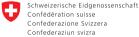


Activity report National Commission for the Prevention of Torture (NCPT)

2023



Nationale Kommission zur Verhütung von Folter (NKVF)
Commission nationale de prévention de la torture (CNPT)
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National commission for the prevention of torture (NCPT)

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Impressum

© National Commission for the Prevention of Torture (NCPT)

Publisher: National Commission for the Prevention of Torture, Schwanengasse 2, 3003 Bern

www.nkvf.admin.ch

Editorial: Secretariat National Commission for the Prevention of Torture

Layout: Bundesamt für Bauten und Logistik (BBL)

Reference source: National Commission for the Prevention of Torture (NCPT)

Schwanengasse 2, 3003 Bern

www.nkvf.admin.ch

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Foreword by the Chair

Dear Reader

In 2023, the National Commission for the Prevention of Torture (NCPT) focused in particular on the rights of children in two areas. Firstly, it looked at the situation in the federal asylum centres, where major changes in the asylum sector have had a considerable impact on the accommodation and care of unaccompanied and accompanied asylum-seeking minors, as the report on our monitoring visits to the federal asylum centres in 2021 and 2022 showed. Secondly, as part of its monitoring of forced returns by air, it examined the situation of children during the forced return of families. Children are clearly not just small adults; their vulnerability entitles them to special protection – protection which is often not provided. The NCPT hopes to promote and prioritise the best interests of the child also under migration law. In addition to these areas, the NCPT remained focused on previous areas of activity (healthcare in facilities where people are deprived of their liberty, police and migration, retirement and nursing homes), with numerous visits to various facilities

In 2023, two members of the Commission, whose term of office had come to an end, left the NCPT: Regula Mader and Leo Näf. Leo Näf supported and shaped the work of the NCPT with great commitment. I would like to thank them both for their tireless and dedicated service. In their place, the Federal Council has appointed Myriam Heidelberger Kaufmann,

an expert in prison management, and Jean-Sébastien Blanc, an expert on the deprivation of liberty and human rights. We look forward to working with both of them.

I would like to thank my colleagues on the Commission for their dedicated work and the objective and constructive discussions, particularly on controversial issues. I would also like to thank all the staff at the NCPT Secretariat for their dedicated and professional support of the Commission's work. I would also like to express my thanks to the observers who support the Commission in monitoring forced returns by air; it is a demanding job and the observation missions are not always easy. Finally, I would like to thank all those who provide us with information about their often difficult situation and to our interlocutors at the federal and cantonal levels, who have responded openly and constructively to the NCPT's criticism and recommendations.

Martina Caroni

NCPT Chair

Annual review

1

In 2023, the NCPT focused on issues relating to migration law, particularly with regard to children. It published an overall report on the situation of unaccompanied asylum-seeking minors in federal asylum centres, summarising 17 visits over two years. It also prioritised the treatment of families in the area of forced returns by air. In autumn, it began a cycle of visits to facilities where administrative detention under migration law is enforced. The Commission met five times in plenary sessions to discuss current issues and adopt reports.

1.1 Thematic focus

The NCPT's legal mandate is to ensure, through regular monitoring visits to a wide range of facilities, that deprivation of liberty measures comply with human rights (Article 2 Federal Act on the National Commission for the Prevention of Torture NCPTA). As this mandate is extensive and the financial and human resources of the Commission are limited, it must therefore prioritise each year where to focus its activities and what facilities to visit.

a. Accommodation in the federal asylum centres

In April 2023, the Commission published a report on its 2021–22 visits to the federal asylum centres (FAC) for the attention of the State Secretariat for Migration (SEM). The comprehensive review of the situation of unaccompanied asylum-seeking minors, which began in 2021, continued in specific areas in 2023. The situation in the federal asylum centres remained challenging during the reporting year due to the continuing high number of asylum seekers from Ukraine and other countries, and an even greater increase in the number of unaccompanied minors than in 2022. This had a further negative impact on the accommodation and care of asylum-seeking minors, whose individual care by professional youth workers SEM was forced to abandon already back in 2022 due to their high number. Some unaccompanied minors over the age of 16 had been categorised by SEM as 'independent' and were accommodated in federal asylum centres where there were no professional youth workers or suitable daily structures and activities. The NCPT reviewed the situation of these young people in two facilities, pointing out that there is no such distinction between 'dependent' and 'independent' minors according to the UN Convention on the Rights of the Child (UNCRC). The protection of unaccompanied asylum-seeking minors will remain a thematic focus of the Commission's human rights review.

In the federal asylum centres, asylum-seekers repeatedly mentioned that their basic needs were not being met. The Commission therefore decided to examine this matter in greater depth, focusing on the areas of individual safety, infrastructure, accommodation, food and clothing. For example, it looked at how families are accommodated in the centres, what small children get to eat, how asylum seekers get seasonally appropriate clothing and whether they can choose it themselves. The selection of which federal asylum centres to visit was based on migration developments at the time. From spring 2023, the Commission therefore visited civil defence facilities, as these were increasingly being used to accommodate asylum seekers.

b. Forced returns by air

When monitoring forced returns by air, the Commission looked at whether the human rights of those being forcibly returned were respected, in particular when coercive measures (physical restraint) were applied. It also examined whether the coercive measures used were proportionate. Coercive measures, such as the tying of hands, arms, legs and upper body, restrict a person's freedom of movement and should therefore only be used as a last resort and for the shortest possible time. They must also be proportionate to the specific circumstances of each case.

The Commission monitored the forced return of 420 people during the reporting year. Around a quarter of these were children. The forced return of families is very stressful for children and parents, and can also be very difficult for other people who are involved. The children generally do not understand what is happening to them and where they are being taken. Due to their age and their previous flight and life experiences, children are particularly at risk of being (re-) traumatised by forced returns. The Commission therefore prioritised the treatment of children in the 2023 reporting period, looking at various aspects such as the physical restraint of children, the physical restraint of parents in front of their children, the use of children for translations and the separation of families. The findings and nine recommendations on dealing with children were summarised in the annual report to the Head of the Federal Department of Justice and Police

(FDJP) and the Cantonal Conference of Justice and Police Directors (CCJPD), which is published each summer.

c. Administrative detention under the Foreign Nationals and Integration Act FNIA

In recent years, the Federal Supreme Court has passed various judgements on administrative detention in Switzerland under migration law. Based on these judgements, a comprehensive upgrading of the infrastructural and material conditions of this form of detention is necessary. Administrative detention should be clearly distinguishable from other types of detention; the material conditions and infrastructure should reflect the fact that it is purely administrative in nature and not based on a criminal offence. Finally, the principle of equivalence of care also applies to healthcare in administrative detention. Eight visits were carried out between autumn 2023 and spring 2024 in order to review these requirements.

d. Provision of healthcare in detention facilities

A short summary report adopted by the Commission last year addressed the question of how the COVID-19 pandemic had affected people in prison. The report formulated 14 recommendations aimed at handling future epidemics and pandemics in detention facilities in accordance with fundamental and human rights. The reports on the 17 detention facilities visited contain a more detailed analysis of the specific issues that were examined.

