

## **Response**

### **of the Austrian Government to the report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) on its periodic visit to Austria**

**from 23 November to 3 December 2021**

The Government of Austria has requested the publication of this response. The CPT's report on the periodic visit to Austria is set out in document CPT/Inf (2023) 03.

Strasbourg, 27 June 2023

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Comments by Austria on the report by  
the European Committee for the Prevention of Torture and Inhuman or  
Degrading Treatment or Punishment (CPT)  
following its visit to Austria

Austria thanks the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) for its report following its visit to Austria from 23 November to 3 December 2021 and wishes to assure that it will give careful consideration to its report and recommendations. Austria attaches great importance to the work of the CPT Committee and is fully committed to cooperation and exchange in order to strengthen the protection and promotion of human rights. Austria would also like to avail itself of this opportunity to thank the CPT Committee for the close cooperation during and after its visit.

The CPT Committee requested a response on four major issues, on which Austria wishes to comment as follows:

**Preliminary remarks on the delegation's unrestricted access to medical records**

**Para 7:**

As mentioned in the report the issue in question was resolved quickly and to everyone's satisfaction. The delegation was provided with the necessary information. However, the issue has given rise to further considerations, currently ongoing, as to whether (clearer) statutory regulations should be envisaged for such cases.

**Human rights concerning police custody**

**Para 12:**

In regularly held training units, which are obligatory for the members of the Austrian police forces, great importance is placed on the fact that handcuffs must be double-locked to prevent over-tightening once they have been put on. This is in line with applicable regulations, in particular the relevant guidelines for training on how to put on and take off handcuffs, shackles and plastic cuffs: "Handcuffs must be double-locked to prevent over-tightening after having been put on." Thus, if the mentioned issue arises in practice, it is attributable neither to shortcomings in the regulations nor to shortcomings in police officer training.

However, the described issue may occur in particular in cases where the person concerned does not cease to put up considerable resistance, as a result of which it is not possible to double-lock the handcuffs. In such cases there is a risk that the handcuffs will automatically tighten when pressure is applied. The department of the Federal Ministry of the Interior (BMI) in charge of such matters is already working towards introducing new handcuffs for persons with larger wrists.

Relevant regulations are contained in the guidelines for medical duties of police doctors (file no.: 2021-0.359.803 dated 1 June 2021) and, as such, are regularly addressed in the training units provided to police doctors and public health doctors. Item 1.19.3 of the cited guidelines: "*Police doctors must also examine persons who claim to have been injured by police officers in the course of an official police*

*action or in police custody. ... The injuries must be documented by using the standardised injury documentation sheet; if necessary, photos may be taken for documentation purposes."*

We would like to refer not only to relevant provisions such as Section 5 of the Guidelines Directive [*Richtlinienverordnung/RLV*] on interventions carried out by law enforcement officers, but also to the fact that a regulation of the Director General for Public Security regarding the "*Use of language by the Austrian Police Force - policy decree*" dated 25 August 2022, file no. 2022- 0.593.147, was re-issued specifically with said matter in mind. Awareness among police officers is being raised accordingly.

**Para 16:**

Extensive enquiries were made with the relevant BMI organisational units in respect of disciplinary proceedings and the outcome of criminal proceedings as a result of allegations of ill-treatment, but their records did not allow the mentioned anonymised eight cases to be retraced with respect to the outcome of the proceedings.

**Para 18:**

The current Austrian government's programme lists the goal of setting up an independent complaints authority to investigate allegations of ill-treatment against police officers. The process for developing an initial legal concept for such an entity is currently in the finalisation and coordination stages. Policy-making has not been finalised yet, with coordination and consultation efforts still underway within the government. Despite all ongoing challenges those in charge of the project are confident that their efforts to submit, as quickly as possible, a proposal for the establishment of an independent investigative body which meets the requirements of a modern constitutional state will succeed.

**Para 19:**

The present issue was already discussed in 2018 by a dialogue committee made up of representatives of the BMI and representatives of civil society (among others Amnesty International, SOS Mitmensch, ZARA - Zivilcourage und Anti-Rassismus-Arbeit). The question of whether to make individual identification obligatory for police officers beyond the scope of current regulations was examined and eventually rejected unanimously since the measures already implemented for identifying, attributing and tracing official acts back to intervening units or individual officers have so far been deemed satisfactory; also, attribution practice experience, in particular after incidents in the context of public order policing, indicate that the matter is regulated satisfactorily. In accordance with the applicable legal regime the identification of officers by name is not expressly called for.

**Para 20:**

The experiences gained from a test phase with body-worn video cameras (BWC/AVES) were generally very positive. For this reason, the BMI plans to have Austria's police forces fully equipped by 2024, acquiring as many as 4,000 body-worn cameras for this purpose. The relevant procurement processes have already been put into motion.

While these devices will be allocated to units and not to individuals, any use of the equipment on the job can be linked to the person responsible in each case and will be documented. Regulations are in place for the cameras used at present, governing their operative use by police officers on duty; these regulations will be revised if the procurement process ultimately results in a different camera product being used.

If of no further relevance to the police, BWC footage will be deleted, either after inspection by a superior officer, automatically after 6 months or, if the footage serves as evidence, by a superior officer after the conclusion of any disciplinary proceedings or preliminary investigation. It is not technically possible for police officers to edit or modify stored footage. Moreover, any deletions are documented in the system.

**Para 22 f:**

The BMI endeavours to fully meet all information obligations required by human rights standards or by law. To this end, the BMI website offers different information sheets in a number of languages for download, in line with the legal basis for the arrest/deprivation of liberty. When non-German-speaking arrested persons are interrogated, there will also be an interpreter present to orally translate the information about their right to appeal. Each of these information sheets draws specific attention to the special interests and rights young persons may have in addition to general ones.

Upon proposal of the Austrian Ombudsman Board (AOB) dated 17 September 2020 (AOB file no. 2020-0.532.405) the wording of the information about arrested persons' right to appeal was also checked for easy comprehension. In addition to the information sheets for arrested persons and the standard legally compliant information about the right to appeal contained in interrogation record templates (in line with the relevant statutory provisions in each case), police officers also have an interrogation tool at their disposal, namely a digital application called PAD. When police officers set up an interrogation form on the computer, they will be directly forwarded to this tool. Police officers will then be advised to take the party to be interrogated through their rights step by step. Should an easier-to-understand explanation be required this interrogation tool offers a "corresponding explanation" for each step, which police officers may use for clarification if the respective wording of the law is too complex for the person concerned to understand. The Austrian Ombudsman Board subsequently emphatically welcomed the availability of this tool (AOB file no. 2021-0.732.333 dated 29 October 2021).

**Para 24:**

Neither Austrian law in general nor various specific statutes containing provisions on the deprivation of liberty (in particular the Austrian Code of Criminal Procedure [*Strafprozessordnung/StPO*], the Austrian Act on Administrative Offences [*Verwaltungsstrafgesetz/VStG*], the Austrian Aliens Police Act [*Fremdenpolizeigesetz/FPG*], the Federal Office of Immigration and Asylum Procedural Act [*BFA-Verfahrensgesetz/BFA-VG*]) nor the Austrian Detention Regulation [*Anhalteordnung/AnhO*] (Section 6(2) *AnhO*) provide for a restriction or differentiation when it comes to notifying (by phone) an arrested or detained person's relatives, another trusted person or a lawyer in terms of whether they reside in Austria or abroad.

**Para 25 to 31:**

The relevant statutory provisions on the right to contact and consult a lawyer are contained in the decrees of the BMI related thereto and are regularly addressed in police training and CPD.

Thus, upon request, arrested and detained persons (regardless of the legal basis for their deprivation of liberty) are always allowed to contact a lawyer, either by calling the Austrian Bar Association's stand-by arrest hotline [*Verteidigernotruf*] or a legal counsel of their own choice.

In addition, arrested and detained persons (prisoners in police detention centres [*Polizeianhaltezentrum/PAZ*]) may, in accordance with Section 21(3) *AnhO*, receive visits from legal counsel at any time and to the extent necessary. In this context "legal counsel" also means defence counsel pursuant to Section 48(1) No. 5 *StPO*, lawyers (i.e., persons registered pursuant to Section 1 in conjunction with Section 5 of the Austrian Lawyers' Code [*Rechtsanwaltsordnung/RAO*] and admitted to the bar in the Republic of Austria, all "European lawyers" as defined in Section 1 of the Austrian Statute on the Free Movement of Services and Establishment of European Lawyers and the Provision of Legal Services by International Lawyers in Austria [*EuRAG*]), public notaries as well as auditors and tax advisors. The BMI will not reject suggestions, should they be made, to expand the scope of the Austrian Bar Association's (free) stand-by service. However, adapting the cooperation with the Austrian Bar Association in this respect falls under the responsibility of the Federal Ministry of Justice.

On 1 June 2020 material amendments to the Austrian Juvenile Court Act [*Jugendgerichtsgesetz/JGG*] entered into force. As a result, the regulations of the Federal Ministry of the Interior were revised in agreement with the Federal Ministry of Justice and re-issued (file no. 2021-0.064.132 dated 13 April 2021).

**Para 32:**

Prisoners with a permanent prescription for drug substitutes are allowed to continue their substitution treatment in detention (administrative detention and detention pending deportation); see now also the 2021 Amendments to the Austrian Narcotic Drugs Act [*Suchtmittelgesetz/SMG*], the Narcotic Drugs Regulation [*Suchtgiftverordnung/SV*] and the Psychotropic Substances Regulation [*Psychotropenverordnung/PV*] regarding the creation of an instrument for the purchase, processing and possession of drugs by the BMI and the Regional Police Headquarters, as for detention in prisons. While no medication dosage readjustment will be carried out, withdrawal symptoms, if any, will be medically treated/treated with medication for the duration of the detention if it was determined by a police doctor that the person in question is fit for detention.

**Para 33 f:**

The detention protocol [*Anhalteprotokoll/AP*] serves the purpose of documenting measures taken during custody in accordance with the provisions of Section 28 *AnhO* within the meaning of Section 10 of the Guidelines Directive. Accordingly, the documentation is produced exclusively in German. As a police custody record, the detention protocol serves neither the purpose of providing information to arrested or detained persons nor does it have any procedural effects with respect to the measures documented therein. The only available version (of part II of the AP) in a language other than German, namely English, is intended solely to provide guidance to police officers when performing official acts involving arrested or detained persons who do not speak German.

Information sheets for arrested persons are available in many different languages to provide legal information to arrested or detained persons, which has to be done as quickly as possible. To have legal effect, legal information (in particular when provided to persons who do not speak German) must always be provided in a formal interrogation setting with the assistance of a qualified interpreter, in line with the relevant legal basis for the deprivation of liberty.

**Para 35:**

The mentioned detention and custody rooms in police stations are only intended for short-term detention periods as defined in Section 27 *AnhO*. In these detention/custody rooms there is no need for hygiene products (in particular female hygiene products) of any kind, while these are in fact stocked by and handed out in police detention centres. There are currently no plans for stockpiling such items at police stations. If a female detainee expresses such a need, it can be met at all times as police officers can be dispatched to procure such products at short notice in stores that are open 24/7.

The present issue was also discussed by the Austrian Ombudsman Board in the context of the national prevention mechanism (AOB file no. 2020-0.131.055), wherein, in its final letter dated 17 September 2020, the Austrian Ombudsman Board "*acknowledged the BMI's logical explanation that ... if need be, female hygiene products will be procured quickly...*".

**Para 36:**

Section 17 *AnhO* provides only for persons who are in detention pending deportation or in administrative detention for more than 24 hours to be given an opportunity for outdoor exercise. Detention pending deportation or administrative detention is served exclusively in police detention centres (PAZs) and in the Vordernberg Deportation Centre. Depending on inmate capacity and total building size all of these establishments offer adequately sized outdoor exercise spaces.

