

AUSTRIAN
OMBUDSMAN BOARD



Annual Report

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

2020

Protection & Promotion of Human Rights

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Preface

The Austrian Ombudsman Board (AOB) was established as a National Preventive Mechanism (NPM) in 2012. In this function, it has the statutory mandate to protect and promote human rights. The core of the mandate is the monitoring of public and private institutions and facilities where the freedom of individuals is restricted. The six commissions of the AOB monitor these institutions on a regular basis regardless of whether there are specific incidents or complaints. The objective of the independent visits is to detect deficits in the system as soon as possible and thus protect persons from abuse and inhumane treatment.

This report should not be merely seen as a summary of the activities of the NPM in 2020. It also clearly highlights where human rights are at risk or have already been violated, where improvement is urgently necessary and which measures need to be implemented. All of the problems and deficits mentioned here are alarm signals necessitating immediate reaction. This applies in times of crisis in particular.

Considerable restrictions in private and public life that entail massive infringements of human rights were and still are required in order to keep the pandemic under control. These are not always proportionate. The basic rights and personal freedom of persons in retirement and nursing homes or institutions and facilities for persons with disabilities were more severely restricted than the rest of the population. Protection against infection resulted in the complete isolation of these particularly vulnerable groups of people in many places.

The general conditions for the institutions and the staff in particular are without doubt very difficult, not least due to frequent changes in the law and short lead times. However, guaranteeing human rights must remain in focus even in difficult times. Thus, as in previous years, the recommendations of the NPM are a focal point in this report as well. They summarise the results of the visits by the commissions and should provide orientation to the institutions and staff working there as well as those with responsibility on the question of which human rights standards have to be guaranteed in the respective institutions.

At the same time, these recommendations highlight the limits of the NPM's work. The NPM can draft recommendations and drive improvement in dialogue with the competent parties. In many cases, this entails reforms that require a new legal basis or better financial resources. This can only be achieved through the government and legislative bodies. For this reason, this report is also an appeal to politicians, the parliament and regional governments to understand and to provide the necessary framework to guarantee that human rights are observed in Austria.

We would like to thank the commissions for their dedication and the Human Rights Advisory Council for its advice and support. A word of thanks also to all the AOB staff who dedicate themselves to the protection of human rights in Austria as part of their everyday work.

This report will also be sent to the UN Subcommittee on Prevention of Torture.



Werner Amon



Bernhard Achitz



Walter Rosenkranz

Vienna, June 2021

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Introduction

This report provides information on the work of the National Preventive Mechanism (NPM) in 2020. The work was significantly affected by two key impacts of the pandemic:

On the one hand, there was a need to address the new risk to human rights persons were exposed to due to the coronavirus-related restrictions and associated isolation. On the other hand, the restrictions also directly affected the monitoring work of the commissions. It was not possible to conduct any visits to institutions and facilities during the first lockdown from the middle of March to the end of May 2020. Knowledge about the novel virus and its infectiousness was still very sparse at this time. The risk of infection on monitoring visits, in particular in retirement and nursing homes, could not be reliably assessed. Personal contact would thus have been irresponsible. Visits were also not possible simply because there was no suitable personal protective equipment (PPE) for the commissions in the beginning.

Impacts of the pandemic on monitoring work

In spring 2020, the NPM thus opted for an alternative way of achieving the best possible protection of persons whose freedom is restricted. The NPM commissions conducted over 160 telephone interviews with the care services in retirement and nursing homes amongst other things, and documented the problems that had to be solved during and after the lockdown. For many of the monitored institutions the NPM gathered the demands and recommendations in the interviews and the results were directed to the authorities and politicians with a view to covering the framework for measures to be taken during the pandemic. The commissions were able to resume their visits under strict hygiene and safety measures from June 2020.

A total of 448 visits were conducted in the reporting year, of which 431 were in institutions and facilities and 17 at police operations. Most of the visits were in retirement and nursing homes (109), in child and youth welfare facilities (102) and in institutions for persons with disabilities (93).

448 monitoring visits

The findings from the visits are summarised in chapter 2. As in previous years, not all of the results could be documented in this report due to the large number of visits conducted. The depiction concentrates on human rights issues the NPM considers critical and reported cases of maladministration that go above and beyond isolated cases thereby implying system-related deficits. In many cases, they are directly related to the restrictions and measures implemented to combat the pandemic. They were also the consequence of a pandemic-related lack of resources: insufficient staff, too little PPE, too few funds. This report also shows, however, that regardless of the special situation in 2020, there are serious deficits in many areas. Some of these were the subject matter of previous reports such as inadequate furnishings and equipment in correctional institutions, the lack of personnel in retirement and nursing homes and deficits in facilities for the detention of mentally ill offenders.

Human rights at risk due to COVID-19

Concrete recommendations for the institutions are derived from the results of the monitoring visits. The list of all recommendations made to date is available on the AOB homepage.

Statistics on the visits Chapter 1 provides a brief overview of the basic focus areas of the NPM. This includes information on the content of the preventive mandate, the organisation and resources. Statistics on the monitoring work carried out in 2020 document how many visits were conducted in which institutions, how these were distributed across the *Laender* and in how many cases there was criticism of the human rights situation. The subject matter of this chapter also includes a summary of the international activities the NPM fosters through numerous networks. This guarantees a continued exchange of experience as well as a uniform approach.

1 Overview of the National Preventive Mechanism

1.1 Mandate

The AOB and its six commissions have been the National Preventive Mechanism (NPM) since 1 July 2012. The commissions are headed by persons with a high level of human rights expertise. They are structured on a regional basis and staffed using a multidisciplinary, multi-ethical approach. External experts can also be consulted if a monitoring topic so requires.

NPM Commissions

Based on a mandate in the Federal Constitution, which is defined in detail in the Ombudsman Board Act, the commissions set up by the AOB visit potential places of deprivation of liberty, observe and monitor the bodies empowered to issue direct orders and carry out coercive measures, and monitor institutions and programmes for persons with disabilities. After their visits, the commissions draw up reports on their observations, give human rights assessments and make suggestions to the AOB regarding how to proceed. All visits are conducted on the basis of the monitoring methodology developed by the Austrian NPM. On follow-up visits commissions evaluate whether the recommendations have been implemented and improvements have been made. The monitoring framework and methodology of the NPM can be accessed on the AOB website.

In spite of the very challenging conditions, a total of 448 monitoring visits were carried out by the commissions in 2020 (2019: 505). In addition to their monitoring and control work, the commissions also conducted 14 round-table discussions with institutions and facilities or their senior administrative departments.

Intensive monitoring and control work

The NPM was also involved in basic police training in 2020. It has been contributing with its own training module since 2017. The aim is to familiarise future police officers with the responsibilities and the work of the NPM. AOB employees and members of the commissions taught a total of 28 classes at eight training centres in 2020: five classes in Vienna and Graz, seven classes in St. Pölten, one class in Ybbs, three classes in Absams and Krumpendorf respectively, as well as two classes in Linz and Traiskirchen respectively. Further courses have already been scheduled for 2021.

Involvement in police and prison officer training

Prison officers have also been trained in the AOB's preventive and *ex-post* control work as part of their training since 2017. In 2020 there were ten teaching sessions in the training centres in Vienna, Stein, Linz and Graz-Karlau. Material learned from this training module is put to the test as part of their qualification examination.

1.2 Exercising the mandate during the pandemic

Visits discontinued during the first lockdown

The authority of the NPM to perform its monitoring work during the COVID-19 pandemic was never an issue even during the general lockdowns in 2020. The NPM paused almost all visits however from 16 March to 30 May 2020. At that time, there was no empirical knowledge of the specifics of the virus and the best possible protection against infection. Reports of already overcrowded hospitals and exploding numbers of dead from neighbouring northern Italy however were a reminder not to underestimate the risk of infection and infectiousness of the SARS-CoV-2 virus.

After the first laboratory-confirmed outbreaks of the illness in hospitals and nursing homes, it became evident in March 2020 that it was not possible to equip the NPM commissions in a way that could prevent contracting infections. In the first few months after the pandemic outbreak, there was not even sufficient medical PPE for the medical and nursing staff with direct contact to infected persons. Even the PCR tests considered the gold standard for suspected cases of COVID-19 by the WHO were subject to strict limitations due to a lack of reagents and laboratory capacity.

Visits possible again since June 2020

During the course of May 2020, the commissions could be sufficiently equipped with top-quality PPE (overalls, FFP2 and FFP3 masks, protective glasses, gloves, disinfectants etc.), thereby enabling visits to the institutions and facilities. The Federal Ministry of Health and its crisis taskforce also met the wish of the NPM at the beginning of June 2020 to inform them how visits should be conducted in retirement and nursing homes in such a way that the risk of passing the virus to this most vulnerable of groups is avoided insofar as possible. Generally speaking, smaller visiting delegations than in previous years were formed until the end of the year, the average duration of visits and meetings shortened, or the visits were conducted outdoors where possible or moved to specially set up visitor zones.

Protective measures of the NPM

As early as the late summer, the NPM changed its approach. Valid PCR tests were made prior of each visit, thus ensuring the institutions that the members of the commissions did not pose an increased threat of infection on the day of the visit. Antigen quick tests were used as a standard prior to starting visits when they became available. Thanks to the caution practised by the members of the commissions in not wanting to place anyone at risk combined with the professional use of the PPE, none of the members of the commissions became infected with SARS-CoV-2 or had to go into quarantine. What is notable and worthy of praise is that the commissions continued their work in the last three calendar months of the year even though the virus had spread uncontrolled throughout Austria and the health authorities were no longer able to stop chains of infection through the immediate isolation of those who were infected or were suspected of being infected.

A two-day strategic communication meeting, which is regularly held in October between the Ombudsman, all of the commission members and AOB staff entrusted with OPCAT duties, was planned to be held in summer 2020 but could not take place due to the pandemic.

As the following chapters will show, the NPM was not inactive even during the first lockdown when small visits took place. The NPM found alternative creative ways of preparing for the coming challenges, maintaining contact with institutions, decision-makers and civil society, and of exchanging ideas with stakeholders per video conferencing among others. The NPM also was and still is in contact with representatives from SPT, CPT, APT and NPMs from other countries to reflect on its own way of working and to win impulses for new initiatives on the basis of this experience.

Continues contact with institutions and authorities

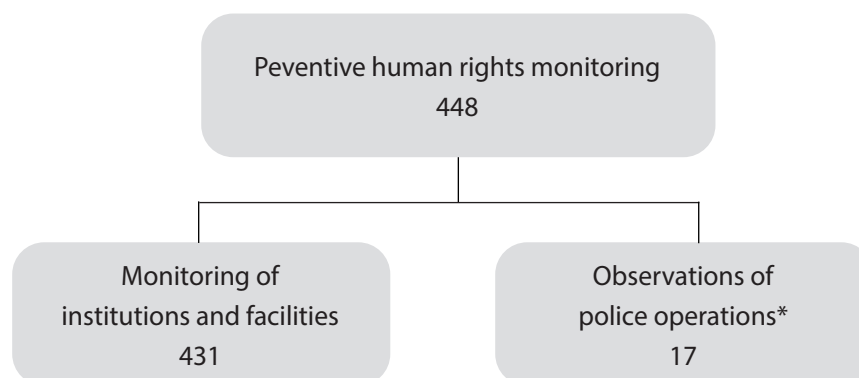
The legislation enforced for the protection of the people infringed many rights that are guaranteed under constitutional law. Persons of all ages were equally affected, but the intensity and the consequences of the restrictions vary greatly due to inequality in economic, family and health resources. What has become evident is the realisation that in the pandemic all areas of life are dependent on a functioning public health system. The NPM had to be flexible when it came to making priorities. In particular, in “less traditional places of detention”, the planned focus areas were redefined.

It was possible, however, to emphasise the significance of preventive human rights protection during the first lockdown in spring 2020. The NPM was successful in countering the general, in some cases disproportionate, restrictions of fundamental and human rights by raising them for discussion, and both the State and private decision-makers were obliged to justify their actions during the health crisis. Based on the experience made by the commissions on their visits, the NPM strongly demanded both more legal security and increased efforts for the protection of particularly vulnerable persons, especially in nursing homes and institutions for persons with disabilities. The NPM also emphasised in the print media, TV and radio interviews that containing a pandemic calls for consequent government action for protecting human life. According to the data platform “Our World in Data”, Austria temporarily recorded the highest number of new infections and registered COVID-19 deaths per inhabitant on average per week in the world in mid-November 2020. Both Statistics Austria and the European mortality monitoring body, Euromomo, have been assuming a very high or high excess mortality rate since the beginning of November 2020. Whilst the pandemic caused a total of 706 laboratory-confirmed COVID-19 deaths from 25 February to 22 June 2020, 2,540 persons alone died of or with COVID-19 in Austria in calendar week 49, totalling 6,312 persons by the end of the year. Around half of these persons had been residents of care facilities.

1.3 Monitoring and control visits in numbers

The commissions conducted 448 visits throughout Austria in 2020, of which 96% were in institutions and facilities, and 4% at police operations. The majority of the visits were unannounced. There was advance notification in 18% of the cases. The monitoring visits lasted three hours on average.

Monitoring and control activities of the commissions in 2020
(absolute figures)



* these include: forced returns, demonstrations, assemblies

431 monitoring visits in institutions and facilities

Of the total 431 visits in institutions and facilities, the vast majority were in so called “less traditional places of detention”. These include retirement and nursing homes, child and youth welfare facilities as well as institutions for persons with disabilities. With 109 visits, retirement and nursing homes were visited most frequently. This is attributable to the fact that this type of institution accounts for the majority of the institutions to be monitored by the NPM. There were 93 visits in institutions for persons with disabilities.

Many follow-up visits

In line with the monitoring practice exercised to date, many facilities were visited several times in the reporting year. For this reason, the total number of visits made is not equal to the number of institutions visited. Follow-up visits serve to determine whether detected deficits have been rectified or improvements made. Correctional institutions and police detention centres, in particular, are monitored several times a year.

Observations of 17 police operations

Furthermore, 17 police operations were observed by the commissions in the reporting year. The reasons for monitoring in these cases were, in particular, forced returns, demonstrations, major police operations, raids and high-security football games.

14 round-table meetings

In addition to this monitoring and control work, the commissions held 14 round-table meetings with institutions and senior administrative departments.

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

Number of visits in 2020 in individual *Laender*
according to the type of institution

	pol. stat.	pol. det. c.	ret.+ nur.h.	youth	inst.f. disabl.	psych. wards	corr. inst.	others	pol. op.
Vienna	1	3	23	29	14	5	6	0	6
Burgenland	1	1	7	24	4	1	0	0	2
Lower Austria	5	2	16	23	30	5	7	1	0
Upper Austria	12	3	12	7	5	1	3	1	1
Salzburg	4	2	16	4	14	0	1	1	3
Carinthia	3	0	4	2	10	3	3	0	1
Styria	10	2	16	4	8	7	3	0	1
Vorarlberg	1	1	3	2	1	2	2	0	0
Tyrol	7	2	12	7	7	4	4	1	3
Total	50	16	109	102	93	28	29	4	17
<i>unannounced</i>	<i>49</i>	<i>14</i>	<i>86</i>	<i>85</i>	<i>83</i>	<i>20</i>	<i>20</i>	<i>4</i>	<i>6</i>

Legend:

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

The total line displays how often the types of institution were monitored or how often police operations were observed. The varying frequency corresponds with the different number of institution types on the one hand. The high numbers in *Laender* with large populations show that there are more institutions in the urban areas, which results in more visits in these area. The following table highlights this aspect and exhibits the total number of monitoring visits per *Land*.

Number of visits in 2020 in the individual *Laender*

Vienna	93
Lower Austria	89
Styria	51
Tyrol	47
Salzburg	45
Upper Austria	45
Burgenland	40
Carinthia	26
Vorarlberg	12
Total	448

Deficits identified on around 73% of the visits

The observations from all 448 monitoring visits are documented in detail in the commissions' reports. The commissions felt compelled to criticise the human rights situation on 325 of the visits. There were no grounds for criticism on just 123 monitoring visits (106 institutions and 17 police operations). Deficits were thus identified by the commissions on 73% of the visits.

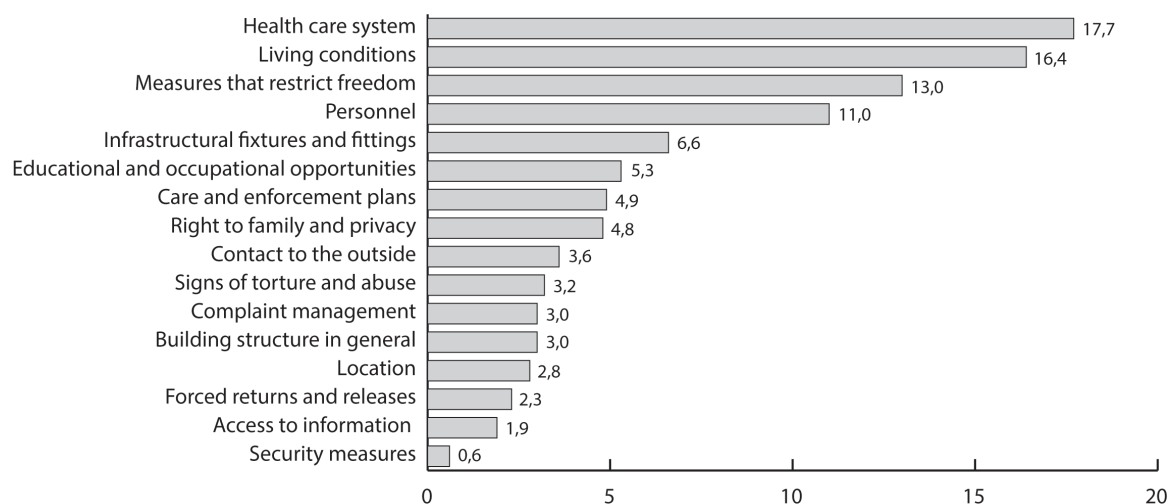
Proportion of visits in 2020 with or without criticism

	with criticism	without criticism
Monitoring of institutions and facilities	75%	25%
Observation of police operations	0%	100%
Visits in total	73%	27%

The following graph gives an overview of how the criticism is distributed across the individual areas addressed by the commissions on their visits. It must be noted here that several areas are monitored on almost every visit and the criticism thus relates to several areas. Most of the criticism was in relation to health care (17.7%). Living conditions were criticised almost as frequently (16.4%), in which case sanitary and hygiene standards, food or the leisure activities programmes were considered most critical. Measures that restrict freedom as well as insufficient human resources were also frequent grounds for criticism (13% and 11% respectively).

Topics of criticism voiced by the commissions

(share in %)



1.4 Budget

In 2020 a budget of EUR 1,450,000 was available to the heads and the members of the commissions as well as the members of the Human Rights Advisory Council. Of this amount, around EUR 1,281,000 were budgeted for the reimbursements and travel expenses for the members of the commissions, and around EUR 85,000 for the Human Rights Advisory Council. Around EUR 84,000 were available for workshops, supervision, PPE, other activities of the commissions and the AOB staff active in the OPCAT area. It was therefore possible to avoid budget cuts, thanks in particular to the National Council as the legislative body in financial matters but also to the Federal Ministry of Finance. Both of them emphasise the necessary financial independence for the preventive activities and show understanding for a sufficient budgetary allocation to the NPM.

1.5 Human resources

1.5.1 Personnel

In order to implement the OPCAT mandate, the AOB received additional permanent positions in 2012. The AOB staff entrusted with NPM responsibilities are legal experts who have experience in the areas of rights of persons with disabilities, children's rights, social rights, police, asylum and the judiciary. The organisational unit "OPCAT Secretariat" is responsible for coordinating the collaboration with the commissions. It also examines international papers and documents in order to support the NPM with information from similar institutions. From January 2021 there will be an additional employee working in the "Secretariat OPCAT", as the limited function period for half of the commission heads and the commission members expires on 1 July 2021 and a public vacancy notice including viewing all of the applications as well as the subsequent planning and scheduling of the hearings have to be completed before the new candidates can start their work.

1.5.2 The commissions

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

1.5.3 Human Rights Advisory Council

The Human Rights Advisory Council was established as an advisory body. It is comprised of representatives from NGOs and federal ministries as well as representations from the *Laender* (see Annex). The Human Rights Advisory Council makes recommendations on NPM's work, which however is operated autonomously by the NPM. Its expertise is consulted in selecting monitoring focal points and working on specific human rights topics which, based on the observations of the commissions, relate to problems that exceed the scope of isolated cases.

1.6 International cooperation

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

Measures depriving the liberty of immigrant children In preparation of his report to the 75th meeting of the UN General Assembly, the UN Special Rapporteur on the human rights of migrants requested contributions on the topic of measures that deprive liberty with a special focus on the custody of immigrant children. The NPM explained the legal provisions and political initiatives in Austria and provided information on examples of good practice.

41st meeting of the SPT In June 2020 the United Nations Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment (SPT) convened at a public meeting, which could be followed online, for the first time. Ibrahim Salama, Chief of the Human Rights Treaties Branch at the Office of the United Nations High Commissioner for Human Rights, addressed the challenges posed by the COVID-19 pandemic in his opening speech. The SPT was unable to make any visits during the quarantine period. They were nevertheless active and provided practical help to the NPMs on pandemic-related topics. The SPT Chairperson, Malcolm Evans, reported that the OPCAT visiting programme was suffering due to the low budget, which impaired the work of the SPT, in particular the visits to the countries. The Chairperson emphasised the importance of the OPCAT special fund.

Pandemic calls for new definition of the term „places of detention“ After the reports from the heads of the SPT regional teams, the revision of the OPCAT convention was announced. In this context, a comprehensive new definition of the term “places of detention” is planned, as the COVID-19 pandemic highlighted the changeability of this term. In conclusion, it was emphasised that the OPCAT states bear

a special responsibility in dealing with COVID-19 and that NPMs should not only be regarded as opponents of the legislators but as their allies.

With COVID-19, it became clear that the protection of the rights of persons with disabilities required special attention during the pandemic. The United Nations, the EU and the Council of Europe agreed that in the context of the pandemic persons with disabilities are particularly at risk of living a life in poverty and are confronted with neglect, abuse and violence far more frequently than others. They are thus some of the persons worst affected by the COVID-19 crisis. A report by the UN Special Rapporteur on the rights of persons with disabilities shows how serious the situation is for persons with disabilities in institutional care, in prisons and psychiatric institutions.

COVID-19 and the rights of persons with disabilities

As it is difficult to say how long the pandemic will dictate how we live our daily lives, it is of paramount importance that the NPMs adapt their preventive monitoring work to the new conditions and develop mechanisms to guarantee the protection of the rights of persons with disabilities. In light of this, the European Network of NHRIs (ENNHRI) organised a webinar together with the NPM from Georgia at which European NPMs were able to share their ideas and experience with experts from the United Nations, the Council of Europe and the EU. The Austrian NPM also took part.

As a member of the South-East Europe NPM Network (SEE NPM Network), experts from the Austrian NPM took part in the SEE NPM Network meetings again in 2020. The Croatian NPM, in their function as chair, organised two virtual meetings in 2020, which addressed the ways of effectively preventing and detecting torture and other cruel treatment in the first few hours of police custody.

SEE NPM Network holds virtual meetings

A total of twelve NPMs shared their experience of preparing and carrying out visits to police institutions and prisons. The basis for this was a survey by the Vienna Ludwig Boltzmann Institute for Human Rights with reference to instructing detainees about the reason for their arrest, informing relatives about the arrest and having access to legal aid and medical care.

First hours in police custody

Solutions were developed to problems that arise when investigating alleged misbehaviour on the part of the police such as when there are only insufficient official records or none at all. It was agreed that visits should continue to be predominantly unannounced and in so doing to consider as many sources of information as possible. Confidentiality must be given priority in conversations with persons in police custody or with police officers in order to prevent reprisals against those interviewed.

Unannounced visits and confidential talks essential

The Serbian NPM, who has the chair of the "Medical Group" of the SEE NPM Network, organised an online meeting on the topic of substance use disorders in prisons and correctional institutions. An expert from the Austrian NPM took part in this online exchange and discussed with colleagues the problem of the existence of illegal substances in prisons and correctional institutions, how these are smuggled in and how the problem can be countered, for example, by recognising substance use disorders as an illness, the necessity of adequate therapies and special training of the staff.

SEE NPM Medical Group

Since 2014, the Austrian NPM has been partner of a programme for exchanging experience and ideas between NPMs from the German-speaking countries and participates actively in meetings with colleagues from Germany and Switzerland as part of this D-A-CH Network.

Expert discussion on German NPM	The National Agency for the Prevention of Torture in Germany had the chair of the D-A-CH Network in the year under review. The meeting planned in Germany had to be cancelled because of the pandemic. However, the parliamentary group <i>Bündnis 90/Die Grünen</i> organised an internal expert discussion dealing with the NPM in Germany.
Austria and Switzerland as best practice examples	Grounds for the debate was an expert opinion prepared by the scientific services office of the German parliament that compared the German NPM with institutions from six other countries (including Austria) and analysed how the German NPM is equipped and which opportunities it has. The Swiss and Austrian NPMs were cited as examples of best practice in this analysis. An expert from the Austrian NPM also took part in this online exchange as did a representative from the Swiss NPM and members of the Council of Europe's Anti-torture Committee.
NPM Newsletter	<p>To promote closer cooperation, the Austrian NPM regularly contributes reports and articles to the Council of Europe's NPM newsletter.</p> <p>In one of these reports on NPM monitoring in COVID-19 times, the NPM iterated the measures taken by the Austrian federal and regional governments at the beginning of the year, how they affected monitoring tasks and how the NPM performed its monitoring work at the start of the pandemic.</p>
Older persons in detention	Another edition of the newsletter dealt with older persons in detention. In this article, the NPM highlighted that Austrian prisons often do not accommodate the special needs of older persons. Examples included a lack of barrier-free access in detention rooms and sanitary facilities. The lack of adequate leisure activities for older persons in detention was also addressed as was health care.
Bilateral exchange	The Austrian NPM is an active host when it comes to bilateral exchange and invites colleagues from other NPMs to come and share experience in Vienna.
Meeting with Serbian NPM in Vienna	The Serbian Ombudsman, Zoran Pasalić, came to Vienna with a three-person delegation in January. During this visit, there was an intense discussion on the pending amendment to the Ombudsman law in Serbia, which will consider the Council of Europe Venice Principles for the first time. As in Austria, the Ombudsman in Serbia is also entrusted with the NPM mandate. There is a regular exchange between Austria and Serbia on this subject within the framework of the SEE NPM Network. Ombudsman Amon and Ombudsman Pasalić emphasised the desire to continue the longstanding cooperation between the two institutions with commitment.
Visit to Slovenian NPM	Ombudsman Amon paid a visit to his Slovenian colleague, Peter Svetina, in Ljubljana at the beginning of the year. They used the occasion to share their experience of the NPM mandate in particular, which both institutions exercise in addition to monitoring the public administration. Based on their common efforts to protect human rights,

Ombudsman Amon and Ombudsman Svetina agreed to intensify their cooperation on future projects on the bilateral and international level.

1.7 Report of the Human Rights Advisory Council

The Human Rights Advisory Council met five times in plenary meetings in 2020. Only two meetings could be held in person because of COVID-19. Two meetings were held online and one meeting partly in person and partly online. In addition to these plenary meetings, the Human Rights Advisory Council also held many working group meetings and prepared statements on the preventive protection of human rights as well as draft recommendations of the NPM. Furthermore, the Human Rights Advisory Council evaluated visit reports and analysed the resulting priorities.

Constructive
collaboration

In the year under review, the Human Rights Advisory Council made detailed statements of opinion based on material presented by the NPM and also on its own initiative. Most of these were published on the AOB website.

Statements of opinion

A) Statements of opinion based on material presented by the NPM:

- Barring orders and prohibitions to enter in-patient care facilities
- Members of the visiting commissions entering railway tracks
- Use of technical devices in correctional institutions
- Violations of the obligation to wear a mask as well as social distancing at gatherings

B) Own initiative statements of opinion of the Human Rights Advisory Council:

- Accommodation of unaccompanied minor refugees
- COVID-19: desirable target situation in fully-assisted living and residential institutions (retirement and nursing homes and facilities for persons with disabilities)
- COVID-19: desirable target situation in psychiatric medical facilities, in facilities for the detention of mentally ill offenders, in institutions with a daily structure and partially assisted living as well as child and youth welfare institutions and facilities

An internal video conference held by the Human Rights Advisory Council on 8 June 2020 dealing with the topic of partial failure to observe human rights when defining COVID-19 measures for homes and similar institutions preceded the latter two statements of opinion.

In addition to these statements of opinion, working groups of the Human Rights Advisory Council also worked on the following topics in the year under review:

Working groups

- Involvement in creating an easy-to-read translation of the statement of opinion on barring orders and prohibitions to enter in-patient care facilities (title: *“Was darf die Polizei?”* – “What is the police allowed to do?”)

- Medical care of administrative detainees
- Comments on the commissions' visit reports
- Mandate and working methods of the Human Rights Advisory Council

Monitoring priorities The Council also contributed to defining the monitoring priorities for the NPM for 2021 with their own recommendations along with remarks and additional suggestions.

Advice During the COVID-19 pandemic in spring 2020, the Human Rights Advisory Council recommended on 30 April 2020 mobilising all available resources on in order to guarantee the maximum effectiveness of the NPM and to apply the "do no harm" principle to achieve the best possible protection of persons who had been deprived of their liberty or subjected to direct orders and coercive measures.

Due to the pandemic, the members of the Human Rights Advisory Council, in their specific function, addressed the issues surrounding the restriction of fundamental rights and rights to freedom for the purpose of preventing the spread of the COVID-19 pandemic in the NPM-relevant institutions during this time. In light of this expertise and due to statements of opinion from renowned national and international organisations, the Human Rights Advisory Council formulated recommendations and suggestions on current topics in correctional institutions such as the efforts to effect early release or alternatives to detention, the treatment of risk groups and outdoor exercise.

After the rapid fall in cases after the first lockdown, the Council also recommended scaling up the number of on-site visits before the summer.

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

2 Findings and recommendations

2.1 Retirement and nursing homes

2.1.1 Introduction

The NPM commissions visited a total of 109 public, non-profit or profit-oriented short- and long-term nursing homes in the year under review; 86 of the visits were unannounced. Most of the visits were cancelled between the middle of March and the end of May due to the reasons explained in chapter 1.2. However, even during this time, evidence of maladministration was examined, and strategies developed to stay in contact with the institutions (see chapter 2.1.2).

109 monitoring visits

The COVID-19 pandemic highlighted the systemic relevance of long-term care for the health care system in a dramatic way. The attention of the media and politicians was nevertheless focused primarily on the hospital sector and the capacity of normal wards and intensive care both after the pandemic broke out in spring and during the most difficult phase in autumn 2020. The NPM thanks all those who worked in care institutions and facilities with a high level of personal dedication under particularly difficult conditions. Even though they were largely unprepared for the pandemic and at times were themselves only inadequately protected and supported, they made a considerable contribution to preventing substantially higher numbers of cases and deaths. The scenes of residents left alone and the dead uncared for as seen in care facilities in Spain and Italy in the spring did not materialise in Austria. Greater appreciation on the part of society and financial recognition for the work of employees in the care sector are urgently required.

Recognition and thanks to those employed in the care sector

If the exhaustive care reform that has been demanded by the NPM for years is further postponed as has been the case to date, there is a risk that the system will collapse after the health crisis (see also NPM Report 2019, p. 22 et seq.). The Federal Government and the Laender have still not reached agreement on how the sustained financing of care will be ensured in the future and how the care sector can be expanded based on needs and comprehensible standards. It is also still unclear how staff shortages in particular in the area of long-term care and mobile services will be countered. More attractive working conditions must be created urgently and the salary gaps between public and private employers as well as between the hospital and care sector must be closed in order to recruit sufficient numbers of staff. The Austrian Court of Audit also emphasised the necessity for nationwide standards in calculating home tariffs and staffing in their report "*Pflege in Österreich*" ("Care in Austria"). It criticised the lack of valid quality standards for nursing homes, for example for specialised care, quality of life as well as medical and social care. The Court therefore demanded coordinated management taking the interfaces between health and care into consideration (see Austrian Court of Audit, *Bund* series 2020/8).

Care reform still pending

Many recommendations by the NPM were implemented in the retirement and nursing homes in 2020 too.

Many recommendations implemented

A nursing home in Vienna expanded its activities programme, which is now organised and implemented by social care experts. Concepts for violence prevention and dealing with dementia were also introduced as well as a late shift for the purpose of allowing residents to go to bed later.

Commission 1 was able to identify considerable improvement in a home in Tyrol since their last visit. Medication is now “packaged” by qualified care staff only. Measures for preventing falls were introduced and were effective. The evening meal was served later on a trial basis in a home in Styria. Additional staff were deployed on the late shift, in particular due to the large number of residents suffering from dementia.

In accordance with a recommendation by Commission 6, team and individual supervision are actively offered and availed of in a home in Burgenland. A home in Upper Austria acted on a recommendation from Commission 2. Staff satisfaction is now evaluated regularly. Mental stress is recorded and analysed every year with the support of an occupational psychologist.

As in previous years, homes frequently performed evaluations of medication-based measures that restrict freedom and reporting of the same to the residents’ representatives as a consequence of visits by the commissions.

Structural modifications and changes in design were implemented in some homes. Complaint letter boxes were mounted or placed in a better location, lighting systems adjusted to better illuminate the corridor area, automatic door openers installed, acoustic announcements activated or improved in lifts, and ramps ordered for balconies.

Indications of structural violence always result in a follow-up visit

If the statements of opinion by the owners and operators or the supervisory authority fail to clearly indicate that sufficient action has been taken on the criticism by the NPM and recommendations implemented, follow-up visits ensue. The procedure is the same if commissions have the impression that one monitoring visit will not suffice to cover more complex issues. This was the case, for example, in a private home in Vienna. The NPM received credible accounts of possible assaults on residents by employees. These could not be verified; however, the commission had the impression after talking to residents that the conduct of the employees was not appropriate. In particular, the behaviour of one qualified nurse was described by several residents as unpleasant, unprofessional and disrespectful. Structural violence was evident on fixed shower days. The call bells for some residents with very restricted mobility were placed too high and they were thus unable to reach them, as observed during the visit. All of the residents confined to their bed wore institutional clothing instead of their own clothes. Mobile partitions in rooms with several beds were not used even during care procedures involving private parts. Municipal department 15 explained in this respect that no deficits had been identified during a previous visit in spring 2019. The home considered the staff’s treatment of the residents as respectful and polite, but was prepared to deal with critical observations. The importance of manners was emphasised and participation in further training programmes on violence and de-escalation advocated in a team meeting. The management also had a detailed discussion with the qualified nurse on the observations made by Commission 4. The home was noted for a follow-up visit.

Worn rooms and cramped conditions were problematic in certain homes. In a home in Lower Austria Commission 5 observed that residents had to eat their meals in a noisy atmosphere between laundry carts in the corridor.

2.1.2 Online contact and telephone interviews

The NPM maintained contact with care facilities via video conferences when most of the visits stopped. These took place particularly when concrete complaints from residents, their relatives or the staff gave grounds for concern. During the first lockdown in particular it was evident that combining the preventive and ex-post control mandate of the AOB as an Ombudsman institution was a contributory factor when immediate action was required by the authorities in certain situations.

Video conference with care facilities

Commission 3, for example, contacted the employees of a home in Styria by video conference because there were indications that several of the residents were showing symptoms of a COVID-19 infection and half of the staff might also have been infected. It became clear during the conversation that the operator had neither forwarded information from the health authorities to the care service and the staff nor had they implemented other measures to get the situation under control. Staff who were on sick leave were listed in the shift plan. The alarming conditions were immediately brought to the attention of the office of the Regional Minister of Health. Commission 3 was informed a few hours later that substitute personnel from other facilities would be recruited to carry out an evacuation. All of the residents were moved to hospitals in Hartberg and Weiz due to the risk to their life and limb confirmed by the official expert. The continued operation of the home was made subject to compliance with several conditions. The home has since been closed down. Legal proceedings have been opened against the operators.

Between 4 and 15 May 2020, the commissions held 166 telephone interviews with care services throughout the country. These interviews, which lasted at least half an hour, were conducted using a questionnaire especially developed for that purpose. The objective of these structured interviews was to obtain information from the source on the problems that had to be addressed during and after the lockdown. The focus was on the following topics: How did the institutions prepare for the pandemic? What kind of support were they offered? What do they need? What have they learned and what are the most important issues they want to tell political decision-makers ?

166 telephone interviews

The results of the survey were presented via the media by Ombudsman Bernhard Achitz on 2 July 2020 and published on the AOB website. It was strongly emphasised that politicians should draw conclusions from the survey when preparing for a possible second wave of infection.

From mid-April 2020, the care services found it frustrating that they received documentation from different authorities, associations and expert groups, which sometimes turned out to be highly complex and some of the recommendations were impossible to implement. Great pains had to be taken to firstly translate much of the information into checklists using a language that both care staff, residents and their relatives could

Insufficient concrete information

understand. The need for concrete regulations and recommendations was addressed repeatedly.

The responses showed that the lack of state support coupled with the absence of help in procuring PPE and delays in evaluating PCR tests in the early stages of the pandemic were perceived as extremely frustrating. In many cases, there were only PPE reserves because there had been an outbreak of influenza or the norovirus at the beginning of 2020. In March 2020, a pandemic box was available in 25% of care facilities in Burgenland, 33% in Salzburg, 42% in Lower Austria and Tyrol, 45% in Carinthia, 47% in Upper Austria, 54% in Vorarlberg, 66% in Vienna and 69% in Styria.

Personnel reserves were inadequate and there were no pools to fall back on in crises. This was the case in particular when experienced staff became ill, were no longer allowed to enter the country from abroad or had to go into quarantine. The staff shortages could not be fully compensated despite the deployment of additional persons performing community service. The 2nd COVID-19 Measures Act (2. COVID-19-Maßnahmegesetz) made it possible to deploy persons without care training or qualifications as well as persons who have completed their training abroad but whose qualifications are not yet recognised. These options were used as a consequence of the staff shortages.

Employers' duty of care Employers are required to look after the health of employees working in long-term care as part of their duty of care. It was already clear from the legal provisions existing before the coronavirus crisis that employees must be protected from harm to their lives and their health in particular and that chronic stress must be prevented. Unilateral last minutes changes to the shift plan are only permissible in emergencies and special circumstances, but they were often necessary during the pandemic. The staffing levels were not increased however: on the contrary, in some Laender the existing tight minimum staffing and specialist ratios were lowered until March 2021.

Very high workload The workload for qualified staff intensified particularly in those homes in which there were outbreaks of the infection. In some cases, there were and still are no separate rooms for employees in isolation areas to change their PPE or wet masks or to take breaks. Fortunately, however, it was emphasised in many homes that cooperation, communication and mutual appreciation had increased during the crisis. The constantly changing need for action also helped increase the preparedness of those involved to adapt to a new situation every day.

The preparatory measures taken by the medical facilities for treating seriously ill COVID-19 patients also proved to be a strain. They meant that persons living in care facilities could not be examined and taken care of or only to a very limited extent for several weeks. This affected residents with cardiovascular, oncological or chronic illnesses who prior to that had been examined regularly in hospitals or been visited by the home's medical officer. In long-term therapy and isolated cases Doctors therefore delegated the administration of medication to qualified care staff under Section 15 of the Federal Act on Healthcare and Nursing Professions (*Gesundheits- und Krankenpflegegesetz*) more often than before. This delegation also included medication containing addictive substances or sedatives that can be administered by qualified staff without harm. Telemedi-

cine programmes in some homes also unearthed enormous potential for care without the risk of infection. Consequences for regular care should be drawn from this after the pandemic has been overcome.

Since the outbreak of the pandemic, the Austrian Healthcare and Nursing Association had been endeavouring to at least grant the competence for autonomously carrying out COVID-19 antigen tests as well as issuing the test confirmation to persons with health care and nursing qualifications. However, this did not materialise in 2020 despite the extensive training of the nursing staff. Whilst in December 2020 paramedics were allowed to swab the nose and throat and perform point of care COVID-19 antigen tests for diagnostic purposes and to take blood from the capillaries to detect antibodies in the context of the pandemic, no consideration was given to care facilities. Yet obtaining a doctor's prescription before testing in care settings in particular is neither practicable nor medically required due to time restrictions and the anyway limited resources. The legislature only reacted to this at the end of February 2021. By amending the Epidemics Act (*Epidemiegesetz*) it was ensured that senior health and nursing staff as well as assistant nurses among others can also swab without prior doctor's prescription when screening to stop the spread of the SARS-CoV-2 pathogen, pursuant to the Federal Act on Healthcare and Nursing Professions.

Amendment of
Epidemics Act

79% of basic medical care was guaranteed in mid-May 2020 according to the care services surveyed. The limited presence of some medical officers and waiting times for appointments in medical facilities were strongly criticised as were the different approaches used by the health authorities with isolation directives. Both the staff and residents also criticised having to wait several days for the results of PCR tests in suspected cases.

Just three of the recommendations made in July 2020 are repeated here, as they are still relevant in the view of the commissions. Some of the recommendations were already followed in the year under review. At the expense of the Federal Government, 100,000 doses of vaccine for the seasonal influenza were procured specially for the residents of nursing homes as a precautionary measure and administered free of charge.

