

I. GENERAL REMARKS

1. The Austrian Ombudsman Board (AOB) **welcomes the opportunity to provide input** for the 3rd cycle of the UPR Review of Austria. Due to the limited number of pages, the following remarks highlight some of the AOB's key issues.
2. Since the second UPR cycle, the AOB has continued to exercise its **broad mandate** under constitutional law **to protect and promote human rights** (Art 148a para 3 Federal Constitutional Law). The AOB and its six multidisciplinary commissions hold the mandate of the **National Preventive Mechanism (NPM)** since 1 July 2012, in accordance with the Optional Protocol to the Convention against Torture (**OPCAT**). The AOB's expert commissions visit places of deprivation of liberty, observe and monitor the bodies empowered to issue direct orders and carry out coercive measures. The AOB further acts as independent authority under Art 16 para 3 of the UN Convention on the Rights of Persons with Disabilities (**CRPD**) and monitors facilities and programmes for persons with disabilities. By the end of 2019, the total number of monitoring visits carried out since 2012 amounted to 3,694. A Human Rights Advisory Council (HRAC), comprised of representatives of NGOs, Federal Ministries and the *Laender* (provinces), supports the AOB as a consultative body.
3. The AOB resumed a new function as of 1 July 2017. The **Pensions for Victims of Children's Homes Act (HOG)** for victims of violence in homes, hospitals and foster families was introduced. It commissioned the AOB to set up an independent pension commission that deals with the applications of victims of child abuse to obtain a monthly pension.
4. The AOB attaches great importance to the **cooperation with the United Nations** and other international organisations and fosters a spirited exchange with other NRHIs and NPMs. In its role as NHRI the AOB actively engages with the UN Treaty Bodies. E.g. in November 2015 a member of the AOB took part in a hearing at the Committee Against Torture in Geneva. Submissions were also sent to the Committee on the Rights for Persons with Disabilities in 2018 and the Committee for the Rights of the Child on the situation of children's rights in Austria in 2019. The AOB regularly interacts with the **OHCHR** by rendering statements to human rights issues, participating at annual meetings of GANHRI and answering questionnaires, e.g. most recently on immigration detention of children seeking adequate reception and care, or Covid-19 and Human Rights.
5. Since 2009 the AOB hosts the Secretariat of the **International Ombudsman Institute (IOI)**, the only global organisation representing ombudsman institutions. It currently has 205 members in over 100 countries.
6. The AOB seeks to **raise awareness** for its work to promote human rights. It engages in human rights education (of future police officers and prison guards) and publishes special reports or books on relevant topics. In 2019 a **special report about the lack of chances on the employment market for persons with disabilities** was made available on the website of the AOB; also in easily understandable language.
7. After criticism on the legal guardianship model, a new law regulating **adult protection** came into force on 1 July 2018. The AOB was intensely involved in the revision of the law within the framework of regular meetings, working groups and published a handbook on this topic.
8. Protecting children and adolescents in public institutions and facilities is of particular concern to the AOB. In order to show which challenges the institutions and the children face, the AOB published a **special report on "The Rights of Children in Public Facilities"** in 2017.
9. For the fourth consecutive year, the AOB participated in a project called **"One in Five"**, to raise awareness about the startling extent of **violence against women** in Austria. Every year, more than 3,000 women seek refuge with their children in one of Austria's women's shelters. One in five women living in Austria is exposed to physical and/or sexual violence. This interdisciplinary seminar is organised by the Department of Forensic Medicine at the Medical University of Vienna in close cooperation with the Austrian Women's Shelter Network. Its content was published in a book by the AOB.

10. Furthermore, a weekly TV-show broadcast nationwide helps gain widespread publicity. The level of awareness of the AOB is measured by an independent opinion poll that shows that **70% of the Austrian population know about the AOB**. They consider the AOB a positive institution close to the citizens and attest the three members of the AOB impartiality, objectivity and independence.
11. As the "human rights house of the Republic of Austria", the AOB has been responsible for protecting and promoting human rights in the Republic of Austria since 1 July 2012. Its three members are elected for a fix term of six years by the Austrian Parliament (National Council) and can be re-elected once. The members of the AOB have to have knowledge in the fields of the organisation and functioning of the public administration and human rights. The members of the AOB are **independent** in the performance of their duties and cannot be voted out, recalled or removed from office.
12. Moreover, the AOB actively **engages with civil society organisations** on a regular basis, e.g. in the ambit of the HRAC, in which 16 NGOs are represented, or when the AOB runs special NGO fora on relevant human rights topics. The AOB is also tasked with the role of coordinating NGOs, e.g. when Austria held the chairmanship of the OSCE in 2017 and a self-evaluation of the human rights situation in Austria was due. Given the broad human rights mandate, the democratic legitimation and institutional independence of the AOB, the AOB considers that it meets the "Paris Principles" and will thus apply for re-accreditation with GANHRI in the near future.