The provisions on outdoor exercise do not apply to the merely temporary detention of criminal suspects even if the detention of criminal suspects exceeds 24 hours, which, depending on the relevant legal basis for detention, may be the case. For this reason, the detention and custody spaces in police stations provided solely for such short-term detention as defined in Section 27 *AnhO* offer no separate areas for outdoor exercise; so far, there are no plans to change this.

### **Human Rights concerning foreign nationals held under aliens legislation**

#### **Para 41:**

Upon consultation with the Vienna Regional Police Headquarters [*Landespolizeidirektion Wien*] as the competent authority we were unable to find any information regarding this allegation. Within the scope of comprehensive training and CPD, police officers dealing with policy custody matters are regularly made aware of the applicable criminal law (Section 312 of the Austrian Criminal Code [*Strafgesetzbuch/StGB*]).

#### **Para 43, 47:**

With respect to the structural conditions of the PAZ HG as already criticised by the CPT delegation during the debriefing EUR 100,000 were approved as an immediate measure for painting and renovation works in the detention areas (cells, activity rooms and corridors) as well as the surgery and visitor area. Work has already started and is scheduled to be completed by the end of 2022, which will result in a more pleasant ambiance.

As a historic building the PAZ HG undoubtedly fails to meet all of the requirements a modern institution for detainees pending deportation should meet, unlike the Vordernberg Deportation Centre, which is a new build. The unacceptable state of repairs and cleanliness is partly caused by the prisoners themselves, some of whom are obviously not particularly eager to assist the staff in achieving and maintaining an adequate level of hygiene.

#### **Para 50:**

There are no plans to employ qualified health and nursing staff since the "police paramedics" model (i.e., trained paramedics) for policy custody matters will not be discarded. Also, there are no plans to introduce a "separation of roles" into treating doctors and public health doctors.

Only recently, a regulation was adopted as part of the re-issued standards for administrative detention and detention pending deportation (file no. 2022-0.328.953 dated 23 June 2022, see item 3.2.3) detailing how involvement and guarding is to be provided during a medical examination of arrested or detained persons.

#### **Para 56:**

It goes without saying that also in the PAZ HG detainees are only placed in a specially secured cell (padded cell) if the requirements laid down in the *AnhO* are fulfilled. Such detention is only continued to the extent that and for as long as the gravity and persistence of the danger that led to such placement make it absolutely necessary, i.e. in cases where the impending danger cannot be warded off by any other reasonable means.

Regarding medical treatment and care during placement in a specially secured cell see item 5.3 of file no. 2022-0.328.953 dated 23 June 2022.

Despite the possibility to address complaints to internal supervisory bodies (complaint pursuant to Section 23 *AnhO* to the commanding officer or under the correctional system complaints scheme set

out in the pertinent legislation) as well as to independent external supervisory bodies (complaint pursuant to Section 88(1) of the Austrian Policing Act [*Sicherheitspolizeigesetz*] to the Regional Administrative Court) no complaints about this practice were received. Following thorough examinations of the specific circumstances the Austrian Ombudsman Board, in the context of the national prevention mechanism, did not see any need for changes either.

With respect to the question of *"why persons were nevertheless held in padded security cells for days on end"* we would like to point out that in the enforcement of arrests the general policy is always to follow a fundamentally different approach in treating "illness" and in treating "danger". Subject to the provisions of the Austrian Committal Act [*Unterbringungsgesetz/UbG*] mentally ill prisoners who are a danger to themselves and/or others must be transferred to psychiatric institutions designated for this purpose and released from police custody.

However, prisoners who show behaviour that is dangerous to themselves and/or others without an objectifiable mental illness in the sense of the nosological classification system ICD-11, in any case including attempts at blackmail by manipulative suicidal tendencies, must be subjected to security measures while in police custody. As for prisoners posing a danger without being mentally ill in the sense of the nosological classification system, the BMI put on record as early as in February 2022 that confinement in specially secured cells may be imposed (*"If prisoners show behaviour that is dangerous to themselves and/or others without an objectifiable mental illness in the sense of the nosological classification system ICD-11, confinements in specially secured cells could be imposed. Such behaviours could include manipulative suicidal attempts at blackmails or internalised violence as a strategy for asserting interests ranging from a rage-driven aggressiveness or reactivity to a chronified readiness to use violence."*). The BMI is therefore of the opinion that the negative wording in the above quote can only be seen as an editorial mistake.

To conclude, the BMI would like to inform the Committee about the number of foreign nationals placed in padded cells in the PAZ Hernalser Gürtel and the duration of their placement since 1 January 2022 to 31 December 2022 (including the number of persons concerned):

<b>Months 2022</b>	<b>Number of persons Total</b>	<b>Duration of placement less than 24 hours per person</b>	<b>Duration of placement more than 24 hours/ less than 72 hours per person</b>	<b>Duration of placement more than 72 hours per person</b>
January	1	1		
February	1	1		
March	4	2		2*
April	2		2	
May	4	3	1	
June				
July	1		1	
August	2		2	
September				
October	1	1		
November	2	1	1	
December	3	2	1	
<b>Total (last revised 17 November)</b>	<b>21</b>	<b>11</b>	<b>8</b>	<b>2</b>

\* Note: One person was held for approx. 76 hours, another person for 13 days and 15 hours.

**Para 59:**

Section 6(4) *AnhO* provides that all prisoners must undergo a search upon admission. This search is a body search carried out by police officers (Section 40(1) in conjunction with (3) of the Austrian Policing Act [*Sicherheitspolizeigesetz/SPG*]). Pursuant to Section 40 *SPG* this type of body search must be distinguished in its purpose from body searches serving the administration of criminal justice (Sections 24 and 139 *StPO*). As its purpose is to detect objects with which the arrested person might directly jeopardise their own physical safety and that of others (fellow prisoners included) or which might facilitate or allow their escape, it serves to ward off danger. By law no specific suspicion is necessary to warrant such a search. However, for a test of proportionality reference must be made to the decision recently rendered by the Administrative Court [*Verwaltungsgericht*] Vienna (Vienna: 17 June 2020, VGW-102/067/2134/2020) on the issue of "Undressing arrested persons for the purpose of a body search": *"Section 40 SPG permits the search of arrested persons, the definition of body search contained in Section 40(4) clause 1 SPG distinguishing between a search of the clothes and an (outer) visual inspection of the body; during the search an arrested person may also be asked to undress completely. However, body searches are not carried out as an end in themselves. Their aim is to ensure that the person that is examined jeopardises neither their own physical safety nor that of others for the duration of their detention. This purpose is the yardstick by which the intensity of the search is to be measured. Complete undressing of arrested persons may be justified where they exhibit a high potential risk of danger. However, the lower the potential risk of danger, the more disproportionate undressing in connection with body searches will become (see also Austrian Supreme Administrative Court [Verwaltungsgerichtshof/VwGH] 29 July 1998, reference number 97/01/0102 and 7 October 2003, reference number 2001/01/0311)."*

Accordingly, where detainees are allowed to temporarily leave the establishment under supervision, are transferred, etc., this is usually followed by a search of only the clothes and of the body of the fully dressed prisoner by patting them down or frisking them and by using hand-held detectors. However, when first admitting prisoners who exhibit ostentatiously aggressive behaviour a thorough search will be conducted, i.e., a search involving exposure of the body. Carrying out such searches in two parts (separately above and below the waist) is neither envisaged nor planned.

**Para 60, 105:**

There are no plans to disarm police officers dealing with policy custody matters.

**Para 61 f:**

With respect to phone calls we refer to the Austrian response to the CPT regarding para 10 ("PAZ Hernalser Gürtel: Possibility of telephone calls").

In this context we refer to the "Open visit" ("*Tischbesuch*") project. As is well known, the Austrian Ombudsman Board in its role as national prevention mechanism urged the introduction of contact or "open visits" during detention pending deportation. However, there were considerable security concerns with respect to practical implementation, both on the part of police doctors and on the part of the medical director of the association "Dialog" ("*Verein Dialog*"). The ever-changing situation with the Covid pandemic has so far also prevented practical implementation. Thus, on the basis of the proposal of the Austrian Ombudsman Board dated 23 March 2021 two 6-month test runs of open visits at the PAZ Hernalser Gürtel were agreed for the period after the lifting of COVID-related restrictions imposed on police detention institutions. The evaluation of these test runs will then serve as the basis for a decision on the way in which open visits will be arranged (monitoring period, exclusion criteria, etc.).

**Para 63:**

Both the initial training programmes and the annual training catalogue of the Security Academy (voluntary training) offer teaching contents on topics such as intercultural understanding, dealing with language barriers and persons suffering from posttraumatic stress disorder or other mental illnesses, as these are aspects of the day-to-day work of all police officers and as such not only important for those working in police detention centres.

Apart from general CPD (training courses lasting 2 to 3 days), which must be completed by all police officers within the standard triennial training cycle, a two-day CPD training is offered to officers working at police detention centres (PAZ); however, due to the COVID situation this training course was not on offer in the recent past. It focuses on content specifically geared towards PAZ tasks and job profiles.

In contrast to detention in prisons, police custody does not require educational offers or preparation for reintegration into society (see Section 10(1) in conjunction with Section 56 of the Austrian Correctional System Act [*Strafvollzugsgesetz/StVG*]). Special training beyond the aforementioned training measures is not deemed necessary for police officers working in police detention centres.

**Para 64:**

Persons detained in the custody rooms of law enforcement authorities (police detention centres and Vordernberg Detention Centre) are informed in accordance with the provisions of the Detention Regulation (see Section 1 *AnhO*).

See also the notes on para 22 (legal information provided to prisoners).

**Human Rights concerning prison establishments**

**Para 66:**

Pursuant to Section 173a(1) of the Code of Criminal Procedure (*StPO*) remand detention may be converted to house arrest upon the petition of the Public Prosecutors' Office or the defendant. The house arrest must be spent at the defendant's residence in Austria. House arrest may be imposed if remand detention cannot be repealed in favour of milder means (Section 173(5) *StPO*), but the purpose of the detention (Section 182(1) *StPO*) can be equally achieved by this way of enforcing remand detention, because the defendants live in stable circumstances and agree to being monitored through appropriate electronic monitoring devices (Section 156(1) and (2) *StVG*). Thus, house arrest is usually not imposed on remand prisoners if milder means are available. This is the main reason for the low number of persons under house arrest.

For defendants for whom no milder means are available the law grants the court the right to order preliminary probation in order to ascertain the defendant's social environment and job situation in order for the court to better assess the requirements of Section 173a *StPO* (Section 173a(2) *StPO*). Practice shows that it is basically factual reasons, in contrast to legal impediments, that preclude house arrest under Section 173a *StPO* (usually the lack of stable living circumstances or the [foreseeable] completion of proceedings in accordance with the duty to expedite proceedings in detention matters so that the defendants themselves or their defence counsel refrain from filing the relevant petitions).

The requirements of Section 173a *StPO* are assessed on a case-by-case basis by the independent judiciary.

**Para 68:**

With respect to the allegations of verbal abuse of inmates of a racist and/or xenophobic nature by staff members such incidents may constitute infringements of professional obligations and are punishable as such; this issue is being taken very seriously. Anti-discrimination is therefore an aspect raised in all initial training programmes (prison officers, prison jurists, etc.) and in relevant CPD events in order to instruct staff accordingly and raise their awareness on an ongoing basis.

During initial training, for example, prison officers must complete 16 lessons in human rights training - fundamental rights, freedoms and human rights, civil rights, human dignity, equal treatment and anti-discrimination.

This highly relevant subject is taught by specially trained colleagues (human rights trainers) from the Austrian Correctional Services Academy or external lecturers in the case of CPD. Moreover, the lecturers discuss the topic of human rights within the scope of subjects such as constitutional law, overview of human rights, administrative law and political studies, as well as when addressing the issue of application of physical violence on the job.

Furthermore, prison officers attend eight additional lessons on human dignity and human rights in the course of the initial training programmes for middle management positions. Subjects such as diversity and gender mainstreaming or the very hands-on practical training for prison officers also deal in depth with these topics and, in doing so, raise awareness.

Overall it should be noted that human rights and the topic of anti-discrimination form an essential part of all initial training programmes in the curricula of all the professions represented in the correctional system.

