



# Report of Various Size – Fieldwork research (FRANET)

## Criminal Detention in the EU – Conditions and Monitoring

### Country Report Austria

FRANET Contractor: European Training and Researcher Centre for Human Rights and Democracy (ETC Graz)  
Authors: Veronika Apostolovski, Markus Möstl  
Review: Klaus Starl  
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## 1. Cell space

- a) What is the national standard for cell space available to prisoners in m<sup>2</sup>? Is it regulated by any legal instrument, such as a legislative act, internal prison regulations, manuals, policy papers etc.?

There is no explicit standard on cell space available to prisoners in m<sup>2</sup>.

The Code of Conduct for Detention (*Anhalteordnung*)<sup>1</sup>, which is applicable for the arrest of persons by the police (or other authorities of public security), does not foresee a specific standard on m<sup>2</sup>. § 4 (1a) Code of Conduct for Detention stipulates that arrest rooms have to be situated and equipped in a way that prisoners are kept in a humane way and that health endangerment is avoided.

The Penal Code (*Strafvollzugsgesetz*) does also not foresee a specific m<sup>2</sup> of cell spaces. §40 (1) Penal Code stipulates that cells have to be appropriately equipped, have sufficient airspace and enough daylight.

- b) Please indicate whether there are different standards applicable to different detention regimes (for example, if applicable in your jurisdiction: open, semi-open, closed etc.).

There are two main detention regimes in Austria. The Code of Conduct for Detention (*Anhalteordnung*)<sup>2</sup> is applicable for arrest of persons by the police (or other authorities of public security).

The rules of the Penal Code (*Strafvollzugsgesetz*)<sup>3</sup> apply to criminal imprisonment. Where applicable, the standards are described for each regime in more detail in this report. The Detention Order for Prisons (*Vollzugsordnung für Justizanstalten, VZO*),<sup>4</sup> a decree issued by the Federal Ministry of Justice in 1995, regulates organisational details concerning prisons, but does not include standards relevant for the present questions.

- c) Please, provide a link to the National Preventive Mechanism's reports **from the reference period** (1 January 2015 to 1 May 2018, if no report is available for this period, please provide a link to the most recent one) and whether there are any recommendations regarding this aspect (please provide the exact quotation in the national language and if official translation is available – in English). These reports can be found on the web-page of the National Preventive Mechanism. For ease of reference a list of links can be found here: <https://apt.ch/en/list-of-designated-npm-by-regions-and-countries/>

<sup>1</sup> Austria, Code of Conduct for Detention (*Verordnung der Bundesministerin für Inneres über die Anhaltung durch die Sicherheitsbehörden und Organe des öffentlichen Sicherheitsdienstes - Anhalteordnung, AnhO*), BGBl. II Nr. 128/1999, available at:

[www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10006102&ShowPrintPreview=True](http://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10006102&ShowPrintPreview=True).

<sup>2</sup> Austria, Code of Conduct for Detention (*Verordnung der Bundesministerin für Inneres über die Anhaltung durch die Sicherheitsbehörden und Organe des öffentlichen Sicherheitsdienstes - Anhalteordnung, AnhO*), BGBl. II Nr. 128/1999, available at:

[www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10006102&ShowPrintPreview=True](http://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10006102&ShowPrintPreview=True).

<sup>3</sup> Austria, Penal Code (*Bundesgesetz vom 26. März 1969 über den Vollzug der Freiheitsstrafen und der mit Freiheitsentziehung verbundenen vorbeugenden Maßnahmen, Strafvollzugsgesetz - StVG*), BGBl. Nr. 144/1969, available at: [www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10002135](http://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10002135).

<sup>4</sup> Austria, Detention Order for Prisons (*Vollzugsordnung für Justizanstalten*), Decree by the Federal Ministry of Justice, JMZ 42302/27/V/95, 22 December 1995, available at:

[www.ris.bka.gv.at/Dokumente/Erlaesse/ERL\\_07\\_000\\_19951222\\_001\\_42302\\_27\\_V\\_95/ERL\\_07\\_000\\_19951222\\_001\\_42302\\_27\\_V\\_95.pdf](http://www.ris.bka.gv.at/Dokumente/Erlaesse/ERL_07_000_19951222_001_42302_27_V_95/ERL_07_000_19951222_001_42302_27_V_95.pdf).

## 2015

- Volksanwaltschaft, Parlamentsbericht 2015 – Präventive Menschenrechtskontrolle, available at: <https://volksanwaltschaft.gv.at/downloads/k2ma/PB39pr%C3%A4ventiv.pdf>

Das CPT legt für Hafträume, die in Einzelbelegung für Aufenthalte von mehr als einigen Stunden Dauer vorgesehen sind, eine Grundfläche von sieben Quadratmetern als Richtwert fest [CPT/Inf/E (2002) 1 – Rev. 2010, S.8]. Zellen die weniger als sechs Quadratmeter messen, sollen nicht für die Unterbringung von Gefangenen genutzt werden. Für den NPM ist die Einhaltung der vom CPT empfohlenen Mindestgröße von Hafträumen im Lichte des Art. 3 EMRK unumgänglich. Gedrängte Haftverhältnisse sind jedenfalls zu vermeiden und Mindesthaftraumgrößen sind einzuhalten.<sup>5</sup>

Seitens des NPM wir darauf verwiesen, dass bei der Bewertung des Haftraumes nicht nur die zur Verfügung stehenden Quadratmeter, zu berücksichtigen sind. Entscheiden ist eine Gesamtschau der Haftraumbedingungen“. „Ein Überbelag und eine geringe Haftraumgröße sind insbesondere in Anbetracht der Tatsache, dass der Großteil der Inhaftierten keiner Beschäftigung nachgeht und 23 Stunden täglich in den Hafträumen eingeschlossen ist, besonders bedenklich.<sup>6</sup>

- Austrian Ombudsman Board, Annual Report 2015 on the activities of the Austrian National Preventive Mechanism, available at: [http://volksanwaltschaft.gv.at/downloads/2kanq/Report%20on%20the%20Activities%20of%20the%20Austrian%20NPM\\_2015.pdf](http://volksanwaltschaft.gv.at/downloads/2kanq/Report%20on%20the%20Activities%20of%20the%20Austrian%20NPM_2015.pdf)

The CPT has established a basic area of seven square meters as a guideline for inmate cells intended for single occupancy for more than a few hours [CPT/Inf/E (2002) 1 – Rev. 2010, p. 8]. Cells that measure less than six square meters should not be used to house prisoners. For the NPM, compliance with the minimum size of inmate cells recommended by the CPT is mandatory in light of Article 3 of the European Convention on Human Rights (ECHR). Crowded detention conditions must be avoided and minimum cell sizes must be complied with.<sup>7</sup>

The NPM points out that, in evaluating the inmate cells, the square metres available are not the only factors to be taken into account. The overall picture of inmate cell conditions is essential. Overcrowding and the small size of inmate cells are especially concerning in light of the fact that most of the detainees have no employment and are confined Long lock-up times in the inmate cells for 23 hours a day.<sup>8</sup>

## 2016

- Volksanwaltschaft, Parlamentsbericht 2016 – Präventive Menschenrechtskontrolle, available at: <https://volksanwaltschaft.gv.at/downloads/elqga/PB40pr%C3%A4ventiv.pdf>.

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<sup>5</sup> Volksanwaltschaft, Parlamentsbericht 2015 – Präventive Menschenrechtskontrolle, available at: <https://volksanwaltschaft.gv.at/downloads/k2ma/PB39pr%C3%A4ventiv.pdf>, p. 112.

<sup>6</sup> Volksanwaltschaft, Parlamentsbericht 2015 – Präventive Menschenrechtskontrolle, available at: <https://volksanwaltschaft.gv.at/downloads/k2ma/PB39pr%C3%A4ventiv.pdf>, p. 112.

<sup>7</sup> Austrian Ombudsman Board, Annual Report 2015 on the activities of the Austrian National Preventive Mechanism, available at: [http://volksanwaltschaft.gv.at/downloads/2kanq/Report%20on%20the%20Activities%20of%20the%20Austrian%20NPM\\_2015.pdf](http://volksanwaltschaft.gv.at/downloads/2kanq/Report%20on%20the%20Activities%20of%20the%20Austrian%20NPM_2015.pdf), p. 105.

<sup>8</sup> Austrian Ombudsman Board, Annual Report 2015 on the activities of the Austrian National Preventive Mechanism, available at: [http://volksanwaltschaft.gv.at/downloads/2kanq/Report%20on%20the%20Activities%20of%20the%20Austrian%20NPM\\_2015.pdf](http://volksanwaltschaft.gv.at/downloads/2kanq/Report%20on%20the%20Activities%20of%20the%20Austrian%20NPM_2015.pdf), p. 105 et seq.

Anhalteräume dürfen nur entsprechend ihrer Größe belegt werden, von einer Überbelegung ist auch bei dringendem Platzbedarf abzusehen. Bei drohender Überbelegung müssen die Angehaltenen in andere Polizeidienststellen verlegt werden.<sup>9</sup>

Die Richtlinie für Arbeitsstätten (Erlass vom April 2013, BMI-OA1520/0008-II/10/c/2013) legt das Ausmaß eines Anhalteräumens, in dem mehrere Personen über einen kürzeren Zeitraum angehalten werden können, mit 20 m<sup>2</sup> fest. Der Begriff „mehrere Personen“ ist nicht näher definiert.<sup>10</sup>

Den Staat trifft im Falle der Durchführung von freiheitsentziehenden Maßnahmen eine besondere Fürsorgepflicht, darunter fällt auch dafür Sorge zu treffen, dass den Inhaftierten ausreichend individueller Lebensraum gewährt wird und dass sie sich nicht wechselseitig durch Tabakkonsum schädigen.<sup>11</sup>

- Austrian Ombudsman Board, Annual Report 2016 on the activities of the Austrian National Preventive Mechanism, available at: [http://volksanwaltschaft.gv.at/downloads/6cpkm/NPM%20Bericht%202016\\_EN\\_FINAL\\_2.pdf](http://volksanwaltschaft.gv.at/downloads/6cpkm/NPM%20Bericht%202016_EN_FINAL_2.pdf).

Detention areas may only be occupied in accordance with their size. There should be no overcrowding even when there is an urgent need for space. At risk of overcrowding, detainees must be moved to other police stations.<sup>12</sup>

A directive for workplaces (Richtlinie für Arbeitsstätten) establishes the dimensions of a detention area, in which multiple persons can be held for a short period of time at 20 m<sup>2</sup>. The term “multiple persons” is not defined in greater detail.<sup>13</sup>

The duty of care not only requires that all detainees have adequate living space, but the state must also guarantee that inmates do not impair their health through their consumption habits.<sup>14</sup>

## 2017

- Volksanwaltschaft, Parlamentsbericht 2017 – Präventive Menschenrechtskontrolle, available at: <https://volksanwaltschaft.gv.at/downloads/3ge1p/Parlamentsbericht%202017%20-%20Pr%C3%A4ventive%20Menschenrechts-kontrolle.pdf>.

The NPM publishes a list of recommendations on its website, where it summarises its findings from the visitations of the institutions. This list is available in (only) German at:

<https://volksanwaltschaft.gv.at/downloads/8n2rb/empfehlungen-des-npm-2017.pdf>. This list was an Annex to the report 2017 and therefore is reported in this Annex as part of the 2017 report.

- The 2017 NPM report is not yet available in English.

## 2. Sanitary Facilities

<sup>9</sup> Volksanwaltschaft, Parlamentsbericht 2016 – Präventive Menschenrechtskontrolle, available at: <https://volksanwaltschaft.gv.at/downloads/elqga/PB40pr%C3%A4ventiv.pdf>, p. 155.

