

## **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 visit to Austria**

**from 22 September to 1 October 2014**

The Austrian Government has requested the publication of this response. The CPT's report on the September/October 2014 visit to Austria is set out in document CPT/Inf (2015) 34.

Strasbourg, 6 November 2015

**Response Statement by the Republic of Austria concerning the Report by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) on its visit to Austria from 22 September - 1 October 2014.**

Vienna, 15 October 2015

**I. Introduction**

The European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment has entered into force in Austria on 1 May 1989. Since then the European Committee for the Prevention of Torture has visited Austria six times: in 1990, 1994, 1999, 2004, 2009 and 2014.

Austria is grateful for the good cooperation during these visits, takes note with great interest of the recommendations and comments made by CPT and will use them as valuable basis for improvements.

The following Austrian statements are broken down according to the CPT report.

**II. Recommendations, Comments and Requests for Information by CPT**

**Dates of the visit and composition of the delegation**

**Concerning item 6**

Until the start of the visit to the Otto Wagner Psychiatric Hospital (hereinafter OWS) on Friday, 26 September 2014, in view of the designation of the team as “visiting delegation” there were differences in opinion between CPT and the Vienna hospital management group about the powers and competencies of CPT, which however could be quickly resolved on Friday following consultations with the Federal Ministry of Health, whereupon the demands made by CPT could be fulfilled.

It cannot be disputed, that these clarifications (powers and competencies of the visiting delegation) could not be unambiguously communicated to all stations of OWS still on Friday afternoon (26 September 2014).

The fact was, however, that the manager of the care services and his deputy, in agreement with the Medical Manager, in the evening of Friday personally visited all stations of the psychiatric centre of OWS, and the stations of the care centre (with the exception of one station, which was informed by the senior physician on duty), to hand over a copy of the “authorisation decree” and to make sure that the entire staff on duty had the latest information before starting their work on the next day. During the concluding discussion on Saturday, 27 September 2014, CPT members confirmed orally that there had been no further problems in this matter.

**Concerning item 7**

The fact that in the Stein Prison the name of all detained persons interviewed by the delegation were collected with a view to transmitting them to the Ministry of Justice was based on a regrettable misunderstanding, which will not be repeated. The responsible persons at the Stein Prison have been informed accordingly.

The responsible authorities had no intention to interfere with the work of CPT. All departments were instructed accordingly, no longer to collect any data of persons CPT had interviewed.

## **General Issues**

### **Concerning item 9**

Since autumn 2013, suicides in institutions of custodial sentences and involuntary forensic placement have been promptly reported by the Penal Services Directorate to the Ombudsman Board. Due to a reorganisation of the administration of custodial sentences and measures such reports about suicides and suicide attempts are being reported since mid-2015 by staff members of the Directorate General for the Administration of Custodial Sentences and Measures involving Deprivation of Liberty.

Whether accusations of ill-treatment against penal services officers shall in future be reported to the Ombudsman Board, and in which manner, is being assessed at present.

## **Police Custody**

### **Concerning item 12**

In item 12, 5<sup>th</sup> paragraph mention is made about bringing asylum seekers before the “Federal Asylum Agency” (Bundesasylamt). On 1 January 2014 the Federal Asylum Agency was replaced by the Federal Office for Immigration and Asylum. The term “Federal Asylum Agency” should therefore be substituted by “Federal Office for Immigration and Asylum”.

### **Concerning item 14**

Austria has year-long, practice-oriented experience in concerns of human rights, which through active involvement of civil society forms an essential basis for sustainable training programmes. Such programmes range from comprehensive tolerance instruction during basic and continuous training to deployment training units. One of the major objectives during basic and continuous training within the police organisation is on-going development and professionalisation of impact-oriented comprehensive understanding of the significance of human rights.

Training units communicate to police officers the necessary conviction and attitude to fulfil the role and take over the responsibility of the police in a state under the rule of law, include, in addition to an overall assessment of human rights, a description of the various manifestations of discrimination, and convey the social and cultural competence to deal with ethnic, social and physical differences. The provisions of the Convention against torture and other cruel, inhuman or degrading treatment or punishment (CAT) are communicated to officers, particularly sharpened and deepened by multipliers. A further special feature of basic and continuous training of police officers is the consideration of all areas of personal and institutional discrimination (ethnic origin, gender, disability, etc.). Positive experiences gained have led to a recent expansion of thematic fields, which now also include “awareness-raising in language use” and “hate crime”.

During basic and continuous training of members of the Austrian executive branch and officers of the security administration the subject matter dealing with mentally ill persons and related issues is being particularly addressed in the curriculum of the following courses for mid-level management:

In the course “intervention against certain groups of persons” course participants are to be trained to muster legal and practical confidence when acting during intervention against certain persons and groups of persons.

In the course “applied psychology” participants are taught selected contents and subject areas of applied psychology, which matter for police actions in general, and for their future employment in particular, thereby becoming aware and expanding their social behavioural competence accordingly. During this course, participants further learn to better perceive and understand themselves and others, and to become aware of social phenomena.

Furthermore it must be mentioned that the full-time lecturer demonstrates professional ethics, communication and conflict management during daily lessons, which in turn are an essential formative element of the training programmes.

Regular evaluations during training programmes ensure that this attitude is and remains always present with the teaching staff. For the entire teaching staff – managers of training centres, teachers and trainers - various workshops on the subject matters “ethics, communication, interaction“ were and are being offered.

For raising their awareness further, particularly also in dealing with people, officers in basic training are required to attend sessions with NGO's which are prepared, held and processed by specially educated trainers.

During further vocational training, 2 to 3 seminars “dealing with mentally ill persons” (plus practice day) are offered every year. The seminars last 5 days each, subsequently a practice day is spent in a psychiatric hospital.

### **Concerning item 15**

Organising basic and continuous training of lawyers and trainee lawyers and issuing corresponding rules and regulations is the responsibility of the Austrian Bar Association (hereinafter ÖRAK). Bar associations and also ÖRAK are autonomous public-law corporations which as a matter of principle handle their affairs within their own purview, and are subjected to only very restricted supervision by the Federal Ministry of Justice (limited to “lawfulness of administrative management”). The recommended raising of awareness of lawyer and trainee lawyer concerning the handling of allegations of ill-treatment raised by their clients through measures of basic and continuous training therefore is a matter of an autonomous body, which is not amenable to influence by government authorities. The CPT report was brought to the attention of ÖRAK with reference to the recommendation made.

### **Concerning item 20**

Concerning item 20, second sentence it should be mentioned that one part of the investigators are temporarily seconded to the Federal Bureau of Anti-Corruption (hereinafter BAK), whereas the rest are permanently allocated to BAK. The report mentions only the temporary secondments.

### **Concerning item 22**

In order to comply with international guidelines or obligations (e.g. United Nations Convention against Corruption), which prescribe establishment of an independent body in the area of preventing and combating corruption - a core task of BAK - a legal basis was created for BAK by adopting the Act on Establishing and Organising the Federal Bureau of Anti-Corruption, FLG I No. 72/2009. The specific independence of the BAK is to be ensured in particular by the following detailed legal provisions:

Although the BAK operates within the Federal Ministry of the Interior, it is set up outside the Directorate General for Public Security – i.e. outside the “classic” hierarchy of security authorities and federal police - namely within Directorate IV (Service and Controlling). The director of BAK does not report to, and is not subject to instructions from the Director General for Public Security. The special status of the director and his deputy is enhanced among others by the special features of their appointment. For instance, the director and his deputy are appointed for a term of office of 5 years. Reappointments are admissible, early removals are inadmissible in principle. By this provision, the director and his deputy are protected from the threat of early removal or from any actual early removal, which considerably strengthens the independence of the organisational management, and ultimately of the BAK.

It must be further noted that Section 7 of the BAK Act requires that instructions to BAK for taking measures in specific proceedings must be in writing and be specifically substantiated. For the purpose of ensuring the necessary transparency, a special legal protection commission which has been established outside and in addition to existing legal protection system, may monitor the activities of BAK in complete independence. Pursuant to the current Code of Criminal Procedure, all BAK investigations – including those against police officers - fall exclusively into the competence of the competent public prosecutor who is organisationally fully separated from the Ministry of the Interior, and under the system of checks and balances reports to the Ministry of Justice. In all its investigations, the BAK consistently endeavours to observe principles of objectivity and avoid any biased decisions. The competencies of the existing system of independent courts and public prosecutors, the further-reaching system of disciplinary law and the complaint options with independent regional administrative courts are supplemented by the BAK. So the Austrian legal order as a whole offers the required legal protection. Moreover, complaints against action of members of the executive branch are also subject to monitoring by the Ombudsman Board in the framework of their general auditing competence in examining cases of maladministration.

