

AUSTRIAN
OMBUDSMAN BOARD



Annual Report

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

2023

Protection & Promotion
of Human Rights

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Preface

The Austrian Ombudsman Board (AOB) and its commissions jointly constitute the National Preventive Mechanism (NPM) in Austria. Since 1 July 2012, the NPM has been monitoring institutions and facilities throughout Austria where persons are or can be deprived of their liberty. These include prisons, police stations, but also retirement and nursing homes, child and youth welfare facilities and psychiatric institutions. In addition, the Austrian NPM monitors facilities for persons with disabilities, as well as police operations during large-scale raids and events, assemblies, demonstrations and deportations.

Serious violations of human rights typically occur when there is a power imbalance or when people have little or no voice. At the core of the NPM's activities is the early identification and elimination of risk factors for human rights violations. Figuratively speaking, the AOB is the human rights house of the Republic of Austria. In order to fulfil this mandate, the NPM visits a large number of institutions and facilities every year, usually unannounced, and monitors the prevailing conditions. The NPM commissions inspect the premises, request documents and records and talk to residents and staff, or they accompany the police in their work. A total of 505 such monitoring visits took place in 2023.

These monitoring activities provide a picture of the state of human rights in the different types of institutions. In addition to positive observations and best practice examples, numerous deficits were again identified in 2023. At best, the identified deficits only affected the daily lives of those on site and, at worst, they brought about great suffering. Some of these deficits could be rectified quickly after a discussion with those responsible, while others – especially those that trace back to systemic deficits – require a great deal of patience. The legal and budgetary framework conditions are usually decisive for the situation on the ground. Sufficient financial resources and appropriately qualified staff are essential factors in creating humane conditions. The NPM therefore reiterates its appeal to Parliament and the Diets to provide the necessary resources.

We would like to thank the commissions for their commitment and the Human Rights Advisory Council for their advice and support. We would also like to express our gratitude to all the AOB staff who do their part every day to ensure that human rights are given the importance they deserve in all areas.



Gaby Schwarz



Bernhard Achitz



Walter Rosenkranz

Vienna, March 2024

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Introduction

This volume provides information on the activities of the National Preventive Mechanism (NPM) in 2023. In the reporting year 2023, the NPM commissions carried out a total of 505 monitoring visits, of which 481 were visits in institutions and facilities and 24 accompanied monitoring of police operations. The monitoring priorities defined together with the commissions were the main focus. However, other unplanned topics that emerged besides the monitoring priorities were also important and addressed on an ongoing basis.

505 monitoring visits

The majority of the visits carried out in retirement and nursing homes were for the purpose of monitoring the nationwide priority „Pain management and palliative care“. This priority started in July 2022 and was completed in October 2023. In addition, the commissions also looked at assisted suicides in care facilities on the occasion of the Assisted Suicide Act (*Sterbeverfügungsgesetz*), which entered into force in 2022 (see chapter 2.1.1.2 under „Assisted Suicide Act and assisted suicide“).

Monitoring priorities

In 2022 and 2023, the topic of „Self-determination with a special focus on sexual self-determination“ was at the centre of the NPM's monitoring work in facilities for persons with disabilities. In April 2023, the topic „Self-determined sexuality“ and the interim findings were already presented at a symposium organised by the Office of the Carinthian Ombudsman for Persons with Disabilities and the Carinthian Monitoring Committee. Following the evaluation of all the findings, the Austrian NPM held a press conference on the matter in February 2024 (see chapter 2.4.1).

The monitoring priority on „detention of juvenile offenders“ was completed in 2022 and the results were published in a special report on „Adolescents in detention“. The recommendations deriving from the report were presented to international participants in an online webinar organized by the Ludwig Boltzmann Institute and the Child Rights Erasmus Academic Network (CREAN). In the reporting year 2023, the focus was on analysing the causes of incidents of violence in detention. The results will be presented separately once the study has been completed.

With regard to police detention centres, the commissions defined three monitoring priorities for the year under review: „(spare) clothing for destitute detainees“, „access of detainees to independent medical doctors of their own choice pursuant to Section 10 (5) Detention Regulation (*Anhalteordnung*)“ and the „de-escalating handling of prisoners“. The NPM considers the continuation of all three monitoring priorities in 2024 to be sensible for various reasons (see chapter 2.6.1).

As part of the newly defined monitoring priorities for police stations, the NPM put a focus on communication and alarm buttons in detention rooms

and the documentation of detentions, with special consideration to the right of detainees to information and notification (see chapter 2.7.2). These two priorities will also continue in 2024. Another topic is the accessibility for persons with disabilities in all police stations in Austria (see chapter 2.7.3).

In 2023, the NPM started its internal process for the development of the new monitoring priority „The institution as a place of protection“ for child and youth welfare facilities and basic care facilities of the *Laender* for unaccompanied minor refugees (see chapter 2.3.6).

In the area of hospitals and psychiatric institutions, the NPM agreed on starting a monitoring priority in 2024, which puts a focus on the institutions' discharge management (see chapter 2.2).

Dialogue with the commissions

In addition to the regular monitoring visits, a constant exchange is particularly important for the high-quality work of the NPM; not only on current topics, but also for the further development of preventive activities. Therefore, the NPM organises an annual two-day event for all the members of the commissions to discuss the experiences gathered from their monitoring activities. Among other things, the monitoring priorities, methodology and ensuing results were analysed and discussed during this event and the members of the commissions collect recommendations and suggestions for improvement and feedback on the further development of the NPM. Moreover, the event that took place in October 2023, included a presentation of a study on the „Practical application of restrictions of liberty and alternatives“ by Hemma Mayrhofer from the Department of Applied Sociology of Law and Criminology at the University of Innsbruck. Participants discussed the results of the study, which was conducted with the partial involvement of the NPM commissions. The members of the commissions then reported about their first experiences with the use of „violence protection cards“ as part of Augmentative and Alternative Communication (AAC) and exchanged views on their continuous usage. The following day, three current problem areas were highlighted. The members of the commissions talked about the results of the monitoring priority „Self-determination with a special focus on sexual self-determination“ and discussed how to proceed with this topic. Another block focussed on the current human rights challenges in relation to the provision of basic level of social services. The session concluded with a presentation on the human rights of LGBTIQ+ persons.

The findings of the monitoring visits in 2023 are dealt with in detail on the following pages. Chapter 1 contains an overview of the NPM with the key data on the mandate and a statistical evaluation of the monitoring visits. This section also provides information on the budget and human resources. Furthermore, it reports on the most important events in the area of international cooperation and collaboration, as well as a report by the Human Rights Advisory Council.

Chapter 2 addresses the individual findings of the monitoring visits in 2023. Due to the large number of monitoring visits carried out, not all findings can be presented in this report. For this reason, the depicted cases focus on situations that require critical evaluation from a human rights perspective and observed maladministration that go beyond individual events, thus indicating systemic deficits. As in previous years, the chapter is structured according to types of institution.

The observations from the commissions' activities and the resulting recommendations of the NPM are laid out in grey boxes at the end of the respective chapter. The recommendations collected since the beginning of the mandate in 2012 are available on the website of the AOB at: <https://volksanwaltschaft.gv.at/en/reports#anchor-index-2950>.

1 Overview of the National Preventive Mechanism

1.1 Mandate

The AOB has been entrusted with the task of protecting and promoting human rights in the Republic of Austria since 1 July 2012. By order of the Federal Constitution, the mandate of the „National Preventive Mechanism“ (NPM) is based on two important United Nations legal instruments: the UN Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) and, the UN Convention on the Rights of Persons with Disabilities (UN CRPD). On the basis of these treaties, the NPM monitors facilities in which personal freedom is or may be deprived or restricted, such as correctional facilities, military barracks, police detention centres, police stations, psychiatric facilities and institutions, retirement and nursing homes, crisis centres and shares accommodation for children and adolescents. Monitoring also extends to facilities and services designed to serve persons with disabilities. In addition, the administration is monitored as an executive power carrying out direct administrative power and coercive measures, for example during forced returns, demonstrations and police operations. Essentially, the aim is to recognise and stop risk factors for human rights violations at an early stage.

Mandate

The AOB fulfils these three areas of competences together with its NPM commissions. The commissions are led by recognised experts in the field of human rights. Commission members come from multiple disciplines and ethnicities. There are currently six regional commissions and one Federal Commission for the Penitentiary System and Forensic Institutions.

7 commissions

The monitoring visits in institutions and facilities and the observation of coercive measures are usually carried out by the commissions unannounced. They are conducted on the basis of a monitoring framework and methodology that was jointly developed by the NPM commissions ([https://volksanwaltschaft.gv.at/downloads/1q79s/Prüfschema %20Methodik %20und %20Veranlassungen %20ENGLISCH_20160701.pdf](https://volksanwaltschaft.gv.at/downloads/1q79s/Prüfschema%20Methodik%20und%20Veranlassungen%20ENGLISCH_20160701.pdf)). The commissions draw up reports on their visits, provide their human rights assessments and make recommendations how to proceed.

In addition, the Human Rights Advisory Council assists the NPM as an advisory body. The members are appointed by the AOB. The Human Rights Advisory Council is headed by a chairperson and a deputy chairperson with proven expertise in the field of human rights and consists of representatives from civil society, the Federal Ministries and the *Laender*.

**Human Rights
Advisory Council**

Intensive monitoring and control

In 2023, the NPM commissions conducted a total of 505 monitoring visits (2022: 481). In addition to their visiting and monitoring activities, the commissions held 18 round-table discussions with institutions and facilities or their senior administrative departments. The number of visits is important to ensure that institutions and facilities are monitored regularly and nationwide. However, it is not only the quantity but also the quality of the visits that plays an important role. For bigger facilities, visits lasting several days with larger delegations can therefore be useful in gaining more in-depth insights.

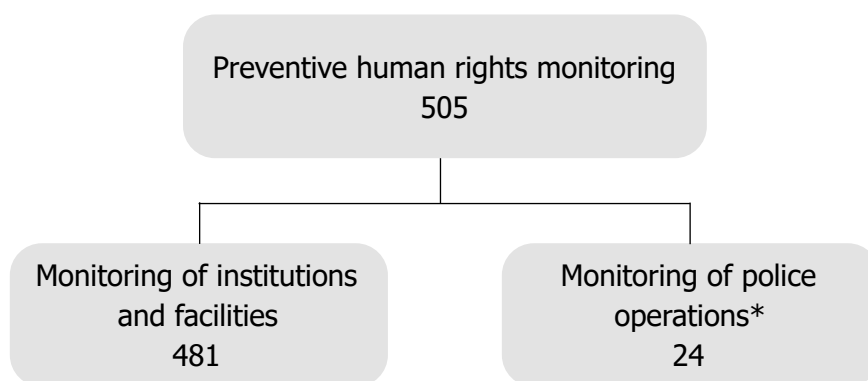
Involvement in police and prison officer training

The knowledge of human rights protection by prison and police officers also plays an important role in preventive monitoring. For this reason, AOB staff and members of the commissions have been involved in training the police and prison officers for years now. As the trainees may also come into contact with the NPM and its commissions later in their careers, the NPM and its work are presented in these teaching modules. In addition, to a lecture on the protection and promotion of human rights, the implementation is further illustrated by practical situations and case studies. In 2023, 57 classes of basic police training were taught throughout Austria. The training took place in person at the Security Academy (SIAK) training centres in the Laender. During the reporting year, 16 units of the basic training for prison officers were held at the Correctional Services Academy (*Strafvollzugsakademie*) in Vienna and at the training centres in Stein, Graz and Linz.

1.2 Monitoring and control visits in numbers

In 2023, the commissions conducted 505 visits throughout Austria. 95% of these visits took place in institutions and facilities, 5 % during police operations. As a rule, the visits were unannounced, only 4% were announced. On average, the monitoring visits lasted three hours.

**Monitoring activities of the commissions in 2023
(absolute numbers)**



* these include: forced returns, demonstrations, assemblies

The majority of the 481 monitoring visits in facilities were in what are known as „less traditional places of detention“. These include over 5,300 different places such as retirement and nursing homes, child and youth welfare facilities and institutions for persons with disabilities. The commissions conducted 358 visits to these types of institutions and facilities, of which 137 were in facilities for persons with disabilities.

481 monitoring visits in institutions and facilities

The total number of visits does not correspond to the number of institutions visited, as many facilities were visited several times. These are known as follow-up visits and are necessary to investigate whether the identified deficits have already been rectified or whether urgently needed improvements have been made. Correctional institutions and police detention centres, in particular, are monitored several times a year.

Many follow-up visits

The following table shows how the monitoring visits are distributed across the various institutions and the police operations in each *Land*.

Number of visits in 2023 in individual <i>Laender</i> according to type of institution									
	pol. stat.	pol. det.	ret. nur.h.	youth	inst. f.dis.	psych. wards	corr. inst.	others	pol. oper.
Vienna	4	2	16	38	18	1	3	6	9
Burgenland	7	1	12	3	20	0	1	0	1
Lower Austria	9	2	25	22	45	0	10	5	1
Upper Austria	5	1	12	7	14	1	5	9	0
Salzburg	10	0	9	4	9	0	2	0	5
Carinthia	4	1	10	6	10	0	0	1	1
Styria	5	2	8	11	8	5	4	3	1
Tyrol	2	3	19	8	8	5	0	0	6
Vorarlberg	0	1	8	3	5	0	0	3	0
TOTAL	46	13	119	102	137	12	25	27	24
<i>unannounced</i>	<i>46</i>	<i>12</i>	<i>119</i>	<i>100</i>	<i>136</i>	<i>12</i>	<i>25</i>	<i>27</i>	<i>7</i>

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

The total line displays how often the type of institution was monitored or police operations were observed. The varying frequency of visits and observations of police operations corresponds with the different number of institution types, and with the size of the population. The following table illustrates this aspect and shows the total number of visits per *Land*.

Number of visits	
Land	2023
Lower Austria	119
Vienna	97
Upper Austria	54
Tyrol	51
Styria	47
Burgenland	45
Salzburg	39
Carinthia	33
Vorarlberg	20
TOTAL	505

Deficits identified on around 70% of the monitoring visits

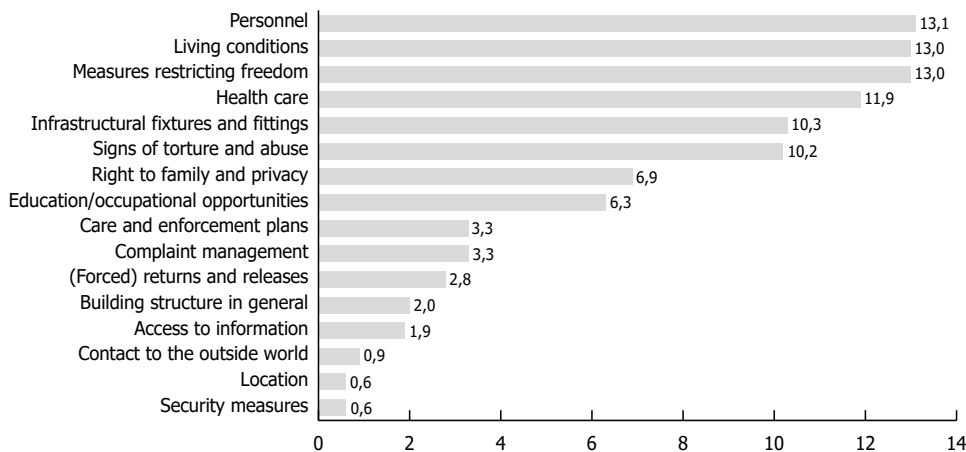
The findings of all 505 monitoring visits are documented in detailed commission reports. The commissions criticised the human rights situation on 322 visits to facilities and institutions. However, in 183 visits (161 institutions and 22 of the 24 police operations), there were no grounds for criticism. The commissions therefore identified deficits in 64% of the

Proportion of visits in 2023		
type	with criticism	without criticism
visits to institutions and facilities	67 %	33 %
police operations	8 %	92 %
Visits in total	64 %	36 %

The following graph gives an overview of the distribution of criticism across the individual areas addressed by the commissions on their visits. It must be noted that several areas are almost always simultaneously monitored during each visit and the criticism therefore relates to several areas. The

areas do not differ significantly from previous years. Consideration must also be given to the fact that the areas listed, are those with the highest level of infringement of the human rights. Accordingly, 13.1 % of the criticism related to inadequate human resources. The living and accommodation conditions were criticised in 13 % of cases. These included, for example, sanitary and hygiene standards, food or the choice of leisure activities. Measures that restrict freedom were criticised just as frequently (13 %). Problems with health care were noted in 11.9 % of cases, followed by complaints about structural fixtures and fittings (10.3 %), signs of maltreatment, abuse, neglect and degrading treatment (10.2 %) and the right to family and privacy (6.9 %).

Topics of criticism voiced by the commissions
share in %



In addition to monitoring visits to institutions and facilities, the commissions concomitantly observed 24 police operations in the reporting year, in particular at demonstrations and during large-scale police operations.

Observation of 24 operations

The commissions also conducted 18 round-table discussions with institutions and facilities and higher-level departments.

18 round table discussions

1.3 Budget

In the 2023 reporting year, a budget of EUR 1,700,000 was available to the heads of the commissions and the members of the commission and the members of the Human Rights Advisory Council. Of this amount, around EUR 1,526,000 were budgeted for remuneration and travel expenses for commission members alone and around EUR 97,000 for the Human Rights Advisory Council. Around EUR 77,000 were available for workshops, supervision, personal protective equipment and other activities of the commissions and the AOB staff employed in the OPCAT area.

1.4 Human resources

1.4.1 Personnel

In order to fulfil the duties of the OPCAT mandate, the AOB received additional permanent positions in 2012. The AOB staff employed for NPM activities are legal experts and have expertise in the areas of the rights of persons with disabilities, children's rights, social rights, police, asylum and the judiciary. The organisational unit „OPCAT Secretariat“ coordinates the collaboration with the commissions. It also examines international reports and documents in order to support the NPM with information from similar institutions.

1.4.2 The commissions

6 regional commissions

The AOB has to set up at least six multidisciplinary commissions to fulfil its tasks. These commissions can be organised according to regional or subject matters. The AOB has set up six regional commissions. Each commission is responsible for monitoring institutions and facilities in a geographic area. They visit retirement and nursing homes, child and youth welfare facilities, psychiatric hospitals and wards, institutions and facilities for persons with disabilities and police facilities. They also observe police operations.

Federal Commission for the enforcement of penalties and measures

A Federal Commission visits facilities of the penitentiary system and forensic institutions throughout Austria. This commission was introduced due to the small number of facilities in the penitentiary system and the fact that they are managed centrally. The correctional institutions are managed by the General Directorate for Facilities of the Penitentiary System and Forensic Institutions of the Federal Ministry of Justice. The Federal Ministry is also responsible for implementing the recommendations made by the NPM. The Federal Commission thus has a comprehensive overview and can easily compare the institutions with one another. In this way, both best practice examples and deficits can be better identified.

Every three years, half of the commission heads and commission members are tendered and newly appointed after consultation with the Human Rights Advisory Council. The last new appointments and reappointments were made in 2021, which is why the heads and members of three of the regional commissions will be reappointed on 1 July 2024 for the next six years.

1.4.3 Human Rights Advisory Council

The Human Rights Advisory Council supports the NPM in an advisory capacity. It is comprised of representatives from the Federal Ministries, the *Laender* and civil society. The Chairperson must have specific skills and

expertise in the area of human rights. All members are appointed by the AOB – based on recommendations from NGOs and ministries. A new deputy chairperson of the Human Rights Advisory Council will be appointed on 1 July 2024 for a period of six years. The Human Rights Advisory Council supports the NPM in defining monitoring priorities, establishing the determination of maladministration and providing recommendations, guaranteeing harmonised procedures and monitoring standards, as well as the selection of commission members.

1.5 International cooperation

1.5.1 United Nations

Under the UN CRPD, states are obliged to explicitly guarantee the rights of persons with disabilities and to eliminate discrimination. Austria has to implement the UN CRPD, since it entered into force in 2008. In addition, measures and decisions taken by the administration, the legislature – both at the federal and the *Laender* level – and the jurisdiction have to be in conformity with the UN CRPD.

Whether Austria fulfils these obligations or not, was the subject of the country review by the UN Committee on the Rights of Persons with Disabilities (UN CRPD Committee). In August 2023, Ombudsman Achitz participated in the country review process as a representative of the National Human Rights Institution (NHRI) and the NPM in Geneva.

Official country review of Austria

As a representative of the Austrian NHRI with A status accreditation, Ombudsman Achitz used his right to speak during the country review to inform the UN CRPD Committee about the greatest problems and challenges in the implementation of the UN CRPD in Austria. Serious shortcomings include the lack of uniform nationwide regulations for barrier-free accessibility, enormous hurdles in inclusive school education, too little personal assistance, a lack of progress in deinstitutionalisation and, last but not least, the fact that there is still no legal right to support services. Applications for support of those in need are often sent back and forth between authorities at the federal and the *Laender* level, as well as public social insurance carriers. Ombudsman Achitz emphasised that the country review must be an impetus for promoting inclusion and participation. He appealed to the Federal Government and the *Laender* to implement the binding recommendations of the UN CRPD Committee, which are published after the country review process.

Ombudsman Achitz speaks before UN Expert Committee in Geneva

During the reporting year, the UN Subcommittee on Prevention of Torture and Other Cruel Treatment (SPT) published the first draft of its General Comment on the interpretation of Article 4 of the OPCAT, in particular on the definition of places of detention. NPMs were invited to submit comments

SPT General Comment on the definition of places of deprivation of liberty

on this first draft. The Austrian NPM welcomed the planned clarification of the SPT on the interpretation of Art. 4 OPCAT and emphasised that it has interpreted and applied the definition of „place of deprivation of liberty“ very broadly since the beginning of its mandate.

20 years of OPCAT The SPT also celebrated its 15th anniversary and 20 years of OPCAT with an event at the United Nations in Geneva. NPMs from all countries were invited to this anniversary celebration. After the opening remarks of a representative of the Office of the High Commissioner for Human Rights, the achievements and challenges of the SPT and the NPMs over the past years were presented. Another focus was on the synergy effects that should be utilised and promoted in the prevention of torture, as well as the role of NPMs in the prevention of torture.

SPT Europe webinar on protection against reprisals The European regional group of the SPT organised a webinar on strengthening the role of NPMs in the prevention of torture, in which an expert from the Austrian NPM took part. The webinar addressed the issue of reprisals, which can be directed not only against persons deprived of liberty, but also against the NPM itself. NPMs from all over Europe presented their strategies on the prevention and protection against different kinds of reprisals and their practical experiences. Particular emphasis was placed on adherence to the „do-no-harm“ principle, the importance of confidential interviews and constant awareness raising about the prohibition of reprisals as an important tool to prevent this.

Online exchange with SPT focal person for Austria The Deputy Chairperson, Rapporteur and focal person for Austria of the SPT asked for an informal online meeting. She thanked the Austrian NPM for regularly sending its annual reports and for the opportunity to discuss more specific topics in person. She was impressed by the large number of visits conducted by the Austrian NPM every year and emphasised the pioneer work Austria does in the area of monitoring retirement and nursing homes and the training of police and prison officers.

Role of NHRIs in torture prevention The 14th International Conference of the Global Alliance of NHRIs (GANHRI) focussed on the issue of torture and the role of NHRIs in the prevention of torture and other forms of ill-treatment. Representatives from over 90 NHRIs met in Copenhagen to discuss the increasing incidents of torture and ill-treatment worldwide. They identified practical measures, which NHRIs can use in their independent mandate to prevent incidents at the national level. Moreover, they talked about the importance of partnerships, and how they can be best established to take this work forward.

1.5.2 European Union

For 13 years, the „European Conference on Health Promotion in Detention“ has combined scientific theory with penitentiary practice. In this productive

format consisting of debates and exchange, central challenges that everyday prison life poses to practice, politics and research are discussed with the aim of finding urgently needed answers.

This year, the 12th European Conference on Health Promotion in Prison was held under the theme „Putting the equivalence principle under review“. It addressed topics such as the necessity of changing public health insurance for detainees and persons in placement and possible solutions, the care of LGBTIQ+ people in detention and the associated challenges, as well as psychiatric care in detention.

12th Conference on Health Promotion in Detention

An expert from the Austrian NPM gave a presentation on the topic of „Accessibility and inclusion in the penitentiary system“ and reported on the situation in Austria. The number of senior citizens in prison is steadily increasing. A phenomenon that can be observed throughout Europe due to demographic developments. Furthermore, there is the problem that only a few correctional institutions have special departments for detainees in need of care. Taking a glance at the facilities of the Austrian penitentiary system and forensic institutions shows that not only existing buildings are usually not barrier-free, but that new buildings and extensions often have design errors in this area as well.

Austria's contribution to barrier-free correctional facilities

1.5.3 Council of Europe

The European NPM Forum, a joint project of the EU and the Council of Europe, organises regular meetings and discussion groups to strengthen cooperation and the mutual trust between the member states.

European NPM Forum

In February, an online workshop was offered in cooperation with the Geneva-based Association for the Prevention of Torture (APT) as part of the NPM Forum. The topic was „Monitoring mental health care in prisons“. Mental health conditions are disproportionately common among detainees. The lack of qualified or supportive staff, demonstrate the low priority given to mental health care in many penitentiary systems.

Mental health care in prison

The online workshop brought together over 100 participants from NPMs, NGOs and the field of health care, as well as representatives of the Council of Europe, the European Court of Human Rights (ECtHR), and the SPT. The participants discussed the protection of the rights of people with mental health conditions and the challenges that arise when monitoring mental health in prisons.

As part of the European NPM Forum, the Austrian NPM regularly contributes to surveys conducted by other NPMs and shares its experiences with colleagues on specific topics. In the reporting year, this included a survey by the Estonian NPM on the use of personal electronic devices in police

Contribution to surveys of NPMs in Europe

detention centres. Moreover, the NPM responded to an inquiry from Switzerland on the situation of people with dementia in retirement and nursing homes, and a request from the Luxembourg NPM on measures that restrict freedom in child and adolescent psychiatry.

1.5.4 OSCE

**Regional meeting of
NPMs in the OSCE
region**

In October 2023, the 6th regional meeting for NPMs in the OSCE region took place in Copenhagen. Austria was represented by an expert. This meeting also focussed on „Mental health in detention and other places of deprivation of liberty“ and examined possible synergies between the UN OPCAT and the UN CRPD.

People with mental disorders often face discrimination, stigmatisation and abuse by staff and/or other detainees. Coercive measures are applied to them disproportionately often and for longer periods of time. Additionally, there is often a risk of overmedication. For NPMs, interviewing the affected persons can be very challenging and requires specific knowledge and approaches.

Therefore, the meeting aimed at the exchange of good practice examples as well as recommendations and the promotion of their implementation. The goal of the meeting was to analyse risk factors and situations that contribute to torture or ill-treatment of persons with mental illnesses in detention and to find ways and strategies to prevent them. The participants emphasised the importance of close interaction between NPMs.

1.5.5 SEE NPM Network

**10th anniversary
of the SEE NPM
Network**

The SEE NPM Network, which was established in Belgrade in 2013 by the NPMs of South Eastern Europe, celebrated its 10th anniversary in 2023. The network now consists of 11 members, including the NPMs from Albania, Bulgaria, Greece, Croatia, Montenegro, North Macedonia, Romania, Serbia, Slovenia, Austria and Hungary, as well as two observers from Kosovo and Bosnia-Herzegovina. The main purpose of the network is closer cooperation, an in-depth exchange of experience, and mutual support. The Austrian NPM is an active member of the network. Its experts regularly take part in meetings.

**Psychiatric care in
the penal system**

In 2023, the Greek NPM chaired the network and organised two meetings for the exchange of experiences. One meeting focused on „Monitoring mental health units in correctional facilities“. NPMs discussed the problem of the growing number of persons with mental illnesses in prison and how they can be guaranteed equivalent medical treatment. In the concluding observations,

the network called upon psychiatric departments in correctional facilities and forensic departments in hospitals to incorporate individualised psychiatric care in the penitentiary system and to ensure that security concerns should not take precedence over medical treatment. Furthermore, they underline that young people must receive special attention in this area.

The second meeting of the network concentrated on existing prison education policies and practices, vocational training and skills development as the detainees' rights and a means to support the rehabilitation and reintegration into society. Education as a right and the need for comprehensive information about educational programmes in prisons, especially for adolescents in detention, were discussed. Another topic was also the often inadequate infrastructure and the lack of material and human resources to guarantee this right to education.

Education as a measure for reintegration

1.5.6 Network of German-speaking NPMs

Since 2014, the Austrian NPM has been a partner in a programme for the exchange of experiences between NPMs in German-speaking countries (Germany, Austria, Switzerland, Luxembourg and Liechtenstein). As part of this exchange programme, the Swiss NPM organised the annual meeting of the network in Bern in 2023. Austria was represented at this meeting by Ombudsman Bernhard Achitz and experts from the NPM commissions.

Meeting 2023 in Bern

The thematic focus of this year's meeting was on forced returns by air and an exchange on the practices, observations and recommendations in the individual countries. The treatment of elderly people who are placed in closed wards of nursing homes was also discussed. To this end, the Swiss NPM presented an expert opinion on human rights requirements in closed wards of retirement and nursing homes in Switzerland. Ombudsman Achitz explained the methodology and priorities of the Austrian NPM in monitoring retirement and nursing homes. Finally, psychiatric healthcare in correctional institutions was discussed and the German NPM presented a research project dealing with persons with mental illnesses in prisons.

Thematic focus

1.6 Report of the Human Rights Advisory Council

The Human Rights Advisory Council met five times for ordinary plenary sessions in 2023. In the previous year, the Advisory Council reorganised its working methods by setting up six thematic working groups (police force, correctional facilities, psychiatric wards and hospitals, as well as retirement and nursing homes, children and youth welfare facilities, and institutions for persons with disabilities). The reorganisation was successful, as it increased

Set-up of 6 thematic working groups

the Council's advisory activities and reduced the workload of the plenary meetings. The thematic working groups consist of seven to ten members. In consideration of their special expertise, they are recruited from the members and substitute members of the Advisory Council.

The working groups are mainly active in the following circumstances:

- Relevant request of the AOB for advisory activity
- Proposals or accompanying consultation prior to the implementation and conclusion of monitoring priorities
- Proposals on relevant topics on the own initiative of the thematic working groups

Topics and proposals The thematic working groups dealt with the following topics in 2023. Subsequently, the Human Rights Advisory Council submitted proposals to the AOB in its plenary session. Some of the proposals were published on the AOB website:

- Involvement in the evaluation of the monitoring priorities in (police) detention centres and police stations from 2021 and 2022, as well as proposals for monitoring priorities for 2023 at the request of the AOB (thematic working group police force)
- The Human Rights Advisory Council analysed the outcome of the monitoring priority „Training and further education for socio-pedagogical staff in child and youth welfare facilities“ (thematic working group child and youth welfare facilities)
- Considerations of the Human Rights Advisory Council on the topic of aggression – violence – de-escalation in child and youth welfare facilities (thematic working group child and youth welfare facilities)
- Proposals of the Human Rights Advisory Council on the AOB's special report „Adolescents in detention“ (thematic working group correctional institutions)
- Addressing the topic of „Ensuring that human rights are guaranteed in retirement and nursing homes through nationwide uniform minimum quality standards“ on the working group's own initiative; the group will continued to work on this in 2024 (thematic working group retirement and nursing homes)
- Involvement of the Human Rights Advisory Council in the determination of future monitoring priorities in psychiatric institutions before the official introduction of new priorities (thematic working group psychiatric wards and hospitals)

- Consideration of the Human Rights Advisory Council on the advisory opinion on the draft law of the Federal Ministry of the Interior amending the law on the Federal Bureau of Anti-Corruption (thematic working group police force and correctional institutions)
- Statement of opinion on „Prohibitions on entering and approaching residential child and youth welfare facilities“ (thematic working group child and youth welfare facilities)
- Statement of opinion on „Assisted suicide in retirement and nursing homes „ (thematic working group retirement and nursing homes)
- Involvement of the Human Rights Advisory Council in the development of the monitoring priority for child and youth welfare facilities and consultation prior to the official introduction of the priority „Institutions as a place of protection“ (thematic working group child and youth welfare facilities)
- Proposal of the Human Rights Advisory Council on the conclusion of the monitoring priority „Violence in prisons“ (thematic working group correctional institutions)
- Proposal of new monitoring priority „Atmosphere in prisons“ (thematic working group correctional institutions)

The working group chairs met on 19 September 2023 and drew a positive conclusion of their activities to date.

Other topics dealt with by the Human Rights Advisory Council:

Other topics

- Karin Rohwani-Wimmer, CPT member and member of Commission 6, informed the Human Rights Advisory Council about her experiences on the „CPT and NPM standards with regard to social institutions“.
- Participation of members of the Human Rights Advisory Council in hearings for the appointment of new commission members .
- The Human Rights Advisory Council suggested some changes to the text for the new call for applications for the heads and members of the NPM commissions in 2024 and agreed on a common approach to the hearing of applicants.

The Human Rights Advisory Council provided input to the AOB's determination of cases of maladministration and its subsequent recommendations to the regional government regarding the inappropriate placement of young people with mental and/or psychiatric illnesses in retirement and care facilities in Tyrol, and on inadequacies in a retirement home in Salzburg.

2 Findings and recommendations

2.1 Retirement and nursing homes

Introduction

In 2023, the commissions carried out 119 visits to retirement and nursing homes, all of which were unannounced. As in previous years, the shortage of (specialised) nursing staff and the subsequent admissions freezes exacerbated existing problems for those in need of care as well as staff. Improving working conditions, increasing the number of training positions, the qualified recruitment of nursing staff from third countries, the faster recognition of training received abroad, the guarantee of long-term finance of care and the respective national quality standards are essential for future reforms.

Great need for reform

The challenges and the need for action are immense: demographics, the complexity of the current system including unresolved interfaces with the healthcare system and the unused potential of digitalisation, telemedicine, etc. require solidarity and solutions that have a noticeable impact on everyday care. Even if long-term care falls within the regulatory competence of the *Laender*, national guidelines are needed to achieve the objectives of the Funding of Care Act (*Pflegefondsgesetz*), such as an improved treatment of persons dependent on care and a nationwide availability of affordable care services. It would be in the common interest of the Federal Government and the *Laender* to proceed in a coordinated manner.

A large proportion of the visits in 2023 were conducted to monitor the nationwide priority „pain management and palliative care“, which started in July 2022 and finished in October 2023. In addition, on the occasion of the Assisted Suicide Act that entering into force in 2022, the commissions also looked at assisted suicides in care facilities. Due to the obvious deficits, the NPM requested a statement of opinion from the Human Rights Advisory Council on this particularly sensitive human rights topic (see chapter 2.1.1.2).

Monitoring visits for pain prevention

Based on a survey developed with the six regional commissions, 123 nationwide visits were carried out in small, medium-sized and large facilities run by public, non-profit and for-profit organisations. The commissions accessed data and interviewed the management and care (specialist) staff, and 1,511 residents of which some had cognitive impairments and some did not.

1,500 interviews with residents

The survey on pain management measures involved a comprehensive and time-consuming review of care documentation. For larger facilities, it was carefully ensured that the visiting commissions consisted of at least four members. As the monitoring priority requires specialist expertise in the area of pain and palliative care, one nurse and one doctor were part of the visiting delegation.

Austria has ratified the International Covenant on Economic, Social and Cultural Rights (CESCR) and thus recognises the „right of everyone to the enjoyment of the highest attainable standard of physical and mental health“ (Article 12) and, as a consequence, „the right to health care for all“. Persons with cognitive impairments, particularly those with dementia who live in long-term care facilities, fall within the scope of the UN CRPD. Preventing pain and ensuring the treatment of acute and chronic pain is therefore a top priority. The information given to those affected to obtain their consent to treatment must be provided in an understandable manner, and take their linguistic, cognitive and emotional competences into account. The monitoring priority was selected, among other things, due to a statement made by the UN Special Rapporteur on Torture as early as 2013. According to this, the conscious or unconscious failure to provide access to professional pain relief violates the right to health (Article 25 UN CRPD), the physical and psychological integrity (Article 17 UN CRPD) and, in serious cases, the right to protection from violence (Article 16 UN CRPD), or to protection from degrading treatment (Article 3 ECHR, Article 15 UN CRPD).

2.1.1 Monitoring priority „pain prevention“

The quality of life of residents in nursing and retirement homes is closely linked to their pain situation. The experience of pain has an impact on the physical, psychological and social well-being of those affected.

According to studies, between 60 and 80 % of the residents in care facilities suffer from pain. Between 40 and 68 % not only accept pain as age-related and unavoidable, but also stated that they had already hide it. (Schreier et al: *Schmerz und Schmerzerfassung in Altenpflegeheimen. Ergebnisse der OSiA-Studie*, in: *Der Schmerz*, April 2015, Volume 29, Issue 2, pp. 203-210). The negative effects of unrelieved or insufficiently relieved pain range from a momentary strain and impairment, to long-lasting restrictions in quality of life. Unrecognised pain affects activities of daily live, hinders social integration, leads to a reduction in quality of life, depression, anxiety or sleep disorders. In addition, pain occurrences have a considerable negative effect on the healing or recovery processes.

Pain that is not treated or is not treated properly for a long period of time causes changes in processing of signals in the nervous system and thus contributes to the development of a pain memory and the chronification of the pain (Sandkühler J., *Physiologie und Pathophysiologie chronischer Schmerzen – Neue Erkenntnisse zur Chronifizierung*. In: *Schmerz Manual BDA*: 23-28, 2002).

High risk of untreated pain

It is therefore necessary to treat pain immediately. If non-pharmacological measures alone are not sufficient to alleviate pain, a pharmacological

treatment should follow the WHO grading scheme. Based on the severity of the pain, this scheme foresees three levels for the provision of pain medication. These range from non-opioid medication to strong opioids, whereby the guiding principle for geriatric patients is „start low, go slow“ (25 to 50% of the usual starting dose for an adult). The Austrian Pain Society (*Österreichische Schmerzgesellschaft*) has been working on the problems with pain assessments and pain therapies of elderly persons for years. It issued an up-to-date recommendation in 2020 (*Positionspapier Schmerzen, Schmerzerfassung und Schmerztherapie im Alter: Besonderheiten und Empfehlungen; Schmerz Nachrichten 1/2020*). The recommendation also states that elderly persons with cognitive impairments or communication deficits are at a particularly high risk of inadequate pain treatment and recording.

Against this background, a standardised pain assessment together with structured pain management play a central role. A trusting interdisciplinary cooperation between trained pain experts (pain nurses, pain and physiotherapists, specialists), relatives and the residents themselves is essential for a joint pain relief strategy.

Article 11 of the „European Charter of Patients' Rights“ contains the right to avoid unnecessary suffering and pain and the right to universal and non-discriminatory access to palliative treatment. This should also apply without restriction to the area of long-term care in Austria. At the international level, there are attempts to establish a particular UN Convention on the Rights of Older Persons to emphasise these aspects more strongly and to ensure that they are no longer under dispute.

Right to avoid unnecessary suffering and pain

Dying with dignity must be guaranteed in all retirement and nursing homes. Palliative care should ensure a holistic pain assessment and care and a self-determined, dignified death. This includes the right to comprehensive medical, nursing, psychosocial and spiritual care and support that is tailored to the individual life situation and palliative needs of the person affected. Here too, retirement and nursing homes, as facilities catering basic needs, are required to provide the necessary framework conditions.

The project „Hospice and Palliative Care in Retirement and Nursing Homes“, which is carried out by Hospice Austria, aims to implement competent hospice and palliative care in every retirement and nursing home in Austria. By the end of 2021, 207 homes in eight *Laender* completed this project. To guarantee the quality of life and human dignity until the end, the NPM believes that the hospice project should be implemented and ensured in the long-term throughout Austria.

Dignified conditions at the end of life

The visit reports revealed a need for improvement in various areas. These are presented in the following.

2.1.1.1 Pain management

Pain management measures and their application

Existing pain must be alleviated as far as possible. Unnecessary pain and the risk of the pain becoming chronic must be prevented at all costs. These ambitious goals can only be achieved through good pain management. The monitoring priority therefore focussed on whether, when and how the facilities are taking appropriate measures to record and treat pain. The commissions assessed pain treatment and its documentation on the basis of the five measures of pain management, namely: screening, assessment, measures/treatment plan, follow-up and evaluation (see extract from: *Expertenstandard Schmerzmanagement in der Pflege, Aktualisierung 2020, Deutsches Netzwerk für Qualitätsentwicklung in der Pflege, DNQP*).

Screening means determining whether pain is present. After a positive screening (pain is present), the assessment goes a little further and determines the characteristics of the pain, whether it is chronic or acute, and whether the pain situation is stable or unstable. The various assessment tools, such as the NRS, VAS or PAINAD scale, are an important part of this measure (see p. 34). Subsequently, a treatment plan must be developed or implemented. The plan contains measures taken against the pain, such as medication or other measures. It also includes information and counselling taken on the pain situation, as well as prophylaxis and documentation of side effects. The success of the therapy is evaluated through regular follow-up checks of the patient's well-being and the monitoring of possible side effects. The aim of these checks is to document whether the therapy goals have actually been achieved with the measures.

The commissions paid particular attention to people with cognitive impairments, as – according to an Austrian study – more than 60 % of care facility residents have cognitive deficiencies (Position paper on pain by the Austrian Pain Society, 1/2020).

More than a quarter do not use pain management

The commissions' survey revealed that more than a quarter of all facilities visited had no structured, documented pain management system in place – neither for cognitively unimpaired nor for cognitively or verbally impaired residents.

Even if this result does not necessarily mean that these institutions do not at all provide pain treatment and relief, there is a risk that it is provided inadequately or too late. Without a well-founded pain assessment, there is no basis for the diagnosis. More importantly, there is also no basis for the selection of suitable interventions and for the assessment of the success of the medical treatment and nursing care provided.

Particular risk with dementia

The NPM is particularly concerned about the results this monitoring priority showed with regard to persons with cognitive impairments and their human

rights. Cognitively capable residents are able to express themselves if they are addressed carefully and asked specific questions. They can communicate whether, where and what kind of pain they are experiencing. They can explain how non-pharmacological and pharmacological pain treatments take effect. This cannot always be assumed for the particularly vulnerable group of persons who are cognitively or verbally impaired. Studies show that this group has a particularly high prevalence of pain: 45.8% of patients with Alzheimer's dementia suffer from pain, as do 56.4% of people with vascular dementia, and 53.9% of people with mixed dementia (position paper on pain from the Austrian Pain Society, 1/2020). If pain is not recognised and – as a consequence – not adequately treated, it has an impact on the person's cognition. Insufficiently controlled pain contributes to a further deterioration in dementia.

If residents with dementia exhibit unusual behaviour, care staff should always consider the possibility of having overlooked pain. Interviews conducted by the commissions in the facilities showed that the adequate recognition of pain, especially for dementia, patients is a major challenge. This makes comprehensive pain management even more important, as it consistently measures pain and can then form the basis for adequate therapy.

In principle, pain management was in place in around 70% of the facilities. Random checks of case samples showed, which of the above mentioned pain management measures were used. They also distinguished between residents with and without cognitive or verbal impairments.

A comparison of all five measures of pain management showed that the number of cognitively impaired persons who receive measures with the pain management system is in some cases significantly lower than that of non-cognitively impaired people.

Fewer measures for cognitively impaired people

The biggest difference is in the implementation or continuation of the treatment plan: While half of those with cognitive abilities receive these measures, the proportion of those with cognitive impairments receiving them is only around a third.

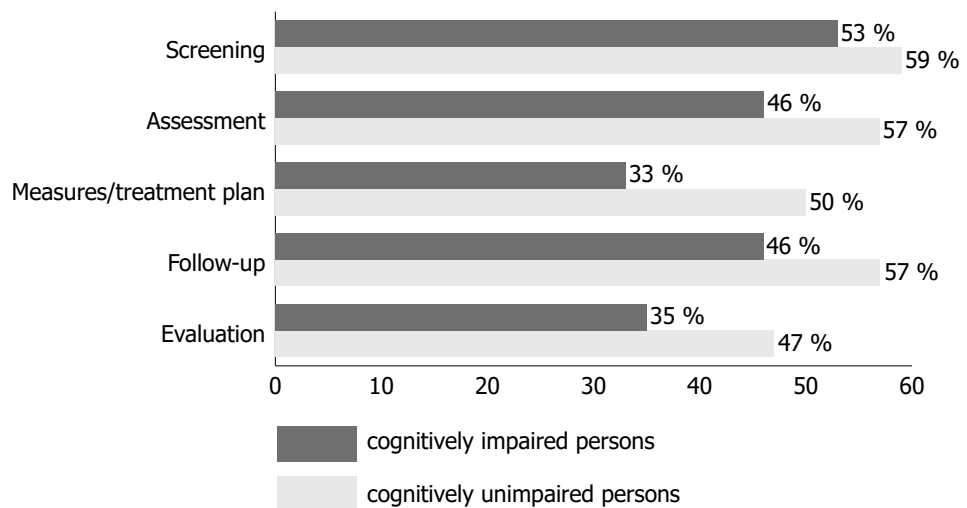
There is also a significant imbalance of 11 percentage points in the pain assessment: 57% of cognitively capable residents receive it, but only 46% of cognitively impaired residents.