Finally, it should be mentioned that this topic is already reflected in the values embraced by the trainers employed, which is demonstrated also by numerous other events such as those on the rights of asylum seekers and foreign nationals.

Moreover, reference has to be made to the "HELP" programme (Human Rights Education for Legal Professionals), in which numerous prison staff members recently participated in the context of discussing the prevention of radicalisation.

As mentioned at the beginning, such actions may constitute infringements of professional obligations. If investigations show that such allegations are true and suspicions are confirmed, such actions will be sanctioned without exception to the extent permitted by statutory requirements (warning, disciplinary complaint, etc., including criminal charges); however, for the sake of completeness, it must be mentioned that in recent years such allegations made by inmates could (for the most part) not be ascertained/verified.

**Para 71:**

The renovation of Vienna-Josefstadt Prison has been a high-priority project for the Directorate General for the Administration of Custodial Sentences and Measures involving Deprivation of Liberty [*Generaldirektion für den Strafvollzug und den Vollzug freiheitsentziehender Maßnahmen*] (Directorate General) for many years. Since the necessary budget was approved by the Federal Ministry of Finance in 2021 this top-priority project can now be realised. Over the next few years Vienna-Josefstadt Prison will be renovated extensively, both structurally and functionally. The structural and functional renovation of Vienna-Josefstadt Prison is an important and extensive major construction project; after all, it is not restricted to the prison, but also includes the Regional Criminal Court Vienna and the Public Prosecutors' Office of Vienna.

The defined construction stages had to be coordinated between the court, the Public Prosecutors' Office and the prison. According to current planning the structural and functional renovation of Vienna-Josefstadt Prison is to be completed by 2032.

The functional and structural renovation of Vienna-Josefstadt Prison will be carried out in different construction phases, during each of which one wing will be closed off from prison operations for the purpose of being renovated.

The renovation will not alter the total surface area of the prison. However, as large detention rooms will be partitioned, accommodation will be optimised. Instead of eight to ten persons per cell now, no more than four persons will be placed in one cell after the renovation.

The functional rooms of the prison wards will be re-structured as well, with the following functional rooms to be made available for each ward: duty room, screening room, kitchenette, fitness room, storage room, utility room, waste storage room.

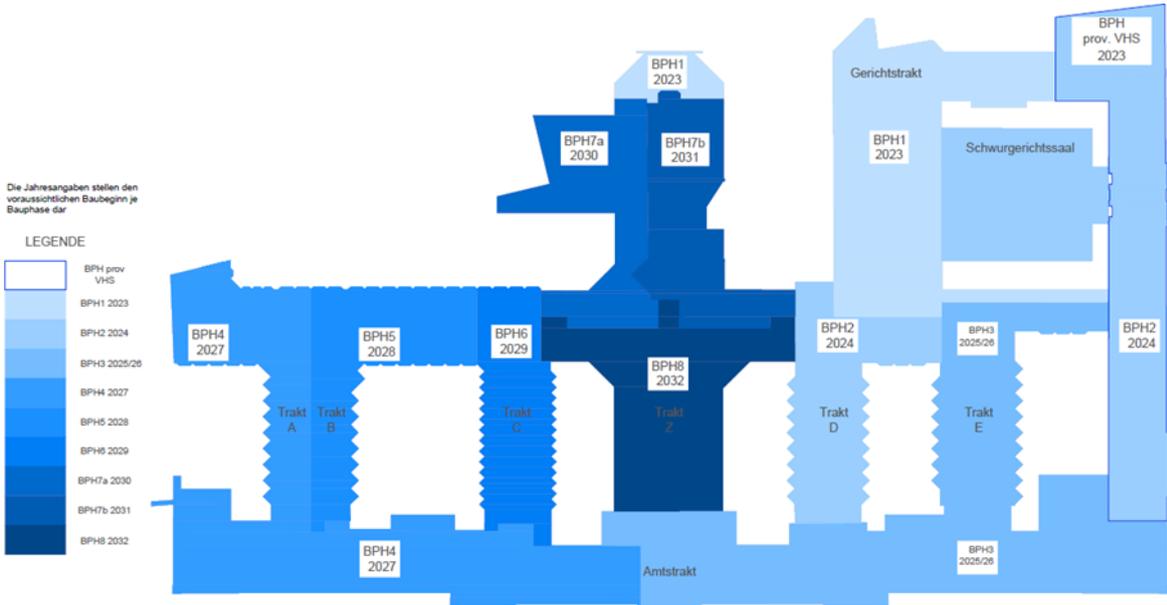
There are also plans to renovate the walk-in clinic, including its relocation; it will be re-structured to include a central duty room, a common room for officers and waiting rooms for inmates. The plans provide for seven clinic rooms, an X-ray centre and the necessary additional rooms for the medical and care staff.

Moreover, there are plans to renovate the security centre, involving its relocation. The security centre will be expanded and technologically updated.

Work will start at the entrance area/gate, including the guard room. The first inmates will have to be relocated in construction phase 2, which is expected to start in the autumn of 2024.

A project group and a steering committee have been set up in the Federal Ministry of Justice to ensure a goal-oriented and efficient realisation of the project.

Overview of the construction phases:



In addition, reference is made to the statements on para 73.

**Para 72:**

The prison administration has no say on the duration of the detention of juvenile remand prisoners, as this is set by the courts of law. However, certain measures such as "social support network conferences" [*Sozialnetzkonferenzen*] may reduce the duration of the remand detention. By creating a satellite establishment in Gerasdorf Juvenile Prison, it has become possible to place juveniles there already during remand detention so that they are provided with more adequate accommodation.

Currently, a special form of accommodation in urban areas is being discussed for juvenile delinquents.

**Para 73:**

Some of the prisons are housed in very old buildings, e.g. former castles and monasteries, which over time have come to urgently require repairs.

The Directorate General undertakes the necessary renovation and construction works in accordance with a needs-based prioritisation and the financial resources available.

In Innsbruck Prison renovation work has been and is being carried out on an ongoing basis. Most recently, the prison kitchen was completely renovated. The health-care area will be renovated as best possible in line with the financial resources available.

**Para 76:**

With respect to the regime offered to prisoners it can be said that the correctional system is working to provide detainees with the best recreational activities options given the existing space limits and the necessary differentiation and separation requirements regarding inmates (separation of accomplices) and to reduce confinement times in line with Section 124 StVG. In the context of resource, target and service agreements with the different prisons, agreements are concluded on the recreational activities offered, which ensures that the inmates can regularly spend leisure time both supervised and unsupervised.

**Para 77:**

Reference is made to the statements on paras 71, 73, 76, 84 and 127.

**Para 78:**

Reference is made to the statements already submitted.

**Para 79:**

Reference is made to the statements on para 84.

**Para 82:**

The Directorate General shares the view that the treatment and support of juvenile inmates requires consideration of different parameters than that of adult inmates. Relevant standards have to both fulfil the statutory requirements and consider the organisational and staffing parameters of the prisons concerned.

For this reason, a workshop held at the Federal Ministry of Justice back in 2012 with the participation of practitioners and the relevant ministerial services set out the following goals to be implemented by the prisons:

1. Activities - training and CPD - work

Each prison is instructed to work out a structured work and support services concept to be submitted to the Directorate General and implemented in consultation with the same.

- Workplace: Taking into account the statutory provisions (Section 58(4) JGG) all prison workshops must set up at least one workplace designated for juvenile prisoners.
- Work rotation: In the course of a work rotation juvenile prisoners shall be given the opportunity to get to know the in-house workshops and thus the different opportunities for work and employment.
- E-learning: Juveniles shall be given the opportunity to acquire computer skills. Learning how to handle state-of-the-art (information) technologies in a structured manner should be included in any modern modular training regime.

## 2. Accommodation - daily routine - opening hours

- Juvenile prisoners shall be remanded in custody under a relaxed regime. If a separation of accomplices has been ordered, the competent court or Public Prosecutors' Office shall be contacted as soon as possible to clarify to what extent and for how long such a separation is to be upheld.
- If there are designated juvenile wards in a prison, they must be staffed on one day of any weekend and/or on public holidays and the detention rooms must be opened for at least three hours.
- Supervised and unsupervised leisure time: The leisure activities offered shall centre on educational contents, including, if possible:
  - o At least once a week, supervised leisure time activities shall be offered.
  - o The leisure activities offered shall include supervised sports activities and experiential-learning activities with outdoor and indoor elements.
  - o Juvenile prisoners must be given the opportunity to participate in group outings.
  - o Activities supporting the acquisition of practical life skills (basic housekeeping, hygiene, food culture, cooking, healthy diet, etc.) shall be included in the leisure activities.
  - o A TV set is a standard element in all cells - TV privileges may be suspended for educational purposes.
  - o An open access library with age-appropriate reading material shall be set up for the juvenile ward.

## 3. Privileges - relaxations - dealing with misconduct

- Compilation of "rules of the game" for the juvenile ward. Being made aware of the prevailing rules and standards, juvenile prisoners can adapt their behaviour.
- A detention plan must be set up for juvenile prisoners. This detention plan ("light") shall document the major interventions that occurred during the detention.
- An interdisciplinary youth team shall be appointed to propose detention-relevant decisions to the prison management.
- In the case of misconduct by juvenile prisoners the use of educational interventions away from the workplace shall be preferable to sanctions such as an order to leave the workplace.

#### 4. Miscellaneous

- Obligatory annual training and CPD programmes shall be devised for the (prison) staff working in the juvenile ward.

Regarding the recommendation to employ qualified staff (at least on a part-time basis) in order to offer juvenile prisoners in Leoben Prison a wide range of activities including school and/or educational activities the Federal Ministry of Justice currently has plans to provide Leoben Prison with the necessary staff resources for social education in the juvenile ward in the near future. (Preparatory) work to this effect has already been initiated. Moreover, the juvenile prisoners in Leoben Prison live in housing groups.

#### **Para 84:**

To improve the health-care situation in Austria's prisons, the 2023 budget is to considerably raise funding for the following areas:

- Accommodation and health care (medicines, general practitioners, dentists, other specialists, psychologists and psychotherapists, etc., fees payable to public hospitals, fees for external forensic placement), by EUR 38.472 million, and
- Judicial Support Agency [*Justizbetreuungsagentur*] (via which health-care personnel is provided in the prisons), by EUR 12.589 million.

Thus, compared to the financial year 2022 additional funds of EUR 51.061 million in total are budgeted for the topics addressed in para 84. This ensures adequate budget funds for the provision of the necessary human resources and medical care in Austria's prisons.

With respect to the insufficient staffing levels it can generally be said that staff levels in all of Austria's 28 prisons together currently amount to 4,639 positions - 4,151 permanent posts on the one hand and 488 FTEs the Justice Support Agency has been ordered to provide on the other hand.

Task-wise, this breaks down into 3,446 prison officer jobs, 797 support worker jobs and 393 administrative jobs. Within these limits, human resources are allocated to the individual prisons on the basis of professional standards and requirements.

However, it is a regrettable fact that the current situation on the Austrian job market will not allow all of these jobs to be filled since there are not enough (suitable) applicants. In particular the filling of vacancies in the field of support work, especially in health care, is becoming more and more difficult. However, irrespective thereof, such staff shortages must never lead to bottlenecks in the provision of services to inmates.

In this regard, the Directorate General is in regular close contact with the individual prisons and the Judicial Support Agency in order to find quick and adequate solutions. Of prime concern in this context is the quick (re-)filling of vacancies with suitable staff. Since the Directorate General cannot raise staff pay levels, the main focus right now is on various recruiting measures and, in this context, on raising awareness for and increasing the attractiveness of the different job profiles available in the correctional system as well as on improving prison staff's day-to-day working environments.

The recruiting of additional human resources, in particular in health care, is being addressed by the Federal Ministry of Justice and will - as it has been for the past few years - be pursued and advanced in the future. However, with regard to the problems mentioned with the filling of vacancies, in particular in the field of support work, measures in this respect are evidently a matter of priority.

