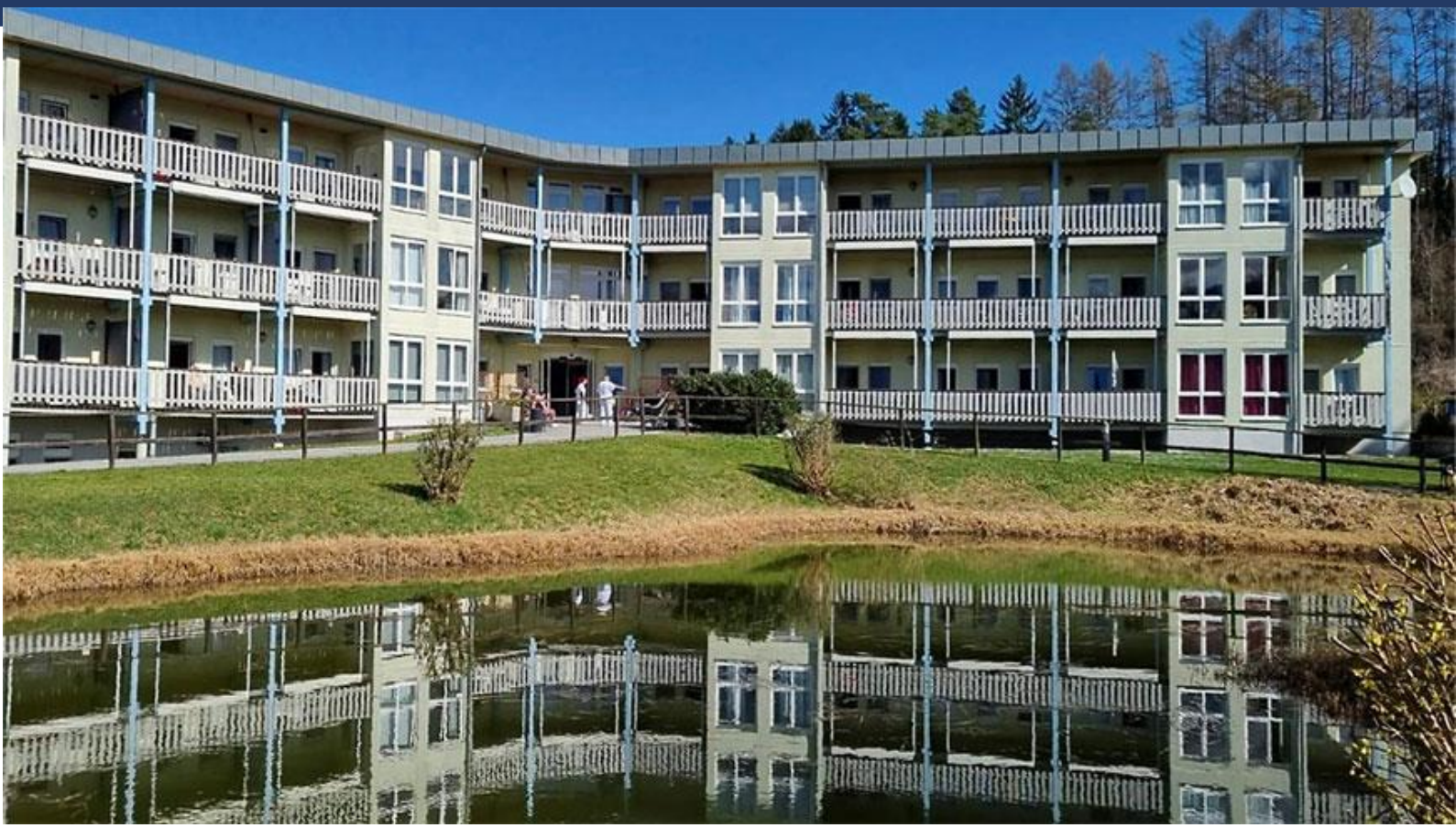
VISIT REPORT

AUSTRIA

March 2025



CPT

EUROPEAN COMMITTEE FOR THE PREVENTION OF TORTURE AND INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

AD HOC VISIT

18 - 28 March 2025

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COUNCIL OF EUROPE

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European Committee for the
Prevention of Torture and Inhuman
or Degrading Treatment or Punishment

Ad hoc visit | 18 - 28 March 2025

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Council of Europe

Contents

EXECUTIVE SUMMARY

The purpose of this visit was to examine the treatment of persons accommodated in residential care homes. To this end, the CPT delegation visited four privately run institutions, two in the state of Lower Austria – Beer Home in Neulengbach, SeneCura Home in Purkersdorf, and two in the state of Styria – Sanlas Holding Margarethenhof Home in Voitsberg, and Althea Koralmblick-Frauental Home in Frauental an der Laßnitz.

The delegation received no allegations, and found no other indications, of ill-treatment of residents by staff in the establishments visited. On the contrary, many residents spoke very positively about staff, and the atmosphere in the homes visited appeared generally relaxed and welcoming.

The living conditions in all homes visited were good or even very good in terms of living space, maintenance of facilities and the standard of hygiene. Most residents were accommodated in single rooms with en-suite facilities, which were bright, clean, spacious, and provided a homely and individualised environment with a sufficient degree of privacy.

The CPT notes that all homes visited, except for the Margarethenhof Home, were experiencing staff shortages which were felt both by management teams (who were trying to address the problem by reducing the capacity of the institution, recruiting temporary staff or training and hiring staff from other countries) and the residents (who seemed to self-censor their requests for staff assistance, like, for example, to have shower more often or to be accompanied outside in a wheelchair).