A follow-up is carried out among 57% of those with cognitive capacity, but only among 46% of those with cognitive impairment.

The evaluation of pain measures is the measure that is carried out least frequently among the cognitively impaired. The difference here is 12 percentage points.

Finally, the smallest difference of only 6 percentage points was found in the pain screening measure, i.e. the first and basic measure to determine whether a person is in pain or not.

Comparison between residents with and residents without cognitive impairment



One in five institutions does not use pain assessment tools

In old age, certain particularities and a lack of warning signals make it more difficult to recognise pain, regardless of dementia or other cognitive or verbal impairments.

Self-assessment scales

Many validated instruments are available for measurement, with the instruments of choice being those based on self-reporting. The most commonly used are visual analogue scales (VAS – often with pictures of faces or „smileys“) and numerical rating scales (NRS – with numbers from 0 to 10). They allow residents to rate the intensity of their current pain. The verbal rating scale (VRS) is a four-to-six-level scale that measures the intensity of the pain through subjective self-assessment using predefined adjectives (from „no“ pain to „unbearable“ pain).

Self-reporting of pain is also very important for people with dementia and should be attempted whenever possible. If information is provided, it must be taken into account as part of the diagnostic process. External observation instruments are available for recognising and measuring pain in more severely cognitively impaired and non-communicative people, i.e. those with moderate and severe dementia: PAINAD scale (Pain Assessment in Advanced Dementia Scale), BISAD scale (observation instrument for pain assessment in elderly people with dementia, the German version of the ECPA pain scale) or the Doloplus-2 scale.

They all rely on non-verbal communication signals: phonetic articulation, facial expressions, behavioural indicators (such as loss of appetite, confusion, protective posture, resistance to touch, etc.) or physical indicators such as altered breathing rhythm, tachycardia or deterioration of the general condition. For example, the PAINAD scale covers the five categories of breathing, negative vocalisations, facial expression, body language, and comfort. A maximum of 2 points can be awarded for each category. This results in a maximum total score of 10. When the assessment results in 2 points or more, there is an assumption that pain is likely. This also applies if the PAINAD is higher during activity than at rest or if pain treatment leads to a reduction in the PAINAD (treatment attempt).

Scales for external assessment

In almost two thirds of the facilities visited, the commissions' findings revealed that some type of pain assessment instrument is known and in use. In the area of self-reporting, the VAS scale is used most frequently. It is used in half of the homes, followed by the NRS scale with 41 %. The VRS scale (11 %), which is also used for self-assessment, is used much less frequently. In terms of external assessment instruments, in almost half (45 %) of the homes the PAINAD scale is by far the most frequently used. The ECPA scale (or the German version: BISAD scale) is only used in 17.5 % of the facilities. Occasionally, the Doloshort plus scale or scales developed by the institution's operators are also used.

However, one in five nursing or retirement homes does not use assessment scales at all. This means that every fifth home does not apply any instruments to assess the intensity of pain, neither among the residents with cognitive or verbal impairments, nor among the residents with cognitive capacity.

Every fifth home does not use scales

It was also noticeable that in some facilities it was not clear according to which criteria the various pain assessment instruments – i.e. those based on self-reporting or external assessment instruments – were used. For example, in one home all residents in the dementia ward were assessed using the NRS scale, while in another facility the PAINAD scale was used for cognitively unimpaired residents. The commissions also visited homes where there was little or no regular pain assessment by professional nursing staff. The review of the documentation sometimes only showed isolated entries (e.g. „once an NRS“), and it was impossible to trace what happened to the results.

- ▶ ***Structures must be created in care facilities to ensure comprehensive, high-quality pain therapy and palliative medical care.***
- ▶ ***A routine screening should be carried out when moving into the home, thereafter at least every four weeks. A screening must be done in the event of a change in medical status, as well as before, during and after a pain intervention (pharmacological and/or non-pharmacological).***

- ▶ ***If self-reporting of pain is not possible, it must be determined whether residents have an illness that could potentially trigger pain. More specifically, it must be assessed whether typical pain-related behaviour occurs.***
- ▶ ***The use of tailored assessment tools as a means to systematically record pain should be standard in all facilities.***
- ▶ ***Especially for people with dementia, the most suitable scales for the respective group must be used to ensure that pain is adequately detected.***

Pain is only documented continuously in around 60 % of homes

It was found that pain is most frequently recorded or assessed when pain is suspected (in 87 % of facilities) and on admission to the home (in 82 % of facilities). In 73 % of the institutions and facilities, pain is documented after the administration of PRN medication. In some electronic documentation systems (Vivendi, Care Centre), a window automatically opens one to two hours after the single case medication, in which the documentation on effectiveness of the medication is obligatory.

Only 61.7% of the facilities continuously document the occurrence of pain. The time intervals vary greatly, from daily to twice a year. However, many facilities routinely record pain on a monthly basis and, in the case of pain patients, on a weekly to daily basis. The recording of chronic pain also widely ranged from once a month to twice a day. Professional standards recommend at least weekly intervals (Wulff et al., 2012, p. 514 based on *DNQP – Deutsches Netzwerk für Qualitätsentwicklung in der Pflege*, 2005, 2022).

- ▶ ***In the case of chronic pain or long-term medication, pain should be recorded at least once a week.***

What aspects of pain are taken into account in the assessment?

The German Network for Quality Development in Nursing Care (*Deutsches Netzwerk für Qualitätsentwicklung in der Pflege*, 2015, pp. 100-103 et seq.) recommends including certain pain-related aspects in the pain history for older people.

- Pain intensity,
- Pain quality (e.g. burning, dull, stabbing, throbbing),
- Duration of the pain (continuous, intermittent, long-lasting, etc.),

- Localisation of the pain (head, back, superficial, deep, etc.),
- Trigger conditions (e.g. during certain movements, during excitement, at rest), and
- Temporal occurrence (start, duration, rhythm)

should be incorporated in the appropriate assessment tool for the respective target group (see p. 34).

All of these aspects are key indicators for the targeted administration of analgesics, since gender-specific differences are relevant for the effectiveness of this type of medication and can even have opposing effects. The reports of side effects are almost twice as high for women as for men. The commissions found that pain localisation is by far most frequently recorded: 110 out of 123 facilities asked about the location of the pain. All other factors are taken into account about equally often, but to a much lesser extent than localisation. The subjective quality of pain is recorded least frequently (only in 60%). According to the nursing staff, this is due to a lack of time, a lack of specialist expertise, or communication deficits and difficulties.

Only 60 % determine the quality of pain

- ▶ ***Recognising pain requires reliable and resident-adapted recording methods.***
- ▶ ***Gender is an important variable in pain therapy with analgesics. Differences in effectiveness between women and men require special attention with regard to selection, dosage and possible undesirable side effects and interactions.***

Availability of analgesics in acute pain situations

Pain and palliative care requires the rapid availability of suitable, highly effective medication, which are usually narcotics within the meaning of the Narcotic Substances Act (*Suchtmittelgesetz*). Pain therapy, but also palliative symptom control, is very often associated with the use of opioids. They have a calming, as well as a soothing effect for the stressful side effects of illnesses or in case of respiratory distress that is perceived as life threatening. The needs of pain patients can change very quickly for a variety of reasons (e.g. sudden onset of swallowing difficulties, frequent vomiting or shortness of breath) and symptoms can unexpectedly take on an intensity that requires acute medication.

No one questions that there is a human right to the treatment of pain in accordance with the latest medical science, especially in the case of acute complications. However, until the end of 2023, restrictive federal regulations were in place that hindered the implementation of efficient and rapidly effective pain treatment. Care facilities that did not have a licence under hospital law, were prohibited from building up reserves of common painkillers or addictive drugs. Medication therefore had to be allocated to

Emergency drug depots

the specific persons and managed for them individually. This led to problems when prescriptions and supplies were urgently needed in the evenings, at weekends or on public holidays. The commissions repeatedly observed such cases. People in need of care had to wait longer for help from an emergency doctor despite unbearable pain or acute respiratory distress. The NPM pointed this out to the Federal Ministry of Social Affairs, Health, Care and Consumer Protection back in 2018 and recommended legislative changes (see NPM Report 2018, p. 41).

Pain treatment in emergencies

Unsurprisingly, the observations on the monitoring priority once again showed that the availability of analgesics (especially narcotics) in acute situations depends on the cooperation with doctors and how easy they can be reached. In many cases, there was no other way than a transfer to the nearest hospital to enable effective analgesic treatment.

Almost 13% of the facilities visited in 2022 and 2023 stated that painkillers, including narcotics, are not available at all times in acute situations. In individual cases, it is not possible to predict when symptoms will occur and how intense they will be. Until now, a continuous supply of painkillers was only guaranteed when there was a round-the-clock structural cooperation with doctors (e.g. 24-hour availability and close proximity to doctors who are also emergency physicians).

Legal amendment simplifies stockpiling of narcotics

An amendment to the laws of pharmacy and narcotics came into force on 1 January 2024. This allows care, palliative and hospice facilities to obtain a supply of common narcotic medications from an institutional pharmacy that is independent of the individual patients. For quality assurance reasons, this only applies to institutions and facilities that are subject to official supervision under state law and whose stock of medicines and drug management is investigated by pharmacies at least quarterly. The NPM expressly welcomes this solution. In addition to faster pain relief, it should also help to prevent extremely stressful transfers of dying patients to hospitals. However, the legal changes do not apply for terminally ill patients who are cared for by specialised mobile palliative teams with trained palliative care doctors that are not attached to hospitals, and who are sometimes cared for in smaller alternative forms of living. The NPM advocates that palliative care doctors should also be able to prescribe and obtain the narcotics they require professionally directly from pharmacies, irrespective of whether they are required by a specific individual or not.

- ▶ ***In nursing, hospice and palliative care facilities, efficient treatment with highly effective painkillers must always be possible around the clock in a reasonable amount of time.***
- ▶ ***The authorisation to have emergency drug depots independent of the individual should also be extended to patients with acute or chronic unbearable pain who are cared for by palliative care physicians in mobile settings.***

Passing on information about changes in pain

The visits for the monitoring priority revealed that changes in pain conditions, which are revealed through the pain assessment, are generally passed on to the respective doctors. Only in 2% of cases, the information was not passed on and in 10% of the cases, there was no clear documentation of the measures or the information passed on.

Almost all homes also offer non-drug pain therapy measures

Many standards and guidelines recommend non-pharmacological measures as supplementary, pain-relieving interventions. They are part of a multimodal therapy concept. This entails active and passive physiotherapeutic measures. Passive procedures include massages, cold and heat treatments and acupuncture. In addition to cognitive behavioural therapy, the group of psychotherapeutic measures also includes body-oriented proceedings, such as autogenic training, relaxation therapies or distraction (external distraction such as solving puzzles, gardening, reading, and listening to music or internal distraction such as breathing exercises or fantasy journeys, which sometimes make it possible to push the pain into the background).

The commissions' survey showed a very positive picture here: Almost all of the monitored retirement and nursing homes (95%) use alternative forms of pain relief alongside pain medication – for example, classic home remedies such as wraps, compresses, rubs, heat and cold applications, pain-relieving positioning or physiotherapy and aromatherapy. The latter refers to the use of essential oils to alleviate illnesses or increase well-being. Attention and time, in form of comforting conversations, are often used to distract from pain.

Numerous
alternative
treatment methods

The implementation of non-pharmacological measures is the responsibility of the care and nursing staff. Almost three quarters of the facilities that offer non-drug pain therapy, offered training in this area. Training was predominantly on the subject of aromatherapy or aromatherapy care, occasionally also on positioning, ointments or medicinal plants, kinaesthetics, basal stimulation and training on the Snoezelen trolley. Many facilities (72.5%) also have care staff with specific additional training.

- ▶ ***Depending on the type and cause of the pain, non-pharmacological pain therapy measures should be used solely or in combination with drug therapy. In any case, individual preferences should also be taken into account.***

Pain management training

The specialist knowledge of nursing staff is a decisive criterion for appropriate care. In pain management, they play a central role in the coordination

Little regular training
courses

and organisation of pain therapy-related processes as well as continuous communication with the residents. For this reason, there was a focus on the education and training of the nursing and care staff. The commissions' survey showed that regular training on pain management only takes place in just over half of the homes visited.

Pain nurse training When asked about the type of training, the vast majority stated that they had training to become a pain nurse. After completion, this advanced training entitles the recipient to use the additional title „Pain Nurse Management“. It includes pain management in nursing and palliative care. Of 68 institutions that responded, 32 already had a pain nurse, or the training was currently on going or was at least planned for the coming year.

In some facilities, training on the topic of pain is offered as part of palliative care training, for example as part of the “Hospice and Palliative Care in Retirement and Nursing Homes” project (see p. 41 et seq.) or in the form of „palliative care days“. In-house training or programmes by the owners and operators of the facilities, e.g. so-called „mini-training“, were also mentioned. In the majority of cases, these training programmes take place at least once a year, sometimes more often. Only in a few cases was it stated that the facility did not have a single nursing staff member specialising in pain.

The COVID-19 pandemic was also a recurring topic during the visits, because in the past three years there have been no or significantly fewer training courses than before. This is slowly changing. In some cases, there were at least online offers for training during the pandemic. However, these were often cancelled due to the labour-intensive challenges in homes.

► ***Due to the important role of nursing staff in pain management, regular training (further education and advanced training) is absolutely essential. It should be widely promoted.***

2.1.1.2 Palliative care

The WHO defines hospice and palliative care as „an approach that improves the quality of life of patients – young and old – and their families who are facing the challenges associated with life-threatening illness. This is achieved through the prevention and relief of suffering, by means of early identification, assessment and treatment of pain and other physical, psychosocial and spiritual distress“ (WHO 2002).

Hospice culture and palliative care is an approach to care that promotes the quality of life of dying people until the end of their lives. It enables them to die with dignity. Holistic care, palliative medical care and pain therapy to alleviate symptoms cater for psychological, social and spiritual wishes. This type of care requires specialised knowledge and experience in pain management, dementia and communication. Interdisciplinary co-operation,

especially between medical and nursing staff, and the involvement of close relatives play a major role.

Questions of palliative care and end-of-life care must be examined with the right to health in mind. Dying with dignity presumes that terminally ill patients are accompanied and cared for accordingly. This in turn requires the necessary framework conditions. Long-term care facilities are part of primary care. Together with hospitals and doctors' offices, they provide 80 to 90 % of palliative care (*Austrian National Health Institute 2018, Hospiz- und Palliative Care in der Grundversorgung/Leitfaden*). It is therefore essential to further expand and promote the integration of hospice culture and palliative care in retirement and nursing homes.

Nursing homes are important component of basic palliative care

Specialised hospice and palliative care facilities (palliative care units, in-patient hospices) do not qualify as primary care and were not part of the survey on the monitoring priority. Therefore, 93 % of the facilities selected for the survey did not have their own palliative care units or, if they did, were not visited by the commissions.

The HPCRNH project

The Hospice and Palliative Care in Retirement and Nursing Homes project (HPCRNH) was developed in 2004 by Hospice Austria based on experiences in Vorarlberg. It is a comprehensive, three-year organisational development process focused on hospice and palliative care. It includes the training of 80 % of all employees from all professional groups involved in patient care. They receive training according to the palliative geriatrics curriculum. The project also comprises further education and the further development of processes in nursing homes to meet the needs of the dying. Through experience and expertise on the subject, all those involved in the care of residents at all hierarchical levels, i.e. caregivers, doctors, kitchen and cleaning staff, should become more confident in their work with seriously ill and dying people and their relatives and loved ones. For more than a decade, experience accumulated in pilot projects throughout Austria. They have resulted in quality targets, structural and process standards and guidelines.

By the end of 2021, 207 homes in eight *Laender* had completed the project, corresponding to around 20 % of all homes. This roughly resembles the figures from the monitoring visits: 18 % of the facilities visited by the commissions have HPCRNH certification.

18 % are HPCRNH-certified

There is still a long way to go to ensure full implementation. However, it was pleasing to see that numerous homes stated during the survey on the monitoring priority that they were planning to obtain a certification. Some had registered for the project and had already organised groups for training or were able to name a fixed start date. Others stated that the plans for

certification had to be interrupted or postponed due to the COVID-19 pandemic, mainly because training, regular meetings, and reflection days did not take place or only took place to a limited extent.

Difficulties in the implementation of HPCRNH

Staff shortages also a problem in this area

When asked about the difficulties encountered in implementing the HPCRNH project, staff shortages were mentioned first and foremost: Besides the general staff shortage and absences due to sick leave, the training courses requires nursing staff and other personnel to be absent for several days. This makes organising the duty roster a challenge.

Staff departures (of already trained) due to retirement or job changes are also problematic. This means that the training quota falls below 80 % and the requirements for certification are no longer met.

Another problem mentioned was the need to keep the topic up to date: training courses for new employees are mandatory in order to maintain certification. The training courses must therefore be offered on an ongoing basis for new employees.

The *Vorsorgedialogs*[®]

Planning in advance

The HPCRNH projects led to the development of a tool called *Vorsorgedialog*[®]. The aim is to determine the wishes of residents at an early stage and document them accordingly so that they can be used in crisis situations. The *Vorsorgedialog*[®] is enshrined in Section 239 (2) of the Austrian Civil Code (amendment to Federal Law Gazette I No. 59/2017 – 2nd Adult Protection Act) and is also included in the Advanced Healthcare Directive Act (amendment to Federal Law Gazette I No. 12/2019) and the Hospice and Palliative Care Fund Act (Federal Law Gazette I No. 29/2022). In legal terms, the *Vorsorgedialog*[®] corresponds to an „other advance healthcare directive“ within the meaning of Section 8 of the Advanced Healthcare Directive Act (*Patientenverfügungsgesetz*), provided that the person making the directive is capable of making decisions at the time it is drawn up.

Through structured and regular interviews with residents, doctors, caregivers, relatives and persons of trust, the *Vorsorgedialog*[®] should document the wishes of the resident in relation to what measures should be taken in critical situations with regard to their physical, psychosocial and spiritual wishes and needs.

The implementation requires a lot of time and staff to ensure that individual disease progression and needs can be taken into account. This is also reflected in the figures collected by the commissions and the figures from Hospice Austria: By the end of 2021, 60 homes in Austria offered the

Vorsorgedialog® – so only around a quarter of the homes that have gone through the project have also implemented the *Vorsorgedialog®*.

The commissions' survey revealed that a „care dialogue“ is conducted in 29 % of the institutions, although this term was often used to refer to other instruments such as care discussions or similar approaches.

The low number shows that there are still numerous obstacles preventing the wider implementation. *Vorsorgedialog®* conversations mean additional work for the nursing and care staff. The commissions were often told about a lack of time and communication when conducting *Vorsorgedialog®*. However, there is also a lack of appropriate funding.

***Vorsorgedialog* in
29 % of the homes**

The need for preventive care dialogues, such as the *Vorsorgedialog®*, is also reflected in the fact that some institutions introduce internal preventive care tools, which support nursing teams with a questionnaire to identify residents' wishes and respond to their needs.

Other institutions and facilities reported positive developments: In some retirement and nursing homes, a mobile palliative care team from the Health Agency of Lower Austria (*Niederösterreichische Landesgesundheitsagentur*) conducts preventive care discussions as part of advance care planning. This involves a team of palliative care specialists visiting the facility once a month to talk to the residents in person about their wishes and needs at the end of their lives.

In summary, the *Vorsorgedialog®* tool and equivalent instruments must first and foremost be filled with life.

- ▶ ***Every seriously ill and dying person has a right to comprehensive medical, nursing, psychosocial and spiritual care and support that takes account of their individual life situation and palliative care needs (NPM Report 2017).***
- ▶ ***To preserve quality of life and human dignity until the end of life, a hospice culture and the project Hospice and Palliative Care in Retirement and Nursing Homes (HPCRNH) should be implemented and sustainably ensured throughout Austria.***
- ▶ ***The Vorsorgedialog® tool should be established in all facilities. Residents and their persons of trust should be supported in making decisions about the final phase of their life. This requires space and time to pass on understandable information about prognoses as well as treatment and care options. Authorised doctors must be available for this purpose in order to ensure respectful and dignified treatment (NPM Report 2017).***
- ▶ ***Comprehensive implementation and equal access to hospice and palliative care in nursing homes must be guaranteed. Care must be sensitive to personal and cultural values, beliefs and habits of the patient to enable dying in dignified conditions (NPM Report 2017).***

- ▶ ***Funding for the Vorsorgedialog® tool must be secured.***
- ▶ ***The prevention of unnecessary transports and stays in hospitals requires planning with foresight, as provided with the Vorsorgedialog®. Preventive planning of care should take place in order to act according to the wishes of the residents.***

Ethical case discussions

The assessment of whether treatment options have been exhausted or whether end-of-life interventions in accordance with the residents' wishes are still possible can vary depending on the situation. Ethical case discussions take place when doubts arise as to whether a planned or ongoing treatment is in accordance with the presumed current wishes of the residents. The aim is to discuss different viewpoints in an equal manner. By inviting those involved in a specific treatment, from the medical, nursing, therapeutic and social services professions as well as relatives, to a moderated discussion different observations and assessments are gathered. Thus, better decisions are made.

Ethical case discussions are not the norm

The commissions' survey on the monitoring priority revealed that ethical case discussions only take place in just over a third of the visited long-term care facilities. If they were the case, the commissions identified a wide variety of approaches and practices. While some facilities set up an ethics council, others discuss ethical aspects during team meetings, ward rounds, supervision or even just during handovers. Some organise interdisciplinary meetings involving the nursing team, doctors, relatives and residents, others do so without the involvement of nursing staff. In addition, some facilities also take into account the wish to involve pastoral workers in ethical case discussions.

It is worth mentioning that some homes developed their own advanced care programmes. They were developed in collaboration with employees and external expertise from the fields of nursing and medicine. These programmes involve the care team, family, friends, volunteers, doctors and therapists in the process of end-of-life care.

More than 75 % of homes do not have a structured approach

However, less than a quarter of the institutions conduct these ethical case discussions in a structured manner. The degree of structure varies: some use forms or crisis sheets (e.g. *Vorsorgedialog®*), „palliative care questionnaires“, „palliative treatment plans“ and „palliative emergency plans“. The frequency of ethical case discussions can also vary, from regular daily meetings to specific occasions such as a noticeable decline or deterioration in general condition.

- ▶ ***There should be open and transparent communication with the residents, their families, the nursing staff and doctors so that the needs and wishes of the residents with regard to palliative and hospice-related measures can be taken into account.***
- ▶ ***All professional groups that are in contact with the residents should be encouraged to cooperate.***
- ▶ ***Regular evaluations of palliative and hospice care must be carried out to ensure that the needs of all residents are being met.***

Documentation of ethical case discussions

In addition to conducting ethical case discussions, it is also important to document them so that this information is available and can be accessed in a simple and transparent manner. The decision made during these ethical case discussions are usually communicated verbally within the team. The communication often occurs during handovers or in team meetings. The decision of the discussion is also recorded in the care documentation in writing and relatives are informed.

Clear documentation is important

The survey of the commissions revealed that ethical case discussions are documented electronically and/or by hand. Most facilities use electronic systems for documentation, which also provides special applications, such as coloured tabs, check marks, notes, or separate fields or special categories (e.g. „personal“, „palliative care“, „doctor’s visit“, „information collection“) to indicate the existence of ethical case discussions. For the most part, handwritten documentation includes a separate form, a crisis sheet or special labelling of the documentation folders. Very few facilities have no structured documentation at all.

Options for preventive planning of care

In Austria, there are a number of ways to record one’s own wishes for treatment at the end of life, such as *Vorsorgedialog®*, advance healthcare directives and health care proxies. According to figures advance health care directives are sporadically available in almost all institutions, followed by health care proxies, DNRs (Do Not Resuscitate), ANDs (Allow Natural Death), and finally the *Vorsorgedialog®* or similar measures. This indicates that there is a need for improvement in education and awareness raising on targeted steps to establish preventive planning in the institutions. The majority of advance healthcare directives exists already when people move into a care home. This fact underlines that increased efforts are necessary on the part of the facilities to proactively sensitise the residents to plan their care wishes in advance.

Offer provision tools actively and as early as possible

In Austria, only a few Nursing Home Acts of the *Laender* regulate the mandatory documentation of advance healthcare directives and health care proxies (e.g. Section 6 Tyrol Nursing Home Act, Section 9 (1) (1) Lower Austrian Nursing Home Regulation, Section 4 (3) Salzburg Nursing Home Act, Section 8 (2) Vorarlberg Nursing Home Act). Only the consistent documentation of dialogues on care wishes, advance healthcare directives and health care proxies helps to ensure that residents' personal values and ideas are taken into account in nursing or medical interventions. The surveys showed that 87% of the facilities at least document these dialogues, advance healthcare directives and health care proxies. In contrast, 7% do not have any appropriate documentation.

Advance healthcare directives and health care proxies are recorded at different times in the institutions. In the majority of the cases, they are noted during the admission process or at least in the first few days. A small proportion only documents them on an *ad hoc* basis, e.g. in the event of a deterioration in health. In many cases, these documents are recorded at a later point in time at the request of the residents or their relatives or, in the case of the care dialogue. The facilities stated that the willingness to discuss such sensitive topics is greater if mutual trust has been established.

Transparent provision of information

Transparency in the interaction with residents and clear communication about the existence of preventive care plans is crucial to ensure that the entire team is informed. Some facilities use special notes in the care documentation, designated boxes in the care report, colour coding systems or special tabs in the IT system to ensure that this information is visible to everyone involved in the care process.

Staff mentioned specific practices, such as placing a rose on a door sign. These are creative approaches to draw attention to the presence of preventive care plans. Such immediate visual symbols are a simple and effective way to create instant visibility without having to specifically search for information.

The clear communication and passing on of documents on preventive care planning is also crucial in the event of a transfer to hospital and must ensure that all relevant information is forwarded to the staff there. The commissions found that – in the case of transfers – almost all homes hand over preventive care plans and advance healthcare directives together with transfer reports or the data sheets of the respective residents.

Training on palliative care in 63 % of the homes visited

Appropriate nursing and medical care depends largely on the professional expertise of the caregivers. It is important that staff considers palliative care from the outset and that every medical and nursing measure includes a palliative component. Staff training therefore plays a crucial role.

Only 63% of the visited institutions provide training in palliative care. In almost all of visited facilities, the professional groups of care assistants receive palliative care training. It is positive that in around half of these retirement and nursing homes all professional groups including those who are not directly involved in nursing and care undergo training (e.g. administration, cleaning staff, kitchen, building services, etc.).

**No training in
37 % of the facilities**

Some institutions stated that already trained employees, attended refresher courses. New employees attended training courses in accordance with the palliative geriatrics curriculum as part of the HPCNRH project or comparable programmes.

The monitoring visits also revealed a lack of doctors in institutions who have completed specialised training in palliative care. Only in around half of the nursing and retirement homes, the administration confirmed that the attending doctors have a qualification in palliative care, while around a quarter of the institutions stated that this was not the case.

► ***Comprehensive and regular training is needed for all professional groups of all hierarchical levels who work in long-term care. It ensures that all staff are familiar with the principles and needs of palliative and hospice care.***

Cooperation between primary care and specialised hospice and palliative care

Mobile palliative and hospice teams act as a link to primary care in retirement and nursing homes. They support staff, palliative patients and relatives with specialist expertise. Whether such specialised services are required depends on the complexity of the palliative situation on the one hand, and the organisational conditions and available resources in the facility on the other.

The monitoring visits showed that more than half (58%) of the facilities employ their own appropriately trained staff to provide palliative care. This primarily includes the additional training of qualified nursing staff in the field of hospice and palliative care pursuant to Section 17 in conjunction with Section 22b Federal Act on Healthcare and Nursing Professions (*Gesundheits- und Krankenpflegegesetz*). Additionally, the homes also mentioned various other and smaller further training programmes such as „End of Life Care“ or other one-day training courses.

According to the survey of the commissions, almost a quarter of the facilities do not employ staff specially trained in palliative care. However, a closer analysis shows that these facilities predominantly use mobile palliative and hospice teams. In addition, some of the institutions that do not yet have trained staff stated that training or further training is currently underway or planned in the near future.

Mobile hospice teams to support staff

Overall, more than 70 % of the retirement and nursing care homes use mobile, i.e. external services, to provide palliative care to their residents; almost always in addition to their own trained staff. The findings show that only around 10 % of the institutions that have their own trained staff do not utilise any additional support.

3% of all the institutions visited had neither care staff with specialised training in palliative care nor access to external expertise from mobile palliative teams. This is highly problematic in view of the human rights obligation towards the terminally ill and dying. The Federal Government's special-purpose grants under the Funding of Care Act (*Pflegefondsgesetz*) can also be used for hospice and palliative care services. For this reason, the nationwide expansion should continue. The supervisory authorities for the retirement and nursing homes of the *Laender* are responsible for pointing out deficits and pressing for their rectification.

- ▶ ***From a human rights perspective, there is an urgent need for a nationwide expansion of hospice and palliative care services.***
- ▶ ***The supervisory authorities for the retirement and nursing homes of the Laender are responsible. They must point out deficits and press for their rectification.***

Palliative care officer and inter-professional collaboration

The realization of a comprehensive care approach to hospice and palliative care is only possible with the collaboration of different professional groups and disciplines. The team should focus on the patient and coordinate treatment with setting up care and support goals that benefit the patient (WHO 1986, WHO 2002).

More than half have palliative care officers

Therefore, the commissions monitored how this collaboration in palliative care works in practice. More than half of the institutions stated that they had palliative care officers and/or external palliative care consultants for their team. The introduction of palliative care officers and a palliative care group is important and integral to the implementation of the HPCRNH project. Yet, retirement and nursing homes that are not HPCRNH-certified also have appointed palliative care officers. The officers are responsible for coordinating hospice and palliative care. They make suggestions and work with the management to ensure that all employees in the home can practice a hospice culture and palliative care. External palliative consultants provide specialised (external) hospice care and offer help in more complex, difficult situations.

Cooperation with pastoral workers, social workers, and psychological works

Palliative care teams are formed on an *ad hoc* and needs-orientated basis. Accordingly, next to the central professions of medicine, nursing and therapy, other professions, such as social work, psychology or spiritual counselling

should also be involved. 87% of the institutions work together with these professional groups in palliative care. Mainly pastoral workers support the palliative team, followed by specialists from the fields of psychology and social work.

The survey results showed that, in most cases, one or two representatives from the fields of counselling, psychology, or social work are always available per facility if required. Contact with these professional groups is usually documented – predominantly in the care report.

- ▶ ***Terminally ill patients are also holders of non-negotiable fundamental rights. From those rights derives the obligation to protect and fulfil the provision of professional palliative care at the end of life.***
- ▶ ***The establishment of palliative care officers is important for the implementation of the right to die in dignity. Additionally, the cooperation and support from other professions such as social work, pastoral work and psychology and the involvement of relatives and caretakers are also necessary for the implementation.***

„Total Pain” concept – a holistic assessment of pain in palliative care

The concept coined by Cicely Saunders in the 1960s is a central component of palliative care. The model aims to emphasise that pain is a multidimensional process that affects the whole person. In addition to physical pain, which is prioritized for treatment, it also considers mental, social and spiritual pain.

Biographical experiences can have an impact on how physical pain is experienced: Loss and grief caused by losing health, mobility, loved ones and very often one's own home lead to mental pain. Social pain means when people in old age feel lonely, especially those whose loved ones have already passed away. Spiritual pain refers to a sense of meaninglessness – many elderly people express that they feel useless or worthless and ask themselves whether their lives can still have meaning after entering a retirement home.

According to the commissions' surveys, the total pain concept is only applied in 19% of facilities. However, this may be at least partly due to the fact that the term „total pain” is not known well enough. As soon as the commissions explained the content of the total pain concept during their visits, many institutions stated that they do indeed record the residents' pain holistically. Biographical and spiritual aspects were taken into account and efforts were made to differentiate between physical and emotional pain. In some cases, it was also clear from the descriptions and documentation (e.g. reports on end-of-life care) that the concept is practised in the facility. In around 11% of all facilities, training on total pain is also provided as part of the palliative or pain training programmes.

Term not familiar enough

Symptom management ensures quality of life

An important goal of symptom management is the recognition of existing and potential symptoms as early as possible. The aim is to alleviate them with suitable measures so that they are reduced to a tolerable level (WHO, 2020).

Symptom management controls tormenting symptoms through targeted care measures as well as drug and non-drug therapies. This is combined with spiritual and psychosocial support and counselling. The primary goal is to achieve the best possible quality of life by alleviating symptoms during the course of the illness (Austrian National Public Health Institute 2018, *Hospizkultur und Palliative Care für Erwachsene in der Grundversorgung / Leitfaden*).

Every fourth institution does not perform symptom management

The survey of the commissions revealed that around a quarter of the institutions do not perform symptom management in palliative care. The diversity of approaches to symptom management in palliative care may explain this relatively high figure. For example, there are different views on the existence and design of symptom management in palliative care. Evidently, there are uncertainties in the implementation of preventive planning and symptom management.

Some retirement and nursing homes show clear efforts towards holistic and preventive planning and emphasise the quality of life and autonomy of residents. Some stated that treatment plans, nursing and care concepts are developed and implemented on an inter-professional basis. Symptoms are recognised and understood in their biopsychosocial and spiritual totality. Other facilities treat certain symptoms, but note that there is no dedicated symptom management.

► ***A holistic, inter-professional and structured approach to symptom management is essential to enable a high level of quality of life and autonomy.***

Palliative sedation

On behalf of the Austrian Palliative Association, a multi-professional working group of palliative care experts and ethicists developed the National Guideline for Palliative Sedation Therapy (PST). „PST is an important and ethically accepted therapy in the care of certain people who, in the process of dying, are experiencing unbearable suffering due to symptoms that are refractory to therapy. PST is increasingly used in the care of the dying.“

This is not a standard medical measure, but the last medical option for controlling intense pain that cannot be treated by other means by way of pharmacological sedation of the person's consciousness. The legally effective

implementation of PST requires the same legitimisation criteria as other medical therapies: an appropriate indication and legally effective consent to the treatment.

The surveys revealed that palliative sedation is not used in the vast majority of facilities (75%), at least not on a regular basis. If palliative sedation is used, this is done on a case-by-case basis based on a doctor's order or in consultation with the mobile palliative care team. In other facilities, the procedure is based on the guidelines of the mobile palliative care team or in accordance with the in-house palliative care manual.

75 % no palliative sedation

Nutrition at the end of life

The survey of the commissions shows that almost all facilities respect and respond to individual wishes and needs at the end of life with regard to nutrition. They offer favourite foods and fulfil special food preferences. Around 90% of the facilities are also tolerant when it comes to refusing food: They provide alternatives to food and flexibly provide finger food, high-calorie drinkable food, oral care with fruit juice, lollipops, snacks and special diets adapted to needs.

Attentive and empathetic care

The institutions do not usually enforce the use of percutaneous endoscopic gastrostomy (PEG) tubes at the end of life. Typically, following ethical case discussions or prior care dialogue, the decision to insert and remove a PEG tube is made in the hospital. Subcutaneous infusions are rarely administered until the end.

The majority of facilities prioritise the consideration of the individual wishes and needs of residents and the careful consideration of ethical and medical aspects. The survey shows a consistently person-centred and reflective approach to nutrition at the end of life. Sometimes, it is the relatives, who want to put pressure on the dying by offering them food in order to supposedly preserve or prolong their lives. Here, education is needed about the natural dying process.

- ▶ ***At the end of life, it is important to determine whether loss of appetite and reduced oral food and fluid intake are solely related to the dying process or occur due to another, reversible cause.***
- ▶ ***Restoring or maintaining the quality of life of seriously ill and dying people must be at the centre of all nursing interventions.***
- ▶ ***The voluntary, sometimes even conscious stop of food intake close to death should be recognised as an expression of autonomy and is part of the natural dying process.***

Other factors in the dying phase and when saying goodbye

In addition to good medical and nursing care, other factors are also essential for dying with dignity. Most of these are related to the involvement of relatives and loved ones. The commissions monitored how the spatial and staffing conditions were organised during the dying phase or when residents were saying goodbye. The results were positive in most areas:

Rooming-in In over 90 % of facilities, relatives are involved in the care and support of residents during the dying phase. This also includes allowing relatives and loved ones to stay overnight in the home (so-called „rooming-in“) in order to say goodbye to the dying. This is possible in 85 % of the facilities visited.

Single room In 82 % of institutions, privacy-preserving rooms in the form of single rooms are available during the dying process. Some homes offer an extra room or a farewell room in order to be able to stay with the dying for 24 hours. Only very few visited facilities are unable to provide the space for this due to the large number of double rooms and full occupancy. In most cases, screens are set up or pre-installed curtains are used. Depending on the size of the room, it may be possible for relatives to stay overnight, but this is difficult to realise – for example by placing armchairs in the room.

Farewell room Around 40 % of the facilities have their own farewell room where the deceased can be laid out and stay for longer, if necessary.

Diverse rituals Around 82 % of the institutions visited have their own rituals before and after death (see page 54 on dealing with the deceased). These also make an important contribution to comprehensive hospice and palliative care. Music, fragrances, aroma care (letting go oil), basal ablutions and prayers (religion-related) are most frequently offered, which are organised as „non-hospital-like“ as possible. In some facilities, for example, the room doors are decorated with symbolic images (e.g. a rose) to emphasise the need for mindfulness.

Night duty is only adequately staffed in half of the homes In the dying phase, homes often see relatives as system partners. This means that relatives have the opportunity to spend as much time as possible with the dying, which is a positive thing. However, this must not lead to gaps in care, such as insufficient staffing of night services being compensated for in this way. During the monitoring visits, the commissions found that only half of the homes had sufficient staffing levels in the night shift. The general lack of staff, often criticized by the NPM, is evident when insufficient staffing makes it impossible for staff to stay with the dying. If there are no permanent watches available (sometimes nuns in spiritual homes or volunteers from palliative care teams) and no relatives, it is an extremely difficult and sad situation for the person concerned and the staff. The staff come into conflict with their professional ethics. Assistance in dealing with illness, farewell, dying, and death is part of the job description in hospice and palliative care training.

The survey also sought whether there is any kind of follow-up care for grieving relatives after the death of a person in need of care. This is only the case in just over half of the homes and is limited to joint events such as memorial and remembrance services, sent cards or albums of memories.

- ▶ ***To ensure continuous, adequate care in the last phase of life, night shift staffing must also be sufficient. Therefore, it must be evaluated and adapted.***

Being able to die within the familiar structure

Many studies on where people want to die show that the vast majority (58 %) of those who consider their preferred place of death want to die at home. For those in need of care, the familiar structure of a long-term care facility can constitute a home. On the other hand, hospitalisations that are repeated at ever-shorter intervals or spending the last days and hours in hospital represent an enormous burden for the very elderly and palliative patients.

The survey on the monitoring priorities revealed that almost all of the facilities visited (97 %) try to prevent the transfer of dying people to hospitals. They emphasised that the possibility of dying with dignity in the retirement and nursing home has priority. By far the most frequently cited determining factor for death with dignity is good medical care and support. Medical presence, i.e. regular visits by GPs (some of whom have additional palliative care training) have a positive effect: If they are easily accessible and visit the dying regularly or even daily in critical phases, it is possible to remain in the facility until death. Well-trained, experienced staff (whether from the home itself or from mobile services that are available immediately if required) and good co-operation between all these people involved in the palliative care phase are essential. Palliative patients and their right to self-determination must be at the centre of all decisions.

Medical presence and well-trained nursing staff

A further question of the survey was how many of the residents actually die in the institution (and not in hospital or a similar medical institution). Results showed that the proportion was between 75 % and 100 %.

For those who died in hospital, it occurred unexpectedly as part of a „planned“ hospitalisation or following acute events such as strokes, heart attacks or bleeding events. Some facilities reported that hospital admissions in the imminent dying phase were sometimes carried out at the request of relatives. Occasionally, they took place after a discussion within the team and if complications were expected that could not be managed with the staffing levels (especially in the night shift). Sometimes transfers of dying residents to hospitals also take place because the doctors providing treatment are not available or are difficult to reach, especially during off-peak hours, at weekends or on public holidays.

- ***Staffing and spatial conditions as well as the accessibility of doctors must be provided in accordance with the wishes and needs of terminally ill residents. This is to avoid stressful transports and stays in hospitals at the end of life.***

Dealing with the deceased

Farewells in an appreciative and respectful manner

Most retirement and nursing homes have many respectful and sensitive rituals that make it easier to cope with death and help the grieving say goodbye. Individual wishes or preferences are also taken into account, such as the choice of clothing and the addition of jewellery, a rosary or personal items, e.g. a dog leash or cigarettes for heavy smokers. The deceased can remain in the room to allow relatives and fellow residents to say goodbye in familiar surroundings. To create a dignified and respectful atmosphere, various actions are taken, including lighting candles, lay out burial sheets, burning incense in the room, placing flowers, scattering rose petals, designing a farewell room with aromatic oils, music, and subdued lighting, and engaging in personal rituals like placing a picture of the deceased and hanging up the obituary. Memorial services, remembrance corners, minutes of remembrance, praying together, religious symbols and blessings all contribute to coping with grief.

In some facilities, a beautiful burial sheet sewn by a member of staff or a beautifully designed death shroud with handprints showed a particularly high level of respect for the deceased.

Overall, the commissions observed that the retirement and nursing homes visited strive to ensure that they give the deceased a dignified departure. They give family members and their staff space and time to say goodbye.

There were recent complaints that coroners were unavailable or difficult to reach at weekends and on public holidays (see NPM Report 2019, pp. 40 et seq.). One institution in Lower Austria explained that, occasionally for the purpose of official death clarification and inspection of the corpse, transports in an ambulance to a hospital had to be organised at great additional expense.

Assisted Suicide Act and assisted suicide

Constitutional Court repeals criminal liability for assisted suicide

In its ruling of 11 December 2020, G 139/2019, the Federal Constitutional Court declared the absolute ban on assisted suicide enshrined in the Criminal Code (*Strafgesetzbuch*) unconstitutional, effective from 2022. This decision was based on the fact that a constitutionally guaranteed right of the individual to free self-determination can be derived from several fundamental rights. In particular, these include the right to private life pursuant to Article 8 ECHR, the right to life pursuant to Article 2 ECHR, and

the principle of equality pursuant to Article 2 Basic Law on the General Rights of Nationals (*Staatsgrundgesetz*) and Article 7 (1) Federal Constitutional Law. This right to self-determination includes the right to shape one's own life and the right to a dignified death. Therefore, it also includes the right of a person with sufficient decision-making capacity to seek the assistance of willing third parties. In line with judgments of the European Court of Human Rights (ECtHR), the Federal Constitutional Court deemed it essential for the legislator to implement accompanying measures. These measures are intended to establish safeguards against abuse and to ensure that individuals wishing to die do not make their decision under the influence of third parties. Among other things, the court explicitly called for the expansion of palliative and hospice care. This expansion aims to mitigate disparities in the living conditions of affected individuals and ensure that everyone has access to palliative care (Constitutional Court G 139/2019-71 para. 102). At the same time, the NPM believes that suicide prevention measures should also be expanded and provided with sufficient resources.

As a result, Section 78 Austrian Criminal Code was amended by federal law (Federal Law Gazette I No. 242/2021) and the Assisted Suicide Act (*Sterbeverfügungsgesetz*) was enacted. The new legal situation entered into force on 1 January 2022. „Killing on request“ is and remains prohibited in Austria.

In Austria, physical assistance in suicide is exempt from punishment in accordance with Section 78 (2) (3) of the Austrian Criminal Code – which is based on Section 6 (3) and Section 7 of the Assisted Suicide Act. This exemption applies if the assistance is provided without reprehensible motives and involves a legal adult suffering from an incurable illness leading to death or a serious, permanent illness that will inevitably and permanently impair their quality of life. Two doctors must provide proof that the person willing to die is capable of making a decision and has made a self-determined choice to commit suicide, with one of the doctors being qualified in palliative medicine. Only then, the notary office draws up the so-called assisted suicide decree, which is a mandatory prerequisite for obtaining a lethal compound from a pharmacy. The execution of the life-ending decision, specifically taking the life-ending pharmaceutical compound, must be carried out by the person who wishes to die in a private setting chosen by them.

During the preparation of the legal amendment, it became clear in the „Dialogue Forum on Assisted Suicide“ initiated by the Federal Ministry of Justice as well as in the review process for the government bill that different views of humanity and values clash in a pluralistic society, particularly with regard to assisted suicide. The new regulation resulting from the Constitutional Court's ruling is therefore not considered far-reaching enough by those in favour. Meanwhile, others believe that the protective measures taken are not sufficient. Care home operators and their associations, such

Critical opinions prior to new regulation

as the „*Lebenshilfe Heim – Bundesverband*“, wanted the legal text to ensure that no person, institution or organisation should be put under direct or indirect pressure. They also insisted that there should be no direct or indirect obligation to tolerate or carry out assisted suicide in care, medical treatment, hospice or palliative care facilities. Representatives of the hospice movement were of the opinion that healthcare professions should not take on assisted suicide. Among other things, it was also demanded that, although the conditions for assisted suicide without punishment should be strictly defined, overly detailed regulations should not be created. This is to prevent assisted suicide from appearing to be a normal social situation legitimised by the State.