- ▶ *The nationwide availability of telemedicine programmes such as video consultation hours or telemonitoring facilitate the medical and therapeutic care of residents in care facilities and should be integrated into regular care.*
- ▶ *The range of tasks for the fully trained higher service should be expanded such that more medical tasks reserved for doctors can be performed by qualified care staff without a doctor's prescription in the future.*
- ▶ *Government agencies shall supply care facilities with sufficient PPE in emergencies during catastrophes. These should be able to rely on quickly getting the required support, be it technical, procedural or personnel.*

2.1.3 Requirements of COVID-19 prevention concepts from a human rights perspective

Most of the residents of homes are much older than 80 years of age, often have multiple diagnoses, and over half of them are suffering from dementia. Cramped conditions coupled with close physical contact with different caregivers generally pose an increased risk of the rapid spread of infectious diseases. In view of the risk of life-threatening complications after SARS-CoV-2 infections, the compatibility of increased virus prevention with the fundamental and human rights of the residents was a core issue for the NPM. The foundations for evidence-based, legally responsible and coordinated action were anything but clear early on.

Figures from the Austrian Agency for Health and Food Safety (*Agentur für Gesundheit und Ernährungssicherheit*) and the Austrian National Public Health Institute (*Gesundheit Österreich GmbH*) indicate that during the first wave in spring 2020 0.3% of all residents of nursing homes died of or with COVID-19. In line with the considerably higher number of infections in the general population, during roughly the ten times stronger second wave in the autumn, both the number of infections and deaths in nursing homes rose sharply. Shielding nursing homes from the outside world proved to be problematic from an ethical point of view, laden with conflict and unenforceable in practice. Thousands of scientists engaged in research all over the world emphasised in a memorandum in October 2020 (<https://www.johnsnowmemo.com/>) that no country had yet succeeded in protecting high-risk groups of individuals in homes when the numbers of COVID-19 new infections were on the increase.

State's duty to protect

Despite the announcements and promises made by politicians and the authorities to guarantee more protection for high-risk patients, smaller care facilities in particular were quickly stretched beyond their limits to even read the nonstop flood of information and non-binding recommendations. The lack of effective help and possibility to test the staff regularly was a critique frequently voiced to the commissions. That looking out for symptoms of COVID-19 and only testing residents who were symptomatic is not an adequate strategy for containing the infection in nursing homes was also evident in those homes that had already been affected by outbreaks in spring 2020.

In the view of the NPM, the proactive obligation to protect life is not only the duty of those responsible in the homes but also of the health authorities on federal and regional level entrusted with combatting infection. It is even more incomprehensible that there was a lack of medical PPE for several weeks after the pandemic broke out and there were no concepts based on valid risk analysis for the use of PPE.

Restrictions of fundamental rights require objective justification

In all of the decisions it has made on the pandemic so far, the Constitutional Court of Austria has also made it clear that only soundly documented evidence can legitimise the proportionality of serious infringements of social life, fundamental rights and right to freedom. Therefore, it is not the exercising of constitutionally guaranteed rights by elderly residents that needs justification but every restriction of the same - even temporary - requires a legal basis as well as a verifiable objective justification.

In television programmes, expert presentations and in the media, the NPM emphasised that it does not suffice when the restriction of fundamental rights pursues a legitimate goal – which is without any doubt the case in protecting the life and health of the population when there are high numbers of COVID-19 infections. Moreover, the measures taken to achieve this goal must be suitable, necessary, appropriate and proportionate. The sooner a suspected case of COVID-19 is detected, the better the staff can adjust to the situation and react correctly so that nobody else becomes infected. In the care services, it turned out that caution regarding clinical symptoms (taking temperature, cough etc.) displayed by the staff and residents could not prevent the spread of infection. What is also important with those in need of care in epidemiological terms is the high number of asymptomatic, infectious virus carriers. Furthermore, infected persons are contagious before they develop symptoms. In both scenarios only a properly developed test strategy can halt the uncontrolled transmission of COVID-19. There are now far more instruments available to this end than in the spring.

Protection of fundamental rights still applies during the pandemic

In spring 2020 the NPM emphasised in written and personal exchanges with the Federal Ministry of Social Affairs, Health, Care and Consumer Protection that nursing home operators need evidence-based instructions on the one hand and legal security on the other in the greatest health crisis in recent history. The dialogue with the Ministry was preceded by meetings with operator organisations, umbrella associations and the representatives of the residents. In this context, there was consensus that during the pandemic supplementary and normatively binding standards are required for effective infection prevention. Nursing homes and the employees who work there should not have the impression that in practice they can only choose between being accused of the criminal deprivation of liberty or the gross negligence of human life. The head of a nursing home expressed the dilemma to Commission 5 in the following words: "It is an intolerable situation. When there is a COVID-19 outbreak everything is inspected even though there are no infection prevention standards. But then it is easy for everyone to blame supervisors for having done things wrong."

Dilemma of contradictory requirements

From 1 November 2020 the Minister of Health issued nationally binding directives through several short-notice amendments (COVID-19 Preventive Measures Regulation – *COVID-19 Schutzmaßnahmenverordnung* as well as COVID-19 Emergency Measures Regulation – *COVID-19 Notmaßnahmenverordnung*). These stipulate amongst others the number and frequency of regular tests for employees of nursing homes, the FFP2 mask obligation, the required content of hygiene concepts (especially for a possible outbreak of SARS-CoV-2 infection), but also regulations for managing visits by relatives and the admission and re-admission of residents.

Progress through standards

For the NPM it is an improvement that the operators of retirement and nursing homes and homes for persons with disabilities are compelled to observe specific precautionary measures to minimise the risk of infection. Unlike in the spring, health and social collateral damage as a consequence of social isolation and the complete shielding of residents can thus no longer be accepted.

The way in which the NPM observed and legally assessed the restriction of personal freedom in retirement and nursing homes is explained in detail in this chapter (see chapter 2.1.4).

Infection prevention binds human resources

The regulations of the Federal Ministry of Social Affairs, Health, Care and Consumer Protection for infection prevention (COVID-19 Preventive Measures Regulation and COVID-19 Emergency Measures Regulation) increased the workload in the facilities enormously. However, the existing staffing ratios do not even come close to covering this additional work, for example the demanding hygiene concepts, visiting management, the regular testing of residents as well as the staff or the organisation and implementation of the COVID-19 vaccinations. There are increasing levels of exhaustion among those who repeatedly pushed themselves beyond their own limits in recent months to protect the residents or to nurse them in the best way possible after infection. The Federal Government assured in December 2020 that any increased cost for additional staff would be covered. Not in every Land and region there were permanent testing facilities by the end of 2020 where staff and relatives could be tested quickly and in an uncomplicated way before starting work or entering the building.

Federal Ministry of Social Affairs, Health, Care and Consumer Protection

The NPM considers it positive that the Ministry has been inviting representatives from in-patient and mobile care services, professional and umbrella associations and the Austrian National Public Health Institute to a dialogue – recently in weekly video conferences – since autumn/winter 2020. The Ministry thus receives feedback on problems and requirements from the source and can provide information on planned changes. The NPM is also involved in this dialogue.

2.1.4 Precautionary infection prevention through deprivation of liberty impermissible

In spring 2020 restrictions on entering public places were enforced in Austria. Persons living in private households, however, were allowed to buy groceries and things necessary for everyday life themselves, go out for a walk or go to the bank or post office. The management of nursing homes imposed far stricter preventive curfews to minimise the risk of transmitting the SARS-CoV-2 virus and strongly recommended residents not to go outside. Both the Federal Ministry of Social Affairs, Health, Care and Consumer Protection as senior health authority and the home supervisory authorities of the *Laender* condoned residents being isolated from the outside world and their right to freedom being restricted without official directive and against their will.

The telephone interviews conducted by the commissions showed that 48% of the care services interviewed still considered briefly leaving the grounds of the home as too dangerous in mid-May. Care services in regions that had hardly been affected by infection to date expressed reservations as to whether this was really necessary. However, they complied with information that stipulated using “security barriers” to counter the risk of infection that could be “imported” into the nursing home from the outside.

Initial reactions justifying these regulations explained that as an illness posing a danger to all risk groups COVID-19 is highly contagious and that there are also asymptomatic cases as well as times when the SARS-CoV-2 pathogen cannot be detected.

The Federal Ministry of Social Affairs, Health, Care and Consumer Protection contributed to guiding nursing homes in the wrong direction with recommendations that were published on its website from 21 April 2020. Residents suspected of being infected with COVID-19 must be isolated in their room or in other suitable accommodation – in compliance with reporting obligations. Because of this, the management of homes assumed that they shared responsibility for implementing the Epidemics Act and were also empowered to use coercive measures.

Recommendations of the Federal Ministry

Information to this effect was given to the residents and their relatives. Commissions 4 and 5 found notices in several homes of one operator with the following content: “Persons who nevertheless leave the pensioners’ residential building must go into mandatory quarantine for 14 days upon their return”. One resident who despite curfew and a warning rebelled against being isolated in her apartment by leaving the grounds of the home to quickly buy something was threatened with termination of her contract. The NPM was able to avert the unilateral termination of the home contract.

Curfews in several homes

In a home in Lower Austria, all of the residents were told not to go outside but to stay inside all of the time. Entrances and exits were not actually locked during the day. However, a crowd barrier was placed between the road and garden entrance to prevent anyone from leaving the home. Furthermore, there were fears that some relatives could use the ground level terraces adjacent to the rooms to circumvent the visiting ban. One home in Tyrol reacted with a written warning and threatened to terminate the home contract of a woman confined to a wheelchair who spoke to her son in the garden of the nursing home while observing social distancing.

The commissions also observed “preventive” isolation of residents on monitoring visits to homes in Burgenland, Styria and Salzburg. This had not been imposed by the health authorities, that is, there was no evidence of contact with them. The predominant cases were not only limited to residents leaving the grounds of the home to go outside or visit relatives. Isolation was frequently imposed after release from hospital or on new admissions even when a negative PCR test had been made in advance and a certificate had been presented. Up to 14 days “precautionary” quarantine (from August 2020 usually ten days) in isolation was the reaction when residents had to undergo outpatient treatment and it could not be ruled out that they had become infected during organised ambulance transport or during the treatment. The situation was particularly dramatic for dialysis patients who were not allowed to even leave their rooms for several weeks and had no personal contact with relatives or other residents.

14 days quarantine in the room

Infection prevention that results in massive restrictions of freedom and social isolation for those in need of care condones damage to their physical and mental health and contributes to a deterioration of (dementia) illness (see Nebois-Zeman/Jaquemar, “COVID-19 aus Sicht der Bewohnervertretung nach HeimAufG” – “COVID-19 from the perspective of representatives of the residents pursuant to the Nursing and Residential

Recommendations of the Human Rights Advisory Council

Homes Residence Act”, ÖZPR 2020/100, issue 6, p. 180 et seq.). A Human Rights Advisory Council working group provided the NPM with recommendations depicting a target situation. This thesis was published on the AOB website. The NPM too considers restrictions to freedom for observing hygiene measures or preventing infection that go beyond the Epidemics Act as massive infringements of human dignity, and continuously questions the legality of the same.

Coercion allowed only in certain cases

Virological and epidemiological requirements that call for sharply reducing contact do not justify partially circumventing laws and the rule of law as a guiding principle of the Federal Constitution even during a pandemic. Mere recommendations from the health and supervisory authorities and advisory bodies that gave rise to extensive quarantine measures have no normative effect. Restrictions of the freedom to move based on this, which are applied indiscriminately to all residents, were however likely to massively infringe their guaranteed protected areas pursuant to Sections 5 and 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms as well as Section 1 of the Federal Constitutional Law on the Protection of Federal Freedom (*Bundesverfassungsgesetz über den Schutz der persönlichen Freiheit*). Care facilities are compelled to immediately report residents who are suspected of being infected or contagious to the competent sanitary authority pursuant to the Epidemics Act. Only this authority shall issue directives but also enforce mandate and isolation notices in the event of imminent danger. In such cases, the staff shall support the residents in implementing the measures set by the health authorities. The exercising of coercion by members of the health professions is not the intention of die Epidemics Act. On the contrary: if a resident refuses to isolate, the applicable legal situation stipulates accommodation in a medical facility pursuant to Section 7 (2) of the Epidemics Act or isolation using coercive measures by the police pursuant to Section 28a of the same Act. The legality of each of these measures must be verifiable according to due process. In the majority of the cases observed by the commissions, curfews and quarantine measures were not based on any official directives.

Threats of isolation and termination of the home contract

Bans on leaving the grounds of the home or their rooms imposed on residents who observed normalised hygiene standards, contact restrictions, social distancing and wore a mask during the pandemic are always impermissible because they have no legal basis. Furthermore, threats of 14 days of isolation or the termination of the home contract in the event of violation of directives issued by the home management fulfil the criteria for coercion. Without a positive COVID-19 test result or concrete grounds for suspected contamination, freedom-restricting measures for the prevention of infection may only be set pursuant to the provisions of the Nursing and Residential Homes Residence Act. There are usually high-risk patients among the residents and only staff who are protected from the risk of infection can guarantee the operation of the homes. As a consequence, measures that restrict freedom can be applied as a less severe and last alternative pursuant to the said Act to residents who are cognitively severely impaired and not fully capable of controlling their faculties. Such measures shall be reported to the representatives of the residents and persons of trust.

The NPM contacted the Federal Ministry of Social Affairs, Health, Care and Consumer Protection several times from mid-May 2020 and drew attention to the legally highly questionable practice. It sought to inform the home operators about the legal situation and to point out that the preventive deprivation of liberty can be avoided through risk management. Due to the large numbers of complaints, the difficult topic was discussed also on the television programme “*Bürgeranwalt*” (“Advocate for the People”). The objective here was not to criticise the management of homes who themselves are stretched to their limits with the emergency situation. Rather the idea was to give an impetus to learn from the experience of the last few months and look for alternatives that are commensurate with human rights guarantees. This was understood in many cases – but not consistently. The Ministry – probably due to the substantial decrease in the numbers of new infections – revised the originally misunderstood recommendations in June 2020 and clarified in a reissue that the restrictions on spending time outside of the home shall not be stricter for the residents than those for the rest of the population.

NPM informs Ministry of Health and the public

On the instigation of the residents’ representatives associations, there have since been several legally binding court decisions pursuant to the Nursing and Residential Homes Residence Act, which declared the restrictions to freedom to which the residents of retirement and nursing homes were subjected illegal at least in part.

The commissions did not observe any indications of general curfews during the summer but also during the second and third lockdown in autumn and winter 2020.

Autumn and winter 2020

Finally, in the end of December 2020 it was also decreed that after leaving the home for more than two hours an “obligatory explanatory talk shall take place”. It is still not clear in how far this can be implemented in practice.

Test on returning to the home

- ▶ *Right to freedom may not be unconditionally subordinated to infection prevention even during a pandemic. Legal limits shall always be observed in this context.*
- ▶ *Programmes that promote exercise for those in care to prevent immobility and a further deterioration of cognitive deficits shall be observed even during the pandemic.*
- ▶ *Prior to concluding a home contract, the pandemic concept of the home shall be explained to the interested parties and their relatives.*

2.1.5 Strict visiting rules

For persons living in long-term care facilities being able to converse with and touch people with whom they have an emotional bond is a welcome change. In addition to those who want to reassure themselves of the wellbeing of their relatives at least once a month, there are many who offered their support in doing everyday chores several times a week, some of them on a daily basis. For residents with cognitive or mental impairments, the presence of trusted persons alone can give them a sense of security and belonging. If their ability to communicate by speaking gradually deteriorates, it is

very helpful if those close to them know how to interpret their facial expressions and gestures and translate them to the nursing staff.

The subject matter of many complaints brought to the NPM's attention shortly after the pandemic outbreak was visiting bans and restrictions in retirement and nursing homes. Whilst families at home were able to agree on whether and in how far they would practice social distancing with a view to the risk of infection with COVID-19, the residents of care facilities and their relatives were confronted with a *fait accompli*.

Unclear legal basis for
visiting bans

Between the end of February and the end of April 2020, visits to care facilities in Austria were almost completely banned or conditional on special permit from the home management. Whether the legal basis for these restrictions was appropriate is more than questionable. In most cases, the requests for visiting bans were issued by the respective regional government which justified their actions with existing written recommendations of the Federal Ministry of Social Affairs, Health, Care and Consumer Protection. Vienna was the only *Land* to stipulate visiting restrictions in temporary regulation thereby removing the pressure from those facilities that had to implement the same.

New media not a
complete substitute for
human relationships

In the first few weeks of the pandemic, relatives were only allowed to say goodbye to the dying in person. In all other cases, strict measures were enforced to avoid the risk of infection and forbid visitors from entering homes. Only palliative and hospice wards were barely affected by these restrictions. To the credit of those responsible in the homes, it must be acknowledged that in the first few weeks after the outbreak of COVID-19 in Austria there was little knowledge of the already active regional spread of the SARS-CoV-2 virus and there was not enough PPE even for the staff. Much time and creativity were used to compensate for the negative effects. Residents were helped in using social media and video telephony to an extent never seen before. The staff often had to help out with laptops, tablets and smartphones. It became quite evident that digital media cannot replace physical closeness for those with poor eyesight or who are hard of hearing as well as those who are cognitively impaired. This is why a home in Vorarlberg encouraged meeting in the garden or through a window from the gym into the garden while observing social distancing at a very early stage. Some permitted visits from a distance, for example, on adjacent balconies or in the form of "fence visits". One home in Tyrol organised postcards with enclosed reply envelopes for the residents to make easy contact. Regular caregivers in a home in Lower Austria wrote letters together with the residents and enclosed photos for the relatives.

The longer the restrictions lasted, the more criticism was expressed at isolating the residents and shielding them from the desired social contacts. Furthermore, it quickly became clear that this did not help prevent outbreaks of infection and deaths in homes. The numbers of complaints increased from persons who missed their spouse, mother, father or grandparents and feared that they would suffer emotional harm and pass away alone. The management of some homes joined the criticism and demanded political support in carefully reopening their doors without being subject to criminal investigation in the event of COVID-19 infections.

The NPM took up and supported this appeal. The Austrian National Public Health Institute was tasked by the Federal Ministry of Social Affairs, Health, Care and Consumer Protection with developing possible solutions, to which the NPM also contributed content. Due to the considerable fall in cases of new infections, the Ministry issued recommendations for the gradual easing of visiting restrictions in retirement and nursing homes from 4 May and 6 June 2020. There have been no more nationwide visiting bans since then.

Restrictions eased during the summer

The manner in which visits are managed is at the discretion of the individual homes. Appointments for visits in dedicated areas – preferably outside – were possible again from May 2020. Visits in rooms, however, were only allowed in most cases in critical phases of life or supporting dying persons. Commissions observed that inside the homes visitor boxes or berths partitioned by plexiglass in open areas or cafés had been set up. Many relatives found wearing a mask and maintaining social distancing difficult because they felt that those in need of care who have cognitive impairments or poor sight or are hard of hearing could not be reached emotionally. In some cases, commissions complained that confidential conversations were not possible in the cramped visitor areas. Some visiting regulations reminded the relatives more of a “prison situation”, as the staff was constantly in sight to monitor whether social distancing was being maintained or people were touching. The time allowed for visits also varied greatly depending on the *Land* and home operator. In many cases, the fact that visits by appointment for only one member of the family respectively were allowed and limited to 15 to 30 minutes gave grounds for conflict. In some homes it was clearly noticeable to the commissions that the staff dedicatedly supported the residents allowing them to have contact with their relatives. In this way, around 32 visits were possible per day in a home in Tyrol with the help of volunteers; in another home over 60 visits were possible per day.

Regulated visiting

Commission 6 criticised that visiting times in a home in south Burgenland were only possible between 12.30 p.m. and 3.00 p.m. Commission 4 questioned why visiting times in a home in Vienna were only possible on weekdays, thus being a barrier to the working population. The management of homes justified this with having to organise visits in such a way that risks are mitigated. They said that advance registration, checks on the day of the visit and disinfecting surfaces after every contact from outside already bound more staff than is currently available. It took quite some time until relatives but also volunteers who had relieved the therapeutic and nursing staff before the pandemic were once again gradually perceived as a supportive pillar in the everyday running of the homes. Reports by the commissions on monitoring visits from July 2020 onwards showed that generally speaking “normal” visiting by advance appointment with registration as well as hygiene standards and obligation to wear a mask was possible in the summer.

Strict compliance with hygiene-related preventive measures gained in importance with the sharp rise in the numbers of infections in autumn 2020 and the shifting of opportunities to meet to the indoors. Commissions noted critically in their feedback to those responsible for the homes that compliance with the preventive measures could be better. Commission 3 visited a home in Carinthia in October 2020 in which neither the staff nor the residents and their relatives were wearing masks on the day of the visit. The staff appeared not to be adequately trained in the use of PPE and some did not

Hygiene requirements not fit for purpose in a pandemic

know where it was stored. The Commission saw a structural deficit in the fact that the provisions set forth in the Carinthian Nursing Home Act (*Kärntner Pflegeheimgesetz*) and in the regulation enacted therein allow that one hygiene officer from the operator organisation is responsible for a total of nine care homes. The NPM noted that a legal comparison of the applicable standards in the individual *Laender* showed that there was little emphasis on infection prevention and hygiene-related regulations (with the exception of Vienna) before the pandemic. Regulations were enacted in Vienna and Burgenland in the late summer that stipulated who is allowed to enter care facilities under compliance with what conditions.

The COVID-19 Preventive Measures Regulation (*COVID-19 Schutzmaßnahmenverordnung*) that came into force on 1 November 2020 (Federal Law Gazette II No. 463/2020) contained binding, nationwide applicable standards for the operators of retirement and nursing homes for the first time. These were tightened with the second lockdown on 17 November 2020 through the COVID-19 Emergency Measures Regulation (*COVID-19-Notmaßnahmenverordnung*) (Federal Law Gazette II No. 479/2020). In December 2020, amendments were added in the 2nd and 3rd COVID-19 Preventive Measures Regulations (Federal Law Gazette II No. 544/2020 and Federal Law Gazette II No. 566/2020) as well as the 2nd COVID-19 Emergency Measures Regulation (Federal Law Gazette II No. 598/2020).

Operators must present prevention concepts

These regulations from the Federal Government increased infection prevention in view of a number of clusters in care facilities. Furthermore, stricter visiting management as well as test strategies for the nursing staff, the medical and therapeutic staff and also the residents were enforced. Exceptions for specifically defined situations were permitted for relatives and persons who regularly perform supporting and care tasks. The regulations from the Minister of Health expressly state: "The measures for retirement and nursing homes shall not be disproportionate or cause unreasonable cases of hardship".

FFP2 masks and obligation to test

Temporary visiting bans were imposed in Upper Austria, Burgenland and Carinthia in view of the numbers of new infections being far in excess of the Austrian average. The Upper Austrian regulation (Provincial Law Gazette No. 104/2020) included several broadly formulated exceptions and ceased to be in force again from 6 December 2020. Burgenland made supplementary regulations for the duration of the visits (maximum one hour), conditions for visits in the resident's room, for coma patients as well as tests after leaving homes (Provincial Law Gazette No. 747/2020). The Carinthian regulation (Provincial Law Gazette No. 94/2020) stipulated a complete visiting ban with exceptions for palliative and hospice care. The NPM drew the attention of the Minister of Health and the Carinthian Governor to the fact that the legality and conformity with fundamental rights of the additional restrictions in the regulation are called into question. For example, it was planned from 12 to 21 November 2020 that home operators have to refuse admission to residents if they have spent more than an hour outside the home and were unable to present a negative COVID-19 test result. The NPM is of the legal opinion that residential units in retirement and nursing homes and homes for persons with disabilities are private living quarters, which is why it is not permitted to prevent returning there by means of a regulation.

The rapid succession of increasingly restrictive requirements from the Federal Government and individual *Laender* made it almost impossible for the homes to prepare and provide information about the new visiting regulations. From the beginning of December 2020, wearing an FFP2 mask was sufficient for all those who did not have the result of a current antigen or PCR test to be allowed to see their relatives in care. From the middle of December, visitors had to present a negative test result and wear an FFP2 mask during the visit.

The tense relationship between infection prevention that is proportionate to the health risk and the right to privacy and family life exists and still has potential for conflict. At least during the nationwide lockdown in Austria from November 2020 there was little scope for extensive easing of restrictions. All of those involved in the care sector but also the general public, the media and relatives must be aware that outbreaks of infection with fatal consequences cannot be 100% avoided in care facilities despite all the efforts made and precautions taken. In light of restrictive hygienic measures it is even more necessary to accommodate the needs of the residents for comfort, occupation, inclusion and bonding. When it will be possible to supply residents and employees working in long-term care with vaccinations was not foreseeable for the NPM at the time of editing of this report.

- ▶ *The needs of the residents for family and personal contact shall be given appropriate priority when balancing infection prevention and social participation.*
- ▶ *There should be a stop to visiting bans – both nationwide and in the respective Laender. In the event of changes in the law, the facilities should be given sufficient preparation time so that they can inform residents and relatives about the current visiting regulations.*

2.1.6 „First lane“ test strategies for care facilities

As a COVID-19 infection is often asymptomatic, the personnel working in homes is not safe from becoming infected unwittingly. The mandatory regular precautionary testing of the employees of retirement and nursing homes was introduced nationwide from as late as 1 November 2020 with the COVID-19 Preventive Measures Regulation, Federal Law Gazette II No. 463/2020. Prior to that there was no harmonised nationwide strategy. Three million tests for a closely meshed test network in the retirement and nursing homes were secured by the Federal Government for the purpose of expanding the screening programmes focussed on protection of the retirement and nursing homes.

Whilst an antigen or molecular biological test for SARS-CoV-2 was required once a week in the beginning, the prescribed test frequency has since increased. The operators of retirement and nursing homes are only allowed to admit employees who are screened every three days at the latest. Feedback from the personnel to the commissions shows that the willingness to contribute to the increased infection prevention is quite high.

Increase in test frequency

However, the nasal swabs used for the antigen tests are perceived as unpleasant and very painful for some. Even if these tests are correctly performed by qualified staff, the nasal mucous membrane reacts very sensitively particularly if there is inflammation. Furthermore, the anatomy in the nose is not the same for everyone and can make inserting swabs up to the nasopharynx problematic.

This is why care facilities in Vienna now use other test methods that do not require medical personnel and are not painful: the gargle test. Unlike the rapid antigen swab test, the gargle test is a PCR test and must be analysed in a laboratory. Another advantage with this method is that it also enables testing for specific virus mutations. The method used to extract sample material was developed as part of the Vienna COVID-19 Diagnostics Initiative (VCDI) and financed through the funds of the Mayor of Vienna and the Vienna Science and Technology Fund amongst others. The screening in the pilot project was conducted on the basis of the Epidemics Act and supported by the medical crisis taskforce of the City of Vienna which also decides on the inclusion of additional operations.

Long waiting times
for test results

The rapid execution and analysis of PCR tests is also essential as soon as suspected cases emerge. Long waiting times for the results make implementing appropriate measures difficult and endanger the life of residents who have not been inoculated yet but might have become infected while not displaying symptoms. In a home in Styria a SARS-CoV-2 infection was diagnosed in a woman by chance after she had been taken to hospital for out-patient treatment. All of the employees as well as the staff were immediately tested by the Red Cross. It was reported to Commission 3 that it took four days to analyse these PCR tests in a laboratory in Salzburg even though the nursing staff had been promised the results within 24 hours. The management of the home had to resort to rapid tests in the interim, of which there were not enough available and some of which produced false negatives. It gradually emerged that 35 out of 73 residents as well as 15 members of the care staff were infected. Twelve persons in need of care died of or with COVID-19 in the home within 14 days.

NPM demands faster
analysis of PCR tests

The NPM requested the Minister of Health and the regional government of Styria for a statement of opinion on how a prioritisation of the analysis of PCR tests from care facilities can be implemented and which concrete steps are being taken to give these facilities the best possible care – in particular, in regions affected by a sharp increase in number of cases. If care facilities have to wait several days for laboratory results, the risk increases that the residents who are not infected cannot be physically separated from those who have been tested positive quickly enough. This also puts the staff at risk – and not least the entire care system.

In a nursing home in Mürztal, 90% of the residents were tested positive for SARS-CoV-2 in November; 75% of the nursing staff were also infected or in quarantine (as 1st contact person). The Federal Army had to help out.

In its statement of opinion, the Federal Ministry of Social Affairs, Health, Care and Consumer Protection pointed out that test capacity is reserved according to a prioritisation within the limits of the available overall capacity. In the event that there is a bottleneck due to

increasing numbers of infections, it is incumbent on the Governor to define an alternative test sequence. Other suitable laboratories can be commissioned for these analyses if the available laboratory resources within the scope of the regional administration are not sufficient. The regional government of Styria requested an extension of the deadline meaning that the content was not clarified at the time of editing this report.

- ▶ ***Mass testing of the staff in care facilities shall not be painful or cause other health complications. Priority shall be given to more tolerable test methods.***
- ▶ ***Prioritisation of the execution and analysis of PCR tests after suspected cases of infection in retirement and nursing homes (“first lane”) is urgently required. The necessary precautions shall be taken by the respective health authorities.***

2.1.7 Positive observations

As in previous years, some examples of good practice are mentioned here.

The comprehensive animation programme in a home in Styria that involved residents suffering from dementia drew attention. Their life stories, routines and preferences were documented together with their relatives as part of a biography project. Three animators employed in the home tried to activate those in need of care and accommodate their needs throughout the day. Commission 2 also observed that the psychosocial care of persons with dementia is not only mentioned in the care plan but also actually put into practice in a home in Salzburg.

Biography work

Increased strict hygiene measures are essential in the fight against COVID-19. A positive observation made by Commission 1 in a home in Vorarlberg was that not only regular mini training sessions were held by the head of the nursing staff but the sessions themselves and participation therein were always documented. The staff who are not responsible for care were also trained in the correct use of PPE and know what they have to do in the case of an outbreak of infection.

Hygiene measures

A geriatric day centre in Vienna that was closed in March 2020 still offered clients “remote care”. The staff maintained daily contact with them by telephone and informed mobile services in cases of emergency, which then carried out house visits. Once or twice a week a letter with information, recipes, puzzles, activity and health tips was sent to the clients. There was also an immediate and effective reaction to a suspected case of COVID-19. All of the contact persons were tested in a test bus belonging to the Samaritans. A home in Salzburg purchased a rikshaw during the lockdown with which trips were made nearly every day thanks to the dedication of volunteers.

Special activities during the lockdown

A home in Tyrol conducted a survey of the residents after the first lockdown on how they had felt and what they had missed most. A gala dinner was organised by the home management in August 2020 to celebrate having coped during this difficult time together.

2.2 Hospitals and psychiatric institutions

2.2.1 Introduction

In 2020 the NPM commissions visited 28 medical facilities, including 19 psychiatric and 9 somatic clinics or departments.

Abolition of net beds As early as 1999, the CPT recommended the Austrian Federal Government to stop the use of net beds in psychiatric clinics. The NPM has taken up this demand several times (see Annual Report 2013, p. 37 et seq.). Per decree of 22 July 2014, the Minister of Health forbid the use of psychiatric intensive beds (net beds) as well as other “cage-like” beds and granted a transition period until 1 July 2015. This gave rise to controversial discussions because without additional personnel it was feared there would be an increase in belt restraints. Surveys of patients indicated that they would not prefer any of the body-restricting measures in question to the net beds.

Survey by the patient advocacy in Vienna shows positive effects The patient advocacy (Network for Patient Advocacy – *VertretungsNetz*) made it clear in 2020 that the negative fears did not materialise (Rappert/Gschaider, *Auswirkungen der Abschaffung der Netzbetten in der Wiener Psychiatrie*, ÖZPR 2020/64, issue 4, p. 114 et seq.). A total of 2,357 random sample placements from February 2014 to September 2017 in three Vienna hospitals were analysed in detail. The frequency and duration of net bed restrictions as well as restraints before and after the ban were recorded. The proportion of the placements in which there was a belt restraint remained unchanged after a brief rise, although in 14.3% of all placements the net beds were not used at all. Less severe restrictions such as bed side rails were used for around 3.7% of the patients. What is also positive is that the total duration of restrictions to freedom fell by 55.3% so that the freedom of every affected person was restricted for 17 hours less than before 1 July 2015.

Psychiatry as monitoring priority for 2021 The NPM focussed on the monitoring priority of psychiatry in several workshops in 2020. From January to July 2021, a questionnaire will be used to examine the causes and ways of dealing with agitated and aggressive behaviour, de-escalation measures as well as the documenting and evaluation of aggressive events. All of the governors were notified of this monitoring priority in December 2020 and requested to inform all psychiatric hospitals. Information was published on the AOB website and made available to the media.

Examination in the first half of 2021 In psychiatric institutions, in particular in acute psychiatry, the greatest occupational risk for the staff is attacks by patients. Inversely, the use of coercive measures (or other “non-professional” violence when working in the wards) poses a great risk of complications in the healing process. Severe traumatising with (lifelong) emotional scars fosters the refusal to undergo subsequent treatments.

Aggression and violence must be taken seriously The guideline-based way of dealing with aggression and violence as well as the effect on the safety, health and well-being of both the staff and the patients must be the focus of any psychiatric work. A growing number of psychiatric institutions is achieving this with training programmes in de-escalation and aggression management because they

have recognised that optimising the way in which agitated or aggressive behaviour is dealt with is a key quality criterion. In order to be able to define adequate measures for the prevention of aggressive events, each ward also has to identify the factors that foster increased agitated behaviour in the direction of aggression or violence.

Ultimately, documenting aggressive events (by means of a standardised form) and searching for causes is critical for the structured analysis of the mentioned phenomena and suitable prevention work. What is important is including such events in an effective follow-up because dedicated countermeasures can be implemented on the basis of such documentation.

Documentation and follow-up of aggressive events

The results of the nationwide documentation are evaluated and used to formulate recommendations by the NPM to the decision-makers.

Results flow into NPM recommendations

The situation for persons with chronic mental illnesses in nursing homes in Styria remains problematic. The NPM repeatedly criticised – most recently based on the observation of a case of structural maladministration (see NPM Report 2019, p. 58 et seq.) – the continued misplacement of young persons with psychiatric illnesses, in particular, in private medical facilities and nursing homes and the financing of such structures with the so-called psychiatry supplement. In this context, it was recommended to quickly develop a phased financing plan for building up adequate, small housing units and care structures (including disorder-specific activity concepts).

Continued misplacement of persons with psychiatric diseases in large institutions

The patients who have often been living in the respective institutions for years or decades are not offered any adequate disorder-specific activity programmes. Generally speaking, the day is defined by the mealtimes with little other activity. Preventive disorder-specific intervention was not evident.

No disorder-specific activity

A monitoring visit by Commission 3 showed that the majority of the (predominantly young) patients is very overweight and suffers from diabetes mellitus, which reinforced the impression of mere "custody". What is missing is a multidisciplinary approach in the sense of disorder-specific motivation of the affected persons to lose weight, change medication (psychotropic medication) and take part in a sports programme.

For persons with chronic mental illnesses, in particular, continuous care with the appropriate amount of time is of great importance. In the opinion of Commission 3, this is not guaranteed in the visited institutions because of the limited amount of time the clinical psychologist spends there.

Insufficient psychological care

Ultimately, the medical and nursing care is still suffering from the inadequate training of the – always very motivated and eager – employees and from a general shortage of staff. There is also no psychiatrist who is permanently on location.

Inadequate psychiatric training of staff

In light of these circumstances, the NPM strongly recommended discontinuing the subsidisation of the long-term accommodation of persons with chronic mental illnesses in large institutions (in the form of the so-called psychiatry supplement) in the medium term and creating suitable types of housing and care structures in its place.

Demand for creation of smaller types of housing

Desinstitutionalisation as long-term objective These demands were also included in the recommendations of the Styrian Monitoring Committee for Persons with Disabilities in February 2020. This committee advocates a long-term deinstitutionalisation of persons with mental impairments (see statement of opinion of the Styrian Monitoring Committee for Persons with Disabilities on the topic of psychiatry supplement and housing offers for persons with mental impairments: *“Psychiatriezuschlag – Wohnangebote für psychisch beeinträchtigte Menschen”*, February 2020).

- ▶ *The subsidisation of the long-term accommodation of persons with chronic mental illnesses in large institutions in the form of the so-called psychiatry supplement should be discontinued. Suitable types of housing and care structures shall be created instead.*
- ▶ *The goal must be a long-term deinstitutionalisation of persons with mental impairments.*

2.2.2 Register for documenting measures that restrict freedom

A longstanding demand of the NPM was met within the framework of the 2018 amendment to the Hospital and Convalescent Homes Act (*Bundesgesetz über Krankenanstalten und Kuranstalten*) which stipulates that psychiatric hospitals and wards shall maintain a register for documenting measures that restrict freedom.

Electronic documentation of measures that restrict freedom Pursuant to Section 38d of said Act, this electronic documentation should contain current information including the name of the person placed under such measures, any other restrictions pursuant to the Hospitalisation of Mentally Ill Persons Act (*Unterbringungsgesetz*), the starting and end time of the placement and any other restrictions, the prescribing doctor and any injuries suffered by the patient or the staff. The documentation must facilitate statistical analyses. The NPM as well as international monitoring mechanisms (CPT and CAT) are permitted access to the documentation.

Preventive effects The registers should guarantee rapid availability of the data on prescribed measures that restrict freedom. The legal entities responsible for the hospitals can analyse how restrictions to freedom are handled, in particular the causes of additional restrictions in everyday life at the facility. The Laender were given six months to enact implementation laws.

Implementation status in the Laender *Ex-officio* investigative proceedings by the AOB showed that the provisions set forth in Section 38d of the Hospital and Convalescent Homes Act have not yet been anchored in all hospital legislation. At the time of editing this report there are thus no relevant *Land*-specific regulations in Burgenland and Carinthia. In the other *Laender*, data on measures that restrict freedom and involuntary placements has been recorded for a long time; in some cases electronically in the medical history. This does not ensure up-to-date recording of the data.

In Lower Austria, measures that restrict freedom are recorded in the individual medical history using standardised forms, which are used as the basis for sending reports to the patient advocacy pursuant to Section 33 (3) of the Hospitalisation Act. The data is transferred to an electronic register and statistical analysis made in some departments, however, not on the basis of current data.

Lower Austria

As part of the phased implementation of the electronic hospital information system in all regional and university hospitals that is planned in the next few years, all reports in connection with the Hospitalisation Act should be forwarded electronically to the patient advocacy and the court, and the data transferred automatically to the register.

In the psychiatric hospitals and departments of the Upper Austrian health care holding company (*Oberösterreichische Gesundheitsholding*), setting up the registers was postponed because of the COVID-19 pandemic and is expected to be completed in the second half of 2021. A register will be set up in the religious order hospitals St. Josef Braunau and Klinikum Wels-Grieskirchen at the beginning of 2021.

Upper Austria

Registers are maintained throughout Tyrol with the exception of Kufstein District Hospital.

Tyrol

The medical history of patients has been documented electronically in Rankweil Regional Hospital in Vorarlberg for years, but only some of the data mentioned in Section 38d of the Hospital and Convalescent Homes Act and Section 63 of the Vorarlberg Hospital Act (*Vorarlberger Spitalgesetz*) is recorded. However, programming that will enable analysis is in the pipeline.

Vorarlberg

In Clinic Klagenfurt, measures that restrict freedom are scanned as part of the medical record and sent daily to the patient advocacy which evaluates the data statistically. Internal department statistics are not created. Aggressive incidents are however recorded in detail in internal statistics.

Carinthia

In the Hospital of the Brothers of Saint John of God Eisenstadt an electronic medical history has been maintained for several years in which measures that restrict freedom as well as aggressive behaviour towards the patients themselves or others are documented. This current data can be accessed through the hospital information system.

Burgenland

In Styria, electronic recording of data in accordance with the Hospitalisation Act has been possible in the patient administration system, "open Medocs", for some time in Graz Süd-West/Standort Süd Regional Hospital and in University Hospital Graz. The starting time and end as well as the type of restriction to movement are documented in this system. There is a current overview of the restrained patients in each department, which can be also invoked at a later date. The relevant electronic documentation is also maintained in the hospital information system of the Hospital of St. John of God in Graz.

Styria

In the psychiatric hospitals and departments of the Vienna Health Association (*Wiener Gesundheitsverbund*), the current data on measures that restrict freedom that have to be recorded by law are documented electronically daily. Since February 2019, steps have

Vienna

been taken to facilitate evaluation of this data. All psychiatric departments should have been able to access current electronic documentation since 10 March 2020.

Salzburg Information on the installation status of the electronic documentation of measures that restrict freedom in Salzburg was not available at the time of editing this report.

No centralised recording and evaluation of data In conclusion, the existing data on the measures that restrict freedom which have been set in the *Laender* is not centrally recorded and evaluated. Valid statements on differences are thus not possible. The argument used by Vienna and Styria for refusing to set up central registers for measures that restrict freedom is that Section 38d of the Hospital and Convalescent Homes Act merely stipulates that psychiatric hospitals and psychiatric departments shall maintain electronic documentation. This line of argument fails to convince the NPM however, because statistical analysis while observing data protection rules should only be possible in an anonymised form anyway. Within the framework of a nationwide statistical data collecting exercise, measures that restrict freedom should be recorded and compared in relation to the number of patients over a longer period of time in order to be able to identify unjustifiable differences in the practice of individual hospitals and take preventive action.