### Concerning item 23

In the 2014 Report by the Federal Government on Public Safety (safety report) (chapter 9.4) the following statistical data are provided:

#### Allegation of ill-treatment against officers of security authorities and similar suspicious cases

	2011	2012	2013	2014
<b>Cases processed by public prosecutors</b>	619	621	546	670
thereof newly arisen in the reported year	609	591	531	652
<b>Termination of investigations</b>	579	557	504	622
thereof pursuant to Section 190 (1) StPO <sup>1</sup>	358	307	339	416
thereof pursuant to Section 190 (2) StPO	213	239	154	206
thereof pursuant to Section 190 (1) and (2) StPO		11	11	0
<b>Cancellation of investigations (Section 197 StPO)</b>	1	0	0	0
<b>Diversion</b>	0	0	0	0
<b>Arraignment/Indictment</b>	0	1	4	1
<b>Withdrawal of indictment prior to main trial (Section 227 (1) StPO)</b>	0	0	0	0
<b>Acquittal</b>	0	1	3	1
<b>Conviction</b>	0	0	2	1

<sup>1</sup> Code of Criminal Procedure (hereinafter StPO)

Proceedings pursuant to Section 297 Criminal Code (slander) for accusing officers of the security authorities to have committed ill-treatment

	2011	2012	2013	2014
<b>Cases processed by public prosecutors</b>	29	20	27	25
thereof newly arisen in the reported year	28	14	24	21
<b>Termination of investigations</b>	23	8	10	9
thereof pursuant to Section 190 (1) StPO	8	3	7	1
thereof pursuant to Section 190 (2) StPO	13	5	3	8
<b>Diversion</b>	0	0	0	0
<b>Arraignment/Indictment</b>	3	7	4	11
<b>Withdrawal of indictment prior to main trial</b> (section 227 (1) StPO)	0	0	0	0
<b>Acquittal</b>	0	7	2	3
<b>Conviction</b>	1	0	1	6

Specific measures have already been taken for the purpose of improving the collection of statistical data in cases of accusation of ill-treatment, e.g. a working group was established within the Federal Ministry of the Interior aimed at improving evaluation and analysis of specific data on the basis of an appropriate review.

**Concerning items 25 and 26**

According to the Austrian Juvenile Court Act (hereinafter JGG) juveniles, unless represented by defence counsel, must upon their request be interrogated in the presence of a person they trust. They have to be informed about this right in the letter of rights and in the subpoena letter, but at the latest prior to the beginning of the questioning. If necessary, the questioning has to be delayed until a lawyer or a trusted person has arrived, as long as this is consistent with the purpose of the questioning, and unless this would mean an inappropriate prolongation of detention. Section 164 (2), third sentence StPO, which in principle offers an option to renounce the presence of a lawyer during questioning of an accused person, when deemed necessary to avert endangering investigations or impairing evidence, is not applicable in juvenile proceedings. Pursuant to Section 46a JGG, Section 37 JGG is also applicable to young adults and therefore not only valid for juveniles, but also for persons up to the age of 21. Police questioning is a very important event, deciding the direction in which further proceedings will develop. Therefore, a juvenile waiving the support of legal counsel (such waiver must be presented to the competent public prosecutor and the competent court, for that matter) can have a negative ring to it. The impression that - even if only in single cases - pressure is being exerted to obtain the desirable waiver of having a trusted person or lawyer present must be avoided by all means. Once a court is involved - even during the investigative phase - defence counsel has to be appointed for the juvenile. This provision also corresponds to the international commitments Austria has entered into (Convention on the Rights of the Child). As nonadult personalities especially need help in avoiding rash or unreasonable decisions and in coping with complicated scenarios - such as criminal proceeding - the Proposal for a Directive of the European Parliament and of the Council on procedural safeguards for children suspected or accused in criminal proceedings, COM (2013) 822, also includes this provision. Art. 4 of the proposed Directive also contains the right of children to be instructed and informed. Negotiations on the Directive are currently on-going. It is still unclear whether the mandatory presence of a lawyer during the entire criminal proceedings will be postulated. Not in the least for practical reasons, the Federal Ministry of Justice holds the view that the result of such negotiations should be waited for, before legislative measures should be taken. In addition, it should be mentioned that Directive 2013/48/EU of the European Parliament and of the Council of 22 October 2013 on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings, and on the right to have a third party informed upon deprivation of liberty and to

communicate with third persons and with consular authorities while deprived of liberty must be implemented in Austria by 27 November 2016. Art. 3 of this Directive requires adaptations of the StPO to better guarantee the right of access to legal counsel, which will also improve the legal position of juveniles in detention. In the course of implementing this Directive, all information leaflets for accused persons in detention will have to be reworked. In this context, special attention will be accorded to make the information leaflets more intelligible for juveniles in detention. Furthermore there are plans to improve intelligibility of instruction leaflets used by the police. For this purpose, a joint working group of the Federal Ministry of the Interior and the Federal Ministry of Justice shall be established in line with a model provided by the Liechtenstein police to work on instruction texts which can be easily understood. The results of this working group can be expected in the course of next year and will be integrated in the layout of the information leaflet for juvenile in detention so that it becomes better understandable.

### **Concerning items 27 and 29**

On the basis of an agreement between the Federal Ministry of Justice and ÖRAK, a lawyer hotline for accused persons in detention has been set up since 2008. According to this agreement, legal support in the form of this lawyer hotline includes telephone consultation, on request also a personal interview, if necessary, the presence of a lawyer during questioning of the accused, as well as other services necessary for taking the appropriate legal action (such as filing an application to the court for providing legal aid counsel). In principle, the services of the lawyer are charged to the accused at an hourly rate of 100,-- euros plus VAT, when legal aid is granted, these costs are taken over by the Federation for the time being. There are information leaflets available (in 20 languages) in each police station informing about this lawyer hotline. According to the monthly information reports provided by ÖRAK to the Federal Ministry of Justice there were 2449 contacts up to and including October 2014. In 236 cases, a personal consultation took place; in 403 cases the presence of defence counsel during questioning was reported. Art. 3 of the above mentioned Directive 2013/48/EU requires adapting the StPO to better guarantee access to a lawyer, because according to the provisions of the Directive such access has to be provided immediately after apprehension, and in principle during all questioning. This will also require comprehensive changes in connection with the lawyer hotline for accused persons in detention. Therefore, the Federal Ministry of Justice, in line with the CPT recommendation, intends to start discussions with ÖRAK in autumn 2015 aimed at implementing the Directive, and to adopt the required implementation legislation by 27 November 2016. It should also be mentioned that the proposed Directive of the European Parliament and of the Council on provisional legal aid for suspects or accused persons deprived of liberty and legal aid in European arrest warrant proceedings which is presently being negotiated is expected to also cause an expansion of the right of free access to a lawyer.

### **Concerning item 28**

Criminal police must inform any arrested accused person immediately following apprehension that he/she has the right - among others - to call a lawyer or have a lawyer called. Criminal police officers have to inform all detained persons about the lawyer hotline, and to hand them not only the "information sheet for detainees" but also the "information sheet about the lawyer hotline" in the appropriate language version. If necessary, an interpreter has to be summoned.

This means, that the accused person has to be informed prior to the beginning of questioning that he/she is entitled to consult a defence counsel beforehand. The accused is further entitled to have a lawyer present during questioning. However, the presence of a lawyer may be renounced, if such a measure is deemed necessary to avert endangering investigations or impairing evidence.

According to the internal guidelines of the Austrian Bar Association, a lawyer who is requested to come personally (to the criminal police station where the accused is being detained) should do so as soon as possible and in any event within three hours to provide legal assistance. The CPT recommendation has been noted that questioning of an apprehended adult person having asked for the presence of a lawyer should be delayed until the arrival of such lawyer.

When the reform of criminal procedures entered into force on 1 January 2008, the Federal Ministry of the Interior, the Federal Ministry of Justice and the Austrian Bar Association (ÖRAK) agreed to establish a lawyer hotline. This hotline can be reached around the clock at a specific telephone number, is free of charge and offers accused persons in detention the opportunity to speak with a lawyer authorised as defence counsel in criminal matters.

In principle, the concrete activity of the lawyer on duty includes a first telephone consultation free of charge. If the accused during the telephone conversation comes to an agreement with the lawyer, such lawyer can also provide on-site consultation at the premises of the criminal police station, be present during questioning, if requested (compare Section 164 StPO), as well as provide other services necessary for taking the appropriate legal action (such as filing an application to the court for providing legal aid counsel, etc.).

When there is suspicion that a crime has been committed by pupils or other juveniles of the age of criminal responsibility (i.e. from the age of fourteen), the provisions of the Code of Criminal Procedure (StPO) and the Juvenile Court Act (JGG) as last amended have to be observed, in particular the provisions of Sections 35, 37 and 38 (1). For young adults the provisions of the Code of Criminal Procedure apply in principle, but in addition also the provisions of JGG, mentioned in Section 46a JGG (such as Section 37 JGG).

On the basis of the Juvenile Court Act 1988 (JGG) as amended by FLG I No. 11/2010 and the replacement of the Youth Welfare Act 1989 (JWG) by the Federal Child and Youth Services Act 2013 (hereinafter B-KJHG 2013) in the version of FLG I No. 69/2013, it was decreed that that a reporting obligation exists to the Youth Welfare Organisation in connection with minors pursuant to Section 37 (1) B-KJHG 2013 and a reporting obligation to the public prosecutor pursuant to Section 32 (3) JGG with regard to criminal acts committed by underage minors.

