

# Criminal Detention in the EU: Conditions and Monitoring

Update of FRA's Criminal Detention Database

(FRANET)

**Country:** Austria

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## Part I: National standards

### 1. Cells

#### a. Cell space

There is no standard on cell space available to detainees in m<sup>2</sup> foreseen in Austrian law. However, there are internal administrative regulations on cell space included in the "Basic decree concerning minimum detention room sizes for detention rooms with one to four inmates and internal guidelines for determining the occupancy of prisons (*"Grundsatzterlass betreffend die Mindesthaftraumgrößen für Hafträume mit ein bis vier Insassinnen bzw. Insassen und interne Richtlinien zur Ermittlung der Belagsfähigkeit der Justizanstalten"*) of 23 September 2006 according to the Federal Minister of Justice. According to the response provided by the Federal Minister of Justice, the minimum sizes are regulated under point II. of this decree as follows:<sup>1</sup>

Generally, a differentiation is made between detainees with and without concessions. §24 (1) Penitentiary System Act (*Strafvollzugsgesetz*)<sup>2</sup> stipulates that a detainee who shows that he/she will cooperate in achieving the purposes of the penal system shall be granted appropriate concessions upon his request.

#### 1 detainee without concessions according to § 24 Penitentiary System Act

without separate wet area but with washbasin 7.5 m<sup>2</sup>

with separate wet area (including washbasin, toilet and a shower area together with the necessary ancillary areas) 9.4 m<sup>2</sup>

with separate wet area (including washbasin and toilet, no shower) 8.6 m<sup>2</sup>

#### 1 detainee with concessions according to § 24 Penitentiary System Act

without separate wet area but with washbasin 10.4 m<sup>2</sup>

with separate wet area (including washbasin, toilet and a shower area together with the necessary ancillary areas) 12.3 m<sup>2</sup>

with separate wet area (including washbasin and toilet, no shower) 11.5 m<sup>2</sup>

#### 2 detainees without concessions according to § 24 Penitentiary System Act

without separate wet area but with washbasin 9.7 m<sup>2</sup>

with separate wet area (including washbasin, toilet and a shower area together with the necessary ancillary areas) 11.6 m<sup>2</sup>

with separate wet area (including washbasin and toilet, no shower) 10.8 m<sup>2</sup>

#### 2 detainees with concessions according to § 24 Penitentiary System Act

without separate wet area but with washbasin 13.8 m<sup>2</sup>

with separate wet area (including washbasin, toilet and a shower area together with the necessary ancillary areas) 15.7 m<sup>2</sup>

with separate wet area (including washbasin and toilet, no shower) 14.9 m<sup>2</sup>

#### 3 detainees without concessions according to § 24 Penitentiary System Act

without separate wet area but with washbasin 14.0 m<sup>2</sup>

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<sup>1</sup> Austria, Federal Minister of Justice, [Response to parliamentary inquiry 2323/J-NR/2020](#), 18 August 2020.

<sup>2</sup> Austria, Penitentiary System Act ([Bundesgesetz vom 26. März 1969 über den Vollzug der Freiheitsstrafen und der mit Freiheitsentziehung verbundenen vorbeugenden Maßnahmen, Strafvollzugsgesetz - StVG](#)), Federal Law Gazette No. 144/1969.

with separate wet area (including washbasin, toilet and a shower area together with the necessary ancillary areas) 16.0 m<sup>2</sup>

with separate wet area (including washbasin and toilet, no shower) 15.2 m<sup>2</sup>

3 detainees with concessions according to § 24 Penitentiary System Act

without separate wet area but with washbasin 19.9 m<sup>2</sup>

with separate wet area (including washbasin, toilet and a shower area together with the necessary ancillary areas) 21.9 m<sup>2</sup>

with separate wet area (including washbasin and toilet, no shower) 21.1 m<sup>2</sup>

4 detainees without concessions according to § 24 Penitentiary System Act

without separate wet area but with washbasin 17.5 m<sup>2</sup>

with separate wet area (including washbasin, toilet and a shower area together with the necessary ancillary areas) 19.6 m<sup>2</sup>

with separate wet area (including washbasin and toilet, no shower) 18.8 m<sup>2</sup>

4 detainees with concessions according to § 24 Penitentiary System Act

without separate wet area but with washbasin 24.8 m<sup>2</sup>

with separate wet area (including washbasin, toilet and a shower area together with the necessary ancillary areas) 26.9 m<sup>2</sup>

with separate wet area (including washbasin and toilet, no shower) 26.1 m<sup>2</sup>

The Federal Minister of Justice further explained that in case of special forms of imprisonment, e.g., in the case of detainees on release (*Freigänger*), open or relaxed detention and residential group detention, it is possible to deviate from these minimum detention room sizes, as in these forms of imprisonment individual activities whose space requirements are included in the calculation of the minimum detention room size can be carried out outside the detention room.<sup>3</sup>

The Federal Minister of Justice clarified further that this decree is an internal administrative guideline that also takes into account the relevant CPT guidelines. However, as this is an internal policy decree without external effect and not a law or regulation, no subjective personal entitlement of a detainee to a corresponding minimum cell size can be derived from it. According to the Minister, the Austrian prison system always seeks to comply with these guidelines in its prisons; however, due to overcrowding, there may be temporary shortfalls.<sup>4</sup> In this context, the prison administrations have been asked to take appropriate measures to create the conditions for 5% overcrowding in their prisons.<sup>5</sup>

The regulations differentiate between single-occupancy and multiple-occupancy cells in line with the Dorobantu ruling spelled out by the CJEU. While the regulations differentiate in detail with which type of sanitary facilities (washbasin, separate wet area including washbasin, toilet and a shower area together with the necessary ancillary areas, separate wet area including washbasin and toilet, no shower) the cell is equipped, the calculations of the available space - contrary to the calculation requirements spelled out by the CJEU in its Dorobantu ruling - take account of the area occupied by sanitary facilities, while not including any space occupied by furniture.

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<sup>3</sup> Austria, Federal Minister of Justice, [Response to parliamentary inquiry 2323/J-NR/2020](#), 18 August 2020.

<sup>4</sup> Austria, Federal Minister of Justice, [Response to parliamentary inquiry 2323/J-NR/2020](#), 18 August 2020.

<sup>5</sup> Austria, Federal Minister of Justice, [Response to parliamentary inquiry 2323/J-NR/2020](#), 18 August 2020.

These regulations meet the requirements concerning the minimum amount of surface area spelled out in para. 34 of the Commission recommendation of 8.12.2022 on procedural rights of suspects and accused persons subject to pre-trial detention.

**b. Access to natural light and fresh air, cell equipment, furniture, and facilities**

§ 40 (1) Penitentiary System Act (*Strafvollzugsgesetz*)<sup>6</sup> stipulates that detainees shall be accommodated in simply and appropriately furnished rooms with sufficient air and daylight. If possible, non-smokers shall not be accommodated together with smokers in the same prison room, unless they expressly agree to joint accommodation. The detention rooms shall be well ventilated and appropriately heated during the cold season. Detainees are entitled to decorate the cell as they wish, in particular with flowers and pictures, provided that this does not jeopardise security and order in the prison according to § 40 (2) Penitentiary System Act. § 40 (3) Penitentiary System Act further stipulates that when it is dark, the prison rooms shall be lit outside the hours of night rest in such a way that the detainees can read and work without endangering their eyesight. Detainees shall be entitled to use electric lamps that can be switched on and off in the cell, especially if they only illuminate the individual cell, even during the night, provided and as long as other detainees are not unreasonably disturbed and there is no fear of misuse. If the cells are not equipped with such lamps, the detainees may be granted the extended lighting of the cell in the evening as a concession (§ 24 Penitentiary System Act<sup>7</sup>).

§ 42 (4) Penitentiary System Act (*Strafvollzugsgesetz*)<sup>8</sup> stipulates the sanitary facilities must be hygienically equipped and designed in such a way that detainees can meet their needs in a clean and decent manner at all times. Cells shall have a “separate” toilet facility, without further defining the required type of separation in a general manner for all cells. However, according to § 40 (4) Penitentiary System Act toilet facilities must be structurally separated (*baulich getrennt*) from the rest of the cell in case the cell is to be accommodated by more than one detainee.

**c. Video-surveillance of cells**

§ 102b (3) Penitentiary System Act (*Strafvollzugsgesetz*)<sup>9</sup> stipulates that, inter alia, that video surveillance shall not be permitted in ordinary detention rooms (*gewöhnliche Hafträume*), common sanitary rooms and rooms reserved exclusively for the stay of prison staff. There are thus no standards on general video-surveillance of cells foreseen in law. The legal commentary on this provision explains that the term “ordinary detention room”, refers to those detention rooms which are usually “inhabited” by the detainees. Thus, rooms which are exclusively used for sleeping and living purposes, are excluded from video surveillance. The prohibition applies without exception, so that general surveillance of ordinary detention rooms is inadmissible even to prevent possible suicides; in this case, the detainee

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<sup>6</sup> Austria, Penitentiary System Act ([Bundesgesetz vom 26. März 1969 über den Vollzug der Freiheitsstrafen und der mit Freiheitsentziehung verbundenen vorbeugenden Maßnahmen, Strafvollzugsgesetz - StVG](#)), Federal Law Gazette No. 144/1969.

<sup>7</sup> Austria, Penitentiary System Act ([Bundesgesetz vom 26. März 1969 über den Vollzug der Freiheitsstrafen und der mit Freiheitsentziehung verbundenen vorbeugenden Maßnahmen, Strafvollzugsgesetz - StVG](#)), Federal Law Gazette No. 144/1969.

<sup>8</sup> Austria, Penitentiary System Act ([Bundesgesetz vom 26. März 1969 über den Vollzug der Freiheitsstrafen und der mit Freiheitsentziehung verbundenen vorbeugenden Maßnahmen, Strafvollzugsgesetz - StVG](#)), Federal Law Gazette No. 144/1969.

<sup>9</sup> Austria, Penitentiary System Act ([Bundesgesetz vom 26. März 1969 über den Vollzug der Freiheitsstrafen und der mit Freiheitsentziehung verbundenen vorbeugenden Maßnahmen, Strafvollzugsgesetz - StVG](#)), Federal Law Gazette No. 144/1969.

would have to be transferred to a special detention room (e.g., for suicidal persons) that can be monitored accordingly.<sup>10</sup> The legal basis for the real-time video-surveillance of such cells is laid down in § 102b (1) Penitentiary System Act. This type of video-surveillance serves protective purposes if there is existing or imminent serious, significant danger to life or the health of an inmate (e.g. danger of serious self-harm or death).

#### d. NPM assessment

*Für einen modernen Strafvollzug bedarf es einer zeitgemäßen Infrastruktur. Geplante Zu- bzw. Umbauten sind ehestmöglich zu realisieren.*<sup>11</sup>

Modern infrastructure is necessary for contemporary detention. Planned extensions and conversion shall be implemented as soon as possible.<sup>12</sup>

*Die permanente Beleuchtung eines Haftraumes, die die dort untergebrachten Inhaftierten nicht zwischen Tag und Nacht unterscheiden lässt, kommt einer Folter gleich und ist unter allen Umständen zu vermeiden.*<sup>13</sup>

The permanent lighting of a cell such that the detainees housed there cannot distinguish between day and night is tantamount to torture and shall be avoided in all circumstances.<sup>14</sup>

*Many criteria, such as cell space, access to natural light, fresh air, cell equipment, facilities available to detainees, as well as the availability of video-surveillance, are checked during the Federal Commission's visits. In the case of video surveillance, special attention is also paid to the pixelation of WCs.*<sup>15</sup>

*Overcrowding is repeatedly a major challenge throughout Austria. As a result, cells are often occupied by more detainees than usual.*<sup>16</sup>

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<sup>10</sup> Drexler, K. and Wenger, T. (2022), Strafvollzugsgesetz, 5th edition, §102b (rdb.at).

<sup>11</sup> Austria, Austrian Ombudsman Board (2022), [Bericht der Volksanwaltschaft an den Nationalrat und an den Bundesrat 2021 - Präventive Menschenrechtskontrolle](#), Vienna, p. 126.

<sup>12</sup> Austria, Austrian Ombudsman Board (2022), [Annual Report of the Austrian Ombudsman Board to the National Council and the Federal Council 2021 Protection and Promotion of Human Rights](#), Vienna, p. 120.

<sup>13</sup> Austria, Austrian Ombudsman Board (2022), [Bericht der Volksanwaltschaft an den Nationalrat und an den Bundesrat 2021 - Präventive Menschenrechtskontrolle](#), Vienna, p. 133.

<sup>14</sup> Austria, Austrian Ombudsman Board (2022), [Annual Report of the Austrian Ombudsman Board to the National Council and the Federal Council 2021 Protection and Promotion of Human Rights](#), Vienna, p. 126.

<sup>15</sup> With regard to the assessments of the NPM members included in this report, please note their general comment that, firstly, the main results of the NPM's monitoring are included in the annual report or special reports anyway and, secondly, that generalisations are very difficult to make, especially as the questions would have to be answered in a very differentiated manner for each institution, which is not feasible in this context. Information provided by members of the Federal Commission for the enforcement of penalties and measures (part of the Austrian NPM) during repeated consultations in March and April 2024.

<sup>16</sup> Information provided by members of the Federal Commission for the enforcement of penalties and measures (part of the Austrian NPM) during repeated consultations in March and April 2024.



Many prisons in Austria have very old building structures, which make it difficult to adapt the cells to the modern standards.<sup>17</sup>

## 2. Allocation of detainees

### a. Geographical allocation

According to § 134 Penitentiary System Act (*Strafvollzugsgesetz*)<sup>18</sup>, the Federal Ministry Justice shall determine within six weeks of admission at the latest in which penal institution, in what form and according to what principles the sentence is to be executed. In making the determination, the nature of the detainee, his previous life, his personal circumstances (this includes relations to the family) and the nature of the offence of which he/she has been found guilty shall be taken into account to the extent necessary to ensure that the purposes of the execution of the sentence (which include the social rehabilitation) are achieved while making the best possible use of the prison facilities according to § 134 (2) Penitentiary System Act. If it appears necessary in the later course of the execution of the sentence, to continue the execution of the sentence in another institution, in another form or according to other principles, the Federal Ministry of Justice shall order the corresponding changes without formal proceedings and without issuing a decision.

This “classification” in accordance with § 134 Penitentiary System Act is only required for sentences of more than eighteen months and serves the purpose of differentiation and greater individualisation in the treatment of detainees.<sup>19</sup> Individual prisons have developed special areas of care, which is taken into account in the classification. These special areas of care include prioritisation in the areas of work and training, detainees on release, care of sex offenders, drug-free wards and increased therapeutic care in the prisons and departments of the penal system. Other priorities relate to the security sector.<sup>20</sup>

### b. Allocation within detention facilities

Pursuant to § 9 Penitentiary System Act (*Strafvollzugsgesetz*)<sup>21</sup> custodial sentences of more than eighteen months shall be executed in a penal institution (*Strafvollzugsanstalt*); until the competent penal institution has been determined, however, the sentence shall be executed in the detention centre of the provincial court (*Gefangenenhaus*). Custodial sentences for which the term of imprisonment does not exceed eighteen months shall be executed in the detention centres or in penal institutions; custodial sentences for which the term of imprisonment does not exceed three months shall be executed exclusively in the detention centres.

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<sup>17</sup> Information provided by members of the Federal Commission for the enforcement of penalties and measures (part of the Austrian NPM) during repeated consultations in March and April 2024.

<sup>18</sup> Austria, Penitentiary System Act ([Bundesgesetz vom 26. März 1969 über den Vollzug der Freiheitsstrafen und der mit Freiheitsentziehung verbundenen vorbeugenden Maßnahmen, Strafvollzugsgesetz - StVG](#)), Federal Law Gazette No. 144/1969.

<sup>19</sup> Drexler, K. and Wenger, T. (2022), *Strafvollzugsgesetz*, 5th edition, §134 (rdb.at).

<sup>20</sup> Drexler, K. and Wenger, T. (2022), *Strafvollzugsgesetz*, 5th edition, §134 (rdb.at).

<sup>21</sup> Austria, Penitentiary System Act ([Bundesgesetz vom 26. März 1969 über den Vollzug der Freiheitsstrafen und der mit Freiheitsentziehung verbundenen vorbeugenden Maßnahmen, Strafvollzugsgesetz - StVG](#)), Federal Law Gazette No. 144/1969.

Pursuant to § 8 Penitentiary System Act (*Strafvollzugsgesetz*)<sup>22</sup> each institution shall be run as male or female institutions or in such a way that the male and female detainees held in the same institution are separated from each other.

§ 185 Criminal Procedure Code 1975 (*Strafprozessordnung*)<sup>23</sup> provides that defendants shall not be detained together with convicted detainees. Defendants who are in custody for the first time [...] shall in any case be detained separately from convicted detainees. However, separation may be waived for outdoor exercise, work, religious services and events, as well as for the provision of healthcare, insofar as such separation is not possible given the facilities available. Insofar as this is necessary to achieve the purposes of detention, defendants suspected of involvement in the same offence shall be detained in such a way that they cannot associate with each other. As long as the public prosecutor has not made a decision on this, such suspects shall in any case be detained separately according to § 185 (2) Criminal Procedure Code 1975. § 185 (3) Criminal Procedure Code 1975 stipulates that female defendants shall in any case be held separately from male defendants and male detainees.

According to § 127 (1) Penitentiary System Act (*Strafvollzugsgesetz*)<sup>24</sup> detainees serving a custodial sentence for the first time shall be held separately from detainees who are not serving a custodial sentence for the first time. In the case of detainees serving sentences of more than three years, such separation may be waived with their consent. However, § 127 (2) Penitentiary System Act stipulates that such separation may be dispensed for exercising outdoors, at work, at religious services and at events, if a separation is not possible given the facilities available. This also applies in the case of detention in relaxed regime.

According to § 158 (1) Penitentiary System Act (*Strafvollzugsgesetz*)<sup>25</sup> the placement (court-ordered measure of forensic placement, *Maßnahmenvollzug*) under criminal law in a forensic therapeutic centre shall be carried out in the specially designated institutions or in the specially designated unit of the institutions for the execution of custodial sentences.

According to § 159 (1) Penitentiary System Act (*Strafvollzugsgesetz*)<sup>26</sup> offenders in need of withdrawal (*entwöhnungsbedürftige Rechtsbrecher*) must be accommodated either in separate detention centres in accordance or in separate units in accordance with § 22 Criminal Procedure Code 1975 (*Strafprozessordnung*)<sup>27</sup>.

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<sup>22</sup> Austria, Penitentiary System Act ([Bundesgesetz vom 26. März 1969 über den Vollzug der Freiheitsstrafen und der mit Freiheitsentziehung verbundenen vorbeugenden Maßnahmen, Strafvollzugsgesetz - StVG](#)), Federal Law Gazette No. 144/1969.

<sup>23</sup> Austria, Criminal Procedure Code 1975 ([Strafprozeßordnung 1975, StPO](#)), Federal Law Gazette No. 631/1975.

<sup>24</sup> Austria, Penitentiary System Act ([Bundesgesetz vom 26. März 1969 über den Vollzug der Freiheitsstrafen und der mit Freiheitsentziehung verbundenen vorbeugenden Maßnahmen, Strafvollzugsgesetz - StVG](#)), Federal Law Gazette No. 144/1969.

<sup>25</sup> Austria, Penitentiary System Act ([Bundesgesetz vom 26. März 1969 über den Vollzug der Freiheitsstrafen und der mit Freiheitsentziehung verbundenen vorbeugenden Maßnahmen, Strafvollzugsgesetz - StVG](#)), Federal Law Gazette No. 144/1969.

<sup>26</sup> Austria, Penitentiary System Act ([Bundesgesetz vom 26. März 1969 über den Vollzug der Freiheitsstrafen und der mit Freiheitsentziehung verbundenen vorbeugenden Maßnahmen, Strafvollzugsgesetz - StVG](#)), Federal Law Gazette No. 144/1969.

<sup>27</sup> Austria, Criminal Procedure Code 1975 ([Strafprozeßordnung 1975, StPO](#)), Federal Law Gazette No. 631/1975.

