

AUSTRIAN
OMBUDSMAN BOARD



Annual Report

on the activities of the Austrian
National Preventive Mechanism (NPM)

2019

Protection & Promotion of Human Rights

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Preface

This report, consisting of around 200 pages, documents the activities of the Austrian Ombudsman Board as National Preventive Mechanism (NPM) in 2019. All of the activities described in this report serve to protect individuals from abuse and degrading treatment. Serious human rights violations typically occur in situations in which there is a power gap or if people cannot make themselves heard.

The Austrian Ombudsman Board (AOB) has the statutory mandate to monitor public and private institutions and facilities where the freedom of individuals is restricted. These so-called places of deprivation of liberty include correctional institutions, police stations, detention centres, retirement and nursing homes, psychiatric wards and child and youth welfare facilities. The commissions of the Austrian NPM conduct monitoring visits in these institutions and facilities on a regular basis to draw attention to deficits and risks, and to effect improvement. A special feature of the Austrian preventive mandate is that, in addition to these places of deprivation of liberty, institutions and facilities for persons with disabilities and police operations are monitored and observed as well.

Conditions worthy of criticism and risks were perceived on around three quarters of all monitoring visits in the year under review: inadequate staffing levels, lack of barrier-free accessibility, overcrowded correctional facilities, disproportionate measures that restrict freedom, and the placement of mentally ill children in adult psychiatric wards are just a few examples. Regardless of how diverse the deficits are, they have one thing in common: for all those affected, they always mean risk and even great suffering in the worst case.

Some of the deficits ascertained could be quickly rectified after talking to those responsible. Visible improvements in previously visited institutions were evident in many cases on follow-up visits. However, the criticism and recommendations for improvements often result in long procedures with operator organisations and supervisory authorities. And in many cases, they too reach the limits of what can be done, simply because politicians fail to set up the necessary framework.

The framework is basically determined by the resources available. Sufficient financing and properly qualified staff are key factors in the creation of humane conditions. If the staff is overstrained, the risk of human rights violations increases. The work overload is frequently attributable to staff shortages, insufficient qualification or a lack of appropriate understanding for the relevant profession.

In many cases there is a lack of information and awareness of how actions can constitute a violation of human dignity. The NPM has addressed this issue in a large number of activities in the field of training and further education.

The recommendations made after the monitoring visits are of great importance. They are not only designed to serve as guidelines regarding humane accommodation and treatment for the visited facilities, but are available to all institutions which are required to observe human rights standards.

This report presents the results of the work of many people who advocate the improvement of human rights: the members of the NPM commissions conduct around 500 monitoring visits with great dedication every year. The Human Rights Advisory Council supports the NPM with its expertise as an advisory body. The day-to-day work of employees at the AOB is characterised by their efforts to ensure that human rights are given the necessary priority in all areas of public life. We would like to express our gratitude to all of them.

This report will also be sent to the UN Subcommittee on Prevention of Torture to whom the Austrian NPM has a reporting obligation..



Werner Amon



Bernhard Achitz



Walter Rosenkranz

Vienna, June 2020

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Introduction

The main focus of this report is the monitoring visits conducted in the year under review for the protection of human rights as well as the observations and recommendations made after the visits.

Preventive monitoring to protect human rights

This volume is divided into two chapters: chapter 1 provides an overview of the work of the AOB and its commissions as the National Preventive Mechanism (NPM). The basis is the preventive mandate, which is explained in more detail at the beginning. This includes the framework for executing the mandate as well as information on the personnel and budgetary resources. The most important figures are presented in the following statistics section: the number of monitoring visits, the distribution across the different institutions and *Laender* as well as the most important areas of criticism. The numbers are based on evaluations from the visit report database implemented for the NPM work, which comprises the data recorded by the commissions anonymously.

Statistics on monitoring

The many international activities are the subject matter at the end of chapter 1. They ensure a regular exchange of experience with comparable organisations from other countries and pursue the goal of further developing the monitoring methodology and standards in particular.

The results of the monitoring work are presented in detail in chapter 2. Most of the monitoring visits were carried out in institutions and facilities in which the freedom of individuals is restricted. Due to the large number of monitoring visits – over 500 in the year under review – it became necessary to make a selection of the main results to be presented in this report. This section of the report thus focuses on frequently observed risks and problems that can be attributed to system-related deficits. These include human rights violations that are not simply attributable to accidents or the failure of individuals but to shortfalls on the part of organisations or operators and to a lack of resources. In addition to system-related deficits, individual cases are presented where serious violations of human rights were observed by the commissions.

Detailed reports on investigations results

The NPM does not see its sole task in pointing out deficits. Rather the goal is to mitigate risks and rectify deficits as quickly as possible. For this reason, information about the subsequent processes is also included, in particular, the reaction of the responsible authorities, or already achieved improvements.

Rectify deficits and minimise risks

Concrete recommendations are formulated for the institutions and facilities from the results of the monitoring visits. These can be found at the end of the respective monitoring reports. Unlike in previous years, all of the recommendations that the NPM has made since taking up its work are not included in this report, as they would inflate the scope of an annual report unnecessarily. The complete list of recommendations is available on the AOB website.

1 Overview of the National Preventive Mechanism

1.1 Mandate

The AOB and its six multidisciplinary commissions have been the National Preventive Mechanism (NPM) in Austria since 1 July 2012. Based on a mandate in the Federal Constitution, which is defined in more detail in the Ombudsman Board Act, the commissions visit places of deprivation of liberty, observe and monitor the bodies empowered to issue direct orders and carry out coercive measures, and perform tasks set forth in the UN Convention on the Rights of Persons with Disabilities (CRPD) being the monitoring of institutions and programmes for persons with disabilities.

505 monitoring visits by the commissions

The commissions conducted 505 monitoring visits in 2019. Most of the initial visits were to institutions for persons with disabilities, retirement and nursing homes, child and youth welfare facilities and psychiatric wards. The classic places of detention such as correctional institutions, police stations and police detention centres are being monitored regularly since 2012. After their visits, the commissions draw up reports on their observations, give human rights assessments and make suggestions to the AOB on how to proceed. All visits are conducted on the basis of the monitoring methodology developed by the Austrian NPM. On follow-up visits the commissions evaluate whether the recommendations have been implemented and improvements have been made. The monitoring framework and methodology can be accessed on the AOB website (https://volksanwaltschaft.gv.at/downloads/1q79s/Pr%C3%BCfschema%20Methodik%20und%20Veranlassungen%20ENGLISCH_20160701.pdf).

17 round-table meetings

The efficacy of the NPM is also dependent on its acceptance with the institutions and facilities and their respective legal entities. The owners and/or operators of the visited institutions and the authorities frequently meet with the NPM to discuss and exchange ideas. In addition to their monitoring and control work, the commissions held 17 round-table meetings with facilities or their senior administrative departments.

Participation in police and prison staff training

The AOB contributes its own training module to basic police training since 2017. The aim is to familiarise future policemen and policewomen with the responsibilities and the work of the NPM. AOB employees and members of the commissions taught a total of 74 classes in eleven training centres in 2019: 16 classes in Vienna, ten classes in Graz, nine classes in St. Pölten, eight classes in Ybbs, six classes in Linz, Feldkirch-Gisingen and Traiskirchen respectively, five classes in Absam, four classes in Krumpendorf, three classes in Eisenstadt and one class in Salzburg. Further training courses are planned for 2020. Prison staff have also been trained on the preventive and *ex-post* control work of the

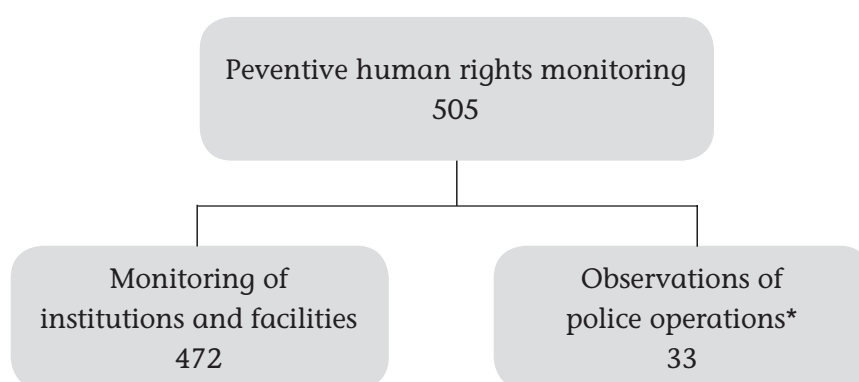
AOB as part of their training since 2017. There were eleven teaching sessions at the training centres in Vienna, Stein, Linz and Graz-Karlau in 2019.

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

1.2 Monitoring and control visits in numbers

The six NPM commissions carried out 505 visits throughout Austria in the year under review. 472 monitoring visits were conducted in institutions and facilities, 33 police operations were observed. By the end of 2019 the total number of monitoring visits carried out by the NPM since the mandate was taken up in 2012 amounted to 3,694.

Monitoring and control activities of the commissions in 2019
(absolute figures)



* these include: forced returns, demonstrations, assemblies

As in the previous years, the vast majority of visits were to the following institutions: retirement and nursing homes, child and youth welfare facilities as well as institutions for persons with disabilities. These institutions comprise the majority of all those monitored by the NPM.

472 visits to institutions and facilities

Many facilities are visited several times during the year, particularly correctional institutions and police detention centres. The number of visits is thus not equivalent to the number of visited institutions and facilities. The visits lasted 3.5 hours on average and were usually unannounced. Only in 4% of the cases was the institution informed in advance.

Numerous follow-up visits

The police operations observed in 2019 were predominantly forced returns, demonstrations, major police operations, raids and football games where trouble was expected. Of the total of 33 police operations observed, 25 were unannounced.

In addition to the monitoring and control activities, the commissions held 17 round-table meetings with institutions and senior administrative departments.

**Number of visits in 2019 in individual *Laender*
according to the type of institution**

	pol. stat.	pol. det. c.	ret.+ nur.h.	youth	inst.f. disabl.	psych. wards	corr. inst.	others	pol. op.
Vienna	13	3	25	33	25	8	8	4	4
Burgenland	0	0	13	1	7	0	0	0	0
Lower Austria	4	0	35	17	28	5	8	2	0
Upper Austria	14	1	12	9	7	0	8	1	2
Salzburg	4	1	7	3	7	0	0	0	9
Carinthia	8	1	5	3	9	3	4	2	2
Styria	6	2	20	3	12	10	3	1	4
Vorarlberg	0	2	4	5	3	3	2	0	2
Tyrol	2	2	14	14	6	5	5	0	5
Total	51	12	135	88	104	34	38	10	33
<i>unannounced</i>	<i>50</i>	<i>12</i>	<i>130</i>	<i>87</i>	<i>101</i>	<i>33</i>	<i>32</i>	<i>9</i>	<i>25</i>

Legend:

- pol.stat. = police stations
- pol.det.c. = police detention centres
- ret.+nur.h. = retirement and nursing homes
- youth = child and youth welfare facilities
- inst.f.disabl. = institutions and facilities for persons with disabilities
- psych.wards = psychiatric wards in hospitals/medical facilities
- corr.inst. = correctional institutions
- others = police departments, Schwechat Airport special transit area, etc.
- pol.op. = police operations

The following table gives an overview of the visits in the individual *Laender* in 2019. It includes both the monitoring visits to the institutions and observations of police operations. Most of the visits were in Vienna and Lower Austria, as the density of population and institutions is highest in these *Laender*.

Number of visits in 2019 in the individual *Laender*

Vienna	128
Lower Austria	99
Styria	61
Upper Austria	54
Tyrol	53
Carinthia	37
Salzburg	31
Burgenland	21
Vorarlberg	21
Total	505

The observations of the commissions are documented in detail in visit reports and recorded in a database. The commissions criticised the human rights situation on 380 visits to institutions and on 11 police operations. No grounds for criticism only occurred on 114 visits (92 institutions and 22 police operations).

Deficits found on around 77% of the visits

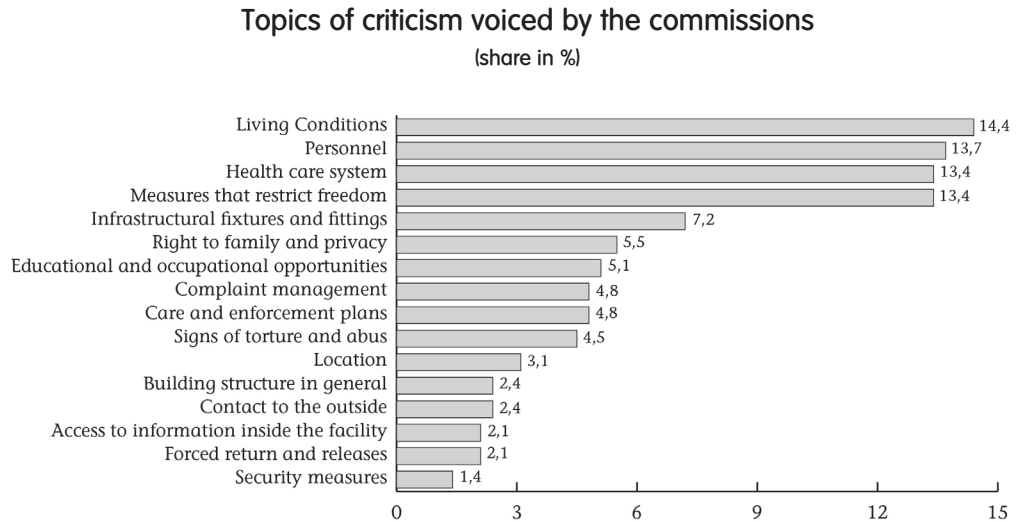
All in all, it can be said that deficits were found in 77% of the visits. The observation of police operations resulted in criticism less frequently than the monitoring of institutions and facilities (33% compared to 81%).

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

Proportion of visits in 2019 with or without criticism

	with criticism	without criticism
Monitoring of institutions and facilities	81%	19%
Observation of police operations	33%	67%
Visits in total	77%	23%

The following graph gives an overview of the topics criticised by the commissions and shows the percentage share in relation to all the criticism voiced. The most frequent reasons for criticism were living conditions (14.4%), which include sanitary and hygiene standards, as well as food and leisure activities. Insufficient human resources also gave frequent grounds for criticism (13.7%). The proportion of criticism regarding health care and those regarding the use of measures that restrict freedom was almost as high (13.4% respectively).



1.3 Budget

In 2019 a budget of EUR 1,450,000 was available to remunerate the heads and the members of the commissions as well as the members of the Human Rights Advisory Council. Of this amount, around EUR 1,275,000 was budgeted for reimbursements and travel expenses for the commission members alone and around EUR 83,000 for the Human Rights Advisory Council. Around EUR 92,000 was available for workshops for the commissions and the personnel working in the OPCAT area as well as for other activities. It was therefore possible to avoid budget cuts, thanks in particular to the National Council as the legislative body in financial matters but also to the Federal Ministry of Finance. Both of them emphasise the necessary financial independence for the preventive activities and show understanding for a sufficient budgetary allocation to the NPM.

1.4 Human resources

1.4.1 Personnel

In order to implement the OPCAT mandate, the AOB received 15 additional permanent positions in 2012. One permanent position has since been eliminated due to budgetary restrictions.

The AOB staff entrusted with NPM responsibilities are legal experts who have experience in the areas of rights of persons with disabilities, children's rights, social rights, police, asylum and the judiciary. The organisational unit "OPCAT Secretariat" is responsible for coordinating the collaboration with the commissions. It also examines international papers and documents in order to support the NPM with information from similar institutions.

1.4.2 The commissions

The NPM entrusts its multidisciplinary commissions (see Annex) with the tasks they have to perform to fulfil the NPM's responsibilities. If required, the regional commissions may involve experts from other specialist areas provided that members of another commission are not available for this purpose. The commissions are organised according to regional criteria. They usually consist of eight members and one commission head respectively.

Six regional
commissions

The entire NPM meets once a year to discuss and exchange ideas on observations and experiences as well as material and organisational problems. In 2019 the participants discussed the following topics after keynote speeches: the admission and guarding of mentally ill offenders in public medical facilities, the sanctioning and administrative penal system in correctional institutions, dealing with decrees and minimum standards and the practical implementation thereof, police operations in child and youth welfare facilities as well as standards in child and youth welfare ("FICE standards"). This annual meeting not only reinforces joint collaboration but also the personal cooperation inside the NPM.

Annual NPM meeting

1.4.3 Human Rights Advisory Council

The Human Rights Advisory Council was established as an advisory body. It is comprised of representatives from NGOs and federal ministries (see Annex). The Human Rights Advisory Council supports the NPM regarding the clarification of monitoring competences and questions that arise during visits and go beyond the problems inherent in an individual case.

1.5 International cooperation

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

IOI supports networking of NPMs

As chair of the General Secretariat of the International Ombudsman Institute (IOI), the AOB also organises the networking of 200 Ombudsman institutions around the world. Many of these institutions also exercise the NPM mandate and the IOI regularly offers these member institutions training programmes with NPM focus as well as workshops and seminars for the international sharing of experience in this area.

SEE NPM Network

The Austrian NPM has been a member of the South-East Europe NPM Network (SEE NPM Network) since October 2013. This network promotes the exchange of knowledge and experience as well as mutual support. The Austrian NPM participates regularly in the network meetings and alternately takes over the chair.

NPM strategies on reprisals

In 2019 the North Macedonian Ombudsman took over the chair of the SEE NPM Network and organised two meetings in Skopje. The first meeting focused on the topic of NPM strategies on how to deal with the possibility of reprisals. After intense discussion between the NPMs from 13 countries, it was agreed that there is a constant risk of reprisals in all places where liberty is deprived. With the help of the “do no harm” principle and active information programmes, NPMs can, however, create a trusting atmosphere on the basis of which affected persons can speak openly with NPM staff without violation of privacy and confidentiality.

Needs of adolescents in detention

The special needs of adolescents in detention were discussed at the second SEE Network meeting chaired by North Macedonia. The participants agreed that adolescents are a particularly vulnerable group and that detention should only be used as a measure of last resort. They further voiced the opinion that alternatives to detention should be sought in all cases and that, in the event of detaining adolescents, the attending personnel should be adequately qualified to know the special needs of adolescents in detention and be able to accommodate these. Furthermore, the medical psychological care of adolescents shall be ensured and they shall be informed of their rights in a language and in a manner that they can understand.

D-A-CH Network meeting in Zurich

Since 2014, the Austrian NPM has been partner of a programme for exchanging experience and ideas between NPMs from the German-speaking countries and participates actively in meetings with colleagues from Germany and Switzerland. The chair alternates between the three member countries (Germany, Austria, Switzerland) within the framework of the D-A-CH Network. In the year under review, the Swiss National Commission for the Prevention of Torture (NCPT) invited partners to a meeting in Zurich at which the participants broached the issue of so-called legally permissible migration-

related deprivation of liberty and returns by air in particular. The Swiss NPM organised a visit to the department responsible for the administrative detention under immigration law provisions at Zurich Airport to give the colleagues a real insight into the Swiss (forced) return practice, thereby initiating an active exchange of ideas and experience for the following day. Ombudsman Werner Amon and an expert took part in this meeting.

The Austrian NPM is an active host when it comes to bilateral exchange and invites colleagues from other NPMs to come and share experience in Vienna.

In March 2019, the Albanian Ombudsman Erinda Ballanca visited the AOB together with the head of the NPM department, the Albanian Children's Ombudsman and other colleagues. After a brief introduction by the Austrian NPM, the two institutions exchanged their respective experience and existing challenges. The importance of the Ombudsman institution was emphasised by both the Albanian and the Austrian side, particularly at a time when democracy is given little leeway. Deeper networking on the European level to pursue the goal of jointly promoting human rights was considered very important.

Bilateral exchange with Albanian NPM

The Serbian Ombudsman Zoran Pašalic together with the head of the Serbian NPM department and the Serbian advisor on "urgent matters" came to Vienna for an informational visit in April 2019. Talking to commission head Andrea Berzlanovich, the delegation from Serbia had the opportunity to become more familiar with the work of the Austrian NPM in the area of so-called "less traditional" places of deprivation of liberty, for example, retirement and nursing homes or institutions for persons with disabilities.

Serbian NPM informs itself about „less traditional places of deprivation of liberty“

As part of the master's course on the subject of the Constitution and the penitentiary law, the Italian NPM organised a study visit for students of this course together with the Università Roma Tre. On their three-day trip to Austria, the guests had the opportunity to talk to representatives of the Federal Ministry of Justice, the Supreme Administrative Court of Austria and the Austrian NPM. Furthermore, an employee of the Correctional Services Academy (*Strafvollzugsakademie*) accompanied the group on visits to the Vienna-Josefstadt correctional institution and – in the area of the detention of mentally ill offenders – the Göllersdorf institution.

Italian students on a working trip to Vienna

Ombudsman Werner Amon greeted the delegation and provided a brief insight into the work of the Austrian NPM. In the detailed exchange with experts from the AOB, the students showed great interest in the system for the detention of mentally ill offenders, the availability of comprehensive health care in the penal system, dealing with alleged abuse on the part of prison officers and in the possibility to appeal for asylum seekers threatened with forced return.

EU project for the promotion of the Kosovan Ombudsman	<p>In October 2019, Ombudsman Werner Amon also greeted Kosovan Ombudsman Hilmi Jashari and his delegation of eleven leading employees from the Kosovan Ombudsman institution. The visit was organised as part of an EU project for the promotion of the Kosovan Ombudsman institution, in the course of which the delegation visited other institutions in the field of human rights, equal treatment and anti-discrimination.</p> <p>Building on the traditionally close contact between the Austrian and the Kosovan Ombudsman institution, there was a detailed exchange on the mandate, role and challenges of NPMs. Both institutions agreed that productive work which is compliant with the mandate requires sufficient qualified personnel. They also emphasised the importance of public relations work to heighten awareness for the Ombudsman institutions and increase effectiveness of their recommendations. On the part of the Austrian NPM, the presentation of the Annual Report in the Austrian Parliament and the television programme <i>Bürgeranwalt</i> (“Advocate of the people”) were highlighted in particular.</p>
Delegation from Ukraine discusses protection in social institutions and psychiatric wards	<p>Within the framework of a Council of Europe project for the promotion of the Ukrainian Ombudsman institution a discussion on the topic of a “Preventive approach against inhumane treatment in social institutions and psychiatric wards” was organised. Ombudsman Bernhard Achitz greeted the delegation to two days of sharing their experience and ideas in Vienna.</p> <p>The Ukrainian Ombudsman institution also exercises the NPM mandate and the guests were very interested in the monitoring of “less traditional” places of detention, in particular in monitoring social institutions and psychiatric wards. Both sides shared many practical experiences and approaches in a discussion with experts from the Austrian NPM. A visit to a nursing home in Lower Austria offered the guests practical insights into looking after persons in need of care and the special care concepts for persons suffering from dementia.</p>
Council of Europe celebrates 30 years of CPT in Strasbourg	<p>On the occasion of the 30th anniversary of the European Committee for the Prevention of Torture (CPT), the Association for the Prevention of Torture (APT), which is located in Geneva, organised an event in Strasbourg together with the OSCE Office for Democratic Institutions and Human Rights, in which the Austrian NPM also participated. The conference focused on the question of which measures have to be initiated to counter abuse and torture during the initial phase of detention. The topic was discussed in detail in the subsequent working meetings with colleagues from NPMs from the different member states. The three-day event ended with an official ceremony to celebrate the 30th anniversary of the CPT.</p>
Nafplion Group meets in Rome	<p>In October 2019 the Council of Europe organised a meeting of the so-called Nafplion Group together with the Italian NPM and Frontex in Rome. An expert from Austria took part in this meeting. This was the first meeting of the Nafplion Group since it was founded in October 2018. In addition to organisational and structural questions on the composition of the group, it</p>

addressed the pool of observers that accompany forced returns executed by Frontex.

Experts from the Austrian NPM also took part in the 10th European conference on health promotion in prisons that took place in Bonn in 2019 and focused on the topic of “Health promotion made easy – practical models for prisoners, officers and externals”. The current health care problems in European correctional institutions and the existing health promotion measures in prisons amongst others were the subject of discussion in the individual plenary sessions. In different working meetings participants discussed specific topics such as health problems in the detention of mentally ill offenders, women’s health in prisons, health and care insurance in prisons, and the inclusion of health problems in release management.

European conference on health promotion in prisons

1.6 Report of the Human Rights Advisory Council

The Human Rights Advisory Council met five times in plenary meetings in 2019. In addition to these plenary meetings, the Human Rights Advisory Council also held many working group meetings and prepared statements on the preventive protection of human rights as well as draft recommendations of the NPM. Furthermore, the Human Rights Advisory Council evaluated visit reports and analysed the resulting priorities.

Constructive collaboration

In the year under review, the Human Rights Advisory Council made statements of opinion based on material presented by the NPM on the following topics:

Statements of opinion

- Standard Operating Procedure (SOP) for placing suicidal detainees in video-monitored inmate cells
- Interim report on the topic of “Lock-up times in correctional institutions”
- Barring orders and prohibitions to enter in-patient care facilities

Working groups of the Human Rights Advisory Council dealt with the following topics in the year under review:

Working groups

- Barring orders and prohibitions to enter in-patient care facilities
- Lock-up times in correctional institutions
- Minimum standards for housing unaccompanied minor refugees
- Mandate and working principles of the Human Rights Advisory Council
- Notes on the visit reports of the commissions

Discussion of diverse topics

Furthermore, the Human Rights Advisory Council also discussed the following topics with the NPM:

- Constitutional requirements for restraining patients
- Suspicion of deficits in Vordernberg detention centre, in relation to medical care in particular
- Mandate of the commissions with regard to day-care centres for the homeless
- Key aspects of the Human Rights Advisory Council's mandate
- Evaluation of existing and definition of new monitoring priorities
- Recommendations for preventive goals as well as specification and implementation of monitoring priorities

The Human Rights Advisory Council addressed structural human rights issues presented in a draft recommendation from the AOB:

- Determination of maladministration and recommendation of the AOB to the regional government of Styria in connection with the inappropriate placement of residents in nursing homes

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

2 Findings and recommendations

2.1 Retirement and nursing homes

2.1.1 Introduction

The NPM commissions visited a total of 135 public and private short- and long-term nursing homes in the year under review; 130 of these visits were unannounced.

In December 2018 the Council of Ministers adopted a memorandum for the further development and sustainable safeguarding of nursing care. Amongst others, this included the commissioning of studies on the additional personnel requirements that can be expected and on future forms of care financing as well as consultations with countries and stakeholders regarding the development of an overall concept. However, the political developments from May 2019 onwards took precedence over these issues and blocked the specification of the “Care Master Plan” (*“Masterplan Pflege”*), which had been originally planned for the end of 2019. The need for reform has been evident for years. There was at least agreement during the election campaign that substantially more funds have to be invested in the care system. Only in this way can the aspiration to humane care be fulfilled throughout the country in a standard, needs-based way and support measures based on local care planning be guaranteed.

Urgent need for
care reform

The care funds and thus the subsidy from the Federal Government to the *Laender* and municipalities expire in 2021. What will happen after that is unknown; the long-term financing is also unclear. In order to make care at home more attractive, measures in support of nursing relatives have to be implemented, the reconciliation of care, family and career has to be improved and precautions have to be taken against poverty in old age for women.

What is essential is a wide range of family relief offers that accommodates both persons requiring care and their needs on the one hand, and does not lose sight of the quality and attractiveness of jobs on the other. In November 2019 a study by the Austrian National Public Health Institute (*Gesundheit Österreich GmbH, GÖG*) on a “Demand forecast for care personnel” was presented. The calculated demand of 75,700 additional caregivers by 2030 makes the urgency for change unequivocally clear. To relieve the areas of hospital and residential care, stronger integration of health care and nursing in the acute and basic medical care of the elderly as well as expert support for nursing relatives is required amongst others; in particular, for those looking after persons suffering from dementia. Reports from the commissions indicate that the existing places in nursing homes are not being filled due to staff shortages. An appeal must therefore be directed to all those politically responsible parties to bundle and implement the existing, constructive solutions. It will only be

possible to counter a lack of personnel if both young people and those re-entering the workforce can be convinced of the attractiveness of training and work in the care sector. Those interested in the nursing profession and willing to get qualification on the so-called second education route have to be attracted to the nursing profession too. Qualified personnel leaving the profession prematurely could also be avoided in the opinion of the NPM if the overall framework were to change radically. This includes working times that are commensurate with care, more appreciation on the part of superiors, better organisation and the transparent exchange of information, but above all, better pay and recognition of the nursing profession.

Caregivers repeatedly emphasise one reason for their dissatisfaction: they find that their work is not adequately appreciated by care management, members of other medical professions and the relatives of the persons they take care of.

Frequently, a good impression

The commissions had a good general impression in many facilities, particularly with respect to the commitment of the care personnel. The criticism by the NPM is not direct at individuals who work there. Critical feedback should, however, reflect the aspects that are indicative of structural problems on the day of the visit. The facilities are told how the communication between staff and residents was perceived. Commission 5 for example accompanied two employees on the night shift in a home in Lower Austria. Despite the fact that many of the residents require considerable psychiatric care, the two employees worked professionally, with calm, treating all of those in need of care with great respect. The delegation observed that the residents were pleased to be addressed personally. In two homes in Tyrol, the residents decide themselves when they go to bed. There is simply the request to be quiet in the leisure areas from 10.00 p.m. These examples show that respectful treatment and taking the time to communicate are prerequisites for a quality of care that honours the dignity of each and every resident.

Hygienic deficits

Sometimes the lack of customer orientation becomes evident as soon as the visit starts, mostly in the form of hygienic deficits. In a nursing home in Lower Austria for instance, the corridors were blocked with wire mesh boxes full of nightshirts and dirty laundry, wheelchairs, walking frames and commodes for hours, a bad smell spread and people at risk of falling were impaired when leaving their rooms. In a home in Upper Austria, the door to the sanitary facilities was open, allowing a smell of urine to spread around the entire entrance area. A home in Salzburg stored incontinence material and dirty laundry in non-airtight boxes in the corridor.

As in the previous years, a large number of recommendations for improvement by the NPM were implemented in 2019. An increasing number of institutions said that they experienced the monitoring visits as well founded and constructive. It is gratifying when those responsible in the institutions take up criticism and implement corresponding measures quickly, some of them right after the visit by the commissions.

A nursing home in Tyrol for example, removed the printed foils from the doors in the dementia section as they made it difficult for the cognitively impaired to leave the department, thus resulting in a freedom-restricting effect. The use of measures that restrict freedom was evaluated and the documentation improved. A weekly programme from 6.30 p.m. to 7.30 p.m. was organised (music, dancing, games, reading out loud etc.). There is also a home café and a fortnightly programme in the departments. The nursing staff was once again instructed about the careful storage of medication. The prescription of medication in individual cases was corrected and fixed by the attending doctors. The three-bed rooms in the care units were converted; screens were placed in the remaining two-bed rooms to protect privacy. The lift controller was modified for barrier-free access thus making it possible to exit without obstruction. Further training in violence in care and de-escalation management is planned for 2020. In another Tyrolean home, ramps were purchased after the visit by Commission 1 to enable residents to overcome balcony thresholds without help. All lift and slide doors to generally accessible balconies were refitted to prevent unintentional closing and ensure that escape from the balcony to the inside of the building is possible at all times. In a Vienna care facility, deficits in the care documentation observed during a visit were rectified in staff meetings.

Implemented NPM
recommendations

The repeated highlighting of problem areas by the NPM also effects improvements on the structural level. 400 new low-floor beds were purchased for the Lower Austrian nursing and care centres. The almost 80% level of equipment achieved there not only improves safety but contributes to better preserving and promoting the mobility of the residents. After a visit by Commission 6 to a home in Burgenland, ten low-floor beds were purchased, the garden refurbished, windows replaced, rooms painted and air conditioning installed in the dining room. A relaxation room for the staff was created; other structural measures included safety features on stairways and fitting outside blinds and sun blinds.

In many cases, it was possible to convince the home operators to introduce more flexible mealtimes. In a home in Lower Austria, the evening meal time was moved to 5.30 p.m.; the same was introduced in a home in Tyrol despite some initial protests on the part of the residents, but they adjusted quickly. For some residents, the improvement in sleeping habits that was brought about by going to bed later was remarkable. A nursing home in Upper Austria followed a recommendation of Commission 2 and now serves breakfast between 7.00 a.m. and 10.00 a.m. The option of eating a snack late in the evening was offered here, as is now the case in many homes. A home in Styria extended late shift to 10.00 p.m. so that residents can stay up longer.

A small home in Vorarlberg followed the recommendation of Commission 1 to install emergency alarms in the toilets and showers because the residents often forget their mobile alarm pagers in the residential areas. A home in

Upper Austria implemented several measures to better compensate for failing spatial orientation after the visit by Commission 2. For example, a picture of their own (former) hall door was stuck to the door of the residents' rooms in order to evoke their memory of a safe home. Barrier-free accessibility was established through contrasting wall paint and brighter lamps. Access to the terraces without steps was made possible; exits to the garden were fitted with automatic revolving doors.

Recommendations
delayed or not
implemented at all

In some cases, however, the recommendations of the NPM are only partially implemented or with considerable delay. Commissions make follow-up visits in cases where the intention to rectify weaknesses was vague or it is not certain for other reasons whether sustainable conditions that are satisfactory for those in need of care were established. Commission 3 made monitoring visits to one Styrian home in 2014, 2016, 2018 and 2019. Initially, the operator completely refused to cooperate; OPCAT examinations were only tolerated after intervention by the AOB and the technical supervision. Inspections and constraints – several in some cases – set down by the supervisory authority were necessary until the first structural changes were noticeable. The deficits ascertained by the commission included non-compliance with the minimum staffing ratio, administration of medication, insufficient nursing documentation, absence of activity programmes and lack of hygiene amongst others. Commission 3 recently recognised some progress; however, it reiterated on its last visit that correct care planning must contain measures for preventing malnutrition and polypharmacy, and additional mobilisation and animation programmes are also necessary. Regardless of this, the supervisory authority was again informed by the NPM about the results of the unannounced visit.

Commission 5 observed little improvement in a nursing home providing long-term and short-term care as well as assisted living compared with the initial visit. The recommendation to extend the night shift had not been taken up; 84 persons aged between 54 and 96, most of whom require a considerable amount of care, are looked after by just two caregivers. They do three rounds per night and have to prepare breakfast at around 5.00 a.m. The evening meal is at 4.30 p.m. so that the day shift can get the persons who are not mobile ready for bed. No incentives are offered for residents to leave their beds or their rooms around 6.00 p.m. This, however, is necessary, as the commission found many persons with physiotherapeutic mobility needs and indications of polypharmacy. In November 2019 the home management informed the NPM that it saw the criticism as an opportunity to evaluate the processes. A working group set up for this purpose is considering revising shift plans amongst others. Commission 2 made several follow-up visits to a home in Upper Austria. Nevertheless, there was still criticism of missing assessments in the care plans viewed on site (falls, pain, malnutrition, decubitus prophylaxis). Progress up to improved day care was positive. In a remote home in Styria, Commission 3 observed deficits in pain management and the use of measures that restrict freedom, in particular with regard to using less severe measures. The residents

are charged for travel from the home to doctors' surgeries; residents want more contact to the outside world and excursions. The statement from the operator and the supervisory authority only referred to the visits in accordance with the Styrian Nursing Home Act (*Pflegeheimgesetz*), which documented no need for change.

Recommendations by the NPM are rarely completely rejected by the home because they appear to be insufficiently justified. The failure to implement the recommendations is not because the NPM is requesting the impossible or does not leave the homes any leeway either. Written reactions speak rather of the strain of meeting all of the expectations under the given conditions. For example, a Tyrolean home informed the NPM that enabling residents to go outside as requested by Commission 1 could not be implemented due to staff shortages and the requested evening programme could not be introduced, not even occasionally. The results of international studies confirm the positive effects of experiencing nature and being outside on the health and behaviour of persons suffering from dementia. Evidence shows that bright daylight has a normalising effect on the sleep-wake rhythm. The use of well-designed gardens and pleasant outside areas should therefore be systematically integrated in the care concept.

Complaints of staff shortages from home management and personnel

2.1.2 Instruments for quality assurance

Care is always complex and process-oriented. The experience of the NPM shows that the quality of care depends on many factors. The qualification and training of the staff, individual knowledge and skills, human and social competence, advanced and further education and the willingness for further personal development all play an important role. The necessary organisational framework includes real (and not merely propagated) role models, a staffing ratio that is proportionate with the actual tasks and challenges, the participation of employees as well as target-oriented interdisciplinary cooperation with other healthcare professions.

The culture of error is also of critical importance. The longer suboptimal decisions are made and the later deficits are detected and rectified, the higher will be the damage suffered by those in need of care and indeed the staff as well. A change of consciousness is necessary for a successful culture of error in care facilities – for managers in particular, but also for all employees. Everyone needs to understand that errors are there so that they can learn from them. As long as the attitude of individuals to this topic does not change, errors will be covered up, kept secret, blamed on others.

Establishing a positive culture of error

The Federal Act on Healthcare and Nursing Professions (*Gesundheits- und Krankenpflegegesetz*) also recognises prevention, health promotion and advice as a core competence of the higher civil service. In all areas of care the legislator therefore requires – on the basis of medical-nursing knowledge

– the autonomous determination of care needs as well as the assessment of dependence on care, diagnostics, planning, organisation, execution, monitoring and evaluation of all care-related processes (see Section 14 of the Federal Act on Healthcare and Nursing Professions).

Active involvement of those in need of care in care planning

As explained in detail in the NPM Report 2018 (p. 42 et seq.), the way in which the relationship with those in need of care as well as the cooperation with their relatives is handled has effects that can prevent or foster violence. The NPM is thus of the opinion that those in need of care and their relatives should be actively involved in decision-making processes, in particular in care planning and care work. This can be implemented within the framework of care visits, for example. These visits will show the residents that there is interest in their well-being and enable the staff to receive regular feedback on their work and the effectiveness of intervention as well as recognise weaknesses.

Care visits are an important instrument for quality assurance when they contribute to detect which individual resources of those in need of care could be activated. This can then increase the person's, the relatives' and the staff's ability to perceive changes that can be further influenced positively. The specialised examination that is part of care visits documents care measures taken and processes implemented to date. By sharing this information, other aspects can be uncovered, which require the extension or revision of the care plan. Especially in difficult situations, the expert advice and exchange of experience can help strengthen the personal responsibility and job satisfaction of the caregiving staff. Commissions observed in several homes that care visits attended by the ward manager are organised in a way that they facilitate a professional transfer of sound information. Care visits and review meetings can reveal further training needs because they enable managers too draw conclusions on the staff's capability to act in certain situations. All of these effects help in developing a jointly supported human-rights-based understanding of care. This is the prerequisite for implementing care concepts with a rehabilitative approach that counter the inappropriate use of measures that restrict freedom and polypharmacy.

In some nursing homes, general practitioners also take part in care visits with the consent of those in need of care. This requires coordination and making appointments, but the result is considerably more informative and saves resources.

Care visits do not appear to be common practice. For example, Commission 2 observed on a visit to a home in Upper Austria in 2019 that no care visits are made by the care service management even though the technical supervision of the regional government of Upper Austria had already criticised this in 2018.

- ▶ *Those in need of care and their relatives shall be actively included in all decision-making processes, in particular in care planning and care work.*
- ▶ *Management responsibility also consists of practicing and supporting a positive culture of error.*
- ▶ *The NPM recommends using care visits for quality assurance in such a manner that they contribute to a jointly supported understanding of care and to resolving difficult situations. The necessity for any further education measures that become evident through this experience shall be met.*
- ▶ *Care that honours the right to the best possible health shall be organised with a rehabilitative approach. Attempts shall be made to minimise the use of medication-based restrictions of freedom on care visits.*

2.1.3 Violence prevention and de-escalation management

Broaching the issue of aggression and violence in care facilities is a fundamental condition for finding the causes thereof and being able to initiate change. For the NPM, it is important to examine the issue “from both sides”, that is, to take not only violence against residents but also violence against caregivers seriously. Caregivers have a right to a healthy and safe working place. What is of critical importance from the NPM’s point of view is therefore that there is awareness on all hierarchical levels that dealing with violence is a preventive matter for the entire organisation – and not a personal problem or the failure of individual employees. Those in need of care and staff are equally affected by structural violence, that is, conditions under which they live and work without being able to influence them.

Violence prevention is the responsibility of organisations

Those who are unable to look after their own needs will sooner or later be unable to look after the needs of entrusted persons in need of care. The NPM has heard complaints from all of the *Laender* about increasing demands, stress and strain, fewer breaks, difficulties in filling vacant positions and overtime that cannot be reduced due to a sense of responsibility to the elderly and colleagues. Commission 2 observed an extremely high number of remaining leave that had not been taken in two homes in Upper Austria. Nursing staff alone had a total of 5,325 hours of remaining leave at the end of 2019, which is equivalent to 26 fulltime annual holidays. The Commission considered it an urgent requirement to increase staffing levels and to involve the caregivers in shift planning. In this context, an evaluation of mental stress at the workplace and employee satisfaction would be essential.

If the daily routine in care facilities is tightly scheduled and primarily based on the concept of “warm, full, clean”-care as opposed to equally important responsibilities such as considering relationships and quality of life, constant pressure is exerted on all those involved. Persons who are cognitively impaired

Relationship work is integral part of good care

may then use violence to attract attention, express their discomfort, defend themselves or because situations are misunderstood. In order to prevent violence, it is important to treat those in need of care in a mindful and respectful way. Organisational cultures in which the needs of those involved are focal and in which institutional support adapts to these needs help prevent violence. Reality shows, however, that elderly persons with impaired orientation and health issues are restrained to inactivity and are neither sufficiently animated nor supported in making independent decisions concerning the organisation of their everyday lives.

Verbal abuse and
negligence

Violence research shows that those in need of care who can only express themselves with difficulty are particularly vulnerable and they are at considerable risk of being subject to violence. This often happens unintentionally. As far as critical actions on the part of nursing staff are concerned, verbal abuse and stress-related negligence are mentioned most frequently to the commissions. At times, it is difficult for those interviewed to admit that their daily work routine induces negative feelings (anger, frustration, revulsion etc.). Insufficient knowledge of care techniques also plays a great role in the occurrence of violence. Members of staff who, for example, do not know how to take someone out of bed or help them in the shower without straining their own back are subjecting their body to considerable strain. This can result in overexertion and irritability. The fundament for attacks is laid when there is no scope allowing for supervision and reflection to relieve the strain. A commission from Upper Austria reported that a resident suffering from dementia showed no reaction to the request to participate in washing herself and spat at the care assistant. Not knowing what else she could do, the care assistant asked a colleague to push the resident closer to the sink and held her mouth closed with a washcloth. The commission received reports of sexual assaults by three male residents on other female residents and a female caregiver in a home in Tyrol. The incidents were discussed in team meetings; however, it was conceded that there was no one available to effectively stop the assaults. None of the employees had received de-escalation training. In a home in Lower Austria, the staff saw no other short-term solution to protecting themselves against sexual assault by a resident than to lock him in his room.

Several other examples show that the way in which nursing staff deals with sexuality in old age and with dementia is often inadequate and results in measures that would appear to be inappropriate. In Upper Austria, repeated masturbation by a resident was designated an "offence" in the documentation. The home reacted by clothing the resident in an overall at night, which could only be opened at the back and was meant to prevent touching the sexual organ. In spring 2019, the media reported about a highly sexually active dementia resident of a retirement home in Vienna who sexually harassed caregivers several times, exposed himself indecently, undressed repeatedly and sought intimacy with female residents also suffering from dementia. Questioning the female resident and the staff failed to establish without

doubt whether there had subsequently been consensual or coerced sexual acts between the two residents. It should be discussed how staff working in long-term care facilities have to deal with the sexual self-determination of residents but also with sexually problematic situations. It is inappropriate to interpret abnormalities that occur after the onset of dementia as a weakness of character, and not to see psychosocial needs behind them. The incidence of sexual behavioural disorders during the course of dementia-related changes can be caused by many factors and is not simply attributable to long-existing inclinations. Organic changes to the brain or certain types of medication can be critical in this respect. If the observed hypersexuality is due to comorbidities or medication administered for the same, the medical treatment shall be optimised and, if necessary, the medicines used to date replaced by medication with a better side effect profile.

Based on observations made on two visits to a care centre, which also included examining anonymous reports, Commission 5 recommended the regional government of Lower Austria to urgently initiate a comprehensive organisational process to minimise the number of violent incidents. The NPM considered it essential to define a comprehensive catalogue of measures in order to guarantee more adequate nursing and care of the residents (including training in violence prevention and de-escalation, regular case reviews, supervision, and drafting of individual crisis intervention plans). The NPM was informed that the recommendations would be taken up. Advanced and further education for management and staff focuses on recognising violence and includes preventive measures with respect to border-violating and challenging behaviour in gerontopsychiatric illnesses. A general pain guideline was published with a catalogue of measures for non-medication therapy forms and assessment instruments drafted for cognitively impaired residents (ZOPA, Doloplus, BESD), with the implementation thereof scheduled for autumn 2019. The NPM was also assured that, after adding psychological experts with external support, the specialised competence will continue to be increased and team development will be supported. In this way, the multidisciplinary work should be improved and activity programmes based on the residents' needs come into their own.

Complex cause of violent incidents call for an organisational process

The NPM has been recommending the textualisation and implementation of violence prevention concepts for years. Furthermore, the NPM continuously points out the necessity for violence prevention training as part of effective de-escalation management. Even if a home has a violence prevention concept, it is not always put into practice. In their interviews, the commissions often hear that the contents are unknown even to employees who have been working there for a long time. However, there is now – unlike back in 2012 when the NPM assumed its work – a growing number of homes that are stepping up violence prevention training, analysing difficult situations in workshops and regularly using case studies to discuss the appropriate action. Methods for dealing with challenging or aggressive behaviour are taught in de-escalation

Violence prevention concepts

training programmes. These include not only physical defence methods but in particular measures for de-escalating conflict. The caregivers must be able – for their own protection – to recognise early warning signs and use techniques to distract and calm the resident down.