The legislators made it clear that persons who are willing to die can make use of the assistance of any person who is willing and sufficiently capable of making their own decision, if the other requirements are met. Yet, no one is obliged to provide assisted suicide against their conscience. Therefore, no one has the right to assisted suicide vis-à-vis care home providers. There is no obligation on the part of the staff working in homes to provide such assistance on request.

However, it is a separate legal question (which is also controversially discussed in different expert opinions) whether there is at least an obligation to tolerate assisted suicide in retirement and nursing homes. This is also true for the concomitant question whether an institution can prohibit residents, who are capable of making such a decision, from accepting assisted suicide in the facility, if staff, relatives or third parties provide it voluntarily. From the NPM's perspective, the current legal situation does not rule out assisted suicide in the rooms of care facilities that are provided for private use under care home contracts.

Nevertheless, the survey of the commissions quickly revealed that there is still a great deal of unease regarding the requirements of the Assisted Suicide Act and the possibility of assisted suicide in long-term care facilities. Many facilities stated that they had not yet dealt with the issue at all and were not prepared should this come up. In the interviews with management staff, it became clear that 53 % of the visited institutions were opposed to assisted suicide in their facilities.

**Hardly any
information; lots of
reservations**

Even one year after the Assisted Suicide Act entered into force, around half of the institutions and facilities told the commissions that there was still too little or insufficient information on the law. Staff lacked legal instructions from the owners and operators of the facility. In some interviews, it was noticeable that professional ethical self-image and religious convictions were decisive factors. In addition, concerns about the potential development of business models for commercial organisations played a role in not even making assisted suicide a subject of discussion. The interviewees also

asserted that it was the responsibility of the state and society to change the framework conditions, so that people who want to die do not find themselves in a situation, where they see suicide as an adequate solution. Therefore, primarily, greater importance must be given to suicide prevention and palliative care must be expanded.

In some cases, nursing and retirement homes extensively analysed the new legal situation. They drew up guidelines and offer further training on the subject. In one of the institutions visited, an assisted suicide had already taken place. In another case, the facility was in the process of preparing an assisted suicide.

Section 12 (2) of the Assisted Suicide Act and the explanatory notes (RV 1177 BlgNR XXVII. GP, 16) clarifies that it is permissible without punishment to inform a person who expresses a wish to die about the legal situation. This must be done in an open-ended manner. *De facto*, it is also unavoidable that staff working in long-term care facilities deal with such wishes or even requests for assistance because of the relationships of trust that have developed. Taking this into account, the NPM found the guidelines of a nationwide operator of care homes to be questionable in terms of human rights. These guidelines banned staff from supporting those wishing to die and even considered the termination of home agreements and the prohibition of visits from relatives or third parties suspected of offering support. In the course of their monitoring visits, the commissions came across similar restrictive requirements for staff.

In addition to the fact that the NPM deems the guidelines as inadmissible under human rights law, the Human Rights Advisory Council was also asked for a statement, which was published on the website of the AOB (only available in German: <https://volksanwaltschaft.gv.at/praeventiv-menschenrechtskontrolle/der-menschenrechtsbeirat>):

1. Although the Assisted Suicide Act does not impose an obligation to cooperate (in the sense of an active duty to provide assistance) on the operators of retirement and nursing homes, it does impose an obligation to tolerate the rights enshrined in the Assisted Suicide Act.
2. Residents who express a wish to die must be able to discuss this and obtain information. They must also be able to exercise this right to assistance and their right to a dignified death in the institution in which they live.
3. The Assisted Suicide Act does not provide a legal basis for the refusal of the psychological support of persons who wish to die or the provision of expert information or visits by notaries, legally qualified employees of patient organisations, etc.

4. The constitutionally guaranteed right to self-determination and to die with dignity is to be interpreted in such a way that the operators of homes are not free to contractually prohibit the exercise or enjoyment of a human right on their premises. They also cannot threaten to terminate the home contract. Contractual clauses have their limits where they negate the right to self-determination of a contracting party through unreasonable restrictions. Agreements that have this effect are null and void (Section 16 in conjunction with Section 879 Austrian Civil Code).

- ▶ ***Residents who express the wish to die and wish to obtain information about assisted suicide or take steps to realise their wish must not suffer any restriction of their contractual rights or other disadvantages in care facilities as a result.***
- ▶ ***Existing assisted suicide decrees must be included in the care plans of retirement and nursing homes as part of palliative care.***
- ▶ ***Training for staff should be implemented (e.g. information and education about palliative and hospice services; regular interdisciplinary conferences on the topic of „dying/suicide wishes and advance directives“).***

2.1.2 Positive observations and implemented recommendations

In 2023, the NPM gained a very positive impression of numerous retirement and nursing homes. In many areas, the NPM was able to identify examples of good practice.

Research kitchen For example, the free offer of high-calorie drinks and supplementary foods was very positively received in an institution in Vienna. Additionally, the efforts of the research kitchen, which constantly tests new recipes to give people with swallowing problems and a lack of appetite more pleasure and enjoyment from food, were well received.

Human resources In a care home in Carinthia, time is set aside each week to use the dementia transition sheet. In a facility in Vorarlberg, there is sufficient staff to make time for outdoor walks. One facility in Tyrol ensures regular time spent outdoors with a fresh air concept. For the implementation of the concept, the measure is divided into three categories („goes out independently“ / „needs motivation“ / „wheelchair assistance required“). This is part of the care organisation and appears in the daily to-do list.

Structural design While the commissions continue to observe a lack of comprehensive accessibility, they also witnessed successful structural designs: Bright, wide corridors, friendly common areas, large, bright, barrier-free rooms decorated with personal items and pictures, a colourful floor design in dementia areas,

room markings with symbols or photos and extensive, well-kept greenery outside. The café in a care home in Styria has signalling cords next to the seating.

One facility in Lower Austria addresses personal wishes as part of the „Us in old age“ concept. This includes a very detailed, written „personal profile“, which is drawn up with the support of relatives and the residents themselves. A facility in Tyrol uses a very detailed questionnaire to determine previous habits and preferences upon moving in. Staff also takes this into account when planning care measures (e.g. evening/morning person; cold/warmth sensitive; odours, spirituality etc.). This enriches and relaxes the familiarisation process.

Biography work

In many areas, recommendations for improvement from the commissions were also implemented in 2023. Also in the context of the monitoring priorities: following the commissions' visits, concepts on pain and palliative care were drawn up, regular pain screenings were included in care planning, pain management processes were optimised and the use of pain nurses was implemented. One facility in Salzburg set up its own palliative working group, which meets monthly to draw up a concept. So far, crisis emergency sheets have been completed for each person to make important DNR (do-not-resuscitate) directives more visible. Many facilities were aware of the need for improvement and announced palliative care as training priority for 2024.

Implemented recommendations 2023

One home already integrated information on the new Assisted Suicide Act into the counselling session upon admission. Numerous others announced further training courses on the subject.

Assisted Suicide Act

Many facilities responded to criticism from the commissions regarding the living conditions. For example, one institution in Vorarlberg and one in Burgenland introduced more flexible meal times and arranged for dinner to be served from 5pm and 5.30 pm at the earliest. In order to expand the activity programme, the home employed a caregiver who now offers activities from Monday to Thursday. A Styrian organisation created 1.75 posts for animation, which now takes place individually and in groups every day.

Living conditions and activities

Improvements were also achieved as part of the NPM's core mandate by evaluating and reporting measures that restrict freedom. The corresponding organization of further training also contributed to these improvements. Diagnoses were introduced or updated and cooperation with doctors was improved. For example, notifications and the definition of individual case medications were worked out and replaced during a joint visit with the attending physicians.

Measures that restrict freedom

Since spring 2023, additional night shifts have been implemented in selected pilot facilities in Lower Austria and new care assistants have been recruited

Relief for the night shift

for this purpose. Different variants of the model are tested to optimise staffing and relieve the night shift. It is planned to roll this out to all nursing and retirement homes by the end of 2025. Some homes have also introduced late shifts to improve care in the evening and night hours.

Restructuring of the district jurisdiction doctor system

In Tyrol, a reorganisation of the district jurisdiction doctor system is in preparation to create transparency with regard to on-call services and availability. The aim is a uniform (process) organisation and the change of the division of the medical districts. This also enables the prompt inspection of the corpses.

2.2 Hospitals and psychiatric institutions

Introduction

In 2023, the NPM commissions visited a total of 12 medical facilities throughout Austria. The number of psychiatric admissions against the will of patients has risen continuously over the last 10 years. The increase in restrictions of movement, in accordance with Section 33 (2) of the Hospitalisation Act (*Unterbringungsgesetz*), since the outbreak of the pandemic is also significant. In particular, gaps in non-hospitalized care, the decline in psychiatrically trained health and nursing staff, as well as the lack of specialists with expertise in child and adolescent psychiatry, also in hospitals, impede the right of psychiatric patients to the highest possible level of health through treatment. This is dramatic because inadequate treatment options and successes not only limit the quality of life but also have a significant negative impact on academic, professional and private life prospects. Added to this, is the psychological strain caused by the illness and its symptoms. Due to the increasing number of involuntary placements of patients, a centralised control function in the form of discharge management system for patients appears to be relevant.

For this reason, the NPM and its commissions agreed on discharge management systems as monitoring priority starting in 2024. The aim should be to plan discharges with such foresight that any necessary care can be continued seamlessly.

**Monitoring
priority „discharge
management
system“ for 2024**

Gaps in care can arise particularly during the transition from in-patient to non-hospitalized psychiatric care. They can lead to unnecessary stress for patients and their relatives, but also lead to a so-called „revolving door psychiatry“ effect. Provisionally, the NPM assumes that optimised discharge management systems could ensure continuity of care and sustainably improve the patients' quality of life. It will be necessary to determine and assess to what extent optimized discharge management systems can significantly reduce avoidable readmissions („revolving door psychiatry“) and ensure the effective use of financial and human resources, both in in-patient and non-hospitalized psychiatric care.

**Avoid „revolving door
psychiatry“**

The commissions will need to pay attention to whether patients (and possibly also relatives or other persons of trust) are involved in the discharge planning at an early stage; and whether their ability of self-management (e.g. in dealing with medication or available therapy options) has been sufficiently strengthened through counselling and training initiatives.

Effective discharge management could help establish new communication and cooperation structures between in-patient psychiatric facilities or departments and follow-up care facilities outside the hospital (doctors in private practices, outreach psychiatry in form of home treatment, etc.).

Survey of the current situation

The monitoring priority therefore aims to use standardised questionnaire forms to determine the situation of the psychiatric hospitals and departments that are to be visited in 2024. Based on the results of this survey, the commissions will make recommendations for optimising discharge management systems.

Examining the implementation of amendments to the Hospitalisation Act

The visits will also be used to assess in which way the reforms that have resulted from the 2021 amendment to the Hospitalisation of Mentally Ill Persons Act (*Unterbringungsgesetz*) and the Private International Law (*Internationales Privatrecht*) have been implemented in practice during the transition phase from in-patient to non-hospitalized care. Some of the newly drafted provisions emphasise the need for networking between the individual actors involved in in-patient and aftercare care and treatment. Hereby, the right to self-determination of those affected is also taken into account.

Pursuant to Section 32b (1) of the Hospitalization Act, until the patients are discharged, the management of the facility must have a conversation with them to see which treatments and measures have improved their situation during the placement, how they envisage their everyday life after release and how they should proceed in the event of a new crises situation. At the patient's request, a treatment plan (e.g. with agreements on medication or with information on how restrictions can be avoided in crises situations) must be drawn up in the event of renewed in-patient treatment in the specific psychiatric ward (Section 32b (2) Hospitalization Act). According to Section 32b (3) of the Hospitalization Act, the management of the facility must demonstrably endeavour to provide appropriate social and psychiatric care for patients if it considers this to be necessary after discharge.

The special provisions for minors (Sections 40 to 40g of the Hospitalization Act) also contain special arrangements to ensure that the transition from in-patient to non-hospitalized or home care is as smooth as possible for children and adolescents. Section 40a (2) Hospitalization Act stipulates, for example, that the head of department must get to know „the minor, including his/her family, with his/her problems and living environment“ when establishing the placement requirements. Section 40g (1) of the Hospitalization Act stipulates that (where appropriate and proportionate) schools, kindergartens and other care facilities must also be included in the planning of further care for the minor following the in-patient stay.

Results lead to NPM recommendations

The NPM will analyse the results of the nationwide survey and submit recommendations to the decision-makers.

Positive room design reduces coercive measures

A recent study by the Medical University of Vienna, the results of which were published in the journal „Child and Adolescent Mental Health“, proves for the first time that architectural innovations can reduce the use of coercive measures in the field of child and adolescent psychiatry.

The study was conducted against the backdrop of spatial improvements at the University Clinic for Child and Adolescent Psychiatry in Vienna. The clinic had been relocated to a renovated part of the building on the Vienna General Hospital site in October 2020. Following the structural modernisation, which – in addition to the use of natural light sources and age-appropriate equipment – resulted in an increase in the amount of space available and thus more opportunities for retreat and privacy for the young patients, the use of mechanical coercive measures (restraints) was significantly reduced (from 13.7 % to 8.1 %).

The results of the study are consistent with the findings of the NPM in the course of the monitoring priorities on the topic of „de-escalation“, which were carried out in 2021 (see NPM Report 2021 for the results with regard to room furnishings and atmosphere, pp. 60 et seq.). At that time, the NPM recommended providing patients with sufficient opportunities to retreat and creating a de-escalating atmosphere in the design of the rooms through a suitable lighting concept and the use of muted colours.

2.2.1 Lack of care and housing options: Inappropriate placement of adolescents

In recent years, the NPM has repeatedly found that outside the hospitals care options for people with chronic psychiatric illnesses are inadequate throughout Austria (see NPM Report 2022, pp. 49 et seq. with further references).

Offers are still inadequate

According to the NPM, the situation of young people with psychiatric illnesses is particularly worrying.

In 2023, Commission 1 visited two retirement and nursing homes, where it met younger residents in addition to the (very) elderly and those in need of care. The activities and leisure programmes, daily routines and staff training were geared exclusively towards the actual target group of the facility, namely the (very) elderly. The staff and the young people concerned were usually aware of the fact that they were inappropriately placed. The lack of alternative forms of housing and care for young people with (mental or psychiatric) illnesses was cited as a reason for the inappropriate placements.

Inappropriate placement of young people

One of the visited facilities in Tyrol was home to several young residents with psychiatric diagnoses who had been transferred from the psychiatric ward at Hall Regional Hospital. Adequately trained staff to care for these people were not available in the facility, which specialises in (very) elderly people and their needs.

In another retirement and nursing home in Tyrol, Commission 1 found inappropriate placement of young people with mental illnesses. For

example, a 29-year-old man with an addiction disorder was living there. After an assault on a resident, he had to give up his place in this home, was temporarily accommodated in a homeless shelter and then lived on the street, where he died shortly afterwards. In the absence of other suitable forms of accommodation and care, the facility in question also regularly took in people directly from the psychiatric ward. Here too, the staff were aware that the facility was not a suitable place to live for younger people with psychiatric illnesses, either structurally or in terms of staffing.

Measures not yet effective

The NPM once again approached the Tyrol regional government and requested information on the specific steps, measures and considerations taken in recent years (since 2019) to create specialised facilities for younger people dependent on care.

So far, Land has not taken too many measures

The Tyrol regional government announced that it was working hard on planning specialised facilities for the target group mentioned, but that providing a broader regional offer was challenging due to the geographical conditions in Tyrol. However, all questions regarding legal ownership, operational management and feasibility will be pursued intensively until the end of 2025.

According to the NPM, retirement and nursing homes often act as a „last resort“ in such cases to prevent homelessness or are used as „field offices of a psychiatric hospital“ for the care of long-term psychiatric cases.

Right to self-determined housing and living situation

The right of persons with disabilities to a self-determined life and inclusion in the community set forth in Article 19 UN CRPD obliges the signatory states to take effective and appropriate measures to enable persons with disabilities to fully enjoy these rights. The normative content of Article 19 UN CRPD includes the right to a self-determined living situation.

Each „General Comment“ on the UN CRPD is an official legal assessment that specifies what the contents of the Convention mean for a particular subject area. The UN Committee on the Rights of Persons with Disabilities stated in General Comment No. 5 that particular attention should be paid to ensuring that young persons with disabilities are not forced to live in an environment designed for older persons (with disabilities) and vice versa (see UN CRPD, General Comment No 5, CRPD/C/GC/5, para. 22). The UN Committee sees the lack of strategies and plans for de-institutionalisation, the continued investment in institutionalised forms of care and the lack of available, affordable, accessible and adaptable services and facilities as an obstacle to the realisation of the right to self-determination (see UN CRPD, General Comment No. 5, CRPD/C/GC/5, para. 15).

If persons with disabilities live in institutions, which are often characterised by rigid procedures and leave little room for individual needs and wishes, they run the risk of having their right to self-determination and their rights

under Article 26 (habilitation and rehabilitation), Article 28 (adequate standard of living and social protection) and Article 30 (participation in cultural life, recreation, leisure and sport) of the UN CRPD violated. The situation is particularly alarming, where younger people with psychiatric illnesses or other forms of disability – due to a lack of alternatives – have to live in an institutional environment that is in no way designed to meet the needs of this group of people and where both, the specialised training of the staff working there and the daily structure and all employment opportunities are geared towards the target group of (very) old people and people dependent on care.

As part of the official country review of Austria in August 2023, the UN Committee sharply criticised the inadequate implementation of the UN CRPD by Austrian legislation and administration and expressed great concern that the regional governments paid little attention to the UN CRPD (see UN CRPD, Concluding observations on the combined second and third reports of Austria, 8 September 2023, CRPD/C/AUT/CO/2-3, para. 6).

**UN country review:
poor results for
Austria**

The UN Committee expressed concern that persons with disabilities in Austria are neither able nor entitled to choose their place of residence independently due to the lack of sufficient housing and support options and the inadequate provision of personal assistants. The recommendations for action for Austria therefore included the definition of a broad-based national de-institutionalisation strategy, with targets, deadlines and funding, which includes the responsibilities of the Federal Government, the *Laender* and the municipalities, ensuring that persons with disabilities are closely involved in these processes and establishing an enforceable legal entitlement to appropriate financial, technical and personal support for a self-determined life.

In the view of the NPM, so far the efforts of the Tyrol regional government to establish and expand suitable housing and care structures were inadequate, which is why the AOB, after consulting the Human Rights Advisory Council, determined a case of maladministration and recommended presenting short and medium-term plans for the expansion of appropriate, needs-based and community-based housing support for younger people with care needs, as well as a more widely disseminated information on alternative options for support and assistance.

**NPM calls for stage
and financing plan**

The regional government declared its intention to follow the recommendations and explained the steps that have already been taken in the short term and which steps are planned in the medium term. Detailed analyses provided information on the reasons for the inappropriate placements that have been made to date. On the one hand, these were at the request of adult guardianships or relatives and, on the other hand, they were related to cognitive or psychiatric impairments, chronic addictive

**Regional government
is working on
implementation
steps**

behaviour or social indications (poor quality of housing, no family support). An immediate improvement in networking between care management and social work specialists, as well as a ban on admission to care facilities for social reasons, are the first steps towards a practice that better fulfils the UN CRPD. Furthermore, the regional government has promised to inform the NPM of all further proceedings without being asked and to push for the expansion of adequate care structures that are orientated towards individual needs.

- ▶ ***The NPM strongly recommends improving non-hospitalized psychiatric care. Comprehensive coordination of health and care services and networking of all decision-makers involved is required.***
- ▶ ***People with self-care deficits or chronic mental health problems must be involved in the planning, management and implementation of care services. Their preferences must be taken into account appropriately.***
- ▶ ***At the same time, structures and resources must be created or changed in order to ensure adequate care for younger people with self-care deficits or mental illnesses, who dependent on care and to avoid inappropriate placements (e.g. in retirement and nursing homes).***

2.2.2 Follow-up care facilities for patients in geriatric psychiatry

Lack of suitable places in care homes

The structurally inadequate offer of care services for people with chronic psychiatric illnesses identified by the NPM also has an extremely detrimental effect on patients in geriatric psychiatry. Due to a lack of infrastructure outside the hospital or inadequate coordination, repatriation or discharge is delayed or not possible at all.

One patient on the geriatric psychiatric unit at Hall Regional Hospital could only be placed in a nursing home after three months. In the experience of the staff, such disproportionately long hospital stays are also due to the fact that nursing homes have only been admitting patients to a very limited extent for some time due to staff shortages. A more intensive exchange of information between the psychiatric departments and the nursing homes would also be necessary, because care facilities seem to have expectations of geriatric psychiatric care that cannot be met even with adequate in-patient care. For example, the aggressive behaviour caused by psychiatric illness in patients cannot always be prevented by psychiatric treatment.

Improvement in supply necessary

From the perspective of the NPM, it is therefore urgently necessary to improve non-hospitalized psychiatric care in addition to the expansion of places in retirement and nursing homes that are specifically designed for

patients in need of geriatric psychiatric care. To this end, concepts should be drawn up to improve general medical and geriatric psychiatric care in retirement and nursing homes and thus support community-based healthcare. This also requires comprehensive coordination of health and service provision and a tight networking of the decision-makers involved. As a relief measure, it would also be necessary to increase the number of qualified short-term care places.

- ▶ ***The range of non-hospitalized care facilities for patients in need of geriatric psychiatric care should be further expanded to avoid long-term stays that are not medically indicated.***
- ▶ ***Medical and psychiatric care outside hospitals should be improved to relieve the burden on the in-patient sector.***
- ▶ ***Comprehensive coordination of healthcare services and networking of the decision-makers involved are necessary.***

2.2.3 Accommodating patients with geriatric psychiatric care needs in regular wards

On the occasion of its visit to Graz II Süd Regional Hospital, the NPM took a critical look at patients in need of geriatric psychiatric care, who were placed in the general psychiatric wards.

This is a particular challenge for staff for a number of reasons:

- Because many patients with geriatric psychiatric care needs also have physical illnesses, extensive medical assessment and treatment is necessary. The nursing care required may be higher due to frailty.
- Some highly psychotic patients may pose a risk to those in need of geriatric psychiatric care (e.g. of being pushed over).
- The care of patients with geriatric psychiatric care needs requires special training for staff (e.g. dementia-orientated training). Patients often require intensive physical support from the nursing staff, which can bring disadvantages for the other patients as the attention of the staff is unevenly distributed.
- Ultimately, the admission of patients with geriatric psychiatric care needs to general psychiatric wards leads to inappropriate placements and deficits in medical and nursing care.
- The fact that the bed capacity at the geriatric psychiatry department of Graz II Süd Regional Hospital was reduced from the original 108 to 56 beds following a change in the care mandate in Styria in 2021 (inclusion of the Elisabethinen Hospital II, in Graz Eggenberg) had a

Reasons for increased staff workload

Inappropriate placement leads to care deficits

negative impact. The geriatric psychiatry department at Graz II Süd Regional Hospital can therefore not adequately meet the need for acute in-patient care with the resources currently available (staff and bed capacity).

Expansion of bed capacity in 2026 at the earliest

The Office of the Styrian Regional Government explained to the NPM that due to the existing challenges in relation to personnel, it will only be possible to expand the bed capacity at the Elisabethinen Hospital and thus relieve the Graz II Süd Regional Hospital in 2026.

The NPM is therefore strongly in favour of intensifying efforts to recruit staff, because compensating for the lack of geriatric psychiatric care places through admissions to general psychiatric wards is unacceptable for both patients and care staff.

- ▶ ***Patients with geriatric psychiatric care needs should not be placed in general psychiatric wards in order to avoid care deficits.***
- ▶ ***In order to avoid inappropriate placements of patients with geriatric psychiatric care needs, it is necessary to expand bed capacities.***

2.2.4 Staff shortages

Problems with understaffing

Staff shortages have a particularly negative effect on the care situation. Many institutions and facilities are understaffed, especially at night, when there are frequent sick days and at weekends.

The NPM, for instance, observed that there is an increasing shortage of qualified nursing and medical staff on the geriatric psychiatric ward at Hall Hospital in Tyrol. For example, two positions for qualified nursing staff have not been filled for some time. Moreover, the proportion of qualified nursing staff is currently only 40 %, although 70 % is generally recommended by Tyrol hospitals.

High level of personal commitment required from staff

In addition, a specialist doctor with a full-time position resigned in January 2023; this vacancy was not filled. Such a tense staffing situation means that staff are accumulating a lot of overtime that cannot be reduced. Leave cannot be used up either. The lack of resources can only be compensated for by the increased personal commitment of staff in order to guarantee the necessary care for patients.

Concepts to reduce the workload of staff

In order to improve the strained staffing situation, it would be necessary to implement existing concepts (e.g. transitional care with sufficient staff resources) and to develop concepts for special emergency situations (e.g. for dealing with violent persons who are sent away and admitted to a psychiatric ward). The NPM calls upon institutions to step up the recruitment of staff for psychiatric wards and implement accompanying measures to relieve the high demand on staff.

- ▶ ***Efforts to recruit medical and nursing staff must be intensified in order to ensure that patients receive adequate care.***
- ▶ ***Concepts to reduce the workload of staff must be implemented.***

2.2.5 Applying measures which restrict freedom

Measures, which restrict freedom, are only permissible if they serve to avert a serious danger, i.e. to prevent a serious and significant threat to one's own or another person's life or health or to medical treatment and care. They can therefore not be justified on organisational, personnel or economic grounds. From a human rights perspective, restraints are among the measures that most severely restrict freedom of movement. They fall within the scope of the prohibition of torture or inhuman or degrading treatment if they are carried out unlawfully or if they lead to pain or physical injury. The duration of restraints must be reduced to the minimum necessary.

According to the standards developed by the CPT, care must be taken to ensure that any fixation is not perceived as degrading. It should only be used in places that are specifically designed for this purpose. These places should be safe, appropriately lit and heated and provide a calming atmosphere. Under no circumstances should restrained patients be exposed to the gaze of others.

CPT standards on measures which restrict freedom

If the acute situation that led to the restraint does no longer exist, the restraint must be ended immediately. If limbs are restrained with belts or straps, a trained member of staff must be present at all times to provide therapeutic assistance.

In 2023, however, the commissions also found that the spatial situation in psychiatric wards is not always suitable for implementing these requirements. In some cases, fellow patients are present in the room or two people are restrained in one room. In this context, the NPM also received reports of incidents involving assaultive co-patients.

Restraints in the presence of others

In any case, patients should be restrained in single rooms in order to ensure their privacy and intimacy.

Insufficient staff for permanent watch

Guards who sit near the restrained person cannot always be guaranteed due to the lack of staff. The lack of such a permanently available sitting guard is particularly problematic when a 3-point or 5-point fixation is not possible without additional risk of injury due to the patient's individual injuries. The NPM therefore recommends that, if necessary, a pool of potential sitting guards should be adequately secured through appropriate advertising, attractive working conditions and appropriate remuneration.

All nursing staff should also receive *lege artis* training in techniques and requirements of restraint at regular intervals. Participation in this training

Regular training required

should be mandatory. A lack of knowledge or protective restraints that are not carried out in accordance with the guidelines pose a risk to patients.

It is therefore necessary that training documents clarify that restraints can only ever be applied using 5-point restraints or, if necessary, 4-point or diagonal 3-point restraints, while maintaining the greatest possible safety and that any other forms of restraint should only be used if a 5-point restraint is not possible or medically contraindicated for special reasons. In such cases, particularly close observation is necessary, which should be ensured by a guard who sits nearby and is permanently present.

Raising awareness for the protection of fundamental rights

Staff and, in particular, nursing managers should be sensitised to compliance with the protection of fundamental rights. This could improve the relationship of trust and cooperation between nursing staff and patient representatives, which would also benefit the patients. In any case, restraints that last several days are extremely questionable from a human rights perspective and should be avoided. In special cases, complete documentation and monitoring must be ensured, and patients must be able to communicate at all times.

The restraint of a patient in bed for four days observed by Commission 3 at Graz II Süd Regional Hospital is questionable from a human rights perspective. The nursing documentation showed that a 5-point restraint was applied for 24 hours, while the patient was placed alone in a room. Another use of a further 5-point restraint lasting around twelve hours was documented as well.

The Office of the Styrian Regional Government justified this long duration with the fact that there were special circumstances (high suicidal tendencies and the associated tendency of the patient to endanger herself). In the view of the NPM, however, alternative care options should also be examined carefully in such cases.

Debriefings and local support

Furthermore, debriefings on measures, which restrict freedom should be offered in a structural form, which requires guidelines and strong motivation on the part of those affected. Such proactive debriefings are particularly important in the case of prolonged periods of restraint in order to process what has happened. Coercive measures are experienced as extremely degrading or traumatic. For this reason, a healthcare policy is needed that favours long-term care outside hospital and close to home instead of repeated acute crisis interventions in order to avoid in-patient stays against the will of those affected and to prevent suicide.

- ▶ ***Sufficient staff must be recruited in order to ensure guards that sit close by.***
- ▶ ***Regular staff training is required to ensure compliance with human rights standards for measures, which restrict freedom.***

- ▶ *In order to protect privacy and intimacy, restraints should be avoided in the presence of other people.*
- ▶ *Proactive debriefings are an essential tool for processing the experience of measures, which restrict freedom.*
- ▶ *A network of psychiatric support structures that is as stable and supportive as possible after crisis situations must be established and expanded nationwide.*
- ▶ *To support access to education, employment, housing and welfare benefits for persons with mental illnesses and psychosocial disabilities, changes are needed in the social sector.*

2.2.6 Child and youth welfare facilities discontinue support

During a visit by Commission 1 to the child and youth psychiatric department of Hall Regional Hospital, the NPM observed that children and adolescents who are placed in out-of-home care by the child and youth welfare services, cannot return to their residential facility after a stay in a psychiatric hospital.

No return to familiar surrounding

The NPM emphasises that the child's well-being must be the top priority in all measures taken by public and private institutions. The health and development of adolescents are strongly determined by their supportive living environment. As a rule, it is not in the best interests of the child if they are not allowed to return to their usual residential facility and thus their familiar environment in the event of a crisis or after a stay in a psychiatric institution (which has become necessary as a result of the crisis). In order to ensure this, it is essential to provide the necessary resources and to apply an interdisciplinary approach to promote and protect health and development by creating effective and lasting relations and partnerships between all relevant actors in child and youth welfare services and the health and education sectors. Only through co-operation can interface problems be solved, gaps in care closed or fragmented services overcome.

From a human rights perspective, it is therefore urgently recommended to create resources, which ensure that children and adolescents can continue to be cared for in the previous institution after a crisis; or that, if necessary, an orderly and accompanied change of institution is carried out.

The Office of the Tyrol Regional Government informed the NPM that first improvements have been achieved by making sure that social workers are better connected: The Department of Child and Youth Welfare is contacted earlier and there is a closer cooperation with child and youth welfare services and institutions. The care centres are to be intensively involved in the

Improvements initiated

treatment through interviews. Measures and alternatives are to be discussed together with the facilities and in close co-operation with the children and adolescents concerned. These processes and decisions, however, are generally organized and taken by adults, while the minors themselves remain excluded or are only involved insufficiently.

- ▶ ***The care and support of children with mental disabilities must have priority. All available resources must be utilised to eliminate discrimination and enable inclusion.***
- ▶ ***In order to safeguard the welfare of children, it must be ensured that contact with caregivers is maintained even in psychiatric crises and that children and adolescents in out-of-home care can return to their usual residential groups after a psychiatric care in a hospital.***
- ▶ ***It is essential that minors with mental disabilities are heard in all proceedings that affect them and that their opinions are respected in accordance with their development.***

2.2.7 Documentation of measures which restrict freedom

Documentation deficiencies During a visit by the NPM to the University Clinic for Orthopaedics and Traumatology in Innsbruck, it was found that the documentation of measures, which restrict freedom was not sufficiently transparent.

Individual cases On two days, for instance, a patient was accommodated several times in a low-floor bed with side rails and an alarm mat. There is no provision for reporting this to the representative(s) of the residents. Furthermore, neither the reason nor the respective circumstances for the measures mentioned could be found in the care documentation.

According to the documentation, one patient had been restrained using a lap belt at 6.09 pm on one day. However, the admission examination of the same day did not document any psychiatric findings, which means that the Nursing and Residential Homes Residence Act (*Heimaufenthaltsgesetz*) may not have been applicable to this patient. A report to the representative of the residents was not evident from the documentation. In addition, the time at which the abdominal belt was removed was not recorded.

For another patient, the use of an Easy Walker was documented several times within a month. The findings revealed dementia with a tendency to wander off, which is why the NPM assumes that the Nursing and Residential Homes Residence Act does apply in this specific case. However, it was not possible to verify if this was reported to the residents' representatives.

In the case of another patient, a measure restricting freedom was reported to the residents' representatives. However, it was not clear from the documentation what type of measure restricting freedom was involved and how long or how often it was applied.

The NPM emphasised the importance of proper and complete documentation of measures, which restrict freedom, not least in order to be able to comprehensibly prove the legality or permissibility of said measure.

The documentation should clearly state the reason, the type of measure restricting freedom, the date and time when the measure was applied, any interruptions (e.g. to go to the toilet), and the end time of the measure. In addition, in the run-up to a measure which restricts freedom, the attempted mitigating measures (e.g. distraction by conversation, two-part bed rails, low-floor bed, sensor mats, etc.) must be listed.

Standards for documentation

The Office of the Tyrol Regional Government informed the NPM that training courses on documentation will be offered in the department in which case studies will be used more frequently. The employees are to be trained in smaller groups by care experts or managers.

Measures for improvement assured

A new clinical system, which will be implemented over the next two years, should make documentation much easier. This programme will record the basic requirements (reason, type of restraint, date and time of start and end, as well as the alleviated measures). By implementing these technical support options, every interruption can also be recorded, which is not possible with the existing personnel resources.

At the Hospitals Tyrol, the potential for improvement in IT-supported transmission is also to be evaluated and any existing deficiencies rectified in close cooperation with the network of representatives (*Vertretungsnetzwerk*).

The NPM welcomes these efforts to improve the documentation of measures which restrict freedom.

- ***In the documentation of measures, which restrict freedom, the reason and type, date and time of the start of the measure, any interruptions (e.g. to go to the toilet), and the end time of the measure, as well as the mitigating measures attempted before the restraint (e.g. distraction by conversations, two split bed rails, low floor beds, etc.) must be documented.***

2.2.8 De-escalation training

Aggression in the health care sector, and particularly in psychiatric institutions and departments, is not entirely avoidable. This is why institutions need a systematic and structured de-escalation management system. Appropriate prevention measures must be understood as a joint task for the entire

Regular training and concepts

organisation and require a detailed clarification or definition of terms, existing resources, expectations, and goals. All these things are usually appropriately defined in de-escalation or safety concepts.

In order to avoid taking action against persons with mentally illnesses, techniques must be taught that offer de-escalation measures and techniques to promote safety at every stage.

Commission 1 noted that de-escalation training is generally provided for the medical and nursing staff of the geriatric psychiatry department at Hall in Tyrol Hospital. However, these training measures are organised on a voluntary basis. ProDeMa (Professional De-escalation Management) training was started but not continued due to the pandemic.

Obligation to provide training

Training has since been resumed, but only a few employees are able to attend the training due to staff shortages. As a result, there is still a considerable need for training, especially for doctors, none of whom have received specialised training to date. However, in order to deal with escalating situations, it is necessary to provide mandatory training for all staff, including doctors, and to maintain their level of knowledge through refresher courses.

The NPM therefore recommends making training in protection against violence and de-escalation measures mandatory for all nursing staff and doctors and providing a curriculum with ongoing refresher courses for the department.

► ***De-escalation training that has been cancelled due to the pandemic should be made up for quickly and be mandatory for staff.***

2.2.9 Cramped spatial conditions

Quality of care suffers

On the occasion of a visit to the second Department of Psychiatry and Psychotherapy at Graz II Süd Regional Hospital, South Site, Commission 3 found that the spatial situation on wards 21 and 22 is not up to date and has a negative impact on the treatment process for patients. The cramped spatial conditions also mean that the intimacy and privacy of patients cannot be adequately guaranteed.

This is also reflected in the fact that there is only one shower for seven patients in the protected area of ward 22 and only one shower and one toilet, as well as one shower in combination with a toilet for 14 patients in the open area of the ward. In the patients' rooms there are only washbasins. Furthermore, the commission found that restraints were being used in rooms with other patients due to full occupancy.

Avoidable additional workload for staff

Due to the inadequate spatial infrastructure, there is also a considerable additional workload for staff. Care activities can only be carried out with

an increased workload and in some cases not at all due to of the missing infrastructure (e.g. lack of a nursing bath for patients with geriatric psychiatric care needs).

The NPM therefore strongly advocates that the structural deficiencies should be improved in a timely manner.

The Office of the Styrian Regional Government admitted to the NPM that the spatial conditions need improvement and that it is working continuously on this matter. Parts of the building, for instance, are to be completely renovated, and the extent, to which additional space can be created to relieve the burden, is examined as well. The relocation of a department to the *Hochsteiermark* Regional Hospital in Bruck an der Mur could also help to improve the spatial situation. However, it is not planned to open until 2027.

**Parts of the building
to be refurbished**

► ***Sufficient space is essential to ensure a positive treatment process for patients and to reduce the workload for staff.***

2.2.10 Positive observations

The NPM also gained positive impressions in the course of its monitoring activities in 2023.

A concept for the introduction of a „home treatment“ programme was developed in Tyrol. The project has been running since June 2023 and provides for a multi-professional team to visit young patients in their family environment, get to know the family context through a better social anamnesis, and provide therapeutic services or treatment on site for a period of around three months. The aim is to avoid or at least reduce in-patient hospitalisation as far as possible.

„Home treatment“

During the last visit to the Department of Psychiatry at Lienz District Hospital, Commission 1 noted a number of improvements. The comprehensive range of therapies and a diverse programme of activities were particularly highlighted. Adequate access to the garden has also been created for patients who are placed in the institutions pursuant to the Hospitalization of Mentally Ill Persons Act (*Unterbringungsgesetz*).

On the occasion of a visit to the Department of Psychiatry and Psychotherapy 2 at Graz II Süd Regional Hospital, South Site, Commission 3 found that the admission management system works well and leads to a significant reduction in the workload of the nursing staff.

During an inspection, Commission 1 positively noted that the Department of Psychiatry and Psychotherapy A, A3 – Geriatric Psychiatric Ward, at Hall Regional Hospital, only uses low-floor beds with sensor mats. Due to this change of beds, the number of fall-preventing bed restraints has been significantly reduced.

**Low-floor beds
reduce restraints**

2.3 Child and youth welfare facilities

Introduction

In 2023, the NPM commissions visited 137 child and youth welfare facilities. As in the previous year, they observed again the massive problems the facilities face in recruiting well-trained staff. Due to high staff turnover, working conditions are extremely stressful. As a consequence, the remaining staff is overstretched, which leads to further redundancies.

Slight increase in out-of-home care

According to the child and youth welfare statistics for 2022, a total of 12,888 children were in out-of-home care in Austria. This again represents a slight increase in numbers. At 12.1 per 1,000 inhabitants under the age of 18, Vienna continues to have the highest number of out-of-home care placements, albeit with a slight decrease. At 5.7, Upper Austria is once again the Land with the lowest number of out-of-home care placements per 1,000 inhabitants under the age of 18.

Nationwide, the proportion of children and adolescents receiving parental support per 1,000 inhabitants rose slightly. In Carinthia, this increase was above average; at 40.3, the *Land* is at the top with the most out-of-home care in relation to the total number of minors. Carinthia was also able to reduce the proportion of full residential care from 11.8 to 11.1, which can be attributed to the increased use of non-residential family support. This means that this *Land* complied with a recommendation of the NPM.

Expansion of non-residential family support still necessary

The NPM continues to call for the expansion of non-residential family support for the whole of Austria in order to enable minors to grow up accompanied by their families and to avoid placement in full residential care as far as possible. A child rights-orientated approach to the care and protection of children requires a paradigm shift towards an attitude that respects and strengthens the dignity and physical and mental integrity of the child. The framework conditions for this must be created by politics and administration. The right to prioritise the best interests of the child in all matters that concern and affect children must be respected.

2.3.1 Implementation of recommendations

Lack of complaint mechanisms

Many institutions also responded quickly to recommendations and criticism from the commissions in 2023. The commissions frequently suggested installing an anonymous complaints system. Most facilities implemented this recommendation promptly by installing complaint letterboxes. One provider installed a letterbox, but did not label it so that the children did not know what to do with it. The NPM suggested discussing the use of the letterbox in a children's team. In some facilities the lack of a notice board for external complaints offices was criticised. The recommendations were taken into account.

Children's teams are installed as an instrument of participation in most institutions and facilities, but the intervals of their meetings had a tendency of becoming longer. If this was the case, the children's teams were held regularly again on the recommendation of the commissions. It is important to give children and adolescents the feeling that caregivers take their concerns seriously. This is the only way to ensure that instruments of participation remain interesting for minors.

Lack of participation

Structural deficits are often found in the shared accommodations. In one case, a threshold was a tripping hazard that had to be changed. Especially in facilities for young people, there is often worn-out or broken furniture, as well as dirty rooms and furnishings. On the recommendation of the NPM, worn-out furniture was disposed of and replaced with new furniture or the accommodations were partially or completely renovated and domestic helpers were hired for the weekly professional cleaning.

Poor living conditions

In some facilities, the commissions found a need for improvement in the management of medication. This mainly consisted of the storage of medication and the documentation of its dispensing. The NPM's recommendations were implemented immediately in most cases. Accordingly, medication is now kept locked away and the facilities concerned promised that this would also be observed in stressful situations. In one shared accommodation, there were two medication cabinets and the part of the cabinet in which the psychotropic medication was stored could not be locked. This was also changed and the facility promised that the date of first use would be noted on opened packaging and that medication would be disposed of properly once it was no longer needed.

Medication management in need of improvement

Documentation in institutions not only serves to record daily events or medical or nursing activities, but should also reflect the development of the children. A clear order should be followed and the documentation should be comprehensible and unalterable. It should also be clear who has made the documentation entry. However, in some institutions, records are still kept in different systems and programmes or in analogue form. This makes it difficult or impossible to summarise or analyse crises and individual events, for example. The possibility of making subsequent changes is problematic as well. The recommendation to replace the existing documentation system was therefore promptly complied with by the facilities concerned. During a visit to a facility in Tyrol, the documentation gave rise to criticism because it contained derogatory wording about the children. A prompt follow-up visit revealed that the documentation had been reviewed in team meetings, documentation guidelines had been drawn up, and staff had been trained in how to formulate value-neutral entries in the documentation system.

Documentation could be improved

One institution was recommended to purchase a colour printer for craft materials, pictures, teaching materials and worksheets, which was also

implemented. In another shared accommodation, a new television was purchased and suitable WLAN access was organised for the young people. A crisis centre housed in a former school building was soundproofed and lockable handles were fitted to the windows.

Lack of privacy Improvements have also been made in relation to the self-determination and privacy of children and adolescents in shared accommodation. Many minors in care are not given room keys, which means that their rooms remain unlocked when they leave, or can only be opened with the help of care staff. In most of the facilities where the commission observed this problem, room keys were handed out, or new locking systems were installed soon after the visits. In one shared accommodation, residents complained that caregivers entered the room immediately after knocking. During a follow-up visit, the commission was able to ascertain that the recommendation to wait for the residents' consent after knocking had been complied with. Upon recommendation of the NPM, the renovation of a crisis centre for adolescents made sure that only single rooms were created. A storage area with lockable boxes was set up to store personal belongings.

The placement of personal information for all to see also constitutes an invasion of the privacy of the young residents. In the office of one shared accommodation, for example, notices about the residents' menstrual cycles were displayed, which were removed after the commission's criticism.

Guidelines and concepts in need of improvement

Familiarisation folders and emergency plans should be available in every shared accommodation and easily accessible to all employees. In one residential home, the criticism of the NPM prompted the organisation to update the guidelines and training documents for all of its residential groups, and to make them available to all employees in the individual facilities, and digitally.

The children's educational and medical folders were restructured and organised more clearly in another shared accommodation. Some of the providers adapted their concepts at the recommendation of the NPM. In one shared accommodation, the sex education concept was revised by an association for sex education.

Unsuitable conditions The NPM assessed the conditions of a socio-pedagogical group inadequate for two Syrian boys, as neither the equipment nor the pedagogical care appeared suitable for the two boys. The minors could not be given any sense of safety or security. They stated that they were very lonely. Due to communication difficulties, the boys were unable to participate in social life in the shared accommodation. No consideration was given to their needs when choosing meals. An interpreter, who was available for seven hours a week, was their only confidant. The NPM managed to have the two children transferred to a more suitable shared accommodation.

In another facility, the NPM succeeded in having the competent district administrative authority investigate the decision of the child and youth welfare services to reject the continuation of psychotherapy for an adolescent resident.

One large organisation provided its staff with more training on violence prevention. In addition, two child and youth protection officers were appointed, who – as part of an ombudsman unit – acted as contact persons for the concerns of all children and adolescents under their care. A protection concept for all areas is supposed to be developed with them. Another institution reported that regular training sessions in the areas of violence prevention, de-escalation and crisis intervention will be held in 2024, following a recommendation of the NPM.

Measures to prevent violence

Withholding pocket money as a sanction for breaching house rules, which was criticised in one institution, was replaced by a reward system following the commission's visit. The young people now receive their pocket money every week, staggered according to age.