After apprehending a juvenile who cannot be released on the spot, a person with parental authority or an adult relative living in the same household as the juvenile as well as any probation officer already appointed for the juvenile and the Youth Welfare Organisation have to be informed without delay, unless the juvenile contradicts for a sound reason.

Upon request, questioning of a juvenile (Sections 164 and 165 StPO) has to be conducted in the presence of a trusted person, unless the juvenile is represented by a lawyer. This right has to be communicated to the juvenile in the letter of rights (Section 50 StPO) and in the subpoena letter (Section 153 (2) StPO), but not later than prior to the beginning of the questioning (Section 164 (1) and (2) StPO). If necessary, questioning has to be delayed until the lawyer or the trusted person has arrived, as long as this is consistent with the purpose of the questioning, and unless this would mean an inappropriate prolongation of detention. Section 164 (2) third sentence StPO does not apply.

A trusted person of the juvenile can be the legal representative, a person with parental authority, a relative, a teacher, an educator or a representative of the Youth Welfare Organisation, of the juvenile legal support agency or of probation services.

Questioning a juvenile or a young adult has to be delayed for an appropriate time, so that a lawyer can be present during questioning.

Pursuant to Section 4 (1) JGG, underage minors having committed a punishable act cannot be punished. As a rule, an identification procedure is required to determine whether the crime suspect is an underage minor or a minor. Pursuant to Section 118 StPO, such identification procedures are permitted upon initiative of the criminal police, if it can be assumed on the basis of certain facts that a person has been involved in a crime, may provide information on the circumstances of the crime commission or has left traces which could serve to solve the crime.

### **Concerning item 30**

The establishments concerned have been instructed accordingly. The diligent maintenance of custody records are monitored on an on-going basis during service control procedures.

### **Concerning item 31**

The complete documentation is based on police reports, charges and messages, with all deprivations of liberty being recorded in a standardised custody record.

By using a standardised and electronically available detention report, the entire detention process, from apprehension to release, or transfer to the authority responsible for conducting proceedings, can be documented in a single record. The officers pronouncing or making the arrest must enter the known data and the measures taken in this detention report; even if no data are known, the minimum requirements in "Detention Report I" are the reason for arrest, the information on the reasons for arrest (if such information could be given to the detainee) and the transfer order to the place of detention.

### **Concerning item 32**

The mentioned shortcomings in the District Police Station Vienna-Fuhrmannngasse (ventilation system) and the police stations Krems an der Donau and Leibnitz (very thin mattresses) shall be remedied in accordance with available budgetary means.

### **Detention of foreign nationals under aliens legislation**

The positive assessment of detention conditions in the Detention Centre Vordernberg constitutes a gratifying reaction in respect to Austria's efforts to fulfil her national and international requirements, in particular the improvement of accommodation conditions for foreign nationals.

### **Concerning items 38-40**

Comprehensive requests for refurbishing the material conditions of the Police Detention Centre Vienna-Hernalser Gürtel have already been submitted, and such refurbishment should soon be realised in the framework of maintenance work which is the obligation both of the landlord and the tenant organisations. With regard to cleaning the office building, a contract was concluded with a cleaning service provider which in addition to cleaning has also taken over the task of disinfection.

In the framework of formulating an up-to-date general concept in accordance with the National Prevention Mechanism NPM (Ombudsman Board), new standards were laid down for detention prior to deportation in open stations by decree of the Federal Ministry of the Interior, BMI-OA1320/0036-II/1/2015 of 7 May 2015. Detention in "open stations" was designated as general standard procedure for detention in the framework of measures taken in immigration policing, which means detention in "open stations" is the "standard regime" for foreign nationals held in detention pending deportation. The only exclusion criteria which require special safety measures are justified suspicion of, or proven health risks for others with normal behaviour in everyday life, reasons of hygiene and endangerment of self and others. According to the principles of open station regime detainees must be placed in open stations within 48 hours after arrival in the police detention centre, after identity check, medical screening and initial questioning. Cell doors in this regime are open from 8.00 a.m. to 9.00 p.m.

### **Concerning item 41**

In this connection, plans of roofing the outdoor exercise yard are being considered. The Austrian authorities use their best effort to develop appropriate solutions in accordance with the landlord organisation and the available budgetary means.

### **Concerning item 42-46**

The recommendations of the Committee for improving health-care services and professional treatment of sick detainees have been accepted. Police officers are being comprehensively retrained to become medical assistants.

The Austrian authorities intend to fully delegate these services to nurses as far as budgetary resources are available. Moreover, the telephone interpreting services in outpatient stations will be expanded after outsourcing it to a service provider by the Federal procurement agency. It is also usual practice to copy and personally hand over medical reports and expert findings to the person concerned.

Moreover, the Detention Regulation provides that all detainees must undergo medical screening within 24 hours of admission, which also aims at recognising infectious diseases and initiating further clarifications or starting a therapy, if necessary.

Frequently even earlier screenings (< 24h) guarantee that no essential medical conditions/infections are overlooked.

According to the records kept by the Office of the Medical Superintendent in the Federal Ministry of the Interior there have been no transmissions of infectious diseases in Austrian police detention centres so far.

This topic will continue to be taken very seriously on account of the necessary protection of detainees and staff members, and strong emphasis is placed on infection risks, which is why no transmissions of serious infectious diseases have so far been recorded in police detention centres.

In principle, privacy of detainees has to be observed in all kinds of medical examinations. In the guidelines for medical duties of police doctors (BMI-OA1300/0011-II/1/b/2006) item 1.11 “medical care for persons arrested by the police or police detainees” and subsequently item 1.11.1 mentions, that “... privacy of detainees must be observed and police officers may only be present for security reasons”.

By analogy, such rules also apply for screening procedures related to fitness for detention. Privacy during medical treatment constitutes an essential precondition, which is being observed by police doctors in the best possible manner, considering the means and space constraints.

The doctor is legally obligated, for that matter, to report cases of ill-treatment alleged by a detainee. When such a report is received, a police lawyer, a police doctor and a staff member from the Bureau of Special Investigations have to be present. The Bureau of Special Investigations forwards the report to the public prosecutor.

### **Concerning item 47**

Austria has taken up and implemented the CPT recommendation to separate the dual role of police doctors as treating doctors and public health doctors. Efforts are presently under way to roll-out this successful system. Medical admission screening procedures are continuously optimised; there are on-going evaluations particularly in the areas of hygiene and prevention of epidemics which will be optimised as well, if necessary.

### **Concerning item 49**

Concerning visits by relatives, an expansion of so-called table visits for detainees prior to deportation has been agreed upon in the NPM. Security concerns against table visits will in future be limited to personal security (detainees and visitors), and on the other hand to material security (highlighting smuggling of drugs/tablets or means/objects for inflicting self-injuries or injuring other persons). Only

persons addicted to opioids or narcotics (persons in substitution treatment) and with security concerns due to danger of absconding are excluded from table visits. Corresponding decree rules are presently being prepared. Visits by children shall take place in a special room with freestanding furniture to enable close body contact with toddlers. Video monitoring is without sound.

As a matter of principle, persons in detention pending deportation may make unmonitored telephone calls. Monitoring telephone calls is inadmissible - unless a condition pursuant to Sections 149a et seqq. StPO is present. In police detention centres without a coin-operated pay phone, detainees may use their own mobile phones to make telephone calls. A legal claim does not exist. The CPT recommendation that detainees should be allowed to keep their mobile phones during their entire detention, is not endorsed by Austria, and there are no plans to include it in the amended Detention Regulation.

The following reasons preclude that detainees should keep their mobile phones for an unlimited period:

- Danger to security and privacy (danger of violating privacy of detainees and police officers) by publishing photos or videos, particularly on the Internet.
- Danger of self-inflicted injuries (particularly by swallowing batteries or parts of the phone)
- Mobile phones as valuable object - theft, trading with mobile phones (not all detainees have mobile phones. This could lead to detainees earning “extra income” by taking advantage of the need of other detainees.
- Downloading and exchanging films (YouTube, etc.), with the Internet offering all kinds of material (such as pornography, etc.).
- Undesirable communications with the outside, which could put the security of the police detention centre into considerable peril.
- Collusion and circulation of information or unlimited communication and collusion for the purpose of escape or smuggling of dangerous material (medication, narcotics, weapons, etc.)
- Disturbing operations and especially night-time peace (Section 8 Detention Regulation, night-time peace would be difficult to enforce)

### **Concerning item 51**

Officers of public security services, for fulfilling the tasks ordained by individual acts of law, also have to partly exercise their power of command and enforcement under administrative authority, which has to be documented accordingly.

Pepper spray (active agent oleoresin capsicum) is a standard less dangerous service weapon. As a weapon of distance, its use may prevent physical disputes which have a much higher potential of injury. Procedures prior to and after the use of pepper spray are regulated in detail by a decree. Major emphasis is placed on aftercare (first aid, examination by the prison doctor or in a public hospital).