- Implementation in the *Laender* The NPM recently contacted each of the *Laender* and asked whether there are harmonised quality guidelines or quality standards applicable to all operators and/or owners, which are supported by the technical supervision, for violence prevention and de-escalation management, and how it can be ensured that all operators and care homes are implementing them.
- Best practice in Vienna The result shows that the guideline “The management of aggression, violence and de-escalation” (“*Aggressions-, Gewalt- und Deeskalationsmanagement*”) – volume 3 of a guideline on nursing and care (“*Handlungsleitlinien Pflege und Betreuung*”) – created by the Association for Viennese Social Institutions last year is still an example of best practice. Implementation of this guideline is a prerequisite for homes in Vienna to be recognised and sponsored by the Vienna Social Fund (FSW).
- Burgenlan enacts legal obligation The Burgenland Social Institution Act (*Sozialeinrichtungsgesetz*) that came into effect on 1 November 2019 stipulates the mandatory presentation of a violence prevention concept (Section 5 (2)(5)) as a condition for granting the operating permit for a retirement and nursing home. Existing homes shall present such a concept within two years of the new law coming into effect, failing which, the regional government can impose conditions concerning this matter. The NPM was informed that the regional government intends to create a standard violence prevention quality guideline soon.
- Lower Austria Standard quality guidelines on violence and de-escalation management were developed for the homes in Lower Austrian in 2019 – with the involvement of private and public owners and operators, residents’ representatives, the network of representatives and the Lower Austrian Patients and Care Advocates. The guidelines were formulated as the condition for recognition and sponsoring by the *Land* of Lower Austria. Implementation is planned for 2020. The training themes of violence prevention, ethics and person-centeredness were defined as part of the framework for quality assurance and the development of care centres for 2019 and 2020. The relevant training programmes were attended by both management and employees and the implementation of the content in practice was accompanied by Quality Management and the Administrative Unit for Innovation of the *Land's* specialist department (Department GS 7). 644 employees from Lower Austrian care centres have taken part in the training programmes to date.
- Vorarlberg In Vorarlberg, the regional government published a guideline on “Dealing with violence to persons in need of care” (“*Umgang mit Gewalt an pflegebedürftigen Menschen*”) at the end of 2019, which was sent to all care services.

In the *Laender* of Salzburg, Styria, Upper Austria and Carinthia, the respective regional governments have not defined quality guidelines or quality standards on violence prevention and de-escalation management to date. Salzburg refers to the minimum standards set forth in the Salzburg Care Act (*Salzburger Pflegegesetz*) as well as the seminars and training programmes on the topic of violence prevention organised by the *Land*. The regional government of Styria refers to regulations set forth in the law of the *Land* that stipulate the presentation of a care and rehabilitation concept a prerequisite for granting a permit; according to the regional government, other content requirements are not required by law. A training programme on this topic took place in November 2019 for managers of retirement and nursing homes in Upper Austria. Professional training in this area is also offered by the School for Elderly Care of the *Land* Upper Austria and the *Pro Senectute* association. The regional government of Carinthia also referred to training programmes and workshops of the home operators and to the fact that additional concepts for dealing with challenging behaviour professionally and de-escalation management measures are implemented in homes specialising in dementia-related care or in gerontopsychiatric care.

Salzburg, Styria, Upper Austria and Carinthia

In Tyrol, the Tyrolean Home Advocacy holds lectures and training courses on the topic of “Dealing with violence”. The Tyrolean regional government assured it would take the request by the NPM as an opportunity to use the experience made by homes with existing violence prevention concepts (for example, at *Tirol Kliniken GmbH*) in the possible introduction of standard guidelines on violence and de-escalation management.

Tyrol

- ▶ *Practical guidelines on dealing with violence and aggression should be available in all care facilities and be discussed regularly with the staff.*
- ▶ *Employers shall take protective measures that have a positive effect on the safety and health of the staff.*
- ▶ *It is necessary to confront the topic of “Sexuality in old age and with dementia” in order to safeguard the right to sexual self-determination and to protect against sexual assaults.*

2.1.4 Restriction of freedom through medication

The possibility of deprivation of liberty against the will of the affected person is the reference point for the Austrian NPM to investigate nursing homes and care facilities based on the power given to it by constitutional and international law.

A particularly challenging part of the commissions' work is finding ways of reducing the medication-based restriction of freedom and defining universal standards for violence prevention and averting health risks.

Awareness of restrictions of freedom is increasing

The deputy department head of the residents' representatives at the *VertretungsNetz* association, Rosalinde Pimon, reported about current developments during the NPM's annual exchange of experience and ideas. Whilst only approx. 8% of all mandatory reports pursuant to the Nursing and Residential Homes Residence Act (*Heimaufenthaltsgesetz*) in 2007 involved medication-based restrictions of freedom, the figure was some 40% in autumn 2019. According to the residents' association *VertretungsNetz*, this is attributable to the awareness on the part of the caregivers and doctors in particular; a development that partially stems from the work of the NPM. According to observations by the NPM, the awareness that administering sedatives can be a restriction of freedom has increased in recent years.

Every medication-based restriction of freedom also constitutes medical treatment. In order to assess the legality therefore, both the conditions of permissibility regulated in the Nursing and Residential Homes Residence Act and the general prerequisites for medical treatment must exist. The purpose of the medication or the therapeutic goal must also be clear before executing the measure. It must be possible to assess whether the medication constitutes a measure that restricts freedom. Administering medication without a therapeutic indication, but simply to suppress anxiety, constitutes an impermissible medication-based measure that restricts freedom and therefore also impermissible medical treatment.

Disclosure of risk potential and therapeutic goal

There are still homes which, despite a large number of residents with suspected psychiatric diagnoses, avoid consulting doctors as well as contacting residents' representatives associations. Commission 2 visited a home in Upper Austria, for example, which, at the time of the visit, had submitted no reports regarding medication-based restrictions of freedom even though the therapeutic goal of the prescribed and potentially sedating medication (e.g. Zyprexa, Praxiten, Dominal) could not be explained by the documented diagnoses alone. The medical documentation must always include the risk potential inherent in the relevant illness. A mere diagnosis without risk assessment is not sufficient and does not constitute a suitable legal basis for a measure that restricts freedom. The commission recommended an immediate examination by the attending general practitioners, to which the home agreed. Likewise in a recently opened home in Lower Austria, the management already conceded to Commission 6 in the final meeting that there were training needs and assured that they would contact the representatives of the residents. In a home in Vorarlberg Commission 1 observed that there were no psychiatric diagnoses for prescribed psychotropic medication.

A medication-based measure that restricts freedom may only be executed if considerable risk of harm to the person involved or third parties cannot be averted through more gentle measures in advance (Section 4 of the Nursing and Residential Homes Residence Act). It shall always be examined whether the deprivation of liberty by psychotropic medication can be avoided through professional care standards, individual care concepts and non-medication-based interventions. In the experience of the NPM, the subsidiarity clause is not sufficiently observed – at least, very often not documented. The causes of unsettled behaviour are not fully looked into. Behavioural disorders with dementia-related illnesses can be caused by somatic conditions or the interaction and side effects of prescribed medication. The documentation work associated with examining alternatives is appropriate according to the court rulings of the Supreme Court, because medication linked to the restriction of freedom can only then be justified if no other measures are actually expedient.

Subsidiarity not sufficiently observed

Commission 1 observed in a home in Tyrol that previously attempted less severe measures had not been documented in any of the reports to the representatives of the residents. The quality of the documentation generally varies as does the awareness and level of knowledge in this respect.

In a home in Vorarlberg, sedating medication including sleeping pills was administered with the evening meal. In the opinion of Commission 1, this constitutes premature tranquilisation and thus a reportable measure that restricts freedom. In isolated cases, it happens that persons suffering from dementia who are unsettled at night are given sleeping medication after midnight. The consequence of this can be a hangover or falls the following day.

Medication administered at the wrong time

The NPM recommends that nursing homes regularly evaluate the use of measures that restrict freedom, draw up founded biographies and create a customised plan that conserves resources. This should cover alternatives to measures that restrict freedom, individual activities for each resident, appropriate communication and maintaining or improving mobility. Success is noticeable on follow-up visits in cases where – as a result of visits by the commissions - medication is adjusted, training or supplementary expert instructions are provided and care visits focusing on restrictions of freedom are made. A particularly positive example is a home in Lower Austria that succeeded in reducing a large number of measures that restrict freedom and noticed an improvement in the residents' well-being since then.

Recommendations and successes of the NPM

- ▶ *The NPM recommends drawing up founded biographies and creating a customised care plan that conserves resources in order to avoid medication-based measures that restrict freedom.*

2.1.5 Polypharmacy: implement the GEMED project nationwide

Definition of polypharmacy

Polypharmacy means the simultaneous use of several medicinal products. The definition most frequently used in specialist literature is the simultaneous taking of five or more medicines. That corresponds with the WHO definition. The WHO speaks of hyperpolymedication if a person is administered more than ten active pharmaceutical ingredients.

Experience of the NPM

The commissions reported about polymedication in retirement and nursing homes in all of the *Laender*. The NPM pointed out avoidable serious health risks and restrictions in the quality of life of elderly persons predominantly connected with psychotropic medication in recent years (see in particular NPM Report 2014, p. 33 et seq.; NPM Report 2015, p. 38 and NPM Report 2017, pp. 35 et seq). The benefit and harm must be weighed up very carefully when prescribing medication to those in need of care. The experience of the NPM shows that this does not happen enough. The likelihood of interactions and undesired adverse effects increases with the amount of medication taken at the same time. This can cause serious complications such as bleeding, kidney or cardiovascular failure in geriatric residents who often have a limited kidney function. An average of six diagnoses usually requiring several long-term prescriptions are made for over 70-year olds (Ulrike Sommeregger in *“Neurologie & Psychiatrie”*, 3/2018, *“Antipsychotika und Benzodiazepine in der Geriatrie”*, p. 37). Awareness where benzodiazepines are concerned is generally not sufficient in the view of the commissions.

Up to 17 long-term medicinal products a day

Commission 5 reported that in a home in Lower Austria over 70% of the residents were prescribed more than five medicinal products by doctors. A random check of the documentation at another nursing home in Lower Austria indicated that four residents were administered between eight and 17 long-term medicinal products and a large number of medicines for individual ailments as well as local therapies. In a home in Styria, 20 of the total 36 residents received between ten and 15 medicinal products for individual ailments whereby in some cases several analgesics were prescribed twice in different pharmaceutical forms (e.g. Novalgin drops and Novalgin pills). This can be a contributory factor to overdose. One resident received 17 long-term medicinal products and 27 medicines for individual ailments. The commission also had the impression of a “medicated atmosphere” in a home in Vienna: in two of the wards, 75% and 71% of those in need of care were affected by polymedication respectively; 58% and 47% were given evening medication; 75% and 65% received night medication (sleep-inducing medication, psychotropic medication, neuroleptics). From the documentation, it was not clear whether and which non-medication-based measures had been considered. The operator explained that most of the residents had a psychiatric diagnosis and were regularly assessed by medical specialists. In a home in Tyrol, several residents were prescribed between ten and 15 different medicinal products, all of which had to be administered in the mornings. It

was also observed in a home in Vorarlberg that up to 15 long-term medicinal products and additional medication for individual ailments were prescribed with daily dosage. In a home in Burgenland, a resident with multimorbidity was prescribed as many as 22 oral medicinal products with daily dosage, of which four were psychotropic medication. During the visit, Commission 6 recommended that a medical specialist clarify the interaction of the different medications due to the effect of an analgesic on the central nervous system.

Polypharmacy often occurs when residents are treated by several doctors (general practitioner, internist, psychiatrist). This is why the medical documentation in nursing homes is so important. In a home in Lower Austria, a resident was prescribed 16 medicinal products for oral administration, including eight centrally effective psychotropic medication and analgesic medication, two compounds from the antidepressant group, an antipsychotic for anticonvulsant therapy and a benzodiazepine as well as Hydal, a strong, addictive, prescription medicine. The patient documentation did not facilitate examination of whether the medication was necessary or whether there were interactions or contraindications.

Necessity of medication
not verifiable

The topic of “Prevention of polypharmacy” was the focus of the annual exchange of experience and ideas among the Austrian NPM in 2019. The NPM took this opportunity to thank Diemut Strasser and Elisabeth Kretschmer for their presentation of the “Geriatric medication management in stationary facilities” (*“Geriatrisches Medikationsmanagement in stationären Einrichtungen”*) project – in short, GEMED.

Best practice: GEMED
project

The aim of GEMED was to demonstrate potential for improvement with respect to medication-based care in nursing homes, in particular the reduction of polypharmacy. The focus was thus the collaboration between caregivers, doctors and pharmacies. Participants were pharmacies, general practitioners and senior citizens’ homes in eleven municipalities in Salzburg (with a total of 611 persons in need of care at an average age of 84). The project ran from November 2016 to October 2017.

Goals and participants

At the beginning of the project, those in need of care were taking an average of eleven pharmaceutical ingredients daily, including a so-called PIM medication. This is a medication that is potentially inadequate for those over the age of 65. The caregivers were given special training in the observation of therapy on the basis of ten parameters which included the most important interactions and side effects such as dizziness, confusion, delirium, bleeding, skin reactions, movement disorders, hypotension etc. Any change in the patients’ condition was documented daily, in particular after adjustments to their medication. Pharmacists analysed the medication.

Regular therapy
observation and
analysis of medication

Based on this information, written recommendations were created monthly for the attending doctors. This affected 212 residents (35%), for whom alone 502 medication-related risks were identified. In some 16% of the cases, an

undesired adverse event was the reason for the recommendation. 72% of the recommendations gave way to an adjustment of the medication.

Discontinuation and reduction of medication

The most frequent recommendation (43%) was for the discontinuation of medication, followed by adjustment through reducing the dose in 23% of the cases.

The effects of GEMED were clear in the example of an 83-year old woman: she came to the home with coordination problems and mixed dementia, was confused, sometimes aggressive, dizzy, tired during the day and suffered from hallucinations. During the course of the analysis, two medicines were discontinued and the dose of other medication halved or reduced. After just two months, she was far more alert, recognised trusted persons and was much more cooperative.

Medication process improved

During the course of the GEMED project, the entire medication process in the participating homes was also evaluated using checklists. This helped to identify medication errors (e.g. taken at the wrong time, wrong dose, duration of time to take medication was too long) and mistakes in storage. According to the Chamber of Pharmacists, the documentation called for improvement in most cases.

Observations of the NPM

The NPM also highlighted errors in the medication process in 2019, particularly in the storage, distribution and use of medication. A home in Styria, for example, failed to observe that only medication given through a tube may be ground and administered through a PEG tube. Sustained-release medication forms and film-coated tablets with enteric coating should, on the other hand, never be ground. The commission also pointed out the ban on storing analgesics in the addictive medication cupboard. Time and again, a lack of documentation and communication resulted in errors. In a home in Lower Austria, there was criticism that the prescribed dispensing of addictive medication per person and medication was not documented in an addictive medication book. Consumption could therefore not be verified by the commission. There was no stocktake in the home either. In a nursing home in Burgenland, the commission criticised medical prescriptions, as they were barely legible.

NPM recommends pharmaceutical consultations

On visits in 2019, commissions recommended several times evaluating the medication or holding pharmaceutical consultations. In most cases, a step-by-step examination of prescriptions then ensued. In accordance with the quality assurance guidelines of the Austrian Chamber of Pharmacists, "Care of the residents in retirement and nursing homes or other care facilities – QSSL" (*"Versorgung und Betreuung der Bewohner von Alten- und Pflegeheimen oder sonstigen Betreuungseinrichtungen – QSSL"*), pharmacists should also be consulted and consideration given to interactions, double prescriptions, dosage, administering medication at the correct time and any problems in using the medication. This is common practice in a Styrian geriatric home: the

pharmacist from the supplier pharmacy contacts the home in individual cases and warns of any possible medication interactions.

In the opinion of the NPM improved alignment between caregivers, general practitioners and doctors could be achieved by means of joint care visits and case reviews based on the GEMED project. This type of approach is already being applied in some nursing homes, for example in Viennese homes that discuss medication-related decisions and changes in the condition of residents in monthly interdisciplinary meetings.

Optimisation of interfaces

- ▶ *It is recommended that the Federal Minister of Social Affairs, Health, Care and Consumer Protection contribute to creating a framework that facilitates, at least in phases, the implementation of the GEMED project.*
- ▶ *Education in all health professions should ensure that elderly persons are not subjected to undesired adverse medical events. Orientation on the GEMED project should also be examined in this respect.*

2.1.6 Heat protection measures for those in need of care and the staff

The number and duration of heat waves in Austria is increasing due to global warming. Commissions were confronted with high room temperatures in several homes in Burgenland and retirement and nursing homes in Tyrol, Lower Austria and Vienna during the summer. The lack of or insufficient heat protection measures were reported in meetings. Continuously high temperatures have not only negative effects on the quality of life, but also represent a health hazard and a lethal risk for residents who are elderly and suffering from multimorbidity. A heat-related unhealthy room temperature affects staff negatively too. Superiors and home operators are also obliged to take measures to minimise job-related health hazards in the interest of their staff.

Frequency and duration of heat waves is increasing

The structure of care facilities determines how well they are prepared for heat waves. In terms of energy, passive cooling systems (heat storage and shade) are preferable to ensure a pleasant microclimate, for example through better ventilation or green oases. Where this is not structurally possible, there should at least be individual air-conditioned areas or the existing air conditioning system serviced, inspected and optimised. Residents have no contractual right to air conditioning. There are also no reference values for the temperature and humidity. Nevertheless, the staff in the respective home must ensure that the heat cannot become a health hazard. This is already anchored in the general duty of care designed to safeguard the dignity of the residents.

Duty of care of retirement and nursing homes

Ensuring cooling It is easier for residents who are mobile and able to orientate themselves to avoid overheated rooms, change their clothes without help, drink enough, use cold foot and arm baths, lay cold compresses on their forehead etc. Persons in need of care who suffer from dementia-related illnesses or whose mobility is impaired, however, have difficulty in adapting their behaviour to summer temperatures. This is exacerbated by the fact that their illnesses negatively affect the body's thermoregulation system and these problems can worsen in the case of overeating due to certain medication and inadequate therapy. During prolonged heat waves, the staff are called upon to ensure and systematically check a sufficient supply of liquids, adapt food and dietary restrictions, and provide cooling through washing, foot and arm baths and hanging up damp cloths. If necessary, packages of measures with oral or intravenous rehydration therapies must be prepared for risk patients.

Reducing heat stress In summer 2019 the commissions visited several homes that had not taken adequate measures during periods of extremely warm weather. Those in need of care and the staff complained that the operator ignored their complaints in this matter. In two homes in Burgenland, outside blinds were fitted and further investments promised after intervention by the NPM. The supervisory authority agreed that medication may never be exposed to extreme heat, to ensure that its efficacy is not impaired. Commission 6 demanded that the ambient temperature in the medication rooms be reduced to 25 degrees and continuously checked. The situation was entirely different in a nursing home in Lower Austria: here, Commission 6 praised the internally written guideline on "Dealing with summer heat stress" which is available to all members of staff. As early as April 2019, the staff was prepared and their awareness increased for tasks following impending heat waves. There too, the NPM was assured that an air conditioning system would be installed before summer 2020. A home in Vienna promised the NPM to set up so-called cooling rooms for hot days.

Vienna: guideline for care facilities Together with experts, the Vienna regional public health authority developed a guideline for medical and care facilities that gives helpful tips and instructions on creating customised heat prevention action plans. Checklists help in examining and, if necessary, adapting the existing specifications and plans of the relevant organisation. They address each of the different levels of responsibility and include both measures that can be quickly implemented and medium-term aligned planning. In addition, the guideline provides a good overview of the topic of heat and its consequences. It also gives information on how heat-related health impairments can be recognised in time and which factors require special attention due to their effects on heat tolerance. The NPM considers this guideline to be an example of best practice.

„GREEN: Cool & Care“ project in Lower Austria In a pilot project initiated in 2019, a climate ceiling was installed in a nursing home in Lower Austria. This technology will be – as the NPM was informed by the regional government of Lower Austria – installed in all retirement and

nursing homes in Lower Austria if evaluated as being successful. A second project running until September 2022 called “GREEN: Cool & Care” addresses greening as a way of optimising the microclimate.

- ▶ *The elderly and chronically ill need special attention during periods of hot weather; in particular, in rooms with little or no air conditioning.*
- ▶ *In new buildings, structural aspects for the prevention of heat-related health impairments should be taken into consideration.*
- ▶ *The prevention of heat-related illnesses and measures that restrict freedom in vulnerable persons as well as the care of heat-related health impairments require additional effort that should be included in staff planning.*
- ▶ *The guideline developed by the municipal department MA 15 in Vienna for medical and care facilities includes instructions for heat prevention action plans and should attract attention beyond the borders of the city.*

2.1.7 Long waiting times for official pronouncement of death and inspection of the corpse

In Austria, all deceased are subjected to an inspection of the corpse. This is to determine the type and cause of death and is, generally speaking, the last and only opportunity to find any evidence of violence. It does not suffice thus to take a fleeting look at the deceased and the medical record and then to complete the death certificate. *Laender* laws oblige everyone – including care homes – to provide truthful information on the circumstances that help to determine the cause of death. Specially trained medical experts are charged with determining whether an autopsy is necessary in cases where the type or cause of death has not been clarified. At least until the official pronouncement of death in connection with the inspection of the corpse, the suspected deceased should remain in the same position insofar as possible at the place of death and not have their clothes changed. Undertakers require an official document before they can remove the body.

It is professionally and emotionally challenging for the caregivers to enable passing with dignity. In 2019 care managers in Lower Austria criticised the exceptionally long waiting times for the official inspection of the corpse. This can result in an intolerable situation during periods of hot weather, in particular. The commissions also reported about long waiting times, particularly in the night or at the weekend. Sure signs of death become evident just one or two hours after the deceased has passed. Waiting for hours for the official pronouncement of death is experienced by the staff and other residents living in shared rooms as irreverent. In addition, there is the question of when the relatives should be informed and how resources can be internally managed

in order to be able to deal with the grieving of the relatives properly.

Changes in *Laender* laws

In 2019 the NPM contacted the liaison office of the *Laender* to obtain an overview of the *de facto* and *de jure* situation. Several *Laender* attempted to improve the situation and counter the lack of medical care by means of changes in legislation. In most *Laender*, the restrictions surrounding the group of doctors authorised to pronounce death were lifted and the red tape slowing down processes removed. The transfer of corpses is now possible in most *Laender* before the official inspection of the corpse under certain conditions.

On-call doctors and emergency medical service

Vorarlberg was able to solve the problems concerning the inspection of the corpse with a medical on-call service and an electronic booking platform. It is thus possible to have corpses inspected round the clock. In Upper Austria, waiting times have been reduced since additional doctors from the emergency medical service (*Hausärztlicher Notdienst*) are deployed for the inspection of corpses.

The remuneration for the inspection of corpses, which was considered to be too low, has since been substantially increased. Coroners, however, demand better education and regular further training. Studies have shown that death from non-natural causes is attested less frequently in older deceased. If more attention were given to the inspection of deceased older persons in need of care, acts of violence could be better recognised or completely ruled out.

- ▶ *The pronouncement of death in care facilities should, insofar as possible, take place shortly after the residents have passed.*
- ▶ *Authorised doctors should be available in order to ensure that such situations are handled with reverence and dignity.*
- ▶ *The inspection of the corpse is a responsible task which also involves recognising crimes and establishing legal certainty. Training should thus include a special focus on skills that help recognise violence to older persons.*

2.1.8 Positive observations

In many homes, a mindful way of treating those in need was highlighted, which is even evident in the documentation. For example, in two small homes in Tyrol that regularly give the residents the opportunity to go outside. The staff also pays special attention to the activities in which those in need participate in order to be able to offer something for everyone. Several more examples of good practice are depicted in the following.

Dementia-friendly environment

The dementia care concept practiced by a home in Carinthia is worthy of praise: the structural fittings were aligned with the needs of those suffering from dementia. On the inside, wide corridors, spacious sources of natural

daylight, the colour concept, pictograms and low beds provide orientation that promotes movement. The residents can use a spacious outdoor area for walks; a chapel, a pond with a waterfall and pavilions address a wide range of senses. “Refreshment stations” enable persons with a strong urge to move and high calorie consumption to eat finger food while on their walk.

A home in Lower Austria pursues several good approaches. System visits (the home and care service management of the four locations in the *Land* visit each other reciprocally), regular care visits and the presence of at least one senior member of staff at the weekend mean that the management also knows all residents and their relatives personally. A residents’ council was established, in which one person per house community is represented and can raise issues, the implementation of which is examined. There is also a feedback café that invites those in need of care and their relatives to a regular sharing of experience and which is also frequented by the home and care service management. Another home in Lower Austria holds standardised case reviews with staff and relatives a few weeks after a new resident has moved in. This enables the home to better estimate the effect the move has had and whether changes in care planning are necessary to improve the quality of the life of the new resident.

Quality assurance
through resident-
centeredness

To provide visual stimulation when lying down, a care facility in Lower Austria decorated the ceiling of the rooms for residents who are confined to their beds. The easily accessible evening activities were also considered positive, for example, a round of games, baking together and chat groups with caregivers. In a home in Tyrol, there is also a games session every evening, which is also open to visitors from the local town.

An emergency telephone that ensures fast and unbureaucratic psychological advice for staff in a home in Vienna is an example of good practice. A home in Upper Austria opened a staff kindergarten to improve employee loyalty.

Support for staff

A home in Vienna set up “cooling rooms” on the advice of residents’ councils. Another care facility is completely barrier-free; the apartment doors are fitted with spyholes, even at wheelchair height.

2.2 Hospitals and psychiatric institutions

2.2.1 Introduction

In the year under review, the commissions visited 34 medical facilities including 19 psychiatric and 15 somatic clinics or departments. 33 visits were unannounced.

Mental health just as important as physical health

As depicted in the NPM reports in previous years, there is no nationwide clinical-psychological treatment programme in Austria which is provided by office-based doctors and covered by state health insurance. There is a huge gap in health care provision, in rural areas in particular. This must be rectified quickly from the NPM's point of view. Sustainable investment in building up structures where health care is provided outside hospitals by office-based doctors ensure that local, professional and rapid support in mental crises reduces the strain for those affected and their relatives, thus taking pressure off the health care system in the medium term. The development and expansion of places in the state health insurance system for clinical psychologists, child and adolescent psychiatrists as well as psychotherapists could counter the chronification of mental disorders in children and adolescents and should therefore be given priority in all *Laender*.

Lack of availability of public medical officers

Relatives, residential facilities (nursing homes, residential groups in homes, shared accommodations etc.) or psychosocial services usually make the first steps towards forced placement when they can no longer deal with persons entrusted to them who have a suspected or diagnosed mental illness, and see no other alternative. These are usually persons who pose enormous challenges for themselves and their surroundings (unaware that they are ill, aggressive, unpredictable, threatening and, at the same time, not knowing that their own health is at risk, sometimes in a state of physical and hygienic neglect). The Hospitalisation of Mentally Ill Persons Act (*Unterbringungsgesetz*) stipulates that a medical examination and certificate pursuant to Section 8 of the Hospitalisation Act are necessary before a person can be hospitalised against their will (involuntary hospitalisation). In cases of imminent danger, the police can, however, bring the affected person to a psychiatric department without examination and certificate (Section 9 of the Hospitalisation Act). As in recent years, the NPM observed that public medical officers are not available quickly enough or at all in rural areas in particular, which is often why medical examinations by them are dropped. This means that the medical examination before involuntary hospitalisation set forth in hospitalisation law can only be performed in some cases. Protection against impermissible admissions to psychiatric wards is thus not sufficiently guaranteed. The NPM recognises structural maladministration here that can only be jointly rectified with the regional governments, as the implementation of Section 8 of the Hospitalisation Act is the responsibility of the *Laender*. In Vienna, police medical officers can be called on through the *Land* control centre. As

the commissions ascertained, doctors are seen by law enforcement officers as valuable relief when they are available on site at short notice.

Having to make decisions alone in cases of imminent danger is extremely stressful for police officers and can lead to misjudgement and the inadequate description of situations where there is a mental state of emergency. As to the question of what qualifies as mental illness pursuant to the Hospitalisation Act, there is extensive and ambiguous judicature (see Halmich, “*Rechtsfragen im präklinischen Umgang mit Patienten*”, RdM 2013, p. 138). Only professionals with the appropriate expert skills can assess whether the person involved has a psychiatric profile and is a threat to themselves or others. Medical specialists in psychiatric departments sometimes do not agree that the criteria for hospitalisation are given. Affected persons are then left on their own far away from their place of residence after the admission examination.

In the course of an own motion investigation by the AOB, the Federal Ministry of the Interior explained that the Police Departments in the *Laender* Burgenland, Lower Austria and Vorarlberg have concluded agreements on the on-call duty of doctors (public medical officers in the District Authorities, office-based doctors). This should ensure improved medical care.

The situation in the other *Laender* is more problematic. Some *Laender* assume that the Hospitalisation Act should be amended to increase the number of authorised doctors pursuant to Section 8. The necessary resources for fulfilling the provisions of the Hospitalisation Act would have to be provided by the Federal Government.

The NPM also recommended amending Section 8 of the Hospitalisation Act and increasing the number of authorised doctors permitted to arrange forced hospitalisation. The financial means for hiring more public medical officers would have to be provided.

Amendment of Hospitalisation Act necessary

This recommendation by the NPM is in line with the decision of a working group with regard to the Hospitalisation Act that was established by the health officers of the *Laender*. According to this, a pool of doctors should be created that is authorised by the *Land* governors to perform examinations pursuant to the Hospitalisation Act. According to a written statement to the NPM, the Federal Ministry of Labour, Social Affairs, Health and Consumer Protection is considering increasing the number of doctors authorised to perform examinations pursuant to the Hospitalisation Act.

Commission 1 reported that body cameras are worn permanently by employees of the security service in Innsbruck Regional Hospital and Hall Regional Hospital. Videos are recorded and stored for 170 hours in the event of an escalation. Persons displaying unruly behaviour are informed that the cameras will be activated. If this does not de-escalate the situation, the security service informs the persons a second time and activates the camera. Picture

Body cameras for prevention and preserving evidence

and sound are recorded and the filmed persons can watch the recording. A de-escalating effect is expected when people can see the disruptive and dangerous behaviour for themselves. The picture and sound material is, however, also given to the police to preserve evidence in case criminal charges are filed. From the point of view of the NPM, it must be emphasised that *Tirol Kliniken GmbH* as the legal entity of both hospitals has broken new ground here, which is why the Human Rights Advisory Council was requested to perform a human rights evaluation of the situation.

It must be ensured that patients can go outside in any case

The restriction of other patients' rights during hospitalisation is only permissible under Section 34a of the Hospitalisation Act if it is unavoidable for averting risk in the sense of Section 3 line 1 of the Hospitalisation Act or for protecting other persons in a psychiatric department, and if it is not disproportionate to the intended purpose. From this, it can be derived as a general rule that every patient shall be given the opportunity to go outside. Spending time outside regularly shall not depend on the staffing levels of an institution. The goal should be to provide conditions that promote the well-being of the patients.

The City of Vienna, however, explained on the occasion of a visit to Hietzing Hospital – Neurological Rehabilitation Centre Rosenhügel that going outside could constitute a considerable risk of self-harm for suicidal patients and is therefore not to be endorsed from a therapeutic point of view.

The NPM is of the opinion that even in cases such as these the patients should have the opportunity to go outside accompanied by a member of staff. The necessary staff must be provided accordingly.

Waiting times for non-urgent heart operations in Graz

On a visit to the University Clinic for Surgery, Clinical Department for Cardiac Surgery of the Regional Hospital in Graz in April 2019, Commission 3 ascertained that there were very long waiting times for non-urgent heart surgery. At the time of the visit, just two out of three operating theatres were ready for use due to structural deficits. As there were often cardiac emergencies – it was evident from the 2019 surgery plan that there was one emergency surgery on average per day –, the waiting time for plannable and postponable yet complicated heart surgeries was extended. Up until the day of the visit, the capacity was utilised only on weekdays and just until 3.00 p.m. meaning that surgeries had to be started before noon. There was one anaesthetist available in the afternoons ("late heart anaesthesia" from 11.00 a.m. to 7.00 p.m.), but they were only deployed for emergencies.

The waiting time for heart surgery was some six weeks at the beginning of April, which, in the view of the NPM, appeared too long at any rate. The provision of an operating theatre for emergencies should be urgently considered. Furthermore, the capacity, in particular for anaesthesia, should be examined and expanded so that surgeries can be performed after 3.00 p.m. and at the weekend, and waiting times can be shortened.

The regional government of Styria explained in a statement of opinion that the increased use and the extension of operating hours after 3.00 p.m. is an important goal. However, the organisational and commercial requirements make the implementation of this goal difficult. Nevertheless, the regional government stated that considerable work is being done to extend the operating hours. The long waiting times for planned heart surgeries are explained by the fact that patients are categorised and, if required, prioritised based on the urgency of their respective procedure. Prioritisation and the sequence in which surgeries are performed are conducted according to medical criteria exclusively. In order to be able to guarantee optimum cardio surgical care, surgery planning is carried out by the acting department head in close cooperation with an experienced senior physician since April 2019.

Several improvements were observed in the Department of Child and Adolescent Psychiatry at Hietzing Hospital – Neurological Rehabilitation Centre Rosenhügel. Commission 4 praised the following measures in particular: the active information of patients in regard to any possible restrictions and other planned treatment procedures, the suitability of the recently adapted rooms, the creation of a specially secured terrace for the acute area, the all-day visiting hours and the more sensitive manner in which staff now deals with measures that restrict freedom.

Improvements in the Department of Child and Adolescent Psychiatry of Hietzing Hospital

There is now a good solution to complaint management in the visited department in the opinion of the NPM. Ward forums were established in which the young patients can address their problems and raise objections. The complaint system was expanded in the current period under review in order to better trace the efficacy of the agreed measures. Complaints letter boxes were installed for anonymous complaints.

- ▶ *The number of doctors who can arrange enforced hospitalisation should be increased by amending Section 8 of the Hospitalisation Act.*
- ▶ *Sufficient financial means shall be provided for hiring more public medical officers.*
- ▶ *More staff must be made available in psychiatric hospitals and departments in order to enable all patients to go outside regularly accompanied by a member of staff.*
- ▶ *Measures for the promotion of patient participation shall be further expanded. Only in this way can it be guaranteed that patients can draw attention to their problems.*

2.2.2 Spatial conditions - deficits and positive developments

Environmental factors (e.g. climate, noise) and architectural conditions (e.g. private space in which to withdraw) have a considerable effect on the behaviour and well-being of people. Structural measures and design elements

Structural design essential for care quality

in psychiatric departments thus have a significant influence on the number of isolations, restrictions, conflicts, coercive measures, suicides and attempted escapes. High-quality furnishings and clean rooms are experienced by patients as an expression of respect and affect their mental well-being and thus their potential for aggression. There is a connection between the amount of private space per person, comfort, good visual monitoring in the wards and a reduction in the number of isolations and restrictions.

Sufficient private space is important for the well-being as well as the protection and control needs of the patients. A needs-based design of the psychiatric medical facilities and patient rooms can thus provide essential positive stimuli for the health of the patients. Shared rooms in particular should be refurbished in order to guarantee the patients sufficient privacy and personal space. This includes the individual use of sanitary rooms.

On the recommendation of the NPM, the legal entities of the medical facilities promised improvements in the spatial conditions, some of which have already been implemented.

New space concept for
Child and Adolescent
Psychiatry of Vienna
General Hospital

An examination of the University Department of Child and Adolescent Psychiatry in Vienna showed that the new building, which is due to be opened in the first six months of 2020, includes a generous space concept. As far as the Hospitalisation Act is concerned, single rooms and an outside area are planned. Attention was paid to the de-escalating effect of room design and architecture that prevents suicide when designing the new building.

Cramped conditions have meant that there have been too few lockable areas to date. The consequence is that wards 06 and 07 were locked for all patients, sometimes for several days, in order to protect individual patients who are suicidal or in danger of escaping. The doors to the wards were open for a maximum of several hours per day. The management and team dealt with locking the doors in a sensitive way and took great pains to ensure that those in out-patient care can enter and leave the wards without delay insofar as possible. However, locking the doors to the wards constitutes an intrusion into personal rights.

The new building now has smaller units that can be locked for short periods of time. Other patients are thus no longer affected when measures that restrict freedom are necessary for individual patients. Furthermore, the hospital promised to examine alternatives to locking the doors to the wards (e.g. personalised chip wristbands, alarm systems).

Cramped conditions in
the IMC ward of Vienna
General Hospital

A visit to the University Department of Psychiatry and Psychotherapy, ward 4C (IMC), of Vienna General Hospital showed that male and female patients were accommodated together in four-bed rooms without permanent privacy screens. This is even more critical, as – unlike intensive care in the somatic area – the patients have to spend several weeks in the ward.

There are curtains and screens available but they are not even used when rooms are occupied by both genders. Furthermore, there is neither a visitors' room nor recreation or therapy rooms for the patients in the ward, which can be used as places to withdraw.

From a human rights point of view, it is very worrying that there are no separate sanitary areas for men and women, and the baths and toilet facilities cannot be locked from the inside.

The sanitary areas are not barrier-free and are not big enough, for example, for persons confined to a wheelchair. It is not possible to push a wheelchair under the sinks and there are no care baths available. The toilet facilities are not barrier-free either.

In response to the criticism of the NPM, the City of Vienna explained that the ward is to be converted in 2020. A recreation room for the patients as well as separate, barrier-free sanitary areas for men and women are planned. In addition, the existing four-bed rooms are to be reduced to three-bed rooms, and two single rooms and one two-bed room is to be created. The recommendation to fit the sanitary areas with locks has already been implemented.

In the Department of Child and Adolescent Psychiatry at Hietzing Hospital – Neurological Rehabilitation Centre Rosenhügel, seven out of 15 beds in ward C3 (adolescent psychiatry) could not be occupied in May 2019 because there were no therapy rooms. Rooms in the basement have since been made available, which has reduced the number of beds blocked. Further adaptations are planned to be able to exploit the full bed capacity as quickly as possible.

Beds blocked in
Child and Adolescent
Psychiatry Department
of Hietzing Hospital

The NPM considered the location of the Department of Child Psychiatry at Rankweil Regional Hospital, which is situated in a local area away from the hospital grounds, as negative, because it requires travelling between the two sites. This can cause shortfalls in medical care at night in particular.

Construction of new
Department of Child
Psychiatry at Rankweil
Regional Hospital

The adaptation of the rooms in the Department of Child Psychiatry was initially only planned as a temporary solution. The NPM thus recommended constructing a new building in close proximity to Rankweil Regional Hospital in the same way as was built for the adolescent psychiatry ward. The existing two-bed rooms in the child psychiatry ward are to be converted to single rooms in order to guarantee the patients' privacy. In any case, the children in two-bed rooms will be able to lock away their personal belongings.

In a statement of opinion, the office of the regional government of Vorarlberg assured that the structural changes requested by the NPM were being implemented in an already planned new building. The concept for the new building includes a common area for the wards for the purpose of exploiting staff synergies. The modern space concept plans single and two-bed rooms as well as function and therapy rooms. Opportunities to get exercise that cater to different age groups are to be set up both indoors and outdoors.

- ▶ *The highest level of protection and guarding the intimate and private space of the patients shall be taken into consideration in the structural design of patient rooms and sanitary facilities.*
- ▶ *In child psychiatry departments, attention shall be given, amongst others, to space concepts that provide the opportunity to get exercise, which is adapted to the different age groups.*

2.2.3 Insufficient personnel

Staff shortages endanger the quality of care

Personnel surveys clearly indicate that those working in the care professions are often under an inordinate amount of stress. This frequently causes exhaustion, depression or physical complaints. If additional factors (such as unfilled vacancies or staff shortages due to long-term sick leave) are added to an already existing stress level, an overload with a high potential for risk occurs.

In the period under review, a shocking lack of personnel was once again evident in several visited institutions, which had alarming effects on the quality of patient care.

Klagenfurt Regional Hospital

For example, Commission 3 observed a lack of medical and nursing staff on a monitoring visit of the Department of Psychiatry and Psychotherapy at Klagenfurt Regional Hospital in October 2018. The negative effects were evident in many ways. Patients were found in situations that were in violation of their dignity in terms of human rights (in beds in hallways, with visible fixation straps, partly undressed). The psychotherapeutic care of the patients was inadequate in the opinion of the commission. Individual therapies with clinical psychologists were rarely offered due to the lack of time resources. There were three suicides in the department in 2018.

In response to the criticism by the NPM, the Carinthian Hospitals Operating Company stated that the staffing levels in the departments had been documented and analysed during the course of 2018. Based on the findings, three additional permanent medical positions were filled in the 2019 staffing plan; a further increase in staffing levels was announced. The NPM welcomes this development as an important step towards guaranteeing adequate medical care for the patients.

Unfilled permanent position in the drug out-patient clinic

Commission 3 ascertained a lack of medical staff in the drug out-patient clinic in Klagenfurt in October 2018. The permanent position for a general practitioner could not be filled for a long time despite an intensive search. On the recommendation of the NPM, the remuneration scheme was adapted. In order to bridge the gap in staffing levels, the number of working hours for doctors with contracts was temporarily increased. Finally, the head of the facility took the training course as teaching practice instructor in autumn

2019 in order to instruct young doctors on the work in a drug out-patient clinic and to create incentives for job applications.

In August 2019 the works council of Amstetten Regional Clinic, together with the doctors' representative body, contacted the NPM in writing regarding stress and overwork. The notice spoke of the massive work overload for the doctors of the regional clinic. From the point of view of the NPM, the lack of qualified medical specialists described in this notice was very worrying.

Strain on staff at
Amstetten Regional
Hospital

There had been an insufficient number of permanent positions for years. This deficit and additional absenteeism had been compensated for by the existing permanent staff for years. In spring 2019 the situation had worsened due to sick leaves among the permanent staff, particularly in the (emergency room of the) Department of Internal Medicine. A total of nine fulltime equivalents were missing based on the staffing plan. Despite quickly organised emergency measures, such as the partial closure of departments, the situation was no longer tolerable.

The regional government of Lower Austria explained in a statement of opinion that different measures had been taken immediately to meet the strained staff situation. Talks were held with both the medical staff and the management of the Department of Internal Medicine as well as with the doctors' representative and the works council. The situation had normalised as far as possible by the beginning of June 2019. Long-term sick leaves were ended; absenteeism due to pregnancy could be gradually compensated for by hiring trainee assistants. A pilot project was completed with a positive result in the out-patient casualty department during the summer months. The out-patient casualty department was converted into an emergency room with 15 beds where patients with unclear medical conditions can be monitored for up to 24 hours. This relieved the strain on both the in-patient area and the specialist diagnostic area in daily operations. The transfer of the pilot project to permanent operation was announced for November 2019. It was also agreed that employees from the Department of Anaesthesia and Intensive Care will support when there is a shortage of staff in the Department of Internal Medicine. Measures were also taken to quickly fill medical positions that become vacant in future.

During a visit to the University Hospital St. Pölten, in particular the Casualty Department and the Intensive Care Unit of Medical Ward 3, Commission 6 observed that the staff has to work additional hours and overtime on a continuous basis. Some of the employees have a considerable amount of remaining leave that cannot be taken.

Overtime and remaining
leave at University
Hospital St. Pölten

An analysis of the work schedules showed that doctors work an average of between 16 and 45 additional hours per month. At times, remaining leave of 250 to 450 hours per employee still had to be taken.

The non-medical staff in the casualty department worked between three and 15 additional hours per month. On average, 160 hours of remaining leave were open, but there were also employees with 253 and 307 hours of remaining leave.

Regarding this matter, the office of the regional government of Lower Austria informed the NPM that a reduction in the number of additional and overtime hours could be achieved by filling the vacant medical and nursing care positions.

Changes in the team cause additional workload for staff

On a monitoring visit of Vienna General Hospital, University Department of Psychiatry and Psychotherapy, Psychiatric Intermediate Care (IMC) ward 4C, Commission 4 ascertained that the hitherto very stable care team made up of predominantly older and experienced officially qualified caregivers was recently confronted with numerous changes and had been reduced in size for several months as a result of sick leaves and departures. This resulted in considerable additional workload for the team.

The care staff found training new employees challenging, as the work in the ward is complicated and requires competences in the field of psychiatry and intensive care, which the new colleagues naturally do not yet have.

In response to this criticism by the NPM, three officially qualified caregivers were hired who were trained by experienced colleagues.

- ▶ *Sufficient medical and nursing care staff shall be made available to guarantee an adequate medical care of the patients.*
- ▶ *When changing teams and filling positions that have become vacant, attention shall be given to training the new employees in time. This is a imperative to provide continuous adequate care of the patients.*

2.2.4 Execution of measures that restrict freedom

Structural deficits in the Department of Geriatric Psychiatry at Graz Regional Hospital

In its Annual Report 2018 (see p. 57 et seq.), the NPM most recently highlighted structural deficits in the Department of Geriatric Psychiatry and Geriatric Psychotherapy at Graz II Standort Süd Regional Hospital. The criticism was of the cramped conditions in the department and the shocking lack of space amongst others. Commission 3 had observed that patients were accommodated in five-bed or six-bed rooms. Measures to protect their privacy in the event of a necessary restraint (e.g. the use of screens) were not adequately implemented or not at all.