On a positive note, the Committee notes that the staff of residential care institutions are legally required to undergo regular continuous professional development covering a wide variety of topics and recommends that the Austrian authorities ensure the implementation of this requirement and that prevention of violence in care is an integral part of staff training.

As regards care provided to residents, the report also positively notes that every resident had an electronic individual written care and rehabilitation plan which demonstrated an individualised approach in terms of care needs, therapeutic interventions and occupational and recreational activities, and which was subject to a periodic review (effectively involving the resident whenever possible). The plans were based upon professional, theoretical care models, aiming for an individual-needs-based, systematic and structured approach to multi-disciplinary care.

Furthermore, the Committee positively notes that the system of reporting freedom restriction measures to the network of residents' representatives (*Bewohnervertretung*) who then actually check their proportionality and, if in doubt, challenge them in court, is a very strong safeguard. However, the CPT was concerned to note that not all cases of pharmacological freedom restriction measures were recorded as such and reported.

As regards legal safeguards, the CPT recommends that the Austrian authorities ensure that every admission to a residential care institution based on the application of a person or their representative is accompanied by a legally valid contract signed by the person concerned or by their representative.

I. INTRODUCTION

A. The visit, the report and follow-up

1. In pursuance of Article 7 of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (hereinafter referred to as "the Convention"), a delegation of the CPT carried out an ad hoc visit to Austria from 18 to 28 March 2025.

The visit was considered by the Committee "to be required in the circumstances" (cf. Article 7, paragraph 1, of the Convention) and its objective was to examine the treatment of persons accommodated in residential care homes. It was the Committee's eighth visit to Austria.[1]

2. The visit was carried out by the following members of the CPT:

- Gunda Wössner, 2nd Vice-President of the CPT (Head of delegation)
- Gergely Fliegauf
- Elisabetta Zamparutti.

They were supported by Dalia Žukauskienė of the CPT Secretariat and assisted by an expert, Margarete Osterfeld, psychiatrist (Germany).

3. In the course of the visit, the delegation visited four residential care homes; two in the state of Lower Austria (Beer Home in Neulengbach and SeneCura Home in Purkersdorf), and two in the state of Styria (Sanlas Holding Margarethenhof Home in Voitsberg and Althea Koralmblick Home in Frauental).

4. The report on the visit was adopted by the CPT at its 117th meeting, held from 30 June to 4 July 2025, and transmitted to the authorities of Austria on 11 July 2025. The various recommendations, comments and requests for information made by the CPT are set out in bold type in the present report. The CPT requests that the authorities of Austria provide within three months a response containing a full account of action taken by them to implement the Committee's recommendations, along with replies to the comments and requests for information formulated in this report.

B. Consultations held by the delegation and cooperation encountered

5. In the course of the visit, the delegation held consultations with Ulrike Königsberger-Ludwig, State Secretary of the Federal Ministry of Social Affairs, Health, Care and Consumer Protection, as well as with other senior officials from the Ministry and from Offices of the Provincial Governments. In addition, talks were held with the NPM team of the Austrian Ombudsman Board. The delegation also met representatives of the non-governmental organisation VertretungsNetz, which is active in areas related to the focus of the visit.

6. The CPT delegation received excellent cooperation during the visit from the Austrian authorities at all levels. The delegation had rapid access to the residential care homes it wished to visit, was able to meet in private with those persons with whom it wanted to speak and was provided with access to the information required to carry out its task.

The Committee wishes to express its appreciation for the assistance provided to its delegation during the visit by the management and staff in the establishments visited, as well as to the support offered by its liaison officer from the Federal Ministry for European and International Affairs, Christina-Maria Lenhardt.

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1. The visit reports and the responses of the Austrian authorities on all previous visits are available on the CPT website: https://www.coe.int/en/web/cpt.

II. FACTS FOUND DURING THE VISIT AND ACTION PROPOSED

Residential Care Homes

1. Preliminary remarks

7. The current long-term care system in Austria was developed in the 1990s, the two main components being long-term care allowances and long-term care services. A federal long-term care allowance can be received upon application and is awarded based upon an individual's particular need for care.[2] Long-term care services, including home care and institutional care, are provided independent of the long-term care allowance and are organised and financed by the federal states.[3]

8. According to the Austrian authorities, in 2022, around 96 000 people were cared for by institutional care services,[4] including in short-term accommodation (for example, for respite care when the carer is on holiday) and transitional care (for example, during rehabilitation after a stay in a hospital).

9. As mentioned in paragraph 3 above, during the 2025 visit, the CPT delegation visited, for the first time, Beer Home in Neulengbach, SeneCura Home in Purkersdorf, Sanlas Holding Margarethenhof Home in Voitsberg, and Althea Koralmblick-Frauental Home in Frauental an der Laßnitz; all the establishments were privately run.

10. Beer Home is situated on the outskirts of the town of Neulengbach in Lower Austria. It is a residential care home owned by the Beer family, providing care to people with chronic mental illness and/or neurological disorders.

With an official capacity of 182 beds, at the time of the visit the establishment was accommodating 160 adult residents – 91 men and 69 women.[5] The primary diagnosis of half of the residents was schizophrenia in its various forms, some 27% of residents had organic mental disorders, other diagnoses included addictive disorders, affective and personality disorders, and a very small number (five residents) were diagnosed with intellectual disability. Only 11 residents were deemed to be legally competent (see section 5 below on safeguards for more information regarding the representation of persons with limited legal capacity).