<sup>10</sup> Volksanwaltschaft, Parlamentsbericht 2016 – Präventive Menschenrechtskontrolle, available at: <https://volksanwaltschaft.gv.at/downloads/elqga/PB40pr%C3%A4ventiv.pdf>, p. 154.

<sup>11</sup> Volksanwaltschaft, Parlamentsbericht 2016 – Präventive Menschenrechtskontrolle, available at: <https://volksanwaltschaft.gv.at/downloads/elqga/PB40pr%C3%A4ventiv.pdf>, p. 127.

<sup>12</sup> Austrian Ombudsman Board, Annual Report 2016 on the activities of the Austrian National Preventive Mechanism, available at: [http://volksanwaltschaft.gv.at/downloads/6cpkm/NPM%20Bericht%202016\\_EN\\_FINAL\\_2.pdf](http://volksanwaltschaft.gv.at/downloads/6cpkm/NPM%20Bericht%202016_EN_FINAL_2.pdf), p. 149.

<sup>13</sup> Austrian Ombudsman Board, Annual Report 2016 on the activities of the Austrian National Preventive Mechanism, available at: [http://volksanwaltschaft.gv.at/downloads/6cpkm/NPM%20Bericht%202016\\_EN\\_FINAL\\_2.pdf](http://volksanwaltschaft.gv.at/downloads/6cpkm/NPM%20Bericht%202016_EN_FINAL_2.pdf), p. 148.

<sup>14</sup> Austrian Ombudsman Board, Annual Report 2016 on the activities of the Austrian National Preventive Mechanism, available at: [http://volksanwaltschaft.gv.at/downloads/6cpkm/NPM%20Bericht%202016\\_EN\\_FINAL\\_2.pdf](http://volksanwaltschaft.gv.at/downloads/6cpkm/NPM%20Bericht%202016_EN_FINAL_2.pdf), p. 120.

- a) What is the national standard with regard to access to toilets? Are these located in cells? If not, do prisoners have access to these facilities without undue delay, even during the night? Do these facilities offer privacy to prisoners who use them?

§ 4 (1a) Code of Conduct for Detention foresees, that sanitary facilities have to be designed in such a way, that also prisoners in common rooms have to be able to use them in a humane way.

§ 42 Penal Code foresees the basic provisions regarding hygiene. Sanitary facilities have to be equipped hygienically, and designed in such a way, that prisoners can at any time use them in a decent way. Cells have to be equipped with separate toilets. Cells with more than one inmate have to be equipped with structurally separate toilets.

- b) What is the national standard with regard to access to regularly cleaned shower/bathing facilities? How often is this access provided? Do these facilities offer privacy to prisoners who use them?

§ 4 (1a) Code of Conduct for Detention foresees, that sanitary facilities have to be designed in such a way, that also prisoners in common rooms have to be able to use them in a humane way.

§ 12 Code of Conduct for Detention states that prisoners have to take a warm shower once a week. To keep the body clean each prisoner is entitled to warm water each day to clean his/her body. Upon request another warm shower has to be granted to the detainee once a week. Destitute detainees have to be provided with means necessary to clean their bodies.

§ 42 Penal Code foresees, that prisons have to be kept clean. In section 3 of the Penal Code it is stipulated, that each prisoners has to receive as much warm water daily so that he/she can clean himself/herself properly. As often as needed, but at least twice a week, he/she has to be given access to warm shower or bathing.

- c) Is the provision of cleanly sanitary facilities regulated by any legal instrument such as a legislative act, internal prison regulations, manuals, policy papers etc.?

Yes, as already described above in a) and b).

- d) Please indicate whether there are different standards applicable to different detention regimes (for example, if applicable in your jurisdiction: open, semi-open, closed etc.).

As explained in 1. b, a distinction is to be made between the Code of Conduct for Detention and the Penal Code. The applicable standards of these legal regimes are reported above in more detail.

- e) Please, provide a link to the National Preventive Mechanism's reports **from the reference period** (1 January 2015 to 1 May 2018, if no report is available for this period, please provide a link to the most recent one) and whether there are any recommendations regarding this aspect (please provide the exact quotation in the national language and if official translation is available – in English). These reports can be found on the web-page of the National Preventive Mechanism. For ease of reference a list of links can be found here: <https://apt.ch/en/list-of-designated-npm-by-regions-and-countries/>

## 2015

- Volksanwaltschaft, Parlamentsbericht 2015 – Präventive Menschenrechtskontrolle, available at: <https://volksanwaltschaft.gv.at/downloads/k2ma/PB39pr%C3%A4ventiv.pdf>

Die fehlende Abtrennung der Toiletten in den Wartehafträumen der JA Innsbruck verletzt bei Mehrfachbelegung des Wartehaftraumes das Gebot zur Achtung der Menschenwürde. Der NPM

fordert in allen Wartehafträumen der JA Innsbruck sowohl einen Sicht- als auch einen Geruchsschutz der sanitären Anlagen vom restlichen Haftraum.<sup>15</sup>

Bei Neuerrichtung und Neuanmietung bzw. bei Umbaumaßnahmen ist die gänzliche Abtrennung des Sanitärbereichs von Hafträumen auch bei kurzfristiger Anhaltung anzustreben.<sup>16</sup>

- Austrian Ombudsman Board, Annual Report 2015 on the activities of the Austrian National Preventive Mechanism, available at:  
[http://volksanwaltschaft.gv.at/downloads/2kang/Report%20on%20the%20Activities%20of%20the%20Austrian%20NPM\\_2015.pdf](http://volksanwaltschaft.gv.at/downloads/2kang/Report%20on%20the%20Activities%20of%20the%20Austrian%20NPM_2015.pdf).

When the holding cells at the Innsbruck correctional institution are occupied by more than one person, the lack of a partition around the toilets violates the requirement to protect human dignity. The NPM advocates that a privacy screen and an odour barrier separate the sanitary facilities from the rest of the cell in all holding cells at the Innsbruck correctional institution.<sup>17</sup>

An endeavour should be made to fully partition the toilet area – even for short-term detentions – for new construction, new rentals and remodelled buildings.<sup>18</sup>

## 2016

- Volksanwaltschaft, Parlamentsbericht 2016 – Präventive Menschenrechtskontrolle, available at:  
<https://volksanwaltschaft.gv.at/downloads/elqga/PB40pr%C3%A4ventiv.pdf>.

No relevant mentionings.

- Austrian Ombudsman Board, Annual Report 2016 on the activities of the Austrian National Preventive Mechanism, available at:  
[http://volksanwaltschaft.gv.at/downloads/6cpkm/NPM%20Bericht%202016\\_EN\\_FINAL\\_2.pdf](http://volksanwaltschaft.gv.at/downloads/6cpkm/NPM%20Bericht%202016_EN_FINAL_2.pdf).

No relevant mentionings.

## 2017

- Volksanwaltschaft, Parlamentsbericht 2017 – Präventive Menschenrechtskontrolle, available at:  
<https://volksanwaltschaft.gv.at/downloads/3ge1p/Parlamentsbericht%202017%20-%20Pr%C3%A4ventive%20Menschenrechts-kontrolle.pdf>.

*Sanitary facilities have to be installed hygienically and set up in a way, that inmates might at any time follow their needs of nature in a humane way.*

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<sup>15</sup> Volksanwaltschaft, Parlamentsbericht 2015 – Präventive Menschenrechtskontrolle, available at:  
<https://volksanwaltschaft.gv.at/downloads/k2ma/PB39pr%C3%A4ventiv.pdf>, p. 120.

<sup>16</sup> Volksanwaltschaft, Parlamentsbericht 2015 – Präventive Menschenrechtskontrolle, available at:  
<https://volksanwaltschaft.gv.at/downloads/k2ma/PB39pr%C3%A4ventiv.pdf>, p. 148.

<sup>17</sup> Austrian Ombudsman Board, Annual Report 2015 on the activities of the Austrian National Preventive Mechanism, available at:  
[http://volksanwaltschaft.gv.at/downloads/2kang/Report%20on%20the%20Activities%20of%20the%20Austrian%20NPM\\_2015.pdf](http://volksanwaltschaft.gv.at/downloads/2kang/Report%20on%20the%20Activities%20of%20the%20Austrian%20NPM_2015.pdf), p. 112.

<sup>18</sup> Austrian Ombudsman Board, Annual Report 2015 on the activities of the Austrian National Preventive Mechanism, available at:  
[http://volksanwaltschaft.gv.at/downloads/2kang/Report%20on%20the%20Activities%20of%20the%20Austrian%20NPM\\_2015.pdf](http://volksanwaltschaft.gv.at/downloads/2kang/Report%20on%20the%20Activities%20of%20the%20Austrian%20NPM_2015.pdf), p. 139.



Sanitäre Anlagen müssen hygienisch eingerichtet sein und so beschaffen sein, dass die Strafgefangenen jederzeit in menschenwürdiger Weise ihren natürlichen Bedürfnissen nachkommen können.<sup>19</sup>

*The access to hygienic sanitary facilities shall be guaranteed for arrested persons. Protection of the personal sphere has to be secured through organizational or structural measures.*

Der Zugang von Angehaltenen zu hygienischen sanitären Einrichtungen ist zu gewährleisten. Der Schutz der Intimsphäre ist durch bauliche bzw. organisatorische Maßnahmen sicherzustellen.

*Toilets in cells for more than one person have to be completely separated. Mattresses and textiles provided to the arrested person have to be clean.*

Toiletten in Mehrpersonenzellen sind vom übrigen Haftraum vollständig abgetrennt zu gestalten. Die an Angehaltene ausgegebenen Matratzen und Textilien haben sauber zu sein.

*Arrested persons shall at least be able to shower twice a week, under special circumstances each day. The arrested persons have to be informed about the possibilities to shower.*

Angehaltene sollen zumindest zweimal wöchentlich, unter besonderen Umständen täglich duschen können. Über die Duschköglichkeit sind die Angehaltenen zu informieren.

*All arrested persons have to have access to toiletries. Women have to be provided with toiletries during menstruation.*

Allen Angehaltenen ist der Zugang zu Hygieneartikel zu ermöglichen. Frauen sind während der Menstruation benötigte Hygieneartikel zur Verfügung zu stellen<sup>20</sup>

*All cells, waiting cells too, have to have separate sanitary facilities if used by more than one person, as well as sufficient light to read and also daylight.*

Alle Hafträume, auch Wartehafträume, müssen bei einer Mehrfachbelegung über baulich abgetrennte sanitäre Anlagen sowie über ausreichend Licht zum Lesen und über Tageslicht verfügen (2015, 2017).<sup>21</sup>

- The 2017 report is not yet available in English.

### 3. Time out of cell

- a) What is the national standard set for time per day/week spent by prisoners outside of their cells:
- a. Outdoors (within the boundary of the prison)?
- According to § 43 Penal Code, prisoners who do not work outside have the right to spend one hour daily outside, if the weather does not prevent it. Prisoners who work outside do have this right on each day they do not work. Time outside is to be extended, if this does not interfere with

<sup>19</sup> Volksanwaltschaft, Parlamentsbericht 2017 – Präventive Menschenrechtskontrolle, available at: <https://volksanwaltschaft.gv.at/downloads/3ge1p/Parlamentsbericht%202017%20-%20Pr%C3%A4ventive%20Menschenrechts-kontrolle.pdf>, p. 146.

<sup>20</sup> Volksanwaltschaft, Parlamentsbericht 2017 – Präventive Menschenrechtskontrolle, available at: <https://volksanwaltschaft.gv.at/downloads/3ge1p/Parlamentsbericht%202017%20-%20Pr%C3%A4ventive%20Menschenrechts-kontrolle.pdf>, p. 155.

<sup>21</sup> Volksanwaltschaft, Parlamentsbericht 2017 – Präventive Menschenrechtskontrolle, available at: <https://volksanwaltschaft.gv.at/downloads/3ge1p/Parlamentsbericht%202017%20-%20Pr%C3%A4ventive%20Menschenrechts-kontrolle.pdf>, p. 204.

other tasks and order in the prison. Sport is to be allowed, as it is possible regarding equipment, age and health.

b. Indoors in the common area?