Land Styria promised improvements

As a consequence of the criticism, a “commission of experts in geriatric psychiatry” was deployed to bring about qualitative improvements. In

reaction to an interim report written by this expert commission in December 2018, the Styrian Hospital Cooperation and the regional government of Styria promised extensive improvements. The NPM was promised that an additional building would, amongst others, improve the space situation from summer 2020 onward, thus eliminating the need for six-bed rooms. The final report was presented in November 2019; an evaluation of the efficacy of the recommended measures is planned for autumn 2020.

In November 2019, the NPM received information about potential new violations in this department. A patient had to spend three nights in the ward bathroom, some of the time restrained, during her in-patient stay in the Department of Geriatric Psychiatry and Geriatric Psychotherapy at Graz II Standort Süd Regional Hospital.

Restraint in ward bathroom

The patient was pushed out of the room in her bed, moved to the ward bathroom and positioned there between the bathtub and the wall in such a way that it was impossible for her free herself from the situation. She was not given a call bell. She was terrified because the door was closed and she was left there alone until the following morning.

The daughter of the patient first contacted the Styrian Patients and Nursing Care Ombudsman. In a meeting with representatives of Graz II Standort Süd Regional Hospital, it was argued that not enough rooms are available to prevent the patients from becoming overexcited and for placing a restraint under observation of their personal rights.

Both the Patients and Nursing Care Ombudsman and the NPM are of the view that placing patients in a ward bathroom to sleep or restraining them there constitutes inhumane treatment and shall be considered an additional restriction pursuant to the Hospitalisation Act. Furthermore, the fact that the patient was not given a call bell to draw attention to herself if required should be vehemently criticised.

Inhumane treatment

Measures for the prevention of such incidents were presented at a meeting with the Management Board of the Styrian Hospital Cooperation at the beginning of December 2019. The placement of patients in rooms that are not dedicated patient rooms was prohibited. Patients are now cared for in patient rooms only. If intensive monitoring is necessary, the patient shall be monitored in the hallway next to the care station. An interdisciplinary medical history will be set up from 2020.

Additional measures announced

Commission 2 noted insufficient awareness on the part of the (medical) staff with regard to measures that restrict freedom during a visit to Kepler University Clinic Linz.

Lack of awareness for measures that restrict freedom

The NPM repeatedly pointed out that the potential applicability of the Nursing and Residential Homes Residence Act (*Heimaufenthaltsgesetz*) must be carefully examined in every individual case (see NPM Report 201, p. 52 et seq.). In addition to a continuous need for care that exists at the time of

admission to the respective hospital, the Nursing and Residential Homes Residences Act becomes applicable to patients who develop a continuous need for care during their hospital stay. Correct handling is only guaranteed with knowledge of the legal provisions and complete documentation.

Medication-based restrictions of freedom represent a particularly sensitive human rights area. Careful consideration is required in every individual case as to whether administering medication implies a measure that restricts freedom. In this context, the diagnosis and the therapy being pursued with the medication shall be considered along with the concrete effect the medication will have on the personal freedom of those involved. Even a therapeutically indicated medication-based treatment shall be considered a measure that restricts freedom if it primarily serves to suppress restlessness and to calm the patient down, i.e. “immobilize” them (cf. Supreme Court of 29.5.2008, 2 Ob 77/08z and Supreme Court of 26.2.2009, 1 Ob 21/09h).

In order to be able to take the right decision in any case, it is absolutely necessary to accurately document all of the circumstances. Notes such as “restlessness” or “sleeplessness” are not helpful in determining whether the patient’s behaviour was a danger to themselves or to others.

Both medication-based and mechanical measures that restrict freedom were used on a patient at the facility visited. The mechanical restrictions were not documented in the care plan or the documentation of execution. They were (as were the medication-based measures) not reported to the residents’ representatives. As far as the commission is concerned, alternative care measures that would have impinged less on the patient’s right of freedom (e.g. low bed, fall mat) would have been possible as well.

Informing staff
and improving
documentation

In its statement of opinion, the *Land* Upper Austria conceded that there is an urgent need for action both with regard to improved information of the staff about the legal framework (applicability of the Nursing and Residential Homes Residence Act) and the necessity of complete and traceable documentation.

► *It shall be ensured that the staff is sufficiently informed about the legal conditions and the resulting (documentation) obligations concerning measures that restrict freedom.*

2.2.5 Violation of the right to wear private clothes

The objective of the Hospitalisation Act is “to cover the limitations to the restriction of personal rights in a constitutional, proper form” during detention (Kopetzki, *Grundriss des Unterbringungsrechts*, paragraph 721). The restriction of the patient’s other rights during hospitalisation is only permissible under Section 34a of the Hospitalisation Act if it is unavoidable for averting risk or

for protecting the rights of other persons in the psychiatric department, and if it is not disproportionate to the intended purpose. In this sense, Section 34a of the Hospitalisation Act expressly grants hospitalised patients the right to wear private clothes. This right refers to the use of the patients' own garments, i.e. clothes that are not provided by the medical facility.

The CPT standards also emphasise that continuously wearing pyjamas or nightshirts is harmful to strengthening the personality and self-confidence of those who are hospitalised (CPT/Inf/E [2002] 1 – rev. 2006, German, p. 54, paragraph 34).

The NPM already pointed out in its most recent report (see NPM Report 2018, p. 59) that continuously wearing institutional clothing is only permissible in justified exceptions. Wearing private clothes is essential in the area of gerontopsychiatry in particular in order to do justice to the normality principle.

Continuously wearing institutional clothing as an exception

During an examination of the 1st and 2nd Psychiatric Department of Hietzing Hospital – Neurological Rehabilitation Centre Rosenhügel, Commission 4 found patients with symptoms of dementia both in hospital clothing and with a chip band on their wrist. One of the patients had been in the ward for two months and was waiting for a suitable place in a home. The reason given for taking the patient's own clothes away from her and having her wear a chip band at the time of admission was that she might "flee the ward".

Institutional clothing and chip bands in Hietzing Hospital

On request, the commission was informed that taking away a patient's own clothes is usually combined with the use of a chip band and the fact that the patient's wardrobe is also locked (without handing over the key). These measures were not sufficiently justified in the patient's medical histories examined by the commissions. A plausible reason why a chip band alone is not considered as an adequate measure for preventing patients from leaving the ward could not be provided.

In a statement of opinion, the Municipal authority of Vienna explained that the chip bands are not personalised. For this reason, institutional clothing has to be additionally used in order to be able to locate the relevant person quicker in case they leave the ward.

The NPM is of the opinion that the combination of institutional clothing and chip bands is a disproportionate infringement of the rights of the affected patients. The chip band as a type of monitoring system should be used as an alternative to institutional clothing in order to safeguard the patients' right to wear their own clothes.

The NPM recommends examining the technical possibilities of personalising the chip bands in future.

- ▶ *The requirement to wear both institutional clothing and a chip band constitutes a disproportionate infringement of the rights of the patients.*
- ▶ *The NPM recommends examining technical possibilities of personalising the chip bands in future.*

2.2.6 Heat protection measures in Vienna hospitals and psychiatric wards

Source of danger: heat High temperatures during the summer and longer hot periods can impair people's health and their ability to perform. Small children, chronically ill and older persons have more difficulty in adapting to high temperatures and are thus considered to be vulnerable.

According to the guideline published by the Vienna regional public health authority (municipal department MA 15) in May 2018 on "Heat protection measures for medical and care institutions to create customised heat protection plans", certain underlying diseases such as cardiovascular illnesses can affect the individual ability to regulate heat. Furthermore, neurological and psychiatric illnesses can have a negative effect on heat regulation. Degenerative illnesses such as Parkinson's disease, Alzheimer's disease or muscular dystrophy can cause coordination problems, myasthenia, paralysis and confusion. Medication such as antidepressants and antipsychotics can also increase the risk of heat-related illnesses.

Regardless of existing conditions, psychiatric patients whose freedom is restricted by the use of mechanical means, suffer under the heat in particular because they are unable to cool down without help.

It is thus even more important in the opinion of the NPM that medical facilities take suitable measures to protect patients from the negative effects of high temperatures and heat waves as much as possible.

Lack of air conditioning in Hietzing Hospital In July 2019 Commission 4 conducted a monitoring visit in the 1st and 2nd Psychiatric Department of Hietzing Hospital – Neurological Rehabilitation Centre Rosenhügel. The reason for the visit was that on previous visits, most recently in June 2018, there was no adequate cooling. At the end of June 2019, the commission again received the information that the situation in Hietzing Hospital was highly objectionable due to the lack of air conditioning. The situation was particularly bad for patients' confined to their beds and restrained patients in the rooms on the south side of the building.

At the time of the visit by the commission, there had been outdoor temperatures of up to 35 degrees Celsius for several days. Only the two acute rooms and a recreational room were air-conditioned. Only some of the patients' rooms and other recreational rooms as well as the staff break room had interior blinds.

There were no outside blinds anywhere. Sheets hung over the windows in the slanted roof in a makeshift manner.

As there was no way of cooling and no shade on the balcony or in the garden, it was very difficult for the staff to make conditions bearable for the patients.

Commission 4 ascertained in interviews that the staff was certainly aware of the possible negative effects that the heat could have for the psychiatric patients. However, they emphasised that the infrastructural conditions make it impossible to take preventive measures. The above-mentioned guideline from the municipal department MA 15 was unknown to the staff or they were not sufficiently familiar with it. The NPM criticised this situation and recommended taking suitable measures quickly.

In a statement of opinion from the Vienna Hospital Association, it was pointed out that in response to the visit by the commission; sun protection film had been fitted to a total of 33 windows on the ground floor and on the third floor of Psychiatric Department of Hietzing Hospital as an initial emergency measure. In addition, the installation of indoor air cooling was promised for the end of April 2020.

Emergency measures
taken

Heat protection measures were announced and partly implemented in the psychiatric and/or gerontopsychiatric departments of other hospitals of the Vienna Hospital Association. Newer or refurbished buildings already have mechanical ventilation systems (Department of Psychiatry and Psychotherapy of Vienna General Hospital, Vienna North Hospital – Clinic Floridsdorf). The existing sun protection will be adapted at those locations that do not have such systems, until the already planned new buildings (Social Medicine Centre South – Kaiser Franz Josef Hospital) will be taking into operation.

- ▶ *The staff of all institutions and facilities shall be made familiar with the guideline on “Heat protection measures for medical and care institutions to create customised heat protection plans” from the municipal department MA 15.*
- ▶ *Rapid implementation of the recommended measures in the guideline shall be ensured.*
- ▶ *If necessary, additional technical measures (installation of ventilation systems etc.) shall be implemented quickly.*

2.2.7 Lack of after-care facilities

The NPM already indicated in its Annual Report 2017 (see p. 59 et seq.) that long-term stays in psychiatric hospitals are mainly attributable to the fact that there are not enough non-hospitalised places for certain groups of persons. This assessment is confirmed in the final report of a study by the Institute for Sociology of Law and Criminology “On accommodation

for mentally ill persons: application of law and cooperation frameworks” (“*Zur Unterbringung psychisch kranker Menschen: Rechtsanwendung und Kooperationszusammenhänge*”) from April 2019. According to this study, there is a huge lack of after-care programmes or mobile care as well as places in assisted living facilities. This is an increasing problem for older persons with mental illnesses in particular. The situation is highly critical when it comes to extremely care-intensive cases or multiple problems such as in the gerontopsychiatric area (e.g. dementia patients with aggressive outbreaks). Hospitals have to provide “care psychiatry” in such cases because suitable after-care or housing cannot be organised for the patients. This often results in extended stays in the in-patient area of hospitals, thus increasing the risk of hospitalisation.

Lack of follow-up care facilities in Tyrol

During several monitoring visits Commission 1 found that there are too few follow-up care facilities for geriatric patients in Tyrol. There is a lack of short-term care places in particular, which older patients can avail of after a stay in hospital to help them strengthen or regain their independence.

In a statement of opinion, the *Land* Tyrol referred to the qualified short-term care model (“transitional care”) that is currently applied in Schwaz (*SeneCura* social centre) and Kitzbühel (*Altenwohnheim Kitzbühel GmbH*). At the end of 2018, a total of 31 transitional care places had been approved and were in operation. It is planned to increase the number of places to 124 by 2025 and to expand the model to other locations (Innsbruck, St. Johann, Lienz, Reutte, Zams).

Non-hospitalised care for persons with special needs

In Vienna too, the current volume of residential and care facilities outside the hospital is insufficient, as is verified from ongoing monitoring visits by Commission 4. For patients with special needs, in particular, the number of currently available needs-related residential places, out-patient care structures and consultation services is to be criticised. Those particularly affected include adolescents with severe social behaviour disorders or persons with mental disorders and intellectual impairments or multiple disabilities. The consequence of these care deficits is that hospital stays last longer than necessary, the waiting times for new admissions are extended and patients are released to other *Laender*, amongst others.

The recommendation of the NPM to increase the number of residential and care facilities was received positively by the Vienna Social Fund (*Fond Soziales Wien*). According to a statement of opinion, around 200 new places have been created since 2015. A general concept for an (additional) facility which is intended to relieve the ward visited by the commission at Hietzing Hospital – Neurological Rehabilitation Centre Rosenhügel has been drafted. 286 new residential facilities with night duty should be completed by 2024.

The NPM holds the view that a non-hospitalised way of care for patients following in-patient psychiatric treatment must be ensured nationwide.

- ▶ *The non-hospitalised care of patients following in-patient psychiatric treatment must be ensured nationwide in order to avoid non-indicated stays in hospital.*
- ▶ *Attention shall be paid to setting up after-care facilities for patients with special needs which have sufficient staff to provide the individual care of these persons.*

2.2.8 Continuing inappropriate placement of the chronically mentally ill

The NPM already criticised the placement of chronically mentally ill persons in Styrian nursing homes in the past (see most recently NPM Report 2017, p. 38 et seq.).

Placement in nursing homes and medical facilities

The demarcation of competencies regarding the psychosocial care system in Styria continues to be unclear. The Styrian Disability Act (*Steiermärkische Behindertengesetz*) guarantees chronically mentally ill persons the right to full in-patient, partial in-patient, out-patient and mobile support under certain conditions; Section 4 (4) of the same law allows those affected to even choose between the available facilities and services. However, pursuant to the Styrian Social Welfare Act (*Steiermärkische Sozialhilfegesetz*), the groups of persons mentioned above may also be placed in nursing homes and medical facilities.

An additional incentive for admitting persons with psychiatric diagnoses to nursing homes and medical facilities was recently created with the regulation on Social Welfare Act services and remuneration that came into effect in October 2018.

The regulation stipulates the payment of a so-called “psychiatry supplement” for the admission of the group of persons mentioned above to such institutions and facilities. This is considerably more than the care supplement applied in the otherwise customary standard cost model. In addition, the “psychiatry supplement” was increased by 7% in 2018.

Private nursing homes and medical facilities operate on a profit-oriented basis and want to ensure the capacity utilisation of their operations. Persons for whom a “psychiatry supplement” is paid are thus often admitted for unlimited periods of time. More importantly, this is possible because there are still not enough other alternatives available for the care of persons with disabilities in Styria.

The failure to expand local, small-scale care structures – which has been requested for a long time – as well as misguided management (for example, through the “psychiatry supplement” mentioned above) mean that a large number of young chronically mentally ill persons in Styria continue to be hospitalised in private nursing homes and medical facilities.

The NPM has repeatedly pointed out in the past that private nursing homes and clinics do not offer the affected group of persons any realistic chance of a self-determined way of living or the possibility of professional and social integration. The facilities visited by Commission 3, put their main focus on the care aspects for chronically mentally ill persons. Needs-related care concepts, on the other hand, are not applied.

Large care facilities are often located in very remote areas, which means that those affected lose their social contacts over time and any future prospects they might have go astray.

When it comes to the type of care, there can thus be no question of the right to choose pursuant to Article 19 of the UN CRPD. It is true that the competent social department created a needs and development plan with regionally differing service offers in 2013. Nevertheless, there is still a lack of supply in the full and partial in-patient psychiatric residential offers. The direct consequence is the misplacement of mentally ill persons in private clinics and nursing homes, as is constantly observed by the commission.

In the meantime, the Austrian Court of Audit also demonstrated in a report published in March 2019 that the structural requirements of nursing homes despite “psychiatry supplement” are comparatively low. For example, psychiatrically trained care staff does not have to be deployed in nursing homes. The standard of care thus varies greatly from the fully assisted residential facilities provided by the services for persons with disabilities.

NPM determines
maladministration

The misplacement of young psychiatrically chronically ill persons in particular in private medical facilities and nursing homes thus constitutes structural maladministration in the opinion of the NPM.

The NPM therefore recommended surveying the wishes and needs of the residents of private medical facilities and nursing homes under the age of 40 in particular in relation to the meaningful organisation of their daily structure. At the same time, the NPM directed a recommendation to the regional government of Styria to create a staged financing plan for the expansion of adequate living arrangements and care structures for persons with chronic psychiatric illnesses and mental impairments.

- ▶ *The wishes and needs of the residents of nursing homes and private medical facilities under the age of 40 in particular in relation to the meaningful organisation of their daily structure shall be surveyed.*
- ▶ *A staged financing plan shall be developed for the creation of adequate living arrangements and care structures for persons with chronic psychiatric illnesses and mental impairments as soon as possible.*

2.2.9 Deficits in out-patient child and adolescent psychiatric care in Styria

Implementation of the Regional Health Care Structure Plan for Styria should guarantee out-patient child and adolescent specialist care in out-patient clinics. This is designed to meet the public health goal of providing out-patient care for children and adolescents – regardless of the type of illness – for as long as possible.

The NPM observed, however, that the psychosocial counselling centres for children and adolescents are not yet operated as out-patient clinics. As a consequence, the specialists in child and adolescent psychiatry employed there cannot write prescriptions.

Establishment of out-patient clinics delayed

This breeds conflict when the attending general practitioners do not follow the recommendations of the specialists in the institutions. There are differences of opinion with regard to medication especially after the diagnosis of untreated ADHD.

The lack of authority to write prescriptions on the part of the specialists in child and adolescent psychiatry also has a negative effect insofar as the families of the patients can get the impression that the specialists in child and adolescent psychiatry in the psychosocial counselling centres have less competence than the general practitioners. This is the case in particular when the general practitioners do not follow the prescription recommended by the experts. The result is a negative transmission of symptomatology, which further complicates the therapy.

The office of the regional government of Styria assured the NPM that upon completion of the approval procedures the psychosocial counselling centres for children and adolescents would be set up as out-patient clinics and be given the authority to write prescriptions. This process was delayed, however, because the Regional Administrative Court of Styria overruled the resolution of the regional government of Styria in April 2019 on formal grounds. This resolution had stipulated the need for socio-psychiatric out-patient clinics for children and adolescents. But even after approval and taking into operation of the socio-psychiatric out-patient clinics for children and adolescents, the existing need in the area of office-based doctors will still not be covered by far.

A total of just five fulltime positions for specialists in child and adolescent psychiatry are planned for out-patient clinics in Styria. With the exception of Graz, only five specialist positions are planned as fulltime positions (0.25 to 0.5 FTE), making the opening times of the out-patient clinics just four to eight hours per week. It is therefore to be expected that the existing waiting times of several months for treatment cannot be reduced and that the bottlenecks in the provision of care will remain.

Insufficient treatment capacity

Due to the small organisational units, holiday and sick leave taken by the specialists in child and adolescent psychiatry cannot be covered in the out-patient clinic itself.

Permanent positions in public health insurance scheme required

Establishing the out-patient clinics can thus only be a first step towards achieving adequate child and adolescent psychiatric care in the area of office-based doctors in Styria. From the NPM's point of view, the creation of permanent positions in the public health insurance scheme in the area of child and adolescent psychiatry to supplement the out-patient clinics is imperative. This dual system would also meet the requirements of Section 135 of the General Social Insurance Act (*Allgemeines Sozialversicherungsgesetz*) that grants the insured the right to choose their doctor.

Evaluation intended

The office of the regional government of Styria reacted to this criticism and promised to evaluate the out-patient care model of "psychosocial counselling with integrated out-patient clinics" throughout Styria. If required, adjustment should be made to the current structural planning in order to increase the effectiveness of care.

- ***Demand in the out-patient area of child and adolescent psychiatry cannot be covered by the existing institutions and current staffing levels. The medical staff shall thus be increased in these institutions in order to ensure nationwide treatment programmes. Furthermore, permanent positions in the public health insurance scheme for child and adolescent psychiatry have to be created.***

2.2.10 Requirements of effective transitional psychiatry

The transition from youth to adulthood is a difficult developmental challenge for every person. Adolescence and young adulthood are a particularly critical phase for the development and chronification of mental disorders. The transition from adolescence-centred to adult-oriented care between the ages of 16 and 24 is thus an enormous challenge.

Interdisciplinary cooperation required

From the developmental psychopathological perspective, specific in-patient and in-patient programmes on an interdisciplinary basis that support the transition would be expedient. It is pivotal that such medical treatment programmes take unstable maturing phases into consideration. They should combine core elements of competences for adolescent psychiatric treatment with core elements of competences for adult psychiatric treatment in a framework suitable for young people.

The relevant staffing is also important to this end. Key contents of these integrated offers are parental work, psycho-education of the affected young persons and their relatives (partners and parents), the inclusion of developmental issues

in psycho and socio-therapeutic programmes, the inclusion of peer groups, support in integrating into the workforce and support of training objectives.

Internationally recognised models indicate that cooperation between specialists in child and adolescent psychiatry, in adult psychiatry as well as in different health professions (psychologists, psychotherapists, specially trained care staff but also social pedagogues, occupational therapists, physiotherapists and music therapists) is required.

A key demand of the NPM remains to create top-quality in-patient transitional psychiatric programmes in Austria as well.

In 2019 a ward at Hietzing Hospital – Neurological Rehabilitation Centre Rosenhügel was converted into a transitional psychiatric ward for the care of adolescents between the ages of 16 and 25. This project is an important step towards professional psychiatric care that should cater to the needs of adolescents and young adults.

On its visits to this ward, however, Commission 4 found that the structure, staffing and concept did not meet the requirements of professional transitional psychiatry. The fulfilment of substantive requirements in particular, such as the development of care concepts and further education of the staff, is essential in this context.

Inadequate structure
and staffing

Furthermore, the specialist care is inadequate. Child and adolescent psychiatrists were only regularly involved in the introductory phase of the project. Thereafter, care was provided almost exclusively by adult psychiatrists. It is not acceptable that no child and adolescent psychiatrists are available for the adolescents.

No social pedagogues have been assigned to the ward to date. However, it can be assumed that the need for diagnosis by psychologists will increase and an intensification of social work measures will be required for the follow-up care of the adolescents to secure the therapy goals (e.g. support in finding a suitable job and/or housing alternatives, cooperation with the Youth Welfare Offices, involvement of the parents).

Sufficient financial resources are vital here. The existing system of hospital billing should be reassessed, as patients from 18 years of age can currently only be billed within the framework of adult psychiatry. However, this does not take account of the increased care effort necessary for the special requirements of transitional psychiatry.

The NPM recommends implementing plans and concepts as quickly as possible to meet the basic, professional and human rights requirements of adequate transitional psychiatry. It is essential to provide the dedicated team with sufficient financial resources and to considerably increase the existing human resources both in the medical and therapeutic area.

- ▶ *Adequate transitional psychiatry requires intensive interdisciplinary cooperation between medical specialists in child and adolescent psychiatry as well as adult psychiatry and therapeutic and care staff.*
- ▶ *Sufficient financial resources are required here to guarantee the necessary human resources.*

2.3 Child and youth welfare facilities

2.3.1 Introduction

The NPM commissions visited 88 child and youth welfare facilities in the year under review. Major differences in quality were found in the individual facilities. Whereas in some shared accommodations measures had to be taken urgently to improve the living conditions in terms of human rights, others were described as examples of best practice. There were no grounds for criticism of the pedagogical care work on several visits; however, other system-related deficits were noticeable. The NPM thus recommended changes and contacted the owners and operators of the facilities, the supervisory authorities and the politically competent members of the government.

Clear differences in quality

Child and youth welfare should primarily open up opportunities for children and adolescents to adequately develop physically, mentally, socially and emotionally. This requires more than just the commitment to accept the political responsibility for continued development. What is also needed is networking with the health care and educational system as well as all other societal players who provide services for children, adolescents and young adults. The NPM considers this to be not sufficiently guaranteed.

Contrary to the demand raised by the NPM and expert groups for the nationwide continued development and standardisation of existing legal regulations, a reform of the distribution of responsibilities was adopted in December 2018. Responsibility for the legislation in child and youth welfare matters was thus completely transferred to the *Laender*. The condition for this was the conclusion of an agreement between the Federal Government and the *Laender* pursuant to Article 15a of Federal Constitutional Law. Due to criticism from expert groups and on the part of the NPM, the continuation of existing child and youth welfare protection levels was anchored in the agreement as was an obligation to cooperate in allowing adjustments to standards in accordance with a professional state of knowledge if requested by any *Land*. There is, above all, neither alignment nor consensus between the *Laender* on the definition of infrastructural criteria (staffing ratio, group size, training educational requirements). This will continue to worsen with the withdrawal of the Federal Government. Nationwide binding regulations for child and youth welfare are more important than ever; they will however not be achieved through the agreement pursuant to Article 15a of Federal Constitutional Law alone. Besides, differing regulations in laws, directives and standards result in different definitions of quality in the out-of-home care process.

Federal Children's and Youth Service Act ceases to be in force in 2020

On the initiative of FICE Austria (International Federation of Educative Communities), the problems associated with the placement and care of minors in residential facilities was discussed and backed up with scientific support.

FICE Austria quality standards complete

The NPM also took part in this discussion in 2017: 66 quality standards were defined in cooperation with representatives of 19 organisations (see NPM Report 2018, p. 70). This agreement goes beyond organisational and *Laender* borders and cannot be commended enough. The results provide specialists in facilities not only practicable orientation on how to keep children's well-being in focus. Making the quality of work for children comparable, verifiable and traceable is also an important overall frame of reference as soon as child and youth welfare becomes the exclusive responsibility of the *Laender*. The quality standards accepted by experts should therefore be implemented by all regional governments as binding quality criteria and applied as assessment criteria by the technical supervision. The NPM welcomes the fact that some private competent authorities for child and youth welfare and protection operating in different *Laender* who were involved in defining the standards have agreed to align their organisational processes to these standards in future.

The NPM will use these standards for its human rights recommendations on monitoring visits. The standards cover eleven subject areas that address topics such as participation, the preventive protection of minors against violence, dealing with risks, assault and violence, health care and educational processes. All of these aspects were and still are NPM monitoring priorities.

NPM contributes to publishing results

The FICE Austria quality standards and a manual were presented at a press conference and a symposium held by the AOB in May 2019. Stephan Sting, professor of social and integrative pedagogy at the University of Klagenfurt, explained why quality standards are important for quality development in residential child and youth welfare facilities. Additional presentations took place with the support of the Ombuds Offices for Children and Youths in Lower Austria, Salzburg, Vorarlberg, Tyrol and Carinthia in autumn 2019.

New regulation in Burgenland - no increase in daily allowances

The regulation on the Children's and Youth Assistance Act (*Kinder- und Jugendhilfegesetz*) came into force in Burgenland on 1 October 2019. There is a transition period of four years for the qualification of the care staff in already approved facilities and five years for the implementation of the required staffing ratio and reduction in group size. All of the other provisions have applied since the regulation came into force. The technical supervision now has to monitor the implementation of the provisions. An increase of the daily allowances, which is necessary to compensate the added cost for the operators incurred by the smaller group size and additional staff, is still outstanding.

Carinthia still working on regulation

There is still no regulation for the Children's and Youth Assistance Act in Carinthia. The NPM pointed out the urgent need to concretise said act, which has been pending for six years, on several occasions. As the visits to the facilities repeatedly showed, regulations on the educational and suitability criteria, the staffing ratio and permissible group size are urgently necessary. Threats to minors could thus be averted. After talks with the competent member of government as well as discussion of the situation in autumn 2019 in the Diet

of Carinthia, assurances were given that those responsible wanted to make relevant regulations in 2020.

Once again in 2019, many improvements could be achieved after the visits by the commissions. Hygiene problems were rectified and necessary refurbishments undertaken in several shared accommodations. One complaint was so extensive that the entire shared accommodation was repainted, the floors sealed and the redesign of the rooms tackled together with the children and adolescents. A shared accommodation for adolescents in Lower Austria was also redecorated and redesigned with the involvement of the adolescent residents. In another shared accommodation in Lower Austria, mould was removed to ensure that the living conditions do not represent a health risk. After criticism by Commission 6, another shared accommodation was designed to cater to children's needs. Cleaning procedures were changed in shared accommodation for unaccompanied minor refugees after criticism by the commissions.

Many improvements achieved through the NPM

In order to prevent violence, it is essential that minors can contact the Ombuds Office for Children and Youths from residential facilities in confidence, free of charge and anonymously. Sometimes it can happen that the posters and folders are damaged and the contact information of the Ombuds Office becomes illegible. The reaction to criticism by the commissions is usually immediate and new information material is displayed.

The storage of medication was frequently the subject matter of complaints in 2019. Fortunately, the recommendations issued were implemented immediately in most cases. Medication that has expired or was prescribed for children who have left the facility must be disposed of regularly. Some shared accommodations also followed the commissions' recommendation to transfer the specific "packaging" of the medication to pharmacies in order to have more time for the care work and minimise stress-related mistakes when dispensing it. Medicinal products should only be stored in lockable cabinets in order to prevent theft and abuse. Due to criticism of the way in which medical records are handled, a form was created for all adolescents in a facility, in which the doctors now have to enter the diagnosis, medication and date of examination. The medical files of the children living in a shared accommodation were modified in a way that doctors' letters and prescriptions can be found faster.

Professional medication management requires precautionary measures

Upon recommendation by Commission 4, the documentation of dispensed medication in a shared accommodation in Vienna was changed in a way that it is now possible to dispense medication at different times and have it individually documented. A crisis centre in Lower Austria was provided a consulting psychiatrist from the competent department of child and adolescent psychiatry and psychotherapy on the recommendation of the NPM. This served to improve the cooperation with the clinic and strengthen the team. An on-call night duty was also introduced after criticism by the NPM. The

pedagogical supervisor moved her place of residence to the vicinity of the crisis centre and is now ready to work within 15 minutes, if required.

Commission 4 criticised that a shared accommodation in Vienna was unmanned between 8.00 a.m. and 12.00 p.m. If a child became sick or lessons were cancelled, the staff in the team had to organise themselves to cover the missed lessons. The operator of the facility responded with the creation of an additional position.

Several operators took the criticism as an opportunity to examine whether and in how far the shared accommodation can be made barrier-free.

Sex education concepts Most of the *Laender* have now also met the demand of the NPM for a sex education concept as an approval requirement for new residential groups. In Vienna, Lower Austria, Carinthia, Salzburg, Tyrol and Burgenland, sex education concepts must be in place for the approval of a new facility. In Upper Austria, Vorarlberg and Styria, sex education concepts are not an approval requirement; however, the child and youth welfare departments in the regional governments emphasised that it is given particular attention.

Cooperation with Ombuds Office for Children and Youths In 2019 there was a meeting again with the Ombuds Offices for Children and Youths at which problems were discussed with members of the NPM.

- ▶ *Regional differences in the regulations for the care of children and adolescents in institutions shall be eliminated.*
- ▶ *The “Quality standards for processes of accommodation and care of children and adolescents in residential facilities” (“Qualitätsstandards für Prozesse der Unterbringung und Betreuung von Kindern und Jugendlichen in stationären Einrichtungen”) published by FICE Austria should be taken up by the regional governments and used in cooperation with the service providers for further development.*
- ▶ *The Laender must monitor the implementation of these quality standards through the technical supervision.*
- ▶ *The Land Burgenland must increase daily allowances.*

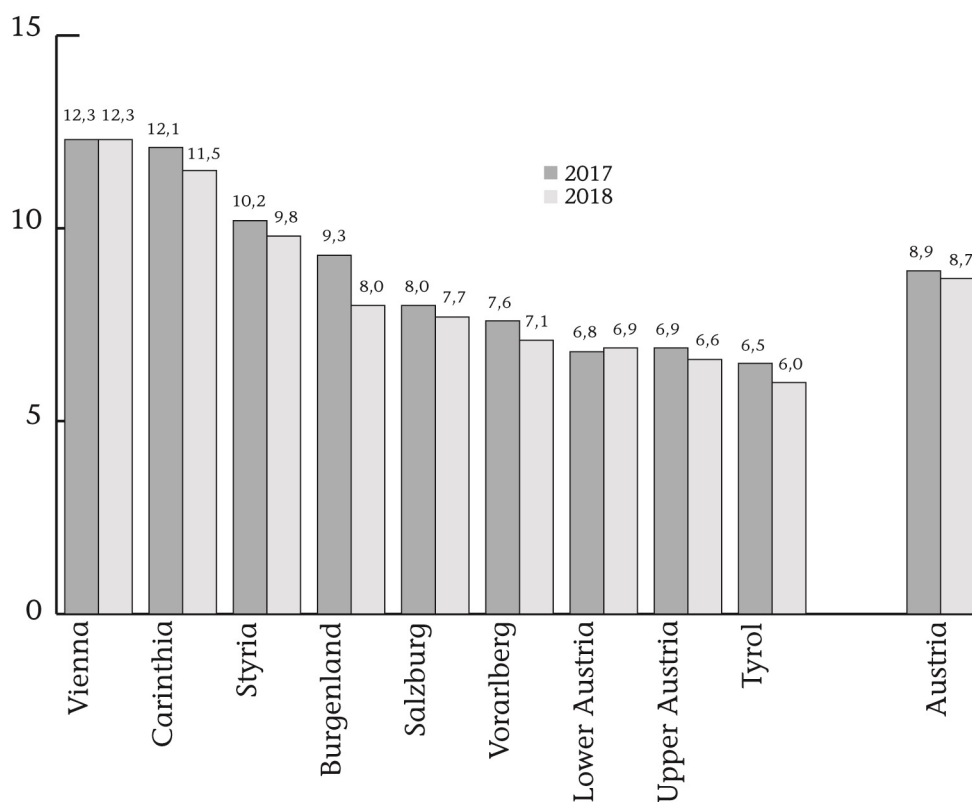
2.3.2 Major differences in out-of-home care in the *Laender*

Comparisons between the *Laender* For the evaluation of the data recorded for the special report on children and their rights in public institutions and facilities in 2017, the AOB also sent out a questionnaire that was aligned to the respective *Laender* in 2019. The main purpose was to record whether the noticeable major differences in the number of minors in out-of-home care between the *Laender* documented in 2017 has since been reduced.

If it is no longer possible for a child to stay in the family setting because their well-being is at risk and the risk can only be averted through care outside of the family or the hitherto home environment, children and adolescents shall be given full residential care. According to the child and youth welfare statistics 2016, a total of 13,617 children and adolescents in Austria were not living with their families. This figure was 13,325 in 2018. A slight decrease in out-of-home care can thus be observed nationwide; however, the regional distribution is not even. Whereas seven *Laender* reported a fall in the number of supported children and adolescents in full residential care compared to 2017, the number of those in residential care increased in Lower Austria and Vienna. Expressed in cases per 1,000 minors, the number of minors living outside their families thus fluctuates nationwide between 12 in Vienna and 6 in Tyrol. 1.23% of children in Vienna were not living with their family in 2018. Carinthia, which was almost on the same level as Vienna in the previous year, was, however, able to reduce the out-of-home care share to 1.15% in 2018. Styria also succeeded in reducing its share considerably. Tyrol, which always had the lowest share, was able to further reduce the same. In 2018, just 0.6% of children in Tyrol were not growing up with their parents.

Nationwide decrease in out-of-home care

Children and adolescents in full residential care per 1,000 inhabitants under 18 years in 2017 and 2018

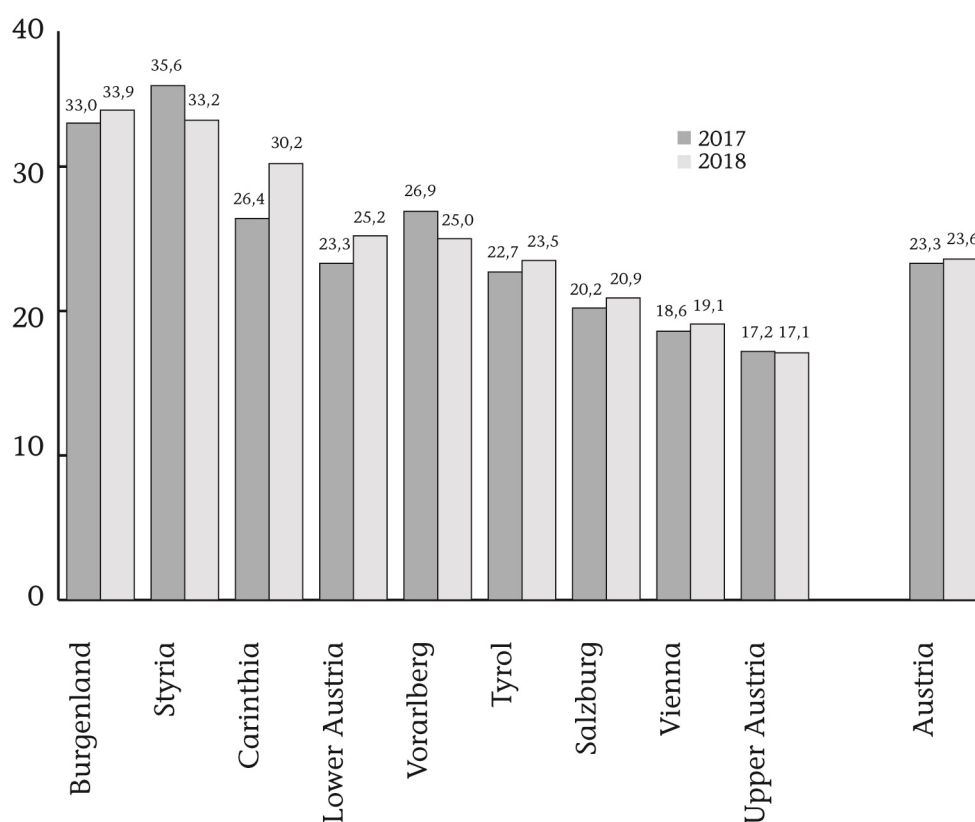


Source: Statistik Austria, child and youth welfare statistics

Expansion of non-residential care is making an impact

There were also major differences in the number of cases in non-residential care. What is particularly noticeable is that Vienna, which is in first place when it comes to full residential care, is in second last place with 19.1% for non-residential care or parental support. Monocausal interpretation of this data does not do justice to the complexity of the operating environment in which child and youth welfare is locally active, and should therefore be avoided. It can, however, be seen from the statistics, that the range of available non-residential care forms evidently has an effect on the amount of residential care.

Children and adolescents under parental support programmes per 1,000 inhabitants under 18 years in 2017 and 2018



Source: Statistik Austria, child and youth welfare statistics

The picture is similar if the ratio between these two types of support is compared with each other. In Vienna, the share of full residential care is 39.29% and the share of non-residential care/parental support programmes is 60.71%. By comparison, in Burgenland 19.15% of support forms are residential care, 80.85% are non-residential.

Child and youth welfare statistics alone do not answer the question as to how high the compensatory effects between non-residential child and your welfare

support and out-of-home care are or could be in the optimal case; the latter clearly being a more intensive infringement of the right to family life from a human rights point of view. Nevertheless, the *Laender* themselves should scrutinise the differences in terms of whether the availability and accessibility of their range of services and packages of measures for child and youth welfare prior to out-of-home care is sufficient to be able to offer protection against further risks to the child's well-being as soon as possible in cooperation with the legal guardian(s).

Some 1.9 million persons have been living in Vienna since the beginning of 2020, making it thus the second largest German-speaking city in Europe in terms of population; the number of inhabitants has grown continuously in recent years. Growth was particularly high in 2015 when a large number of asylum seekers were accepted. In light of the constant multiple risks inherent in the metropolitan area, child and youth welfare services are faced with special challenges both in the conception and management of a wide range of subsidies and support and the financing of the same. From the NPM's point of view, however, it would appear to be imperative due to the primacy of children's well-being that the child and youth welfare services can offer and deploy sufficient resources even for longer-term and flexible support measures in families, if required and when there are signs of risk to the child's wellbeing. The basic conditions for needs-based non-residential support for children and adults in precarious situations, with special risk factors for challenging parenting situations, strong socioeconomic or mental (multiple) strain and/or migration or refugee experience are more complex in urban settings than in rural areas that are less harmful to development. The continued rise in residential care between 2017 and 2018 cannot be explained by an increase in risk evaluation procedures in Vienna, as these have even decreased in recent years.

Special situation in Vienna

The trend is completely different in Carinthia. The Land that was in the same position as Vienna in relation to out-of-home care in 2017 reported a 37.6% increase in risk evaluations in 2018. This is attributable to a campaign in cooperation with the Ombuds Office for Children and Youths that called for increased awareness in relation to suspected risks to children's well-being. Despite the fact that the campaign bound resources, it succeeded in reducing the number of out-of-home cases by expanding non-residential care and intensive counselling for families. This is a positive example of how the expansion of early, customised parental support can result in success stories inside the family.

Decrease in residential care in Carinthia

The expansion of non-residential care has also made an impact in Salzburg and Styria.

- ▶ *To avoid out-of-home care in Vienna, the range of non-residential support forms shall be expanded, in particular for specific target groups with high risk factors.*
- ▶ *Carinthia, Salzburg and Styria must continue their course of the increased use of non-residential support.*

2.3.3 Prevention of violence

Backlog in violence prevention	It is still the case that not all socio-pedagogical facilities have a violence prevention concept and a sex education concept. Many employees working in shared accommodation have also not been or have been insufficiently trained in violence prevention, conflict management and de-escalation.
Security in how to act through crisis plans	Commission 2 observed high potential for violence with the adolescents in a facility in Upper Austria. It recommended advanced training for all employees on the topic of violence prevention, de-escalation and measures that restrict freedom. The commission also recommended crisis plans for specific situations and individual crisis plans for all of the adolescents who tend to lose control and have aggressive outbursts.
Deficits in advanced training and further education on violence prevention	Advanced training and further education deficits relating to violence prevention and de-escalation were also found in another shared accommodation in Upper Austria. It was evident from the documentation that there had been repeated sexual assaults and other violent incidents. The commission thus recommended regular staff training on causes and risk factors regarding violence in care.
Urgent need for action for the protection of younger children	After visiting a facility in Lower Austria, Commission 6 reported that the older boys were mobbing and bullying a nine-year old boy. The pedagogical manager said that the younger boy provoked the others and had to learn to defend himself against the older boys. The team also did nothing against sexual harassment. The harassment was not documented either. In spite of the incidents, there was neither a violence prevention concept nor a sex education concept. The commission feared for the well-being of the younger residents and saw an urgent need for action. The technical supervision of the Land conducted an immediate visit and also had the impression that younger children in particular are not protected and left on their own in difficult situations. The pedagogical manager was instructed to actively guide the minors through the caregivers and to develop measures for de-escalation and conflict resolution with them. A sex education concept and a violence prevention concept were called for. The shared accommodation was obliged to report incidents to the supervisory authority without delay.
Sex education concepts complete	The conceptual framework for sex education developed in Upper Austria in cooperation with all socio-pedagogical facilities and the Austrian Institute for Sex Education and Sex Therapy (<i>Österreichisches Institut für Sexualpädagogik</i>)

und Sexualtherapien) was completed. Social pedagogues as well as children and adolescents from the age of eight were involved; a total of 23 shared accommodations took part. The concept defines a common approach to sex education and provides orientation and support to the facilities for integrating the topic into the daily care routine. It should be implemented by the operators within the framework of a voluntary obligation. The technical supervision will monitor implementation in the individual residential groups. SOS Children's Villages also developed a general sex education concept for its shared accommodations throughout Austria in 2019, which is currently being implemented in the individual groups.

All of the facilities in Vorarlberg have a sex education concept. The focus of advanced training for the entire child and youth welfare system 2018/2019 was on the topic of "sexual assaults among children and adolescents". All employees of public and private child and youth welfare facilities as well as of the system partners from the area of child and adolescent psychiatry took part together in a training course specially designed for child and youth welfare facilities in Vorarlberg.

Training focus

- ▶ *Violence prevention concepts and sex education concepts must be available and implemented in all shared accommodations.*
- ▶ *Deficits in education on the topic of violence prevention must be eliminated through regular training.*
- ▶ *The protection of younger children must be guaranteed.*

2.3.4 Inadequate care of minors

Pursuant to Article 2 (2) of Federal Constitutional Law on children's rights, every child that is permanently or temporarily removed from their family settings is entitled to special protection and support of the State. Pursuant to Article 3 (3) of the UNCRC as well, the signatory states shall ensure that the institutions, services and facilities responsible for the welfare and protection of children meet the standards defined by the competent authorities. Sufficient qualified personnel must be available in order to guarantee the safety and the best possible development of the children. The authorities must use their supervisory powers to monitor whether this is the case for every child.

Programmes conforming to children's rights must provide safety

The objective of assistance plans is to ensure the appropriate social, mental and physical development and education of the affected children and adolescents. Care forms with the most promising perspective for each individual child shall be used. If out-of-home care is the only suitable alternative, a customised socio-pedagogical programme shall be created for each child.

Small children
unprotected among
traumatised adolescents

Sometimes commissions encounter minors in facilities who are too young for the pedagogical concepts of the shared accommodation and whose care is thus inadequate. The admission of a considerably younger child is a burden for the child, the group and the staff, because this consequently means, that there is less time available to take care of all of the children. The children's right to extensive care and protection is thus violated.