In the same manner, as with all *service weapons* used by, or personally assigned to police officers, the proportionality principle must be strictly observed also when using pepper spray. Police officers are obligated to carry service tools, including the pepper spray canister, openly in a multi-functional belt, so that they can use them in case of need. The fact that pepper spray canisters are carried openly, in combination with the certainty that this weapon would be used only by professionally trained officers in a law-abiding and proportionate manner, has had a preventive effect and contributed a great deal to a marked de-escalation. The preventive effect of open display is considered to provide more security than hiding the weapon.

Use of the big pepper spray canister is only permitted, if non-dangerous or less dangerous measures, such as an order to bring about a lawful status, the threat of using a weapon, pursuing a fleeing person, the use of physical strength or other available more lenient means appear to be unsuitable or have

proven ineffective. If various weapons are available, the least dangerous weapon which seems to be just suitable to cope with the existing situation must be used.

Concerning objections against service weapons it should be added that Austria fulfils her obligation (based upon the judgment by the European Court of Human Rights), i.e. to see to it that the most lenient weapon is made available prior to any specific case. In this sense, the Federal Ministry of the Interior use its best efforts to provide police officers with an appropriate range of service weapons tailored to the various danger scenarios, so that in any specific case they are able to use the most lenient weapon with which the operational goal can just be achieved.

Since introducing pepper sprays, no complaints about abuse by police officers have been received.

General aftercare measures and documentation or reporting obligations are comprehensively regulated by a decree. Regional police directorates are responsible for checking the factual circumstances and for assessing the measures taken from a police tactical and legal point of view. The documentation of injuries suffered during measures involving deprivation of liberty is comprehensively regulated by decree No. 63.220/120-II/20/96 of 4 December 1996. In case of an alleged or actually discovered injury, the injured person must be examined by the police doctor without delay. Any injury discovered without fail results in appropriate investigations in terms of an allegation of ill-treatment. In cases of personal injuries suffered or threats to the physical safety of persons, or in cases of material damage intentionally caused during enforcement measures, review results have to be presented to the competent public prosecutor as “report on the use of means of coercion”.

It should be mentioned that pepper sprays are carried only by police officers and not by the private security staff at the Vordernberg Detention Centre. Carrying a not authorised pepper spray canister would entail consequences for the employment of the person concerned.

The recommendation by the Committee that pepper spray not form part of the standard equipment of custodial staff and that it never be used in confined spaces, is being examined by the Federal Ministry of the Interior.

### **Concerning item 52**

Persons in detention pending deportation are entitled to complain to the officer-in-charge, lodge a measures complaint or else a complaint pursuant to Section 88 (2) Security Police Act (hereinafter SPG). Section 23 of Detention Regulation provides all detainees with a complaint option in writing or orally about continued violation of a right he/she is entitled to under the Detention Regulation. The officer-in-charge must examine such representation or complaint, and in case of a justified complaint immediately restore the situation to a legally compliant state, or if he holds the opinion, that the complaint is unjustified, present the facts to the authority. Detention Regulation applies, regardless of who has taken or omitted a specific measure; it only comes down to whether the person concerned feels that a right he/she is entitled to under the Detention Regulation has been violated.

The complaint option to the officer-in-charge does in no way curtail the option to lodge other complaints, such as the complaint options described below. Pursuant to Section 88 (1) SPG, administrative courts are seised of complaints by persons claiming to have had their rights violated by direct powers of command and enforcement exercised by security authorities. In connection with measures taken during detention pending deportation, the Supreme Administrative Court (hereinafter VwGH) uses a very far-reaching approach. “Inasmuch as [such] circumstances of detention pending deportation or occurrences and omission during such detention (e.g. failure to provide adequate medical care) are to be contested, this must be made by way of a complaint under Section 67a (2) General Administrative Procedure Act (hereinafter AVG) or under Section 88 SPG 1991 (VwGH 25 October 2012, 2012/21/0064).

This primarily clarifies that measures in connection with the detention of persons by security authorities are acts of sovereign administration, and that complaints, even those only relating to

detention conditions (including omissions), can be the subject of a measures complaint pursuant to Section 88 (1) SPG.

Against the background of this very far-reaching approach of VwGH, the fact that all circumstances, incidences and even omission in connection with the detention of persons can be included in the complaint option of Section 88 (1) SPG will be only marginally relevant, but the complaint option under Section 88 (2) SPG should not be completely excluded from the onset. According to this, administrative courts are seised of complaints by persons claiming to have had their rights violated through actions by the security administration, unless this has happened in the form of a decision. Thus, Section 88 (2) SPG provides an option to lodge a complaint in those cases where rights, in particular those granted by the Detention Regulation, have been violated without exercising powers of command and enforcement during official actions by the security administration, which also includes detention pending deportation. According to rulings of VwGH, a complaint against verbal abuse during an official act can be lodged on this basis (VwSlg. 16.688A/2005). The above explanation concerning measures complaints also applies to similar complaints against the behaviour of private security staff on duty.

## **Prisons**

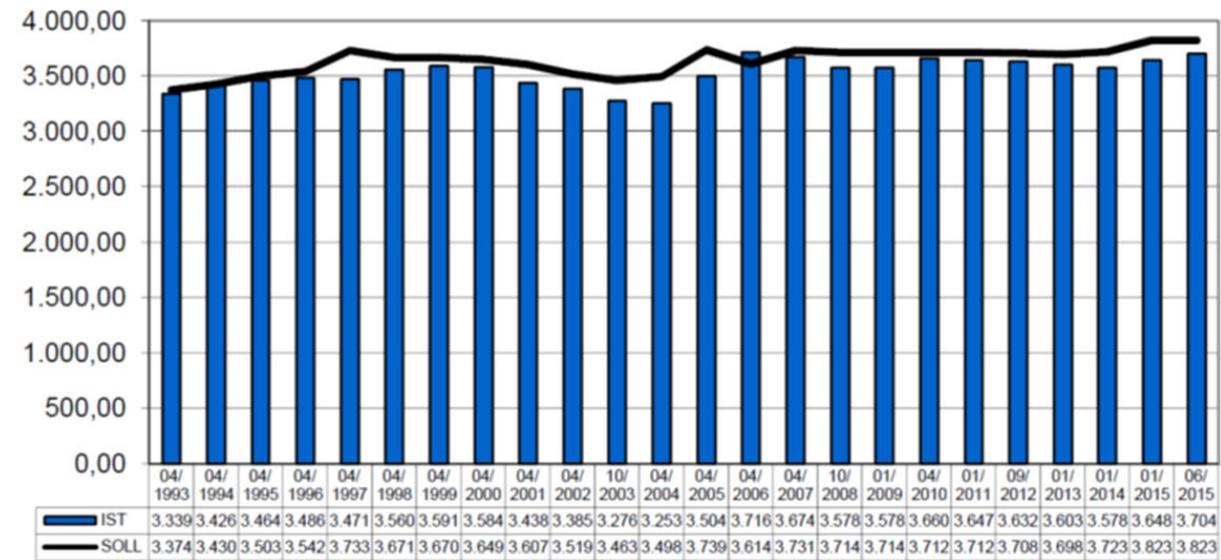
### **Concerning items 58 and 75**

At the present time juvenile remand detainees are regularly transferred to the Gerasdorf prison, if their remand detention is prolonged. If the indictment is available and the main trial will be held promptly, the juvenile person remains in the Vienna-Josefstadt prison, unless there is overcrowding at that time. It is the objective that juveniles should not be accommodated in the Vienna-Josefstadt prison for more than two weeks. This is the practice already in many cases.

### **Concerning items 59, 68-70 and 76**

One of the major tasks of a democratic society and of a justice system committed to well-ordered principles of the rule of law includes penal services guaranteeing respect of fundamental and human rights. In this area tenured positions have to be secured, as are required by such penal services conforming to human rights. In this connection, the following development of staff numbers in prisons should be pointed out:

**Prison Staff**  
**Personnel deployment in full time equivalents**  
**(without apprentices; without administrative interns)**



In view of increasing numbers of prisoners, and of ever more complicated and demanding tasks (in particular with juvenile detentions, detention of young adults and involuntary forensic placements), and the consequently very stressful situation in administering penal services, considerable improvements in the area of tenured positions and resources could be achieved. Recently, prisons were allocated 100 additional tenured prison staff positions. The purpose of such additions is to at least mitigate the shortage of tenured positions and personnel resources in the area of penal services, and in particular to provide resources for supporting and easing the burden for juvenile detention.

30 of these new tenured positions were filled through so-called mobility management. This mobility management particularly offers jobs to civil servants from the Federal Ministry of Defence and Sports (BMLVS), in order to hire them for a career in the justice system or in a prison. In a first stage, now 27 of these 100 additional tenured positions were allocated to prisons from a point of view of easing the burden of prisons with low staff resources, as well as considering the considerable additional workloads which have arisen over recent years - such as electronically monitored house arrests - and to strengthen juvenile detention facilities.