With regard to the recommendation to pay particular attention to the vacancies for nurses in the Vienna-Josefstadt Prison we note that, as of 1 December 2022, a full-time nurse was employed (40 hours per week); as of 1 January 2023, also a psychologist for 20 hours per week has started her work in Vienna-Josefstadt Prison. In addition, recruitment efforts are currently underway for two care assistant posts for 20 hours per week each and a post as head of the support service for 40 hours per week.

As for the review of the staffing situation in Innsbruck Prison and Leoben Prison it can also be noted that in Leoben Prison a job vacancy for a psychologist for 20 hours per week was successfully (re)filled as of 1 November 2022. Furthermore a post as a nurse for 40 hours per week for Innsbruck Prison will be filled soon.

With respect to Göllersdorf Prison and the staffing situation there, in particular the number of special-needs teachers and nursing staff, a job vacancy for the post of an occupational therapist for 20 hours per week is currently being advertised. In addition, a post as a professional assistant in the occupational therapy service for 40 hours per week was filled as of 1 November 2022. Moreover another post as a professional assistant in the occupational therapy service for 40 hours per week is currently being advertised. As regards nursing staff in Göllersdorf Prison, the employment of an additional nurse is currently in progress while another post as a nurse is currently being advertised. The employment of an additional psychologist for 40 hours per week for Göllersdorf Prison is currently in progress.

As of 16 January 2023 an additional psychologist was employed in Stein Prison for 40 hours per week.

In addition to the constant efforts to fill vacancies and boost medical staff numbers in the prisons the number of medical staff members in the Directorate General was increased in the course of budget negotiations. A Psychiatric Superintendent Office and a Care Coordination Office, in particular for forensic placements, are being set up to complement the existing Medical Superintendent Office at the Directorate General. In addition the hours of the Medical Superintendent Office are being increased (by ten additional hours per week).

**Para 85:**

In connection with health care and/or adequate medical care for inmates in prisons and in involuntary forensic placement institutions, the number of qualified health care and nursing staff needed to provide inmates with basic service is calculated based on the effort involved in providing nursing services, in presenting inmates to general practitioners and psychiatrists for consultations, and in tasks involved in providing substance substitution treatment. The allocation of human resources to each prison is based on the results of these calculations.

A total of about 336 such posts are currently budgeted for in the administration of custodial sentences and measures involving deprivation of liberty, some of which, regrettably, still remain unfilled despite considerable efforts. The involvement of prison officers in the performance of health-care tasks must be regarded as an "emergency measure" only and is limited exclusively to presenting inmates to general practitioners and psychiatrists for consultations as well as to administrative tasks.

Health-care tasks in the proper sense of the term are performed exclusively by prison staff members qualified for such purposes (nursing staff).

With regard to the prisons visited, we would like to point out (again) that the filling of the following vacancies is currently in progress/at the planning stage and, as a result, it is to be hoped that the current staffing situation in health care (nursing staff) will improve.

Göllersdorf Prison: 2 nurses (40 hours/week each)

Vienna-Josefstadt Prison 1 nurse (40 hours/week), 2 care assistants (20 hours/week each)

Innsbruck Prison: 1 nurse (40 hours/week)

With due consideration of security-relevant aspects it must be noted that the confidentiality of examinations is protected both by the physician's duty to maintain secrecy and the obligation to respect official secrecy by which all prison officers are bound.

As for the security aspects to be taken into account it must be mentioned that the number of assaults on prison staff members has regrettably increased in recent years. However, we are pleased to report that it has been possible to reduce the presence of prison officers in medical wards to a minimum. However, it is up to the physician in charge to decide whether or not they want a prison officer to be present in the surgery during examination.

With respect to maintaining/ensuring security and order during medical treatment/examinations in a surgery or medical ward it must be ensured that the prison officers enlisted to provide medical support services will be able to intervene instantly in the case of violent assaults by prisoners during examinations/treatment, ideally averting attacks at an early stage and preventing the persons present from being injured or the situation from escalating.

Given the insights gained from crisis management it must be emphasised that it is crucial that trained and qualified prison officers are in a position to immediately intervene on site and that this possibility of intervention cannot be replaced by technical equipment (e.g. alarm buttons). The Federal Ministry of Justice is of the opinion that there is currently no alternative to this organisational security measure, i.e. the presence of prison officers in medical wards or during examinations/treatments in surgeries in a medical support staff role.

In the view of the Federal Ministry of Justice positioning of prison officers within eyesight and/or earshot is not an effective approach to adequately dealing with an attack or assault or to ensuring security and order in line with the principle of keeping inmates separated from the outside world [*Abschließungsgrundsatz*], all the more so as valuable time would be lost before emergency measures can be taken. Such a removed and therefore less favourable position would entirely foil efforts to take defensive measures, i.e., react immediately to assaults. As a result, doctors and qualified health and nursing staff would be put in significantly more danger and the intervening prison guards would be faced with a situation far more unfavourable and significantly more dangerous for them. Further, particularly at large prisons, such as Vienna-Josefstadt Prison, the frequency of medical consultations is so high that medical doctors are not in a position to obtain the necessary information to assess whether an inmate poses a particular danger or not.

As a result of the restrictions experienced in prison the treatment and examination of prisoners inside the prison establishment is often highly emotionally charged, which is why it involves a higher risk than a comparable treatment/examination outside of prison. Incidents have been recorded where imprisoned addicts were not prescribed the drug dosage or substitution they had hoped for and, consequently, attacked the physician. The only way to prevent such assaults is or was the presence of prison officers in their role as medical support staff.

Finally, it must not be forgotten that it is the treating physicians who have repeatedly requested that prison officers be involved in medical examinations.

It should also be mentioned that, by participating in the training courses offered to medical staff, the prison officers performing medical support services also benefit from the health-care education and CPD programme.

The distribution of previously dispensed (partially automated) medicines by a prison officer is in line with standard practice outside prison. Checking whether medication is being taken in the correct dosage is not a task explicitly assigned to nursing staff, but may also be carried out by other support staff (see, for example, home nursing services).

**Para 86:**

As for the so-called "11er Zettel" (request form for routine medical appointments), the form has been revised to reflect the data-protection regulations with respect to medical care, and health-related information can now be found only on the inside of the folded request, which ensures that such information is no longer visible to the prison officers collecting such requests. In addition, reference is made to the statements on para 85.

**Para 87:** Reference is made to the statements on para 73.

**Para 88:**

The medical examination of inmates within 24 hours of admission is one of the goals of the current telemedicine project. In a pilot project the telemedical treatment of inmates is currently being tested on weekdays for four hours per day during core working hours. One of the project goals is for this medical application to be available around the clock, which would mean meeting the CPT's recommendation in this respect. Irrespective thereof the prisons are requested to meet the demand for prompt medical examination upon admission already now, where possible, also by having recourse to telemedicine.

**Para 89:**

This recommendation will be taken into account in the next training courses in this context. The respective training courses for the staff entrusted with these tasks are held four times a year and are always in high demand. In addition the controls in the IVV-Med (electronic medical records) will be expanded correspondingly. Currently, blood testing is regulated by decree; implementation is the responsibility of the respective prison.

**Para 91:**

This form of treatment is prescribed and supervised by the respective psychiatrist. In Innsbruck Prison specialist physicians for psychiatry are currently on duty from Monday to Friday so that it is ensured that prescriptions can be made out at least on weekdays. Already prescribed medication will be handed out on weekends, too, to bridge the gap when no psychiatrist is present. If that is not sufficient, emergency services will be called who can then prescribe the appropriate medication.

**Para 92:**

Not all needles found in the establishments are used for injecting illegal drugs, but for example also for tattooing or other activities.

It is currently not envisaged to implement a needle-exchange programme in Austrian prisons since the prisons' substitution programme offers numerous ways of stabilising substance use in line with the requirements set out in the external (OST) guidelines. Apart from the usual oral substitution medication this programme also includes the administration of opioid substitution depot medication (Buvidal).

While in the past the policy pursued by the correctional and forensic placement system had been the mandatory enforcement of abstinence, this has been replaced by the principle of stable medication.

Every patient is now given the choice to be administered legal substances by the medical staff to satisfy their personal needs. The desired objective is to avoid the consumption of substances resulting in intoxication, which, from a therapeutical and medical point of view, is considered unfavourable. Thus, every inmate has the right to have an individual substance-use plan drawn up for them so they will spend their time in prison in a stable condition.

**Para 95:**

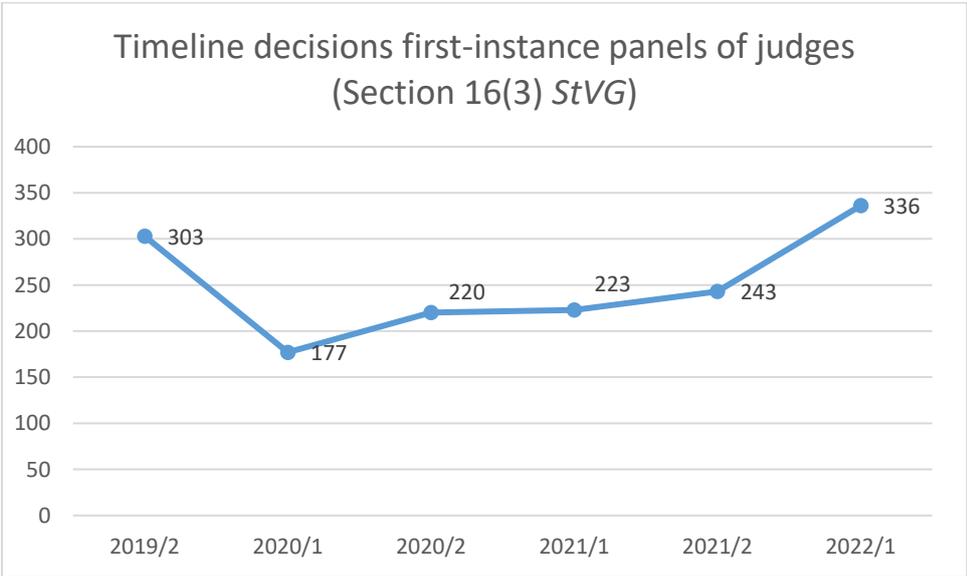
A broad range of legal protection mechanisms is available to ensure the protection and promotion of the rights of prisoners. Apart from the complaints system available under the Correctional System Act (*StVG*) there are external institutions both on the national and international level, e.g. the Austrian Ombudsman Board (*AOB*) and the CPT Committee, with which prisoners may file complaints or which visit prisons and make recommendations based on these visits. This wide range of avenues of complaint has led to a general increase in the number of complaints filed in recent years (including within the legal protection system provided by the *StVG*).

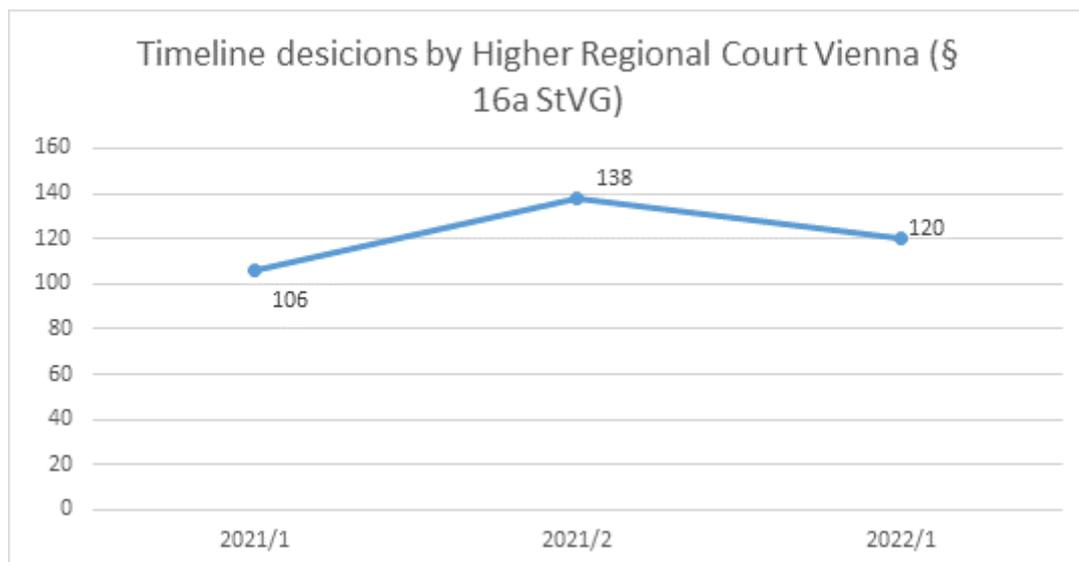
The legal protection system under the *StVG* encompasses both appeals to the supervisory authorities (Section 122 *StVG*) and complaints for violation of rights (Sections 120 *et seq.* *StVG*).