From a human rights perspective, the authorities must consider and balance three fundamental rights when fulfilling their obligation to contain a pandemic in a detention facility: the right to life (Article 6 UN Covenant II, Article 2 ECHR), the right to health (Article 12 UN Covenant I) and the right to protection from torture and cruel, inhuman or degrading treatment (Article 7 UN Covenant II, Article 3 ECHR). There is therefore a human rights dilemma in infection control. Measures that restrict a person's freedom, such as medical quarantine and isolation, are of fundamental importance in the fight against infectious diseases. However, restricting the detainee's freedoms more than is necessary may border on inhumane treatment. Custodial facilities therefore face a particular challenge in implementing epidemic and pandemic-related measures without violating fundamental rights.

e. Additional thematic focus areas

Another focus was the application and documentation of movement-restricting measures in retirement and nursing homes. Here, the Commission examined the management of complaints, violence prevention, medical and nursing care, residents' daily structure and their participation in decision-making.

The Commission also visited a forensic psychiatric centre. It invited three experts from the Austrian ombudsperson board to the visit so that they could compare notes on the findings.

Finally, the Commission visited police stations of the Fribourg and Schwyz cantonal police forces. Before the visits, it spoke with people in remand custody in the cantonal prisons to ask about their arrest, interrogation and general treatment by the police. The Commission then visited detention cells, interrogation rooms and police transport vehicles and held discussions with police staff.

1.2 In-house training

The Commission attaches great importance to ongoing professional development. In 2023, this took place primarily through bilateral or multilateral exchanges with other National Preventive Mechanisms. The exchanges focused on issues relating to monitoring procedures and follow-up action regarding the implementation of recommendations.

In January, the Commission invited the Women's Trafficking and Migration Centre FIZ (*Fachstelle Frauenhandel und Frauenmigration*) and Alexander Ott from the City of Bern Police to a workshop on human trafficking. The Commission assumes that there are human trafficking victims and perpetrators in pre-trial detention centres, prisons and federal asylum centres. After the workshop, the Commission added key issues pertaining to this area to its points for review.

The Omega Foundation and the OSCE Office for Democratic Institutions and Human Rights (ODIHR) offered the Commission further training on the monitoring of weapons and restraints. The Commission also invited the observers of forced returns to the course in March, which focused on as-

sessing the proportionate use of coercive measures and weapons. The use of tasers was also discussed.

In the spring, the Commission organised in-house training courses on care. Denise Balmer, a nursing expert, gave a lecture on the topic of nursing and care in retirement homes, and Dr Ursula Klopfstein, a member of the Commission, gave a talk on neurodegenerative dementia.

Violence prevention in retirement and nursing homes as well as facilities for people with disabilities was the focus of the Commission's annual retreat in April. The guest speaker, social education worker and mediator Lukas Wunderlich, spoke about the institutional risk factors for violence and the cultural and structural factors that influence aggression. Another topic was the potential side effects of movement-restricting measures in such institutions. For example, studies on retirement and nursing homes show that movement-restricting measures can detract from a resident's quality of life, leading to a decrease in physical activity and an increase in challenging behaviour. The presentation emphasised in particular how important it is to examine violence prevention and the use of movement-restricting measures also in facilities for people with disabilities.

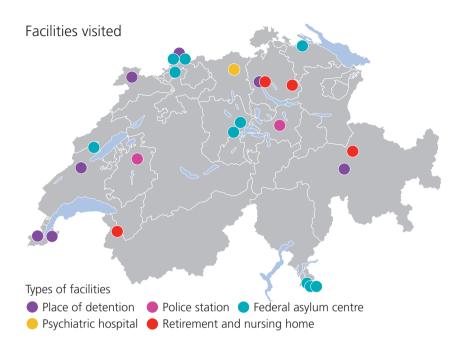
Activities

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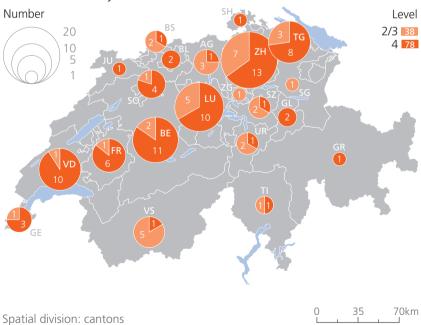
The NCPT's main task is to visit deprivation of liberty facilities in order to prevent ill-treatment and to make recommendations and suggestions to the authorities on how to improve the situation of those concerned. According to Article 4 paragraph 2 of the Optional Protocol to the UN Convention against Torture (OPCAT), 'deprivation of liberty means any form of detention or imprisonment or the placement a person in a public or private custodial setting which that person is not authorised to leave at will by order of any judicial, administrative or other authority'. In 2023, the Commission carried out a total of 24 one- or two-day visits across Switzerland and formulated around 200 recommendations for the relevant authorities. It also drafted statements on human rights' issues relating to the prevention of torture and cruel, inhuman or degrading treatment. In addition, it organised a migration forum on asylum issues for the first time again in three years.

2.1 Migration Forum

In April, the NCPT invited around thirty representatives of the State Secretariat for Migration (SEM), the Office of the United Nations High Commissioner for Refugees (UNHCR) and civil society organisations to an exchange on the situation of unaccompanied asylum-seeking minors in federal asylum centres. During the forum, the NCPT Chair presented the Commission's key findings and highlighted the need for action in this area, as set out in the recently published report on its 17 visits to regular and temporary federal asylum centres in 2021 and 2022. In addition, Dr Sydney Gaultier from the Centre hospitalier universitaire vaudois (CHUV) in Lausanne gave a presentation on the challenges that many unaccompanied minors face after arriving in Switzerland. Among other things, he discussed the paradoxical situation whereby these young people in the federal asylum centres feel protected on the one hand, but unsafe on the other. He also drew the participants' attention to the fact that they often suffer greatly psychologically, but rarely speak about it openly. In addition, two SEM employees gave a presentation on the current challenges concerning unaccompanied minors in the federal asylum centres. The three presentations formed the basis for group discussions on age-appropriate and human rights-compliant accommodation for young people in the federal asylum centres.