In Upper Austria, Commission 2 encountered a four-year old girl in a residential group for minors from the age of six. Even though this child required more care than older boys and girls, the staffing level was not increased. The situation was stressful for both the four-year old and the other children. Some of the children told Commission 2 that the caregivers were not interested in them anymore since they had to look after the little girl. The interviewed staff also had reservations as to whether the shared accommodation is suitable for the girl, as she needed more intensive care. The existing human resources, however, were only sufficient to maintain the daily structure. The team had little say in the matter when the girl was admitted. Commission 2 criticised that physical attacks by the older children could not be prevented with the existing human resources.

In another facility in Upper Austria, both adolescents and staff reported that there were regular violent excesses and even assaults on the care team. Commission 2 had the impression that violence-based power structures – driven by a few severely traumatised adolescents – could be established at the facility. The committed team was unable to cope with these challenges. The police had to be alarmed repeatedly. Introverted minors locked themselves in their rooms out of fear. A six-year old girl was to be admitted to a place that had become available in this shared accommodation. The NPM took a justified stand on this matter because there would have been an acute risk to this considerably younger child. The regional government of Upper Austria arranged a monitoring visit by the supervisory authority. A different care alternative was found for the six-year old. It is clear that a setting with intensive support which fosters development must be developed for this shared accommodation.

High care levels bind
resources

Not only younger children but also children and adolescents who need a different care setting due to their diagnoses or impairments bind many human resources. In a shared accommodation in Vienna, great dedication on the part of the staff in dealing with the cared for children was observed, but the employees seemed to be stretched to their limits. They were left alone with the challenging behaviour and illnesses of the children. Six out of eight children had a medical-psychiatric diagnosis; a four-year old girl had a psychological diagnosis. 1:1 care was necessary for three of these minors in the view of Commission 4. Additional staff would be required for this. However, the existing positions were not even filled due to resignations and sick leave. Socio-pedagogical and psychiatric care was thus not possible. One child with an attention deficit and hyperactivity disorder did not receive a special therapy

programme due to the tight staff situation. A boy suffering from an autism spectrum disorder did not receive adequate treatment either.

During the visit, Commission 4 observed several dangerous situations when the group left the building. Two children climbed up a garden gate and threatened to fall onto the footpath. A boy on a swing was at a dangerous height. Another boy ran up and down unsupervised at the side of the road. The caregivers took great pains but could not supervise all of the children at the same time.

Dangerous situations were observed

A brother and sister from Syria were living in a shared accommodation in Vienna. The caregivers showed great effort to deal professionally with the challenging behaviour of the two children. Nevertheless, the siblings constantly went missing and were so overwhelmed by school that they refused to go and did not respect the rules of conduct. The pedagogic staff contacted municipal department MA 11 and requested that the two children be accommodated in a suitable facility. They justified the request by stating that the time-intensive care necessary for the two minors meant that they were barely able to look after the other adolescents.

In a residential group in Carinthia, Commission 3 came to the conclusion that the education of the employees was not adequate with respect to the severity of the impairments of some of the cared for minors. Nevertheless, the operator of the facility did not consider it necessary to employ clinical psychologists. Commission 3 also criticised two other shared accommodations in Carinthia, where at least two clinical psychologists should have been employed in view of the types of illnesses. The helplessness of the team was evident from the number of incidents and police operations. In another facility in Carinthia, a girl attempted to commit suicide at the beginning of November 2019 and was released to her mother as early as mid-December of the same year. The team said they had already expressed reservations in 2018 about the inadequate therapeutic support in the shared accommodation. Furthermore, the staff reported that the admission of the girl to the children's psychiatric ward of Klagenfurt Regional Hospital and Villach Regional Hospital had been refused for months. It remained questionable for Commission 3 whether the girl had a psychiatric or clinical-psychological diagnosis at all in the last few years. The AOB initiated an own-motion investigation.

Staff education inadequate

If there are problems in shared accommodations with minors who display severe behavioural disorders, the fluctuation in personnel often rises as a result of work overload. Facilities that specialise in the care of adolescents with psychiatric diagnoses in particular are often affected by resignations and are unable to work with a full team. Shared accommodations in Salzburg and Styria were not fully manned from the beginning, which eventually resulted in the closure of the facilities.

High staff fluctuation exacerbates problem

Expansion of inclusive groups	Several <i>Laender</i> are adapting their approach and have stopped expanding purely intensive pedagogical facilities in favour of looking after children and adolescents with increased care requirements inclusively in regular shared accommodations. This is the case in Upper Austria, for example. In Vorarlberg, a pilot test was started in several children's residential groups a few years ago to implement the integrative approach in cooperation with the child and adolescent psychiatry services. Experience to date has been very positive which is why the test is to be extended to all children's residential groups. Work is also being done in Lower Austria on implementing socially inclusive residential groups. This will ensure the regional availability of therapeutic groups that better meet the requirements. In order to be able to meet the special needs of children and adolescents, concepts for socio-pedagogical shared accommodations were adapted and intensive shared accommodations created in Carinthia too.
Increase in staffing ratio required	An increase in the staffing ratio is critical for the success of these models. Other key conditions are the advanced and further education of the staff as well as the multi-professional composition of the care team. The stability of the group shall not be threatened by the admission of too many children with increased care needs. Exceptions to admission approval and deviations from the concept would cause an overload of the team and the children's group.
Personnel must be involved in decision on admission process	The residential group team must be involved in decisions regarding the admission of individual children. The child and their family must also have the opportunity to get to know with facility and be involved in the decision. A care plan must be prepared and continuously developed and evaluated. In 2019 the City of Vienna opened several shared accommodations for a maximum of four children and adolescents with psychiatric care needs. The shared accommodations cooperate with the child and adolescent psychiatric out-patient clinic of the Psychosocial Service of the City of Vienna.
Range of special places must be increased	Regardless of whether the <i>Laender</i> are pushing the expansion of inclusive groups or creating special groups, it is particularly important that the range of special places is increased.

- ▶ *The life of many minors is characterised by the breakup of relationships, violence, abuse, social deprivation, neglect and traumatisation. Personal biographic histories must be taken into consideration in the facilities.*
- ▶ *Minors, in particular, must be protected. Care must be taken that their accommodation is suitable.*
- ▶ *Personnel resources must meet care needs both qualitatively and quantitatively.*
- ▶ *The increased staff requirements for inclusive groups must be taken into account.*
- ▶ *The range of special places for minors with psychiatric care needs must be further increased.*

2.3.5 Placement of minors outside their own *Laender*

The Burgenland Children's and Youth Assistance Act stipulates that a maximum of 15% of the total number of minors in a Burgenland facility may be from other *Laender*. The NPM welcomes the introduction of this rule. The approval of the regional government is required and justification must be provided if the limit is exceeded. According to the explanatory notes on Section 20 of the Children's and Youth Assistance Act, the lack of suitable places in special facilities in the requesting *Laender* amongst others is considered grounds for approval.

Upper limit in
Burgenland

This is to be criticised, as the lack of suitable places is nearly always the reason for placements outside the minor's home *Land*. This is illustrated by the example of a facility in Burgenland which only accommodated children from Vienna at the time of the visit by Commission 6. As an enquiry to municipal department MA 11 indicated, most of the children had come to this shared accommodation because there were no suitable care places available in Vienna. There are also repeated complaints from parents that their children are placed in another *Land*. The NPM thus recommends that the circumstances be carefully examined in every individual case prior to approval if the requesting competent authorities for child youth welfare and protection has too few places in special facilities in its own *Land*.

Possibility to approve
must be managed
restrictively

Overall, the number of children placed in other *Laender* has decreased. This positive trend is likely attributable to the efforts of the *Laender* to create more care places. The downward trend, however, is also due to the restrictions introduced in Upper Austria and Burgenland on the admission of minors from other *Laender*: whereas in Burgenland 29.22% of the out-of-home minors lived outside their home *Land* in 2016, this figure was just 22.22% in 2018. In Upper Austria, the number has been halved since the introduction of the upper limit in 2014. The NPM thus requests the other *Laender* to also introduce an upper

Decrease in numbers
positive

limit for the accommodation of children from other *Laender*. Lower Austria announced that it intends to follow this recommendation.

- ▶ *There must be an upper limit for the admission of children from other Laender.*
- ▶ *The lack of special places shall not constitute the reason for placement outside a minor's own Land.*

2.3.6 Returning children to their families

Sufficient and suitable measures

Pursuant to the rulings of the European Court of Human Rights (ECHR), Article 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms guarantees parents that sufficient and suitable measures are taken to reunite the family after their child has lived out of home. As the NPM has determined several times, however, work with the families varies greatly from Land to Land. Some facilities take over the cooperation with the parents themselves; others purchase social services as a supplement. Occasionally, social workers assume the task of supporting the families to the point where the child can return home. The system that the competent authorities for child and youth welfare and protection opt for is irrelevant. What is important is that extra, specially trained staff is available for this additional task. Working with parents can only succeed if there is more staff.

Savings possible through faster returns

Children could return to their families faster through continuous work with the parents and the family system as well as the regular monitoring of development within the families. This could help save costs, as full residential care is considerably more expensive than family outreach work in the long term.

Working with parents in Burgenland anchored in the regulation

Since October 2019 the regulation on the Children's and Youth Assistance Act in Burgenland stipulates a mandatory half equivalent of full-time employment per facility for work relating to biography and outreach to the parents. This improvement in quality should also be reflected in an increase in the daily allowances. In the new regulation on the Children's and Youth Assistance Act in Lower Austria, additional hours for family outreach work are mandatory, however, only for semi-residential care. An expansion of family outreach to residential facilities is planned. In Vorarlberg, working with parents is possible through the facility or non-residential care in the form of parental support or one available specialist in child and adolescent welfare. Tyrol obliged all facilities to actively involve those parents who have opted for the standard cost model.

In the other *Laender*, working with parents is now an obligatory part of the care concepts. However, it is only realised within the framework of available

resources. Apart from that, there are individual projects: a third of the facilities in Upper Austria offer active family outreach work, for example, to strengthen and stabilise the family setting and to enable the children and adolescents to stay in the family system in the long term. In Styria, a specified amount of work with parents can be individually provided through the deployment of flexible support since the change in the child and youth welfare system. In Vienna, an intensive form of working with parents can be offset by applying the system of the socio-therapeutic place of residence; this is practiced by several facilities.

These projects are to be welcomed, but should however be expanded nationwide. The *Laender* should follow the example of Burgenland and stipulate mandatory additional staff for working with parents in the shared accommodations. Anchoring working with parents in the facility concepts will not suffice. Family outreach work cannot be accomplished with the existing tight staffing levels in the areas of social work or social pedagogy.

Additional human resources for working with parents necessary

Working with parents is unthinkable in the shared accommodations operated by the City of Vienna in which one person has to work alone. It will thus be necessary to introduce a second person to the work roster in Vienna as is the standard in socio-pedagogical facilities throughout Austria. Children could be returned to their families faster and the number of out-of-home cases would be thus reduced.

Working with parents impossible with one-person shifts

- ▶ *Additional resources must be made available for working with parents in the shared accommodations.*
- ▶ *Increased numbers of children returning to their own homes through concentrated outreach work with the families saves cost in the long term.*
- ▶ *Working with families by applying an outreach and activating approach must be used more.*

2.3.7 Placement in acute crisis

Crisis placements serve as an emergency measure when there is an acute risk to a child's well-being in the family. The placement is designed to provide protection and safety for the children on the one hand. On the other hand, the family system and the child should be assessed in order to determine whether and with which measures it would be possible to allow the child to return home. This task can no longer be accomplished when crisis facilities are overcrowded. An important aspect of crisis work is thus lost.

Crisis accommodation is more than protection in dangerous situations

In Vienna, the crisis centres have been continuously overcrowded and occupied by more than the stipulated eight children per facility for many years. They were also clearly overcrowded throughout most of 2019. In some cases, even

Once again overcrowding in Vienna crisis centres in 2019

the maximum number of twelve children was exceeded on some days, as there was an acute lack of crisis places. There is no additional staff available in the crisis centres despite the overcrowding. Effective care is thus not possible.

Measures are insufficient

In recent years, the competent authorities for child and youth welfare and protection in Vienna sought to relieve the crisis centres by expanding the follow-up care places and non-residential family support. The figures for 2019 indicate, however, that these expectations have not been fulfilled. The NPM thus recommends continuing the expansion of follow-up care places and increasing the number of crisis places. The NPM also recommended setting up a socio-psychiatric crisis centre so that small children and adolescents with impulse control disorders can be taken care of separately. This recommendation was not taken up by the City of Vienna.

Lower Austria is planning to set up such a socio-psychiatric crisis centre. The ongoing child and youth welfare planning update by the University of Koblenz-Landau also indicated that additional places are necessary in crisis care. The regional government of Lower Austria promised to extend the number of places.

In Upper Austria, the regular and reserve places in residential crisis care were well occupied but sufficient. Styria, Salzburg and Vorarlberg reported that the available places are sufficient as well. The number of crisis places in Tyrol was continuously extended in recent years and also meets the demand according to information from the *Land*. The preparatory work for an additional crisis intervention centre is ongoing in Carinthia. Expansion of the child protection centres is planned for 2020.

Establishment of a crisis centre necessary in Burgenland

In Burgenland, crisis centres are stipulated for the first time in the regulation. The *Land* confirmed that increasingly complex problems in the families call for crisis accommodation with a comprehensive, multi-perspectival assessment. However, there are currently no plans to set up a dedicated crisis centre. From January 2020, only six crisis places are to be set up in an existing facility and crisis care staff hired who can take on up to two foster children temporarily. These plans will not be sufficient to cover the needs of older children and adolescents in particular. The urgent need for a crisis centre above all in the adolescent area was also confirmed on a visit by Commission 6 to a facility in Lower Austria. It was reported there that the facility often had to admit adolescents from Burgenland. The NPM thus considers the establishment of a dedicated crisis centre to be urgently necessary and appeals to the *Land* to take the relevant steps.

- ▶ *There must be crisis centres throughout Austria.*
- ▶ *The measures to relieve the crisis centres in Vienna must be strengthened.*
- ▶ *Crisis places must be expanded to meet demand accordingly.*

2.3.8 Necessary limitation of group size

There have been enormous differences in group size throughout Austria to date. However, awareness of the problem has now developed in the *Laender* as the competent authorities for child and youth welfare and protection – after long-standing demands by the NPM. In Burgenland, only ten children can be taken care of per socio-pedagogical group and eight per socio-therapeutic group after the transition phase expires in October 2024 at the latest. In Lower Austria, the maximum group size will be only nine as opposed to the ten allowed to date. The maximum group size in Salzburg has been eight for quite some time, and in Tyrol the number is nine or eight in socio-therapeutic groups. In Vorarlberg too, there are nine children per residential group.

Differences are decreasing

In Carinthia, the regulation on the Children's and Youth Assistance Act is still in progress. The permissible group size amongst others should be stipulated therein. Currently, between eight and twelve places are approved in existing shared accommodations. This number is between eight and ten in socio-therapeutic groups. The NPM deems group size of over ten children as inappropriate and recommends stipulating a lower maximum group size. Styria is also requested to amend the implementation regulation of the Children's and Youth Assistance Act even if the maximum occupancy of 13 children is only applied in exceptions according to the *Land*.

Carinthia needs regulation

In Vienna, the regulation on the Children's and Youth Assistance Act states that group size shall not exceed eight children per residential group. However, this does not apply for already approved facilities. Municipal department MA 11 has limited group size to eight in its facilities. The NPM criticises that ten children can still be taken care of per group in existing private facilities in which most of the children with special behavioural disorders and psychiatric diagnoses live, even if this is only the case in a few shared accommodations according to the City of Vienna.

- ▶ *It is urgently necessary that the Land Carinthia adopt the regulation on the Children's and Youth Assistance Act to ensure the protection and well-being of the children.*
- ▶ *Group size must be limited to ten children.*

2.3.9 Support for young adults

More support for young adults

The figures on support for young adults communicated by the *Laender* demonstrate clear differences as in previous years. Overall, there was an increase in both the residential and non-residential areas. In Vienna, more support was granted for adolescents of full age in 2018 than in the previous year; however, the nationwide figures are still very low. Compared with the number of minors accommodated in Vienna, the number of young adults who continue to be cared for in residential facilities is noticeably low. By comparison, in Carinthia, Salzburg and Tyrol, almost double the number of residential support for young adults is approved as compared to Vienna and Burgenland. Lower Austria, Vienna and Burgenland take up last place in the non-residential area; Vorarlberg, Tyrol and Carinthia approve the most support.

Educational disadvantage for care leavers

The NPM has been advocating the expansion of support for young adults for years. A study from the University of Klagenfurt demonstrated that adolescents living out of home need much longer to complete professional training or secondary school and cannot expect any support from their family of origin. They also complete school leaving exams (qualification for admission to university) or a university degree less often than other young adults. The NPM thus appeals to Vienna, Lower Austria and Burgenland to expand support for young adults.

Raise in age limit planned

One positive point is that Burgenland is considering raising the age limit for the support of young adults from 21 to 24. This also meets the long-standing demand of the NPM, as the completion of a university degree at the age of 21 is impossible even with the best educational record. Vorarlberg should be a role model for the other *Laender*: unaccompanied minor refugees can be cared for in Vorarlberg within the framework of residential and non-residential support after they have reached legal age.

- ▶ *Support for young adults must be expanded in Vienna, Lower Austria and Burgenland.*
- ▶ *The age limit for support should be raised throughout Austria.*

2.3.10 Expanding the scope of the Nursing and Residential Homes Residence Act

The amendment to the Nursing and Residential Homes Residence Act (*Heimaufenthaltsgesetz*) enacted on 1 July 2018 created the basis for comprehensive legal protection on the restriction of freedom of all children and adolescents. This legal protection applies regardless of the facility in which children and adolescents live. The legal extension of the scope of said act is attributable amongst others to the fact that the NPM and residents' representative associations consistently highlighted the deficits in legal protection. The groundwork was put in place by the statement of opinion of the Human Rights Advisory Council of December 2015 published on the AOB website highlighting the necessity of an amendment from the human rights perspective (see NPM Report 2018, p. 67 et seq.). Employees from the residents' representatives have been present in child and youth welfare facilities, facilities that provide reception conditions for unaccompanied minor refugees under the Basic Provision Agreement but also in special schools, day care centres etc. since the amendment came into effect. In addition to information events, there is an intensive exchange of experience and ideas with those responsible for the facilities. The residents' representatives monitor compliance with the Nursing and Residential Homes Residence Act very critically and formally request legal examination if required.

Representatives of the residents in shared accommodation

The *Laender* have taken a partly critical, partly sceptical stance on the applicability of the Nursing and Residential Homes Residence Act to socio-pedagogical facilities. The City of Vienna reported to the NPM that several court cases are pending and the Viennese Department of Child and Youth Welfare sees the need for clarification through decisions by the Supreme Court. The NPM also assumes that the still undefined legal term of "age typicality" will sharpen on the basis of expert opinions in the field of special needs education. There is concern in particular that the Nursing and Residential Homes Residence Act could facilitate the re-introduction of closed child and youth welfare facilities. The Department of Child and Youth Welfare of Tyrol also reported a differentiated view.

Jurisdiction required

The feedback from the other *Laender* at the end of 2019 was very positive. After joint information events for residents' representatives and the technical supervision, there is now a periodic exchange of experience and ideas with all residential groups and the residents' representatives in Lower Austria and Upper Austria, which is also attended by the technical supervision. In Upper Austria, members of the residents' representative network and the head of Commission 2 were also invited to the annual meeting of the Association for Social Pedagogy (*Verein Sozialpädagogik*), of which almost all operators of socio-pedagogical facilities in Upper Austria are members. The NPM reported there about its experience of inappropriate measures that restrict freedom

and explained the legal framework. In addition to the administration of psychotropic sedative medication, net beds, restraint with straps, holding down and forced placement in time-out rooms, locked areas can also constitute impermissible measures that restrict freedom insofar as they are not the least severe measure to avert danger. The Nursing and Residential Homes Residence Act does not forbid the restriction of freedom *per se* but regulates the conditions under which it is permissible. It stipulates documentation and justification of such measures and requires those implementing them to consider with the gentlest possible approach. The Nursing and Residential Homes Residence Act is thus an important guarantee for the right to freedom of minors; this is particularly the case in view of the ratification of international conventions such as the UNCRC. Restrictions of freedom and coercive measures are, however, not covered by the scope of the Nursing and Residential Homes Residence Act if such measures are justified for the care of the child within the custody framework.

Uncertainty among staff The commissions observed on many visits that there is uncertainty among the socio-pedagogical staff regarding the legal regulations. For example, Commission 1 learned in a shared accommodation in Vorarlberg that almost all of the reports to the residents' representatives did not include the less severe measures that had been undertaken prior to measures that restrict freedom. This was, however, very well documented in the internal reporting. A change in the medication for a resident was reported to the residents' representatives; however, that she was also administered PRN medication was not reported. The relevant prescription was not included either. The commission recommended updating the reports to the residents' representatives.

Staffing levels too low In a facility in Vienna, a group had to be temporarily closed. All of the children from the shared accommodation were placed in other facilities or sent home. The reason was a court-appointed expert opinion to examine the permissibility of restricting the freedom of a resident. It was determined that less severe measures could have been applied. However, the expert was of the opinion that the staffing level at the shared accommodation was far too low for this in view of the number of residents. The shared accommodation has been undergoing restructuring measures since then.

The staff at another facility in Vienna reported to the commission that no measures that restrict freedom were applied. However, in the interviews with the staff, clear knowledge deficits concerning measures that restrict freedom and how to handle the same were evident. The commission thus expressed doubt as to whether measures that restrict freedom in the sense of the law are even recognised as such.

Initial success of the amendment All legally enforced changes that influence the organisational process need time and may cause uncertainty at first. An initial success of the amendment is however that routines are being questioned and the restriction of freedom is

no longer a taboo topic but must be openly addressed, discussed and reflected on. The fact that this does not always succeed on its own but a signal from the outside can be necessary can be seen as an indication of the importance and effectiveness of independent external monitoring.

- ▶ *Additional training of the staff in the Nursing and Residential Homes Residence Act is necessary in many facilities.*

2.3.11 Discrimination of unaccompanied minor refugees

Unaccompanied minor refugees in Austria still do not have the same treatment and the same protection as parentless Austrian children. Due to the lower daily allowances within the framework of reception conditions under the Basic Provision Agreement, unaccompanied minor refugees receive neither the therapeutic nor social-work-related care they need (see details in the NPM Report 2018, pp. 81 et seq.). Staff without the relevant training still work in the facilities. Advanced training programmes in the area of violence prevention and de-escalation in particular are required, but are not usually financed. The child and youth welfare departments do not exercise the technical supervision over the facilities for unaccompanied minor refugees in all *Laender*. This causes an objectively unjustified unequal treatment of unaccompanied minor refugees if there is no awareness of quality development in the interest of the adolescents in the basic reception conditions framework. Adolescents who have experienced being a refugee need contact persons who take them seriously, build a relationship with them, but at the same time encourage and enable them to take up meaningful activities.

In all of the *Laender* the NPM criticised that the size and structure of the facilities for unaccompanied minor refugees do not comply with the usual child and youth welfare standards. In Lower Austria for example, there are contractual agreements with owners and operators that permit occupancy of up to 48 unaccompanied minor refugees. The regional government explained that Lower Austria exceeded the quota for accepting unaccompanied minor refugees agreed between the Federal Government and the *Laender* by far at the peak of the refugee crisis in 2015, and special care structures and group sizes were contractually fixed in order to prevent minor refugees from becoming homeless. Due to the actual prevailing conditions from mid-2019, the regional government claimed there are no more “large facilities” because all of those for unaccompanied minor refugees now have an average occupancy of 25 persons or less based on the falling numbers of applications for political asylum. This group size does not leave scope for individual care either.

Group size and security companies

A facility for unaccompanied minor refugees operated under the Basic Provision Agreement, which was visited by Commission 5 in November and December 2018 as well as in May 2019 and February 2020, accommodated only 15 unaccompanied minor refugees and six now adult asylum seekers. The unchanged staffing levels meant that not only socio-pedagogical care could be intensified, but also all of the recommendations from the NPM could be implemented and a continuous, stabilising relationship was established through a dedicated care system. Seven unaccompanied minor refugees now have an apprenticeship; the others are doing courses or are on other programmes provided by the Public Employment Service Austria (*Arbeitsmarktservice*). At the end of 2018, the regional government justified the necessity of the presence of an uninformed security man between 5.00 p.m. and 8.00 a.m. When asked about his responsibilities, the security man recently explained to the commission that he watched over the residents and protected the caregivers, patrolled every thirty minutes and made a roll call from 10.00p.m. After the NPM criticised this for the first time, the security company was withdrawn until the middle of February 2019; the second time the security company was engaged was not on the request of the facility management but of the regional government. In a statement of opinion to the NPM, the latter mentioned that there had been an increased number of police operations in different facilities for unaccompanied minor refugees at the peak of the refugee crisis and that the deployment of security companies contributes to reassuring the local population. Agreement could only initially be reached with the NPM insofar as the right to movement of the unaccompanied minor refugees shall not be impaired and their privacy not restricted. Staff from private security companies has not and does not work in the area of child and youth welfare and is not trained in dealing with unaccompanied minor refugees. The regional government of Lower Austria merely assured the NPM that the scope for action of the security company would be clearly defined and the documentation for the intervention thereof specified. In autumn 2019, the security company was completely withdrawn, as recommended by the commission.

Frequent closures exacerbate the situation

The problem, which has existed for years, is exacerbated by the closure of facilities caused by the declining number of asylum seekers. The unaccompanied minor refugees are thus forced to change facility frequently. The unstable housing conditions and changing contact persons, with whom the adolescents cannot build a trusting relationship, exert enormous pressure. This has a negative impact on the working conditions in the existing facilities.

Due to the closures and lack of suitable places in the vicinity, the adolescents are uprooted from their familiar surroundings. Even though the number of minors to be cared for is decreasing, there is no crisis intervention and specialised accommodation forms for unaccompanied minor refugees who require psychiatric or psychotherapeutic care.

The situation becomes particularly critical for the unaccompanied minor refugees if the owner and operator associations have to file for insolvency as a result of the closures. In this case, the employment contracts of the staff working in the shared accommodation are terminated by the liquidator, the internal facility documentation destroyed and the shared accommodation vacated from one day to the next. An orderly takeover is thus not possible.

In Tyrol, Commission 1 ascertained unacceptable deficits in two shared accommodations that had been caused by the insolvency of a major operator. The owner and operator associations that took over the shared accommodations found facilities with no staff but fully occupied with adolescents. The living areas were in a state of serious neglect because no investments had been made for a long time due to the pending insolvency. It took several months until the operation could be run with a full team and under acceptable hygienic conditions.

Intolerable conditions at the time of takeover

- ▶ *The unequal treatment of unaccompanied minor refugees compared with other minors must be stopped.*
- ▶ *Specialised accommodation forms with the appropriate care and crisis intervention must be provided for unaccompanied minor refugees and young adults with special needs.*
- ▶ *New owners and operators must be supported when taking over shared accommodation in order to rectify deficits as quickly as possible.*

2.3.12 Positive observations

The adolescents in a facility in Vorarlberg were very positive about the care they received. Commission 1 also had a good impression. One positive aspect of the care concept was the inclusion of time-out trips in order to prevent the breaking of relationships if it is not possible for the adolescent to be taken care of in another shared accommodation at that time. The NPM has been requesting the introduction of such a model for years, as it avoids the breakup of relationships when adolescents move to a different facility.

Time-out trips to prevent relationships from breaking

Overall, the highly flexible way in which crisis situations are handled in Vorarlberg deserves praise. There is a family crisis service with an on-call duty in the night and at weekends that places children and adolescents in a crisis residential group if required. Adolescents who should not be accommodated in shared accommodation for different reasons are offered a place in semi-residential care. Care and upbringing are not transferred to the facility in this case. The goal is to bring these adolescents back into care.

Family crisis service and semi-residential care

Animal-assisted
pedagogy facilitates
relationship building

Commission 6 drew particular attention to a facility with animal-assisted pedagogy in Lower Austria. Animal-assisted therapy enables the children and adolescents to open up to the pedagogues quicker; the animals make relationship building easier, difficult topics can be worked through better. Each child has a foster animal which enables them to learn to take on responsibility quickly. The facility also stands out due to its family-like atmosphere.

Exemplary participation

The participation of the children and adolescents also functions very well in the shared accommodation: team meetings are held every week at which the adolescents take the minutes themselves and confirm the same with their signature. Above all, Commission 6 was struck by the warm-hearted manner in which the care staff and the management treated the children and adolescents during the visit; another positive aspect was the low amount of medication. The children reported vividly that they are happy in the facility.

2.4 Institutions and facilities for persons with disabilities

2.4.1 Introduction

In 2019 the NPM visited 104 institutions and facilities for persons with disabilities; 101 of these monitoring visits were unannounced. It was evident from the visits that the risk of violence, exploitation and abuse is partly attributable to processes and inadvertency that endanger human rights and partly to a lack of resources in the institutions and facilities. Many of the problems identified could be solved if a policy were enacted that stipulates nationwide collaboration between the Federal Government and the *Laender* and takes the rights of persons with disabilities in line with the UNCRC into consideration.

Every year, complaints are lodged about insurmountable barriers regarding access to the employment market. These are often from persons with learning impairments themselves who are medically disqualified as incapacitated for work shortly after completing compulsory education without taking their available potential into consideration. As a consequence, they are forced to spend the rest of their lives on the minimum subsistence level of social welfare benefits. In 2018 the labour force participation rate of persons of working age with disabilities was, at 58.5%, considerably lower than that of those in the same age group without disabilities (77.8%). As no improvements can be expected, the AOB published a special report in November 2019 entitled “No chance of employment – the reality of persons with disabilities” (“*Keine Chance auf Arbeit – Die Realität von Menschen mit Behinderung*”). The report summarises the complaints of the past seven years from both, the area of ex-post control as well as the findings from nationwide visits by the NPM commissions to occupational therapy workshops.

Special report „No chance of employment“

The exclusion of some 22,000 persons with disabilities in sheltered workshops from the support through the Public Employment Service Austria (*Arbeitsmarktservice*) for establishing an employer-employee relationship as well as from legal health and pension insurance, which is based purely on medical criteria, is a violation of human-rights obligations to which Austria has committed. Three basic problem areas above all can be identified: 1. The employment market is not inclusive. 2. Persons with disabilities do not have full independent social insurance despite being employed in workshops. 3. Persons with disabilities in workshops do not receive adequate remuneration but rather a mere pocket money of EUR 5 to – in very rare cases – EUR 200 per month.

Three problem areas

As a solution to these problems, the NPM recommended amending legal regulations and structures in a way that the determination of incapacity for work according to medical criteria is discontinued and the Public Employment Service Austria shall ensure that persons with disabilities have the opportunity

Recommendations

to enter the employment market with all their potential and skills. Furthermore, the legal health and pension insurance of those in occupational therapy workshops should be made possible by specifying them as insurable activities. New remuneration models instead of the existing “pocket money system” shall be examined.

The government programme 2020–2024 presented in January 2020 contains several passages that vaguely promise the implementation of the recommendations of the NPM. The programme emphasises that there will be a special focus on inclusion in the employment market as well as remuneration instead of pocket money for persons with disabilities in future. Furthermore, there will no longer be an “automatic” determination of incapacity for work at least for those under 24 years of age. If, how and when it will be possible to effectively improve the situation of all those affected is currently unforeseeable for the NPM. A change of paradigm is necessary to this end. The federal and regional laws of the Austrian legal system do not use a uniform legal term of “disability”. The medical view of “incapacity for work”, which has dominated to date, is not compliant with the UNCRC because it sees disabilities as congenital or acquired abnormal deficits that must be broadly accepted as irreversible. Discussion of the AOB special report in all legislative bodies should support the implementation of central demands and underline the fact that the potential that persons with disabilities can and want to contribute is underestimated.

Implementation announced in the government programme

An easy-to-read version of the special report was created to also enable persons with learning difficulties to find out more about the work of the AOB and its commissions and inform themselves about legal barriers that directly affect them. The Federal Government will be measured by the NPM based on the intentions included in the government programme and it remains to be seen whether actual significant progress is made towards inclusion and self-determination by involving self-representation.

Reduce the risk of poverty and provide access to education

The government programme 2020–2024 also includes the intention to minimise the risk of poverty for children and adolescents with disabilities. Regulations regarding maintenance obligations in the Austrian Civil Code (*Allgemeines bürgerliches Gesetzbuch*) in the area of persons with disabilities should also be revised. The NPM is emphatic that there is much catching up to do here. In Austria, the political agenda for disability-related matters is usually a peripheral matter. As interdisciplinary topics, the relevant range of issues always covers securing a livelihood and health, integration (education, employment) to equality. Particularly in times when issues such as savings in the social welfare area and emphasis on the responsibility of the individual dominate the political landscape, state support must be structured in a way that precludes discriminatory effects. Charity events and fundraising campaigns for the benefit of persons with disabilities will never be a substitute for human-rights-based policies. The commissions regularly stress that, above

all, more independent living and their own income are mentioned as desirable perspectives in interviews with persons with disabilities.

Another demand, the standardised regulation of “personal assistance”, is also included in the government programme. In this context, it is, first of all, important that no group is excluded as a matter of principle, for example persons with cognitive and/or mental impairments. Second, “personal assistance” shall be structured such that a self-determined life must be possible for the clients in both the leisure and work area. Many personal assistants conclude free service contracts with their clients. However, in reality these are dependent employment relationships in many cases. This means that the clients can be confronted with retrospective payments, for example compulsory insurance. Those affected are often unaware of this.

Personal assistance

The development of a new National Action Plan on Disability (NAP on Disability) is a good opportunity to improve the situation of persons with disabilities. This is currently being drafted by civic groups and self-representatives as well as the *Laender* with the involvement of the NPM. It is planned to be in force by December 2030 and it should be implemented from January 2021. The large number of relevant topics is being dealt with in 25 groups. The number of individual teams demonstrates the enormous scope of spheres that still need to be structured in conformity with human rights. In this context, not only the involvement of all stakeholders is important but also securing the financing of the NAP on Disability so that the implementation of the same can be measured against the UNCRC standards.

Financing of NAP on Disability shall be ensured

The completion of a comprehensive NAP on Disability is desirable in view of the pending official country review of Austria by the competent UN committee. In 2013 the committee ascertained that Austria does not sufficiently guarantee the rights of persons with disabilities in many areas. An ambitious NAP on Disability could be a key road map for finally rectifying these failures.

2.4.2 Right to participation

The UN Committee on the Rights of Persons with Disabilities has addressed the right to participation in the implementation and monitoring of the UN Convention on the Rights of Persons with Disabilities (CRPD). The committee explained its deliberations in its General comment No. 7. In essence, the convention requires that persons with disabilities can participate in all political decision-making processes that affect their rights. This means that persons with disabilities must be already involved in the development and implementation stages of legislation, political concepts or general administrative decisions. They should be able to contribute their expertise and experience and be taken seriously. Organisations of persons with disabilities should act as their voice.

Participation in political decisions

The committee stressed the difference between organisations for persons with disabilities and organisations of persons with disabilities. The latter are mainly comprised of persons who are affected themselves as members and leaders. As all persons with disabilities should participate, the organisations must represent all persons with disabilities; that is in particular, women, children, persons with multiple disabilities, persons with learning difficulties or mental impairments and immigrants.

Participation in decision-making process

In order for participation to be able to succeed in a meaningful way, consideration must be given to the needs of the affected persons. Information must be comprehensible and accessible, deadlines for statements of opinion sufficient. It must be possible for persons with disabilities to participate in decision-making processes regardless of the nature of their impairment. The State has the obligation to provide the necessary subsidies and framework in this respect. Securing comprehensive legal and civic rights for all citizens is a fundament of modern democracies and anchored in many contracts under international law. Observations by the NPM indicate that it is not currently certain that, for example, local election and voting documents are equally accessible for all persons with disabilities (simple language, large and high-contrast letters, translation into sign language, braille etc.). In addition, it is not guaranteed that persons with disabilities are invited to contribute in election campaigns or to run for an office etc.

It became once again clear in 2019 that in some cases even the care staff questioned whether persons with multiple disabilities are able to organise themselves, form their own opinion and express the same. It is true that the NPM encountered many examples of good practice of how organisations can successfully install participative processes. However, participation in political and social life cannot be realised as long as people think predominantly in terms of human deficits. In the following, the report thus concentrates on the deficits ascertained by the commissions in institutions and facilities that make the right to participation impossible.

Possibilities to communicate are basic condition

The most basic condition for participation is the ability to communicate. Experiences made by the commissions show, however, that precisely those whose ability to communicate is impaired receive little specific encouragement in particular. One reason for this is that this group is often ascribed only basic competencies. Not much is expected of these persons as a result. The staff assumes that clients are “content” anyway or that they know their clients’ needs. It is thus overlooked that persons with communication impairments can have very different preconditions and have very different needs. Individual care and support is also essential in the prevention of violence. The body’s own communication forms as well as electronic and non-electronic aids shall be used instead of spoken language (see NPM Report 2016, p. 90 et seq.).

It is all the more alarming for the NPM that Augmentative and Alternative Communication is rarely used or completely unknown in many institutions and facilities. These methods and tools improve the ability of persons with communication impairments to communicate and receive information. The affected persons can thus express their will better and live a more self-determined life as a consequence. This applies for persons with cognitive impairments and others.

Augmentative and Alternative Communication often not used

Individual target plans and corresponding support measures are vital in order for persons with impairments to be able to develop as well as possible and lead a life which is as self-determined as possible. This does not mean that persons with disabilities have to achieve performance-driven targets. Rather a plan for their future shall encompass their needs and desires as well as the support provided to realise the same. This can also be extended to cover school or employment-related goals. In the year under review, commissions also visited several institutions and facilities in which target plans were developed only superficially or not at all. The relevant conditions with which to achieve the planned target were often not created, which can reinforce a lack of independence and the feeling of resignation.

Individual target plans necessary

Reality for many persons with disabilities is, however, that they cannot live close to a local community but have to live in institutions in remote locations. Transport to the town centre is provided, but many examples show that there is little or no communication with the local residents and then only at certain events. Participation in “normal” daily life is non-existent. Life is thus reduced to a predominantly closed area that provides security and care but offers only a limited horizon. This is an obstacle to participation and interest in political decision-making processes. Years of socialisation in a secure, special world in which responsibility is taken away does not promote participation in social or political processes.

Apart from the location of the institution, this influence can further be detected when in relation to self-determination in day-to-day life. The commissions frequently report about institutions and facilities in which residents are not free to decide for themselves on matters such as sleeping times, the time and type of meals, leisure activities etc.. These decisions are often taken by the staff and those affected have to bow to the routine of the facility. The individual desires and needs are often only accommodated to a limited extent in order not to interfere with the routine. People are not encouraged to formulate or express their own will in such settings. It thus becomes even less likely that they will avail of the opportunity to participate in political decision-making processes.

Self-determination

This can also be seen from the fact that the commissions constantly report about institutions in which there is no residents’ or self-representation. The reason often given for this is that the residents have no interest in participation. In response, the NPM states that every person is naturally free to decide whether

Lack of self-representation demonstrates deficits

or not to participate in the community. However, there is no doubt that persons who were socialised in institutions and are in a dependent relationship first have to be motivated to organise themselves and to seek self-representation and empowered to do the same.

Empowerment The NPM has repeatedly criticised facilities for their remote location in combination with lack of transport alternatives, for insufficient Augmentative and Alternative Communication, flawed target planning or lack of residents' representation. These factors have a significant influence on participation. As long as persons in institutions and facilities do not experience "empowerment" with which to pursue their interests autonomously, real participation is not conceivable.

► *Participation means involvement in political decision-making processes; the framework necessary for this shall be secured in institutions and facilities.*

2.4.3 Study on experiences of violence of persons with disabilities

Risk of violence for persons with disabilities researched for the first time

Since 2012, commissions have been highlighting that persons with disabilities are exposed to a greater risk of violence as a consequence of their high vulnerability. The reports to the National Council and Federal Council provided impetus for a parliamentary motion for a resolution that requested the Federal Ministry of Labour, Social Affairs, Health and Consumer Protection to commission a scientific study in agreement with the NPM in November 2014. Representative results for Austria have been available for the first time since December 2019. The study is based on the collection of extensive data on the experience of violence of adults with disabilities who use facilities for persons with disabilities, live in psychosocial institutions or are mentally ill offenders in detention. In addition to standardised questionnaires from users and representatives from institutions, detailed qualitative interviews were also conducted and good practice summary analyses prepared. The NPM contributed its expertise in an accompanying working group.

Risk of violence particularly high for persons with disabilities

In detail, the picture is as follows: more than eight out of ten persons with disabilities have experienced psychological violence in their life. Six out of ten have been subjected to serious psychological violence as well as dangerous threats or persistent harassment in their life. In addition, every third person interviewed has experienced severe psychological violence in the last three years.

Similar incidences of physical violence were observed: almost eight out of ten interviewed persons with disabilities have experienced physical violence and

four out of ten have been exposed to serious violence. One out of ten persons was a victim of serious physical violence in the past three years whereby persons who require support with basic needs such as personal hygiene are particularly affected. This, according to the analysis, is attributable to care-relevant forms of violence. "Being handled" in an inappropriately rough manner during care activities can be given as an example here. The prevalence is significantly higher for mentally ill offenders in detention both in relation to increased frequency and severity of experiences of physical violence and, in particular, recent experiences of violence (experienced in the past three years).

Persons with disabilities are also kicked, pushed or roughly handled more often. The frequency of becoming a victim of this kind of violence is twice as high as for persons without disabilities. The likelihood of being threatened with a weapon (knife or gun) is even three to four times higher for persons with disabilities.

The study makes the urgent need for action with regard to sexuality and sexual violence transparent: every second person with disability or mental illness has been affected by sexual harassment or serious sexual violence in their life. Whereas the majority of those in management consider sex education support to be implemented in the institutions, this appears to be the case only half of the time in reality and practice according to the staff.

The study identifies a large number of risk and protective factors especially also for girls, women and men. It also demonstrates that the size of an institution is not necessarily an indicator for the institutional culture; smaller institutions are not more likely to provide a violence-free environment. Analyses show that amongst others experience of violence is reported far more frequently in institutions where less caregiving personnel is available. The risk of violence is evidently high if there is little time for person-centred care. In these cases, it is more difficult to react to violence between the residents.

Risk and protective factors

Structural limitations such as the lack of space to which residents can withdraw, fixed washing times, insufficient autonomy and self-determination increase the risk of violence. Particularly important for violence prevention are social contacts, persons of trust inside and outside of families and institutions, person-centred care concepts and forms of support that enable those in care to participate and lead their lives in a self-determined way.

The NPM has regularly addressed these aspects in recent years and will continue to do so. There is a considerable need for action in the reduction of risks to violence. Persons with disabilities and mental impairments must be adequately informed about forms of violence and how to be protected against the same. The promotion of empowerment and self-determination is also deemed an important violence prevention strategy in the study.

The NPM would welcome a special presentation of the results of the study in all of the *Laender* with the participation of *Laender* as operators of institutions and facilities for persons with disabilities. Both the technical supervision as well as the management of facilities and organisations for persons with disabilities are urgently called upon to exercise their protection mandate more comprehensively, conduct professional risk monitoring and focus on the further development of violence prevention strategies.

- ▶ *The main results of this research study should be presented in all Laender and be taken up by regional governments and institutions and facilities. Strategies for violence prevention and protection shall be further developed.*
- ▶ *In the same way, the research results and information about forms of violence and protection against the same shall also be accessible to persons with disabilities and their representatives in a barrier-free way so that they know where they can get support internally and externally, if needed.*

2.4.4 Measures that restrict freedom in special schools and day care also subject to legal review

A long-standing demand of the NPM came into force as of 1 July 2018: the scope of the Nursing and Residential Homes Residence Act (*Heimaufenthaltsgesetz*) was extended to cover institutions and facilities for the care and education of minors with cognitive impairments and mental disabilities. Initial figures demonstrate how important it is to include children and adolescents under the protection of this act. Approx. 3,000 reports of measures that restrict the freedom of children and adolescents with disabilities were forwarded to the competent residents' representatives within a year. Commissions ascertained in multiple cases that the application of such measures was not always in compliance with the law. The NPM considers it a great success that dealing with measures that restrict freedom could be finally removed from the taboo area and can now be openly addressed (see more detailed examples in chapter 2.3.10).

The residents' representatives sought judicial review of the use of measures that restrict freedom on a minor boy in a special pedagogical centre. The Supreme Court found in summer 2019 that the Nursing and Residential Homes Residence Act applies to both the special pedagogical school and the day care section in the special pedagogical centre. According to the institution-relevant demarcation, it makes no difference whether the pupils have residential or non-residential care (Supreme Court 7 Ob 80/19v). The NPM welcomes this ruling enthusiastically.

There is also a lack of care staff in the area of education. This opens the door to non-reflective practices that can culminate in measures that restrict freedom. There are now court rulings that make the severity of violation of the right to freedom transparent for the first time. In the case of a nine-year old girl from Salzburg, the competent district court found several measures that restrict freedom, which are untypical for said age group, such as being held tight during class and school activities inside and outside the school building as well as when changing incontinence material, being restrained with a chest strap and in the buggy. The chest strap with guiding “leash” had already been ruled impermissible in the initial hearing. The administration of medication was ruled impermissible. Holding the girl tight and the chest strap in the buggy were ruled impermissible for the past, and ruled permissible under certain conditions for a duration of six months and provided that alternatives were being established (district court of Oberndorf of 23.11.2018, 1Ha 17/18h).