Complaints for violation of rights relating to orders given by or the conduct of prison staff must be lodged with the first instance authority (prison management), which must issue a formal decision [*Bescheid*] after carrying out a formal procedure (Section 22(3) *StVG*). Appeals against such a decision can be lodged with the court for criminal matters having local jurisdiction over the prison, sitting as a panel of three judges [*Vollzugssenat*] under Section 16(3) *StVG*. Appeals against decisions by this panel of judges can in turn be lodged with the highest-level court in Austria in charge of the administration of custodial sentences and forensic placement under Section 16a *StVG* (Higher Regional Court Vienna).

Complaints for violation of rights relating to decisions made and orders given by or the conduct of the prison director must be lodged with the aforementioned panel of judges under Section 16(3) *StVG*. This court decision can in turn be appealed by lodging a complaint with the next-instance panel of judges (Higher Regional Court Vienna) under Section 16a *StVG*.

The possibility to lodge appeals with the courts having jurisdiction over the respective prison is increasingly made use of.





Appeals to the supervisory authorities:

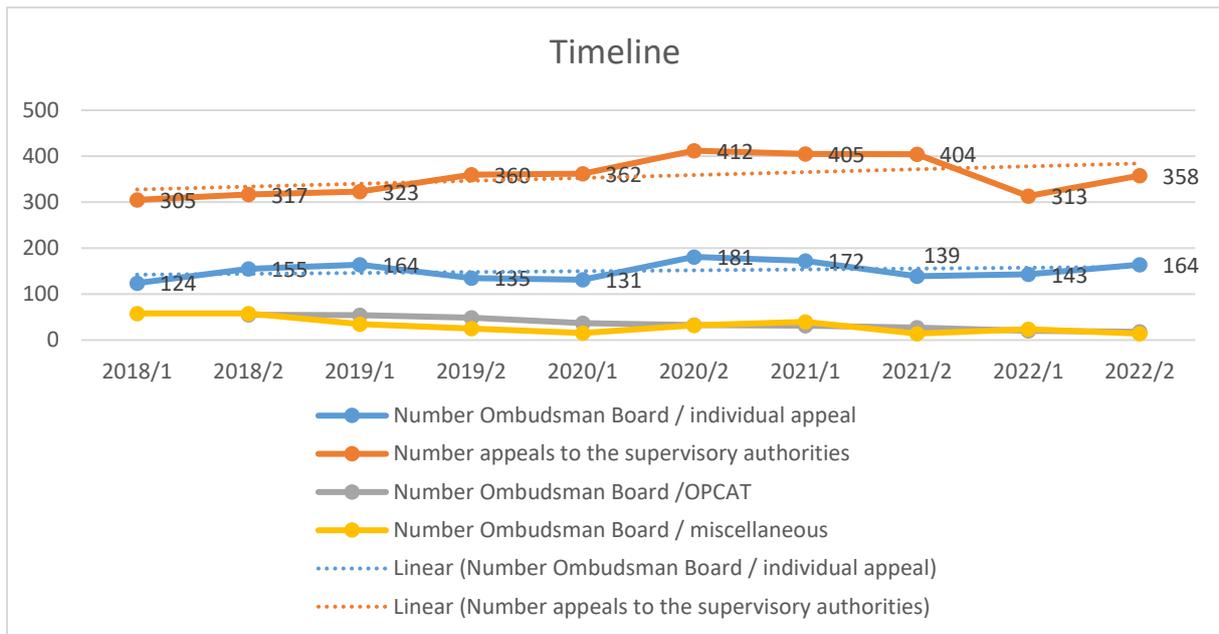
In accordance with Section 122 StVG prisoners may address complaints regarding any matter arising under the StVG (i.e., orders, decisions and conduct of prison officers not only they themselves are affected by) to the prison authorities in their supervisory capacity (i.e., the prison director as first-instance authority as defined in Section 11(1) StVG and the Directorate General in the Federal Ministry of Justice as supreme authority as defined in Section 13 StVG).

**I. Austrian Ombudsman Board**

In accordance with Article 148a of the Austrian Federal Constitutional Act [*Bundes-Verfassungsgesetz/B-VG*] anyone may file a complaint with the Austrian Ombudsman Board on the grounds of alleged shortcomings in the federal administration (...), in particular on the grounds of an alleged violation of human rights, provided that they are personally affected by such shortcomings and provided that there are no (longer any) legal remedies available to them. Any such complaint must be examined by the Austrian Ombudsman Board. The applicant must be informed of the result of the examination and the measures taken, if any (individual application). Any prisoner may file a complaint with the Austrian Ombudsman Board, which will conduct a review to examine the administrative actions of the Federal Government (specifically of the prison management bodies). The outcome of these examinations will be submitted to the Federal Ministry of Justice (and subsequently to the prison establishment in question) and published in the annual activity report submitted to both chambers of the Austrian Parliament by the Austrian Ombudsman Board.

The Austrian Ombudsman Board also exerts preventive control in its role as a national prevention mechanism (NPM) under OPCAT and regularly provides consultation and counselling in the prisons for both inmates and staff. Where possible, the issues raised on such occasions are discussed on site with representatives of the prison and resolved.

The number of appeals to the supervisory authorities, as well as enquiries from the Austrian Ombudsman Board received by the Competence Centre for Legal Protection in the Directorate General over time (\*up to 31 December 2022):



In addition, reference is made to the statements on para 96.

**Para 96:**

The Austrian complaints register was launched on 1 November 2018. It was used to record statistical data on the appeals to the supervisory authorities and complaints for violation of rights filed all over Austria in both quantitative and qualitative terms. Starting in 2020 the complaints register was then upgraded from a mere register to a module within the electronic management application for the correctional system (eVM). The new Complaints Cases module (eVM-BSV) was taken live across Austria on 2 November 2022. Apart from recording (quantitative and qualitative) statistical data on appeals to the supervisory authorities, complaints for violation of rights and enquiries by the Austrian Ombudsman Board, it now also ensures exclusively digital file management in all correctional system authorities, using components of Justiz 3.0 (filing and task management system). Edited in the reporting platform of the justice administration ("Cockpit") on the basis of informative indicators (number of complaints, complaints rate, decisions) the data generated in eVM-BSV are available for controlling and steering purposes both at the individual prisons and at the central offices.

The Austrian Ombudsman Board has also repeatedly demanded that complaints boxes be put up (most recently Vienna-Josefstadt Prison [complaints boxes were put up in all wards of the juvenile department] and "Wohnen Mauer" aftercare institution [a complaints box was put up upon the suggestion of the Federal Commission of the Austrian Ombudsman Board (AOB)]). Complaints box operations in the juvenile department of Josefstadt Prison will be evaluated with respect to potential use at further locations. Inmates are always informed orally and in detail about the avenues of complaint available to them. There are plans to make information sheets about how to file complaints available to inmates upon admission, in multiple languages. However, the data provided with respect to para 95 on the number of complaints submitted already strongly indicates that the complaint avenues set out under para 95 are open to, and used by, all inmates.

**Para 97:**

All prisons are staffed with a sufficient number of female prison officers (especially in health care), so that the recommendation, to ensure that gender-specific screening on admission for women by

specifically trained staff (and, preferably, health-care staff) is introduced in all prisons in Austria which accommodate female prisoners, is being followed insofar as gender-specific screening for women upon admission is already being offered now.

**Para 98:**

The statutory requirements regarding visiting hours for juveniles are complied with in all prisons. Visiting hours are prolonged by one hour or more beyond the range set out in statutory provisions in order to allow juvenile prisoners to use the social reception room for longer.

Implementation of the recommendation regarding Section 93 *StVG* is being considered in the context of the planned amendment to the *StVG*.

**Para 99:**

Section 94 *StVG* is applicable to the visiting arrangements for all prison inmates. The principle of keeping inmates separated from the outside world [*Abschließungsgrundsatz*], (Section 21 *StVG*) is enforced by monitoring visits both in intellectual (Section 94(4) and Section 95 *StVG*) and physical terms (Section 94(3)). In keeping with this principle, inmates and visitors are usually physically separated during visits (perforated glass partition or booth with telephone receiver). Pursuant to Section 94(1) sentence 4 *StVG* the prison director may grant prisoners unmonitored visiting privileges or otherwise relax regulations for visits, in particular if the visitors are relatives, unless it must be feared that the prisoner will exploit this fact. This includes the reduction of physical barriers, or what is referred to as "open visits". However, according to Austrian case law, there is no subjective public right to the latter (see *VwGH 98/20/0209* or repeated rulings of the Higher Regional Court Vienna [*Oberlandesgericht Wien*] 132 Bs 115/17g, 33 Bs 322/16v, 33 Bs 305/16v and others). The approach chosen in this context is necessary for safety and security reasons (in particular since there is a risk of smuggling). Monitoring visits without any technical installations such as glass panes would be impossible, not least because of a lack of human resources. With respect to allowing visits to remand prisoners without any physical separation it must be noted that Section 188 of the Code of Criminal Procedure [*StPO*] does not provide for a physical separation, but instead for monitoring and, if necessary, the prohibition or cancellation of visits. The enforcement of physical separation is primarily due to the existing furniture, fixtures and equipment of the visitor areas as well as safety and security concerns in the institutions.

**Para 100:**

With respect to this recommendation we would like to point out that the Austrian practice of public prosecutors or judges approving visits also satisfies the European Prison Rules. In the majority of cases this approval is purely formal since remand prisoners are allowed to receive visits within the established visiting times anyways, as often and for as long as such visits can be handled with reasonable effort (Section 188(1) *StPO*).

However, this provision, too, allows the authorities to interfere with the fundamental right to respect for family life as defined in Article 8 of the European Convention on Human Rights. If, for example, a relative is denied visits for a few weeks in cases of a risk of collusion, the fact that the remand prisoner was allowed to write letters to and receive letters from this person might play a role in the determination of whether such fundamental right was violated (ECHR 29 June 1994, 22.289/93, ÖJZ-MRK 1995, 153; *Kirchbacher/Rami* in *Fuchs/Ratz*, WK *StPO* Section 188 *StPO* paragraph 9 with further references). Withholding approval for a visit, for which reasons must always be given and which can be contested, is admissible in any given case only if there is reason to fear that the purpose of remand detention or the security of the institution is at risk (Section 188(1) No. 3 *StPO*).

Given these facts, we cannot understand the assumption underlying the recommendation, namely that "allegedly" receiving the authorisation took up to three weeks in some cases.

**Para 101:**

There are plans to amend Section 96a StVG in connection with the planned comprehensive amendment to the StVG.

**Para 102:**

Indigent prisoners may contact the respective prison social services whenever they need to make a free telephone call.

There are also arrangements for making video calls; in this context, we refer to the statements on para 103.

To cover postage inmates may use money which they are otherwise not allowed to use for paying for services while in detention. Pursuant to Section 92(3) StVG the Federal Government shall bear such costs if an inmate is, without any fault on their part, unable to cover the costs. Being considered at fault for not having the means to cover postage can be justified on any grounds for fault and will be applicable already where prisoners have imprudently used their money for other purposes (*Higher Regional Court Vienna 1 Vk 94/05 [= JSt- StVG 2006/26]*). If inmates are unable to cover the costs through no fault of their own, the prison management must officially classify them as being indigent.