According to § 160 (1) Penitentiary System Act (*Strafvollzugsgesetz*)<sup>28</sup> the detention of dangerous recidivists (*gefährliche Rückfallstäter*) shall in general be carried out in specially designated institutions or in special units of institutions for the execution of custodial sentences. However, as of now no such designated institution currently exists in Austria.<sup>29</sup>

§ 55 (1) Juvenile Court Act (*Jugendgerichtsgesetz*)<sup>30</sup> stipulates that prison sentences imposed on juveniles (anyone who has reached the age of fourteen but not yet eighteen;) shall be executed in special institutions designated for this purpose, or, if possible, in special departments of other prisons. § 55 (2) Juvenile Court Act stipulates further that juvenile detainees shall be separated from adult detainees.

### c. NPM assessment

*Können Untergebrachte nicht zeitnahe in ihre Zielanstalt überstellt werden, ist ihnen bis dahin ein adäquates Therapieangebot zu unterbreiten.*<sup>31</sup>

If detainees cannot be transferred to their target institution as planned, they shall be offered an adequate therapy programme.<sup>32</sup>

*The place of accommodation, i.e. the distance from the family, is not often mentioned by those affected, but it is a recurring theme. Especially when children are involved, and particularly for women, the place of detention plays a role. As Austria only has one women's prison, the place of detention is not an issue for women in relation to resocialization. For men, the place of detention in relation to the family generally seems to play a less important role. Expected prison conditions and sometimes the "severity" of the courts responsible in the district (chances of half and third sentences) outweigh this. One prison officer put it like this - admittedly exaggerated: "Women want to see their children, the men are glad to be rid of them." During visits, the specific location of the juveniles in prison is scrutinised and a closer look is taken at the allocation of other detainees, in case specific complaints are made.*<sup>33</sup>

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<sup>28</sup> Austria, Penitentiary System Act ([Bundesgesetz vom 26. März 1969 über den Vollzug der Freiheitsstrafen und der mit Freiheitsentziehung verbundenen vorbeugenden Maßnahmen, Strafvollzugsgesetz - StVG](#)), Federal Law Gazette No. 144/1969.

<sup>29</sup> Drexler, K. and Wenger, T. (2022), *Strafvollzugsgesetz*, 5th edition, §160 (rdb.at).

<sup>30</sup> Austria, Juvenile Court Act 1988 ([Bundesgesetz vom 20. Oktober 1988 über die Rechtspflege bei Straftaten Jugendlicher und junger Erwachsener, Jugendgerichtsgesetz 1988 – JGG](#)), Federal Law Gazette Nr. 599/1988.

<sup>31</sup> Austria, Austrian Ombudsman Board (2023), [Bericht der Volksanwaltschaft an den Nationalrat und an den Bundesrat 2022 - Präventive Menschenrechtskontrolle](#), Vienna, p. 125.

<sup>32</sup> Austria, Austrian Ombudsman Board (2023), [Annual Report of the Austrian Ombudsman Board to the National Council and the Federal Council 2021 Protection and Promotion of Human Rights](#), Vienna, p. 115.

<sup>33</sup> Information provided by members of the Federal Commission for the enforcement of penalties and measures (part of the Austrian NPM) during repeated consultations in March and April 2024.

### 3. Hygiene and sanitary conditions

#### a. Access to toilets

§ 42 (4) Penitentiary System Act (*Strafvollzugsgesetz*)<sup>34</sup> stipulates the sanitary facilities must be hygienically equipped and designed in such a way that detainees can meet their needs in a clean and decent manner at all times. Cells shall have a “separate” toilet facility, without further defining the required type of separation in a general manner for all cells. However, according to § 40 (4) Penitentiary System Act toilet facilities must be structurally separated (*baulich getrennt*) from the rest of the cell in case the cell is to be accommodated by more than one detainee.

According to the legal commentary on this provision neither toilets in multi-person detention rooms that are separated from the rest of the detention room by curtains, nor toilets that are not permanently accessible, nor the so-called bucket system meet the hygienic standards and the requirement to respect human dignity.<sup>35</sup>

#### b. Access to showers and warm and running water

§ 42 (3) Penitentiary System Act (*Strafvollzugsgesetz*)<sup>36</sup> stipulates that detainees shall be given enough hot water daily to enable them to clean themselves thoroughly. In addition, they shall be given the opportunity to take a warm shower or full bath as often as necessary, but at least twice a week.

According to § 42 (2) Penitentiary System Act (*Strafvollzugsgesetz*) detainees must care for their bodies as health and cleanliness require. A sense of honour and human dignity must be maintained when monitoring personal hygiene. If there is a risk of danger or abuse, haircuts and shaving must be carried out in the presence of a prison officer according to this provision.

#### c. Access to sanitary products

According to § 132 Penitentiary System Act, detainees receive institutional clothing and/or underwear upon admission to the institution either if they do not have any of their own or if they wish to do so, regardless of whether they have sufficient clothing or not. The same applies to items for simple personal hygiene (toothpaste, soap, toothbrush, towels, toilet paper). Both, clothing and the items necessary for simple personal hygiene are to be supplemented later, if necessary, as part of the obligation enshrined in § 31 Penitentiary System Act.<sup>37</sup> According to § 34 (1) Penitentiary System Act detainees shall be entitled to purchase food and beverages as well as personal hygiene products and other simple articles of daily use once a week at their own expense through the institution.

#### d. Hygienic conditions in cells

§ 42 (1) Penitentiary System Act (*Strafvollzugsgesetz*)<sup>38</sup> stipulates that the facility shall be kept clean.

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<sup>34</sup> Austria, Penitentiary System Act ([Bundesgesetz vom 26. März 1969 über den Vollzug der Freiheitsstrafen und der mit Freiheitsentziehung verbundenen vorbeugenden Maßnahmen, Strafvollzugsgesetz - StVG](#)), Federal Law Gazette No. 144/1969.

<sup>35</sup> Drexler, K. and Wenger, T. (2022), *Strafvollzugsgesetz*, 5th edition, §42 (rdb.at).

<sup>36</sup> Austria, Penitentiary System Act ([Bundesgesetz vom 26. März 1969 über den Vollzug der Freiheitsstrafen und der mit Freiheitsentziehung verbundenen vorbeugenden Maßnahmen, Strafvollzugsgesetz - StVG](#)), Federal Law Gazette No. 144/1969.

<sup>37</sup> Drexler, K. and Wenger, T. (2022), *Strafvollzugsgesetz*, 5th edition, §132 (rdb.at).

<sup>38</sup> Austria, Penitentiary System Act ([Bundesgesetz vom 26. März 1969 über den Vollzug der Freiheitsstrafen und der mit Freiheitsentziehung verbundenen vorbeugenden Maßnahmen, Strafvollzugsgesetz - StVG](#)), Federal Law Gazette No. 144/1969.

§ 39 Penitentiary System Act stipulates that detainees shall be entitled to wear their own underwear as well as simple and appropriate outer clothing, provided that regular cleaning of the underwear is possible in the institution or can be arranged for outside the prison and there is no danger to security and order. Otherwise, detainees shall wear prison clothing in the cases specified in the Penitentiary System Act. Bedding, towels and handkerchiefs shall also be provided by the prison.

§ 35 Penitentiary System Act stipulates that detainees shall keep the cells and prison facilities clean.

e. NPM assessment

*Hafräume, in denen mehre Personen, wenn auch nur kurzfristig, untergebracht werden, müssen über eine baulich abgetrennte Toilette verfügen.*<sup>39</sup>

Cells in which several persons are housed, even if only briefly, shall have a structurally separate toilet.<sup>40</sup>

*Einzelhafräume müssen über Toiletten verfügen, die vom restlichen Hafraum getrennt sind (durch Vorhang, Barrieren).*<sup>41</sup>

Single cells shall have a toilet that is separate from the rest of the cell (by a curtain, barriers).<sup>42</sup>

*Strafgefangenen ist ausreichend Gelegenheit zum Duschen zu geben.*<sup>43</sup>

Prison inmates shall be given ample opportunity to shower.<sup>44</sup>

*Hygiene and sanitary conditions are usually not a major concern. However, not all prisons cells have the required structurally separate toilet facility.*<sup>45</sup>

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<sup>39</sup> Austria, Austrian Ombudsman Board (2022), [Bericht der Volksanwaltschaft an den Nationalrat und an den Bundesrat 2021 - Präventive Menschenrechtskontrolle](#), Vienna, p. 128.

<sup>40</sup> Austria, Austrian Ombudsman Board (2022), [Annual Report of the Austrian Ombudsman Board to the National Council and the Federal Council 2021 Protection and Promotion of Human Rights](#), Vienna, p. 122.

<sup>41</sup> Austria, Austrian Ombudsman Board (2022), [Bericht der Volksanwaltschaft an den Nationalrat und an den Bundesrat 2021 - Präventive Menschenrechtskontrolle](#), Vienna, p. 128.

<sup>42</sup> Austria, Austrian Ombudsman Board (2022), [Annual Report of the Austrian Ombudsman Board to the National Council and the Federal Council 2021 Protection and Promotion of Human Rights](#), Vienna, p. 122.

<sup>43</sup> Austria, Austrian Ombudsman Board (2022), [Bericht der Volksanwaltschaft an den Nationalrat und an den Bundesrat 2021 - Präventive Menschenrechtskontrolle](#), Vienna, p. 129.

<sup>44</sup> Austria, Austrian Ombudsman Board (2022), [Annual Report of the Austrian Ombudsman Board to the National Council and the Federal Council 2021 Protection and Promotion of Human Rights](#), Vienna, p. 123.

<sup>45</sup> Information provided by members of the Federal Commission for the enforcement of penalties and measures (part of the Austrian NPM) during repeated consultations in March and April 2024.

## 4. Nutrition

### a. Quality and quantity of food

§ 38 (1) Penitentiary System Act (*Strafvollzugsgesetz*)<sup>46</sup> stipulates that detainees shall be adequately provided with simple prison food. The food shall be in accordance with nutritional science and tasty and shall be served at the usual times of the day for meals. According to the legal commentary on this provision, food for working detainees should be more plentiful - also based on nutritional science.<sup>47</sup>

According to § 34 (1) Penitentiary System Act detainees shall be entitled to purchase food and beverages as well as personal hygiene products and other simple articles of daily use once a week at their own expense through the institution.

According to information provided by the Federal Minister of Justice in 2021<sup>48</sup>, the lower limit of the daily energy requirement for male adults amounts to 9000 kilojoules, the upper limit 12,500 kilojoules, whereby the energy values contained in fruit must be taken into account in the calculation in line with the basic decree<sup>49</sup> concerning the catering and kitchen system in prisons. These nutritional principles represent a general framework for all prisons.

§ 58 (2) Juvenile Court Act (*Jugendgerichtsgesetz*)<sup>50</sup> provides that juvenile detainees shall be provided with more food in accordance with their physical development.

### b. Drinking water

§ 38 (1) Penitentiary System Act (*Strafvollzugsgesetz*)<sup>51</sup> stipulates that detainees shall be adequately provided with simple prison food. The basic decree concerning the catering and kitchen system in prisons<sup>52</sup> provides that detainees shall be provided with sufficient drinking water at all times (also during working hours).

### c. Dietary requirements

§ 38 (1) Penitentiary System Act (*Strafvollzugsgesetz*)<sup>53</sup> stipulates that food shall be in accordance with nutritional science and tasty.

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<sup>46</sup> Austria, Penitentiary System Act ([Bundesgesetz vom 26. März 1969 über den Vollzug der Freiheitsstrafen und der mit Freiheitsentziehung verbundenen vorbeugenden Maßnahmen, Strafvollzugsgesetz - StVG](#)), Federal Law Gazette No. 144/1969.

<sup>47</sup> Drexler, K. and Wenger, T. (2022), *Strafvollzugsgesetz*, 5th edition, §132 (rdb.at).

<sup>48</sup> Austria, Federal Minister of Justice, [Response to parliamentary inquiry 4599/J-NR/2020](#), 11 February 2021.

<sup>49</sup> Austria, Basic decree concerning the catering and kitchen system in prisons ([Grundsatzterlass betreffend das Verpflegs- und Küchenwesen der Justizanstalten](#)), entry into force: 1 April 2016.

<sup>50</sup> Austria, Juvenile Court Act 1988 ([Bundesgesetz vom 20. Oktober 1988 über die Rechtspflege bei Straftaten Jugendlicher und junger Erwachsener, Jugendgerichtsgesetz 1988 – JGG](#)), Federal Law Gazette Nr. 599/1988.

<sup>51</sup> Austria, Penitentiary System Act ([Bundesgesetz vom 26. März 1969 über den Vollzug der Freiheitsstrafen und der mit Freiheitsentziehung verbundenen vorbeugenden Maßnahmen, Strafvollzugsgesetz - StVG](#)), Federal Law Gazette No. 144/1969.

<sup>52</sup> Austria, Basic decree concerning the catering and kitchen system in prisons ([Grundsatzterlass betreffend das Verpflegs- und Küchenwesen der Justizanstalten](#)), entry into force: 1 April 2016.

<sup>53</sup> Austria, Penitentiary System Act ([Bundesgesetz vom 26. März 1969 über den Vollzug der Freiheitsstrafen und der mit Freiheitsentziehung verbundenen vorbeugenden Maßnahmen, Strafvollzugsgesetz - StVG](#)), Federal Law Gazette No. 144/1969.



The basic decree concerning the catering and kitchen system in prisons<sup>54</sup> provides that various forms of nutrition shall be offered. This includes: normal diet, meals for young people, dietary requirements in accordance with religious beliefs and cultural precepts, dietary meals, light meals, light meals in accordance with religious beliefs and cultural precepts, diabetic meals, and an underweight allowance. With regard to vegetarian or vegan diets, the decree states that individual dietary requirements can be catered for according to the available resources and possibilities. However, there is no subjective right to such dietary requirements.

#### d. NPM assessment

No such assessments to be reported for the reporting period.

*Quality and a balanced diet are always part of the questions during visits and are also a regular topic for detainees. Experience has shown that diets, light meals, Ramadan, kosher food and other individual needs are taken into consideration.*<sup>55</sup>

*Detainees occasionally criticise the quantity and quality of the food.*<sup>56</sup>

### 5. Time spent outside the cell and outdoors

#### a. Time spent outdoors

§ 43 Penitentiary System Act (*Strafvollzugsgesetz*)<sup>57</sup> stipulates that - if the weather does not prevent it - detainees who do not work outdoors shall have the right to spend one hour outdoors every day, and other detainees shall have the right to spend one hour outdoors on non-working days, considering their state of health. The time spent outdoors shall be extended if this is possible without interfering with other duties and the order in the prison.

§ 58 (3) Juvenile Court Act (*Jugendgerichtsgesetz*)<sup>58</sup> provides that juvenile detainees who do not work outdoors shall have the right to spend two hours outdoors every day, and other juvenile detainees shall have the right to spend two hours outdoors on non-working days, taking into account their state of health, whereby this time shall be used for physical development through physical exercise, sport and play where possible. If outdoor exercise is not possible due to the weather without jeopardising health, exercise in suitable rooms within the institution shall be made possible instead.

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<sup>54</sup> Austria, Basic decree concerning the catering and kitchen system in prisons ([Grundsatzterlass betreffend das Verpflegs- und Küchenwesen der Justizanstalten](#)), entry into force: 1 April 2016.

<sup>55</sup> Information provided by members of the Federal Commission for the enforcement of penalties and measures (part of the Austrian NPM) during repeated consultations in March and April 2024.

<sup>56</sup> Information provided by members of the Federal Commission for the enforcement of penalties and measures (part of the Austrian NPM) during repeated consultations in March and April 2024.

<sup>57</sup> Austria, Penitentiary System Act ([Bundesgesetz vom 26. März 1969 über den Vollzug der Freiheitsstrafen und der mit Freiheitsentziehung verbundenen vorbeugenden Maßnahmen, Strafvollzugsgesetz - StVG](#)), Federal Law Gazette No. 144/1969.

<sup>58</sup> Austria, Juvenile Court Act 1988 ([Bundesgesetz vom 20. Oktober 1988 über die Rechtspflege bei Straftaten Jugendlicher und junger Erwachsener, Jugendgerichtsgesetz 1988 – JGG](#)), Federal Law Gazette Nr. 599/1988.

#### b. Time spent indoors

§ 124 (1) Penitentiary System Act (*Strafvollzugsgesetz*)<sup>59</sup> stipulates that during the day, detainees shall be accommodated in community with other detainees as long as possible. During the night rest period, they shall be accommodated as individually as possible. If appropriate, the accommodation shall be in living groups or otherwise without closing the detention or recreation rooms during the day.

#### c. Recreational facilities

§ 59 Penitentiary System Act stipulates that every prison shall have a library from which detainees may borrow books and periodicals. The standard of public libraries shall be taken into account when equipping the libraries.

§ 43 Penitentiary System Act (*Strafvollzugsgesetz*)<sup>60</sup> stipulates that during the time spent outdoors, sporting activity shall be permitted insofar as this is possible according to the facilities available and appears appropriate according to the age and state of health of the detainees.

#### d. Educational activities

§ 65 Penitentiary System Act stipulates that an educational, artistic, or entertaining event shall be held at least once every three months in the penal institutions.

§ 58 (1) Penitentiary System Act (*Strafvollzugsgesetz*) stipulates that detainees shall be encouraged to make meaningful use of their free time and, if necessary, instructed to do so. To this end, they shall in particular be given the opportunity to read, to participate in the reception of radio broadcasts (radio and television), to engage in sporting activities or to play parlour games. § 58 (2) Penitentiary System Act (*Strafvollzugsgesetz*) stipulates that insofar as it is possible, taking into account the conditions of the prison, without impairing the routine (*Dienst*) and the security and order, the detainees shall be entitled to obtain their own books and magazines (§ 60 Penitentiary System Act), to work in their free time (§ 61 Penitentiary System Act), to keep written records (§ 62 Penitentiary System Act), to draw and paint (§ 63 Penitentiary System Act) and to participate in events (§ 65 Penitentiary System Act). According to § 64 Penitentiary System Act, the objects required to exercise the rights referred to in §§ 62 and 63 Penitentiary System Act shall be procured by the prison at the detainee's expense.

§ 58 (5) Juvenile Court Act (*Jugendgerichtsgesetz*)<sup>61</sup> provides that in special prisons for juveniles, detainees shall receive regular education. In other institutions for the execution of custodial sentences, education shall be provided in the execution of juvenile sentences insofar as this is possible and feasible. The lessons shall aim to remedy any deficiencies in the detainees' compulsory education and also to promote their general education. The success of the lessons shall be recorded in an appropriate manner. The time spent in class shall be included in working hours.

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<sup>59</sup> Austria, Penitentiary System Act ([Bundesgesetz vom 26. März 1969 über den Vollzug der Freiheitsstrafen und der mit Freiheitsentziehung verbundenen vorbeugenden Maßnahmen, Strafvollzugsgesetz - StVG](#)), Federal Law Gazette No. 144/1969.

<sup>60</sup> Austria, Penitentiary System Act ([Bundesgesetz vom 26. März 1969 über den Vollzug der Freiheitsstrafen und der mit Freiheitsentziehung verbundenen vorbeugenden Maßnahmen, Strafvollzugsgesetz - StVG](#)), Federal Law Gazette No. 144/1969.

<sup>61</sup> Austria, Juvenile Court Act 1988 ([Bundesgesetz vom 20. Oktober 1988 über die Rechtspflege bei Straftaten Jugendlicher und junger Erwachsener, Jugendgerichtsgesetz 1988 – JGG](#)), Federal Law Gazette Nr. 599/1988.