Serious violations of the right to freedom

2.4.5 Risk of exploitation through inadequate support

The NPM already criticised amongst others the remote locations and unprofessional care in centres for psychosocial rehabilitation in 2017, which affected persons with mental impairments. As a reaction to the NPM’s criticism, the regional government of Carinthia made a considerable effort to improve the situation. A financially secured schedule for the inclusion of these institutions and facilities in the Carinthian Equal Opportunities Act (*Chancengleichheitsgesetz*), however, was still not available at the time of editing this report – despite multiple assurances from the competent member of the regional government (see NPM Report 2017, p. 96).

In 2019 Commission 3 found a large number of deficits in three other facilities for persons suffering from addiction, persons with mental impairments and persons with mental disabilities. The care does not comply with the current human rights standards. The commission also criticised the lack of transparency of the financial situation of these facilities and could not rule out the risk of exploitation of the affected persons.

Remote location as an obstacle to inclusion

The facilities are in remote locations and are impossible or very difficult to reach by public transport. The residents thus have only a limited possibility to organise their leisure time themselves. Two of the facilities are run as an agricultural and forestry operation; the third facility provides so-called therapy places in an in-house workshop.

On principle, the commission welcomed the opportunity of work with animals and working outdoors. At the same time, it was not possible to rebut the suspicion that the residents, as cheap labour, keep the operation running or even make it possible in the first place. In one facility, the working times were regulated without consulting the affected persons and were equivalent to

Agriculture maintained by persons with disabilities

fulltime employment. There is neither a balance between work and relaxation nor work-related support for the specific disabilities of those concerned. For example, the only task given to a fifteen-year old cognitively impaired boy was to clean out the stables.

The clients are paid a mere pocket money for their work. The reason given for this is the intensity of care that incurs cost. This was not really plausible to Commission 3 because while the operator receives high daily allowances from the Land for the care they offer, there still is no qualified personnel to care for persons with disabilities.

Financial situation not transparent

Furthermore, the facility is operated as a closed agricultural system in which a non-profit limited liability company and an operations limited liability company each hold a share. The non-profit company pays rent to the operations company for the use of the farm and purchases food there, which was produced through the work of the persons with disabilities, for daily use. The founding of a non-profit limited liability company has proved to be a suitable legal form for many social organisations. This is due to the many advantages (including limited liability, tax exemption and tax relief). They are legally required to use double-entry bookkeeping and adhere to accounting practices. This legal form forbids that shareholders receive transfer of income or payment of high salaries. It is not the commissions' task to assess whether or not the subsidies, which are provided by the Land Carinthia, are used in conformity with the established contract and pursuant to purposes set forth in the articles of incorporation, but it certainly falls within the remit of the technical supervision.

In the second facility, which also operates a farm, Commission 3 considers that it is primarily the residents who maintain the farm and perform the regular tasks that may be required. Here again, the commission found a lack of suitable care and individual support, which would have allowed the residents to develop in line with their own expectations. When work and leisure time are primarily geared towards operating requirements and all profits are pocketed by the operators of the facility, it can be assumed that persons with disabilities are defenceless to the exploitation of their manpower. Pressure was exerted on the affected persons in many ways. This was evident amongst others in the fact that the clients had to participate in morning and evening common prayer. Those who were not awake in time in the mornings or were tired early in the evenings were woken in order not to miss the ritual.

Punishment-based treatment effects the discontinuation of therapy

A facility for persons suffering from addiction had no concepts for treatment-specific care and therapy. Instead, strict rules are imposed on the affected persons for the duration of their stay. Leaving the clinic is not allowed in the first eight weeks after admission. In the event of a relapse, the affected person must now undergo a four- to eight-week starting phase with "curfew". Affected persons who break the rules have to spend the night in the neighbouring guesthouse at their own expense. The high rate of discontinued therapies

is hardly surprising, which, in the view of Commission 3, is attributable to the unqualified care. Relapses are part of daily life in every detoxification clinic. Numerous studies have shown that a disciplinary release of the affected patients is helpful in very few cases and merely helps them gradually slide back into an addiction environment. The operator receives EUR 6,000 in subsidies every day and reported an annual profit of EUR 233,000 for 2016.

As a consequence of the NPM's criticism, multiple monitoring visits of the facility by the specialist department of the regional government ensued. The termination of the civil law agreement with the operator of the facility was suggested. The final results of the official examinations were not known to the NPM at the time of editing this report was edited.

In the case of the agricultural operations, the regional government demanded corrective measures by official notification and arranged external evaluations.

- ▶ *Owners and operators of facilities must provide qualified care and align this with the desires and needs of persons with disabilities.*
- ▶ *A transparent financial situation should be a prerequisite for receiving state subsidies; non-profit limited liability companies are required to use double-entry bookkeeping and adhere to accounting practices.*
- ▶ *Pure occupational therapy without catering to the needs of the affected persons is impermissible.*

2.4.6 Hygiene rules and restrictions reduce quality of life

The purpose of the UN Convention on the Rights of Persons with Disabilities (CRPD) is to enable persons with disabilities to live an independent and self-determined life as well as to participate fully in all areas of life. They should be able to determine themselves where, with whom and how they live (Article 19 UN CRPD). Autonomy, self-determination and inclusion are thus fundamental pillars of the convention. Inclusion also means "normalisation", that is, that the life of persons with and without disabilities should deviate from one another as little as possible (see also National Action Plan on Disability 2012–2020).

On visits to two residential facilities for persons with disabilities in Lower Austria, Commission 5 was informed that the *Land* Lower Austria had recently imposed extremely strict hygiene rules on the facilities that made everyday life difficult and annoyed long-standing residents as well as the staff. The NPM was requested to look at how these restrictions also contribute to hindering the residents from living an individual and independent life.

Hygiene rules and restrictions linked with risks

For example, liquid soap and disinfectant dispensers had to be fitted in all bathrooms in the shared accommodations; the use of bars of soap was forbidden. This gave rise to dangerous situations: one resident for instance drinks all liquids compulsively and also swallowed liquid soap unobserved. Some residents are unable to distinguish the different use for liquids themselves due to their disability. Because of the liquid soap, they were motivated to wash their hands and face with disinfectant too. Others are not able to use the dispenser and require help. They were, however, able to use bars of soap on their own. A resident suffering from dementia misses his bar of soap and looks for it in vain in the bathroom every day. The facility reported these difficulties to the supervisory authority but was, however, turned down.

Interference in daily routine

In fact, regulations were not only limited to hygiene products. It is no longer permitted to do arts and crafts on the table in the combined kitchen/living room of the facility if the table is later used for meals. Surfaces on chests of drawers, wardrobes etc. must be kept clear and accessible at all times. This limits the scope for designing the rooms. The staff is confronted with the problem of having to enforce this rule with residents who require more space for their belongings. The supervisory authority also required the staff to inspect the standard of hygiene in all of the toilets daily; including that of residents who have cleaned their own toilets to date and perceive this kind of inspection as a constant invasion of their privacy. All of the towels and face cloths had to be labelled with the names of the residents including those in bathrooms that are used by one resident alone.

No barriers to abilities in daily routine

A barrier-free life is more than unimpeded access to houses and walk-in showers or baths. It often includes little things such as products for personal hygiene that increase the quality of life of persons with disabilities and allows them a self-determined daily routine. If personal hygiene poses a considerable challenge for those affected, Commission 5 is of the view that practical solutions must be individually developed. It is very important to elderly persons or persons with disabilities if, despite the limited ability in their daily routine, they are still not relying on the help of third parties and are independent when it comes to personal hygiene and body care. There is a wide range of aids that were specially developed or can be individually adapted to facilitate autonomous bathing/showering and using the toilet despite handicap.

The NPM considers hospital-like hygiene rules for shared accommodation in which persons with disabilities have their home to be excessive. Every person has a space that they make the centre of their world and to which they can withdraw. Being able to design living space according to one's own wishes, helps finding stability in your life. The flexible application of rules and structures of cohabitation are basic elements for dismantling institutional risk structures for violence (cf. Federal Ministry of Labour, Social Affairs, Health and Consumer Protection, "Experience and prevention of violence to persons with disabilities" – *"Erfahrungen und Prävention von Gewalt an Menschen*

mit Behinderungen 2019”, p. 33). The need for hygiene and order can vary in persons with as well as without disabilities. Imposing certain uniform obligations by regulatory authorities therefore requires objective justification.

The NPM contacted the regional government of Lower Austria regarding this matter and requested clarification. The regional government emphasised that there are no general hygiene guidelines for residential facilities or day care centres for persons with disabilities in Lower Austria. The measures mentioned had to do with rules that were imposed in connection with dirt observed in an isolated concrete case. They have since been changed again in accordance with the intervention of the commission after a meeting with representatives of the facility. From the point of view of the NPM, supervisory bodies are for their part – regardless of whether they issue restrictions in individual cases or general guidelines – required to observe the UN CRPD. Official decrees shall be drafted in a way that they do not limit the independence of persons with disabilities. For the future, care shall be taken to ensure that official orders are not in conflict with the objectives of the UN CRPD.

► *Practical hygiene aids can contribute to living an independent life for persons with disabilities. As long as there are no infectious diseases or illnesses that weaken the immune system, special hygiene measures do not have to be observed in institutions and facilities for persons with disabilities. Preferences of the residents must be taken into account in the choice of hygiene products.*

2.4.7 Necessary precautions for barring orders and prohibitions to enter

Last year, the NPM reported about a young man with multiple severe disabilities who was removed by the police from his long-standing residential facility in Upper Austria and served a barring order after an aggressive incident. The operator of the home terminated the home contract and new accommodation had to be found quasi overnight, which proved to be difficult. Another case was presented of a young man who, after an outburst in relation to an impulse control disorder and the following police operation, had to leave a residential facility in Klagenfurt abruptly. The search for a suitable residential care alternative lasted several months. During this time, the mother of the man, who was stretched far beyond her physical and mental limits, was left completely alone with the problem because all facilities in Carinthia refused to admit her son (see NPM Report 2018, p. 100). The social support and disability aid laws of the Laender only grant the legal right to a place but not to a place in a specific facility.

Statement of opinion
of the Human Rights
Advisory Council

Upon the request of the NPM, the Human Rights Advisory Council dealt with the problem in detail and submitted a comprehensive statement of opinion in January 2020. The information contained therein is the result of a long discussion process in which numerous experts and the commissions took part as well. The statement of opinion of the Human Rights Advisory Council is available on the AOB website and can form the basis for reflection both in facilities and as part of police work.

The Human Rights Advisory Council, as does the NPM, assumes that persons who are subjected to violence or aggression from other residents as well as those who behave aggressively or violently towards other residents (or towards care staff) are particularly vulnerable people. They are usually not in a position to organise alternative adequate care due to their disability.

Increased human rights
responsibility

The provisions of the Austrian Security Police Act (*Sicherheitspolizeigesetz*) and the Austrian Enforcement Regulation (*Exekutionsordnung*) primarily serve to protect a person at risk from further violence. The barring order under police supervision pursuant to Section 38a of the Austrian Security Police Act facilitates the rapid and effective termination of a dangerous situation by public security officers. When a barring order is issued by the police, it is of no consequence that the criminal liability of the person causing the danger is limited or even not possible due to their disability. The particular vulnerability of these persons, however, calls for increased responsibility on the part of the State for observing human rights which encompasses both the prevention of violent incidents as well as the execution and follow-up care of state interventions.

Restrictions to the right to freedom shall thus not only be assessed in terms of their appropriateness but also, if the potential aggressor is a person with disability, with special attention to human rights in the context of whether “appropriate precautions” are in place or not in line with Article 5 (3) of the UN CRPD.

Imposing a barring order pursuant to Section 38a of the Austrian Security Police Act on persons with disabilities who, due to their increased care and support needs, live in institutions and endanger those living and working there with them, is permissible as the last resort in the opinion of the Human Rights Advisory Council. However, an additional framework is needed that goes beyond the existence of the legal underlying conditions set forth in the Austrian Security Police Act. Imposing permissible barring orders can result in an inhumane situation in human rights terms and in light of Article 5 (3) of the UN CRPD. This is the case in particular if, prior to police intervention, no adequate violence-prevention measures were implemented or no suitable alternative housing and care options can be offered after barring orders have been issued.

The question of which facility is most suitable for the affected person should thus be given top priority. If persons with disabilities who have displayed behaviour that harms themselves or others are to be admitted to a facility, adequately trained and experienced staff shall be deployed. The staff must be able to deal with stress situations and aggressive behaviour professionally. In addition to violence prevention concepts, individual de-escalation and crisis plans for challenging residents are also required, which are based on observed and documented behaviour. The Human Rights Advisory Council recommends a series of concrete guidelines that can give orientation to the facility managers and the staff.

Even if the legal representative of a person can be entrusted with the task of “finding a place to live”, the *Laender* are also responsible for the continued supply of accommodation for those who have been served barring orders. This is set forth in the obligation to take appropriate precautionary measures pursuant to Article 5 (3) of the UN CRPD. Persons with disabilities have a legal right to accommodation, meals, support and care from the State. The Federal Government and the respective *Land* are primarily responsible for ensuring that persons with disabilities who pose a danger to others receive adequate support and care either in the form of in-patient medical treatment, placement in a psychiatric ward or in another fully assisted alternative inside the framework of institutions and facilities for persons with disabilities. In actual fact, there is a shortage of care facilities for crisis cases or quickly available regional care places outside of the hospitals for persons with disabilities. These places could, for example, be specialised competence centres in specialist hospitals with psychiatric-neurological expertise for persons with disabilities, and experience in dealing with persons displaying unusual behaviour.

Right to housing and care is upheld in crisis too

In any case, what is needed are – sometimes very different – tailored solutions that are aligned with the actual circumstances in the *Laender*. In addition to an adequate number of crisis places, a 24-hour hotline is essential, compared to the one available in child and youth welfare that takes over the unpostponable case management for housing and acts as a contact for police officers. As the *Laender* usually grant the statutory approval of residential facilities and subsidise the same through contracts, the obligation to participate in a 24-hour emergency hotline for all institutions and owners and operators should be included.

24-hour hotline and crisis places shall be set up

- ▶ ***Imposing a barring order on persons with disabilities from residential/in-patient institutions and facilities is only permissible when all less severe measures have been exhausted and while observing the principle of proportionality.***

- ▶ *Preventive measures should avoid escalations of violence and police intervention in institutions and facilities as much as possible. The conditions for this are general and individual crisis intervention plans as well as specialised staff that is trained in violence prevention.*
- ▶ *If a barring order is imposed, the Laender shall continue to honour their responsibility for the housing and care of persons with disabilities even if legal representatives are entrusted with the task of “finding a place to live”.*
- ▶ *To this end, a sufficient number of crisis places for persons with disabilities shall be provided. The continued housing and care of such persons shall be guaranteed with immediate effect through a coordination centre and a 24-hour emergency hotline.*

2.4.8 Positive observations

An important aspect of the work of the NPM is the identification of good practice models. Fortunately, the commissions can report about such institutions and facilities more and more frequently.

Needs of the clients in focus

For example, a facility for persons with multiple disabilities in Vienna could be assessed by Commission 5 as a model facility in many respects. The facility is consistently designed to meet the needs of the clients whereby assisted decision-making and a dedicated care system play a significant role. The de-escalation management includes a ten-step scale for each person displaying challenging behaviour. De-escalating measures and instructions are assigned to each step on the scale. This system provides security for the care staff.

Inclusion fostered

In a pilot project, clients were introduced to operations in the primary employment market with the help of the care staff. The objective was not the integration of the affected persons in the employment market because this did not seem realistic for those with multiple disabilities. Rather it served to enable them to encounter the “real” world for a few hours or a day and thereby foster inclusion. The comprehensive measures for Augmentative and Alternative Communication as well as informing the clients about their rights and complaint management were considered very positive by the commission.

Planned decision-making process for the choice of where to live

In a facility for fully-assisted living, Commission 4 observed that a concept of person-centred work was being implemented. The wishes and needs of the residents are the focus of personal meetings and routines are adapted accordingly. Generally speaking, the free choice of where to live is guaranteed in the best possible way by a planned and accompanied decision-making process. It is possible to get to know one another in advance or to spend a few trial days in the facility. Self-determination in old age is facilitated by allowing the residents to remain in the facility during the day meaning that they are then not cared for in a daily structure. Furthermore, the facility stood out thanks to a well-developed approach to topics such as sexuality and violence.

A recycling operation set itself the objective of giving even “challenging” clients a chance, not to let them go when there are difficulties and to always find a solution to problems. Clients in this operation are extremely motivated and feel very much appreciated. They emphasised their satisfaction to Commission 5 because they were deployed according to their abilities, received recognition and were given opportunities for professional development. Co-operations with other regional operations make this possible. There is hardly any absenteeism.

Creative solutions to behavioural problems

Another recycling operation in Lower Austria was also assessed by Commission 5 as being a best practice example of inclusion. The facility functions like a “normal” production operation whereby special consideration is given for clients up to care level 3 who are accepted to work there. Subsidies from the *Land* make it possible for clients to complete basic training courses or specific advanced training, aligned to their respective speed. The acquired skills (e.g. driving licence or forklift driving licence) make it easier to find work.

Training becomes possible

A workshop was praised as an extremely positive example of the process of client self-representation. One client was chosen as peer group leader after an “invitation to tender” and was trained by an external trainer. He now moderates monthly meetings with other clients from the same region at which they exchange experience and ideas. Assistants who are bound to secrecy are engaged as required. The wishes and complaints are forwarded to the operator organisation in a structured manner, which understands these suggestions as a mandate to act.

Peer group leader selected

Commission 3 reported about a facility which took care to provide special places in which to withdraw when persons become overstimulated. These can be designed individually: one resident built a kind of cave out of scarves as a “safe place” and uses a sign to let other residents know when she wants complete quiet. There is an anger refuge with a boxing bag and a drum for reducing aggression in the garden.

Anger refuge for reducing aggression

The pleasant, warm design of the common rooms in a shared accommodation was mentioned as a best practice example. The residents can individually decorate the single rooms with their own furniture and accessories. Furthermore, activities are organised outside of the daily structure, which also provide an opportunity to meet people without disabilities. For example, clients can take part in swimming lessons and swimming competitions.

Individual decorating and numerous activities

Another facility was praised by Commission 1 because of the individual care it provides. Clients are treated there in a warm-hearted and respectful way as a general rule. Clients have their own email address and access to a PC and are encouraged to use the same. Inclusion and normality are promoted through cooperation with a special pedagogical centre, a kindergarten and the local community.

The importance of the work atmosphere and respectful cooperation among the staff could be seen in a facility that was visited by Commission 3. The positive way in which the staff operated was designated an example of good practice. They are happy to cater to the special needs of the residents and even non-verbal communication is practiced in a respectful manner.

2.5 Correctional institutions

2.5.1 Introduction

The NPM visited 38 facilities of the penitentiary system and facilities for the detention of mentally ill offenders in the year under review.

In addition to the visits, it is important to the NPM to seek regular contact with representatives of the authorities. Besides a contact meeting in the Federal Ministry of Constitutional Affairs, Reforms, Deregulation and Justice, the annual meeting of the prison wardens provided an opportunity to reflect and exchange ideas. The challenges that are inherent in modern, care-oriented prisons could be addressed very openly. In spite of holding diverging stances at times, both sides praised the positive atmosphere in the discussions and emphasised the importance of a respectful dialogue.

Good cooperation

The expert dialogue will be continued next year. Discussion of the implementation of still open recommendations with the individually responsible management is intended – in addition to debate on structural problems.

The NPM was able to rely on the experience it made on its monitoring visits at the two meetings of the members of the SEE Network, a cooperation of the NPMs in the South-East European countries. The meetings took place in June and October 2019 in Skopje under the chairmanship of the North Macedonian Ombudsman. “NPM Policies on Reprisals” and “Special needs of juveniles in places of detention” were on the agenda. Both meetings concluded with unanimously agreed recommendations that the members accepted as standards in their countries. In addition to pertinent publications, representatives of the NPM spoke at conferences including in Bonn and Madrid.

International activities

The offer to prepare prison guard entrants for their future contacts with the NPM as part of their basic training has certainly stood the test. The training lessons were consistently well received. In order to be able to deal with all of the questions in sufficient detail, the lecture time from the Correctional Services Academy (*Strafvollzugsakademie*) was extended to four units. The opportunity to also present the NPM and its responsibilities to legal secretaries and psychologists during their training was welcomed. Two invitations to network meetings of forensic follow-up care facilities increased the awareness level of the NPM for owners and operators of the same. The NPM was also given feedback on its visits at these meetings.

Training and networking

The focus of the commissions’ monitoring visits in 2019 was on: body searches with disrobement (2.5.2), health care (2.5.3) as well as women (2.5.4) and adolescents (2.5.5) in prison. Subsequent to findings and recommendations on these focal areas, there are reports on personnel (2.5.6), on living conditions (2.5.7), the infrastructural fixtures and fittings (2.5.8), contact to the outside

Focus of monitoring work

(2.5.9), access to information (2.5.10) as well as the detention of mentally ill offenders (2.5.11).

2.5.2 Body searches with disrobement

Highly sensitive area	Prisoners must undergo a body search in designated rooms when they are transferred or admitted to a prison. This also applies when prisoners are released. These are body searches during which all clothing has to be removed respectively. Body searches shall be conducted as required in order to guarantee safety and order. The NPM has repeatedly addressed this topic (see NPM Report 2017, pp. 128 et seq.; NPM Report 2018, pp. 134 et seq.).
Objectionable practice	Regrettably, incidents occurred again in the period under review that gave rise to criticism:
Klagenfurt correctional institution	In Klagenfurt correctional institution for example, body searches of prisoners are monitored by camera and followed live at the prison base.
Vienna-Josefstadt correctional institution	In Vienna-Josefstadt correctional institution, female inmates reported that they were not allowed to put on their underpants before having to remove their clothes to the waist. Furthermore, the women reported that they had to squat completely naked, cough and spread their legs without good reason. The prison guards searched all orifices. Those affected had experienced this procedure as very shameful and unpleasant. Two inmates also reported that the door to the room in which they had to undress was open, i.e. not fully closed and that third parties (male officers) were able to see into the room.
Hirtenberg correctional institution	In Hirtenberg correctional institution, inmates claimed that they had to undergo a body search with disrobement after every “table visit” (visit with no or reduced physical barriers). Several inmates said they would prefer to do without receiving visitors in light of these circumstances.
Position of the NPM	The examples above demonstrate that these are not mere isolated incidents. The NPM thus considers it necessary to reiterate its stance on body searches: Body searches shall be conducted not only in cases where there is founded suspicion but also as random checks. Constant body searches are, however, in breach of the law.
Careful balancing of the implications	The provision anchored in the law stipulating that disrobement in association with a body search shall be conducted “as sparingly as possible” corresponds with the subjective right of the inmates to behaviour that respects human dignity on the part of the prison employees. With regard to body searches, the European Court of Human Rights explains that they constitute an infringement of the intimacy and human dignity of the inmates. They can,

however, be necessary to guarantee safety in prisons and to maintain order or prevent criminal actions.

A body search including the anus does not constitute inhumane or humiliating treatment if it is only ordered in certain, serious, suspicious circumstances. The European Court of Human Rights has deemed unnecessary, routine body searches with disrobement as well as inspection of the anal area inhumane or humiliating; it emphasised the degrading character of such searches in this context. This does not apply in cases where the grounds for the inspection are given (see also Federal Constitutional Court 10.7.2013, 2 BvR 2815/11 mNw on the jurisdiction of the European Court of Human Rights).

Prohibition of acting against good faith

In the case of detainees awaiting trial, there can be circumstances in which it is very unlikely that objects are being smuggled in orifices in the genital area. In such cases, inspections of the same are considered disproportionate. This is the case for example when the arrest is unexpected leaving no time to conceal objects and there is no other evidence to suggest otherwise.

The Penitentiary System Act (*Strafvollzugsgesetz*) stipulates that a body search with disrobement shall be conducted in the presence of two officers of the same gender as the inmate and in the absence of other prisoners and persons of the opposite sex. International standards recommend that body searches shall be conducted by officers specially trained in this area. Furthermore, LGBTIQ should be able to determine themselves which gender should conduct the body search (recommendation of the Association for the Prevention of Torture, https://www.ap.t.ch/detention-focus/en/detention_issues/6/).

Strict gender segregation

Body searches shall be conducted with respect for the sense of pride and dignity of the person to be searched. This also includes that the search takes place in suitable rooms that cannot be looked into from the outside and have the appropriate room temperature.

Suitable rooms

The NPM requests the Federal Ministry of Constitutional Affairs, Reforms, Deregulation and Justice to ensure that body searches at Klagenfurt correctional institution are conducted without camera surveillance in future. The rooms shall be (also according to the manual "Searching persons" – "*Durchsuchung von Personen*" for law enforcement officers in Austrian prisons) such that it is not possible to see inside them in order not to violate the sense of pride of the person to be searched.

Klagenfurt correctional institution

The Federal Ministry of Constitutional Affairs, Reforms, Deregulation and Justice, in contrast, points out the risk that the persons to be searched could attack the prison guards. With respect to the bodily integrity of the prison guards, which must be guaranteed, it is necessary to maintain this practice. This view is not convincing because, if this were the case, all body searches would have to be conducted under camera surveillance, which is in breach of the proportionality principle.

Vienna-Josefstadt correctional institution The Federal Ministry of Constitutional Affairs, Reforms, Deregulation and Justice also claims that neither in Vienna-Josefstadt correctional institution nor in any other correctional institutions orifices (anus, genitals) are routinely (i.e. without founded and serious suspicion) searched when persons are admitted to the prison.

It must be noted that the response from the Federal Ministry of Constitutional Affairs, Reforms, Deregulation and Justice and the reports from the interviewed persons deviate from each other on this point. The NPM stresses that a body search including the inspection of orifices that are normally covered may be ordered without exception in special circumstances and in cases of founded and serious suspicion. Unnecessary, routine naked inspections and examinations of otherwise covered orifices are humiliating in the sense of Article 3 of the European Convention on Human Rights. It was recommended to address the permissibility of searching orifices that are normally covered more precisely in the teaching aid “Searching persons”.

Hirtenberg correctional institution The NPM qualifies the regular body search with disrobement of detainees after every table visit in Hirtenberg correctional institution as excessive. Passing of unpermitted objects from one person to another can also be prevented by monitoring the visit. The Federal Ministry of Constitutional Affairs, Reforms, Deregulation and Justice confirmed that body searches shall only be ordered or conducted randomly in suspected cases. It remains to be seen whether Hirtenberg correctional institution refrains from regularly conducting body searches after table visits in future.

Disrobement in two steps In line with the recommendations of the CPT and after incidents at Vienna-Josefstadt correctional institution, the NPM once again requested that body searches with disrobement are always conducted in two steps so that the person to be searched does not have to fully undress. It is regrettable that this recommendation is still not being followed.

Documentation The recommendation that the reason, concomitant circumstances and the way in which the body search including disrobement is conducted shall be documented in writing still applies (see NPM Report 2017, p. 130; NPM Report 2018, p. 136).

Alternatives preferred It was also recommended to evaluate in how far other methods (for example, the use of body scanners) can be applied. The response from the Federal Ministry of Constitutional Affairs, Reforms, Deregulation and Justice indicates, however, that in view of the substantial acquisition cost and current budget situation, it would appear that the use of so-called body scanners cannot be implemented.

Training needs As far as the NPM is concerned, the further training programme is underdeveloped. Conducting body searches while observing the detainees' sense of pride, human dignity and, at the same time, considering any security

aspects should be attributed greater significance. Further mandatory training events on the topic should be offered for those officers who regularly conduct body searches with disrobement.

On the contrary, the Federal Ministry of Constitutional Affairs, Reforms, Deregulation and Justice does not consider it necessary to provide special training beyond the “Law enforcement competence” (*“Exekutive Kompetenz”*) further training event. The recommendation of the NPM is thus not being followed.

Upon the recommendation of the NPM (see NPM Report 2018, pp. 134 et seq.), conducting a body search with disrobement during a restraint with handcuffs was included in the new version of the teaching aid “Searching persons”. Regrettably, the problem of how to proceed in cases in which the members of the task force are all male and the person to be searched is a woman is not addressed, as was recommended by the NPM.

Body search during restraint

- ▶ *All body searches shall be conducted in such a way as to respect the sense of pride and human dignity.*
- ▶ *It shall be ensured that no unnecessary or routine naked body searches and inspection of normally covered orifices shall be conducted, as these are in violation of the law and are inhumane and humiliating.*
- ▶ *Body searches with disrobement shall be conducted in two steps so that the person to be searched does not have to fully undress.*
- ▶ *Body searches with disrobement shall be conducted by specially trained law enforcement officers of the same gender as the person to be searched only. Special mandatory further training events should be offered for the officers who regularly have to conduct such body searches.*
- ▶ *Alternative methods (for example, the use of body scanners) shall be developed for the purpose of replacing body searches including those with disrobement.*

2.5.3 Health care

2.5.3.1 Suicide prevention

Suicide is a common cause of death in correctional institutions. Detainees are a high-risk group of vulnerable persons. Every suicide is a stressful incident both for the law enforcement officers and the other prisoners. All correctional institutions are requested to develop suicide prevention concepts and to evaluate these at regular intervals.

The visit to Korneuburg correctional institution in February 2019 focused on suicide prevention. The starting point here was the existing prevention concept which was classified as exemplary in 2017. However, after interviewing

Korneuburg correctional institution

the officers it became evident that the collaboration and communication between the individual professional groups could be improved. The individual interviews in particular demonstrated differing perceptions and assessments on several issues whereby most of the differences of opinion were between the psychological service on the one hand and social work service and prison guards on the other.

Differing levels of information

The NPM therefore recommended improving the exchange between the special services and the prison. Suicide prevention should be on the agenda of team meetings at least once a month. In this way, misunderstandings and incorrect information can be clarified more easily.

The visiting team also enquired about the so-called listeners. They are prisoners who are available as a contact person to a mentally unstable inmate and who listen to them if required. These persons require intensive training and support. Thanks to these listeners, many suicides (attempts) could already be prevented. Only the psychological service knew which detainees are deployed as listeners at Korneuburg correctional institution. The commissions did not get any information about the criteria that these listeners have to fulfil.

Assessment not traceable

Furthermore, the attention of the visiting team was drawn to an inmate whose classification within the VISCI (Viennese Instrument for Suicidality in Correctional Institutions) was changed from “red” to “yellow” without documenting who had performed this change. Detainees are assessed according to VISCI criteria after arrival at a correctional institution in order to prevent suicides. The classification is made using a traffic light system (green, yellow, red). The VISCI classification is “red” if a detainee is suicidal. The NPM recommended familiarising all employees with the VISCI classification and ensuring that the mechanism is understood.

The Federal Ministry of Constitutional Affairs, Reforms, Deregulation and Justice responded that all prison officers are trained and are able to trace the classification procedures by looking at the documentation. The ministry also said that potential candidates to act as listeners can be detected by an electronic query if required. Furthermore, the Federal Ministry of Constitutional Affairs, Reforms, Deregulation and Justice points out that the different professional groups at Korneuburg correctional institution have a good communication structure. The professional groups exchange information both in the weekly specialist and department team meetings as well as on a daily basis in the individual departments.

Communication structure can be improved

In this context, the NPM reiterates that there was no consensus on the criteria for a listener between the professional groups on the day of the visit. It was also – as the observations in another correctional institution (Sonnberg) showed – not an isolated case that it was not possible to establish who had changed a VISCI classification. Against this background, an evaluation of the

communication processes within the framework of the update of the suicide prevention concepts is considered expedient.

- ▶ *Suicide prevention concepts should be regularly evaluated.*
- ▶ *It shall be ensured that the exchange of specialist information necessary for effective suicide prevention functions between the professional services and the prison.*

2.5.3.2 Bottlenecks in acute psychiatric care

Acute psychiatric care continues to pose an unsolved problem. On almost every visit, the prison wardens complain that there is no adequate acute psychiatric care for detainees awaiting trial and convicts. What is desirable is the establishment of a forensic therapeutic centre for eastern Austria, comparable to the former Asten Centre for Forensic Therapeutic Science that is now operated as a correctional institution (see Annual Report 2018, p. 159 et seq.).

Structural deficit

The NPM receives recurrent reports that there are problems and long delays in admitting psychotic patients, as the hospitals are often full and badly prepared for such patients.

Not enough beds

Clinics see themselves as being partially incapable of treating acute psychiatric detainees on an in-patient basis. They merely carry out an assessment and usually refer the patient to Mauer-Öhling Regional Clinic. There, patients are only admitted if there are sufficient grounds that the delinquent was unaccountable for their actions at the time of the deed and, due to their mental disorder, a precautionary measure that deprives liberty will be imposed (Section 429 of the Austrian Code of Criminal Procedure). In the remaining cases, patients are sent to the University Clinic in Linz or Pavilion 23/2 of Otto Wagner Hospital in Vienna. As the capacity of Pavilion 23/2 is usually fully utilised, the patients are often transported to Linz. The escorting prison officers report that there have been “challenging scenes” during the drive there.

Dangerous transport

Just how critical the impact of bottlenecks can be became evident at the beginning of 2020. An inmate attempted to hang himself in his cell at Wels correctional institution. The prisoner was due to be transferred to the Neuromed Campus in Linz. As there was no free bed there, he had to stay in Wels correctional institution. A fellow inmate saved his life by intervening in time. The injured man was taken to Wels hospital.

Suicide prevention at the last minute

- *The in-patient acute psychiatric care of detainees awaiting trial and convicts must be expanded urgently.*

2.5.3.3 Staff shortages in the medical area

Ongoing problem As requested time and again in past years, solutions have to be developed on a nationwide basis, such as the problem of the tight personnel situation in the medical area (see most recently NPM Report 2018, p. 114 et seq.). What is missing above all is a financial incentive to attract medical experts to work in prisons and detention centres. Vacancies remain unoccupied for a long time because no doctors apply due to the low remuneration. Salaries should thus be increased substantially in order to guarantee medical care in the middle and long term and to remove existing bottlenecks.

Stein correctional institution As in the previous year, Stein correctional institution can once again be mentioned as an example of massive staff shortages in the medical area. The fulltime positions in both the psychiatric and general practitioner service are still vacant.

Vienna-Favoriten correctional institution Medical staff is also missing in Vienna-Favoriten correctional institution. A mere four hours per week have been manned in the psychiatric area since 2018. Considering that Vienna-Favoriten is a therapeutically oriented institution where prison inmates, who require detoxification (Section 68a Penitentiary Systems) and others, who require detoxification (Section 22 Austrian Criminal Code) are detained, the inadequate psychiatric care of the detainees has a particularly grave effect.

Only consultant psychiatrists and consultant neurologists with sufficient time for diagnostic appointments can perform a comprehensive diagnosis of the mental illnesses. International studies verify that the mental comorbidity of persons administered substitute substances is particularly high. Inadequate psychiatric care results in an increased risk of relapse as well as the illegal consumption of additional substances. The psychiatric service should actively address the group of persons suffering from addiction. That, however, requires sufficient human resources.

St. Pölten correctional institution In St. Pölten correctional institution, three consultant psychiatrists and neurologists provide office hours alternately once a week. A general practitioner comes to the institution on Mondays and Wednesdays from 7.30 a.m. to 3.00 p.m. As there is no medical staff in the correctional institution from Wednesday afternoon until early Monday morning, the health examination upon arrival including addiction screening in St. Pölten court prison cannot be carried out within 24 hours of arrival of a detainee. For the NPM, there are also doubts as to whether adequate care of the detainees at St. Pölten correctional institution can be guaranteed with the current staffing levels.

In addition to medical care and time-consuming diagnostics, resources for maintaining the cooperation and exchange with other specialist services are required. In light of the rigid timeframe, it would appear questionable whether and to what extent consultant psychiatrists and consultant neurologists cooperate with other specialist services.

In May 2018 only one general practitioner as well as one consultant psychiatrist/neurologist were employed for five hours per week respectively at Wiener Neustadt correctional institution. The presence of the psychiatrist and the general practitioner once a week is not sufficient to adequately care for all of the detainees requiring treatment in a timely manner. The magnitude of the need for care is evident from the fact that 35 detainees were categorised as suicidal in Wiener Neustadt correctional institution in October 2018.

Wiener Neustadt
correctional institution

In addition, only the prison psychiatrist has a qualification in drug substitution. This poses the question of who writes the prescriptions for the substitutions used in the treatment of substance abuse disorders or cares for the patients in his absence.

The Federal Ministry of Constitutional Affairs, Reforms, Deregulation and Justice assures that the psychiatrist can also be reached by telephone outside of his working hours. Emergencies are transferred to the Psychiatry Department of the Regional Clinic Lower Austria after clearance with him. A deputy is ensured in such a way as the medical superintendent of the Federal Ministry of Constitutional Affairs, Reforms, Deregulation and Justices writes the prescriptions for substitutions and takes care of the patients during this time. The prison psychiatrist is also represented by a colleague during sick leave and holidays.

In May 2019 the Federal Ministry of Constitutional Affairs, Reforms, Deregulations and Justice informed that the Federal Ministry for the Civil Service and Sport was working on improving the special contracts concluded with doctors. The remuneration rates are to be increased substantially compared to the old contracts. This hope was (also) shattered in December.

Remuneration rates as
key factor

Furthermore, the Federal Ministry for the Civil Service and Sport only approves the conclusion of special contracts for medical management services. There will therefore be no new medical guideline. Doctors will be engaged by the recruitment agency for justice supporting staff exclusively; admission of general practitioners as well as psychiatrists under the terms of a civil service contract is not (no longer) possible.

- ▶ *A financial incentive is required in particular to attract medical experts to work in prisons.*
- ▶ *The vacant positions in the medical area shall be filled as soon as possible.*

2.5.3.4 Electronic Patient Record Module needs optimisation

Outdated software All of the detainees' medically relevant data (examinations, diagnoses, treatments, appointments etc.) are stored in the Electronic Patient Record Module of the Integrated Prison Administration system.

It was evident last year that this module cannot be expanded due to system limitations. It was thus not possible to install a programme for examining the interaction of medications. It is also not possible to automatically schedule a (mandatory) follow-up appointment to discuss the results with the patient after a blood test. Furthermore, the doctors reported repeatedly that learning to use the Electronic Patient Record Module is very time-consuming and the application is not user-friendly.

Replacement should be installed soon The NPM considers the speedy replacement of the Electronic Patient Record Module in its current form urgently necessary. Regrettably, the Federal Ministry of Constitutional Affairs, Reforms, Deregulation and Justice is unable to provide a timeframe for the installation of a successor system. In addition, the NPM recommends the installation of computer systems for examining the interaction of medications as soon as possible. Such systems are used as standard medical practice outside of the prison service. Currently, only the office of the medical superintendent in the Federal Ministry of Constitutional Affairs, Reforms, Deregulation and Justice has such software.

- ▶ *The Electronic Patient Record Module shall be replaced quickly.*
- ▶ *A mandatory automatic follow-up appointment with the patient to discuss the results shall be scheduled after a blood test.*
- ▶ *Computer programmes for examining the interaction of medications shall be installed in all correctional institutions.*

2.5.3.5 Hepatitis C virus (HCV) therapy

The NPM already focussed on the therapy programmes for detainees with chronic hepatitis C on its monitoring visits last year. It was examined whether detainees are offered a therapy with Direct Acting Antivirals (DAA) medication (see NPM Report 2018, pp. 112 et seq.). Regrettably, the NPM found this year once again that detainees who are infected with hepatitis C do not receive

professional treatment.

On a visit to Göllersdorf correctional institution, the NPM observed that there are frequent requests for DAA but that these are often turned down. Said treatment was approved for just two detainees. The Federal Ministry of Constitutional Affairs, Reforms, Deregulation and Justice pointed out that in the case of those in the special institutions – more frequently than in other correctional institutions – possible interactions with existing medication have to be considered. For this reason, several patients were on a waiting list to receive treatment with DAA after a possible change of medication.

Göllersdorf correctional institution

The NPM recalls that detained persons have the right to the same medical care as those living in freedom. Failure to administer medication must then be medically indicated and objectively founded.

During a visit to Vienna-Josefstadt correctional institution it could be seen that state-of-the-art treatment of detainees infected with HCV is guaranteed as a matter of principle through cooperation with Vienna General Hospital. The treatment of patients with a positive HCV diagnosis is determined and monitored by the General Hospital. The DAA therapy prescriptions from the General Hospital are approved by the medical superintendent of the Federal Ministry of Constitutional Affairs, Reforms, Deregulation and Justice regardless of the level of fibrosis.

Vienna-Josefstadt correctional institution

On the negative side, the approval by the medical superintendent takes several weeks. Even if HCV is a slowly progressing illness, certain circumstances such as cirrhosis of the liver can make a rapid start of treatment necessary. The NPM learned of a case where a patient with diagnosed cirrhosis of the liver was refused DAA therapy even though those responsible for approval had been informed about the urgency of treatment. In this sense, it was evident that the approval of HCV therapy by the medical superintendent has to be faster in urgent cases.

Approval takes a long time

The NPM also came to this conclusion on a visit to Graz-Karlau correctional institution. The on-site diagnosis and testing by the doctors was considered exemplary. In some cases, however, it takes more than a year until a decision is made by the general directorate on the approval of treatments. The procedure lacks any form of transparency. Those affected are left waiting a considerable amount of time for a reply. On the day of the visit, it was not possible for the visiting team to verify which approval criteria are used, how long approval takes and why those affected are forced to wait so long for decisions.

Graz-Karlau correctional institution

There is no rejection of the therapy requests either. Approval is simply “not confirmed” in the Electronic Patient Record Module, which results in some detainees waiting for approval for years.

Documentation in Electronic Patient Record Module

The NPM recommended informing the attending doctors, and subsequently the patients of the reasons in the event that a therapy prescription is rejected. The Federal Ministry of Constitutional Affairs, Reforms, Deregulation and Justice responded that in future the HCV therapy as well as the relevant requests including response and justification by the medical superintendent will be documented both in the Electronic Patient Record Module and the respective medical record.

- ▶ *Approval of therapy by the medical superintendent shall be timely.*
- ▶ *The request for a specific therapy, approval or rejection as well as the treatment procedure shall be documented in the Electronic Patient Record Module and the medical record.*

2.5.3.6 Treatment of substance use disorders

Problems with opioid substitution treatment

In 2018 the NPM focussed on monitoring the treatment of persons who are suffering from a substance use disorder (see NPM Report 2017, pp. 120 et seq.; NPM Report 2018, pp. 106 et seq.,). The NPM also took a closer look at the living conditions of this group of persons in the period under review.

Vienna-Josefstadt correctional institution

Opioid substitution in Austria's largest correctional institution was scrutinised, for example. On the day of the visit, some 130 out of 1,255 detained persons were on substitution treatment in Vienna-Josefstadt correctional institution.

On the positive side, all of the general practitioners working at Vienna-Josefstadt correctional institution have a qualification in substitution. The NPM also acknowledged that both detainees who were on substitution therapy prior to starting their prison term and those who become addicted during the deprivation of their liberty have access to a substitution treatment.

Categorical prescription practice

Methadone is predominantly used, and Substitol retard and buprenorphine (Suboxone) less frequently, in substitution therapy. Many persons suffering from addiction are radically transferred to methadone during detention. The majority of interviewed persons described the transfer as stressful, as the sudden change of medication is accompanied by side effects (headaches, perspiration, nightmares). Furthermore, a compound (L-Polamidon®), which had the mildest side effect profile, is restrictively approved by the Federal Ministry of Constitutional Affairs, Reforms, Deregulation and Justice for cost reasons.

The practice of only prescribing certain medication is worthy of criticism. The NPM stresses that, in line with the principle of equivalence, persons in

detention shall be provided with the same medical products as persons living in freedom. In particular, detained persons should not be precluded from receiving remedies that have less severe side effects. The NPM recommended making different substitution compounds available in prisons (at a lower cost).

The Federal Ministry of Constitutional Affairs, Reforms, Deregulation and Justice argued that the change to methadone has proved to be successful based on the many decisions taken by medical specialists. The NPM cannot follow this stance unconditionally; rather it demands carefully weighing up which medication is best suited in the individual case prior to changing medication. The fact that some of the persons to receive substitution therapy regrettably (are likely to) abuse some medications shall not be used as an excuse not to prescribe and administer the same.

Careful change of medication

During the visits to St. Pölten correctional institution in November 2018 and January 2019, prison guards claimed that only those detainees who had been on a substitution programme before the detention had commenced receive an opioid substitution therapy.

St. Pölten correctional institution

The NPM already emphasised last year after a visit to Feldkirch correctional institution that there is an indication for a substitution therapy not only when the patient is already on non-hospitalised substitution upon arrival at the correctional institution. In fact, opioid addiction alone suffices as a basis to be indicated for substitution therapy (see NPM Report 2018, p. 108). It is indisputable that patients who are addicted to opioids must have access to adequate (substitution) therapy. Failure to do so constitutes a violation of Article 3 of the European Convention on Human Rights (ECHR 1.9.2016, Bsw. 62303/13, Wolfgang Adam Wenner versus the Federal Republic of Germany).

On the positive side, since July 2018 inmates in Vienna-Josefstadt correctional institution who are taking part in opioid substitution therapy and are due to receive benefits from the Public Employment Service Austria after their release are allowed to temporarily leave the prison two to three weeks before release to register with the Public Employment Service Austria. Access to health insurance benefits (incl. substitution therapy) is thus guaranteed from the day of release.

Good transition management

► *A comprehensive risk assessment as to which medication is the most suited in the individual case should always be carried out before substitution medication is changed.*

Addiction screening and multi-professional treatment team

In Klagenfurt correctional institution, the NPM encountered a detainee who was suffering from severe withdrawal. A look at the documentation and consultation with the officers revealed that the inmate had been admitted to the institution four days previously but had not seen a doctor. To ease the

Klagenfurt correctional institution

symptoms, the man, who was suffering from addiction, was administered tablets which had been prescribed by an external doctor without having seen the inmate. The response of the Federal Ministry of Constitutional Affairs, Reforms, Deregulation and Justice was that the prison doctor was on holiday.