II. SPECIFIC CONCERNS

Social human rights

13. Social human rights are only partially addressed in the Austrian constitution. A general, comprehensive guarantee of social human rights is not enshrined in the constitution.

Persons with disabilities / older persons

14. Comprehensive inclusion and self-determination still have not been realised for people with disabilities. Despite improvements in the past years, many persons with disabilities still live in institutions where they have little exchange with the outside world, particularly when they live and work in facilities run by the same provider.
15. There is no inclusive labour market. The employment rate of people with disabilities is very low and many people are generally excluded from the labour market or from unemployment benefits. Persons who have been diagnosed with a reduced working capability of 50 % or more, based on a merely medical evaluation, can either participate at occupational therapy workshops where they get "pocket money" instead of any remuneration, or they are left to do nothing. Such occupations are not considered to be regular employment contracts and do not result in any kind of independent security under pension insurance law. Persons with disabilities depend on social welfare which means that they cannot improve their situation either through their own will and performance or through inheritance and gifts. As a consequence, many persons with disabilities are facing poverty throughout their lives.
16. Public areas are not always accessible. Although providers of public services, such as shops and restaurants, are obliged to provide barrier-free access, there is no right to the removals of barriers.
17. Austrian law does not provide a uniform definition of the term "disability". Due to the federal structure, there are no common standards in nursing facilities and older persons' homes which are under the provisions of CRPD. Furthermore, acts regulating nursing facilities and older persons' homes do not refer to the CRPD.

Social services for asylum seekers and beneficiaries of a subsidiary protection status

18. The AOB continuously receives complaints about the bad quality of facilities of the basic provision of social services (*Grundversorgungsquartiere*) as these facilities are old buildings in remote areas that cannot be used for any other purposes. Moreover, some *Laender*

unjustifiably do not provide social welfare to beneficiaries of a subsidiary protection but for persons eligible for asylum. The money available within the framework of reception conditions under the Basic Provision Agreement (*Grundversorgung*) is far less than the minimum level of social welfare which leaves many asylum seekers and beneficiaries of a subsidiary protection with only EUR 40 per month at their free disposal. As they are not entitled to attend a German course or, in the case of asylum seekers, do not have access to the labour market, they hardly have the opportunity to occupy themselves meaningfully.

19. The daily allowances within *Grundversorgung* for unaccompanied minor refugees (UMRs) are much less than the basic level of social services for minors in other institutions providing aid to children and adolescents. Consequently, many facilities lack staff and are of poor quality which has a negative impact particularly on UMRs who are no longer of school age and do not have access to the labour market.
20. Moreover, the competent authorities for child and youth welfare and protection apply too late or even never for parental custody of UMRs, leaving them without any legal guardian.

Labour market

21. The Austrian Public Employment Service uses software to evaluate the chances of unemployed people on the labour market. The algorithm is mathematically sound and therefore seems unassailable. However, value judgments are incorporated into the algorithm whereas relevant personal characteristics or special skills are being ignored. Additionally, the algorithm reflects the existing discrimination of women and older people, entailing the risk of discriminatory use of resources.

Violence against women

22. Despite the increase in case numbers of domestic violence against women and children, legislators and public administration are yet not taking enough concrete measures to minimise the risks. The AOB calls for an increase in preventive measures, focal points for affected children, victim-oriented work with perpetrators and training in the area of health consequences of violence and the need for medical care.

Intersex persons

23. Every year around 30 children are born with chromosomal, hormonal or anatomical characteristics which do not match strict medical definitions of male or female. Austrian medicine is currently following the principle of removing “disturbing” sexual characteristics. In response to complaints, a working group led by the Federal Ministry of Social Affairs and Health drafted recommendations on intersex persons which, unfortunately, are not known by a large number of doctors and parents of intersex children. It is therefore imperative to establish competence centres for specialised support.
24. Whilst the Austrian Constitutional Court decided that intersex persons do have a right to gender markers in civil registers that reflect the individual’s own self-determined gender identity, the decree in force constitutes a bureaucratic hurdle for the entry “intersex”, even though it has already been found unlawful by a court.

International law

25. The AOB recommends to the Federal Government that it signs and ratifies the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights to highlight the importance of the rights under the Covenant and to give individuals the possibility to lodge a complaint.