#### e. NPM assessment

*Auch in Zeiten einer Pandemie haben Inhaftierte das Recht auf sportliche Betätigung während des Aufenthalts im Freien.*<sup>62</sup>

Even during a pandemic, detainees have the right to sporting activities when outdoors.<sup>63</sup>

*Die personellen Ressourcen müssen an die realen Erfordernisse eines modernen Vollzugsalltags angepasst werden. Ausreichend Personal ist nötig, um angemessene Lebens- und Aufenthaltsbedingungen sicherzustellen.*<sup>64</sup>

Human resources shall be aligned with the real needs of modern everyday prison life. Sufficient personnel is necessary to guarantee appropriate living conditions.<sup>65</sup>

*Auch und gerade während der Pandemie ist allen Inhaftierten der tägliche Aufenthalt an der frischen Luft zu ermöglichen.*<sup>66</sup>

All detainees shall have the possibility to go outside in the fresh air every day, in particular during the pandemic.<sup>67</sup>

*Es ist für ausreichend Sport- und Bewegungsmöglichkeiten zu sorgen.*<sup>68</sup>

Sufficient opportunities for sport and exercise shall be ensured.<sup>69</sup>

*The actual time spent outside the cell and outdoors is an aspect strongly observed by the Federal Commission for the enforcement of penalties and measures because certain groups of detainees are*

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<sup>62</sup> Austria, Austrian Ombudsman Board (2022), [Bericht der Volksanwaltschaft an den Nationalrat und an den Bundesrat 2021 - Präventive Menschenrechtskontrolle](#), Vienna, p 130.

<sup>63</sup> Austria, Austrian Ombudsman Board (2022), [Annual Report of the Austrian Ombudsman Board to the National Council and the Federal Council 2021 Protection and Promotion of Human Rights](#), Vienna, p. 123.

<sup>64</sup> Austria, Austrian Ombudsman Board (2022), [Bericht der Volksanwaltschaft an den Nationalrat und an den Bundesrat 2021 - Präventive Menschenrechtskontrolle](#), Vienna, p 149.

<sup>65</sup> Austria, Austrian Ombudsman Board (2022), [Annual Report of the Austrian Ombudsman Board to the National Council and the Federal Council 2021 Protection and Promotion of Human Rights](#), Vienna, p. 142.

<sup>66</sup> Austria, Austrian Ombudsman Board (2023), [Bericht der Volksanwaltschaft an den Nationalrat und an den Bundesrat 2022 - Präventive Menschenrechtskontrolle](#), Vienna, p. 112.

<sup>67</sup> Austria, Austrian Ombudsman Board (2023), [Annual Report of the Austrian Ombudsman Board to the National Council and the Federal Council 2021 Protection and Promotion of Human Rights](#), Vienna, p. 104.

<sup>68</sup> Austria, Austrian Ombudsman Board (2023), [Bericht der Volksanwaltschaft an den Nationalrat und an den Bundesrat 2022 - Präventive Menschenrechtskontrolle](#), Vienna, p. 113.

<sup>69</sup> Austria, Austrian Ombudsman Board (2023), [Annual Report of the Austrian Ombudsman Board to the National Council and the Federal Council 2021 Protection and Promotion of Human Rights](#), Vienna, p. 104.

locked up for 23 hours. In other words, they are allowed to walk for one hour and, at best, have a small number of additional sports and leisure activities outside the cell.<sup>70</sup>

In some prisons, detainees generally call for more opportunities for sport and exercise. However, due to the lack of sufficient staff in prisons leisure activities are often cut.<sup>71</sup>

## 6. Solitary confinement

### a. Placement in solitary confinement

§ 103 Penitentiary System Act (*Strafvollzugsgesetz*)<sup>72</sup> stipulates that solitary confinement is one of the security measures for detainees with flight risk, risk of violence or self-harm or other relevant danger for security and order. § 103 (2) 1a Penitentiary System Act stipulates that a detainee who either works during the day or is kept in his/her spare time in common areas for two hours may be taken into solitary confinement for the rest of the day. § 103 (2) 4 Penitentiary System Act (*Strafvollzugsgesetz*) provides for the placement of the detainee in a specially secured cell, from which all objects are removed with which the detainee can cause harm or harm himself/herself. § 103 (3a) Penitentiary System Act (*Strafvollzugsgesetz*) stipulates that only detainees, whose dangerousness to themselves, other persons or property does not permit placement in another detention room, may be accommodated in a specially secured cell. The specially secured cell must have sufficient air supply and sufficient daylight. If there are no concerns regarding the safety, a mattress, and a spoon for taking meals shall be made available to a person accommodated in the specially secured cell. § 103 (5) Penitentiary System Act (*Strafvollzugsgesetz*) stipulates that the special security measures shall be maintained insofar as and as long as this is absolutely necessary due to the extent and continuance of the danger. § 103 (6) Penitentiary System Act (*Strafvollzugsgesetz*) stipulates that the ordering of special security measures shall be at the discretion of the supervising prison officer. The latter shall report any such order to the prison head without delay. The prison head shall decide without delay on the maintenance of the special security measure. The maintenance of a measure may only be ordered by a court, which shall decide thereon upon request of the prison head. If the court orders the maintenance of the measure, it shall at the same time determine its maximum permissible duration; if the reasons that led to the ordering of such a measure cease to exist before the expiry of this period, the prison head shall immediately cancel the measure.

§ 114 (1) Penitentiary System Act provides that the penalty of house arrest may be imposed. House arrest may not exceed four weeks. According to § 114 (2) Penitentiary System Act the detainee shall be held in a special solitary confinement room during the period of house arrest. In minor cases it may be ordered in the sentence that the detainee shall serve the house arrest in their usual place of detention. During such detention, the detainee shall be deprived of the rights specified in section § 109 (3) Penitentiary System Act and the privileges granted to him, unless in the case of simple house arrest

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<sup>70</sup> Information provided by members of the Federal Commission for the enforcement of penalties and measures (part of the Austrian NPM) during repeated consultations in March and April 2024.

<sup>71</sup> Information provided by members of the Federal Commission for the enforcement of penalties and measures (part of the Austrian NPM) during repeated consultations in March and April 2024.

<sup>72</sup> Austria, Penitentiary System Act ([Bundesgesetz vom 26. März 1969 über den Vollzug der Freiheitsstrafen und der mit Freiheitsentziehung verbundenen vorbeugenden Maßnahmen, Strafvollzugsgesetz - StVG](#)), Federal Law Gazette No. 144/1969.

individual rights or privileges are expressly maintained in the order to achieve the educational purpose of the sentence. When exercising outdoors, the detainee must be kept separate from others. The detainee may only be engaged in work that can be carried out in the detention room. In case strict house arrest is imposed, at least the restriction of the time during which the detention room is artificially lit and/or the withdrawal from work shall be ordered in the judgement for the duration of the house arrest.

§ 125 (2) Penitentiary System Act (*Strafvollzugsgesetz*) stipulates that, for a period exceeding four weeks, a detainee may only be kept in solitary confinement against his/her will by order of a court, which shall decide thereon upon request of the prison head. If the court orders the continuation of solitary confinement, it shall at the same time determine the duration of such continuation. A detainee may only be kept in solitary confinement for more than six months at his/her request and only with the consent of the prison doctor.

#### b. Monitoring of detainees

§ 125 (1) Penitentiary System Act (*Strafvollzugsgesetz*)<sup>73</sup> stipulates that if a detainee is held in solitary confinement by day and by night, he/she must be visited at least once a day by a suitable prison officer unless he/she receives visits.

Detainees placed in a specially secured cell, pursuant to § 103 (2) 4 Penitentiary System Act, shall be visited by a doctor as soon as possible, at the latest within 24 hours, without prejudice to special supervision by prison staff. Subsequently, such detainees shall be visited by the prison doctor on a daily basis; if the prison doctor is not on duty in the prison on a daily basis, they shall be visited by a prison staff member experienced in medical service on days when the doctor is not present. A psychiatrist, psychotherapist or psychologist shall be consulted as far as this appears feasible.

§ 58 (8) Juvenile Court Act (*Jugendgerichtsgesetz*)<sup>74</sup> provides that every juvenile detainee held in solitary confinement shall be given the opportunity to hold a conversation at least twice a day.

#### c. NPM assessment

*Besonders gesicherte Hafträume sollen mit einem ca. 50 cm hohen Sitz- und Liegequader aus Hartschaum ausgestattet sein, der mit einer abwaschbaren, desinfizierbaren Folie überzogen ist.*<sup>75</sup>

Specially secured cells should be equipped with 50 cm high cuboids made of rigid foam, which is covered with a washable, disinfectable foil.<sup>76</sup>

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<sup>73</sup> Austria, Penitentiary System Act ([Bundesgesetz vom 26. März 1969 über den Vollzug der Freiheitsstrafen und der mit Freiheitsentziehung verbundenen vorbeugenden Maßnahmen, Strafvollzugsgesetz - StVG](#)), Federal Law Gazette No. 144/1969.

<sup>74</sup> Austria, Juvenile Court Act 1988 ([Bundesgesetz vom 20. Oktober 1988 über die Rechtspflege bei Straftaten Jugendlicher und junger Erwachsener, Jugendgerichtsgesetz 1988 – JGG](#)), Federal Law Gazette Nr. 599/1988.

<sup>75</sup> Austria, Austrian Ombudsman Board (2022), [Bericht der Volksanwaltschaft an den Nationalrat und an den Bundesrat 2021 - Präventive Menschenrechtskontrolle](#), Vienna, p. 125.

<sup>76</sup> Austria, Austrian Ombudsman Board (2022), [Annual Report of the Austrian Ombudsman Board to the National Council and the Federal Council 2021 Protection and Promotion of Human Rights](#), Vienna, p. 118 et seq.

*Soll eine Kameraüberwachung ihren Zweck nicht verfehlen, dürfen die dafür eingesetzten Beamtinnen und Beamten nicht gleichzeitig mit anderen Aufgaben betraut werden.*<sup>77</sup>

In order for the camera surveillance not to fail, the officers deployed to monitor the cells should not be entrusted with other tasks at the same time.<sup>78</sup>

*Accommodation in so-called secure cells (“besonders gesicherte Hafträume”) is scrutinised particularly closely and strictly. Both the spatial conditions and the care situation during isolation are checked during visits. The legal framework conditions and the actual situations in isolation have already been criticised in detail on many occasions.*<sup>79</sup>

*Some of these detention rooms are not sufficiently equipped, in particular in order to prevent self-harm.*<sup>80</sup>

## 7. Work and education of detainees to promote social reintegration

### a. General measures to promote social reintegration

§ 20 Penitentiary System Act (*Strafvollzugsgesetz*)<sup>81</sup> describes the purposes of the penal system. According to this provision, the execution of custodial sentences is intended to help convicted persons to adopt an upright attitude to life that is adapted to the requirements of community life and to prevent them from indulging in harmful tendencies. Execution is also intended to demonstrate the negative value (*Unwert*) of the behaviour on which the conviction is based. In order to achieve these purposes and to maintain security and order in the institutions for the execution of custodial sentences, detainees shall be isolated from the outside world in accordance with the provisions of the Penitentiary System Act and the regulations based thereon, subjected to other restrictions on their lifestyle and subjected to educational measures.

§ 56 Penitentiary System Act (*Strafvollzugsgesetz*)<sup>82</sup> provides that an educational influence on the detainees shall be endeavoured in the implementation of all measures of the penal system. In addition, detainees shall be given special educational counselling in individual and group discussions and in other suitable ways.

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<sup>77</sup> Austria, Austrian Ombudsman Board (2022), [Bericht der Volksanwaltschaft an den Nationalrat und an den Bundesrat 2021 - Präventive Menschenrechtskontrolle](#), Vienna, p. 125.

<sup>78</sup> Austria, Austrian Ombudsman Board (2022), [Annual Report of the Austrian Ombudsman Board to the National Council and the Federal Council 2021 Protection and Promotion of Human Rights](#), Vienna, p. 118 et seq.

<sup>79</sup> Information provided by members of the Federal Commission for the enforcement of penalties and measures (part of the Austrian NPM) during repeated consultations in March and April 2024.

<sup>80</sup> Information provided by members of the Federal Commission for the enforcement of penalties and measures (part of the Austrian NPM) during repeated consultations in March and April 2024.

<sup>81</sup> Austria, Penitentiary System Act ([Bundesgesetz vom 26. März 1969 über den Vollzug der Freiheitsstrafen und der mit Freiheitsentziehung verbundenen vorbeugenden Maßnahmen, Strafvollzugsgesetz - StVG](#)), Federal Law Gazette No. 144/1969.

<sup>82</sup> Austria, Penitentiary System Act ([Bundesgesetz vom 26. März 1969 über den Vollzug der Freiheitsstrafen und der mit Freiheitsentziehung verbundenen vorbeugenden Maßnahmen, Strafvollzugsgesetz - StVG](#)), Federal Law Gazette No. 144/1969.

According to § 75 Penitentiary System Act (*Strafvollzugsgesetz*)<sup>83</sup> detainees shall be instructed to maintain relationships with their relatives insofar as this is possible without interfering with the orderly operation of the prison and insofar as it is to be expected that this will have a favourable influence on the detainees, promote their later progress or otherwise be of benefit to them. Detainees shall also be instructed to make provision for the care of their property. Their efforts to this end shall be supported with advice and assistance at their request in co-operation with the competent authorities and voluntary welfare agencies. Moreover, detainees shall also be instructed, if necessary, to make provision for accommodation and work after their release. Their efforts to this end shall, at their request, be supported with advice and assistance in cooperation with the authorities responsible for vocational counselling and job placement and the independent welfare services.

According to § 144 Penitentiary System Act (*Strafvollzugsgesetz*)<sup>84</sup> detainees shall be given increased educational and welfare counselling before release to prepare them for life at liberty. Insofar as this is possible in the prison facilities, detainees who are not expected to abuse the relaxed regime shall be granted one or more of the relaxed regimes referred to in § 126 Penitentiary System Act. Preparation for release

§ 146 Penitentiary System Act (*Strafvollzugsgesetz*)<sup>85</sup> provides, inter alia, that detainees shall be informed by a legally competent person of the legal disadvantages they will continue to suffer after their release as a result of their conviction and of the legal possibilities for remedying these disadvantages. Moreover, detainees shall be encouraged, if necessary, to make timely provision for finding suitable accommodation and a decent income after their release and, on release, to have proper clothing and the means necessary for travelling to their future place of residence and for supporting themselves in the initial period after release. Sick, injured or pregnant detainees must be advised to make arrangements for their medical care after release. The efforts of detainees shall be supported with advice and assistance in cooperation with the regional labour offices and public and private welfare agencies.

#### b. Access to work

§ 44 Penitentiary System Act (*Strafvollzugsgesetz*)<sup>86</sup> stipulates that every detainee capable of work shall be obliged to perform labour. Detainees obliged to work shall perform the work assigned to them. Detainees may not be required to perform work that would endanger their lives or seriously damage their health.

§ 45 Penitentiary System Act provides that provision shall be made to ensure that every detainee is able to perform useful labour. All work that arises in the operation of institutions for the execution of

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<sup>83</sup> Austria, Penitentiary System Act ([Bundesgesetz vom 26. März 1969 über den Vollzug der Freiheitsstrafen und der mit Freiheitsentziehung verbundenen vorbeugenden Maßnahmen, Strafvollzugsgesetz - StVG](#)), Federal Law Gazette No. 144/1969.

<sup>84</sup> Austria, Penitentiary System Act ([Bundesgesetz vom 26. März 1969 über den Vollzug der Freiheitsstrafen und der mit Freiheitsentziehung verbundenen vorbeugenden Maßnahmen, Strafvollzugsgesetz - StVG](#)), Federal Law Gazette No. 144/1969.

<sup>85</sup> Austria, Penitentiary System Act ([Bundesgesetz vom 26. März 1969 über den Vollzug der Freiheitsstrafen und der mit Freiheitsentziehung verbundenen vorbeugenden Maßnahmen, Strafvollzugsgesetz - StVG](#)), Federal Law Gazette No. 144/1969.

<sup>86</sup> Austria, Penitentiary System Act ([Bundesgesetz vom 26. März 1969 über den Vollzug der Freiheitsstrafen und der mit Freiheitsentziehung verbundenen vorbeugenden Maßnahmen, Strafvollzugsgesetz - StVG](#)), Federal Law Gazette No. 144/1969.

custodial sentences and that can be performed by detainees shall be performed by detainees. In addition, detainees shall be employed in other work for the public administration, in charitable work or in the production of goods for sale, as well as in work for commercial enterprises or other private clients.

§ 49 Penitentiary System Act provides that the workplaces shall be equipped in a contemporary manner and § 52 Penitentiary System Act provides details concerning the remuneration for labour.

§ 58 (4) Juvenile Court Act (*Jugendgerichtsgesetz*)<sup>87</sup> provides that juvenile detainees shall only be engaged in work that is also educationally useful. In particular, they shall also be assigned to outdoor work. Juvenile detainees may only work outside the prison if they are not exposed to the public in such a way as to blunt their sense of honour (“Ehrgefühl”). The daily working time shall be interrupted by at least two longer breaks for recreation.

### c. Access to education

According to § 48 Penitentiary System Act (*Strafvollzugsgesetz*)<sup>88</sup> detainees who have not learnt a profession or who cannot be employed in the profession they have learnt shall be trained in a profession corresponding to their knowledge, abilities and possibly also their inclinations, if and insofar as this is possible within the term of the sentence. Certificates of vocational training shall be issued in such a way that it is not recognisable that the examination or training took place in prison. Vocational training and further training courses may also be held during the time intended for the performance of work. Participation in such courses outside an institution may only be permitted to detainees who are not likely to abuse their labour. Detainees who take part in vocational training and further training courses shall receive remuneration.

§ 57 (1) Penitentiary System Act (*Strafvollzugsgesetz*)<sup>89</sup> stipulates that in prisons where, in view of the average number of detainees held there and the average length of their sentences, this is compatible with the principles of economical, efficient and appropriate administration, provision shall be made for detainees who lack the knowledge and skills usually taught in elementary schools to receive the necessary education. Under the same conditions, regular further training courses shall be organised in the prisons for suitable detainees. According to § 57 (2) Penitentiary System Act detainees may participate in distance learning courses. They may also use funds for this purpose which are not otherwise available to them in prison. In the event of misuse, further participation in the course shall be prohibited. § 57 (3) Penitentiary System Act provides that education and the activities associated with participation in distance learning courses shall be carried out during non-working hours.

§ 58 (5) Juvenile Court Act (*Jugendgerichtsgesetz*)<sup>90</sup> provides that in institutions for the execution of juvenile sentences, detainees shall receive regular education. In other institutions for the execution of custodial sentences, education shall be provided in the execution of juvenile sentences insofar as this is

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<sup>87</sup> Austria, Juvenile Court Act 1988 ([Bundesgesetz vom 20. Oktober 1988 über die Rechtspflege bei Straftaten Jugendlicher und junger Erwachsener, Jugendgerichtsgesetz 1988 – JGG](#)), Federal Law Gazette Nr. 599/1988.

<sup>88</sup> Austria, Penitentiary System Act ([Bundesgesetz vom 26. März 1969 über den Vollzug der Freiheitsstrafen und der mit Freiheitsentziehung verbundenen vorbeugenden Maßnahmen, Strafvollzugsgesetz - StVG](#)), Federal Law Gazette No. 144/1969.

<sup>89</sup> Austria, Penitentiary System Act ([Bundesgesetz vom 26. März 1969 über den Vollzug der Freiheitsstrafen und der mit Freiheitsentziehung verbundenen vorbeugenden Maßnahmen, Strafvollzugsgesetz - StVG](#)), Federal Law Gazette No. 144/1969.

<sup>90</sup> Austria, Juvenile Court Act 1988 ([Bundesgesetz vom 20. Oktober 1988 über die Rechtspflege bei Straftaten Jugendlicher und junger Erwachsener, Jugendgerichtsgesetz 1988 – JGG](#)), Federal Law Gazette Nr. 599/1988.



possible and feasible. The lessons shall aim to remedy any deficiencies in the detainees' compulsory education and also to promote their general education. The success of the lessons shall be recorded in an appropriate manner. The time spent in class shall be included in working hours.