Innsbruck correctional institution The NPM also ascertained in Innsbruck correctional institution that, contrary to the guidelines on the counselling, care and treatment of detainees suffering from addiction who are awaiting trial as well as those who are convicted and those who are mentally ill, no addiction screening was carried out either by the medical or the social work service over a longer period of time.

Timely examination The NPM repeatedly demanded that the initial examination should take place as soon as possible, but within 24 hours at the latest (see NPM Report 2017, pp. 124 et seq.). Following this, the NPM recommended that the individual screening for substance use disorders shall take place on the day of arrival but at the latest within 24 hours of admission to detention. This shall be performed by the medical staff (general practitioner or consultant psychiatrist); this also applies at weekends and on public holidays.

Acute health risk Only in this way can health risk be mitigated that exists in cases of untreated withdrawal or “cold turkey” and can be life-threatening with certain substances. If there is no medical staff available in a suspected case, the medical (emergency) service shall be notified or the detainee transferred to a hospital (see NPM Report 2018, p. 111 et seq.).

Multi-professional treatment called for The NPM observed on focal visits once again that in some correctional institutions no multi-professional treatment team has been set up for persons with a substance use disorder or that such a team is not sufficiently manned despite this being stipulated in the guidelines.

Vienna-Josefstadt, Innsbruck, and St. Pölten correctional institution For example, no such team had been set up in Vienna-Josefstadt correctional institution at the end of May. There was no multi-professional treatment team in Innsbruck correctional institution in August 2017 either. The same was found at St. Pölten correctional institution at the end of November 2018. The NPM emphasised once again that the interdisciplinary cooperation between internal and external specialists and the prison guards is a fundamental condition for fulfilling the standards for counselling, care and treatment of persons suffering from addiction.

The management of Innsbruck correctional institution reacted to the criticism of the NPM and assured that addiction screening has been performed again by the infirmary and the social work service in accordance with the decree since the middle of 2018. Furthermore, the multi-professional treatment team for persons with a substance use disorder in Innsbruck correctional institution has been restructured. Monthly meetings are held at which the possibilities of counselling and/or therapeutic treatment of those affected are discussed. The results are documented in the enforcement plan. The other correctional

institutions should follow this example. There is still no feedback from St. Pölten correctional institution and Vienna-Josefstadt correctional institution.

- ▶ *Every correctional institution shall establish a multi-professional treatment team for the treatment of substance use disorders.*
- ▶ *The examination to determine whether there is a substance use disorder shall be performed by the medical staff upon arrival, but within 24 hours at the latest; this also applies at weekends and on public holidays.*

Incomplete therapeutic programme

Substance addiction is a chronic illness that requires therapeutic treatment. Detainees with a substance use disorder thus need adequate therapy and treatment.

Practice shows that care in the correctional institutions varies depending on the department. Information gathered on the visit to Innsbruck correctional institution in August 2017 indicated that up to 50% of the detainees needed a substance use disorder therapy programme as provided in the department for mentally ill offenders. This department has only ten detention places however (see NPM Report 2017, pp. 120 et seq.).

Innsbruck correctional institution

Innsbruck correctional institution took the criticism as an opportunity to re-open the so-called “base group for detainees with serious addiction” in January 2019 after a break of some two years. Even if the reactivation is to be seen as positive, this care programme will not suffice. The base group programme merely offers fortnightly information events from external institutions alternating with an exercise unit. Additional care and treatment settings are thus needed for the detainees with a substance use disorder who are held in normal prisons.

Base group installed

In Innsbruck correctional institution, the creation of a so-called area without illegal drugs has been planned since June 2017. Addicts who live voluntarily in this area should be offered more activities and therapeutic intervention in accordance with a concept by the correctional institution. The NPM recommends an appraisal of the concept as soon as possible so that steps for its implementation can be taken. For the NPM, it is not clear why the final appraisal of this concept has not been made by the Federal Ministry of Constitutional Affairs, Reforms, Deregulation and Justice since December 2017.

Drug-free department

- ▶ *In addition to the medical addiction programme (e.g. opioid substitution therapy), effective therapy options shall be offered to the detainees with a substance use disorder.*

Lack of enforcement and care plans

St. Pölten correctional institution On the visits to St. Pölten correctional institution in November 2018 and January 2019, the NPM learned that neither enforcement plans nor individual treatment plans are created for detainees with a substance use disorder awaiting trial. Due to the staff situation, an enforcement plan is only set up for detainees with a sentence of at least 18 months.

Clear guidelines The guidelines (for the counselling, care and treatment of persons suffering from addiction in detention awaiting trial, in facilities of the penitentiary system and in facilities for the detention of and mentally ill offenders) stipulate that an enforcement plan shall be created for each “addicted detainee” even if they are in pre-trial detention. The multi-professional treatment team shall, in addition, create an individual treatment plan in the initial phase. This should serve as the basis for the planning and organisation of a detainee’s stay in a correctional institution and is a component of the enforcement plan.

Apparently, the allocated permanent law enforcement positions as well as the staff capacity in the specialised services do not suffice to meet the guidelines. Alignment of the human resources to the actual requirements is required in order to ensure adequate living conditions in line with the prevention of human rights violations for detainees.

- ▶ *An enforcement plan and an individual treatment plan shall be created during pre-trial detention for persons with a substance use disorder.*

2.5.3.7 Therapies

Universal access rights to files for all specialist services

Graz-Karlau correctional institution In May 2018 the NPM visited the department for mentally ill offenders of Graz-Karlau correctional institution. The focus of the visit was the psychotherapeutic and forensic psychological treatment of the detainees.

Split documentation After examining the documentation, the NPM found that (medical) records do not contain the information collected on the treated persons in a concentrated form. Furthermore, the psychological service had to move its documentation to external data carriers (USB sticks) because insufficient memory is provided by the judiciary on the PC servers.

The NPM therefore recommended maintaining medical histories centrally so that all specialist services have access to all information on the detainees at all times. In addition, sufficient memory shall be provided for the documentation so that the statements of opinion from the psychological service in particular do not have to be stored on external data carriers.

The Federal Ministry of Constitutional Affairs, Reforms, Deregulation and Justice followed this recommendation and established a working group to address the question of how to set up repositories and access rights (for all specialist services) in the Electronic Patient Record Module or on secure drives while observing special professional confidentiality obligations, thus enabling all specialist services to access information.

Nationwide regulation

The working group was able to agree on a uniform drive. Personal data, which cannot be saved in the Electronic Patient Record Module for technical reasons, shall be stored in this structure. The drives guarantee data security. The management of the institution grants access rights to the respective drives such that multi-professionalism can be taken account of in the interest of the prison administration and the employees have all of the information at their disposal that is required for fulfilling their tasks properly. The transfer deadline to the relevant drives expired in mid-April 2019.

Uniform drive

- *The specialist services shall be granted access rights to the documentation in order to facilitate adequate treatment and care. To this end, the technical conditions shall be created while maintaining data security.*

Quality criteria for psychotherapists

On a positive note, the prison administration provides sufficient funding for external psychotherapy for mentally ill offenders in detention at Graz-Karlau correction institution.

Graz-Karlau correctional institution

However, the fact that not only psychotherapists with specific forensic qualifications are deployed in detention for mentally ill offenders is seen as critical. A regulation that applies nationwide for the quality and recruitment of psychotherapists who work for the judiciary (in particular in the detention of mentally ill offenders) should be specified.

No selection criteria

With regard to the therapy programme, the NPM missed a clear allocation based on the indication of specific disorders. There is no differentiation by schools of psychotherapy. In the sense of the “customisation options” (Federal Constitutional Court 2 BvR 2356/09 = EuGRZ 2011 – European Basic Rights Magazine, pp. 297 et seq.), the formulation of a written regulation was thus recommended for determining which therapist with which qualifications should be deployed for which types of detainee disorder.

Working group set up

The Federal Ministry of Constitutional Affairs, Reforms, Deregulation and Justice took up this recommendation and installed a working group, which is currently working on relevant specialised aspects including the requirements of the penal system. Completion of the work is expected in 2020.

- ▶ *Psychotherapists who are deployed in prisons should have special qualifications. The definition of the criteria according to which they are selected should apply nationwide.*

Therapeutic care of detainees with poor German language skills

- Sonnberg correctional institution

On a visit to Sonnberg correctional institution, the NPM focussed on the treatment and therapy programmes for first-time offenders. It learned that the treatment and therapeutic care of first-time offenders among the monitored detainees – at least, those with medium-term sentences – took place promptly after their transfer. Treatment plans and a differentiated therapeutic programme deal with the specific problems of the detainees directly.
- Few places on language courses

The therapeutic care of detainees with poor German-speaking skills and a medium-term sentence transpired to be a weakness, however. A lack of places means that a quick allocation to a German language course is not possible. The certified German course can only be offered for 15 participants whereby detainees with therapeutic needs are given preference. It is also possible to learn the German language in a so-called learning centre; this is a training room that is accessible to detainees in their leisure time. This programme, however, requires a high level of initiative and discipline and is regrettably not well frequented.
- Therapists with foreign language skills are rare

As the Federal Ministry of Constitutional Affairs, Reforms, Deregulation and Justice explains, there are very few forensic therapists in Austria with proficiency in foreign languages. Sonnberg correctional institution offers therapies in German and English. There is a Turkish-speaking forensic therapist in Stein correctional institution. A Greek-speaking forensic therapist can be engaged if required.
- Specific conversational situations

In addition, group therapy is preferred to individual therapy in forensic therapy. The use of video interpreters is not possible within the group therapy framework. It must be noted that the use of video interpreters in individual therapies is viewed critically for financial reasons and, above all, on ethical grounds (relationship of confidence between therapist and client). Sonnberg correctional institution goes to great pains, however, to find an adequate solution in every case.

- *If it is not possible to offer a therapy in a language that the detainee can understand, they must – without a waiting period – be able to join a German course.*

2.5.4 Women in prison

2.5.4.1 Inmates housed in shared accommodation and lock-up times

Regrettably, the information gathered in the period under review has shown once again that the minimum standards for women in prison imposed by the Federal Ministry of Constitutional Affairs, Reforms, Deregulation and Justice in February 2016 are not fully implemented in all correctional institutions.

For example, this was evident in Wiener Neustadt correctional institution which the NPM visited in September 2018. The women's section of the court prison consists of twelve inmate cells with 22 places. Of these, seven cells with 14 places are operated as detention in shared accommodation and five cells with eight places as regular detention. At the time of the visit, 14 women were in the women's section. Only seven beds were occupied even though the shared accommodation area has 14 places available. The remaining women were living in closed detention.

Wiener Neustadt
correctional institution

The NPM had the impression that women in Wiener Neustadt correctional institution are kept in (closed) detention as a matter of principle and only benefit from shared accommodation in exceptions. This approach conflicts with the minimum standards for women in prison, according to which both female pre-trial and convicted detainees shall be detained in shared accommodation in general. It shall thus be guaranteed that women's sections are usually operated as shared accommodation and women shall only be kept in regular detention in justified exceptions.

Non-compliance with
standards

In Vienna-Josefstadt correctional institution, at least one area has been set up for detention in shared accommodation in all three departments of the women's section since February 2018 (see NPM Report 2018, p. 127 et seq.). A follow-up visit to the women's section of Vienna-Josefstadt correctional institution in December 2018 showed that in the department for female pre-trial detainees a maximum of 17% and in the department for convicted women a maximum of 40% of the detainees could be housed in shared accommodation. The number of detention places in shared accommodation can thus be increased.

Vienna-Josefstadt
correctional institution

Regarding the detention places that are not part of the shared accommodation, the Federal Ministry of Constitutional Affairs, Reforms, Deregulation and Justice as well as Vienna-Josefstadt correctional institution have always stated that the cells are open daily from 7.00 a.m. to 3.00 p.m. As already reported in the past, this is not consistent with the observations of the NPM. On the contrary, the regular detention cells are usually closed all day (i.e. 23 hours per

Lock-up times too long

day). All of the cell doors were also locked when the NPM visited the regular detention area of Department A4 in December 2018 (at round 9.45 a.m.).

Locked in for up to 23 hours

The situation was similar in Wiener Neustadt correctional institution. The NPM noted there too that the cell opening times for the regular detention area in the women's section are not observed. Contrary to the information from the Federal Ministry of Constitutional Affairs, Reforms, Deregulation and Justice as well as the concept for women in prison, the cell doors of the regular detention area are usually locked for up to 23 hours per day. For example, all of the regular detention cells were locked on a Tuesday when the NPM arrived in the women's section at around 11.00 a.m. and at around 1.20 p.m.

It does not suffice to set cell opening times if they are not complied with in practice. The NPM therefore urgently recommended complying with the specified regulations. The staff of Wiener Neustadt correctional institution stated in this context that the regular detention cells are only opened if two law enforcement officers are working in the women's section. The Federal Ministry of Constitutional Affairs, Reforms, Deregulation and Justice points out that (only) 1.5 law enforcement officers are missing to form a complete team in the law enforcement area in Wiener Neustadt correctional institution. The NPM can only draw the conclusion that the allocated permanent positions evidently are not sufficient to enable compliance with the cell opening times.

More staff required

The necessity for additional permanent positions was addressed in the previous year's report (see NPM Report 2018, p. 128 et seq., pp. 130 et seq.). The Federal Ministry of Constitutional Affairs, Reforms, Deregulation and Justice states that in accordance with the recommendation of the NPM, additional permanent positions are being requested for the staffing plan 2020 und 2021 to reduce the lock-up times. In addition to the increase in permanent positions, the structural changes and optimisation of the personnel resources which are needed to avoid lock-up times of up to 23 hours per day should be examined.

Successive improvements

On the positive side, according to information from the Federal Ministry of Constitutional Affairs, Reforms, Deregulation and Justice, the request of the NPM was followed in Vienna-Josefstadt correctional institution and detention in shared accommodation extended to all departments of the women's section. All inmates can now leave their cells of their own accord between 7.00 a.m. and 10.00 p.m. as a general rule.

A complete shared accommodation for detainees awaiting trial was – after a pilot phase – also established on 1 September 2019. The department for non-smokers, adolescents as well as mothers with children has been operated as a shared accommodation since mid-2018.

Linz correctional institution

Regarding Linz correctional institution, the Federal Ministry of Constitutional Affairs, Reforms, Deregulation and Justice reports that the cell opening times in the women's section have been extended since June 2019. This is possible

because video surveillance was installed in the corridors of the women's section and the cells were fitted with a new lock system. The recommendation from the previous year was thus followed (see NPM Report 2018, p. 128).

The obligatory annual evaluation of the women's section concept by the prison warden of Linz correctional institution is a positive aspect. This ensures that necessary adjustments can be made quickly. It is desirable that the women's section concepts are evaluated annually in all correctional institutions. To date, the Federal Ministry of Constitutional Affairs, Reforms, Deregulation and Justice has only agreed to a revision of the women's prison concept in Wiener Neustadt correctional institution.

Regular examination of the concepts

- ▶ *All women's sections shall usually be operated as shared accommodation in accordance with the minimum standards for women in prison. Female detainees shall only be kept in regular detention in justified exceptions.*
- ▶ *The cells in the women's sections shall be open all day on weekdays, weekends and public holidays.*
- ▶ *The concepts for women's sections shall undergo an annual evaluation.*

2.5.4.2 Occupational activities

The minimum standards for women in prison stipulate that every detainee shall be offered fulltime occupational activity provided the order situation in the individual companies allows this. The detainees should also have the opportunity to get to know companies owned by the institution and different occupational opportunities within the framework of job rotation.

The NPM has repeatedly emphasised the importance of access for the detainees to useful activities outside their cell. Having a daily job has a positive effect on the detainees' behaviour in prison and contributes to reducing conflict between detainees. A balanced daily structure is particularly important in view of the envisaged re-socialisation of the detainees. A lack of occupational opportunities combined with other negative factors can effect a considerable deterioration in the life situation of the detainees, which can then result in inhumane and humiliating prison conditions as a consequence of rigid lock-up times.

Manifold importance

The NPM spoke to detainees in closed detention at Wiener Neustadt correctional institution in September 2018. Not one of the interviewed detainees was working in a company or within the job rotation framework. The interviewed women explained that occupational opportunities were limited to cleaning work on an hour-by-hour basis. None of the detainees knew about the continued and advanced training (German course, computer course, and professional

Wiener Neustadt correctional institution

qualifications) that exists according to the Wiener Neustadt correctional institution concept even though several detainees speak a foreign language or would have been interested in further education.

Vienna-Josefstadt correctional institution On the visit to the women's section of Vienna-Josefstadt correctional institution, the NPM noticed once again that the pre-trial detainees in closed detention in particular have no work for the most part. The detainees reported that not being able to pursue a gainful occupation is very stressful as is being locked up in a cell for multiple inmates for up to 23 hours a day.

Fitness and stress management The NPM recommended offering the women more opportunities to do sport. For example, fitness equipment such as steppers or ergometers could be purchased and made available to the inmates during cell opening times. Furthermore, there should be an alternative programme for the time spent outdoors in bad weather. The recommendation was taken up. After a requirements analysis, two steppers and an ergometer were ordered for the women's section of Vienna-Josefstadt correctional institution. The equipment should be set up in the group rooms or in the corridors.

► *The occupational opportunities programme for women detainees shall be expanded. Women detainees should have the opportunity to familiarise themselves with different types of occupational activity in different companies.*

2.5.4.3 No support in birth preparation

Innsbruck correctional institution In Innsbruck correctional institution, the NPM became aware of a young mother who was detained there with her baby. The inexperienced young mother was supported by another inmate in caring for the infant. The inmate was deprived of both birth preparation and post-natal care by a midwife.

International recommendations such as the UNODC (Handbook on Women and Imprisonment, 2nd edition, p. 84), based on the Bangkok Rules, call for equal treatment for (expectant) mothers in detention and in freedom with regard to birth preparation and post-natal care.

Prompt implementation The NPM recommended taking up contact with a midwife who can support the inmate during pregnancy and instruct her in baby care after the birth. The correctional institution followed the recommendation immediately so that shortly afterwards another inmate received the support of a midwife.

- ▶ *Birth preparation and post-natal care should be available to inmates to the same extent that it is to women living in freedom.*
- ▶ *The correctional institutions shall ensure that pregnant inmates receive birth preparation support from a midwife.*

2.5.4.4 Rights of small children in the penal system

Small children who live with their detained mothers in correctional institutions are not sentenced to live in prison and can leave the institution when accompanied by a suitable person at any time. In Innsbruck correctional institution, neither the mother of the child nor the prison guard in the mother and child department was aware of this.

Children are not prisoners

The NPM criticised this knowledge deficit. Advanced training has been mandatory for all prison guards working in a mother and child department in accordance with the decree “Minimum standards for women in Austrian correctional institutions” (“*Mindeststandards für den Frauenvollzug in österreichischen Anstalten*”) since 2016. Nevertheless, there are still many prison guards who have not attended this training course. The first course only took place in the autumn of 2018.

Training needs

The Federal Ministry of Constitutional Affairs, Reforms, Deregulation and Justice justified the knowledge deficit with a change of staff in the department and with the fact that children rarely live in the institution together with their detained mothers. The ministry also made reference to the contents of basic training and to the mandatory training courses.

- ▶ *Staff deployed to mother and child departments should be informed about the rights of the child.*

2.5.5 Adolescents

2.5.5.1 Separate detention of adolescents and adult detainees

In addition to the special institution for adolescents in Gerasdorf and Schwarzau correctional institution, the court prisons of Graz-Jakomini, Innsbruck, Klagenfurt, Linz, Salzburg and Vienna-Josefstadt currently have juvenile departments. All of the remaining court prisons have no departments for juvenile detention even though adolescents (particularly while awaiting trial) can be detained in any court prison in general.

Due to the rare and usually shorter detention, there are no dedicated departments for female adolescents. They are normally detained in the women’s section in court prisons, mostly in a separate cell.

Separation rules not always complied with

A recurring problem is that the rule of separate detention of adolescent and adult detainees is not (always) complied with. This is the case in court prisons without juvenile departments in particular. As a general rule, the detention of adolescents for pre-trial and criminal offences shall be separate from that of adults. International standards recommend that adolescents shall be separated from adults and detained in a special institution or dedicated department (e.g. in the framework provisions of the United Nations for the juvenile justice system, A/RES/40/33, 29 November 1985, “Beijing Rules” rule 26.3, see also CPT “Juveniles deprived of their liberty under criminal legislation”, CPT/Inf(2015)1-part, recommendation 102).

Risk of harmful influence

If adolescents and adults are detained together, there is a latent risk that the adolescents might be exposed to harmful influences or be disadvantaged in some other way. The law allows the detention of adolescent prisoners together with adult prisoners only “if, under the circumstances, neither a harmful influence nor other disadvantage for the juvenile prisoners is to be feared” (Section 55 (2) Juvenile Court Act).

Careful consideration

Whenever the NPM encounters the joint detention of adolescents and adults, the institutions almost always have the same argument. Special care is taken that the adolescents are not exposed to harmful influences. The selection of the adult detainees is based on the reason for their offence and their personality. Furthermore, these are cases without exception in which the mental condition of the adolescent calls for joint detention.

The NPM still considers it critical if adolescents are detained together with adults in a cell. Special care should be taken to detain adolescents separately from adults in court prisons also. Where there are no juvenile departments, efforts should be intensified to avoid detaining adolescents in a cell with adults. Adolescents should also be able to take part in activities outside of the cell in order to avoid isolation.

► *Adolescents shall be detained in a way that they are not exposed to harmful influences or other disadvantage. In particular, adolescents shall be detained separately from adult detainees.*

2.5.5.2 Youth concepts and detention in share accommodation

Youth concepts in all correctional institution

To date, there have only been youth care concepts in court prisons that had their own juvenile departments. The NPM recommended that all court prisons in which adolescents can be detained develop a youth concept.

The Federal Ministry of Constitutional Affairs, Reforms, Deregulation and Justice followed this recommendation and requested the remaining court prisons (Leoben, Eisenstadt, Wiener Neustadt, Feldkirch, Korneuburg, Krems, Ried, Wels and St. Pölten correctional institutions) to create a youth care concept. These concepts have since been created (with the exception of Eisenstadt correctional institution).

Special attention should be given to female adolescents when developing youth concepts. Linz correctional institution is a good example in this respect, revising the women's concept and in so doing focussing strongly on the needs of female adolescents. Vienna-Josefstadt correctional institution has since followed the NPM's recommendation too (see NPM Report 2018, p. 133 et seq.).

Linz and Vienna-Josefstadt correctional institution

In April 2019, the Federal Ministry of Constitutional Affairs, Reforms, Deregulation and Justice communicated the youth concept of Wiener Neustadt correctional institution of January 2019. From the draft, it was not clear whether the concept was referring to both male and female adolescents. The concept did not contain concrete guidelines for the care of female adolescents either. The set lock-up times on Fridays, weekends, Sundays and public holidays (at 12.30 p.m. or 11.30 a.m.) should also be reduced. Furthermore, detention in shared accommodation should be given preference for adolescents in particular.

Wiener Neustadt correctional institution

The 2012 youth concept of Innsbruck correctional institution was rewritten during the course of 2019. Here too, the NPM recommended focussing more on the needs of female adolescents and integrating female adolescents in (socio-pedagogical) care as well as the educational and occupational opportunities open to the male adolescents. This recommendation was not followed in the concept for the juvenile department in May 2019.

Innsbruck correctional institution

The reallocation of the shared accommodation area that formerly belonged to the juvenile department of Innsbruck correctional institution to the adult detention area at the beginning of 2018 gave grounds for criticism. The reason for this at the time was the low numbers of detained adolescents.

Shared accommodation reallocated

There has been no consistent detention in shared accommodation in the juvenile department since then due to a lack of space. However, the cells in the juvenile department are open daily until 6.00 p.m. according to the Federal Ministry of Constitutional Affairs, Reforms, Deregulation and Justice. In contrast, adolescents claimed that these times are not always observed. They said that at weekends, in particular, the cells were only opened for short periods.

The NPM criticised that the juvenile department is not operated as detention in shared accommodation. Adolescents should be detained in shared accommodation unless there are compelling reasons not to do so. The minimum standards for women in prison which stipulate detention in shared accommodation for pre-trial and convicted prisoners as a matter of principle

Adverse effects

shall be observed for adolescent female offenders. It was recommended to detain all adolescents in shared accommodation as a general rule and to adapt the minimum standards for juvenile detention such that it can be operated as shared accommodation as a matter of principle. Regrettably, the implementation of the recommendations of the NPM at Innsbruck correctional institution is currently not possible due to a lack of space.

- ▶ *Female and male adolescents should be detained in shared accommodation as a matter of principle. The minimum standards for juvenile detention shall be adapted accordingly.*
- ▶ *The daily routine as well as care shall be specified in a youth concept; in so doing, consideration shall be given to defining educational and occupational opportunities as well as (socio-pedagogical) care plans for female adolescents.*

2.5.5.3 Work and education

Adolescents in juvenile detention should be educated to display behaviour that conforms to the law and the requirements of community life. If the length of the sentence permits, they should be trained in a profession that corresponds to their knowledge, skills and their hitherto occupation and preferences insofar as possible.

Gerasdorf correctional institution As the expansion of the special institution for male adolescents into a “youth competence centre” was announced in spring 2017, there was broad consensus in the media on the importance of expanding occupational opportunities for the reintegration of the adolescents. In a broadcast, the Ministry emphasised: “It is especially important that the adolescents receive proper care and that we give them a perspective for a life in freedom through an apprenticeship or education!” (press release of 28 April 2017, available on the Federal Ministry of Constitutional Affairs, Reforms, Deregulation and Justice website).

Construction halt incomprehensible However, on a visit to Gerasdorf correctional institution in spring 2019, the NPM learned that the already started construction work had been halted. The Federal Ministry of Constitutional Affairs, Reforms, Deregulation and Justice replied that the planned expansion of the correctional institution into a “youth competence centre” had to be cancelled because of the budget situation. The NPM regrets this and reiterates the importance of adequate educational and occupational opportunities for adolescents in particular.

Innsbruck correctional institution The adolescents in Innsbruck correctional institution were hit even harder, as they were unable to complete any of their professional training due to the conversion of the institution kitchen. As long as the institution kitchen was operational, the adolescents could continue with their apprenticeship as baker, cook and waiter there.

The adolescents can only perform low-threshold contract work in a company providing occupational opportunities for juvenile department until further notice. Due to the weak order situation, sometimes only very few (usually only two) adolescents can work in the workshop. Furthermore, the workshop is often closed on Fridays due to staff shortages.

Temporarily no education programmes

On the positive side, the workshop in the juvenile department is mixed gender and female adolescents can find work there too.

- ▶ *Adolescents should be educated in a profession that corresponds to their knowledge, skills and preferences. Apprenticeship programmes should meet the needs and the interests of the adolescents. Girls shall not be discriminated against in this respect.*
- ▶ *The expansion of Gerasdorf correction institution into a youth competence centre should be continued.*

2.5.6 Personnel

2.5.6.1 Shortages in prison guard staff

The personnel situation remains tight in the area of law enforcement officers. Human resources shall be adapted to meet the needs of everyday life in detention.

The Federal Ministry of Constitutional Affairs, Reforms, Deregulation and Justice usually points out that the proportion of permanent positions filled in the law enforcement area is high in any case. For example, all of the law enforcement permanent positions allocated to St. Pölten correctional institution were filled on 1 April 2019; just 1.5 positions required to make up a complete team were unfilled in Wiener Neustadt correctional institution in spring 2019.

St. Pölten correctional institution

However, the allocated law enforcement permanent positions are not sufficient, as there are not enough officers in the different departments. These positions are necessary to ensure that the detainees can spend at least part of the day pursuing meaningful activity outside their cells in line with modern detention concepts. Increased staffing is also the condition for expanding the range of shared accommodation, occupational opportunities, activities and sports.

The available capacity in the law enforcement area in the correctional institutions was *de facto* reduced with the possibility of crediting more hours for night shifts (from one to currently 1.5 hours) at the same staffing level. An increase in planned permanent positions in the law enforcement area would have already been necessary at that point in time in order to offset absenteeism (see NPM Report 2018, p. 120 et seq.).

Needs foreseeable

Additional responsibilities An additional burden is that correctional institutions in the Higher Regional Court district of Vienna have to escort one-day furloughs. These deployments bind personnel capacity which is then not available in the correctional institution, particularly for work in the departments. Vienna-Josefstadt suffers tremendously from this and urgently needs relief due to its chronic overcrowding.

The NPM considers an alignment of human resources with the real requirements indispensable in order to guarantee appropriate living conditions for the detainees and prevent human rights violations. The Federal Ministry of Constitutional Affairs, Reforms, Deregulation and Justice has promised to request an additional 150 regular permanent positions (Eb2) and 100 trainee permanent positions (E2c) in the next plan on permanent positions. It remains to be seen if this request is granted and how quickly these positions can be filled with suitable candidates.

Considerable rise in sick leaves The successive rise in sick leave of prison guards has become a considerable strain for regular service in recent years (this was highlighted regarding Vienna-Josefstadt correctional institution last year, see NPM Report 2018, p. 130 et seq.). In St. Pölten correctional institution for example, 5,500 hours of sick leave were reported in the period from November 2003 to October 2004; in contrast, in the period from November 2017 to October 2018, the figure was 22,500 hours of sick leave. The number has thus tripled.

According to information from the Federal Ministry of Constitutional Affairs, Reforms, Deregulation and Justice, this is predominantly long-term sick leave. Those on sick leave have been requested several times to undergo an examination by the public medical officer in St. Pölten and police chief medical specialist in Vienna. It was also promised that meetings to discuss the return to work would be held with the affected officers. It remains to be seen if these measures will have any effect.

Vienna-Josefstadt correctional institution Regrettably, these return to work meetings did not have the desired effect in Vienna-Josefstadt correctional institution. The short-term sick leave failed to develop a downward trend too. The large number of staff on sick leave drove the employer to define measures for health promotion together with the prison wardens, and implement them in the institutions.

Supporting measures Health days are held regularly in Vienna-Josefstadt correctional institution: a wide range of medical check-ups, vaccinations (flu and TBEV vaccination, hepatitis vaccination) and vaccination advice as well as a large number of keynote talks are offered.

Furthermore, a psychological service staff position was established at the Correctional Services Academy (*Strafvollzugsakademie*) that, amongst others, is responsible for evaluating the physical and mental strain at the workplace in the correctional institution.

- ▶ *Additional human resources are needed to meet the legal and minimum standards for the requirements of modern detention.*

2.5.6.2 Training and continuing education for employees in women's correctional institutions

The NPM reported about the nationwide continuing education course for the detention of women, which took place in October 2018 and April 2019 for the first time (see NPM Report 2018, p. 131 et seq.). In the future, these training courses will be mandatory for officers working in women's correctional institutions.

The Federal Ministry of Constitutional Affairs, Reforms, Deregulation and Justice assured that officers who have already been working in the women's section for a long time will complete the training course too. The Ministry was unable to tell when all of the officers deployed will have completed this training course. However, great emphasis is being placed on the training and continuing education of officers working in the field of women's detention. The goal is that all officers deployed to women's correctional institutions complete the training course as soon as possible.

- ▶ *All officers deployed in women's correctional institutions should complete the training course for the detention of women as soon as possible.*

2.5.7 Living conditions

2.5.7.1 Insufficient occupational opportunities and excessive lock-up times

Last year's report (see NPM Report 2018, pp. 118 et seq.) highlighted how the lack of staff in correctional institutions combined with the strain for the personnel are reflected in particular in long lock-up times and inadequate occupational opportunities for the detainees.

This was found once again in the period under review. For example, there was an alarmingly high number of prisoners in Eisenstadt correctional institution without any occupational activities. Of 180 persons, only 48 detainees pursued an occupational activity; that is around 27%.

Eisenstadt correctional institution

It is understandable that it is difficult to offer all prisoners a meaningful occupation in a court prison with high detainee fluctuation. However, some

two thirds of the inmates in Eisenstadt correctional institution are convicted and just one third are awaiting trial.

The Federal Ministry of Constitutional Affairs, Reforms, Deregulation and Justice assured that the management of Eisenstadt correctional institution is continuously making efforts to achieve a high level of occupational activity for the inmates. Their efforts are, however, constantly hindered by absenteeism. The Ministry also remarked that the NPM visit had taken place during the main holiday period, which explains the low occupational activity rate.

Innsbruck correctional institution

In the previous year, the court prison of Innsbruck correctional institution gave grounds for criticism due to inadequate occupational opportunities and the excessive lock-up times (see NPM Report 2018, pp. 118 et seq.). Regrettably, the situation there has not improved. Innsbruck correctional institution has a capacity of 475 places. In January 2019, some 55% of the detainees had a job. Of the 260 detainees in Innsbruck correctional institution who have a regular job, 15 were awaiting trial.

The NPM therefore recommended once again that the occupational opportunities for detainees in Innsbruck correctional institution are expanded and the range of jobs increased. To this end, the relevant amount of space is needed on the one hand, to be able to set up sufficient companies or operating areas. On the other hand, sufficient personnel is required in order to be able to keep the companies open on an ongoing basis. Furthermore, more areas for relaxed detention shall be created so that the detainees with no occupational opportunities are not locked in their cells for 23 hours per day. The doors of the cells should be kept open during day shift as a general rule so that detainees spend at least eight hours outside their cells and occupy themselves meaningfully.

Stein correctional institution

Last year, there was criticism of the fact that since the beginning of 2018 the companies and workshops in Stein correctional institution are closed during the (main) holiday periods (Easter week, in the summer etc.). In addition, the lock-up times were prolonged in some departments in July and August 2018, as there was no extended service.

Half of the companies closed

This situation had worsened by a follow-up visit at the end of November 2018. On the day of the visit, 13 out of 27 companies were closed due to the lack of staff. Overall, in 2018 about 1,900 companies were closed or not fully operational; between January 2019 and March 2019 approx. 300 were closed or not fully operational. Stein correctional institution justified this with staff shortages. The information gathered by the NPM showed that as a consequence of the closures jobs cannot be completed in time and orders have to be cancelled. The closed days are demotivating not only for the prisoners but for operations managers too.

The NPM reiterates that workshops and companies should not remain closed due to staff shortages. Otherwise, available jobs are not continuously manned and the lock-up times of the detainees are extended. The large number of days on which the workshops and companies are closed are a mental strain for the detainees and have an adverse effect on the atmosphere in the institution. Furthermore, the prisoners have less money as the opportunity to earn is reduced.

Multiple negative effects

It remains to be said that in Stein correctional institution approx. 97% of the law enforcement permanent positions are being filled. However, companies still regularly remain closed and extended lock-up times were ordered during the summer months. The allocated permanent positions do not suffice (see above chapter 2.5.6.1 “Prison guard staff shortages”). The NPM thus recommended filling the vacant permanent positions as soon as possible and once again requesting additional permanent positions in the law enforcement sector at the next round of negotiations.

Permanent positions do not suffice

Fortunately, this recommendation was followed. All 311 law enforcement permanent positions in Stein correctional institution have been filled since the end of May 2019. It was also recognised that an expected 13 candidates will complete their basic training in prison guard service at the beginning of March 2020 and will commence work at Stein correctional institution. These new positions should cover unforeseen absenteeism of officers and prevent the closure of workshops and companies.

The Federal Ministry of Constitutional Affairs, Reforms, Deregulation and Justice also set up a working group that will analyse the operational organisation of Stein correctional institution and suggest changes where necessary. From the evaluation of the operating structure, the ministry expects efficiency improvements in staff deployment that will have a positive effect on the employment situation. The working group assumed its activity in May 2019. In view of the fact that improvements to the operating organisation at Stein correctional institution should be achieved as soon as possible, it is difficult to understand why this working group was set up as a long-term project without a fixed timeframe.

Evaluation of operating structures

The enormous commitment of the managers of the companies and workshops at Stein correctional institution should also be mentioned. In addition, the offers for an apprenticeship or skilled worker training are diverse and future-oriented.

Positive observations

- ▶ *Vacant law enforcement permanent positions shall be filled as soon as possible.*
- ▶ *Additional personnel is required to reduce the lock-up times and increase the amount of occupational opportunities.*
- ▶ *Companies and workshops in the correctional institutions shall be open on an ongoing basis. The employment of external specialists in the companies shall be expanded.*

2.5.8 Infrastructural fixtures and fittings

2.5.8.1 Complete refurbishment, repairs and reconstruction demanded

Wiener Neustadt correctional institution On a visit to Wiener Neustadt correctional institution in September 2018, the NPM viewed the cells in the convicted and pre-trial department and noted considerable deficits.

Major shortcomings Many of the cells were in a state of serious neglect, the walls scribbled on and smeared. Windows were broken and could not be closed. The furnishings were worn in many cells and damaged in most cases. Sanitary facilities were only separated from the cell in a makeshift way and had no ventilation. Some cells had mould and some did not have sufficient lighting.

The observed prison conditions in Wiener Neustadt correctional institution deviate considerably from infrastructural fixtures and fittings of other regional court prisons and fall clearly short of the minimum standard that can be expected. The complete refurbishment of the correctional institution is unavoidable in order to guarantee the humane detention of the detainees.

It was also recommended that the standard of hygiene of all mattresses, blankets and pillows be regularly examined, cleaned at regular intervals and replaced if necessary.

Ministry confirms the need for refurbishment The Federal Ministry of Constitutional Affairs, Reforms, Deregulation and Justice reported that repair measures were undertaken immediately. Regrettably, no improvements could be observed during a visit of the cells in the men's section on a consultation day in Wiener Neustadt correctional institution in February 2019. A recent visit in the late autumn of 2019 showed little progress in this respect.

Wiener Neustadt correctional institution has since been allocated new management. The Federal Ministry of Constitutional Affairs, Reforms, Deregulation and Justice promised to reduce the occupancy level of Wiener Neustadt correctional institution decreasing the number of detainees in the men's section in order to facilitate the efficient and rapid refurbishment of the intolerable prison conditions there. A refurbishment plan is currently being developed.

The condition of the building at Klagenfurt correctional institution is also critical. The entire structure is in urgent need of refurbishment. There is also not enough room to provide modern detention conditions. This situation has been criticised by the NPM for years. The fast construction of a new building is unavoidable in order to be able to meet the requirements of modern detention. The Federal Ministry of Constitutional Affairs, Reforms, Deregulation and Justice assured that there are plans for rebuilding the correctional institution. However, concrete details could not be provided yet.

Klagenfurt correctional institution

The situation regarding the structural problems in Sonnberg correctional institution is also unchanged. The visitor area is still not barrier-free. Long visits can still not be held in the correctional institution because of the lack of suitable rooms. The detainees thus have to be transported to Korneuburg correctional institution for family visits, which then binds personnel resources. These time-related additional tasks are particularly difficult for an overall tight staffing level that is designed for normal detention and does not take the high proportion of (150) risk offenders with increased care and security requirements into account.

Sonnberg correctional institution

The therapy rooms in Sonnberg correctional institution are completely inadequate too. There are only bare, narrow rooms available which preclude any therapeutic atmosphere; these include a tiny room (the so called “police room”) that is reserved for police interrogation and questioning.

The NPM reiterates its request for construction of a new visitor area. The management of the institution has applied for this repeatedly. The construction could also include the urgently needed therapy rooms. There is sufficient space inside the surrounding area. The Federal Ministry of Constitutional Affairs, Reforms, Deregulation and Justice recognises this necessity; a feasibility study has been available since February 2017. However, more urgent measures had to be given priority for budget reasons. It is thus not clear, when the construction measure can be implemented.

Space for visitor area and therapy rooms needed

It is not justifiable that the therapy rooms should be created only after completion of construction of a visitor area. In an institution that specialises in the treatment and care of detainees with increased therapeutic needs, there should be a sufficient number of therapy rooms.

In November 2018 the sanitary facilities of the admission section of Vienna-Favoriten correctional institution were visited. The NPM noted on this visit that there was mould in the shower room. The NPM recommended removing the mould promptly and implementing measures to ensure air circulation or better ventilation (e.g. installation of ventilators, ventilation grilles). The Federal Ministry of Constitutional Affairs, Reforms, Deregulation and Justice reacted promptly and organised the refurbishment in May 2019.

Vienna-Favoriten correctional institution

Furthermore, it was recorded on this visit that the kitchen in the admission section was damaged in places and very dirty. The criticism by the NPM was also taken as an opportunity to organise overall refurbishment, which was completed at the end of May 2019.

Leoben correctional institution

For years, the detainees at Leoben correctional institution have complained about the frequent interruptions to the supply of warm water. The Federal Ministry of Constitutional Affairs, Reforms, Deregulation and Justice reported repeatedly of measures to rectify this problem, which regrettably have not delivered the desired result for many years.

In December 2018 the Federal Ministry of Constitutional Affairs, Reforms, Deregulation and Justice reported that the reason for this is the highly sensitive shower fittings. These fittings are now being successively replaced – whenever a defect is reported – with standard single-lever taps. In this way, a solution was found that does not hinder operation and is exorbitantly costly.

- ▶ *Maintenance and refurbishment work or reconstruction shall ensure that the rooms and fittings in correctional institutions meet the minimum standards that can be expected of modern, resocialisation-based detention.*
- ▶ *Sufficient, contemporary therapy rooms should be available in institutions that specialise in the treatment and care of detainees with increased therapeutic needs.*
- ▶ *Sufficient space shall be provided for long-term visits.*

2.5.8.2 Toilets in cells for multiple inmates

Dornbirn satellite facility of Feldkirch correctional institution

As on the recent visits to Dornbirn satellite facility of Feldkirch correctional institution, the NPM observed that the structural condition of one cell did not comply with the legal provisions. The toilet was inadequately separated from the rest of this cell for multiple inmates.

Structural separation mandatory for years

Since 1 January 2017, it has been required by law that toilets have to be structurally separated from cells. The toilets in cells for multiple inmates must be completely separated from the rest of the cell. A toilet in a cell for multiple inmates that is only separated by a partition that is open at the top and the bottom does not comply with the hygiene standards and the principle of safeguarding human dignity.

The NPM reiterates the recommendation to ensure a complete structural separation of the toilet from the rest of the cell as soon as possible. Furthermore, the installation of ventilation systems is also recommended. Only one inmate shall be detained in the cell until it is refurbished accordingly.

- ▶ *Toilets shall be completely separated from the remainder of the cell in cells for multiple inmates in order to comply with hygiene standards and safeguard human dignity.*

2.5.8.3 Right to privacy when giving urine samples

On a visit to Dornbirn satellite facility, several inmates claimed that they had been observed by prison guards while giving urine samples. A mirror for the indirect observation of the urine sample is not fitted – contrary to standard practice – in the toilets. No mirrors

The Federal Ministry of Constitutional Affairs, Reforms, Deregulation and Justice responded that the detainees are searched prior to giving the urine sample. The urine sample is then given alone and without direct supervision. This “gentle” approach means that it is not necessary to fit a mirror.

The decree for providing a urine sample gives the detainees a choice. The detainee can decide if he would prefer to make the urine sample under direct supervision or undergo a body search in advance. Approach not conformant with the decree

The NPM therefore recommends fitting a mirror in each toilette where urine samples are normally given and informing the inmates about their choice in this matter.

- ▶ *The detainees can choose whether they would prefer an indirect observation when giving a urine sample or being searched beforehand. Exercising this right of choice shall not be impeded by inadequate structural conditions.*

2.5.9 Contact to the outside

2.5.9.1 Visiting time

Detainees should have the opportunity to maintain their relationships with family and friends. Regular contact to the outside world is a major contributor to the resocialisation process. The visiting times should enable working persons or school-age children to visit prisoners. The NPM considers it advisable that detainees can be visited at least on one workday including in the afternoon or in the early evening as well as at the weekend.

The institution management shall set the visiting times for four weekdays including at least once in the evening or at the weekend. The management of the correctional institution therefore has the choice to allow visits in the evening hours or at the weekend. Legal provisions permit either one evening visit or the opportunity to visit at the weekend; this is merely the minimum Needs-based visiting times

in the NPM’s point of view. The guiding principle should be to generally encourage contact with the outside world.

The NPM already criticised the visiting times in several correctional institutions in the reports in previous years (see NPM Report 2015, p. 110 et seq.; NPM Report 2016, p. 127), as they did not correspond with the real life of working people, in particular when visitors have to travel some distance to the institution. Regrettably, this common practice gave grounds for criticism once again in 2019.

Klagenfurt correctional institution	In Klagenfurt correctional institution, visits are possible Monday to Thursday from 7.30 a.m. to 3.30 p.m., Tuesday from 4.00 p.m. to 6.30 p.m. and Friday from 7.30 a.m. to 12.30 p.m. There are no visiting times at the weekend.
Graz-Jakomini correctional institution	In Graz-Jakomini correctional institution, visits are allowed on Monday and Tuesday from 8.00 a.m. to 3.00 p.m. and Wednesday to Friday from 8.00 to 12.00 p.m. Children can only see their detained parents in the school holidays. The Federal Ministry of Constitutional Affairs, Reforms, Deregulation and Justice already conceded in 2018 that an extension of the visiting times at Graz-Jakomini correctional institution is also in the interest of the prison administration. The implementation can – apart from the tight personnel situation – not be achieved unilaterally but has to be agreed with the President of the Regional Court and the public prosecutors’ office.
Eisenstadt correctional institution	The visiting times in Eisenstadt correctional institution also gave grounds for criticism. Visits were allowed only on weekdays until the early afternoon. On the positive side, the reaction to the criticism was that visits are now possible on one weekday until 6.00 p.m.