2.2 Number of forced returns and police-escorted transfers at various enforcement levels

The Commission accompanied 49 forced returns by air at enforcement level 4 (Article 28 Use of Force Ordinance UFO), including 78 airport transfers under police escort from the cantons of Aargau, Basel-Stadt, Basel-Landschaft, Bern, Fribourg, Geneva, Glarus, Graubünden, Jura, Lucerne, Schaffhausen, Schwyz, Solothurn, Ticino, Thurgau, Uri, Vaud, Valais and Zurich. It also monitored 38 police-escorted transfers at enforcement levels 2 and 3 (Article 28 UFO) from the cantons of Aargau, Basel-Stadt, Bern, Fribourg, Geneva, Lucerne, Schwyz, Solothurn, St. Gallen, Ticino, Thurgau, Uri, Vaud, Valais, Zug and Zurich. The Commission requested written comments from the authorities to clarify the police interventions in some of the cases it had observed.

2.3 Monitoring procedures

The aim of monitoring visits is to monitor the living conditions and examine the treatment of persons deprived of their liberty from the perspective of fundamental and human rights. Some of the visits are announced in advance, others are not. During a monitoring visit, the NCPT delegation, which varies in composition depending on the facility visited, conducts interviews with detained persons or persons subject to other freedom or movement-restricting measures, and with the management and staff of the respective facility. The delegation also inspects all records and documents that are relevant to its monitoring mandate, including house rules and internal regulations, orders relating to disciplinary and security measures, and orders concerning the treatment of a person without their consent or measures restricting their movement. It also reviews plans for the enforcement of correctional, administrative or treatment measures. For each monitoring visit, the delegation defines separate points for review which are tailored to the particular thematic focus area.

The 2023 monitoring visits generally went smoothly: management and staff received the visiting delegations in a friendly and professional manner, and the requested documents were provided in full. Following each monitoring visit, the management of the facility received an initial verbal feedback in which the delegation summarised its findings and provided the management with a first opportunity to respond. The delegation's obser-

vations and findings were then summarised in a written report for approval by the Commission, and the recommendations submitted to the relevant authorities for comment. The report is published on the Commission's website, together with the authorities' comments.

2.4 Number of visits

In 2023, the Commission carried out 24 monitoring visits to facilities where people were deprived of their liberty or had their liberty restricted. During the visits, it reviewed practices pertaining to the relevant provisions of criminal procedure, criminal law, civil law and asylum and migration law, as well as compliance with international human rights' standards. The Commission inspected two facilities for the enforcement of deprivation of liberty measures under criminal procedure law, three facilities for the enforcement of sentences and measures, four facilities for the enforcement of administrative detention under migration law, one psychiatric facility, four retirement and nursing homes and ten federal asylum centres. The Commission also conducted thirteen interviews with the relevant federal and cantonal authorities in which it outlined its final findings and discussed the need for action.

2.5 Cantonal police

a. Schwyz Cantonal Police

In July, the Commission visited the police stations in Einsiedeln, Küssnacht, Lachen, Pfäffikon and Schwyz as well as the security centre Biberbrugg. The Commission was pleased to note that any injuries suffered by detainees on arrest were systematically documented. It also welcomed the fact that minors are always examined by a doctor to determine their fitness for detention, but regretted that there are no specific guidelines for the transport, restraint, body search and care of minors. In view of the particular vulnerability of young people, the Commission pointed out that a lawyer should always be present when minors are interrogated. The Commission welcomed the practice of the Schwyz Cantonal Police to only use restraints on detainees following an individual risk assessment, but regretted the fact that they are systematically handcuffed behind their back at the prison authority's request when transferred to the cantonal prison.

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It also regretted that the prison systematically carries out body searches on all new arrivals. The Commission reminded the Schwyz Cantonal Police that strip-searches are only permitted if there are serious and concrete indications that a detainee poses a danger to themself or others. Finally, the Commission emphasised that the fixation of hands behind a person's back during transport should be avoided and that shackling during transport in the cell transporter should be completely dispensed with. The authorities refrained from issuing a statement.

b. Fribourg Cantonal Police

In September, the Commission visited the Fribourg cantonal police stations in Bulle, Romont, Fribourg-Pilettes and at Fribourg railway station, as well as the security police building in Fribourg and the intervention centres in Granges-Paccot and Domdidier. Before visiting the police stations, the Commission travelled to the central prison to talk to detainees about their experiences with the cantonal police. From the conversations with members of the police force, it concluded that police officers were sensitive to issues related to LGBTIQ+ persons and the problem of ethnic profiling, which it recommended be expressly prohibited. The Commission deemed the physical conditions of detention in police stations that have a cell wing to be unsuitable for stays of more than 24 hours. It regretted that in all the cell blocks visited, none of the cells used for temporary detention had any natural light. For this reason, the Commission considers it extremely problematic to hold persons in these cells for more than a few hours. It also noted that artificial light is on around the clock in the cells at the Domdidier intervention centre and recommended that lights be switched off at night. In addition, none of the police posts visited has an outside yard. The Commission criticised the use of the very narrow confinement cell for people who are agitated, and recommended that they should only be used in exceptional situations and until medical staff are on the scene. It also called for the use of these cells to be documented. In addition, the Commission recommended that the metal rings built into the tables to handcuff suspects to the table during interrogations be removed. It also recommended the complete elimination of shackles during transportation in cell vans and reminded the authorities of the importance of establishing an alternative and independent complaints mechanism for allegations of ill-treatment by detainees or prisoners.

2.6 Facilities for the enforcement of sentences and measures

In the first half of the reporting year, the Commission focused on reviewing healthcare in facilities where custodial sentences are enforced, following on from its activities in 2022. The Commission visited three facilities to determine whether the healthcare provided there meets national and international standards.

a. Gefängnis Zürich

During its visit to Zurich Prison in March, the Commission was pleased to note that group detention has been introduced as part of pre-trial detention, allowing for more social contact between detainees. Other positive changes have also been introduced since the last visit in 2017: a gym and a music room have been set up for the men, the corridors and some cells have been repainted and the communal areas have been made more comfortable. The Commission recommended that group detention should also be allowed in the evenings and at weekends. The Commission discovered that disciplinary detention and detention for security reasons are carried out in the same cells in the basement. It judged this practice to be problematic and recommended using different cells in order to distinguish between these very different measures.