#### d. NPM assessment

*Langfristig ist eine Strategie zu entwickeln, um die Beschäftigungsquote (Arbeit) männlicher Inhaftierter graduell anzuheben. Die Möglichkeiten der Freizeitgestaltung sind auszubauen.<sup>91</sup>*

In the long term, a strategy shall be developed for the purpose of gradually increasing the employment rate (work) of male detainees. Recreational opportunities shall be expanded.<sup>92</sup>

*In den anstaltseigenen Betrieben ist eine Durchmischung von weiblichen und männlichen Inhaftierten anzustreben.<sup>93</sup>*

Efforts shall be made to mix male and female detainees in the institution's companies providing occupational opportunities.<sup>94</sup>

*Auch weiblichen Inhaftierten muss die Möglichkeit geboten werden, eine Beschäftigung außerhalb der Anstalt zu verrichten. Frauen dürfen gegenüber männlichen Inhaftierten nicht benachteiligt werden.<sup>95</sup>*

Female detainees shall also be given the opportunity to work outside the institution. Women shall not be placed at a disadvantage compared to male detainees.<sup>96</sup>

*Präventivmaßnahmen gegen die Ausbreitung des COVID-19-Virus dürfen nicht überschießend sein. Der Zugang zu Fachdiensten muss auch während der Unterbringung in Zugangshafträumen gewährleistet sein.<sup>97</sup>*

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<sup>91</sup> Austria, Austrian Ombudsman Board (2022), [Bericht der Volksanwaltschaft an den Nationalrat und an den Bundesrat 2021 - Präventive Menschenrechtskontrolle](#), Vienna, p 128.

<sup>92</sup> Austria, Austrian Ombudsman Board (2022), [Annual Report of the Austrian Ombudsman Board to the National Council and the Federal Council 2021 Protection and Promotion of Human Rights](#), Vienna, p. 122.

<sup>93</sup> Austria, Austrian Ombudsman Board (2022), [Bericht der Volksanwaltschaft an den Nationalrat und an den Bundesrat 2021 - Präventive Menschenrechtskontrolle](#), Vienna, p 129.

<sup>94</sup> Austria, Austrian Ombudsman Board (2022), [Annual Report of the Austrian Ombudsman Board to the National Council and the Federal Council 2021 Protection and Promotion of Human Rights](#), Vienna, p. 123.

<sup>95</sup> Austria, Austrian Ombudsman Board (2022), [Bericht der Volksanwaltschaft an den Nationalrat und an den Bundesrat 2021 - Präventive Menschenrechtskontrolle](#), Vienna, p. 152.

<sup>96</sup> Austria, Austrian Ombudsman Board (2022), [Annual Report of the Austrian Ombudsman Board to the National Council and the Federal Council 2021 Protection and Promotion of Human Rights](#), Vienna, p. 144.

<sup>97</sup> Austria, Austrian Ombudsman Board (2023), [Bericht der Volksanwaltschaft an den Nationalrat und an den Bundesrat 2022 - Präventive Menschenrechtskontrolle](#), Vienna, p. 111.

Preventive measures against the spread of the COVID-19 virus shall not be excessive. Access to special services shall be guaranteed even while in arrival cells.<sup>98</sup>

*Bei Gesprächen mit Mitarbeiterinnen und Mitarbeitern der Fachdienste muss eine Vertraulichkeit der Gespräche gewahrt werden.*<sup>99</sup>

Confidentiality shall be assured for meetings with staff from the special services.<sup>100</sup>

*Gelockerter Vollzug und Freigang sind Teil der Entlassungsvorbereitung. Auf sie kann in keiner Justizanstalt verzichtet werden.*<sup>101</sup>

Relaxed detention and day release are part of preparing for release, which no correctional institution can do without.<sup>102</sup>

*Sufficient and meaningful activity is a regular consideration during visits by the Federal Commission for the enforcement of penalties and measures. Educational opportunities are continually examined, particularly with regard to young detainees.*<sup>103</sup>

*It was repeatedly observed by the Federal Commission for the enforcement of penalties and measures that a lack of staff in prisons leads to work and leisure activities being cut.*<sup>104</sup>

## 8. Healthcare

### a. Access to healthcare

The fifth sub-section of the Penitentiary System Act (*Strafvollzugsgesetz*)<sup>105</sup> deals with medical care for detainees. § 66 Penitentiary System Act stipulates that care must be taken to maintain the physical and mental health of detainees. The health status of detainees and their weight are to be monitored. § 67

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<sup>98</sup> Austria, Austrian Ombudsman Board (2023), [Annual Report of the Austrian Ombudsman Board to the National Council and the Federal Council 2021 Protection and Promotion of Human Rights](#), Vienna, p. 103.

<sup>99</sup> Austria, Austrian Ombudsman Board (2023), [Bericht der Volksanwaltschaft an den Nationalrat und an den Bundesrat 2022 - Präventive Menschenrechtskontrolle](#), Vienna, p. 116.

<sup>100</sup> Austria, Austrian Ombudsman Board (2023), [Annual Report of the Austrian Ombudsman Board to the National Council and the Federal Council 2021 Protection and Promotion of Human Rights](#), Vienna, p. 107.

<sup>101</sup> Austria, Austrian Ombudsman Board (2023), [Bericht der Volksanwaltschaft an den Nationalrat und an den Bundesrat 2022 - Präventive Menschenrechtskontrolle](#), Vienna, p. 124.

<sup>102</sup> Austria, Austrian Ombudsman Board (2023), [Annual Report of the Austrian Ombudsman Board to the National Council and the Federal Council 2021 Protection and Promotion of Human Rights](#), Vienna, p. 115.

<sup>103</sup> Information provided by members of the Federal Commission for the enforcement of penalties and measures (part of the Austrian NPM) during repeated consultations in March and April 2024.

<sup>104</sup> Information provided by members of the Federal Commission for the enforcement of penalties and measures (part of the Austrian NPM) during repeated consultations in March and April 2024.

<sup>105</sup> Austria, Penitentiary System Act ([Bundesgesetz vom 26. März 1969 über den Vollzug der Freiheitsstrafen und der mit Freiheitsentziehung verbundenen vorbeugenden Maßnahmen, Strafvollzugsgesetz - StVG](#)), Federal Law Gazette No. 144/1969.



Penitentiary System Act provides that the performance of a medical experiment on a detainee is also inadmissible if the detainee consents to it. § 68 (1) Penitentiary System Act stipulates that in case of illness, accident, suicide attempt or other self-harm the prison doctor has to be informed. In such cases, the prison doctor shall examine the detainee and has to make sure that he/she receives the necessary medical and, if necessary, specialist treatment and care. The prison doctor shall also determine whether the detainee is ill, whether he/she is bedridden, where he/she is to be accommodated, and whether and to what extent he/she is able to work according to § 68 (2) Penitentiary System Act.

According to § 73 Penitentiary System Act, the detainee shall be granted the necessary dental treatment. The conservative dental treatment shall be carried out in a simple form unless the detainee requests special treatment at his/her own expense. Dentures are only provided on the own costs of the detainee.

#### b. Availability of medical staff

If the prison doctor cannot be reached, another doctor shall be called in urgent cases according to § 70 Penitentiary System Act. Another doctor shall also be called in, if the prison doctor deems this appropriate in view of the nature and seriousness of the case, or, if the detainee requests it in the event of a suspected serious illness and pays the costs.

§ 71 Penitentiary System Act (*Strafvollzugsgesetz*)<sup>106</sup> provides that in case a sick or injured detainee cannot be properly treated in the prison or if he/she poses an otherwise unavoidable threat to the health of others, he/she shall be transferred to the nearest prison which has facilities to ensure the necessary treatment or segregation. If the detainee cannot be properly treated in another prison or if his/her life would be endangered by transfer to another prison, he/she shall be taken to a suitable public hospital and, if necessary, guarded there. The public hospitals are obliged to admit the detainees and allow him/her to be guarded.

#### c. Medical examination upon admission

§ 132 (5) Penitentiary System Act (*Strafvollzugsgesetz*)<sup>107</sup> provides that detainees shall be medically examined on admission or as soon as possible thereafter.

#### d. Preventive care

§ 66 Penitentiary System Act (*Strafvollzugsgesetz*)<sup>108</sup> stipulates that the health status of detainees and their weight are to be monitored. The scope of medical services is not regulated in the Penitentiary System Act. However, according to the legal commentary on this provision, there is no entitlement to preventive medical check-ups. Yet, since a difference in treatment between prisoners and the rest of the population would not be objectively justified, the benefits to be provided under the Penitentiary System Act must be based on what would be provided by the social security system in the same case.

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<sup>106</sup> Austria, Penitentiary System Act ([Bundesgesetz vom 26. März 1969 über den Vollzug der Freiheitsstrafen und der mit Freiheitsentziehung verbundenen vorbeugenden Maßnahmen, Strafvollzugsgesetz - StVG](#)), Federal Law Gazette No. 144/1969.

<sup>107</sup> Austria, Penitentiary System Act ([Bundesgesetz vom 26. März 1969 über den Vollzug der Freiheitsstrafen und der mit Freiheitsentziehung verbundenen vorbeugenden Maßnahmen, Strafvollzugsgesetz - StVG](#)), Federal Law Gazette No. 144/1969.

<sup>108</sup> Austria, Penitentiary System Act ([Bundesgesetz vom 26. März 1969 über den Vollzug der Freiheitsstrafen und der mit Freiheitsentziehung verbundenen vorbeugenden Maßnahmen, Strafvollzugsgesetz - StVG](#)), Federal Law Gazette No. 144/1969.

In any case, the benefits provided by social insurance must be exceeded where this is medically justified due to the specific situation of the prison system (e.g. higher risk of spreading diseases under the conditions in prisons) in order to avert danger to the general public (e.g. according to the current state of medical discussion for tuberculosis, but not for HIV).<sup>109</sup>

#### e. Specialised care

§ 21 (1) of the Austrian Criminal Code (*Strafgesetzbuch*)<sup>110</sup> provides that any person who has committed an offence described under § 21 (3) Austrian Criminal Code under the significant influence of a serious and persistent mental disorder and cannot be punished solely because he was mentally incompetent (*zurechnungsunfähig*) at the time of the offence due to this disorder shall be placed in a forensic therapeutic centre if there is a high probability that he/she will otherwise commit a punishable offence with serious consequences in the foreseeable future under the significant influence of his mental disorder. § 21 (2) of the Austrian Criminal Code provides further that if there is such a fear, a person who, without being mentally incompetent, has committed an offence pursuant to § 21 (3) Austrian Criminal Code under the significant influence of a serious and persistent mental disorder shall also be placed in a forensic therapeutic centre. In this case, placement shall be ordered at the same time as the sentence is imposed.

§ 22 of the Austrian Criminal Code (*Strafgesetzbuch*)<sup>111</sup> provides that Any person who is addicted to the abuse of an intoxicating or addictive substance and is convicted of a criminal offence committed while intoxicated or otherwise in connection with his or her habituation or of committing a punishable offence while fully intoxicated shall be committed by the court to an institution for offenders in need of withdrawal, if it is to be feared from his person and the nature of the offence that he/she will otherwise commit a punishable offence with serious consequences in connection with his/her habituation to intoxicants or addictive substances or will commit punishable offences with not merely minor consequences. Such placement shall not be ordered if the offender has to serve more than two years in prison, if the conditions for his criminal placement in a forensic-therapeutic centre are met or if the attempt to withdraw him/her off the habit appears to be futile from the outset.

§ 68a Penitentiary System Act (*Strafvollzugsgesetz*)<sup>112</sup> provides that a detainee shall undergo withdrawal treatment, (a) if according to the declaration of the prison doctor, the detainee is addicted to the abuse of an intoxicant or addictive substance and the treatment is appropriate in view of the duration of the sentence, or (b) if the term of the sentence is more than two years and admission to an institution for lawbreakers in need of weaning (section 22 of the Criminal Code) has been waived only for this reason. § 68a (2) Penitentiary System Act provides that no weaning treatment shall be initiated or continued if the attempt at such treatment appears futile from the outset or if its continuation would not be successful.

§ 129 Penitentiary System Act provides that detainees who are unsuitable for the general penal system on account of mental health problems shall [...] be detained separately from other detainees and cared

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<sup>109</sup> Drexler, K. and Wenger, T. (2022), *Strafvollzugsgesetz*, 5th edition, §66 (rdb.at).

<sup>110</sup> Austria, Austrian Criminal Code (*Strafgesetzbuch*), Federal Law Gazette No. 60/1974.

<sup>111</sup> Austria, Austrian Criminal Code (*Strafgesetzbuch*), Federal Law Gazette No. 60/1974.

<sup>112</sup> Austria, Penitentiary System Act (*Bundesgesetz vom 26. März 1969 über den Vollzug der Freiheitsstrafen und der mit Freiheitsentziehung verbundenen vorbeugenden Maßnahmen, Strafvollzugsgesetz - StVG*), Federal Law Gazette No. 144/1969.

for in accordance with their condition. If the execution of the prison sentence in the regular manner would be detrimental to such a detainee, the prison head shall order deviations from the provisions of the Penitentiary System Act that are adapted to the detainee's individual nature. In doing so, however, the rights granted to the detainee may not be impaired.

§ 57 Juvenile Court Act (*Jugendgerichtsgesetz*)<sup>113</sup> provides that the execution of placement in an institution for juvenile offenders in need of withdrawal shall take place in the institutions designated under § 159 Penitentiary System Act for the execution of this measure on adults or in the institutions or departments designated for the execution of sentences on juveniles. The Federal Minister of Justice is responsible for determining the institution.

§ 57a Juvenile Court Act (*Jugendgerichtsgesetz*)<sup>114</sup> provides that the execution of the criminal detention of juveniles pursuant to § 21 Austrian Criminal Code (*Strafgesetzbuch*) may also take place in separate areas of the institutions or wards designated for the execution of sentences for juveniles if they can be treated and cared for appropriately there. The Federal Minister of Justice shall be responsible for determining the institution. According to this provision, juveniles shall be given special and intensive care and treatment appropriate to their age and state of maturity. A specialist in child and adolescent psychiatry shall be consulted.

#### f. Treatment of the detainee's choosing

§ 70 Penitentiary System Act (*Strafvollzugsgesetz*)<sup>115</sup> provides that another doctor shall also be called in, [...] if the detainee requests it in the event of a suspected serious illness and pays the costs.

#### g. NPM assessment

*Um die Treffsicherheit der Einstufung nach VISCI zu gewährleisten, sollte der Fragebogen nicht nur den momentanen psychischen Zustand der Insassin bzw. des Insassen erfassen.*<sup>116</sup>

In order to guarantee the accuracy of the VISCI system, the questionnaire should not only capture the current mental state of the inmate.<sup>117</sup> [explanatory comment: "VISCI" is the Viennese Instrument for Suicidality in Correctional Institutions, which is a questionnaire applied in all Austrian correctional institutions. The NPM suggested that this questionnaire should not only capture the current mental state of the inmate only].

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<sup>113</sup> Austria, Juvenile Court Act 1988 ([Bundesgesetz vom 20. Oktober 1988 über die Rechtspflege bei Straftaten Jugendlicher und junger Erwachsener, Jugendgerichtsgesetz 1988 – JGG](#)), Federal Law Gazette Nr. 599/1988.

<sup>114</sup> Austria, Juvenile Court Act 1988 ([Bundesgesetz vom 20. Oktober 1988 über die Rechtspflege bei Straftaten Jugendlicher und junger Erwachsener, Jugendgerichtsgesetz 1988 – JGG](#)), Federal Law Gazette Nr. 599/1988.

<sup>115</sup> Austria, Penitentiary System Act ([Bundesgesetz vom 26. März 1969 über den Vollzug der Freiheitsstrafen und der mit Freiheitsentziehung verbundenen vorbeugenden Maßnahmen, Strafvollzugsgesetz - StVG](#)), Federal Law Gazette No. 144/1969.

<sup>116</sup> Austria, Austrian Ombudsman Board (2022), [Bericht der Volksanwaltschaft an den Nationalrat und an den Bundesrat 2021 - Präventive Menschenrechtskontrolle](#), Vienna, p. 123.

<sup>117</sup> Austria, Austrian Ombudsman Board (2022), [Annual Report of the Austrian Ombudsman Board to the National Council and the Federal Council 2021 Protection and Promotion of Human Rights](#), Vienna, p. 117 et seq.

*Bekannte Risikofaktoren aus Vorhaft (insbesondere in der Vergangenheit liegende Suizidversuche etc.) sollen bei der Suizideinschätzung berücksichtigt werden.*<sup>118</sup>

Known risk factors from previous periods in detention (particularly previous attempted suicides etc.) should be included in the suicide assessment.<sup>119</sup>

*Das BMJ sollte eine Strategie entwickeln, Medizinerinnen und Mediziner für eine Tätigkeit in der Justiz zu gewinnen.*<sup>120</sup>

The Federal Ministry of Justice should develop a strategy for recruiting medical specialists for work in the judiciary.<sup>121</sup>

*Inhaftierte haben ein Recht auf eine adäquate psychiatrische Versorgung. Die vakante Stelle der Fachärztin bzw. des Facharztes für Psychiatrie ist ehestmöglich zu besetzen.*<sup>122</sup>

*Es ist ein psychiatrisches Monitoring insbesondere für Inhaftierte mit einer Substanzgebrauchsstörung zu etablieren.*<sup>123</sup>

Detainees have a right to adequate psychiatric care. The vacant psychiatric consultant position shall be filled as soon as possible.<sup>124</sup>

Psychiatric monitoring particularly for detainees with a substance use disorder shall be established.<sup>125</sup>

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<sup>118</sup> Austria, Austrian Ombudsman Board (2022), [Bericht der Volksanwaltschaft an den Nationalrat und an den Bundesrat 2021 - Präventive Menschenrechtskontrolle](#), Vienna, p. 123.

<sup>119</sup> Austria, Austrian Ombudsman Board (2022), [Annual Report of the Austrian Ombudsman Board to the National Council and the Federal Council 2021 Protection and Promotion of Human Rights](#), Vienna, p. 117 et seq.

<sup>120</sup> Austria, Austrian Ombudsman Board (2022), [Bericht der Volksanwaltschaft an den Nationalrat und an den Bundesrat 2021 - Präventive Menschenrechtskontrolle](#), Vienna, p. 135.

<sup>121</sup> Austria, Austrian Ombudsman Board (2022), [Annual Report of the Austrian Ombudsman Board to the National Council and the Federal Council 2021 Protection and Promotion of Human Rights](#), Vienna, p. 128.

<sup>122</sup> Austria, Austrian Ombudsman Board (2022), [Bericht der Volksanwaltschaft an den Nationalrat und an den Bundesrat 2021 - Präventive Menschenrechtskontrolle](#), Vienna, p. 136.

<sup>123</sup> Austria, Austrian Ombudsman Board (2022), [Bericht der Volksanwaltschaft an den Nationalrat und an den Bundesrat 2021 - Präventive Menschenrechtskontrolle](#), Vienna, p. 136.

<sup>124</sup> Austria, Austrian Ombudsman Board (2022), [Annual Report of the Austrian Ombudsman Board to the National Council and the Federal Council 2021 Protection and Promotion of Human Rights](#), Vienna, p. 130.

<sup>125</sup> Austria, Austrian Ombudsman Board (2022), [Annual Report of the Austrian Ombudsman Board to the National Council and the Federal Council 2021 Protection and Promotion of Human Rights](#), Vienna, p. 130.