- ▶ *The visiting times shall be set such that working persons and school-age children can visits detainees too.*
- ▶ *Visits should also be possible in the afternoon or the early evening on at least one workday and at the weekend.*

2.5.9.2 Table visits

Touching not allowed	In Wiener Neustadt correctional institution, it is not possible to hug or touch visitors during a so-called table visit (visit with reduced or no physical barriers). There is a family visiting room but this is only available for children up to the age of two. During the “normal” visits, there are strict instructions not to touch each other. A low pane of glass is also fitted to the table. Apart from this, family visits and table visits are infrequent.
Family-friendly atmosphere	The NPM recommended that family visits be made possible not only with children under the age of two but also with children of all ages as well as with

partners. Furthermore, the visits with children shall be organised as child-friendly as possible. Generally speaking, visits should be organised in such a way that prisoners can maintain family relationships as normally as possible.

The Federal Ministry of Constitutional Affairs, Reforms, Deregulation and Justice points out that the organisation of table visits is not standardised by law. As long as there is no fear that the table visits will be abused, surveillance is not necessary or the loosening of other rules for organising the visit can be approved. The complete removal of physical barriers is not set forth in the law. For this reason, the approach used by Wiener Neustadt correctional institution is not criticised by the Federal Ministry of Constitutional Affairs, Reforms, Deregulation and Justice. With respect to the physical contact ban during table visits, the Ministry points out that there is no subjective right vis-à-vis the public authorities regarding how the visit is organised, the foregoing of surveillance or permitting bodily contact.

Strict contact ban is disproportionate

The NPM stresses that in many other court prisons table visits are held without physical barriers and bodily contact is allowed. It is encouraging that the approach used by Wiener Neustadt correctional institution was addressed during an inspection by representatives of the Federal Ministry of Constitutional Affairs, Reforms, Deregulation and Justice. The result was that the new management of Wiener Neustadt correctional institution was requested by the Ministry – in accordance with the recommendation of the NPM – to permit table visits without any barriers between the detainees and the visitors.

- ▶ *Table visits should – provided there are no concrete security concerns to the contrary – be held without physical barriers and with the possibility of bodily contact.*
- ▶ *Family visits shall be made possible with children of all ages and partners as a matter of principle. Visits with children shall be organised in a child-friendly way as far as possible.*

2.5.9.3 Internet telephony

Internet telephony provides a cost-effective and modern opportunity for detainees to maintain contact with their families and friends during their time in detention. This modern form of communication is especially helpful if the contact is very restricted or not possible due to high telephone costs or long distances to the prison (e.g. from abroad). The NPM already recommended the introduction of Internet telephony in correctional institutions in 2015 (see NPM Report 2015, p. 110; NPM Report 2016, p. 127 et seq.).

Cheap form of communication

The Federal Ministry of Constitutional Affairs, Reforms, Deregulation and Justice started a pilot project with some delay for the implementation of

Pilot project not yet complete

Internet telephony in Graz-Karlau correctional institution in April 2017 and in Garsten and Stein correction institutions respectively in October 2017. The test phase was extended several times due to unforeseen technical problems. In May 2019 the ministry communicated that the devices in use were to be transferred to a new, more reasonable software and the project is continuing. As a consequence of this change, it is not foreseeable when an evaluation of Internet telephony and a roll-out of the same to other correctional institutions will take place.

The NPM anticipates that, in view of the long pilot phase in particular, there will be nationwide Internet telephony as soon as possible.

Legislative amendment
foreseeable

On the positive side, “holding telephone calls via video telephony in accordance with the technical conditions available in the institution” will save money in the future. A legislative draft contains a regulation regarding this matter, with which to amend the Penitentiary System Act (*Strafvollzugsgesetz*) and the Probation Assistance Act (*Bewährungshilfegesetz*). The amendment was submitted for assessment in late autumn 2019.

► ***The introduction of Internet telephony shall be expedited in all correctional institutions.***

2.5.10 Access to information

2.5.10.1 Video interpreting

System has proved
successful

In previous years, the reports also addressed the special challenge of the diversity of languages and the successful pilot project of “Video interpreting in correctional institutions” (see NPM Report 2015, pp. 97 et seq.; NPM Report 2016, p. 124 et seq.; NPM Report 2017, p. 134 et seq.). The NPM emphasised that the communication of, in particular, medical information and health care shall not fail because of language barriers, and requested the installation of a video interpreting system. Likewise, qualified interpreters shall be engaged in administrative penalty proceedings in order to avoid any dependent relationships with fellow detainees who translate.

Extension to specialist
areas

Fortunately, these recommendations by the NPM were followed without exception. Since April 2017, there is at least one video interpreting system in each Austrian correctional institution for the medical area. The system was rolled out to other specialist areas in the care field (e.g. psychological service, social work service) and to the administrative penalty unit in April 2018.

The NPM also recommended documenting the use of video interpreters in the Integrated Prison Administration system. This recommendation was also

followed and every time video interpreters are used, is now recorded in the Integrated Prison Administration system.

Detention practice does not always keep pace with the ministerial directives. On numerous occasions in recent years, the available device was not or inadequately used. Fellow detainees are still called on to translate instead of professional interpreters.

Reticence prevails

This came to light most recently on a visit to Graz-Jakomini correctional institution in spring 2019, where the NPM observed, that the video interpreting system was used just once in March in the infirmary of the correctional institution.

Graz-Jakomini
correctional institution

The protection of privacy anchored in constitutional law requires that other inmates cannot be privy to confidential medical data in sensitive areas such as at doctor's appointments. Even if other inmates are deployed on the initiative of detainees themselves, only sworn interpreters shall be engaged for the translation of sensitive medical questions or results. It must also be ensured that medical information is correctly communicated to the affected person.

Non-professional not
allowed at medical
appointments

The NPM reiterates that the video interpreting system available nationwide should be used. Detainees shall not be consulted for translation services. The medical staff shall be referred to the video interpreting system. Translations by other detainees shall not be permitted.

The NPM also recommends the possibility of deploying video interpreting – perhaps with mobile devices – in the access area and in the departments (“locked zone”). The Federal Ministry of Constitutional Affairs, Reforms, Deregulation and Justice states in this regard that, due to the current technical conditions and the network infrastructure, the implementation of a mobile video interpreting solution is not feasible. The all-in-one devices currently in use can be moved inside the correctional institution in any case; all that is needed to use them is a power and network connection.

Faster availability of the
devices

To date, the NPM has not been able to determine whether the monitors are transported to different departments inside the correctional institution or whether the devices are used in the access area or in the departments when there are language barriers. It therefore recommended informing all of the prison guards that the all-in-one video interpreting devices can also be used in the departments and during admission if required. The relevant detailed procedure shall be defined: a contact person shall be designated who is trained in the use of the device and is responsible to transporting the same etc.

The NPM will ascertain on its monitoring visits whether the devices can actually be moved easily and are used in the event of language barriers in the access area and in the locked zone of the prison guards.

Satellite facilities undersupplied It is noticeable that there is no video interpreting device in the satellite facility (Dornbirn satellite facility of Feldkirch correctional institution). The Federal Ministry of Constitutional Affairs, Reforms, Deregulation and Justice considers this unnecessary, as care is taken that the detainees selected for this satellite facility can express themselves at least in English. The ministry also said that several foreign languages are covered by the multilingual staff. The NPM remains firm in its recommendation that satellite facilities too shall be equipped with a video interpreting system.

- ▶ *Qualified interpreters shall be engaged when there are communication problems in the medical area, in administrative penalty proceedings and during counselling (e.g. psychological service, social work service).*
- ▶ *The video interpreting systems available nationwide shall be used without exception in the medical area, in administrative penalty proceedings and for counselling. Detainees shall not be deployed for translation services.*
- ▶ *The video interpreting system should also be used in the access area and in the departments.*
- ▶ *Video interpreting shall also be provided in the satellite facilities.*

2.5.11 Detention of mentally ill offenders

Monitoring the living conditions of persons who have become criminal as a consequence of mental illness is one of the core areas of the NPM mandate. Because of the risk that these persons could commit another crime with serious consequences, the court can also impose a “precautionary measure” in addition to or instead of the penalty, depending on whether they were accountable or not at the time of the deed. Such measures are prescribed for an indefinite period. They shall be enforced for as long as their purpose requires. Precisely because this does not rule out lifelong detention, the placement of mentally ill offenders in detention is particularly sensitive from a human rights point of view.

2.5.11.1 Material and personnel conditions

Göllersdorf correctional institution As in previous years, the NPM also visited Göllersdorf correctional institution, a special facility with the mandate to treat offenders who cannot be held accountable for their crimes. The focus of the visit this time was the living conditions of those detained there over the long term. One of them showed clear signs of hospitalisation. This was confirmed by the medical management.

Three persons who were interviewed have been detained for more than ten years. For people who have been locked up for so long, release is highly unlikely even if their dangerousness has been reduced. All of those involved thus now assume that one detainee will spend the rest of his life in this institution. He is now 73, has been in detention since 1968 and in Göllersdorf correctional institution since it was opened.

Resocialisation can no longer be expected

Conversely, there is a trend which indicates that an increasing number of younger persons with intellectual impairments are admitted to detention for mentally ill offenders. For example, the delegation diagnosed a slight to moderate impairment of intelligence in five of the inmates. Four inmates had lived in a facility for persons with disabilities before. The motivation behind the crimes perpetrated by these persons is not characterised by an excessive use of violence.

Admission from shared accommodations for persons with disabilities

There are no resources available for this group of persons: there is no care staff for persons with disabilities, no special expertise, few opportunities for 1:1 care and individual support; Augmentative and Alternative Communication is unknown; even the simplest aids are not available. For these persons too, there is a risk of strong hospitalisation and excessively long detention.

It was suggested that the problem of detaining mentally ill persons be addressed in consultation with the facilities for persons with disabilities. On the one hand, this should serve to avoid persons with impairments being “expelled” from facilities for persons with disabilities to detention for mentally ill offenders. On the other, it is hoped that this will help to expand the network of follow-up care facilities (in particular in Lower Austria).

Lack of specialised institutions and facilities

The NPM is aware that the group of perpetrators who cannot be held accountable living in detention for mentally ill offenders (pursuant to Section 21 (1) Austrian Criminal Code) is very heterogeneous and responds differently to treatment. It is also the case that there is often no significant improvement in the psychopathological condition of patients with severe symptoms. It is therefore all the more important, that adequate, humane living conditions are provided for persons without the perspective of release.

Regrettably, the NPM encountered conditions quite to the contrary on its visit. The hygienic conditions could only be assessed as catastrophic in one department. The kitchen was in an appalling state of neglect. There was an immediate reaction to this criticism and a new kitchen was acquired. The mould-ridden sanitary facilities in the accommodation area of the employees were refurbished. A new ventilation system was installed in addition to new showers.

Hygienic deficits

The structural measures might have effected some improvement, but they have no impact on the underlying structural problem. Göllersdorf correctional institution is far from the standard that is expected from a centre for forensic

therapeutic care. Reports in previous years already highlighted that the material conditions at Göllersdorf correctional institution cannot be improved to the extent that the quality standards of a therapeutic centre can be achieved. In this respect, the request for a new building or extension remains (see NPM Report 2017, pp. 104 et seq.).

- ▶ *The lawful detention of mentally ill offenders is not possible without modern infrastructure.*
- ▶ *Persons who were previously in a facility for persons with disabilities tend to be at a particular disadvantage in detention for mentally ill offenders. Without specialised follow-up care facilities, there is a considerable risk that they will be detained for excessively long periods of time.*

2.5.11.2 Fixation straps attached to patient beds

Pavilion 23/2 at Otto Wagner Hospital

On the visit to Pavilion 23/2 of Otto Wagner Hospital, the NPM criticised that fixation straps are permanently attached to the patient beds and only covered with a sheet. The patients are thus forced to lie and sleep on top of the wide straps with buckles.

The medical staff justified this situation by saying that the straps have to be close at hand in acute cases; they are thus permanently attached to the beds.

Practice changed

The NPM is aware of the need to have the fixation straps immediately available. Nevertheless, the straps shall be attached to the patient bed in a such a way that they are not uncomfortable or do not cause pressure when lying on the bed. Fortunately, there is feedback that since the NPM visit the fixation straps are removed directly after the restraint is ended.

- ▶ *Fixation straps should be removed from the bed directly after the restraint is ended.*

2.5.11.3 Documentation of restraints

Mostviertel Amstetten-Mauer Regional Clinic

The meticulous documentation of restraints is of particular importance from a preventive point of view, as experience has shown that this results in a decrease in the deprivation of freedom. A large number of restraint logs were only partially filled out on a visit to the forensic department of Mostviertel Amstetten-Mauer Regional Clinic. They often contained only diagnoses and referred to the danger to the person themselves and to third parties without detailing the specific situation.

The Federal Ministry of Constitutional Affairs, Reforms, Deregulation and Justice explained that the visit of the NPM was at a time when the hospital was changing to electronic documentation. Gaps in the documentation in isolated cases were due to an interface problem. These problems have since been rectified.

- ▶ *Restraint logs must document precisely the necessity of each measure that restricts freedom.*
- ▶ *Measures that restrict freedom shall be recorded centrally. This is a condition for the possibility of effectively reducing restrictions of freedom.*

2.5.11.4 Video-monitored patient rooms

In Mostviertel Amstetten-Mauer Regional Clinic, the NPM noted that a video camera is installed in all of the rooms in the newly constructed building for forensic patients. The NPM warns that infringements of the privacy of the affected persons must be proportionate and compliance shall be observed.

Mostviertel Amstetten-Mauer Regional Clinic

The Federal Ministry of Constitutional Affairs, Reforms, Deregulation and Justice assures that the video surveillance is only activated if this is necessary to avert danger and the same cannot be achieved using less severe measures. In any case, the affected patients are informed accordingly. However, it is not possible for them to know if and when the camera is switched on. The NPM thus recommended a mechanical cover for the cameras.

On a positive note, all of the cameras are now covered by a roller blind, thus indicating whether a camera is in operation.

- ▶ *In a video-monitored patient room, it must be possible for the patient to see if the camera is in operation.*

2.5.11.5 Video-monitored patient rooms

For the NPM, there is the question of who covers the travel expenses for patients if they have to return to hospital for a short stay as part of an interruption in their detention. This question was raised on a visit to the two forensic wards of Graz Süd-West Regional Hospital.

Graz Süd-West Regional Hospital

The NPM considers it good practice when the medical, psychological and care staff travel to the follow-up care facilities to inform themselves about the condition of the patients. This is more comfortable for the patients than

having to travel repeatedly to the hospital in Graz. The staff receive a kilometre allowance for the travel.

Conversely, there are cases in which the illness requires a stay in a hospital ward for observation.

Federal Government should bear the costs

The Federal Ministry of Constitutional Affairs, Reforms, Deregulation and Justice confirmed that Graz Süd-West Regional Hospital requires cost sharing on the part of patients if their “financial situation” permits. At all other locations where measures that restrict freedom are enforced pursuant to Section 21(1) of the Austrian Criminal Code, however, these costs are born by the enforcement facility. In the interest of equal treatment, the Ministry was recommended that in the event of cost sharing the Federal Government will reimburse the cost to the patient.

► *Any travel expenses as part of a break in detention should not be charged to the patient.*

2.5.11.6 No care contract despite non-profit status -St. Oswald ob Eibiswald retirement home

Assisted residential facility

On a visit by Commission 3 to St. Oswald ob Eibiswald retirement home, in which 14 forensic residents live, the question was raised as to why no care contract was concluded with this home.

Contract with Federal Government not a must

The general directorate responded that the pertinent legal provisions do not require the conclusion of contracts. It is also not the intention to conclude a contract pursuant to Section 179a (s) of the Penitentiary System Act (*Strafvollzugsgesetz*) with every non-profit facility covering every programme nationwide. Furthermore, in this specific case, neither the Federal Ministry of Constitutional Affairs, Reforms, Deregulation and Justice nor the home have the desire to conclude a framework agreement.

Expansion desirable

The NPM has to acknowledge the explanations above. However, as an evaluation of the range of services is only considered in those facilities which have such framework agreements, it should be in the interest of the Federal Government to successively expand the group of facilities that fulfil the conditions pursuant to Section 179a (3) of the Penitentiary System Act.

- ▶ *Even if the legal situation does not stipulate the mandatory conclusion of a contract pursuant to Section 179a (3) of the Penitentiary System Act, agreements should be concluded with as many non-profit facilities as possible.*

2.6 Police detention centres

2.6.1 Introduction

Ten visits to police detention

In 2019 the commissions carried out ten visits to police detention centres, to Vordernberg detention centre and to the special transit area of Schwechat Airport.

The commissions mainly examined compliance with the stipulations for detention set forth in the decree of the Federal Ministry of the Interior of January 2018. The focus of the visits was on monitoring the fixtures and fittings and structural condition of the police detention centres as well as the implementation of the improvements envisaged by the Federal Ministry of the Interior.

2.6.2 New decree on detention enforcement and new hygiene directives

As explained in its Report 2018 (p. 140 et seq.), the NPM recommended the Federal Ministry of the Interior in May 2016 and in December 2017 to implement the standards adopted by the working group on conditions in police detention centres.

The decree of the Federal Ministry of the Interior of January 2018 deviated from these standards in some cases; regulations are also missing in places (see NPM Report 2018, p. 141 et seq.). Furthermore, neither the revision of the hygiene directives for police detention centres nor that of the Directive on Workplaces (*Richtlinie für Arbeitsstätten*) were complete at the beginning of 2019 (see NPM Report 2018, p. 142).

Adaptation of the Directive on Workplaces

In June 2019 the Federal Ministry of the Interior reported the completion of the revision of the Directive on Workplaces, which had taken over four years. The NPM was recently informed that the new directive should be released in spring 2020.

From the point of view of the NPM, the incorporation of all of its recommended standards, which can only be realised through structural measures, requires the assessment of several specialist departments of the Federal Ministry of the Interior. However, without the release of the new Directive on Workplaces it is to be feared that, amongst others, the provision of rooms for table visits, the construction of privacy walls in the communal shower rooms and the physical separation of toilets in cells for multiple inmates in all police detention centres will be delayed once again.

The NPM will therefore continue to monitor the implementation of all standards and specifications of the Federal Ministry of the Interior that require structural measures.

In September 2019 the Federal Ministry of the Interior submitted the revised hygiene directives for police detention centres of 1 July 2019. The Ministry integrated all of the standards adopted by the working group in this directive including fixtures and fittings in the centres (with bed linen etc.), access to (free) toiletries and shower facilities. The directives also contain the specifications agreed with the NPM for cleaning and changing bed linen and mattresses. The NPM will monitor the implementation of the specifications on its visits based on these directives.

New hygiene directive for police detention centres

Together with the hygiene directives, the Federal Ministry of the Interior also presented the NPM the new decree on detention enforcement of May 2019. This decree contains all of the amendments envisaged by the Ministry, which the NPM requested in the previous year (see NPM Report 2018, p. 141 et seq.)

New decree on detention enforcement

The decree now stipulates that all examinations after the initial examination by a public medical officer at the beginning of placement of a person in a special security (padded) cell shall take place within twelve hours.

Amendments implemented

If there is no video monitoring system or the video monitoring is broken or not functioning properly, a person in a security cell shall be personally monitored at least every 15 minutes. Persons in padded cells shall be constantly monitored directly beside the cell if the video monitoring is broken or is not working properly.

According to the decree, barrier-free use of a telephone shall be enabled if needed, as concluded by the working group.

On the positive side, the new decree contains a regulation for monitoring the use of handcuffs and/or shackles for convicts in padded cells (see NPM Report 2018, p. 142). Accordingly, the effect of and need for handcuffs and/or shackles for this person shall be monitored and documented constantly, at the least once every hour. In addition, not only the time at which food and liquids are offered to persons in padded cells and the possible rejection or refusal on the part of the prisoner shall be documented, but also visits to the toilet.

Additional obligations for documentation

The NPM thus anticipates a more precise documentation of all measures and offers to persons detained in padded cells.

Equally positive is an amendment to the specifications in the decree of January 2018 in connection with occupational opportunities for the detainees. The decree of May 2019 stipulates fitting all cells that are not used for preventive detention with one socket respectively per detention place and at least two more sockets, that is, in total three (instead of two) sockets.

Regulations on the protection of non-smokers The Federal Ministry of the Interior integrated all of the no smoking standards for the protection of non-smokers agreed by the working group in the new decree (see NPM Report 2017, p. 147).

Restriction of opportunities for table visits Another important topic, which was discussed by the working group in detail, was the visiting modalities. The working group agreed that in future open visits should be the norm in police detention centres. The new decree deviates from this regulation, which was discussed in detail and jointly agreed with the Federal Ministry of the Interior (see NPM Report 2015, p. 122 et seq.). The NPM criticises this action by the Ministry sharply and condemns it with regard to the affected persons as a setback from the human rights perspective.

In accordance with the decree of January 2018, table visits for detainees awaiting forced return and prisoners serving an administrative penalty should be enabled depending on the existing space situation in the respective police detention centre, provided there are no reasons to the contrary regarding the prisoner or the visitors.

Supposed risks of table visits The decree of May 2019 stipulates that personnel resources for monitoring table visits should also be a condition for the same. After much painstaking correspondence, the Federal Ministry of the Interior recently communicated that the highest possible standard of safety and order cannot be guaranteed during table visits in the police detention centres. Table visits are therefore – as has been the case to date – only possible in Vordernberg detention centre.

The Federal Ministry of the Interior pointed out that there is an increased risk with visits to prisoners who are suffering from addiction or display a mental disorder, as forbidden addictive substances, medication or syringes can be smuggled in. There is also the risk that prisoners are coerced by other prisoners into having themselves brought substances into the police detention centre at table visits. Furthermore, the close personal contact with visitors or relatives could trigger not only conflict but also impulsive assaults on visitors by prisoners in order to blackmail their way out of detention. This risk is prevalent among detainees awaiting forced return, for whom the detention situation poses an emotional strain.

According to the Federal Ministry of the Interior, extensive personnel, organisational and structural measures are required in the larger police detention centres in particular, such as Hernalser Gürtel detention centre, in order to counter these risks.

From a structural perspective, two completely separate visiting areas for table and security visits including an entrance and exit security gate for visitors with metal detector as well as a room for visits from accompanied children or minors would have to be created there. It would be necessary to increase the number of law enforcement officers deployed for security visits from two to between eight and eleven to operate and monitor table visits. Furthermore, the

existence of exclusion criteria and searching of the persons to be visited as well as all prisoners before and after a table visit would have to be documented. Even more personnel is required to this end.

The Federal Ministry of the Interior stated that the working group did not discuss the amount of funds necessary for these measures, which is not currently covered by the budget. This is why the regular enabling of table visits is currently not possible.

According to the Ministry there is no money

For the NPM, it is highly critical that the Federal Ministry of the Interior is now withdrawing on the basis of budgetary aspects allegedly not discussed by the working group. All of the participants in the working group – naturally including those from the Ministry – were aware that the unanimously defined standards can only be realised if the relevant funds are available. The topic was discussed, but inclusion in the standards was rejected, as the budget would have to be available in order to fulfil the standards.

Working group certainly did discuss budgetary aspects

With regard to the occupational opportunities, the minutes of the working group approved by all participants on 23 February 2016 contain the following passage: “It is recommended to include a passage in the standards which considers the guarantee in the current budget that functional devices and objects for leisure activities should always be available. If the standards exist and they should be fulfilled, it is of course necessary that a budget is planned for the same. Anchoring this in the standards is thus not necessary”. The NPM therefore assumed and relied on the fact that funds would be available for the jointly defined standards.

The NPM cannot understand the security concerns either. These are based on an objectively unverifiable general suspicion of all persons in police detention. The Federal Ministry of the Interior did not consider that the working group agreed criteria for precluding table visits, for example the suspected abuse of prescription medication or when there are specific security concerns.

Subjective general suspicion at the expense of all detainees

In addition, it was also not taken into account that several visits were to police detention centres in which there is no enforcement pending forced return. The safety arguments that predominantly referred to detention pending forced return did not apply in these centres. The Federal Ministry of the Interior completely ignored the detention-centre-specific arguments. The NPM is not satisfied with this and will continue to follow-up on this topic. During a meeting with the NPM from Germany and Switzerland in Zurich in autumn 2019, it was learned that open visits in detention pending forced return are considered normal in both of these countries. This is further motivation for open visits in police detention.

After a visit to Innsbruck police detention centre in March 2018, the NPM confronted the Federal Ministry of the Interior with the fact that it is not possible for prisoners to have visits on Saturdays or Sundays. The Federal

Visit to Innsbruck police detention centre at weekends

Ministry of the Interior referred in this context to the practice reported by the Police Department of Tyrol according to which it is possible for prisoners in Innsbruck police detention centre to have visits at the weekend and on public holidays too. On a follow-up visit in September 2019, the commission ascertained when viewing the visitor lists of the last three years that during this time there was not a single visit to a prisoner on a Saturday or Sunday. This observation will necessitate further examination by the NPM.

Evaluation of implementation status

The NPM initiated an *ex-officio* evaluation in May 2019 to determine the implementation status of all recommended detention enforcement standards since 2015.

The sobering result is that, according to the Federal Ministry of the Interior, all of the standards have only been implemented in Vordernberg police detention centre. The Ministry did not take a stance on Innsbruck police detention centre due to the pending closure in 2020. Due to the alleged pending closure of Linz police detention centre in December 2019, the ministry refrained from reporting here also. Steyr police detention centre, which is due to be closed after the refurbishment work at Linz police detention centre has been completed, was also excluded.

All cell types not available everywhere

It was noticed while examining the information from the Federal Ministry of the Interior that all police detention centres have “normal” single cells (class 1); however, some have no security cells (class 2) or special security (padded) cells (class 3). According to the Ministry, neither the extension nor the conversion or a new construction is planned for the Eisenstadt and St. Pölten police detention centres. It can thus be deduced that there will be no class 2 and 3 cells there in the medium term.

Table visits only possible in exceptions

In addition to a general account of the police detention centres in which do and do not offer the possibility of long-term detention pending forced return, the Federal Ministry of the Interior reiterated that table visits are only possible on a regular basis in Vordernberg police detention centre, in the other police detention centres, however, only in exceptions.

In line with the standards on occupational opportunities for the detainees adopted by the working group, the programmes foreseen in the decree are available without restrictions in Bludenz, Hernalser Gürtel and Roßauer Lände police detention centres according to the Federal Ministry of the Interior.

Different occupational opportunity programmes

The Ministry reported about applications to subsequently equip Eisenstadt, Wels and Villach police detention centres with basketball baskets. These could not be installed in Klagenfurt, St. Pölten and Wiener Neustadt due to the low height of the yard. Balls and sports mats were not provided in Klagenfurt police detention centre because of the lack of usable space. A table football game is planned for Villach police detention centre in future.

The examination for fitting all cells at Eisenstadt police detention centre with TV connections and sockets is underway. The refurbishment plans for Salzburg and Graz police detention centres already include these fittings. The fitting of all cells at Villach police detention centre with sockets is due as part of the already planned refurbishment.

Reports from the visits indicate that, contrary to the objective of the standards adopted by the working group, there is no nationwide occupational opportunities programme.

Also the implementation of the structural standards regarding hygiene adopted by the working group varies greatly in the police detention centres. According to the Federal Ministry of the Interior, the common shower facilities at Eisenstadt, Villach, St. Pölten, Wels, Hernalser Gürtel and Roßauer Lände police detention centres thus have privacy or partition walls between the individual showers. With the exception of Bludenz police detention centre, the installation of such partitions in the shower facilities of the other police detention centres is already planned. At the same time, the complete structural separation of the toilet in cells for multiple inmates is also planned for Wels, Salzburg and Graz police detention centres.

Different arrangement of showers and toilets

Besides, the information from the Federal Ministry of the Interior indicated that there are different possibilities for storing personal belongings in the cells. For example, there are lockable lockers in the cells of Eisenstadt, Wels, Salzburg, Graz, Hernalser Gürtel and Roßauer Lände police detention centres. There are open shelves in Klagenfurt, small shelves in Bludenz, and small shelves with doors in St. Pölten police detention centres respectively. The Ministry promised to include the possibility of storing away personal belongings during the planned refurbishment in Villach and Wiener Neustadt police detention centres.

Somewhere to store personal belongings in the cells

The NPM will monitor the announced measures for improvement and other information during its visits. Only when the standards set forth in the decree of May 2019 are finally realised, has the Federal Ministry of the Interior implemented the recommendations.

- ▶ *The technical surveillance of all cells used for securing purposes should be carried out using video surveillance that is independent of any light source and observing the personal space of the detainees.*
- ▶ *Detainees in police detention centres must be allowed to use their own brought in lamps etc., provided that these do not bother other persons.*
- ▶ *Detainees in police detention centres should have the opportunity to purchase (mobile) LED lamps in the police detention centre or the detention centre.*
- ▶ *There must be a sufficient number of cells available in all police detention centres which are suitable for solitary confinement pursuant to Section 5 and/or Section 5b (2) (4) of the Detention Regulation (Anhalteordnung).*
- ▶ *Specially secured cells should have natural daylight, and there must be natural or mechanical ventilation in all single cells.*
- ▶ *All single cells must have an alarm button, the activation of which has to be acknowledged at the cell.*
- ▶ *Single cells pursuant to Section 5 of the Detention Regulation must be fitted with a sink, supply of cold and hot water, a sit-down toilet, a bed and a table with seating.*
- ▶ *Tiled security cells shall have a (squat) toilet.*
- ▶ *Detainees awaiting forced return must be transferred to the open section of the police detention centre within 48 hours of admission. Exceptions to the open detention should only be possible in the cases agreed with the NPM.*
- ▶ *Section 5a of the Detention Regulation should be amended for the textualisation and clarification of the principles of detention pending forced return enforced in the open section of police detention.*
- ▶ *Visits to the detainees should take place at a table unless there are specific, safety-relevant criteria as well as in the event of prisoners in court custody. The undisturbed course of table visits must be guaranteed – if necessary, through structural measures.*
- ▶ *A dedicated room with a table must be provided for visits by minor relatives in police detention centres.*
- ▶ *Access to hygienic sanitary facilities for the detainees in police detention centres as well as the protection of their personal space at all times must be guaranteed through structural and/or organisational measures.*
- ▶ *Toilets in cells for multiple inmates in police detention centres must be completely separated from the rest of the cell. The mattresses and textiles handed out to detainees must be clean.*
- ▶ *Occupational and leisure opportunities in the scope agreed with the NPM should be available to all detainees in police detention centres.*

2.6.3 Other aspects of detention enforcement in police detention centres

In its Report 2018 (see p. 144 f.), the NPM examined the assignment that the Federal Ministry of the Interior should enable all persons detained in St. Pölten police detention centre to keep their personal belongings in lockable containers in their cells on a trial basis. The NPM started gathering information on this topic in 2019 in order to gain knowledge from the trial operation.

Lockable containers

The report by the Federal Ministry of the Interior indicated that the trial operation is still ongoing. All of the persons detained in the police detention centre since March 2019 had been given a multilingual information sheet and had been instructed about the possibility of receiving a padlock. However, none of the prisoners had shown any interest in locking the existing boxes in the cells with a padlock.

The NPM reiterated to the Federal Ministry of the Interior that the lack of interest on the part of the inmates of St. Pölten police detention centre does not necessarily mean that there is no demand for lockable storage options in the other police detention centres. From the point of view of the NPM, the different occupancy rates and equipment of the cells in the various police detention centres shall be taken into consideration too.

In order to safeguard privacy in cells for multiple inmates, the NPM endorsed the provision of a lockable storage option for small, personal belongings of the prisoners to a reasonable level in all police detention centres.

The working group for living conditions in police detention centres was unable to conclusively clarify the provision of video telephony (“Skype”) or Internet, as there was no information available on the cost (see NPM Report 2018, p. 143).

Video telephony and Internet access

In the course of the continued discussion, the Federal Ministry of the Interior reported about the results of a trial operation of video telephony in Graz Karlau, Garsten and Suben correctional institutions. According to this, the licence fees per year for the – not yet available – provision of video telephony in all 28 correctional institutions would cost approx. EUR 60,000, and the one-off cost for the hardware would amount to approx. EUR 45,000. These costs are too high for police detention. Electronically controllable Internet access requires considerable technical and financial expense, which is why this is not established.

The NPM is not in a position to counter the cost argument of the Ministry. However, on a visit to the airport prison in Zurich (Switzerland) in October 2019, the NPM observed that the foreigners held in administrative detention there were generously provided access to the Internet. The NPM recommended that the Federal Ministry of the Interior obtain more information on the

arrangement and organisation of this use of the Internet from the prison or the competent regulatory authority.

Digital documentation of curative-medical detainee information

On a visit to Villach police detention centre, the NPM had doubts that the complete medical treatment information of detainees were forwarded, when they were transferred to other police detention centres. The Federal Ministry of the Interior was able to refute these doubts. The NPM took the recommendation of the commission to set up the digital documentation of curative-medical information in all police detention centres and detention centres, however, as an opportunity to initiate *ex-officio* investigations of this topic.

The Federal Ministry of the Interior announced to implement the digital documentation as part of a necessary update of the “Detention File Prison Administration” application by the end of 2020. Regarding the question from the NPM as to which technical solution is planned in this respect, the Ministry recently reported that it has already commissioned the update.

- ▶ *Those detained in cells for multiple inmates should have somewhere to lock their personal belongings in the cell in order to safeguard their privacy.*
- ▶ *The centralised digital documentation of curative-medical information of detainees should be established generally in all police detention centres as soon as possible.*

2.6.4 Case-oriented analysis of suicides and attempted suicides

In accordance with the standards developed by the working group for suicide prevention, the offices for quality and knowledge management at the Police Departments should analyse every suicide or attempted suicide in future. This analysis should consider the medical, psychological and organisational aspects of the case (see NPM Report 2017, p. 149).

Lack of clarity concerning the subject matter of the analysis

In January 2019 the Federal Ministry of the Interior announced it would create a concept for conducting this analysis by June 2019. However, in July 2019, the Ministry informed that in order to conduct a conclusive analysis it wants to consider not only cases of suicide and attempted suicide but also parasuicidal gestures and self-harm. The Ministry promised to start a pilot operation in Vienna in autumn 2019.

The NPM clarified in this context that the case-oriented analysis is designed to establish whether and why signs of (attempted) suicide remained unrecognised. Consequently, in the view of the NPM, the analysis includes an examination of whether the person displayed parasuicidal behaviour before the incident.

The Federal Ministry of the Interior recently reported that the data protection officer of the Police Department has no objection to an evaluation of suicide

cases based on executed, organisational measures. However, the evaluation of all anonymised health data on suicides and attempted suicides necessary for the case-oriented analysis is not compatible with the current legal situation.

The NPM does not follow the reference to the disclosure ban and prohibition on exploitation pursuant to Section 39a (1) of the Hospitalisation of Mentally Ill Persons Act (*Unterbringungsgesetz*) in this matter, as this only affects official acts by security authorities pursuant to Sections 8 and 9 of the Hospitalisation Act. This includes the involuntary placement of a person in a psychiatric ward with a medical certificate (the existence of a psychiatric illness that can only be treated in a psychiatric ward as well as being a danger to oneself or others) on the one hand. On the other, this also includes the powers or obligation of the security authorities to present the person for medical examination in special suspected cases.

Data protection concerns on the part of the Ministry

The ban pursuant to Section 39a (1) of the Hospitalisation Act serves to prevent the possibility of retrieving documented evidence of a psychiatric illness of the affected person. The official acts pursuant to Sections 8 and 9 of the Hospitalisation Act can, in the view of the NPM, thus only be executed after perception of potential self-harm of the affected persons resulting from a psychiatric illness. Experience shows that not every attempted suicide is attributable to a psychiatric illness. Furthermore, the case-oriented analysis should also serve to highlight possible failures in dealing with identifiable suicidal tendencies in the police institution, however, not (in addition) with a psychiatric illness.

The working group on suicide prevention clearly defined the approach for how suicide and attempted suicide shall be discussed and followed-up in police detention centres. The NPM strongly criticises that implementation of this definition is impeded by data protection law considerations which – in the view of the NPM – are unsuitable.

- ▶ *Organisational guidelines shall ensure that a case-oriented, standardised analysis and follow-up for the optimisation of preventive work take place after every suicide or attempted suicide.*

2.6.5 Fire protection in police detention centres

In the year under review, the NPM also pursued the implementation of the recommendations of the Dialogue Committee on Civil Society (*Zivilgesellschaftliches Dialoggremium*) of the Federal Ministry of the Interior for improving preventive and defensive fire protection in the area of police detention (see NPM Report 2018, p. 147 et seq.).

Recommendations included the use of metal fireproof rubbish bins amongst others in the cells and leisure areas of police detention centres (see NPM Report 2018, p. 148). The Federal Ministry of the Interior responded that it would not be following this recommendation. Investigation of the incidents to date had shown that the material of the rubbish bin had not been critical or increased the risk in any of the fires in cells.

Trial of „target-group-oriented deployment training“

The practical training in the area of searching persons and body searches of detainees with special focus on fire protection should be held as “target-group-oriented deployment training” in future. This training is a further development of the existing deployment training for law enforcement officers that is customised to the respective deployment area. The relevant trial operation was carried out until December 2019 in police detention centres and detention centres in the Laender Salzburg, Styria and Vienna. The Federal Ministry of the Interior did not have any results recently.

Electronic fire protection book

The Federal Ministry of the Interior also reported about a pilot operation started in April 2019 for an electronic fire protection book in selected sections of the Police Department of Upper Austria, which depicts all building structures and technical equipment. The responsible fire protection staff has to recurrently work through or inspect 47 topics at specified intervals. The extensive training of the fire protection staff of the Police Department of Upper Austria is planned from February 2020. The nationwide roll-out of the electronic fire protection book is due during the course of 2020.

E-learning modules under development

In June 2019 the Security Academy approved the theoretical fire protection training programmes (eLearning modules) on de-escalation in dealing with psychotic and aggressive persons and specific fire protection training. According to the Federal Ministry of the Interior, the work on this training content will be completed in 2020.

After inspecting all extinguishing agents and fire protection equipment in the police detention centres, the Federal Ministry of the Interior decided to purchase more compressed air equipment alongside the classic smoke hoods. The approval has already been issued. Purchase of the equipment can be expected in 2021.

- ▶ *The fire protection standard in police detention shall be aligned to that applicable for correctional institutions as a minimum.*
- ▶ *The Federal Ministry of the Interior should develop an overall strategy for the nationwide uniform organisation of preventive and defensive fire protection and issue specifications accordingly.*
- ▶ *All cells used for long-term police detention should have suitable, automatic fire alarm systems.*

2.6.6 Occupational opportunities in police detention centres

During their visits, the commissions monitored the occupational opportunities available to detainees. In so doing, they took the decree of the Federal Ministry of the Interior of January 2018 into consideration.

According to this decree, the detainees should have the opportunity to use a recreation room. On a visit to Innsbruck police detention centre in November 2018, the NPM criticised that the two common rooms which had been unused on the previous visit in March 2018 were still locked because of damage from a water leak. The Federal Ministry of the Interior reported that the rooms have been usable again since the completion of extensive refurbishment work in April 2019.

Recreation rooms locked

Board games shall also be provided for the prisoners. However, there was an insufficient number of these available on visits to Hernalser Gürtel police detention centre in January 2019 and Wels police detention centre in February 2019.

Lack of board games

A sufficient amount of functioning sports equipment such as table football, basketball baskets, balls, table tennis equipment (if possible) and sports mats or small gym mats shall also be provided. The NPM criticised on a visit to Innsbruck police detention centre in November 2018 that a basketball basket, balls and sports mats were missing. The Federal Ministry of the Interior promised to purchase this equipment.

Lack of sports equipment

After a visit by the commission to Hernalser Gürtel police detention centre in January 2019, the Federal Ministry of the Interior assured that damaged or unused objects are replaced on an ongoing basis. As there were not enough basketballs available on the day of the visit, the NPM was unable to verify this assurance.

It was also noted that detainees were not offered any occupational opportunities which are provided by external persons such as NGOs or clubs (e.g. painting and dance courses). On the recommendation of the NPM to permit such opportunities in the police detention centre in accordance with the decree, the Federal Ministry of the Interior responded that such programmes are not available in the police detention centre.

Leisure activities accompanied by external persons

The NPM deduced from this that the Police Department of Vienna had not actively promoted these programmes. From the NPM's point of view, leisure activities from external providers can only take place in police detention centres, if the Police Departments are active and contact potential providers or inform them in writing. The assistance for persons being detained pending their forced return or spiritual counselling would be a good starting point for example. The NPM thus recommended entrusting the Police Department of Vienna with the promotion of suitable, externally provided leisure activities.

Without active support on the part of the competent department, the standard adopted by the working group will not be implemented in reality.

- ▶ *The detainees shall be provided with occupational opportunities in the scope agreed with the NPM. To this end, it is necessary that the respective competent department contact persons and clubs and actively obtain offers.*

2.6.7 Inadequate fixtures and fittings in police detention centres

The importance of follow-up visits is evident again every year. The NPM first receives promises from the Federal Ministry of the Interior that the rectification of deficits has been organised. On follow-up visits, however, the commissions found unchanged conditions, which is why the NPM has to query and urge those responsible to make progress. It should also be mentioned, that some deficits are rectified quickly and the commissions can confirm the implementation thereof.

Wels police detention centre

On a visit to Wels police detention centre in May 2016, the NPM recommended painting the walls of the yard. Furthermore, it recommended the Federal Ministry of the Interior to increase the load capacity of the outside lift of the administrative building which was limited to 180 kg. Persons who are confined to an electric wheelchair were unable to use the lift, thus precluding barrier-free accessibility to the building. The Ministry informed the NPM in 2016 that the owner of the building, the Federal Real Estate and Property Corporation (*Bundesimmobiliengesellschaft*), wanted to implement these recommendations.

On a follow-up visit in February 2019, the commission saw that none of the measures had been implemented. The Federal Ministry of the Interior reported about the intention of the owner, to realise the recommended measures, but was unable to provide a timeframe in this matter.

The commission also found that the toilets in the cells for multiple inmates were not completely separated and six of the eight showers were not working properly. As the Federal Ministry of the Interior promised the refurbishment of Wels police detention centre after the renovation of Linz police detention centre, the NPM recommended keeping the occupancy rate down until then in order to minimise infringements of the detainees' privacy. The Ministry agreed to replace the showerheads (on an ongoing basis), which calcify quickly, which is why the NPM recommended the installation of a water softener.

The NPM also criticised the dispensing of medication and addictive substances for the detainees by law enforcement officers without paramedical training in the absence of medical staff.

On a visit to Hernalser Gürtel police detention centre in January 2019, the commission detected massive soiling on the walls and in the sanitary areas of six cells. In addition, the showerheads or fittings were missing on half of the showers in the common shower room on the first floor. The NPM welcomed the promised refurbishment and cleaning measures and the intention to have fittings that cannot be manipulated installed in the showers.

Hernalser Gürtel police detention centre

On a visit to Bludenz police detention centre in 2018, the NPM recommended removing the opaque shafts in front of the cell windows on the first floor, as it did in 2016. The NPM also criticised the lack of a ramp and a passenger lift in the building that cannot be accessed in a barrier-free way. The Federal Ministry of the Interior reported at the time that it had commissioned cost estimates.

Bludenz police detention centre

During a follow-up visit in October 2019, the commission noted that the shafts were still there and there were no plans to remove them. Furthermore, the two single cells in the basement of the police detention centre did not have sufficient supply of fresh air. The NPM recommended the ministry to remove the shafts and install ventilation for the single cells.

On a visit to Innsbruck police detention centre in November 2018, the commission observed deficits in the fittings of the common shower room in the basement and in one cell. The Federal Ministry of the Interior reported that the deficits were rectified shortly after the visit. The Ministry also announced the discontinuation of operations of the police detention centre at the current location and the relocation to Innsbruck correctional institution at the end of 2019.

Innsbruck police detention centre

During a follow-up visit to the police detention centre in September 2019, the commission learned that the relocation of the police detention centre would only be in mid-2020, as the necessary conversion of Innsbruck correctional institution was delayed.

- ▶ *The condition and fittings of cells in the sense of the Detention Regulation must always enable the humane detention of persons.*
- ▶ *Detention enforcement standards agreed with the NPM, which can only be realised through structural measures, should be implemented without delay.*

2.6.8 Deficits in the documentation of detention

Arrested and detained persons have certain information and notification rights (see NPM Report 2018, p. 159). These persons shall be informed of their rights and this shall be documented in the detention log. The detained persons

Verifiable information on rights

shall confirm that they have received instruction or information sheets or have waived their rights with their signature.

If a person refuses to sign, this shall also be documented in the detention log. Should the behaviour of the person make it impossible to inform them or hand out information sheets, the reasons shall be noted (see NPM Report 2017, p. 157).

Missing documentation
in the detention log

On a visit to Innsbruck police detention centre in March 2018, the commission already found that these notes were missing in the detention log. The Federal Ministry of the Interior conceded that the law enforcement officers had failed to document the refusal of the detained person to sign as well as their uncooperative behaviour.

During a follow-up visit to the police detention centre in November 2018, it was noted in the case of a detainee that the signature to confirm that they had received information sheets was missing in the detention log. The reasons for this were also not noted. The Federal Ministry of the Interior responded that the mental state of the detainee at the time of his arrest stopped him from being informed and receiving information sheets. As the report about this official act already contains information on the health condition of the affected person, the documentation in the detention log was not considered necessary.

The NPM contradicted this view of the Ministry and recommended measures to increase awareness on the part of the law enforcement officers, which, according to the ministry, have already been implemented.

Misleading notes

On this visit, the commission also detected deficits in the documentation of three placements in the padded cell of the police detention centre. The reports of the measures contained the misleading note "Alternative clothing: No". Consequently, it was not ascertainable whether the detainees had been offered tear-resistant clothing after undressing and had refused to take it, or whether they had not been offered the clothing at all.