The Commission received a mixed impression of the healthcare provided. Although the designated rooms are adequately equipped and a medical assessment is routinely carried out within the first 24 hours of admission, the medical documentation was found to be incomplete and the prison staff had access to the detainees' medical files, which violates patient confidentiality. In addition, medication was not distributed exclusively by healthcare professionals. The Commission considers these practices to be inadequate and recommends that measures be taken to ensure confidentiality. Finally, the Commission learnt that detainees, including pregnant women, are systematically handcuffed during transportation to external medical examinations. The Commission recommends that handcuffs should only be used during transportation after an individual risk assessment and strongly recommends that pregnant women should never be handcuffed

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b Prison de la Croisée

In April, the Commission visited Croisée Prison in the canton of Vaud and found an occupancy rate of 140 per cent. The overcrowding of prisons in the canton remains one of the Commission's main criticisms because of its negative impact on living conditions. The Commission recommended that more natural light be allowed into the cells, particularly in the admissions section, where people in remand custody are locked in their cells for 23 hours a day. The Commission also recommended that the detention regime be made less restrictive by leaving the cells in the accommodation section open for longer, by reducing the time people in remand custody spend in the cells and by creating more employment and work opportunities.

The Commission gained an overall positive impression of the healthcare provided. The facility's medical service is affiliated to the *Centre hospitalier universitaire vaudois* (CHUV), which has an appropriate infrastructure and a medical team that is present in the prison's psychiatric unit seven days a week. The Commission also found that the provisions of the Epidemics Ordinance had been well implemented. The Commission regretted that detainees at this facility are also shackled (hands and feet) during transportation to external medical examinations or treatment, and recommended that such practices should be used in a differentiated manner and only after an individual risk assessment.

c. Prison de Porrentruy

Following its visit to Porrentruy Prison in August, the Commission reiterated its 2014 recommendation to close the prison as it does not meet national and international standards. The prison is located in a medieval castle and has no outdoor prison yard: the detainees' daily walks take place in a large room with open windows. It is the Commission's reiterates that the daily walks must take place outdoors. It also regretted that people in remand custody are locked in their cells for more than 20 hours a day. The Commission found that the various problematic living conditions in Porrentruy Prison cumulatively amounted to inhuman treatment under Article 3 ECHR. Following the visit, a meeting was held in February 2024 with the responsible government councillor to discuss the living conditions in Porrentruy prisons.

2.7 Psychiatric facilities

a. Zentrum Forensische Psychiatrie Stationär der Klinik für Forensische Psychiatrie der Psychiatrischen Dienste Aargau

In May, the Commission visited the inpatient psychiatric centre at the Clinic for Psychiatry of the Aargau Psychiatric Services, together with experts from Austria's ombudsperson's office (*Volksanwaltschaft*). The Commission was pleased to note that the centre had detailed and up-to-date treatment plans for all patients. It also commended the dedicated and respectful treatment of patients by the staff. The clinic is divided into six wards – the first ward, known as KFP 1, serves as an acute ward and also as an assessment ward primarily for persons subject to correctional measures. In view of the high level of security, the infrastructure (which allows little autonomy or privacy) and the limited therapeutic and occupational opportunities, the Commission is of the opinion that the living conditions on this ward are not appropriate for long-term stays.

The Commission also pointed out that the outdoor yard should be large enough to allow for exercise and be an inviting place for rest and recuperation. It also considers it problematic that people who are subject to care-related hospitalisation are on the same ward as people who are subject to a penal sentence or measure. The other wards of the clinic have large and bright rooms and are generally more friendly and less restrictive. The Commission recommended that underage patients should not be accommodated in the clinic and that other accommodation options should be sought. A response by the authorities to the findings is pending.

2.8 Facilities for administrative detention under migration law

a. Abteilung für ausländerrechtliche Administrativhaft der Justizvollzugsanstalt Realta

During its visit to the administrative detention unit at Realta Prison in the canton of Graubünden in September, the Commission found that the detention conditions and regime do not reflect the nature of administrative detention due to the highly prison-like character of the facility. The 16 individual cells, which are used for the first, maximum, 96 hours of administrative detention under migration law, are dark and cramped; the windows are barred and let in very little natural light. The Commission welcomed the fact that detainees are allowed free access to the outdoor yard for 12 hours, which corresponds to the length of time that cells are open. However, the Commission criticised the lack of access to the internet and mobile phones, as well as the lack of visiting opportunities at weekends. It also noted that the small number of people held in this unit and the lack of counselling or support from social services amount in practice to solitary confinement.

b. Établissement de détention administrative de Favra

The Commission visited the Favra administrative detention centre in the canton of Geneva in October. The Commission asked the competent cantonal authorities for an appointment to present the findings orally.

c. Établissement concordataire de détention administrative de Frambois

In October, the Commission also visited the Frambois administrative detention centre outside the city of Geneva. The Commission asked the competent cantonal authorities for an appointment to present the findings orally.

d. Gefängnis Bässlergut

In November, the Commission visited the administrative detention unit under migration law at Bässlergut Prison in Basel. Although the unit is housed in a building separate from the penitentiary unit of the prison, also here the infrastructure has the character of a prison, a: the cell windows are barred, the outdoor yard is surrounded by walls and barbed wire and the communal areas are sparsely furnished. The Commission welcomed the fact that, since its last visit in 2017, the opening times of the cells have been extended to over twelve hours a day and those of the outdoor yard to almost four hours a day. However, it recommended more flexible access to the fitness room and offering detainees additional employment opportunities. The Commission also regretted that detainees were only allowed very limited internet access and recommended they be permitted to use personal mobile phones. It also recommended that stays in the security cells should be documented. Finally, it issued a reminder that detainees

may only be medically examined in the presence of third parties as an exception and only if there is a serious security risk.