- ▶ ***The provisions of Section 38d (2) of the Hospital and Convalescent Homes Act on the current recording of measures that restrict freedom in electronic documentation systems shall be implemented nationwide.***
- ▶ ***The recorded data should be accessible by the *Laender* in anonymised form in a centralised evaluation.***
- ▶ ***Within the framework of statistical data collection, measures that restrict freedom should be recorded over a longer period of time and put in relation to the number of patients. On the basis of this data, it is possible to identify significant differences and take preventive action.***

2.2.3 Dealing with COVID-19 measures

Staying in hospital is a difficult situation for people. In addition to the physical and/or mental suffering, there comes the feeling of helplessness. Visits from close persons have a comforting effect on most patients.

Strict visiting rules from March 2020 The Federal Ministry of Social Affairs, Health, Care and Consumer Protection and the *Laender* agreed on visiting bans in order to maintain the operability of hospitals during the pandemic. There should only be exceptions for small children and dying persons. These bans came into effect in Vienna, Styria, Burgenland, Upper Austria, Lower Austria, Carinthia and Tyrol shortly before the shutdown imposed in March 2020. This was not the case throughout Salzburg or Vorarlberg. Written recommendations on COVID-19 preventive measures in hospitals were published by the Ministry on 31 March 2020. These did not explicitly mention visiting bans; however, the objective to keep the number of visitors as low as possible was stated. Only Vienna issued a regulation prohibiting visitors

from entering hospitals, residential and nursing homes as well as nursing wards on 14 April 2020. All of the other clinics referred to board resolutions of the hospital operators or their house rules. The feared masses of COVID-19 patients did not materialise in spring 2020; all of the planned treatment had been postponed. Visiting was managed more generously with appointment systems from May, but greatly restricted towards the end of the year because of a sharp increase in the number of new infections. The AOB received many individual complaints on this topic. There was consensus in the NPM that the right to receive visits can be restricted to stop the spread of COVID-19, but a general visiting ban should never be imposed.

Apart from that, commissions were mainly positive about the way in which the visited hospitals and psychiatric institutions and psychiatric departments handled the pandemic-related protective measures.

In the department for chronic patients at the Clinic Klagenfurt, the standard operating procedures for the prevention of spreading the SARS-CoV-2 virus were ideally formulated according to Commission 3. The preventive measures were well chosen, and PPE and PCR test kits were in sufficient supply throughout the first lockdown. The staff did their best to substitute services and therapies that could not be provided temporarily using a pooled approach to the therapeutic service.

A monitoring visit by Commission 1 to the Department of Child and Adolescent Psychiatry at Hall Regional Hospital indicated that the minors were well informed about the risks of spreading the virus and precautionary measures. In addition, they were still allowed to go outside.

However, Commission 1 observed on this visit to the Department of Child and Adolescent Psychiatry at Hall Regional Hospital that newly admitted patients who were not suspected of being ill were isolated until a negative PCR test could be presented. This took up to 30 hours. This is not proportionate for minors with mental issues.

Isolation measures at Hall Regional Hospital

Restrictions of freedom against the will of those affected are only permissible under Austrian constitutional law in the exceptions mentioned in the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights) and the Basic Law on the General Rights of Nationals (Staatsgrundgesetz) for the protection of personal freedom, and then only based on statutory authorisation. The management of hospitals is not authorised to impose preventive regulations that restrict freedom.

There is no statutory basis for the isolation of patients without medically verified suspicion of disease to be found in the relevant regulations in the Hospitalisation Act, the Epidemics Act and at most the COVID-19 Preventive Measures Regulation. Quarantine imposed by way of notification by health authorities could not be deduced from the documents viewed by Commission 1. There were also no reports to the patient advocacy of this type of isolation as a measure that restricts freedom.

No legal basis

Furthermore, the commission took a critical view of the existing telephone times during visiting bans and restricted visiting hours. Patients were only allowed to use their mobile

Insufficient outside contacts during

phones between 11.00 a.m. and 12.00 p.m. as well as between 5.45 p.m. and 6.45 p.m. During the first lockdown, few visits were possible. In spite of complaints, the telephone times were not extended.

From the point of view of the NPM, telephone times for minor patients should be extended especially when visiting had to be limited due to the pandemic, in order to ensure that contact to trusted persons remains intact.

IT equipment inadequate The NPM took a critical look at the IT equipment on a monitoring visit to the Department of Neurology and Psychiatry in Childhood and Adolescence at Clinic Klagenfurt. The availability of electronic devices and internet access were inadequate, which is why it was not possible for the patients to have video contact with their relatives. It was not even possible to hold proceedings under the Hospitalisation Act per video conference in a timely manner.

Court cases on involuntary hospitalisation were expressly exempted by the legislators from the waiver of legal proceedings deadlines (Section 1 (1) First judiciary law accompanying the COVID-19 Law (1. COVID-19-Justizbegleit-Gesetz) (see Barth, COVID-19 und die Folgen für familienrechtliche Angelegenheiten und den Gerichtsbetrieb, iFamZ 2020, issue 2, p. 68 et seq.). The possibility of using video telephony or other forms of communication was expressly defined in the legislation in order to facilitate the rapid and risk-free participation in and holding of the proceedings without personal attendance.

The recommendation of the NPM for an immediate improvement of the technical equipment was followed by enabling the department to hold all assistants conferences, work meetings and also patient contact online.

Based on the observations of the NPM commissions as well as of some of its members in a working group, the Human Rights Advisory Council also dealt with the COVID-19 preventive measures to be set, and provided a basis for discussion. This was considered suitable for publishing and is available on the AOB website.

- ▶ *Even during a pandemic, close relatives and persons of trust shall have the opportunity to get a direct personal impression of how patients are – and not only via video telephony.*
- ▶ *At most, visitors shall be given the same PPE as is used by the staff.*
- ▶ *The isolation of minors who are suspected of being infected in their rooms until their COVID-19 test result is available shall be imposed by health authorities. This shall be prohibited for minors without a medically verified suspicion of infection due to the lack of a legal basis.*
- ▶ *Video contact opportunities shall be guaranteed. Legal proceedings for involuntary hospitalisation in relation to restrictions to freedom shall be held without delay. The management of hospitals is responsible for the relevant IT equipment.*

- ▶ ***Preventing personal contact between a parent and a child shall be the absolute exception. Every possible contact opportunity that does not put the child's welfare at risk shall be used when children are in in-patient care.***
- ▶ ***Telephone times shall be extended if a restriction of visiting hours is urgently necessary.***

2.2.4 Child and adolescent psychiatric care

Organisations such as the UN Committee on the Rights of the Child (CRC/C/AUT/CO/5-6 of February 2020), the Ombudspersons for children and youths in the *Laender* (Supplementary Report by the Ombuds Offices for Children and Youths in Austria to the 5th and 6th Report of the Republic of Austria to the United Nations pursuant to Article 44 (1)b of the Convention on the Rights of the Child) as well as the NPM (list of recommendations 2012–2019) have repeatedly pointed out that there are not enough in-patient care places for children and adolescents with mental disorders in Austria.

Not enough in-patient care places available

According to a study by the Austrian Society for Child and Adolescent Psychiatry, Psychosomatics and Psychotherapy – ÖGKJP (based on data from 2012 to 2019), the lowest bed indices are in Styria and Vienna (Fliedl/Ecker/Karwautz, *Kinder- und jugendpsychiatrische Versorgung 2019 in Österreich – Stufen der Versorgung, Ist-Stand und Ausblick*, in: *neuropsychiatrie*, 2020, 181).

In Vienna only about half of the in-patient and day-care treatment places planned in the Regional Health Care Structure Plan 2020 are currently available. Besides, there is a regular reduction in the in-patient treatment resources in the child and adolescent psychiatry departments due to freezes in the number of beds made available.

Precarious care situation in Vienna

Ten medical specialists stopped working in the child and adolescent psychiatry departments of Floridsdorf Hospital and Hietzing Hospital between November 2018 and September 2020. In contrast, there are approximately 346,000 minors living in Vienna today, more than a fifth of whom display symptoms of psychiatric illness, according to current studies (see Wagner et al., *Mental health problems in Austrian adolescents: a nationwide, two-stage epidemiological study applying DSM-5 criteria*, *European Child & Adolescent Psychiatry* 26, 1483–1499, 2017).

In the opinion of the NPM, the decision to release the University Clinic for Child and Adolescent Psychiatry of Vienna General Hospital from the responsibility of the regional care network goes hand in hand with the risk of a deterioration of the quality of care. The NPM holds the view that this should only have been allowed after the care capacity for child and adolescent psychiatry in the in-patient and day-care area that is planned in the Regional Health Care Structure Plan for Vienna 2020 and the Health Care Plan for Psychiatry and Psychosomatics Vienna (*Psychiatrischer und Psychosomatischer Versorgungsplan Wien – PPV 2030*) has been successfully provided.

Vienna General Hospital left the care network too soon

A concentration of acute and crisis stays in the Department of Child and Adolescent Psychiatry of Hietzing Hospital is to be feared as a consequence, as this hospital has to

Fear of rise in acute and crisis hospital stays

take on responsibility for the full care of minor patients from all over Vienna. This can have a negative impact on the quality of local treatment and carries the risk that more medical specialists will leave the department because of the increased workload. The limited bed capacity for regional care also increases the risk that minor patients will be admitted to departments of adult psychiatry.

Lack of medical specialists

The existing child and adolescent psychiatry departments in Vienna are not fully operational because there are not enough child and adolescent psychiatry specialists. In spite of the relevant job advertisements, it has not been possible to fill many of the medical specialist positions in the child and adolescent psychiatry departments at Hietzing Hospital and Floridsdorf Hospital. The reasons for this communicated to the commission included the growing competition from alternative job offers, the lack of financial incentives in a position offered by the Vienna Health Association, the stressful work situation as well as the low number of trainee positions and trained medical specialists.

This opinion coincides with the results of the above quoted work on the basis of the data from the Austrian Society for Child and Adolescent Psychiatry, Psychosomatics and Psychotherapy. As of 31 December 2019, there were 96 authorised trainee positions for the discipline of child and adolescent psychiatry in all of Austria. Because of the lack of medical specialists who are required for training, 25 out of 125 positions nationwide could not be filled recently. As it will continue to be very difficult to fill these positions in the foreseeable future, there will be no relevant growth in trainee places (see Fliedl/Ecker/Karwautz, 2020, 185).

Push specialised subject training

The regulation for rare subjects in its current form is, in the opinion of the authors, not adequate for achieving full care in the area of child and adolescent psychiatry. Until 31 May 2021, the instruction and supervision of the interns by two medical specialists is considered sufficient for approving the first four trainee positions in the specialised area of child and adolescent psychiatry. For every other trainee position, however, an additional fulltime medical specialist is necessary (or several parttime medical specialists equivalent to one FTE), see Section 37 (1) Regulation on Education and Training for Medical Practitioners 2015 (*Ärztinnen-/Ärzte-Ausbildungsordnung*), Federal Law Gazette II 147/2015. In order to achieve an improvement in child and adolescent psychiatric care, training in the specialised subject shall be promoted throughout Austria (see Fliedl/Ecker/Karwautz, 2020, 187).

Call for special care programmes

From the NPM's point of view, for effective child and adolescent psychiatric care, additional programmes outside of hospitals must be created, which meet the needs of the target group, some of whom display strong psychiatric symptoms and associated developmental and behavioural disorders. In this way, the imminent effects of inadequate care (such as self-harm and harm to others, hospitalisation, the breakup of relationships, lack of perspective and hopelessness etc.) can be reduced.

Increase mobile programmes

In the view of the Austrian Society for Child and Adolescent Psychiatry, Psychosomatics and Psychotherapy, mobile programmes (so-called home treatment models) should be included in the performance-based hospital financing. There are examples for such programmes in Germany and Switzerland (see Fliedl/Ecker/Karwautz, 2020, 187).

The NPM strongly recommends providing the conditions required to make it possible to operate the bed wards in Floridsdorf Hospital and avoid admissions freeze in the existing locations. Effective incentives shall be created in order to interest applicants in medical specialist positions at clinics of the Vienna Health Association.

Create incentives for filling vacancies

In its Report 2019 (pp. 61 et seq.), the NPM already pointed out the necessity of expanding in-patient transitional psychiatry programmes for adolescents in the transformational phase into adulthood. To this end, intensive interdisciplinary cooperation between specialists in child and adolescent psychiatry, adult psychiatry and therapeutic and nursing staff is required.

Hietzing Hospital - transitional psychiatry

The conversion of a ward at Hietzing Hospital with Neurological Rehabilitation Centre Rosenhügel into a transitional psychiatry ward for the care of adolescents and young adults between the ages of 16 and 25 in 2019 is thus a very welcome development. However, the NPM observed on a follow-up visit that the "Transitional psychiatry" project had not been implemented properly. Adolescent patients had been admitted to the said ward but the legal, structural and organisational principles and concept according to which the "Transitional psychiatry" project should be implemented has still not been regulated. It was also not possible to find out the staffing and qualifications, and which personnel development measures are required to carry out the transitional psychiatric care obligation in order to meet the relevant performance requirements. With regard to these basic questions, reference was merely made to a working group within the framework of a psychiatric and psychosomatic care plan as well as an internal departmental concept. As far as the adolescent patients are concerned, this results in a lack of specific therapeutic concepts and programmes that are tailored to the target group as well as a lack of competence in child and adolescent psychiatry on the part of the care staff. The lack of clarity surrounding the actual start of in-patient transitional psychiatric care was the cause of frustration and uncertainty among the nursing staff, thus resulting in high staff turnover.

There was thus still no child and adolescent psychiatric ward concept (objectives, programmes, treatment models, care models) as well as specific specialised concepts (e.g. dealing with violence, coercive treatments, drug abuse and self-harming behaviour). Furthermore, there was no qualified staff for child and adolescent psychiatric treatment. The support services initially provided by the Rosenhügel Child and Adolescent Psychiatry department had been virtually stopped. The lack of adolescent psychiatric concepts in the ward was thus additionally worsened.

Lack of concepts for the ward

The Chief Executive Office of the City of Vienna conceded that the development of the "Transitional psychiatry" project was delayed due to the COVID-19 pandemic. The project was due to start with sufficient qualified staff in autumn 2020. A team training programme in the area of dialectic-behavioural therapy that had already started was also only continued in autumn 2020 due to the pandemic. However, only a "Draft concept for the transitional psychiatry pilot project" including the planned staffing was handed over to the NPM.

The NPM thus pointed out once again that a detailed plan of the structural and organisational principles as well as of the staffing and personnel development measures is required.

Care deficits in Carinthia On a monitoring visit to the Department of Neurology and Psychiatry in Childhood and Adolescence at Clinic Klagenfurt, the NPM dealt with the psychiatric care of children and adolescents in Carinthia in closer detail.

The implementation of the Psychiatry Plan 2020 was delayed and is only due to start in 2021. The reason for this is that the out-patient clinics for child and adolescent psychiatric care in Carinthia could not be approved due to objections from the Medical Chamber.

Local care is of key importance However, relevant approval is urgently needed in order to guarantee local child and adolescent psychiatry care in multidisciplinary facilities.

In this context, the Austrian Public Health Insurance Office pointed out that a pilot project had been initiated in collaboration with the Carinthian Regional Association for Psychotherapy. It is intended for children and adolescents up to the age of 18, started in April 2018 and is limited to three years. The care programme is due to be rolled out across the Land during this time.

Integrative concepts for addiction are required "Adolescents with complex psychiatric diseases" and resultant addiction do not receive adequate care. Their treatment should be specifically addressed in the psychiatry concept. The separation of substance use disorders and psychiatric illness is now outdated. A total of 90% of the persons with substance use disorders have an underlying psychiatric illness. The psychiatry coordinator of the *Land* should be fully involved.

The NPM therefore advocates the implementation of integrative concepts for comprehensive care.

Generally speaking, an increase in the number of beds for minors suffering from psychiatric diseases is required. It does not suffice to set up more psychosomatic beds because psychosomatic diagnoses are not an integral component of psychiatry and there is no "psychosomatics" discipline in Austria.

- ▶ *Effective incentives (financial reward, attractive working conditions and working hours, career opportunities, further education programmes amongst others) must be created in order to win specialists in child and adolescent psychiatry for positions in clinics of the Vienna Health Association.*
- ▶ *Parallel to this, (non-hospitalised) care settings must be created, which address the psychiatric symptoms as well as the developmental and behavioural disorders of the target group.*
- ▶ *In order to ensure adequate transitional psychiatry, a detailed plan of the structural and organisational principles is necessary, which also defines the required staffing and personnel development programmes.*

2.2.5 Therapeutic design of hospital areas

Creating modern spatial structures is a key factor in preventing agitation and aggression and contributes to avoiding measures that restrict freedom. The necessity of new buildings and conversions is not contested by the operators, but their implementation is delayed. Projects are insufficiently budgeted and are not monitored with the required priority.

New buildings and conversions necessary

On a monitoring visit to the psychiatric department of Favoriten Hospital, formerly known as Kaiser Franz Josef Hospital, Commission 4 observed extremely cramped conditions. There is nowhere for the patients to withdraw in shared rooms, which does not support the recovery process of acutely ill patients. There are no bathrooms in acute rooms and no sinks in the toilet facilities. Because there is no new building, four patients are accommodated in three-bed rooms. This results in difficult working conditions and thus higher staff turnover.

Favoriten Hospital

Patients are released shortly after the acute phase due to the lack of space. The average length of a stay in the psychiatric department is thus just between twelve and fourteen days. This means that after the acute phase the patients do not receive any further care in the hospital, thereby fundamentally differentiating the department from other psychiatric departments in Vienna. This gives rise to an alarming situation from the human rights perspective, being that psychiatric care varies greatly depending on the district.

Short stays

The application of the Hospitalisation of Mentally Ill Persons Act as a special component of psychiatric care cannot thus be embedded in an overall concept, nurturing "revolving door psychiatry".

In a statement of opinion, the City of Vienna explained that conversion measures are underway in Favoriten Hospital. The bathrooms in the patients' rooms are to be adapted to the hygiene standards for medical handwashing stations. Exchanging the staff WC for the patient WC is under consideration.

Conversion of sanitary facilities

An interim concept for a new building is being discussed by the Vienna Health Association. An increase in the number of beds is included in the feasibility study. Furthermore, the existing infrastructure is to be adapted. However, a date for the implementation was not announced.

Date for new building open

In the opinion of the NPM, the structural condition of the Psychiatric Department A1 at Hall Regional Hospital fails to meet the requirements of contemporary psychiatric care. The layout and design of the rooms are not conformant with current standards. According to the observations made by Commission 1, there is no place for the patients to withdraw in the department. The consequence of an acute lack of space is that beds in hallways are a permanent item in the occupancy plan and frequently used. Improvement was effected through a room key system, which prevented entry to other rooms.

Hall Regional Hospital

Commission 1 also took a critical view of the mixed gender occupancy of the ward. Staff confirmed in confidential conversations that patients had attacked other patients.

Attacks among the patients

Avoid beds in hallways	The number of beds should be adapted to the existing demand in order to avoid the use of beds in hallways and restraint therein.
New building taken into operation only in 2024	In response to this criticism by the NPM, the <i>Land</i> Tyrol announced that a new building is planned for the psychiatric wards A1, A2 and A4 and a tendering procedure is being prepared. However, this new building will only be taken into operation in 2024.
Rankweil Regional Hospital	On a monitoring visit to the psychiatric intensive care ward E1 of Rankweil Regional Hospital, Commission 1 observed that there were only two-bed and four-bed rooms available. These rooms are so small that there is not enough storage space for clothes and personal belongings. The sanitary facilities for men are in the hallway. One has two WC cubicles, one of which also has a urinal, two sinks, a shower unit as well as a shower adapted to the needs of persons with disabilities. There is no privacy there.
One toilet for six patients	The sanitary facilities for women are also in the hallway, whereby one room has a WC, two sinks and a shower unit. For the NPM it is objectionable that there is only one toilet for six women.
New building by 2024	The <i>Land</i> Vorarlberg informed the NPM that the structural deficits would be improved with the construction of a new building for adult psychiatry; however, this only is planned for 2024. Until then, a reduction in the occupancy rate should contribute to avoiding the use of beds in hallways. The NPM observed serious deficits in the layout and furnishings not only in the psychiatric departments but also in other wards in the hospitals.
Ottakring Hospital	The worn pavilions at Ottakring Hospital, formerly known as Wilhelminen Hospital, fail to meet the requirements of contemporary care in the opinion of Commission 4. Patients are accommodated in five-bed and six-bed rooms. This constitutes a severe breach of privacy. Furthermore, blocking the already narrow hallways is a risk to patient safety.
Conversions organised and additional renovation necessary	The City of Vienna referred to already organised conversion and renovation work. Two six-bed rooms in the casualty department were converted. At the same time, two new three-bed rooms are planned. Two bed wards in the 4 th medical department are to be completely renovated. The renovation of ward F-Nord is also planned.
Krems Regional Hospital	On a monitoring visit to Krems Regional Hospital, Commission 5 observed that there were beds in the hallways of the cardiological department. Two beds were only separated from the hallway by curtains. Two other beds, which were in the hallway with a bedside table, were unoccupied at the time of the visit. The <i>Land</i> Lower Austria assured that the beds in the hallways would be completely removed for good.
Hochsteiermark Regional Hospital Bruck a.d. Mur	According to Commission 3, the conditions are extremely cramped in the neurological department of Hochsteiermark Regional Hospital, Bruck an der Mur. Overcrowding of shared rooms clearly infringes privacy, in particular that of patients who are confined to their bed. Doctors' visits take place in the shared rooms, for example, where other patients can hear medical details.

<p>The <i>Land</i> Styria conceded that four-bed rooms in particular do not provide the optimum protection of privacy. However, the existing spatial resources leave no scope for using other rooms. Through the increase in the number of beds to 77 as part of the Regional Health Care Structure Plan for Styria – 2025, privacy requirements will thus be integrated in the relevant conversion and construction projects. The frequent immobility of neurological patients makes it impossible to hold the doctors' visits outside the patients' rooms. However, the diagnoses are not discussed where possible, particularly if they are serious. Personal conversations with doctors can take place in a separate examination room.</p>	<p>Plans to increase the number of beds</p>
<p>Commission 6 visited the 2nd neurological department of St. Pölten University Clinic in November 2020. The building structure is neither modern nor adjusted to the needs of persons with disabilities. 25 of the 36 beds in the ward are in five-bed rooms. It is difficult for the staff to provide adequate care in the cramped rooms because the beds have to be moved regularly in order to bring a patient in a wheelchair out of the room.</p>	<p>St. Pölten University Clinic</p>
<p>Difficult situations can occur when going to the toilet because the entrance to the bathrooms areas is cramped. Not all toilet doors are wide enough for wheelchairs.</p>	<p>Access to the toilets problematic</p>
<p>The acute lack of space means that wheelchairs, aids and special chairs have to be left in the hallway. This poses a risk to patients with a walking impairment because they are not able to hold the handrail on the wall.</p>	<p>Hallways blocked</p>
<p>The NPM had the overall impression that the staff were stretched to the limits of what can be reasonably expected in trying to ensure the appropriate care of the patients, particularly when the ward is full. It is only planned to move one department to a new building in 2024.</p>	<p>Unreasonable strain on the staff</p>

- ▶ *New buildings shall be constructed as quickly as possible to ensure adequate and contemporary psychiatric care.*
- ▶ *Patient rooms with up to six beds and worn sanitary facilities are unacceptable.*
- ▶ *Interim concepts, refurbishment and renovation are thus essential until new buildings have been completed.*

2.2.6 Lack of qualified staff

<p>The lack of personnel in the medical and nursing area puts the staff under a considerable strain, which can culminate in a difficult situation in the care of patients. It is difficult to find qualified staff, the reasons for this being above all the low pay in the nursing area and the lack of flexibility in work shifts.</p>	<p>Working conditions should be improved</p>
<p>The NPM observed that in Ottakring Hospital in Vienna, formerly known as Wilhelminen Hospital, several nursing positions were not filled, which means that it is not possible to comply with the defined staffing ratio for patient care.</p>	<p>Ottakring Hospital</p>

In a statement of opinion, the City of Vienna explained that the Vienna municipal hospitals recruit their own staff and advertise vacancies. Thanks to recruitment programmes, the staff situation in the nursing area could be substantially improved since the time of the monitoring visit.

Landstrasse Hospital	On a monitoring visit to Landstraße Hospital, formerly known as Rudolfstiftung, it was observed that 2.5 medical specialist positions were not filled in the department of general psychiatry due to a lack of suitable applications.
Lack of doctors threatens quality of treatment	<p>This deficit places severe restrictions on the psychiatric treatment services, which can result in a negative impact on the quality of treatment and thus health. Furthermore, the lack of staff means an increased workload for the existing doctors. Besides, this can result in limited time for teamwork, sharing expertise, further education and training.</p> <p>The NPM therefore recommended analysing the causes of the lack of medical specialists in the department and creating incentives to find suitable medical specialists in psychiatry and psychotherapeutic medicine.</p>
Therapeutic programmes insufficient	The hours per week in the therapeutic area were below the minimum personnel requirements set forth in the performance-related hospital financing model, based on the existing beds and day-care places. Human resources were particularly tight in the area of ergotherapy. The NPM recommended creating permanent positions for therapists too.
Intensive recruitment required	The City of Vienna explained that medical specialist positions were not filled because one employee was on maternity leave and another had handed in their notice. There were 1.87 positions vacant in July 2020. In addition, a senior physician returned to work in August 2020 after parental leave. Three doctors currently undergoing their medical specialist training will complete their qualification in the coming three years, which should help to alleviate the situation. Notwithstanding, it was assured that job advertisements are being constantly adapted and optimised. The staffing in the therapeutic area is also being evaluated.
Staffing night shifts	The NPM observed that staffing nurses on night shifts is difficult. Staffing with just one nurse every second night results in almost unmanageable situations in Floridsdorf Hospital, for example. The City of Vienna reacted with continuous staffing of two night shifts in the nursing area. Two qualified nurses or only one qualified nurse and a nursing assistant are on the night shift in the 2 nd neurological department of St. Pölten University Clinic. The preparation of the medication and infusions can, however, only be performed by qualified staff. The qualified nurses want to avoid night shifts with just one nursing assistant, which can cause disagreement among the staff. The NPM therefore recommended that two qualified nurses should work consistently on the night shift.
Favoriten Hospital	A chronic lack of staff was observed on a monitoring visit to ward B3 at Favoriten Hospital, formerly known as Kaiser Franz Josef Hospital. The increased workload resulted in resignations. Three positions were not filled in the medical area; a 20-hour position was vacant in the nursing area.

New employees were not properly trained due to the lack of time. The pressure to perform was clearly perceivable in the conversations with those affected. The tense staffing situation among the medical personnel meant that restraints were followed up by the employees in meetings but were not always discussed with the patients.

Staff under considerable pressure

The City of Vienna informed the NPM that the personnel situation was improved by filling a vacant medical specialist position. A candidate was found for another position; the part-time position in the nursing area was filled.

For medical specialists, trainee doctors and psychologists, on-the-job supervision was introduced as an integral component in the department organisation. Furthermore, a shift from department exams to an informal, objective, factual exchange of information is being promoted.

Improvement in working conditions

Repeated monitoring of a private clinic in Styria indicated an above-average turnover of the therapeutic and medical staff. A gradual overload of the remaining staff was evident due to the understaffing. In the opinion of the NPM, the patients thus received too few therapies and treatments.

High personnel turnover in private clinic

The interim report from an investigation by the regulatory authorities in July 2020 (and as a reaction to the observations by the NPM), involving a court-appointed expert from the field of psychiatry, showed an imperative need for more medical specialists from July 2021 in order to guarantee the continued operation of the clinic. In addition – in line with the observations by the NPM – it was noted that at least two clinical psychologists have to be hired to ensure adequate care of the patient groups in the clinic (some of whom are suffering from medium and severe depression).

More staff required to keep the clinic running

- ▶ *The working conditions for personnel in the health sector shall be improved in order to make filling vacant positions easier.*
- ▶ *The night shifts in the nursing area shall be staffed with qualified personnel in order to ensure adequate care of the patients at all times.*

2.2.7 Long hospitalisation without medical need

On a visit to the Ottakring Hospital, formerly known as Wilhelminen Hospital, the NPM generally addressed the problem of so-called “long-term patients” whose release is considerably delayed for organisational reasons. The occupancy of acute beds with patients who could be released from a medical point of view means a massive restriction in the quality of life for those affected.

On an organisational level, extended hospitalisation causes a reduction in the available bed capacity and thus financial losses, which result in an additional economic burden. According to a report by the Austrian Court of Audit from 2015, a hospital bed costs an

High cost

average of EUR 850 per day and one patient day in a municipal institution an average of EUR 270.

Long waiting times for a place in a nursing home

The average waiting time for a place in a nursing home was between 8.4 and 35 days between January and April 2019 depending on the department. In total, 139 patients waited an average of 21.1 days during this time (time from application to release) for a suitable place in a nursing home.

The reasons are manifold and are attributable to both medically and organisationally related delays in release (e.g. application for adult guardianship, refusal from a specific nursing home, waiting for documents, required approval of funding).

Patients who were transferred from the casualty department to the Baumgarten nursing home after three-months of geriatric rehabilitation were thus sent back to the hospital if they had no follow-up accommodation and care options. The residents of apartments for senior citizens are also refused after a stay in hospital if there are no free places in the nursing wards at the houses of the Non-profit Fund for Viennese Senior Citizens Homes (*Kuratorium Wiener Pensionisten-Wohnhäuser*) because of the amount of care they need.

Foreign patients

There is a similar problem for foreign patients in need of care, for whom the Vienna Social Fund does not bear the cost of a nursing home due to their lack of a claim to social benefits. If return to the respective country of origin is not possible for medical or other reasons, release from hospital is *de facto* impossible.

Patient dies after 1,436 days in hospital care

A Romanian citizen had been in in-patient care since 2015. Despite the involvement of numerous persons and institutions, it was not possible to organise a suitable care place for him. Due to his underlying neurological disease (multiple sclerosis) and an infection, he needed adequate long-term care. Ultimately, he received in-patient care for 1,436 days in Ottakring Hospital and died after a long and serious illness.

The care teams can neither provide the necessary emotional nor social support required for these long-term patients. Prolonged hospitalisation without the relevant medical indication fosters the development of mental and physical impairments (hospitalism).

Lack of after-care places

The City of Vienna conceded that, despite the great efforts being undertaken, patients in the acute hospitals have to stay in in-patient care for a longer time than is necessary from a medical point of view because there is a lack of after-care facilities and patients are not accepted back into the normal care institutions.

Difficult transfer of foreign citizens

Foreign citizens can often not be returned to their home country or to suitable care facilities despite the involvement of the embassies and the Federal Ministry for European and International Affairs. The Vienna Health Association generated the following evaluation on this topic:

Long-term patients per 14 February 2020

Institution	Nationality	Number of days
Hitzing Hospital	Algeria	105
	Afghanistan	249
	Romania	273
Donau Hospital	Greece	201
	Bulgaria	56
	Great Britain	200
	Poland	156
Wilhelminen Hospital	Slovakia	31
	Romania	33
	USA	54
	Poland	347
Total open cases		11

The Vienna Health Association appears to be making an effort to facilitate the release of patients to suitable after-care facilities. This will enable hospitals to concentrate on fulfilling their care obligation. This is why the "Remobilisation and After-care Beds" (*"Remobilisations- und Nachsorgebetten"*) project was initiated at Vienna General Hospital and Ottakring Hospital, which is also to be extended to Donaustadt Clinic. A further measure is the introduction of a standard operating procedure for the Vienna Health Association to guarantee continuous, high-quality and legally conformant care of long-term patients who have no claim to social insurance.

Measures for improving the care situation

- ▶ *The waiting time for a nursing place for patients for whom hospitalisation is no longer necessary shall be shortened further.*
- ▶ *Hospitalism, i.e. mental and physical impairments due to a lack of social, emotional and cognitive stimuli, shall be avoided.*

2.3 Child and youth welfare facilities

2.3.1 Introduction

Major differences in quality noticeable

The commissions visited 102 child and youth welfare facilities in 2020. As on the visits in previous years, major differences in quality in the individual facilities were noticeable. There is a very clear connection between the staffing ratio and the quality of care. Structural deficits caused by understaffing can only be compensated by the high level of dedication of the staff for a short period of time. This was clearly evident during the first lockdown in spring 2020 as well as when there was a considerably higher risk of infection in autumn 2020. Facilities with a low staffing ratio found it far more difficult to overcome the crisis. Existing weaknesses worsened as a result of the increased effort required during the pandemic.

Looking back at 2020, the NPM sees positive developments in the child and youth welfare facilities thanks to the cooperation with different institutions:

Uniform standards were defined to harmonise quality in residential child and youth welfare facilities on the initiative of FICE Austria (International Federation of Educative Communities) in cooperation with representatives from 19 organisations. The NPM was also involved (see NPM Reports 2018 and 2019, p. 71 and p. 64 et seq. respectively). The standards were defined with scientific support and presented at a kick-off event at the premises of the AOB in May 2019. There were follow-up events in Tyrol, Salzburg, Vorarlberg, Lower Austria and Carinthia, in which commission members took part as speakers. Further events were planned in the other *Laender* but had to be cancelled both in spring and autumn 2020 due to the COVID-19 crisis.

Great interest in FICE quality standards

At all of the conferences held, the experts showed great interest in this publication that is unique in Europe. In Tyrol, it was announced that the standards would be used as the benchmark for child and youth welfare that is conformant with children's rights. The regional government of Upper Austria organised a working group in which the competent authorities for the Upper Austrian child and youth welfare facilities and the University of Applied Sciences in Linz were represented for the purpose of developing a pilot implementation project. In Lower Austria, the University of Applied Sciences in St. Pölten was ready to add the standards to the curriculum of the study course Social Pedagogy. Vorarlberg announced that it wants to integrate the FICE quality standards into the requirements of the Land for residential child and youth welfare facilities. The Land Carinthia intends to deploy a working group to develop a structural framework in line with the standards with the support of the University of Klagenfurt. Most of the projects had to be postponed to 2021 because of the pandemic outbreak.

Progress in the implementation of FICE standards

The owners and operators of child and youth welfare facilities who had been involved in defining the standards and signed a commitment for their organisation to implement the same actively dealt with putting the FICE standards into practical daily care work in the past year. All of the initiatives were preceded by an analysis of the current situation to identify the areas in which the standards are already used and where additional

implementation steps are required. Based on this information, specific measures were developed, but there were delays in the implementation thereof.

The NPM commissions have been using the standards for the human rights assessments after monitoring visits since they were published. Another important step in the implementation of the standards would be their inclusion as an examination criterion on the monitoring visits to child and youth welfare facilities in the *Laender*. There was agreement in this respect from Vorarlberg and Upper Austria which was also communicated to the NPM. A FICE project next year will tackle the question of which further education programmes would be necessary to enable the staff to implement the FICE standards in their day-to-day work. Another project is for the development of quality standards for non-residential child and youth facilities.

Decrease in number of children in out-of-home care

The NPM special report on children and their rights in state facilities reported for the first time that the ratio of the number of children in out-of-home care to the total number of minors living in the *Land* varies in the *Laender*. The NPM recommended the *Laender* of Vienna, Styria, Vorarlberg and Carinthia to find the causes of this development and to expand their programme for non-residential measures. The 2019 child and youth welfare statistics in Austria show that the number of non-residential child and youth facilities in Austria remained relatively constant compared to the previous year; however, fewer minors are looked after in full residential care. This is a positive development.

At 12.3%, Vienna is still in first place when it comes to out-of-home care and Tyrol in last place at 6%. The variances between the other *Laender* have decreased. In Vienna the continued high numbers are most likely attributable to the fact that despite the expansion of the non-residential programme there has been a sharp increase in the size of the population since 2015, posing special challenges for child and youth welfare services. The expansion of the programme, above all early interventional help for special target groups with higher risk factors in particular, should thus be continued.

It is very positive that support for young adults of legal age has increased. The highest proportion is in Carinthia at 12.4% indicating an increase of 4% compared to the previous year. Nevertheless, the NPM considers establishing a legal claim to continued support beyond reaching legal age as necessary as increasing the maximum age to 24. In Burgenland, the possibility of extending care up to the age of 24 is to be implemented soon.

Increased number of approvals for the support of young adults of legal age

The willingness of most of the owners and operators to rectify deficits observed during the monitoring visits by the commissions directly after the visit was very high last year too. Feedback from many facilities confirmed that the expertise and external perspective of the commissions are much appreciated and the facilities endeavour to quickly implement the recommendations.

Many positive changes on the institutional level

Group rules and the consequences for violations thereof are often grounds for criticism. One major operator defined new rules that were made available to all shared accommodations with the requirement to adapt their own set of rules accordingly. Withholding pocket money as a consequence of breaching the rules in a shared

accommodation for girls was abolished. The children in a shared accommodation who had complained about the disproportionate consequences imposed for harmless breaches of the rules confirmed on the follow-up visit that these had been abolished. Mechanisms for and forms of participation are still missing in some facilities or were installed but not sufficiently used. There had been no children's team meeting for nine months in one shared accommodation; it was continued on the recommendation of the NPM. In other shared accommodations, children's teams only met sporadically and are now held regularly.

Facilities invited the Ombuds Offices for Children and Youths to come and introduce themselves on the recommendation of the NPM if commissions noticed that the minors were not familiar with these institutions. If there were no Ombuds Offices for Children or telephone hotline ("*Rat auf Draht*") posters in a facility, the NPM reminded the operator that information on external complaint offices that also deal with the problems of minors anonymously shall be made available and the children shall be informed of their existence. On the recommendation of Commission 6, the technical supervision of Burgenland designed a standardised form for reporting reportable incidences for all of the facilities in the Land. In one shared accommodation, a social pedagogue was appointed to report measures that restrict freedom to the representatives of the residents. An additional male employee was included in one team on the recommendation of the NPM. The mental strain in the workplace was evaluated separately in some facilities on the recommendation of commissions.

However, the monitoring visits in 2020 highlighted once again structural deficits that have still not been fully eliminated despite being raised by the NPM repeatedly.

The staff is often not or not regularly trained in de-escalation techniques. This criticism is also taken up in most cases. Employees are then given the opportunity to take part in de-escalation training programmes and further education on the topic of violence prevention or pedagogical conversation. Socio-pedagogical and sex education concepts as well as violence prevention concepts have since been established in most shared accommodations. However, some of these are not enough to guarantee the protection of the minors. On recommendation of the NPM, several concepts had to be revised, enhanced or changed to reflect the programmes or location.

NPM commissions had to insist that fire protection issues be addressed, the protection of non-smokers guaranteed and hygiene problems and structural deficits rectified. On the recommendation of the NPM, new furniture was acquired and window bars removed. Some buildings in which shared accommodations were housed in cramped or otherwise unacceptable conditions were completely converted. If this was not possible, the residents of the shared accommodations were moved to suitable buildings. In many facilities new door locking systems were installed and lockable lockers acquired for the children's personal belongings.

Flaws in medication management

In some facilities there was criticism that the proper management of medication is not given priority. In many facilities in 2020, the commissions found expired medication that had been prescribed for children and adolescents who were no longer living in the

facility. Deficits in the administration of the medication are observed just as frequently. In one shared accommodation, the administration of medication prescribed by doctors was only documented with a two-week delay. In another, there was no documentation of the supplies or the administration of medication that is included in the addictive substances category and for which the documentation of supplies and the maintaining of an addictive medication book are mandatory.

If a patient is to stop taking medication, there must be written instructions from a doctor to do so. If these are only given verbally, the written instructions shall be obtained as quickly as possible, which some facilities occasionally forget. Some prescriptions are flawed either because the doctors or the staff add handwritten notes or because the dose to be administered is missing. There is no prescription for some medication, or the prescribed medication is not the same as that in the medication summary and the medication list. PRN medication is sometimes prescribed without any further description of the event requiring treatment. The NPM recommends consulting the competent doctor in such cases when there is doubt or the formulation of instructions is unclear.

Commissions sometimes found medication cupboards unlocked, which poses a potential risk to children and adolescents. In one facility, epilepsy medication was stored unlocked in the kitchen; in another shared accommodation, the medication was in a lockable cupboard but it was stored together with toys. In another shared accommodation, the medication cupboard was in the kitchen where continuous monitoring cannot be ensured. The cupboard was then moved to the staffroom. In another case the medication cupboard was in a chaotic condition because nobody felt responsible for the continuous monitoring of supplies. It was recommended to appoint one person to be responsible for this. The shared accommodations are also recommended to store psychotropic medication separately from other medicinal products and to have the medication from the pharmacy blistered. On a positive note, these NPM recommendations were implemented in most cases with immediate effect.