Since the allocation of those 100 additional tenured prison staff positions, appropriate basic training programmes with altogether 119 trainees have already started. The start of further two training programmes with 25 trainees each is scheduled for autumn 2015. Considering that approx. 70 prison officers retire every year, placement of the additional 100 prison staff positions is well provided for.

Moreover, the Judicial Services Agency (hereinafter JBA) has been commissioned to make available to prisons a total of 46 additional professionals (psychologists, social workers, social pedagogues, caregivers, craftsmen). Due to the expansion of the Forensic Centre Asten and the Salzburg Prison, the JBA in the meantime has been asked to provide further additional professionals (physicians, psychiatrists, physio- and ergotherapists, psychologists, social workers and case workers).

Furthermore, the efforts should be mentioned to enable transferring civil servants from the former Post and Telekom administration to the justice system - and in particular to penal services. As at 1 July 2015, five former staff members of Post/Telekom have been offered tenured positions in prisons, three further staff members of Post/Telekom are presently seconded to work in prisons.

Through the measures mentioned, the personnel situation at prisons has been considerably improved, which is why now activity measures at prisons can also be increased. By employing social pedagogues also during weekends the targeted support activities could be improved and increased. The Graz-Jakomini prison is regularly (seasonally) adapting its activity programmes. Furthermore, the juvenile department of that prison has social pedagogues available (for individual support, group support, social competence training, workshops, literacy courses, extended duty, etc.), but also prison officers who regularly offer sports units to juvenile prisoners.

Austrian authorities are most concerned to meet the requirements of a competent deployment of personnel in penal services - in particular also in the area of attending prisoners and enabling work and leisure activities involved therewith. Efforts to increase the number of tenured positions shall continue unabated in the future, in order to achieve further improvements of detention conditions for prisoners.

#### **Concerning item 60**

The recommendation of CPT has been implemented, to instruct the managements of the Feldkirch and Graz-Karlau prisons to see to it, that their staff members observe the provisions of Section 22 Penal Services Act (hereinafter StVG) and to behave against prisoners in a calm, serious and firm manner, treat them fairly and respect their sense of honour and human dignity.

#### **Concerning item 61**

The prison officer involved was indicted on 26 April 2014 for inflicting bodily harm during exercising official duty. He is charged to have intentionally inflicted bodily harm on a prisoner while performing his official duty as a prison guard and to have punched him in the face. The prison officer is at present working at the Graz-Karlau Prison in a function without any contacts to prisoners.

#### **Concerning item 64**

According to the results of a feasibility study, the plan to increase the size of windows in the cell blocks A, B and C of the Graz-Karlau Prison to gain more daylight for the cells, can only be implemented in the course of a total renovation of the cell building, as massive interference with the building structure would be necessary. For operational reasons, a total renovation can only be started, once the current major building measures at the Graz-Karlau Prison have been completed. Provided the necessary budgetary resources are made available, preparatory work for implementing such measures is scheduled for early 2017. In any case, the metal bar devices attached to the windows have to remain for security reasons.

#### **Concerning item 65**

In the Feldkirch Prison, the ground floor cells sized 9.0 to 9.07 m<sup>2</sup> (on the first floor sized 9.39 m<sup>2</sup>) are each intended and appointed for single occupancy. Special attention will be paid to avoiding overcrowding. Short term phases of overcrowding can never be entirely avoided due to unforeseen events (high number of admissions, separation of accomplices, and the like). At the Dornbirn satellite station there are four ground floor cells sized 8.36 m<sup>2</sup>, which are intended for two occupants each; but these cells shall be only used to accommodate prisoners in relaxed regime custody.

#### **Concerning item 66**

Prisoners who wish to shower more frequently may directly request this with the departmental commander. Commanders have been instructed by the prison guard supervisory board to make more frequent showers available if this is possible from an operational viewpoint. This involves individual requests and not any general increased shower opportunities, as neither adequate facilities (only two showers per floor) nor personnel resources exist at the Feldkirch Prison.

### **Concerning item 70**

The present weak economic growth has had a particularly disadvantageous effect on work activities for prisoners. Therefore, increased activities to reduce closing days for workshops are undertaken. As closing days occur most frequently due to short-term deployment of their operations managers, who are prison officers, for unforeseen executive tasks (bringing prisoners to court, escorting, guarding prisoners in hospitals, etc.), employment of additional civil craftsmen in workshops is being accelerated among others, who are not used for such tasks and can therefore not be withdrawn from the workshops for such reasons.

### **Concerning item 71**

Pursuant to Section 43 StVG prisoners who do not work outdoors have the right to daily outdoor activities of one hour, taking into consideration their state of health, and unless weather conditions are forbidding. Such outdoor exercises are regularly provided; as an alternative, there are sports activities in sports centres. Opportunities to exercise the right to outdoor activities mainly depend upon the availability of appropriate facilities and protective clothing, for that matter. The Josefstadt Prison has - between the cell blocks, the prison and the court house - six courtyards for outdoor activities. Outdoor activities are exercised there according to the provisions of StVG. Due to the tight locations, the large number of remand detainees which require separation of accomplices and the disproportionately large number of prisoners with security qualifications, outdoor activities are a great challenge for the prison. Moreover, the courtyards are built too narrow and too deep for being either entirely or partially roofed over. Therefore, the problem of a lack of outdoor activities during rainy days can unfortunately not be remedied by constructional measures. For this reason, the Vienna-Josefstadt Prison has in the meantime purchased disposable rain coats, which had previously been successfully tested in the Feldkirch Prison. For security reasons, weather conditions such as hailstorms, strong winds of thunderstorms rule out outdoor activities in spite of available protective clothing. In juvenile detention - provided the weather is good - outdoor activities of at least two hours are guaranteed. Juveniles have larger space available; in one of the courtyards a small raised-bed facility is planned, which is to be set up and cultivated by juvenile inmates.

### **Concerning item 75**

see answer concerning item 58

### **Concerning item 78**

The presence of prison officers in hospital wards has been regulated by a decree covering personnel deployment in this area, particularly also governing access to medical data and confidentiality obligations. Apart from security tasks, prison officers have to perform no health-related activities whatsoever. In various prisons, dispensing medication has been changed to "blistering", so that prison officers without any medical training can perform this task. Dispensing of blistered medication is equivalent to handing out mail pieces, and can also be performed by laymen. In the course of last year, qualified care personnel could be increased, particularly by taking over qualified personnel from another Ministry. This process is being performed with the help of calculating ratios and has not yet been concluded at all prisons. In August 2015, an additional qualified caregiver has taken up position at the Feldkirch Prison.

### **Concerning item 79**

An - also desirable - expansion of available hours for general practitioners, and also for psychiatrists could not yet been achieved due to the tight budgetary and personnel situation in the field of medical personnel. This very field is particularly affected by the lack of medical trainees which prevails in Austria.

### **Concerning item 80**

The integrated prisoner administration (hereinafter IVV) also includes a system of electronic medical files. This system was developed by Bundesrechenzentrum GmbH (Federal IT Services Provider) for purposes of penal services and features a high potential for further development. Inquiries for vital parameters or external medical results could be improved, for that matter. Epidemiological inquiries can now be performed from a central location.

### **Concerning item 81**

The observation at the Feldkirch Prison communicated by CPT was checked by the medical supervisor. The subsequent professional discussion with the officer involved has resulted in a change in the caregiving situation.

### **Concerning items 82-83**

Medical admission screening has been expanded by the requirement of filling out an initial multi-lingual questionnaire about medical history and of taking of blood samples. Access of patients or their lawyers to medical files is available at any time.

### **Concerning item 84**

Although needle-exchange programmes have proven to be adequate prevention measures against hepatitis B/C and HIV infections, such measures are not yet allowed in Austrian prisons. But as intravenous administering of narcotics is quite common in Austrian prisons, needle-exchange programmes would be a useful method of health-care and are planned for the future. For the time being, "harm reduction" measures are taken by providing "take care" kits, lectures and trainings to staff members.

### **Concerning items 85-89**

In general it must be mentioned here, that European Prison Rules - which are non-mandatory, for that matter - are complied with by the Austrian practice of visit authorisations by public prosecutors or judges. In the great majority of cases, such authorisations are just a formality, the more so as remand detainees within set visiting hours may receive as many visitors and to an extent as such visits may be organised without incurring unreasonable expense. But even this provision allows interfering with the fundamental right to respect for family life according to Article 8 ECHR. A visit refusal has always to be substantiated and is liable to be challenged - as demanded by CPT - and is only allowed in individual cases when the purpose of remand detention or the safety of the prison is believed to be in danger.