*Solange eine akute Gefährdung vorliegt, sollte im Fall einer Ausführung in ein Krankenhaus eine weitere Behandlung auch dort erfolgen. Für die Zeit danach sollte es ein effektives Übergangsmanagement zwischen dem Spital und der Justizanstalt geben.*<sup>126</sup>

As long as there is an acute risk, further treatment should also be provided in the hospital to which a detainee is transferred. There should be effective transition management between the hospital and the correctional institution in the time thereafter.<sup>127</sup>

*Bundesweit ist ein System einer Rufbereitschaft des medizinischen Dienstes für Wochenenden und während des Nachtdienstes zu etablieren.*<sup>128</sup>

A nationwide on-call medical service system shall be established for the weekend and during the night shift.<sup>129</sup>

*Alle Inhaftierten, auch Untersuchungsgefangene, mit einer chronischen HCV-Infektion sollen denselben Zugang zu Therapie mit DAA (direkt antiviral wirksamen Medikamenten) wie Personen in Freiheit erhalten.*<sup>130</sup>

*Es sind Maßnahmen zur Erhöhung der Therapieplätze mit DAA (direkt antiviral wirksamen Medikamenten) für Personen mit chronischer HCV-Infektion im Vollzug zu ergreifen, um den Vorgaben der WHO zur Elimination der HCV-Erkrankung bis zum Jahr 2030 realistisch entsprechen zu können.*<sup>131</sup>

All detainees including those awaiting trial with a chronic HCV infection should have the same access to therapy with DAA (direct acting antivirals) as persons living in freedom.<sup>132</sup>

Measures shall be taken to increase the number of therapy places with DAA for persons with chronic HCV infection in detention in order to be able to meet the WHO requirement to eradicate the HCV illness by 2030.<sup>133</sup>

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<sup>126</sup> Austria, Austrian Ombudsman Board (2022), [Bericht der Volksanwaltschaft an den Nationalrat und an den Bundesrat 2021 - Präventive Menschenrechtskontrolle](#), Vienna, p 138.

<sup>127</sup> Austria, Austrian Ombudsman Board (2022), [Annual Report of the Austrian Ombudsman Board to the National Council and the Federal Council 2021 Protection and Promotion of Human Rights](#), Vienna, p. 131.

<sup>128</sup> Austria, Austrian Ombudsman Board (2022), [Bericht der Volksanwaltschaft an den Nationalrat und an den Bundesrat 2021 - Präventive Menschenrechtskontrolle](#), Vienna, p 139.

<sup>129</sup> Austria, Austrian Ombudsman Board (2022), [Annual Report of the Austrian Ombudsman Board to the National Council and the Federal Council 2021 Protection and Promotion of Human Rights](#), Vienna, p. 132.

<sup>130</sup> Austria, Austrian Ombudsman Board (2022), [Bericht der Volksanwaltschaft an den Nationalrat und an den Bundesrat 2021 - Präventive Menschenrechtskontrolle](#), Vienna, p 140.

<sup>131</sup> Austria, Austrian Ombudsman Board (2022), [Bericht der Volksanwaltschaft an den Nationalrat und an den Bundesrat 2021 - Präventive Menschenrechtskontrolle](#), Vienna, p. 140.

<sup>132</sup> Austria, Austrian Ombudsman Board (2022), [Annual Report of the Austrian Ombudsman Board to the National Council and the Federal Council 2021 Protection and Promotion of Human Rights](#), Vienna, p. 133.

<sup>133</sup> Austria, Austrian Ombudsman Board (2022), [Annual Report of the Austrian Ombudsman Board to the National Council and the Federal Council 2021 Protection and Promotion of Human Rights](#), Vienna, p. 133.

*Die Substituierung mittels Depotmedikation soll auf freiwilliger Basis angeboten werden. Patientinnen und Patienten sind über das Präparat ausreichend zu informieren.*<sup>134</sup>

Substitution with depot medication should be provided on a voluntary basis. Patients shall be adequately informed about the compound.<sup>135</sup>

*Die Depotmedikation mit dem lang wirksamen Buprenorphin-Präparat (Buvidal®) soll vermehrt zur Substitutionsbehandlung im Vollzug eingesetzt werden.*<sup>136</sup>

Depot medication with the long-term effective buprenorphine compound (Buvidal®) should be used more often for substitution treatment in the prison system.<sup>137</sup>

*Das Justizwachepersonal soll in der Applikation des Nyxoidsprays® (Wirkstoff Naloxon) geschult und die Abteilungen der Insassentrakte damit ausgestattet werden, um einem opioidassoziierten Atemstillstand entgegenzuwirken, bis der Notarzt eintrifft.*<sup>138</sup>

The prison guards should be trained in the application of the Nyxoid spray (with active ingredient naloxone) and the departments in the inmate wing equipped with the same in order to prevent opioid-associated respiratory arrest until the emergency doctor arrives.<sup>139</sup>

*Medikamente sollen in der Mitte eines Kühlschranks gelagert werden, dessen Temperatur regelmäßig zu überprüfen ist.*<sup>140</sup>

Medication should be stored in the middle of a fridge, the temperature of which is regularly monitored.<sup>141</sup>

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<sup>134</sup> Austria, Austrian Ombudsman Board (2022), [Bericht der Volksanwaltschaft an den Nationalrat und an den Bundesrat 2021 - Präventive Menschenrechtskontrolle](#), Vienna, 140.

<sup>135</sup> Austria, Austrian Ombudsman Board (2022), [Annual Report of the Austrian Ombudsman Board to the National Council and the Federal Council 2021 Protection and Promotion of Human Rights](#), Vienna, p. 133.

<sup>136</sup> Austria, Austrian Ombudsman Board (2022), [Bericht der Volksanwaltschaft an den Nationalrat und an den Bundesrat 2021 - Präventive Menschenrechtskontrolle](#), Vienna, p. 141.

<sup>137</sup> Austria, Austrian Ombudsman Board (2022), [Annual Report of the Austrian Ombudsman Board to the National Council and the Federal Council 2021 Protection and Promotion of Human Rights](#), Vienna, p. 134.

<sup>138</sup> Austria, Austrian Ombudsman Board (2022), [Bericht der Volksanwaltschaft an den Nationalrat und an den Bundesrat 2021 - Präventive Menschenrechtskontrolle](#), Vienna, p. 142.

<sup>139</sup> Austria, Austrian Ombudsman Board (2022), [Annual Report of the Austrian Ombudsman Board to the National Council and the Federal Council 2021 Protection and Promotion of Human Rights](#), Vienna, p. 135.

<sup>140</sup> Austria, Austrian Ombudsman Board (2022), [Bericht der Volksanwaltschaft an den Nationalrat und an den Bundesrat 2021 - Präventive Menschenrechtskontrolle](#), Vienna, p. 143.

<sup>141</sup> Austria, Austrian Ombudsman Board (2022), [Annual Report of the Austrian Ombudsman Board to the National Council and the Federal Council 2021 Protection and Promotion of Human Rights](#), Vienna, p. 136.



*Bei Tropfen sollte auf der Verpackung das Anbruchs- und Verbrauchsdatum vermerkt sein.*<sup>142</sup>

The date on which the container was opened and the “use by” date should be written on the packaging of drops.<sup>143</sup>

*Das Umfüllen von Tropfen sollte einer Apotheke vorbehalten bleiben.*<sup>144</sup>

The transferring of drops from one container to another should only be performed by a pharmacist.<sup>145</sup>

*Das Dispensieren von Medikamenten für die Inhaftierten sollte mittels Vieraugenprinzip erfolgen. Alle Kontrollen sind zu dokumentieren.*<sup>146</sup>

Medication for the detainees should be dispensed using the dual control principle. All checks shall be documented.<sup>147</sup>

*Bei Gesprächen mit den Mitarbeiterinnen und Mitarbeitern des Psychologischen oder Sozialen Dienstes muss eine Vertraulichkeit der Gespräche gewährleistet werden.*<sup>148</sup>

The confidentiality of conversations with the staff of the psychological or social service shall be guaranteed.<sup>149</sup>

*Erlaubt die gesundheitliche Situation die Anwesenheit einer Therapeutin bzw. eines Therapeuten nicht, sollte zumindest Einzeltherapie digital über eine gesicherte Leitung angeboten werden.*<sup>150</sup>

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<sup>142</sup> Austria, Austrian Ombudsman Board (2022), [Bericht der Volksanwaltschaft an den Nationalrat und an den Bundesrat 2021 - Präventive Menschenrechtskontrolle](#), Vienna, p. 143.

<sup>143</sup> Austria, Austrian Ombudsman Board (2022), [Annual Report of the Austrian Ombudsman Board to the National Council and the Federal Council 2021 Protection and Promotion of Human Rights](#), Vienna, p. 136.

<sup>144</sup> Austria, Austrian Ombudsman Board (2022), [Bericht der Volksanwaltschaft an den Nationalrat und an den Bundesrat 2021 - Präventive Menschenrechtskontrolle](#), Vienna, p. 143.

<sup>145</sup> Austria, Austrian Ombudsman Board (2022), [Annual Report of the Austrian Ombudsman Board to the National Council and the Federal Council 2021 Protection and Promotion of Human Rights](#), Vienna, p. 136.

<sup>146</sup> Austria, Austrian Ombudsman Board (2022), [Bericht der Volksanwaltschaft an den Nationalrat und an den Bundesrat 2021 - Präventive Menschenrechtskontrolle](#), Vienna, p. 144.

<sup>147</sup> Austria, Austrian Ombudsman Board (2022), [Annual Report of the Austrian Ombudsman Board to the National Council and the Federal Council 2021 Protection and Promotion of Human Rights](#), Vienna, p. 136.

<sup>148</sup> Austria, Austrian Ombudsman Board (2022), [Bericht der Volksanwaltschaft an den Nationalrat und an den Bundesrat 2021 - Präventive Menschenrechtskontrolle](#), Vienna, p. 144.

<sup>149</sup> Austria, Austrian Ombudsman Board (2022), [Annual Report of the Austrian Ombudsman Board to the National Council and the Federal Council 2021 Protection and Promotion of Human Rights](#), Vienna, p. 137.

<sup>150</sup> Austria, Austrian Ombudsman Board (2022), [Bericht der Volksanwaltschaft an den Nationalrat und an den Bundesrat 2021 - Präventive Menschenrechtskontrolle](#), Vienna, p. 145.

If the health situation does not permit the presence of a therapist, at least individual therapy should be offered digitally through a secure connection.<sup>151</sup>

*Kann eine Psychotherapie nicht persönlich absolviert werden, sollte sie virtuell angeboten werden.*<sup>152</sup>

Psychotherapies that cannot be carried out personally should be offered using a virtual format.<sup>153</sup>

*Den Fachdienstbereichen soll ein individuell gestaltetes Budget zur Verfügung stehen, um einen bedarfsorientierten Zukauf von externen Betreuungsmaßnahmen bzw. (Therapie) Leistungen zu ermöglichen.*<sup>154</sup>

The special service areas should have an individually managed budget in order to facilitate the needs-based purchase of external support measures and (therapy) services.<sup>155</sup>

*Gesundheitsdaten sind besonders schützenswerte Informationen. Eine für alle Personen sichtbare Markierung des VISCI-Status ist zu unterlassen.*<sup>156</sup>

Health data is information that shall be protected at all times. The VISCI status shall not be visible for all to see.<sup>157</sup>

*Therapiegespräche dürfen nicht in Anwesenheit Dritter oder für diese vernehmbar geführt werden.*<sup>158</sup>

Therapy meetings shall not be held in the presence of or be audible to third parties.<sup>159</sup>

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<sup>151</sup> Austria, Austrian Ombudsman Board (2022), [Annual Report of the Austrian Ombudsman Board to the National Council and the Federal Council 2021 Protection and Promotion of Human Rights](#), Vienna, p. 138.

<sup>152</sup> Austria, Austrian Ombudsman Board (2022), [Bericht der Volksanwaltschaft an den Nationalrat und an den Bundesrat 2021 - Präventive Menschenrechtskontrolle](#), Vienna, p. 146.

<sup>153</sup> Austria, Austrian Ombudsman Board (2022), [Annual Report of the Austrian Ombudsman Board to the National Council and the Federal Council 2021 Protection and Promotion of Human Rights](#), Vienna, p. 139.

<sup>154</sup> Austria, Austrian Ombudsman Board (2022), [Bericht der Volksanwaltschaft an den Nationalrat und an den Bundesrat 2021 - Präventive Menschenrechtskontrolle](#), Vienna.

<sup>155</sup> Austria, Austrian Ombudsman Board (2022), [Annual Report of the Austrian Ombudsman Board to the National Council and the Federal Council 2021 Protection and Promotion of Human Rights](#), Vienna, p.

<sup>156</sup> Austria, Austrian Ombudsman Board (2023), [Bericht der Volksanwaltschaft an den Nationalrat und an den Bundesrat 2022 - Präventive Menschenrechtskontrolle](#), Vienna, p. 115.

<sup>157</sup> Austria, Austrian Ombudsman Board (2023), [Annual Report of the Austrian Ombudsman Board to the National Council and the Federal Council 2021 Protection and Promotion of Human Rights](#), Vienna, p. 107.

<sup>158</sup> Austria, Austrian Ombudsman Board (2023), [Bericht der Volksanwaltschaft an den Nationalrat und an den Bundesrat 2022 - Präventive Menschenrechtskontrolle](#), Vienna, p. 116.

<sup>159</sup> Austria, Austrian Ombudsman Board (2023), [Annual Report of the Austrian Ombudsman Board to the National Council and the Federal Council 2021 Protection and Promotion of Human Rights](#), Vienna, p. 108.



*Medizinisches Personal sollte in ausreichendem Maße vorhanden sein, sodass eine adäquate Betreuung der Insassinnen und Insassen sichergestellt ist. Um ausreichend geeignetes medizinisches Personal zu akquirieren, sind entsprechende finanzielle Anreize zu schaffen.<sup>160</sup>*

Sufficient medical staff should be available to guarantee adequate care of the inmates. Appropriate financial incentives shall be created in order to acquire sufficient suitable medical staff.<sup>161</sup>

*Die Vollzugsverwaltung hat für eine dem Stand der medizinischen Wissenschaften entsprechende Behandlung und Betreuung zu sorgen. Besonders gesicherte Zellen sind inadäquate Umgebungen zur Behandlung psychisch kranker Menschen.<sup>162</sup>*

The Integrated Prison Administration shall guarantee treatment and care in line with current medical science. Specially secured cells are inadequate environments for treating mentally ill persons.<sup>163</sup>

*Insassinnen und Insassen haben ein Recht auf eine DAA-Therapie. Gegen ansteckende Krankheiten in Gefängnissen sind zum Schutz aller Personen umgehend effektive Maßnahmen zu setzen.<sup>164</sup>*

Inmates have a right to DAA therapy. Effective measures for combating infectious diseases in prisons shall be undertaken immediately to protect all persons.<sup>165</sup>

*Exekutives Personal, das regelmäßig im Bereich des Maßnahmenvollzugs eingesetzt ist, sollte in Grundzügen von den Krankheitsbildern der dort untergebrachten Personen wissen. Eine gemeinsame (Zusatz-)Ausbildung von exekutivem und nicht exekutivem Personal fördert das wechselseitige Verständnis und sollte in sämtlichen JA etabliert werden. Teambuilding-Maßnahmen sind wichtige Faktoren zum Erreichen der Vollzugsziele.<sup>166</sup>*

Law enforcement personnel that are regularly deployed in forensic institutions should be familiar with the basics of the illnesses suffered by the persons detained there. A joint (additional) training programme for law enforcement and non-law enforcement personnel promotes mutual understanding

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<sup>160</sup> Austria, Austrian Ombudsman Board (2023), [Bericht der Volksanwaltschaft an den Nationalrat und an den Bundesrat 2022 - Präventive Menschenrechtskontrolle](#), Vienna, p. 119.

<sup>161</sup> Austria, Austrian Ombudsman Board (2023), [Annual Report of the Austrian Ombudsman Board to the National Council and the Federal Council 2021 Protection and Promotion of Human Rights](#), Vienna, p. 110.

<sup>162</sup> Austria, Austrian Ombudsman Board (2023), [Bericht der Volksanwaltschaft an den Nationalrat und an den Bundesrat 2022 - Präventive Menschenrechtskontrolle](#), Vienna, p. 120.

<sup>163</sup> Austria, Austrian Ombudsman Board (2023), [Annual Report of the Austrian Ombudsman Board to the National Council and the Federal Council 2021 Protection and Promotion of Human Rights](#), Vienna, p. 111.

<sup>164</sup> Austria, Austrian Ombudsman Board (2023), [Bericht der Volksanwaltschaft an den Nationalrat und an den Bundesrat 2022 - Präventive Menschenrechtskontrolle](#), Vienna, p. 121.

<sup>165</sup> Austria, Austrian Ombudsman Board (2023), [Annual Report of the Austrian Ombudsman Board to the National Council and the Federal Council 2021 Protection and Promotion of Human Rights](#), Vienna, p. 112.

<sup>166</sup> Austria, Austrian Ombudsman Board (2023), [Bericht der Volksanwaltschaft an den Nationalrat und an den Bundesrat 2022 - Präventive Menschenrechtskontrolle](#), Vienna, p. 122.

and should be established in all correctional institutions. Teambuilding measures are important factors for achieving detention objectives.<sup>167</sup>

*Gerade in einer Einrichtung für psychisch kranke Rechtsbrecher ist die Anwesenheit von Fachärztinnen und Fachärzten für Psychiatrie auch nachts und am Wochenende geboten. Das BMJ muss langfristig eine Strategie erarbeiten, um Medizinerinnen und Mediziner verstärkt für eine Tätigkeit in der Vollzugsverwaltung zu gewinnen.*<sup>168</sup>

In forensic institutions in particular, the presence of medical specialists in psychiatry is also required at night and at the weekend. In the long term, the Federal Ministry of Justice shall develop a strategy to convince more doctors to work in the prison administration.<sup>169</sup>

*Medical care is one of the key points of all visits by the Federal Commission for the enforcement of penalties and measures.*<sup>170</sup>

*Recruiting sufficient medical specialists for work in the judiciary is a challenge in Austria. The Federal Commission for the enforcement of penalties and measures observed cases of insufficient medical staff with negative impacts on the adequate care of the detainees, particularly in respect to psychiatric care for persons with mental health problems.*<sup>171</sup>

## 9. Prevention of violence and ill-treatment

### a. Protection from violence by prison staff

As a rule, violence against detainees is prohibited under Austrian law, except in circumstances in which the use of force is expressly permitted by law. Special measures in place to protect detainees against violence from prison staff contain the following:

#### Standards regulating the lawful use of force:

§ 104 Penitentiary System Act lays down the rules for the use of force by prison staff. According to § 104 (1) Penitentiary System Act prison staff may only use direct force in case of self-defence, to overcome a resistance to state authority or an assault on an official, to prevent the escape of a detainee or to recapture him; towards a person who enters or attempts to enter the institution or to free a detainee; to overcome any other failure to comply with an order which endangers the security and order

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<sup>167</sup> Austria, Austrian Ombudsman Board (2023), [Annual Report of the Austrian Ombudsman Board to the National Council and the Federal Council 2021 Protection and Promotion of Human Rights](#), Vienna, p. 113.

<sup>168</sup> Austria, Austrian Ombudsman Board (2023), [Bericht der Volksanwaltschaft an den Nationalrat und an den Bundesrat 2022 - Präventive Menschenrechtskontrolle](#), Vienna, p. 125.

<sup>169</sup> Austria, Austrian Ombudsman Board (2023), [Annual Report of the Austrian Ombudsman Board to the National Council and the Federal Council 2021 Protection and Promotion of Human Rights](#), Vienna, p. 116.

<sup>170</sup> Information provided by members of the Federal Commission for the enforcement of penalties and measures (part of the Austrian NPM) during repeated consultations in March and April 2024.

<sup>171</sup> Information provided by members of the Federal Commission for the enforcement of penalties and measures (part of the Austrian NPM) during repeated consultations in March and April 2024.

of the penal system. § 104 (2) Penitentiary System Act stipulates that the use of force shall be limited to the necessary amount. It may only be used after prior announcement (*Androhung*), unless this would jeopardise the purpose of the use of force.