11. SeneCura Home located in the town of Purkersdorf in Lower Austria (Purkersdorf Home) is a residential care home for older people which also provides care for persons in a persistent vegetative state (eight at the time of the visit). It is owned by SeneCura, the country's largest residential care homes operator, which is reportedly managing 85 care facilities with approximately 7 000 beds.

With an official capacity of 78 beds, at the time of the visit, the establishment was accommodating 77 adult residents[6] – 32 men and 45 women. Half of the residents were persons with organic mental disorders (including various forms of dementia), while the rest were persons with affective disorders, persons recovering after cerebrovascular events, or those diagnosed with schizophrenia; 30 residents were deemed to be legally competent.

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2. The long-term care allowance is an income-independent benefit intended to cover additional care-related expenses. It is granted in seven stages, depending on the level of care required, ranging from €192 to €2 061 per month (2024 data).
3. Residential care fees differ between federal states but generally range from €90 a day (Carinthia and Salzburg) to €223 in Vienna (data from 2023 Long-Term Care landscape in Austria InCARE Short Report). The proportion paid by the resident depends upon their income (including any long-term care allowance which they receive). If the resident cannot cover the fees themselves, they receive state assistance.
4. Information taken from the "Implementation report on the Council Recommendation on access to affordable high-quality long-term care", provided in 2024. The Council Recommendation on affordable high-quality long-term care was adopted by the Council of the European Union on 8 December 2022 as part of the Care Strategy. It invites the EU member states to take action to improve access to affordable, high-quality long-term care for all people who need it.
5. A male resident died during the first day of the CPT visit to the institution.
6. Three residents were away in a somatic hospital for treatment.

12. Margarethenhof Home located in the town of Voitsberg in Styria is a residential care home for people with chronic mental illness. It is owned by Sanlas Holding, a company providing healthcare and residential care services in 14 facilities throughout Austria.

With an official capacity of 140 beds, at the time of the visit, the establishment was accommodating 138 adult residents – 75 men and 63 women. The main diagnosis among the residents was schizophrenia in its various forms (some 56%), followed by residents with affective disorders and personality disorders, alcohol addiction, and four residents with intellectual disability; 68 residents were deemed to be legally competent.

13. Althea Koralmblick-Frauental Home located in the town of Frauental an der Laßnitz (Frauental Home) is a residential care home for older people. It is owned by Althea, the largest residential care homes operator in Styria, managing 11 facilities.

With an official capacity of 150 beds, at the time of the visit, the establishment was accommodating 122 adult residents[7] – 44 men and 78 women. Half of the residents were persons with organic mental disorders (including various forms of dementia), while the other half were older persons with (mostly) somatic health problems; 82 residents were deemed to be legally competent.

14. According to Article 179a of the Act on the Execution of Prison Sentences (*Strafvollzugsgesetz* – StVG), an offender who is conditionally released from prison or a forensic therapeutic centre may be instructed to reside in a socio-therapeutic residential facility (Article 51(2) of the Criminal Code (*Strafgesetzbuch*, StGB)) or to continue rehabilitation, psychotherapeutic or medical treatment (Article 51(3) of the Criminal Code).[8] The Committee notes that Beer and Margarethenhof Homes were accommodating some conditionally released persons – 10 in Beer Home and eight in Margarethenhof Home (see section 3 below on care for more information regarding such residents).

15. The delegation received no allegations, and found no other indications, of ill-treatment of residents by staff in the establishments visited. On the contrary, many residents spoke very positively about staff, and the atmosphere in the homes visited appeared generally relaxed and welcoming. The caring attitude and the commitment of staff were particularly visible in Margarethenhof Home.

As regards violence between residents, some quarrels occurred between residents in the homes visited, but the delegation were advised, and witnessed themselves, that staff intervened immediately and adequately to calm the situation and prevent further escalation. The Committee further positively notes that, in Frauental, Purkersdorf and Margarethenhof Homes, staff were provided with guidelines and/or training on dealing with aggressive residents.

The CPT trusts that the Austrian authorities will ensure that prevention of violence in care is an integral part of the continuous professional development[9] and that all residential care institutions have relevant guidelines.

2. Residents' living conditions

16. The living conditions in all homes visited were good or even very good in terms of living space, maintenance of facilities and the standard of hygiene. The majority of residents were accommodated in single rooms with en-suite facilities, which were bright, clean, spacious, and provided a homely and individualised environment[10] with a sufficient degree of privacy (all residents had keys to their rooms, and couples could live together).

7. One resident was away on home leave.
8. According to Article 48 of the Criminal Code, the probationary period for conditional release from a prison sentence is at least one year and at most three years. If a person is conditionally released to continue treatment (to which they have agreed), the probationary period is at least one year and at most five years. The probationary period upon release from a forensic therapeutic centre (for criminally irresponsible persons under criminal detention) is 10 years.
9. See paragraph 29 for more information on staff training.
10. In all homes visited, residents had the opportunity to bring items of their own furniture.

Modern communal bathrooms were equipped with baths adapted for persons in need of intensive assistance or with limited mobility (who were also provided with special anti-decubitus mattresses to prevent bed sores). All establishments had elevators and outside ramps to assist the residents' access to the outside space.

17. Beer Home was established in 1927 and since then has been managed by successive generations of the Beer family. The residents were accommodated in an L-shaped building of four floors (which was significantly expanded in 1994). Those residents in need of continuous assistance lived on the ground floor, with the most independent residents accommodated on the top floor.[11] The majority of the rooms were single; multiple-occupancy rooms had two to four beds per room.