2.3.2 NPM monitoring priorities – review and outlook

From 2021 to 2022, the NPM focused on the monitoring priority „education and training of socio-pedagogical staff“. The results were presented at a press conference, published in the previous year's report and discussed in detail in the National Council and Federal Council (see NPM Report 2022, pp. 65 et seq.). In addition, the results of the monitoring visits in the *Laender* are presented in the reports to the Diets and specific recommendations are made in relation to child and youth welfare services owned and operated by the *Laender*.

Prioritisation 2021/22

The findings of the monitoring priority showed that only around half of the employees in child and youth welfare facilities have a qualification in social pedagogy or social work and are therefore perfectly qualified for the professional requirements. The rest has other academic qualifications and training in basic social professions, the content of which only partially corresponds to the professional activities in socio-pedagogical institutions. Some are still in training. The NPM called on the *Laender* to make continuing education mandatory for these professional groups in order to close knowledge gaps.

The Austrian Association for Professions in the Social Work Field took the results of the monitoring priorities as an opportunity to once again emphasise the importance of a professional law for social work. The first efforts to achieve such a law date back more than 20 years. However, there are currently no legal regulations on areas of work and mandate, quality

Monitoring priorities provide impetus for protection of professional titles

assurance or training for members of the profession. At an event of the Austrian Chamber of Labour in April 2023, at which Ombudsman Achitz and others presented the results of the NPM, the competent Federal Minister for Social Affairs, Health, Care and Consumer Protection promised to take the first steps and kept word. The training requirements are to be defined in 2024 with the Social Work Designation Act (*Sozialarbeits-Bezeichnungsgesetz*). „Social worker“ and „social pedagogue“ will thus become legally protected job titles with clearly defined requirements. These include a degree in social work, completed training at social academies, a bachelor's or master's degree, or a diploma programme in social pedagogy.

This law partially fulfils a long-standing demand of the NPM. However, a comprehensive professional law regulating key issues, such as professional rights and duties, remains the goal following a constitutional amendment.

New curriculum for in-service training

After completion of the quality standards for residential child and youth welfare services by FICE (International Federation of Educative Communities) Austria, an international network for the improvement of out-of-home care for children and adolescents, it became apparent that the majority of caregivers in institutions and facilities would require continuing education in order to be able to implement the guarantees of the UN CRC in practice. A curriculum was therefore developed for the dual (in-service) training of professionals in residential child and youth welfare services. This was presented on the premises of the Austrian Ombudsman Board in January 2023. In the meantime, the University of Applied Sciences (FH) Campus Vienna has developed an academic university programme from this curriculum. The Academy for Pedagogical Competence in Innsbruck also created a 100-hour additional qualification for residential child and youth welfare services based on these quality standards. The courses will start in spring 2024.

Budget planning must guarantee children's rights

The monitoring priorities also revealed the nationwide shortage of training places for social work programmes. According to media reports, the FH Eisenstadt wanted to create an additional part-time degree programme, but the Federal Ministry of Education, Science and Research refused to fund it. The *Laender* of Upper Austria and Vienna also submitted applications for new degree programmes to the Ministry in order to create more university places in the field of social work and socio-pedagogical studies. However, the establishment of „social pedagogy“ as a tertiary education programme failed, as the Federal Government did not want to make any provisions for this. In addition to an assessment of the economic situation, budget planning at the federal and *Laender* level also requires an evaluation of the extent to which existing legislation, policy guidelines and programmes respect, protect and guarantee children's rights. The NPM therefore believes that public funds and corresponding budget allocations need to be mobilised in order to meet the demand for trained socio-pedagogical professionals nationwide.

In 2023, the NPM started the internal process of developing a new monitoring priority. With the participation of all commissions and the Human Rights Advisory Council, „institution as a place of protection“ was defined as the new monitoring priority for child and youth welfare facilities and the state's basic care system for unaccompanied minor refugees and asylum seekers.

New monitoring priorities 2024

In order to provide the best possible support for the development of children and adolescents who come from stressful backgrounds, it is important to absorb their traumatisation as quickly as possible and support them in (re) gaining self-efficacy. Socio-pedagogical facilities should offer a „safe place“ and a trauma-sensitive care environment for this purpose. Due to the special framework conditions in child and youth welfare services, institutions can pose specific risks and dangers for both the minors and the care staff.

The primary aim of this focus area is to identify whether the institutions and facilities visited are perceived as „safe places“ by the children and adolescents. Of particular interest, are the necessary criteria for the existence of a „safe place“ from the perspective of those affected, the requirements for the fulfilment of this claim and the potential risks of human rights violations. These parameters will be used to analyse the institutional conditions.

What makes institutions a safe place?

The new focus encompasses a wide range of thematic aspects and requirements. These include the suitability of the placement of children and adolescents (especially those with behavioural problems), the establishment of trusting and sustainable care relationships, the greatest possible continuity of care and relationships, the greatest possible co-determination in everyday life, and the protection from all forms of violence. The child's right to be heard and to have their personal opinion appropriately taken into account must be systematically recognised in all decision-making processes. The empowerment and participation of the child must play a central role in all strategies and programmes for the care and protection of the child.

Aspects of the new monitoring priority

The development of a survey questionnaire and its trial application by the commissions is planned in the first half of 2024. The supervisory authorities will be informed about the aspects of the nationwide monitoring priority and the associated preventive objectives before the planned launch in autumn 2024.

2.3.3 Difficult personnel situation

The shortage of staff throughout Austria poses particular challenges for both public and private owners and operators and has an impact on team members, as they have to work a lot of overtime. If they can no longer cope with the working conditions, more staff will leave. However, ending relationships are a major additional burden for children who have problems

Blatant staff shortage

in forming such relationships due to the experiences they have made in their own families. In many shared accommodations, there have even been several changes in the course of the last year. However, children are only able to accept educational programmes at all, if they have the greatest possible continuity of care and relationships. As such working conditions lead to a further work overload for the teams, the NPM suggested relieving the burden on staff through additional permanent positions.

The effects of the staff shortage were particularly noticeable during the visits in Vienna and Lower Austria. In Lower Austria, Commission 5 found a shared accommodation that was in a state of emergency due to the extreme shortage of staff. The children were already very dissatisfied, as leisure activities, such as excursions and group holidays, were no longer possible due to vacant positions. The employees were burdened by a lot of overtime and poor working conditions, which led to further resignations.

**Relationship work
is neglected**

Staff from the day care centre also had to be called in to maintain operations in a shared accommodation in Lower Austria. The day care centre was closed. The educators at the day care centre struggled with the changeover to rotating night and weekend shifts. Despite this reorganisation, there was not enough time in the shared accommodation for care and educational discussions with the children. The mood of the children, who feared a rapid change of caregivers based on their previous experiences, was just as gloomy as that of the caregivers. There were no more children's teams, and the intervals between supervision and team meetings became longer and longer. Commission 5 observed that childcare had become „storage“, rather than a process of building up relationships.

A toddler group was opened in a large centre run by the *Land* of Lower Austria. The team started with great motivation, but soon after the first three children moved in, they were overwhelmed. The staffing conditions were not sufficient to meet the needs of the complexly traumatised children, who were in a very precarious physical condition. In addition, the educational team was not specially trained to meet the needs of the very young children, which is why there was a high turnover of staff soon after the group home had opened. To avoid having to close the group, two adolescent boys and their caregivers from another group at the same facility were integrated into the toddler group, which was extremely difficult for everybody involved. When part of the remaining team also went on sick leave, the centre had to integrate its residential group into the toddler group in order to be able to cover the services.

**Unacceptable
reactions to
personnel problems**

One consequence of the situation, which was intolerable for everyone, was the use of inappropriate educational interventions. From the documentation, Commission 5 found that a five-year-old girl was sent to the room alone, as the staffing ratio rarely allowed that she was accompanied there. Various

dangerous situations occurred during this time. On one occasion, the toddler climbed onto the windowsill and opened two windows.

When services could no longer be provided due to low staffing levels in one regional facility, group assistants had to perform night duties alone, although they are not actually permitted to do so. Commission 6 took a very critical view of this.

In some shared accommodations of Vienna's child and youth welfare services, the demand for double staffing, which has been raised since the NPM was established, was met by deploying staff still in training from the third semester onwards. However, this did not apply to all shared accommodations of the Vienna municipal department MA 11, which meant that therapies were cancelled in one shared accommodation if the community service worker was unable to take the children to therapy. Leisure activities also had to be restricted. In order to be able to pick up other children from school, the remaining children had to be taken with them.

**Comprehensive
double staffing**

Commission 5 found a precarious staffing situation in another facility in Vienna, where some of the childcare staff were untrained and staff turnover was high. In addition, the children's different origins and traumatic experiences as refugees placed an increased burden on the staff, which made the educational work considerably more difficult. The NPM pointed out the consequences of ongoing relationship breakdowns for the minors in care and criticised the fact that new employees in training were already on night duty alone after just two weeks.

Educational staff often have to stand in for domestic helpers who are on permanent sick leave and take over cooking and cleaning duties. In some shared accommodations, only basic cleaning by an external cleaning company is planned from the outset. As a consequence, the area of competence of the care staff extends far beyond educational activities and also includes extensive housekeeping activities, such as catering for the minors in care and cleaning work. The NPM recommends that this should be changed, as it leaves less time for educational work with the children.

There is also a glaring shortage of staff in the crisis centres in Vienna and Lower Austria. Due to this and the overcrowding in one crisis centre in Vienna, the care staff did not have the necessary time to devote themselves fully to all residents or to provide them with sufficient individual care. As Commission 4 observed, there was a lack of support with schoolwork and contact between care staff and schools and other care facilities, for example. This situation led to extremely stressful working situations and consequently to staff turnover. The staff had to work a lot of overtime. This also affected the staff who was still in training and were assigned to work independently at night.

**Staff shortages also
affects crisis centres**

Anxiety situation due to working alone Commission 5 found a similar situation in a crisis centre in Vienna. The untrained staff, who were on duty alone at night, even locked themselves in the duty room out of fear.

Double occupancy urgently needed at night A large number of small children were accommodated in another crisis centre in Vienna. In the opinion of Commission 5, the permanent overcrowding and the widely diverse group would have made triple staffing necessary during the day and double staffing at night. According to staff in crisis centres, single occupancy at night in particular has long since ceased to meet the actual needs. This makes it impossible to respond to the individual needs of minors and favours the escalation of conflicts between them, as low-threshold violence prevention measures are not implemented in time.

Use of security Instead of double staffing at night, as requested by the NPM, Vienna's child and youth welfare services increasingly responded by deploying security services to support the caregivers. The staff situation had a particularly tragic effect in a crisis centre where a sexually traumatised girl and an adolescent with a history of sexual assault were accommodated at the same time. The girl was raped during the night. She testified to the police that no one had heard her cries for help. Among other things, the NPM criticised the violation of the duty of supervision by Vienna's child and youth welfare services and urgently suggested increasing the number of educational staff instead of deploying security services.

A crisis centre in Lower Austria had to leave some of its care places vacant due to understaffing. As there are already too few crisis centres in Lower Austria, this has had a negative impact on minors who are not adequately cared for or protected from violence in their families.

- ▶ ***Crisis centres should have triple staffing during the day and double staffing at night.***
- ▶ ***Untrained personnel should not provide services on their own.***
- ▶ ***Targeted measures against staff turnover must be taken in good time.***
- ▶ ***Staffing problems must not lead to childcare situations that are detrimental to children's welfare.***

2.3.4 Shortage of socio-therapeutic and psychiatric places as well as crisis places

Shortage causes inappropriate placements During their visits to socio-pedagogical facilities, the commissions repeatedly encounter children and adolescents with severe psychological injuries and traumatisation who do not receive the care they need in a socio-pedagogical care setting. A shortage of socio-therapeutic and socio-psychiatric places can be observed throughout Austria. Institutions and facilities thus often have

to wait a very long time until an adequate solution is found for children and adolescents with psychiatric diagnoses. The health and development of minors are strongly determined by their living environment, and any misallocation not only endangers those affected, but can also jeopardise the protection and safety of other children and adolescents living in the institution.

The observations of the commissions emphasised the problematic situation that the NPM has already pointed out several times. During its visit to a facility in Carinthia, Commission 3 learnt that a resident had repeatedly become violent towards other adolescents and caregivers and had injured them. As he needed a lot of attention, the size of the group was not suitable for him; he would have needed a smaller setting. However, there were no suitable places available. At the recommendation of the NPM, Carinthia promised to set up multidisciplinary socio-therapeutic and socio-psychiatric facilities for children and adolescents. In addition, the Land provided information about the ongoing work on new concepts for specialised care facilities for children and adolescents with special needs in a working group set up specifically for this purpose.

Carinthia promises expansion

For Commission 5, Vienna once again demonstrated the need for a socio-therapeutic programme with suitable residential places for children in persistent crisis situations and for those who need smaller group sizes. In the documentation of one centre, there were 18 incident reports concerning a girl within two months. The doctors treating her recommended a transfer to a socio-psychiatric shared accommodation. However, as no suitable place could be found in a timely manner and she refused to remain in the facility, the minor had to wait two months for a suitable place in another shared accommodation run by the organisation. This led to a further breakdown in the girl's relationship.

Demand also in Vienna

In Lower Austria, Commissions 5 and 6 have noticed a deterioration in the care of children and adolescents who would require a higher care staff ratio and a smaller group setting since a standardised cost model has been introduced. The so-called socio-therapeutic shared accommodations were closed and converted into socio-pedagogically inclusive shared accommodations with nine children. There are too few shared accommodations that offer therapeutic places in smaller group settings, and these are occupied for years. Due to this lack of appropriate programmes, children are often placed in shared accommodations, which are not the best choice. The NPM encouraged the expansion of small groups.

Recommendation to expand small groups in Lower Austria

During a visit to an institution in Lower Austria, Commission 6 identified a glaring lack of places for young people with disabilities between the ages of 16 and 18, which serve to help them become independent; this was the case in both, fully-assisted and partially-assisted living facilities. The transition between socio-pedagogical and curative education facilities is difficult due to

the interface problems between the department for child and youth welfare services and the department for social services.

The fact that Lower Austria is planning to establish two socio-psychiatric shared accommodations, with two more to follow, is fundamentally positive. However, the realisation of this project is already taking several years, even though the places are urgently needed.

**No small groups
in Styria**

Commission 3 also suggested that the possibility of smaller group sizes with four to six children be included in the implementation regulation, as there are currently no such concepts in Styria. On a positive note, the group size of Styrian residential groups for children and adolescents has been reduced from 13 to nine children. This finally fulfils a long-standing demand of the NPM.

**Reduction in group
size necessary in
Carinthia**

This makes Carinthia the only *Land* in which groups with more than ten children are permitted. The NPM recommends reducing the group size in the new Carinthian Children's and Youth Assistance Act (*Kärntner Kinder- und Jugendhilfegesetz*).

The lack of socio-therapeutic and socio-psychiatric places also has an impact on crisis centres. Due to great difficulties in finding adequate follow-up places, minors often stay longer in crisis centres than planned. Excessively long placements have many disadvantages. The minors have to cope with long periods of uncertainty regarding a follow-up placement, long-term psychotherapeutic or psychiatric care are delayed, and relationships that have been built up in the crisis centre are (once again) broken off.

**Expansion of services
required in Vienna**

In its Report 2010 to the Vienna Diet, the AOB therefore called on the City of Vienna to expand the number of socio-therapeutic and socio-psychiatric places in line with demand. Individual places were subsequently added again and again. Between 2019 and 2022, the number of therapeutic residential places was increased from 140 to 240. However, this is not enough to achieve a significant improvement in the permanent overcrowding of Vienna's crisis centres. According to the City of Vienna, a further expansion of the socio-therapeutic and socio-psychiatric facilities is planned. The Vienna City Court of Audit examined the care provided for children and adolescents with mental or psychosomatic illnesses from 2019 to 2021 and also recommended that the Vienna municipal department MA 11 expand the number of socio-psychiatric residential communities for children in out-of-home care.

Commission 4 encountered some children in a crisis centre in Vienna who were waiting for follow-up placements to become available, which is why they could not be moved to follow-up facilities. When visiting another crisis centre, the commission noticed that this facility had already been continuously overcrowded for eight months. Instead of the maximum amount of eight children and adolescents, eleven minors were placed in this crisis centre, most of whom had psychiatric diagnoses. The situation was similar in another crisis centre in Vienna. At the time of Commission 5's visit,

no suitable places could be found for some of the children there either, which is why they could not be released from the crisis centre.

Overcrowded crisis centres can also be attributed to the fact that the existing number of crisis de-escalation places are not sufficient. The NPM therefore called for an increase in the number of crisis centres from the outset. Despite the persistently poor supply situation, no further crisis centre is being planned according to the City of Vienna. However, a project group has been set up to improve the overcrowding and overloading of staff in the crisis centres.

Crisis centres in Vienna permanently overcrowded

The situation is similar in Lower Austria. The four crisis centres of the *Land* and the two private ones have a total of 75 places and six emergency places available. There is also the option of caring for children in crisis situations in shared accommodations. However, neither the staffing ratio nor the training of the staff in the shared accommodations meet the requirements for a crisis assessment. In some regions of Lower Austria, there is no crisis centre at all, which is why the minors have to be placed in facilities that are a very long way from home. Two-hour journeys to their schools or training centres and the loss of their peer group are not uncommon. The NPM is therefore once again calling for the expansion of crisis centres in Lower Austria.

Expansion also recommended in Lower Austria

In a children's crisis group in Upper Austria, the stays of minors also lasted longer than the four months envisaged in the concept, as the children were waiting for available follow-up places. Tyrol currently also faces an acute shortage of follow-up care facilities, as Commission 1 observed during a visit to a centre for young people in crisis situations. At the time of the visit, many minors were waiting for a free spot in the residential care facilities of the child and youth welfare services.

Long stays also in Upper Austria and Tyrol

There are also not enough crisis centres with foster parents for young children throughout Austria. Crisis centres do not have the right staffing ratio for small children and the staff are not trained for this particular age group. In addition, crisis centres are unsuitable for children under the age of three simply because of the size of the groups.

The precarious situation in crisis centres and shared accommodations is exacerbated by a lack of support services in child and adolescent psychiatry and a lack of therapy services at health insurance costs. During visits, the commissions repeatedly receive reports of months-long waiting times for therapy places.

Inadequate psychiatric care

Commission 4 learnt from a residential group for small children in Vienna that a boy needed autism-specific support. However, the waiting time for this is two years. Other children would need trauma therapy. However, timely (outpatient) support services for children and adolescents with severe mental impairments are rarely available. In view of this situation, sustainable solutions and a guarantee for care are needed for all children

Lack of therapy services

and adolescents so that they are not left alone in acute mental health crises. If illnesses are not treated, they continue to worsen. This is why there is an urgent need to expand medical and therapeutic support services.

Expansion planned in Vorarlberg and Styria

The *Land* Vorarlberg reported to the NPM that an increase in beds and outpatient care places in child and adolescent psychiatry is planned as part of the Regional Health Care Structure Plan for Vorarlberg with a planning horizon of 2025. Styria also envisages an expansion of service capacities in its Regional Health Care Structure Plan 2025. The focus is on expanding outpatient care, among other things.

Ongoing projects in Tyrol

Commission 1 learnt that there are not enough places in child and adolescent psychiatry in Tyrol either. The *Land* of Tyrol informed the NPM about regular meetings with child and youth welfare facilities, the competent specialist departments, and the Austrian Society for Child and Youth Psychiatry with the aim of improving the in-patient, outpatient, and day-clinic care situation in Tyrol and referred to the projects „Home treatment in child and youth welfare services“ and „GetFit4MentalHealth“. The latter is intended to raise awareness of mental health among children and adolescents in schools and counteract the development of mental illness.

- ▶ ***A sufficient number of socio-therapeutic and socio-psychiatric places and small groups should be available throughout Austria. The Laender must expand their services in line with demand.***
- ▶ ***The number of crisis de-escalation places should be expanded.***
- ▶ ***In-patient psychiatric care must be guaranteed for all children in full residential care.***
- ▶ ***Outpatient therapy services should be available for minors in out-of-home care without waiting times.***

2.3.5 Restrictions on freedom

The right to personal freedom is one of the basic human rights. Standards on the right to personal freedom, procedural safeguards, and institutional monitoring can be found in the Universal Declaration of Human Rights, the UNCRC and the European Convention on Human Rights (ECHR), among others. Deprivation of liberty means forcibly restricting a person's physical freedom of movement, preventing them from leaving a confined space.

Study on personal freedom of children

In July 2022, the Ludwig Boltzmann Institute of Fundamental and Human Rights published a study entitled „Locking children up is not a solution! The child right to personal liberty“. The study sheds light on the areas of „adolescents and criminal law“, „migration and deprivation of liberty of children and adolescents“, „children and adolescents in psychiatric

institutions“, „children and adolescents with disabilities“ and „children and adolescents in other institutions“. It contains important demands for the prevention of restrictions on freedom and for taking into account the special needs of minors.

In the area of child and youth welfare services, the study starts with the prevention of placement. As the NPM has been doing for years, the study also calls for the expansion of early help programmes and parental support during residential child care. It also calls for more places to be offered in foster families instead of residential care. The implementation of a child and adolescent participation package for all children and adolescents in institutions and facilities should strengthen their opportunities for participation in decision-making processes. Legal regulations to ensure child protection concepts and increased training and implementation of de-escalation concepts in all child and youth welfare facilities are also named as important measures.

Finally, there are calls for more and continuing training for educational professionals, for staff to be taught methods for dealing with conflicts and, above all, for more resources to be provided to enable the most individualised care possible for children and adolescents. All of these demands are in line with the long-standing recommendations of the NPM.

Requirements correspond to NPM recommendations

In order to implement the right to personal freedom, the Nursing and Residential Homes Residence Act (*Heimaufenthaltsgesetz*) was created at the national level, which has also been applicable to child and youth welfare facilities, as well as the special-needs school sector since 2018. In 2022, 3,608 new measures, which restrict freedom, or deprive minors of their liberty, were reported in child and youth welfare facilities, including special-needs schools; in 2023, the figure was 5,770. The reasons for this are manifold and range from insufficient awareness among staff, or inadequate confidence in dealing with escalating crisis situations, to inappropriate staffing ratios, group sizes and a lack of individual care.

The rising number of cases is not the only cause for concern. In order to avoid reporting obligations and external monitoring by residents' associations, some owners and operators have started to use legal arguments to evade the regime of the Nursing and Residential Homes Residence Act. This is done by arguing that the law does not apply to their socio-pedagogical shared accommodations. In its decision 7 Ob 80/19v, the Supreme Court stated that the Nursing and Residential Homes Residence Act is applicable if at least three minors with mental illness or mental disabilities can be permanently cared for or looked after in institutions. This catch-all provision is therefore intended to cover facilities in which, due to the existing structures, conditions are more similar to a home than to a family.

Question of the applicability of the respective law

In addition to some private organisations, Vienna's child and youth welfare

services are of the opinion that the same does not apply to their own shared accommodations. According to the City of Vienna, it was discussed with the representatives of the residents that the question of the scope of application would have to be clarified by relevant rulings of the highest courts. The denial of the applicability of the Nursing and Residential Homes Residence Act is surprising in view of the group composition of many shared accommodations in the City of Vienna. As the NPM has observed for years, minors with cognitive and mental impairments are indeed cared for in this facilities and have to be moved to specialised facilities if everyday situations escalate repeatedly. Before that, however, they spend a long time in the shared accommodations of the Municipal Department MA 11, where their freedom is repeatedly restricted. If the representatives of the residents and the staff look for alternatives to restrictions on freedom or, if necessary, seek legal protection under the law, this is exclusively done in the interests of the minors. They can only develop new ways of experiencing themselves and others and different ways of interacting as a result of a change in the care situation.

In Styria, there was a decision on this topic by the Graz-Ost District Court, which came to the conclusion that the Nursing and Residential Homes Residence Act was not applicable to residential groups for children and adolescents due to the grounds for exclusion stipulated in the Regulation on the Implementation of the Styrian Children's and Youth Assistance Act (*Steiermärkisches Kinder- und Jugendhilfegesetz*). However, the Supreme Court referred the matter back to the court of first instance, where it is still pending, for a new decision following further proceedings have been completed.

In a facility in Tyrol, Commission 1 found a note from the residents' representative according to which the facility disputed the applicability of the Nursing and Residential Homes Residence Act to its shared accommodation. Here too, the management of the facility argued that a classic socio-pedagogical shared accommodation was not able to provide care for three children with mental illnesses or mental disabilities. In its comment, the *Land* Tyrol explained that it was extremely difficult in practice to differentiate between children and adolescents with mental disorders and those with a mental illnesses.

Restrictions of liberty always the last resort

Regardless of whether the Nursing and Residential Homes Residence Act is applicable to a residential group, restrictions on freedom must be consistently avoided. If less severe measures are available, these must be prioritised and documented. Regardless of whether or not children and adolescents are staying in institutions and facilities to which the Nursing and Residential Homes Residence Act applies, they all should have available a set of review instruments, in case of restrictions of liberty that are inappropriate regarding their age. If the Nursing and Residential Homes Residence Act

is not applicable, the *Laender* as supervisory authorities are called upon to initiate such reviews after each incident and to take measures that do not jeopardise the child's development, or at least do so to a lesser extent. It is also the responsibility of the *Laender* as competent authorities for child and youth welfare and protection to ensure that all persons who are professionally responsible for the prevention of violence, protection from violence, and care following violence, actually do take the needs of minors into account in their everyday work and respect their rights.

In child and youth welfare facilities, which are undisputedly covered by the scope of application of the Nursing and Residential Homes Residence Act and which should be familiar with the law that has now been applicable for more than five years, measures, which restrict freedom are sometimes not reported immediately to the residents' representatives. In a facility in Vorarlberg, Commission 1 observed that an eight-year-old girl was repeatedly restrained with physical force for short periods of time during impulsive outbursts, which generally did not have a de-escalating effect, but rather increased the impulsive outbursts. Commission 1 also received information during a visit in Tyrol that an eight-year-old boy was repeatedly restrained for several minutes. Such restraint is neither typical for this age group nor is it considered to be a normal educational intervention. In both cases, the measures were not reported to the residents' representatives. The NPM made it clear to the facilities that even short-term restrictions of freedom interfere with the right to personal freedom and must be reported.

Reporting obligations disregarded

Commission 3 found a delayed report to the residents' representative in a Styrian residential group for children and adolescents. If reports are not made immediately, restrictions on freedom are also inadmissible. Due to the criticism of the NPM, the *Land* of Styria once again discussed the legal situation with the owner, as well as the urgency and importance of prompt notifications that trigger action by the representative of the residents.

In a facility in Salzburg, a twelve-year-old with care level 6 spent the night in a so-called Kayser bed. This is a large crib with side panels with closing mechanism that the girl could not open herself. At the request of the resident's representative, the competent district court declared the use of the bed permissible for a limited period of time under certain conditions, but ordered improvements to be made in a timely manner. The facility subsequently endeavoured to provide the girl with as normal a sleeping situation as possible by implementing the recommendations of an expert. In addition, the staffing ratio was increased and the number of children was reduced to four in order to provide adequate intensive care for this minor without restricting her freedom.

- ▶ ***Measures to prevent restrictions on the freedom of children and adolescents must be taken consistently.***
- ▶ ***Restrictions on freedom should be used as a last resort in the event of escalation.***
- ▶ ***Reporting and documentation obligations according to the Nursing and Residential Homes Residence Act must be observed.***

2.3.6 Place of protection

Hazard potentials Child and youth welfare facilities are designed to protect children and adolescents, which is why they have to guarantee this requirement comprehensively. It is particularly important to note that such facilities also harbour specific risks. These are caused by round-the-clock care, dependency and power relationships, particular vulnerability due to traumatising in the family, as well as privacy and intimacy, as the institution is also the home of the children and adolescents.

In order to ensure protection and enable the early detection of potential risks, such facilities should have protection concepts that are specifically tailored to their particular characteristics. The FICE quality standards for in-patient child and youth welfare services stipulate that facilities should have such a protection concept that is known to all employees.

Upper Austria develops guidelines To implement these standards, Upper Austria published guidelines for the development of protection concepts in socio-pedagogical institutions. It is intended to support the institutions and facilities in Upper Austria in developing a customised protection concept. The guidelines are based on a broad understanding of protection and safety. The team and the children and adolescents in care should be involved in the development of the concepts.

Carinthia and Styria set initiatives Carinthia organised a large conference on the topic of protection concepts with expert presentations, at which basic knowledge on the development of protection concepts at the specialist administration level was imparted. Styria also organised a symposium on the topic of „Targeting child protection – prevention and intervention in cases of violence against children“. The NPM welcomes all of these initiatives, which can make an important contribution to ensuring that children and adolescents in out-of-home care receive the best possible protection.

Group composition is crucial An important aspect is the right group composition. However, due to the problems described above in finding the right childcare places, the commissions repeatedly encounter highly problematic group constellations.

Protection not guaranteed for some children In order to counteract staffing difficulties, several groups were merged in a Lower Austrian facility visited by Commission 5. As a result, three severely traumatised toddlers were living in a shared accommodation with several

adolescent boys. This resulted in an increased risk for a girl who had experienced severe sexual abuse in her original family.

In another facility in Lower Austria, Commission 6 also criticised the composition of the group as critical. Two adolescents were placed in this shared accommodation, who were violent towards other children and the caregivers. One caregiver suffered a broken rib. This was exacerbated by the chronic understaffing. The facility was not considered a safe place for the minors and their protection was not sufficiently guaranteed. Due to the excessive demands, the staff also resorted to methods of „black pedagogy“. During the visit, one girl reported that after being choked by a boy and vomiting, she had to wipe up the vomit.

In one institution in Vienna, Commission 5 criticised the group constellation. There were numerous escalations involving children who were prone to aggressive behaviour. Children with nursing care needs were also accommodated in this facility. The age range of the children was also assessed as problematic.

In a crisis centre, which is designed for adolescents with challenging behaviour, Commission 4 found a 13-year-old girl, who was absent most of the time. When she was present in the shared accommodation, she posed a serious risk to the other children and adolescents, as well as the staff. She choked other children, hit them and the caregivers, or threatened to kill them. She also smuggled in adolescents, who were not placed in the facility and with whom she committed criminal offences. This was particularly dangerous for a ten-year-old girl who had developed a psychological dependency on her and was unable to separate herself. The teenager took her to her gang and supplied her with drugs. As a result, the younger girl was also absent from time to time. Commission 4 suggested individual support for her and an adaptation of the room situation in the crisis centre.

Child massively in danger

In an institution in Burgenland, Commission 6 found that a boy had sexually assaulted an eleven-year-old girl. However, the documentation did not include a review of the assaults or a report to the *Land*. It was also criticised that, despite such incidents, the children and adolescents were not able to lock the doors to their rooms, although the technical supervision had already criticised this. Some minors also reported physical assaults by caregivers to the commission.

As a result of these findings, which were reported by the NPM to the competent authorities for child and youth welfare and protection, several unannounced supervisory visits were carried out. In the interviews, the children and adolescents repeated their descriptions of physical assaults by the staff. They reported being slapped, pulled by the ears, pushed against the wall, pushed off the stairs, and pulled by the wrist. Even sexual boundary violations were described. Ultimately, the technical supervision deemed the

Violence emanating from staff

facility no longer suitable for the residential care of children and adolescents. Permanent alternative places were found for all the children.

Group composition enables sexual violence

Commission 4 classified the group composition of a crisis centre in Vienna as extremely problematic. A sexually traumatised girl and an adolescent, who had already committed sexual assaults himself, were accommodated together. The Ombuds Office for Children and Youths also objected to the placement of the 13-year-old boy, who had already committed many violent offences such as robbery, assault and the like.

After he raped the twelve-year-old girl, he was transferred to a crisis centre for adolescent boys, where he attacked fellow residents and staff. The NPM criticised the fact that a special care concept was not immediately drawn up for this boy, but that he was only transferred to another crisis centre. Without even considering accompanying measures, the right to protection of the physical integrity of fellow residents and staff was violated.

Not a safe place

Due to a boy suffering from a serious impulse control disorder, a security service was provided during the night in a crisis centre in Vienna. This was to protect the residents, most of whom had psychiatric diagnoses from physical assaults. Commission 4 found that the centre was not a safe place at the time of the visit. In particular, the employment of security staff seemed counterproductive, as they could have an irritating and possibly even frightening effect on the other children and adolescents.

Crises affect the entire group

In another shared accommodation in Vienna, Commission 5 once again identified an urgent need for improvement in the care of children in ongoing crisis situations. The documentation contained 18 incident reports within two months concerning one resident. The records revealed assaults on other children, threats of self-harm, and threats against the staff, which is why the police often had to be called in. The NPM pointed out that a group size of nine minors is not suitable for every child. The occurrence of long-term crises in one child can have an impact on the entire group and the necessary support is then no longer guaranteed for the other children. The implementation of standardised and regular training in the areas of violence prevention and de-escalation was recommended.

Worrying level of violence

The level of violence and aggression was worrying in another facility in Vienna, which mainly accommodated unaccompanied minor refugees at the time of the Commission's visit. The children at the facility, who were traumatised due to their experiences as refugees, were aggressive and violent both towards each other and towards the staff. A pressurised gas pistol was found in one room and a switchblade knife in another, which is why entry checks were carried out.

Due to frequent escalations, there were often police operations in the shared accommodation. In two cases, the police had to remove residents and place them in a psychiatric ward. In another incident, an eight-year-old boy

was punched and kicked in the stomach by a 14-year-old, leaving the child unconscious for a short time. The NPM urgently recommended measures to prevent violence and a diagnostic assessment of the children and adolescents. The NPM further recommended that trained experts support the staff's relationship work with the children and that staff receive regular training in violence prevention and de-escalation. Vienna's child and youth welfare services confirmed the need for improvement and announced further training courses on violence and conflict management.

Following numerous reports by the commissions on violent behaviour by children and adolescents and the associated police interventions, the NPM asked the Human Rights Advisory Council for a fundamental human rights assessment in relation to the police issuing prohibitions to return orders within the meaning of Section 38a of the Austrian Security Police Act (*Sicherheitspolizeigesetz*) against minors in shared accommodation. In its statement „Prohibitions on entering and approaching residential child and youth welfare facilities“, the Human Rights Advisory Council expressed its opinion that prohibitions on entering and approaching children and adolescents in residential care should only be imposed by the police as a last resort. Instead, the primary aim should be to create a framework to prevent these police measures. If issuing an order to prohibit entry and approach is nevertheless unavoidable, the competent authorities must take all necessary measures for both, the minors affected by violence and those who have been removed.

**Human Rights
Advisory Council
comments on
prohibitions to return**

The Human Rights Advisory Council formulated a series of recommendations for action, including for the *Laender* as owners and operators of child and youth welfare services. These include the careful selection of a suitable facility, the deployment of adequately trained and specially qualified staff, individual or target group-specific crisis and de-escalation plans, as well as guidelines for staff. Equally important are protection concepts for the prevention and handling of dangerous situations, adapted to the group. Standards for the training of educational staff, for protection concepts, and for staffing rations should be laid down in *Laender* laws and defined as a prerequisite for the authorisation of facilities. In addition, the supervisory authorities should monitor their implementation at regular intervals.

**Various
recommendations
for action**

If the police are called in by an institution, only police officers, who are specially trained in communicating with children and adolescents should be deployed. In addition, the children and adolescents concerned should be provided with a counsellor who should provide support, guidance and information in the crisis situation.

The Human Rights Advisory Council also places special demands on the time after the prohibitions to return have been issued. There must be no gaps at the interface between the police and the child and youth welfare services. Therefore, an on-call service should be available at all times for the child and youth welfare services.

Adequate care after barring order

It is particularly important that the basic care of children and adolescents who have been removed by the police is ensured and that relationships are prevented from breaking down. This requires adequate places in alternative care, as well as sufficient places in crisis accommodation facilities and networking between the facilities. Under no circumstances should children and adolescents who have been banned from entering and approaching be taken to psychiatric wards, emergency shelters, or back to their families due to a lack of alternatives.

Finally, the Human Rights Advisory Council spoke out in favour of mandatory follow-ups of incidents of violence within the facility. In doing so, special attention should not only be paid to the minors who have been sent away, but also to the minors at risk and the staff.

- ▶ ***All the Laender should start a process to develop protection concepts.***
- ▶ ***Symptom groups that are pedagogically incompatible with each other must not be placed in the same group.***
- ▶ ***Institutions and facilities must guarantee the right to a safe place.***
- ▶ ***After a police action, adequate care must be provided for the minors who have been removed and the incidents must be thoroughly processed.***

2.3.7 Care for unaccompanied minor refugees

Federal facilities not designed for long-term stays

Following visits to various federal care centres for asylum seekers, Commissions 3, 4 and 5 criticised the inadequate care provided for unaccompanied minor refugees. In one Carinthian facility, the commission reported that up to 70 unaccompanied minors refugees were housed in an old, dilapidated building. Such large facilities are completely unsuitable for children who have no legal guardians and, moreover, contrary to child law standards. After visiting a facility in Lower Austria, the Commission criticised the fact that the unaccompanied minor refugees were accommodated in uninhabitable dormitories with no opportunities for retreat. The hygienic conditions of the sanitary facilities were sometimes unacceptable. One facility in Vienna reported that although attempts were made to offer the children a daily structure, this was only rudimentary. Language education programmes were hardly available. Outdoor showers could only be reached via a makeshift wooden walkway, without protection from the cold and wet. However, the staff at the visited facilities were very committed and endeavoured to provide the best possible care.

Rapid transfer to the care of the Laender

What these centres had in common was the fact that they were not designed for the long-term care of unaccompanied minor refugees, which is why the care did not meet the children's needs. This is not surprising, as asylum

seekers should be transferred from the basic care system of the federal government to the basic care systems of the *Laender* after being admitted to the asylum procedure. The federal facilities are only designed for a short-term stay of a few days.

The NPM addressed a corresponding criticism to the Federal Ministry of the Interior, which is responsible for the federal care facilities. In its statement, the Federal Ministry of the Interior explained its endeavours to transfer persons who have been admitted to the asylum procedure to the basic welfare services of the *Laender* as soon as possible.

The distribution of people to the individual municipalities takes place within the jurisdiction of the *Laender* according to available capacities. Close cooperation between all partners and, in particular, the provision of free capacities at *Laender* level is therefore essential for the partnership-based system of basic services. The federal government is in constant and close dialogue with the competent offices of the *Laender* in order to increase the transferrals to the *Laender*.

Too little capacity in most *Laender*

Subsequently, the NPM asked all regional governments for their opinion. The *Laender* unanimously stated that there were several reasons for the difficult care situation. After the demand for childcare places had risen sharply in 2015 and 2016, the number of asylum seekers fell. The *Laender* Vorarlberg and Upper Austria, for example, reported that many places could not be filled. This led to high vacancy costs in the respective facilities, which again led to closures and a reduction in capacity. As the demand for places has increased again for some time, supply bottlenecks have emerged.

Vacancy costs are a problem

Creating new facilities is proving difficult. Tyrol, Salzburg, Burgenland, Vienna and other *Laender* confirmed once again that the daily rate agreed between the federal and regional governments for unaccompanied minor refugees is too low. This is all the more serious because the need for care is particularly high for this group due to their traumatising history as refugees. Carinthia reported that it was also difficult to find operators for facilities for unaccompanied minor refugees.

Daily rate for unaccompanied minors too low

There are also staff shortages to contend with. This makes it difficult to expand the number of childcare places and has a negative impact on existing childcare relationships. Particularly qualified staff are needed for UMF.

Last but not least, the situation on the real estate market has made it difficult to establish new facilities in several regions in recent years. Lower Austria also reported that facilities for unaccompanied minor refugees had to fulfil qualified construction standards, which made the search more difficult. Styria explained that attempts were being made to establish small-structured accommodations and that more suitable locations would have to be found accordingly.

Difficult property market

**Special case
„House Ukraine“**

Commission 1 observed a special case in Tyrol. A facility there accommodated both, the underage residents, as well as the staff of a Ukrainian centre. The custody of the Ukrainian children had been transferred to the Ukrainian manager of the facility by emergency decree, which is why, strictly speaking, they were not considered unaccompanied minor refugees.

**Participation Act
should be applicable
to asylum seekers**

The daily rate provided for the care of unaccompanied minor refugees under the reception conditions would be paid for these children. This is below the standard daily rate of the child and youth welfare services throughout Austria. As the children also had increased support needs, a daily rate in accordance with the Tyrol Participation Act (*Tiroler Teilhabegesetz*) would have been the appropriate form of support to enable the necessary therapies. However, the Ukrainian children only had a temporary right of residence pursuant to a regulation based on the Asylum Act, which is why they did not fall under the scope of the Tyrolian Participation Act.

The operator of the facility had tried to integrate „House Ukraine“ into its facility in the best possible way. However, the usual standards of child and youth welfare services could not be guaranteed with the daily rates paid – even with the help of private donations. In this facility, the different care options for children cared for by the child and youth welfare services, as opposed to (unaccompanied) children under the basic reception conditions were clearly demonstrated. This distinction would be extremely problematic even for a shorter period of time. In view of the long period of care under the basic reception conditions, however, they are unacceptable.

**Equal daily rate
demanded for
unaccompanied
minor refugees**

Obviously, the care of unaccompanied minor refugees poses major challenges for the responsible authorities and facilities. At the same time, however, it must be noted that the NPM has been criticising the low daily rates for their care for years. These rates could be raised quite quickly if there was the political will to do so. The distinction between children seeking asylum and other children in child and youth welfare services is particularly incomprehensible. This is absolutely inadmissible from a human rights perspective. The situation is even worse for children with disabilities who are not covered by the disability laws of the *Laender* as long as they are cared for under the basic reception conditions.

Increased efforts must also be taken to make working with unaccompanied minor refugees more attractive and to promote the relevant training programmes. This would bring about an improvement, at least in the medium term.

**Concepts for
fluctuating space
requirements**

Irrespective of this, however, the *Laender* in particular must develop concepts for responding as quickly as possible to changes in demand for childcare places. There will also be fluctuations in the future and these challenges must be met. The fact that asylum seekers spend several months in federal facilities is highly questionable from a human rights perspective, both for children and adults.

- ▶ *It is necessary to increase in daily rates for the care of unaccompanied minor refugees.*
- ▶ *Concepts are needed to meet the fluctuating demands for childcare places.*
- ▶ *Concepts to mitigate staff shortages must be developed and implemented.*

2.3.8 Positive observations

Commission 3 was particularly positive about the wide range of leisure activities on offer in a shared accommodation in Carinthia. It was characterised by its diversity and very well received by the adolescents. In addition to water sports activities on the lake near the facility, the adolescents had access to a music room in the basement where they could take piano lessons and play in a band. Participation in the regular house evening, where current issues affecting the shared accommodation and complaints from the children were discussed, was also rated positively.

**Comprehensive
leisure programme**

Commission 6 rated the leisure activities of one facility in Lower Austria as particularly good and comprehensive. Thanks to the accommodation's cooperation with a gym and several sports clubs, the adolescents have numerous sports opportunities at their disposal. This enables them to socialise outside of the facility. The shared accommodation also liaises very closely with the municipality. As a result, the adolescents take part in many of the city's projects. The shared accommodation also has the „Be Busy“ project, which is funded by external sponsors and enables the adolescents to receive work training in preparation for their future jobs.

In addition to these points, the opportunities for participation at the facility were noted as particularly good. There are regular house meetings, which take place in three parts. In „Team2Kids“, the childcare team reports on the planned dates and activities for the coming week. In the „Kids2Kids“ setting, the adolescents discuss topics that they would like to bring to the attention of the childcare staff. Finally, the adolescents formulate their wishes and suggestions in the „Kids2Team“, which the caregivers then deal with in their team meeting. Comprehensive participation is also characterised by the fact that the half-yearly development reports are read and discussed with the adolescents and their requests for changes are marked in the reports. Finally, the adolescents confirm with their signature that they agree with the wording and content.

Active participation

Commission 3 was particularly positive about the numerous opportunities for participation in a shared accommodation in Styria. Here, the minors elect a spokesperson from their circle for the regular children's house meetings. The results are discussed further in a general house meeting. The children and adolescents also independently draw up the house rules and consequences for misbehaviour.

Commission 6 saw the organisation of a so-called „group forum“ in an institution in Lower Austria as good practice. The children are actively involved in finding topics and encouraged to participate in the group forum. It is supervised by the caregivers and the results are recorded in writing. The centre also organises a house council twice a year. This is prepared in great detail with the participation of all caregivers. In previous years, the children were introduced to the tasks of technical supervision and the NPM in a playful way.

Targeted use of additional training

Seven caregivers in a shared accommodation in Styria had additional training in trauma education. This enables the team to work with the children on an individualised trauma pedagogy basis. Among other things, this can be seen in the reward system developed for each individual child. Commission 3 emphasised the additional notice board in child-friendly language as an example of a good approach to house rules. There were also several trauma educators and a sex educator on the team at a centre in Vorarlberg visited by Commission 1.

In another institution in Styria, where drugs are a recurring theme, two staff members specialising in this area offer drug counselling. In contrast to the previous external counselling, the adolescents regularly make use of this.

Intensive cooperation with psychiatry

During its visit to a crisis centre in Vienna, Commission 5 learned of a particularly intensive collaboration between the facility and a child psychiatrist. The doctor attends the team meeting every fortnight to provide advice. If necessary, she also contacts the children in order to plan further care appropriately. Such a frequent presence should become standard in other crisis centres as well. Close cooperation with the child and adolescent psychiatry department of the Vienna General Hospital in the form of mutual observations contributes significantly to improving cooperation.