§ 105 Penitentiary System Act regulates the lawful use of weapons by prison staff. § 105 (1) Penitentiary System Act stipulates that prison officers who accompany or transfer detainees or who are responsible for ensuring lockdown and order in the prison shall, insofar as this appears necessary to maintain security and order in the prison, carry a service weapon when performing their duties. § 105 (2) Penitentiary System Act stipulates that the service weapons generally are truncheons and handguns. For guard duty in institutions where this appears necessary in view of the large number or the particular danger of detainees held there, also long firearms are service weapons. § 105 (3) Penitentiary System Act stipulates that prison staff may only use their weapons in the cases of § 104 (1) 1 to 4 Penitentiary System Act. Service weapons other than truncheons, handguns or long firearms may only be used by order of the prison head. If the decision of the prison head cannot be made in time and if there is imminent danger, the highest-ranking prison officer is authorised to make the decision. § 105 (4) Penitentiary System Act stipulates, inter alia, that the use of weapons shall only be permissible if non-dangerous or less dangerous measures, such as in particular the order to establish the lawful state, the threat of the use of weapons, the pursuit of a fugitive, the use of physical force or available more lenient means, such as in particular handcuffs or technical barriers, appear unsuitable or have proven ineffective. If various weapons are available, only the least dangerous weapon that still seems suitable in the respective situation may be used. § 105 (5) Penitentiary System Act stipulates that the purpose of the use of weapons against persons may only be to render them incapable of attacking, resisting, or escaping. In the cases of § 104 (1) 1 to 4 Penitentiary System Act, the damage to be expected from the use of the weapon must not be obviously disproportionate to the intended result. Every weapon shall be used with the greatest possible protection of persons and property. Weapons may only be used against people if the purpose of their use cannot be achieved by weapon action against property. § 105 (6) Penitentiary System Act stipulates that the use of a weapon against people, which endangers life, is only permissible: 1. in the case of self-defence in defence of a person; 2. for the suppression of a riot or insurrection; 3. to prevent the escape or to recapture a detainee who has been convicted of a crime that identifies him or her as a person dangerous to the security of the state, person or property in general. § 105 (7) Penitentiary System Act stipulates that except in the case of self-defence, the life-threatening use of weapons against persons shall be announced expressly, immediately preceding in time and clearly perceptible; it is only permissible if bystanders are not likely to be endangered thereby.

Special measures foreseen by law to protect detainees against violence from prison staff:

According to § 22 Penitentiary System Act (*Strafvollzugsgesetz*)<sup>172</sup> detainees shall be treated calmly, seriously and firmly, fairly and with respect for their sense of honour and human dignity. They shall be addressed with a formal "you" ("Sie") and, if an individual detainee is addressed by his/her surname, as "Mr" or "Mrs" and by that name.

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<sup>172</sup> Austria, Penitentiary System Act ([Bundesgesetz vom 26. März 1969 über den Vollzug der Freiheitsstrafen und der mit Freiheitsentziehung verbundenen vorbeugenden Maßnahmen, Strafvollzugsgesetz - StVG](#)), Federal Law Gazette No. 144/1969.

§ 102 (1) Penitentiary System Act (*Strafvollzugsgesetz*)<sup>173</sup> stipulates that it has to be ensured that detainees behave in the manner prescribed by the Penitentiary System Act. In particular, appropriate precautions shall be taken to prevent both, the commission of criminal offences by detainees as well as the commission of criminal offences against detainees.

§102 (2) Penitentiary System Act stipulates that searches shall be carried out as gently as possible, and personal searches shall be carried out by staff of the same sex as the detainee. Physical searches involving exposure shall be carried out in the presence of two staff members of the sex of the detainee and in the absence of fellow detainees and persons of the opposite sex.

Moreover, the competent Ministry 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>174</sup>

According to § 119 Penitentiary System Act detainees shall have the right to submit requests in an appropriate form, either orally or in writing, concerning the execution of their sentence. For this purpose, they shall address themselves to the prison officer who can be contacted first in cases that cannot be delayed, and otherwise to the prison officer responsible for this purpose at the time of day to be specified in the house rules.

§ 120 Penitentiary System Act foresees a complaint mechanism for detainees regarding decisions and orders taken against them as well as conduct of prison officers. Those complaints have to be addressed to the prison head in writing or orally. The prison court shall decide on the complaint against a decision, order or conduct of the prison head (§ 16 (3) Penitentiary System Act).

#### b. Protection from violence by other detainees

§ 102 (1) Penitentiary System Act (*Strafvollzugsgesetz*)<sup>175</sup> stipulates that it has to be ensured that detainees behave in the manner prescribed by the Penitentiary System Act. In particular, appropriate precautions shall be taken to prevent both, the commission of criminal offences by detainees as well as the commission of criminal offences against detainees.

§ 102b (1) Penitentiary System Act stipulates that in order to secure the isolation of detainees from the outside world and to secure order in the prison, in particular to prevent the commission of criminal

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<sup>173</sup> Austria, Penitentiary System Act ([Bundesgesetz vom 26. März 1969 über den Vollzug der Freiheitsstrafen und der mit Freiheitsentziehung verbundenen vorbeugenden Maßnahmen, Strafvollzugsgesetz - StVG](#)), Federal Law Gazette No. 144/1969.

<sup>174</sup> Information received from the Federal Ministry Constitutional Affairs, Reforms, Deregulation and Justice on 21 June 2018.

<sup>175</sup> Austria, Penitentiary System Act ([Bundesgesetz vom 26. März 1969 über den Vollzug der Freiheitsstrafen und der mit Freiheitsentziehung verbundenen vorbeugenden Maßnahmen, Strafvollzugsgesetz - StVG](#)), Federal Law Gazette No. 144/1969.

offences by detainees and the commission of criminal offences against detainees, and in the event of a serious and substantial threat to the life or health of a detainee, the prison head is authorised to use technical means for the real-time transmission of images in the prison and at its boundaries (real-time monitoring).

§ 102b (2) Penitentiary System Act stipulates that the acquisition of personal data of detainees present with technical means for image recording shall only be permissible for the reasons stated in § 102b (1) Penitentiary System Act and, moreover, only in the entrance area, in the visitor and interrogation zones, in the corridors, in the places serving the employment and stay of detainees outside the prison rooms and in comparable areas as well as at the boundaries of the prison. The data obtained in this way may also be used for the prosecution of a judicially punishable act or an administrative offence.

§ 102b (3) Penitentiary System Act stipulates that video surveillance shall not be permissible for purposes other than those mentioned in the preceding paragraphs, in particular for monitoring the performance of prison staff. Video surveillance shall not be permitted in ordinary detention rooms, common sanitary rooms and rooms reserved exclusively for the stay of prison staff.

According to § 119 Penitentiary System Act detainees shall have the right to submit requests in an appropriate form, either orally or in writing, concerning the execution of their sentence. For this purpose, they shall address themselves to the prison officer who can be contacted first in cases that cannot be delayed, and otherwise to the prison officer responsible for this purpose at the time of day to be specified in the house rules.

§ 120 Penitentiary System Act foresees a complaint mechanism for detainees regarding decisions and orders taken against them as well as conduct of prison officers. Those complaints have to be addressed to the prison head in writing or orally. The prison court shall decide on the complaint against a decision, order or conduct of the prison head (§ 16 (3) Penitentiary System Act).

### c. NPM assessment

*Zur Prävention von Auseinandersetzungen müssen mehr Einzelhafträume zur Verfügung stehen.*<sup>176</sup>

More single cells shall be available in order to prevent altercations.<sup>177</sup>

*Engmaschige Betreuung und regelmäßiger Austausch über den psychischen Status der Inhaftierten sind Präventionsmaßnahmen, um Konflikte unter den Strafgefangenen rechtzeitig zu erkennen und deeskalierend Maßnahmen zu setzen.*<sup>178</sup>

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<sup>176</sup> Austria, Austrian Ombudsman Board (2022), [Bericht der Volksanwaltschaft an den Nationalrat und an den Bundesrat 2021 - Präventive Menschenrechtskontrolle](#), Vienna, p. 127.

<sup>177</sup> Austria, Austrian Ombudsman Board (2022), [Annual Report of the Austrian Ombudsman Board to the National Council and the Federal Council 2021 Protection and Promotion of Human Rights](#), Vienna, p. 121.

<sup>178</sup> Austria, Austrian Ombudsman Board (2023), [Bericht der Volksanwaltschaft an den Nationalrat und an den Bundesrat 2022 - Präventive Menschenrechtskontrolle](#), Vienna, p. 109.

Closely coordinated support and regular discussion of the mental health of detainees are preventive measures that help recognise conflict among prison inmates early and implement de-escalating measures.<sup>179</sup>

*Jedes Verhalten, wie auch das Anbringen von Schildern, Karten und dergleichen, die eine herabwürdigende Haltung zum Ausdruck bringen, ist zu unterlassen.*<sup>180</sup>

Any behaviour, including hanging up signs, cards and the like, that expresses a derogatory attitude shall be stopped.<sup>181</sup>

*The Federal Commission for the enforcement of penalties and measures has been focussing on the issue of violence for more than a year. In particular, the functionality of complaints mechanisms and options was examined. In other words, it was also examined whether complaints were effectively investigated.*<sup>182</sup>

*In many cases, fear of repression by fellow detainees prevents detainees from reporting incidents to prison staff.*<sup>183</sup>

## 10. Contact with the outside world

### a. Visits

As a general rule, detainees may communicate in writing with other persons and bodies, make telephone calls and receive visits according to § 86 Penitentiary System Act (*Strafvollzugsgesetz*).<sup>184</sup> However, correspondence, telephone calls and visits shall be prohibited if there is a risk of endangering security and order in the prison or of exerting an unfavourable influence on the detainee.

According to § 93 Penitentiary System Act (*Strafvollzugsgesetz*)<sup>185</sup> detainees may receive visits within the specified visiting hours as often and to the extent that their organisation can be guaranteed with reasonable effort. They may not be denied at least one visit lasting at least half an hour every week; the duration of visits shall be extended to at least one hour at least once every six weeks. If a detainee rarely

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<sup>179</sup> Austria, Austrian Ombudsman Board (2023), [Annual Report of the Austrian Ombudsman Board to the National Council and the Federal Council 2021 Protection and Promotion of Human Rights](#), Vienna, p. 101.

<sup>180</sup> Austria, Austrian Ombudsman Board (2023), [Bericht der Volksanwaltschaft an den Nationalrat und an den Bundesrat 2022 - Präventive Menschenrechtskontrolle](#), Vienna, p. 118.

<sup>181</sup> Austria, Austrian Ombudsman Board (2023), [Annual Report of the Austrian Ombudsman Board to the National Council and the Federal Council 2021 Protection and Promotion of Human Rights](#), Vienna, p. 109.

<sup>182</sup> Information provided by members of the Federal Commission for the enforcement of penalties and measures (part of the Austrian NPM) during repeated consultations in March and April 2024.

<sup>183</sup> Information provided by members of the Federal Commission for the enforcement of penalties and measures (part of the Austrian NPM) during repeated consultations in March and April 2024.

<sup>184</sup> Austria, Penitentiary System Act ([Bundesgesetz vom 26. März 1969 über den Vollzug der Freiheitsstrafen und der mit Freiheitsentziehung verbundenen vorbeugenden Maßnahmen, Strafvollzugsgesetz - StVG](#)), Federal Law Gazette No. 144/1969.

<sup>185</sup> Austria, Penitentiary System Act ([Bundesgesetz vom 26. März 1969 über den Vollzug der Freiheitsstrafen und der mit Freiheitsentziehung verbundenen vorbeugenden Maßnahmen, Strafvollzugsgesetz - StVG](#)), Federal Law Gazette No. 144/1969.



receives a visit or if a visitor has a long journey to get there, the duration of the visit shall in any case be extended appropriately. In order to settle important personal, economic or legal matters which cannot be dealt with in writing or postponed until release, and in order to maintain family and other personal ties, detainees shall be given the opportunity to receive visits in suitable premises at an appropriate frequency and duration, if necessary, also outside visiting hours. Supervision of such visits may be dispensed with if there are no objections. Visitors who have not yet reached the age of 14 shall only be allowed to visit if accompanied by an adult. More than three visitors should not be admitted to visit a detainee at the same time. Visits shall be monitored carefully accruing to § 95 Penitentiary System Act. § 96 provides that visits by representatives of public authorities and care centres as well as visits by legal advisors shall also be permitted outside the official visiting hours. The content of conversations held between detainees and these visitors shall not be monitored.

§ 58 (7) Juvenile Court Act (*Jugendgerichtsgesetz*)<sup>186</sup> provides that juvenile detainees may receive a visit lasting at least one hour every week. If the sentence to be served at the time of commencement of the sentence exceeds four weeks, a juvenile detainees shall, if necessary, be given the opportunity to visit a prison suitable for detaining juvenile detainees close to his/her place of residence for a reasonable period of time, provided that transport and a place of detention are available in the desired prison facility; such visits shall be granted at least once for sentences of up to six months and at least every six months for longer sentences.

#### b. Correspondence

§ 87 Penitentiary System Act (*Strafvollzugsgesetz*)<sup>187</sup> provides that detainees shall, in principle, be entitled to send and receive letters, cards and telegrams without restriction and in compliance with the secrecy of correspondence. If such letters are received on behalf of a detainee, they may only be handed to him by the prison head or by a prison officer designated by him for this purpose. Letters must be legible, comprehensible, generally written in German and in full script. Members of a domestic linguistic minority shall be entitled to use their language. If the detainee is not sufficiently proficient in German, the use of a foreign language shall be permissible; this shall also apply if the recipient of the letter is not sufficiently proficient in German, provided there are no objections. Letters that have been handed to detainees shall be left with them for one week, then taken back and either destroyed or kept for the detainee, depending on the detainee's request. At the detainee's request, letters shall also be left with him, provided there is no risk of misuse and order in the detention room is not jeopardised.

§ 89 Penitentiary System Act provides that detainees may generally only write letters during their free time. In urgent cases, however, they shall also be permitted to write during working hours. Detainees shall be provided with the necessary writing materials for their letters and submissions and, if they do not have access to them, even if they use funds that are not otherwise available to them for the provision of prison services, they shall be provided with an appropriate amount of stationery. Detainees who are unable to read and write shall be assisted by a prison officer.

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<sup>186</sup> Austria, Juvenile Court Act 1988 ([Bundesgesetz vom 20. Oktober 1988 über die Rechtspflege bei Straftaten Jugendlicher und junger Erwachsener, Jugendgerichtsgesetz 1988 – JGG](#)), Federal Law Gazette Nr. 599/1988.

<sup>187</sup> Austria, Penitentiary System Act ([Bundesgesetz vom 26. März 1969 über den Vollzug der Freiheitsstrafen und der mit Freiheitsentziehung verbundenen vorbeugenden Maßnahmen, Strafvollzugsgesetz - StVG](#)), Federal Law Gazette No. 144/1969.

§ 90 Penitentiary System Act provides regulations for the monitoring of correspondence, § 90b for the withholding of correspondence. Pursuant to § 90b Penitentiary System Act letters addressed by a detainee to public authorities, legal advisers or care centres with the correct sender's details may be placed in a sealed envelope for dispatch.

Letters from legal advisers, care centres or public authorities to a detainee may only be opened in the detainee's presence and only under certain conditions set out in § 90b Penitentiary System Act.

According to § 96a Penitentiary System Act detainees shall be allowed to make telephone calls, in particular to relatives, guardians and social institutions as well as to public bodies, legal advisers and care centres. The content of conversations between detainees and the persons and agencies referred to in § 90b (4) to (6) Penitentiary System Act shall not be monitored.

#### c. Visits with children

Visitors who have not yet reached the age of 14 shall only be allowed to visit if accompanied by an adult according to §93 (3) Penitentiary System Act (*Strafvollzugsgesetz*).<sup>188</sup>

#### d. NPM assessment

*Im Sinne der Aufrechterhaltung familiärer und sonstiger persönlicher Bindungen ist eine Ausweitung der Besuchszeiten geboten.*<sup>189</sup>

An extension of the visiting hours is advisable in the interest of maintaining family and other personal contacts.<sup>190</sup>

*Telefonate sollten jederzeit vom Haftraum aus geführt werden können.*<sup>191</sup>

It shall be possible to make telephone calls from the cell at all times.<sup>192</sup>

*Videotelefonie sollte ausreichend allen Interessenten zur Nutzung offenstehen. Die Inhaftierten müssen über die Möglichkeit zur Videotelefonie aufgeklärt werden.*<sup>193</sup>

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<sup>188</sup> Austria, Penitentiary System Act ([Bundesgesetz vom 26. März 1969 über den Vollzug der Freiheitsstrafen und der mit Freiheitsentziehung verbundenen vorbeugenden Maßnahmen, Strafvollzugsgesetz - StVG](#)), Federal Law Gazette No. 144/1969.

<sup>189</sup> Austria, Austrian Ombudsman Board (2022), [Bericht der Volksanwaltschaft an den Nationalrat und an den Bundesrat 2021 - Präventive Menschenrechtskontrolle](#), Vienna, p. 130.

<sup>190</sup> Austria, Austrian Ombudsman Board (2022), [Annual Report of the Austrian Ombudsman Board to the National Council and the Federal Council 2021 Protection and Promotion of Human Rights](#), Vienna, p. 124.

<sup>191</sup> Austria, Austrian Ombudsman Board (2022), [Bericht der Volksanwaltschaft an den Nationalrat und an den Bundesrat 2021 - Präventive Menschenrechtskontrolle](#), Vienna, p. 131.

<sup>192</sup> Austria, Austrian Ombudsman Board (2022), [Annual Report of the Austrian Ombudsman Board to the National Council and the Federal Council 2021 Protection and Promotion of Human Rights](#), Vienna, p. 124.

<sup>193</sup> Austria, Austrian Ombudsman Board (2022), Bericht der Volksanwaltschaft an den Nationalrat und an den Bundesrat 2021 - Präventive Menschenrechtskontrolle, Vienna, p. 132.



Video telephony should be sufficiently available to all those interested in using the same. The detainees shall be informed of the possibility to use video telephony.<sup>194</sup>

*Es sind geeignete Räume für die Videobesuche zur Verfügung zu stellen, um die Fachdienstzimmer nicht zu blockieren.*<sup>195</sup>

Suitable rooms for video telephony shall be provided in order not to block the specialist services rooms.<sup>196</sup>

*Zur Aufrechterhaltung familiärer und sonstiger persönlicher Bindungen ist eine Ausweitung der Besuchszeiten auf das Wochenende geboten.*<sup>197</sup>

An extension of visiting hours to include the weekend is advisable for maintaining family contact and other personal relationships.<sup>198</sup>

*Videotelefonie sollte allen Insassinnen und Insassen ermöglicht werden.*<sup>199</sup>

Video telephony should be possible for all inmates.<sup>200</sup>

*Die Lage von Räumlichkeiten für den Langzeitbesuch sollte so gewählt sein, dass die Besucherinnen und Besucher nicht in den geschlossenen Wohnbereich der Inhaftierten müssen. Langzeitbesuchsräumlichkeiten müssen Privat- und Intimsphäre ermöglichen.*<sup>201</sup>

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<sup>194</sup> Austria, Austrian Ombudsman Board (2022), [Annual Report of the Austrian Ombudsman Board to the National Council and the Federal Council 2021 Protection and Promotion of Human Rights](#), Vienna, p. 125.

<sup>195</sup> Austria, Austrian Ombudsman Board (2022), [Bericht der Volksanwaltschaft an den Nationalrat und an den Bundesrat 2021 - Präventive Menschenrechtskontrolle](#), Vienna.

<sup>196</sup> Austria, Austrian Ombudsman Board (2022), [Annual Report of the Austrian Ombudsman Board to the National Council and the Federal Council 2021 Protection and Promotion of Human Rights](#), Vienna, p. 125.

<sup>197</sup> Austria, Austrian Ombudsman Board (2023), [Bericht der Volksanwaltschaft an den Nationalrat und an den Bundesrat 2022 - Präventive Menschenrechtskontrolle](#), Vienna, p. 113 .

<sup>198</sup> Austria, Austrian Ombudsman Board (2023), [Annual Report of the Austrian Ombudsman Board to the National Council and the Federal Council 2021 Protection and Promotion of Human Rights](#), Vienna, p. 105.

<sup>199</sup> Austria, Austrian Ombudsman Board (2023), [Bericht der Volksanwaltschaft an den Nationalrat und an den Bundesrat 2022 - Präventive Menschenrechtskontrolle](#), Vienna, p. 114.

<sup>200</sup> Austria, Austrian Ombudsman Board (2023), [Annual Report of the Austrian Ombudsman Board to the National Council and the Federal Council 2021 Protection and Promotion of Human Rights](#), Vienna, p. 105.

<sup>201</sup> Austria, Austrian Ombudsman Board (2023), [Bericht der Volksanwaltschaft an den Nationalrat und an den Bundesrat 2022 - Präventive Menschenrechtskontrolle](#), Vienna, p. 114.