2.9 Federal asylum centres

In 2021 and 2022, the Commission acknowledged that its findings were quickly outdated as a result of the significant change in migration flows and therefore adjusted its reporting. While in previous years its findings of all the visits carried out over a period of one and a half to two years were summarised in an overall report, these are now presented in separate, more frequent reports based on asylum regions. Reporting is therefore now more up to date and the Commission's recommendations focus on individual or a specific group of FACs. The reports are published on the NCPT website together with SEM's response to the findings. Monitoring visits to federal asylum centres are always unannounced.

a. Federal asylum centre in Steckborn

In March, the Commission visited the temporary FAC in the underground Bühl civil defence facility in the commune of Steckborn in the canton of Thurgau. It welcomed the fact that the asylum seekers have sufficient clothing for all seasons, which is available from an on-site clothes shop. Baby food for new-borns was also available. However, there was a lack of flexibility when it came to feeding small children, with them receiving the same food as adults. The Commission's criticism centred on the infrastructure of the FAC. As is usual in a civil defence facility, there is no daylight and most of the bedrooms, showers, the dining room and other communal areas are not clearly separated from each other. This provides asylum seekers with hardly any opportunities for retreat or privacy. The accommodation of people of different genders and families with children in a civil protection facility is particularly problematic. On their way to the toilets, women and girls have to pass through a communal room, even at night, which is mainly occupied by men. The Commission judged the living conditions to be unsuitable for children, as there is a lack of daylight, the rooms are cramped and there are no play areas for children. The Commission therefore pointed out that underground accommodation is problematic from a human rights perspective: it is only appropriate for short stays and it is always unsuitable for particularly vulnerable people and children.

b. Federal asylum centre in Provence (Les Rochat barracks)

In March, the Commission also visited the temporary federal asylum centre in the Les Rochat barracks in the commune of Provence in the canton of Vaud. The facility exclusively houses unaccompanied minors over the age of 16 who are deemed to be 'independent'. A range of activities such as cricket, football or carpentry under the guidance of a carpenter gives the unaccompanied minors a certain daily structure despite, at the time of the visit, the lack of care und supervision by professional educational staff. The minors have enough clothing. In its letter to SEM, the Commission emphasised that according to the UN Convention on the Rights of the Child (UNCRC), all people up to the age of 18 are considered children and that the Convention applies to all minors regardless of their age. It criticised the distinction between 'independent' and 'dependent' unaccompanied minors as being incompatible with the Convention. The Commission also found indications that at least 10 of the unaccompanied minors classified as 'independent' had been victims of human trafficking or physical, psychological or sexual violence, and that therefore the identification of particularly vulnerable unaccompanied minors over the age of 16 had not worked in practice. In contrast to statements by staff that there was little violence at the facility, the Commission found that there had been mass brawls among the minors. In addition, almost all of the minors with whom the Commission talked stated of their own accord that two particular security staff had behaved aggressively towards them. Based on the information received, it was unclear how the rooms near the reception area which are furnished with beds are being used. The Commission pointed out that their use must be clearly regulated and limited to the short-term accommodation of minors who would otherwise significantly disrupt daily life due to intoxication or other reasons. The Commission emphasised that the rooms were not to be used as a security room for short term detention.

c. Federal asylum centres in Basel (Bonergasse and Schäferweg) and Aesch

On two days in May, the Commission visited the temporary federal asylum centres located in the Bonergasse and Schäferweg civil defence facilities in the city of Basel and in the civil defence facility in the commune of Aesch in the canton of Basel-Landschaft. The Commission welcomed the fact that asylum seekers in the Bonergasse and Schäferweg facilities

were able to select themselves and try on clothing in the shop at the Basel FAC. It was also pleased to note that at the civil defence centres visited food and drink purchased in jars or cans could be decanted into plastic containers and taken back to the place of accommodation. The Commission considered the obligation to provide information to the NCPT delegation was not being fully complied with: although SEM staff were on hand at all times to provide information and grant access to all requested documents, the security staff were not available for interviews with the delegation, giving as justification the duty of confidentiality clause in their employment contract. The Commission criticised this in its letter to SEM and referred to Article 8 paragraph 3 NCPTA and the OPCAT provisions under which the Commission is authorised to conduct confidential interviews with any person who may have relevant information. The Commission also found that information about two suspected cases involving violence by security staff against asylum seekers had not been passed on to SEM: in one case staff had not filed any report about the incident, and in the other case a report had been written by the security staff only and not by the member of the care staff who had been present. The Commission urgently recommended that SEM investigate these cases internally. In addition, the Commission found shortcomings in the care of unaccompanied asylum-seeking minors at the Aesch centre: there was a lack of professional youth workers, German lessons only took place sporadically and there were hardly any other activities. The Commission also pointed out that underground accommodation with no natural light is problematic from a human rights perspective; it is only appropriate for short stays and always unsuitable for particularly vulnerable people and children.

d. Federal asylum centres in the Ticino and Central Switzerland asylum region

From September, the Commission visited all the accommodation facilities in the Ticino and Central Switzerland asylum region: the federal asylum centre in Balerna and the one in Chiasso (both the accommodation at Via Motta 1b and the accommodation at Via Motta 7-11) in September, the FAC Emmen in October, the FAC Eigenthal in December and the FAC Glaubenberg in January 2024. The Commission summarised its findings in a report. The initial somatic care provided by nursing staff from the health service on site generally worked well in these FACs. The Commission was also pleased to note that school-age children in the centres with school facilities praised the dedicated teachers.

However, the Commission was particularly concerned about the dilapidated condition of the facility at Via Motta 7-11, located at Chiasso railway station, which is due for demolition. It recommended that SEM stop accommodating children and particularly vulnerable people there with immediate effect and close it as quickly as possible. The Commission has noted that the facility was closed at the end of 2023. In Emmen, up to 200 asylum seekers were sleeping and eating in a single hall. At the same time, there was a lack of communal and retreat areas. The Commission recommended to SEM that, wherever possible, asylum seekers should not be accommodated in multi-purpose halls; if such accommodation is unavoidable, the duration of stay should be as short as possible and no children or other particularly vulnerable persons should be accommodated there. There was a sufficient and appropriate supply of food for babies, but a lack of suitable food for small children in the visited FACs. According to the information received, this led to many children refusing to eat and in some cases to malnutrition. The Commission recommended that SEM and the care companies ensure adequate catering for young children. In some FACs there was a varied range of clothing available, while in others the supply of clothing was inadequate and often chosen by staff. The Commission recommended that SEM and the care companies ensure that sufficient clothing is available in all FACs and that asylum seekers choose their own shoes and clothing in an on-site shop.