Purkersdorf Home is a purpose-built residential care home which opened in 2005. A three-storey building (adjacent to a kindergarten) accommodated the residents on the first and second floor, in single or double rooms.[12] The garden (with hutches for rabbits which residents could pet) was accessible through a communal dining room on the ground floor.

Margarethenhof Home is a purpose-built residential care home which opened in 2000 and is situated in large grounds with an artificial pond and hutches for rabbits. The Y-shaped building accommodated residents on three floors, in single or double rooms, each with a balcony (some rooms had two balconies, one of which was enclosed). A very spacious basement level housed multiple rooms for activities, a canteen, a communal area, and a residents' coffee shop.

Frauental Home is a purpose-built residential care home which opened in 2022. The residents were accommodated in a three-storey T-shaped building, in single or double rooms (the ground floor rooms having a veranda). The first and second floors were divided into two wings – one for residents with dementia and the other for older residents with (mostly) somatic health problems. To assist those residents with dementia to better orientate themselves, the colours of the floor and walls were different between the two wings (the doors of staff offices were also coloured differently).

18. The delegation noted that, in Beer Home, residents with very different care needs were accommodated on the same units together. For example, persons with dementia or in need of very intensive care were housed alongside persons with mental disorders (schizophrenia, chronic depression, personality disorder).

Such a lack of separation of categories of residents is more likely to lead to inter-resident disputes (as witnessed by the delegation) and to have a negative impact on individualised care and the promotion of specifically adapted environments.

> **The CPT recommends that residential care homes accommodate residents with substantially different care needs in separate units, where the environment can be better tailored to their specific individual needs.**

3. Staff and care provided to residents

19. According to the Health and Nursing Care Act (*Gesundheits- und Krankenpflegegesetz* – GuKG), there are three categories of nursing staff – qualified healthcare and nursing staff (*Diplomierte Gesundheits- und Krankenpfleger:innen*), specialist nursing assistants (*Pflegefachassistent:innen*), and nursing assistants (*Pflegeassistent:innen*). In addition, residential care homes also employ care staff such as orderlies who have undergone nursing assistant training (*Heimhelfer:innen),* and ward assistants (*Stationshilfen*) who primarily perform tasks such as cleaning and assisting with personal hygiene, dressing, and eating.

11. An adjacent three-storey, old part of the establishment also housed 11 beds.
12. Residents in a persistent vegetative state were accommodated in four single rooms and two four-bedded rooms.

20. Beer Home employed 70 full-time equivalent (FTE) nursing staff (and had 11 FTE vacancies) and 13 FTE care staff working 12-hour shifts to provide care for up to 182 residents. During the day, there were usually 16 nursing staff and some nine care staff on duty, and during the night there were four nursing staff.

As regards the psycho-social rehabilitation staff, there was one occupational therapist, one physiotherapist, one music therapist, two social pedagogues, one trainee psychotherapist, and one vacant post for a psychologist.

Two general practitioners visited the establishment for two hours every working day (two more came twice a week to issue prescriptions), and a psychiatrist visited once a week.

21. In Purkersdorf Home, there were 39 nursing staff covering 36.5 full-time equivalents (FTE) and 5.7 FTE vacancies, and five FTE care staff working 12-hours shifts to provide care for up to 78 residents. In addition to the staff dedicated to caring for residents in a persistent vegetative state, during the day, there were usually some eight nursing staff and two care staff, and during the night, two nursing staff on duty; there were no psycho-social rehabilitation staff employed by the institution, and no vacancies for such staff.

Every resident had their own general practitioner who visited them when required (there were five such doctors). A neuropsychiatrist visited once a month for a whole day and a neuropsychologist once every two weeks for two to three hours.

22. In Margarethenhof Home, there were 40 FTE and 18 part-time nursing staff, and four FTE and one part-time care staff working 12-hour shifts to provide care for up to 140 residents. During the day, there were usually some 22 nursing staff and one or two care staff on duty, and during the night, three nursing staff. The psycho-social rehabilitation staff included two FTE and one part-time occupational therapists, and two FTE and three part-time social pedagogues; a psychologist visited twice a week for three to four hours.

Every resident had their own general practitioner who visited them when required (there were seven such doctors). Two psychiatrists visited once a week for three to four hours each.

23. Frauental Home employed 66 nursing staff covering 45.8 FTE (and had 12 vacancies) and nine care staff covering 6.6 FTE (with 3.5 FTE vacancies) working 12-hour shifts to provide care for up to 150 residents. During the day, there were usually some 19 nursing staff and two care staff on duty, and during the night, three nursing staff. There were no psycho-social rehabilitation staff employed by the institution, and no vacancies for such staff.

Every resident had their own general practitioner who visited them when required (there were eleven such doctors).

24. To conclude, all homes visited were experiencing staff shortages, except for the Margarethenhof Home which had a dedicated staff retention strategy. It was, therefore, not surprising that during interviews with residents, staff shortages were frequently raised. Many residents told the delegation that they were aware how overstretched the staff were and that they felt that staff had no time to provide anything beyond basic services. Thus, not wanting "to be a burden", a number of residents seemed to self-censor their requests for staff assistance, such as, for example, to shower more frequently[13] or to be accompanied beyond their room in a wheelchair[14].

13. A number of residents who needed assistance when showering stated that, although they were getting daily bed baths and staff assisted them to take a shower once or twice a week, they would have preferred to shower daily, but did not want to bother the staff, who seemed very busy.

14. For example, a few residents who needed assistance to move around in a wheelchair stated that they rarely went outside to the garden (or even to the dining room, in some cases) because they did not want to create extra tasks for the staff, who had already complained about their unmanageable workload.