§ 126 Penal Code foresees the possibilities for loosened form of imprisonment. (2) foresees different possibilities, for example arrest without locking of the doors of the cells and common rooms during the day.

b) Are sports or other recreational and educational facilities available to prisoners? If so what types?

All prisons have special sport and recreational facilities.<sup>22</sup> For example all prisons have libraries and there are music- or theatre groups. A focus is laid on sport activities, providing sport fields, gyms and fitness rooms.<sup>23</sup>

c) Is time spent in cells regulated by any legal instrument, such as a legislative act, internal prison regulations, manuals, policy papers etc.?

As mentioned above there are provisions regarding spent time outside, there are no other provisions in legal instruments in this regard.

d) Please indicate whether there are different standards applicable to different detention regimes (for example, if applicable in your jurisdiction: open, semi-open, closed etc.).

As explained in 1. b, a distinction is to be made between the Code of Conduct for Detention and the Penal Code. The applicable standards of these legal regimes are reported above in more detail.

e) Please, provide a link to the National Preventive Mechanism's reports **from the reference period** (1 January 2015 to 1 May 2018, if no report is available for this period, please provide a link to the most recent one) and whether there are any recommendations regarding this aspect (please provide the exact quotation in the national language and if official translation is available – in English). These reports can be found on the web-page of the National Preventive Mechanism. For ease of reference a list of links can be found here: <https://apt.ch/en/list-of-designated-npm-by-regions-and-countries/>

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No relevant mentionings.

## 2016

<sup>22</sup> Austria, Federal Ministry of Justice (2013), Strafvollzug in Österreich, available at: [www.justiz.gv.at/web2013/file/2c9484853e44f8f9013ef9d9e2b928dd.de.0/strafvollzug\\_download.pdf](http://www.justiz.gv.at/web2013/file/2c9484853e44f8f9013ef9d9e2b928dd.de.0/strafvollzug_download.pdf), p. 31.

<sup>23</sup> Austria, Federal Ministry of Justice (2013), Strafvollzug in Österreich, available at: [www.justiz.gv.at/web2013/file/2c9484853e44f8f9013ef9d9e2b928dd.de.0/strafvollzug\\_download.pdf](http://www.justiz.gv.at/web2013/file/2c9484853e44f8f9013ef9d9e2b928dd.de.0/strafvollzug_download.pdf), p. 31.



- Volksanwaltschaft, Parlamentsbericht 2016 – Präventive Menschenrechtskontrolle, available at: <https://volksanwaltschaft.gv.at/downloads/elqga/PB40pr%C3%A4ventiv.pdf>.

Es sollen Schritte unternommen werden, um den Häftlingen mehr Zeit für Aktivitäten außerhalb des Haftraumes, einschließlich an Freitagen und Wochenenden, zu bieten. Die Verschlusszeiten insbesondere bei nicht beschäftigten Häftlingen sind zu verkürzen. Einschlusszeiten von 23 Stunden täglich sind unhaltbar.<sup>24</sup>

Personen, denen die Freiheit entzogen ist, sollen sinnvolle Aktivitäten angeboten werden, dies gilt insbesondere für Jugendliche. Neben Erziehung sowie Schul- bzw Berufsausbildung soll auch die sportliche Betätigung einen wichtigen Teil dieses Programmes bilden.<sup>25</sup>

- Austrian Ombudsman Board, Annual Report 2016 on the activities of the Austrian National Preventive Mechanism, available at: [http://volksanwaltschaft.gv.at/downloads/6cpkm/NPM%20Bericht%202016\\_EN\\_FINAL\\_2.pdf](http://volksanwaltschaft.gv.at/downloads/6cpkm/NPM%20Bericht%202016_EN_FINAL_2.pdf).

Steps should be taken to offer prisoners more time for activities outside the inmate cell, including of Fridays and weekends. The lock-up times must be shortened, particularly for unemployed prisoners. Lock-up times of 23 hours per day are intolerable.<sup>26</sup>

Persons who have been deprived of their liberty should be offered appropriate activities. This applies to juveniles, in particular. In addition to education and occupational or other training, sports activities should also be an important part of this programme.<sup>27</sup>

## 2017

- Volksanwaltschaft, Parlamentsbericht 2017 – Präventive Menschenrechtskontrolle, available at: <https://volksanwaltschaft.gv.at/downloads/3ge1p/Parlamentsbericht%202017%20-%20Pr%C3%A4ventive%20Menschenrechts-kontrolle.pdf>.

*Additionally to schooling and vocational education as well as education in general, sport shall be an important part of activities of youth in prisons.*

Zusätzlich zur Schul- bzw Berufsausbildung sowie der Erziehung soll auch die sportliche Betätigung ein wichtiger Teil im Aktivitätenprogramm jugendlicher Inhaftierter sein.<sup>28</sup>

*Time outside has to be provided for adults for an hour each day and two hours for youth. This time has to be available for the inmates net.*

Der Aufenthalt im Freien ist täglich mindestens eine Stunde bei Erwachsenen und zwei Stunden bei Jugendlichen zu ermöglichen. (2014) Diese Zeit muss den Inhaftierten netto zur Verfügung stehen.

*The time spent for being brought outside and back inside shall not be counted. If staying outside is not possible due to the weather, alternatives have to be provided (e.g. in a gym).*

<sup>24</sup> Volksanwaltschaft, Parlamentsbericht 2016 – Präventive Menschenrechtskontrolle, available at: <https://volksanwaltschaft.gv.at/downloads/elqga/PB40pr%C3%A4ventiv.pdf>, p. 126

<sup>25</sup> Volksanwaltschaft, Parlamentsbericht 2016 – Präventive Menschenrechtskontrolle, available at: <https://volksanwaltschaft.gv.at/downloads/elqga/PB40pr%C3%A4ventiv.pdf>, p. 126.

<sup>26</sup> Austrian Ombudsman Board, Annual Report 2016 on the activities of the Austrian National Preventive Mechanism, available at: [http://volksanwaltschaft.gv.at/downloads/6cpkm/NPM%20Bericht%202016\\_EN\\_FINAL\\_2.pdf](http://volksanwaltschaft.gv.at/downloads/6cpkm/NPM%20Bericht%202016_EN_FINAL_2.pdf), p. 119.

<sup>27</sup> Austrian Ombudsman Board, Annual Report 2016 on the activities of the Austrian National Preventive Mechanism, available at: [http://volksanwaltschaft.gv.at/downloads/6cpkm/NPM%20Bericht%202016\\_EN\\_FINAL\\_2.pdf](http://volksanwaltschaft.gv.at/downloads/6cpkm/NPM%20Bericht%202016_EN_FINAL_2.pdf), p. 119.

<sup>28</sup> Volksanwaltschaft, Parlamentsbericht 2017 – Präventive Menschenrechtskontrolle, available at: <https://volksanwaltschaft.gv.at/downloads/3ge1p/Parlamentsbericht%202017%20-%20Pr%C3%A4ventive%20Menschenrechts-kontrolle.pdf>, p.206.

Die Zeit des Vor- und Abführens ist nicht in den Aufenthalt im Freien einzurechnen. Wenn der Aufenthalt im Freien wegen Schlechtwetters entfällt, sind alternative Bewegungsmöglichkeiten (z.B. in einem Sportsaal) anzubieten. (2017).<sup>29</sup>

*The provision of at least one time of physical exercise outside has to be guaranteed. Police Arrest Centres have to have useful equipment in- and outdoors. There shall not only be functioning (sport) equipments but also board games and also the participation in external leisure activities should be allowed.*

Das Angebot der täglichen, mindestens einstündigen Bewegung der Angehaltenen im Freien ist sicherzustellen. Für eine zweckmäßige Ausstattung des PAZ-Innen- und Außenbereichs ist zu sorgen. Es sollten nicht nur funktionstüchtige (Sport-)Geräte in erforderlicher Anzahl sowie Gesellschaftsspiele bereitgestellt werden, auch die Nutzung extern angebotener Freizeitmöglichkeiten ist zuzulassen.<sup>30</sup>

- The 2017 report is not yet available in English.

#### 4. Solitary confinement

- a) What is the national standard set regarding solitary confinement? Is it regulated by any legal instrument, such as a legislative act, internal prison regulations, manuals, policy papers etc.?

§ 5 Code of Conduct for Detention foresees conditions for solitary confinement (*Einzelhaft*), in case an inmate turned violent against another inmate, if the courts ask for it, or if she/he holds risks of infection. Furthermore, solitary confinement is possible if it seems commanded because of the crime or if this is in the interest of other inmates.

§ 103 (2) 1a Penal Code mentions solitary confinement as one of the security measures for prisoners with flight risk, risk of violence or self harm or other relevant danger for security and order. A prisoner who either works during the day or is kept in his/her spare time in common areas for two hours might be taken into solitary confinement for the rest of the day.

Solitary confinement is one of the forms of imprisonment listed in the 12th sub-section of the Penal Code. § 125 Penal Code states that a person held in solitary confinement, who does not receive visitors, has to be visited by a prison officer at least once a day. A prisoner may only be kept in solitary confinement for longer than four weeks, if this was ordered by the court. In case the court orders solitary confinement, it has to speak out on the duration of it. A prisoner might only be kept in solitary confinement for longer than six months, if he/she asks for it and the prison doctor agrees.

- b) *Please indicate whether there are different standards applicable to different detention regimes (for example, if applicable in your jurisdiction: open, semi-open, closed etc.).*

As explained in 1. b, a distinction is to be made between the Code of Conduct for Detention and the Penal Code. The applicable standards of these legal regimes are reported above in more detail.

- c) *Please, provide a link to the National Preventive Mechanism's reports **from the reference period** (1 January 2015 to 1 May 2018, if no report is available for this period, please provide a link to the most recent one) and whether there are any recommendations regarding this aspect (please provide the exact quotation in the national language and if official translation is available – in English). These*

<sup>29</sup> Volksanwaltschaft, Parlamentsbericht 2017 – Präventive Menschenrechtskontrolle, available at: <https://volksanwaltschaft.gv.at/downloads/3ge1p/Parlamentsbericht%202017%20-%20Pr%C3%A4ventive%20Menschenrechts-kontrolle.pdf>, p. 204 .

<sup>30</sup> Volksanwaltschaft, Parlamentsbericht 2017 – Präventive Menschenrechtskontrolle, available at: <https://volksanwaltschaft.gv.at/downloads/3ge1p/Parlamentsbericht%202017%20-%20Pr%C3%A4ventive%20Menschenrechts-kontrolle.pdf>, p. 155.

reports can be found on the web-page of the National Preventive Mechanism. For ease of reference a list of links can be found here: <https://apt.ch/en/list-of-designated-npm-by-regions-and-countries/>

#### 2015

- Volksanwaltschaft, Parlamentsbericht 2015 – Präventive Menschenrechtskontrolle, available at: <https://volksanwaltschaft.gv.at/downloads/k2ma/PB39pr%C3%A4ventiv.pdf>.

No relevant mentionings.

- Austrian Ombudsman Board, Annual Report 2015 on the activities of the Austrian National Preventive Mechanism, available at: [http://volksanwaltschaft.gv.at/downloads/2kanq/Report%20on%20the%20Activities%20of%20the%20Austrian%20NPM\\_2015.pdf](http://volksanwaltschaft.gv.at/downloads/2kanq/Report%20on%20the%20Activities%20of%20the%20Austrian%20NPM_2015.pdf).

No relevant mentionings.