**Para 103:**

With respect to the recommendation to maintain the possibility of making video calls beyond the duration of anti-COVID 19 measures, we are pleased to inform you that the matter of video calls is already regulated by the decree on video calls for inmates in the Austrian correctional system dated 4 March 2020 independently of anti-COVID 19 measures.

Under this decree all prisons may, in their own sphere of responsibility, grant the right to make video calls to inmates who, for reasons of geographical distance from their relatives, are not able to receive visitors in Austria.

**Para 104:**

First of all, we would like to draw attention to Section 105 StVG as well as relevant requirements set out by decree on the part of the Directorate General (Correctional System Handbook [*Vollzugshandbuch*]):

*Marginal no. 167 of the Correctional System Handbook:*

**GUARD DUTY**

*Guard duty means exact and exclusively allocated tasks in connection with the activities described in Section 105(1) StVG, including, without limitation, guarding tasks concerning keeping inmates isolated from the outside world and ensuring order inside the prison. For example, the guard must ensure that no unauthorised person enters the prison, that inmates do not escape and that there are no prohibited contacts between inmates or between inmates and non-inmates. Guard duty is of utmost importance for the security and order of the prison, including the guard's own safety and the safety of other persons in the prison. For day and/or night shifts the necessary areas to be guarded, the hours and descriptions (e.g. gate guard, courtyard guard, bars guard, tower guard) and the weapons as well as other equipment are to be defined by the prison director in a general order. Before commencing guard duty the prison officers assigned to guard duty must inform themselves*

*about the prison director's orders relating to the area to be guarded by them and about the current circumstances. Prison officers assigned to CCTV as defined in Section 102b StVG are deemed to be on guard duty as well. During guard duty the guard must not leave the area to be guarded without authorisation. The guard must immediately advise circumstances requiring their immediate replacement (e.g. where full fitness to work is impaired). During guard duty the guard must abstain from any activities that may reduce their capacity to act, perceive and respond, and from taking things easy (e.g. private phone calls, media consumption, reading).*

Marginal no. 198 of the Correctional System Handbook:

*Prison officers escorting inmates are required to carry the service weapons allocated to them at all times. Prison officers keeping inmates isolated from the outside world and ensuring order in the prison (Section 102 StVG) must carry a service weapon insofar as this appears to be appropriate for maintaining security and order in the prison. The prison director must make that decision. Unless otherwise ordered by the prison director, prison officers must in any case carry pepper spray as a service weapon in the prison.*

We further stress that any and all service weapons are carried in a concealed manner (in a holster). Concealed carry is the default mode, with exceptions only in specific situations (in alert, crisis or disaster scenarios). Only multi-purpose batons [*Rettungsmehrzweckstock*] are not entirely covered by the holster. However, the tool is primarily used for rescues and emergencies (e.g. seatbelt cutter screwed into the cap and lever tool for jammed/manipulated cell doors). Telescopic batons (with only blocking/defensive, levering and transport techniques being admissible), which can be carried in a holster fully covering the tool, have already replaced the multi-purpose batons in the majority of cases.

Prison officers are taught how to use the service weapons during their initial training. Modular operational training units ensure that weapon handling skills are regularly kept up to date.

The reason why prison officers carry weapons during night shifts is mainly that they need to ensure that prisoners stay locked up. When confronted with dynamically evolving, complex and often conflict-loaded situations involving people with a variety of behavioural norms, nationalities and often care-intensive clinical needs, prison officers have to meet exceptionally high expectations, especially when it comes to their personal, social, methodological and professional skills.

In addition to training and CPD to enable prison officers to handle alert, crisis and disaster scenarios in prisons and forensic placement institutions it is indispensable to equip them with the best possible safety and security gear for their own safety.

In concluding, it must be put on record that the number of assaults on prison staff (in particular prison officers) has regrettably increased in recent years.

**Para 105:**

Reference is made to the statements on para 104.

**Para 106:**

First of all, searches involving exposure of the body are only conducted as a measure of last resort in line with the statutory requirements.

As a last resort measure, full body exposure must be limited in time to the extent absolutely required.

The issue of personal searches as a particularly invasive measure (in particular searches involving exposure of the body) has been addressed by preparing a designated training policy and including it in

training and CPD events. The compilation of standards for the searching of persons raises awareness among prison officers for how invasive the removal of their clothes is for the persons searched, which applies already when the person to be searched is for the most part undressed (e.g. wearing nothing but undergarments).

Excerpt from standards for the searching of persons:

*Body searches involving exposure of the body must always be conducted in the presence of two officers of the same gender as the person to be searched and in the absence of fellow prisoners and persons of the opposite gender. We already talk of exposure of the body if the person to be searched is for the most part undressed (e.g. wearing nothing but undergarments). Where full body exposure is necessary, it must be limited in time to the extent absolutely required. As a matter of principle such searches must be conducted in the presence of no more than two staff members; however, in accordance with the provisions of Section 103(1) StVG more than two staff members of the same gender as the person to be searched may be ordered to be present at the body search.*

*Once the person to be searched has undressed, the inspection must be limited to a visual inspection of the body including the genital area. Observations and conspicuous features must be documented (injuries etc.) and appropriate further measures taken (visit to the doctor etc.).*

*If certain facts give rise to the assumption that the person to be searched is hiding an object in their body, a doctor must be entrusted with the search (examination). "Certain facts" in this context means concrete information or evidence (e.g. witness report).*

*If it must be assumed due to certain facts that someone is hiding an object in their mouth, the order to open their mouth may also be given to the person by a prison officer. The mere visual inspection of the oral cavity (including using an artificial source of light, such as a torch, for illuminating the oral cavity) thus does not require the assistance of a physician.*

**Para 107:**

Being aware of the invasiveness of a security measure as defined in Section 103(2) No. 4 StVG the Directorate General has defined standards for this type of accommodation applicable to new builds and renovations. They include:

- Underfloor heating
- No power outlets
- Light switches in tamper-proof design
- Sanitary facilities
- Squat toilet
- Sink/water point integrated into the wall - sensor-controlled
- Shower with shower head integrated into the wall - controllable from outside the cell
- Tamper-proof lighting or protection of the window surfaces (e.g. Perspex, anti-vandalism glass P6B to P8B)
- TV connections (if a TV is in use, it must be installed and protected in a manner ensuring that it cannot be damaged)
- Clock with date display

- Partition (preferably made of glass, low-injury design) in the access area for conflict-free communication; a service hatch must be allowed for
- Mechanical ventilation/cooling

Accordingly, in new builds or renovation projects specially secured cells must by default be designed in such a way that drinking water can be accessed directly and at any time and an adequate room atmosphere is assured in line with the necessary security standards.

Existing specially secured cells in prisons will be adapted accordingly to the extent allowed by the budget.

As a quality assurance measure existing solitary confinement cells in prisons are controlled at regular intervals and recurrently by the supervisory unit under the direction of Dept II 2 in the Directorate General.

With respect to the points of criticism raised in connection with the Innsbruck Prison, it is ensured, in addition to structural measures, that the inmates of all prisons have the possibility of interacting with the prison officers at any time in order to request and be provided with drinking water.

Finally, we would also like to put on record that as part of our efforts to ensure ongoing optimisation the relevant isolation scenarios, including what facilities such cells should feature, are on the agenda of the working group on security and care settings in situations of crisis, which was established recently and which also includes representatives of the Austrian Ombudsman Board.

**Para 108:**

Implementation of the recommendation regarding Section 114 StVG is being considered in the context of the planned amendment to the StVG.

With respect to Section 58(9) of the Juvenile Court Act [*Jugendgerichtsgesetz/JGG*] we would like to point out the following: The Statute Amending the Juvenile Court Act [*Jugendgerichtsgesetz-Änderungsgesetz*] 2015 BGBl. [Federal Law Gazette] I No. 154/2015) reduced the duration of solitary confinement from two weeks to one week, bearing in mind that at the time the previous version of the Prison Rules (2006) applied, item 60.5 of which read: *Solitary confinement shall be imposed as a punishment only in exceptional cases and for a specified period of time, which shall be as short as possible.*

Item 60.6.a of the Revised European Prison Rules (2020) now reads: *Solitary confinement, that is the confinement of a prisoner for more than 22 hours a day without meaningful human contact, shall never be imposed on children, pregnant women, breastfeeding mothers or parents with infants in prison.*

Further modification of or amendment to Section 58(9) JGG within the meaning of item 60.6a. of the Revised European Prison Rules (2020) is being considered.

**Para 109:**

Implementation of the recommendation regarding Section 114 StVG is being considered in the context of the planned amendment to the StVG.

**Para 110:**

The oral pronouncement of disciplinary decisions corresponds to the procedure applicable in criminal proceedings where sentences are also pronounced orally and where defendants are (orally) informed about their right to appeal. In principle, a criminal judgement must be issued (in writing) within four

weeks; however, under certain circumstances, it may be issued in abbreviated form (Section 270(4) of the Code of Criminal Procedure [*Strafprozessordnung/StPO*]).

Pursuant to Section 116(4) sentence 4 *StVG* prisoners must be served a written copy of the disciplinary ruling upon request. To the knowledge of the Federal Ministry for Justice and as confirmed by the CPT this approach works in practice. The key points of the ruling must in any case be included in the prisoner's files for documentation purposes.

Oral pronouncement ensures that the person concerned understands the decision. In addition, this is also in conformity with the principle that disciplinary sanctions must be enforced immediately unless otherwise provided for in the *StVG* (Section 116(6) *StVG*).

### **Human Rights concerning forensic and civil psychiatric establishments**

#### **Para 113:**

Reference is made to the statements in para 126.

#### **Para 118:**

The reform of forensic placement was divided into two packages:

- The first part, the Forensic Placement Amendment Act [*Maßnahmenvollzugsanpassungsgesetz/MVAG*], includes stricter criteria regarding the prerequisites for the penal placement in a forensic-therapeutic centre. A ministerial draft bill was partially revised following public review. The Act was finally passed in December 2022 and has already partially entered into force.
- The second part of the reform, the Forensic Placement Act [*Maßnahmenvollzugsgesetz/MVG*], focuses on the treatment and support of inmates during and after release from penal placement. The main purpose is to meet the separation requirement [*Abstandsgebot*] developed by the ECtHR and the German Federal Constitutional Court [*Bundesverfassungsgericht*], i.e. the requirement that mentally ill or mentally disordered imprisoned persons must be treated appropriately and, above all, differently and separately from prisoners. Once the first part of the reform has been adopted, the ministerial draft bill for the second part will be finalised and submitted for review.

Representation of persons in penal placement by patient advocates is envisaged within the scope of the new Forensic Placement Act.

#### **Para 125:**

Reference is made to the statements in para 73.

#### **Para 126:**

Warranting a system of forensic placement in conformity with human rights is in the Federal Ministry of Justice's supreme interest. The constantly increasing number of committals of persons in forensic placement as defined in Section 21(1) of the Criminal Code [*Strafgesetzbuch/StGB*] over the years poses challenges for the prison management and requires a continuing expansion of placement facilities. After completion of the annex to the Asten Prison (which will provide another 100 places)

the Federal Ministry of Justice intends to establish approximately another 100 places for persons committed pursuant to Section 21(1) *StGB* in the Göllersdorf Prison.

A feasibility study commissioned for that purpose is now available in its final version. The gross construction cost for this large-scale construction project is currently calculated at about EUR 115 million (plus another EUR 2.5 million for furniture, fixtures and equipment).

The following measures were budgeted for:

- Historic castle - surface renovation of the historic castle, conversion and overall renovation of the ancillary rooms near the current kitchen into an office and storerooms, conversion and general renovation of the current guard rooms into accommodations and storerooms.
- Historic side wings - surface renovation of the historic side wings, conversion of the current kitchen into cloakrooms and offices.
- Annex from the 1980s - general renovation, adaptation of its function, thermal upgrading.
- Construction of a new building next to the existing blocks of the 1980s annex, including inner courtyards and greening of roofs.
- Exterior facilities: Expansion of parking spaces, green spaces, walkways, driveways and paved areas, fenced-in exercise yards, construction of security fences for the new-build.