25. The Committee notes the efforts of the homes visited to address the problem of staff shortages, especially nursing staff. Both Beer and Frauental Homes were reportedly not admitting new residents and were operating below their full official capacity because they had insufficient staff. Purkersdorf and Frauental Homes were filling some of their staff vacancies by hiring temporary staff from a pool service, but such a solution was not ideal as it did not allow a long-term relationship between the staff and residents to be established so as to maintain continuity of care. Moreover, all four homes had found it necessary to hire staff from other countries.[15]

The Committee further notes that, as part of the reform in long-term care made in 2022-23, the Austrian authorities have taken steps to enable members of the workforce who were trained abroad to practise their profession more quickly and to better facilitate the necessary nostrification[16] procedures. Furthermore, since the reform of the Red-White-Red (RWR) card[17] in 2022, skilled workers in shortage occupations – including qualified nurses, specialist nursing assistants and nursing assistants – can now obtain the necessary points for the RWR card more easily.[18]

26. **Given the fact that the demand for staff in residential care institutions will only grow,[19] the CPT recommends that the Austrian authorities further strengthen their efforts to ensure that there are sufficient numbers of appropriately trained nursing and care staff across all grades and disciplines.**

Moreover, during interviews with staff, they often raised the topic of there being different legal requirements regarding the staff-to-resident ratio in different federal states, as well as different salaries for the same staff categories, which often created "unfair" competition between neighbouring federal states when recruiting staff.[20] **The CPT would appreciate the comments of the Austrian authorities on this matter.**

27. The Committee notes that out of the four homes visited, only Purkersdorf Home was providing residents with preventive dental care. Reportedly, two dentists were visiting the institution every three months and checking on every resident.

The CPT recommends that the Austrian authorities ensure that adequate dental care (including preventative/conservative treatment) is provided in all residential care homes.

28. In all homes visited, the delegation noted a number of cases of polypharmacy, that is, the use of multiple prescription medications. Often, around half of prescribed medications taken by a resident were psychoactive (for example, memantine, quetiapine, citalopram, risperidone, lorazepam).

In the Committee's opinion, the issue of polypharmacy in residential care institutions should be taken very seriously due to the risks of interaction between different medications and potentially serious side-effects and complications. A medication review (involving the patient, if possible) should be performed regularly to allow a structured evaluation of the medications used with the aim of optimising treatment, improving health outcomes, and preventing harm. **The CPT trusts that the Austrian authorities will endeavour to ensure that these precepts are effectively implemented in practice in residential care institutions.**

15. For example, from elsewhere in the EU, India, Thailand, Kenya, Morocco etc. New staff were adequately trained and could speak German.
16. The recognition of a foreign professional training certificate or university degree as equivalent to an Austrian qualification.
17. A combined residence and work permit.
18. Other measures to attract staff taken by the Austrian authorities include the salary increase, additional week off, time credit for heavy night work, childcare services, official housing etc.
19. According to the Austrian National Public Health Institute, around 51 000 additional nursing and care staff will be needed in acute and long-term care institutions by 2030.
20. Reportedly, it was more difficult to recruit staff in regions bordering those federal states where the staff-to-resident ratio and salary was higher.

29. According to the Austrian legislation, the staff of residential care institutions are required to undergo regular continuous professional development, and the delegation saw annual training plans in all homes visited. They covered a wide variety of topics, including decubitus prevention, nutrition and diet, pain management, incontinence issues, first aid, wound management, aromatherapy, dementia, Validation,[21] palliative care, suicide prevention, nursing documentation etc.

In Margarethenhof Home, seven further qualification courses for staff with higher qualifications were also offered (each of which lasted several months). Furthermore, it was very positive that staff there were also provided with supportive supervision and counselling; the CPT recommends that such practice be introduced in all residential care institutions.

30. The delegation noted, however, that in Frauental Home not all staff members had undergone the mandatory amount of training, even though it was provided for free and during working hours.

The CPT recommends that the Austrian authorities ensure that all staff of the residential care institutions undergo the legally required amount of professional training.

31. Regarding the daily regime for residents, there was a range of occupational, rehabilitative, and recreational activities on offer in all homes visited. The quantity and variety were particularly impressive in Margarethenhof Home, where many residents were occupied with different activities throughout the day, a number of them carefully selected to address the needs of individual residents.[22] A coffee shop in Margarethenhof Home, where a number of residents worked several hours per day as baristas, was another very positive example of engaging residents in meaningful activities.

However, in Frauental and Purkersdorf Homes, there was a lack of activities and stimulation specifically tailored to persons with dementia, and in Beer Home, a number of persons with chronic mental disorders lamented the lack of any more meaningful and engaging activities than colouring or group walking.

The CPT recommends that the Austrian authorities take steps, in all residential care institutions, to offer a wide range of programmes of specifically tailored activities and stimulation, including in those institutions accommodating persons with very different profiles and needs together (for example, persons with chronic mental illness, persons with dementia, and older persons with somatic health problems). This will also require more staff qualified to provide such activities (for example, occupational therapists, special pedagogues, psychologists etc.)

32. Every resident had an electronic individual written care and rehabilitation plan which demonstrated an individualised approach in terms of care needs, therapeutic interventions and occupational and recreational activities, and which was subject to a periodic review (effectively involving the resident whenever possible). The plans provided a clear overview of multi-disciplinary interventions, their goals within the relevant timeline and achievements, and were based upon professional, theoretical care models, aiming for an individual-needs-based, systematic and structured approach to multi-disciplinary care.