Physical violence among asylum seekers was mainly reported in the Balerna, Chiasso (both centres) and Glaubenberg facilities. Based on numerous reports from asylum seekers, the Commission criticised the fact that, particularly in the centres in Ticino, security staff did not intervene in a preventive manner to de-escalate conflicts or call in violence prevention staff, but only after physical violence had already occurred. The Commission noted that in the Balerna, Chiasso (Via Motta 1b and Via Motta 7-11) and Eigenthal facilities, cases of sexual violence by asylum seekers towards other asylum seekers had been documented and reported, indicating that the staff were able to identify such cases. During its monitoring visit, however, the Commission also found that some asylum seekers were reluctant to report incidents of sexual violence due to intimidation or fear of reprisals or negative consequences for their asylum application. It recommended that SEM and the care and security staff actively encourage asylum seeking persons to report cases of sexual violence and to inform them that reporting such an incident has no impact on their asylum procedure.

2.10 Retirement and nursing homes

a. Gesundheitszentrum für das Alter Laubegg

In January, the Commission visited the Laubegg retirement home for the elderly in the city of Zurich. According to the documents received, the facility houses an above-average number of residents with low care needs. However, on its monitoring visit the Commission found persons with dementia also living at the retirement home, which does not have a closed ward for dementia residents. The Commission welcomed that the facility has specific guidelines for applying movement-restricting measures and that the staff have a high level of awareness of this issue. However, it recommended that the form used for ordering movement-restricting measures be supplemented with information on the possibilities for legal appeal. It also recommended that the concept for dealing with residents suffering from dementia be implemented systematically and that staff receive further training in this area. Another focus of the visit was complaints management. The Commission welcomed the fact that residents receive a document from the City of Zurich on admission, which specifies the internal and external complaints procedure and that this document is also available in the entrance area, but criticised that the complaints form is only available in paper form on request at reception. The Commission therefore recommended that the complaints form be displayed in the reception area as well, and that any complaints received and measures taken be documented. Finally, the Commission issued a reminder that all residents, including those who are less mobile and those without relatives, should be encouraged to go for a walk or spend at least one hour a day in the fresh air, accompanied by someone.

b. Home Les Tilleuls

When the Commission visited the Les Tilleuls retirement and nursing home in Monthey in the canton of Valais in March, part of the nursing home was being renovated. The home is made up of both old and new buildings, whereby the layout can confuse residents and visitors. The care home does not have a closed ward, but instead promotes the inclusion of residents with dementia based on its own integration model. The Commission welcomed the high awareness among staff and management of the issue of movement-restricting measures. The use of such measures is always discussed among the team and reviewed at regular intervals. In ad-

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dition, all movement-restricting measures are documented in detail, and the persons affected or their relatives are systematically informed about their legal rights. Although the facility has an ethics charter, which mentions the topic of violence prevention, the Commission issued a reminder that it is important to define what types of conduct may be harmful to residents.

c. Pflegezentrum Bauma

The Commission visited the Bauma care centre in the canton of Zurich in April and June. The facility specialises in the long-term care of adults with severely chronic psychiatric illnesses, which are often linked to physical illnesses and therefore require additional care. The centre accepts residents subject to civil or criminal sanctions as well as those who are not subject to such sanctions, which leads to legally difficult guestions of distinction. The Commission gained a positive impression in the areas of medical and nursing care and staff: the facility is very well staffed with specialist personnel. However, it considers the cramped rooms and outdoor areas to be problematic, as they offer hardly any opportunities for exercise. This has a particularly negative impact on residents who are admitted under Article 64 of the Swiss Criminal Code (indefinite incarceration), which is why the Commission considers the conditions under which they are held to not be in line with human rights. Due to the special strategic positioning of the facility and the composition of its residents, a strict security policy is reguired. The Commission received feedback that the implementation of the security measures can have a negative impact on the residents. The Commission issued a reminder that medical needs must be met with a minimum of personal restrictions, particularly with regard to residents under care-related hospitalisation.

d. Seniorenzentrum Cadonau

The Cadonau home in the canton of Graubünden, which the Commission visited in July, is a modern building with large and bright rooms. It offers both segregated and integrated dementia care, with two closed wards connected by an easily accessible garden specially designed for people with dementia. The Commission welcomes the fact that the facility has guidelines for measures restricting movement, but noted various shortcomings in their implementation: for example, it is not clear in the documents who orders individual measures, nor is the decision-making process leading

to the measure clearly documented. There is also a lack of information on legal remedies. The Commission issued a reminder that documentation must be complete and clear and include information on the right of appeal. In addition, a doctor should always be involved in the decision-making process. The Commission also considered the number of residents with pressure sores to be problematic and recommended that the concept for pressure sore prevention, which contains a comprehensive list of measures, be better implemented. Finally, the Commission welcomes the fact that the facility has a concept for the prevention of violence, but had the impression during its monitoring visit that the staff were aware of the concept to varying degrees, depending on their hierarchical level.

2.11 Opinions

The Commission issued two opinions to federal authorities. In 2021, the Oberholzer investigation report highlighted shortcomings in the legal basis for certain procedures in the FACs. Among other things, the report suggested that SEM regulate the use of disciplinary and security measures. SEM therefore drafted a proposal for a partial revision of the Asylum Act (AsylA). In its opinion on the draft, the Commission commented on the topics of physical searches (new Article 9 AsylA), the use of police coercion and police measures (new Article 25 lit. 2 and 3 AsylA) by SEM i. e., private security staff in the FACs, disciplinary measures (new Article 25 lit. a AsylA), short term detention to avert immediate danger (security room, new Article 25 lit. b AsylA) and the transfer of security tasks to private security companies (new Article 25 lit. c AsylA).

In a further statement, the Commission emphasised the importance of regulating the trade of goods used for torture, as proposed in the new Federal Act on the Trade in Goods used for Torture (Torture Goods Act, TAG).

The Commission also commented on the eighth periodic report of Switzerland, which was discussed at the 77th session of the UN Committee against Torture (CAT) in July (see Chapter 3.4). The Commission also wrote a contribution for the report of the UN Special Rapporteur on Torture for the 55th session of the UN Human Rights Council. The topic of the contribution was good practices in dealing with vulnerable persons in the prison system and in police custody.