Recommendations for medication management implemented

- ▶ *The FICE quality standards should be used as an examination criterion on visits by the supervisory authorities to child and youth welfare facilities in all Laender.*
- ▶ *The non-residential help programme, in particular for special target groups with higher risk factors, should be further expanded in Vienna.*
- ▶ *The legal claim to support for young adults should be anchored in the law. The maximum age for this type of support should be raised throughout Austria.*

2.3.2 The facility as a protective shelter

Child and youth welfare residential facilities are designed to be a protective shelter for children and adolescents. It is paramount that they can fully guarantee this aspiration, as, due to the nature of the dependent relationships and power structures, fulltime

Specific dangerous situations in shared accommodations

care as well as the particular vulnerability of the minors, they are open to certain dangerous situations. A protection concept is thus necessary that includes measures for preventing and dealing with dangerous situations, attacks and violent incidents. Most of the socio-pedagogical facilities now have a violence prevention concept and a sex education concept. However, these are often not or insufficiently applied in practice. The commissions regularly observe in facilities that the staff is not familiar with the content of the concepts or have not been trained in implementing them.

Violent incidents on a daily basis The staff and the interviewed minors in a shared accommodation in Upper Austria reported that there were violent incidents every day and the police is called regularly. The minors told Commission 2 that they were afraid of one resident who also hits the caregivers and aimed a soft gun at another child. He had held boys and girls by the throat. The staff reported that the adolescents had decided to mentally break a new younger boy. They hit him, held his mouth closed, hid him under a cover and forbade him to cry. In addition, they forced him to convince the staff that he enjoyed visits from the other children in his room. What was really going on therefore only became noticeable after some time.

Violence part of everyday life at shared accommodation Since daily physical and mental violence was part of everyday life at the shared accommodation and the staff did not view it so negatively anymore, Commission 2 considered that the development of the minors cared for seriously at risk. The objective of being a safe shelter for the children formulated in the concept could not be guaranteed, which is why measures to prevent violence and alter the prevailing power structures were urgently recommended. The NPM also insisted that until the situation has stabilised any vacant places should not be occupied. The technical supervision of the Land visited the facility three times because of the many deficits observed by Commission 2 and drew similar conclusions. Several regulations were imposed on the facility. The operator has drafted a new violence prevention concept, deployed a new group leader and made changes to the staff.

Increased potential for violence with adolescents Increased potential for violence among the adolescents was observed at another facility in Upper Austria due the high personnel turnover and changes in the group. Commission 2 considered it urgently necessary to counter the sense of powerlessness experienced by the staff by organising training programmes on violence prevention and de-escalation. Individual crisis plans were also recommended for adolescents prone to outbreaks of aggression and a loss of control as well as team development measures.

Lack of expert support for the staff There were massive problems with a nine-year old boy with extreme behavioural disorders in a facility in Burgenland. The management reported that the team had to develop their own instructions for dealing with him in order to be able to have a de-escalating effect on the impulsive outbursts of the child. The staff had not received dedicated training in dealing with the child's special situation. Commission 6 criticised that the staff was not supported through the involvement of experts, and the technical supervision had not prescribed any measures. The reporting of incidents to the *Land* or the district administrative authority per telephone only was also criticised.

A nine-year old boy was mobbed and bullied by older boys in a shared accommodation in Lower Austria. On recommendation of the NPM, the technical supervision visited the shared accommodation several times, and observed similar deficits. The shared accommodation was then closed down. In another shared accommodation, one of the boys displayed conspicuous behaviour for several years. He was suspected of exercising sexualised violence on a six-year old girl and physical violence against other children. Commission 5 identified a too lenient treatment of the adolescent and insufficient protection of the other children and adolescents living in the shared accommodation. No steps were taken to move the adolescent to different accommodation after starting a sexual relationship with a thirteen-year old girl. The consequence was that after ending the relationship the girl was subjected to abuse and threats in diverse internet forums for months. Charges were pressed as soon the mobbing and stalking became known, but nothing was done to move the adolescent away from where the girl was living.

Insufficient protection of other children

In a shared accommodation in Vienna, Commission 5 also came to the conclusion that the wellbeing of the children cared for there was in danger. Between March and July 2020 the commission found 144 reports of specific incidents documenting violence, damage to property and personal injury. The commission had the impression that the staff tried to de-escalate by talking to the perpetrators; however, to no avail. Points of criticism were the lack of a development concept and the support of the caregivers by the management. The composition and size of the group were also considered problematic. The revision of the care concept and an alignment to the needs of the minors were recommended. Municipal department MA 11 reacted to the recommendations and reduced the group size to six minors until the situation had stabilised. One girl was accommodated in a different care setting.

Risk to children's wellbeing in shared accommodation

In a shared accommodation in Lower Austria, Commission 6 came upon three children requiring intensive support who regularly had to be taken into in-patient care. In addition, there were at least two children with psychiatric or post-traumatic stress disorders. Here too, outbreaks of aggression and violence among the children were more frequent than the average; the police had to be called in for support. The other children were intimidated and frightened by the many incidents. The commission recommended a change of care setting for several children.

Change of care setting required

Behaviour that was harmful to the adolescents themselves and to others dominated everyday life of a socio-psychiatric shared accommodation in Vienna. Even though only six residents were cared for in the shared accommodation, Commission 4 found that the size of the group was too big to guarantee adequate protection of the severely traumatised adolescents. A temporary reduction in group size by not filling places that become vacant was recommended.

Recommendation to reduce group size

A crisis intervention group in Vienna is closed during the day meaning that the girls living there are forced to leave the shared accommodation between 9.00 a.m. and 5.00 p.m. Nevertheless, municipal department MA 11 continues to allocate adolescents with psychiatric diagnoses with specific and intensive support needs to this facility, which Commission 4 had already criticised on the previous monitoring visit. Even on the follow-

No care during the day

up visit, it was observed that once again an adolescent girl was cared for there despite the fact that the low-threshold care setting was unsuitable for her. Municipal department MA 11 did not even try to accommodate her in a specialised facility. It was evident from the documentation that there had been a fire in the girl's shared accommodation during an aggressive outburst.

- ▶ *Children and adolescents shall be protected from violence in the best possible way.*
- ▶ *Protection concepts shall be openly available in all shared accommodations and the staff shall be familiar with the same.*
- ▶ *The staff shall be trained in order to be able to implement the concepts.*
- ▶ *Adolescents with psychiatric diagnoses shall not be accommodated in low-threshold care facilities and left on their own.*

2.3.3 Challenges of the COVID-19 pandemic

Pandemic stresses children and adolescents in particular

Children and adolescents were and continue to be particularly affected and stressed by the measures taken to counter the COVID-19 pandemic. Their rights to social contact, social participation, playing as well as pre-school and school education were and still are severely restricted due to the closure of schools, playgrounds, sports grounds, clubs and societies and due to curfews. Unlike adults, their development is impeded and they suffer additional deficits that are difficult for them to compensate. All of this applies even more to children and adolescents in the custody of child and youth welfare services, as they cannot grow up in the security of a family. The learning support and home-schooling provided by the parents during the frequent school closures had to be borne by the pedagogical staff in addition to their care work.

Learning support with less staff

This, in itself, already major challenge of providing learning support for an average of ten children and adolescents was exacerbated by the fact that in many shared accommodations the full team could not be scheduled for work. Many employees were excused because they are at risk or were temporarily unavailable because they were in quarantine or on sick leave. The rest of the team was thus under considerable strain. Furthermore, it was difficult to organise a daily structure for the children and adolescents. This resulted in increased media consumption by many children and adolescents, which was difficult for them to stop once the schools re-opened.

Promise to bear costs not kept

Several major owners and operators who, in addition to full residential care, also offer non-residential family support or daily structures, were able to transfer the personnel, as these services were closed due to the lockdown. Some shared accommodations provided an additional member of staff to take care of home-schooling. In Burgenland, covering the cost for this was initially approved by the specialist department but then not paid. Many shared accommodations then decided to continue sending the minors to school to be looked after. In shared accommodations in other *Laender*, there was help

from persons doing civilian service or on internships. This had little effect on the high workload for those performing the work.

The situation was particularly bad in facilities where the staffing was already tight. Facilities operated by the *Land*, in which the employment plans do not permit creating positions at short notice, were badly affected. The situation was problematic in the facilities of municipal department MA 11, in which only four social pedagogues are responsible for eight children and adolescents on an alternating basis. In some shared accommodations, sometimes only two persons could be deployed because of sick leave and quarantine measures.

Pandemic exacerbates existing problems

The staff spoke of an extremely high workload and a lot of overtime. The social pedagogues who could still be deployed had to work double shifts repeatedly, so that they were in the shared accommodations for 48 hours. Shared accommodations were grouped together at the weekend due to the lack of staff, which meant that the children were cared for by social pedagogues they did not know in an environment that was unfamiliar to them. Municipal department MA 11 provided replacement staff from the pool. This did not work well in all groups, as the new persons can have an unsettling effect on an existing group. One of the shared accommodations visited did not avail of pool staff for this reason.

Extremely high workload for the staff

In another shared accommodation operated by the City of Vienna, which takes care of adolescents, the shifts which were usually staffed with two persons were changed such that only one person was working at any given time. This meant a considerable strain for the caregivers who were working alone and posed a challenging situation for the team. The staff reported that it was not possible to offer the adolescents effective learning support and properly check the homework during home-schooling. Not all of the minors were able to absorb the material on their own.

Only one instead of two caregivers per shift

An additional strain for social pedagogues was that they had to cook and clean themselves, as the housekeeping staff were excused due to being at risk to COVID-19. There was no supervision and no team meetings were held for several months in many facilities in 2020. Quite a few employees complained that they experienced many restrictions by having to wear a mask at work but had no breaks. Other facilities waived the obligation to wear a mask inside buildings in the interest of the children.

Another major challenge was that the travel taking the minors home for the weekends was stopped completely during the first lockdown, meaning that it was not possible for all of them to go home. This meant that all of the children were in the facility over the weekend when there is normally only one person working. Additional personnel could be provided for this by some private owners and operators whereas this was not possible in other shared accommodations and took its toll on the quality of care. In addition to this, the children and adolescents were very sad at not being able to see their families for weeks. The loss of positive relationships to the family and the daily structure exacerbated behavioural disorders in groups that were not stable. Unlike in spring 2020, personal contacts and trips home were barely affected during the second and third lockdowns

No trips home at the weekend

from November 2020. Instead, different measures were used in all of the *Laenderto* to keep the risk of infection as low as possible.

Insufficient staff was also the reason why in some shared accommodations the children were not or seldom taken out for a walk and the house councils and team meetings did not take place. As a result, the atmosphere in these shared accommodations gradually deteriorated and was very tense.

Inadequate technical equipment

In addition to the staff shortages, inadequate technical equipment created problems during the school closures. Even though the owners and operators had purchased additional laptops and tablets during the summer months, there were not enough devices in some shared accommodations for the subsequent school closures. The internet connection was not stable enough in some shared accommodations when all of the children had home-schooling at the same time, or it was unsuitable for this purpose.

Children had to vacate shared accommodation

The isolation of ill and positive tested asymptomatic children and suspected cases was not possible in all shared accommodations due to a lack of space. In a facility of one private operator, children with a positive test were moved to an isolation shared accommodation at the head office. The rooms in an external residential group in Lower Austria were used to house infected children and adolescents. The minors who normally live at this location had to move to a house on the grounds of a home many kilometres away from the shared accommodation. This was extremely stressful for them because the shared accommodation is their home. It was particularly problematic for children and adolescents whose care setting has been changed several times. One adolescent whose former shared accommodation had been closed down just a few months previously refused after returning to the external residential group to go on summer holidays because he feared losing his place in his group.

Excessive precautionary measures

In a crisis centre in Lower Austria, children and adolescents were made to shower and change their clothes after a weekend at home or receiving family visits in order to prevent the spread of COVID-19 infections even though there is no evidence that COVID-19 infections can be transmitted from clothing. External persons were not permitted to enter the shared accommodations meaning that visits could only take place in the visiting room or in the garden. In crisis centres in Lower Austria, the clinical psychologists had to work from their home office during the first lockdown in March 2020 with the result that diagnoses could not be made for the children and adolescents. For this reason, their stay in the crisis centre was extended unnecessarily.

Lack of medical and therapeutic care

The medical care of the children and adolescents was severely restricted in some regions of Austria. Almost all hospital appointments even for planned treatments were cancelled during the spring lockdown even in urgent cases. Medical specialists treated emergencies only during this phase. Psychotherapies for minors were also cancelled. Some therapists switched to video therapy, which was not accepted by all children and adolescents, meaning that they received no therapeutic care for a long time. In some facilities there were frequent problems with PPE, as it was not delivered on time.

However, the commissions reported about examples of best practice during the pandemic. These residential facilities managed to cope very well during the curfews and school closures. It was perceived that group cohesion increased and there was clearly less conflict and escalation in the crisis. In some facilities, the children and adolescents even had better grades due to home-schooling and in some cases progress was made with children who have a fear of school. Some teams were very creative in using the time in the best possible way. Daytrips, workouts on the terrace or ballgames with school friends over the fence helped the minors to cope with the curfews. In one facility, the pedagogical head built a climbing frame out of wood with the children and planted a raised flowerbed for each child together with the minors.

Positive examples

Several operators expressed their concern to the commissions that the social pedagogues working in child and youth welfare facilities could be at a disadvantage in the drafting of the national vaccination strategy in the same way they were with testing and supplies of PPE. In the view of the NPM, the personnel working there should be given the opportunity to be vaccinated at the same time as the pedagogical staff in schools. Since the beginning of the COVID-19 pandemic in Austria, the question has been discussed how often healthy children contract the virus and just how infectious they can actually be without becoming seriously ill. The assumption persisted for a long time that in particular children under ten years of age only contribute to infection in schools to a limited extent. However, a growing number of studies indicated towards the end of 2020 that children under ten years of age are infected with SARS-CoV-2 almost as frequently as children between the ages of eleven and fourteen or their teachers. The risk of transmission to care staff in socio-pedagogical and socio-therapeutic facilities is thus existent.

Shared accommodation are part of system-relevant infrastructure

- ▶ *The development of children is at high risk both during the health crisis and thereafter. This shall be countered, in particular after the pandemic has levelled off.*
- ▶ *Child and youth welfare shared accommodations shall be equipped with the technology necessary for home-schooling.*
- ▶ *The staffing required to cover the additional demand caused by the pandemic shall be provided.*
- ▶ *Socio-pedagogical staff should be given the opportunity to receive vaccination at the same time as teachers, as they are part of the system-relevant infrastructure.*

2.3.4 Worsening instead of planned improvements

Even before the outbreak of the COVID-19 pandemic last year, the NPM had criticised that quality improvements had been planned in Burgenland with the Regulation on Children's and Youth Assistance Act but the daily allowances had not been increased accordingly. Only the index was adjusted. The socio-therapeutic shared accommodations are particularly affected, as eight children will only be allowed per group from 1 October

Daily allowances in Burgenland not increased yet

2024. In order to be able to achieve the reduction in group size by half in the remaining three years, the facilities should not occupy places that become vacant due to release or adolescents coming of age. The owners and operators are faced with untenable financial problems because the regional government has not yet raised the daily allowances. The consequence is that minors will continue to be accepted until the end of 2023 under the existing permits and would then have to be released regardless of additional care needs. The NPM opposes this approach based on children's rights considerations, as it would entail an avoidable breakup of relationships that is harmful for the children. Furthermore, the increased requirements on the staff have been in effect in Burgenland for a year and were not compensated for 2020 either. The NPM insists that the Burgenland regional government quickly ensure that the owners and operators are compensated for the additional cost incurred by the proactive adaptation to the requirements of the Child and Youth Welfare Facilities Regulation.

Closure of socio-therapeutic shared accommodation

The Child and Youth Welfare Facilities Regulation was changed in Lower Austria too; socio-pedagogical inclusive housing for minors in full residential care were introduced. In the future, up to four minors with special individual needs of a mental, physical, emotional or social nature can be placed in these shared accommodations. For every minor with special needs, the "individual care" module should be paid in addition to the daily allowance. The existing socio-therapeutic residential groups will cease to exist in the future.

After monitoring visits in several shared accommodations in Lower Austria in 2019 and 2020, the NPM commissions reported that the management feared that, under the conditions of the standard cost model, they would no longer be able to accept children and adolescents requiring high levels of care who were previously housed in socio-therapeutic residential groups. There is a risk here that instead of more places being available for children with special individual needs as the Land expects there will be fewer places.

Worsening through standard cost model feared

It must be noted in this context that minors with special individual needs require several hours of individual care every day, as they can usually only take part in school class for a short period and have to be collected early. Unlike the children and adolescents cared for in socio-pedagogical residential groups to date, they also need individual care in the afternoon. They have to be taken out of the group frequently because they cannot be integrated in groups with eight other children for a longer period of time. Such individual care is not manageable with the additional staffing of 0.25 FTE per child with special individual needs stipulated in the draft regulation, as even at maximum capacity with four minors requiring special care there is only one additional FTE. In the socio-therapeutic groups where these children have been cared for to date, there was a far higher staffing ratio with a maximum permissible group size of eight children as opposed to the planned nine children.

Besides, the higher daily allowance could be settled for every child with no time limit, making it possible to provide an additional high-quality, needs-based programme. Now the "individual care" model can only be settled for a maximum of four children so that even at full capacity less funds are available for the groups. The additional package also

has a time limit. This too was not the case to date, as the higher daily allowance covered the total care time. It is also unrealistic that all shared accommodations will accept minors with special needs, which can be attributable to the composition of the groups due to the age range or different types of problems. The peculiarity of group dynamics in large facilities limits the implementation of the concept of social inclusive housing in the socio-pedagogical care centres of the *Land*.

Another problem is the necessity of a connection to a department of child and adolescent psychiatry and psychotherapy, which is not the case in many facilities. If, however, just a few or no minors with special individual needs can be accepted per shared accommodation for this reason, it can be assumed that the basic model intended for residential care will not suffice to guarantee the customary quality of socio-pedagogical care provided to date. It is thus to be feared that the, in principle, positive introduction of inclusive residential groups will result in a deterioration of socio-pedagogical care if more staff is not made available for implementing the changes or if the required funds are calculated too sparingly. Savings are always at the expense of the already disadvantaged children and adolescents who cannot grow up in their family. The NPM thus recommended raising the care ratio in the regulation and aligning the daily allowances with the increased demand.

A worsening of the situation is also feared for minors who are in partial residential care. They need more therapy in the form of logotherapy, occupational and physiotherapies because they have a lot of catching up to do due to what was missed in their parental home. The therapies were paid for by child and youth welfare services to date. In the future, the health care system will finance these therapies. However, this cannot be implemented in practice, as there are no local out-patient care structures in many areas in Lower Austria. The NPM requested the *Land* Lower Austria to continue to bear the cost of therapies that are otherwise not available.

Less therapies for the partial residential areas

The *Land* Carinthia informed the NPM that the Regulation on the Children's and Youth Assistance Act would be completed in summer 2020. This had not been enacted up to the time of completing this report at the end of January 2021. Standards for important areas of socio-pedagogical care such as the qualification of the staff have thus been neither defined nor transparently presented again in 2020.

Carinthian regulation still in preparation

- ▶ ***The Burgenland regional government should quickly raise the daily allowances in order to enable the amendments to the Child and Youth Welfare Facilities Regulation.***
- ▶ ***The regional government of Lower Austria should increase the care ratio for socio-pedagogical inclusive shared accommodations and align the daily allowances with the increased demand.***
- ▶ ***The regional government of Carinthia is requested yet again to enact the announced Regulation on Children's and Youth Assistance Act.***

2.3.5 No nationwide crisis placements when children’s wellbeing is in acute danger

Comprehensive evaluation during crises in the family

There should be an immediate crisis placement of minors when emergency measures are necessary due to acute danger in families, which makes it impossible for them to stay in their home. The crisis care is designated to provide safety and protection of the minors, de-escalation of the family situation and the development of viable solutions with all involved. In order to identify the risks to and needs of the children, there is an objectively substantiated evaluation of the life situation and the personal and social resources of the child as well as the familial protection and risk factors in the form of an assessment and medical history.

Vienna crisis centres overcrowded most of the year

There have been crisis centres in every district in Vienna for about 25 years. These are designed for eight minors and assess the risks to the children’s wellbeing over a period of approx. eight weeks. The crisis centres have been overcrowded most of the time for many years. In some exceptional cases, Commissions 4 and 5 even found an occupancy of 14 children. The reason for the overcrowding is a lack of crisis places and excessively long waiting times for follow-up care places. Suitable places cannot be found for minors with severe traumatisation in particular. They have to wait for months, sometimes even a year, for a suitable place.

The NPM has thus been demanding the expansion of therapeutic care places in Vienna for a long time. Another way of relieving the overload on crisis centres would be to expand non-residential risk assessments as well as increasing programmes in the area of non-residential support, as these are also not always directly available when needed and children sometimes have to stay longer in the crisis centre than is necessary for assessment. The NPM has also already recommended the provision of a crisis centre for minors with psychiatric diagnoses.

Anticipated relief did not materialise

Municipal department MA 11 anticipated an improvement of this situation that has been criticised by the NPM for years through regionalisation within the framework of the structural reform. In cooperation with private owners and operators, 70 new follow-up care places with different focuses were created in the past two years, and the non-residential support programme was also expanded. However, these measures are still insufficient. The situation is strained, in particular, in districts where more residential space has been created in recent years. The City of Vienna also announced the expansion of crisis de-escalation places, socio-therapeutic and socio-psychiatric care units as well as non-residential programmes in 2020. These projects should be implemented as quickly as possible in order to finally effect sustained relief of the crisis centres.

Staff turnover due to high stress levels

Commission 5 identified another problem, notably that predominantly job starters work in the crisis centre who only stay a few years due to the high workload. The increased workload is compensated with an allowance that is, however, very low and bears no relation to the challenges faced by the social pedagogues. An increase in the allowance could reduce the staff turnover.

In Burgenland, the new regulation enabled the opportunity for setting up new crisis centres. To date, however, only six crisis de-escalation places have been established in a residential group on the grounds of a large facility and the appointment of crisis foster parents announced. The NPM is critical of crisis de-escalation places on the grounds of a large facility for several reasons. During the crisis assessment, children and adolescents are particularly vulnerable and open to negative influences from peers. The group dynamics in large facilities exacerbate the problem of children in a crisis whereby both the children undergoing assessment and the other children and adolescents are at risk. The staff does not have a sufficient relationship with the children in a crisis to be able to counter these dynamics. This is the reason why Vienna started moving crisis places from existing facilities and creating crisis centres 25 years ago.

Crisis places on the ground of a large facility

The NPM thus urgently recommended Burgenland to set up a crisis centre at a dedicated location too. The NPM also criticises that in Burgenland currently it is only possible to accept children and adolescents in crisis places if measures are taken to avert imminent danger. If there is no imminent danger or the legal guardians consent to out-of-home care, the children and adolescents are placed in the care facility without assessment and diagnosis. This also explains the very low demand for crisis places compared to the rest of Austria. Such an interpretation of the regulation does not comply with the legislator's intention of improving the quality of care of minors in out-of-home care in Burgenland and establishing modern socio-pedagogical standards.

Dedicated crisis centre required for Burgenland

For children who come into out-of-home care directly from their family without crisis assessment neither their individual needs nor mental condition or development status are diagnosed. It is thus not possible to find suitable accommodation. And there is the danger that the children will not receive the care that they need. Changes in care settings, which are harmful for the development of the children, can be the consequence. It is also a major challenge for the care facilities accepting children without advance crisis assessment, as they have to take care of the stabilisation and diagnosis of the minors in addition to the care work.

Crisis assessment for all children

There is also a lack of crisis places in Styria. In a particularly bad case, a twelve-year old girl had to be housed in a crisis de-escalation place in Burgenland for this reason for several weeks. As this was only vacant for a limited time and a suitable follow-up place was not available, she was transferred to a facility that considered itself unsuitable.

Insufficient crisis places in Styria and Carinthia

Carinthia has two crisis centres with eight places and two emergency places respectively. They are located in Klagenfurt and Spittal/Drau. Both have a waiting list, which reflects the inadequate care of the minors in this area. The NPM sharply criticised that there are no immediately available places for crisis situations, but that those affected are forced to wait until a place becomes free.

- ▶ *Crisis centres shall be set up throughout Austria.*
- ▶ *The number of crisis places shall meet the demand.*
- ▶ *Plans for expanding follow-up places shall be urgently implemented.*

2.3.6 Different levels of education in care facilities

Professionalism required The professionalism of the staff is a condition for children and adolescents in residential care to receive the best possible support in their development. Professionalism encompasses different dimensions. This includes a sound education that prepares candidates for the tasks and requirements of child and youth welfare in the best possible way, imparts the necessary factual, methodical and didactical skills and requires dealing with theories and concepts of social pedagogy. In addition to theoretical knowledge, competency in implementation that is acquired and consolidated largely through practical experience is required for professional work. At the same time, the composition of the group in terms of age, behavioural disorders and mental illness poses different challenges for the staff. The opportunity to receive further education and advanced training as well as team reflection and supervision to this end are imperative.

Risk of overload of poorly trained staff The better the staff is prepared for the challenges of caring for children and adolescents during their training, the fewer problems they will have in practice. Dealing with the particularities of the individual children or the group must be covered in further education and advanced training in order to equip the caregivers in the best possible way. If the caregivers are not adequately trained or if they even perform the job without any training, the likelihood of being overstrained is very high. Strain increases the risk of burnout manifold, which results in higher staff turnover in a facility. There is thus a direct connection between poorly trained staff and the breakup of relationships, which is extremely harmful for the children's development. There is also a direct connection between the work overload of untrained or inadequately trained staff and the risk of violating human rights.

The NPM has been pointing out for years that the qualifications and level of education vary greatly in the facilities. This is because the Children's and Youth Assistance Acts of the *Laender* and the regulations enacted thereunder permit different qualifications and the owners and operators of the facilities do not place much emphasis on education and training. The technical supervision only checks if the staff have completed the training prescribed in their *Land* and if the number of training hours is complied with. What is not checked is whether the training and the level of education corresponds with the challenges of the children taken care of in the residential group. The commissions repeatedly identify deficits in this context and recommend relevant training programmes.

Further education and advanced training as new monitoring priority The NPM and its commissions have defined the further education and advanced training of the socio-pedagogical staff as a new monitoring priority and will address this issue frequently in 2021. To this end, a comprehensive questionnaire was developed which

has to be used on every monitoring visit to child and youth welfare facilities in order to achieve comparable results. An important point here will be whether during recruitment care is taken that the candidates' qualifications meet the specific requirements of the shared accommodations, and whether sufficient and adequate further education and advanced training will be provided so that the personnel is equipped to deal with the changing pedagogical challenges. Sufficient opportunity for reflection in the form of teams and supervision should also be documented.

- ▶ *The qualification of the staff shall correspond to the specific requirements of the shared accommodations and guarantee the implementation of children's rights.*
- ▶ *With the help of further education and advanced training, the staff shall be able to deal with the pedagogical challenges appropriately.*
- ▶ *The opportunity for the reflection on care situations shall be provided nationwide.*

2.3.7 Insufficient staffing

The staffing of a facility has a direct influence on the quality of care. With sufficient resources, the care team can cope with even difficult group constellations. In contrast, the staff can become overstrained if the staffing only allows one person per shift.

Insufficient staffing is a threat to the quality of care

When children have an impulsive outburst, one caregiver has to try to de-escalate the situation, while a second caregiver has to take care of protecting the group. If one person works alone on a shift, they can only bring themselves and the group into safety. The child who is having the impulsive outburst and also urgently needs help in this situation is left on their own. The documentation is routinely viewed on monitoring visits by the commissions. It shows that the caregivers see no other alternative than to lock themselves in with the other children to escape attack. Scenarios such as these can only be seen as most critical not only from a pedagogical but also from a human rights point of view. They also leave the social pedagogues with a sense of helplessness. Frequent occurrences of such incidents result in a high staff turnover.

The staff turnover is a problem that is difficult to get under control in many shared accommodations. In one shared accommodation in Vienna, the entire team except for one employee left within a year; there was also a change in management. As is so often the case, the high staff turnover was directly connected to excessive violent incidents, which affected not only the other children but the staff too. The inhibition on the part of the cared for minors to use physical violence against the care team seemed to diminish continually. Punches in the face or the stomach were documented. From a sense of helplessness, the staff increasingly reacted to the violence by holding the minors down, as they themselves had the feeling that they had no pedagogical way of de-escalating the situation. The operator of the facility reacted with a wide range of teambuilding

High staff turnover

measures and de-escalation training programmes. Furthermore, a project was initiated to better understand the reasons for the staff turnover.

High staff turnover can also be triggered by training that does not meet the requirements of the group and the consequent overload of the staff. The frequent breakup of relationships caused by the high turnover in turn has a negative impact on the development of the cared for minors and exacerbates the problem. The new pedagogues need time to be able to build up a relationship with the minors. Only when a relationship exists is it possible to intervene in a de-escalating manner and to act confidently. A facility can thus easily get caught in a vicious circle that is difficult to break.

Some employees try to escape the strain and burnout by reducing their working hours. In a residential group in Upper Austria, all of the employees were working part-time at the time of the monitoring visit by Commission 2. This made it difficult to build up a bond with the children and adolescents. The high staff turnover meant that there were constant vacancies, which could not be filled at short notice, thereby further increasing the workload for the other employees. The Land Upper Austria reacted to the criticism of the NPM by imposing an admission freeze until all of the vacancies had been filled, and prevented the admission of a six-year old girl.

Staffing ratio does not suffice for difficult group constellations

On monitoring visits, the commissions often observe that the staffing ratio for residential groups prescribed by the Laender is fulfilled but that this does not suffice in difficult group constellations. When minors display behaviour that is aggressive towards themselves and others, traumatic experiences as well as attachment trauma from early childhood are often the cause. Trauma pedagogy and resilience research shows that stable relationships help these minors to deal with stress differently. To this end, a stable team and sufficient time for every individual in the group are needed. There can be no positive development for the minors if there are not enough human resources to safeguard all their development opportunities and offer them healing bonds. Regrettably, the commissions often have the impression that the employees would like to and endeavour to do many things but reach their limits both personally and in terms of staffing and time.

Long shifts foster overloads

Repeated grounds for criticism are the customary long shifts in some child and youth welfare facilities. Due to the resulting increased risk of overload, the collective agreement of *Sozialwirtschaft Österreich* (an association of social and health care companies), which however is not binding for all child and youth welfare facilities, stipulates a limitation to working hours: 24-hour shifts are only allowed in emergency situations. These can only be extended by a maximum of one hour during shift change. However, many facilities have a 32-hour shift model; some even allow 48-hour shifts. These models are critical not only from the labour law aspect but also from a human rights perspective. The socio-pedagogical care of children and adolescents in itself places high demands on the personality and qualification of the staff. The basic requirements for this work are objectivity, trustworthiness, an understanding of socio-pedagogical everyday life with a sense of responsibility and assertiveness and a consistent respectful treatment of the

cared for children and adolescents. These requirements cannot be fulfilled by persons who are overstrained.

Low staffing levels also mean that it is impossible to perform the work with parents that is urgently needed to return the minors to their family. The amount of joint leisure activities also has to be reduced, particularly if the range of ages in the group is large; this was also the reason for complaints on monitoring visits by the commissions.

Parental work not possible

- ▶ *The staffing shall meet the specific requirements of the group.*
- ▶ *Working time models with 32-hour or 48-hour shifts shall be revised.*
- ▶ *Two persons per shift should be the universal standard.*

2.3.8 Positive observations

After a monitoring visit to a socio-therapeutic shared accommodation in Burgenland, Commission 6 came to the conclusion that the entire facility earned the distinction “best practice”. The underlying care concept, sex education concept as well as the violence prevention concept could also be used as a model for other similar facilities. Even though the children came from their families with severe traumatising to the shared accommodation, they made extremely good progress thanks to the exemplary care.

Best practice for the entire family

One of the key strengths of this shared accommodation is the high staffing ratio and above average level of qualification of all the employees and the management. There are at least three, mostly four social pedagogues working in the shared accommodation at all times. There is no staff turnover. What is to be emphasised in particular is that after the child and youth welfare services have stopped bearing the cost of care, the facility offers young adults who do not have the option of returning to their family the opportunity to live in a building belonging to the association and to receive the basic care provided by the shared accommodation beyond the age of 21.

Commission 6 also had a very positive overall impression of another socio-pedagogical shared accommodation in Burgenland. What was emphasised here too was that the facility maintains contact with adolescents who were previously cared for there after their time had elapsed, and the adolescents who have left the shared accommodation continue to receive support through donations, which gives them access to higher education and training. The contact to the care leavers also has a positive effect on the adolescents who are currently in care.

Support for formerly cared for adolescents

Commission 6 considered individual de-escalation concepts for each of the cared for minors a very good method for preventing situations from becoming out of control. These concepts explain in detail what can help to de-escalate the situation when there

Individual de-escalation concepts

is an impulsive outburst. The measures are developed together with the children taking their personal perception into consideration. The signs of an impulsive outburst are displayed in a traffic light system. There is also an emergency box containing objects that are selected by the children themselves and can help in de-escalating the situation. The de-escalation plans are evaluated and updated on a regular basis.

Exemplary participation instruments

The residents of a shared accommodation in Vienna enjoy far more participation than average. They exercise co-determination regarding food, the choice of holiday destination and in everyday matters. The shared accommodation excels thanks to its special concept and high pedagogical aspirations that are implemented in day-to-day life.

Successful parental work

On a monitoring visit to a residential group in Lower Austria, Commission 6 evaluated the focus of the facility on intensive work with the parents very positively. In addition to the overall willingness to cooperate by all involved, successful parental work needs a professional pedagogical attitude on the part of the staff who understand the family of origin as an important cooperation and parenting partner even during the out-of-home care. Structured work with the complete family system supports the parents in recognising their resources and opportunities in order to be able to cope with their own lives but also life together with their children again. In fact, minors in the visited facility are released home after one or two years on average. The socio-pedagogical staff has special training in family outreach work.

2.4 Institutions and facilities for persons with disabilities

2.4.1 Introduction

A total of 93 monitoring visits took place in institutions and facilities for persons with disabilities in 2020. The way in which the challenges posed by the pandemic were dealt with was made the focus of these monitoring visits by the commissions due to the many individual complaints received by the AOB on the topic.

Persons who live in institutions and facilities and/or work in day-care centres were particularly affected by institutionally imposed COVID-19 protective measures. Not all of these persons are in risk groups due to existing chronic conditions per se, meaning that they would be expected to experience a serious case of COVID-19. That “higher safety standards” should apply to persons with disabilities and their rights to freedom have therefore to be more severely restricted than those of the general population is an expression of a paternalistic attitude that must be overcome, especially in times of crisis, according to the UN Convention on the Rights of Persons with Disabilities (CRPD). The fact is that for a long time information on infection and protective measures was not available in simple language as well as in barrier-free forms for those who have hearing problems, poor eyesight or both. From March 2020, rigorous curfews and visiting restrictions were imposed nationwide and many day-care centres closed as a precautionary measure, which was tolerated by the politicians. The loss of meaningful activity and occupation, the loss of all counselling, contact and leisure programmes outside of the institutions and facilities as well as the restrictions of the freedom to move resulted in massive disruptions in the routine of many persons with disabilities, which in some cases included availing of therapeutic support.

Persons with disabilities particularly affected

The view that social contacts as well as care and therapy programmes have to be maintained even during a serious health crisis gradually prevailed, although the vulnerability to disorders in the psychiatric area for persons with disabilities under existing environmental conditions already results in up to four times higher rates and an earlier outbreak of illness than in the general population. This poses a special risk in an emergency situation such as during a pandemic. All restrictions of freedom and measures that isolate physically and socially pose a serious risk factor for persons with disabilities. They accelerate the loss of competence in practical everyday life and can cause physical and mental disorders, in particular depression and anxiety. Even if there are no health problems, conflict with other residents and staff can escalate more easily. Furthermore, negative feelings such as sadness, irritability or anger foster problematic behaviour and can cause an intensification in stereotypes as an expression of inner distress and uncertainty.

Isolation leads to mental complications

As early as April 2020, the Monitoring Committee of the Federal Government as well as the offices in the *Laender* that are entrusted with comparable tasks, the Austrian Disability Council, self-representation organisations and the NPM unanimously pointed out that it must be possible for persons with disabilities to participate in the COVID-19 crisis management groups set up by the Federal Government and the regional governments.

Persons with disabilities under-represented in crisis management groups

If this is not the case, these advisory bodies will not have the expertise required to accurately estimate and balance the effects of measures on persons with disabilities. The request for real participation was only fulfilled hesitantly and only in some *Laender*.

All of the NPM commissions were aware in the spring that the pandemic situation would be challenging for residential institutions and facilities – particularly in the first few weeks after the outbreak of SARS-CoV-2 infection in Austria – where there was no “template” for the correct approach. It would have been all the more important to use the self-determination and the rights of persons with disabilities as the starting point for all considerations and actions. Some institutions and facilities were more successful at this than others.

Great dedication of the care staff

According to observations made by the commissions, the staff made remarkable achievements thanks to their extraordinary personal dedication during this unprecedented time. Confronted with a crisis situation scarcely imaginable and without preparation, the employees had to react quickly to changing circumstances, often improvise and expose themselves to an increased risk of infection after outbreaks in the residential institutions and facilities. Furthermore, they had to compensate for absenteeism due to quarantine directives. The NPM would like to express the highest regard and respect for all of the employees.

It is undisputed that clear legal and practical rules for proportionate measures are necessary to overcome crisis situations. Neither the departments of the regional governments set up for facilities for persons with disabilities nor the health authorities approached the operator organisations to offer target-group support in residential homes and groups and discuss general conditions (infection protection, PPE supply, potential emergency care, quarantine measures).

Diverse challenges

The NPM already emphasised in its Report 2019 (pp. 93 et seq.) that persons with disabilities are exposed to an increased risk of violence due to their greater vulnerability. This was highlighted as the result of a research study as well as the many years of observations by the commissions. The risk most certainly did not decrease with the (mental and physical) challenges to the care situation during the pandemic.

The NPM points out that the failures of recent years can have an even stronger impact during the pandemic. The NPM would thus like to emphasise once again the importance of violence prevention, supervision to relieve the staff, and the safeguarding of medical care even in more isolated institutions, and the exploitation of all expedient communication channels.

2.4.2 No clear guidance for institutions and facilities

To obtain detailed information on the situation in the individual *Laender*, the AOB carried out an *ex-officio* proceeding in summer 2020. A detailed questionnaire was sent to the *Laender* subject to the NPM monitoring mandate. The objective was to learn which hygiene and protection regulations were recommended for the residential facilities and

day-care centres, how the appropriateness of exit and visiting regulations is ensured, which guidelines were applicable in relation to suspected cases and what support was provided to enable the clients to have more contact with their social environment. It called for an improvement in information, in particular for persons who are intellectually challenged. Some complaints from several operator organisations were also taken up, who feared being unable to continue running their operation because of a lack of clarity regarding short-time work regulations or the limited availability of staff due to being in a risk group.

The feedback from the *Laender* showed a wide range of different measures. It became clear that the institutions had been given a large number of non-binding recommendations but hardly any clear guidelines for preventive concepts and for dealing with suspected cases. Initially, it was not clear to the management and the employees of the institutions how they should proceed in this emergency situation and which standard of due care had to be complied with for infection prevention measures. This is extremely problematic in the view of the NPM. Within the framework of the general duties of protection and due diligence, measures shall be set by both the State and the institutions and facilities for persons with disabilities in order to avert risks to the life and the health of the residents as well as of the customers of partial resident services – while observing human dignity and the right to self-determination. Fundamental rights theory in Austria calls for a situational weighting. In this context, the value of the purpose of the severity of an infringement must be compared with the degree of goal achievement. It is necessary to compare different courses of action with each other and choose the option with the least harm. When authorities or operator organisations simply impose blanket recommendations on care institutions and, in addition, subordinate all other fundamental and human rights to the protection of health, care institutions are inevitably forced into critical dilemmas of a constitutional, liability-related and criminal nature (see Klaushofer et al., “*Ausgewählte unions- und verfassungsrechtliche Fragen der österreichischen Maßnahmen zur Eindämmung der Ausbreitung des Covid-19-Virus*”, 2020, in *Zeitschrift für Öffentliches Recht*, volume 75, p. 120).

Lack of binding directives

The NPM already made clear before the end of the first lockdown that there is no objective justification for isolating persons with disabilities for their own protection – whether they want it or not – as a precautionary measure and to uphold curfews when public life is gradually returning to normal for the rest of the population. The idea that one simply has to isolate risk groups and minimise their personal contacts during the pandemic in order to be able to continue with economic and social life faster was also rejected.

In early summer, the Federal Ministry of Social Affairs, Health, Care and Consumer Protection issued two recommendations for institutions and facilities for persons with disabilities in the *Laender*, to which the NPM also contributed. These emphasised that persons with impairments shall not be assigned to a risk group simply because they have disabilities; this shall be examined individually as with all persons. They also stipulated that measures for the protection of residents of institutions for persons with disabilities

Persons with disabilities not automatically high-risk group

shall not be excessive (Recommendations of the Federal Ministry of Social Affairs, Health, Care and Consumer Protection of 29 May 2020 and 18 June 2020).

Obligatory risk-based prevention concepts

Several NPM interventions on different levels were necessary before the competent ministry, as part of the COVID-19 Preventive Measures Regulation (*COVID-19 Schutzmaßnahmenverordnung*) from November 2020, standardised a legal obligation to develop and implement COVID-19 prevention concepts for the owners and operators of institutions for persons with disabilities, which are based on risk analyses and reflect leading-edge science.