2.4 Institutions and facilities for persons with disabilities

Introduction

In 2023, the rights of persons with disabilities in Austria were scrutinised as part of the UN CRPD country review. By adopting the UN CRPD, Austria committed to granting comprehensive rights to persons with disabilities and eliminating discrimination. The Committee on the Rights of Persons with Disabilities regularly reviews whether these obligations are being met. In August 2023, Austria had to answer questions from this UN expert committee as to why persons with disabilities are still being denied a number of rights.

Country review on implementation of the UN CRPD

The Austrian Federal Government, together with the *Laender*, had prepared a state report and answered questions from the expert committee in writing. In addition, the AOB, the Independent Monitoring Committee, the Ombud for Persons with Disabilities, and civil society organisations submitted shadow reports with their own assessment of the implementation of the UN CRPD.

AOB presents shadow report

As the AOB is frequently confronted with complaints from persons with disabilities, it was able to provide an assessment in many areas. This concerned both the legal framework and administrative practice. In addition, the NPM's work gives the AOB a comprehensive insight into the conditions that prevail in facilities for persons with disabilities.

The civil society representatives also had the opportunity to meet the members of the Committee of Experts in Geneva before the country review and to report personally on their experiences and analyses. In addition, the AOB, the Ombud for Persons with Disabilities, and the Independent Monitoring Committee were able to make oral statements at the public hearing of the country review and inform the Committee of Experts.

Participation in Geneva hearing

The international committee of experts was well informed about the situation in Austria and was able to address Austria's shortcomings in detail. After completing its review, the committee published recommendations for action (CRPD/C/AUT/CO/2-3, 8 September 2023), which Austria must implement as quickly as possible.

In these reports, the expert committee stated that Austria fails in its duty to implement the UN CRPD. As the obligations are not being met satisfactorily, improvements must be made quickly in both legislation and administrative practice.

Austria has a lot to do

The committee emphasised the (joint) responsibility of the *Laender* for implementing the UN CRPD. They must guarantee the rights of persons with disabilities within their area of responsibility.

The expert committee called for a comprehensive national de-institutionalisation strategy to be drawn up by the federal and regional

Strategy necessary to de-institutionalise

governments for facilities for persons with disabilities. Failure to do so will prevent persons with disabilities from leading a self-determined life and being included in the community, as provided for in the UN CRPD.

Protection from (sexual) violence is essential The committee also emphasised the importance of protection against violence in institutions (especially for women) and of violence protection and crisis concepts. However, concepts and the promotion of sexual self-determination, which goes beyond protection from sexual violence, are also essential in institutions and facilities.

Accessibility for persons with disabilities The expert committee was concerned about the lack of accessibility not only in terms of structural barriers, but also in terms of information, education and mobility access. The international experts also emphasised the importance of respecting privacy, especially in institutions and facilities.

Wages instead of pocket money In the area of daily structures, the expert committee called for the payment of appropriate wages instead of pocket money and the promotion of an inclusive labour market. The committee was concerned about the segregation of children, particularly in education, and recommended the transition from a segregated system to an inclusive school and kindergarten system.

The points of criticism raised by the UN Committee of Experts underline the fact that Austria still has a long way to go before it has properly implemented the UN CRPD. The recommendations for action confirm the NPM's criticism (which in some cases has been ongoing for years). The NPM repeatedly proposed measures that would be relatively easy to implement and could strengthen the rights of persons with disabilities.

The NPM recommends the following measures, among others, for comprehensive preventive protection against violence in institutions:

- ▶ ***Every institution must have mandatory violence protection and crisis concepts.***
- ▶ ***De-escalation training must be carried out regularly and is mandatory.***
- ▶ ***PRN medication may only be administered within the legally prescribed framework.***
- ▶ ***Every institution must have a mandatory concept for sexual self-determination (including protection from violence).***
- ▶ ***AAC is mandatory for non-verbal people.***
- ▶ ***Comprehensive accessibility for persons with disabilities must be established in all facilities.***
- ▶ ***Those affected should receive appropriate wages instead of pocket money in order to strengthen their independence.***

In order to obtain a better, structured overview of the scope of self-determination (including sexual self-determination) in institutions and facilities, the NPM's work in 2023 focussed on setting priorities in coordination with the commissions and the Human Rights Advisory Council.

2.4.1 Monitoring priority: Self-determination with a focus on sexual self-determination

In 2022 and 2023, the topic of „self-determination with a special focus on sexual self-determination“ was at the centre of the NPM's work in facilities for persons with disabilities. The NPM drafted a survey questionnaire for this purpose. In preparation for the Austria-wide visits of the commissions, a workshop with experts in the field of protection against violence and sexuality of persons with disabilities was organised. Interim results of the monitoring priorities were already presented in April 2023 at a symposium organised by the Office of the Carinthian Ombudsman for Persons with Disabilities and the Carinthian Monitoring Committee on the topic of „Self-determined sexuality“. Furthermore, a press conference was held by the NPM in February 2024 following the evaluation of all results.

The monitoring priority was set on the basis of the following considerations:

The right to self-determination is one of the central principles of the UN CRPD (Article 3, Article 19 UN CRPD). According to this, persons with disabilities should have the freedom to make their own decisions in order to organise their lives as autonomously and self-determined as possible.

Preventive goal

When persons with disabilities live in institutions and facilities, they are often confronted with a high degree of heteronomy due to the structures and institutional framework conditions. This applies to their choice of place of residence and flatmates, everyday and leisure activities (mealtimes, bathing times, visiting times, bedtimes, etc.), as well as many other areas of daily life. There is often little or no room for manoeuvre when it comes to making their own decisions.

For years, commissions have reported that although persons with disabilities are „well cared for“ in various institutions, they have little say in many decisions that affect their daily lives. The idea that (usually well-intentioned) safety precautions are more important than a free and self-determined life often still prevails.

Well supplied, but too little to say

Nevertheless, it must also be possible that persons with disabilities, who live in residential facilities, can organise their own lives autonomously and make independent decisions. Prescribed framework conditions without self-determination not only lead to a lack of independence, but can also favour forms of institutional violence. The primary goal of facilities for persons with disabilities must therefore be to promote and support an independent lifestyle for persons with disabilities.

Human right to sexual self-determination

The right to sexual self-determination is part of the right to a self-determined life and, in line with the normality principle, also applies to persons with disabilities living in institutions (Articles 3 and 19 UN CRPD). The right to sexual self-determination means creating framework conditions that enable self-determined sexuality for persons with disabilities in institutions and facilities. At the same time, the right to sexual self-determination also includes protection from sexual violence and abuse.

The aim of the focus was therefore to examine whether framework conditions guarantee the best possible protection against sexual violence on the one hand and whether they do not stand in the way of self-determined, fulfilled sexuality on the other.

Prerequisite for violence prevention

Sexuality is an existential need and important for the personal development, health, and well-being of every human being. It is a central part of human existence, irrespective of the aspect of reproduction, or the specific form it takes. From a human rights perspective, the topic of „sexuality of persons with disabilities“ is relevant to the NPM in various ways. On the one hand, the prevention of direct and immediate sexual violence or abuse is at the core of the mandate. On the other hand, persons with disabilities, like everyone else, have a right to self-determination, privacy and sexual health. These different perspectives have already formed the basis for the work of the NPM.

The NPM observed that the idea that persons with disabilities are gender-neutral beings is still prevalent in institutions and facilities. By ignoring this issue, the rights of persons with disabilities are grossly violated.

Persons with disabilities more often affected by violence

This is particularly evident in the context of violence. A comprehensive study commissioned by the Ministry of Social Affairs on experiences and prevention of violence against persons with disabilities who live or work in institutions and facilities (Mayrhofer/Mandl/Schachner/Seidler, 2019) came to the conclusion that approximately every second person with disabilities or mental illness has experienced sexual violence in their lives (44.2 % in institutions for persons with disabilities, 60.6 % in psychosocial institutions).

Women with disabilities are affected by sexual violence much more often than men. Women with disabilities are also often discriminated against in the area of victim protection, and they rarely receive the support they need. Accordingly, the study emphasises the importance of a gender-sensitive perspective in the prevention and treatment of violence against persons with disabilities.

UN Committee calls for protection from gender-based violence

As part of the current 2023 country review, the UN Committee on the Rights of Persons with Disabilities called on Austria (8 September 2023, CRPD/C/AUT/CO/2-3) to ensure that women and girls with disabilities, including those living in institutions and facilities, have effective access to prevention

and protection mechanisms against gender-based violence. This includes counselling centres, shelters, sex education programmes, crisis management plans, health counselling, etc. In addition, the State should take effective and specific measures to prevent multiple and intersectional discrimination against women and girls with disabilities.

In the Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention), Austria commits itself to specific measures to protect and prevent violence, especially for women and girls with disabilities.

Obligations under the Istanbul Convention

From April 2022 to June 2023, the NPM commissions visited a total of 161 facilities for persons with disabilities throughout Austria as part of the monitoring priority. The following chapters provide an overview of the observations gained from these visits and the resulting recommendations of the NPM.

161 monitoring priority visits

Independence in activities of daily living

The vast majority of the persons with disabilities in the 161 facilities visited carry out activities such as personal hygiene (82%), shopping (70%), eating (93%) or taking medication (81%) independently or with guidance. As many as 61% also prepare meals independently or with guidance.

The various abilities of those affected must be taken into account when analysing the situation. For example, one third of the visited facilities also care for people with particularly severe impairments who require basic stimulation. It is more difficult for this group to carry out everyday activities independently. In general, there are heterogeneous groups of residents in many facilities. As a result, some people (can) go shopping alone, for example, while others cannot do so due to the conditions in the facility. Generalised statements are difficult to make due to individual needs.

In any case, the figures regarding the free choice of doctors are worrying. In 27% of the facilities visited, residents are not free to choose their doctor. This is a violation of the principles of the UN CRPD. Measures should therefore be taken urgently to enable better access to a free choice of doctors.

Often no free choice of doctor

- ▶ ***Institutions and facilities urgently need to take measures to enable a free choice of doctors.***
- ▶ ***Sufficient staff must be available for transport and to accompany the patient to medical appointments.***

- ▶ ***The Ministry of Social Affairs, Health, Care and Consumer Protection and medical associations must take measures to improve free access to medical care for persons with disabilities, especially in rural areas and with regard to the various specialisations.***
- ▶ ***The use of video consultations should be considered.***

Self-determination in time planning

In addition to the topic of independently performing everyday activities, the commissions also observed the general conditions for realising one's own wishes in terms of time planning in the institutions. If such wishes and needs are not considered, there is usually little room for putting them into practice independently.

In 84 % of the facilities visited, the wishes and needs of those affected with regard to scheduling their personal hygiene are largely taken into account. When it comes to meal preparation, only 60 % of the facilities do so. This also shows that the relatively good data on independence in more than a third of the facilities is only possible within a narrower specified time frame.

In 75 % of the facilities, time-related requests for food intake are accommodated and overly strict regulations are avoided.

In 80 % of the facilities, the needs of the residents are predominantly taken into account during the night. Conversely, this means that this does not happen in 20 % of the facilities. One explanation may be staff shortages, which means that some residents receive the care they need for the night too early in the day. It is hard to imagine a justification for such early bedtimes. Although the period for the night rest is scheduled in many residential units, for example from 10 p.m. to 6 a.m., this does not necessarily rule out occupation with hobbies in the room or a stay in communal areas with a lower noise level.

**Individual needs
must be taken into
account**

Similarly, 16 % of the visited facilities do not predominantly take time-related wishes into account when organising leisure activities. This is also incomprehensible. Even people with a need for basic stimulation have preferences and individual wishes that should be accommodated. The lack of consideration is therefore probably due to a lack of sensitivity or a lack of staff resources.

**AAC basic
requirement**

In general, the analysis must take into account that AAC is not used in several of the facilities. In these cases, the staff reported that it was possible to explore the will without AAC or that, for example, they had developed their own sign languages or that they could make do with pictograms. In some cases, the commissions were also told that AAC was simply not accepted by the residents. In the NPM's view every person has a need for contact

and communication. Based on a person's existing skills, AAC develops individualised measures for better communication and more participation. However, the use of gestures, objects, graphic symbols, or technical aids must be tailored to the existing skills of the supported person. Appropriate training courses provide the necessary specialised knowledge.

Finally, in 25 % of the facilities, residents are not included in the educational goal planning. This should not be the case in any facility; the lack of involvement in 25 % of the facilities is an alarming figure.

No say in target planning

- ▶ ***Institutions and facilities should always design and structure their work according to the following principle: „The realisation of the wishes and satisfaction of the needs of clients has top priority and is the basis for all decisions. Refusals should be justified and documented.“***
- ▶ ***AAC should always be made available if required. The use of AAC must be accompanied by appropriate personnel. Staff must have sufficient time for this.***
- ▶ ***All residents must be included in educational target plans and these must be drawn up for everyone.***
- ▶ ***Regardless of the type of disability, no group must be excluded from co-determination or self-determination.***
- ▶ ***Self-determination should be given a particularly high priority in the living space of those affected in terms of night-time rest, meal times and the like. Institutional constraints should be reduced to a minimum – as is also the case with living arrangements outside of institutions.***

Community activities outside the institution

Many residents in institutions have to live in more or less open special worlds in which both living and employment revolve around the same people, owners and operators, and places. Activities outside the institutions are therefore important. Persons with disabilities have needs and also the right to undertake activities away from their usual living and working spaces, just like everyone else.

Carrying out such activities collectively, can not only be an important contribution to the general well-being, but also contribute to a sense of community, positive group dynamics, and team building. For this reason, the commissions also ascertained during their visits whether joint activities were being organised.

The results of the monitoring priority visits show that almost all facilities organise activities in the surrounding area. The activities listed a range from shopping trips, eating out, visits to cafés, or sports activities, to visits to places of interest, Christmas markets, etc.

Lack of accessibility for persons with disabilities inhibits activities

Some organisations stated that activities are more difficult when most of clients use wheelchairs. Spontaneous activities are then difficult to organise because they require longer advance planning. This once again shows how the lack of accessibility for persons with disabilities in public spaces considerably restricts people's freedom.

Joint excursions and holidays are organised by 86 % of the facilities. The spectrum ranges from several excursions and holidays per year and facility to at least one holiday per year. However, some facilities also stated that no joint holidays were organised due to differing interests.

- ▶ ***Activities outside the institution should be a given. This applies to all target groups.***
- ▶ ***The necessary human and financial resources must be secured for this and at the highest level of transparency possible.***
- ▶ ***Even clients who have a negative attitude towards activities should be motivated to join them.***
- ▶ ***Municipalities, the Laender and the federal government are called upon to create a barrier-free environment.***

Self-representation is important

Self-determination always presupposes the ability to form and express one's own will and to behave accordingly. Persons with disabilities in institutions or facilities traditionally have fewer opportunities to express their will due to predetermined structures, socialisation in disability-specific environments, insufficient support, the prevalence of a care and/or safety mentality, and/or exclusively non-verbal communication options. As many institutions tend to be closed and persons with disabilities depend on the support of staff, there is an imbalance of power that does not promote the open expression of one's free will.

Core element for self-determination

This is why self-representation bodies are so important in all institutions. Issues can be raised and discussed among those affected. This can provide impetus for their own decision-making. Furthermore, it is the task of a self-representation body to act as a spokesperson for individuals in the group, thereby enabling or facilitating the expression of their will and at the same time reducing an imbalance of power.

No elected self-representation

The results of the monitoring priority visits are disappointing. Only 56 % of all facilities visited have elected self-representations. The explanation given in many of these cases is that the people concerned are either not interested in having an elected representative body, or that they would represent themselves.

The figures on the ability of the self-representation to exert influence also show a considerable need for improvement. The elected self-representation bodies report only in 28 % of the facilities that problems and wishes were completely addressed, or that the results were mostly satisfactory. Several facilities with self-representation bodies reported that requests were not addressed at all, or only addressed on a case-by-case basis. This result shows that there is a lot of catching up to do in terms of self-determination.

- ▶ ***Institutions and facilities should inform residents of the benefits that elected self-representation bodies can bring about.***
- ▶ ***Institutions should create the infrastructural conditions for self-representation.***

Sex education concept essential for self-determination

In the area of sexual self-determination, the existence and implementation of a suitable sex education concept is an essential sign of practised self-determination. A participatory sex education concept developed by the institution is the basis for a shared understanding and approach to topics relating to love, relationships, partnership, sexuality, and physicality. It should also contain jointly developed guidelines on how to deal with sexual boundary violations, sexual assault, and more serious forms of sexualised violence.

Removal of taboos is essential

An accompanied and preventative approach to these issues enables persons with disabilities to receive adequate and safe information and to find contact persons. It also increases the confidence of teams and is an important factor in the prevention of violence.

The positions of the operators and the management of the facility on partnership and sexuality should be formulated clearly and comprehensibly. If there are clear contents and rules, legal uncertainties – what staff are allowed to do and what not – can also be eliminated. If these rules are missing, decisions on how to deal with the topics of sexuality and partnership depend on the opinion of the respective caregiver or the families of the persons with disabilities concerned.

Clearly formulated positions on sexuality and partnership

In the 2023 country review, the UN Committee on the Rights of Persons with Disabilities expressed concern about the lack of sex education concepts in many institutions. It emphasised the importance of these concepts for sexual self-determination and protection from sexual violence, especially for women and girls with disabilities.

This is confirmed by the commissions' findings: 30 % of the facilities visited do not have a sex education concept. This means that there are no written rules on the topics of sexuality, partnership and protection from sexual violence.

No sex education concept

Around 40 % of the facilities have a sex education concept, but not in an easy-to-read version. However, it is particularly important to provide the concept in an easy-to-read version in facilities which also accommodate people with intellectual disabilities. 20 % of the visited facilities have a sex education concept that is also available in an easy-to-read version.

Concepts are often not known in the facilities

In many cases, facilities had developed sex education concepts, but the management and teams on site were not aware of it. The topics of sexuality and sexual self-determination were also not discussed in team meetings or further training courses.

However, concepts and position papers only begin to „come to life“ when they are discussed regularly and more often, e.g. in team meetings and regular training sessions. If the topic of sexuality is no longer a taboo, everyday working life can also be easier with regard to this topic. It is advisable to build up expertise within the institution in order to be able to deal with acute issues on a day-to-day basis.

The commissions' observations showed that even if a sex education concept was available, it was not always suitable for the institution in question. Concepts must be tailored to the specific institutions and facilities and the needs of the residents, preferably in cooperation with them. Some concepts are too generalised. In one facility, for example, the commission noted: „The concept of the institution seems to be filled with empty phrases and offers relatively few concrete information.“

Only just over half of the concepts took into account the sexual orientation of the residents, while two thirds took gender into account. None of the facilities cared for people who stated „diverse“ as their gender identity. Only one person interviewed told the commission that they were not entirely sure of their gender. Although no persons were found in the visited facilities who clearly identified as „diverse“, this does not allow the conclusion that sufficient attention is being paid to this issue. People who have had almost a lifetime of experience in institutions and have been socialised in this way may only have had limited opportunities to develop corresponding needs or self-perceptions.

Institutions and facilities announced improvements

In response to the criticism by the commissions, numerous facilities announced that they would develop sex education concepts or implement them in their facilities. Workshops for staff and residents were also planned and organised. During follow-up visits in 2024, the commissions will be able to verify the status of implementation.

- ▶ ***A suitable sex education concept should be a prerequisite for being recognised as a facility for persons with disabilities.***
- ▶ ***Each institution should develop a customised sex education concept with the involvement of clients and employees in a participatory manner.***

- ▶ ***Sex education concepts should also be developed in an easy-to-read format and brought closer to the attention of the clients.***
- ▶ ***These concepts must be put into practice. Internal training and regular team meetings should take place. The topic should also be included as a mandatory part of the staff's training phase.***
- ▶ ***Every institution should be prepared, both conceptually and in terms of infrastructure, to accept people with a „diverse“ gender identity, or to provide the best possible support to people who are already being cared for if becoming aware of this.***

Sexual education and information required

It is important for everyone to know their own body and their own needs. Sex education and information are therefore essential for exercising and implementing the right to sexual self-determination. Information and education also act as protection against sexual violence and abuse. Only those who are informed can make their own decisions, set boundaries, and recognise and protect themselves against transgressive behaviour.

Sex education as protection against violence

According to a study by the Ministry of Social Affairs (Mayrhofer/Mandl/Schachner/Seidler, 2019), only around half of the people surveyed in disability care facilities stated that they had received sufficient sex education. More than a third received no sex education at all.

The NPM commissions looked into how sex education concepts are implemented at the level of the residents. During their visits, the commissions repeatedly gained the impression that sex education work is not carried out consistently or only at the specific request of the residents. In less than half of the facilities, sex education is offered according to a concept. Only a third of the facilities offer a conceptual sex education or to accompany residents to sex education counselling services.

Too little sex education and information

During a visit by the commission, the manager of a facility explained that sex education does not take place. Sex education materials were also not used out of respect for human dignity. Individual discussions are possible at any time. However, sexual self-determination, needs and boundaries are only dealt with to the extent that they are relevant to the community and the life together.

On the other hand, institutions sometimes do very committed work in the area of sex education. They involve external counselling centres such as Ninlil, Senia, or the men's counselling service (*Männerberatung*). They also provide information on how to satisfy sexual needs independently. Counsellors provide support in organising aids on request. Some centres have their own sex therapists who are also available to clients.

Institutions and facilities do very committed work

- ▶ ***Persons with disabilities must receive adequate information on topics such as sexuality, love, partnership and relationships, if necessary with the help of external experts.***
- ▶ ***Information and education protect against sexual violence and are essential for sexual self-determination.***

Self-determined contraception required

Contraception is not always self-determined

Women affected by forced sterilisation are still living in institutions. In its 2023 country review, the UN Committee on the Rights of Persons with Disabilities expressed concern about reports of sterilisation of women and girls without their consent and apparently outside the limits of Sections 253-255 of the Austrian Civil Code (*Allgemeines Bürgerliches Gesetzbuch*). Following several amendments, sterilisation of minors in Austria is neither possible with the consent of the minor, nor with the substitute consent of their parents (Section 146d of the Austrian Civil Code). In the case of adults, sterilisation may only be carried out if the person concerned, who is capable of understanding and judgement, gives their consent (Section 283(1) of the Austrian Civil Code). Civil society organisations see this as a possibility to put women with disabilities under emotional pressure, or persuaded them to make a decision without realising the consequences at the time. According to Section 255 of the Austrian Civil Code, adult guardians may not consent to a medical measure aimed at permanent reproductive incapacity unless there is otherwise a risk to life, a risk of serious damage to the health of the concerned person, or severe pain due to permanent physical suffering. Any such consent must be authorised by a court.

UN Committee calls for action

The UN Committee also expressed concern about reports that women and girls, especially in institutions, are administered contraceptives without their consent or even without their knowledge. The UN Committee also calls on Austria to take appropriate measures for a strict enforcement of the legal ban on sterilisation, to collect data on sterilisations performed, and to only use medical measures to prevent reproduction with personal consent.

The commissions' findings revealed that in around 20% of the institutions and facilities contraception is not always self-determined. Teams reported that parents often want to have a say in a wish to protect their children. They believe that cognitive impairments lead to sexual immaturity („eternal childhood“), which stands in the way of growing up, so that sex education or information are not necessary and the desire to satisfy sexual needs alone or with another person does not exist. Girls and women with learning disabilities are more affected by the prejudice of being sexless or asexual. This overlooks the fact that the lack of awareness, the lack of confrontation with the changing body during puberty, and the inability to name touches that

are perceived as pleasant or unpleasant increase the risk of them becoming victims of sexualised violence. The suppression of sexual needs demanded by the environment not only represents a considerable impairment to the quality of life, but can also be the cause of many psychosomatic disorders and illnesses. This is why sexual self-determination is so important.

Questions about contraception – similar to questions about love, partnership, and sexuality – generally serve to find out what the person concerned wants. This was confirmed by the Adult Protection Act (*Erwachsenenschutzgesetz*), which has been in force since 2018. This law not only replaced legal guardianship with adult guardianship, but also strengthened a self-determined decision-making for people who are limited in their decision-making capacity due to mental illnesses or impairments. Those affected must be informed about the decisions and their consequences in a way that they can understand. If necessary, a support group should be set up. This should provide assistance, information about options, and ensure that an informed decision can be made. At the request of those affected, relatives or other trusted persons can be represented in the support group. However, they must also know and accept that people with cognitive impairments have sexual needs and – like everyone else – want to fulfil these needs in a variety of ways in order to lead a successful life. Professionals trained in sex education should therefore also be represented in these support groups.

Own decision of those concerned

- ▶ ***The legal prohibition of sterilisation (except in cases of health risk) pursuant to Section 255 of the Austrian Civil Code must be strictly implemented and must not be circumvented, even at the instigation of adult representatives.***
- ▶ ***Contraceptive measures should only be taken with the informed consent of the person concerned (Section 252 et seq. of the Austrian Civil Code).***
- ▶ ***For questions of sexual self-determination, people trained in sex education (possibly from external counselling centres) should also be represented in support groups.***

Caregivers not trained in sex education

Caregivers who are trained in sex education fulfil important tasks in facilities for persons with disabilities. They should support residents in exercising their right to sexual self-determination. Caregivers must be able to offer persons with disabilities adequate information about sexuality. They should inform them about services and sensitise persons with disabilities to sexual boundary violations. In addition, caregivers should also be trained to recognise when a resident is being sexually harassed. However, only half of the facilities visited had caregivers who were trained in sex education.

50 % of the institutions

- ▶ ***All facilities for persons with disabilities should employ caregivers trained in sex education. Further training and continuing education and training in this area should be emphasised.***
- ▶ ***Operators of institutions and facilities should eliminate legal and other uncertainties for staff through training and specific instructions.***

Sex education programmes for non-verbal, sensory-impaired or particularly severely impaired people

Sexuality is a basic human need – regardless of the severity of one’s disability. People with severe disabilities also have the right to live as self-determined a life as possible, including with regard to their sexuality. In addition, non-verbal or severely impaired people are particularly at risk of becoming victims of sexual harassment or abuse.

The commissions therefore determined whether the visited facilities provided methods and aids to enable sexual self-determination for people with particularly severe impairments. Caregivers must be particularly sensitive and attentive here in order to be able to perceive the needs of their clients and act accordingly.

Aggressive reactions from persons with disabilities can be an expression of the fact that sexual needs cannot be realised. During the commissions’ visits to facilities, staff reported that they often have the feeling that great tensions are due to the failure to fulfil sexual needs, especially in the case of particularly severely impaired clients.

Too few sex education programmes

However, the commissions were repeatedly told that sexual needs were „not an issue“ in facilities where many non-verbal or severely impaired people live. In around half of the facilities visited, there were no aids or services for people who cannot speak, hear or see, or for people with particularly severe impairments to deal with the topic of sexuality.

Positive examples

However, there are also facilities that make a special effort to ensure the sexual self-determination of clients who are particularly severely impaired. Passive support is provided after the care activities, so they are able to touch themselves, for example by positioning them accordingly in bed or in the bathtub, or by not closing the incontinence pad right away, etc. One facility made it possible for two people to lie together in the nest swing.

- ▶ ***People with severe disabilities also have the right to the greatest possible sexual self-determination. They must be supported with adequate aids and services to fulfil this right. This also includes protection from sexual violence.***

- ▶ ***Sex education information should be available to all people, regardless of their disability. Information and materials on sex education should therefore also be available and used in simple language and AAC (pictures, posters, pictograms, etc.), or in sign language.***

Protection of privacy

People need a place where they can be alone, where no one will disturb them. This is also important for the right to sexual self-determination. Every person living in an institution has the right to be undisturbed. It is about the protection of privacy and intimacy (Article 8 ECHR, Article 22 UN CRPD). Privacy is best protected in institutions when persons with disabilities have a single room. They should be able to lock this room themselves, and staff should knock before entering residents' rooms. Where there are (still) shared rooms, there should at least be a visual cover, e.g. screens, as well as opportunities for residents to retreat. Even if they need support in relation to personal hygiene, persons with disabilities still have the right to be undisturbed sometimes. They should also have the opportunity to receive visitors undisturbed, even overnight.

In some facilities, the commissions criticised the fact that residents have little privacy and no rooms to retreat to due to shared rooms. In these facilities, those affected have no space where they can be undisturbed. However, the majority of the facilities visited (86 %) now have single rooms, most of which can also be locked. In some facilities, the management stated that rooms could not be locked for security reasons.

Retreats are essential

Overnight visits for people who do not live in the facility were not even possible in half of the facilities. In contrast, other facilities deliberately made overnight visits possible by providing residents with large beds in their rooms.

Overnight visits often not possible

- ▶ ***Persons with disabilities must be given sufficient privacy and intimacy in all facilities (single rooms, lockable doors, knocking, etc.).***
- ▶ ***Multi-bed rooms should be replaced by single rooms to protect the right to privacy and sexual self-determination. If there are still multi-bed rooms, a visual cover should be installed and each resident should be given the opportunity to spend time alone, with friends or family undisturbed***
- ▶ ***Visits in their own room should be possible, including overnight visits.***
- ▶ ***Privacy and intimacy must also be preserved when providing care services. Undisturbed time to experience one's own body must be made possible..***

Sexual assistance required

The UN Committee on the Rights of Persons with Disabilities emphasised to Austria in the 2023 country review that persons with disabilities have the right to sexual assistance. Sexual assistance is an offer for people who, due to their disability, are unable to fulfil their sexual needs without help.

UN Committee calls for action

The UN Committee was concerned that the anti-prostitution laws of the *Laender* have a deterring effect on sexual assistance services for persons with disabilities that are publicly funded. The UN Committee called on Austria to harmonise federal and regional legislation on prostitution and sexual assistance in order to ensure the provision of publicly funded services of sexual assistance for persons with disabilities.

Legal uncertainty

The commissions' findings also revealed that the visited facilities were sometimes hesitant about the topic of sexual assistance. In more than a third of the facilities visited, the possibility of utilising sexual assistance is decidedly excluded, often due to legal uncertainty. Several facilities reported that sexual assistance used to be permitted, but that it was prohibited as „residential prostitution“ under the respective Regional Police Act (*Landespolizeigesetz*), or that relatives considered it to be „leading third parties to fornication for payment“ (Section 213 of the Criminal Code) and was therefore now a taboo. In some cases, it was also pointed out that there were no such services available in the region, or that clients lacked the financial means to pay for them.

Change of law in Vorarlberg

Legally, sexual assistance falls under prostitution in Austria and is therefore subject to the different regulations on prostitution of the *Laender*. In the *Laender*, where home visits for prostitution are prohibited (Carinthia, Salzburg, Tyrol), this includes the use of sexual assistance in facilities for persons with disabilities. In Lower Austria and Burgenland, residential prostitution is only permitted in „independent flats“, which allows physical contact through sexual assistance in residential facilities for people with disabilities, but makes consensual sexual intercourse there a punishable offence. In Vorarlberg, an amendment to the law passed at the end of 2023 made it possible for severely impaired people to receive sexual assistance from trained staff in a private setting, including in institutions and facilities. The NPM expressly welcomed this development.

- ▶ ***The use of sexual services must be equally accessible to persons with disabilities within the framework permitted by law –regardless of whether they live in or outside of institutions.***
- ▶ ***In accordance with the recommendations of the UN Committee on the Rights of Persons with Disabilities, the provisions of national and regional criminal law on prostitution and sexual assistance should be amended to ensure that persons with disabilities can also exercise their right to sexual assistance in institutions and facilities.***

Enabling the right to family life

According to the UN CRPD, States Parties are obliged to take effective and appropriate measures to eliminate discrimination against persons with disabilities in all matters relating to marriage, family, parenthood, and relationships. Among other things, Article 23 of the UN CRPD stipulates that States Parties shall provide appropriate support to persons with disabilities in the exercise of their parental responsibilities. States Parties shall also ensure that a child is not separated from their parents against their will unless the competent authorities determine, in a judgement that can be reviewed by a court, that such separation is necessary for the best interests of the child. In no case may the disability of the child or of one or both parents be the reason for such separation (Article 23(4) UN CRPD).

As part of the monitoring priority visits, the commissions determined whether residents express a desire to have children and how facilities deal with this.

As the NPM observed, many teams support the residents' desire for partnerships and also cater to any wishes for children. In one facility in Salzburg, the organisation explained that one couple wanted to have children. For this reason, the facility had organised exercise materials (pregnancy belly, training dummy). In addition, an action plan was drawn up to provide the couple with structured support.

Dealing sensitively with wish to have a child

However, it was not possible to accompany a pregnant client in the facility. It was explained, that this is due to a lack of staff, infrastructure and an appropriate concept for such a situation. None of the clients would be able to look after a child without adequate support. This means that a child would have to be taken away by the child and youth welfare services after birth. There are currently no alternative options or services available.

The AOB initiated *ex officio* investigative proceedings and asked all *Laender* for a statement of opinion on this issue. In their responses, some of the *Laender* stated that a corresponding offer could be created if required, or that there was currently no need. There are no special parent-child residential programmes for parents with disabilities in most of the *Laender*. Support is mainly provided in the form of mobile care and personal assistance. There are also child and youth welfare services to support parents, which can also be used by persons with disabilities who basically lead an independent life with assistance. However, the range of services is not sufficient in this area.

Too few offers for parents with disabilities

In Upper Austria, two parent-child rooms for persons with disabilities are provided in a fully supervised residential facility. The City of Vienna reports, among other things, that surveys are being carried out to determine the needs-based organisation of such services. In April 2023, an inclusive working group was formed within the Association for Viennese Social Institutions to improve the situation of parents with disabilities. Salzburg also

stated that a concept for parental support is being developed. Involved are, among others, the child and youth welfare services, operators of facilities for persons with disabilities, and the Ombuds Office for Children and Youths.

UN Committee recommends providing support

As part of the 2023 country review, the UN Committee on the Rights of Persons with Disabilities also expressed concern about the lack of support services for persons with intellectual or psychosocial disabilities and their children, and the separation of the children from their parents. The UN Committee recommends providing the support services that persons with intellectual and/or psychosocial disabilities need to effectively exercise their right to family life with their children.

- ▶ ***Opportunities for parental support for persons with disabilities should be expanded.***
- ▶ ***The support systems for people with disabilities and the child and youth welfare services should network and cooperate better.***

Ensure protection from sexual violence

The right to sexual self-determination also includes protection from sexual violence. This is particularly important for persons with disabilities who live in institutions. Inadequate handling of issues of sexual self-determination makes people vulnerable to violence and abuse. Effective protection against violence is only possible if persons with disabilities have learnt to know their own boundaries and to express them when they are violated. If clients exhibit conspicuous changes in behaviour, the causes must be questioned and dealt with professionally.

The most recent study on experiences and prevention of violence against persons with disabilities (Mayrhofer / Mandl / Schachner / Seidler, 2019), for which more than 300 people living or working in institutions and facilities were interviewed, showed that persons with disabilities experience sexual violence and abuse significantly more often than people without disabilities. Women and girls with disabilities are affected by sexual violence significantly more often than men.

Protection from sexual violence and abuse is particularly important in facilities for persons with disabilities. This is also emphasised by the UN CRPD (Articles 6 and 16) and obliges the States Parties to take appropriate protective measures for persons with disabilities and, in particular, to strengthen the autonomy of women and girls.

Protection against violence and empowerment of women and girls

As part of the 2023 country review, the UN Committee on the Rights of Persons with Disabilities expressed concern about the frequency of violence against persons with disabilities in institutions and facilities, particularly against women and girls and against persons with psychosocial and/or intellectual disabilities. The UN Committee called on Austria to take effective measures against this. This includes the participatory creation of violence

protection concepts and sex education concepts in institutions, standardised proceedings in the event of incidents of violence, but also the dismantling of institutional structures.

Austria is also obliged under the Istanbul Convention (Convention of the Council of Europe on preventing and combatting violence against women and domestic violence) to take specific measures to protect and prevent violence, especially for women and girls with disabilities.

Obligation under the Istanbul Convention

During their visits, the commissions repeatedly heard of sexual assaults, mostly by residents against fellow residents, as well as against care staff. This often involved unwanted touching, verbal comments, and undressing in front of other people. In one case, which occurred some time ago, a caregiver shaved a non-verbal client's private parts without consulting her and without any indication for doing so. During a follow-up visit, the commission realised that this incident and other violent assaults by a fellow resident had not been dealt with appropriately. However, the facility has since implemented numerous recommendations from Commission 1. The resident concerned is receiving psychotherapy and has been given an AAC tablet.

Violence prevention measures and clear guidelines on how to deal with incidents of violence and suspected cases are essential in every institution and facility. In only 63 % of the visited institutions did the commission find a prescribed, clearly defined procedure after an incident of violence is known. Just as many facilities carry out research into the causes of behavioural changes and incidents. Only 27 % of the facilities have a night watch service. Incidents are documented and dealt with in 83 % of the visited facilities.

No clearly defined procedure in the event of violence

- ▶ ***Measures of de-institutionalisation and social space and community issues are essential aspects of protection against structural violence and should therefore be structured and promoted more intensively.***
- ▶ ***A sufficient supply of qualified staff –with adequate pay and working conditions –is a basic prerequisite for violence prevention work.***
- ▶ ***Federal and regional legislation should stipulate an elaborated violence protection and de-escalation concept as a condition for the authorisation of facilities for persons with disabilities.***
- ▶ ***Violence protection concepts should be developed in a participatory manner with the involvement of persons with disabilities and in various formats (AAC, easy-to-read, etc.).***
- ▶ ***Violence protection concepts should contain the principle or mission statement of the institution, the rights of persons with disabilities, preventive measures, specific rules of behaviour and procedures in the event of incidents of violence and suspected cases, as well as clear guidelines on contact persons.***

- ▶ ***Protection against violence concepts are only effective if they are implemented and reviewed regularly. To this end, regular further and advanced training should be organised for all employees, as well as prevention and empowerment training for the clients.***
- ▶ ***Groups particularly at risk of violence and sexual assault –women, LGBTIQ+ people, and people with a migration background –should be specifically informed about their rights, contact persons, and protection options in empowerment training sessions.***
- ▶ ***Individual de-escalation plans should be drawn up for clients with problematic, crisis-prone behaviour and special attention should be paid to possible triggers for crises and how to avoid them.***

2.4.2 Overview of other topics

There is still a lack of well-trained staff

As in all types of facilities, the NPM also found staff shortages in facilities for persons with disabilities as well. Above all, there is a lack of sufficiently qualified staff, as the NPM already stated in the last report (NPM Report 2022, pp. 87 et seq.). Facilities repeatedly reported that sufficient and well-trained staff were hard to find on the labour market.

In one Viennese facility, for example, only seven of the 13 caregivers had a relevant qualification, while another employee was in training at the time of the visit. The level of qualification was therefore below that specified by the Association for Viennese Social Institutions. The employees complained about the stressful work situation resulting from the staff shortage. Staff turnover was high. The problem – staff shortages, qualification deficits, staff turnover – was all the more serious because the facility was mainly home to elderly persons with multiple disabilities and high care needs. Commission 4 criticised the fact that this increased the risk of errors in day-to-day treatment and that care based on the UN CRPD could not be guaranteed in the commission's view.

The operator referred to the lack of personnel as a cross-sector problem and to its efforts in the area of personnel recruitment and development. The level of qualification had been improved since the commission's visit. The authority's response was still pending at the time of going to press.

The lack of sufficient and appropriately trained staff was also an issue in other *Laender*, for example in a facility in Salzburg. Commission 2 once again criticised the large number of employees without training during its visits in the reporting period. In its statement, the *Land* of Salzburg also referred to the general shortage of staff and the various efforts made by the operator of the facility. It is necessary to develop suitable strategies to retain and train

staff and to find new staff in order to ensure that the target group can be cared for in the long term.

In a day workshop in Burgenland, Commission 6 was told by the management of the facility and the residents' representative that the clients, aged between 30 and 50, were very worried about their future housing. Most of them were still living with their parents, some of whom were already elderly. In the event of their parents' death, persons with disabilities are often placed in retirement and nursing homes, as there is a lack of part-time and full-time assisted living options. The *Land* explained that the problem was known and that a study on this topic and a needs assessment had been carried out.

Inappropriate placement in retirement and nursing homes

2.4.3 Positive observations

Despite all the problems and points of criticism, the NPM also came across many positive examples. Persons with disabilities are not recipients of charity, but bearers of rights. This shift towards a human rights perspective continues to progress, as the NPM also noted in 2023.

The commissions observed many dedicated teams during their visits. They recognise people's individual needs and try to support them in leading an individual lifestyle. In one facility in Vorarlberg, for example, a resident was supported in cycling independently despite severe restrictions. The District Authority issued him a letter stating that he was able to cycle on his own despite his impairment. This made him very proud. In a Lower Austrian facility, three residents were able to move from a residential home to an assisted housing facility. The work at this facility was geared towards learning to be independent in everyday life, such as taking the bus into town on their own. Another centre offered PC and Internet courses to promote the independence of its clients.

Help with learning independence

Self-determination, independent living, equal rights, education and full participation in society are inconceivable without communication. In many institutions and facilities, however, AAC is either not offered, or not used enough. But there are also positive examples, as Commission 4 found. The staff of a Vienna day care facility with a very demanding clientele (high care requirements, many with a lack of impulse control) use photos, pictograms, signs and electronic aids to communicate with the residents in a variety of ways. This enables residents to have a say in their choice of lunch or leisure activities. A facility concept and the house rules are available in easy-to-read language. Once a month, an AAC expert visits the home to work with clients and the team.

Self-determination requires communication

For persons with disabilities who are cared for in institutions, hospitalisation can lead to a variety of problems due to communication problems. One

Data sheets facilitate hospital stays

facility in Lower Austria counters this with data sheets that are given to residents when they are hospitalised. In addition to necessary information about the residents, these sheets also record preferences, habits and communication options: „Mr M. can drink from a glass, in tense situations it calms him down to drink from a Sippy cup.“ These notes show a targeted examination of specific habits and not only facilitate hospital stays, but also the training of new employees. The commission praised that such detailed descriptions of preferences, trigger points, and possibilities for de-escalation are unique. AAC is also very present at the facility and is used whenever possible. During one of the commission's visits, an external specialist trained a resident on the speech computer, which he will be able to control with eye fixation in future.

**Monitoring
priority leads to
improvements**

As part of the monitoring priority on the topic of (sexual) self-determination in facilities for persons with disabilities, commissions also found that many facilities already have an enlightened attitude towards the sexuality of persons with disabilities. Residents are accompanied and, if desired, supported in their search for a partner, or in the procurement of tools. Improvements have been achieved in facilities where there were shortcomings. Many institutions announced that they would develop sex education concepts and train staff or offer sex workshops for clients.

Staff shortages were also a frequent topic during the monitoring visits in 2023. In one facility in Burgenland, three positions were vacant at the time of the commission's visit. At night, a single „sleeping“ night duty was responsible for 22 residents who were accommodated over three floors and some of whom required a high level of care. This resulted in a significant increase in behavioural problems and aggressive assaults. Commission 6 recommended that a night watch service be set up immediately. This was prescribed following an unannounced inspection by the regional government. An additional qualified caregiver was deployed during the day to relieve the care staff.

Some facilities also took up the NPM's recommendations on the topic of protection against violence. In one facility in Lower Austria, a resident behaved abusively towards defenceless fellow residents. A violence prevention team was organised on the recommendation of Commission 6. Since then, incidents have been documented and discussed within the team. Several members of staff took part in a multi-day training programme on the topic of violence protection. A complaints management system was set up and a complaints letterbox installed.

2.5 Correctional institutions

Introduction

In the year under review, the NPM visited 25 facilities of the penitentiary system and forensic institutions, including socio-therapeutic residential facilities.

This year, representatives of the NPM once again gave presentations at international and national events, took part in various networking meetings and published on topics relating to the detainees in forensic institutions.

International exchange

At the beginning of May 2023, members of the Austrian NPM were able to accompany a delegation from the National Commission for the Prevention of Torture of Switzerland on a multi-day visit to a forensic institution in Königsfelden (Canton Aargau) and gain valuable insights into the work of their Swiss colleagues. Fruitful contact discussions were held with the NPMs of the neighbouring countries Czech Republic, Slovakia, Hungary, and Slovenia. Further exchange visits are planned for 2024.

At the end of November, the NPM took part in the meeting of the Global Alliance of National Human Rights Institutions (GANHRI) in Copenhagen. The conference ended with the adoption of the Kiev-Copenhagen Declaration. This set out a series of measures that National Human Rights Institutions (NHRIs) will take as part of their promotion, prevention and protection work against torture and other inhuman or degrading treatment. This was followed by a conference of NPMs and NGOs from the OSCE states. Issues relating to mental health care, primarily in prisons, were discussed. There is a shortage of doctors and nurses across Europe. Shortages hit vulnerable groups particularly hard.

GANHRI Conference

Violence against women was also the topic of the GREVIO (Group of Experts on Action against Violence against Women and Domestic Violence) state visit, which took place in Vienna in October 2023. In December 2023, a virtual roundtable was held on issues relating to the care of women who self-harm in prison („Women at risk of self-harm in prison“). Like many European organisations, the Austrian NPM also took part in this exchange of experiences.