#### 2016

- Volksanwaltschaft, Parlamentsbericht 2016 – Präventive Menschenrechtskontrolle, available at: <https://volksanwaltschaft.gv.at/downloads/elqga/PB40pr%C3%A4ventiv.pdf>. Selbstmordgefährdete Inhaftierte dürfen nicht in einem Einzelhaftstraum untergebracht werden. Eine Videoüberwachung schließt für sich noch nicht aus, dass sich die Gefährdeten in einem unbeobachteten Moment suizidieren. (2014).<sup>31</sup>

- Austrian Ombudsman Board, Annual Report 2016 on the activities of the Austrian National Preventive Mechanism, available at: [http://volksanwaltschaft.gv.at/downloads/6cpkm/NPM%20Bericht%202016\\_EN\\_FINAL\\_2.pdf](http://volksanwaltschaft.gv.at/downloads/6cpkm/NPM%20Bericht%202016_EN_FINAL_2.pdf).

Potentially suicidal inmates may not be housed in a single cell. Video Monitoring does not rule out suicide by the persons at risk during an unobserved moment.<sup>32</sup>

#### 2017

- Volksanwaltschaft, Parlamentsbericht 2017 – Präventive Menschenrechtskontrolle, available at: <https://volksanwaltschaft.gv.at/downloads/3ge1p/Parlamentsbericht%202017%20-%20Pr%C3%A4ventive%20Menschenrechts-kontrolle.pdf>.

*Cells (also single person cells) have to have toilets separated from the rest of the room.*

*Haft Räume (auch Einzelhaft Räume) haben über eine vom restlichen Haftraum getrennte WC-Anlage zu verfügen".<sup>33</sup>*

*In all police arrest centres (PAZ) there has to be a sufficient number of cells, which are suitable for implementing solitary confinement according to § 5 and 5b (2) Z4 AnhO.*

<sup>31</sup> Volksanwaltschaft, Parlamentsbericht 2016 – Präventive Menschenrechtskontrolle, available at: <https://volksanwaltschaft.gv.at/downloads/elqga/PB40pr%C3%A4ventiv.pdf>, p. 187.

<sup>32</sup> Austrian Ombudsman Board, Annual Report 2016 on the activities of the Austrian National Preventive Mechanism, available at: [http://volksanwaltschaft.gv.at/downloads/6cpkm/NPM%20Bericht%202016\\_EN\\_FINAL\\_2.pdf](http://volksanwaltschaft.gv.at/downloads/6cpkm/NPM%20Bericht%202016_EN_FINAL_2.pdf), p. 179.

<sup>33</sup> Volksanwaltschaft, Parlamentsbericht 2017 – Präventive Menschenrechtskontrolle, available at: <https://volksanwaltschaft.gv.at/downloads/3ge1p/Parlamentsbericht%202017%20-%20Pr%C3%A4ventive%20Menschenrechts-kontrolle.pdf>, p. 146.

„In sämtlichen PAZ muss eine ausreichende Anzahl an Hafträumen vorhanden sein, die für den Vollzug der Einzelhaft gemäß § 5 bzw 5b Abs. 2 Z4 AnhO geeignet sind.<sup>34</sup>

*All cells have to have an alarm button. Solitary cells according to § 5 AnhO have to have a sink, hot and cold water, a toilet, a bed as well as a table and possibilities to sit.*

In allen Einzelhafträumen muss eine beim Haftraum zu quittierende Alarntaste vorhanden sein. Einzelzellen gemäß § 5 AnhO sind mit einem Waschbecken, einer Warm- und Kaltwasser-Versorgung, einer Sitztoilette, einem Bett und einem Tisch mit Sitzmöglichkeit auszustatten. [...]

*Reasons, start, progress and end of solitary confinement as well as consultation of a doctor upon accommodation in a specially secured cell have to be documented.*

Grund, Beginn, Verlauf und Ende einer Einzelhaftunterbringung sowie die Beziehung einer Ärztin bzw. eines Arztes bei Unterbringung in einer besonders gesicherten Zelle sind zu dokumentieren.<sup>35</sup>

- The 2017 report is not yet available in English.

## 5. Access to healthcare

- a) What is the national standard with regard to access to medical services in prisons? (E.g. do prisoners have prompt access to medical services within prisons or externally? Do prisoners have access to dentists and opticians?)

§ 10 Code of Conduct for Detention states that necessary medical care for prisoners has to be provided by medical officers (*Amtsärzte*) or by other precaution (*Vorsorge*) by making sure that a doctor can intervene without unnecessary delay. In minor cases paramedics may take care of prisoners.

According to § 10 (5) Code of Conduct for Detention prisoners are free to consult a doctor of their choice on their own costs. Those consultations have to take place in the cell.

The fifth sub-section of the Penal Code deals with medical care for prisoners. § 66 Penal Code states that the health status of inmates and their weight are to be monitored. In case of illness, accident, suicide attempt or other self harm the prison doctor has to be informed and has to treat the inmate or transfer her/him to special doctors (§ 68 Penal Code). According to § 73 Penal Code prisoners have to be granted the necessary dental treatments. Dentures are only provided on the own costs of the inmate.

- b) Are there any special provisions relating to the provision of specialist care? (E.g. for long-term diseases, for sick and elderly prisoners, the mentally ill, drug addicted prisoners etc.)

§ 68a Penal Code deals with withdrawal treatments in case the treatment seems appropriate regarding the duration of imprisonment, or if the sentence is more than two years and the treatment was the reason not to transfer the person to an institution for mentally disturbed offenders.

- c) Is access to healthcare in prisons regulated by any legal instrument, such as a legislative act, internal prison regulations, manuals, policy papers etc.?

<sup>34</sup> Volksanwaltschaft, Parlamentsbericht 2017 – Präventive Menschenrechtskontrolle, available at: <https://volksanwaltschaft.gv.at/downloads/3ge1p/Parlamentsbericht%202017%20-%20Pr%C3%A4ventive%20Menschenrechts-kontrolle.pdf>, p. 153.

<sup>35</sup> Volksanwaltschaft, Parlamentsbericht 2017 – Präventive Menschenrechtskontrolle, available at: <https://volksanwaltschaft.gv.at/downloads/3ge1p/Parlamentsbericht%202017%20-%20Pr%C3%A4ventive%20Menschenrechts-kontrolle.pdf>, p. 154.

This is described above under a).

d) *Please indicate whether there are different standards applicable to different detention regimes.*

As explained in 1. b, a distinction is to be made between the Code of Conduct for Detention and the Penal Code. The applicable standards of these legal regimes are reported above in more detail. As explained above, the Penal Code explicitly foresees dental care, while this is not the case in the Code of Conduct for Detention.

e) *Please, provide a link to the National Preventive Mechanism's reports from the reference period (1 January 2015 to 1 May 2018, if no report is available for this period, please provide a link to the most recent one) and whether there are any recommendations regarding this aspect (please provide the exact quotation in the national language and if official translation is available – in English). These reports can be found on the web-page of the National Preventive Mechanism. For ease of reference a list of links can be found here: <https://apt.ch/en/list-of-designated-npm-by-regions-and-countries/>*

The 2017 report by the AOB summarizes the main mentionings of standards and findings by the NPM in this regard in respect to detention in prisons and police detention. The 2017 report is not yet available in English. [Where English quotes were available in the separate annual report, these quotes were directly inserted in the German list.](#)

#### On detention in prisons:

„Inhaftierten ist dasselbe Niveau medizinischer Fürsorge sowie Pflege zu gewähren wie Personen in Kranken- und Pflegeeinrichtungen in Freiheit. (2014, 2015)

It must be guaranteed that the medical care of detainees is on the same level as that of persons who are at liberty.<sup>36</sup>

*To guarantee this care under comparable conditions as for persons in freedom, medical personnel has to be available in a sufficient number.*

Um eine medizinische und pflegerische Behandlung unter vergleichbaren Bedingungen zur Verfügung zu stellen, wie sie Patientinnen bzw. Patienten in Freiheit genießen, muss medizinisches Personal in ausreichendem Maße vorhanden sein. (2017).

Eine personelle Aufstockung des medizinischen Personals, insbesondere hinsichtlich der psychiatrischen Versorgung, ist in zahlreichen JA erforderlich. (2015, 2016)

E.g. in the 2015 report: The NPM considers it necessary to hire additional medical personnel, particularly for the purpose of psychiatric care in the out-patient clinic of the Stein correctional institution.<sup>37</sup>

*Inmates with substance abuse problems are entitled that their special treatment, care and advise necessities are taken into account.*

Inhaftierte mit einer Substanzgebrauchsstörung haben einen Anspruch darauf, dass ihren speziellen Behandlungs-, Betreuungs- und Beratungsbedürfnissen Rechnung getragen wird. (2017)

<sup>36</sup> Austrian Ombudsman Board, Annual Report 2015 on the activities of the Austrian National Preventive Mechanism, available at: [http://volksanwaltschaft.gv.at/downloads/2kanq/Report%20on%20the%20Activities%20of%20the%20Austrian%20NPM\\_2015.pdf](http://volksanwaltschaft.gv.at/downloads/2kanq/Report%20on%20the%20Activities%20of%20the%20Austrian%20NPM_2015.pdf), p. 90.

<sup>37</sup> Austrian Ombudsman Board, Annual Report 2015 on the activities of the Austrian National Preventive Mechanism, available at: [http://volksanwaltschaft.gv.at/downloads/2kanq/Report%20on%20the%20Activities%20of%20the%20Austrian%20NPM\\_2015.pdf](http://volksanwaltschaft.gv.at/downloads/2kanq/Report%20on%20the%20Activities%20of%20the%20Austrian%20NPM_2015.pdf), p. 103.

*In case of difficulties of understanding trained interpreters have to be consulted. The nation wide installed video interpreting systems have to be used exclusively (2017)* Bei Verständigungsschwierigkeiten im medizinischen Bereich sind ausgebildete Dolmetscherinnen bzw. Dolmetscher beizuziehen. Die flächendeckend in den Krankenabteilungen zur Verfügung stehenden Videodolmetsch-Systeme sind ausnahmslos zu verwenden. (2014, 2015, 2016, 2017)

The NPM hopes that video interpreting will be introduced into all facilities operated by Austrian police departments and facilities for the detention of mentally ill offenders in the course of 2016.<sup>38</sup>

*Preventive medical check-ups also are part of the standard of medical care.*

Zum Standard der medizinischen Versorgung zählen auch Vorsorgeuntersuchungen. (2014)

*Regular visitations shall help to prevent bodily and mental neglect of long-term prisoners.*

Regelmäßige Visiten sollen insbesondere helfen, körperliche und seelische Verwahrlosungen von Langzeitinhaftierten hintanzuhalten. (2014, 2015)

Auf Krankenabteilungen und in Ordinationen hat ausschließlich ausgebildetes Gesundheits- und Krankenpflegepersonal Dienst zu versehen. Dieses darf keine Aufsichtsfunktionen ausüben. Eine Beiziehung von Strafvollzugsbediensteten der Justizwache darf nur ausnahmsweise aufgrund einer Gefährlichkeitsprognose über Verlangen der Ärztin bzw. des Arztes erfolgen. (2016)

Only trained health care and nursing personnel should provide services in infirmaries and physician's offices. They may not perform any supervisory functions. Prison guards may only be utilized as an exception by request of the physician due to a risk assessment.<sup>39</sup>

Für den Fall, dass eine Bewachung bei der Untersuchung einer oder eines Inhaftierten zwingend erforderlich ist, soll diese nur von einer Person gleichen Geschlechtes vorgenommen werden. (2015)

It was demanded that, if it was absolutely necessary to have a prison guard present during the examination of a detainee, he or she should be a person of the same gender. Under which circumstances it is absolutely necessary to have a guard present during a medical treatment (in the room at the correctional institution provided for this purpose) is still left open.<sup>40</sup>

Ärztliche Experimente an Inhaftierten sind gesetzlich verboten. Das Verbot ist ein absolutes. Unerheblich ist, ob bei einem invasiven Eingriff eine Beeinträchtigung zu erwarten ist. (2016)

Medical experiments on inmates are prohibited by law. The prohibition is absolute. It is irrelevant whether an adverse effect can be expected from the invasive procedure.<sup>41</sup>

Das Führen einer elektronischen Pflegedokumentation ist unerlässlich, um allein durch die Möglichkeit der Nachvollziehbarkeit eine vermehrte Sorgfalt im Umgang mit pflegebedürftigen Gefangenen zu bewirken. (2015)

<sup>38</sup> Austrian Ombudsman Board, Annual Report 2015 on the activities of the Austrian National Preventive Mechanism, available at:

[http://volksanwaltschaft.gv.at/downloads/2kanq/Report%20on%20the%20Activities%20of%20the%20Austrian%20NPM\\_2015.pdf](http://volksanwaltschaft.gv.at/downloads/2kanq/Report%20on%20the%20Activities%20of%20the%20Austrian%20NPM_2015.pdf), p. 98.