Health care - presence of executive staff during medical examinations in prisons

26. In recent years, the AOB in its function as NPM has worked intensively on the question under which conditions the presence of prison officers is required during a medical examination. In practice, prison guards are present in the treatment rooms during medical interventions, even when there is no safety risk. According to the NPM, this is in conflict with the need to respect for privacy and confidentiality. Both are essential for the atmosphere of trust, which in turn is

a necessary part of the doctor-patient relationship.

27. The CPT stipulates in its standards that any medical examination of prisoners should be conducted out of earshot and - unless the doctor requests otherwise - out of sight of the prison staff. Similarly, the keeping of patient records should be the sole responsibility of the doctor [CPT/Inf/E (2002) 1 – Rev. 2010, Deutsch, S. 36].
28. The CPT recommended that the Austrian authorities "initiate the abolition of the practice of involving prison officers in the performance of medical duties in every prison nationwide." and that "immediate steps be taken to ensure that medical personnel no longer perform supervisory functions".
29. The NPM therefore submitted a recommendation to the Federal Minister of Justice (MoJ) in early 2017 demanding that only trained nursing staff should be employed in the wards and surgeries of prisons to safeguard the principle of medical confidentiality. This is to be ensured continuously by appropriate organisational measures. The nursing staff may not exercise supervisory functions.
30. The presence of an executive prison officer should therefore be the exception. However, even in these cases, care must be taken to ensure that confidentiality is maintained as far as possible by means of technical or structural precautions (e.g. screen, glass partition, headphones).

Hepatitis C Virus Therapy

31. Since 2017, several new medicinal products from the group of Direct Acting Antivirals (DAA) have been approved in the prison system for the treatment of chronic hepatitis C; This led to a complete cure of almost all treated patients. The chief physician in the MoJ decides who receives the therapy. Regrettably, the NPM found that detainees receive the medication only after a strict compliance check and therefore many detainees who are infected with hepatitis C do not receive professional treatment.
32. The NPM stresses that persons in detention are entitled to the same level of medical care as persons at liberty (principle of equivalence). Detainees must therefore not be excluded from therapy or medication on the grounds of lack of compliance. In accordance with the principle of transparency, applications for a specific therapy, its approval or refusal and the course of treatment must be documented in the Electronic Patient Record Module. Uniform standards are required for the initial consultation with the psychological service and the initial psychiatric examination.

Lack of implementation of standards of conditions of detention in police detention centres

33. In a four-year working group, the NPM, together with the Federal Ministry of the Interior (MoI), developed standards for conditions of detention in police detention centres (e.g. open detention was agreed upon as standard for detention pending forced return). Although the MoI implemented these standards in a decree in 2019, the standards have so far only been implemented in a few cases or even been withdrawn. Structural measures such as the creation of rooms for table visits, the installation of public walls/privacy screens in the communal shower rooms and the spatial separation of toilets in multi-person cells in all police detention centres were promised, but again made conditional on a further working group in the MoI. The NPM will therefore continue monitoring the actual implementation of all standards and specifications of the MoI.
34. The NPM and the MoI agreed that open visits should be standard in the police station in future. However, the new decree differs from this agreement. The NPM criticises this procedure of the MoI as a step backwards in terms of human rights. The MoI now makes table visits dependent on spatial and staff resources, the absence of reasons relating to the prisoner or the visiting person and assumes an increased risk with prisoners who are suffering from addiction or display a mental disorder. All these circumstances were already known when the standards were jointly developed.

35. The NPM is extremely critical of the fact that the MoI invokes lack of budgetary resources. In order to ascertain the status of implementation of all standards recommended for detention enforcement since 2015, the NPM initiated an official evaluation in May 2019. The sobering result: in only one institution all standards were implemented. For example, there are no uniform nationwide activity and leisure opportunities. The implementation in the police detention centre differed greatly with regard to the building standards adopted by the working group on hygiene.

Suicide prevention in police detention centres

36. According to the standards developed on suicide prevention in police institutions, the Police Department of the competent *Land* shall analyse every suicide or suicide attempt. This analysis should highlight the medical, psychological and organisational aspects of the case. The MoI announced that a concept for implementation will be prepared in 2019.
37. The case-oriented analysis is intended to determine whether and why indications of the person's intention to (attempt to) commit suicide remained undetected prior to the analysed incident. Consequently, according to the NPM, the analysis includes an examination of whether the person was engaged in parasuicidal behaviour prior to the incident.
38. Lately, the MoI reported that the evaluation of all anonymised health data required for case-oriented analysis was not compatible with the current laws on data protection. The NPM is extremely critical of the fact that the previously agreed upon procedure of discussing and processing suicides and attempted suicides in police facilities, might now be stopped for reasons of data protection rules.