33. The Committee positively notes that Margarethenhof Home has started staff training focused on interaction with residents conditionally released from prisons or forensic therapeutic centres, and that the individual rehabilitation plans of such residents had specific and relevant individualised interventions (for example, coping strategies for impulse control, training in activities of daily living etc.). However, this was not the case in Beer Home, where there were also a number of residents with chronic mental illness conditionally released from a prison or a forensic therapeutic centre.

21. Validation is a method of communicating and being with disoriented, very old people.
22. The activities on offer included individual therapy, group therapy, music therapy, creative workshops, occupational therapy, cognitive training, animal-based therapy, mindfulness training, gardening, daily skills training, games, and many others.

The CPT recommends that the Austrian authorities ensure that residential care institutions accommodating persons conditionally released according to Article 179a of the Act on the Execution of Prison Sentences develop specific individualised therapeutic care plans for this category of residents. Furthermore, staff working with such residents should receive training focused on specific relevant interventions and activities promoting their reintegration into the community. Finally, steps should be taken to ensure that such institutions employ adequately trained psychologists and, ideally, social workers to respond to the rehabilitative requirements of conditionally released persons.

34. The examination of relevant documentation and interviews with medical staff revealed that autopsies were not systematically being carried out following the unexpected death of a resident. The delegation was informed that this is not required by Austrian law.

In the Committee's view, just as is the case for other establishments in which persons may be deprived of their liberty by a public authority, when a resident in a residential care home dies unexpectedly, an autopsy should always follow, unless a medical authority independent of the establishment indicates that an autopsy is unnecessary.

Further, when a resident dies after having been hospitalised in an outside healthcare facility, the clinical causes of their death (and the conclusions of any autopsy performed) should be systematically communicated to the residential care home and the resident's family and/or adult representative.

The CPT recommends that the Austrian authorities take the necessary steps – including at the legislative level – to ensure that, whenever a resident dies in a residential care home or, following a transfer from it, in a hospital:

- **the death is promptly certified by a medical doctor on the basis of the resident's medical history, the circumstances of their death, and a physical examination;**

- **an autopsy is carried out unless a clear diagnosis of a fatal disease has been established prior to death by a doctor, and that disease led to their death. In order to prevent any potential conflict of interest, this assessment should be performed by a medical authority independent of the residential care home;**

- **whenever an autopsy is performed, its conclusions are systematically communicated to the management of the residential care home, with a view to ascertaining whether there are lessons to be learned as regards operating procedures;**

- **a record of the clinical causes of residents' deaths is kept at the residential care home.**

- **Further, when a resident dies under suspicious circumstances or following an injury, relevant investigative authorities should always be informed.**

4. Restrictive measures

35. The Committee notes that according to Austrian legislation, namely the Nursing and Residential Homes Residence Act (*Heimaufenthaltsgesetz*), a resident who is mentally ill or mentally disabled may be subjected to a freedom restriction measure (*Freiheitsbeschränkung*), which can only be imposed under certain conditions (all of which must be met and documented at the same time):

- there is a serious, significant and current danger to oneself or others,
- the form of restriction chosen must be appropriate, suitable and indispensable for the prevention of danger,
- no other milder nursing, care or organisational measures or alternatives are possible.[23]

Moreover, the Austrian legislation requires that any restriction of freedom must represent the least possible intrusion and may only be used for as short a time as necessary. If the resident's freedom is restricted for longer than 48 hours or repeatedly beyond this period, the head of the establishment must immediately obtain a medical certificate stating that the resident is mentally ill or mentally disabled and, in connection with this, is seriously and significantly endangering their own life or health or those of others.

36. The Committee notes that the law does not provide an exhaustive list of freedom restriction measures. However, it was noted that any mechanical, electronic or pharmacological means used to make it impossible for a person to change their location within an institution according to their own wish (or even a threat to use it) could be considered a freedom restriction measure, including:

1) Preventing a person from leaving an area by:
   - locking a room, ward, or entrance door;
   - a complicated door opening mechanism;
   - door/elevator codes or alarm/monitoring systems;
   - personal tracking devices which facilitate retrieval or prevent departure;
   - labyrinth-like corridors or gardens;
   - use of a "time-out" room (isolation room);
   - manual holding;
   - removal of walking aids.

2) Preventing a person from leaving a chair or a wheelchair by:
   - securing a resident to a chair/wheelchair with a belt, pelvic belt (*Sitzhose*) or a seat vest (*Sitzweste*);
   - applying wheelchair brakes which a resident is unable to release;
   - putting a table (including a therapy table) in front of a chair/wheelchair, which a resident is unable to move.

3) Preventing a person from leaving the bed by:
   - raising bedrails;
   - using mechanical restraint belts;
   - putting objects in front of the bed as obstacles.

4) Not providing a person with necessary mobilisation, physiotherapy, a suitable wheelchair etc.

5) Administration of medication which reduces the ability to or weakens the desire to move.[24]

37. The residential care institutions are obliged to report every freedom restriction measure to the residents' representatives (*Bewohnervertretung*). These are state-funded non-governmental organisations whose mission is to ensure that persons in residential care homes are not subjected to excessive freedom restriction measures.

The residents' representatives (*Bewohnervertretung*) can check such reports directly on site. To do this, they may speak to the resident, the person who ordered the measure, or other staff members. They inspect the care and nursing records of the resident concerned and may suggest alternatives.

23. Depending on the type of a freedom restriction measure, the relevant professional group (doctors, senior nurses and senior pedagogues) is responsible for the order. For example, restriction of freedom through medication can only be ordered by a doctor.
24. This list and further examples are provided in the VertretungsNetz brochure on the Nursing and Residential Homes Residence Act.