<sup>39</sup> Austrian Ombudsman Board, Annual Report 2016 on the activities of the Austrian National Preventive Mechanism, available at: [http://volksanwaltschaft.gv.at/downloads/6cpkm/NPM%20Bericht%202016\\_EN\\_FINAL\\_2.pdf](http://volksanwaltschaft.gv.at/downloads/6cpkm/NPM%20Bericht%202016_EN_FINAL_2.pdf), p. 101 et seq.

<sup>40</sup> Austrian Ombudsman Board, Annual Report 2015 on the activities of the Austrian National Preventive Mechanism, available at:

[http://volksanwaltschaft.gv.at/downloads/2kanq/Report%20on%20the%20Activities%20of%20the%20Austrian%20NPM\\_2015.pdf](http://volksanwaltschaft.gv.at/downloads/2kanq/Report%20on%20the%20Activities%20of%20the%20Austrian%20NPM_2015.pdf), p. 94.

<sup>41</sup> Austrian Ombudsman Board, Annual Report 2016 on the activities of the Austrian National Preventive Mechanism, available at: [http://volksanwaltschaft.gv.at/downloads/6cpkm/NPM%20Bericht%202016\\_EN\\_FINAL\\_2.pdf](http://volksanwaltschaft.gv.at/downloads/6cpkm/NPM%20Bericht%202016_EN_FINAL_2.pdf), p. 106.



The NPM considers the establishment of an electronic record of nursing care to be indispensable. The ability to trace the individual instances of treatment and care will already ensure increased diligence in dealing with prisoners in need of nursing care.<sup>42</sup>

*Newly admitted prisoners have to be medically checked within 24 hours upon arrival.*

Neu eingetroffene Häftlinge sind binnen 24 Stunden nach ihrer Aufnahme bzw. auch bei einer Überstellung (z.B. aufgrund einer Vollzugsortsänderung oder einer Klassifizierung) einer medizinischen ärztlichen Untersuchung (Zugangsuntersuchung) zu unterziehen. (2016)

Der Umfang der Zugangsuntersuchung muss im Sinne einer bundesweit einheitlichen Vorgangsweise standardisiert werden. Sie hat im Interesse des Fremd- und Selbstschutzes sowie des Erkennens von Misshandlungsspuren neben einem Anamnesegespräch auch aus einer Ganzkörperuntersuchung inklusive Entblößung zu bestehen. Die Inhaftierten sollen ausdrücklich auf die Möglichkeit einer Blutuntersuchung hingewiesen werden. Eine Ablehnung einer Blutuntersuchung seitens der Häftlinge ist im IVV-MED-Modul zu dokumentieren. (2016, 2017)

In the interest of self-protection, the protection of others and the discovery of mistreatment, the health examination upon arrival should include a physical examination in addition to a medical history record.<sup>43</sup>

*Prisoners who suffer from psychiatric (pre-existing)-illnesses have to be brought to a psychiatric doctor in short time after admittance to the prison and are to be cared for by regular contact to the doctor.*

Inhaftierte, die an einer psychiatrischen (Vor-)Erkrankung leiden, sind zeitnahe nach der Einlieferung in eine JA einer Fachärztin bzw. einem Facharzt für Psychiatrie vorzustellen und durch regelmäßige Kontakte psychiatrisch zu begleiten. (2016)

*To guarantee effective suicide prevention, prisoners who hold VISCI red status, have to be brought to the psychological and psychiatric experts as soon as possible to produce an experts' report.*

Im Sinne einer effektiven Suizidprävention sind Inhaftierte, die im VISCI-System auf Rot geschaltet sind, zu einem ehestmöglichen Zeitpunkt dem Psychologischen und Psychiatrischen Fachdienst zur Erstellung eines (ärztlichen) Fachbefundes und Therapievorschlages vorzustellen. (2016)

*Psychiatric and psychological care is part of health care and has to be therefore guaranteed in pre-trial detention and in criminal detention and detention of mentally ill offenders.*

Die psychiatrische wie psychologische Versorgung ist Teil der Gesundheitspflege und als solche in den Anstalten in der Untersuchungshaft und im Straf- und Maßnahmenvollzug sicherzustellen. (2014)

*Regarding youth and young adults it has to be conducted by experts on child- and youth psychiatry, especially in the course of starting or conducting a substitutional treatment.*

Bei Jugendlichen und jungen Erwachsenen hat sie durch Fachärztinnen und Fachärzte der Kinder- und Jugendpsychiatrie zu erfolgen, insbesondere auch zur Durchführung bzw. Indikationsstellung einer Substitutionsbehandlung. (2016)

*Prisoners who show psychological particularities and at the same time are not able for regular imprisonment have to be separated from other inmates and have to receive special care and therapy. Standards for care and criteria for classification have to be developed.*

Strafgefangene, die eine psychische Besonderheit und gleichzeitig eine fehlende Eignung für den allgemeinen Strafvollzug aufweisen, sind von den übrigen Strafgefangenen zu trennen und haben eine adäquate fachspezifische Betreuung und Therapie zu erhalten. Für sie sind Standards für die Versorgung bzw. Betreuung sowie Kriterien als Orientierungshilfe für die Klassifizierung zu etablieren. (2017)

<sup>42</sup> Austrian Ombudsman Board, Annual Report 2015 on the activities of the Austrian National Preventive Mechanism, available at:

[http://volksanwaltschaft.gv.at/downloads/2kanq/Report%20on%20the%20Activities%20of%20the%20Austrian%20NPM\\_2015.pdf](http://volksanwaltschaft.gv.at/downloads/2kanq/Report%20on%20the%20Activities%20of%20the%20Austrian%20NPM_2015.pdf), p. 92.

<sup>43</sup> Austrian Ombudsman Board, Annual Report 2016 on the activities of the Austrian National Preventive Mechanism, available at: [http://volksanwaltschaft.gv.at/downloads/6cpgm/NPM%20Bericht%202016\\_EN\\_FINAL\\_2.pdf](http://volksanwaltschaft.gv.at/downloads/6cpgm/NPM%20Bericht%202016_EN_FINAL_2.pdf), p. 105.



*Individual therapeutic treatments for detained persons have to be foreseen as well as specific rooms. Therapy has to start soon after accomodation. Months of inactivity are not acceptable.*

Individuelle Therapieangebote für Untergebrachte sind ebenso vorzusehen wie entsprechende Räumlichkeiten. Die Therapien sind zeitnahe nach der Unterbringung zu beginnen. Ein monatelanger Stillstand ist nicht akzeptabel. (2017)

Es ist sicherzustellen, dass die Zustimmung der oder des Betroffenen vor der Verabreichung von einer Placebo-Medikation vorliegt. (2015)<sup>44</sup>

Moreover, the NPM emphasises that placebo medication can only be tolerated if the patient is informed.<sup>45</sup>

On detention in police institutions:

Die Definition des Begriffs „Hafffähigkeit“ sollte in der AnhO eindeutig festgelegt werden. (2015)

A clear definition of the term “fitness to undergo detention” should be provided in the Code of Conduct for Detention.<sup>46</sup>

Bei der Feststellung, ob Haftunfähigkeit aufgrund psychischer Beeinträchtigungen vorliegt, ist mit besonderer Sensibilität vorzugehen. Bei deutlichen Hinweisen auf das Vorliegen psychischer Beeinträchtigungen im Anamnesebogen oder im Anhalteprotokoll ist eine Psychiaterin bzw. ein Psychiater beizuziehen. (2015)

Particular sensitivity should be used in determining whether a person is unfit to undergo detention due to mental impairment.<sup>47</sup>

Eine exakte sprachliche Auseinandersetzung mit der untersuchten Person ist erforderlich. Bei Bedarf muss eine Dolmetscherin bzw. ein Dolmetscher beigezogen werden. (2015)

A precise verbal exchange with the person being examined is necessary. An interpreter must be called in, if necessary.<sup>48</sup>

Polizeiärztinnen bzw. Polizeiärzte müssen – unabhängig von Wochentag oder Uhrzeit – jederzeit auf eine psychiatrische Expertise zurückgreifen können. (2015)

Police physicians should always be able to correctly assess the need for specialised treatment of detained persons based on the situation and to quickly access psychiatric expertise, if necessary, regardless of the day of the week and the time of day.<sup>49</sup>

<sup>44</sup> Volksanwaltschaft, Parlamentsbericht 2017 – Präventive Menschenrechtskontrolle, available at:

<https://volksanwaltschaft.gv.at/downloads/3ge1p/Parlamentsbericht%202017%20-%20Pr%C3%A4ventive%20Menschenrechts-kontrolle.pdf>, p. 207-209.

<sup>45</sup> Austrian Ombudsman Board, Annual Report 2015 on the activities of the Austrian National Preventive Mechanism, available at:

[http://volksanwaltschaft.gv.at/downloads/2kanq/Report%20on%20the%20Activities%20of%20the%20Austrian%20NPM\\_2015.pdf](http://volksanwaltschaft.gv.at/downloads/2kanq/Report%20on%20the%20Activities%20of%20the%20Austrian%20NPM_2015.pdf), p. 101.

<sup>46</sup> Austrian Ombudsman Board, Annual Report 2015 on the activities of the Austrian National Preventive Mechanism, available at:

[http://volksanwaltschaft.gv.at/downloads/2kanq/Report%20on%20the%20Activities%20of%20the%20Austrian%20NPM\\_2015.pdf](http://volksanwaltschaft.gv.at/downloads/2kanq/Report%20on%20the%20Activities%20of%20the%20Austrian%20NPM_2015.pdf), p. 131.

<sup>47</sup> Austrian Ombudsman Board, Annual Report 2015 on the activities of the Austrian National Preventive Mechanism, available at:

[http://volksanwaltschaft.gv.at/downloads/2kanq/Report%20on%20the%20Activities%20of%20the%20Austrian%20NPM\\_2015.pdf](http://volksanwaltschaft.gv.at/downloads/2kanq/Report%20on%20the%20Activities%20of%20the%20Austrian%20NPM_2015.pdf), p. 131.

<sup>48</sup> Austrian Ombudsman Board, Annual Report 2015 on the activities of the Austrian National Preventive Mechanism, available at:

[http://volksanwaltschaft.gv.at/downloads/2kanq/Report%20on%20the%20Activities%20of%20the%20Austrian%20NPM\\_2015.pdf](http://volksanwaltschaft.gv.at/downloads/2kanq/Report%20on%20the%20Activities%20of%20the%20Austrian%20NPM_2015.pdf), p. 131 et seq.

<sup>49</sup> Austrian Ombudsman Board, Annual Report 2015 on the activities of the Austrian National Preventive Mechanism, available at:

[http://volksanwaltschaft.gv.at/downloads/2kanq/Report%20on%20the%20Activities%20of%20the%20Austrian%20NPM\\_2015.pdf](http://volksanwaltschaft.gv.at/downloads/2kanq/Report%20on%20the%20Activities%20of%20the%20Austrian%20NPM_2015.pdf), p. 131.