2.4.3 Massive curfew and visiting restrictions

The core of the lockdown in spring was the instruction by the Federal Government to the population to reduce personal contact as much as possible with persons who do not live in the same household. Entering public space was – with a few exceptions – forbidden. (This ban was subsequently nullified by the Constitutional Court of Austria as unconstitutional). This of course also applied to persons with disabilities who live in institutions and facilities. The lockdown regulations allowed going for a walk, taking care of important errands or visiting doctors' surgeries, for example.

The residential facilities for persons with disabilities were faced with problems due to these exceptions to the curfews. Additional qualified staff was not available; in the beginning, there was a lack of PPE – as there was in the nursing homes. The winding down of medical services as part of the COVID-19 crisis management in the hospitals increased the concern that a crisis could become unmanageable and both symptoms of COVID-19 infection and signs of deterioration could be overlooked. In conversations with commissions, the fear was expressed that outbreaks of infection starting with individual residents of large institutions would be more difficult to bring under control than those in small, closed residential groups. There was doubt that these persons could move in the public area without being a risk to themselves or others. The staff that performs care close to the body for clients with multiple disabilities should also be protected from an increased risk that could have brought the existing care system to its knees. On the other hand, it was already clear in spring 2020 that staying and meeting outside supported by other precautionary measures such as social distancing and wearing a mask bears a lower risk of infection than larger groups of persons staying inside only.

Freedom of persons with disabilities restricted in particular

A number of institutions decided to take the drastic step of minimising the risk of infection by imposing curfews. Residents were not allowed to leave the buildings during the lockdown. Visits from families or friends were not possible.

This extreme situation could be alleviated in institutions with gardens that were available for outdoor exercise. Other institutions allowed accompanied walks outdoors. However, this was not always the case.

Legal requirements not fulfilled

Decision-makers overlooked in many cases that they bore the responsibility for the safety of the clients, but not only the general lockdown regulations had to be observed.

The (constitutional) legal provisions under which measures that restrict freedom are allowed to be set still apply during a pandemic.

Restrictions of freedom against the will of those affected are only permissible in the constitutionally defined exceptions and only on the basis of a legal authorisation (see Klaushofer et al., "*Ausgewählte unions- und verfassungsrechtliche Fragen der österreichischen Maßnahmen zur Eindämmung der Ausbreitung des Covid-19-Virus*", 2020, in *Zeitschrift für Öffentliches Recht*, volume 75, p. 118).

For the justification of curfews during the COVID-19 pandemic, the Nursing and Residential Homes Residence Act (*Heimaufenthaltsgesetz*), the Epidemics Act (*Epidemiegesetz*) and at most the COVID-19 Measures Act (COVID-19-Maßnahmengesetz) can be considered. The above-mentioned guidelines are executed by the administrative authorities. If there are no such official guidelines (by decree or regulation), there is no basis for a measure that deprives liberty. The application of the Nursing and Residential Homes Residence Act on the other hand can only be considered for persons with mental disabilities or mental illness. According to this Act, a curfew could only be justified if the affected person is at risk of harming themselves or someone else and there are no other milder, expedient alternatives available. But even if these conditions were fulfilled – which is doubtful in most of the cases where curfews were imposed – a procedure shall be complied with: the measures shall be reported to the representative(s) of the residents without delay. If this does not happen, they are illegal for this reason alone.

Legal basis for measures that restrict freedom is requirement

Forbidding persons from leaving their place of residence or making it impossible for them to do so constitutes a measure that restricts freedom and can only be applied under the conditions mentioned above. That staff are trained in this matter – regardless of COVID-19 – should be obvious.

Regrettably, the NPM observed several times where that no careful consideration was made of whether a measure that restricts freedom is proportionate. In some cases, the measures were also not reported to the representative(s) of the residents. This means that the affected persons were subjected to measures that restrict freedom which were not legally justified.

Measures that restrict freedom often not justified

Even if institutions and facilities had the best of intentions and no experience with such a pandemic and their staff were stretched to their limits, diverging from the legal framework for serious infringements of fundamental rights is unacceptable. In many cases, the measures constituted a disproportionate restriction of fundamental and human rights, in particular the right to personal freedom pursuant to Article 5 of the European Convention on Human Rights (ECHR). This was also confirmed in court decisions according to which residents of institutions shall be given the opportunity to leave the shared accommodation accompanied by one person up to six times per week.

Health protection does not justify impermissible restrictions of freedom

The drastic curfews and visiting restrictions in the residential institutions and facilities meant that many younger persons with disabilities in particular left their residential institutions during the first lockdown and were taken care of at home by their families. This meant not only enormous strain for the relatives. The subsequent return to the

institutions turned out to be difficult because in the beginning many institutions only consented to a return if the affected persons agreed to several days in quarantine. They were not even allowed to leave their room to eat during this time.

Some institutions made visits possible

It should not be left unmentioned that some institutions also reacted flexibly during the first lockdown and allowed visits. It was thus possible to meet relatives in the garden and in the garage observing the hygiene guidelines in a facility in Lower Austria, for example.

Easing of restrictions

The visiting regulations were eased gradually from May 2020. Table visits with masks were possible and, from the summer, staying the night with relatives was allowed again in some cases. That the lifting of restrictions after the first lockdown took too long was conceded even by several representatives of institutions in conversations with the commissions.

The NPM urgently recommended the institutions and facilities to plan concrete measures in time for the event that the number of cases increases and with it the risk of infection as well as the re-introduction of stricter measures. This should facilitate an individually appropriate and proportionate way of dealing with curfews and visiting restrictions in the future.

Define protection measures individually

Examples of such measures could be the personal definition of individual liberties or restrictions based on the competence of the respective person in handling the prescribed social distancing and hygiene measures; for those residents who are unable to comply with the prescribed safety measures without help, a programme for regularly going outside accompanied 1:1 should be set up.

The Human Rights Advisory Council demanded the creation of dedicated visiting areas in which an adequately secured meeting for “high-risk groups” should be possible. Visiting times should be flexible, the duration of visits not too short and visits of at least two persons (e.g. both parents, siblings etc.) should be facilitated. PPE should be provided and registration for contact tracing carried out. The Human Rights Advisory Council also emphasised the necessity of a sense of responsibility on the part of the staff (incl. those doing civilian service) in order to prevent the infection being carried into the institutions where possible.

Persons with disabilities also have the right to make their own decisions. It would be discriminatory to ascribe persons with cognitive impairments a higher probability of risk for “wrongdoing” as a matter of principle. Experience has shown that there is no difference in how persons with and without disabilities abide by or disobey orders and recommendations. After the progress made in the area of inclusion, the pandemic shall not provide any justification for isolating persons with disabilities more than the general population. They too miss social contact, leisure, sports and shopping trips.

- ▶ *Authorities shall generate evidence-based risk analyses, make clear guidelines for the content of prevention concepts as well as monitor the implementation thereof.*
- ▶ *Employees shall be trained in the conditions under which measures that restrict freedom are permissible. These training programmes should be mandatory.*
- ▶ *Every resident shall be given the opportunity to go outside, if required accompanied by another person.*
- ▶ *Visiting areas should be set up in the institutions and facilities in order to guarantee personal contact to close persons.*

2.4.4 Closed day-care centres

Curfews in residential facilities were also due to the fact that day-care centres remained closed in the first weeks and months of the lockdown. This meant that important care programmes during the day were missing. For persons with cognitive impairments in particular these occupational opportunities are very important and provide a structure and bring stability to their daily routine. The discontinuation of these programmes can have a more severe mental impact than with persons without such impairments.

Loss of daily structures

But the challenges also increased for all of those who provide care – whether professional staff in residential institutions or family members providing care at home. In many cases, basic care that was broken by the daily structure had to be changed to 24-hour care. This caused considerable strain that was difficult to alleviate.

The day-care centres dealt with this situation very differently. Whilst some facilities had only little to no contact with their clients during the closure, others went to great pains to maintain contact during this time. The manager of a day-care centre thus had regular contact to the clients and their relatives. She reported that after a few weeks the strain on some families with the 24/7 care of their relatives became increasingly evident. For this reason, she offered her advice to the relatives. Letters to the relatives were written regularly in another facility.

Examples of good practice

The commissions had very positive reports of cases in Lower Austria where the daily structure staff came to the respective residential institutions to provide support service. Personal contacts could be maintained and the staff relieved in this way.

The NPM shares the view that the temporary closure of day-care centres should not result in the complete break in contact with the clients and their families. Those affected need a minimum level of contact with their familiar caregivers. In addition, relatives who now have to shoulder the care of their family members alone need help and support. To this end, all of the technical channels available should be used to maintain contact and inform those affected about further steps in such unprecedented situations.

Maintaining contact with caregivers

In isolated cases, day-care centres remained open during the first lockdown. For example, the shop was closed at a daily structure in Salzburg, but the adjoining day-

Some day-care centres remained open

care centre remained open from mid-March to the end of May 2020. Residents of the adjacent residential building and external clients were divided up in the day-care centre in the residential building and the shop. Mingling of the groups should be avoided as much as possible.

The change of group brought about by the COVID-19 measures also had positive aspects. Thanks to the change it was possible for the clients to become familiar with other work areas and some were delighted to perform the new jobs.

Another day-care centre in Salzburg was also open during the first lockdown to give at least one client care during the day. The parents of the man both worked in system-relevant jobs and were not able to take care of him during the day.

Difficulties with re-opening

The approaches to re-opening the day-care centres also varied greatly. Whilst some institutions developed their own concepts for the gradual scaling up of the day-care centres and informed the affected persons, other institutions re-opened in an unstructured manner. In any case, it is clear that many persons with disabilities had to stay at home or in their residential facility for too long.

One day-care centre was praised for setting up an isolation station. In this way, operation could be taken up again while minimising risk at the same time.

It was not understandable for many of those affected that they had to continue paying fees during the lockdown and only a credit was announced.

Commissions reported very positively that day-care centres continued to pay pocket money during the closure, so that there was no drawback for the clients at least in this respect.

Imminent loss of place in day-care centre

The imminent loss of his place in a day-care centre for a young man evoked complete consternation. His day-care centre had been closed during the first lockdown and after the gradual re-opening the centre advised him not to return, as members of his family are in a risk group. The day-care centre informed his parents in autumn 2020 that in accordance with the guidelines of the *Land* he is not allowed to return, as he had lost his entitlement to care. This was justified with the argument that the care expires automatically according to the statutory provisions if it – for whatever reason – is not availed of for more than six months. That this should also apply to the situation in which the centre was closed due to the coronavirus pandemic and was not visited for safety reasons on the recommendation of the facility was fully incomprehensible for the affected family and the NPM. The *Land* announced that it would endeavour to get the man his place back in the day-care centre when it is possible for him to visit it again. However, this uncertainty is unacceptable for those affected.

Although the day-care centres were open during the lockdown in autumn 2020 – unlike in the spring – several relatives raised complaints. They reported that they or the clients had been requested to voluntarily forego the care programme until the rate of infection eases. In particular, elderly parents of persons with disabilities but also larger families thus felt they were under pressure and subjected to overloading their resources.

On the other hand, day-care centres showed flexibility when planning their programmes in the face of an increasing risk of infection. For example, morning and afternoon groups were formed in a facility in Burgenland in order to reduce the number of persons present simultaneously and thus the risk of contagion. In other facilities in Burgenland, groups were divided up and thus had the opportunity to maintain the existing daily structure on Mondays, Wednesdays and Fridays or on Tuesdays and Thursdays. The days were then alternated the following week.

- ▶ *Day-care centres should remain open in crisis situations.*
- ▶ *If day-care centres are closed, contact to caregivers should be maintained where possible. The technical conditions for this should be provided.*
- ▶ *Crisis situations for which those affected are not at fault shall in no way result in the loss of places in day-care centres.*

2.4.5 Round the clock in shared accommodation

During the first lockdown, the day-care centres were closed from mid-March to mid-June 2020 and only opened gradually thereafter. However, reports from the commissions indicated that in autumn 2020 too some day-care centres were closed again. In addition to the curfew and visiting ban, this meant that persons with disabilities, who live in residential facilities, had to spend all of their time in their facility without exception.

The closure of the day-care centres was particularly problematic in institutions and facilities with little space. There was nowhere else to go, which caused increased tension between the residents. Where available, gardens were of course used. In other cases, facilities organised 1:1 walks.

In some cases, more intensive care was possible because some of the residents were living with their families again. This meant that fewer persons had to be cared for thereby freeing up staff resources. However, this was not the norm.

Efforts to plan diverse activities during the day

Commissions reported that the residential facilities tried to adapt the daily planning, to intensify activity programmes and individual care, and thereby to compensate the absence of day-care centres. The commissions reported of individual daily plans, which served to address specific wishes and needs of those affected.

However, not only the cramped conditions but also the “social distancing” in general created problems for many persons with disabilities. They perceived the restricted bodily contact as difficult in particular. This is, above all, problematic because many persons in residential facilities do not live with a partner but at the same time have a great need for bodily contact.

Adequate information imperative Persons can usually orientate themselves better in emergency situations if they understand what is going on around them and how they should behave. This applies to persons without disabilities in the same way as it does to persons with disabilities. It is thus imperative that persons with disabilities in care are informed in an adequate way about the pandemic, what behaviour is expected of them and what next steps are planned. The NPM has repeatedly criticised in the past that too little attention is paid to expedient communication in many institutions. In particular, non-verbal persons with multiple disabilities in some institutions are barely informed about activities, events or news in their surroundings. This problem was exacerbated during the pandemic.

Examples of good practice At the same time, there were quite a few positive examples of institutions and facilities that dealt with this topic very well. In one facility, the residents received daily “Corona News” in simple language. In other institutions, hygiene measures in the form of pictures were displayed in the hallways. Training sessions on how to wear a mask properly and on other protective measures were held. Numbering systems for washing hands or traffic light regulations with behavioural rules were observed by the commissions.

Loss of social contacts The opportunities to meet up with people outside the institutions during the lockdown were very limited or in some cases completely ruled out. Commissions reported that many cared for persons were not able to meet their families for three months. Other social contacts that are possible in everyday situations such as when shopping, visiting a bar or events were sorely missed by those affected too. Many institutions tried to use electronic media to enable contact with families and friends as much as possible. This worked very well in some cases, in others less so.

More staff to guarantee better protection of fundamental rights The additional activities also required staff resources, however. In some cases, the staff in residential institutions were supported by colleagues from the closed day-care centres. In other cases, fewer clients had to be taken care of than usual because some spent the lockdown with their families. This even facilitated improved, more individualised care.

But there was not always sufficient staff available. The residential facilities were often supported by staff from the closed day-care centres. But this was not the case everywhere. In addition, there were staff shortages when employees were in a risk group and could not work.

In one residential facility for example, all twelve elderly residents were cared for by a single caregiver from 8.30 a.m. to 1.30 p.m. The commission emphasised that this precarious staffing resulted in an unacceptable strain on both the care staff and the cared for persons. They need adequate relationships and activity programmes to compensate for the absence of external contacts. Furthermore, they often need more support in coping with everyday situations because of their age. These requirements cannot be fulfilled with one person working alone.

The operator of the facility argued that they had consciously avoided support from day-care centres at the beginning of the pandemic for fear of infecting this particularly vulnerable group of persons. Both knowledge of the pandemic and awareness of the

rights and freedom of persons with disabilities have since improved, which is why the operator would act differently in the future.

It is positive that there was a change of awareness during the pandemic. However, it is also important to take precautions in good time in order to avoid care gaps in the event of new crisis situations.

- ▶ *All clients have a right to adequate and timely information even in crisis situations. The best possible communication channels should be used.*
- ▶ *Staff shortages can worsen in crisis situations. Sufficient staff shall thus be ensured in normal times.*
- ▶ *Social contacts should be facilitated as much as possible in emergency situations too. Activities close to the community should be a matter of course in normal times.*

2.4.6 Lack of PPE and too little information

According to many institutions and facilities, they did not have sufficient PPE at the beginning of the coronavirus pandemic. "We always worked with the fear that it would run out", said the manager of a residential facility for persons with disabilities. This improved over time. In many cases not enough PPE could be organised. Some institutions received no FFP2 or FFP3 masks until the summer.

Some institutions were very flexible and innovative. They tried to sew masks themselves when there were problems with supply, in order to guarantee a minimum level of infection prevention.

In order to be able to ensure the standards of hygiene necessary to reduce infection in crisis situations in the future, the rapid availability of PPE should be guaranteed. Some owners and operators of institutions have since started to build up central stores. This, however, is easier for larger service providers than for smaller operator organisations. The public administration should support owners and operators of institutions in crisis situations accordingly.

Rapid availability of PPE imperative

But not only the procurement of hygienic PPE posed great challenges for the institutions. The information on using the PPE and on other hygiene and protective measures was perceived as insufficient by the staff in several facilities. In some cases, there was no hygiene training at all.

Clear information on protective measures necessary

Some facilities saw the responsibility for inadequate information management with the respective *Laender*. They felt abandoned in the beginning. They complained that there was merely information on statutory provisions available but that they had received no concrete directly applicable guidelines or support. For example, a COVID-19 guideline for psychosocial and addiction-oriented institutions and facilities written by a *Land* was only presented in October 2020.

Example of good practice The commissions, however, also reported about very positive cases in which institutions recruited a hygiene specialist or organised hygiene training to be able to deal with difficulties in the best possible way.

According to the commissions, hygiene training at least should be guaranteed nationwide. Moreover, the owners and operators of the institutions and facilities should be given clear instructions on how to deal with suspected COVID-19 cases and sufficient tests should be provided for the residents and staff. This is also relevant for future crises.

Excessive protective measures in some cases However, even when there was sufficient PPE there were grounds for criticism. Some protective measures were generally perceived as excessive by those affected. For example, in one facility residents had to wear a mask when going outside, even for a walk on a lonely country path.

Some institutions responded to criticism by the NPM merely with the remark that particularly high safety precautions are important because persons with increased health risks live or work in the facilities.

The obligation to wear a mask by the staff was perceived as obstructive in care work. The cared for persons are thus barely able to read the facial expressions of their caregivers which means that an important means of communication was lost.

- ▶ *Owners and operators of institutions shall be supported in the procurement of PPE by the public administration. Relevant precautions could be made as part of a civil defence project.*
- ▶ *Authorities should give owners and operators of institutions clear guidelines as quickly as possible.*

2.4.7 Access to medical care

Ensure equal access Persons with disabilities shall have the same access to medical care in the event of COVID-19 infection as persons without impairments. Disability shall not result in being at a disadvantage when it comes to medical care. In no way shall a disability be an exclusion criterion in the event of a possible triage system. More specialisation and under certain circumstances a higher allocation of resources can be necessary to enable equality here.

For persons with considerable and complex assistance needs, the trusted persons who support them should also be allowed into the hospital. Needless to say, the desire and willingness to receive treatment shall be respected. The NPM follows the relevant requirements of *Lebenshilfe Österreich*.

Medical and therapeutic care limited The commissions reported that residents had different experiences with medical care during the pandemic. Whereas in one of the facilities visited in Vienna a general practitioner held surgery hours in the same building and was therefore available at all

times, others reported that doctors' visits were stopped completely. General practitioners were often reachable by telephone, there were, however, few house visits.

In this context, the NPM would like to point out that there were problems with medical care in some facilities even before the pandemic. There was an extreme case of a facility in which a doctor prescribed all of the psychotropic medication once a year for twelve months and made no further house visits and had no other contact with the patients after that. It cannot be satisfactory if the availability of medical care continues to decrease during a pandemic. The public administration has to develop concepts here to provide persons who live in such facilities equal access to medical care.

What complicated the situation further during the pandemic was the fact that external therapies had to be cancelled or postponed. In this context, the NPM would like to refer to a recommendation of the Human Rights Advisory Council, which emphasised that during the COVID-19 pandemic health care includes therapeutic programmes such as physio, logo and psychotherapy. A pandemic plan must thus include how these programmes can best be maintained while observing hygiene standards.

- ▶ *Medical care shall be guaranteed nationwide; even in institutions and facilities in remote places. Deficits have an even stronger impact in crisis situations.*
- ▶ *Therapy programmes are a component of medical care and should therefore be available at all times to the extent possible.*

2.4.8 Prevention of violence

The lockdown was extremely difficult for persons who have aggressive outbursts and display particularly challenging behaviour because of their disability. The residents experienced great uncertainty due to the continuing emergency situation, the almost complete loss of social contacts and being "locked up" in the facility.

Several institutions and facilities reported that some of the residents' potential for aggressive behaviour increased during the lockdown. Persons became increasingly nervous, displayed stereotypical behaviour and shouted a lot. There were also reports of physical violence towards other residents and the staff. The situation was exacerbated by staff shortages in some facilities.

Increased potential for aggression in some cases due to emergency situation

Since 2012 commissions have been regularly highlighting that persons with disabilities are at a greater risk of being subjected to violence due to their vulnerability. The NPM reported last year about the representative results of a study on violence experienced by persons in facilities for persons with disabilities.

According to the study, almost eight out of ten of the persons with disabilities interviewed had experienced violence and four out of ten had been subjected to severe violence.

One out of ten persons had been subjected to serious physical violence in the last three years, whereby the risk is particularly high for persons with increased assistance needs, for example, with body hygiene. Analysis shows that this is attributable to care-relevant types of violence. More than eight out of ten persons with disabilities had experienced emotional violence in their lives.

Violence prevention
measures more
important than ever

The study also identifies a wide range of risk and protection factors specifically for girls, women and men. Analyses show amongst others that there are reports of experiencing violence far more frequently in institutions with fewer care staff. If there is little time for person-centred care, the risk of violence is evidently high.

Particularly important for preventing violence are social contacts, trusted persons, person-centred care concepts and support forms that enable the cared for persons to participate in and lead a self-determined life.

Most of the risk factors identified in the study increased during the lockdown. The commissions did not observe a significant increase in incidents of violence on their monitoring visits; however, the reduction in risk factors in "normal times" shall be pushed more fervently in the future in order to be better prepared for emergency situations.

Years of sexual abuse by
caregiver

The fatal consequences of failing to implement universal preventive measures were evident in a facility in Carinthia that was visited by Commission 3. At the time of the visit, the facility was in the process of learning from a case of severe abuse of a female resident. A mentally impaired woman was sexually abused by her caregiver for more than ten years. Only after he had gone into retirement did she find the courage to report the attacks. The commission was told that the atmosphere in the facility had been one of fear. Both residents and the staff were terrified of the former manageress who was also the partner of the perpetrator. The operator of the facility explained that the reason why the abuse had gone on for so long unnoticed was the decentralised location and the structures in the facility, which had made detecting crimes difficult.

The perpetrator has since been convicted. It is praiseworthy that after the abuse was reported the facility acted immediately and is now undergoing a revised staff and conceptual orientation. In addition to this, the NPM is of the opinion that it is imperative to build alternatives to home structures and facilitate living close to the local community with the relevant support. This would enable persons with disabilities to live in their familiar environment, take part in social life and be able to use the regular infrastructure.

On a monitoring visit to a residential facility in Tyrol, Commission 1 learned of an incident that amounted to sexual harassment. A male employee shaved the private parts of a younger, nonverbal, female client without her consent and without any medical or care-related indication for the same. After some discussion, the facility reacted with the mutual termination of his contract of employment. The commission criticised in this context that this employee was still employed in the facility for a further two months after the incident and was allowed to work alone on day shifts – even if on a different floor. According to the regional management, there are violence prevention and sex education concepts,

but these have not yet been brought to the attention of the employees. Commission 1 reported that the management level had not originally assessed the act of the employee as sexual harassment but as “inappropriate exaggerated diligence”. Acts of sexual and sexualised violence committed by qualified staff working in the area of persons with disabilities are still very much treated as a taboo and covered up due to misunderstood solidarity or out of fear of endangering the reputation of the institution. This is not helpful in addressing the structurally related dependence of persons with disabilities living in residential facilities.

- ▶ ***Violence prevention shall be a fundament in every institution and facility for persons with disabilities. Failures can become more evident in emergency situations.***
- ▶ ***Adequate staffing can reduce the risk of violence.***
- ▶ ***Persons with disabilities shall be protected against violence. Violence prevention shall focus on the right to self-determination, privacy, the right to physical and emotional integrity (protection against sexual assault) as well as the right to sex education and sex counselling.***

2.4.9 Inappropriate use of public funds

In 2019 Commission 3 visited a facility for persons with disabilities in Carinthia which was organised as an agricultural operation. The clients between the ages of 15 and 55 were to be offered integration into the workforce through training and occupational activity. Although the commission found the work with animals positive, the almost complete lack of qualified agricultural staff was noticeable. The commission had the impression that the residents and external persons with disabilities performed the agricultural work almost completely alone and received no relevant employment with social insurance cover or pay in return. Commission 3 suspected exploitation in this case.

Suspected exploitation

In response to the criticism of the NPM, the *Land* Carinthia issued an investigative mandate to an external company to audit the financial management and funds received by the facility.

NPM criticism

The audit showed that according to the business records presented for the period 2013 to 2018 a substantial amount of money was not used for the purpose set forth by the *Land* Carinthia in the standard cost model and thus did not benefit the clients.

Public funds not used as stipulated

The main reason for the partially unverifiable financial management was the failure to separate business operations from social services. The *Land* paid lump sums. These were set off against expenses, some of which could not be allocated to a specific cost category. It was suspicious that budgets for leisure activities were barely used. The facility explained this with a lack of interest on the part of the clients. However, the auditors

came to the conclusion that a lack of programmes and incentives was the reason for the lack of interest.

Re-structuring stipulated by *Land* In order to continue operations, the following recommendations were formulated amongst others:

- Business and social services should be separate. Jobs with social insurance cover could thus be offered to persons with disabilities. The risk of exploitation would then no longer exist.
- New management should facilitate the development from an outdated family operation to a contemporary service provider.
- There shall be an obligatory separation of commercial areas and social services. There shall be a binding social plan for reserves.

The sale of vegetables at local markets and the opening of a shop were recommended to better integrate those affected into the local community. The facility also has a restaurant that could be opened to the public. Finally, the lifting of time restrictions for the use of communication devices was recommended to reinforce the independence and self-determination of the residents.

The NPM will use follow-up visits to evaluate whether the tight controls of the technical supervision can contribute to improving the care situation to UN CRPD level and whether the desires and needs of the clients are at last accommodated.

2.5 Correctional institutions

2.5.1 Introduction

The NPM visited 29 facilities of the penitentiary system and facilities for the detention of mentally ill offenders in the year under review.

The reduction in this figure by about a quarter compared to the previous year is attributable to the decision to carry out fewer on-site visits during the lockdown. The NPM wanted to minimise the risk of carrying the virus into institutions on the one hand. On the other, the visit planning took the tight staff situation in the correctional institutions into consideration, which was a result of the change to shift operation.

Conscious reduction

On the monitoring visits, the multiple restrictions that equally affected both the officers and the prisoners and how these were dealt with were documented. Observations and points of criticism on this topic are presented in chapter 2.5.2. The commissions, however, did not limit themselves to the effects on health policy in the institutions during the pandemic. They also observed and documented issues covered in the monitoring priorities and addressed weakness – most of which were already known – as a matter of routine.

Predefined topics

Observations made on a large-scale raid are reported in chapter 2.5.3. It was the first targeted campaign in a correctional institution to be attended by the NPM. Chapters 2.5.4 to 2.5.9 catch up with topics from the previous year. It became evident that body searches with disrobement continue to be carried out with grounds for objection. Nothing has changed in the deficient structures in the acute psychiatric care of inmates either. The conditions in the public hospitals are highlighted in the last chapter “Detention of mentally ill offenders”.

Due to the coronavirus, the dialogue with the general directorate and the prison wardens had to be cancelled. Both should be taken up again as soon as the public health situation permits.

Whereas all of the teaching units for new prison guards could be held in classrooms, international contacts could only be maintained online. The NPM took part in several events that were organised by the APT and SPT dealing with conducting monitoring visits during a pandemic. Several conferences should also be mentioned that were held by the Ludwig Boltzmann Institute of Fundamental and Human Rights or took place within the framework of the SEE Network in Croatia and Serbia.

Training and international contacts

2.5.2 COVID-19 in facilities of the penitentiary system and facilities for the detention of mentally ill offenders

Directly after the outbreak of the COVID-19 pandemic, international human rights organisations addressed the impact on facilities of the penitentiary system. They pointed out that measures that are taken in the interest of public health can result in

International standards

prisoners being exposed to a higher risk of abuse and violation of their human rights. Many guidelines and recommendations were drawn up.

Independent control
at all times

The CPT and the SPT emphasise that the monitoring of places of deprivation of liberty by independent bodies including the NPM is a fundamental mechanism in the prevention of abuse. During a global health crisis such as the COVID-19 pandemic, independent monitoring gains in importance due to the potential risk of abuse and violations of human rights in closed institutions. The WHO points out that the COVID-19 pandemic shall not be used as justification for curtailing the access and monitoring rights of independent institutions whose task it is to prevent abuse and inhumane treatment (WHO Interim Guidance – Section 3 Planning Principles and Human Rights Considerations). The SPT also emphasises that during the pandemic the NPM shall be granted access to all detention institutions as a matter of principle, including the places where persons have been placed under quarantine; even if temporary restrictions to access are permissible pursuant to OPCAT Article 14 (2). It goes without saying that the NPM takes the required precautions to observe the basic “do no harm” principle and thereby protect the public, the detainees, the care staff and themselves.

Centralised management
by the Ministry of Justice

On 28 February 2020, the general directorate informed the NPM that in view of the first confirmed cases of infection with COVID-19 a team of experts had been set up in the Federal Ministry of Justice involving all departments and the office of the medical superintendent.

In addition to hygiene measures, a decree stipulates the restriction of detainees going outside alone and a ban on groups going outside. Visits may only be in the form of so-called glass visits. Contact to the outside is reduced considerably. Protective masks and disinfectant are provided to the institutions.

Extensive decrees

The number of internal instructions also grew in line with the numbers of cases of infection. Seven internal instructions were thus enacted between mid-March and mid-April 2020 alone, which comprised up to 40 pages including annexes.

Human Rights Advisory
Council analysis

The NPM used the initial announcement as an opportunity to request the opinion of the Human Rights Advisory Council. Of interest was whether the prescribed preventive measures comply with the principle of proportionality, which the Human Rights Advisory Council affirmed. In addition, all announcements and internal instructions were subjected to an ongoing monitoring process.

In concrete terms, the content of the decrees was compared to international standards and a questionnaire was formulated which was initially used virtually and then in person with the decision-makers on the on-site visits after the restrictions were eased. In so doing, the feasibility and practicability of the Federal Ministry of Justice directives were evaluated.

In addition to the management and representatives of the special services, the NPM addressed employees from different professions as well as employee representatives of the law enforcement and other services to document the sensitivities but also the concerns of the staff. To the extent that monitoring visits could be conducted on-site,

the commissions got an impression of the living conditions in the departments and interviewed detainees. NPM consultation days were used for this purpose.

The excerpts depicted in this report are restricted to the activity of the NPM. Reference is made to the COVID-19 Report for a complete overview of the impact of the pandemic in the area of facilities of the penitentiary system and facilities for the detention of mentally ill offenders.

General overview in COVID-19 report

2.5.2.1 Isolation and quarantine

The NPM paid particular attention to the arrival cells that are also called admission or observation cells or isolation rooms in which inmates had to spend up to three weeks in quarantine after admission.

Measures that restrict freedom

Stricter hygiene standards apply to these cells. They are deep cleaned and completely disinfected before each new occupant is admitted. In some cases, these rooms are located in the area of the infirmary. In other cases, departments had to be converted, which the NPM views quite critically. For example, the department for open detention in Ried correctional institution, the day release prisoner department in the Floridsdorf satellite facility of Mittersteig correctional institution and the adolescent department in Klagenfurt correctional institution were dissolved. The cells there were and are until further notice reserved for persons whose coronavirus infection status has to be clarified.

Several points of criticism

An increase in occupancy or numbers of suspected cases can mean that two inmates have to share such a cell. If they are not allocated to the cell at the same time, the quarantine is inevitably extended for one of them until the critical period has elapsed for both. The commission highlighted this problem on one of the monitoring visits to Vienna-Josefstadt correctional institution.

In Leoben correctional institution, the NPM managed to enable the inmates in the arrival cells to not only exercise their right to go outside every day without putting other persons at risk but also to have the opportunity to get physical exercise. The express request by the NPM that an inmate in an arrival cell can use an ergometer in the entrance area was fulfilled.

In addition to the living conditions of the persons in isolation, the NPM also examined whether sufficient prevention measures were taken to protect employees from infection. The directives from the general directorate contained a rule that persons with contact to those allocated to the arrival cells had to wear PPE including an FFP2 mask. In some correctional institutions, the PPE was limited to wearing gloves which were otherwise used in the shift operation.

Preventive measures

2.5.2.2 Obligation to wear a mask

Inmates are only allowed to join the day-to-day routine in correctional institutions after admission or transfer once it has been clarified that they are not infected. As not only

the inmates but also a large number of persons employed in the correctional institution have contact to the outside world, wearing a tight mask is obligatory.

An employee who is not a law enforcement officer contacted the NPM. He has to wear a mask even though he works alone in his office. Needless to say, he is prepared to wear the mask when he has contact with other employees or detainees but fails to fully understand the sense of the directive when he is sitting alone in his office.

The Federal Ministry of Justice defended the internal instruction according to which there is an obligation to wear masks at work at all times. The measure is designed to protect all detainees, for whose health the State is responsible, and all employees who have to be protected from infection under the duty of care. The directive to wear a protective mask is not considered to be disproportionate but is required to counter the spread of the virus.

The NPM does not question the necessity of measures that prevent carrying the COVID-19 virus into correctional institutions. Wearing a mask is considered sensible as a matter of principle. However, the obligation can be dropped if contagion can be ruled out. This is the case if an employee performs their work alone in a room. Excessive directives cause a violation of fundamental rights pursuant to Article 8 of the ECHR. That the directive to wear a mask indirectly, directly and disadvantageously violates the legal sphere has been clarified by the Constitutional Court of Austria in G 271/2020, V 463-467/2020 = NLMR 20202/5, 409 et seq.

Appearance The NPM welcomed an announcement by the Federal Ministry of Justice on 3 September 2020 in connection with the obligation to wear a mask, in which the officers are informed that regarding their appearance the claim of an “appropriate dignified and, in the sense of Section 43 of the Austrian Civil Servants Act (Beamten-Dienstrechtsgesetz) impartial appearance”, shall be upheld. Black face masks that conceal facial features and have a martial effect are disapproved by the NPM. They generate distance and are not compatible with care in detention. When tube scarves are worn, the general directorate correctly pointed out that such garments represent an increased safety risk for the wearer when fulfilling their duties.

2.5.2.3 Work and further education

Important daily structure The law stipulates that every prison inmate is obliged to work. Conversely, the institutions shall ensure that every prisoner can perform “useful work”. The work is performed in the in-house “companies”. These include joineries, metalworking shops and in some cases automobile workshops. There are also production sites that were set up by businesses, so called companies providing occupational opportunities in which sorting jobs or simple manual tasks such as packing supplied goods are frequently performed.

obligation for reciprocal protection During a pandemic, the requirement to provide sufficient work is confronted with protection against infection because during the day detainees often have to share cramped rooms with others who are otherwise housed in different sections of the

building. There is also constant contact with the staff, who are at risk themselves on the one hand but can transmit the virus on the other.

The NPM was surprised at how different the situation was during the lockdown. Whilst all of the companies in the correctional institutions in Stein, St. Pölten and Suben – with the exception of the system-relevant ones – closed, the correctional institutions in Linz and Graz-Karlau ramped up work and kept their companies open even at the weekend. In some institutions, the companies providing occupational opportunities had to limit their work because the number of orders decreased substantially. If they were closed in isolated cases, these were compensated for with more time outside in the Floridsdorf satellite facility of Mittersteig correctional institution.

If there was no work, some institutions provided access for their inmates to the ELIS programmes, an eLearning module. Downtime could thus be used for training and further education. Despite the tight staff situation, compulsory school operation in Vienna-Josefstadt correctional institution was continued during the “hard lockdown”.

Those who were unable or not allowed to work through no fault of their own received compensation. This should also continue in the event of another lockdown, which the commission recommended on their most recent monitoring visit to Korneuburg correctional institution. It is not understandable that the other detainees are treated differently to the prison inmates in Göllersdorf correctional institution and receive no money.

2.5.2.4 Going outdoors

Prisoners who do not work outdoors are entitled to go out into the fresh air for an hour every day. Mentally ill offenders in detention also have this right. The time shall be extended if this is possible without impeding the routine and order in the institution.

An hour outdoors every day

To reduce the risk of infection, Korneuburg correctional institution temporarily partitioned the walking areas with plastic sheets and used their sport areas as well. In this way, it was possible for all detainees to spend time outdoors at the usual time. Furthermore, social distancing was practiced sufficiently. Other institutions such as Stein correctional institution strictly ensured that detainees from different departments did not come into contact with each other.

Some correctional institutions managed to extend the amount of time spent outdoors. For example, Klagenfurt correctional institution extended the yard exercise period to one and a half hours. Linz and Mittersteig correctional institutions allowed the detainees two hours outdoors. St. Pölten correctional institution was able to schedule a second yard exercise period in the afternoon. If the staffing situation and shift plan allow, this programme should be maintained after the end of the pandemic.

Only Vienna-Josefstadt correctional institution failed to comply with the legal obligation. The argument was that the detainees from each cell would have to be taken to the yard separately from the detainees from other cells, as otherwise the isolation would be

interrupted and the existing quarantine to no avail. This is not affordable due to the size of the institution and the notorious lack of staff. The NPM criticised this restriction. Every effort should be made to ensure that the right to spend time outdoors is upheld, particularly when the admission department is under permanent lock-up.

2.5.2.5 Receiving mail

Parcels returned The general directorate banned accepting laundry parcels in spring 2020 to prevent the virus being brought into the institutions. Detainees were thus not able to receive parcels with clothes from relatives or friends. In view of the early summer temperatures in April in particular, the detainees urgently awaited these parcels.

To the NPM it was inexplicable why the parcels were returned to sender and not stored in the correctional institution until they could be distributed to the detainees without reservation. This measure was not objectively justifiable. Even the sources to which the Federal Ministry of Justice refers precluded as early as the beginning of March that the virus “is transmitted to persons via commodities (parcels, clothes, objects), groceries, drinking water and tap water” (AGES risk communication “FAQ Coronavirus”, as per 5 March 2020, p. 13). The general directorate recently referred succinctly to the limited storage capacity in the correctional institutions.

Copying letters Incoming letters and photos were not distributed to the recipients. In accordance with the directive, the officers made copies of the post. The detainees criticised that they were allowed to receive subscribed newspapers fresh from the press, but the original letters and photos sent to them were first stored in the depot. They received copies instead.

The general directorate responded to the reproach that this infringement of human rights could be avoided if post is put aside until potential viruses on the surface are no longer infectious as follows: creating and maintaining a list documenting which letter was handed out to which inmate would involve too much effort. It was thus decided not to apply this procedure.

2.5.2.6 Daily routine - compensatory measures

Activities and pastimes The NPM observed on monitoring visits that many correctional institutions went to great trouble to try and maintain the usual daily routine. Nevertheless, restrictions, for example affecting visits, games and sports or other leisure activities, could not be avoided. To reduce the disadvantages for the detainees and stop them from becoming bored, activity boxes were distributed in some institutions. Jigsaws, board games or card games and puzzles were also distributed. It was possible to use the library all of the time in almost all institutions.

Films and gaming consoles TV sets were donated to Linz correctional institution by an association. The management was thus able to fit a TV set into all cells. St. Pölten correctional institution announced video films in advance through its internal intercom and then played them on a television

channel at different times in different languages. The channel could be transmitted into every cell. Salzburg correctional institution procured a larger number of non-web-enabled gaming consoles and gave them to the detainees.

The leisure activities were expanded in some institutions. Darts and tennis were offered. Visits to the gym were organised in small groups. In contrast, the complete closure of the sports hall in Suben correctional institution was incomprehensible.

Sports and leisure activities

Graz-Karlau correctional institution established the “inmates’ information” in which the detainees were informed about measures, and the leisure activity programme was promoted. Other institutions extended the cell opening times to compensate for the compulsory restrictions and thus reduced the psychological pressure during the lockdown period. Ried correctional institution allowed the inmates to shower more frequently; an additional bathroom was installed in the women’s department.

Services and religious gatherings were not permitted to take place for weeks. However, the detainees were given the opportunity to speak to pastoral workers via video conference during this time. Where masses, devotions and common prayers were allowed thereafter, the institutions observed the restrictions that the religious communities had set for themselves.

Practising religion

2.5.2.7 Contact to the outside

With the beginning of the hard lockdown in mid-March 2020, personal visits by relatives were not permitted in the correctional institutions. The same applied in November after a contact ban had been re-imposed in public spaces.

Visiting ban

The Federal Ministry of Justice has been planning the installation of video telephony in the correctional institutions for some time in order to enable the detainees – as a complement to visits – to maintain social contact to their relatives and friends in a legal way. After completion of a test phase, this form of communication was allowed in all institutions in March 2020. The prison administration thus followed a longstanding demand of the NPM.

Video telephony

It was stipulated per decree that internet telephony is not a visit in the sense of Section 93 of the Penitentiary System Act (Strafvollzugsgesetz) but rather a type of telecommunication.