The location of rooms for long visits should be selected in a way that the visitors do not have to be inside the locked residential area for the detainees. X Rooms for long visits shall facilitate privacy and intimacy.<sup>202</sup>

*Visiting options, including long-term visits and visiting conditions (premises, but especially options for visits on weekends and off-peak times) are constantly checked Federal Commission for the enforcement of penalties and measures. The question of video telephony options is becoming increasingly important.*<sup>203</sup>

*Not all prison facilities have child-friendly visiting rooms.*<sup>204</sup>

## 11. Special measures for female detainees

### a. General conditions of detention for women and girls

Are there any general national standards for conditions of detention of women? If so, what do they require?

The Penitentiary System Act (*Strafvollzugsgesetz*)<sup>205</sup> also applies to the detention of women. As described in more detail below, the Penitentiary System Act includes standards specifically for the detention of women.

The Austrian National Preventive Mechanism reports that in 2016, the Federal Ministry of Justice issued an unpublished decree on "Minimum standards for women in Austrian correctional institutions" (*Mindeststandards für den Frauenvollzug in österreichischen Justizanstalten*), which must be implemented in the prisons since then. The decree states, *inter alia*, that female prisons should generally be run in such a way that inmates are housed in shared accommodations (*Wohngruppenvollzug*). This means that the cells are open.<sup>206</sup>

### b. Separation from men

§ 8 (4) Penitentiary System Act (*Strafvollzugsgesetz*)<sup>207</sup> stipulates that prisons shall be run as male or female institutions or in such a way that the male and female detainees held in the same institution are separated from each other.

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<sup>202</sup> Austria, Austrian Ombudsman Board (2023), [Annual Report of the Austrian Ombudsman Board to the National Council and the Federal Council 2021 Protection and Promotion of Human Rights](#), Vienna, p. 106.

<sup>203</sup> Information provided by members of the Federal Commission for the enforcement of penalties and measures (part of the Austrian NPM) during repeated consultations in March and April 2024.

<sup>204</sup> Information provided by members of the Federal Commission for the enforcement of penalties and measures (part of the Austrian NPM) during repeated consultations in March and April 2024.

<sup>205</sup> Austria, Penitentiary System Act ([Bundesgesetz vom 26. März 1969 über den Vollzug der Freiheitsstrafen und der mit Freiheitsentziehung verbundenen vorbeugenden Maßnahmen, Strafvollzugsgesetz - StVG](#)), Federal Law Gazette No. 144/1969.

<sup>206</sup> Austria, [Annual Report on the activities of the Austrian National Preventive Mechanism \(NPM\) 2016](#), Vienna, March 2017, p. 121.

<sup>207</sup> Austria, Penitentiary System Act ([Bundesgesetz vom 26. März 1969 über den Vollzug der Freiheitsstrafen und der mit Freiheitsentziehung verbundenen vorbeugenden Maßnahmen, Strafvollzugsgesetz - StVG](#)), Federal Law Gazette No. 144/1969.

### c. Hygiene

No such standards are included in the Penitentiary System Act (*Strafvollzugsgesetz*).<sup>208</sup>

### d. Healthcare

§ 5 (2) Penitentiary System Act (*Strafvollzugsgesetz*)<sup>209</sup> stipulates that, if the sentenced person is pregnant or has given birth within the last year, the commencement of the execution of the sentence shall be postponed until the end of the sixth week after the birth and beyond that as long as the child is in the care of the sentenced person, but at most until the end of one year after the birth. However, the execution of the sentence shall be commenced as soon as the sentenced person herself requests it, no danger to her health or the child is to be expected from the execution of the sentence and an execution of the sentence that is in accordance with the nature of the custodial sentence is feasible.

§ 74 § (1) Penitentiary System Act stipulates that the provisions relating to the care of sick or injured detainees shall apply mutatis mutandis to the care of pregnant detainees or detainees who have recently given birth. Pregnant women shall be taken to a public hospital for delivery.

### e. Pregnancy and women with babies or young children

§ 74 § (2) Penitentiary System Act stipulates that female detainees who have the right to care for and bring up their children may keep them with them until they reach the age of two, unless this would be detrimental to the child. Subject to the same restrictions, the prison head may, if the necessary facilities are available, also permit detainees to keep their children with them until they reach the age of three at the latest, if, at the time of reaching the age of two, only a further sentence of not more than one year remains to be served. § 74 (3) Penitentiary System Act stipulates that, as long as a detainee keeps her child with her, the prison shall also provide for the maintenance of the child. The costs for this shall be borne by the state.

The legal commentary on this provision clarifies that the prison head has to assess whether the detention in prison is likely to be detrimental to the child's well-being. In principle, it is to be assumed that it is disadvantageous for the child to grow up in the milieu of a correctional institution - especially if professional criminals as well as members of the most serious criminality are held there. As soon as the child becomes aware of this, but at the latest when it reaches the age of three, it should no longer be left with its mother. A detrimental effect for the child can also be assumed if no suitable facilities are available for his or her placement in the prison. The relevant wording in § 74 § (2) Penitentiary System Act can only be understood as a mandate to the prison administration to provide suitable facilities. This means appropriately adapted detention rooms (cot, toys, child-friendly furnishings), in which mother and child are kept alone, with sufficient opportunities for exercise and to spend time outdoors. Moreover, child-friendly nutrition is to be provided.<sup>210</sup>

### f. NPM assessment

No such assessments to be reported for the reporting period.

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<sup>208</sup> Austria, Penitentiary System Act ([Bundesgesetz vom 26. März 1969 über den Vollzug der Freiheitsstrafen und der mit Freiheitsentziehung verbundenen vorbeugenden Maßnahmen, Strafvollzugsgesetz - StVG](#)), Federal Law Gazette No. 144/1969.

<sup>209</sup> Austria, Penitentiary System Act ([Bundesgesetz vom 26. März 1969 über den Vollzug der Freiheitsstrafen und der mit Freiheitsentziehung verbundenen vorbeugenden Maßnahmen, Strafvollzugsgesetz - StVG](#)), Federal Law Gazette No. 144/1969.

<sup>210</sup> Drexler, K. and Wenger, T. (2022), *Strafvollzugsgesetz*, 5th edition, §74 (rdb.at).

*Special conditions for women and girls, especially their structural disadvantages in terms of employment and leisure time, are regularly monitored during the visit.*<sup>211</sup>

*Women's wards are always inspected during visits and talks are also held with the women in prison. Emphasis is also placed on women's specific needs, such as the availability of hygiene products and specialists, especially gynecologists. All mother and child units have already been inspected by the Federal Commission and, depending on the location visited, also criticised.*<sup>212</sup>

## 12. Special measures for foreign nationals

### a. General measures for foreign nationals

There are no general measures for foreign nationals included in the Penitentiary System Act (*Strafvollzugsgesetz*).<sup>213</sup>

### b. Interpretation and translation

§ 65a Penitentiary System Act (*Strafvollzugsgesetz*)<sup>214</sup> provides that in the educational care and employment of detainees, in particular in equipping libraries, procuring books and magazines and organising training and language courses and events, the needs of detainees whose native language is not German shall also be taken into account wherever possible.

§ 116 (5) Penitentiary System Act (*Strafvollzugsgesetz*)<sup>215</sup> provides that detainees who do not have a sufficient command of German, shall be provided with the necessary translation assistance in administrative penal proceedings (*Ordnungsstrafverfahren*).

### c. NPM assessment

No such assessments to be reported for the reporting period.

*With regard to detainees who speak a foreign language, the information and communication options are primarily questioned by the Federal Commission for the enforcement of penalties and measures during visits.*<sup>216</sup>

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<sup>211</sup> Information provided by members of the Federal Commission for the enforcement of penalties and measures (part of the Austrian NPM) during repeated consultations in March and April 2024.

<sup>212</sup> Information provided by members of the Federal Commission for the enforcement of penalties and measures (part of the Austrian NPM) during repeated consultations in March and April 2024.

<sup>213</sup> Austria, Penitentiary System Act ([Bundesgesetz vom 26. März 1969 über den Vollzug der Freiheitsstrafen und der mit Freiheitsentziehung verbundenen vorbeugenden Maßnahmen, Strafvollzugsgesetz - StVG](#)), Federal Law Gazette No. 144/1969.

<sup>214</sup> Austria, Penitentiary System Act ([Bundesgesetz vom 26. März 1969 über den Vollzug der Freiheitsstrafen und der mit Freiheitsentziehung verbundenen vorbeugenden Maßnahmen, Strafvollzugsgesetz - StVG](#)), Federal Law Gazette No. 144/1969.

<sup>215</sup> Austria, Penitentiary System Act ([Bundesgesetz vom 26. März 1969 über den Vollzug der Freiheitsstrafen und der mit Freiheitsentziehung verbundenen vorbeugenden Maßnahmen, Strafvollzugsgesetz - StVG](#)), Federal Law Gazette No. 144/1969.

<sup>216</sup> Information provided by members of the Federal Commission for the enforcement of penalties and measures (part of the Austrian NPM) during repeated consultations in March and April 2024.

Experience has shown that language barriers lead to disadvantages, especially if there are not several people from the same language group in prison. This holds especially true, if information from experienced prisoners is not (or cannot be) passed on to new arrivals. The usual information policy of detention institutions is not able to completely and ideally deal with foreign languages.<sup>217</sup>

### 13. Special measures relating to detention of children and young adults

#### a. Age groups

§ 1 (2) Juvenile Court Act (*Jugendgerichtsgesetz*)<sup>218</sup> defines juveniles ("Jugendlicher") as persons who have reached the age of 14, but are below the age of 18. Minors ("Unmündige"), defined as anyone who has not yet reached the age of 14 yet, are not liable to prosecution. Persons above 18 and below the age of 21 are defined as "young adults" ("junge Erwachsene") according to § 1 Juvenile Court Act.

§ 55 (3) 1 Juvenile Court Act (*Jugendgerichtsgesetz*)<sup>219</sup> stipulates that adult detainees under the age of twenty-two may be placed under the juvenile detention regime provided that there is no reason to fear that the juvenile detainees will be adversely affected or otherwise disadvantaged.

§ 55 (3) 2 Juvenile Court Act stipulates that detainees who are to be held in the juvenile detention regime shall remain subject to this regime until they reach the age of twenty-four, provided that there is no reason to fear that the juvenile detainees will be adversely affected or otherwise disadvantaged. If, at the time of reaching the age of twenty-four, only a sentence of not more than one year is expected to be served, or if the transfer to a prison for adults would be associated with particular disadvantages for the detainee, the detainee may remain subject to the juvenile detention regime even for the execution of the remainder of the sentence. In no case may a detainee who has reached the age of twenty-seven remain subject to the juvenile detention regime.

§ 55 (6) Juvenile Court Act stipulates that all provisions applicable to juvenile detainees shall apply to older detainees subject to juvenile detention. However, upon their request, they shall be exempted from schooling by the head of the prison.

#### b. General measures for detained children and young adults

§ 51 Juvenile Court Act (*Jugendgerichtsgesetz*)<sup>220</sup> and § 2 Penitentiary System Act (*Strafvollzugsgesetz*)<sup>221</sup> lay down the general rule that if not provided for otherwise in the Juvenile Court Act, the general provisions for the execution of sentences of imprisonment shall apply to juveniles. §§

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<sup>217</sup> Information provided by members of the Federal Commission for the enforcement of penalties and measures (part of the Austrian NPM) during repeated consultations in March and April 2024.

<sup>218</sup> Austria, Juvenile Court Act 1988 ([Bundesgesetz vom 20. Oktober 1988 über die Rechtspflege bei Straftaten Jugendlicher und junger Erwachsener, Jugendgerichtsgesetz 1988 – JGG](#)), Federal Law Gazette Nr. 599/1988.

<sup>219</sup> Austria, Juvenile Court Act 1988 ([Bundesgesetz vom 20. Oktober 1988 über die Rechtspflege bei Straftaten Jugendlicher und junger Erwachsener, Jugendgerichtsgesetz 1988 – JGG](#)), Federal Law Gazette Nr. 599/1988.

<sup>220</sup> Austria, Juvenile Court Act 1988 ([Bundesgesetz vom 20. Oktober 1988 über die Rechtspflege bei Straftaten Jugendlicher und junger Erwachsener, Jugendgerichtsgesetz 1988 – JGG](#)), Federal Law Gazette Nr. 599/1988.

<sup>221</sup> Austria, Penitentiary System Act ([Bundesgesetz vom 26. März 1969 über den Vollzug der Freiheitsstrafen und der mit Freiheitsentziehung verbundenen vorbeugenden Maßnahmen, Strafvollzugsgesetz - StVG](#)), Federal Law Gazette No. 144/1969.

172 (2) and 173 (5) Criminal Procedure Code 1975<sup>222</sup> and § 35a (2) Juvenile Court Act lay down the detailed provisions on measures alternative to detention.

In accordance with the minimum standards for juvenile detention and for juvenile departments in Austrian prisons (laid down in decree BMJ-VD41704/0011-VD 2/2012), special framework conditions and perspectives are provided for the treatment and care of juveniles. On the one hand, the minimum standards correspond to the legal requirements and, on the other hand, take into account the organisational and staffing conditions of the prisons concerned. Accordingly, the prisons concerned must implement a structured work and training concept. Furthermore, the juvenile detention centre must be run as a relaxed regime and the minimum opening hours of these detention rooms must be extended. The leisure activities for juvenile inmates are centred on educational content (supervised leisure time, sports activities, experiential education activities with outdoor/indoor elements, group outings, activities to acquire practical life skills, departmental libraries with age-appropriate reading material). In the form of a "catalogue of rules" (*Spielregelkatalog*), the young people are given guidance for their behavior by disclosing the applicable rules and norms. An enforcement plan (*Vollzugsplan*) must also be drawn up for each juvenile detainee, documenting the main interventions during detention. As part of the interdisciplinary juvenile team, issues relevant to detention are discussed together and submitted to the prison management for a decision.<sup>223</sup>

### c. Separation from adults

In relation to pre-trial detention, § 36 (1) Juvenile Court Act (*Jugendgerichtsgesetz*)<sup>224</sup> stipulates that juveniles shall be detained in a special section of the prison, if possible. § 36 (3) Juvenile Court Act provides that juveniles - as a general rule for pre-trial detention - shall be separated from adult detainees from whom a harmful influence is to be feared. Detention in solitary confinement shall be dispensed for juveniles if this would be detrimental to the detainee and if he/she can be detained together with other detainees without danger to these other detainees.

§ 55 (1) Juvenile Court Act (*Jugendgerichtsgesetz*)<sup>225</sup> provides that prison sentences for juveniles shall be executed in the special institutions designated for this purpose, and in other institutions for the execution of prison sentences possibly in special wards.

According to § 55 (2) Juvenile Court Act (*Jugendgerichtsgesetz*)<sup>226</sup> juvenile detainees shall be separated from adult detainees who are not subject to juvenile detention. However, separation may be dispensed with if, under the circumstances given, there are no grounds for concern that the juvenile detainee will be subject to harmful influence or otherwise disadvantaged.

§ 56 Juvenile Court Act provides that custodial sentences of more than six months shall be executed in special institutions for juveniles unless the tasks of the juvenile penal system can be better performed in another institution. However, if the sentenced person has reached the age of eighteen at the time of

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<sup>222</sup> Austria, Criminal Procedure Code 1975 ([Strafprozeßordnung 1975, StPO](#)), Federal Law Gazette No. 631/1975.

<sup>223</sup> Austria, Federal Minister of Justice, [Response to parliamentary inquiry 6400/J-NR/2021](#), 22 June 2021.

<sup>224</sup> Austria, Juvenile Court Act 1988 ([Bundesgesetz vom 20. Oktober 1988 über die Rechtspflege bei Straftaten Jugendlicher und junger Erwachsener, Jugendgerichtsgesetz 1988 – JGG](#)), Federal Law Gazette Nr. 599/1988.

<sup>225</sup> Austria, Juvenile Court Act 1988 ([Bundesgesetz vom 20. Oktober 1988 über die Rechtspflege bei Straftaten Jugendlicher und junger Erwachsener, Jugendgerichtsgesetz 1988 – JGG](#)), Federal Law Gazette Nr. 599/1988.

<sup>226</sup> Austria, Juvenile Court Act 1988 ([Bundesgesetz vom 20. Oktober 1988 über die Rechtspflege bei Straftaten Jugendlicher und junger Erwachsener, Jugendgerichtsgesetz 1988 – JGG](#)), Federal Law Gazette Nr. 599/1988.



commencement of the sentence, the custodial sentence may also be served in a general penal institution or in a court prison. The Federal Ministry of Justice is responsible for determining the prison in which the sentence is to be served.

§ 54 Juvenile Court Act (*Jugendgerichtsgesetz*)<sup>227</sup> provides that persons entrusted with the treatment of juvenile detainees shall have an understanding of education and be informed about the most important findings of education, psychology and psychiatry relevant to their work. The Federal Minister of Justice shall ensure that further training programmes corresponding to these criteria are offered, in which the persons entrusted with juvenile detainees must regularly participate.

#### d. NPM assessment

*Es ist dafür zu sorgen, dass Jugendliche nicht in jenes Milieu zurückfallen, das in ihrem Leben bereits einmal kriminalitätsfördernd wirkte.*<sup>228</sup>

It is important to ensure that young people do not fall back into the same environment that has already encouraged crime in their lives.

*In speziellen Einrichtungen kann auf die Bedürfnisse von Jugendlichen besser eingegangen werden. Je kleiner Einrichtungen sind und je seltener in ihnen Jugendliche angehalten werden, umso aufwändiger ist es, dort eine adäquate Betreuung sicherzustellen.*<sup>229</sup>

The needs of young people can be better catered for in specialised facilities. The smaller the centres are and the less frequently young people are detained in them, the more time-consuming it is to ensure adequate care there.

*Klassifizierungsentscheidungen haben rasch zu erfolgen. Die gesetzliche Frist von sechs Wochen ist einzuhalten.*<sup>230</sup>

Classification decisions [as to the placement in a particular facility] must be made quickly. The statutory period of six weeks must be adhered to.

*Jugendliche sind grundsätzlich getrennt von Erwachsenen anzuhalten. Wird von diesem Trennungsgebot abgesehen, darf von den Erwachsenen kein schädlicher Einfluss ausgehen.*<sup>231</sup>

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<sup>227</sup> Austria, Juvenile Court Act 1988 ([Bundesgesetz vom 20. Oktober 1988 über die Rechtspflege bei Straftaten Jugendlicher und junger Erwachsener, Jugendgerichtsgesetz 1988 – JGG](#)), Federal Law Gazette Nr. 599/1988.

<sup>228</sup> Austria, Austrian Ombudsman Board (20222), Juveniles in detention: Perception report 2022 ([Jugend in Haft: Wahrnehmungsbericht 2022](#)), p. 39.

<sup>229</sup> Austria, Austrian Ombudsman Board (20222), Juveniles in detention: Perception report 2022 ([Jugend in Haft: Wahrnehmungsbericht 2022](#)), p. 39.

<sup>230</sup> Austria, Austrian Ombudsman Board (20222), Juveniles in detention: Perception report 2022 ([Jugend in Haft: Wahrnehmungsbericht 2022](#)), p. 39.

<sup>231</sup> Austria, Austrian Ombudsman Board (20222), Juveniles in detention: Perception report 2022 ([Jugend in Haft: Wahrnehmungsbericht 2022](#)), p. 39.



Juveniles must in principle be detained separately from adults. If this separation requirement is waived, the adults must not exert any harmful influence.

*Der Jugendvollzug ist grundsätzlich als Wohngruppenvollzug zu führen, d.h. dass alle (weiblichen und männlichen) jugendlichen Untersuchungs- und Strafgefangenen grundsätzlich im Wohngruppenvollzug anzuhalten sind.<sup>232</sup>*

As a matter of principle, juvenile detention is to be carried out in residential groups, i.e. all (male and female) juvenile remand and sentenced detainees are to be detained in residential groups.