The very stage of preliminary proceedings is dominated by issues of safety and of guaranteeing an orderly trial. Against this background, the judiciary use their best efforts to enable open visits to remand detainees. But whether such possibilities can be offered, can only be assessed by considering the concrete circumstances of each individual case. Any general rule would be unsuitable to duly take into account such requirements. Penal Services Administration use their best efforts - as long as this can be coped with considering available personnel resources - to enable adequate visiting times to inmates. Penal Services Administration will continue such efforts also in the future. It is untrue that inmates have to justify telephone calls by well-founded reasons; rather they only have to indicate such reasons on the request form. If such reasons are indicated, the inmate has a subjective legal claim to make a phone call thereafter. Moreover, there is the option to grant inmates by way of an incentive the privilege to make telephone calls for which no well-founded reason exists.

### **Concerning item 86**

The Code of Criminal Procedure does not foresee physical separation when visiting remand detainees, but rather supervision and prohibition or termination of the visit, if necessary. Such decisions depend mainly on visiting room facilities and are subject to prison safety. Juveniles and young adults as remand detainees have an opportunity to receive regular social visits in the visiting area, which take place without physical separation from their relatives and in the presence of a social worker or psychologist. Such social visit may take place in addition to regular visits during normal visiting hours.

### **Concerning items 87-88**

StVG defines visits as follows: “During normal visiting hours prisoner may receive as many visitors and to an extent as such visits may be organised without incurring unreasonable expense. They must be allowed to receive at least one visit per week lasting at least half an hour; at least once in a period of six weeks visiting times must be expanded to at least one hour. If the prisoner receives visitors only rarely, or a visitor has a long journey to arrive at the prison, duration of visits should be prolonged in an adequate manner, if required.” In the case of an indicated requirement for more frequent family contacts, there is the option of handling such visits through social services. The competent authorities are using their best efforts to make available facilities for long-time visits by family members in the usual duration. These types of visits are available both to remand detainees and to sentenced prisoners.

### **Concerning item 90**

Due to the increasing number of inmates of a non-Austrian origin, prisons – depending on the facilities available – are employing e.g. the following tools to counter language barriers:

- Medical history questionnaires are available in the following languages: Albanian, Arabic, Armenian, Bangladeshi, Bosnian, Bulgarian, Chechen, Croatian, Czech, Dari, Danish, Dutch, English, Farsi (Persian), Finnish, French, Georgian, German, Greek, Hindi, Hungarian, Igbo, Italian, Kurdish-Kurmanci, Kurdish-Sorani, Lithuanian, Macedonian, Mandarin Chinese, Moldavian, Mongolian, Nepali, Norwegian, Panjabi, Pashtu-Pashto, Polish, Portuguese, Romanian, Russian, Serbian, Slovakian, Slovenian, Spanish, Tamil, Turkish, Ukrainian, Urdu, Vietnamese and Yoruba;
- Employing external interpreters.

In principle, all prison officers have at least school knowledge of English language. Some staff members coming from a migrant background do not have German as mother tongue, or could acquire good knowledge of foreign languages. These language skills are used in the work environment on a voluntary basis and serve as a prison-internal resource for other staff members in the form of “communication support”. According to a survey by the Department for legislation relating to aliens and for intercultural communication, the following language skills are available at the Vienna-Josefstadt prison: Amharic, Albanian, Arabic, Bosnian, Croatian, Czech, English, Flemish, French, Greek, Hungarian, Italian, Polish, Portuguese, Romanian, Russian, Serbian, Slovakian, Spanish and Turkish. Via the languages mentioned, communication in the languages Azerbaijani, Bulgarian, Macedonian, Turkmen, Uzbek and various other Turk languages is possible.

### **Concerning item 91**

In November 2014 started the six-month long pilot project “Video Interpreting in the Vienna-Josefstadt Prison” for ambulatory purposes; the pilot phase ended on 30 April 2015 and was very successful. The health-care personnel positively mentioned particularly the sensitive handling of medical data - which has also been demanded by the Ombudsman Board already. The evaluation results of this project are shown below in percentages:

- in 92% of cases the interpreter was reached within 2 minutes
- in 87% of the cases there were no problems with the video connection
- in 90% of the cases there were no problems with the audio connection
- in 20% of the cases the interview lasted for up to 20 minutes
- in 35% of the cases the interview lasted for up to 10 minutes
- in 37% of the cases the interview lasted for up to 5 minutes
- in 53% of the cases a medical examination would have taken longer
- 92% of the participants found the video interpreting function very helpful.

Due to the successful pilot project the project is being prolonged in time, until an opportunity for outsourcing will be available.

#### **Concerning items 93-94**

The implementation of the recommendation is presently being assessed. In addition, it must be mentioned that a roll-out of the module “misdemeanour proceedings” of the IVV was started on 1 July 2015. Thus misdemeanour proceedings are in future electronically supported by text modules made available. This should result in strengthening party hearings (which in principle is foreseen in the IVV system) and in increasing the number of written engrossments of decisions.

As a matter of principle, the Federal Ministry of Justice agrees with the CPT view that solitary confinement or house arrest constitutes the strictest disciplinary measure and may result in a life-changing experience particularly for juvenile delinquents, which should be limited to aggravated cases. In penal service practice the administrative sanction of house arrest is imposed only rarely, particularly for a period of 14 days.

For this reason the bill for an amended Juvenile Court Act 2015 (JGG) shall include changing Section 58 (9) JGG limiting detention in house arrest for juvenile detainees to one week.

The recommended maximum detention time of three days is considered too short to cope with special individual cases in practice.

#### **Concerning item 97**

Prison officers monitoring locking-up and orderly behaviour in prisons must also carry a service firearm in the prison - to the extent as it is considered necessary for maintaining safety and order in the prison. After assessing the current regulation, no reason for any change has been ascertained. Due to reduced staffing there is always a security risk, if a cell door has to be opened during night shift (particularly in the case of multiple occupancy cells). However, the prison officer carrying a firearm does not make direct contact with inmates. His/her task is rather to secure the flight path as security guard, and as alarm guard to call other prison guards for help, if necessary. In addition, the knowledge that there are armed security and alarm guards has a considerable preventive effect.

#### **Concerning item 98**

See item 51

#### **Concerning item 99**

Establishing the competence centre legal protection within the new Directorate General for the Administration of Custodial Sentences and Measures involving Deprivation of Liberty highlights the importance of a functioning complaint system. Monitoring administrative government functions is being exercised in the public interest. In this sense, a functioning complaint system plus a transparent management system is an indispensable part of an efficient and modern administration, which is capable of quickly checking abuses and expeditiously remedy actually existing abuses. It will be one of the foremost tasks of the Directorate General to establish a uniform complaint system in Austrian prisons. The best manner in which the recommendation can be implemented is presently considered by

the competent authorities. It is conceivable that information about complaint options pursuant to StVG could well be included in internal rules or in the information leaflet.

### **Status of persons in a court-ordered measure of involuntary forensic placement**

#### **Concerning items 103-105**

Concerning the Stein prison it must be noted in general that in the course of total renovation of the Unit T1, all cells are provided among others with separate wet rooms (WC), whereas a common bathroom and a separate garbage disposal areas are being set up in each department. On the ground floor of Unit T1 there is a recreation room sized 87 m<sup>2</sup> and a library sized 80m<sup>2</sup>. Furthermore, there is amply corridor space. Concerning lock-up regimes it should be noted that in the north and east wings there are alternate prolonged guard services until 5 p.m. Moreover, as from 3 p.m. there are daily leisure time opportunities offered, in which inmates may participate on a voluntary basis. (Temporarily) non-working prisoners may freely move about the department over most of the day.

#### **Concerning item 108**

All efforts to hire a full-time psychiatrist for the psychiatric care of inmates at the Stein Prison have so far been futile. The Judicial Services Agency continues to try finding an adequate professional by placing regular job advertisements.

#### **Concerning item 110**

The reform of involuntary forensic placement is scheduled in several phases. At the present time, substantial changes in the structure of forensic placement in specialised prison departments are being prepared. These structural changes include management responsibilities, work distribution, personnel deployment and training programmes for staff members of those specialised departments for forensic placement. This reform step should guarantee the essential substantive elements of the minimum distance rule. These first structural changes should also include measures to increase motivation and individualisation of treatment schedules; a case management system shall be established (in the meaning of continuous specific clinical-psychological treatment), ranging from assessment of help requirements, through accompaniment in a social therapeutic environment to a conclusive assessment of risk characteristics and their changes. By taking adequate measures, the case manager ensures that personal, situational and social changes in inmates which could encourage delinquency can be readily recognised. This is being achieved through monitoring, personal contacts, interdisciplinary networking and recurring risk assessment. The case manager shall coordinate the necessary therapeutic treatments from admission up to transfer management. A corresponding report to CPT can be submitted upon completion of the first phase in late 2015.