The immediate implementation came as a surprise to the correctional institutions. First of all, they had to procure sufficient devices. In some cases, notebooks with integrated camera were and still are used. The system has since been established in all institutions and resonance from the detainees is positive. Only those in facilities for the detention of mentally ill offenders are sometimes overwhelmed and continue to use conventional telephone calls.

Organisation and process

On monitoring visits, the NPM observed that video telephony is not only promoted by the institutions but requested by the inmates. Persons whose relatives live far away in

particular thus have the opportunity to maintain visual contact to their family. They also often get to see their relatives in familiar surroundings, which is a compensation for the sometimes poor audio quality. Only in the Floridsdorf satellite facility of Mittersteig correctional institution did the NPM have to criticise that the inmates were not adequately informed about the opportunity to use this modern form of communication.

2.5.2.8 Psychological care and therapies

The general directorate allowed external therapists again from the beginning of May in order to cover the care needs of the inmates. They were able to take up their therapies either virtually or on-site. The therapy sessions had to be held behind glass in the institutions. Only one-on-one meetings were allowed. Treatment in a group setting was not permitted. Group counselling, a method that contributes to an improved atmosphere through de-escalating conflict and clearing up misunderstandings, was limited to five participants.

As the management of Mittersteig correctional institution put it, in actual fact the psychotherapies only started very sluggishly. Some therapists refused to continue therapies via the internet because they considered the data transmission via a software that can be purchased on the open market not to be secure. They terminated existing contracts. The administration of the judiciary had to look for replacements. In Graz-Karlau correctional institution, there was still not a single detainee in psychotherapeutic treatment in July 2020.

Video therapy as opportunity

Although prescribed by the general directorate and recommended by the Austrian Federal Association for Psychotherapy (*Österreichischer Bundesverband für Psychotherapie*) and public health insurers, not all correctional institutions enabled psychotherapy per video conference. It had not been heard of in the Floridsdorf satellite facility of Mittersteig correctional institution at the end of November. The NPM is of the opinion that this opportunity should be expedited, thus making it possible to hold group therapies.

2.5.2.9 Relaxed detention

Day release prisoners

Prison inmates shall be detained in relaxed detention if the structural conditions allow and it can be expected that the eased restrictions will not be abused. The easing of restrictions includes limiting or not deploying guards when working. The detainees are also allowed to leave the institution once or twice a month on day release.

Curfews for months

Day release is the term used if the prisoners work for a company outside of the institution without guards. At the end of March, the general directorate decreed that day release shall only be granted for "urgently required system-relevant workers to maintain the infrastructure and supply (e.g. harvest hands)". This restriction was gradually relaxed as the other measures were eased and reinforced again recently. It was throughout forbidden to leave the institution.

The Federal Ministry of Justice defended the restrictions with the argument that it is far more difficult to check if the measures are being complied within the family and circle of friends than at work. The risk of carrying the virus into the correctional institutions was considered to be high.

The NPM sees these infringements of privacy and family life critically. In addition to the intensity of the infringement, the time factor in particular creates problems, as nobody can say for how long restrictions will have to be tolerated in view of the (again) current strong increase in numbers of infections. Most recently, the measures for the penal system were extended until 31 March 2021 (Section 7 Regulation Federal Law Gazette II No. 120/2020 as amended in the Federal Law Gazette II No. 419/2020).

Requirement shall be evidence-based

An additional toughening of measures (also for life outside closed institutions) was also anticipated due to the increasing lack of beds in hospitals. It is clear that all restrictions shall only be upheld for as long as they are necessary. The legislators and regulators shall – as the Constitutional Court of Austria emphasised in V 411/2020 – substantiate this with relevant numerical data.

2.5.2.10 Preparation for release

In the same way as with day release prisoners, detainees who are already on the pre-release programme were affected by the curfew. This begins three to twelve months prior to the planned release depending on the extent of the custodial sentence to be served. During this time, prison inmates “shall be given one or more opportunities for day release of a maximum of three days respectively in Austria plus any required travel” in preparation for life in freedom and to bring their personal affairs into order.

Pre-release programme

It is true that the correctional institutions made an effort not to release detainees abruptly, as the NPM was assured in Innsbruck. Despite the contact restrictions, the preparatory meetings with the social service were “held normally”. However, the fact of the matter is that the release preparation was reduced to a minimum. It was as difficult to look for work and accommodation, take care of administrative affairs and go to the support facilities as it was to look up private contacts again.

The preparatory steps for conditional release from detention of mentally ill offenders were and are not affected by these restrictions. Nevertheless, the NPM became aware of circumstances that result in an extension of detention in a closed institution.

Detention of mentally ill offenders

For example, the manageress of a follow-up care facility in southern Austria complained that her facility was not running at full occupancy. Whilst there had been a run on places in the previous year, supply had been exceeding demand for some time. The NPM explains that this is attributable to a directive by the Federal Ministry of Justice according to which persons whose placement is interrupted go into quarantine in a single cell if they return to the correctional institution. However, the cramped conditions in most of the institutions make it impossible to place several patients in quarantine at the same time. As a result, the easing of restrictions was reduced or they were not relaxed in the

first place. The situation in which patients cannot be taken back into the correctional institution if they display problematic behaviour was to be avoided.

2.5.3 Targeted operation in Garsten correctional institution

Major raid after prison breach A target operation took place in Garsten correctional institution in September 2019. The companies in the institution and the listed tract in which the prison inmates are housed were systematically searched. The operation was observed by the NPM. The delegation made positive observations.

Correct, proportionate approach These pertained to the correct and friendly manner of the law enforcement officers, the proper documentation of the individual cell searches, the preparation of photo documentation, the approach used for the perfunctory person searches, the gentle and proportionate approach when opening cells throughout as well as the option for the deployed officers to contact a team leader at all times if required.

The delegation also approved of the fact that for the duration of the cell searches the inmates were taken to a different room where they could sit down. It was also viewed positively that the objects found were categorised insofar as possible and labelled and each team included an internal experienced prison officer.

Harsh tone of voice Notwithstanding there were some points of criticism. For example, the delegation observed that when opening the cells during the search and the associated request to leave the room the inmates were not always informed about the pending event in complete sentences but sometimes with a terse "Search". Some inmates were also addressed informally with "du", which is a violation of Section 22 (1) of the Penitentiary System Act.

Unnecessary disarray Even though the general approach during the cell searches was restrained, it was observed in some cases that the inmates' personal belongings were handled thoughtlessly and the cell was left in disarray.

In the concluding meeting, it was explained to the delegation that it is sometimes necessary to empty the contents of already opened grocery packaging. However, it is not understandable that upon returning to the cell cigarette filters were strewn on the floor and syrup had been poured out.

Ministry of Justice reminds of decree The general directorate took up these points of criticism and reminded the delegates at the prison wardens conference at the end of November 2019 of the decree-conformant execution of cell searches. Furthermore, the recommendations for improvement were on the agenda of the meeting of the correctional institution's security officers at the beginning of December 2019.

Insecure new hires During the observation of the targeted campaign, it was documented that the new hires deployed did not feel sufficiently prepared for the method used to search cells as well as body searches.

The result of the further inquiries thus confirms the wish that new hires have expressed to the NPM in the course of their E2b training: measures that involve intrusion should be (better) trained and not merely demonstrated once during the training programme.

Therefore, the NPM attempted to accommodate this suggestion, particularly since a session in the training course (for colleagues) increases the confidence of the intervening bodies and thus contributes to gentle actions that conform to human rights.

Practical training sessions before deployment

Regarding this matter, the general directorate stated that in the modules “Deployment training” and “Executive powers and safety” the theoretical basics of searching persons and their belongings are taught and then exercised in practice. The correct way of dealing with detainees is also learnt in “Prison actions training”. Searching cells is explained in the “Penal system law” and “Executive powers and safety” modules and practised in the second practical phase of basic training in the correctional institutions. The general directorate claimed that it is not the case that measures involving intrusion are not sufficiently covered in basic training. Expanding the training in this area is thus not planned.

- ▶ ***Body and cell searches are sensitive intrusions into the fundamental right to privacy. If the intrusion is not to be a violation of the fundamental right, it has to be proportionate.***
- ▶ ***As part of the State’s monopoly on the use of force, body searches are particularly intrusive. It is all the more important to not only train new hires in theory on how these searches shall be conducted.***

2.5.4 Body searches with disrobement

Although this has been repeatedly objected to (see NPM Report 2017, pp. 128 et seq., NPM Report 2018, pp. 134 et seq., most recently in detail in NPM Report 2019, pp. 107 et seq.), inmates still have to remove all of their clothes during body searches in Vienna-Josefstadt correctional institution.

Vienna-Josefstadt correctional institution

Several inmates in Vienna-Simmering correctional institution told the delegation that body searches with full disrobement are conducted on arrival in the admission department and during the cell inspections, and not in two steps.

Vienna-Simmering correctional institution

In its statement of opinion, the Federal Ministry of Justice explains that with reference to the teaching aid on body searches, “*Durchsuchung von Personen*”, a two-phase search is conducted if there are no specific safety-relevant concerns. The search is not conducted immediately with full disrobement but is limited to the clothed body at the beginning. Disrobement and inspection of the genitals come only in a second step. The necessary full disrobement is thus limited to the absolutely necessary time so that inmates can put their underwear back on after a very short period.

Ministry does not deviate from this practice

The NPM pointed out that according to this teaching aid “particular care shall be taken to ensure that the time of full disrobement shall be kept as short as absolutely necessary”. The reasons that necessitate disrobement are not mentioned. It is at the discretion of the respective officer whether and for how long a person who is going to be searched has to fully undress. The full disrobement of female detainees during a body search is contrary to human rights standards and can constitute degrading treatment pursuant to Article 3 of the ECHR.

Breach of international standards

According to international standards (Rule 19 of the Bangkok Rules), effective measures shall be taken to guarantee the protection of dignity and respect of female prisoners during the search. Searches should thus be conducted – if they are absolutely necessary – such that the person to be searched is never completely undressed (PRI Guidance Document on the United Nations Rules on the Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders [The Bangkok Rules], published in October 2013 by Penal Reform International [PRI], page 63).

The demand of the NPM to conduct body searches with full disrobement in two steps for all persons so that the person to be searched does not have to fully undress, that is, only has to expose part of the body, is thus still valid.

Written documentation

Furthermore, the NPM recommends that body searches with disrobement shall be documented in writing due to the intensity of the intrusion. The written documentation of the purpose and the specific circumstances surrounding the search are required in order to ensure their subsequent verifiability.

On the positive side, the Federal Ministry of Justice has promised to include documentation (incl. the beginning and end of the search, name of the persons conducting the search, general abnormalities and results etc.) in the (further) digitalisation of police departments and facilities for the detention of mentally ill offenders.

► ***Body searches shall be conducted in two steps and shall respect the pride and dignity of the person being searched. Body searches with disrobement shall be documented in writing due to the intensity of the intrusion.***

2.5.5 Health care

2.5.5.1 Suicide and attempted suicide

Many incidents

Suicide is the most frequent cause of death in correctional institutions. It happens in the first few hours after admission, after an event that is subjectively perceived as debilitating during detention – be it after a bail hearing, main hearing or public day in court, when expectations have not materialised – or as rational suicide towards the end of serving a sentence.

The managers of the correctional institutions are obliged to report suicides and attempted suicides in their institutions to the general directorate immediately and in a standardised manner. The reports are forwarded by the general directorate to the NPM who then promptly informs the competent commission.

After a decrease of about 50% in the previous year, the number of incidents rose again in the year under review to the level of 2017 and 2018. The 28 reports received by the NPM in 2020 include seven cases with a fatal outcome. The most frequent method used in this year too was hanging by bedclothes suspended from struts in the cells. In two cases, inmates drank a large amount of cleaning agent, two detainees swallowed razor blades.

Sharp rise again

2.5.5.2 Adjustment of suicide concept - Linz correctional institution

The management of a correctional institution shall ensure that suicidal behaviour is detected in time, correctly assessed and treated through clearly defined guidelines at the time of referral, through continuous observation and psychological-mental intervention for prisoners who are at risk (see "Preventing Suicide", a manual for employees in correctional service, Department of Mental Health and Substance Abuse, World Health Organization 2007).

Common practice was to use the assessment of the previous institution when a detainee was transferred to Linz correctional institution. In the opinion of the NPM, the transfer to another correctional institution requires an adjustment of the assessment of the current state of health of the detainee. Suicidal thoughts can occur at any stage of detention, even in someone who has showed absolutely no signs of such to date and had been classified as "green" according to the Viennese Instrument for Suicidality in Correctional Institutions (VISCI) system. This means that persons who are transferred from another correctional institution should be re-assessed according to the VISCI classification. Moreover, detainees who are acutely at risk and classified "red" should receive constant and regular psychiatric care.

No update

On the request of the NPM, the suicide concept of Linz correctional institution was examined by the competent specialist department in the general directorate. The result confirmed that the process of referral to the psychiatrist needs to be optimised. In future, inmates who are classified as VISCI "red" at the time of admission will be sent to the psychiatrist directly after the health examination upon arrival. The recommendation of the NPM is also accommodated whereby there is a documented examination of the VISCI status as part of the health examination upon arrival when detainees are transferred from other correctional institution.

General directorate also sees need for change

- ▶ *after their transfer. This shall be documented.*
- ▶ *Persons who are classified as VISCI “red” at admission should be sent to the psychiatric specialist service as soon as possible.*

2.5.5.3 Deficits in acute psychiatric care - Innsbruck correctional institution

Recurring theme The NPM has repeatedly highlighted the completely inadequate acute psychiatric care of inmates. In almost every meeting the management of correctional institutions complains that – although the law stipulates that public hospitals are obliged to admit inmates – they have reservations about the in-patient care of prisoners. Patients who need longer specialised treatment are only “patched up” as out-patients. The correctional institutions are not equipped to deal with persons who need nursing in addition to constant medical care.

Nationwide bottlenecks in care That the problems are not only – as presented in NPM Report, p. 112 et seq. – limited to the east of Austria is confirmed in the reports of the responsible commission for Vorarlberg and Tyrol. The commission focussed on the living conditions and medical care of inmates of Innsbruck correctional institution who are suicidal and require acute psychiatric treatment and who are temporarily admitted by the association of Tyrolean hospitals *tirol kliniken*.

Even though the willingness to cooperate by both institutions was good during the visit, there were still considerable difficulties until the commission received the requested documents (medical histories). These were only disclosed by *tirol kliniken* after intervention by the Federal Ministry of Justice.

Different lengths of stay in hospital The analysis of the documents confirms observations made by the experts on their monitoring visit to both institutions. Compared to Hall Regional Hospital whose forensic department, despite the responsibility of Innsbruck Regional Hospital, was willing to admit patients – insofar as occupancy levels permit, the duration of their stay in Innsbruck Regional Hospital was considerably shorter.

The hospital stay was often just a few days. After direct suicidality could no longer be determined and acute symptoms had subsided, the inmate was transferred back to the correctional institution. Frequently the symptoms reappeared quickly once the effect of the acute medication had worn off, the consequence of which was another transfer to Innsbruck Regional Hospital.

Potentially dangerous transport The constant change of location is not only detrimental to the state of health of the patient. Since the transport is often during a critical phase, it is associated with a considerable risk to all involved. The commission also observed that there are no long-term treatment plans for prison inmates at Innsbruck Regional Hospital.

Overall, the commission concluded that patients who are transferred from the correctional institution to an in-patient stay in a psychiatric department are suffering

predominantly from serious mental illnesses of the schizophrenic group or from severe personality disorders. The disorders require psychiatric treatment that goes beyond the possibilities of the consultant psychiatric and psychological service in the correctional institution.

By contrast, in the forensic ward of the department of psychiatry at Hall Regional Hospital patients who are transferred from Innsbruck correctional institution are observed for longer and receive long-term therapy concepts. This results in longer stays on the one hand, but also to more sustainable treatment results.

Better treatment in Hall Regional Hospital

As the commission aptly highlighted, the principle of equal treatment shall prevail, namely that detained persons shall not receive inferior treatment to those living in freedom. This also includes that patients who are the inmates in a correctional institution are further treated in the open area of the psychiatric department and, in particular, are offered psychotherapeutic care after an acute stay in a closed area of a psychiatric clinic.

Human rights relevance

The NPM is aware that a meeting took place between *tirol kliniken* and Innsbruck correctional institution in 2018 at which the main points for a standardised procedure for in-patient admissions of patients from the correctional institution were defined. However, the NPM considers the psychiatric care needs after a stay in the acute ward as currently not sufficiently covered.

The Federal Ministry of Justice responded that the medical superintendent had been at *tirol kliniken* several times and addressed the issue of adequate treatment for patients in the psychiatric department who are transferred from Innsbruck correctional institution. It was emphasised that the cost is covered by the Federal Government and the medical requirement is in focus.

Admission to in-patient care not a question of cost

As the general directorate concluded, scaling up the psychiatric service is not feasible due to the lack of suitable permanent positions. Innsbruck correctional institution has just 0.8 FTEs and an additional contracted psychiatrist when required for the psychiatric area. The prison administration thus relies on *tirol kliniken* and the psychiatric ward of Hall Regional Hospital for the psychiatric care of the inmates. In this respect, further attempts could be made to achieve adequate care in *tirol kliniken* for the inmates of Innsbruck correctional institution with psychiatric issues.

Furthermore, it must be stated in relation to the frequent readmission of the patients that a public hospital is neither authorised nor obliged to restrict the freedom of inmates if there is no (longer) a risk in the sense of Section 3(1) of the Hospitalisation of Mentally Ill Persons Act. Restrictions to the freedom to move by the hospital are only permissible pursuant to Section 33 of the Hospitalisation Act. In the event of a revocation of the hospitalisation pursuant to the Hospitalisation Act, it thus depends on whether the detainee needs (further) treatment in the hospital or whether he or she can also be treated properly in the correctional institution. If then the hospital does not see such a risk after the acute phase (i.e. after revocation of the hospitalisation), the inmate shall, if further in-patient care is indicated, be further treated in the open area of the hospital and, if necessary, be guarded by the correctional institution. If further treatment in the

Hospital provides no follow-up care

hospital is not indicated or equivalent treatment is possible by the medical staff in the correctional institution, the inmate shall be returned to the same.

Transition management shall be improved The NPM agrees with the Federal Ministry of Justice that it is neither expedient nor proportionate to further (psychotherapeutically) treat detainees in such treatment constellations under guard in a psychiatric hospital. This applies under the condition that adequate treatment that complies with the standards is also possible in the correctional institution. Equivalent (psychotherapeutic) treatment can also be (further) provided in the correctional institution but requires sufficient (human) resources. As these are not a given at the moment, in-patient treatment in the clinic should be performed. If the infrastructure for further psychiatric treatment in the correctional institution is provided, suitable transition management shall be set up between the hospital and the correctional institution.

- ▶ *Effective transition management is required in order to continue treatment after in-patient care in hospital.*
- ▶ *Adequate psychiatric care includes psychotherapeutic treatment.*

2.5.5.4 Discrimination and long waiting times for HCV therapies – Graz-Karlau correctional institution

The focus of a monitoring visit by the commission to Graz-Karlau correctional institution in August 2019 was the examination of the decision processes for approving hepatitis C therapies.

Fast assessment The commission emphasised that the approach used by those responsible in Graz-Karlau correctional institution is commendable. First of all, the antibody status of the inmates is documented. If the result is positive, the genotype and viral load are determined, and the inmate is transported to the specialised department in Graz Regional Hospital. The internist issues a clear treatment recommendation after which those responsible at Graz-Karlau correctional institution immediately submit applications for treatment to the Federal Ministry of Justice in order to be allocated the medication necessary for the recommended treatment.

Long decision processes It can sometimes take up to a year until decisions are made. There are considerable delays not just in isolated cases. The procedure is completely untransparent. Those affected do not receive a reply for a very long time. On the day of the visit, it was not evident to the delegation which criteria are used for approval, how long an approval lasts and why persons have to wait so long for decisions.

Years of uncertainty Therapy requests are not rejected either. The remark “not confirmed” is merely entered in the “Approval” section in the electronic medical record. The consequence is that some inmates are still waiting for approval years later.

The NPM requested disclosure of the criteria used for granting approvals and why there are such long waiting times. Reference was made to the jurisdiction of the European Court of Human Rights according to which states have an obligation to take effective measures against infectious diseases in prisons and to assess the state of health of detainees by examination in order to promptly grant them access to necessary treatment, failing which there is a breach of Article 3 of the ECHR (European Court of Human Rights 18 December 2012, Jeladze v Georgia, Appl. No. 1871/08, recital 42; European Court of Human Rights 12 July 2007, Testa v Croatia, Appl. No. 20877/04, recital 51).

The general directorate stated that the quality of care for patients with HCV therapy in Graz-Karlau correctional institution has improved due to the hiring of a specialist in internal medicine (specialised in gastroenterology) and can therefore be provided on-site regularly. In this way, both the patients who receive a therapy and those who have completed a therapy (with follow-up care needs) are well looked after.

Besides, as stated by the general directorate, an elimination plan has been drawn up with the Federal Ministry of Social Affairs, Health, Care and Consumer Protection according to which 45 to 50 therapy places are offered per year depending on the financial situation. Considering the current number of ill patients, this is also in line with the goals of the WHO. These therapy places are distributed to all 28 correctional institutions in Austria. Graz-Karlau correctional institution has, with its inmate population, a larger share than other correctional institutions. Furthermore, the allocation of three therapy places per quarter respectively roughly meets the above-mentioned requirement.

Medication subject to a quota

The NPM countered this line of argumentation by stating that the therapy programme should be based on the need. In the sense of equal treatment, it is not understandable that treatment is only provided if the quota has not yet been exhausted.

Principle of equality violated

In this context, reference had to be made to recent recommendations of the CPT. The most recent visits in England and Georgia had thus indicated that sufficient DAA therapies were offered there quickly (CPT/Inf [2019] 29 margin 116 "rapid"; CPT/Inf [2019] 16 margin 83 "available"). If Austria does not want to fall behind internationally, all patients should be offered therapies for this reason alone.

The WHO also emphasises this when it states that all persons with chronic HCV should be treated. Generally speaking, the WHO recommends applying the DAA-based regime for the HCV therapy (Stöver/Keppler, *Elimination von Hepatitis-C-Infektionen in Gefängnissen, Praxis-Report* 2018, p. 8 et seq.).

WHO also recommends DAA therapies

- ▶ *After diagnosis, all persons with chronic HCV infection should quickly receive an interferon-free combination treatment with direct antiviral agents.*
- ▶ *Issuing medication based on a quota is contrary to the principle of equality and a violation of the equivalence principle.*

2.5.6 Women in prison

2.5.6.1 Inmates housed in shared accommodation in women's section - Vienna-Josefstadt correctional institution

Standards as benchmark "Minimum standards for women detained in Austrian correctional institutions" ("*Mindeststandards für den Frauenvollzug in österreichischen JA*") were enacted by the Federal Ministry of Justice in spring 2016 (Federal Ministry of Justice GD41750//0008-II 3/2015). These contained guidelines for the placement and care of female detainees awaiting trial and convicts. Prison for women shall thus be in shared accommodation as a matter of principle.

The NPM criticised several times that just one out of three departments in the women's section of Vienna-Josefstadt court prison was run as a shared accommodation, and this only partly so (see NPM Report 2017, pp. 117 et seq. with further references). In reaction to this criticism, an area for shared accommodation was set up in all three women's departments of Vienna-Josefstadt correctional institution.

Implementation impaired by pandemic The shared accommodation is to be expanded in the department for detainees awaiting trial by moving a glass portal. The necessary approval has been granted; however, the building work has been delayed due to the pandemic.

- ▶ *Women's departments shall be run as shared accommodation as a matter of principle.*
- ▶ *Only in justified isolated cases should women be detained in closed detention.*

2.5.6.2 Shower opportunities for all women - Linz and Innsbruck correctional institution

Subjective disadvantage On two monitoring visits by the commission to Linz correctional institution in summer 2019, several inmates claimed independently of one another that only the employed women had the opportunity to shower every day. Those who were not employed were only allowed to use the shower areas twice a week. The commission heard similar complaints on its monitoring visits to Innsbruck correctional institution in autumn 2020.

The NPM was repeatedly assured that at least menstruating women have the opportunity to shower every day. The use of shower areas is possible upon request.

Pragmatic solution Basically, the women's department is run as a "relaxed department". The cell doors are open Monday to Thursday from 7.00 a.m. to 3.15 p.m. and Friday to Sunday and on public holidays from 7.00 a.m. to 11.15 a.m. Keeping the shower areas open continuously did not stand the test due to the problematic interpretation of hygiene on the part of the inmates. The express request to open the shower rooms should not, however, cause a sense of shame. For this reason, the shower areas are now open only from 7.00 a.m. to 8.30 a.m. for general use by inmates who are not employees.

- ▶ *It shall be ensured that the increased hygiene needs of inmates (particularly during menstruation) are accommodated.*
- ▶ *Menstruating women should have the opportunity to shower every day without having to request the same.*

2.5.6.3 Insufficient supply of hygiene products - Wels correctional institution

On a monitoring visit to Wels correctional institution, the commission learned that the supply of hygiene products for the inmates is insufficient. Toothpaste and soap were provided but no tampons.

The Federal Ministry of Justice explained that hygiene products are given to the inmates as needed. They can request different products such as toothpaste, a toothbrush, shampoo, soap and sanitary towels.

In the opinion of the NPM, hygiene products should not only include sanitary towels but also tampons for the purpose of increased hygiene needs during menstruation. These should be provided to the inmates and not have to be purchased in the kiosk.

- ▶ *The range of hygiene products should also include tampons (in different sizes).*

2.5.7 Adolescents

In mid-January 2020, the chairwoman of the Human Rights Advisory Council, Renate Kicker, recommended the deployment of a working group on the monitoring priority "incarceration of juvenile offenders". The working group was set up at the beginning of March and drew up a catalogue of questions in several meetings. The NPM made a selection of questions from this catalogue in a meeting on 8 October 2020. The questions will be asked on the monitoring visits to the correctional institutions in the coming year.

Monitoring priority

The observations of the commission in the year under review show how important it is to address the living conditions of adolescents (14 to 18 years) and young adults (18 to 21 years) in prison. The delegations encountered adolescents who were housed in the adults' section several times on their monitoring visits to the correctional institutions.

2.5.7.1 Placement of adults - Linz, Wels and Krems correctional institution

Linz correctional institution In Linz correctional institution, a fifteen-year old boy awaiting trial was found in the adults' department. The Federal Ministry of Justice explained that this was because the juvenile department in Linz correctional institution has a capacity of eight persons. 14 adolescents and 19 young adults were being detained at the time in question. The cramped conditions meant that accommodating adolescents in the adult section could not be avoided. In addition, the open detention practised in the juvenile department meant that only one of the suspects can be detained in the juvenile department if complicity is involved. If placement in the juvenile department is not possible, the juveniles are supported by the adolescents' team.

Krems correctional institution On a monitoring visit to the juvenile department of Krems correctional institution at the end of January 2020, the delegation encountered an adolescent boy who shared a cell with an adult and was integrated in regular detention. The Federal Ministry of Justice pointed out that after admission the adolescent had shared a cell with a young adult. After there was friction and conflict between the two, the younger was moved for safety reasons to a cell with an adult from whom no harmful influence was to be feared.

Wels correctional institution The commission noticed on a monitoring visit to Wels correctional institution at the beginning of December 2019 that a seventeen-year old boy shared a cell with an adult who looked after him. The Federal Ministry of Justice explained that there is no dedicated juvenile department in Wels correctional institution, which is why the adolescent is being detained in the open shared accommodation. Normally, two adolescents share a cell. However, this was not possible at the time of the visit because only one adolescent was in detention. In order not to isolate him, the department head selected an inmate who shared the cell with the adolescent. Great attention was given to selecting the inmate, regarding his personality in particular, to avoid a harmful influence on the adolescent.

Rule of separate detention not absolute As a matter of principle, the detention of adolescents awaiting trial and of those after conviction shall be separate from adults. However, the law stipulates that adolescent detainees awaiting trial can be held together with adult detainees if "due to their physical, mental or emotional condition an exception is necessary" (Section 36 (3) Juvenile Court Act (*Jugendgerichtsgesetz*)). The law allows deviation from the rule of separate detention if "neither a harmful influence nor other disadvantage for the juvenile prisoners is to be feared" (Section 55 (2) Juvenile Court Act).

That adolescents shall be separated from adults and detained in a special institution or dedicated department is recommended in the framework provisions of the United Nations for the juvenile justice system (A/RES/40/33, 29 November 1985, "Beijing Rules", Rule 26.3) and also by the CPT ("Juveniles deprived of their liberty under criminal legislation", CPT/Inf [2015]1-part, recommendation 102).

Same conditions The NPM is critical of adolescents being detained in the same cell as adults. The prevention of a harmful influence or other disadvantage for the adolescent prisoner should always have top priority. It must be guaranteed above all that adolescents who cannot be admitted to the juvenile department are at no disadvantage when it comes

to cell opening times and other easing of restrictions. Measures involving non-smoker protection for those under the age of 18 shall be observed when adolescents are housed with adults in regular detention.

- ▶ *Adolescents who are detained together with adults shall be at no disadvantage compared to the adolescents detained in the juvenile department.*
- ▶ *Adolescents shall be detained in such a way that they are not exposed to harmful influence or other disadvantage. They shall be detained separately from adult detainees.*

2.5.7.2 Lack of additional qualifications for the juvenile department - Vienna-Josefstadt correctional institution

The commission has repeatedly highlighted the tense personnel situation in the juvenile department of Vienna-Josefstadt correctional institution, which was compensated for by deploying officers from other departments. In June 2019, the commission once again found that prison officers without additional qualifications were working in the juvenile department team.

Recurring criticism

The particular vulnerability and special needs of the adolescents in detention require that only officers work in juvenile departments who are familiar with and have been specially trained in dealing with adolescents. These officers should have pedagogical skills (see CPT/Inf/E [2002] 1 – Rev. 2010, p. 86).

The NPM demands that both the day and night shifts are manned with officers from the juvenile department. As stipulated in the minimum standards for the detention of juvenile offenders and juvenile departments (Federal Ministry of Justice VD41704/0011-VD 2/2012), these officers shall have obligatory training in this specialised detention area. The training programme on the detention of juvenile offenders (*“Arbeitsfeld Jugendvollzug”*) shall be completed.

Obligatory additional qualifications

As the NPM was assured, it is important to the Federal Ministry of Justice that those prison officers who are deployed in the detention of adolescents receive special training. It is, however, not always possible that this training programme is completed on time due to the low number of adolescents and the unplannable admission to a total of 16 regional court prisons on the one hand and the hiring of new officers on the other. In any case, all of the prison officers working in detention of adolescents are integrated in multidisciplinary teams in which there is awareness for the perception of violence and oppressive structures.

- ▶ *It shall be ensured that adolescents in detention are cared for by trained personnel.*
- ▶ *All officers deployed in juvenile departments should complete the training course for detention of juvenile offenders as soon as possible.*

2.5.8 Evidence of torture, maltreatment, abuse, neglect and degrading treatment

2.5.8.1 Derogatory comments by prison officers - Linc correctional institution

Unacceptable behaviour On two monitoring visits in summer 2019, the members of the delegation learned of several incidents in which inmates were spoken to and treated by prison officers in a derogatory manner.

The statements by the inmates were made independently of one another and were consistent in terms of content. Upon request, the names of the officers were given to the members of the delegation.

The NPM recommended implementing verifiable and documented measures accordingly. The persons involved should be confronted with the accusations and urgently reminded to observe the legal provisions. According to these, prison inmates shall be treated with respect for their sense of honour and dignity.

Measures by administrative authority The Federal Ministry of Justice followed this recommendation. One-on-one meetings were held with the officers. They also availed of supervision. Furthermore, they were registered for specialised further education programmes in the Correctional Services Academy (*Strafvollzugsakademie*).

- ▶ *The communication with inmates shall be respectful.*
- ▶ *Prison inmates shall be treated with respect for their sense of honour and dignity.*

2.5.8.2 Curious rules of conduct - Vienna-Simmering correctional institution

Dubious rules of behaviour The commission observed on their monitoring visit in February 2019 that objectionable rules of conduct had been enforced in one department:

For example, "all inmates shall show themselves to the officers in a proper manner during the monitoring roll call" and "an inmate who is on the toilet shall briefly open the door and say that they are present". The commission also noticed that "wearing hoods pulled over the head is not permitted in the department". Furthermore, there is a rule

stipulating that “when the cell is opened by officers during the day, every inmate shall stand up and shall not remain lying on the bed. Failure to do so shall be punished”.

The NPM criticised that the interpretation of these rules for the inmates is at the discretion of the staff. The directives constitute an infringement of a person’s privacy that is lacking any legal basis. Their vagueness fosters treatment that can be perceived as arbitrary. Furthermore, it is not clear which sanctions are threatened in the event of violation.

Legal vacuum

The Federal Ministry of Justice agreed with this criticism. The rules of conduct were removed from the department after a meeting between representatives of the general directorate and the management of Vienna-Simmering correctional institution.

- ▶ *Rules of conduct shall be determined by the law.*
- ▶ *A set of rules shall be formulated such that the interpretation and implementation thereof is not left to the discretion of the staff.*

2.5.8.3 Inconsistent penal practice - Vienna-Josefstadt correctional institution

On a monitoring visit to the correctional institution in June 2019, the commission criticised the punishment of breaches of discipline in the juvenile department. The prison guards set the consequences for breaches of the rules on a case-by-case basis. There is thus no clear definition of which punishment is imposed to what extent for which breach. The sanctions, the respective incident as well as any conversations held are not documented.

Arbitrary punishment

This practice is contrary to the international recommendations according to which any type of behaviour that constitutes a breach of discipline shall be described as a statement of facts and the sanctions defined amongst others (“United Nations Rules for the Protection of Juveniles Deprived of their Liberty”, chapter L/rule 68). All disciplinary actions should also be documented.

International requirements

In the view of the NPM, the excessive punishment of infringements can go beyond disciplining and culminate in inhumane or degrading treatment. The possibilities for sanctioning breaches of obligation are diverse and intrude on the personal circumstances of the inmates, which can result in hardship, discrimination and victimisation. The penalty that prison inmates can expect for each misdemeanour using which measures and for how long shall thus be clearly regulated.

Implementation precept

The Federal Ministry of Justice stated that the directly necessary pedagogical measures are set and documented by the department officers. Furthermore, an internal departmental working group has been tasked with creating a criteria catalogue in order to make sanctions transparent and comprehensible. This was due for completion before

the summer of 2020 and then to be tested by spring 2021. The NPM is looking forward to conclusive feedback on this topic.

- ▶ *Prisoners shall know which penalty to expect in the event of misconduct.*
- ▶ *In order to guarantee consistent penal practice, the creation of a catalogue with criteria or guidelines for comparable infringements with harmonised disciplinary penalties is required.*

2.5.8.4 Isolation is not a disciplinary measure - Innsbruck correctional institution

Inmate escapes A prison inmate failed to return after a furlough. After initiating a search, the police arrested him the following day. He was then isolated from other inmates in Innsbruck correctional institution.

Isolation is not a penalty The failure of a prison inmate to return from a furlough constitutes an offence, which means that isolation can be imposed under the conditions set forth in Section 116 (2) of the Penitentiary System Act (*Strafvollzugsgesetz*). In the opinion of the Federal Ministry of Justice, the isolation in this specific case was required to maintain safety and order and to prevent bad example and negative effects for the other inmates.

Admittedly, the legal literature points out that isolation can be imposed if this measure is necessary to maintain safety and order in the institution because copycat behaviour by other inmates is to be feared.

Presumption of innocence as corrective However, the provision set forth in Section 116 (2) of the Penitentiary System Act shall not be interpreted such that isolation is imposed as a purely universal preventive measure, because this would constitute a breach of the presumption of innocence. Rather, isolation shall only be implemented for the purpose of ensuring that a risk to or by other inmates is averted (Section 102 (1)(2) of the Penitentiary System Act). To that effect, the pertinent literature writes that isolation “[is] only the forced separation from other inmates in order not to have a negative effect on them” (Drexler/Weger, Penitentiary System Act, Section 116 margin number 7 with reference to Vienna Higher Regional Court 132 Bs 86/18v).

The NPM welcomes the fact that this question will be addressed at the next administrative penalty experts’ conference.

- ▶ *Isolation shall not be imposed as a purely universal preventive measure because this would violate the presumption of innocence.*

2.5.9 Detention of mentally ill offenders

The number of offenders on whom the courts have imposed preventive measures that deprive liberty continues to rise. The special treatment and care needs of this group of persons as well as the necessity to separate them from prison inmates poses increasing challenges for the administration of the judiciary. Often those hospitalised have to wait for a considerable amount of time after their verdict becomes legally binding until a place is free in the institution prescribed for them. This is exacerbated by the deficient material and personnel situation in the target institutions.

Infrastructural weaknesses

Whereas in recent years, the NPM Report predominantly contained observations from the correctional institutions, critical descriptions of conditions in the public hospitals in which mentally ill offenders are housed (temporary or permanently) were more frequent in the period under review. There is a need for investment here too.

2.5.9.1 Protective restraints due to lack of space - Graz II Regional Hospital

On their monitoring visit to the First Forensic Department of Graz II Regional Hospital in September 2019, the commission specifically addressed the living conditions of those patients who were in the separate room for inmates in need of acute psychiatric care on that day.

Separate room for inmates in need of acute psychiatric care

The separate room for inmates in need of acute psychiatric care is a room that is located inside the forensic ward to house inmates who, due to their mental condition, have to be taken temporarily from Graz-Jakomini, Graz-Karlau or Leoben correctional institution to a hospital. This sickroom is monitored through an observation window connected to an office that is available to the prison officers.

The experts observed that there were three persons in the sickroom that is designed for two beds and there were restraints in place.

Preventive handcuffing

It is extremely stressful for patients to experience a person beside them being restrained. The commission also observed that, due to the lack of space, persons are placed under "protective restraints" to prevent assaults on other patients.

In view of the principle of proportionality, against which every intervention shall be measured, this practice is objectionable. In addition, restraints that are executed "directly in front of the other patients in the department (...)" are qualified by the CPT as "degrading both for the patient and involuntary spectators" and (thus) constitute a violation of Article 3 of the ECHR (CPT/Inf [94]20, GR-PM1, Section 235).

Degrading treatment

The operator of the institution stated that the separate room for inmates in need of acute psychiatric care was planned in cooperation with the correctional institution. Regrettably, there had been repeated capacity problems in the past. This had been the case on the day of the visit by the commission. As there is not always an alternative in another free room in the department, there are in fact protective restraints. The staff are

instructed in any case to carry out the restraints in a way that respects the dignity of the patient and to use a screen. This was done in the case in question.

Bringing the wards together

It is not acceptable for the NPM that the external conditions determine whether a patient is mechanically restrained. It therefore welcomes the fact the Federal Ministry of Justice is holding talks with the hospital operator on extending the ward at Graz Regional Hospital. The entire forensic area is to be extended. From a structural perspective, the adjacent wards are to be adapted for this purpose. The goal is to bring all of the forensic patients who are currently being treated in the different areas of the general psychiatric departments at Graz II Regional Hospital together in a special department. The plans also include the extension of the separate room for inmates in need of acute psychiatric care.

The first of a two-phase plan will bring all of the male patients together. The offer is to be extended to the women in a second phase.

The talks should be finished by the end of the year so that the NPM can expect reports on the results at the beginning of 2021.

- ▶ ***The lack of single rooms shall not be the reason for restraining patients to protect them from each other.***
- ▶ ***The condition for uniform medical care is that patients are not dispersed to several wards due to a lack of space and then treated there in isolation.***

2.5.9.2 Lack of space in Department E2 (Forensics) - Rankweil Regional Hospital

No criticism regarding treatment

After reviewing the documentation on their monitoring visit in spring 2019, the commission was assured that the treatment of the patients met current medical standards. Another positive highlight was that the criticism expressed on a previous visit was followed: now all persons who are deprived of their liberty can go outdoors for a least one hour every day whereby the opportunity to go outside in the fresh air is not limited to having access to a balcony.

Lack of space persists

As far as the available space is concerned, the commission upholds the criticism that small double rooms fail to meet modern psychiatric standards. In this context, it is not overlooked that already before the last monitoring visit (in September 2017) a four-bed room had been divided into two two-bed rooms, which is positive.

The criticism also still applies that women cannot access the terrace without intervention.

With regard to this matter, the office of the regional government of Vorarlberg stated that additional conversion costs amounting to millions (should) be avoided in any case if – due to open questions regarding the further development of Rankweil Regional Hospital – they end up having to be posted as “lost” costs in a few years time.

The Vorarlberger Krankenhaus-Betriebs GmbH company did not contest this statement, mentioned however that the implementation of the master plan for the construction of a new building for adult psychiatry is on schedule. The building should be taken into operation in 2024.

Conversion by 2024

- *The living conditions in a hospital are determined to a considerable extent by the amount of available space. This applies, in particular, to wards in which patients are not merely housed temporarily.*

2.5.9.3 Insufficient documentation - Hall Regional Hospital

A delegation of Commission 1 visited the Forensic Ward A6 of Hall Regional Hospital in July 2020. The cooperation on the part of the contacts with the delegation on this visit was exemplary too. An open and honest meeting ensued. All of the requested information was disclosed and documents provided.