The residents' representatives can apply to the competent district court to review the freedom restriction measure. In the judicial review procedure, they represent the interests of the resident. The resident, their legal representative, their person of trust and the head of the establishment are also entitled to apply for a judicial review of a freedom restriction measure.

38. In the Committee's view, the system of reporting freedom restriction measures to the network of residents' representatives who then actually check their proportionality and, if in doubt, challenge them in court, is a very strong safeguard.

Furthermore, it is commendable that the homes visited, except for Beer Home, reportedly regularly consulted the residents' representatives on what constituted a freedom restriction measure, especially pharmacological ones; the CPT recommends such practice in all residential care institutions.

39. The delegation consulted the registers of freedom restriction measures and the reports to the residents' representatives in all four homes visited and found no indication of an excessive resort to these measures (see, however, paragraph 40 below regarding the reporting of pharmacological freedom restriction measures).

On the day of the visit, in Beer Home, three residents had their bed rails raised when in bed, and one was not allowed to leave the institution alone as it was feared he was too confused to find his way back.

In Purkersdorf Home, 10 residents had mechanical and electronical freedom restriction measures (personal tracking device, chest belt, pelvic belt, therapy table), and 44 residents had pharmacological freedom restriction measures, some multiple.

In Margarethenhof Home, four residents had mechanical freedom restriction measures, sometimes multiple (personal tracking device, chest belts, bed rails, locked in a room at their own request), and six had pharmacological freedom restriction measures, some of them multiple.

In Frauental Home, twenty residents had mechanical freedom restriction measures, sometimes multiple (personal tracking device, bed rails, therapy table, not allowed to leave the institution alone), and twenty-six had pharmacological freedom restriction measures, some of them multiple.

40. The Committee is, however, concerned to note a rather different interpretation of the Nursing and Residential Homes Residence Act in the homes visited as regards the recording and reporting of the use of pharmacological freedom restriction measures. This led to cases whereby the use of medication, which could be seen as a freedom restriction measure (chemical restraint), was always reported in Frauental and Margarethenhof Homes, but only in certain cases in Purkersdorf Home, and very rarely in Beer Home.

The Committee recommends that the Austrian authorities ensure a coherent application of the Nursing and Residential Homes Residence Act across all federal states, whereby all cases of the use of medication as a freedom restriction measure are always recorded and reported.

5. Safeguards

41. The Committee notes that admission to residential care homes falls under the scope of the Civil Code (*Allgemeines bürgerliches Gesetzbuch* – ABGB).

According to Article 257 of ABGB, an adult person who is capable of decision making must decide themselves upon a change to their place of residence. If they are not capable of making decisions, an authorised person or an adult representative (*Erwachsenenvertreter*, see more in paragraph 44 below) whose area of responsibility covers this matter must make the decision if this is necessary to protect the wellbeing of the person represented. If the place of residence of the person represented is to be changed permanently, court approval is required beforehand.

42. In practice, the admission of a person to a residential care home is based on an application, which must be accompanied by documents confirming that they meet the level of care required for eligibility. The person is then placed on a waiting list and, once a place becomes available, a contract is signed by the person, or their adult representative, shortly before their actual admission to the establishment. The contract may be terminated by a resident at any time and the resident must then be discharged from the establishment.[25]

43. The delegation consulted the legal files of the residents in all four homes visited. Regarding the legal safeguards surrounding admission to the institutions, the Committee found that only eight out of 160 residents in Beer Home had written contracts regarding their placement, signed either by themselves or their adult representative (in the other three homes, the signed contracts were available for every resident). The Director of Beer Home explained to the delegation that, in all other cases, the basis for admission was some sort of a "gentleman's agreement" between a Director and the resident (or their adult representative) which, in the Committee's opinion, is obviously not sufficient to serve as a legal basis for a person's placement in a social care institution.

> **The CPT recommends that the Austrian authorities ensure that every admission to a residential care institution based on the application of a person or their adult representative is accompanied by a legally valid contract signed by the person concerned or by their adult representative.**

44. The Committee further notes that in 2018 the Austrian Parliament adopted the Second Protection of Adults Act (*2. Erwachsenenschutz-Gesetz* – 2.Erw-SchG) which aims to modernise the guardianship system for adults with limited legal capacity, focusing upon autonomy, self-determination and decision-making guidance. The new law introduced four forms of adult representation:

1. Enduring power of attorney – this can be set up for an indefinite period but cannot take effect until the person concerned is no longer able to make their own decisions. Supervision by the court is essentially limited to approving decisions when the attorney and the person represented disagree regarding medical treatment.

2. Elective representation – a person can choose a representative (usually someone with close links to the individual concerned) even if they no longer have full legal capacity. However, they must be able to understand the consequences of appointing the representative, at least in broad terms, and act accordingly. This scheme, valid indefinitely, is subject to supervision by the court.

3. Statutory representation – exercised usually by family members and relatives, this is subject to court supervision and must be reviewed by the court every three years.

4. Court-appointed representation – seen as the last resort, this ceases to apply after the specific matter it relates to has been dealt with, or after three years, whichever is sooner. The powers of the representative are clearly restricted to particular matters and the legal capacity of the person represented is in principle retained.[26]

45. The Committee observed different practices in the homes visited regarding the periodic review of statutory and court-appointed representation by a court every three years. In the Committee's view, it is very positive that the staff from the Margarethenhof Home accompanied the residents to the court hearings and that the residents from Frauental and Beer Homes were heard in person by a judge who came to the institution to see them.