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Contacts

3

Dialogue and networking form an important basis for the NCPT's preventive work. In the reporting year, the NCPT increased its advisory activities for parliamentary committees. At international level, the NCPT welcomed its counterparts from Germany and Austria in November for the annual meeting of German-speaking National Preventive Mechanisms (NPMs) and other NPMs for bilateral exchange meetings. The Secretariat also answered 76 enquiries from the public.

3.1 Migration

Last year, the Commission was heard twice by a parliamentary committee on migration law issues. In February, the National Council Political Institutions Committee (PIC-N) invited the NCPT to brief it about the need for action in the area of migration law enforcement monitoring (forced returns by air). In August, the Council of States Political Institutions Committee (PIC-S) was interested to hear the Commission's assessment of accommodation and care in the FACs.

In the area of migration, the Commission and the Secretariat regularly exchanged information with SEM representatives. Among other things, a meeting took place in July between the Head of the Directorate for International Cooperation at SEM and the new NCPT Chair. As a result of the monitoring visits to the federal asylum centres, there was also regular contact with SEM's Asylum Directorate A further exchange on migration issues with authorities and civil society organisations took place in April as part of the Migration Forum (see Chapter 2.1).

The NCPT Secretariat was also in contact with the UN High Commissioner for Refugees (UNHCR) and the Swiss Refugee Council (SRC), for example with regard to the amendment and the new provisions of the Asylum Act (see Chapter 2.11). The Secretariat also took part in the meetings organised by the Civil Society Platform in the federal asylum centres to exchange views on current topics relating to the centres. Exchanges like these with stakeholders who are familiar with the situation in the federal asylum centres provide important additional information besides the Commission's own findings.

The Secretariat was also in regular contact with the Head of the Secretariat and the President of the Federal Commission on Migration (FCM) on current migration law issues.

As part of the human rights monitoring of forced returns by air, the Commission was in contact with SEM's International Affairs Directorate, in particular with the Returns Division. At the end of March, an NCPT delegation met with the FDJP's Expert Committee on Return and Removal, whose task is to respond to the Commission's reports on forced returns by air. Those present discussed the Commission's findings and its recommendations on compliance with human rights requirements for forced returns by air. Over the course of the year, the NCPT Secretariat was also in regular contact with individual representatives of the Expert Committee and with the cantonal police forces in order to clarify individual issues observed during forced returns at enforcement levels 2, 3 and 4. The NCPT Chair and a senior SEM staff member also met bilaterally with representatives of the cantonal police of Aargau and Thurgau to discuss the procedure for forced returns at enforcement level 4. The Commission sees direct dialogue as an opportunity to discuss its criticism constructively with the police officers responsible and to hear their views. The Commission was also in contact with employees of OSEARA AG, which is responsible for medical assistance during forced returns by air.

Commission members also spoke at further training courses for people involved in police escorts in Geneva and Kreuzlingen and gave presentations on the procedure for human rights monitoring of forced returns by air. In November, the NCPT Chair and representatives of the Secretariat gave a presentation on international human rights standards in the field of forced returns at the annual training course for team leaders of the cantonal police forces involved in forced returns by air. Using practical examples, the course participants and SEM representatives discussed the application of these standards. These direct exchanges continue to be constructive and beneficial, as the Commission's findings and recommendations in this area can be explained and discussed in detail.

3.2 Detention in general and provision of health care during deprivation of liberty in particular

The Conference of Cantonal Justice and Police Directors (CCJPD) and the Swiss Centre of Expertise in Prison and Probation (SCEPP) hosted round tables on healthcare in the prison system in April and September. There was a further exchange with SCEPP staff in November when Commission members attended the SCEPP's annual conference on 'How (a)social is the prison system?'

In May, the Commission was invited to present its findings and the resulting need for action at the 12th European Conference on Healthcare in Prisons on the topic of 'The equivalence of care principle in a fact check' in Murten. The Commission regards the invitation as a further sign that its two general reports on healthcare in prisons are appreciated by the relevant experts. With regard to monitoring visits to review healthcare in prisons, the Commission was in contact with the Federal Office of Public Health (FOPH), in particular with the Communicable Diseases Division.

In May, the responsible Geneva cantonal councillor and in December, following the cantonal elections, the new cantonal councillor invited cantonal and national human rights organisations to discuss current developments in the area of police detention and criminal law enforcement in the canton of Geneva as part of the Consultative Committee on Human Rights (Commission consultative sur les droits humains). The administrative detention under migration law was another thematic focus due to recent judgements passed by the cantonal court of first instance of the canton of Geneva. Each meeting was attended by a member of the Commission or a representative of the NCPT Secretariat.

Finally, in April, a member of the Commission took part in a panel discussion on the topic of pre-trial detention. The discussion was organised as part of the two-day conference of the Swiss Deprivation of Liberty Association (FES) in Ermatingen in the canton of Thurgau.

3.3 Retirement and nursing homes

The third meeting of the 'Retirement and nursing homes' support group took place in September. This group is made up of specialists from the areas

of retirement homes, institutions for the disabled, the complaints office for residents and the field of ethics. It acts as a sounding board for the Commission and is of central importance in ensuring that the Commission's recommendations in this area are pragmatic and can be implemented. Among other things, questions related to the imposition of movement-restricting measures were discussed in a well-founded and practice-orientated manner.

3.4 Human rights bodies

a. United Nations (UN)

In 2023, the Commission again exchanged views with human rights bodies of the United Nations in Geneva. This included a discussion on the eighth periodic report of Switzerland at the 77th session of the UN Committee against Torture (CAT) in July at the Palais Wilson in Geneva, where the NCPT Chair and Executive Director presented the most important current issues relating to human rights and the deprivation of liberty. In the field of migration, the focus was on the accommodation and care of unaccompanied asylum-seeking minors in FACs and the use of coercive measures in forced returns by air. The Commission also drew CAT's attention to the recommendation of the Federal Data Protection and Information Commissioner (FDPIC) that the NCPT should be subject to the Federal Act on the Principle of Public Proceedings in the Administration (PPA). If implemented, the recommendation would undermine the confidential nature of the Commission's work, which CAT considered to be highly problematic. The Commission was guestioned among other things about its financial situation; CAT wanted to know, for example, whether the NCPT's annual funding allows it to fulfil its mandate, which the Commission answered in the negative. The UN experts were also interested in the implementation of the NCPT's recommendations (see CAT/C/CHE/CO/8).