In a pilot project and as a temporary solution, an independent departmental system for forensic placement shall be established in the Garsten, Graz-Karlau and Stein prisons, and first standards (above all important for steering the departments) for treatment and accommodation shall be laid down. This pilot project shall go before a comprehensive "Project Reform Involuntary Forensic Placement" and improve the situation of forensic placement for a transitional period of probably three to five years. The conclusive report of the working group forensic placement can be found here: <https://www.justiz.gv.at/web2013/file/2c94848a4b074c31014b3ad6caea0a71.de.0/bericht%20ag%20ma%C3%9Fnahmenvollzug.pdf>

#### **Concerning item 113**

Anti-androgen treatment is based upon recommendation from various sources, in particular from external experts (e.g. in the course of hearings examining further detention), the assessment and evaluation centre for violent or sex offenders within the Directorate General for the Administration of Custodial Sentences and Measures involving Deprivation of Liberty, the in-house psychiatric service

or from the person concerned him/herself. In each case, an anamnesis by the prison physician or the psychiatric service will be performed before anti-androgen treatment is administered. This evaluation is in principle performed by at least two doctors, and the start of the therapy is based on a joint decision by all physicians involved. This form of therapy is based on a broad medical foundation, in particular so that data about (any occurring) side effects can be quickly and completely collected. In case of particular issues or existing risk factors, external experts will be consulted, if necessary. Critical cases will be externally discussed and evaluated in a professional discourse. Medical explanations are given in a personal individually tailored and case-related conversation with the person concerned.

Comprehensive explanation and supporting individual conversations are the method of choice to solicit the patient's willingness and consent to be subjected to this form of therapy. It has proven inadequate to exert emotional pressure on the patients/inmates to undergo an anti-androgen treatment, because such a treatment as individual measure is not sufficient to decisively minimise the risk of recidivism or to justify granting privileges of relaxing the prison regime or early release. So far, no uniform rules have existed. Medical treatments are administered according to the state of the art. The psychiatric professionals working for the judiciary usually proceed in accordance with the "Hamburg Standard". After conclusion of the medical discussion of these issues there are plans to draft corresponding rules under the leadership of chief medical services. The "Hamburg Standards", as well as the continuous documentation of the patient's decision-making will form integral components of such rules. In connection with comprehensive documentation obligations – inclusion in the IVV-MED is in preparation – an external quality assurance is also being considered.

#### **Concerning item 114**

The so-called "neurodevelopment disorder" most likely corresponds to dementia (F02.8/ICD10) and autism (F8.40/ICD10). According to DSM-5, "neurocognitive disorder" is the designation for dementia. Two persons with a diagnosis of dementia are being detained under Section 21 (2) Criminal Code; three persons with a diagnosis of dementia and seven persons with a diagnosis of pervasive developmental disorder (autism, etc.) are being detained under Section 21 (1) Criminal Code. There are no data for other forms of detention. The question, which inmates cannot benefit from therapeutic activities, cannot be answered without any additional specification. Persons with dementia are not excluded from care policies. Even the above mentioned cases can benefit from therapeutic activities–tailored to their respective clinical needs.

Anonymisation of the inmates concerned in the CPT report makes it impossible for the penal administration to identify them precisely. Therefore, the situation of the mentioned persons concerned cannot be dealt with here in any detail.

#### **Concerning item 115**

We should mention in advance that time and again Romania is requested to take over cases of involuntary forensic placement under Section 21 (2) Criminal Code. But according to the experience of the Federal Ministry of Justice there are hardly any realistic prospects of success against the background of different legal concepts.

In a judgment passed by the Regional Court for Criminal Matters in Graz dated 15 March 2012, the Romanian national mentioned in the report was found guilty to have committed the crimes of intentional serious bodily harm and grave coercion and of the offence of dangerous threat and procurement, and sentenced to serve a prison term of 2 years and to be transferred to an institution of forensic placement under Section 21 (2) Criminal Code. Following an inquiry from the Romanian Ministry of Justice, on 4 July 2013 a request for taking over the imposed sentence and forensic placement was made to Romania on the basis of the Convention of 21 March 1983 on the Transfer of Sentenced Persons (CETS 112), after the Romanian side had given assurances in principle that taking over a forensic placement imposed under Section 21 (2) Criminal Code was possible. After repeated additions to the medical documentation requested by the Romanian authorities, the Federal Ministry of Justice on 16 April 2014 - upon a request from Romania - renewed the request for taking over the

sentence and forensic placement on the basis of the Council framework decision 2008/909/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the European Union.

After repeated urgent messages and further explanations of involuntary forensic placement under Section 21 (2) Criminal Code, the Romanian appellate court in Targu Mures competent for recognition and enforcement in a letter dated 7 August 2015 submitted its final decision of the same date, taking over the sentence, but not the forensic placement under Section 21 (2) Criminal Code. An answer to a respective inquiry with the Romanian authorities sent on 12 August 2015 has not been received yet. The other Romanian national was sentenced in a judgment by the Regional Court of Criminal Matters Vienna, final since 12 October 2011, among others for having committed the crimes of rape pursuant to Section 201 (1) and (2) 1<sup>st</sup> and 4<sup>th</sup> case Criminal Code to serve a prison term of 17 years and to be transferred to an institution of forensic placement under Section 21 (2) Criminal Code. In relation to this sentence, the Stein Prison has not yet submitted the documentation necessary for examining whether the enforcement of the penalty or placement order can be transferred. It should be mentioned that the convicted person had already previously been transferred to Romania to serve a sentence of eight years and a revoked conditional sentence of nine months imposed in a judgment by the Regional Court of Criminal Matters Vienna of November 2004 for having committed the crime of rape pursuant to Section 201 (1) Criminal Code.

### **Concerning item 116**

The tendency to offer freedom for individual needs, provided security and order are guaranteed, is increasingly reflected in the treatment of transsexual inmates. In everyday practise, there often is a lack of knowledge about the phenomenon “transsexualism” and its manifestations. According to current practice, a transfer to a prison for women is only possible once the civil status has been changed. The legally ordained separate detention of male and female prisoners fails to meet the requirements of transsexual persons in their physical and social reality. The fact that since 2009 a gender change in the register of births is possible without any gender reassignment surgery, poses a further complementary problem for penal detention. As a match between biological sexual characteristics and legal civil status can no longer be presumed, new classification criteria should be developed. A classification according to the social gender or to the gender the person lived in before imprisonment could take a burden off the person involved and off the prison personnel. In line with the broadly-based public debate about transgender and transsexuality, a comprehensive information campaign in the penal services system by providing information and prevention material is being considered. Equally the possibility of establishing an expert group for this very purpose is under consideration. The creation of “standards of care” could be a first step towards quality assurance in the area of transidentity in penal detention and forensic placement in Austria.

### **Concerning items 117-118**

The courts comply with the legal obligation to hold a hearing at least every two years. Not only the frequency, but also the institutional framework of such hearings is very important. An appropriate legal representation of the person concerned - be it through free provision of a lawyer or by patients’ ombudsmen - must be assured in any case. An essential task for the working group for reforming involuntary forensic placement has been to evaluate the state of forensic placements under Section 21 Criminal Code, to identify fields of problems, to collect data from an expert, organisational and legislative point of view and to specify the related reform needs. The final report contains numerous recommendations which mainly correspond to CPT recommendations. By the end of 2015, a corresponding legislative proposal shall be drawn up, which should as far as possible take those recommendations into consideration. According to Section 25 (3) Criminal Code, the court must at least once a year examine *ex officio*, whether forensic placement under Section 21 Criminal Code must of necessity be continued any further. In August 2015, the Federal Ministry of Justice has informed the courts and public prosecutors by decree about the ECtHR judgment of 16 July 2015 in the legal matter Kuttner versus Austria (7997/09), according to which an interval of 16 months between decisions

relative to evaluating the necessity of forensic placement under Section 25 (3) Criminal Code constitutes a violation of Article 5 ECHR. Whereas an evaluation has to be performed every year, the law (Section 167 (1) StVG) makes a personal hearing of the person concerned only mandatory every two years.

The working group for reforming involuntary forensic placement in its legislative proposal No. 42 has recommended that “the decision on release on parole should be taken in a hearing in line with a hearing evaluating further remand detention pursuant to Section 176 StPO.” Pursuant to Section 176 StPO, the accused person among others has to be informed of the hearing date and has to be brought to the hearing; during the hearing he/she has the right to respond to the contentions of the public prosecutor, and the right to speak last. In the hearing of the enforcing court on a release on parole, the provisions of StPO apply on a subsidiary basis, with the convicted person having the same rights as an accused person. If conditions pursuant to Section 61 (2) StPO are met, provision of a legal aid counsel is also possible. Thus, persons concerned are entitled (upon application) to be provided with legal aid counsel, if they are unable to bear the total costs of legal counsel without impairing the sustenance necessary to lead a simple life for themselves and for the family they have to support, if and when such counsel is necessary in the interest of administration of justice, and above all in the interest of an appropriate defence. In this sense, provision of legal counsel is required by law in the following cases

- if the accused is blind, deaf, mute or handicapped in another way or does not speak the court language sufficiently and therefore not capable of defending him/herself;
- for appeal procedures due to a complaint having been filed;
- in cases of difficult factual or legal situations.