Appreciative meeting

There are several positive observations in the visit report. These include that the documentation is now maintained in accordance with the Hospitalisation Act and measures that restrict freedom are reported to the patient advocacy.

Of two documentation procedures viewed, one was incomplete because the reason for isolation was not fully mentioned. The self-harm was only verbally presented as suicidality. The justification in the documentation is "protection of the patient". Attempted less severe alternatives to isolation are not mentioned.

Documentation incomplete

Measures that restrict freedom shall only be used in isolated cases if the type, extent and duration are essential for averting danger to the life and health of the patient or others, or for medical treatment or care, and they are not disproportionate to their purpose.

The documentation should thus not only provide information on the specific risk but also on the use of less severe measures without which the existence of the statutory requirements cannot be verified.

- *If the documentation of measures that restrict freedom is only cursory, it is not possible to say if the use of less severe measures would have sufficed in the individual case.*

2.5.9.4 Missing documents for the treatment of mentally ill offenders - Federal Ministry of Justice

On a monitoring visit to Graz II Regional Hospital Chief Physician Department II (formerly Forensic Psychiatry, second ward PS2F2), the doctors on duty complained that advisory opinions issued for the main hearing are only made available to the hospital after files

„Left in the dark“

have been requested from the time when the verdict comes into legal force. Until then, the public hospital does not know what the patient has been accused of or is left to deduce the suspected criminal activity from what is printed in the media. Sometimes the hospitals are lucky and the defence lawyer provides copies of the psychiatric assessment.

After admission, the subsequent assessments are also not available in the Forensics II Department.

In this context, the visit report quotes literally: "The communication with the judiciary is so poor that in some cases there is no notification even of conditional releases and sometimes patients suddenly said that they have been released. A member of staff is therefore always sent to the court hearings."

Human rights relevance The NPM regrets that the communication structures are (apparently) completely inadequate. It must be stated from a human rights perspective that the delayed application of therapies fails to meet the intensification requirement.

From a legal point of view, there should be no difference whether the judicial referral pursuant to Section 429 (4) of the Austrian Code of Criminal Procedure (Strafprozessordnung) is to – remaining in the diction of said procedure – "a special facility for mentally ill offenders" or to a "public hospital for the mentally ill persons". Since the delegation of prison duties, as the commission correctly emphasised, does not constitute administrative assistance, the reference to Section 76 of the Austrian Code of Criminal Procedure is of little meaning.

Undue infringement of fundamental rights Provisions shall be interpreted in conformity with the Constitution in such a way that avoidable restrictions of personal freedom are prevented. Failure to provide the hospital with all of the information can result in therapies being initiated only later. In case of doubt, a higher level of risk to others and thus stricter precautionary measures can be assumed, which entail more restrictions to freedom and less easing of measures.

Untenable practice The Federal Ministry of Justice conceded that there really are different systems for collecting information in the different locations; however, the advisory opinions are not generally provided to the treating institutions on a routine basis.

Some institutions receive the advisory opinions through the competent court, some through the legal representative or court-appointed expert (with declaration of consent of the affected patient respectively), and others organise the advisory opinions through the patient in question themselves. The treating institutions thus use an individually selected way to achieve a satisfactory information status. They report however unanimously of an objective need for accessing information through the advisory opinions.

Lack of a legal base The Federal Ministry of Justice recognises that the delayed initiation of therapies shall not be caused by an extended information flow, but remarked that this is not a prison-related problem (and not a regional Graz problem either). The issue is that the existing statutory provisions are being applied by the independent courts.

In this context, it is about the examination of an individual case, which requires an application accordingly.

The result is that the current legal situation would thus be confronted with a binding structure of timely access to advisory opinions in the referral procedure. The courts are not obliged to disclose information on their own initiative.

Disclosure should be an obligation

The NPM considers the enforced legal regulations inadequate. They in no way conform with the intensification requirement. The NPM recommended the Federal Ministry of Justice to urgently forward the problem to the competent specialised department. A legal regulation should be integrated in the Reform Act on the Detention of the Mentally Ill Offenders 2020. The structure of the draft suggests that Section 30 (1) would be applicable here.

- ▶ *If the referral advisory opinion is not available to the hospital when treatment is initiated, therapies can only be applied with delays.*
- ▶ *If the persons treating and nursing patients do not have the necessary documents, this has a negative effect on measures that restrict the freedom of the patients.*

2.5.9.5 Removal of safety defects - Egertboden Schwaz therapy centre

In the report on the monitoring visit to the follow-up care facility Egertboden Schwaz therapy centre (Return project), there are positive observations and appreciative remarks which were reported to the manageress of the facility during the final meeting.

Initial visit

However, the commission also identified several opportunities for improvement:

For example, the commission recommended acquiring suitable fire extinguishing agents, in particular, fire hoses. The commission recognises that a tranquil environment surrounded by nature can be helpful from a therapeutic perspective. However, they pointed out that in the winter months in particular the facility can be difficult to reach when there are treacherous road conditions or the weather is severe. It is all the more important to have a fire extinguishing device on-site in the event of fire.

Remote mountain location

The operator of the facility shared these reservations. An extinguishing agent depot was installed in the outside area. A box in which the hoses are stored is mounted beside the hydrant in the entrance. There are hand-held fire extinguishers located in the building itself. To date, there were routine fire prevention instructions as well as a simulated evacuation once a year. This will now be expanded to include fire drills.

Dependent on self-help for a considerable amount of time

The commission observed in the building that the medication management is not secure. The cupboard in which medication was stored was not lockable. It was promised that the door to the office including the frame would be reinforced. The commission also pointed out that the office on the slope side is on ground level and the window is not

Safety concerns

barred. Due to the location on a slope, it is easy to climb in from the outside especially when the window is open.

These points of criticism were also taken up and rectified. Only the window in the office is to remain unbarred, as it can be used as an escape route in the event of emergency.

Additional improvements The recommendation to organise violence prevention training for the staff and to train them in self-defence measures was also implemented.

The documentation, which was still performed manually on the day of the visit, has since been changed to an electronic form. Thanks to the installation of a complaints letter box, the clients now have the opportunity to deposit wishes, recommendations and suggestions for improvement anonymously.

- ▶ *Fire drills should be held in all follow-up care facilities every year.*
- ▶ *Medication should be stored in a lockable cupboard that is located in a safe place.*
- ▶ *Residents and staff should be able to deposit recommendations, wishes and suggestions for improvement at all times and also in anonymous form.*

2.5.9.6 Incomplete documentation - CARDO GmbH

On their first monitoring visit to a follow-up care facility for mentally ill offenders in Wels, the commission recommended that the documentation be completed and care plans and target objectives be created.

The management of the facility stated that work was already underway. A few months after the monitoring visit, care plans and target agreements were made between the residents and their caregivers. All of the agreements are scanned and saved in the respective clients' folders on the PC.

- ▶ *Care plans and target agreements help both the clients and their caregivers to measure treatment progress and evaluate whether the targets were also achieved.*

2.6 Police detention centres

2.6.1 Introduction

In 2020 the commissions carried out a total of 16 visits to (police) detention centres. The commissions mainly examined compliance with the stipulations that the Federal Ministry of the Interior has announced in several decrees for the prevention of COVID-19 infection in detention since March 2020. As in previous years, the commissions also focussed on identifying shortcomings in detention conditions, the structural and hygiene standards and deficits in the documentation of detention.

16 visits to police detention centres

2.6.2 COVID-19 in police detention

Because of the first nationwide lockdown and the risk of infection, the commissions were not able to carry out visits in police detention centres from 9 March 2020 until the beginning of June 2020. The NPM therefore obtained *ex-officio* information weekly by telephone from March to the end of April 2020 from the Federal Ministry of the Interior on potential but not yet materialised cases of infection in the detention centres.

The Federal Ministry of the Interior announced a decree in mid-March 2020 with rules for avoiding the transmission and spread of coronavirus infection in detention. This decree stipulated severe restrictions of the provisions set forth in the decree of the Ministry of May 2019 (see NPM Report 2019, pp. 151 et seq.). This included reducing visits to the detainees to “glass visits” in the legally regulated cases such as for legal counsel or return advice or from close relatives of detainees awaiting forced return whose forced return was imminent. The Ministry also stopped detention pending forced return completely in open sections of detention centres.

Decree with massive restrictions in detention

Moreover, there was a ban on transferring detainees to other police detention centres. This affected detainees awaiting forced return in particular who had to be detained for more than seven days and were not located in Vordernberg detention centre or in the police detention centres of Salzburg, Hernalser Gürtel or Roßauer Lände. Only these four facilities are set up for longer time detention pending forced return.

However, the decree stipulated that the detainees shall still – only by cell and with social distancing – be able to exercise outdoors, shower and receive medical care. Furthermore, the Federal Ministry of the Interior committed all detention centres to have sufficient games, books and magazines in different languages to avoid swapping between cells and thus the transmission of infection.

The NPM started evaluating the restrictions in April 2020 in order to document the effects on the detained persons. The Federal Ministry of the Interior forwarded an amended version of the decree of March 2020 in this respect. Therein, the Ministry declared all “glass visits” to detainees as permissible. However, the Ministry required all visitors to wear a mask while being in the detention centres.

Ex-officio evaluation of the decree

Quarantine for all new arrivals	<p>The Federal Ministry of the Interior introduced arrivals quarantine in the second decree: according to this, all of the newly admitted persons within one to three days had to be housed in very small groups (two persons in the best case) during the first fourteen days of detention. This did not apply to persons transferred directly from correctional institutions who had been in detention for more than fourteen days. The persons in arrivals quarantine had to be allowed by cell to go out into the yard every day, shower and have access to medical care during the time they were separated from the other detainees. However, the Ministry made the transfer of detainees awaiting forced return to the open section conditional on passing the arrivals quarantine and on displaying no symptoms of infection.</p> <p>At the end of June 2020, the Federal Ministry of the Interior communicated to all Police Departments that the separation of new arrivals in police detention centres – with the exception of concrete suspected cases of infection – does not justify preventive isolation of those affected. The Ministry explained this specification to the NPM with the occasional lack of free places in two police detention centres in which only one person respectively is admitted on many days.</p>
Revocation of eased restrictions	<p>Due to the rise in COVID-19 infections in Austria in autumn 2020, the Ministry announced new restrictions in detention per decree at the end of November 2020. The detainees were only allowed “glass visits” again in the legally regulated cases and detainees awaiting forced return were only allowed visits from their closest relatives and important reference persons. The detainees had to be allowed to shower and go outdoors only by cell or in small groups.</p>
Open detention pending forced return maintained	<p>However, the Federal Ministry of the Interior did not generally stop open detention pending forced return. Instead, the Ministry made the transfer of detainees awaiting forced return to the open section conditional on completing the now ten days of arrivals quarantine. The new decree also stipulated opening the cells in detention pending forced return at different times in order to avoid larger gatherings of detainees.</p>
Concepts to compensate for restrictions	<p>Furthermore, the Ministry instructed all Police Departments to present concepts for the daily structure and occupational activities in the detention centres in a timely manner. In accordance with the decree, the concepts should in any case include the provision of sports equipment and, insofar as the architecture permits simple implementation, fitting the communal cells with TV sets.</p> <p>Regulations for the COVID-19 testing of persons in arrivals quarantine were not included in the decree. The NPM recommended the use of tests in order to shorten the duration of arrivals quarantine in the event of a negative test result. This recommendation was made because of a previously forwarded report from the Federal Ministry of the Interior on the COVID-19 infection of two detainees awaiting forced return directly before their forced return by air.</p>
COVID-19 testing of detainees only in suspected cases	<p>In January 2021, the Federal Ministry of the Interior stated that there were no plans to use COVID-19 tests on detainees without a justified case of suspected infection, as these could result in false negative test results, for example because there is too little virus</p>

material at the time of the test. According to the Ministry, there is no legal basis for the obligatory COVID-19 testing of detainees.

The Federal Ministry of the interior announced, however, that all employees of the Ministry have had the opportunity to take part in voluntary antigen tests since December 2020. Furthermore, the Ministry reported about the intention to create a department-wide test strategy according to which the employees working in detention enforcement in particular are entitled to two voluntary anonymous COVID-19 tests.

The commissions identified several deficits in relation to the COVID-19 pandemic on their visits to the detention centres.

For example, they noticed on the monitoring visits to Hernalser Gürtel police detention centre in March and July 2020, and to Innsbruck police detention centre in October 2020 that the receivers of the intercom in the visiting area were not disinfected after each use. Furthermore, there was doubt on a monitoring visit to Roßauer Lände police detention centre that the door handles and the telephone system for the detainees were cleaned regularly.

Inadequate surface disinfection

On the visit to Innsbruck police detention centre in October 2020 the commission found the disinfectant dispensers in the women's washrooms and in the hallway empty. The monitoring visit to Hernalser Gürtel police detention centre in July 2020 showed that there was no disinfectant in the cells and no disinfectant dispensers at the entrances to the police detention centres.

During the latter visit, the detainees complained about the lack of written information in foreign languages on the hygiene measures for the prevention of COVID-19 infection. Furthermore, it was observed on the monitoring visits to Vordernberg police detention centre and Roßauer Lände police detention centre that there was only information in German and English on the hygiene protection measures.

Inadequate information on protective measures

The deployment of a prisoner serving an administrative penalty as a house worker in Graz police detention centre appeared critical to the commission. Although only admitted to the police detention centre just five days before the monitoring visit, the detainee was not in quarantine but helping out with serving food to the other detainees.

The focus of the visits by the commissions was also the provision of sports and occupational activities in the locked cells.

During the monitoring visit to Wels police detention centre, there were doubts as to whether the detainees in single cells have other opportunities to occupy themselves in their cells apart from reading books. The Federal Ministry of the Interior stated that radio reception with installed receiver terminals is possible in all of the cells and that magazines are available to all detainees. The NPM criticised the lack of opportunity for the detainees to use sports equipment such as small sports mats in the cells, which was not contested by the Ministry.

Few opportunities for detainees to occupy themselves

The commission received contradictory information on the visit to Innsbruck police detention centre in June 2020 regarding the opportunities of the detainees to receive

visits or get exercise outside every day during arrivals quarantine. The Federal Ministry of the Interior contested any restrictions of these opportunities and stated that the occupational opportunities in the police detention centre in the new location of Innsbruck correctional institution (since the beginning of September 2020) had improved.

On the monitoring visit to Salzburg police detention centre in July 2020, the commission learned that the gym there had been closed since the beginning of the COVID-19 pandemic. The reason for the closure was unclarity regarding how the room should be disinfected. The Federal Ministry of the Interior did not contest the closure and stated that all of the detainees can now use the gym again.

During this visit, the commission noticed the poor acoustic situation in the visiting room that resulted from the structural conditions and the plexiglass shields used as partitions. The Federal Ministry of the Interior communicated that Salzburg Police Department is examining whether the installation of an intercom in the visiting room could be brought forward.

On the monitoring visit to Vordernberg detention centre, it became evident that Styria Police Department did not replace a sufficient number of defective TV sets and justified this with the argument that the detainees in the shared accommodations should occupy themselves together more. In the opinion of the NPM this justification requires more clarification due to the different nationalities of the inmates in the shared accommodations and potential conflict between them.

In September 2020, the commission learned on a monitoring visit to Linz police detention centre, which is operated in a container building, that there was no daily yard exercise for at least one hour due to the emergency operation. According to the staff, the detainees only had the opportunity to go outside the building for short smoking breaks.

Not all of the detainees and law enforcement officers interviewed on the monitoring visit to Innsbruck police detention centre in October 2020 were aware of the books and sports mats stored in the detainees' common rooms. In addition, there were generally only a few books (also in foreign languages) and hardly any games and magazines.

On the monitoring visit to Bludenz police detention centre, all of the detainees praised the respectful behaviour of the staff and the range of games, magazines and books available at all times. It was also possible for the detainees to hold video phone calls on their mobile telephones in a cell under video surveillance.

2.6.3 Pending implementation of NPM recommendations

As presented in the NPM Report 2019 (p. 151 et seq.), the NPM recommended the Federal Ministry of the Interior in May 2016 and in December 2017 to implement the standards resolved by the working group for living conditions in police detention centres.

Contrary to the announcement by the Federal Ministry of the Interior made in the previous year, the promised release of the revised Directive on Workplaces (*Richtlinie für Arbeitsstätten*) failed to appear either in spring 2020 or by the end of 2020. The Ministry made the implementation of those NPM recommendations for which structural measures are necessary in particular dependent on this release.

Adaptation of the
Directive on Workplaces

In June 2020, the Federal Ministry of the Interior reported about the conclusion of the content revision of the Directive on Workplaces; however, it also stated that final agreement with all of the departments involved is required. The Ministry had to postpone this agreement process due to the pandemic situation. The Ministry announced in December 2020 that the Directive on Workplaces was still being assessed but that the release thereof was planned for the first quarter of 2021.

The repeated delay of the release of the Directive on Workplaces probably means that the construction of partition screens in the common shower rooms and the separation of toilets in cells for multiple inmates in all police detention centres will be implemented three years after the relevant standards have been agreed in the working group at the earliest.

The NPM addressed the Federal Ministry of the Interior in 2020 regarding the topic of the lack of complete separation of toilets in cells for multiple persons on a monitoring visit to Salzburg police detention centre in 2019. The Ministry justified the structural deficit identified in four cells with the not yet completed plans for the complete renovation of the police detention centre. The Ministry explained that the detainees had rarely used opportunity to choose a single cell and that the police detention centre had always fulfilled this request.

However, the Federal Ministry of the Interior also remarked that the working group, when defining those standards that require structural changes to the police detention centre buildings that are several decades old, had chosen the formulation “for new construction, extension and larger conversions”. The NPM emphasised that this restriction is inappropriate and the working group had not included such a condition in the jointly agreed standard.

Limited binding power
of the Directive on
Workplaces

As the working group standard for the toilets in cells for multiple inmates does not contain such a restrictive formulation, the NPM recommended the Federal Ministry of the Interior not to include this formulation in the Directive on Workplaces. The Ministry held out the prospect that this condition would appear several times in the Directive on Workplaces. The reason for this is the clarification in the Directive on Workplaces that the obligation to implement the standards does not come into effect with the release of the Directive on Workplaces or for minor renovation measures. Measures such as the complete separation of all toilets can only be implemented during major, longer-term conversions, as in such cases the police detention centre would have to remain closed for several weeks.

The Federal Ministry of the Interior assured that all Police Departments could implement individual working group guidelines or standards from the Directive on Workplaces on smaller construction measures (cell by cell or when repairing damage).

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

Lockable lockers The Federal Ministry of the Interior reported, as presented in the NPM Report 2019 (p. 158), about the lack of interest on the part of the detainees in St. Pölten police detention centre in the pilot offer of locking the existing lockers in the cells with a padlock. The NPM addressed the Ministry with this topic once again and spoke out in favour of the provision of lockable containers for storing small personal belongings of the detainees in all police detention centres.

Shelves planned in Directive on Workplaces The Federal Ministry of the Interior conceded that all of the detainees had been positive about the opportunity to store small personal belongings in the cells during the pilot phase in St. Pölten police detention centre. For this reason, in accordance with the new Directive on Workplaces, there should be the opportunity to place items on shelves in all cells in future provided there is enough space. Where this is not possible, shelves shall be included in new constructions, extensions or conversions.

In view of what the Federal Ministry of the Interior has reported, the NPM is looking forward to the release of the new Directive on Workplaces.

Realisation of table visits As explained in the NPM Report 2019 (pp. 155 et seq.), the regulations for table visits in the decree on detention enforcement of the Federal Ministry of the Interior of May 2019 deviated greatly from the standards discussed and resolved by the working group. The Ministry made table visits conditional on the availability of staff and space in the police detention centres although the working group agreed table visits as the preferred form.

The NPM vehemently criticised the approach used by the Federal Ministry of the Interior and, based on the opportunity to receive table visits granted in some police detention centres, recommended ensuring the nationwide realisation of table visits in accordance with the working group standards as soon as possible.

Subsequently, the Ministry questioned the standard for table visits defined by its own representatives as well as the NPM. The working group had not fully considered the serious practical consequences of this measure in detention. The Ministry literally communicated the following to the AOB: "Notwithstanding if the Ombudsman should continue to have reservations about the potential unequal treatment of detainees and therefore uphold their recommendation to make arrangements as soon as possible that ensure the standardised and full implementation of table visits nationwide, this can only be achieved if the occasional facilitation of table visits is generally forbidden in all police detention centres."

Attitude of the Ministry is critical The NPM considered this form of communication and treatment of the jointly defined standards as very negative, as it gave the impression of an ultimatum and is contrary to the intention of the OPCAT to improve detention and working conditions. Furthermore,

the security concerns voiced by the Federal Ministry of the Interior failed to invalidate the criticism of the NPM. In this context, the opinion of the Ministry was also critical for the NPM because the deprivation of liberty is never voluntary, and detainees are to be excluded from the principle of trust for their good conduct and compliance with the law even though they are supposed to display good conduct in detention.

Because of this difficult situation, representatives of the NPM held personal meetings with Federal Minister of the Interior. The result of these talks was the assurance of the implementation of table visits in accordance with the working group standards in Vienna police detention centres during the course of 2021. However, in the subsequent written documentation, the Federal Ministry of the Interior referred to the reservations about table visits on the part of the medical staff, the personnel and the works council. It was recommended to discuss the further approach in meetings with the NPM, which was still open at the time of editing this report.

Recent arrangement to implement table visits

As depicted in the NPM Report 2019, the visitor lists for 2017 to 2019 viewed on the monitoring visit to Innsbruck police detention centre in September 2019 did not contain any entries for visits on a Saturday or Sunday (see NPM Report 2019, p. 154). This gave grounds to doubt the notification from the Federal Ministry of the Interior that it is common practice to allow the detainees to receive visits at the weekend. In the course of the subsequent examination, the Ministry explained that there had indeed been no visits at the weekends recently but that they were usually possible if requested by the detainees.

Visits at weekends in Innsbruck police detention centre

On monitoring visits, the NPM will continue to follow up on the implementation of all standards that it recommended to the Federal Ministry of the Interior in May 2016 and December 2017. Only when these standards have been fully realised has the Federal Ministry of the Interior really implemented the recommendations of the NPM.

- ▶ *There must be a sufficient number of cells available in all police detention centres which are suitable for solitary confinement pursuant to Section 5 and/or Section 5b (2) (4) of the Detention Regulation (Anhalteordnung).*
- ▶ *Specially secured cells in police detention centres should have natural daylight, and there must be natural or mechanical ventilation in all single cells.*
- ▶ *All single cells must have an alarm button, the activation of which has to be acknowledged at the cell.*
- ▶ *Single cells pursuant to Section 5 of the Detention Regulation must be fitted with a sink, supply of cold and hot water, a sit-down toilet, a bed and a table with seating.*
- ▶ *Tiled security cells shall have a (squat) toilet.*
- ▶ *The technical surveillance of all cells used for securing purposes should be carried out using video surveillance that is independent of any light source and observing the personal space of the detainees.*

- ▶ *Access to hygienic sanitary facilities for the detainees in police detention centres as well as the protection of their personal space at all times must be guaranteed through structural and/or organisational measures.*
- ▶ *Toilets in cells for multiple inmates in police detention centres must be completely separated from the rest of the cell. The mattresses and textiles handed out to detainees must be clean.*
- ▶ *Visits to the detainees should take place at a table unless there are specific, safety-relevant criteria as well as in the event of prisoners in court custody. The undisturbed course of table visits must be guaranteed – if necessary, through structural measures.*
- ▶ *A dedicated room with a table must be provided for visits by minor relatives in police detention centres.*
- ▶ *Occupational and leisure opportunities in the scope agreed with the NPM should be available to all detainees in police detention centres.*

2.6.4 Further aspects of detention enforcement in police detention centres

Video telephony As presented in the NPM Report 2019 (p. 158), the Federal Ministry of the Interior rejected implementing the opportunity for detainees to use video telephony (via Skype) with reference to the high yearly software licence fees and the one-off cost for the hardware. In further discussions, the Ministry voiced understandable security concerns in connection with the use of the internet for video telephony, which the NPM acknowledged.

On monitoring visits to Wels and Salzburg police detention centres, the commission observed that the detainees were not able to receive visits or only received “glass visits”. Furthermore, the voice quality in the visiting rooms of Salzburg police detention centre was severely limited due to the plexiglass shield and the spatial conditions.

Free video telephony In Klagenfurt correctional institution, detainees have had the opportunity to communicate with the outside via an application for video conferences since spring 2020. This video telephony served as a substitute for the personal visits that had to be stopped during the pandemic. It was noticeable in this case that use of the application was free of charge if the video conference or video call did not last longer than 40 minutes.

Since the Federal Ministry of Justice communicated that it had already commissioned the installation of telephony in all correctional institutions, the NPM recommended the Federal Ministry of the Interior to establish a similar opportunity in police detention. Furthermore, the NPM recommended that the Federal Ministry of the Interior obtain information on the organisation of video telephone calls in correctional institutions from the Federal Ministry of Justice. The Federal Ministry of the Interior stated that it did not plan to implement video telephony as another form of communication for detainees (in addition to telephone calls, letters and visits).

As justification, the Federal Ministry of the Interior referred to the fact that the Federal Ministry of Justice defined video telephony as a variable form of telecommunications for detainees in prisons pursuant to Section 86 of the Penitentiary System Act (Strafvollzugsgesetz) and not as a visit pursuant to Section 93 of the same act. Furthermore, the conditions stipulated in the Penitentiary System Act for approving telephone calls, the content of which is the same as those in Sections 19 and 21 of the Detention Regulation (Anhalteordnung), deviate from those for granting visits.

The Federal Ministry of the Interior emphasised that telephone calls in justified cases might be a subjective right of the detainees; however, they would have to state and verify the reasons for the same. That is why a general approval of telephone calls is neither conformant with the law nor planned by the Federal Ministry of Justice as part of the implementation of video telephony in the correctional institutions. In the view of the Federal Ministry of the Interior, the legal scope of contact to the outside of persons in police detention is amply ensured through the regulations in Sections 19 to 21 of the Detention Regulation.

Legal reservations of the
Ministry of the Interior

The NPM could not understand this, as the opportunity to receive visits from family members in particular requires that these persons can travel to the respective location of the police detention centre. That this opportunity to travel is unrestricted at all times is to be doubted in light of the pandemic situation and any recent curfews. Apart from that, video telephony is a considerably cheaper way for detainees (awaiting forced return) to communicate with their relatives compared to telephone calls with foreign countries. The NPM will continue to promote the implementation of video telephony in detention enforcement.

In 2019 the NPM initiated *ex-officio* proceedings regarding the establishment of the digital documentation of curative medical detainee information for all institutions (see NPM Report 2019, p. 159). The Federal Ministry of the Interior responded that it planned the completion of the application called “Detention file prison administration” (“Anhaltedatei-Vollzugsverwaltung” – AD-VW Neu) including a medical module (“Medizinmodul”) by October 2020.

Digital documentation
of curative medical
detainee information

The Federal Ministry of the Interior subsequently reported that the “Detention file prison administration” application is ready for go-live, and the rollout of the software has been underway since September 2020. However, the Ministry conceded that the readiness for use of the commissioned “Medicine Module” is to be expected in the first quarter of 2021 due to delays caused by the pandemic. Time-consuming approval testing of the software and user training are required before the change to electronic documentation and the go-live of the “Medicine Module”. The Ministry was not able to give a date for the productive operation of the “Medicine Module”. The NPM will therefore continue to monitor the measures taken by the Ministry for establishing the digital documentation of curative medical detainee information.

Pandemic-related delays

- ▶ *The opportunity for detainees to use free-of-charge or cheap video telephony should be set up in police detention centres.*
- ▶ *The digital documentation of curative medical detainee information for all institutions should be set up in all police detention centres as soon as possible.*

2.6.5 Case-oriented analysis of suicides and attempted suicides

As depicted in the NPM Report 2019 (p. 159 et seq.), the Federal Ministry of the Interior had not implemented the standard for the analysis of suicides and attempted suicides developed by the working group responsible for suicide prevention by the end of 2019. The Ministry explained the lack of nationwide instructions with data protection reservations regarding the use of anonymised health data for the analysis of suicides and attempted suicides.

Decree on the analysis of suicides and attempted suicides

The Ministry eventually followed the legal considerations of the NPM and, in October 2020, provided a concept for the case-oriented analysis including a form for documenting the incidents to be analysed. The analysis process is for suicides and attempted suicides only. Furthermore, only case information to which access can be granted without reservation should be used in the analysis. According to the Ministry, this includes work-related and organisational entries in particular about the detention of the respective person. The Ministry did not test a pilot operation of the concept and announced that it wanted to analyse all of the suicides and attempted suicides in detention enforcement in 2019 retrospectively. A decree to this effect was then announced.

The Federal Ministry of the Interior thus implemented the recommendation of the NPM of June 2018. It remains to be seen which findings the Ministry will draw from the analysis of future suicides and attempted suicides and the retrospective analysis of the cases from 2019.

2.6.6 Fire protection in police detention centres

Results of the monitoring priority

Within the framework of the monitoring priority defined in 2018, "Fire protection in police detention centres", the commissions recorded, as they did already in 2019, the technical and organisational fire protection measures in several police detention centres. On the monitoring visit to Steyr police detention centre, it was observed that a fire detection system including smoke alarms had been installed throughout the building at the end of 2019. The management of Innsbruck police detention centre (in the temporary quarters on the areal of Innsbruck correctional institution) reported on the monitoring visit in October 2020 about a successful fire drill on the day before the visit by the commission.

On the recommendation of the NPM, the Federal Ministry of the Interior responded that the plastic rubbish bins in all of the rooms in the open detention area of Salzburg

police detention centre had been replaced with fireproof bins. The NPM welcomed this measure (see NPM Report 2019, p. 160).

The evaluation of the specific surveys showed that in all of the cells in the visited police detention centres the alarm and call buttons worked and the staff were informed about the correct way to act in the event of fire. However, it was confirmed that most of the police detention centres only had fire alarms in the hallways. Fire and smoke alarms were only in the residential areas and cells in Vordernberg detention centre.

The NPM also followed the implementation of the recommendations by the Dialogue Committee on Civil Society (*Zivilgesellschaftliches Dialoggremium*) of the Federal Ministry of the Interior ("*Polizei.Macht.Menschen.Rechte*") for the improvement of fire protection in police detention (see NPM Report 2018, p. 147 et seq.). The Federal Ministry of the Interior stated that it had complied with the technical fire protection standards for correctional institutions in the planning for the renovation of Linz police detention centre as well as the new construction of Innsbruck police detention centre and a police detention centre in Vorarlberg.

Ex-officio examination of fire protection

In addition, the Federal Ministry of the Interior reported about the successful completion of the pilot operation of the "target-group-oriented deployment training" programme and the announcement of the "guideline for training the deployment in police detention centres" in June 2020. This guideline, which is applicable for the Vordernberg detention centre for now, defines training material on the topics of firefighting, protective equipment as well as detecting and dealing with fire risks from detainees. After completion of the two-year, trial implementation of this guideline in the detention centre, the nationwide rollout is planned from September 2022.

Training guidelines for deployment training

The NPM also learned that the pilot operation of the electronic fire protection book in divisions of the Police Department of Upper Austria initiated in 2019 was positive. According to the Federal Ministry of the Interior, the fire protection officer of the Police Department of Upper Austria maintains the fire protection book for the central offices. However, the electronic book was not used in the local offices until the end of 2020, as it was not possible to train the staff due to the pandemic situation.

Live operation of the electronic fire protection book in Upper Austria

Regarding the remaining recommended measures for improving fire protection, the Federal Ministry of the Interior stated that the pandemic had caused a considerable workload for the Employee Protection department that supports the implementation of these measures. In view of this, there was no further progress to report. However, the Ministry announced that it would continue working on the not yet implemented recommendations.

► ***The fire protection standard in police detention shall be aligned with that applicable for correctional institutions at least.***

- ▶ *The Federal Ministry of the Interior should develop an overall strategy for the nationwide standardised organisation of preventive and reactive fire protection and enforce standards.*
- ▶ *All of the cells used for longer-term police detention should have suitable, automatic fire detection systems.*

2.6.7 Staff shortages in Hernalser Gürtel and Roßauer Lände police detention centres

The NPM continued its *ex-officio* examination of the precarious staffing situation in the two Vienna police detention centres in the year under review. As presented in the NPM Report 2019 (p. 166 et seq.), the NPM considered the staffing shortages and effects thereof very problematic.

No evidence of understaffing identified by the Ministry

The Federal Ministry of the Interior claimed that it had discussed the many reports of short-term restrictions to open detention pending forced return in the two police detention centres with the Vienna Police Department already in autumn 2019. An examination of the number of permanent positions and the actual staffing situation did not identify any irregularities, deviations or even understaffing. A precise analysis of the work processes and the required effort in relation to the detention capacity is planned.

Further examinations announced

As the majority of reports about the closure of open detention pending forced return in 2019 and also in 2020 mentioned understaffing as a cause, the NPM pursued the problem. The Federal Ministry of the Interior recently promised a precise analysis of the situation, which was not complete at the end of 2020.

The NPM will continue to monitor the steps taken by the Federal Ministry of the Interior to improve the staffing situation, particularly since it emerged on a follow-up visit to Hernalser Gürtel police detention centre in July 2020 that the calculation of the number of permanent positions was 15 years old. Furthermore, a monitoring visit to Roßauer Lände police detention centre in October 2020 showed that 50 additional employees would be required to maintain the proper operation of the centre.

- ▶ *The staffing level in the police detention centres should correspond to the anticipated target situation. Understaffing shall be avoided in order to prevent work overload.*
- ▶ *Detainees awaiting forced detention shall be housed in open detention within 48 hours of admission to the police detention centre or detention centre.*
- ▶ *The exclusion of detainees awaiting forced return from open detention in the police detention centre should only be for the reasons agreed with the NPM.*

2.6.8 Detention of mentally impaired persons who can harm others

The fitness to undergo detention in terms of health is the condition for detention in police detention centres (Section 7 of the Detention Regulation (*Anhalteordnung*)). If a detainee displays behaviour that can be self-harming or a risk to others, Section 5b of the Detention Regulation stipulates special security measures. The most intrusive measure is the placement in specially secured cell. Pursuant to Section 1 (4) of Federal Constitutional Law on the Protection of Personal Freedom (*Bundesverfassungsgesetz über den Schutz der persönlichen Freiheit*), detainees shall always be treated with respect for their dignity and in the gentlest way possible.

On the monitoring visit to Roßauer Lände police detention centre in October 2020, the commission learned of the case of a detainee awaiting forced return who was severely mentally impaired, was at risk of harming others but did not accept that he was ill and was not willing to receive treatment. The detainee had already been in different, specially secured cells for three months at that time.

In the view of the commission, the detention in isolation exacerbated the poor state of health of the detainee. As the detainee was not at an acute risk of self-harm according to a psychiatric specialist from the DIALOG association, forced placement in the psychiatric department of a hospital did not seem possible. In view of the classification of the detainee as a danger to public safety, however, his release was out of the question.

No alternative to three months detention in isolation

Due to the situation of the detainee, the commission saw a possible structural deficit in the detention of mentally ill persons who can harm others but are not willing to receive treatment. The commission considered a dedicated concept for their care to be necessary, which would include a more friendly design of specially secured cells amongst others. The NPM will carry out additional examinations in this area.

► *Detainees shall be detained with respect for their dignity and in the gentlest way possible.*

2.6.9 Inadequate fixtures and fittings in police detention centres

On their monitoring visits, the commissions regularly examine the condition of fixtures and fittings in the police detention centres. There were deficits in this area too in 2020. However, it must be stated that any deficits identified are often quickly removed and the commissions can confirm the implementation of promised improvement measures.

On the monitoring visit to Wiener Neustadt police detention centre, the commission observed that the connecting area between the floor of the security cell and one of the cell walls was not grouted to a waterproof standard. This made it almost impossible to spray-clean the cell if it is badly soiled. There was a risk that the dirty water could seep into the masonry and cause further damage. In response to the recommendation to tile

Wiener Neustadt police detention centre

the connecting area between the cell floor and the cell wall, the Federal Ministry of the Interior reported that the Police Department of Lower Austria had commissioned a cost estimate and planned implementation of the measure in 2020.

Hernalser Gürtel police detention centre

The commission observed on the monitoring visit to Hernalser Gürtel police detention centre in March 2020 that there were only two working shower places or showers for 52 detainees housed on one floor of the building. The NPM criticised this particularly because on the previous visit in October 2019 the manager had reported about the installation of showerheads that cannot be manipulated.

The Federal Ministry of the Interior confirmed the defective fittings and reported about the installation of new shower panels that cannot be manipulated in the shower rooms. In March 2020, the Federal Ministry of the Interior mentioned that the defective fittings had been repaired between the two monitoring visits. However, after the repairs, the detainees had removed several fittings and showerheads.

Linz police detention centre

On the monitoring visit to Linz police detention centre, which is operated in a container building, the commission observed that all of the detention rooms (for the detention of persons for up to a maximum of 48 hours) had neither a toilet nor a sink. This lack of fittings was contrary to the standards in the Directive on Workplaces. Furthermore, the commission considered the fact the detainees had to ask to go to the toilet and had to be accompanied by the staff to the toilet opposite the detention rooms to be questionable from a human rights perspective.

Bludenz police detention centre

On a monitoring visit to Bludenz police detention centre, the NPM recommended implementing a technical solution to ensure a sufficient supply of fresh air to the single cells in the basement of the police detention centre. At the time, the Federal Ministry of the Interior stated that the Police Department of Vorarlberg was planning to ensure the exchange of air in the cells through a device connected to the extractor in the adjoining room. On a follow-up visit in September 2019, the commission learned that the Federal Real Estate and Property Corporation (*Bundesimmobiliengesellschaft*), as owner of the building, had rejected the planned solution, as both an air induction and an air extraction system would be required. The NPM requested the Federal Ministry of the Interior for information on why the two systems had not yet been installed.

Innsbruck police detention centre

On the monitoring visit to the temporary location of Innsbruck police detention centre at Innsbruck correctional institution in October 2020, the commission could not establish whether the air-conditioning system in the security cells actually works. Furthermore, the sanitary areas in these cells – contrary to the standards resolved by the working group – could be seen with video surveillance thereby depriving the detainees of any protection of their privacy. The police detention centre did not have a specially secured padded cell in which to house detainees at risk of self-harm either. There was also no special non-smoking cell in the police detention centre, that is to say, there was a smell of cold smoke in all of the cells viewed.

The commission also considered the hygienic condition of several rooms as poor. For example, the floors in several cells and the bath in the men's shower room were covered

in dust. There was mouldy food in a cell in the women's section. Numerous toilets had quite visibly not been cleaned. Furthermore, the police detention centre did not have a free change of clothes for detainees with no money.

On the monitoring visit to Roßauer Lände police detention centre, the commission criticised the poor hygienic conditions on the third floor of the building. Both the floor and the ceiling of the sanitary rooms were badly soiled or had mould. Furthermore, the floor and the toilet in a security cell were badly soiled and had brownish stains.

Roßauer Lände police detention centre

The commission observed on the monitoring visit to Salzburg police detention centre in December 2019 that there was a board between the mattress and metal springs on a bed in a staff recreation room. In response to the recommendation to replace the bed and provide adequate relaxation opportunities in all staff recreation rooms, the Federal Ministry of the Interior reported that only one officer used the bed. The Ministry explained that the criticised bed eased the back problems of the officer and that there were six other recreation rooms available for the remaining members of staff.

Salzburg police detention centre

On follow-up visits to the police detention centre in July and August 2020, however, the commission observed that the statement from the Federal Ministry of the Interior did not refer to the bed viewed in December 2019 but to a bed in another recreation room. There were thus two beds reinforced with boards. The NPM thus took this opportunity to recommend replacing both beds.

- ▶ ***The condition and furnishing of cells in the sense of the Detention Regulation (Anhalteordnung) shall always facilitate the detention of persons while observing human dignity.***
- ▶ ***Standards for detention enforcement that are agreed with the NPM and can only be realised with structural measures should be implemented without delay.***
- ▶ ***The technical surveillance of all cells used for securing purposes in police detention centres should be carried out using video surveillance that is independent of any light source and observing the personal space of the detainees.***

2.6.10 Deficits in the documentation of detention

The complete and correct documentation of official acts serves to make the actions of law enforcement officers and the course of official acts transparent. In the same way, law enforcement officers can subsequently provide information on the course of an official act and protect themselves from potentially incorrect claims. In the police detention centres, detention is predominantly documented in the "detention log" form and in the "Detention file prison administration" ("Anhaltedatei-Vollzugsverwaltung") application.

Correct documentation promotes transparency

As announced in the NPM Report 2019 (p. 166), the NPM carried out additional investigations in 2020 surrounding the death of a detainee awaiting forced return in Roßauer Lände police detention centre in June 2019. The result showed that there was

no evidence of wrongdoing on the part of the law enforcement or medical staff in the police detention centre, particularly when, according to two expert opinions from the public prosecutors' office of Vienna, the detainee died of sudden heart failure.

Entries in the detention log that did not correspond to the facts

The NPM criticised, however, that in the detention log III (police medical officer expert opinion) used to document the fitness to undergo detention examination, wounds from an existing health condition were incorrectly recorded as "injuries" (due to an official act). The Federal Ministry of the Interior regretted these entries that did not correspond to the facts.