The overall project duration is calculated to be approximately five years.

In accordance with the requirements of Austrian law the Federal Ministry of Justice is carrying out an approval process with the Federal Ministry of Finance, with reserves to be used for this construction project already provided for in the budgets for 2022 and 2023.

**Para 127:**

The different cell lock-up times account for the different types of inmates. The North E Section of Stein Prison is a facility which accommodates inmates who are not suitable for a more progressive opening regime due to safety and security concerns in connection with their disorders.

In connection with staffing requirements it can generally be said that, where appropriate, internal rostering measures will have to be taken in order to comply with the recommendation to extend cell-opening times and to review the current regulations on outdoor exercise in psychiatric institutions (including forensic prisons) accordingly. Awareness of prisons for these matters is being raised accordingly by this report.

**Para 128:**

Reference is made to the statements on paras 127 and 156.

**Para 129:**

Reference is made to the statements on para 126.

**Para 130:**

Reference is made to the statements on para 84.

**Para 131:**

Reference is made to the statements on para 84.

**Para 133:**

Reference is made to the statements on para 84.

**Para 134:**

Reference is made to the statements on para 104.

**Para 136:**

Reference is made to the statements on para 84.

**Para 137:**

The situation described ("a number of patients, in particular those who had been held at the prison for several years already, were engaged in very few or even no activities") will be investigated.

Considering the given situation ("patients who are not able or not willing to engage themselves in therapeutic or other organised activities") concepts will have to be established together with the prisons concerned to ensure that patients will be motivated to engage in purposeful activities.

**Para 138:**

Reference is made to the statements on para 84.

**Para 139:**

Following successful treatment in forensic placement, i.e. after the specific danger posed by an inmate has been eliminated, forensic follow-up support in (socio-therapeutic) residential facilities is fundamental for the prevention of relapses. The prison management uses extensive resources for that purpose. In principle, the social and health authorities of the Austrian states are responsible for ensuring that sufficient and appropriate facilities will be available for accommodation after a conditional release from forensic placement. The federal justice administration takes on already more responsibilities than it would have to under applicable law, ensuring the management of such facilities through suitable socio-psychiatric cooperation partners and covering the substantial costs of the daily rates charged for follow-up support as defined in Section 179a StVG. Therefore, any shortcomings identified in the provision of suitable care facilities cannot be attributed to the prison administration system.

It should be put on record that there is an actual lack of (specific) facilities (in particular for persons in need of special nursing care). This situation cannot be changed by the justice administration alone. Following a recommendation of the Federal Ministry of Finance, such placements could be reduced if the state governments met their responsibilities accordingly. This means that the federal government and the state governments will have to join forces.

**Para 140:**

Apart from the central facility at the Vienna-Mittersteig Prison, special departments in the general prisons for the enforcement of custodial sentences (as defined in Section 158(5) StVG, Departments for Involuntary Forensic Placement) in Stein, Graz-Karlau, Garsten and Gerasdorf (juveniles) accommodate persons who are committed under Section 21(2) StGB. In view of the developing numbers of forensic placements, Garsten Prison will be converted into a forensic therapeutic centre. The conversion will be completed by the end of 2023. After that, two special departments in regular prisons will remain in operation (in Stein and Graz-Karlau).

The report by Prof. Dr. Jabloner, former Minister of Justice, of November 2019 contained the following observations on this issue:

*"This form of placement [as defined in Section 158(5) StVG] does not meet the requirements of treating mentally disordered offenders or their special situation. In addition, ECtHR case-law, according to which involuntary forensic placement must be clearly separated from normal enforcement of custodial sentences (separation requirement) must be observed. Such ECtHR case-law specifically provides that, after having served their sentence, mentally disordered offenders who can be held responsible for their actions may exclusively be placed in so-called forensic centres or, if they are to be detained in a prison, in a separate building that offers the same treatment standard as a forensic centre.*

*Under a strict interpretation, the placing of persons committed pursuant to Section 21(2) StGB in departments of general prisons after they have served their sentence, which is current practice in some cases, would no longer meet those requirements. Moreover, the final report of the expert panel on involuntary forensic placement, and the bills of 2016, 2017 and 2018 prepared in response to the same, provide that all persons placed pursuant to Section 21(2) StGB (i.e. also before they have served their sentence) exclusively be placed in forensic centres, allowing, however, for a certain transition period.*

*In view of the most recent decisions of the European Court of Human Rights (cf. in particular the judgment in Lorenz v. Austria of 20 July 2017 in conjunction with Bergmann v. Germany of 7 January 2016) detention in special departments of prisons for the enforcement of custodial sentences (departments for involuntary forensic placement) seems no longer admissible for persons placed pursuant to Section 21(2) StGB who have served their sentence in any case."<sup>1</sup>*

In line with the above observations, the definition given for the separation requirement, namely that detention in special departments of regular prisons (departments for involuntary forensic placement) both while vicariously serving the prison sentence and after having served the sentence is admissible, will be reviewed as to whether changes should be effected in such a way that these departments are used exclusively to accommodate detainees who have not served their sentence yet.

Reference is made to the further statements on the reform of forensic placement under para 118.

**Para 141:**

The suggestion of the CPT Committee to prepare individual treatment plans for all patients has been implemented.

Pursuant to Section 134 StVG the head of the prison enforcing the custodial sentence must determine the way in which the sentence is to be enforced within the framework defined by the said Act and the outcome of the classification process (detention plan). The detention plan must include the mode of enforcement of the sentence, the work, the educational and medical support, contacts with the outside world and supervision. This fundamental provision on the enforcement of custodial sentences must also be applied to placements pursuant to Section 21 StGB taking the special purposes of involuntary forensic placement (Section 164 StVG) into account. Under the current legal situation the requirements for individual treatment plans apply only to the prisons concerned.

**Para 142:**

The medical history of each inmate contains a list of measures and how they are to be implemented in the course of daily medical treatments. The events mentioned by the CPT are recorded daily in that

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<sup>1</sup> The term "mentally disordered offender" is in line with the current wording of Section 21 StGB, which will be replaced by more neutral and less stigmatising terms in the course of the ongoing reform project.

register. As these events are recorded by different medical staff members, the corresponding data cannot be retrieved for statistical purposes.

**Para 143:**

As to the question relating to the treatment of hepatitis C patients and the allocation of costs for such treatment, a comprehensive solution is being developed which will guarantee medical treatment in line with the equivalence principle.

**Para 146:**

All restraint measures are recorded in detail in an electronic documentation system; currently, there is no separate register for restraint measures. Such a register will be introduced in connection with the implementation of the Lower Austrian Hospital Information System (NÖKIS).

The Federal Computing Centre Setting will examine the possibility of setting up such a register within the scope of the medical history, including statistical analysis.

**Para 149:**

Reference is made to the statements on para 156.

**Para 150:**

Reference is made to the statements on para 156.

**Para 151:**

Representation of persons in penal placement by patient advocates is envisaged in connection with the new Forensic Placement Act. Reference is made to the further statements on the reform of the forensic placement system under para 118.

**Para 153:**

Applicable law (Section 165 *StVG* for persons placed as defined in Section 21(1) *StGB* and Section 166 No. 1 *StVG* for persons placed as defined in Section 21(2) *StGB*) provides the legal basis for a derogation from Section 103(2) No. 4 *StVG* in the case of persons in penal placement. An amendment to Section 103(3) *StVG* with a broader scope and targeting all prisoners is envisaged in connection with the planned amendment to the Correctional System Act [*StVG*].

Reference is also made to the guidelines specified by decree of the Directorate General, which are contained in the Correctional System Handbook under marginal no. 191:

*While placed in a specially secured cell, inmates have no right to receive visits or make phone calls. Contacts to legal counsel (Section 90b(5) StVG) remain unaffected by such exclusion. If inmates are at a risk of committing suicide (not merely inflicting minor self-injuries) because the special security measure was imposed or if such episodes occur during enforcement of a special security measure as defined in Section 103(2) No. 4 StVG which was imposed for a different reason, the prison director must order exemptions from enforcement of the security measure in the interest of the inmate's health on a case-by-case basis (e.g. allowing visitors and/or phone calls) which are suitable to counteract the mental disorder. To do so, the prison director must classify the prisoners as falling under Section 129 StVG. For persons in forensic placement the legal bases for such orders are Section 165(2), Section 166 No. 1, last sentence, Section 167 StVG; for remand prisoners the legal bases are Section 182(4) StPO (Section 129 StVG).*

In addition, reference is made to the statements on para 156.

**Para 154:**

The Directorate General takes the complaints in this context very seriously. However, neither the inspection and analysis of the heating data for Göllersdorf Prison nor the inspection of the records concerning call bells and the related response times showed any conspicuous issues in this respect.

**Para 155:**

When choosing medication, which is the responsibility of the treating physician, the focus should of course be on the patient's wellbeing. In the context referred to by CPT rapid-acting medication led to a deterioration in the progression of the disease. Patients became agitated more quickly and had to be medicated more often. The use of depot injections has proved to be a less invasive approach.

**Para 156:**

Seclusion as defined in Section 103(2) No. 4 StVG constitutes the most invasive security measure and must be ordered with utmost care and prudence in accordance with the principle of *ultima ratio*. In this context reference is made to the standards specified by decree which are contained in the Correctional System Handbook:

*Marginal no. 179 et seq. of the Correctional System Handbook:*

*Special security measures as defined in Section 103 StVG serve the purpose of warding off specific dangers listed exhaustively and alternatively, sometimes also of calming down an inmate. Section 103 StVG must be applied to all prison inmates and requires all correctional authorities to take the measures required to ward off the dangers described therein. A prognosis-based decision is necessary to clarify whether or not there is danger. The danger must be sufficiently specific to justify a special security measure; and in every single case the circumstances of the specific case must be taken into account. Dangers may be roughly divided into escape and endangering persons/property.*

*All measures are governed by the principle of proportionality. Accordingly, only that measure must be ordered which will reliably ward off the existing danger and best preserve the legal sphere of the person concerned at the same time (i.e. the mildest measure in the circumstances). The inmate's mental and physical health must be considered at all times. The law provides for a maximum period of time only in the cases defined in Section 103(2) Nos. 4 and 5 StVG. Any measure must be stopped immediately once the danger against which it is directed no longer persists. The measures must be absolutely necessary with regard to the danger that triggered their order and reflect the intensity of their encroachment in ascending order (Section 103(1), (2) Nos. 1 to 5 StVG). No measure constitutes a punishment; measures must never be used as a punishment.*

*Detailed reasons must be given for and documentation must be kept on all orders given under Section 103 StVG.*

*Security measures are imposed by order of the supervising prison officer, i.e. the person who, due to hierarchy regulations, holds the authority to give directions, the power of command and the right to give orders vis-à-vis other prison officers that may be present at the place where the incident occurred. The decision as to who is to be considered the supervising prison officer in a specific case remains reserved to the relevant internal regulations. If there is no such regulation (yet) or if it is not accessible due to imminent danger, it will depend on who, according to the daily duty roster, has the supervising role at the place where the incident occurred.*

*Subsequently, the prison director must be immediately notified of the fact that a special security measure has been ordered. At first, an oral report or a report by phone will be sufficient; by the end of*

*his/her shift the prison officer must submit the report in writing. The prison director must immediately decide whether or not to maintain the security measure.*

*Due to the concomitant circumstances detention in a specially secured cell as defined in Section 103(2) No. 4 StVG is considered the most invasive form of solitary confinement. That is why a special security measure as defined in Section 103(2) No. 1a StVG or, if the prerequisites are fulfilled, seclusion as defined in Section 116(2) StVG must always be ordered if they suffice to effectively ward off the danger.*

*The inmate must be especially guarded while detained in a specially secured cell so that threats to their well-being do not remain undetected. The prison director must be informed of any change in the situation so that he/she may make further decisions with regard to the special security measure.*

*Detention in a specially secured cell for more than one week or putting cuffs or a straitjacket on a prisoner for more than 48 hours is subject to approval from the court having jurisdiction over the prison, which will make a decision on the prison director's petition. The petition must be filed with the court in such a timely manner (before the deadline) that the court will be able to make the decision by the deadline.*

*Pursuant to Section 103(3) inmates who are subject to a security measure as defined in Section 103(2) No. 4 must promptly and not later than within 24 hours be seen by a doctor, who must check whether transfer to a public hospital is necessary. Subsequently, inmates must be seen by the prison doctor every day for as long as the seclusion lasts. If the prison doctor is not on duty at the prison every day, inmates must be seen by a prison officer who has medical experience on the days on which no doctor is present. In addition, specialists (psychiatrists, psychologists, psychotherapists) must be involved if this seems reasonable.*

The Directorate General focuses particularly on such invasive security measures. For example, measures imposed as defined in Section 103(2) No. 4 are recorded in monthly management controlling statistics to ensure the respective developments in the prisons are monitored and interventions can be made quickly where necessary. In addition, random checks of seclusions are carried out in the course of the supervision activities within the responsibility of Dept II 2.