In October, an NCPT delegation exchanged views with the Chair of the UN Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (SPT) in an online meeting. The exchange focused on the state of affairs around four and a half years after the SPT's visit to Switzerland (see CAT/OP/CHE/RONPM/R.1).

b. National Preventive Mechanisms (NPM)

What are our biggest challenges and how do we deal with them? These questions were discussed with various other NPMs during the reporting year. In March, for example, the Commission received representatives of the NPM of the Maldives at its office in Bern. The NPM of the Maldives is affiliated to the national human rights institution (Human Rights Commission of the Maldives HRCM). The one-day exchange focused on the gender-specific healthcare needs of women in prison. Discussions also took place on ensuring regular and effective monitoring of the implementation of the recommendations by the authorities.

In June, the Commission discussed the challenges of implementing the Optional Protocol to the UN Convention against Torture (OPCAT) with representatives of Cape Verde's NPM. Cape Verde's NPM is also affiliated to the its national human rights commission (*Comissão Nacional para os Direitos Humanos e a Cidadania*). Another thematic focus was again healthcare in the prison system. Even though these two island states – the Maldives and Cape Verde – differ greatly from Switzerland politically, geographically and in terms of their social structure, it was interesting to note that their NPMs face similar challenges.

In November, the NCPT invited its German and Austrian counterparts to the annual exchange of German-speaking NPMs in Bern. The main topics of the meeting were monitoring human rights in forced returns by air, the human rights dimension with respect to closed wards in retirement and nursing homes, and basic psychiatric care in prisons. The Commission invited two psychiatric experts from the cantons of Basel-Stadt and Zurich to discuss these issues. The guest speakers described the daily challenges in their institutions and the solutions that have been introduced to deal with people with mental health problems in prison.

A few days later, the OSCE Office for Democratic Institutions and Human Rights (ODIHR), the Council of Europe (CoE) and the Association for the Prevention of Torture (APT) hosted the annual meeting of NPMs and civil society organisations in the OSCE region on the topic of 'Joining forces to prevent torture and other ill-treatment' in Copenhagen. The Commission was represented by one person at the meeting. The two-day meeting focused on psychiatric care and the treatment of vulnerable groups in the prison system. One of the topics discussed was how human rights ob-

servers deal with challenging situations. One participant said that the NPM mandate to regularly visit all places of detention is a challenge in itself. The NPM mandate is too broad to be realistically implemented and requires prioritisation. This, in turn, also gives rise to stress, as decisions then have to be made as to which vulnerable groups receives less attention.

c. Swiss Human Rights Institution (SHRI)

From January to May, the NCPT Chair and Executive Director took part in numerous meetings of the working group for the creation of a national human rights institution: the Swiss Human Rights Institution (SHRI) was founded at the inaugural meeting on 23 May. In November, the Executive Director met the board of the SHRI in Fribourg for a multilateral exchange between various extra-parliamentary commissions (Federal Commission for Women's Issues FCWI, Federal Commission on Migration FCM, Federal Commission against Racism FCR, Federal Commission for Child and Youth Affairs, FCCY).

3.5 Contacts with detainees, their families and lawyers

The NCPT Secretariat regularly responds to questions and concerns from detainees or asylum seekers, their relatives or their lawyers. The NCPT is not an ombudsperson's office and therefore has no mandate to investigate complaints from individuals. However, letters and calls from detainees or their relatives detailing their grievances can draw the Commission's attention to certain problem areas and are therefore of considerable relevance. In addition, relevant information received by the Commission is taken into account when planning its annual monitoring visits and determining its main focus areas. If there are indications of serious problems, the Secretariat may contact the relevant authorities or take other measures.

3.6 Other contacts

In March, the NCPT Chair took part in a panel discussion organised by *Politforum* Bern on the topic of 'Torture and Democracy'.

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Overview of the NCPT

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The NCPT consists of 12 members elected by the Federal Council, who are supported in performing their duties by a secretariat. The Commission's limited financial and human resources are often criticised at international level. The practical possibilities for fulfilling its mandate are therefore limited.

4.1 Commission

The members of the NCPT determine the Commission's strategy, annual planning, and position on human rights issues. The numerous subject areas of the NCPT discussed in this report reflect the broad professional expertise of the Commission members in the fields of human rights, law, correctional and administrative detention, medicine, psychiatry, child and adult protection and police work. The Commission members are elected by the Federal Council.

Members of the Commission:

- Martina Caroni, Vice Chair and Chair since April 2023
- Regula Mader, Chair until March
- Corinne Devaud-Cornaz, Vice Chair
- Maurizio Albisetti Bernasconi
- Jean-Sébastien Blanc (since August)
- Daniel Bolomey
- Philippe Gutmann
- Myriam Heidelberger Kaufmann (since August)
- Urs Hepp
- Hanspeter Kiener
- Ursula Klopfstein-Bichsel
- Leo Näf (until June)
- Helena Neidhart
- Frika Steinmann

4.2 Observers

For the regular observation of police-escorted transports and forced return flights, the Commission, in addition to deploying its members, calls upon external observers. In 2023 these observers were:

- Myriam Bitschy
- Fabrizio Comandini
- Joseph Germann
- David Lerch
- Dieter von Blarer

4.3 Secretariat

The Secretariat is responsible for the operational planning and organisation of the Commission's monitoring activities. It handles the organisational and preparatory details of the NCPT's monitoring and follow-up visits and prepares reports and position papers for the attention of the federal and cantonal authorities. It maintains regular contact with other human rights bodies at both the UN and Council of Europe level as well as with other NPMs abroad. Within Switzerland, it maintains contacts with federal and cantonal authorities and other relevant organisations.

For administrative purposes, the Secretariat is assigned to the General Secretariat of the Federal Department of Justice and Police (GS-FDJP) and uses its human resources, financial, IT and translation services.

The Secretariat currently has six employees and a graduate intern:

- Livia Hadorn, Head of Secretariat
- Alexandra Kossin, Deputy Head of Secretariat and Research Associate for Monitoring Retirement and Nursing Homes
- Lukas Heim, Research Associate for Monitoring Federal Asylum Centres
- Maya Ketterer, Research Expert
- Tsedön Khangsar, Research Associate for Monitoring Healthcare Provision in Detention Facilities
- Sara Maggiore, Graduate intern (from July)
- Sandrine Nüssli, Graduate intern (to June)
- Valentina Stefanović, Research Associate for Monitoring Forced Returns by Air

4.4 Budget

The Commission's overall budget in 2023 was CHF 1,180,118.