*A guideline foreseeing criteria regarding adequate preventive health care of psychologically noticeable, self-endangering, alcohol or substance abusing persons is necessary.*

Eine Richtlinie, die Kriterien für eine adäquate Gesundheitsversorgung von psychisch auffälligen, selbstgefährdeten, alkoholisierten und substanzbeeinträchtigten Personen festlegt, ist notwendig. (2014, 2015)

Bei Vorliegen von Selbstgefährdung soll die medizinisch notwendige Überstellung in Fachkliniken der Unterbringung in besonders gesicherten Zellen vorgezogen werden. (2015)

The development of criteria for the medically necessary transfer of such persons to specialised clinics instead of their placement in specially secured cells could minimise the risk of jeopardising the health of this particularly vulnerable group of persons by making a bad decision.<sup>50</sup>

*Police doctors shall inform persons, who are not able to stay in prison, prior to leaving the prison about medical measures and possibilities to allow for later care for the person.*

Polizeiärztinnen bzw. Polizeiärzte sollen haftunfähige Personen vor Aufhebung der Haft über etwaige weitere medizinische Maßnahmen und Möglichkeiten informieren, um der entlassenen Person eine anschließende Versorgung nahelegen zu können. (2015)

*For medical examinations of persons not speaking German an interpreter or another persons capable to speak the languages shall be consulted.*

Bei ärztlichen Untersuchungen von nicht Deutsch sprechenden Angehaltenen ist eine Dolmetscherin bzw. ein Dolmetscher oder eine sprachkundige Person beizuziehen. (2014)

*Information on consulting an interpreter shall be taken up into the protocol of arrest.*

Angaben über die Hinzuziehung einer Dolmetscherin bzw. eines Dolmetschers oder einer sprachkundigen Person sind in den Anhalteprotokollen zu dokumentieren. (2014)

*Inmates have to be provided with the anamnesis form in their mothertongue, regardless of knowledge of the German language.*

Den Inhaftierten ist der ärztliche Anamnesebogen unabhängig von möglichen Deutschkenntnissen in ihrer Muttersprache auszuhändigen. (2014)

*Medical examinations have to be documented conclusively and without contradictions.*

Medizinische Untersuchungen müssen nachvollziehbar und widerspruchsfrei dokumentiert sein. (2013)

*Medication shall only be distributed by trained staff or under supervision of a doctor.*

Medikamente dürfen nur durch geschultes Personal oder unter ärztlicher Aufsicht ausgegeben werden. (2013)

*Upon arrest in special secured cells in PAZ an immediate first medical check by a doctor has to take place.*

Bei Unterbringungen in besonders gesicherten Zellen von PAZ hat ehestmöglich eine erste ärztliche Untersuchung des Häftlings stattzufinden. (2017)

*Isolated arrest of inmates on hunger strike in PAZ shall only take place if medical treatment is not possible in open stations.*

Die isolierte Anhaltung hungerstreikender Schubhäftlinge in PAZ soll nur dann erfolgen, wenn die jeweils erforderliche ärztliche Behandlung nicht in offener Station realisierbar ist. (2017)

<sup>50</sup> Austrian Ombudsman Board, Annual Report 2015 on the activities of the Austrian National Preventive Mechanism, available at:

[http://volksanwaltschaft.gv.at/downloads/2kang/Report%20on%20the%20Activities%20of%20the%20Austrian%20NPM\\_2015.pdf](http://volksanwaltschaft.gv.at/downloads/2kang/Report%20on%20the%20Activities%20of%20the%20Austrian%20NPM_2015.pdf), p. 128.

*If there is a suspicion of suicide risks, this has to be documented. Information of decision makers as well as medical checks have to take place.*

Besteht bei einer angehaltenen Person ein Verdacht auf Suizidgefahr, so ist dies zu dokumentieren. Eine Information an die Entscheidungsträger sowie die rasche Einleitung einer (fach-)ärztlichen Abklärung hat zu erfolgen. (2017)

*If suicide risks are confirmed, organisational measures have to take place to hinder access to dangerous items.*

Wird eine Suizidgefahr festgestellt, sind organisatorische Maßnahmen zu treffen, die den Zugang der angehaltenen Person zu gefährlichen Gegenständen verhindern. (2017)

*After a suicide (attempt) immediate measures to save the life have to be conducted. Measures of crisis intervention regarding inmates have to be conducted quickly.*

Nach einem Suizid(versuch) sind lebensrettende Sofortmaßnahmen und die weitere Rettungskette einzuleiten. Maßnahmen der Krisenintervention bei Mithäftlingen sind rasch durchzuführen. (2017)

*Organisational measures have to secure that standardised analysis to optimise prevention work take place after each suicide or suicide attempt.*

Durch organisatorische Vorgaben ist sicherzustellen, dass nach jedem Suizid oder (vereiteltem) Suizidversuch eine fallorientierte, standardisierte Analyse zur Optimierung der Präventionsarbeit stattfindet. (2017)

*The Federal Ministry of the Interior has to safeguard that all administrative arrested persons receive adequate medical treatment.*

Das BMI hat dafür zu sorgen, dass alle im AHZ Angehaltenen eine adäquate kurativ-medizinische Versorgung nach dem Stand der Wissenschaft erhalten. (2017)

*Medical and medical care staff of the AHZ has to have access to psychiatric expertise at any time.*

Das ärztliche bzw. pflegerische Personal des AHZ muss jederzeit auf eine psychiatrische Expertise zurückgreifen können. (2017)

*The existing concept of rooms and personnel at the AHZ clinic shall be adapted. Documentation on patients shall be conducted in electronic form.*

Das bestehende Raum- und Personalkonzept im Ambulanzbereich des AHZ soll adaptiert werden. Die Patientendokumentation in der Ambulanz soll in elektronischer Form erfolgen. (2017)

*Medical examinations and treatments of persons in police inspections have to be in general conducted by doctors alone. Police officers may only be present due to security reasons and shall not be those who conducted the arrest.*

Ärztliche Untersuchungen und Behandlungen von Personen in PI sind grundsätzlich alleine mit der Ärztin bzw. dem Arzt durchzuführen. Exekutivbedienstete dürfen bei ärztlichen Untersuchungen im Polizeiarrest nur aus Sicherheitsgründen beigezogen werden und sollen nicht die Festnahme durchgeführt haben. (2017)

*At police inspections the presents of a police officer during medical examination, the name, the reasons for presence as well as the measures for upholding privacy of the inmate shall be documented.*

In PI sollen im Anhalteprotokoll die Anwesenheit einer bzw. eines Exekutivbediensteten bei der medizinischen Untersuchung und Behandlung, der Name und der Grund für die Anwesenheit der bzw. des beigezogenen Exekutivbediensteten sowie die Angabe, welche Maßnahmen zur Wahrung der Intimität getroffen wurden, festgehalten werden. (2017)

*In case of being naked during a medical check the present police officer has to have the same sex as the inmate.*

Bei Entblößungen im Zuge von ärztlichen Untersuchungen in PI muss die bzw. der hinzugezogene Exekutivbedienstete geschlechtsident mit der angehaltenen Person sein. (2017)

*Officers being present because of security reasons shall be out of earshot and if possible also out of sight.*  
Aus Sicherheitsgründen beigezogene Exekutivbedienstete in PI müssen sich jedenfalls außer Hörweite und wenn möglich außer Sichtweite aufhalten. (2017)

*If possible, separate rooms for examinations shall be available at PI. In any case technical measures to guarantee a confidential medical examination have to be taken.*

Nach Möglichkeit sollen abgesonderte Untersuchungsräume in PI zur Verfügung gestellt werden. In jedem Fall sind technische Vorkehrungen zur Gewährleistung einer vertraulichen ärztlichen Untersuchung zu treffen. (2017)

*Protection of non-smokers has to be provided in all PI. Cells may not be used as smoking zones of personnel.*  
Der Nichtraucherschutz ist in allen PI einzuhalten. Anhalte- und Verwahrungsräume dürfen nicht als Raucherzonen für Bedienstete verwendet werden. (2017)<sup>51</sup>

## 6. Special measures in place to protect juvenile prisoners.

- a) Are there any legal instruments, such as a legislative act, internal prison regulations, manuals, policy papers etc. regulating the separation of juvenile prisoners from adults? (e.g. a separate juvenile ward, or part of the building, canteen, common area etc.?)

According to § 4 (3) Code of Conduct for Detention, minors are to be accommodated separately from adults.

The seventh section of the Juvenile Court Act (*Jugendgerichtsgesetz, JGG*)<sup>52</sup> foresees specific provisions for imprisonment of juveniles. § 51 Juvenile Court Act stipulates that the general rules on imprisonment of the Penal Code apply for juveniles unless provision of the JGG foresee otherwise. Imprisonment of juveniles shall be conducted in separate institutions, if possible or in separate wards. Juveniles are to be separated from adults according to § 55 (2) Juvenile Court Act.

- b) What age category falls under this specific juvenile prison regime?  
Youth until 18 and young adults until the age of 21 according to § 1 Juvenile Court Act.

- c) *Please indicate whether there are different standards applicable to different detention regimes (for example, if applicable in your jurisdiction: open, semi-open, closed etc.).*

As explained in 1. b, a distinction is to be made between the Code of Conduct for Detention and the Penal Code. The applicable standards of these legal regimes are reported above in more detail. In this case, the regulations of the Juvenile Court Act (*Jugendgerichtsgesetz, JGG*) presented above under a) apply as well.

§§ 51 et seq foresee special provisions of detention of youth, whereby the general rules apply, when nothing else is foreseen in the Juvenile Court Act. Juveniles shall be educated towards acting according to the rules of society according to § 53. They shall be – if possible – educated to hold vocational education. § 54 foresees specific provisions for persons working with juvenile prisoners, these persons shall have pedagogical understanding and shall be informed about the most important facts regarding pedagogy, psychology and psychiatry. § 58 foresees a number of measures on how to treat juvenile prisoners, such as more food for them because of their development (2), two hours of time spent outside (3), only giving them useful tasks (4), providing them with regular teaching in the special detention facilities for juveniles (5), visits (7), which can take place at least once a week for one hour.

<sup>51</sup> Volksanwaltschaft, Parlamentsbericht 2017 – Präventive Menschenrechtskontrolle, available at: <https://volksanwaltschaft.gv.at/downloads/3ge1p/Parlamentsbericht%202017%20-%20Pr%C3%A4ventive%20Menschenrechts-kontrolle.pdf>, p. 214-216.

<sup>52</sup> Austria, Juvenile Court Act (*Jugendgerichtsgesetz, JGG*), BGBl. 599/1988 last amended by BGBl. I Nr. 154/2015, available at: [www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10002825](http://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10002825).

- d) Please, provide a link to the National Preventive Mechanism's reports **from the reference period** (1 January 2015 to 1 May 2018, if no report is available for this period, please provide a link to the most recent one) and whether there are any recommendations regarding this aspect (please provide the exact quotation in the national language and if official translation is available – in English). These reports can be found on the web-page of the National Preventive Mechanism. For ease of reference a list of links can be found here: <https://apt.ch/en/list-of-designated-npm-by-regions-and-countries/>

## 2015

- Volksanwaltschaft, Parlamentsbericht 2015 – Präventive Menschenrechtskontrolle, available at: <https://volksanwaltschaft.gv.at/downloads/k2ma/PB39pr%C3%A4ventiv.pdf>.