The Federal Ministry of the Interior assured that alternative clothing is always offered after the detainees' clothing has been confiscated. For this reason, the note is to be interpreted as the refusal of this offer. According to the ministry, the Police Department of Tyrol nevertheless organised measures to better document the refusal of alternative clothing.

Confiscation of
alternative clothing -
detainees naked?

The commission examined the documentation of placements in the padded cell and the offer of alternative clothing during a follow-up visit to Innsbruck police detention centre in September 2019. It became clear that the alternative clothing provided to two persons had to be confiscated again because they had tried to strangle themselves with it. It was thus to be assumed that the detainees were then naked. The NPM pointed out its reluctant stance on the complete disrobing of detainees to the Ministry (see NPM Report 2018, p. 155).

Not only the documentation of orders and measures during detention enforcement but also the documentation of medical examinations including those by public medical officers as well as reasons should be complete, conclusive and verifiable.

In light of the above, the NPM conducted an *ex-officio* investigation of the circumstances surrounding the death of a detainee with a walking impediment who was awaiting forced return in Roßauer Lände police detention centre in June 2019. According to the Federal Ministry of the Interior, the deceased had been certified as fit for forced return three days before the incident. Even on the evening before the incident, there had been no noticeable signs of his subsequent death. The NPM will continue investigating this case, as the detainee awaiting forced return had been unable to sit up in bed without help on the day before his death according to the statement of the facts presented by the legal advisor.

Fatality in Roßauer
Lände police detention
centre

► *The documentation of detention in police detention centres shall be complete and verifiable.*

2.6.9 Staff shortages at Hernalser Gürtel and Roßauer Lände police detention centre

As presented in the NPM Report 2018 (see p. 153), detention awaiting forced return shall be conducted as open detention. Detainees awaiting forced return shall thus only be held in closed cells under certain conditions (see NPM Report 2016, p. 135 et seq.). These criteria apply exclusively to specific reasons regarding the person or the behaviour of the detainee.

The Federal Ministry of the Interior informed the NPM between February and November 2019 in several reports about the temporary restriction of open detention awaiting forced return in Hernalser Gürtel and Roßauer Lände police detention centres. The Ministry justified these restrictions, which were usually only for a few hours, in several reports with the lack of available guards.

Restriction of open
detention awaiting
forced return

At the beginning of November and December 2019, reports from Vienna Police Department made clear that those awaiting forced return did not only face short-term restrictions of open detention. The reports indicated that the doors of the cells allocated to detainees awaiting forced return were open only between 8.00 a.m. and 5.00 p.m. (instead of the 8.00 a.m. and 9.00 p.m. as stipulated in the decree of the Federal Ministry of the Interior). The Vienna Police Department justified this measure with the staff situation in the police detention centres.

The reports also indicated that due to a lack of available places in the open detention area of Hernalser Gürtel police detention centre, newly admitted detainees awaiting forced return were not transferred from closed detention within 48 hours at the latest but on average only after 60 to 70 hours. The commission observed this practice during a visit to Hernalser Gürtel police detention centre in January 2019. The NPM criticised this approach that does not comply with the specifications in the decree.

Numerous unfilled permanent positions

During a follow-up visit to Roßauer Lände police detention centre in June 2019, the commission learned that of a total 320 planned permanent positions in the entire Vienna police detention centre only approx. 275 were filled.

The NPM took this information as an opportunity to initiate ex-officio investigative proceedings. The Federal Ministry of the Interior pointed out that the staff shortages hinder not only the enforcement of open detention in conformance with the decree but also the execution of table visits. Furthermore, it is to be feared that the overload for the staff has a negative impact on how they deal with the detainees.

- ▶ *The staffing level in police detention centres should correspond to the target situation. Understaffing shall be avoided in order to prevent overload.*
- ▶ *Detainees awaiting forced return shall be placed in open detention within 48 hours of admission to the police detention centre or detention centre.*
- ▶ *Exclusion of detainees awaiting forced return from open detention in police detention centres should only be for the reasons agreed with the NPM.*

2.6.10 Vordernberg detention centre

As reported in 2018 (see NPM Report 2018, pp. 151 et seq.), the NPM confronted the Federal Ministry of the Interior with the deficits found during a visit to Vordernberg detention centre in April 2018. The Ministry was able to refute numerous points of criticism. Furthermore, the Ministry reported about measures for the rectification of several deficits.

Rectification of some deficits

For example, the detained persons can move freely in the institution for over an hour every second weekday in accordance with the new care concept. During this time, they have the opportunity to visit the gym, the sports field, the table tennis table, the library and the meditation room. The Federal Ministry of the Interior also reported about the disposal of expired medication. Furthermore, promised to examine the employment of a clinical psychologist as well as possible measures for cooling the rooms in the detention centre from an occupational medical perspective. The Ministry also reported about the

change in the menu made in October 2018, which now includes information on nutrients.

The commission conducted a follow-up visit to the detention centre in February 2019. It observed once again that there was no electronic patient documentation in the out-patient section. The staff in the out-patient section attributed this to the refusal of the Federal Ministry of the Interior to carry the cost of a specific programme. The commission identified several deficits in medication management. Medication was ground several hours before dispensing, Diazepam tablets were ground before being administered instead of using a liquid dosage form and there was no consultant pharmacy monitoring of medicinal product management. During the visit, the management of the out-patient section and the detention centre expressed the need for additional medical, psychiatric-specialist and clinical-psychological staff.

Follow-up visit in
February 2019

The Federal Ministry of the Interior reported about efforts to win additional (specialist) medical staff for work in the out-patient section, which ultimately failed due to the lack of interest on the part of suitable candidates. With regard to the electronic patient documentation, the ministry stated that all of the adaptations to a programme desired by the out-patient section operator had been financed. The operator had however refused to use the programme in March 2019 referring to legal concerns.

The Federal Ministry of the Interior also reported about commissioning the recommended consultant-pharmacy-related examination of the out-patient section and on measures for cooling the detention centre building (installation of an air conditioning system, attaching heat protection film to the windows).

The Federal Ministry of the Interior could not refute the criticism of the NPM regarding the grinding of medication hours before dispensing it. The argument that grinding the medication directly before dispensing is too time-consuming was inconclusive from the NPM's point of view. Apart from that, the NPM considered filling the advertised position for a clinical psychologist with a psychologist whose training is not recognised in Austria critical.

The commission conducted a further follow-up visit in July 2019, during which it was once again noted that there was no electronic patient documentation. The commission was told that efforts are being made to provide psychiatric counselling and treatment of detainees via video consultation at the detention centre.

Open questions after
follow-up visit

While examining the detainees' medical information it was apparent that two persons are detained in the detention centre although there were indications of a substance use disorder and opioid dependence before and during the admission examination respectively. This required clarification, because the Federal Ministry of the Interior had stressed several times in the past that it

does not admit detainees with a substance use disorder or opioid dependence to the detention centre but transfers them to Vienna police detention centre.

What also seemed questionable was the temporary relocation of detainees awaiting forced return from a shared accommodation which had been turned into a closed detention area to single cells. This measure was taken to enable to placement of arrested foreigners, who had entered Austria illegally, in the shared accommodation.

The NPM will naturally follow up on these questions.

- ▶ *The patient documentation in the out-patient section of the detention centre should be in electronic form and medical diagnoses should be in accordance with the ICD 10 classification system.*
- ▶ *The medical and care staff at the detention centre must be able to fall back on clinical-psychological and psychiatric expertise.*
- ▶ *The Federal Ministry of the Interior shall ensure that every detainee in the detention centre receives adequate curative-medical care based on state-of-the-art scientific knowledge.*
- ▶ *The Federal Ministry of the Interior should organise measures that enable psychiatric counselling and treatment via video consultation.*
- ▶ *The detention of detainees awaiting forced return in single cells should only be in the cases set forth in Section 5 and/or Section 5b of the Detention Regulation.*

2.6.11 Positive observation

The commissions repeatedly observed the high willingness to cooperate on the part of the staff in the visited institutions as well as the professional and correct way of dealing with the detainees in 2019.

Dedication of the warden of Bludenz police detention centre

The personal dedication of the warden of Bludenz police detention centre is exemplary. In the night before the visit by the commission, a detainee injured himself and was thus placed in a security cell. The warden came into the police detention centre the following day, his free day, to inform himself personally about the circumstances surrounding the incident and the wellbeing of the affected person.

Visits on public holidays possible

On the visit to Innsbruck police detention centre in September 2019, the commission ascertained that visits to detainees were neither predominantly in the form of table visits nor at the weekend. However, the opportunity for detainees to receive visitors on public holidays if visiting days are on such is a positive development.

2.7 Police stations

2.7.1 Introduction

The commissions visited 51 police stations in the year under review. As in previous years, the focus of these visits was on the proper documentation of measures that restrict freedom as well as the structure and furnishings of the stations and departments.

51 visits to police stations

The closure of basement detention rooms at police stations which do not meet all human rights criteria remains a major issue for the NPM (see chapter 2.7.2).

Basement detention rooms and staffing

The structural lack of staff in the police force feared in 2018 did not materialise in 2019 (see NPM Report 2018, p. 160). As in previous years, however, the NPM also criticised the unoccupied stations and departments and the low proportion of policewomen in police stations in rural areas (see chapter 2.7.3) in the period under review.

The NPM paid considerable attention in 2018 to observing fire protection and the provision of the opportunity for detainees in the detention room to contact the officers (see chapter 2.7.5).

2.7.2 Basement detention rooms at police stations

As presented in the report of the previous year (see NPM Report 2018, p. 159), the NPM followed up on the question of whether all impermissible basement detention rooms have been closed. The Federal Ministry of the Interior reported about the closure of the detention rooms in Ried im Innkreis motorway police station, which is why the NPM saw no grounds for further criticism.

Ried im Innkreis motorway police station

The information gathered on St. Johann im Pongau police station from 2015 already indicated that the station was located two floors above the two basement detention rooms (see NPM Report 2016, p. 153 et seq.). A query addressed to the Federal Ministry of the Interior showed that there had been no change to the layout. The NPM criticised that the detention rooms are still not connected to the station and should therefore be closed.

St. Johann im Pongau police station

In Traun police station, the location, ventilation and lighting in the three basement detention rooms were uncritical. However, all three cells were smaller than the stipulated minimum area of 6 m². The Federal Ministry of the Interior promised to examine possible structural changes. The NPM welcomed this initial measure, but criticised the size of the cells and recommended immediate closure until the deficits have been rectified.

Traun police station

- ▶ *Basement detention rooms in police stations must have sufficient lighting and ventilation, fulfil the fire protection regulations and guarantee direct contact and rapid reaction in the event of an incident.*
- ▶ *Basement detention rooms in police stations must be connected to the station and – regardless of their location – be of an adequate size.*
- ▶ *With new buildings and conversions, detention rooms should no longer be set up in the basement of police stations.*

2.7.3 Insufficient staffing of police stations

In previous years (see NPM Report 2018, p. 159), the NPM already criticised poorly staffed police stations and the associated workload for the law enforcement officers caused by overtime and night shifts.

Staff shortages cause higher workload

In 2019 the NPM criticised the fact that in Pappenheimgasse police station a fifth of the permanent positions were not filled from December 2018 onwards. The NPM assumes that the systematisation of this police station with 70 law enforcement officers is based on relevant personnel requirement planning. It is therefore not surprising that the 55 employees in Pappenheimgasse police station are under considerable strain. The actual staffing level in Ausstellungsstraße police station was far below the target figure despite a high workload. In Attnang-Puchheim police station and Bad Aussee police station too, several permanent positions were not filled. The Federal Ministry of the Interior followed the recommendation of the NPM to increase staffing in Bad Aussee police station as well as in Kremsmünster police station.

The NPM understands that the staffing level in a police station can fall below the planned target level for different reasons (sick leave, assignments, training etc.) from time to time. At the least, above average overtime should be avoided by implementing the necessary organisational measures, as stress and strain can also have a negative effect on the detained persons.

Personnel campaign and increased hiring

In 2019 the NPM completed the nationwide examination of staff shortages in the Austrian police force initiated at the end of 2017 (see NPM Report 2018, p. 159). In so doing, the NPM observed that the Federal Ministry of the Interior endeavoured to successively increase the number of employees in law enforcement. In 2019 a total of 2,000 additional trainee positions until 2022 were created thanks to an increase in permanent positions and a resolute recruiting and hiring campaign. This was also designed to offset the large number of retirements in the coming years. Fortunately, the Ministry promised to change from the rigid permanent position model to more flexible personnel requirement planning. The NPM will continue to observe this topic.

The commissions recorded the number of policewomen in the visited police stations in 2019 and found out that no policewomen were employed in Launsdorf police station and in Greifenburg police station. The number of policewomen was low in several police stations in rural areas. The Federal Ministry of the Interior was usually able to demonstrate that female law enforcement officers (from nearby police stations) were available when required. The Ministry also assured that requests to relocate policewomen to stations with fewer female employees would be fulfilled.

Low number of police women in police stations

Increasing the proportion of women in law enforcement is a concern for the NPM for two reasons. If a policewoman has to be called in from another police station because a woman is being detained, this extends the duration of the detention. A balanced gender ratio in the police force is also desirable in cases of domestic violence with regard to victim support.

The NPM recognises the endeavours of the Federal Ministry of the Interior to successively increase the proportion of women law enforcement officers (see NPM Report 2018, p. 160). Due to its lecturing activities for the police, the NPM can confirm that the proportion of women in the classes taught exceeded 50% in some cases.

- ▶ *The staffing level in police stations should correspond with the planned target. Understaffing causes stress and overload, both of which have a negative effect on the detained persons.*
- ▶ *In view of possible official acts which affect women, such as arrests and detention, there should be a balance between female and male law enforcement officers in police stations. The proportion of women in law enforcement should be increased.*

2.7.4 Deficits in the documentation of detention

The commissions regularly view the detention books and detention logs of the respective police station on their visits. Restrictions of freedom constitute serious infringements, which is why they have to be fully documented.

In 2019 the NPM once again stresses that arrested persons have certain information and notification rights (see most recently NPM Report 2018, p. 159 et seq.). If these are not granted, the right to personal freedom guaranteed under constitutional law is violated. Public security officers must inform detained persons of their rights and document the same. The detained person confirms receipt as well as the claiming or waiving of these information and notification rights with their signature in the detention log. If a person refuses to sign, the law enforcement officer must document this in the log.

Verifiable information on rights is important

Measures that restrict freedom must be documented in a traceable manner. For example, the time when handcuffs were placed and removed must be documented. The use of handcuffs and/or shackles on a person for a longer period of time must be justified.

Numerous documentation deficits

As in 2018, the commissions detected deficits in the documentation of detention and pointed this out to the heads of the police stations in the concluding meetings. Once again, the NPM criticised the inadequate documentation of the removal of handcuffs as well as the provision of information sheets. In some cases, detention logs were not completely filled and not signed by the attending law enforcement officers. The confirmation stamp of the admission of a detainee to a police detention centre was missing in a detention log. The duration of some detentions remained unclear. The notification of a legal representative was also not documented properly. In one case, a detention was only documented in the detention book.

The Federal Ministry of the Interior initiated training and awareness measures in the criticised cases.

Kematen police station - no detention book

Effective July 2017, the Ministry adopted a decree according to which all police stations with usable cells shall maintain a detention book. The decree also clarifies which entries have to be made (see NPM Report 2018, p. 159). On its visit to Kematen police station in May 2018, the commission criticised that there was no detention book. The Ministry rectified this deficit. In Gallneukirchen police station, the NPM criticised amongst others that three detentions in the cells had not been entered in the detention book.

In 2019 the NPM completed its monitoring of Mittersill police station, which was initiated in 2018 (see NPM Report 2018, p. 159) and recommended making law enforcement officers aware of the importance of the proper documentation of detention in personal meetings – and not for example “only” per email. The Federal Ministry of the Interior then organised meetings with the officers of this police station.

- ▶ *Detention in police stations shall be fully documented in a verifiable manner.*
- ▶ *The affected officers should be made aware of how to document detention properly in personal meetings.*

2.7.5 Structural deficits in police stations

If commissions identify structural deficits on their visits, these are usually discussed with the heads of the police stations during the concluding meeting. Deficits are often rectified quickly. If a solution cannot be reached in this way, the NPM informs the Federal Ministry of the Interior.

In 2019 the NPM criticised the fact that the special security cells in Tannengasse police station had not yet been retrofitted with a light-independent video monitoring system. The Federal Ministry of the Interior had promised to implement this measure in June 2018, but postponed it to the end of 2019 for financial reasons. In Gallneukirchen police station, the commission ascertained that both detention rooms were insufficiently lit. The ministry arranged the fitting of an adequate source of light and extension of the cell in detention room 1. The recommendation to only use detention room 2 for short-term detention was taken up by the Ministry. The NPM was recently informed that due to construction work use of the second cell is to be discontinued.

Numerous deficient furnishings and fittings

The NPM also criticised the unhygienic conditions in the detention rooms of Deutschlandsberg police station as well as the risk of fire, which was to be feared as a result of damaged electrical wiring caused by regular water leaks. The detention rooms were cleaned immediately. The Federal Ministry of the Interior also promised that the building would be refurbished. In Hall police station, the Ministry had rectified problems with flushing the toilet in a detention room as the NPM noted. The Ministry also followed the recommendation to improve the signage by adding two signs in Hermagor police station. The lack of protection for non-smokers as well as problems with storage of objects in a detention room in Kirchdorf/Krems police station were also rectified.

One point of criticism that cannot usually be rectified quickly or at all is the lack of barrier-free accessibility. The Federal Ministry of the Interior drew up a staged plan in accordance with the Federal Act on the Equal Treatment of People with Disabilities (*Bundesbehindertengleichstellungsgesetz*) indicating by when which police station should have barrier-free furnishings and equipment. In around 300 police stations, which are not included in the staged plan, barrier-free accessibility is technically infeasible. These stations had to be moved or alternative organisational solutions found by the end of 2019. The NPM will therefore urge police stations to equip themselves in a barrier-free accessible way as quickly as possible next year.

Lack of barrier-free accessibility

The commissions identified several police stations that do not have barrier-free access. In Marchtrenk police station, the Federal Ministry of the Interior had an additional call button installed. In Hall police station in Tyrol, the Ministry assured that an intercom would be installed. The NPM criticised that the intercom was too high in Motorbootstation Neumarkt am Wallersee – Seediens police station and in Friesach police station. The ministry promised

to move the intercoms in order to facilitate barrier-free communication. In Velden police station, the ministry promised to set up and mark a parking space for the persons with disabilities.

- ▶ *Police stations must be hygienic and have their own backup systems. Detentions rooms must be sufficiently lit.*
- ▶ *Police stations should be barrier-free. The existing staged plan pursuant to the Federal Act on the Equal Treatment of People with Disabilities shall be observed. Barriers shall be removed immediately in urgent cases.*

2.7.6 Supervision for law enforcement officers

The NPM is convinced that supervision, as guided reflection of professional conduct, can make a contribution to human-rights-oriented action on the part of law enforcement officers (see NPM Report 2018, p. 166). The commissions regularly address this preventive psychological support on their visits to police stations.

If the visit report explains why supervision seems appropriate in the visited police station or if the interviews with the law enforcement officers indicate that this aid appears to be unknown in the station, the NPM scrutinises both the possible reasons for this and awareness of this support.

Information initiative
of the Ministry on
supervision

The Federal Ministry of the Interior informed the NPM when it visited Dornbirn motorway police station in May 2018 that the Ministry's psychological service had adopted a pro-active information initiative for the promotion of supervision for 2018. The NPM enquired about the results of this initiative in May 2019.

Increased use of
supervision

The Federal Ministry of the Interior presented all of the measures implemented from December 2017 to May 2019 (new regulation of supervision with decree, setting up an information homepage, promotion in the media and within the education and training framework). The evaluation by the Ministry indicated that the number of applications for supervision in 2018 more than doubled compared to 2017. As a next step, the Ministry is planning to summarise the effects of the information initiative of December 2019.

The NPM welcomes the efforts of the Federal Ministry of the Interior and shares its view that the employer is not solely responsible for availing of supervision. Voluntary use is also preferred in a statement of opinion by the Human Rights Advisory Council on the "Supervision" template of 24 February 2015 (see NPM Report 2015, p. 137 et seq.). The NPM will continue to observe this topic and approach the Federal Ministry of the Interior in this matter again in 2020.

- ▶ *The use of supervision should be promoted. Superiors, in particular, should encourage the staff in their station to avail of supervision.*

2.7.7 Lack of knowledge about the OPCAT mandate

On its visits to Eggersdorf bei Graz police station and Friesach police station, the commission observed that those interviewed knew little about the responsibilities and powers of the NPM under the OPCAT mandate. The Federal Ministry of the Interior reminded all of the officers in both police stations of the relevant decree.

Awareness raised

The NPM welcomed that the officers were informed and their awareness raised. Knowledge of the responsibilities of the NPM is very important, as every police station can be affected by an NPM visit. For this reason, the responsibilities and powers of the AOB have also been the subject matter of basic police training since 2017. A total of 74 classes were instructed as part of basic police training throughout Austria in 2019.

74 police classes instructed

- ▶ *All law enforcement officers should be informed about the work of the NPM within the framework of the OPCAT mandate.*

2.7.8 No Detention Regulation poster

On a visit to Hall police station, the commission criticised that there was no abbreviated version of the Detention Regulation (*Anhalteordnung*) hanging in the detention rooms.

The Federal Ministry of the Interior was of the view that Section 1 (3) of the Detention Regulation does not apply to short-term detention in police stations. Those affected are not subjected to a regular daily routine during their maximum 48 hours of detention. Certain rights could not be claimed (for example, shopping, activity, visiting rules etc.) and obligations exercised (e.g. cleaning the cell).

No information on Detention Regulation necessary?

Pursuant to Section 1 (3) of the Detention Regulation, the regulations for the daily routine and the rights and obligations of the inmates stipulated in this Regulation shall be posted in an abbreviated form in the cells of the detention rooms of a security authority. Section 27 of the Detention Regulation stipulates that parts of said regulation shall be applied to detention in a cell in a police

station. The poster pursuant to Section 1 (3) of the Detention Regulation can be in extracted form and shall be available in several languages.

Mandatory posting of Detention Regulation

It is plausible for the NPM that those rules, which are typically designed for the enforcement of longer-term detention, do not have to be effective in short-term detention in a police station. However, it can be deduced from Section 27 of the Detention Regulation that at least an abbreviated version of the said regulation must be displayed in police stations as well.

The NPM thus criticised that the Detention Regulation was not hung out in the detention rooms of Hall police station.

► *At least an abbreviated version of the Detention Regulation must be hung out in the detention rooms of police stations.*

2.7.9 Positive observations

The commissions document their observations from every visit to an institution in a visit report. Positive aspects and improvements are also praised in the report and those responsible for a station informed in a concluding meeting. In some cases, it was important to the NPM to inform the Federal Ministry of the Interior as the most senior authority about positive impressions in writing. The Ministry and the affected police stations welcome this form of constructive cooperation.

Cooperation and well-equipped stations

The commissions often praised the detailed documentation of detention, the high level of cooperation, the harmonious work atmosphere, clean and well-equipped cells, training offered on the topics of mental illness and dementia as well as barrier-free, modern police stations.

Kandlgasse police station

Kandlgasse police station made an exceptionally good impression on a commission in December 2019. In addition to the good cooperation with the NPM, the clean and well-equipped detention area and the clear detention documentation, the commission praised the moderate use of the special secure cell, the individual supervision offered and the fact that blankets are changed in the detention room after every detention.

Wagramer Straße police station

A measure taken in Wagramer Straße police station made a special impression. An information truck drives to residential areas up to four times a month thereby increasing the sense of security of the local residents. The NPM assessed the deployment of trained officers in victim protection in this police station as positive. Furthermore, the commission praised the employee support through the Vienna Police Department in the form of coaching. Employees can avail

of this offer of assistance not only for stress-related pressure at work but also for private problems.

On the visit to Traiskirchen police station, the commission found exemplary leadership and short detention due to the good collaboration with the psychiatric department of Baden Regional Clinic and Wiener Neustadt public prosecutors' office. The commission praised the well-maintained detention book, the clean detention area, the excellent work atmosphere and the use of body-worn cameras. The organisation of barring orders proved to be particularly efficient, which now includes the relocation of affected asylum seekers. The commission was impressed by the dedication of the officers who provided the persons due for forced return with carrier bags of their own accord.

Traiskirchen police station

In Wattgasse police station, the commission praised the stance of the superintendent, for whom dealing with detained persons with respect on the part of his employees is of key importance. If officers do not behave correctly towards inmates, they are removed from the detention area.

Wattgasse police station

On the visit to Velden am Wörthersee police station, a commission praised the professional competence of an employee and the high proportion of policewomen. In Hermagor police station, the commission highlighted the employment of an officer with impaired vision who has a work assistant.

Velden am Wörthersee and Hermagor police stations

The commission also considered the employment of an administrative assistant in Deutschlandsberg police station positive, as this contributes to relieving the law enforcement officers in administrative work.

Deutschlandsberg police station

2.8 Coercive acts

2.8.1 Introduction

33 observations In the year under review 2019, the commissions observed a total of 33 acts of direct administrative power and coercive measures. These included two (forced) returns as well as 31 demonstrations, football games, raids, events, examinations regarding basic reception conditions and other major police operations.

This year, the NPM criticised more police operations at football games, in which case two Vienna derbies in particular gave grounds for criticism. Other than that, the NPM praised the deployment of the police force at football games as in the preceding years.

At demonstrations and targeted campaigns in 2019, the NPM broached the issue of the legal foundation on which police measures are based amongst others. Apart from that, official acts as part of targeted campaigns or demonstrations rarely gave grounds for criticism in 2019. In particular, demonstrations that had considerable conflict potential in previous years, for example those against the Vienna Academics Ball or against rallies by the Identitarian Movement Austria ("*Identitäre*") took place in 2019 without incident.

(Forced) returns as well as contact meetings in advance went smoothly in most cases.

Notification obligation observed In accordance with the notification decree the NPM was informed by the police stations in advance of pending operations so that there were no grounds for criticism in this respect.

2019 no participation in forced returns by air The members of the commissions did not accompany any forced returns by air in 2019. The reason for this was that the forced returns by air in previous years ran smoothly and without complaint and there was therefore no necessity to accompany them. It could also be deduced from the monitoring reports from the organisation commissioned by the Federal Ministry of the Interior – 41 in total in the year under review – which are regularly submitted to the NPM that forced returns by air are usually managed in a professional way. The NPM informed itself at a meeting in the Federal Ministry of the Interior about the work of the ICMPD organisation (International Centre for Migration Policy Development), which has supported persons and organisations that accompany and observe forced returns in numerous EEA states on three projects to date, FREM I, II and III (Forced Return Monitoring).

2.8.2 Observation of demonstrations

On 20 September 2018, there was a demonstration against the EU summit in Salzburg. There were tumultuous scenes in the area of the bus stop *Volksgartenbad/Bürgersteinstraße*. The situation escalated after law enforcement officers arrested a person for identification purposes and took them to a police bus because of criminal behaviour. A sit-in by demonstrators ensued because they demanded the release of the arrested person. The police then used tear gas, arrested more persons and took these to the police bus too.

Escalation after arrest

In the view of the commission, the use of tear gas was proportionate. However, it criticised the lack of communication with the demonstrators as well as the disproportionately long amount of time that two demonstrators had to spend in the small, cramped cells in the police bus.

Criticism of police communication

As explained in previous reports, police operations should be based on the “3 D strategy” (Dialogue – De-escalation – Drastic Measures). The first step should be to communicate with the demonstrators. Attempts should be made to de-escalate as the next step, and measures should then only be taken as the final consequence.

However, the observations of the commissions showed that the approach used by the police was passive, uncoordinated and without leadership. No attempts were made to communicate with the demonstrators. A patrol vehicle for “tactical communication” was only deployed after more than two hours of the sit-in.

„3D Strategy” not consistently pursued

With regard to the lack of communication with the demonstrators, the Federal Ministry of the Interior explained that the deployment of “tactical communication” vehicles has only been in use since July 2018 and is being evaluated on an ongoing basis. There were only a few empirical values available at the time of the operation. The recommendations of the NPM to improve dialogue with the help of “tactical communication” vehicles were thus welcomed. In the case in question, in the opinion of the Ministry, there had been communication with the demonstrators on several levels including announcements by loudspeaker.

The NPM criticised the poor communication with the demonstrators, as it caused the prolonged detention of the two demonstrators in the police bus for over two hours and a traffic jam. However, it had also to be taken into consideration that one of the demonstrators had hindered his identification by hiding his ID card in his shoe.

In another case, the commission observed that audio-visual recordings were made by several police officers (“docu teams”) during a demonstration against the informal meeting of the Ministers of the Interior in Innsbruck on 17 July

Use of audi-visual recording devices

2018. These were not announced to the participants of the gathering. Section 13a (3) of the Austrian Security Police Act (*Sicherheitspolizeigesetz*), however, stipulates the obligation to disclose or announce the recording of images. According to a statement of opinion by the Tyrol Police Department to the NPM, the video recordings were based on this provision. The obligation to notify was fulfilled by openly filming and through verbal notification of those affected according to the Police Department.

Section 13a of the Security Police Act on the other hand expressly stipulates that recordings shall be announced in such a way that they are known to those affected before the recording starts. Open recordings are only permissible after such notification. Merely filming openly does not fulfil the obligation to notify.

Police announcement
inaudible

The commission did not hear any announcement. Due to the volume level and the large number of affected persons, a megaphone would have been necessary, which according to the observations of the commission was not used.

The Federal Ministry of the Interior for its part justified the permissibility of the use of audio-visual recordings with Section 54 (4) of the Security Police Act. Pursuant to this provision, the determination of personal data using audio-visual recordings is permissible for defence against dangerous attacks or criminal activities. Even “ominous behaviour”, that is, the threat of a legally protected right in connection with wilful criminal offences suffices to assess behaviour as a dangerous attack. As it was to be assumed, due to the unexpected course of the demonstration, that such acts would occur (formation of a “black bloc” etc.), the collection of personal data using audio-visual recordings was justified in the view of the Ministry.

Different opinions on
legal bases

The NPM criticised that the Police Department and the Federal Ministry of the Interior represented diverging legal opinions and stated that policing shall be based on a single statutory authorisation that is clear to all those involved. Furthermore, the NPM expressed doubt regarding the legal basis of Section 54 (4) of the Security Police Act, as this provision restricts the permissibility of the use of audio-visual recordings to the fulfilment of specific tasks, that is, defence against dangerous attacks and criminal activities as well as enhanced danger research.

The NPM is aware that, generally speaking, there is increased potential for danger with the formation of a “black bloc”. However, it cannot be concluded as a rule that the formation of a “black bloc” generally involves wilful criminal offences and thereby justifies the application of Section 54 (4) of the Security Police Act. This is also evident from the fact that the law enforcement officers were wearing helmets but were not carrying shields. The NPM was also of the opinion that not every ignited smoke bomb and every masked demonstrator can be seen by the police as the preparation of a dangerous attack.

- ▶ *The use of tactical communication at demonstrations should be promoted and expanded. The authority and police bodies shall be trained and their awareness raised accordingly.*
- ▶ *Before surveillance measures that are subject to strict legal regulations (such as audio-visual recordings) are used at demonstrations, the statutory norm on which this measure is based must be unambiguous and the legal conditions for its use must be complied with.*

2.8.3 Football games

While observing two football games, the NPM criticised the way in which law enforcement officers dealt with members of the commission.

At the Europa League game between RB Salzburg and SSC Napoli on 14 March 2019, the law enforcement officers first refused members of the commission admission to the guest fan block. Only after clearance with the head of the operation were the members of the commission able to observe the police force in this area too. The Federal Ministry of the Interior justified this with the fact that the law enforcement officers had understandable concerns about the safety of the members of the commission.

Admission to away fan block temporarily refused

The NPM pointed out to the ministry that the members of the commission are responsible for their own decisions and actions when exercising their mandate. The ministry took this case as an opportunity to discuss the support obligation towards the NPM with the leading law enforcement officers.

On 7 October 2018, a commission observed a game between Wacker Innsbruck and LASK. The NPM criticised that two law enforcement officers “dragged” a fan to a patrol car to establish his identity. When the members of the commission asked the police officer the reason for establishing the fan’s identity after the official act, he answered: “Because he was gawking.” The law enforcement officer repeated this reason several times.

Lack of regard for the commission

The NPM ascertained that this type of communication demonstrates a lack of regard both for the members of the commission and the affected person, and criticised this behaviour.

At the major Vienna Derby on 16 September 2018, the commission criticised the massive use of pyrotechnics. According to information from the head of the operation, there were special permits for the use of pyrotechnics in several sections of the Allianz Stadium. In view of the existing pyrotechnics ban and the general hazardous situation at high-risk games, this decision was inexplicable for the NPM.

Massive use of pyrotechnics

Persons who were banned from the stadium admitted

The commission also observed that persons who had been banned from the stadium, were once again admitted. The NPM asked the Federal Ministry of the Interior how persons who were banned from the stadium are checked at the entrances, who is informed about the attendance of persons banned from the stadium and who decides that these persons are still admitted.

The Federal Ministry of the Interior responded that a special permit was issued pursuant to the Austrian Pyrotechnic Safety Act (*Pyrotechnikgesetz*) for the purpose of fan choreography under stipulation of restrictions. The use of Bengal torches of any brand and type that were not mentioned in the notice was illegal. Due to the massive and partly illegal use of pyrotechnics, the decree was revised so that in future special permits will be issued more restrictively. The NPM criticised the notice that was the basis for the excessive use of pyrotechnics, and welcomed the new decree.

Police not responsible for stadium bans

With regard to the problem that persons who are banned from the stadium are repeatedly observed there, the Federal Ministry of the Interior explained that a stadium ban is a preventive measure against a natural person on the basis of civil law. Such a ban is issued based on the house rules of the respective event organiser. Hence, the imposition of stadium bans is not the responsibility of the security authorities but the competent offices of the Austrian Football Association and the Austrian *Bundesliga*. The involvement of security authorities or organs of public security service is not permissible. The stewards acting on the behalf of the clubs must refuse admission in the event of a stadium ban.

Encirclement of 1,382 persons

On 16 December 2018, the NPM observed the police operation at the Vienna derby between *Austria Wien* and *Rapid Wien*. This case drew considerable attention from the media because some 1,400 persons were encircled for five to six hours. Many of those affected contacted the AOB with complaints later.

The NPM criticised, above all, the large number of encircled people and where they were encircled, as this was dangerous and unsuitable for encirclement. The people had to hold out for up to six hours at sub-zero temperatures. A woman who has diabetes and had no insulin with her was only allowed to leave the encircled area after five hours according to information from the commission. There were no emergency services available for persons who collapsed. Even persons who needed to use the bathroom had to hold out in the encirclement until their identity was established. Furthermore, the police announcements were not heard.

Encirclement on a motorway bridge

The Federal Ministry of the Interior reported that some of the fans were masked and had been very aggressive even at the beginning. The fan march stopped of its own accord on the Absbergbrücke (bridge) that crosses the A23 Vienna city motorway. Pyrotechnics were ignited and objects thrown onto the motorway. As these were criminal offences, the suspects and witnesses had to

be identified for the investigation proceedings pursuant to the Austrian Code of Criminal Procedure (*Strafprozessordnung*). As the fan march did not move on, they were encircled at this location and the motorway was closed for some time.

Children, frail persons and women were given priority in establishing their identity. There were, however, persons inside the encirclement who prevented others from being “treated” quicker. Contrary to the observation of the NPM, families with children and persons who had to use the bathroom were given priority. Police paramedics and an ambulance were allegedly also available. Police announcements were loud enough and comprehensible from the point of view of the Federal Ministry of the Interior; however, they were interrupted by shouting, clapping and whistling.

The Federal Ministry of the Interior held the opinion that the encircled area could have been opened faster if the fans had cooperated. In this connection, the Ministry quotes the website of the fanclub *Rapid Wien “ultras”* in which a cooperation between the fans on the one hand and between the police and the media on the other hand is rejected.

In principle, the NPM showed understanding for the difficulties and the special challenges of this police operation, but assessed the deployment as critical.

Difficult situation for law enforcement

Without doubt, throwing objects onto the motorway justified the obligation of the police to investigate and avert danger. The police executed this task by temporarily closing this part of the motorway so that road users were no longer in danger.

However, the NPM criticised that the encircled area on the bridge was dangerous for the participants in the fan march. The location was also not suitable for detaining such a large number of persons for several hours. The ministry actually conceded that there was a risk that persons could have fallen over the railing onto the motorway.

Not a safe place for encirclement

Furthermore, there was the risk of an escalation or even a mass panic. This was even more so, as according to the statement of opinion of the Ministry, many fans had demonstrated aggressive behaviour earlier.

The fan march stopped on the bridge according to information from the Ministry and did not want (initially) to proceed. The persons in the fan march were surely interested in being in the stadium in time for the kick-off in the view of the NPM. The police could thus have waited to see whether the fan march started to move again before the match began.

The European Court of Human Rights (ECHR) addressed the conformance of the police tactic of encirclement under the aspect of deprivation of liberty in detail for the first time in 2012 (Austin amongst others versus the United

Regular examination of the situation required

Kingdom, verdict of 15 March 2012, Bsw. 39692/09). According to the verdict of the ECHR, the police must have a certain measure of discretion in taking operative decisions; however, the police force has certain obligations at the same time. For example, they have to examine the situation in the encircled area regularly and re-evaluate whether the conditions for maintaining the encirclement still apply.

Regardless of the fact that the question of the deprivation of liberty is on a case-by-case basis in the rulings of the ECHR, it seems important to the NPM that the knowledge gained from the incident and case-related considerations of the NPM are taken into account in the future. It should thus be possible to handle comparable situations better or avoid them in the first place.

Evaluation of the video material took too long

Also, the NPM ascertained that the evaluation of the video material took a very long time and was still not complete in May 2019. In light of the severity of the infringement of fundamental rights and the attention of the media to the operation, faster evaluation of the material would have been called for.

- ▶ *The encirclement of demonstrators shall be executed in locations that are safe for the encircled persons and other uninvolved persons.*
- ▶ *The police force shall examine at regular intervals whether and for how long an encirclement should be maintained at a demonstration.*

2.8.4 Forced returns

At an arrest in connection with a forced return in Rankweil on 12 December 2018, the NPM criticised that the officers had to knock on a neighbour's door in the early hours because they were not able to find the flat of the persons awaiting forced return. More proactive planning would have been necessary. Apart from that, the arrest and forced return were carried out correctly.

In another case, the NPM observed that asylum seekers were deported even though the Federal Administrative Court had not yet ruled on the petition for suspensive effect.

The NPM referred to the findings of the Supreme Administrative Court of Austria of 13 December 2018 (Ro 2018/18/0008), according to which the Federal Administrative Court shall decide on the appeal against revocation of the suspensive effect in any case within a week of submission in order to comply with the provisions of EU law. Furthermore, it was clarified that until a decision on the appeal against the revocation of the suspensive effect is made, the measure terminating residence is not enforceable in spite of the provision.

2.8.5 Targeted campaigns

The NPM criticised that during an inspection of a goods train at *Seebahnhof Brennersee* train station (Matrei train station – Brenner police station) on 10 March 2018 the mobile phones of the held persons were confiscated as bail. The held persons were given the business mobile phones of the law enforcement officers if needed. This was however of little help to the affected persons in the view of the NPM, as they had saved their private contacts with phone numbers on their mobile phones. At least, the mobile phones should have been returned if only to obtain the numbers.

Confiscation of mobile phone as bail

Furthermore, the NPM recommended the deployment of policewomen in the future, because women who might have been the victim of human trafficking could have been affected by the official act on such operations.

During the course of this observation, commission members were prevented by an Austrian Federal Railways incident manager from walking on the tracks. The response from the Federal Ministry for Transport, Innovation and Technology, according to which members of the commission can acquire a special permit, was not a satisfactory solution for the NPM. Because this would, in the view of the NPM, cause considerable organisational effort which would not be justified in relation to the possible use cases. The NPM thus sought advice from the Human Rights Advisory Council on defining how to proceed in this matter.

Austrian Federal Railways refused entry to the tracks

The NPM criticised several targeted inspections of the no-weapons zone “*Bogenmeile*” in Innsbruck in December 2018 and January 2019. The announcement of the order was flawed. On the one hand, the announcement was incorrectly linked on the Tyrol Police Department website, which the Tyrol Police Department corrected. On the other hand, the on-site boards for the announcement were positioned too high (2.10 to 2.20 metres) to still be legible. In these cases too, the Tyrol Police Department reacted to the criticism of the NPM and moved the boards to a lower position.

No-weapons zone in Innsbruck

The NPM also criticised the police investigation in a case of suspected prostitution in a residential flat as part of this targeted inspection. The police carried out an undercover investigation with no legal basis. A law enforcement officer claimed to be a client on the telephone and visited the suspected prostitute in her flat. There, he negotiated the price with her as a potential customer and said he had to leave the flat again for a few minutes. After he had opened the door, another law enforcement officer entered the flat. Only then did the two of them identify themselves as law enforcement officers and exercise the official mandate.

Criticism of undercover investigation of prostitution in a flat

The condition of averting a dangerous attack for the permissibility of undercover investigations was not given. Pursuant to Section 16 (2) of the

Austrian Security Police Act (*Sicherheitspolizeigesetz*), a dangerous attack must be a wilful criminal offence. Illegal prostitution in residential flats is not a criminal offence but an administrative offence pursuant to the Tyrolean Regional Police Act (*Landes-Polizeigesetz*). Consequently, an undercover investigation on the basis of Section 54 (3) of the Security Police Act is not permissible. Furthermore, premises protected under domiciliary rights may only be entered during undercover investigation with the consent of the owner. However, consent shall not be brought about through deceptively obtained access.

Unauthorised recording of a conversation

The NPM also criticised that the conversation between the prostitute and the undercover investigator was transmitted and recorded using technical means. Pursuant to Section 149d of the Austrian Code of Criminal Procedure (*Strafprozessordnung*), surveillance using technical means is only permitted amongst others after a court order. This thus constituted an infringement of the constitutionally guaranteed right to respect for private and family life pursuant to Article 8 of the European Convention on Human Rights.

- ▶ *Persons whose mobile phones are confiscated as bail in targeted campaigns should, if needed, be returned their mobile phones so that they can make calls or, at least, read the phone numbers.*
- ▶ *Undercover police investigations in the area of prostitution in residential flats are only permissible if there is a pertinent legal basis.*

2.8.6 Positive observations

As in previous years, many police operations in 2019 were correct or exemplary.

Demonstrations against the „black-blue“ coalition

The police operation at the Thursday demonstration against the “black-blue” coalition in Graz on 26 September 2019 was well coordinated and went smoothly, as did the operation at the demonstration “Black-blue never again! No to racism!” (“*Nie wieder Schwarz-Blau! Nein zu Rassismus!*”) on 21 September 2019 in Vienna. In both cases, however, an officer was not aware of the mandate of the commission, which caused short delays. The NPM requested the Federal Ministry of the Interior to remind the law enforcement officers of the powers of the commissions under the OPCAT mandate.

No criticism of police at Vienna Academics Ball demonstration

While observing this year’s demonstration against the Vienna Academics Ball on 25 January 2019, the NPM praised the police for their restrained and de-escalating accompanying of the protest march. The Federal Ministry of the Interior could conclusively justify the wearing of helmets on some sections of streets where law enforcement officers saw a necessity to protect themselves.

In the case of the Identitarian Movement Austria rally and the demonstration against the same on 13 April 2019 in Vienna, it was possible to separate the demonstrations from each other, and to warn demonstrators audibly of the collection of audio-visual material in the event of breaches of the law.

A commission described the police operation at the demonstration “Fraternities out! Out of the government and the Graz Congress!” (“*Burschis raus! Aus der Regierung und dem Grazer Kongress!*”) on the occasion of the Graz Academics Ball on 19 January 2019 as best practice. In particular, the good preparation and clear communication with the help of a tactical communication vehicle were exemplary.

Best practice at a demonstration

A “Fridays for Future” demonstration on 27 September 2019 in Vienna was accompanied by the law enforcement officers in a very restrained manner.

As in 2018, the commission evaluated the police operation at the Croatian commemorative celebration in Loibach and the counterdemonstration in Bleiburg on 18 May 2019 as positive. The communication with the participants was exemplary, also through the deployment of Croatian personnel.

Croatian commemorative celebrations

Even if the NPM criticised police operations surrounding football games this year (see chapter 2.8.3), the observations were mostly positive.

For example, there was praise for the police at the two games between WSG Tirol and the major Viennese clubs *Rapid Wien* on 21 September 2019 and *Austria Wien* on 25 September 2019. In both cases, the law enforcement officers remained in the background in order not to escalate dangerous situations. The game between Wacker Innsbruck and RB Salzburg on 17 March 2019 and the respective police operation went very smoothly too.

Positive feedback for the police at two football games

The commission considered the international friendly games between RB Salzburg and Real Madrid, and RB Salzburg and Chelsea, both in Salzburg, and the game between Besiktas Istanbul and Udinese Calcio in Grödig as moderately and comprehensively organised with respect to the measures taken to ensure a coordinated operation as well as the relevant smooth vacating of the stadium after the game. It was also welcomed that in the game against Real Madrid the announcement of video surveillance was displayed clearly on the two video screens inside the stadium and shown in three other languages including that of the guest fans in particular. The UEFA League game between *Rapid Wien* and Inter Milan on 14 February 2019 in Vienna went without incident. The commission assessed the encirclement and subsequent establishing of identity during the fan march and the football game between RB Salzburg and RB Leipzig on 29 November 2018 in Salzburg as moderate.

In the opinion of the NPM, the police operation during the Formula One World Championship race on 30 June in Spielberg was also very well organised.

Annex

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Vienna, June 2020