The focus on „Detention of juvenile offenders“ was completed last year and the AOB published the results in the perception report „Youth in Detention“. The recommendations contained therein were presented to international participants in an online webinar organised by the Ludwig Boltzmann Institute of Fundamental and Human Rights and the Child Rights Erasmus Academic Network (CREAN).

An exchange on the working methods of European NPMs took place as part of the SPT webinar entitled „Strengthening the role of NPMs in the prevention of torture“.

SEE NPM Network Two meetings of the SEE NPM Network, an association of south-east European NPMs, were held in the reporting year. This time, the topics were health care in prisons and education and training opportunities during imprisonment as part of resocialisation.

Monitoring priority: incidents of violence in detention In the year under review, the NPM set itself the goal of determining the causes of incidents of violence in detention in more detail. The monitoring priority is to be finalised in the coming weeks and the results will be presented separately.

It is not surprising that the AOB frequently encountered the same problem areas in its *ex-post* control activities, as does the NPM during its visits. These are dealt with in detail in the AOB's annual report on monitoring public administration. As in previous years, the two annual reports therefore complement each other.

2.5.1 Infrastructural fixtures and fittings

Lack of barrier-free accessibility for persons with disabilities

In recent years, the NPM has already shown that there is a great need to catch up nationwide with regard to structural accessibility. Many correctional institutions still do not have barrier-free detention rooms.

Vienna-Josefstadt correctional institution not barrier-free The NPM found that four detainees in wheelchairs were detained in Vienna-Josefstadt correctional institution in August 2023. This is despite the fact that Austria's largest correctional institution is not structurally barrier-free and does not have a single barrier-free cell. It is not possible for persons with physical disabilities to get to the exercise yard or to operating facilities without assistance and thus without time-consuming staff work.

Commitment to barrier-free accessibility for persons with disabilities Persons with disabilities who are in prison should have the same living and accommodation conditions as other detainees. This obligation to provide appropriate conditions also includes ensuring that facilities are available for the special needs of prisoners with physical disabilities. As a State Party to the UN CRPD, Austria has committed itself to this.

Violation of Article 3 ECHR The European Court of Human Rights (ECtHR) found that degrading treatment can occur when detainees with physical disabilities are held in regular prisons that are unsuitable for wheelchair users. The ECtHR considered it a violation of Article 3 ECHR to detain a person with physical disabilities in a prison in which they cannot move around independently, or cannot reach the various prison facilities, including the sanitary facilities, independently and are therefore dependent on the help of fellow prisoners (see ECtHR 20 May 2010, Bsw. 46857/06, Z 27).

Refurbishment from autumn 2023 The NPM recommended that comprehensive attention be paid to creating accessibility for persons with disabilities when renovating and refurbishing

the Vienna-Josefstadt correctional institution. The Federal Ministry of Justice assured that the construction of 14 barrier-free detention rooms in 12 different departments is planned. As a result, at least one barrier-free detention room should be available for all forms of detention. It is also planned to install lifts and a bed lift for detainees who are confined to bed. In the course of this renovation and refurbishment efforts, appropriate ramps are also to be built for barrier-free access to the inner courtyard in at least two courtyards.

As a short-term solution for accommodating prisoners with physical disabilities, the Federal Ministry of Justice stated that detainees from Vienna-Josefstadt correctional institution could be transferred to the Wilhelmshöhe field office. One focus of the facility is the care of seriously ill and geriatric inmates. The facility is also designed to provide care for elderly inmates, including end-of-life care in prison.

Wilhelmshöhe
field office

However, during the visit to the Wilhelmshöhe field office in June 2023, the NPM had to criticise the lack of barrier-free accessibility for persons with disabilities. On a positive note, a lift has been installed. This brings some relief. However, further structural adaptations to make the Wilhelmshöhe special medical facility suitable for the disabled and barrier-free are urgently needed. The Federal Ministry of Justice reported that a reconstruction of the Wilhelmshöhe field office is planned over the next few years, which should bring improvements in the area of accessibility for persons with disabilities.

Reconstruction
planned

- ▶ ***Prisoners with physical disabilities must be able to move around independently and to reach the various prison facilities, including the sanitary facilities, on their own.***
- ▶ ***Correctional institutions must be adapted as soon as possible to be barrier-free and suitable for the disabled, taking into account the relevant regulations on barrier-free accessibility.***
- ▶ ***A facility intended for geriatric care and the care of non-mobile detainees must be barrier-free.***

No visual, noise and odour protection for toilets

The NPM inspected a multi-person detention room in Vienna-Favoriten correctional institution, which has a toilet that is only separated by partitions. The partition walls are open at the top. Furthermore, neither the multi-occupancy nor the single-occupancy detention rooms in Vienna-Favoriten correctional institution have an exhaust air system.

Vienna-Favoriten
correctional
institution

According to the Federal Ministry of Justice, the construction of a wall partition (up to the ceiling of the detention room) is time-consuming and, above all, cost-intensive. There are currently no plans to renovate or install a ventilation system.

Violation of the statutory provision

The NPM states that detention rooms, in which more than one person is held, must have a toilet that is structurally separated from the rest of the room with sufficient odour and noise protection. If such structural measures are missing, this constitutes a violation of the Penitentiary System Act (*Strafvollzugsgesetz*). Performing natural needs without privacy is undoubtedly degrading and unacceptable for all those present in the immediate vicinity without adequate visual, noise and odour protection.

- ▶ ***Detention rooms in which more than one person is held must have a toilet that is structurally separated from the rest of the room and has adequate noise and odour protection.***

Additional space required for the support work of the special services

Hirtenberg correctional institution

One visiting delegation noted positively that the Hirtenberg correctional institution's psychological service has a strong presence in the wards and offers low-threshold conversations. However, the facilities in the „new wing“ of Hirtenberg correctional institution are inadequate. There is only one screening room available to the counselling services in each department, which results in bottlenecks in the support work.

According to the Federal Ministry of Justice, the possibility of creating additional rooms for the special services is limited due to the size and architecture of the building. Nevertheless, the management of the facility is planning to set up additional group rooms this year.

- ▶ ***Sufficient rooms must be made available for the support staff in the respective departments in order to avoid bottlenecks in the support work.***

Inadequate equipment in leisure areas

Wels correctional institution

In March 2023, the inspected leisure rooms (Departments A1 and U1) at Wels correctional institution were very bare and poorly equipped. The recreation room in Department A1 was an empty room with a kitchenette, but without a table and chairs. There was only one table tennis table for three departments.

The NPM recommended making the leisure rooms in the wards more friendly and equipping them with more items for leisure activities (e.g. dartboard, table tennis tables, cross-training or home training equipment). During the concluding meetings, the management promised to endeavour to make improvements.

Equipment purchased

In the meantime, the leisure rooms have been equipped with tables and chairs and some have been repainted. Table tennis tables, dart boards and,

in some departments, a table football table have also been installed. In one department, both leisure rooms have a radio, television and various board games, which are popular with detainees. There are also plans to renovate the kitchens in all the recreation rooms.

Lack of lockable lockers

In Klagenfurt correctional institution, the NPM once again criticised the fact that cells for multiple inmates are not equipped with lockable lockers. Detainees therefore have no possibility to store private items securely and thus prevent possible theft. The Federal Ministry of Justice promised to equip lockers with padlocks in new buildings and new facilities for multi-occupancy detention rooms.

**Klagenfurt
correctional
institution**

The NPM continues to uphold its demand to equip all multi-occupancy detention rooms nationwide with lockable lockers, especially as this could also be implemented in many older penal system facilities. From the NPM's perspective, the installation of a simple and inexpensive padlock represents a minor administrative burden. In order to counter the problem of lost or defective keys, it would be possible to consider setting a deposit in advance.

**Ministry's arguments
not convincing**

► ***Lockable boxes must be provided in cells for multiple inmates to give detainees a certain amount of privacy.***

2.5.2 Living conditions

Overcrowded prisons are a nationwide problem

The NPM was concerned to see that overcrowding in prisons was once again on the rise nationwide. Neither the special services nor the prison guards are staffed to cope with overcrowding, which is why care deficits are inevitable.

**Inhumane prison
conditions**

Overcrowding was the reason for a visit in mid-October 2022 in Eisenstadt correctional institution. Due to the high number of arrested smugglers, the facility was occupied with 210 inmates, although it is only designed for 175. The NPM's visit in September 2023 showed no improvement. There were 229 detainees in the correctional institution on the day of the visit.

**Eisenstadt
correctional
institution**

The NPM inspected two-person cells in which three to four persons were accommodated. In one cell, a mattress was lying on the floor directly in front of a bunk bed. It is not possible to enter the detention room from the bunk bed without climbing onto the mattress.

Since January 2023, the Salzburg correctional institution has also been operating at over 100% capacity. In May 2023, 249 people were detained in the facility, although the maximum capacity is for 227 detainees. Emergency

**Salzburg correctional
institution**

beds and bunk beds were set up and new arrivals were accommodated in the infirmary. Despite attempts to quickly process classification procedures and changes to places of detention, it was not possible to significantly reduce the prison's occupancy rate, as the other correctional institutions were also at full capacity.

Hirtenberg correctional institution

When the NPM visited Hirtenberg correctional institution in February 2023, it was also overcrowded. Three-person cells in the new wing were occupied by four inmates. Transfers to other correctional institutions were hardly possible due to the high capacity utilisation nationwide.

Wels correctional institution

Overcrowding was also observed in Wels correctional institution at the end of March 2023. The facility was occupied by 166 detainees, although it only has 156 places available. The visiting delegation found that two additional beds had been set up in each of the multi-occupancy cells with four regular places.

Suben correctional institution

Suben correctional facility is also struggling with the current overcrowding. The maximum occupancy capacity of the detention rooms in the three residential groups of the senior citizens' section was exceeded in April 2023.

The Federal Ministry of Justice confirmed the observations of the NPM and pointed out that the number of detainees cannot be influenced by the prison administration. Efforts are being made to achieve an even utilisation of the existing prison facilities, taking into account the legal framework conditions. However, relieving the capacity of one correctional institution generally led to a burden on other correctional institutions.

The NPM calls for prompt short- and long-term measures to be taken against the overcrowding of correctional institutions across Austria. The expansion of electronically monitored house arrest by means of ankle bracelets has been planned for a long time. It is urgently recommended that the long-planned amendment to the Penitentiary System Act be implemented as soon as possible in order to combat overcrowding and promote resocialisation.

More electronically monitored house arrests

The NPM also called on the Federal Ministry of Justice to make a swift decision on the further utilisation of Gerasdorf correctional institution. Full utilisation of this institution could somewhat reduce the pressure on the prison population in the east of Austria. At the end of 2023, the decision was made to establish a new facility for young people with independent management on the site of the Vienna-Simmering correctional institution (Münnichplatz correctional institution). It remains to be seen how soon the announced project will be realised (for more details, see chapter 2.5.12. on the detention of juvenile offenders).

► ***Short and long-term measures must be taken to prevent overcrowding in correctional institutions.***

Sizes of detention rooms are too small

The St. Pölten correctional institution, which is over 100 years old, is no longer suitable for a modern penal system. There are almost 30 detention rooms for multiple inmates, which accommodate six people in a room of approx. 20 to 27 m². Although the management of the facility endeavours to generally occupy the detention rooms with a maximum of five detainees, an increase to six people is sometimes unavoidable due to the overcrowded situation.

**St. Pölten
correctional
institution**

The minimum standards of the CPT stipulate that a multi-person detention room should offer a minimum of 4 m² per person. These minimum sizes do not include the sanitary facilities. In any case, 1 to 2 m² should be added for the sanitary facilities. In addition, there should be at least 2 metres between the walls and 2.5 metres between the floor and the ceiling of the room.

The CPT has defined deviating standards regarding the desirable minimum sizes of cells for two to four persons („Living space per prisoner in prison establishments“, CPT/Inf (2015) 44). The minimum desirable size of these multi-person detention rooms, excluding the sanitary facilities, is 10 m² for two-person cells, 14 m² for three-person cells, and 18 m² for four-person cells.

**Minimum size of
detention rooms**

In the opinion of the NPM, the desirable minimum size for detention rooms as recommended by the CPT should be adhered to, as well as (particularly in the case of new constructions and refurbishments) a maximum occupancy limit of four detainees per room.

St. Pölten correctional institution also has cramped communal showers that are used by up to six people at a time. The lack of partitions favours assaults by fellow detainees; the confined space means that the detainees' privacy and intimacy is not sufficiently protected.

**Cramped showers
favour assaults**

The NPM recommended installing a visual cover or partition between the individual showers. An emergency call button should also be installed. It was agreed to implement these recommendations, provided there were no technical objections.

► ***The minimum sizes for detention rooms as specified by the CPT must be observed.***

Lack of protection for non-smokers

During a visit to Suben correctional institution in April 2023, the NPM observed that non-smoker protection was not being observed, particularly in the section for senior inmates. Smokers and non-smokers are housed together in a detention room for multiple inmates.

**Suben correctional
institution**

The Federal Ministry of Justice assured that the aim is to separate smoking and non-smoking detainees, but that this cannot be guaranteed at all times due to the high capacity and other circumstances, such as the type of prison or the separation of accomplices. Efforts are being made to ensure that joint accommodation only takes place if the non-smoking inmates agrees to this.

► ***Non-smokers should not be placed together with smoking detainees in detention rooms for multiple inmates.***

Reduced cell opening hours and sports and leisure activities for women in prison

Krems correctional institution

During a visit to Krems correctional institution in December 2022, it was not clear to the NPM why the opening times of the detention rooms for men and women in relaxed detention differ: In the women's section, the detention rooms were only open once a week until 4.30 pm. In contrast, the detention rooms of the male inmates were open from Monday to Thursday until around 4.30 pm.

The NPM recommended extending the opening hours of the detention rooms in the women's section, especially as no reasons could be given for the different approach. The Federal Ministry of Justice took up the criticism and promised to harmonise the opening hours of the detention rooms for women.

Linz correctional institution

In Linz correctional institution, the NPM recommended keeping the detention rooms in the women's section open all day on weekdays, weekends and public holidays. The detention room doors are currently open from Monday to Thursday from 7 am to 3 pm and on Friday until 11.30 am. Every fortnight, inmates can cook and do handicraft together in the „late shift“, which starts at 3 pm. This programme should be offered on a regular basis on all working days.

According to the Federal Ministry of Justice, it is not possible to extend the cell opening hours due to a lack of sufficient staff. The NPM pointed out that 96 % of the permanent positions at Linz correctional institution are filled. For the NPM, this can only lead to the conclusion that the allocated permanent positions for prison staff are obviously not sufficient.

More positions and optimisation

The NPM once again calls for sufficient permanent positions to be allocated to the correctional institution in order to be able to provide detainees with appropriate care. In addition to increasing the number of permanent positions, the structural changes and optimisation of personnel resources required to further reduce lock-up times must also be examined.

More sports and leisure options

Female detainees also reported that they were only able to use the fitness room once a week, and that this was not always guaranteed. The NPM

recommended providing sufficient opportunities for sport and exercise. Linz correctional institution took up this recommendation.

- ▶ ***The detention rooms in the women's wards must be kept open all day on weekdays, weekends and public holidays.***
- ▶ ***Female detainees must also be given sufficient opportunities for sport and exercise.***

2.5.3 Education and occupational opportunities

Insufficient range of employment and activities

It has already been shown in the past that excessively long lock-up times and few employment and activity programmes can be attributed to two causes: insufficient staff resources and outdated spatial conditions in the correctional facilities.

Too few staff and old buildings

Businesses and leisure and sports facilities often remain closed because there is a lack of staff to supervise and instruct the detainees. If businesses have to be closed and leisure and sports activities cancelled, prisoners are sometimes locked up in their cells for 23 hours a day with nothing to do.

In addition, many court prisons only offer limited employment opportunities due to a lack of space. In most cases, considerable structural measures (recunstruction, extension, new construction) are required to create sufficient work and leisure facilities in these buildings. Overcrowding further restricts the – usually already limited – range of work and activities on offer.

Eisenstadt correctional institution only has a workplace for around 45 % of the detainees. It is not possible to expand the number of workplaces due to a lack of space. The number of unemployed detainees continued to rise due to overcrowding-related closures, meaning that less than 30 % of the detainees were working on the day of the NPM's visit in September 2023.

Eisenstadt correctional institution

A similar picture emerged in Feldkirch correctional institution in the summer of 2022. Many unoccupied detainees reported that lock-up times of up to 23 hours a day were the norm. According to the Federal Ministry of Justice, at least one civilian, manual labourer is now employed. In addition, a further 10 jobs have been created for wage labour and piece work.

Feldkirch correctional institution

In St. Pölten correctional institution, too, only around 50 % of detainees have a job and there are regular lock-up times of 23 hours a day. Here, new businesses cannot be established due to a lack of space. Detainees also stated during the NPM's visit in September 2022 that they had never used the recreation or fitness room and were not aware that one existed.

St. Pölten correctional institution

According to the Federal Ministry of Justice, the staffing situation at St. Pölten correctional institution led to the fact that no sports and leisure

activities could be offered to detainees who were not employed. This was despite the fact that only around three prison guard positions were vacant. The Ministry of Justice finally agreed. Since the end of March 2023, at least one member of the prison staff has been responsible for the sports activities on weekdays for detainees who are not employed. It remains to be seen whether the use of the leisure and fitness room will now be open to both employed and unemployed detainees.

Ried correctional institution

The increase in the employment rate to 60 % recorded in Ried correctional institution in November 2022 is pleasing. Nevertheless, when interviewing detainees in this correctional institution, the NPM learnt that many of them are locked up for up to 23 hours a day.

New leisure concepts for unemployed detainees

On a positive note, recreational activities are also organised for detainees who are not employed. According to the Ministry of Justice, leisure activities are organised flexibly from Monday to Thursday from 8 am to 2 pm and on Friday from 8 am to 11.30 am.

Finally, the Ministry of Justice announced that it was seeking to obtain additional permanent positions at the levels A3/3 and A4/GL. This is intended to further relieve law enforcement officers of administrative tasks so that they can fulfil their actual duties in the law enforcement service (e.g. in the companies and leisure activities of detainees).

- ▶ ***Detainees should be able to spend a reasonable part of the day (at least 8 hours) outside their cells and engage in various meaningful activities.***
- ▶ ***Detainees should have effective access to sports opportunities.***
- ▶ ***Workshops and businesses should not remain closed due to a lack of staff.***

Discrimination in work and employment against women in prison

Ried correctional institution

It is pleasing to note that there was a satisfactory employment rate for women in prison in Ried correctional institution in November 2022. The NPM once again criticised the fact that female inmates only have the opportunity to work in the laundry, as house workers, cleaners, or in the officers' canteen. Women are not allowed to work in the car repair shop, the companies providing occupational opportunities, or the carpentry workshop. Denying women equal access to occupational activities constitutes discrimination.

No gender segregation in the companies

The Ministry of Justice pointed out that, in response to the criticism of the NPM, gender-specific segregation is no longer applied in any of the workshop, which provide occupational opportunities in Ried correctional institution. According to the Ministry, this process has also been implemented in the area of supervised leisure activities and educational measures and is also „lived“ in the facility itself.

The occupational opportunities for female detainees in the facilities of Wels correctional institution have not improved since the preliminary visit in February 2021. According to the commission's findings of March 2023, women only have employment opportunities in the cleaning service, house cleaning and laundry. According to the Ministry of Justice, this is due to the fact that the other workplaces were set up for male inmates and do not have separate sanitary facilities.

Wels correctional institution

The construction of a new labour hall would improve the work situation of the female detainees in Wels correctional institution. However, its construction is uncertain. In the meantime, a feasibility study has been commissioned.

Feasibility of a new work hall

► ***Women should have equal access to the same range of activities as men.***

2.5.4 Contact to the outside world

Sparsely equipped visiting rooms

In St. Pölten correctional institution, families with children have little space during their visit. There is no area where children can play with their detained parent.

St. Pölten correctional institution

The NPM recommended enlarging the visiting area of the St. Pölten correctional institution. It should also be designed to be family and child-friendly, to ensure that children have a positive visiting experience.

The Federal Ministry of Justice replied that due to the structural conditions at St. Pölten correctional institution, no changes are currently possible. In the past, there had been plans for a new building for St. Pölten correctional institution. A new building or extension to St. Pölten correctional institution is currently not planned.

No new construction or extension for St. Pölten facility

During its visit in summer 2023 in Schwarza correctional institution, the NPM also recommended setting up a family-friendly visiting area. Even though there is a shelf with some games in a corner of the visiting room, work should be done to create a family-friendly and inviting environment, especially in a women's correctional institution where children frequently visit. The NPM's recommendation has already been implemented and the play corner has been made friendlier and additional children's toys have been provided.

Schwarza correctional institution

► ***Visits with children should be able to take place in a friendly atmosphere that is suitable to children.***

Adolescents need support when contacting close family members abroad

Eisenstadt and Gerasdorf correctional institutions

One adolescent reported to the NPM that he spent weeks in both Eisenstadt and Gerasdorf correctional institutions asking to contact his parents in Afghanistan to inform them of his whereabouts. Only after around 12 weeks and a suicide attempt, did the Vienna-Josefstadt correctional institution contact the court and request permission to talk to the mother.

Contacting relatives The NPM re-iterates that contact with the outside world should be promoted as a form of social bonding. Detainees must be enabled to maintain contact with their close family and, if necessary, be supported in doing so. The court or the public prosecutor's office determines with whom a detainee in pre-trial detention may have contact. Detainees must be informed accordingly, so that they can approach the court and seek such a permission to speak. They must also be supported in this by staff.

- ▶ ***Contact with the outside world should be encouraged as a form of social bonding. Detainees must be enabled to maintain contact with their close family and, if necessary, supported in doing so.***
- ▶ ***Restrictions on contact with the outside world should only be imposed on adolescents in exceptional cases.***

Expansion of video telephony required

Video telephony in all institutions since 2020

At the beginning of the COVID-19 pandemic, the Federal Ministry of Justice introduced video telephony in correctional institutions in spring 2020. This was in response to a long-standing request by the NPM. During the visits to the correctional institutions, the NPM observed that the detainees made frequent use of the video calls. They make it easier to maintain visual contact, especially for people whose relatives live far away.

During a visit to Suben correctional institution, the commission learned from a notice that only detainees who do not receive visits have the opportunity to use video telephony once a month, while visits are possible once a week according to the law. The decree stipulates that video telephony is not a visit within the meaning of this statutory provision, but a form of telecommunication, which is why the regulations on visits do not apply.

Increase the number of devices

The Ministry of Justice is aware of this problem and is endeavouring to increase the number of devices for video telephony. There are plans for expansion, but these had not yet been finalised at the time of writing this report. The NPM hopes that the number of video telephony stations will be increased rapidly.

- ▶ ***Video telephony must be expanded in all correctional institutions. The technical prerequisites for this must be created. Sufficient end devices must be made available.***

2.5.5 Right to family and privacy

Problematic body searches with disrobement

In the past, the NPM has dealt with strip searches on several occasions (see most recently NPM Report 2019, pp. 107 et seq.). Following the CPT's recommendation, the NPM called for the body searches with disrobement to be carried out in two steps so that the person to be searched does not have undress completely. This recommendation was not complied with for years, with female inmates in particular complaining about this repeatedly.

It is encouraging that the Federal Ministry of Justice has now drawn up new standards for the search of persons in Austrian police departments and forensic institutions. They are to be included in basic and further training programmes and used in everyday prison life.

New standards for body searches

The standards stipulate that strip searches are to be carried out in stages in accordance with the „two-phase principle“. Deviations from this are only permitted in justified exceptional cases, which are also specified in the guidelines. Challenges in connection with intersex or transgender persons are also addressed in the standards.

The NPM further recommends that the reason for a body search with disrobement, the circumstances surrounding it and the nature of the measure must be documented in writing. The NPM noted that phrases such as „the physical search was carried out with respect for the person's sense of honour and human dignity“ are empty phrases and do not constitute sufficient documentation of the interference with the person's fundamental right.

Documentation still required

Internationally, it is also recommended that alternative methods be used. It is regrettable that the use of so-called body scanners is not being considered in view of the high acquisition costs.

The NPM continues to take the view that regular mandatory training and further training courses are required to conduct body searches while respecting the sense of honour and human dignity of the person searched and at the same time taking into account any security aspects. Regrettably, the Ministry of Justice still does not comply with this NPM recommendation.

Training and further education required

2.5.6 Access to information

Challenges with video interpreting

In previous years, the NPM already reported on the particular challenge of linguistic diversity and the successful pilot project „video interpreting in correctional institutions“ (most recently NPM Report 2019, pp. 143 et seq.).

Fortunately, the recommendations of the NPM were fully complied with. Since April 2017, at least one video interpreting system for the medical area has been available in all Austrian correctional institutions nationwide. In addition to the medical area, the video interpreting system was extended nationwide to other specialist areas in the care sector (e.g. psychological service, social work service) and to the administrative penalty unit in April 2018.

Assessment of suicide risk The NPM repeatedly emphasised how important it is to ensure that the specialist services are able to communicate with inmates. This appears to be essential if the risk of suicide is to be assessed by the specialised services.

In order to assess whether there is a risk of suicide, a detailed conversation must be held with the person concerned. If this is not possible due to communication problems, the video interpreting system must be used.

Eisenstadt correctional institution In the case of a foreign-language juvenile in Eisenstadt correctional institution, the psychological service failed to conduct an interview with a video interpreting device, although the inmate was behaving „depressed and reserved“ and his cell mate had also stated that he „cried a lot“ at night. After three weeks, the adolescent was transferred to another prison, where he attempted suicide.

Hirtenberg correctional institution In Hirtenberg correctional institution, the psychological care of foreign-language detainees is also made more difficult by the inadequate use of video interpreting services. Many detainees at Hirtenberg correctional institution cannot speak sufficient German. During a visit in February 2023, the NPM was informed that Hirtenberg correctional institution has the highest proportion of foreigners in the country. The number of video interpreting systems currently available is therefore not enough.

The NPM recommended the installation of at least one additional video interpreting device in the modular building. The management of the Hirtenberg correctional institution assured that it would purchase an additional device.

(Mobile) video interpreting devices In 2019, the NPM suggested that video interpreting – e.g. using mobile video interpreting devices – should also be made available nationwide for the access area and the departments. This recommendation has not yet been complied with.

During the visit to Ried correctional institution in November 2022, the NPM ascertained that mobile interpreting devices are also used in addition to video interpreting by professional interpreters. The so-called VASCO translators are mobile. They work like handheld dictation devices. The spoken word is translated into the desired language. These devices have proved their worth during the pandemic, especially as presentations of inmates were only possible to a limited extent.

Ried correctional institution: VASCO translators

In Eisenstadt correctional institution, the psychological service will also use VASCO translators in the future to assess the risk of suicide in order to ensure that interviews with the psychological service can be conducted quickly despite the existence of a language barrier.

There are also some deficiencies in the use of these devices, as the different languages are not comprehensively covered and it is necessary to speak slowly and clearly into the device. Sentences may have to be recorded repeatedly until the device provides a helpful translation. In addition, the device can only recognise and translate a few sentences (around one to three) at a time. It also remains unclear whether the words are really translated correctly.

Correct translation not guaranteed

The NPM welcomes the acquisition of these devices, but emphasises that a comprehensive assessment of suicidal behaviour requires a detailed interview with video interpreting. Such devices cannot replace the use of professional interpreters.

According to the Federal Ministry of Justice, work is now underway to enable video interpreting using mobile devices (tablets). This would fulfil a long-standing demand of the NPM. However, before the technical implementation, the correctional institutions must be equipped with a network and a secure public authority WLAN connection. Planning for this has already begun.

Planning for mobile devices underway

- ▶ ***In the event of communication difficulties in the medical field, in administrative penalty proceedings, and during counselling sessions (e.g. psychological service, social work service), trained interpreters must be called in.***
- ▶ ***An assessment of the risk of suicide must not be omitted due to communication problems.***
- ▶ ***The video interpreting system will also be used in the access area and in the departments.***

2.5.7 Measures which restrict freedom

Self-harm and suicide prevention in specially secured detention rooms

Dealing with crisis situations in prison and suicide prevention have always been a high priority in the NPM's work. Regrettably, 12 people took their own lives during their imprisonment in the reporting year. This is more than twice as many as in the previous year.

There is no doubt that further efforts have to be made as soon as possible to prevent suicides and self-harm and to provide people in crisis situations with close and professional psychological and psychiatric support.

Increase in suicides in detention

The rising number of suicides in detention prompted the multidisciplinary working group on suicide prevention set up by the Federal Ministry of Justice in 2022, in which the NPM also participated. The final report of this working group was presented in July 2023. It now remains to be seen whether the recommendations made in the report will be implemented (further information on the working group can be found in the Annual Report 2023 on the AOB's monitoring of public administration", chapter 3.7.2.1).

New uniform minimum standards

Among other things, the working group also defined new uniform minimum standards for the equipment of specially secured cells. Detainees are placed in such cells if they are in an exceptional mental state and pose a danger to themselves or others.

In future, specially secured cells in new buildings or during general refurbishments are to be constructed in accordance with these new minimum standards (as far as possible). Adaptations are to be made to existing cells, provided the financial resources are available and the spatial conditions permit such adaptations.

The new minimum standards stipulate that the specially secured cells should be equipped with underfloor heating, a floor-level toilet, a washbasin or water tap, a light switch, a secure TV set, mechanical ventilation and cooling, and video surveillance. Window areas should be fitted with Perspex screens or breakthrough-proof glazing and partition walls with hatches in the access area should be designed in a way that prevents injury. There should also be two access points.

Clock with day display important

People who are placed in a specially secured cells due to a crisis situation can become disorientated and suffer from anxiety. The additional loss of a sense of time can be very stressful. Those affected should therefore be given a sense of time at all times. The new minimum standards stipulate that a clear view of a clock with a display of the date should be ensured in the particularly secure cells. It is pleasing to note that some correctional institutions (e.g. Wels correctional institution) already have a visible clock, which displays the day of the week.

The NPM criticised the fact that numerous specially secured cells do not have the option of getting drinking water themselves. This was found in Wels, Ried, St. Pölten and Hirtenberg correctional institutions. It was always assured that detainees were provided with sufficient drinking water. In accordance with the new minimum standards, the NPM recommended that detainees should have self-determined access to drinking water. In some correctional institutions, retrofitting has already taken place or has been promised (Wels correctional institution, St. Pölten correctional institution, Reid correctional institution).

Self-drawing of drinking water

There is a risk of strangulation if the partition (or „separating grid“) between the specially secured cells has cross struts. In some correctional institutions, such cross struts have been found, which enables hanging in these specially secured cells and can be used for suicide (attempts). These cross struts should be covered as soon as possible, for example with Perspex screens. If necessary, the screen should be provided with air holes so that the cell is supplied with sufficient fresh air.

Risk of strangulation on cross struts

During the inspection of the specially secured cells in Stein correctional institution in July 2022, the NPM pointed out the acute risk of injury due to the cross struts in the „ separating grids“. The grids were installed both in front of the window and in front of the entrance to the cell. Unfortunately, an inmate strangled himself on these cross struts at the beginning of 2023, which once again highlighted the urgency of covering these separating grids.

Stein correctional institution: inmate strangled himself

After initial hesitation, the Ministry of Justice promised to secure the grids in Stein correctional institution by glazing them. Suben correctional institution also agreed to install Perspex screens in a timely manner following a corresponding recommendation from the NPM.

Steel cell partitions with cross struts were also criticised in Krems correctional institution. Here, too, it was recommended to cover them with Perspex screens. After repeated references to the acute danger situation, the Federal Ministry of Justice finally informed the NPM that the procurement and installation of a fine-meshed grid had already been initiated.

Krems correctional institution

Already in July 2021, the NPM recommended that Linz correctional institution covers the cross struts of the separation grids of the specially secured cell. The recommendation was again made in January 2023.

Linz correctional institution

There is also a risk of injury on sharp edges. The NPM observed this, for example, in the brickwork of the toilets in the specially secured cells of Linz and St. Pölten correctional institutions. In two specially secured cells in Hirtenberg correctional institution, the squat toilets pose a risk of injury as they are not fully embedded in the floor.

Risk of injury: sharp edges

In the year under review, the NPM again recommended that several correctional institutions (St. Pölten, Hirtenberg and Vienna-Favoriten

correctional institutions) should equip the specially secured cells with hazard-free seating and reclining blocks with an approximate height of 50 cm, made of hard foam. A mattress lying on the floor is not an adequate option for sitting and lying down. In the course of placement in a specially secured cell, which is usually accompanied by an exceptional psychological state, the detention room and thus also the seating and reclining blocks may become contaminated. They should therefore have a cover that can be washed off and disinfected easily.

- ▶ ***When furnishing the specially secured cells, attention must be paid to the prevention of self-harm or suicide attempts. They must be equipped in such a way that there is no risk of injury.***
- ▶ ***Specially secured cells should be equipped with a drinking water tap and a radio and/or television.***
- ▶ ***Detainees who are housed in a specially secured cell should always be able to keep track of the time. A clock with a day indicator should therefore be visibly displayed.***

Safeguarding privacy in detention rooms with video surveillance

The law provides for the possibility of video surveillance to prevent suicides, danger to life, or the risk of serious self-harm. However, video surveillance may also be used to maintain security and order in the correctional institution (in particular to prevent detainees from committing criminal offences, such as roughhousing or drug use). In many correctional institutions, video surveillance is therefore not only possible in the specially secured cells, but also in isolation cells.

St. Pölten correctional institution

The isolation cells under video surveillance in St. Pölten correctional institution gave rise to criticism. They are located in the basement. Problematic are the partition walls made of lightweight chipboards that were installed as a visual cover for the toilet, which is located directly next to the door of the cell. These boards can easily break and be used as a weapon or for self-harm. The NPM demanded that the isolation cells be designed to be hazard-proof.

Toilet area visible

In addition, the images from the video surveillance of the toilet facilities were not pixelated at the time of the visit. The lack of software cannot be used as an argument against minimum human rights requirements. The privacy of detainees when using the toilet must also be protected in isolation cells.

The NPM also recommended that detainees who are held under video surveillance be informed of the video surveillance. If video surveillance is not necessary, the video cameras should be covered or other detention rooms should be used. This must be documented accordingly.

The Ministry of Justice stated that video surveillance is often carried out when it is assumed that a person is an acute danger to themselves or others. These people are visited by the psychological service shortly after their admission. The main purpose of these interviews is to assess the acute danger to themselves or others. The person being monitored is generally in an extreme psychological situation.

Acute danger to self or others

In the opinion of the psychological service, explicit reference to the camera in the detention room would be counterproductive. In most cases, it is not possible to predict how the detainee will react to the video surveillance. The notification could also lead to an intensification of the crisis-like development. In addition, it is often not possible to conduct a conversation in an acute situation.

- ▶ ***If a detention room under video surveillance does not have a separate toilet, the detainee's privacy must be protected by pixelating the image.***
- ▶ ***Detainees must be informed about video surveillance in accordance with statutory provisions. If video surveillance is not necessary, the video cameras must be covered or other detention rooms must be used. This must be documented accordingly.***

2.5.8 Health care

Problems with temporary detention in forensic institutions

Persons who are likely to be committed to detention in forensic institutions must be placed in forensic therapeutic centre and not in a „regular“ correctional institution. This is required by law, pursuant to Section 431 of the Austrian Code of Criminal Procedure (*Strafprozessordnung*). Nevertheless, during the visit to Wiener Neustadt correctional institution at the beginning of June 2023, the NPM found that four persons with a mental illnesses were detained there.

Wiener Neustadt correctional institution

Correctional institutions are neither equipped with sufficient specialised staff nor do the staff have the appropriate training to treat persons with a mental illness. For the persons concerned, detention in a „regular“ correctional institution often means that they have to be placed in specially secured cells, as for instance in one of the cases observed by the NPM in Vienna Neustadt correctional institution. It would have been appropriate to immediately transfer the temporarily detained persons to a psychiatric ward or forensic centre in order to be able to treat their illness in the sense of complex psychiatric treatment (psychopharmacological, psychological, psychotherapeutic and socio-therapeutic).

No adequate psychiatric treatment

The Federal Ministry of Justice agreed with the NPM's opinion and recognised the need for improvement. If a detained person receives the status of

Demand for forensic-therapeutic places

Section 431 of the Austrian Code of Criminal Procedure, the competent psychiatric department is notified immediately. In this specific case, however, all beds in the psychiatric ward of Mauer Regional Hospital were occupied at the time of notification.

Finally, the Ministry referred to improvements that could be achieved by creating additional capacities through the reallocation of the Vienna-Favoriten correctional institution, the Göllersdorf field office in the Vienna-Josefstadt correctional institution and the (gradual) expansion of the Asten forensic therapeutic centre.

Nevertheless, the detention in forensic institutions is still under serious pressure in terms of capacity and staffing. As a result, there are still long delays in the admission of persons with mental illnesses to suitable psychiatric facilities.

No adequate care for persons with mental illnesses in regular correctional institutions

In addition to those persons who are (temporarily) detained in forensic institutions and must be accommodated in forensic therapeutic centres, the NPM also encountered inmates or detainees on remand with severe mental illnesses who were detained in correctional institutions. As far as this group of persons is concerned, no improvement in their care could be observed in the reporting year.

Chronic shortage of beds

The problem of the chronic shortage of beds in psychiatric departments specialising in forensic medicine has been known for years. The admission of acute psychiatric patients to hospitals without a forensic focus is usually problematic, as these hospitals themselves are regularly overcrowded and also unprepared for such patients.

As a result, detainees who have an urgent indication for psychiatric in-patient treatment are held in specially secured cells for longer periods or on a recurring basis. This often happens even though there is a medical recommendation for transfer to a public psychiatric hospital or a correctional institution with appropriate psychiatric expertise. This group of people is usually at risk of harming themselves or others and requires very close medical care and corresponding close medical monitoring to stabilise their state of health, which correctional institutions (with the current facilities, particularly in terms of medical staff) are certainly unable to provide.

Innsbruck correctional institution

The NPM came across one such case in Innsbruck correctional institution in December 2022, for example, where an inmate was found who had already been in a specially secured cell for two months. The man was confused, appeared neglected and was sitting huddled in the detention room in his underpants and a nightgown that was open at the back.

The doctor repeatedly recommended that the inmate be transferred to another institution (be it a correctional institution or a public medical facility). In Innsbruck correctional institution, adequate psychiatric care could not be guaranteed. The documentation also showed that the person concerned did not respond to attempts at contact. An interpreter was not called in.

Doctor recommends transfer to specialised facility

The Federal Ministry of Justice stated that the inmate had been visited daily by the prison's medical and nursing staff. The transfer of the person concerned to a specialised facility had failed due to the fact that the patient had not been (provisionally) placed in a forensic institution. He was in custody awaiting transfer. The date for the handover to the foreign authorities had been repeatedly postponed, sometimes at very short notice. This was why reasonable planning of the further psychiatric procedure had failed several times.

The NPM criticised the fact that Innsbruck correctional institution had not succeeded in stabilising the state of health of the person concerned. An imminent handover to foreign authorities cannot be cited to justify weeks of inadequate psychiatric care.

The Ministry of Justice announced the prospect of networking meetings between Innsbruck correctional institution and Innsbruck Psychiatric Hospital and Hall Hospital in Tyrol. The aim of these meetings is to facilitate the hospitalisation of inmates who pose an acute risk to others or themselves. Initial talks between representatives of Innsbruck correctional institution and Innsbruck Psychiatric Hospital took place in January 2024.

Networking meeting between correctional institutions and psychiatry

When reviewing the documentation in Leoben correctional institution, the NPM noticed that numerous security measures had been imposed on an inmate in spring 2022. The psychological service had recommended that the inmate be transferred to Graz II Regional Hospital due to his psychiatric condition. Nevertheless, the inmate remained in the specially secured detention centre for a long period of time, despite his severe mental illness. Only when a decision had been made on provisional placement (in a forensic institution) was he transferred to the forensic therapeutic department of Graz-Karlau correctional institution.

Leoben correctional institution

The management justified the inmate's stay in Leoben correctional institution by stating that a decision not to transfer the inmate had been made following consultations with the prison doctor and the psychiatric service.

The NPM once again emphasised that detainees with complex psychiatric illnesses must not be placed in specially secured cells for longer periods of time. If care is not otherwise possible, they must be transferred.

The visit to Salzburg correctional institution in May 2023 revealed a particular challenge regarding adult inmates with mental illness who are in pre-trial detention, have committed an offence with a sentence of less than one year,

Salzburg correctional institution

and are not placed in forensic institutions for this reason alone. These people are detained in (court) prisons despite having pronounced mental health problems.

Due to their severe mental problems, those affected are permanently transferred to detention rooms under video surveillance immediately after admission. There, they are seen by psychiatrists once or twice a week and given medication. This care cannot prevent psychiatric crises from breaking out, which means that these detainees awaiting trial, who have severe mental illnesses, are sometimes also placed in specially secured cells.

Prolonged detention of persons with severe mental illnesses in solitary confinement under video surveillance is not an adequate form of placement. Isolation in solitary confinement without personal interaction or adequate care and medical treatment can lead to a further deterioration in health.

Once again, the NPM emphasised that people with severe mental illnesses should not be detained in regular detention, as this is not tailored to their needs. These people require close, multidisciplinary and, in particular, psychiatric care. International principles and recommendations demand that persons with mental illnesses should always be cared for in specialised facilities under the supervision of recognised health professionals.

The Federal Ministry of Justice confirmed that persons with psychiatric diagnoses can only receive rudimentary treatment in Salzburg correctional institution. These people are accommodated in the infirmary and attempts are being made to gradually integrate them into everyday life in the prison. Thanks to a plan of action that has now been established for dealing with those concerned, it has been possible to largely stabilise two particularly conspicuous detainees and gradually integrate them into everyday life in the facility.

The NPM recommends that nationwide consideration be given to how adequate care can be provided for detainees awaiting trial or prison inmates with severe mental illnesses and acute psychiatric patients. Failure to treat this group of persons can lead to an even more severe course of illness and be associated with considerable damage to the inmate's physical and mental health.

The Ministry of Justice agreed that the expansion of forensic psychiatric departments is sensible and urgently required. However, according to the Ministry, the necessary resources are lacking. Concrete measures to bring about a solution for the acute psychiatric care of detainees awaiting trial and prison inmates were and are subject of regular negotiations with the hospital operators in Vienna and Lower Austria (not in Burgenland).

- ▶ ***Persons with mental illnesses should always be cared for in specialised facilities under the supervision of recognised health professionals. They should not be detained in regular detention centres, as these are not designed to meet their needs.***
- ▶ ***Prisoners who cannot receive adequate psychiatric care in prison must be transferred.***
- ▶ ***Long-term detention of a person with a mental illness without adequate psychiatric treatment violates the duty of care and supervision.***

Too few specialists for psychiatry

The NPM repeatedly criticised the fact that no medical staff are present at Asten forensic therapeutic centre in the evenings and at weekends. Comprehensive medical care is urgently needed, especially for patients in detention in forensic institutions. During a visit in spring 2023, it was also discovered that the position of medical director had been vacant since the end of 2022. It is pleasing that this position was found at the beginning of 2024.

**Asten forensic
therapeutic centre**

The Ministry of Justice pointed out that there was a shortage of psychiatrists throughout Austria. There would be too few specialists to extend attendance to nights and weekends.

During a visit to Stein correctional institution in July 2022, the NPM also found that the psychiatric care was completely inadequate (see NPM Report 2022, pp. 110 et seq.). Only one psychiatrist was employed for eight hours per week and one psychiatrist from another correctional institution was employed as an alternative for five hours per week. In addition, an association provided two psychiatrists by means of tele-medical care via a pilot project.

**Stein correctional
institution**

At the beginning of 2023, three psychiatrists were employed for a total of 28.5 hours per week (partly via the recruitment agency for justice supporting staff, and partly via the correctional institution itself). In addition, tele-medical care was provided for three hours per week.

Stein correctional institution has a total capacity of 839 inmates. In addition to prisoners with long-sentences, the facility also holds detainees with serious and persistent mental illnesses (in accordance with Section 21 (2) of the Austrian Criminal Code). Since 2023, the recruitment agency for justice supporting staff has provided a total of 61 hours of psychiatric care per week.

The NPM emphasised that more must be done to attract medical professionals to work in the penal system. It is regrettable that the

contractual conditions have not been improved. It is, however, encouraging that the specialised medical services are now almost fully staffed (see also the AOB's Annual Report 2023 on monitoring public administration, chapter 1.1.1.7 Staff shortage in Stein correctional institution).

- ▶ ***The Ministry of Justice must develop a long-term strategy to attract more medical professionals to work in prison administration.***
- ▶ ***In forensic institutions in particular, the presence of psychiatric specialists is also required at night and at weekends.***

Health examination upon arrival within 24 hours – pilot project „Telemedicine“

In several correctional institutions, the NPM repeatedly criticised the fact that newly arrived detainees do not receive a medical examination (health examination upon arrival) within 24 hours of their admission or transfer (e.g. Ried, Graz-Jakomini, and Wels correctional institutions). In the opinion of the NPM, the health examination upon arrival must be carried out on the day of arrival or within 24 hours (see NPM Report 2016, pp. 103 et seq.).