As part of our efforts to ensure ongoing optimisation, including with respect to the decision-making process in imposing such a measure, Section 103(2) No. 4 StVG is on the agenda of the working group on security and care settings in situations of crisis, which was established recently and which also includes representatives of the Austrian Ombudsman Board. The final report on that topic is in progress.

**Para 157:**

Reference is made to the statements on paras 107 and 126.

**Para 162:**

According to the second sentence of Section 167(1) StVG a person held in involuntary forensic placement must be heard by the court at least once every two years prior to any decision on a release on probation.

Several adaptations have been adopted within the scope of the Forensic Placement Amendment Act [MVAG]: For instance, a modification to the effect that the decision on the necessity of further detention be made within the period of one year of the last decision (instead of currently

[commencement of] review within that period) or a special regulation concerning the consultation of expert witnesses when considering the necessity of continuing penal placement of juveniles.

**Para 163:**

Only the independent courts decide whether or not a person remains in forensic placement. In fact, the pursuit of the purposes of forensic placement is difficult where non-Austrians are involved; on the one hand, because of issues under the law relating to aliens, which are sometimes unclear (or unresolvable), and, on the other hand, because of language barriers. The prison authorities try to address this challenge by using "video interpretation", a method which has been well-established in all prisons for quite some time. A future challenge will be the promotion of language skills among staff members by offering special courses.

**Para 166:**

Pursuant to Section 167a(2) *StVG* Sections 33 to 38 *UbG* apply analogously in the case of committal to a public psychiatric hospital. A regulation for treatment by physicians with respect to all persons in penal placement similar to that of Section 36 *UbG* is envisaged within the scope of the new Forensic Placement Act [*MVG*].

Pursuant to the first sentence of Section 167(1) *StVG* Sections 20 to 129, 131 to 135, 146 to 150 and 152 *StVG* apply analogously to placements pursuant to Section 21(1) and (2) *StGB* unless provided otherwise by Sections 164 to 166 *StVG*.

Section 120(1) *StVG* provides that prisoners may lodge complaints about any decision or order affecting their rights and about any conduct of prison staff concerning their rights. However, prisoners may only complain about the type of treatment they receive from a physician under the provisions of Section 122 *StVG*. Pursuant to Section 122 *StVG* prisoners have the right file applications and complaints under the correctional system complaints scheme (appeal to the supervisory authorities [*Aufsichtsbeschwerde*]). Contrary to appeals to the petitions for administrative review, for which a deadline has to be observed (Section 120(2) *StVG*), appeals to the supervisory authorities as defined in Section 122 *StVG* may be lodged at any time (= Higher Regional Court Vienna [*OLG Wien*] 33 Bs 21/16d, 33 Bs 205/16p; *Drexler/Weger, StVG*<sup>5</sup> Section 122 (as at 1 January 2022, rdb.at) marginal no. 1).

**Para 167:**

A compulsory second medical opinion is currently not envisaged for the cases described.

The Office of the Medical Superintendent was established in the Directorate General in order to review medical decisions in prisons and in forensic placement; external psychiatrists are consulted as necessary to increase the range the psychiatric competence of this institution. A Psychiatric Superintendent Office and a Care Coordination Office, in particular for forensic placements, are being set up to complement the existing Medical Superintendent Office at the Directorate General. In addition the hours of the Medical Superintendent Office are being increased (by ten additional hours per week).

**Para 168:**

Any involuntary treatment of patients is reported to the Directorate General and documented by the same in the electronic file system. The files can be retrieved by the Directorate General at any time. This feature is not available in IVV-MED.

**Para 169:**

The recommendation ("all patients in *Maßnahmenvollzug* are systematically provided with full, accurate and comprehensive information about their condition and the treatment prescribed for them and are placed in a position to give their free and informed consent") is in line with the state of the art in involuntary treatment (*see the standards for treatment in involuntary forensic placement as defined in to Sections 63 and 64 StGB. Interdisciplinary Task-Force of the German Association for Psychiatry, Psychotherapy and Psychosomatics*).

Accordingly, treatment during involuntary forensic placement is normally admissible only if, before starting the treatment, the committed person has given their consent and was informed about the advantages and disadvantages of the chosen treatment, about alternative forms of treatment as well as about possible disadvantages of non-treatment. (*Müller J, Saimeh N (2017) Standards für die Behandlung im Maßregelvollzug nach §§ 63 und 64 StGB. Der Nervenarzt 88.*)

The prison administration system acknowledges the recommendation and envisages its implementation within the sphere of responsibility of the justice system.

As to the question of anti-androgen therapy the Office of the Medical Superintendent has informed us that this type of therapy is administered in accordance with well-defined approval and monitoring procedures. In the last few years no such therapies were carried out in prisons or forensic placement facilities in Austria.

**Para 170:**

According to consistent views voiced in the reference literature the provisions on patient advocates are not applicable to involuntary forensic placement by committal to a public psychiatric hospital as defined in Section 167a StVG. Therefore, patient advocates have no power of representation in this context. Pursuant to Section 167a StVG neither Sections 13 or 14 UbG nor Section 71(3) No. 4 StVG are applicable.

Representation of persons in penal placement by patient advocates is envisaged within the scope of the new Forensic Placement Act.

**Para 171:**

Reference is made to the statements on paras 95 and 96.

**Para 172:**

The Directorate General always endeavours to preserve the prisoners' privacy to the extent permitted by law. Where this is possible under aspects of construction engineering and security technology it is ensured that telephone systems offer prisoners privacy in the best possible way. In addition, reference is made to the statements on para 103.

**Para 173:**

In-person visits are allowed according to individual risk assessment. In times of more severe restrictions due to COVID-19, visits were temporarily allowed only with visitor and patient being separated by a glass pane. This continues to apply. Individual exceptions are possible. In addition, reference is made to the statements on para 99.

**Para 174:**

For the topic of segregation a working group has been established at the Federal Ministry of Justice. The final report on that topic is in progress.

**Para 175:**

Reference is made to the statements on para 106.

**APPENDIX**  
**Response provided by the Austrian authorities**  
**to the specific recommendations under paragraphs 46, 78 and 143 of the CPT's report**  
**on the November-December 2021 visit to Austria (received on 11 November 2022)**

Austria thanks the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) for its report following its visit to Austria from 23 November to 3 December 2021 and wishes to assure that it will give careful consideration to its report and recommendations. Austria attaches great importance to the work of the CPT Committee and is fully committed to cooperation and exchange in order to strengthen the protection and promotion of human rights. Austria would also like to avail itself of this opportunity to thank the CPT Committee for the close cooperation during and after its visit.

The CPT Committee requested a response on three major issues, on which Austria wishes to comment as follows:

**PAZ Hernalser Gürtel – implementation of the open regime**

**Para 46:**

With regard to the Committee's request that the authorities take steps to implement the open regime at PAZ Hernalser Gürtel, the Federal Ministry of the Federal Ministry of the Interior informed as follows:

Detention alone inevitably results in the obligation to ensure the safety of the detained persons. Not only must the necessary medical care or treatment be ensured in the event of injury or illness, but the entire enforcement process must be designed in such a way that the physical and mental health of the detained persons is not impaired. This includes all appropriate, necessary and reasonable measures to prevent the special risks of infection resulting from the restrictions on freedom of movement.

The suspension of the so-called "open-detention" was a temporary response to the formation of a COVID-cluster at the PAZ Hernalser-Gürtel. In principle, detention awaiting deportation has continued to be held in open wards since the beginning of the pandemic. However, this form of detention had to be suspended for an initial period of two weeks on 8 November 2021 after having obtained the advice from the chief medical officer in favour of this measure and after informing the Ombudsman Board. Due to the high rate of COVID-infections, "opendetention" was no longer justifiable despite the preventive measures applicable nationwide (quarantine of access, hygiene measures, prevention of simultaneous mixing of more than 16 persons, obligation to wear an FFP2 mask outside the cells, etc.), as system-critical intramural infection dynamics had to be expected. After a one-time extension, the measure could be terminated on December 7, 2021, and since then detention awaiting deportation has again taken place in open wards, but still in strict compliance with the restrictions ordered nationwide to minimize the epidemiological risk in detention. These restrictions only permit the simultaneous opening of two or - depending on the state of the floor - a maximum of three cells per ward or residential group, in order to prevent the mixing of more than 16 persons. However, these exclusively pandemic-related restrictions do not amount to a closed prison, nor can the opening step demanded by the Committee be justified at present without jeopardizing the maintenance of the prison system with its constitutional guarantees.

The ordered measures are regularly reviewed and adjusted accordingly in consultation with medical experts. With regard to the opening hours, it should be noted that the decree on Explanatory Notes on the Detention Regulations - Standards in the Execution of Administrative Penalties and Detention pending Removal (Erläuterungen zur Anhalteordnung (AnhO) - Standards im Verwaltungsstraf- und Schubhaftvollzug) of 23 June 2022, stipulates under "Principles of detention awaiting deportation in open wards" that the cell doors are to be "kept open (unlocked) for at least 10 hours every day, or longer if possible "outside the night-time rest period specified in the respective police detention center.

### **Vienna-Josefstadt Prison – daily access to outdoor exercise**

#### **Para 78:**

With regard to the Committee's request that the authorities take steps to ensure that newly arrived prisoners who are placed in quarantine at Vienna-Josefstadt Prison are offered daily access to outdoor exercise for at least one hour, the Federal Ministry of Justice informed as follows:

As soon as the Austrian authorities were made aware of the circumstances by the Committee, measures were taken. In particular, the management of the Vienna-Josefstadt Prison has drawn up a concept to ensure that its inmates in quarantine units have the possibility to spend time outdoors every day. The utilization and distribution of the available exercise yards has been adapted accordingly. The *Directorate General for the Administration of Custodial Sanctions and Measures involving Deprivation of Liberty* in the Federal Ministry of Justice approves the efforts made by the Vienna-Josefstadt Prison and currently does not see any need for further orders and measures. However, it should be noted that inspections and discussions are nevertheless held at regularly.

### **Mauer Regional Hospital –direct-acting antiviral (DAA) treatment**

#### **Para 143:**

With regard to the Committee's request for information on the assessments for direct-acting antiviral (DAA) treatment and on the subsequently provided treatment regarding five mentioned patients at Mauer Regional Hospital, the Office of the Federal Government of Lower Austria informed as follows:

Hepatitis screening of the patients of the Department of Forensic Psychiatry in Mauer was performed. In five cases, hep C was confirmed by a positive PCR examination. Further diagnostic clarification was carried out at the St. Pölten University Hospital, Internal Medicine Department. The specialists of the Department of Gastroenterology and Hepatology under the direction of Prim. Priv.-Doz. Dr. Andreas Maieron will draw up a treatment plan. If treatment with DAA is indicated, it will be started as soon as possible. The necessary control examinations will also be carried out in cooperation with the 2nd Internal Department of the University Hospital St. Pölten.