Use of outdated versions of forms

Furthermore, it transpired that the Federal Ministry of the Interior only instructed all Police Departments in July 2019 to exclusively use the new version of the detention log III which the suicide prevention working group had already unanimously agreed years before (see NPM Report 2018, p. 145). The Ministry regretted this lapse.

On the monitoring visit to Vordernberg detention centre in July 2019, the commission also criticised the use of the outdated version of detention log III to document the fitness to undergo detention examination of two detainees awaiting forced return. The Federal Ministry of the Interior regretted that the old version of the form was saved in the logging system and used at the time when the detainees were arrested.

No entry of a certain detention in the „detention file prison administration“ application

On the monitoring visit to Salzburg police detention centre in December 2019, it was observed that there was no entry for the detention of a detainee for less than 24 hours in the "Detention file prison administration" application. The Federal Ministry of the Interior stated that the Police Department of Salzburg had complained about the missing electronic records and had issued instructions to increase awareness of the officers in the police detention centre. Arrested and detained persons have certain rights of information and notification (see NPM Report 2018, p. 159). They shall be verifiably cautioned and informed of their rights. This shall be documented in the detention log. With their signature, the person shall confirm that they have been cautioned and acknowledge the receipt of information sheets or the waiver of their rights.

Questionable use of the detention log

On the monitoring visit to Salzburg police detention centre in August 2020, the commission requested access to the detention log for the arrest and detention of six persons who had attempted to disturb a demonstration in the city of Salzburg. However, the commission only received copies of the respective electronic information on where they were held. The extent of the cautioning was thus not visible. As the commission had requested the disclosure of the detention logs from the Police Department of Salzburg to no avail before the monitoring visit, it came to the conclusion that the detention log was neither used for the arrests nor the admission of the persons to the police detention centre.

Unclear documentation of measures

The commission observed deficits in the documentation of placements in specially secured cells during the monitoring visit to Innsbruck police detention centre in October 2020. It was not clear from the documentation why the placement in the specially secured cells was prescribed or ended, or why the detainee's clothes were (partially) taken away. The comparison of several pieces of documentation also indicated that in some cases, in

spite of a similar situation or circumstances, security measures of varying intensity such as the partial or complete removal of the detainee's clothing were prescribed.

► *Detention in police detention centres shall be documented completely and transparently.*

2.6.11 Vordernberg detention centre

The NPM confronted the Federal Ministry of the Interior with several deficits observed on the monitoring visit to Vordernberg detention centre in July 2019 (see NPM Report 2019, p. 167). The Ministry was able to refute all of the points of criticism. The NPM carried out a follow-up visit in August 2020. On this visit, the NPM could assure itself of the implementation of several recommendations and announced improvements.

These included the issuing of medication to the detainees in a specially adapted room, the installation of digital thermometers in a room in the infirmary as well as the medication fridge located in the same room. The commission also found the occasional video consultation for psychiatric care positive.

Implementation of recommendations

During this visit, however, the commission perceived that several detainees complained about the quality of the food. The commission also learned from an officer that the cooling in the visiting room, the admission area and in the recreational areas for the law enforcement staff was not sufficient despite the use of heat protection foils. The commission saw the need to clarify the statement by an officer that the Police Department of Styria does not replace defective TV sets or does not provide enough replacements.

New points of criticism

The commission recommended providing the Nyroxid R compound (nasal spray for emergency therapy of opioid overdoses) to each residential group base. The non-medical staff could also apply this nasal spray after appropriate training. The intravenous or intramuscular administration of the liquid emergency therapy remedy in supply at the detention centre can, on the other hand, only be performed by medical specialists.

Furthermore, there were only German signs on disinfecting hands and information on how to avoid infection with COVID-19 on the walls and doors in the building. The commission also considered the installation of a sink in the rooms of the shift supervision as a protective measure against COVID-19 infection to be useful. The NPM will monitor these open questions.

- ▶ *The food for detainees in detention centres shall be balanced in accordance with nutritional science and in sufficient quantity.*
- ▶ *Suitable measures shall be taken in detention centres to ensure the relevant cooling of all inside rooms.*
- ▶ *The Federal Ministry of the Interior should organise measures that facilitate psychiatric advice and treatment by means of video consultation.*
- ▶ *The Federal Ministry of the Interior shall ensure that every detainee in detention centres promptly receives curative medical care in accordance with leading edge science.*

2.6.12 Positive observations

On several monitoring visits to detention centres, the commissions observed the high level of cooperation of the staff and the correct way they dealt with the detainees.

Vienna police detention centre

On the monitoring visit to Hernalser Gürtel police detention centre in March 2020, the commission designated the poster made by an officer for the detainees that showed the prayer times or the sunrise and sunset times for one month an example of best practice. The commission also welcomed the installation of lockable lockers for storing the detainees' personal belongings in the single cell area. Furthermore, it considered the practice of the officers working in this area to allow the detainees to take their meals outside of the single cells positive.

The commission was pleased on the monitoring visits to Hernalser Gürtel police detention centre in July 2020 and Roßauer Lände police detention centre that the detainees in arrivals quarantine were also able to visit the tobacconist's and the canteen.

Wiener Neustadt police detention centre

In Wiener Neustadt police detention centre, which is used exclusively for holding prisoners serving administrative penalties, the commission observed that the form of detention was open. This is remarkable because detention in the open section is reserved for detainees awaiting forced return as a matter of principle. In addition, the commission praised the cleanliness of the cells and common rooms for the detainees.

Eisenstadt police detention centre

The commission considered the 24/7 availability of medical staff positive on their monitoring visit to Eisenstadt police detention centre.

Bludenz police detention centre

On the monitoring visit to Bludenz police detention centre, the detainees praised the respectful behaviour of the staff and the range of permanently accessible games, magazines and books. The commission commended that the staff focussed on providing the best possible treatment of the detainees during the first nationwide lockdown and on the day of the visit. This also included the opportunity to make video calls using their own mobile phones in the arrivals cell that is under video surveillance.

2.7 Police stations

2.7.1 Introduction

The commissions visited 50 police stations in the year under review. As in previous years, the focus of these visiting delegations was on the proper documentation of measures that deprive liberty as well as the structure and furnishings of the stations and departments.

50 visits to police stations

COVID-19 was an important issue for the NPM on visits to police stations too. The observations are summarised in chapter 2.7.2.

Within the framework of monitoring priorities, the NPM concentrated in 2019 and 2020 on compliance with fire protection and the provision of contact opportunities for detainees in detention rooms. After an analysis of these topics, the NPM decided on two new monitoring priorities in the area of short-term police detention for 2021: the proper documentation of detention in the detention book and barrier-free access in all police stations in Austria (see chapter 2.7.3).

Monitoring priorities

2.7.2 COVID-19 prevention in police stations

The commissions visited 20 police stations between January and 10 March 2020. Monitoring visits were not possible for a long time after that due to the first lockdown and the risk of infection. The commissions resumed their visiting activity after the curfews were eased at the beginning of May 2020. When talking to the officers, the delegations focussed on dealing with the pandemic in everyday police life.

Just a few police stations complained about a lack of PPE and disinfectant as well as inadequate training at the beginning of the first lockdown. On the vast majority of their visits, the commissions praised the strict compliance with the hygiene regulations (maintaining distance, wearing a mask, installing disinfectant dispensers, temperature measurement). The plexiglass shields in Vösendorf police station ensured safe contact with the public. The commission commended that in the week of the visit to St. Johann in Tyrol police station on 11 December 2020 all of the law enforcement officers had routinely been tested with antigen tests.

Lack of PPE at the beginning of the pandemic

In order to keep the risk of infection for the officers in the stations low, the staff was divided into groups in all facilities. Sector patrols were no longer carried out by officers from other police stations. This prevented the spread of the infection beyond one group in Fürstenfeld police station. The commissions also considered it positive that no larger meetings were held.

Strict shift planning to prevent contagion

The monitoring visit to Wolkersdorf police station showed that between mid-March and mid-April 2020 a third of the staff was not available. The examination by the NPM indicated that the police security of the population in the district of this police station

was at no time in danger. The police stations in the surrounding area took over some of the work.

The holiday ban imposed in direct connection with the first lockdown increased the staffing level. In combination with the unanimously reported decrease in the normal workload by all of the interviewed officers, the additional effort required to support the health authorities (monitoring quarantine rules) could be easily managed.

Exemplary handling
of an ill detainee

On their monitoring visits, the commissions observed that for the protection of the detainees against infection with COVID-19 the covers in the detention rooms were changed after every time they were used. Cells and cars were also disinfected after use. The commission praised the handling of a detainee displaying flu symptoms and a temperature on their visit to Kopernikusgasse police station. A PCR test was carried out immediately. The affected person was detained in a single cell until there was a negative test result. The law enforcement officer involved went into self-isolation.

2.7.3 Monitoring priorities

In 2018 the NPM defined the two monitoring priorities of “Notification and alarm protection in detention rooms” and “Fire protection”.

In the implementation of the CPT standards (CPT/Inf/E [2002] 1 – version 2010, German, p. 16, margin No. 48), according to which persons in police custody shall be able to contact the guards at all times, Section 4 (5) of the Detention Regulation (*Anhalteordnung*) stipulates that equipment for notifying the guards shall be available in all cells. This provision is usually fulfilled by installing an alarm button.

The commissions have been regularly examining the proper functioning and visibility of alarm buttons in detention rooms for years. In so doing, they also checked whether the call system used by the law enforcement officers can be deactivated.

In 2017 the NPM addressed the Federal Ministry of the Interior regarding the topic of compliance with organisational fire protection in police stations. The Ministry referred to the amendment of the Federal Regulation on Workplaces in 2015 and the statutory creation of evacuation officers. The fire protection staff and associated organisation within the Police Departments were subsequently restructured and announced per decree. An additional decree on this topic was enacted in 2018.

In view of the serious effects of fire-related incidents in cells, the commissions made observations of the organisational and technical fire protection on their monitoring visits.

Final evaluation of the
former priorities

In the area of short-term police detention, the commissions addressed the monitoring priorities on about 40% of all visits in 2020. The evaluation showed that it can be generally assumed that alarm buttons are properly installed in the cells in police stations. The NPM also had an overall positive assessment of the organisational and technical fire

protection. An inadequate fire protection plan was the subject of a complaint in just one case, which the Federal Ministry of the Interior updated immediately.

The NPM therefore stopped following the existing monitoring priorities and defined new ones.

New monitoring priorities

Due to the importance of meticulous detention documentation from a fundamental rights perspective and the deficits identified in recent years, the NPM decided – with the involvement of the Human Rights Advisory Council – to define the proper documentation of detention in the detention book as a monitoring priority in 2021 (see chapter 2.7.4). The NPM will report about the experiences gained and the results of the evaluation of this monitoring priority.

The second monitoring priority covers the barrier-free status of all police stations in Austria, as – in spite of the generous transition periods – many police stations are still inadequately equipped (see chapter 2.7.5). The NPM has set itself the following goals: the acceleration of the implementation of the legally stipulated status as well as the recording and recommendation of interim solutions if implementation appears unachievable in the foreseeable future. Furthermore, persons with disabilities should not be detained in police stations without barrier-free accessibility in the view of the NPM.

2.7.4 Inadequate documentation of detention

The commissions regularly view the detention books and detention logs on their monitoring visits. Restrictions of freedom constitute serious infringements, which is why they must be fully documented.

Persons who are arrested have rights of information and notification (see most recently NPM Report 2019, p. 172 et seq.). Failure to respect these is a violation of the constitutionally guaranteed right to personal freedom. Public security officers shall inform detainees of their rights and document the same. The detained person shall confirm the receipt and availing or waiving of rights of information and notification. If a person refuses to sign, the law enforcement officer shall document the same in the log.

Measures that restrict freedom shall be documented in a transparent manner. For example, the beginning and the end of the use of handcuffs shall be documented. Handcuffing for a long period of time shall be justified.

As in the previous year, the commissions identified deficits in the documentation of detention and pointed this out to the heads of the stations in the concluding meetings. Once again, the NPM complained about the inadequate documentation of when handcuffs are removed and the distribution of information sheets. In some cases, the detention logs were not complete and the signatures of the law enforcement officers performing the official acts were missing. The duration of the detention was unclear

Numerous cases of inadequate documentation

in some cases. The NPM criticised missing entries in the detention book as well as inconsistencies between the detention log and detention book in one case.

On one monitoring visit, a detention log was neither in the original file nor in the general folder; another detention log was mistakenly forwarded to another police station. One official act remained unverifiable due to a lack of meticulous documentation. The transfer of a detainee to another police station was not noted in the documentation. The youth welfare operator was not notified of the detention of a minor.

The Federal Ministry of the Interior set training and awareness increasing measures in these cases.

Pursuant to Section 5 (5) of the Detention Regulation, the placement of a detainee in the specially secured cell is only permissible if the risk to them self, other persons or property does not allow placement in another cell. If the reasons for imposing such a measure cease to exist, it shall be revoked without delay. On a monitoring visit to Viktor-Christ-Gasse police station, the commission criticised that a person had been detained in the specially secured cell for more than ten hours. Furthermore, the commission critically observed that the "Public medical officer" field was ticked in the documentation of the measure, but the name of a doctor was not entered.

Mistake in documentation of measures

The Federal Ministry of the Interior stated that the detainee had fallen asleep in the specially secured cell. As he was not displaying any symptoms of infection or injuries, he had not been awoken when the public medical officer came. After he had woken up, the detainee was fit to be questioned and was immediately presented to the legally trained standby officer. The Ministry conceded that the "Public medical officer" section had mistakenly not been crossed out in the documentation of the measure.

Documentation of the sleeping phase - Viktor-Christ-Gasse police station

The NPM could understand that the detainee who had fallen asleep in the cell was not awoken when the public medical officer arrived. This would not be considered careful in the sense of Sections 3 and 4 of the Detention Regulation. However, the NPM criticised that the sleeping phase and the outstanding examination were not recorded in the documentation of the measure and recommended awareness for the issue (see NPM Report 2018, p. 159).

► ***Detention in police stations shall be documented seamlessly and in a transparent way.***

2.7.5 Deficits in structural conditions

Elimination of deficits often promised on-site

If the commissions observe deficits in structural conditions on their monitoring visits, these are usually discussed with the station head in the concluding meeting. Smaller deficits are frequently eliminated quickly. If a solution cannot be found in this way, the NPM informs the Federal Ministry of the Interior.

As reported in the previous year, the NPM criticised the conversion to light-independent video surveillance in the specially secured cells in Tannengasse police station, which was promised for 2018 but postponed until the end of 2019 for cost reasons (see NPM Report 2019, p. 174). The follow-up visit in July 2020 showed that this measure had still not been implemented. The Federal Ministry of the Interior conceded that there were delays and promised the installation of the infrared video surveillance in 2021.

The commission found fault with the condition of the detention room in Haid motorway police station with several unfixed pieces of furniture. Furthermore, the commission found a co-sleeper and two mattresses in the room. The commissions expressed safety reservations due to two retaining hooks in the wall and recommended cladding the heating to make it vandal-proof. The Federal Ministry of the Interior removed the retaining hooks as well as all furniture except for the bench from the detention room. The Ministry also took up the recommendation of the commission to clad the heating.

Unsafe detention rooms

While viewing the detention room in Wals police station, the commission noticed damage to the wall and criticised that plasterboards had been built in such a room. The Federal Ministry of the Interior promised vandal-proof renovation.

In addition to the appalling condition of some of the furnishing in Graz main train station police station, the NPM complained that members of the public and visitors were breathalysed directly behind the reception area. These official actions could be observed without restriction from the waiting area that is separated by a glass partition. Those affected were thus “put on show”. The Federal Ministry of the Interior promised to place a privacy foil on the door of the security system and to successively replace the worn furniture.

In the detention room in Mondsee police station, the NPM criticised the inadequate lighting and the window through which objects could be thrown. The Federal Ministry of the Interior promised to rectify the deficits. In Krenglbach police station, the Ministry had immediately removed all mobile objects from the cell that is used for storage. The NPM also criticised the inadequate fittings in the two detention rooms in Wiesing motorway police station (lack of ventilation, no partition between cell and cell entrance area, no running water). The NPM could not understand that the Federal Ministry of the Interior wanted to wait with the renovation for the new release of the Directive on Workplaces without however drafting a schedule.

Numerous deficits in furniture and fittings

The Federal Ministry of the Interior followed the recommendation to renovate the water heating in Glasenbach police station, so that the showers could be used by the officers again. The Ministry also had the intercom in St. Martin im Mühlkreis police station quickly repaired. By having the soiled walls in Juchgasse police station painted, the Ministry rectified this hygiene deficit.

In accordance with hygiene regulations – applicable before the outbreak of COVID-19 – covers in detention rooms had to be changed at intervals of four weeks or immediately when they were dirty. In the case of Wattens police station, the commission noticed in September 2019 a crumpled and evidently used cover on the floor of a detention room

even though the last detention in this cell had taken place six months before. A used cover had already been found in the detention room on a visit by the commission in April 2017. The Federal Ministry of the Interior failed to provide a plausible explanation for this. On the positive side, the Ministry followed the recommendation of the NPM to install air-conditioning in places.

Lack of barrier-free
access

One point of criticism that usually cannot be rectified at all or quickly is the lack of barrier-free accessibility. In the phased plan based on the Federal Act on the Equal Treatment of People with Disabilities (*Bundesbehindertengleichstellungsgesetz*), the Federal Ministry of the Interior defined when which police station should be (re)designed to enable barrier-free access. In the case of around 300 police stations, which are not included in the phased plan, barrier-free accessibility cannot be realised for technical reasons. Originally, police stations should have been reachable without barriers by the end of 2015. This deadline was extended by four years. At the end of 2019 at the latest, the Federal Ministry of the Interior should have relocated all non-barrier-free stations or have found an alternative organisational solution.

In 2020 too, the commissions observed that several police stations did not have barrier-free accessibility. In Lambach police station, the Federal Ministry of the Interior promised the reconstruction by June 2020, which was already planned before the visit by the commission. In Krenglbach police station, the entrance was widened and the installation of a stair lift was promised. Barrier-free status should be implemented in Mondsee police station and Neuhofen/Krems police station by the end of 2020; implementation in Mautern/Styria police station will only be in 2021 due to cost reasons.

2.7.6 Insufficient staffing

The NPM has been criticising understaffed police stations and associated workload for the law enforcement officers in the form of overtime and night shifts for years (see NPM Report 2019, p. 171 et seq.).

The NPM can understand that the staffing level in a police station can occasionally fall below the target situation for different reasons (sick leave, temporary relocation, training etc.). At least, above average overtime should be avoided through organisational measures, as stress and overload can also have a negative effect on the detained persons.

Staff shortages cause
higher workload

The NPM criticised in the year under review that almost a quarter of the permanent positions in Bruck an der Mur police station were vacant. At the time of the monitoring visit, the station, which is calculated to have 41 permanent positions, employed just 36 law enforcement officers equivalent to 31 FTEs as well as an executive assistant and an assistant. The NPM assumes that the calculated staffing of a police station is based on requirements planning. The Federal Ministry of the Interior promised to scale up the staffing of Bruck an der Mur police station with law enforcement officers from the current basic training programmes.

In Juchgasse police station, the NPM criticised that the actual staffing level was far below the target from September 2019 to March 2020. Several permanent positions were also vacant in Van-der-Nüll-Gasse police station despite the heavy workload. The Federal Ministry of the Interior followed the recommendation of the NPM and increased the staffing in both stations.

Ministry increases staffing

► *The staffing level in the police stations should correspond to the prescribed target situation. Understaffing causes stress and overload, which can have a negative impact on the detained persons.*

2.7.7 Supervision for law enforcement officers

The NPM is convinced that supervision, as guided reflection of professional conduct, can make a contribution to human-rights-oriented action on the part of law enforcement officers (see NPM Report 2019, p. 175 et seq.). The contributions the NPM visiting delegations make to increasing the awareness of the law enforcement officers should not be underestimated.

If the log documents show why supervision would appear to be useful in the visited police station or if the conversations with the law enforcement officers indicate that this type of support is not known in the station, the NPM informs the Federal Ministry of the Interior in its function as employer.

As announced in 2019, the NPM contacted the Federal Ministry of the Interior in 2020 to learn the results of the evaluation of the information initiative on the promotion of supervision (see NPM Report 2019, p. 175).

Examination of the results of the information initiative

The Federal Ministry of the Interior presented that the number of applications for supervision had increased substantially from the end of December 2017 to the end of 2019 and attributed this to the information initiative. The drop in the numbers of applications in the first and second quarters of 2020 was understandable in view of the COVID-19 situation. The information homepage on the intranet is continually updated. In addition, the Ministry promised the revision of the existing supervision decrees, the development of a supervision folder and specific eLearning module, continuous quality assurance as well as training programmes for increasing the awareness of the staff.

Increase in applications up the end of December 2019

The psychological service of the Federal Ministry of the Interior shared the recommendation of the NPM to present and offer the supervision programme already during the two-year police training. Trainee policemen and policewomen can apply for supervision at any time as an officer. There are also opportunities for reflection and teaching staff who are trained as peers available during basic police training. The resonance for these programmes is positive. The NPM also addresses supervision and its advantages in the training content it teaches.

Ministry promises further improvements

The NPM welcomes the efforts of the Federal Ministry of the Interior and shared the view that the employer is not exclusively responsible for availing of the supervision programme. The Human Rights Advisory Council also favoured voluntary use when asked for an estimation by the NPM in 2015 (see NPM Report 2015, p. 137 et seq.)

Evaluation of the measures to date

In December 2020, the NPM contacted the Federal Ministry of the Interior again and requested current information, in particular regarding the impact of COVID-19 on the numbers of applications in the third and fourth quarter 2020. A statement of opinion from the Federal Ministry of the Interior that covered all of the questions was not yet available at the time of editing this report. However, the Ministry forwarded the NPM a new decree on the topic of supervision, coaching and mediation for all employees.

- ***Availing of supervision should be promoted and fears and reservations avoided. In particular, managers should encourage the staff in their police stations to avail of supervision. A positive picture of supervision should be imparted already during basic police training.***

2.7.8 Violence prevention training

In September 2019, a commission visited Mureck police station. The Federal Ministry of the Interior presented the training programme for domestic violence during the investigative proceedings. From the NPM's point of view, it is positive that the Ministry collaborates with the violence prevention centres as well as the intervention office in Vienna.

Special training of law enforcement officers in domestic violence

As per May 2020, there were 516 law enforcement officers specially trained in the area of violence prevention nationwide. An additional 40 regional trainers were available. From January 2019 to mid-March 2020, 246 officers from the Police Department of Styria and 100 officers from the Police Department of Carinthia were trained in 80 training programmes in the area of violence prevention. The Federal Ministry of the Interior promised a needs-based increase in so called "GIP" officers (i.e. specialists in violence in the private sphere) including the necessary new training programmes when the COVID-19 restrictions have been eased.

2.7.9 Lack of privacy during examinations by the police (public) medical officer

As explained in detail in the NPM Report 2017, the NPM recommended the Federal Ministry of the Interior to provide separate examination rooms in police detention where possible but, in any case, to take technical precautions to ensure that privacy is guaranteed during medical examinations (see NPM Report 2017, p. 161 et seq.).

Hohenbergstraße police station is one of the few police stations that has a dedicated examination room. Nevertheless, the monitoring showed that the doctors involved tend to use the admission room in the detention area. The examination room is – according to the Federal Ministry of the Interior – only used for intensive examinations.

Examinations often take place in detention area

On a positive note, around three quarters of all examinations in the period from 15 November 2019 to 15 May 2020 were carried out without the presence of law enforcement officers as recommended by the NPM. However, the NPM criticised the non-exclusive use of the examination room in Hohenbergstraße police station.

- ▶ *Medical examinations and the treatment of persons in police detention shall take place alone with the doctor.*
- ▶ *Where possible, separate examination rooms should be provided in police detention. In any case, technical precautions to guarantee a medical examination in privacy shall be taken.*

2.7.10 Positive observations

The commissions document their observations in a visit report on every monitoring visit. Commissions also observe positive aspects and improvements and communicate these in the concluding meeting. In several cases, it was important to the NPM to inform the Federal Ministry of the Interior as the most senior body about positive impressions in writing. The Ministry and the police stations welcome this form of constructive cooperation.

Very frequently, the commissions praised the exemplary willingness to cooperate, the harmonious working atmosphere, the faultless documentation of official acts and detentions, the gender balance among the law enforcement officers, clean and well-equipped cells as well as barrier-free and contemporarily designed police stations.

Cooperation and good equipment

On their monitoring visit to Sonnenallee police station, the commission was impressed by the particular commitment of a district police officer within the framework of his preventive work.

Sonnenallee police station

In addition to the use of the supervision programme at Enkplatz police station, the commission praised the good leadership by the commander, to whom the respectful treatment of detainees is important. All accusations of abuse are not only forwarded but also discussed internally with the law enforcement officers. The NPM holds the view that this method of working through abuse allegations should be used in other police stations.

Enkplatz police station

A positive observation made by the commission on the visit to Bruck an der Mur police station was that station head notified peer support on difficult operations. The commission also praised the use of body-worn cameras, the dementia training

Bruck an der Mur police station

programme completed by all officers and the entrusting of a policewoman with preventive measures (lectures in schools, advising burglary victims).

- Satteins police station The commission found it very positive that Satteins police station can quickly reach doctors when needed thanks to the existing medical pool system in the area of the Police Department of Vorarlberg.
- Juchgasse police station In Juchgasse police station, the commission praised that all of the cells were equipped with dimmable lights and the Vienna Police Department offers employee support to all officers.
- Van-der-Nüll-Gasse police station On their visit to Van-der-Nüll-Gasse police station, the commission found the close cooperation with the Kaiser Franz Josef Hospital when dealing with mentally ill persons as well as the internal processing of accusations of abuse, the use of weapons and the use of physical strength very positive. The commission also praised the regular referral of the officers to the peer support and employee support programmes as well as the positive attitude of the superiors to these support options.
- St. Georgen am Attersee police station St. Georgen am Attersee police station got the attention of the commission with its careful, correct and obliging treatment of those arrested and the good medical care. The commission praised the implementation of the recommendations on barrier-free accessibility and the personnel situation.
- Perchtoldsdorf police station On the monitoring visit to Perchtoldsdorf police station, the commission also found it positive that detainees are offered notification of a legal representative or use of the standby legal assistance hotline in a traceable manner.

2.8 Coercive acts

2.8.1 Introduction

In the year under review 2020, the commissions observed a total of 17 acts of direct administrative power and coercive measures. These include one (forced) return as well as 16 demonstrations, football games, raids, events, examinations regarding basic reception conditions and other major police operations.

This year once again the NPM criticised a police operation at a major Vienna derby (see chapter 2.8.5). Other than that, the NPM praised the deployment of the police force at football games as in previous years.

The majority of observations was positive as in the previous years. The NPM thus noted that police operations at demonstrations, which had been fraught with conflict for years, for example the demonstrations against the Vienna Academics Ball or rallies against the Identitarian Movement Austria ("*Identitäre*"), passed without incident.

No problems at demonstrations

For 2019 and 2020, the NPM defined monitoring priorities with the involvement of the Human Rights Advisory Council. In the area of coercive acts, these were the audibility of loudspeaker announcements and the use of cameras at rallies and demonstrations. As there were no conclusive observations on this topic in 2019, the NPM continued pursuing this monitoring priority in 2020. Due to the coronavirus situation, there were even fewer opportunities to implement this monitoring priority in 2020.

Monitoring priorities

The NPM did not observe any forced returns by air in 2020. This was largely attributable to coronavirus-related impediments. However, the NPM was notified about 18 forced returns to Nigeria, Gambia, Afghanistan, Georgia, Armenia, Pakistan, Russia und Bosnia-Herzegovina by means of the monitor reports from the Human Rights Association Austria (*Verein Menschenrechte Österreich*). The NPM took two critical monitor reports to initiate ex-officio proceedings (see chapter 2.8.6).

2.8.2 Police operations in times of COVID-19

Due to the coronavirus situation, there were in general fewer football games, targeted campaigns and other events that required police operations and thus observation by the commissions.

Fewer observations due to coronavirus

There were also fewer demonstrations because of the coronavirus pandemic. However, the "Notification Decree" was an issue again, that is, the decree that defines the criteria under which the NPM should be informed about police operations (see chapter 2.8.3).

During the coronavirus pandemic, the NPM was not informed of all the politically controversial demonstrations. Nevertheless, commissions observed two demonstrations against the coronavirus measures of the Federal Government. On the demonstrations

Demonstrations against coronavirus measures

in Vienna on 14 May 2020 and 31 October 2020 respectively, the NPM perceived the behaviour of the police force to be de-escalating and proportionate.

Demonstrations against coronavirus measures from January 2021

Protest rallies against coronavirus measures increased throughout January 2021. These took place in the form of “walks” on the one hand, and also as “carnival parades”, which were usually peaceful and at least some of the time in compliance with the COVID-19 protective measures. On the other hand, there were major anti-coronavirus rallies directed against the Federal Government, particularly in large towns, at which the police intervened due to non-compliance with the COVID-19 protective measures.

The Vienna Police Department thus decided at the end of January 2021 to ban rallies. Nevertheless, according to reports from the media thousands of people assembled in Vienna to demonstrate despite the ban. According to the media reports, the police did not disperse the rally immediately and allegedly charged thousands of demonstrators for non-compliance with the protective measures.

Human Rights Advisory Council interviewed again

As a consequence of these events, the AOB received complaints and protests from persons regarding the actions of the police. Persons who were penalised for non-compliance with the protective measures complained that the police had not immediately dispersed the unauthorised rally. Others for their part complained about the dispersal of the rallies and the disproportionate actions of the police. As many of the complaints were based on film material in social media and those reporting them were not personally affected, the AOB requested the Human Rights Advisory Council for a supplemental opinion of its assessment of the police approach from the perspective of the protection of fundamental rights.

2.8.3 Notification of police operations

As already discussed in the NPM Report 2017 (pp. 171 et seq.), a decree from the Federal Ministry of the Interior regulates the obligations to inform the NPM (“Notification Decree”). An important criterion for the assessment of whether an event is reported is the question of whether the police consider this event to be semi-peaceful or unpeaceful in its risk analysis. As agreed, peaceful events are not reported to the NPM.

Commissions reported from May 2020 that they were not always informed about demonstrations against coronavirus measures and against racism (“Black lives matter”).

Risk assessment by the police

The Federal Ministry of the Interior explained that the police had assessed all of the demonstrations about which the NPM was not informed as peaceful. These assessments had been correct according to an *ex-officio* analysis because these demonstrations had taken place without incident.

The NPM only shared this assessment conditionally, as these were politically controversial demonstrations on sensitive issues. In view of the heated discussions in Austria surrounding the coronavirus measures and due to the violent riots in the USA during the “Black lives matter” demonstrations, notification would have been sensible. It all also

transpired over the year that not all demonstrations against the coronavirus measures were without incident.

After extensive discussion, however, the NPM refrained from wanting to be informed about all demonstrations – regardless of the risk classification by the police – because then thousands more events would be reported. The commission would then have to examine this mass of reports and decide whether observation would appear to be sensible and required. This additional effort would not be manageable for the commissions for capacity reasons.

Peaceful and semi-peaceful demonstrations not notifiable

In the event of a non-reported demonstration where the commissions for example can assume from the reports in the media that it was challenging for the police, they can however view the police risk analysis and examine why the police had classified this demonstration as peaceful or semi-peaceful.

2.8.4 Entering railway tracks

As explained in the NPM Report 2019 (p. 186), an employee of Austrian Federal Railways refused members of the commission entry to the railway tracks while observing the monitoring of a goods train by the police force.

In its statement of opinion, the Federal Ministry for Climate Action, Environment, Energy, Mobility, Innovation and Technology referred to the statutory rules that prohibit members of the commissions from entering the railway tracks. Individual exception regulations could only be issued for the individual members of the commission on a case-by-case basis.

With this solution, however, the NPM would not have been able to fulfil its constitutional mandate. Furthermore, the organisational effort required would have been greater. For this reason, the NPM requested the Human Rights Advisory Council for an assessment.

The Human Rights Advisory Council argued in its statement of opinion that the Federal Ministry for Climate Action, Environment, Energy, Mobility, Innovation and Technology could either make use of its power to issue statutory instruments in accordance with Section 47 (2) of the Railway Act (Eisenbahngesetz) in favour of the commission members or explicitly mention the members of the NPM in the text of Section 47 (2) of said act by way of an amendment of the law.

Advice of the Human Rights Advisory Council

The Ministry initially agreed to the request of the NPM for a statutory regulation as part of the next amendment to the Railway Act in autumn 2020. However, this promise was not included in the draft for review. The NPM therefore submitted a statement of opinion in the parliamentary review process and also reminded the Ministry of its promise.

Statement of opinion in review process

Section 47 (2) of the Railway Act thus now authorises the NPM and its commission members to enter the railway tracks of the Austrian Federal Railways without permit “if and for as long as this is necessary to perform the obligations of their office”.

2.8.5 Football games

Pyrotechnics and questionable banners

A derby between *Austria Wien* and *Rapid Wien* took place on 1 September 2019 in Vienna. The commission criticised that large amounts of forbidden pyrotechnics were ignited, in some cases questionable banners (skull as a symbol of a hooligan group designed to look like the SS skull) were hung up and it was possible for fans to storm the VIP area and injure three law enforcement officers.

In response to the first point of criticism, the Federal Ministry of the Interior stated that there was no permit issued for the use of pyrotechnics and that the organiser is responsible for admission to the event.

Search warrant was issued

The NPM noted that – according to the information from the Federal Ministry of the Interior – the game was qualified as high-risk. The executive thus issued a search warrant pursuant to the Austrian Security Police Act (*Sicherheitspolizeigesetz*). This allows the public security officers to search persons who want to enter the ground prior to admission and to stop them from entering the event if they refuse. Admission checks were also included in the official security police mandate.

The NPM could not understand why the law enforcement officers did not make use of the search warrant for high-risk fans at the major Vienna Derby.

Banners with critical symbols and content

In the view of the Federal Ministry of the Interior, the in part critical banners were justifiable under the fundamental right to the freedom of speech. In this context, the Ministry referred to a decision by the Constitutional Court of Austria according to which banners with A.C.A.B. (all cops are bastards) written on them do not constitute an insult to the law enforcement officers but merely highlight the tense relationship between fans and the police. In this respect, the content of this banner was covered by the right to the freedom of speech in the opinion of the Constitutional Court of Austria.

The NPM doubted that the decision of the Constitutional Court of Austria is applicable in this case. Because the meaning of the abbreviation “A.C.A.B.” and thus the question of whether the use thereof is acceptable and covered by the right to the freedom of speech is, according to the Constitutional Court of Austria, closely related to the problematic relationship between the police and the fans. Said court went into great detail on this in its decision. In the case in question, the banners contained completely different problematic symbols and statements. In the opinion of the NPM, all types of banners should not be tolerated, particularly if they possibly contain neo-Nazi symbols. For this reason, the NPM recommended that in the future the executive should examine, when considering the right to the freedom of speech, whether there is a breach of decency pursuant to the Vienna Security Law.

Police operation too late in escalation

On the last point of criticism where it was possible for fans to penetrate the VIP area and injure three law enforcement officers, the Federal Ministry of the Interior stated that the police had at first observed how *Rapid* fans had climbed over the fence out of their sector into the adjoining sector. At this point in time, the responsibility for managing the situation was still with the stewards. Police intervention was not yet required. Only from the point when the fans had penetrated the VIP area was it clear for the police that the

other guests were in imminent danger and the stewards were no longer able to take the relevant measures.

The NPM criticised that the police had waited too long to intervene and had only become active from the time when the VIP area was penetrated. A risk of danger to the guests and the injuries of the law enforcement officers could have been avoided if the police had acted sooner.

- ▶ *At high-risk football games, the executive should make use of a search warrant in order to prevent fans from bringing pyrotechnics into the stadium.*
- ▶ *Banners with questionable content should be critically scrutinised by the executive when considering the right to the freedom of speech and be examined with respect to a possible breach of decency.*

2.8.6 Forced returns

A commission observed a contact meeting in Salzburg Puch correctional institution prior to a forced return to Tunis.

The commission criticised that at this meeting of the Association of Human Rights Austria (*Verein Menschenrechte Österreich*), whose duty is to act as a return advisor, an employee of the association appeared as a type of “representative” of the person awaiting forced return. The employee of the Association of Human Rights Austria thus took part in the contact meeting quasi as a representative of the affected person. The woman acting in the name of the association was also designed a “helper” of the affected person by the head of the forced return team.

Mixing the roles of return advisor and legal advisor

Legal advice and return advice are two different fields of duties with different objectives (see NPM Report 2014, p. 140 et seq.). The affected person shall therefore be informed about the function that the entrusted organisation is assuming. Failure to do so would amount to circumvention of their rights in this respect, particularly considering that the Association of Human Rights Austria is active as both legal advisor and return advisor.

The Federal Ministry of the Interior also emphasised that there shall be a clear distinction between legal advice on the one side and return assistance on the other. However, the function of the employee of the Association of Human Rights Austria was clearly identifiable in the opinion of the Federal Ministry of the Interior. Nevertheless, the NPM concluded critically that, according to the observations made by the commission, the role that the representative of the Association of Human Rights Austria was exercising was not clear.

During another contact meeting in Roßauer Lände police detention centre, the commission found after a viewing of random entries in the medical documentation that some diagnoses of post-traumatic stress disorders or personality disorders and

Erroneous documentation in assessment of capability to fly

the associated medication information were not included in the assessment on the capability to fly.

The police medical service ultimately confirmed that a list from the Federal Office for Immigration and Asylum with entries on the existing conditions of the affected persons had not been forwarded to the police medical service. As the affected persons had not provided any information on possible existing conditions themselves, they were thus not included in the files.

The NPM criticised the inadequate communication between the Federal Office for Immigration and Asylum and the police detention centre. Furthermore, the NPM emphasised the special importance of complete medical documentation, as only with this can a conclusive assessment of the person's capability to fly be made.

Flight monitoring by Association of Human Rights Austria on behalf of the Ministry

Independently of the NPM mandate, the Association of Human Rights Austria accompanies forced returns by air on behalf of the Federal Ministry of the Interior. The association acts as a human rights observer pursuant to the Return Guideline. The reports on these observations are also forwarded to the NPM, which can initiate *ex-officio* proceedings if there is criticism of the approach used by the executive. As observations by commission were restricted due to the coronavirus, the NPM availed of this opportunity.

Employees of the Association of Human Rights Austria observed a contact meeting on 17 June 2020 and the subsequent forced return by charter to Tiflis on 18 June 2020. During the contact meeting in the Zimmergasse family accommodation, a family complained that they had not been informed of the rejection of their application for voluntary exit. They were ready to leave the country and had applied for voluntary exit but had then been arrested by the police and deported, which had caused considerable stress for the family.

No information on the refusal of voluntary exit

The Federal Ministry of the Interior stated that voluntary exit could not be carried out because the deadline for such cases had been missed. The family had thus been deported. The information about the negative decision on the voluntary exit reached the Association of Human Rights Austria a day after the forced return to Georgia.

It was not understandable for the NPM that the decision according to which voluntary exit was not possible was not sent to the family on time. It thus criticised the procedures used by the authorities.

- ▶ *There shall be a clear distinction between legal advice and return advice. The different roles shall be clearly recognisable for those affected.*
- ▶ *The relevant health-related information shall be included in an assessment of the capability of a person to fly. To this end, there shall be a flow of information between the authorities accordingly.*
- ▶ *Information on the rejection of a voluntary exit should reach those affected before a forced return.*

2.8.7 Positive observations

As in previous years, many police operations conducted last year were correct and exemplary.

At the national league games between SCR Altach and SK Rapid Wien on 9 November 2019 as well as between *WSG Swarovski Tirol* and *SK Sturm Graz* on 30 November 2019, the law enforcement officers stayed in the background and used de-escalation tactics even when the fans tried to provoke them at times. The Red Bull Salzburg Europe Champions League games were also held consistently without friction. The commission observed good organisation during admission to the ground and after fulltime at both the game against SSD Napoli and against Liverpool FC.

Football games

Events such as the 100-year anniversary of the national referendum on 9 and 10 October 2020 in Carinthia or the night slalom in Schladming on 28 January 2020 were also executed professionally by the law enforcement officers.

Events

The commissions reported positively on the demonstrations, which took place less frequently than in recent years due to the coronavirus. Above all, demonstrations that had been fraught with conflict for years such as the demonstration against the Vienna Academics Ball and the demonstration against the Fraternity Ball ("*Burschenbundball*") in Linz passed as peacefully this year as the demonstration "Criticism of Vienna's migration policy" ("*Kritik an der Wiener Migrationspolitik*") in October of this year.

Demonstrations

Border controls by the Aliens Police and border police unit, PUMA, at Schattendorf border checkpoint and at Kittsee border checkpoint were assessed as excellent by the respective commission.

Aliens police and border police controls

While observing a road check in Gries am Brenner on 19 July 2020, the commission saw nothing to be criticised in any of the official acts.

A contact meeting prior to a forced return and the forced return to Moscow itself were carried out correctly and in a highly professional manner according to the observation by a commission.

Forced returns

Annex

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