The Federal Ministry of Justice states that as part of the „Telemedicine“ project, all correctional institutions currently have access to general practitioners in order to enable prompt examinations upon arrival. Telemedicine is available to all institutions that do not have a doctor on duty continuously during normal working hours, namely from Monday to Thursday from 12 noon to 4 pm and on Fridays from 9 am to 1 pm. At present, this only applies to routine (plannable) examinations.

- ▶ ***The health examination upon arrival should be carried out within 24 hours of the detainee's arrival at the correctional institution.***

Presence of executive personnel during medical examinations

Already since the beginning of 2017, the NPM is recommending that only trained nursing and care staff should be on duty in the hospital wards and surgeries of correctional institutions in order to uphold the principle of medical confidentiality. They should not perform any supervisory functions (see NPM Report 2018, p. 117).

Linz correctional institution

In Linz correctional institution in January 2023, the NPM observed that the general practitioner always conducted medical interviews and treatments in the presence of a prison guard. Examinations by another doctor, on the other hand, took place without the presence of a prison guard, but always in the presence of a nurse.

In St. Pölten correctional institution, prison guards were also routinely present during medical interviews and explorations by the psychiatrist.

St. Pölten

The NPM observed that prison guards are also present in Krems correctional institution during general medical or psychiatric treatment consultations with prisoners, unless the prisoners request to speak to the doctor alone.

Krems correctional institution

The NPM has repeatedly pointed out in recent years that the practice of the constant presence of third parties contradicts human rights standards. Prison guards must only be present during medical examinations or interviews in exceptional cases at the request of the doctor. Furthermore, the workplace of the prison guards in the infirmary must be physically separated from the treatment room.

The NPM is also of the opinion that the presence of prison guards in the doctor's rooms during medical treatment is in conflict with the need to maintain intimacy and confidentiality. Respect for privacy and confidentiality are fundamental rights of the individual and are essential for an atmosphere of trust, which in turn is a necessary component of the doctor-patient relationship. This applies in particular to correctional institutions, where detainees are not free to choose their doctor.

Maintaining intimacy and confidentiality

The CPT also stipulated in its standards that any medical examination of prisoners should be done out of earshot and – unless the doctor concerned requests otherwise – out of sight of prison staff.

The Federal Ministry of Justice explained that prison guards are not only present in the surgery to keep watch, but are also urgently needed for numerous administrative tasks. If a patient wishes to have a conversation in private and does not pose a risk, such a conversation will of course be made possible. There is no prospect of a general change to the procedure.

No change in prospect

- ▶ ***In order to uphold the principle of medical confidentiality, only trained nursing and care staff shall be on duty in the hospital wards and surgeries of the correctional institutions. They should not perform any supervisory functions.***
- ▶ ***In accordance with international standards, prison guards should only be involved in exceptional cases on the basis of a risk assessment at the request of the doctor. Doctor-patient confidentiality must be maintained.***
- ▶ ***The safety of medical personnel must be ensured.***

2.5.9 Personnel

Staff shortage in prison guards

Many correctional institutions throughout Austria struggled with a massive staff shortage in the reporting year. Businesses and leisure and sports

facilities often remained closed due to a lack of (executive) prison guard staff to supervise and instruct detainees during work or leisure activities (see also chapter 2.5.3.). This in turn led to very long lock-up times and a tense prison climate. Such living conditions can be a breeding ground for frequent incidents of violence and self-harm.

Creating financial incentives

The Ministry of Justice confirmed the shortage of staff throughout Austria and explained that recruitment measures are not always successful. Financial aspects are often only a partial motivating factor to work in the penal system. In the area of prison guards, at least the basic salary for those joining the executive services was increased with the 2nd amendment to the service law in 2022.

Working group to improve the personnel situation

In order to meet the challenges of the staff shortage, a multidisciplinary working group was set up on the topic of „Making jobs in facilities of the penitentiary system and in forensic institutions more attractive – improving the staffing situation in the prison guard and other professional groups“. The kick-off event took place in October 2023.

No applicants for social work service

Linz correctional institution

Recruiting staff for the social work service is becoming more and more of a particular challenge. Many positions have had to be tendered several times as either no applications or only unqualified applications were received. In Linz correctional institution, for example, a full-time position has already been tendered for the sixth time. There were virtually no applicants.

Vienna-Mittersteig forensic therapeutic centre

During a visit to the forensic therapeutic centre Vienna-Mittersteig in September 2022, the NPM also had to determine that around 100 weekly hours for social workers remained vacant. The NPM considered the low starting salary in the federal civil service compared to other organisations (associations, NGOs, provinces, municipal authorities) to be the reason for this. The Federal Ministry of Justice admitted that there were 2.45 vacant positions in the social work service at the Mittersteig forensic therapeutic centre at the beginning of February 2023. A new employee was recruited from mid-February.

New categorisation in social work service

At the beginning of the year, the Federal Ministry for Arts, Culture, the Civil Service and Sport announced that social workers would be upgraded at the beginning of March 2023. This will result in salary increases.

The NPM took note of the measures taken. It is hoped that the salary increases will at least ensure that the current staffing levels can be maintained, as sufficient staffing levels are essential for a modern penitentiary system and forensic institutions. Employees must be adequately remunerated for their work.

Lack of therapy offers in the psychological service due to staff shortages

Detainees at Wels correctional institution complained during the NPM's visit in March 2023 that the understaffing of the psychological service was very noticeable. Requests are no longer processed promptly and the support services have been reduced.

Wels correctional institution

The psychological service had a total of 80 hours per week. At the time of the visit, only 50 hours per week were covered. According to the Ministry of Justice, the unfilled 30 hours per week are tendered again and again. The 11th repeat invitation to tender is currently underway.

11th repeat invitation to tender

The NPM paid a visit to Hirtenberg correctional institution in February 2023. Detainees serving long sentences are increasingly being placed in this correctional institution, which has led to a change in the composition of the inmates. In addition, many detainees have a substance abuse disorder.

Hirtenberg correctional institution

The psychological service at Hirtenberg correctional institution, which has four full-time positions (160 hours per week), was now and again only staffed with 65 hours per week. The work of the remaining staff was at times limited to crisis interventions, and it was not possible to provide long-term, close-knit support or maintain therapy groups.

At the time of the visit, the staffing situation was somewhat better, but therapies could not be offered according to need, but rather in order of release date (and based on general linguistic and intellectual responsiveness). This means that detainees serving long sentences in particular have no chance of receiving therapy and the associated relaxation in the short and medium term. This understandably leads to a high potential for frustration and conflict.

Inadequate supervision and the resulting extensions of prison sentences contradict the State's duty of care under Article 5 ECHR. If appropriate therapy is not provided over a longer period of time, this makes the prospect of conditional release and resocialisation more difficult. The State is obliged to set up an appropriate and individualised therapy programme.

Commitment to therapy programmes

The Ministry of Justice stated that three full-time positions were filled and one was vacant in July 2023. The last position was also filled in October 2023. It also pointed out that the work of the employees of the psychological service does not include therapeutic interventions. This is because not every psychologist employed in the penal system has therapy training. It is the task of the psychological service to ensure that therapeutic services are purchased as required.

No therapeutic interventions

The NPM had to critically question why the budget earmarked for therapies had not been fully utilised last year. The Ministry of Justice referred to the

pandemic-related restrictions that were still in place at the time. It remains to be seen whether more therapies will be offered in the future.

► ***An appropriate and individual therapy programme for detainees must be ensured.***

2.5.10 Care and enforcement plans

Detention in forensic institutions: better care for inmates

Vienna-Favoriten correctional institution

On the occasion of its visit to the Vienna-Favoriten forensic therapeutic centre in November 2022, the NPM recommended improving the care settings in detention in forensic institutions. It would make sense to draw up a treatment plan for each inmate and to define annual or semi-annual steps, the fulfilment of which would also motivate the inmate. The plans should be drawn up with the involvement of the inmates and be comprehensible to them. To this end, it was suggested that levels of relaxed detention be introduced in order to establish a structured pre-release programme.

Establishment of morning rounds

It is also important to encourage the special services to proactively visit the detainees. Daily morning rounds through the departments, for example, would allow concerns to be addressed earlier, bureaucratic obstacles to be removed and a basis of trust to be created. The enforcement objectives could thus be achieved more efficiently and reliably.

Establishing levels of relaxed detention

In September 2023, the Federal Ministry of Justice informed the NPM that the working group on the establishment of relaxed levels of detention had been completed and presented to the staff of the Vienna-Favoriten forensic therapeutic centre at a staff meeting in June 2023. The system developed has been in use since then.

The management of the Vienna-Favoriten forensic therapeutic centre assessed the introduction of a treatment plan positively, but prioritised the development of relaxed levels of detention. The framework conditions for the treatment plan are to be discussed in the course of a strategy meeting in an interdisciplinary setting and then implemented.

At present, enforcement plans are drawn up as part of the monthly specialist team meetings. It is also possible to take into account the interests and wishes of the inmates. The respective results are explained verbally to the inmates. In principle, all therapeutic measures are included in the enforcement plan.

A „morning round“ by the specialised services on the wards as recommended by the NPM is currently being implemented. However, the Ministry of Justice emphasised that the implementation of so-called „morning rounds“ is the responsibility of the nursing service of the Vienna-Favoriten forensic therapeutic centre and is usually offered embedded in the care concept of

a milieu-therapeutic group. The staff of the psychological service at Vienna-Favoriten forensic therapeutic centre are present in person every day from Monday to Friday in the various wards to conduct interviews with the people accommodated there.

- ▶ ***In order to motivate inmates, treatment plans should be developed together with them and relaxed levels of detention should be established.***
- ▶ ***Specialist services should proactively visit the inmates in the wards on a regular basis (e.g. by means of daily morning rounds through the wards).***

2.5.11 Return and releases –follow-up care facilities

Medication found unlocked

At the end of July 2023, the NPM visited one of the two forensic transitional residential buildings in Graz and was able to provide the management of the facility with positive feedback on a number of points: This related to recommendations from the last visit that had been implemented, such as the installation of a complaints letterbox that can be used unobserved, or the qualifications of the staff. De-escalation training that was still outstanding at the time of the last visit had been completed by almost all employees on the day of the visit. The current staffing situation was also noted as positive. *Pro mente Styria* is thus able to offer its clients individually tailored housing and care solutions.

Pro mente Styria

In June 2022, the NPM visited the Neuland Asten follow-up care facility (*pro mente plus* Upper Austria). Here, too, many positive points were communicated to the management of the residential facility during the visit. The respectful treatment of the residents was emphasised in particular.

Pro mente plus
Upper Austria

The only point of criticism in both facilities was the storage of medication. In the forensic transitional residential building in Graz, the cabinet containing the medication was found unlocked on the day of the visit.

Storage of
medication
problematic

In the Neuland Asten follow-up care facility, the medicine cabinet is generally locked when the staff leave the room, but in the opinion of the NPM, this does not offer sufficient security against misuse. Attention must be paid to ensuring that the medication is properly stored to prevent unauthorised access by third parties. The facility reacted right away to the NPM's criticism and a knob was fitted to the door of the staff's duty room. This door is now permanently locked and access is only possible in the presence of staff.

- ▶ ***The after-care facility's duty of care and protection towards its clients also includes the safe storage of medication. The containers provided for this purpose must be kept locked.***

Lack of barrier-free accessibility for persons with disabilities

Follow-up care facility in Mauer – Pavilion 12 of the regional hospital

At the end of February 2023, the NPM visited the follow-up care facility Wohnen Mauer, located in pavilion 12 of the regional hospital, and was impressed by the emphatic care setting, the good staffing ratio and the possibility of equine therapy. In addition, weekend excursions were resumed, a complaints letterbox was installed, the sanitary facilities were separated by gender and the training programme for staff was expanded.

Lack of accessibility for persons with disabilities

The criticism remained that the follow-up care facility is not barrier-free and that the sanitary facilities are so small that they cannot be used with a wheelchair. According to the Ministry of Justice, this is to be improved with a ramp. In addition, those affected can use the actual access ramp through the otherwise blocked centre entrance.

The wheelchair and/or other walking aids can now be used more easily thanks to the rearrangement of the men's and women's toilets and the installation of additional grab rails.

Missing alarm buttons

The NPM also criticised the fact that the rooms – with one exception – are not equipped with an alarm button, although at least one resident is at risk of falling. It was recommended that an alarm button be installed in all rooms of the follow-up care facility. Alternatively, emergency call bracelets should be used.

The follow-up care facility was reserved in this regard. The installation of emergency call buttons is not mandatory. However, a person at risk of falling would be equipped with a radio bell and an emergency call bracelet. An acoustic alarm mat would also be used. The person concerned accepts that the door is left ajar overnight so that help can be called quickly if necessary.

More leisure activities

The recommendation to include leisure activities in the care and target plans with the residents was taken up. The facility is committed to the guiding principle of „movement gets things moving“. There is a daily morning walk (3 to 4 kilometres) and an afternoon walk. An exercise bike and a table tennis table are available in the building. In summer, excursions to various attractions and sights are organised.

- ▶ ***Follow-up care facilities should be barrier-free.***
- ▶ ***Leisure activities should be included in the target and care agreements. In this way, attention can be paid to their implementation in individual cases.***

Further training measures are to be promoted

Follow-up care facility WOBES Grünbergstraße Project 21/2

On the occasion of the visit to the follow-up care facility WOBES Grünbergstraße project 21/2, the NPM recommended that all employees should acquire knowledge specific to the profession in the form of basic socio-psychiatric training and regularly attend further training events.

The management of the facility explained that a basic seminar had been successfully completed by 15 of the association's employees as part of its continuing education programme. The seminar is fundamentally and comprehensively concerned with the prevention and resolution of violent conflicts in one's own working environment. The primary aim is to respect the personal rights and dignity of clients while ensuring the safety of all those involved. The seminar consists of information blocks, self-reflection phases, small group work, and practical exercises. It comprises 32 teaching units of 45 minutes each.

- ▶ ***In order to be able to offer high-quality, client-centred care, all employees of the follow-up care facilities should complete basic psychiatric training and regularly participate in further training events.***

2.5.12 Detention of juveniles

Decision on a new location for adolescents

In its report on „Juveniles in Detention“ from 2022 (only available in German), the NPM stated that Gerasdorf correctional institution as a special facility for juveniles is no longer suitable for a modern detention of juveniles – primarily due to its structural and geographical location. Therapies and vocational training should increasingly take place outside a correctional institution, which requires good public transport connections. Contact with the family, which is particularly important for juveniles, is also only possible to a limited extent due to the difficult accessibility of Gerasdorf correctional institution.

Detention of juveniles in transition

A multidisciplinary working group set up by the Federal Ministry of Justice in December 2022 dealt with the question of where and in what form the detention of juveniles should be organised in Austria. The working group presented its final report in October 2023. It recommended the establishment of a new facility for juveniles with independent management on the premises of Vienna-Simmering correctional institution.

The Minister of Justice followed this recommendation; Münnichplatz correctional institution is expected to start operations as early as July 2024. Therefore, urgent precautions should be taken to ensure smooth operation. In particular, sufficient staff must be provided and trained; prison guards should complete the course for the „Detention of Juveniles“ immediately.

2024 new location for juvenile detention

According to the unanimous opinion of the experts, Gerasdorf correctional institution should be used to detain young people with medium and long-term criminal records, particularly by utilising the available resources in the area of vocational and educational opportunities. The full capacity of this prison would also relieve the burden on correctional institutions in eastern Austria.

Gerasdorf correctional institution

Juveniles need exercise The time leading up to the decision was very stressful for the staff and detainees at Gerasdorf correctional institution. The negative prison climate was also clearly noticeable for the NPM during its visit in summer 2023. Most of the businesses were closed, it was not possible to exercise on the sports field, and it the only option to spend time outdoors was in the inner courtyard. Numerous administrative penalties, in particular violence among the juveniles, were on the agenda.

The Ministry of Justice assured that measures for improvement are being taken on an ongoing basis. For example, the sports programme and various group activities have been expanded.

Criticism of unauthorised department The NPM strongly criticised the establishment of a new department, which was referred to – at least by some staff and detainees – as a „security department“. According to the Ministry of Justice, the department was not authorised as such. It was primarily intended to provide needs-orientated care for difficult detainees. In spring 2024, the NPM was informed that the department in question had now been reorganised and was available to the adolescents who had been transferred from Eisenstadt correctional institution to Gerasdorf due to oppressive overcrowding.

► ***The capacities of Gerasdorf correctional institution are to be used promptly for juveniles with a training focus once they have been relocated.***

Inadequate support for juveniles

Feldkirch correctional institution The NPM has been pointing out for years that the care of juveniles in numerous court prisons without a juvenile department is in need of improvement (most recently in its 2022 report on „Juveniles in Detention“, which is only available in German). One example of this is Feldkirch correctional institution. It is located in a historic Art Nouveau building that is a listed building. For years, the NPM has criticised many structural deficiencies that can be attributed to the old building structure and has called for the construction of a new building or at least extensive adaptations (see NPM Report 2021, p. 119).

No contemporary detention of juveniles Juveniles are regularly detained in Feldkirch correctional institution, but there is no separate department for them. There is no possibility of housing inmates in shared accommodations, hardly any activities, and no opportunity to take part in sports. In addition, there is no separate care for adolescents and young adults by socio-pedagogical staff, as there are no posts allocated for this purpose.

In the opinion of the Ministry of Justice, the establishment of a separate department is not expedient due to the small number of juveniles. However, one member of staff has completed the course for the „Detention of

Juveniles“ and, if juveniles are detained, is entrusted with their employment. There are no separate sports groups; the juveniles are divided up among the adult groups. The need for an additional social pedagogue is also not seen due to the small number of adolescents.

The NPM emphasised once again that juveniles must be cared for and detained in shared accommodation in accordance with the minimum standards for the detention of juveniles even in correctional institutions that do not have a juvenile department.

- ▶ ***Juveniles must be supervised in accordance with the minimum standards for the detention of juveniles even if the correctional institutions do not have juvenile departments.***
- ▶ ***Meaningful leisure activities should be regularly offered to juveniles in all correctional institution. Sports programmes in particular should not be missing.***
- ▶ ***It must be ensured that juveniles in custody are supervised by staff specially trained to meet their needs and requirements. All staff assigned to juvenile units should complete the training course for the detention of juveniles.***

Best practice: Pilot project offers residential care to adolescents in electronically monitored house arrest

The NPM found a best-practice example of the resocialisation of juvenile and adolescent inmates in Linz correctional institution. As part of a pilot project, *Soziale Initiative GmbH* (Social Initiative Ltd.) made flats available free of charge to selected adolescents (aged 18 to 24) for the purpose of detention in the form of electronically monitored house arrest at the beginning of 2023.

Linz correctional institution

A „youth coach“ creates the necessary daily structure. A specialist conference meets regularly in Linz. It consists of prison officers from Linz correctional institution, employees of *Soziale Initiative GmbH* who work in the crisis hotline area (evenings and weekends) and as youth coaches (follow-up care), social education workers, probation officers, and volunteers from associations in cooperation with the independent volunteer centre of the *Land*.

The project currently only exists in Linz correctional institution. It is co-financed by the Ministry of Justice for the years 2023 and 2024. Unfortunately, there are no plans to extend the project to other correctional institutions, as the respective contractual partners or external institutions do not exist in other *Laender*.

No plans for nationwide expansion

The goals of a successful enforcement of custodial sentences for juveniles and adolescents, who are subject to juvenile detention (i.e. up to a maximum age of 27 years) are resocialisation, reintegration, and the associated

minimisation of delinquency. Dealing with this particularly vulnerable group requires different attention, perspectives and framework conditions than with adults. A multi-professional and systemically collaborative support system with a higher level of support, counselling and therapy services is required.

The NPM therefore supports the pilot project of Linz correctional institution all the more and calls on the Federal Ministry of Justice to support and promote such projects in other Laender as well.

► ***The NPM considers the pilot project on residential care in electronically monitored house arrest for juvenile detainees of Linz correctional institution to be a best-practice example of how structures for resocialisation and reintegration can be successfully created for a particularly vulnerable group.***

Best practice: Café Aloha – Wien-Favoriten forensic therapeutic centre

An „inmate coffee shop“ (Café Aloha) was set up in the Vienna-Favoriten forensic therapeutic centre in cooperation with law enforcement, civilian staff and the inmates. The café is run indoors and outdoors by a multi-professional team.

This is a joint (employment) project with the inmates and it is intended to contribute to dialogue and exchange between the inmates. During its visit, the NPM observed that the increased employment of inmates and their active involvement in the organisation and maintenance of the café had a positive effect on the atmosphere in the facility. The inviting design of the café was also perceived positively. The NPM is in favour of such innovative projects and recommends that other forensic therapeutic centres follow this example of best practice.

2.5.13 Legislative recommendations

Long period of house arrest for adult detainees

**Up to 4 weeks
solitary confinement**

The most severe punishment for misbehaviour is house arrest. Those affected are isolated in a detention room and are only allowed to leave it to go out into the yard (without other prisoners). Section 114 (1) of the Penitentiary System Act (Strafvollzugsgesetz) stipulates that the maximum length of house arrest for adult detainees is four weeks.

**Contradiction
to international
standards**

Even if house arrest is rarely imposed for such a long time in practice, the possible duration of four weeks contradicts international standards and is also criticised by the NPM. This is particularly the case when the rights to correspondence, visits or telephone calls are withdrawn at the same time. Mental and physical health can suffer as a result of such isolation.

The CPT considers that the maximum period of solitary confinement for a given offence should not exceed 14 days and should preferably be less (CPT/Inf(2011)28-part2). The United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) stipulate a prohibition of solitary confinement for more than 15 days, as solitary confinement as a disciplinary sanction for longer than 15 days may amount to torture or other cruel, inhuman or degrading treatment or punishment (Nelson Mandela Rules 43 and 44). Long-term solitary confinement is defined, for example, as 15 days of at least 22 hours per day without any meaningful human contact. In addition, solitary confinement can create an opportunity for targeted abuse, away from the attention of other detainees or prison staff.

Solitary confinement can be torture

Prisoners who are in solitary confinement as part of a disciplinary sanction should also never have a complete ban on contact with their families. The European Prison Rules also stipulate that a disciplinary measure does not include a complete ban on contact with the family.

Austria has not yet complied with the CPT's recommendations following the visits in 2014 and 2021 to change the complete ban on contact with the outside world (except with a lawyer) and also to reduce the duration of disciplinary solitary confinement to 14 days. Implementing the recommendation would help to minimise the negative effects of solitary confinement, which have been proven in numerous studies. It is also recommended that prisoners in solitary confinement should have two hours of meaningful human contact and daily interviews with an appropriate prison officer.

Recommendation: Shorten duration to 14 days

The Federal Ministry of Justice pointed out that the assessment of punishment depends on the importance of the object of legal protection and the intensity of its violation. In addition, aggravating and mitigating factors must be weighed against each other. According to the Ministry of Justice, house arrest for longer than 14 days is only imposed if the aggravating circumstances clearly prevail.

If the maximum length of house arrest for adults were to be reduced to 14 days, the Ministry believes that certain offences could no longer be properly punished. According to the Ministry, flexibility is necessary in order to be able to treat each case individually and to take appropriate account of the behaviour of individuals.

If house arrest is imposed – for example for the duration of the maximum term – a court can review the decision of the management of the facility before the respective sanction is carried out. In the opinion of the Ministry of Justice, this can prevent a disproportionate approach.

Review by the court

The Ministry assures that detainees in house arrest are regularly visited by staff. They can spend time outdoors and are provided with books and radio programmes.

The NPM stands by its recommendation to shorten the maximum legally permissible duration of disciplinary solitary confinement for adults from the current four weeks to 14 days. This is necessary in order to prevent torture and inhuman and degrading treatment. The prolonged isolation of detainees can have an extremely damaging effect on their mental, physical and social health. These damaging effects increase with the duration of the measure.

Recommendation: No solitary confinement for juveniles

In the view of the NPM, juveniles should not be placed under house arrest at all (see report on „Juveniles in Detention“, 2022, and AOB Annual Report 2023 on monitoring public administration, chapter 1.1.1.4).

- ▶ ***The maximum legally permitted duration of house arrest for adults should be reduced from the current four weeks to 14 days.***
- ▶ ***Adolescents should not be subject to house arrest.***

Electronic „ankle bracelet“ not possible in relaxed detention

On the occasion of its visit to the Oberfucha field office of Stein correctional institution, the NPM became aware that electronic „ankle bracelets“ are used in relaxed detention.

The statutory basis (Section 126 (5) of the Penitentiary System Act) of this administrative practice states that means of electronic supervision can also be ordered for inmates in relaxed detention. However, the use of these monitoring measures presupposes a certain risk of abuse. In order to be detained in relaxed detention, there must be no risk of abuse. In this respect, there is a contradiction in the provision, which is also pointed out in the commentary literature.

The NPM suggests deleting the last part of the sentence: „as well as means of electronic supervision pursuant to section 99 (5) last sentence“.

2.6 Police detention centres

Introduction

In 2023, the commissions conducted a total of 13 visits to police detention centres and the Vordernberg detention centre. Another commission visit took place in the special transit area of Schwechat Airport. As in the past, the commissions monitored the conditions of detention and compliance with the requirements for detention enforcement issued by the Federal Ministry of the Interior in the form of decrees and guidelines.

13 visits to police detention centres

The commissions paid particular attention to the three monitoring priorities defined for the reporting year. These concerned „(spare) clothing for destitute detainees“, „access of detainees to medical doctors of their own choice pursuant to Section 10 (5) of the Detention Regulation“ and „de-escalating approach when handling detainees“ (see also chapter 2.6.1).

Monitoring priorities

2.6.1 Monitoring priorities

For the years 2021 and 2022, the NPM, in cooperation with the Human Rights Advisory Council, defined three monitoring priorities: „implementation of the standards for detention enforcement adopted by the working group ‘Detention in police detention centres’ and supported by the NPM“, „quality of the documentation of the public medical officer’s examination of fitness for detention (in detention log III)“ and „(spare) clothing for destitute detainees“.

Summary of the years 2021 and 2022

The first monitoring priority covered nine individual aspects of the topics defined in the working group standards:

Detention enforcement

- Design and equipment of cells for solitary confinement,
- Monitoring and public medical care of persons in preventive detention,
- Detention pending forced return in an open ward,
- Management of visits (visiting times and visiting modalities),
- Employment and leisure opportunities,
- Access to information from the outside world (purchase of magazines, possibility to make telephone calls),
- Maintaining privacy during personal hygiene (separation of toilets in cells for multiple inmates, privacy screens in shower rooms),
- Shower facilities for detainees and
- Cleaning or exchange of mattresses, blankets and bed linen.

The commissions made reference to this monitoring priority in twelve of the 23 visit reports drawn up in 2021 and 2022 and addressed aspects of it in a further eight reports. In three visit reports, the commissions noted that all of the working group standards had been implemented in the institution or that there was no reason to criticise them. The NPM therefore assumed that in all cases in which the commissions did not document any negative findings or did not suggest any improvements, there were no deficiencies in the implementation of these standards.

The evaluation of 20 visit reports showed that the commissions primarily monitored the implementation of the working group standards on the furnishing of the cells and, in particular, the complete separation of the toilets in cells for multiple inmates, the employment opportunities and the possibilities of maintaining contact with the outside world by means of telephone calls or visits by relatives or friends. Three visit reports addressed concerns about the (pandemic-related) restrictions on detention pending forced return in open wards of police detention centres.

As outlined in the NPM Reports 2021 and 2022, the findings of the commissions led to various criticism by the NPM. This concerned, among other things, deficits in the equipment of the buildings of police detention centres and the security cells, the inadequate separation of the toilets in cells for multiple inmates, hygienic deficiencies in the cells and other rooms of police detention centres, and the lack of employment opportunities. Based on two visit reports drawn up in 2022, the NPM also saw deficits in the equipment of one police detention centre and the documentation of hygiene checks in another police detention centre in 2023 (see also chapters 2.6.5 and 2.6.8).

Documentation The monitoring priority „quality of the documentation of the public medical officer’s examination of fitness for detention (in detention log III)” was based on the CPT’s recommendation in the country report on Denmark (CPT/Inf [2019] 35) to document injuries, which have been determined by the police doctor in the best possible way. The aim of this monitoring priority was to randomly check the completeness and traceability of the documentation of the examinations and the injuries that existed before a person was detained.

This monitoring priority was explicitly referred to in ten of the 23 visit reports from 2021 and 2022. The commissions conducted surveys on this topic during five further visits.

In five visit reports, the commissions assessed the documentation of the examinations of the fitness for detention as conclusive and complete. Except for one case, they did not expressed any need for improvement. In one case, the NPM criticised the use of an outdated version of the „Detention Log III” form by a doctor who had been consulted by a PI for the examination of a prisoner serving an administrative penalty before being transferred to the police detention centre (see NPM Report 2021, pp. 161 et seq.).

For 2022, the NPM defined the topic of „(spare) clothing for destitute detainees“ as the third monitoring priority. The purpose of this monitoring priority was to conduct a nationwide survey to determine whether and what clothing is offered, whether and when detainees receive information about this and about the possibility of cleaning soiled clothing, and how the clothing supply is stored.

(Spare) clothing

The commissions took this priority into account during 13 visits to ten detention centres in 2022. During two of these visits, the commissions doubted whether the amount of clothing in stock was sufficient to meet requirements. However, the Federal Ministry of the Interior was able to clear these concerns. In another visit report, the commission criticised the untidy storage of (spare) clothing in a room of the detention centre and the worn impression the clothing gave. A result was not yet available at the time of going to press.

The NPM did not consider it necessary to continue the monitoring priority on the „implementation of the standards for detention enforcement recommended by the working group“ in 2023, as it can be assumed that the commissions will continue to consider deficiencies in the implementation of the working group standards in the future. As the vast majority of the visits that addressed the quality of the documentation of the public medical officer's examination of fitness for detention did not contain any criticism, the NPM also refrained from continuing this monitoring priority.

**Monitoring priorities
in 2023**

After the commissions only conducted surveys on „(spare) clothing for destitute detainees“ in one third of the 14 detention centres in Austria in 2022, the NPM decided to continue this monitoring priority in 2023 in order to obtain a nationwide overview of this topic. In addition, the NPM defined two new monitoring priorities with the support of the Human Rights Advisory Council.

**Monitoring priorities
for (spare) clothing
2023**

In its statement on the medical care of administrative detainees published on the AOB website (https://volksanwaltschaft.gv.at/downloads/StellungnahmeMRB_MedizinischeVersorgungVerwaltungshaeflinge.pdf), the Human Rights Advisory Council expressed the need to explore ways of reducing the workload of doctors working for the Federal Ministry of the Interior, with view to ensuring the necessary medical care for detainees. This would be possible by calling in doctors of the inmates' own choice and at their own expense in accordance with Section 10 (5) of the Detention Regulation (Anhalteordnung) (in short: a doctor of choice). According to the Human Rights Advisory Council, detainees have rarely made use of this right in the past, as they were not informed about it or did not have the necessary funds.

The NPM took up the concerns of the Human Rights Advisory Council and defined the monitoring priority „access of detainees to medical doctors of their own choice within the meaning of Section 10 (5) of the Detention

**Access to medical
doctors of own
choice**

Regulation“ (monitoring priority 2) in order to determine whether, when and how detainees are informed of their right pursuant to Section 10 (5) Detention Regulation and how the care provided by the medical doctors of their own choice is organised.

De-escalation The third monitoring priority defined by the NPM is on the topic of a „de-escalating approaches when handling detainees“ (monitoring priority 3) after a commission proposed in autumn 2022 that acts of physical or psychological violence by law enforcement officers towards detainees or other law enforcement officers be monitored. This monitoring priority is to provide a nationwide overview of the content of the theoretical and practical training of law enforcement officers in de-escalating approaches with detainees and other law enforcement officers. The commissions should also determine whether law enforcement officers can report misconduct by colleagues, including in anonymous form, to their superior department.

Summary of the 2023 results In eight out of ten visits, the commissions surveyed monitoring priority 3. During one further visit, a commission reported on improvements to the clothing stock. The commissions also selected monitoring priorities 2 and 3 in nine of the ten visit reports.

On seven visits, the commissions noted that there was a sufficient, properly stored supply of clean (spare) clothing and that the detainees were informed of the offer to have their own clothes cleaned. During a visit to a police detention centre, one commission criticised the fact that until then only the chaplain working there had filled the clothing supply. At the time of going to press, the investigative proceedings that had been initiated had not yet been completed.

In six visit reports, the commissions noted that it was generally possible for detainees to consult medical doctors of their own choice. In three of the facilities, it was noted that there no list of such doctors was available and that the detainees had only been informed of their right under Section 10 (5) Detention Regulation on a case-by-case basis. In two further visit reports, the commissions recommended that the „Information sheet on personal hygiene and medical services in the police detention centre“, which is handed out to the detainees, should be supplemented to include a reference to the right under Section 10 (5) Detention Regulation, because several inmates were unaware of the possibility of consulting medical doctors of their own choice. Another visit report contained the suggestion that the Federal Ministry of the Interior should improve the (official) medical care of persons detained in the police detention centre. This was based on the information provided by the law enforcement officers interviewed during the visit, who reported gaps in the availability of public medical officers. At the time of going to press, the three investigative proceedings were still pending.

In connection with monitoring priority 3, six visit reports indicated that the police detention centre staff are trained in the area of de-escalation, for example during basic training or as part of further training measures, such as the e-learning module on suicide prevention or operational training. In two other visit reports, one commission suggested that the Ministry of the Interior should develop training measures to train the practical implementation of the training content. Similarly, in another visit report, another commission suggested that the Ministry should add a practical part – such as role-playing in a real-life environment – to the „De-escalation measures“ training module offered online by the Security Academy. The three investigative proceedings for these recommendations had not yet been finalised at the time of going to press.

The NPM considers the continuation of all three monitoring priorities in 2024 to be sensible due to their relevance to everyday life in detention centres. Furthermore, the commissions have not yet surveyed all three monitoring priorities in all fourteen detention centres. The NPM is striving for a nationwide overview.

Continue monitoring priorities in 2024

2.6.2 COVID-19 in police detention centres

As reported in 2022 (see NPM Report 2022, p. 127), a commission observed during its visit to Hernalser Gürtel police detention centre at the end of May 2022 that detention pending forced return was carried out in shifts in the open wards. For example, the doors of the cells for multiple inmates on the first floor were only opened for two hours a day in accordance with a decree issued by the Federal Ministry of the Interior in November 2021 in order to avoid greater mixing of detainees outside the cells.

Enforcement of detention pending forced return in shifts

At the end of April 2023, the Federal Ministry of the Interior announced that it had always organised detention enforcement during the COVID-19 pandemic in line with the recommendations of its Chief Medical Superintendent. These recommendations had been agreed with the Federal Ministry of Social Affairs, Health Care and Consumer Protection and the Medical University of Vienna from the outset. The Ministry of the Interior explained that the alternate opening of the cell doors had prevented infections. At the same time, the Ministry of the Interior informed the NPM that it had cancelled the shift operation of the detention centre for detainees awaiting forced return in January 2023.

New decree from January 2023

The Federal Ministry of the Interior also comprehensibly disputed the NPM's criticism that there were too few employment opportunities for the inmates in the infection protection department of the police detention centre (see NPM Report 2022, pp. 127 et seq.). A satellite system for receiving German and foreign-language television programmes had been installed and all cells in the police detention centre were gradually being equipped with TV-sets.

In the AOB's *ex-officio* investigative proceedings into the organisation of detention enforcement during the COVID-19 pandemic, the NPM welcomed the fact that the Ministry of the Interior had cancelled shift operation in detention pending forced return. The NPM also welcomed the fact that the duration of the entrance quarantine was reduced from ten to five days with the decree of January 2023.

Lifting of COVID-19 restrictions

The Ministry of the Interior informed the NPM in connection with the agreed trial operation of table visits in the Hernalser Gürtel police detention centre (see NPM Report 2022, pp. 136 et seq.) that all pandemic-related restrictions were lifted at the end of June 2023. The NPM requested that it be informed of the actual implementation of this measure. The Ministry of the Interior only complied with this request in autumn 2023. As there was no further need for action, the NPM ended its official enquiries on this topic.

2.6.3 Implementation of NPM recommendations

As explained in its report 2020 (see p. 138), the NPM recommended to the Federal Ministry of the Interior in May 2016 and December 2017 that the standards adopted by the working group together with the Federal Ministry of the Interior be implemented.

Implementation of standards only for new buildings, extensions and major reconstruction

In the NPM Report 2022 (see pp. 129 et seq.), the NPM reported on the new Directive on Workplaces (*Richtlinie für Arbeitsstätten*) published by the Federal Ministry of the Interior in December 2021 and the decree on detention enforcement of June 2022. As explained at the time, the NPM criticised the Ministry of the Interior, in particular that the standards adopted by the joint working group, which can only be implemented through structural measures, must be put into practice „in any case in the context of new buildings, structural extensions and major reconstruction“. In 2023, the NPM communicated its concerns to the Ministry of the Interior. The NPM did not expect the Ministry to change its requirements. It therefore announced that the commissions will monitor the Ministry's promise to implement the construction measures as soon as possible.

Leisure activities organised by external parties

At the same time, the NPM requested *ex officio* that the Ministry of the Interior provides information about the possibilities for detainees to take advantage of leisure activities offered and supervised by external providers, as stipulated in the Ministry's decree of June 2023 (see NPM Report 2022, p. 130). As explained above, in autumn 2022 the Ministry of the Interior was still in the process of clarifying liability issues in connection with sports training in the area of the Vordernberg detention centre.

No active search for external offers

The Ministry of the Interior took the view that liability was still unclear. In particular in the event that external persons were injured while exercising, or as a result of attacks by detainees awaiting forced return, or in case the

detainees were injured due to incorrect exercise or exercise instructions. As such injuries would be likely, it would be impossible to actively request external persons or organisations to instruct the detainees in sports – as agreed in the working group – free of charge and yet at their own risk.

The NPM was unable to understand this justification. On the one hand, the working group did not stipulate in its standards on employment opportunities that the leisure activities organised by external persons were free of charge. Secondly, the Ministry of the Interior probably failed to recognise that external persons or organisations can only learn of the need for offers for the detainees through the active involvement of the competent Police Department or police detention centre management. The NPM therefore adheres to the recommendation developed jointly with the Ministry of the Interior in December 2017 and urged the Ministry to instruct all correctional authorities to determine the recreational activities offered by external organisations.

With this communication, the NPM also informed the Ministry of the Interior that the *ex officio* proceedings on the implementation of its previous recommendations have been completed. It concluded by referring to its criticism of the implementation of several working group standards, in particular those that can only be realised through structural measures (see most recently NPM Report 2022, pp. 129 et seq.).

As reported in the NPM Report 2022 (see pp. 132 et seq.), during its visit to Salzburg police detention centre in early September 2022 a commission found that several detainees were unaware that they could request individual accommodation if the toilet in the cells for multiple inmates was not completely partitioned off.

Incomplete partitioning of toilets

The NPM recommended informing all persons detained in the police detention centre accordingly when they are admitted. The Federal Ministry of the Interior referred to a requirement of the *Land* Salzburg Police Department. According to this, all detainees must be proactively and verbally informed of the possibility of individual accommodation upon admission, provided that rooms are available. This information and the actual utilisation of this option must also be documented. The NPM welcomed this. Apart from this, it criticised the fact that the toilets in all cells for multiple inmates in the police detention centre are not thoroughly enough partitioned off. This deficiency is to be remedied in the course of the modernisation of the police detention centre.

During the visit to Graz police detention centre at the end of August 2023, the toilets in the cells for multiple inmates and the toilets in the male prisoners' common room were also not completely partitioned off. Furthermore, there was no space in the recreation room to permanently set up a table, e.g. for card games, and the windows of the domestic workers' cell did not have a curtain or screen to protect them from the light of the police detention centre

New construction of Graz police detention centre again recommended

floodlights at night. The NPM recommended that the new construction of the police detention centre at the current location, which was favoured by the Federal Ministry of the Interior, be pushed forward in order to improve the deficiencies. The Ministry's statement was not yet available at the time of going to press.

Lack of a padded safety cell

At the end of August 2023, the NPM observed during a visit to Eisenstadt police detention centre that a fire in November 2022 had destroyed the only specially secured and padded cell available. According to the decree issued by the Federal Ministry of the Interior on detention enforcement in June 2023, every police detention centre should have such a cell in order to provide adequate and secure accommodation, especially for persons at risk of harming themselves. As one cell had just been converted into a visitors' room during the visit, the NPM recommended restoring the padded cell there and converting another cell into a visitors' room. The Ministry's statement was not yet available at the time of going to press.

Defective emergency call buttons in security cells

During the visit to Roßauer Lände police detention centre in June 2023, the commission observed that the emergency call buttons installed under a padded wall panel in two specially secured cells were defective. As permanent video surveillance of the persons accommodated in the cells cannot be ensured at all times, the NPM recommended that the emergency call button be repaired quickly. The statement from the Federal Ministry of the Interior was also not yet available in this case at the time of going to press.

As part of its future visits, the NPM will continue to pursue the realisation of all (including structural) standards that it recommended to the Federal Ministry of the Interior in May 2016 and December 2017 and that are laid down in the current decree of the Ministry of the Interior from June 2022.

- ▶ ***All persons detained in police detention centres should be provided with employment and recreational opportunities to the extent agreed with the NPM.***
- ▶ ***The access of detainees in police detention centres to hygienic sanitary facilities and the protection of their privacy at all times must be guaranteed by structural and organisational measures.***
- ▶ ***Toilets in cells for multiple inmates in police detention centres must be completely separate from the rest of the cell.***
- ▶ ***All detention centres must have a sufficient number of detention rooms that are suitable for the execution of solitary confinement in accordance with Section 5 or Section 5b (2) (4) Detention Regulation.***
- ▶ ***All individual cells must have a call button which can be confirmed at the cell and which must be clearly labelled.***

2.6.4 Other aspects of enforcement in police detention centres

In 2023, the NPM also monitored *ex officio* the measures of the Federal Ministry of the Interior to create cross-institutional, electronic documentation of the curative medical information of the detainees in all detention centres (see NPM Report 2022, pp. 135 et seq.).

Digital documentation

In spring 2023, the Ministry of the Interior announced that the „medicine module“ created for this purpose in the application „detention file prison administration“ (*Anhaltedatei-Vollzugsverwaltung*) had already been in use nationwide since mid-June 2022. The NPM asked whether there were plans to supplement the module, for example by documenting the dispensing of medication. The Ministry of the Interior stated that additions that were not absolutely necessary would only be implemented once they were technically feasible and covered by the budget. The NPM understood this and welcomed the establishment of the „medicine module“ in all detention centres.

Medical module in operation since summer 2022

The NPM also *ex officio* monitored the facilitation of table visits in 2023. As last explained in the NPM Report 2022 (see, pp. 136 et seq.), the NPM made the start of the agreed two trial operations of table visits in the Hernalser Gürtel police detention centre dependent on when the Federal Ministry of Social Affairs, Health, Care and Consumer Protection announces the end of the COVID-19 pandemic.

Realisation of table visits

Following the lifting of all pandemic-related restrictions as of 30 June 2023, the Ministry of the Interior announced that the costs of the construction measures for the trial operations were lower than expected, according to the Vienna Police Department. For this reason, the Police Department had already commissioned the Federal Real Estate and Property Corporation (*Bundesimmobiliengesellschaft*) with the reconstruction work, which will take several months to complete. This work included the installation of real-time video surveillance of all twelve intercom stations, as well as a system for moving the previous Perspex panes, the procurement of a second metal detector and the creation of a room for prisoner who are visited by children. The Ministry of the Interior also announced that table visits would again be possible at two stations at the beginning of July 2023.

In December 2023, the Ministry of the Interior announced that only two visiting stations had been available for desk visits up until then and that waiting times had increased to a reasonable extent for some visitors. The Police Department had also urged the Federal Real Estate and Property Corporation to carry out the remodelling work, but it had not yet responded. The NPM will continue to follow up on the Ministry's requests for unrestricted trial operations in the Hernalser Gürtel police detention centre.

- ▶ ***Except where certain security-related criteria are met and in the case of prisoners in court custody, visits to detainees in police detention centres should take the form of table visits. The undisturbed organisation of table visits must be ensured –also through structural measures. A separate room with a table must be provided for visits by underage relatives in police detention centres.***

2.6.5 Lack of equipment and structural deficits in police detention centres

The commissions regularly monitor the condition of the equipment of police detention centres. They also identified deficits in 2023. However, deficiencies are quickly rectified in some cases. The commissions can often confirm this during a follow-up visit, for example.

Salzburg police detention centre

As reported in the NPM Report 2022 (see p. 138), only one of the two visiting stations in the two visitors' rooms was equipped with an intercom system during the visit to Salzburg police detention centre in September 2022. In order to improve communication between detainees and visitors, the NPM recommended retrofitting the other visiting stations with such an intercom system and erecting a partition wall between the visiting stations in the smaller visitors' room.

In April 2023, the Federal Ministry of the Interior stated that the acoustic problems resulted from the emptiness of the visitor rooms and could only be remedied with structural modifications. The Ministry considered these structural measures to be disproportionate due to the planned refurbishment of the facility, especially as the use of only two of the four visiting stations had not yet led to any noticeable delays or waiting times when processing visitors.