Der NPM fordert in den JA Innsbruck und Graz-Jakomini längere Haftraumöffnungszeiten für jugendliche Inhaftierte am Wochenende. Um gewaltsamen Übergriffen zwischen jugendlichen Inhaftierten vorzubeugen, bedarf es eines strukturierten und ausgewogenen Tagesablaufs mit möglichst kurzen Einschlusszeiten. Personalengpässe dürfen nicht zu Lasten der Jugendlichen gehen.<sup>53</sup>

In der Jugendabteilung der JA Innsbruck und in der JA Klagenfurt sollen auch Abend- und Wochenendbesuche ermöglicht werden.<sup>54</sup>

- Austrian Ombudsman Board, Annual Report 2015 on the activities of the Austrian National Preventive Mechanism, available at: [http://volksanwaltschaft.gv.at/downloads/2kanq/Report%20on%20the%20Activities%20of%20the%20Austrian%20NPM\\_2015.pdf](http://volksanwaltschaft.gv.at/downloads/2kanq/Report%20on%20the%20Activities%20of%20the%20Austrian%20NPM_2015.pdf).

The NPM advocates that the cells of juvenile detainees remain open longer on the weekends in the Innsbruck and Graz-Jakomini correctional institutions. To avoid violent assaults between juvenile detainees, there must be a structured and balanced daily routine with the shortest possible lock-up times. Personnel shortages may not adversely affect juveniles.<sup>55</sup>

Evening and weekend visits should be permitted in the juvenile ward of the Innsbruck correctional institution and in the Klagenfurt correctional institution.<sup>56</sup>

## 2016

<sup>53</sup> Volksanwaltschaft, Parlamentsbericht 2015 – Präventive Menschenrechtskontrolle, available at: <https://volksanwaltschaft.gv.at/downloads/k2ma/PB39pr%C3%A4ventiv.pdf>, p. 116.

<sup>54</sup> Volksanwaltschaft, Parlamentsbericht 2015 – Präventive Menschenrechtskontrolle, available at: <https://volksanwaltschaft.gv.at/downloads/k2ma/PB39pr%C3%A4ventiv.pdf>, p. 118.

<sup>55</sup> Austrian Ombudsman Board, Annual Report 2015 on the activities of the Austrian National Preventive Mechanism, available at: [http://volksanwaltschaft.gv.at/downloads/2kanq/Report%20on%20the%20Activities%20of%20the%20Austrian%20NPM\\_2015.pdf](http://volksanwaltschaft.gv.at/downloads/2kanq/Report%20on%20the%20Activities%20of%20the%20Austrian%20NPM_2015.pdf), p. 109.

<sup>56</sup> Austrian Ombudsman Board, Annual Report 2015 on the activities of the Austrian National Preventive Mechanism, available at: [http://volksanwaltschaft.gv.at/downloads/2kanq/Report%20on%20the%20Activities%20of%20the%20Austrian%20NPM\\_2015.pdf](http://volksanwaltschaft.gv.at/downloads/2kanq/Report%20on%20the%20Activities%20of%20the%20Austrian%20NPM_2015.pdf), p. 111.

- Volksanwaltschaft, Parlamentsbericht 2016 – Präventive Menschenrechtskontrolle, available at: <https://volksanwaltschaft.gv.at/downloads/elqga/PB40pr%C3%A4ventiv.pdf>.

Die psychiatrische Versorgung Jugendlicher und junger Erwachsener in Österreichs JA hat durch Fachärztinnen und Fachärzte der Kinder- und Jugendpsychiatrie zu erfolgen. Es sind alle Anstrengungen zu unternehmen, um ehestens sicherzustellen, dass die psychiatrische Versorgung von Jugendlichen und jungen Erwachsenen in Untersuchungshaft und im Straf- und Maßnahmenvollzug von Fachärztinnen und Fachärzten für Kinder- und Jugendpsychiatrie erfolgt. Zur Durchführung der Substitutionsbehandlung als auch zur Indikationsstellung der Substitutionstherapie bei minderjährigen Inhaftierten ist jedenfalls die Expertise einer Fachärztin bzw. eines Facharztes für Kinder- und Jugendpsychiatrie einzuholen.<sup>57</sup>

Es ist sicherzustellen, dass Jugendliche in Haft von speziell auf deren Bedürfnisse und Anforderungen geschultem Personal betreut werden. Den Jugendabteilungen soll ein autonomer Personalpool an Mitarbeiterinnen und Mitarbeitern zur Verfügung stehen. Diese Bediensteten sollen ein besonderes Interesse am Jugendvollzug aufweisen und das Ausbildungsprogramm „Arbeitsfeld Jugendvollzug“ absolviert haben.<sup>58</sup>

Ausführungen von Jugendlichen sind (außer bei Bedenken im Einzelfall) in Zivilkleidung durchzuführen. Dies ist von den Justizwachebediensteten zu beachten.<sup>59</sup>

Personen, denen die Freiheit entzogen ist, sollen sinnvolle Aktivitäten angeboten werden, dies gilt insbesondere für Jugendliche. Neben Erziehung sowie Schul- bzw. Berufsbildung soll auch die sportliche Betätigung einen wichtigen Teil dieses Programmes bilden.<sup>60</sup>

Es sind längere Haftraumöffnungszeiten für jugendliche Inhaftierte am Wochenende einzurichten. Um gewaltsamen Übergriffen zwischen jugendlichen Inhaftierten vorzubeugen, ist ein strukturierter und ausgewogener Tagesablauf mit möglichst kurzen Einschusszeiten zu etablieren. Personallengpässe dürfen nicht zu Lasten der Jugendlichen gehen. (2015)<sup>61</sup>

- Austrian Ombudsman Board, Annual Report 2016 on the activities of the Austrian National Preventive Mechanism, available at: [http://volksanwaltschaft.gv.at/downloads/6cprkm/NPM%20Bericht%202016\\_EN\\_FINAL\\_2.pdf](http://volksanwaltschaft.gv.at/downloads/6cprkm/NPM%20Bericht%202016_EN_FINAL_2.pdf).

Psychiatric care for juveniles and young adults in Austrian correctional institutions must be provided by specialists in child and adolescent psychiatry. Every effort must be made to ensure that psychiatric care is provided to juveniles and young adults in pre-trial detention and detention for mentally ill offenders by specialists in child and adolescent psychiatry. The expertise of a specialist in child and adolescent psychiatry must be obtained to engage in substitution treatment and to define the indications for substitution therapy for minor inmates.<sup>62</sup>

<sup>57</sup> Volksanwaltschaft, Parlamentsbericht 2016 – Präventive Menschenrechtskontrolle, available at: <https://volksanwaltschaft.gv.at/downloads/elqga/PB40pr%C3%A4ventiv.pdf>, p. 114.

<sup>58</sup> Volksanwaltschaft, Parlamentsbericht 2016 – Präventive Menschenrechtskontrolle, available at: <https://volksanwaltschaft.gv.at/downloads/elqga/PB40pr%C3%A4ventiv.pdf>, p. 122.

<sup>59</sup> Volksanwaltschaft, Parlamentsbericht 2016 – Präventive Menschenrechtskontrolle, available at: <https://volksanwaltschaft.gv.at/downloads/elqga/PB40pr%C3%A4ventiv.pdf>, p. 123.

<sup>60</sup> Volksanwaltschaft, Parlamentsbericht 2016 – Präventive Menschenrechtskontrolle, available at: <https://volksanwaltschaft.gv.at/downloads/elqga/PB40pr%C3%A4ventiv.pdf>, p. 126.

<sup>61</sup> Volksanwaltschaft, Parlamentsbericht 2016 – Präventive Menschenrechtskontrolle, available at: <https://volksanwaltschaft.gv.at/downloads/elqga/PB40pr%C3%A4ventiv.pdf>, p. 185.

<sup>62</sup> Austrian Ombudsman Board, Annual Report 2016 on the activities of the Austrian National Preventive Mechanism, available at: [http://volksanwaltschaft.gv.at/downloads/6cprkm/NPM%20Bericht%202016\\_EN\\_FINAL\\_2.pdf](http://volksanwaltschaft.gv.at/downloads/6cprkm/NPM%20Bericht%202016_EN_FINAL_2.pdf), p. 108.



Steps must be taken to ensure that juveniles in detention are supported by personnel who are specially trained regarding their needs and requirements. An autonomous pool of employees should be available to the juvenile sections. These employees should have a special interest in juvenile offenders and have completed the training programme on "Detention of juvenile offenders as a field work."<sup>63</sup>

Unless there are specific concerns in an individual situation, prison guards have to wear civilian clothing when taking juveniles outside. Prison guards have to comply with this requirement.<sup>64</sup>

Persons who have been deprived of their liberty should be offered appropriate activities. This applies to juveniles in particular. In addition to education and occupational or other training, sports activities should also be an important part of this programme.<sup>65</sup>

Cells of juvenile detainees should remain open longer at the weekends. In order to avoid violent assaults among juvenile detainees, a structured and balanced daily routine must be established with the shortest possible lock-up times. Personnel shortages may not adversely affect juvenile detainees.<sup>66</sup>

The night shift in the juvenile department should only be staffed with juvenile department employees. (2014)

Only employees with pedagogic training should escort juvenile detainees when they are taken outside. (2015)

The administration of the judiciary should make a targeted search for suitable employees for the detention of juvenile offenders. Such employees should be offered attractive working conditions after completing the relevant training. (2014)<sup>67</sup>

## 2017

- Volksanwaltschaft, Parlamentsbericht 2017 – Präventive Menschenrechtskontrolle, available at: <https://volksanwaltschaft.gv.at/downloads/3ge1p/Parlamentsbericht%202017%20-%20Pr%C3%A4ventive%20Menschenrechts-kontrolle.pdf>.

Night shifts in juvenile departments are to be conducted only by staff of the juvenile department. Only staff who has pedagogical knowledge shall accompany juveniles during tours. Administration shall look for suitable staff for juvenile detention. They shall be offered attractive working conditions after finalizing a relevant training.

Der Nachtdienst im Jugenddepartment soll ausschließlich durch Bedienstete des Jugenddepartments besetzt werden. (2014)

Ausschließlich Bedienstete, die über pädagogische Kenntnisse verfügen, sollen jugendliche Inhaftierte bei Ausführungen begleiten. (2015)

Die Justizverwaltung soll gezielt nach geeigneten Mitarbeitern für den Jugendvollzug suchen. Diesen Bediensteten sind nach Absolvieren einer einschlägigen Ausbildung attraktive Arbeitsbedingungen anzubieten. (2014)<sup>68</sup>

<sup>63</sup> Austrian Ombudsman Board, Annual Report 2016 on the activities of the Austrian National Preventive Mechanism, available at: [http://volksanwaltschaft.gv.at/downloads/6cpkm/NPM%20Bericht%202016\\_EN\\_FINAL\\_2.pdf](http://volksanwaltschaft.gv.at/downloads/6cpkm/NPM%20Bericht%202016_EN_FINAL_2.pdf), p. 115 et seq.

<sup>64</sup> Austrian Ombudsman Board, Annual Report 2016 on the activities of the Austrian National Preventive Mechanism, available at: [http://volksanwaltschaft.gv.at/downloads/6cpkm/NPM%20Bericht%202016\\_EN\\_FINAL\\_2.pdf](http://volksanwaltschaft.gv.at/downloads/6cpkm/NPM%20Bericht%202016_EN_FINAL_2.pdf), p. 117.

<sup>65</sup> Austrian Ombudsman Board, Annual Report 2016 on the activities of the Austrian National Preventive Mechanism, available at: [http://volksanwaltschaft.gv.at/downloads/6cpkm/NPM%20Bericht%202016\\_EN\\_FINAL\\_2.pdf](http://volksanwaltschaft.gv.at/downloads/6cpkm/NPM%20Bericht%202016_EN_FINAL_2.pdf), p. 119.

<sup>66</sup> Austrian Ombudsman Board, Annual Report 2016 on the activities of the Austrian National Preventive Mechanism, available at: [http://volksanwaltschaft.gv.at/downloads/6cpkm/NPM%20Bericht%202016\\_EN\\_FINAL\\_2.pdf](http://volksanwaltschaft.gv.at/downloads/6cpkm/NPM%20Bericht%202016_EN_FINAL_2.pdf), p. 177.