The CPT recommendation to grant legal aid counsel in discharge procedures in all cases of financial need even without the presence of one of the above conditions, corresponds largely with the legislative recommendation No. 15 of the working group involuntary forensic placement “requirement of necessary defence counsel in discharge procedures: Persons in involuntary forensic placement under Section 21 (2) Criminal Code should be provided with a court-appointed defence counsel in discharge procedures from the time when the sentence has been served, persons in involuntary forensic placement under Section 21 (1) Criminal code from the time when the placement has lasted for three years. The enforcing court should be obligated to ask persons in forensic placement to name legal counsel and/or to apply for legal aid.”

### **Psychiatric establishments**

All CPT recommendations in this chapter were communicated to the authorities of the Federal States. The authorities of the Federal States have been requested to forward the recommendations to the institutional guarantors of the psychiatric establishments and of hospitals with psychiatric departments for consideration.

### **Concerning item 119**

Concerning the closing down or transfer of psychiatric departments of OWS it should be mentioned that the former 5<sup>th</sup> psychiatric ward (at the OWS site covering districts 3 and 11) has in the meantime been transferred to the Hospital Rudolfstiftung (coverage has been adapted to the Regional Structural Health-Care Plan 2020 (hereinafter RSG 2020) and now includes districts 3, 4 and 11). In 2017, the transfer of the 2<sup>nd</sup> and 6<sup>th</sup> psychiatric wards (presently covering districts 12, 13, 14, 15, 16 and 23, to the Hospital Hietzing is scheduled and will then cover, according to RSG 2020, districts 12, 13, 14, 15 and 23); the transfer of the 4<sup>th</sup> psychiatric ward (presently responsible for the districts 20 and 21, unchanged under RSG 2020, to the Hospital North) will also be carried out. Also the “closed station for acute psychiatric care of sentenced and remand prisoners, and for specially endangered or dangerous patients from Vienna” shall be closed at the OWS site in late 2017. Finally, the transfer of

the remaining psychiatric wards to the Wilhelmina Hospital or to the Social Medical Centre South - Kaiser-Franz-Josef Hospital will be implemented in line with the status of (constructional) implementation of the medium and long-term Vienna Hospital Concept 2030.

### **Concerning item 123**

The contents of the guideline regarding the “use of means of restraint” are known to the entire staff. Presently, a new Standard Operating Procedure (SOP) is being prepared.

### **Concerning item 124**

Setting up a central register with the data requested in the CPT report is not foreseen in the Involuntary Placement Act currently in force, which would therefore have to be amended by new legislation as this would mean collecting and processing extremely sensitive personal data. In any case, the Federal Ministry of Health has contacted the guarantors of the hospitals concerned in order to create or enhance awareness for the subject matter central register of means of restraint. As setting up such a central register would require adaptations of the IT-systems, efforts will be made to establish and agree on a realistic time period with the bodies concerned for implementing this project - also considering the pressure on costs in the health system - prior to taking any legislative measures. Pertinent discussions with hospital guarantors have not yet been concluded.

### **Concerning item 126**

In connection with abolishing net beds, a working group was established within the Vienna Association of Hospitals, which also discussed accompanying measures involved. Primarily, further enhancements of specialised training in de-escalation techniques have been adopted and implemented.

In principle, it should be noted, that net beds constitute one specific form of restraint among other options. The following applies: in cases of restraint necessity, the “most lenient” form should be selected. This has been and will continue to be practiced (without net beds). It is incorrect that net beds have been exclusively or predominantly used for restraint purposes. It goes without saying that the development of all other options which could avoid restraints altogether (such as special patient monitoring systems) is being observed with great attention. In real terms - this should not be seen in connection with prohibiting net beds, but should be the continuous task in the interest of “state of the art” treatment, care and nursing. In any case, all alternative options (“more lenient means”) have been and will continue to be used to avoid restraints. Net beds were only being used in institutions of the Municipality of Vienna. The issue of preparing nation-wide guidelines for the use of means of restraint shall be dealt with by the advisory board for mental health established with the Federal Ministry of Health.

### **Concerning item 131**

A permanent presence in the room for patients who are subjected to restraint is generally not expedient from a point of view of treatment and supervision. It is undisputed that continuous monitoring is required, but such measure can also be ensured in another form. Obviously, the “assistance” mentioned - and continuous monitoring – are already being used. The current spatial conditions in the pavilions, however, do not always allow applying restraints exclusively out of sight of other persons. The necessary adaptations (single-bed rooms) would mean a considerable financial outlay and of necessity result in a reduction of the number of beds available for psychiatric services.

Comprehensive and meaningful information of the person concerned on the reasons for the intervention (measures of restraint) must obviously be the goal, in a very low number of cases it may occur - for various reasons - that such information cannot be given. Systematic debriefing of a restrained patient by the attending physician has been included in the appropriate guideline, could not, however, be implemented in all cases during daily routine work. The future SOP will require that every patient must be offered such debriefing shortly after the restraint has been terminated. This has

also to be documented. Special attention is given to the observance of this guideline. The CPT allegation that patients have been subjected to *Fixierung* whilst naked is difficult to ascertain. The station managements informed us that they are particularly careful ensuring that restraints are only applied to patients who wear clothes. In one station it had occurred that one patient (at his own request) was restrained naked, but covered with a blanket. Systematic complaint records and the free texts of patients questioned provide no indications whatsoever for such practices (considering the time period from 2008 to the present). It has occurred in the past that patients subjected to *Fixierung* were additionally placed in net beds. Because such a combination actually reduces the time of actual restraint, this was considered to be in the interest of patients. The CPT statement is correct, that open net beds were used as “ordinary” beds in the Forensic Ward. The constructional situation (width of doorframes) in station 23/2 does not allow simply transferring net beds from or into the room. For such transfer, net beds have to be “disassembled” and subsequently reassembled. As a matter of course, medical treatment of patients under restraint is administered in compliance with statutory provisions.

### **Concerning item 133**

Austria agrees with CPT, that patients subjected to means of restraint should benefit from the same safeguards against therapeutic interventions of an involuntary nature as other patients. Therefore, Sections 35 et seqq. Involuntary Placement Act do not differentiate with respect to medical treatment, whether a person is being restrained in his/her mobility pursuant to Section 33 (3) Involuntary Placement Act.

### **Concerning item 134**

The Austrian Structural Health Plan 2012 – which is the binding framework plan for the integrated structure of the Austrian health-care system - provides for placing children and juveniles in separate wards for child and adolescent psychiatry. It is well known, that there is at present a shortage of such wards. Improvements – although slowly progressing - can be observed. This is also related to the fact that there is a shortage of specialists for child and adolescent psychiatry. Therefore, this specialisation was defined as a so-called shortage specialisation, and there are specific reliefs for educating medical professionals in this specialisation (Section 37 Education Regulation for Physicians 2015, FLG II No. 147/2015). In this connection it should be pointed out that the Federal State Steiermark in 2014 expanded the services offered by one out-patient station and one day-clinic with six beds at the Regional Hospital Leoben, and the Municipality of Vienna will expand the services offered by one ward for child and adolescent psychiatry at the Hospital North with a total of 57 beds.

### **Concerning item 135**

It is recognised that the colour of uniforms can trigger different feelings and reactions with different individuals. The CPT recommendation to introduce a different dress code for private security staff (maybe in line with the dress code of the security staff in the Detention Centre Vordernberg, see item 51) is being examined.

### **Concerning item 136**

On the basis of the Supreme Court decision mentioned in the CPT report, the OWS revised the SOP “Cooperation – Medical and Security Staff” accordingly, implemented it as binding instruction for the OWS, and informed the staff on 1 July 2015 by internal directive. The best option to ensure safety in the meaning of existing legal standards would be the formation of a “team for de-escalation of aggression and violence” (consisting of senior psychiatric medical and nursing staff with appropriate additional training in the area of aggression and de-escalation management).

**Concerning item 137**

Information about interventions by the police against psychiatric patients since January 2013 can only be collected from the appropriate medical history of the patients concerned. Any systematic collection of such data is not possible. The CPT claim that initial screenings of new arrivals were not always performed in a thorough manner, cannot be ascertained, as more detailed information has not been communicated.

**Concerning item 138**

The CPT claim that initial screenings of new arrivals were not always performed in a thorough manner, cannot be ascertained, as more detailed information has not been communicated.

**Concerning item 139**

According to the core recommendation No. 6 of the working group for reforming involuntary forensic placement, “compos mentis perpetrators should be transferred for treatment and care to the health and social systems of the Federal States.” Once this recommendation, which is presently being examined, has been implemented, this would concurrently mean that forensic psychiatric patients will also be placed under the supervision of patients’ advocates. Moreover as the law stands, the responsible Federal Ministry of Justice has considered it also as a fact, that forensic patients placed in psychiatric hospitals or wards be supervised by patients’ advocates. It is intended therefore, that this point be made clear by late 2015 in the draft amendment mentioned, taking into account the CPT recommendation, regardless of whether and when the total transfer of treatment and care for persons subject to measures of involuntary forensic placement pursuant to Section 21 (1) Criminal Code to the health and social systems of the Federal States will be completed. All recommendations have financial consequences (more hearings, more cases of legal aid, more supervision by patients’ advocates), so that their implementation depends upon the proviso of budgetary cover available.