Special transit area of Schwechat Airport

During the visit to the special transit area of Schwechat Airport in building 800 in March 2023, the commission observed several structural and equipment deficits in the rejection zone. This area accommodates persons whose unlawful entry into the federal territory is to be prevented. They therefore spend the time until their return flight in the special transit area. As only one of the rooms visited had a wet room and the rooms no longer appeared up-to-date, the NPM recommended that the persons concerned should no longer be accommodated there, but in the rooms of the „new rejection zone“ in building 810, which were still unused at the time.

The Federal Ministry of the Interior explained conclusively that people are only accommodated in the new premises when the rejection zone is fully occupied or when it is necessary to separate people of different and conflict-ridden ethnicities. The location of the rejection zone near the special transit area in building 800, where people are voluntarily waiting for their applications for international protection to be assessed, also leads to synergy

effects in terms of shorter distances and catering. However, the Schwechat municipal police headquarter had arranged for the rejection zone to be repainted and for new mattresses, armchairs, games and magazines to be purchased for the people accommodated there.

During the visit to Roßauer Lände police detention centre in June 2023, it was observed that the roof terrace of the women's section, which is used as a walking area, was only planted with small plants and there were no shrubs or grass areas at all. In order to counteract the rising outdoor temperatures in the summer months, the NPM recommended to the Ministry of the Interior that this outdoor area be planted with fast-growing, shady plants. The Ministry's response was not yet available at the time of going to press.

Roßauer Lände police detention centre

During the visit to Graz police detention centre in August 2023, the commission learnt that the detainees placed in the tiled „special custody cells“ of the police detention centre were not provided with a mattress, a pillow or a blanket. As the NPM considers these cells to be specially secured but not padded cells, the NPM recommended that the cells be equipped with vandal-proof mattresses. The Ministry of the Interior explained that the mattresses are generally vandal-proof, but that misuse by tearing them open, eating the contents etc. can never be completely ruled out.

Graz police detention centre

- ▶ ***The exercise yard or outdoor area of a detention centre available to detainees should be shaded by natural greenery to meet their needs.***
- ▶ ***In order to minimise the risk of self-harm for persons placed in „special custody cells“ and at the same time ensure their sleeping comfort, these cells should be equipped with vandal-proof mattresses.***

2.6.6 Fire protection in police detention centres

In 2023, the NPM also monitored *ex officio* the implementation of the recommendations of the Dialogue Committee on Civil Rights (*Zivilgesellschaftliches Dialoggremium*) of the Federal Ministry of the Interior („*Polizei.Macht.Menschen.Rechte*“) to improve fire safety in police detention centres (see NPM Report 2018, pp. 147 et seq.).

In two reports, the Ministry of the Interior informed the NPM about several advances in the realisation of these recommendations. According to the Ministry, the Austrian Federal Fire Brigade Association had not communicated by July 2023 when the recommended expansion of the „Technical Guidelines for Fire Prevention N 160/11 for correctional institutions“ to include the terms „police detention centre“ and „places of detention in district and municipal police headquarters“ would be implemented. The Ministry of the Interior therefore instructed all Police Departments to apply the current technical guidelines for fire prevention to all refurbishment and new construction projects.

Further progress with the Dialogue Committee's recommendations

Furthermore, the Ministry of the Interior announced that in June 2023 it had issued specifications for the procurement of new short-term compressed air breathing devices by the individual Police Departments on the open market because the equipment was not available from the Federal Procurement Agency at the time. According to the Ministry of the Interior, these devices should be available to all police detention centres by the end of 2023 to cover their needs. In addition, the Ministry had begun rolling out the electronic fire safety logbook nationwide in November 2023 (see NPM Report 2020, p. 145). The plan is to complete this measure in the first half of 2024. As the nationwide implementation of the electronic fire safety book requires a great deal of effort, the training measures on „fire safety training“ and „de-escalation in dealing with psychotic and aggressive persons“ have not been further developed. The Ministry of the Interior announced that it would publish the training measures in the first half of 2024 and intends to successively work through all of the recommendations of the Dialogue Committee on Civil Rights that have not yet been implemented. The NPM will continue to monitor their realisation.

- ▶ ***The level of fire protection in police detention must be adapted at least to the standard applicable to correctional institutions.***
- ▶ ***The Federal Ministry of the Interior is to develop an overall strategy for the nationwide standardisation of preventive and defensive fire protection and issue corresponding guidelines.***
- ▶ ***All detention rooms used for long-term police detention should be equipped with suitable automatic fire alarm systems.***

2.6.7 Case-orientated analysis of suicides and suicide attempts

**New decree from
March 2023**

As explained in the NPM Report 2020 (see pp. 144 et seq.), the NPM concluded its official investigations on this topic after the Federal Ministry of the Interior issued a decree in December 2020 with guidelines for analysing suicides and attempted suicides. In May 2023, the Ministry of the Interior informed the NPM that it had amended these guidelines following a change in April 2021 by issuing a new decree in March 2023.

Firstly, the current decree no longer requires the Police Departments to send the analysis sheet to the Ministry of the Interior. They are now only obliged to send their conclusions and proposals for preventive measures to the Ministry together with the survey form. Secondly, the Ministry of the Interior has revised or tightened up the content of the questionnaire, which describes the specific circumstances of each incident. As the NPM is of the opinion that the quality of the analyses of suicides and attempted suicides is not reduced as a result of these changes, the NPM took note of the change.

2.6.8 Hygiene deficits in detention enforcement

During the visit to the Hernalser Gürtel police detention centre in May 2022, the commission questioned whether the detention centre was complying with the hygiene guidelines of the Ministry of the Interior. Specifically, there were no records of the monthly police and public medical officer inspections of the measures provided for in the hygiene plan or the random checks of the detention rooms for the months of February to April 2022.

Failure to comply with the hygiene guidelines

In the opinion of the Federal Ministry of the Interior, hygiene checks had been carried out in accordance with regulations during the period mentioned. However, the Ministry conceded that the Police Medical Service and the specialist department responsible for detention enforcement of the Vienna Police Department had both assumed that the other organisational unit was responsible for the documentation. Furthermore, the Ministry clarified that the specialised department was now responsible for this and provided documentation showing hygiene checks between June 2022 and January 2023.

As outlined in the NPM Report 2022 (see p. 141), the commission observed shortcomings in the provision of clean bed linen for detainees during its visit to Innsbruck police detention centre in September 2022. One inmate did not receive any covers for the duvet or for the head cushion that was soiled with dried blood stains. Another inmate complained that a pillowcase was missing.

Inadequate provision of clean bed linen

The Ministry of the Interior admitted to the NPM that the inadequate provision of bed linen for the detainees was inadvertent when they were admitted to the police detention centre. However, it was up to the detainees concerned to speak up if they needed more bed linen. The NPM did not share this opinion, as no detainee can know the specifications in the hygiene guidelines regarding the bed linen they are entitled to at the beginning of their detention.

In its statement of opinion, the Ministry of the Interior also addressed the commission's criticism that on the day of the visit to Innsbruck police detention centre only the side dishes of the goulash served as lunch were available as vegetarian or vegan meals (see NPM Report 2022, pp. 142 et seq.). The Ministry of the Interior pointed out that the detainees would have to express any catering requests to the police detention centre staff so that they could be taken into account when the meals were delivered by Innsbruck correctional institution. In addition, „polenta with coleslaw“ was the meat-free option on the menu of the correctional institution's kitchen at the time. However, the management of the police detention centre had taken up the commission's recommendation by ordering an additional five portions of meat-free food every day until further notice, in order to offer it to the inmates even if they had not expressly requested it

Deficiencies in the catering for inmates

- ▶ ***The requirements of the Federal Ministry of the Interior for monitoring compliance with the hygiene guidelines in all detention centres and their documentation must be implemented in full.***
- ▶ ***At the beginning of their detention, detainees must be provided with clean bed linen to the extent required and agreed between the Federal Ministry of the Interior and the NPM. Soiled or damaged bed linen and blankets must be replaced immediately.***

2.6.9 Lack of knowledge of the commissions' competences

During the visit to the Hernalser Gürtel police detention centre in May 2022, an executive officer accompanied the commission to a cell, listened to their conversations with several inmates within earshot and commented on them. When the commission asked the officer and his colleagues outside another cell to allow confidential conversations with the inmates, the officer made this dependent on consultation with his superior.

Violation of the Ministry's decree

In the view of the NPM, the behaviour of the official contradicted the requirements of the Federal Ministry of the Interior in its decree of February 2020 on the reporting, communication and information obligations of the Ministry of the Interior in connection with visits by the commissions. According to these clear guidelines, the commissions must be allowed contact with the detainees at their request without the presence of third parties. The NPM recommended that the Federal Ministry of the Interior makes all executive staff working in the police detention centre aware of these requirements.

The Ministry of the Interior argued that the criticised behaviour of the official was due to the fact that many executive staff working in the police detention centre were only temporarily assigned and would consult their superiors if they had any doubts about the competences of the commission in order to ensure the safety of the commission members. However, the Ministry also stated that it had already reminded all staff working in the Vienna police detention centres of the competences of the commissions.

- ▶ ***All commissions must be allowed confidential contact with detainees during their visits in accordance with Section 11 (3) of the Ombudsman Act and the guidelines of the Federal Ministry of the Interior.***

2.6.9.1 No summary of the Detention Regulation in the cells of police detention centres

During the visit to Wiener Neustadt police detention centre in March 2023, there a notice of the house rules and the Detention Regulation was displayed in German in the corridor in front of the cells, which consisted of a single page printed in very small print. This notice also did not comply with the decree, as it did not inform detainees that they could obtain a free change of clothes if necessary. Furthermore, contrary to the provisions of Section 1 (2) and (3) Z (2) Detention Regulation, the commission did not find a summary of the Detention Regulation in the cells with a list of the rights and obligations of the detainees stipulated therein.

Need for better information for inmates

In order to counter these circumstances and any language barriers, the NPM recommended to the Ministry of the Interior that simple-language leaflets in various national languages be handed out to detainees when they are admitted to the police detention centre. The Ministry refused to implement this, since the Detention Regulation did not provide for a distribution of such printouts of the Detention Regulation. The prisoners had mostly rejected the information leaflets that had already been handed out.

However, the NPM welcomed the fact that the police detention centre management added the wording of Section 4 (2) Detention Regulation to the German-language abridged version of the Detention Regulation, which provides for any necessary replacement clothing. Since, according to the Ministry of the Interior, the abridged version has also been posted in all police detention centres in the meantime, the NPM considered the deficiency to have been remedied.

Amendment and posting of the abridged version of the Detention Regulation

2.6.10 Positive observations

During all visits to detention centres in 2023, the commissions observed a high level of cooperation among staff.

During the visit to Innsbruck police detention centre in May 2023, the commission highlighted two positive improvements since the preliminary visit in September 2022: Firstly, as announced by the Federal Ministry of the Interior, there was a lockable area or safe inside the medicine cupboard in the doctor's room for storing medication containing narcotics and there was also a „narcotics book“ to document the dispensing of narcotics. On the other hand, the documentation on the segregation of detainees in solitary confinement made it possible to trace the progress of the measures.

Innsbruck police detention centre

During the follow-up visit to the police detention centre in August 2023, the commission learnt that the „psychological walk“ training measure had been introduced for the law enforcement officers working at the police detention

centre, which also enables interviews with an external psychologist. The commission welcomed this low-threshold team-building measure, as it can help to strengthen the mental health of police detention centre staff.

Roßbauer Lände police detention centre In the report of the visit to Roßbauer Lände police detention centre in June 2023, the commission welcomed the fact that – as recommended – a sun sail had been installed to shade the roof terrace for the female inmates. It also praised the empathetic treatment of female inmates by the staff in the women's section. Furthermore, it considered the cleaning of the police detention centre departments and, in particular, the specially secured cells, which was carried out by an external company, to be positive. The commission described the stock of (spare) clothing for destitute inmates in the police detention centre as exemplary, as it included clean underwear, seasonal outerwear and shoes to cover their needs.

Vordernberg detention centre The commission made the same positive observation during its visit to the Vordernberg detention centre in August 2023. The extensive stock of (spare) clothing there also consisted of clean outerwear and underwear for summer and winter, as well as shoes in various sizes.

2.7 Police stations

Introduction

In the reporting year, the commissions conducted 46 visits to police stations. As in previous years, the visiting delegations focussed on the proper documentation of measures involving deprivation of liberty and the structural equipment of the departments.

46 visits to police stations

In 2023, the NPM focussed more closely on communication and alarm protection in detention rooms and the documentation of detention as part of the newly defined monitoring priorities, paying particular attention to the information and communication rights of detainees. The results of the commissions' findings are summarised in chapter 2.7.1. The accessibility for persons with disabilities in all police stations in Austria remains an issue (see chapter 2.7.3.).

Monitoring priorities

2.7.1 Monitoring priorities

As outlined in its Report 2022, the NPM, in close cooperation with the Human Rights Advisory Council, defined the new monitoring priorities of „communication and alarm protection in detention rooms“ and „proper documentation of detention with special consideration of information and communication rights for detainees“ for 2023 (see NPM Report 2022, pp. 147 et seq.).

At the time of going to press, the NPM had analysed 33 visit reports from the commissions in police stations in 2023.

In 20 police stations, communication and alarm protection was provided without restrictions. Six did not have a detention room, which is why the commissions did not raise any criticism there. In one case, the commission observed a malfunctioning alarm button in a detention room. As the head of the unit promised to repair it immediately during the visit, the commission did not consider any further action necessary. The NPM criticised the lack of labelling of alarm buttons in four cases and considered the deficit to have been rectified due to improvements that had been made or promised. The commissions did not make any findings regarding inmate cells in two police stations, nor was the monitoring priority explicitly noted in the visit report.

Notification and alarm protection

In 2023, the commissions found proper documentation of detention in 21 police stations, paying particular attention to the information and communication rights of the detainees. The NPM criticised deficiencies in two cases and considered these to have been rectified due to awareness-raising measures. The commissions did not address the monitoring priority in four visits. In one case, the suspicion that detainees had been inadequately

Information and notification rights

informed of their rights could not be substantiated. Based on the findings of the commissions, four visit reports did not contain any proposals for resolution to the NPM. At the time of going to press, five monitoring procedures relating to the focus area „proper documentation of detention with special consideration of the information and communication rights of detainees“ had not yet been completed.

Summary and continuation of the monitoring priorities

Even though the deficits identified in both monitoring priorities were relatively low in terms of the number of visits evaluated in 2023 (12 % and 6 % respectively), the NPM considers the continuation of both monitoring priorities in 2024 to be sensible. This is not only due to the great importance of the CPT standards, on which the monitoring priorities are based (see NPM Report 2022, pp. 147 et seq.). The evaluation of the monitoring priorities showed that no police stations in Vorarlberg was visited. The commissions made the most visits to the *Laender* of Lower Austria (8), Burgenland (6), and Salzburg (5). The number of visits to police stations in Vienna (3), Upper Austria (3), and Styria (2) was relatively low compared to the size of these *Laender*. The NPM therefore still sees a need for monitoring in this regard.

2.7.2 Inadequate documentation of detention

Restrictions of liberty are serious interventions, which is why they must be fully documented. The commissions therefore regularly inspect the detention books and logs during their visits.

Detained persons are entitled to certain rights to information and communication (see most recently NPM Report 2022, pp. 148 et seq.). If these rights are not respected, the constitutionally guaranteed right to personal freedom is violated. Public security officers must inform detainees of their rights and document this. The detained person confirms receipt and the utilisation or waiver of information and communication rights. If a person refuses to sign, the executive body must record this in the protocol.

Measures which restrict freedom must be documented in a comprehensible manner. For example, the beginning and end of the application of handcuffs must be recorded. A long period of restraint must be justified.

Documentation deficits

As in previous years, the commissions identified deficits in the documentation of detention and brought this to the attention of the heads of the departments in the concluding meetings. In some cases, detention logs were not completed in full and the documentation when information sheets were handed out was inadequate. Once again, the NPM criticised the lack of signatures of the law enforcement officers acting on behalf of the authorities and the persons detained. The Federal Ministry of the Interior implemented awareness measures in all cases.

In July 2017, the Ministry of the Interior issued a decree stating that all police stations with usable detention cells must keep a detention book (see NPM Report 2019, p. 173). This clearly regulates which entries must be made in the detention book.

At Viktor-Christ-Gasse police station, which has several detention rooms, the NPM criticised the fact that the respective detention room used was not noted in the detention book. At Leonding police station, the NPM criticised the fact that the detention book was not consistently kept in chronological order. After sensitising the staff, the NPM considered this deficiency to have been rectified.

In a decree issued in June 2022, the Ministry of the Interior regulated the monitoring and control of individual detention in administrative detention and detention pending forced return. By analogy, these provisions also apply to short-term detentions in detention centres in police stations. In general, individual detention should be monitored at least once an hour during the day. If a justified danger to the person being detained is assumed, a quarter-hourly or, if necessary, even closer personal surveillance must be ordered.

Regular inspection rounds required

The NPM criticised the patrols carried out at Waidhofen an der Thaya police station, which were carried out at too great intervals. The Ministry of the Interior promised that the law enforcement officers would be sensitised.

- ▶ ***Detention in police stations must be fully and comprehensibly documented.***
- ▶ ***Checks on individual detention in police stations must be carried out at least every hour during the day, unless closer monitoring is ordered if necessary.***

2.7.3 Inadequate structural conditions in police stations

If the commissions find deficiencies in the structural conditions during their visits, these are usually discussed with the head of department during the concluding meetings. Minor defects are often rectified quickly. If no solution can be found in this way, the NPM informs the Federal Ministry of the Interior.

Due to the prioritisation, the monitoring of communication and alarm protection in detention rooms in police stations was intensified in 2023, although this important aspect had already been regularly reviewed by the commissions before (see chapter 2.7.1.). The NPM found one defective alarm button in the Salzburg City Hall police station and one in the Leopoldsgasse police station during the reporting year. In the Police Department Vorarlberg and the Seewalchen motorway police station, as well as in the Freistadt, Geras, Juchgasse, and St. Veit an der Glan police stations, the commissions criticised the lack of labelling of the functional alarm buttons. The Ministry of the Interior rectified all deficiencies.

Inadequate notification and alarm protection

Unacceptable toilets in the detention rooms

In three police stations, the commissions once again criticised the design of the toilets in the detention rooms where the flush button is out of the prisoners' reach. As a result, detainees are unable to flush the toilet independently after relieving themselves, but require assistance from staff. The NPM considers such detention conditions to be degrading as they lack a minimum level of privacy (see NPM Report 2022, p. 150). The Ministry of the Interior conceded that the sanitary facilities found in the detention centres in Raabs an der Thaya, Lasee, and Anif police stations no longer meet today's standards. As a timetable for improvements had been presented and preparatory work had already been carried out, the NPM considered the deficits to be in the process of being remedied.

As reported in the 2020 Report, the NPM criticised the conversion of the specially secured cells in Vienna detention centres to light-independent video surveillance, which was promised in 2018 but postponed to the end of 2019 for cost reasons (see NPM Report 2020, p. 158). A follow-up visit to Viktor-Christ-Gasse police station in April 2022 revealed that this measure had still not been implemented. The Ministry of the Interior admitted delays. The infrared camera was installed in the specially secured cell of Viktor-Christ-Gasse police station, while the monitoring procedure was still ongoing, so that the NPM considered the problem to have been resolved.

Detention rooms not safe

According to the Directive on Workplaces (*Richtlinie für Arbeitsstätten*), components that could cause injuries or serve as an attachment point for strangulation devices may not be used in custody cells. In the Vorarlberg Police Department, department of the State Office of Criminal Investigation, the NPM considered the door hinges on the cell doors in the four custody cells to be a security hazard. Due to the physical distance between the custody cells and the journal service room of the State Office of Criminal Investigation, the NPM also recommended installing intercom systems and video surveillance. The Ministry of the Interior promised to implement all measures promptly. The NPM also recommended increasing the monitoring of detainees until the structural improvements have been completed.

A detention room should ensure that people can be stopped safely for a short period of time. The Directive on Workplaces stipulates that a detention room should be equipped with vandal-proof seating to prevent injuries. The NPM is of the opinion that the equipment of detention rooms in police stations should also be able to withstand violent detainees.

In Hof bei Salzburg police station, the commission criticised the fact that the detention room contained a mobile bench and that the plasterboard walls were partially blocked. As the Ministry of the Interior equipped the detention room with a firmly bolted bench and a window without handles with impact-resistant glass during the monitoring procedure, the NPM considered these deficits to have been rectified. The Ministry assumed that the walls were sufficiently safe as the wall structure was reinforced. The NPM objected to

the relatively easily damaged and therefore not vandal-proof walls of the detention room and adhered to its recommendation for structural changes.

The Directive on Workplaces generally provides for a security gate in the entrance area of a police station. At the Kittsee police station, the commission criticised the lack of such a security gate, a defective camera in the entrance area, and an unsecured fuse box outside the department. The commission also criticised the lack of test protocols for the lightning protection system, the heating system, and the electrical system. As the Ministry of the Interior was unable to provide a timetable for improvements to the fuse box and the security gate, the NPM criticised these safety deficiencies. The Ministry of the Interior requested the inspection reports on the technical systems, which is why the NPM assumes that improvements will be implemented.

Numerous deficits in the equipment

According to the CPT (CPT/Inf/E (2002) 1 Rev. 2010, German version, p. 8, margin no. 42), police cells should be adequately ventilated and lit. During the inspection of the detention room at Kittsee police station, the commission observed inadequate lighting and ventilation of the detention room, as well as structural deficits. The Ministry of the Interior was unable to provide a precise timetable for relocating the department or for structural improvements.

At Freistadt police station, the Ministry of the Interior acknowledged the perceived lack of space and the need to renovate the facility and promised renovation. The Ministry quickly rectified the lack of signage at Innsbruck and Anif police stations and had a loose exposed aggregate concrete slab in the entrance area to the Innsbruck Aliens Police Station repaired. Ansfelden police station justified the storage of rubbish and two ladders in the detention room with a lack of space. Immediately after the commission's visit, the detention room was brought into proper condition.

The commissions critically observed traces of blood in the specially secured detention rooms at Juchgasse police station and Salzburg City Hall police station. The NPM criticised hygiene deficiencies in the visitors' sanitary facilities at Innsbruck police station and in the detention room at Kittsee police station. The Ministry of the Interior rectified these deficits immediately.

One point of criticism that generally cannot be remedied quickly or at all is the lack of barrier-free accessibility. A solution, such as relocation, should have been found by the end of 2019 for those departments where accessibility cannot be technically realised. Based on its priorities in 2021 and 2022, the NPM determined that many police stations in Austria are not barrier-free (see NPM Report 2022, pp. 145 et seq.).

Lack of accessibility for persons with disabilities

As reported in the previous year, the NPM continuously pointed out the lack of accessibility for persons with disabilities at many police stations, which is why the Federal Ministry of the Interior set up a working group. In order to gain an overview of further developments in the area of short-

Working group in the Ministry and *ex officio* investigations by the AOB

term police accessibility, the AOB initiated *ex officio* investigative proceedings in the summer of 2022 (see NPM Report 2022, p. 151). According to the Ministry of the Interior, around three quarters (76 %) of all police stations throughout Austria are considered barrier-free, at least structurally, insofar as persons with impaired mobility and wheelchair users can reach the entrance and reception area without restriction. The NPM recognises that the number of non-accessible police stations with reception areas has been reduced. The Ministry of the Interior did not provide a forecast as to when all police stations in Austria can be expected to be barrier-free. However, the NPM noted positively that the Ministry now provides information on the accessibility of departments on the Internet.

The NPM and the Human Rights Advisory Council recommended that the accessibility for persons with disabilities of the visited facilities be included in the monitoring routine as a former monitoring priority. The commissions complied with this in a large number of the visits.

In 2023, the NPM found 15 facilities that were not barrier-free: Some police stations were only accessible via stairs or the intercom system was mounted too high. Two facilities had access that was dangerous for people in wheelchairs. The commissions also found entrance doors that were too heavy, defective automatic door openers, a lack of signs indicating barrier-free access, and visitor toilets that were not barrier-free. In some cases, the Ministry of the Interior complied with the NPM's recommendation. Entrance doors were repaired and automatic door openers installed, call systems that were mounted too high were moved, staff were equipped with mobile laptops for official acts in more suitable locations and visitor toilets were adapted. In one facility, a difference in level in the entrance area was levelled out. In several police stations, the Ministry of the Interior set out a specific timetable for remodelling work or provided additional rooms with barrier-free access. In one case, the relocation of the police station was already well advanced. In one basically barrier-free police station, the Ministry promised to improve the possibility of contacting the facility for people who need help using the stair lift. For five departments, the Ministry was unable to provide a timetable for accessibility.

The Federal Ministry of the Interior stated, particularly in the official monitoring procedure, but also in the case of some of the facilities complained about, that the reasons for the lack of accessibility of some police stations were manifold (e.g. lack of owner consent, listed building protection, structural feasibility, disproportionate effort, no suitable rental property for relocation) and were generally not within the sphere of influence of the respective Police Department.

The NPM understands that the respective police station is often dependent on cooperation with the owner of the building in which the department is located when implementing accessibility for persons with disabilities.

However, the Ministry of the Interior has long been aware of the problem of the numerous police stations that are not barrier-free. The deadline for implementing accessibility for persons with disabilities expired at the end of 2019.

- ▶ ***Alarm buttons in detention rooms must be functional and adequately labelled so that detainees can contact the security staff.***
- ▶ ***Detention rooms must be equipped with reasonable sanitary facilities and have adequate ventilation and lighting.***
- ▶ ***Components that can cause injuries or serve as fastenings for strangulation devices must be avoided in detention rooms.***
- ▶ ***Police stations should have their own safety systems.***
- ▶ ***Detention rooms must be clean.***
- ▶ ***Police stations must be designed to be barrier-free.***

2.7.4 Staff shortage at the Josefstadt municipal police headquarters

For years, the NPM has criticised poorly staffed police stations and the associated workload of law enforcement officers due to overtime and night shifts (most recently NPM Report 2022, p. 156).

During its visit to the Fuhrmannsgasse police station, the commission discussed the staffing situation with the head of the Josefstadt municipal police headquarters and recommended adjusting the actual staffing level (285) to the systemised level (386) due to the high workload.

Blatant staff shortage

The NPM understands that the number of staff in a police station may be below the planned target level at times for various reasons (sick leave, assignments, training, etc.). However, at least an above-average amount of overtime should be avoided through organisational measures, as stress and work overload can also have a negative impact on the staff employed.

The NPM shares the view that not all employees are always available at times in operational organisations. It therefore also considers it justifiable that the staff actually available may deviate by up to one fifth of the total staff, provided that the workload at the department does not exceed the average level.

The NPM considers it critical – regardless of the actual workload situation – if more than one fifth of the staff is missing. The NPM criticised the fact that the actual staffing level in the Josefstadt municipal police headquarter was

Shortfall should not exceed one fifth

23% below the target level in the period from the beginning of November 2022 to the end of February. In view of the fact that the Federal Ministry of the Interior significantly improved the staffing situation from March 2023, the NPM considered the shortage to have been remedied.

- ▶ ***The number of staff in police stations should correspond to the planned target level. Understaffing leads to stress and work overload. Both can have a negative impact on detainees.***

2.7.5 Failure to display the Detention Regulation

Obligatory display of the Detention Regulation

Pursuant to Section 1 (3) Detention Regulation (*Anhalteordnung*), the provisions on the daily routine and the rights and obligations of detainees set out in this regulation must be displayed in abbreviated form in the detention rooms of the security authority. Section 27 of the Detention Regulation stipulates that Sections 1 and 2 of the regulation shall apply *mutatis mutandis* to detention in a detention room of a police station. The notice pursuant to Section 1 (2) Detention Regulation may be limited and must be available in some languages (Section 1 (2) Detention Regulation). The NPM recognises from Section 27 of the Detention Regulation that it is also to be displayed in police stations, at least in limited form.

During its visit to Neumarkt police station in Styria, the commission criticised the fact that no abridged version of the Detention Regulation was displayed in the custody cell. As the head of the police station immediately promised to put up a notice, the NPM considered the deficiency to have been remedied without further action.

- ▶ ***At least an abridged version of the Detention Regulation must be displayed in the custody cells of police stations.***

2.7.6 Positive observations

The commissions record their observations in a visit report during each visit. They also note welcome aspects, such as best practice examples and improvements, and share them in the concluding meetings. In several cases, the NPM was keen to communicate its positive observations in writing to the Federal Ministry of the Interior as the supreme body. The Ministry of the Interior and the concerned facilities welcome this form of constructive cooperation.

Cooperation and good equipment

The commissions regularly praise the exemplary willingness to cooperate, the impeccable documentation of official acts and detention, a harmonious working atmosphere and well-equipped and clean detention rooms, as well as barrier-free and modern facilities.

In the Villach Trattengasse police station, which is well equipped and barrier-free, the commission recognised the good cooperation with the Villach police detention centre. The commission was particularly positive about the fact that all employees are trained in dealing with dementia patients.

**Villach Trattengasse
police station**

The commission was impressed by the significant improvement in the quality of the detention documentation since the previous visit to Mittersill police station. The reason for this is an internal inspection by the deputy head of the department.

**Mittersill
police station**

The modern Werfen police station caught the commission's eye as a prime example of successful office design. Accessibility for persons with disabilities has been implemented in an exemplary manner and the department is very well staffed. In addition, the commission emphasised the procedure for official acts in accordance with the Hospitalization of Mentally Ill Persons Act (*Unterbringungsgesetz*) as an example of best practice: if the rescue service involved is unable to reach the emergency doctors, who are often difficult to reach in the country, this is seen as confirmation of the lack of an alternative treatment. There is then „imminent danger“ and the law enforcement officers may take people to a psychiatric ward even against their will.

**Wagrain
police station**

During the follow-up visit to Perg police station, the commission observed the numbering of the detentions documented in the detention book and the identical numbering of the detention logs collected as best practice for rapid assignability.

Perg police station

At Leopoldsgasse police station, the commission praised the perceived willingness to cooperate, the commitment of the head of the department in relation to further training and the cleanliness of the detention area.

**Leopoldsgasse
police station**

The commission praised the structural improvements in the detention room of Salzburg railway police station, as well as the careful management of the detention book. The commission expressly emphasised the fact that all detentions in this department are numbered and all detention logs are filed alphabetically in folders.

**Salzburg railway
police station**

At the Rust police station, the commission praised the exemplary barrier-free design of the department in a historic building.

Rust police station

The commission was pleased to note that Murau police station is easy to find, that peer support is available when needed, and that prevention events are organised at schools as part of the project „save together“ („*Gemeinsam Sicher*“).

Murau police station

During its visit to Angern an der March police station, the commission praised the perceived willingness to cooperate, the good space available, the clean detention room, and the fact that peer support is proactively called in during stressful operations.

**Angern an der March
police station**

Geras police station At Geras police station, the commission positively emphasised the certification as a dementia-friendly department and the participation of a specially trained member of staff in networking meetings in the area of protection against violence.

2.8 Coercive acts

Introduction

Since 2012 – as part of their OPCAT Mandate – the NPM commissions have been observing and monitoring the behaviour of the police when exercising direct administrative power and coercive measures. An act of direct administrative power and coercive measures is when the police exercise individual coercion or issue an order against a person in the execution of administrative laws.

In the year under review, the NPM observed 24 police operations, the majority of which – similar to last year – were police operations at football games (10) and demonstrations (6). In addition, police operations were observed at large festivals, such as the Frequency and Nova Rock festivals.

**Observation of
24 police operations**

Another important sub-area is monitoring inspections regarding the basic reception conditions. This monitoring option has existed since 2010 and is regulated in Section 9(a) of the Federal Basic Welfare Support Act (*Grundversorgungsgesetz*). With the involvement of the Aliens Police, checks are carried out to determine whether persons found in asylum centres are registered there. Attention is also paid to any anomalies in asylum centres.

Since the abolition of border controls at the EU's internal borders (Schengen Agreement Convention), immigration and border police unit (PUMA) have been carrying out checks as part of the Schengen compensatory measures. For example, PUMA officers carry out identity checks in trains, railway stations, or on motorways and country roads.

In the year under review, a commission accompanied a return flight to Bucharest and Sofia. The commission observed a forced return by bus to the German border and was present at the contact meeting beforehand. Overall, the NPM was therefore able to form a good picture, especially as the Federal Agency for Reception and Support Services (*Bundesagentur für Betreuungs- und Unterstützungsleistungen*) also provided the NPM with 41 monitoring reports of forced returns by air to numerous countries, such as Bulgaria, Romania, Croatia, Nigeria, Pakistan, India, Georgia, Armenia, Iraq, and the Dominican Republic. Seven monitoring reports related to forced returns by bus to Croatia, Romania, Bulgaria, Belarus, and Serbia.

In 2023, the NPM was repeatedly able to observe that the police again conducted the vast majority of the overall monitored acts of direct administrative power and coercive measures correctly and professionally.

2.8.1 Demonstrations

Positioning of tactical communication vehicles

In February 2023, a commission monitored the „Borders Kill“ demonstration in the city of Innsbruck. The commission particularly praised the de-escalating attitude of the police during the operation. Time and again, the positioning of the tactical communication vehicle and the perceptibility of loudspeaker announcements at demonstrations play a key role. This is particularly the case because information is also regularly announced about the use of video and audio recordings and these recordings would not be legal without prior notification.

Audible loudspeaker announcements

Although the loudspeaker announcements of the tactic communication vehicles regarding the video and audio recordings were not continuously audible, the Federal Ministry of the Interior comprehensibly demonstrated that the summary of all measures taken (in particular timely information by posting on the official notice board, publication on the website and announcement by means of the tactic communication vehicles on site), guaranteed that the announcement of the use of video and audio recordings was made to such an extent that making such recordings was legal.

- ▶ ***The technical possibilities of the tactical communication vehicle should be utilised efficiently in order to make verbal announcements and announcements with this technology audible in the best way possible.***

2.8.2 Football games

Information sheets in foreign languages

If it is feared that violent fans at a major sporting event could pose a general threat to the health of several people or lead to dangerous attacks, the security authorities are authorised to declare a security area around this venue of a maximum of 500 meters in accordance with Section 49 (a) of the Austrian Security Police Act (*Sicherheitspolizeigesetz*), as was the case at the Europa League football game between *SK Sturm Graz* and *Feyenoord Rotterdam* in Graz-Liebenau in October 2022. People can also be removed from this security area if necessary. In this context, the commission recommended that a general information sheet for those who have been turned away should also be made available in the common foreign languages in order to inform the widest possible circle of potentially foreign-language speakers. The Federal Ministry of the Interior promised to look into this recommendation.

In May 2022, the championship match between *FK Austria Vienna* and *SK Rapid Vienna* took place at the Generali Arena. The commission praised the fact that the police operation was very well organised and that the emergency services kept a de-escalating presence in the background throughout the entire operation. Nevertheless, there were various clashes between rival fan groups before, during and after the match, but this could not have been

completely avoided at an event of this size and with such an explosive nature and was at a manageable level compared to other derbies in the past.

The use and/or misuse of fireworks in football stadiums is a regular topic that the commissions deal with. The question arises as to what can be done to prevent the illegal use of pyrotechnics in stadiums and the associated risk (injury to players and spectators from fireworks).

Illegal removal of pyrotechnics

In the above-mentioned match, the Police Department issued a search warrant on the basis of Section 41 (1) of the Security Police Act on the basis of relevant experience in Vienna derbies. As already stated in the NPM Report 2022 (pp. 162 et seq.), Section 41 of the Security Police Act authorises the executive on the basis of an ordinance to check persons on a voluntary basis; otherwise these persons could be prevented from entering the stadium. In practice, prohibited pyrotechnics are regularly confiscated from fans during these access controls. Since the use of pyrotechnics is basically an administrative offence and not an act of violence or even a dangerous attack, a search warrant on the sole possibility of an expected administrative offence (through pyrotechnics) would be inadmissible, as the Ministry of the Interior rightly argues.

Search warrant enables inspections

The NPM understands that the illegal use of pyrotechnics at major sporting events is an international phenomenon that other European countries also have to cope with. The Ministry of the Interior can thus draw on international experience in the planning and assessment of major football events through the Europe-wide exchange with the National Football Information Office. With this in mind, the NPM welcomes the fact that the Austrian security authorities are constantly endeavouring to develop new operational approaches to counter the misuse of pyrotechnics in stadiums.

The Austrian Pyrotechnic Safety Act (*Pyrotechnikgesetz*) stipulates that pyrotechnic objects may not be possessed or used in connection with a sporting event. In the course of a football championship match in Vienna in April 2023, the Police Department granted an exemption to this ban subject to certain conditions and requirements. The commission found that significantly more pyrotechnic items were set off at this derby than at comparable games in the past. The NPM therefore reminded the Ministry of the Interior that the exceptions for pyrotechnics must be given restrictively. Section 39 (3) of the Pyrotechnic Safety Act does not provide for general, abstract exemption authorisations and, according to Supreme Court rulings, exemptions must be interpreted restrictively. Conditions prescribed by official notifications should ensure that risks to life, health and property or public safety are avoided with a probability bordering on certainty.

Restrictive interpretation of exceptions for pyrotechnics

- ***At high-risk games, the police should make greater use of the possibility of a search warrant and thus check people and their bags in order to better prevent fans from bringing pyrotechnics into the stadium.***

2.8.3 Compensatory measures and targeted campaigns by the police

Professional operation

In June 2023, a commission decided to monitor a targeted campaign related to Ukrainian refugee movements in Pfunds (Tyrol). This was done as part of a duo-national compensatory measure. During the operation, around 30 to 40 vehicles were checked. In addition to members of the Austrian police, a Swiss customs officer and an officer from the Graubünden cantonal police, forces from the Austrian Federal Army and a dog handler were on standby. The operation was conducted professionally and the officers were very friendly and cooperative.

2.8.4 Inspection regarding basic reception conditions

Information sheets in foreign languages

On the occasion of monitoring a police inspection regarding the basic reception conditions in July 2022, the commission praised the very good preparation and competent execution of this operation. In particular, the information sheet explaining the reason for the inspection was handed out to those affected in twelve foreign languages. The commission recommended that the information sheets be supplemented so that they not only explain the reason for the inspection, but also include a reference to the legal provision and its content.

The Ministry of the Interior argued that the information sheet is an important tool in practice for communicating the reason for and objective of the inspection. Care should therefore be taken to ensure that complicated explanations and legal texts do not cause additional confusion.

Right to information

In the opinion of the NPM, the right to information is a human right that can be derived from the constitutionally enshrined right to information (Article 10 ECHR) according to the now established jurisprudence of the European Court of Human Rights (ECtHR of 17 February 2017, 21575/08). The system of asylum law provisions, including those relating to basic welfare support, is complex and often difficult to explain in a comprehensible and simple manner. Nevertheless, the illiteracy or reading difficulties of some of those affected should not automatically mean that the fundamental and human right to information is also taken away from those, who are able to read (in their native language) and understand what they have read.

- ▶ ***Information sheets, which are available in the most common foreign languages during inspections regarding the basic reception conditions, should be supplemented in a new edition so that the purpose of the inspection is explained and the legal provisions are described in simple language.***

2.8.5 Forced returns and returns

The forced return of a person in detention pending forced return often involves a great deal of logistical and organisational effort. A commission monitored the forced return of a man from Innsbruck police detention centre to Germany in February 2023 and questioned why he was taken from Salzburg police detention centre via Germany back to Innsbruck police detention centre, to be then returned to Germany accompanied by nine officers.

Dublin return

The Federal Ministry of the Interior clearly explained that the Russian citizen had been arrested by officers of the Office for Protection of the Constitution and Counterterrorism of Tyrol and the Hall police station and taken to the Innsbruck police detention centre that same evening on the grounds of „danger to public safety, risk of absconding, person conspicuous of criminal activities, terrorism-related“. One day later, the Federal Office for Immigration and Asylum imposed detention pending forced return and requested the German authorities to take over. Furthermore, the Tyrol Police Department requested that the nationwide accommodation and transport management of the Ministry of the Interior transfers the detainee awaiting forced return to a detention centre for longer-term detention pending forced return (Salzburg police detention centre, Vienna police detention centre, Vordernberg detention centre), as it was foreseeable that the detention period would exceed seven days.

Partly large logistical effort

At the end of the five-day COVID-19 quarantine period, the detainee awaiting forced return was transferred from Innsbruck police detention centre to Salzburg police detention centre, as the escorted transfer out of the country was initially planned at the Schärding/Passau border crossing.

In agreement with the German authorities, however, the return to Germany was planned to happen at the Kufstein/Kiefersfelden border crossing. In preparation of this, the detainee was transferred from Salzburg police detention centre to Innsbruck police detention centre again. He was then handed over at the German border crossing in Kiefersfelden as planned. Despite the logistical effort involved, the entire forced return procedure was correct. The commission emphasised the clear and comprehensible communication by the team in charge of this forced return.

Time and again, charter flights are used to transport asylum seekers out of the country, for example during a Dublin return of eight asylum seekers (two Pakistanis, one Ethiopian, two Syrians, and three Moroccans) in March 2023. The operation began at 4 am at the Roßauer Lände police detention centre. Immediately after the airport bus arrived at the aircraft, three returnees began to put up massive resistance to the forced return, so that they had to be restrained and carried onto the aircraft.

Return to Romania and Bulgaria

**Massive resistance
from returnees**

The coercive measures taken before take-off at Vienna Airport or in the air (restraint with slings on hands and feet or with cable ties, wearing helmets and spit protection) were continuously evaluated in the presence of a doctor and an interpreter and replaced by the law enforcement officers with less coercive measures as soon as this was possible. The handover of the returnees to the security authorities in the destination countries of Romania and Bulgaria also worked well. The commission was able to observe the professional behaviour of the law enforcement officers throughout the operation. This forced return by air was accompanied by external human rights observers, who also noted the respectful behaviour and that the transfer by charter plane was carried out properly and in accordance with human rights standards.

Nevertheless, such operations are usually associated with a great deal of psychological stress for the law enforcement officers due to the massive resistance, which is why the NPM pointed out that they should be provided with supervision and peer support. According to the Federal Ministry of the Interior, a so-called „debriefing“, i.e. a team debriefing, usually takes place in the case of cross-border forced returns by charter flights. The escorting officers did not report any need for peer support or psychological support for this forced return. In principle, law enforcement officers can also make use of the psychological service of the Ministry of the Interior or the Police Department directly at any time, i.e. without following official channels or without the necessary authorisation.

2.8.6 Positive observations

**Professional
operations at football
games**

In February 2023, a commission observed a UEFA Europa League football game (*Red Bull Salzburg vs. AS Roma*) at the Red Bull Arena in Salzburg. The following examples of good practice were observed as a result of the professional and appropriate approach in terms of a de-escalating and human rights-compliant intervention: The availability of buses in the cordon ensured the rapid removal of fans. Appropriate advance notice was given in good time by means of announcements in the stadium. Furthermore, the deployment of officers with the appropriate language knowledge (Italian executive unit) before and after the game helped to ensure that the visiting fans were well informed and that the event ran smoothly.

The two international matches in the Ernst Happel Stadium against Belgium as part of the European Championship qualifiers and the friendly match against Germany ran smoothly. The organisation by the police was professional. The commission also monitored the behaviour of the police at the Graz derby during the cup competition of the Austrian Football Association positively. The police were unable to prevent the riots, which were also shown in the media, and the arrests were correct.

In another case, the commission praised the de-escalating attitude of the executive, namely at the Europa League football game between *SK Sturm Graz* and *Feyenoord Rotterdam* at the Merkur Arena Graz-Liebenau in October 2022. This applied in particular to the incidents before the game, when Dutch fans ran over the stewards checking the validity of tickets, creating a very dangerous situation. The commission also took a favourable view of the actions of an official who quickly directed numerous *Feyenoord* fans into the stadium via an alternative route, thereby preventing a clash with the opposing fans.

At the 2023 final of the cup competition of the Austrian Football Association between *SK Rapid Vienna* and *Sturm Graz* at the Wörthersee Stadium in Klagenfurt, the commission praised the exemplary organisation of the law enforcement authorities in the run-up to the event. As part of the „Safe Together“ campaign, the neighbourhood along the route of the fan march of *Rapid Vienna* was actively asked to remove flower pots and cars from the danger zone on the day of the event in order to prevent damage to property.

**„Safe Together“
campaign**

In October 2023, a commission monitored the „March for Life“ demonstration, as well as the counter-demonstration. In order to prevent a direct clash between the two groups, around 50 counter-demonstrators were encircled. Various law enforcement units took part in the encirclement and service dogs (Malinois) were also deployed. The commission found that the behaviour of the police forces were de-escalating and correct from a human rights perspective.

Demonstrations

A police operation on the occasion of the assembly on „Against Genocide and Oppression – Free Palestine“ in Innsbruck was also perceived positively. The law enforcement officers mostly stayed in the background. Nevertheless, they carried out the task of identifying people who may have been chanting incitement to hatred („from the river to the sea, Palestine will be free“) and checking their identity.

According to the commissions, the intervening law enforcement officers carried out inspections regarding the basic reception conditions in July 2023 in the *Land* of Salzburg in a calm, friendly and correct manner. With Ukrainian displaced persons in particular, they tried to lighten up the official act with a few words in Russian. The fact that they took multilingual information sheets with them on the upcoming inspection was also rated positively.

**Inspections
regarding basic
reception conditions**

The commission also found the police operation at the Nova Rock and Frequency music festivals as positive. The police officers behaved in a de-escalating and very professional manner.

Annex

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Vienna, March 2024