<sup>67</sup> Austrian Ombudsman Board, Annual Report 2016 on the activities of the Austrian National Preventive Mechanism, available at: [http://volksanwaltschaft.gv.at/downloads/6cpkm/NPM%20Bericht%202016\\_EN\\_FINAL\\_2.pdf](http://volksanwaltschaft.gv.at/downloads/6cpkm/NPM%20Bericht%202016_EN_FINAL_2.pdf), p. 181.

<sup>68</sup> Volksanwaltschaft, Parlamentsbericht 2017 – Präventive Menschenrechtskontrolle, available at: <https://volksanwaltschaft.gv.at/downloads/3ge1p/Parlamentsbericht%202017%20-%20Pr%C3%A4ventive%20Menschenrechts-kontrolle.pdf>, p. 188.



- The 2017 report is not yet available in English.

## 7. Special measures in place to protect prisoners from violence

- a) Are any special measures in place to protect prisoners against violence, including sexual violence? (E.g. are prisoners supervised by prison staff? Are there emergency call buttons? Do guards receive training in de-escalation? Do prisoners have access to a complaints mechanism?)

§ 3 Code of Conduct for Detention foresees, that supervisory authorities have to protect prisoners from unlawful interferences with their rights and have to treat them in a way, that their dignity is safeguarded and protection of the person (*Schonung der Person*). They have to protect prisoners from injuries and health damages, if they are not able to do it themselves due to certain circumstances (§ 3 (2)).

§ 5 (1) 1 Code of Conduct for Detention on solitary confinement foresees that a prisoner has to be held in solitary confinement, if it is to be assumed, that he/she will inflict violence on other inmates. § 5 (3) 5 Code of Conduct for Detention also allows for solitary confinement, if it is to be assumed, that the prisoner might endanger his/her health or life through violence.

§ 5a (2) Code of Conduct for Detention on less severe enforcement regime (*offener Vollzug*) states that such an open implementation of imprisonment might be conducted immediately or after an observation period, if the inmate fulfils medical requirements and has shown relevant behaviour (no aggression, no readiness to violence, no flight attempts).

§ 5b Code of Conduct for Detention foresees special security measures for persons who pose a risk of violence for other persons or items. Such measure might be

- Searching the personal items and the cell more frequently
- Nightly lighting of the cell
- Taking away furniture or items of daily use or clothing, when misuse of those items is to be feared
- Bringing the person to a specially secured cell, where all items have been removed, which could lead the prisoner to inflict damage or self-harm

Such special measure might only be implemented as long as they are absolutely necessary according to the amount and continuation of the danger, which led to the order of such measures.

§23 Code of Conduct for Detention foresees a complaint mechanism, the so-called *Kommandatenbeschwerde* (complaint to the commander). Prisoners have the possibility to complain orally or in writing about the violation of one of the rights as laid down in the Code of Conduct for Detention. They are then to be brought to the Commander without unnecessary delay. In case they complain about ill-treatment or abuse a medical expert opinion has to be initiated immediately.

§ 102 Penal Code states, that it shall be monitored, that prisoners act like it is foreseen by this law. Provisions have to be taken, that no criminal acts are committed by prisoners or regarding prisoners.

§ 102 b Penal Code states, that measures for real time monitoring (*Echtzeitüberwachung*) have to be installed to prevent criminal acts by and regarding prisoners. This also applies regarding severe and serious endangerment of life or health of inmates.

§ 103 Penal Code foresees certain security measures against persons where – among others – violence against other people might happen. Those persons might be detained in solitary confinement, or their cells might be searched more often, light will be switched on during the night, items might be taken away from them, accommodation in specially secured cells might be ordered or they might be given shackles or straightjackets. Shackles may only be attached to the person if

he/she threatened, prepared or attempted violence against other person and danger of repetition is given.

§ 104 Penal Code is the provision on direct force. Officers may only use immediate force in certain circumstances, such as self-defence, to hinder flight of a detainee, etc. Violence has always to be kept at the necessary degree and only after prior announcement (unless the reasons for using violence would be endangered).

§ 119 Penal Code foresees a complaint mechanism for prisoners regarding decisions and orders taken against them as well as conduct of prison officers. Those complaints have to be addressed to the director of the prison in writing or orally.

The Ministry Constitutional Affairs, Reforms, Deregulation and Justice furthermore states that the security concept of prisons is based on security by care and employment, as well as constructional (single cells), technical (e.g., camera monitoring, intercoms) and organisational (e.g., irregular checks, also during the nighttime) security concepts and measures. These concepts and measures are under ongoing evaluation. Moreover, anti-aggression training, a program on “psychological treatment for violent offenders” (*Psychologische Behandlungsprogramm für Gewaltstraftäter*), special workshops on relevant topics are implemented, and ongoing contact is held with the inmates. Prison guards are trained regarding communication and conflict resolution already in their basic training. De-escalation is trained, as well as weapon-less defense. Further on the job training is provided in these regards, e.g. on professional de-escalation management.<sup>69</sup>

- b) Are there any special measures in place to protect LGBTI prisoners, who are particularly vulnerable to violence/sexual violence?

No information on this issue Penal Code and Code of Conduct for Detention. The Federal Ministry Constitutional Affairs, Reforms, Deregulation and Justice reports that - if needed - multiprofessional teams develop solutions for the person in question and his/her needs.<sup>70</sup>

- c) Are these measures regulated by any legal instrument, such as a legislative act, internal prison regulations, manuals, policy papers etc.?

Yes, they are described under a).

All prisons have a handbook on “psychological treatment programmes for violent offenders” (*Psychologische Behandlungsprogramme für Gewaltstraftäter*) according to information provided by the Ministry Constitutional Affairs, Reforms, Deregulation and Justice.<sup>71</sup>

- d) *Please indicate whether there are different standards applicable to different detention regimes (for example, if applicable in your jurisdiction: open, semi-open, closed etc.)..*

As explained in 1. b, a distinction is to be made between the Code of Conduct for Detention and the Penal Code. The applicable standards of these legal regimes are reported above in more detail.

- e) *Please, provide a link to the National Preventive Mechanism’s reports from the reference period (1 January 2015 to 1 May 2018, if no report is available for this period, please provide a link to the most recent one) and whether there are any recommendations regarding this aspect (please provide the exact quotation in the national language and if official translation is available – in English) These reports can be found on the web-page of the National Preventive Mechanism. For ease of reference a list of links can be found here: <https://apt.ch/en/list-of--designated-npmb-by-regions-and-countries/>*

<sup>69</sup> Information received from the Federal Ministry Constitutional Affairs, Reforms, Deregulation and Justice on 21 June 2018.

<sup>70</sup> Information received from the Federal Ministry Constitutional Affairs, Reforms, Deregulation and Justice on 21 June 2018.

<sup>71</sup> Information received from the Federal Ministry Constitutional Affairs, Reforms, Deregulation and Justice on 21 June 2018.

## 2015

- Volksanwaltschaft, Parlamentsbericht 2015 – Präventive Menschenrechtskontrolle, available at: <https://volksanwaltschaft.gv.at/downloads/k2ma/PB39pr%C3%A4ventiv.pdf>

No relevant mentioning.

- Austrian Ombudsman Board, Annual Report 2015 on the activities of the Austrian National Preventive Mechanism, available at: [http://volksanwaltschaft.gv.at/downloads/2kanq/Report%20on%20the%20Activities%20of%20the%20Austrian%20NPM\\_2015.pdf](http://volksanwaltschaft.gv.at/downloads/2kanq/Report%20on%20the%20Activities%20of%20the%20Austrian%20NPM_2015.pdf).

The NPM advocates that the cells of juvenile detainees remain open longer on the weekends in the Innsbruck and Graz-Jakomini correctional institutions. To avoid violent assaults between juvenile detainees, there must be a structured and balanced daily routine with the shortest possible lock-up times. Personnel shortages may not adversely affect juveniles.<sup>72</sup>

## 2016

- Volksanwaltschaft, Parlamentsbericht 2016 – Präventive Menschenrechtskontrolle, available at: <https://volksanwaltschaft.gv.at/downloads/elqga/PB40pr%C3%A4ventiv.pdf>.

No relevant mentioning.

- Austrian Ombudsman Board, Annual Report 2016 on the activities of the Austrian National Preventive Mechanism, available at: [http://volksanwaltschaft.gv.at/downloads/6cpcm/NPM%20Bericht%202016\\_EN\\_FINAL\\_2.pdf](http://volksanwaltschaft.gv.at/downloads/6cpcm/NPM%20Bericht%202016_EN_FINAL_2.pdf).

No relevant mentioning.

## 2017

- Volksanwaltschaft, Parlamentsbericht 2017 – Präventive Menschenrechtskontrolle, available at: <https://volksanwaltschaft.gv.at/downloads/3ge1p/Parlamentsbericht%202017%20-%20Pr%C3%A4ventive%20Menschenrechts-kontrolle.pdf>.

*The NPM asks for longer opening of cells in JA Innsbruck and Graz-Jakomini for juveniles on the weekend. To prevent violent incidents between juvenile prisoners, there is a need for structured and well balanced daily routines with as short as possible times locked in cells. Personnel shortages shall not lead to disadvantages of the juveniles.*

Der NPM fordert in den JA Innsbruck und Graz-Jakomini längere Haftraumöffnungszeiten für jugendliche Inhaftierte am Wochenende. Um gewaltsamen Übergriffen zwischen jugendlichen Inhaftierten vorzubeugen, bedarf es eines strukturierten und ausgewogenen Tagesablaufs mit möglichst kurzen Einschlusszeiten. Personalengpässe dürfen nicht zu Lasten der Jugendlichen gehen.<sup>73</sup>

- The 2017 report is not yet available in English.

<sup>72</sup> Austrian Ombudsman Board, Annual Report 2015 on the activities of the Austrian National Preventive Mechanism, available at: [http://volksanwaltschaft.gv.at/downloads/2kanq/Report%20on%20the%20Activities%20of%20the%20Austrian%20NPM\\_2015.pdf](http://volksanwaltschaft.gv.at/downloads/2kanq/Report%20on%20the%20Activities%20of%20the%20Austrian%20NPM_2015.pdf), p. 109.

<sup>73</sup> Volksanwaltschaft, Parlamentsbericht 2017 – Präventive Menschenrechtskontrolle, available at: <https://volksanwaltschaft.gv.at/downloads/3ge1p/Parlamentsbericht%202017%20-%20Pr%C3%A4ventive%20Menschenrechts-kontrolle.pdf>, p. 116.

## 8. Responsible authorities

- a) What authority is responsible for the provision of additional information requested under Article 15 of the EAW Framework Decision? *(Please specify whether there a central authority deals with these requests, if yes, please provide contact details, such as the name of the institution, a website, physical and email addresses, and a telephone number. In the absence of a central authority, who deals with those requests?)*

Austria chose the de-centralised way for implementing the Framework Decision on the European Arrest Warrant. The contact between authorities takes place directly between the issuing and the executing authority according to § 14 (1) EU-JZG.<sup>74</sup> As a result, the competent court or prosecutor has to provide such information in direct contact.<sup>75</sup>

- b) What authority is responsible for monitoring conditions of detention and putting forward recommendations?

The Austrian Ombudsman Board with its regional commissions acting as Austrian NPM is responsible for this kind of monitoring. Information in English is provided here:

<https://volksanwaltschaft.gv.at/en/preventive-human-rights-monitoring>.

***Please cite any relevant sources***

<sup>74</sup> Austria, Federal Law on the judicial cooperation in criminal matters with member states of the EU (*Bundesgesetz über die justizielle Zusammenarbeit in Strafsachen mit den Mitgliedstaaten der Europäischen Union, EU-JZG*), BGBl. I Nr. 36/2004, available at: [www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=20003339](http://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=20003339).

<sup>75</sup> Information received from the Federal Ministry of Justice on 23 May 2018 following an information request.