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25. If a resident is not capable of making such decisions, court approval is required for terminating the contract (permanent change of residence). If there is a disagreement between a resident and their adult representative, the resident is assigned a representative from the adult protection association (*VertretungsNetz*) who will also carry out a place of residence assessment.

26. For more information, see the brochure of the Federal Ministry of Constitutional Affairs, Reforms, Deregulation and Justice on The New Adult Protection Law.

However, in Purkersdorf Home, the delegation was informed that the renewal of adult representation was "automatic", and that the residents concerned were not heard in person by a judge (there was no record of a judge visiting the institution or the residents attending the court hearings in person or online). This seems to be in breach of Article 128 of the Non-contentious proceedings Act (*Außerstreitgesetz* – AußStrG), which requires the court to obtain a personal impression of the person involved in the proceedings regarding the renewal of adult representation. **The CPT would appreciate the comments of the Austrian authorities on this matter.**

46. As regards consent to treatment, this is also regulated by the Civil Code (ABGB), depending upon the decision-making capacity of the person concerned.

According to Article 252 of ABGB, an adult person who is capable of making decisions can only consent to medical treatment themselves. If the doctor considers an adult person to be incapable of making decisions, they must make a demonstrable effort to involve relatives, other close people, confidantes and specialists who are particularly experienced in dealing with people in such situations, and who can support the adult person in regaining their decision-making capacity (unless the patient objects to such involvement).

According to Article 253 of ABGB, medical treatment of an adult who is not capable of making decisions requires the consent of their healthcare proxy or adult representative whose area of responsibility includes this matter. In doing so, that person must be guided by the wishes of the person represented. In cases of doubt, it must be assumed that the person wants the medically indicated treatment. The reasons for and significance of the medical treatment must also be explained to the person who is not capable of making decisions, at the time of treatment, as far as is possible and if it is not detrimental to their wellbeing.

Finally, according to Article 254 of ABGB, if a person who is not capable of making decisions indicates to their healthcare proxy or adult representative, or to the doctor, that they refuse medical treatment or its continuation, the consent of the healthcare proxy or adult representative to the treatment requires the approval of the court.

47. In the Committee's view, all persons in the residential care homes (and, when they lack legal capacity, also their adult representatives) should be systematically provided with information about their condition and the treatment prescribed for them, and the doctors should be instructed to always seek the resident's written consent to treatment prior to its commencement.

This could be done by means of a special form for informed consent to treatment, signed by the resident and (if they lack capacity) by their adult representative. A resident capable of discernment should have the right to refuse treatment. Exceptions from this rule may only be applied based on the law and clinical protocols. Further, involuntary treatment should be accompanied by safeguards such as the possibility of another, independent, medical assessment to authorise administration of specific medication on an involuntary basis for the shortest possible time. The resident should also be able to challenge involuntary treatment decision before an independent outside authority and must be informed of this right in writing.

The Committee notes that residents with full legal capacity were allegedly informed about the treatment and gave their consent verbally. As regards those residents with limited capacity, their adult representatives were allegedly informed verbally about the treatment proposed, although not systematically.[27]

> **The CPT recommends that the Austrian authorities ensure that in all residential care institutions a documented informed consent to treatment, signed by the resident concerned or their adult representative, is sought prior to commencing or changing treatment, as required by the national legislation.**

27. In Beer Home, for example, there seemed to be an assumption by the treating psychiatrist that the adult representatives, especially when they were not family members, were not really interested in knowing about the treatment of the persons they represented.

48. Arrangements for residents' contact with their families or friends were very good and require no further comment.[28] It is also positive that a detailed information brochure (in a format accessible to residents) was given upon admission to Purkersdorf and Margarethenhof Homes, setting out the establishment's routine, accommodation conditions and the services available.

The Committee recommends that such brochures are provided to the residents in all residential care institutions.

49. As regards complaints mechanisms, each home visited had complaint boxes easily accessible to the residents which, according to the staff, were usually empty. Reportedly, the residents preferred to raise their complaints orally and directly with the staff. However, neither oral, nor the rare written complaints, were recorded in any of the homes visited.

The CPT recommends that, in all residential care institutions, registers are introduced which record complaints/themes (including those orally communicated), the responses given (within agreed time frames), and the actions taken. Such registers, where applicable, should demonstrate multi-disciplinary learning from the complaint(s) (and any investigations), as well as any revised approaches taken to improve the quality of care offered to residents.

As regards inspections and external monitoring, all four homes were regularly visited by different federal supervisory authorities as well as the Austrian National Preventive Mechanism (NPM).

28. Residents had a virtually unrestricted possibility to receive visits and could keep their mobile phones.

"NO ONE SHALL BE SUBJECTED TO TORTURE OR TO INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT"

Article 3 of the European Convention on Human Rights

Established in 1989 by the Council of Europe Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, the CPT's aim is to strengthen the protection of persons deprived of their liberty through the organisation of regular visits to places of detention.

The Committee is an independent, non-judicial preventive mechanism, complementing the work of the European Court of Human Rights. It monitors the treatment of persons deprived of their liberty by visiting places such as prisons, juvenile detention centres, police stations, immigration detention facilities, psychiatric hospitals and social care homes. CPT delegations have unrestricted access to places of detention, and the right to interview, in private, persons deprived of their liberty. They may access all the information necessary to carry out their work, including any administrative and medical documents.

The CPT plays an essential role in promoting decency in detention, through the development of minimum standards and good practice for states parties, as well as through coordination with other international bodies. The implementation of its recommendations has a significant impact on the development of human rights in Council of Europe member states and influences the policies, legislation and practices of national authorities regarding detention.

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