*Ein Unterrichtsverbot während der Schulferien ist für Lehrerinnen und Lehrer in allen JA unzweckmäßig. Eine gesetzliche Sonderregelung käme allen Beteiligten entgegen. Den Jugendlichen sollen auch Ausbildungsplätze außerhalb der JA offenstehen. Gesetzliche Grundlagen für eine Lehre im Freigang sind zu schaffen. Nur mithilfe von ausreichend Personal kann das Ausbildungsangebot aufrechterhalten werden. Werte- und Orientierungskurse sollten allen Jugendlichen mit Migrationshintergrund angeboten werden. Sprachbarrieren dürfen einer Betreuung nicht entgegenstehen. Videodolmetsch sollte daher bei Jugendlichen häufig eingesetzt werden. Deutschkurse sind regelmäßig anzubieten.<sup>233</sup>*

A ban on teaching during school holidays is inappropriate for teachers in all correctional institutions. A special statutory regulation would be favourable to all parties involved. Young people should also have access to apprenticeships outside of correctional institutions. A legal basis must be created for apprenticeships outside of school. The training programme can only be maintained with the help of sufficient staff. Value and orientation courses should be offered to all young people with a migration background. Language barriers must not stand in the way of counselling. Video interpreting should therefore be used frequently with young people. German courses should be offered regularly.

*Eine sinnvolle Freizeitbeschäftigung soll den Jugendlichen in allen JA regelmäßig angeboten werden. Vor allem Sportangebote dürfen nicht fehlen. Auch an Wochenenden sollen die Jugendlichen – von Sozialpädagoginnen und Sozialpädagogen – betreut werden.<sup>234</sup>*

Meaningful leisure activities should be regularly offered to young people in all correctional institutions. Sports programmes in particular should not be missing. The young people should also be supervised by social pedagogues at weekends.

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<sup>232</sup> Austria, Austrian Ombudsman Board (2022), Juveniles in detention: Perception report 2022 ([Jugend in Haft: Wahrnehmungsbericht 2022](#)), p. 40.

<sup>233</sup> Austria, Austrian Ombudsman Board (2022), Juveniles in detention: Perception report 2022 ([Jugend in Haft: Wahrnehmungsbericht 2022](#)), p. 40.

<sup>234</sup> Austria, Austrian Ombudsman Board (2022), Juveniles in detention: Perception report 2022 ([Jugend in Haft: Wahrnehmungsbericht 2022](#)), p. 40.

*Die Verhängung der Haft ist für Jugendliche oft ein einschneidendes Erlebnis. Nur erfahrene, besonders ausgebildete Beamtinnen und Beamte können dabei die nötige Stütze bieten. Lehrgänge für den Jugendvollzug sind von allen auf Jugendabteilungen tätigen Beamtinnen und Beamten zu absolvieren. Diese Lehrgänge müssen auch regelmäßig angeboten werden.<sup>235</sup>*

Being sent to prison is often a traumatic experience for young people. Only experienced, specially trained officers can provide the necessary support. Training courses for juvenile detention must be completed by all officers working in juvenile departments. These courses must also be offered on a regular basis.

*Flexible Besuchszeiten, vor allem auch abends und am Wochenende, erleichtern berufstätigen Eltern mit ihren Kindern in Kontakt zu bleiben. Kindgerechte Besuchsräumlichkeiten ermöglichen die Mitnahme von kleinen (Geschwister-) Kindern, sodass der Kontakt zu ihnen nicht verloren geht. Der Abholbesuch als Lockerung ist Motivation für den Jugendlichen zu Wohlverhalten und fördert seine Resozialisierung.<sup>236</sup>*

Flexible visiting times, especially in the evenings and at weekends, make it easier for working parents to stay in contact with their children. Child-friendly visiting rooms allow young (sibling) children to be taken along so that contact with them is not lost. The pick-up visit as a relaxation is motivation for the young person to behave well and promotes their resocialisation.

*Internettelefonie ist eine kostengünstige Methode der Kommunikation. Sie sollte allen Jugendlichen im Strafvollzug offenstehen.<sup>237</sup>*

Internet telephony is a cost-effective method of communication. It should be available to all young people in prison.

*Es sind alle Anstrengungen zu unternehmen, um Kinder- und Jugendpsychiaterinnen und -psychiater für die fachärztliche Versorgung von Jugendlichen und jungen Erwachsenen im Straf- und Maßnahmenvollzug zu gewinnen.<sup>238</sup>*

Every effort must be made to recruit child and adolescent psychiatrists to provide specialist medical care for juveniles and young adults in prison and forensic detention centres.

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<sup>235</sup> Austria, Austrian Ombudsman Board (2022), Juveniles in detention: Perception report 2022 ([Jugend in Haft: Wahrnehmungsbericht 2022](#)), p. 40.

<sup>236</sup> Austria, Austrian Ombudsman Board (2022), Juveniles in detention: Perception report 2022 ([Jugend in Haft: Wahrnehmungsbericht 2022](#)), p. 40.

<sup>237</sup> Austria, Austrian Ombudsman Board (2022), Juveniles in detention: Perception report 2022 ([Jugend in Haft: Wahrnehmungsbericht 2022](#)), p. 41.

<sup>238</sup> Austria, Austrian Ombudsman Board (2022), Juveniles in detention: Perception report 2022 ([Jugend in Haft: Wahrnehmungsbericht 2022](#)), p. 41.

*Für Jugendliche ist ein klar definierter Regelkatalog mit den Folgen von Verstößen zu verfassen und den jungen Inhaftierten bekannt zu machen. Sanktionen sollten erst dann zum Einsatz gelangen, wenn alle pädagogischen Maßnahmen ausgeschöpft sind.*<sup>239</sup>

A clearly defined catalogue of rules with the consequences of infringements should be drawn up for juveniles and made known to the young detainees. Sanctions should only be used once all educational measures have been exhausted.

*Die Jugendkonzepte der JA haben auch auf die Betreuung weiblicher Jugendlicher einzugehen. Lehrangebote sollen dem Bedarf wie den Interessen der Jugendlichen entsprechen. Weibliche Jugendliche dürfen dabei nicht benachteiligt werden.*<sup>240</sup>

The youth concepts of the correctional institutions must also address the care of young women. Training programmes should meet the needs and interests of young people. Female young people must not be disadvantaged.

*Der Gefahr eines Rückfalles sollte mit intensiver Betreuungsarbeit bereits während der Haft begegnet werden. Je eher gezielte Förderungen im Haftalltag einsetzen, umso nachhaltiger ist ihre Wirkung in der Zeit danach. Das gesamte soziale Umfeld sollte in die Vorbereitung der Entlassung eingebunden werden. Nicht auf Institutionen, sondern auf die handelnden Menschen kommt es dabei an.*<sup>241</sup>

The risk of reoffending should be countered with intensive counselling during the prison sentence. The earlier targeted support programmes are introduced in everyday prison life, the more sustainable their effect will be afterwards. The entire social environment should be involved in the preparation for release. It is not the institutions that matter, but the people involved.

*Über Jugendliche soll eine vorbeugende Maßnahme nicht zeitlich unbefristet verhängt werden können. Forensisch therapeutische Zentren sind ehestens einzurichten. Die Aufnahme in ein Spital sollte nur erfolgen, wenn dies medizinisch indiziert ist. Der Ausbau von Nachsorgeeinrichtungen für Jugendliche und junge Erwachsene ist vor allem im Westen Österreichs zu forcieren.*<sup>242</sup>

It should not be possible to impose preventive measures on juveniles for an indefinite period of time. Forensic therapeutic centres should be set up as soon as possible. Admission to a hospital should only

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<sup>239</sup> Austria, Austrian Ombudsman Board (2022), Juveniles in detention: Perception report 2022 ([Jugend in Haft: Wahrnehmungsbericht 2022](#)), p. 41.

<sup>240</sup> Austria, Austrian Ombudsman Board (2022), Juveniles in detention: Perception report 2022 ([Jugend in Haft: Wahrnehmungsbericht 2022](#)), p. 41.

<sup>241</sup> Austria, Austrian Ombudsman Board (2022), Juveniles in detention: Perception report 2022 ([Jugend in Haft: Wahrnehmungsbericht 2022](#)), p. 41.

<sup>242</sup> Austria, Austrian Ombudsman Board (2022), Juveniles in detention: Perception report 2022 ([Jugend in Haft: Wahrnehmungsbericht 2022](#)), p. 41.

take place if medically indicated. The expansion of aftercare facilities for adolescents and young adults should be accelerated, especially in western Austria.

*The specific needs of young people are assessed in all prisons where young people are held. When it comes to young people, the basic attitude and approach in the penal system is more educational than punitive.<sup>243</sup> A recent report<sup>244</sup> is available on juveniles in detention.<sup>245</sup>*

*The prison release system provides for a network of professionals to be set up for the purpose of resocialisation (“Sozialnetzkonferenz”). Nevertheless, it is difficult, for example, to continue apprenticeships started in prison. As the competences of youth and social welfare lie with the federal provinces (Bundesländer) states, there are often difficulties with resocialisation for financial and resource-related reasons.<sup>246</sup>*

## 14. Special measures to protect detainees with disabilities or serious medical conditions

### a. Care in detention

For the national standards regarding the provision of specialised care for detainees with mental health-related medical conditions see above under 8. Apart from the general standards related to healthcare, there are no specific provisions aiming to ensure that persons with disabilities receive appropriate care included in the Penitentiary System Act (*Strafvollzugsgesetz*).<sup>247</sup>

### b. Continuity of care

The Penitentiary System Act (*Strafvollzugsgesetz*)<sup>248</sup> does not provide for any such specific measures.

### c. Reasonable accommodation and accessibility

According to the Federal Disability Equality Act (*Bundes-Behindertengleichstellungsgesetz*)<sup>249</sup> nobody shall be directly or indirectly discriminated against due to a disability. In view of the adaptation work required for many federal buildings, it obliges the federal government to draw up staged plans, which

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<sup>243</sup> Information provided by members of the Federal Commission for the enforcement of penalties and measures (part of the Austrian NPM) during repeated consultations in March and April 2024.

<sup>244</sup> Austria, Austrian Ombudsman Board (20222), Juveniles in detention: Perception report 2022 ([Jugend in Haft: Wahrnehmungsbericht 2022](#)).

<sup>245</sup> Information provided by members of the Federal Commission for the enforcement of penalties and measures (part of the Austrian NPM) during repeated consultations in March and April 2024.

<sup>246</sup> Information provided by members of the Federal Commission for the enforcement of penalties and measures (part of the Austrian NPM) during repeated consultations in March and April 2024.

<sup>247</sup> Austria, Penitentiary System Act ([Bundesgesetz vom 26. März 1969 über den Vollzug der Freiheitsstrafen und der mit Freiheitsentziehung verbundenen vorbeugenden Maßnahmen, Strafvollzugsgesetz - StVG](#)), Federal Law Gazette No. 144/1969.

<sup>248</sup> Austria, Penitentiary System Act ([Bundesgesetz vom 26. März 1969 über den Vollzug der Freiheitsstrafen und der mit Freiheitsentziehung verbundenen vorbeugenden Maßnahmen, Strafvollzugsgesetz - StVG](#)), Federal Law Gazette No. 144/1969.

<sup>249</sup> Austria, Federal Disability Equality Act ([Bundesgesetz über die Gleichstellung von Menschen mit Behinderungen \(Bundes-Behindertengleichstellungsgesetz – BGStG\)](#)), Federal Law Gazette I No. 82/2005.

must be publicised accordingly. The Penitentiary System Act (*Strafvollzugsgesetz*)<sup>250</sup> does not provide for any such specific standards.

#### d. NPM assessment

*Auf den forensischen Abteilungen muss es ausreichend Rückzugsmöglichkeiten für die Patientinnen und Patienten geben. Fixierungen sollen nur in den dafür eingerichteten Räumen vorgenommen werden.*<sup>251</sup>

There shall be sufficient places for patients to withdraw [in the sense of retreating] in forensic departments. Restraints should only be carried out in the rooms designated for that purpose.<sup>252</sup>

*Um die besonderen Herausforderungen im Maßnahmenvollzug bewältigen zu können, sollten Justizwachebedienstete ein entsprechendes Ausbildungsmodul absolvieren.*<sup>253</sup>

Prison officers should complete a relevant training module in order to be able to tackle the challenges of working in the detention of mentally ill offenders.<sup>254</sup>

*Inmates with specific needs, including persons with mental health problems, are an ongoing and constantly examined topic during visits. Due to the long-term, systemic problems with medical care in the Austrian penal system, there are generally significant deficits in care. Such deficits are less about safety, but more about the health of the detainees.*<sup>255</sup>

*In addition, the availability of suitable aftercare facilities plays a significant role in the release process and is poorly resolved. In particular, releases from court-ordered forensic placement sometimes fail due to the availability of aftercare facilities and thus lead to disproportionately long imprisonment, sometimes extremely long imprisonment, even though care in a prison or forensic facility would no longer be necessary.*<sup>256</sup>

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<sup>250</sup> Austria, Penitentiary System Act ([Bundesgesetz vom 26. März 1969 über den Vollzug der Freiheitsstrafen und der mit Freiheitsentziehung verbundenen vorbeugenden Maßnahmen, Strafvollzugsgesetz - StVG](#)), Federal Law Gazette No. 144/1969.

<sup>251</sup> Austria, Austrian Ombudsman Board (2022), [Bericht der Volksanwaltschaft an den Nationalrat und an den Bundesrat 2021 - Präventive Menschenrechtskontrolle](#), Vienna, 147.

<sup>252</sup> Austria, Austrian Ombudsman Board (2022), [Annual Report of the Austrian Ombudsman Board to the National Council and the Federal Council 2021 Protection and Promotion of Human Rights](#), Vienna, p.140.

<sup>253</sup> Austria, Austrian Ombudsman Board (2022), [Bericht der Volksanwaltschaft an den Nationalrat und an den Bundesrat 2021 - Präventive Menschenrechtskontrolle](#), Vienna, p. 148.

<sup>254</sup> Austria, Austrian Ombudsman Board (2022), [Annual Report of the Austrian Ombudsman Board to the National Council and the Federal Council 2021 Protection and Promotion of Human Rights](#), Vienna, p. 140.

<sup>255</sup> Information provided by members of the Federal Commission for the enforcement of penalties and measures (part of the Austrian NPM) during repeated consultations in March and April 2024.

<sup>256</sup> Information provided by members of the Federal Commission for the enforcement of penalties and measures (part of the Austrian NPM) during repeated consultations in March and April 2024.

## 15. Specific measures to protect detainees with special needs or other vulnerabilities

### a. Protection of LGBTI detainees

No such standards are foreseen in the Penitentiary System Act (*Strafvollzugsgesetz*).<sup>257</sup> The competent Federal Ministry reports that, if needed, multiprofessional teams develop solutions for the person in question and his/her needs.<sup>258</sup>

### b. Protection of trans detainees

No such measures are foreseen in the Penitentiary System Act (*Strafvollzugsgesetz*).<sup>259</sup>

### c. Protection of other vulnerable detainees

No such specific measures are foreseen in the Penitentiary System Act (*Strafvollzugsgesetz*).<sup>260</sup> For general measures concerning the prevention of violence and ill-treatment see section 9 above.

### d. NPM assessment

No such assessments to be reported for the reporting period.

*LGBTI people are spoken to during visits and their well-being is addressed. Safety, as well as their health care, are addressed in all facilities where these people stay.*<sup>261</sup>

*The adequate care and safety of this group of people depends on the individual circumstances and must be considered on a case-by-case basis.*<sup>262</sup>

## 16. Specific measures to address radicalisation in prisons

### a. General measures to prevent radicalisation

No such specific measures are foreseen in the Penitentiary System Act (*Strafvollzugsgesetz*).<sup>263</sup>

According to the Federal Ministry of Justice, individual and internally coordinated regulations have been established in each prison for the prevention of extremism and deradicalisation. In each prison, two suitable prison officers are trained as experts and are particularly sensitised to the area of

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<sup>257</sup> Austria, Penitentiary System Act ([Bundesgesetz vom 26. März 1969 über den Vollzug der Freiheitsstrafen und der mit Freiheitsentziehung verbundenen vorbeugenden Maßnahmen, Strafvollzugsgesetz - StVG](#)), Federal Law Gazette No. 144/1969.

<sup>258</sup> Information received from the Federal Ministry Constitutional Affairs, Reforms, Deregulation and Justice on 21 June 2018.

<sup>259</sup> Austria, Penitentiary System Act ([Bundesgesetz vom 26. März 1969 über den Vollzug der Freiheitsstrafen und der mit Freiheitsentziehung verbundenen vorbeugenden Maßnahmen, Strafvollzugsgesetz - StVG](#)), Federal Law Gazette No. 144/1969.

<sup>260</sup> Austria, Penitentiary System Act ([Bundesgesetz vom 26. März 1969 über den Vollzug der Freiheitsstrafen und der mit Freiheitsentziehung verbundenen vorbeugenden Maßnahmen, Strafvollzugsgesetz - StVG](#)), Federal Law Gazette No. 144/1969.

<sup>261</sup> Information provided by members of the Federal Commission for the enforcement of penalties and measures (part of the Austrian NPM) during repeated consultations in March and April 2024.

<sup>262</sup> Information provided by members of the Federal Commission for the enforcement of penalties and measures (part of the Austrian NPM) during repeated consultations in March and April 2024.

<sup>263</sup> Austria, Penitentiary System Act ([Bundesgesetz vom 26. März 1969 über den Vollzug der Freiheitsstrafen und der mit Freiheitsentziehung verbundenen vorbeugenden Maßnahmen, Strafvollzugsgesetz - StVG](#)), Federal Law Gazette No. 144/1969.

(de)radicalisation. The Coordination Unit for the Prevention of Extremism and Deradicalisation (*Koordinationsstelle Extremismusprävention und Deradikalisierung*) was set up in the Directorate General for Prisons and the Enforcement of Measures involving Deprivation of Liberty, which, among other things, draws up the framework guidelines for the prisons, ensures the appropriate training of prison staff and guarantees the inter-agency exchange of information.<sup>264</sup>

#### b. Risk assessments

The Penitentiary System Act (*Strafvollzugsgesetz*)<sup>265</sup> does not provide for such a risk assessment. However, §23 (1a) of the Austrian Criminal Code (*Strafgesetzbuch*)<sup>266</sup> provides that if a person is sentenced to at least eighteen months' imprisonment after reaching the age of eighteen, the court shall at the same time order his placement in an institution for dangerous recidivists, if the conviction is exclusively or predominantly for one or more intentional criminal offences under §§ 278b to 278f Austrian Criminal Code (offences related to terrorism), [...]or if it is to be feared that he/she will otherwise continue to commit such offences with serious consequences due to his/her propensity to commit terrorist offences.

#### c. Training of staff

The Penitentiary System Act (*Strafvollzugsgesetz*)<sup>267</sup> does not provide for such a training. According to the Federal Ministry of Justice, in each prison, two suitable prison officers are trained as experts and are particularly sensitised to the area of (de)radicalisation. The Coordination Unit for the Prevention of Extremism and Deradicalisation (*Koordinationsstelle Extremismusprävention und Deradikalisierung*) was set up in the Directorate General for Prisons and the Enforcement of Measures involving Deprivation of Liberty, which, among other things, draws up the framework guidelines for the prisons, ensures the appropriate training of prison staff and guarantees the inter-agency exchange of information.<sup>268</sup>

#### d. Deradicalisation measures

In Austria, the NGO DERAD is commissioned by the Federal Ministry of Justice for the support of detainees in the area of extremism prevention, as well as for the aftercare of persons convicted of relevant offences and for educational measures for prison officers in the area of extremism prevention.<sup>269</sup>

#### e. NPM assessment

No such assessments to be reported for the reporting period.

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<sup>264</sup> Austria, Federal Ministry of Justice, [Extremismus und Deradikalisierung in Justizanstalten](#).

<sup>265</sup> Austria, Penitentiary System Act ([Bundesgesetz vom 26. März 1969 über den Vollzug der Freiheitsstrafen und der mit Freiheitsentziehung verbundenen vorbeugenden Maßnahmen, Strafvollzugsgesetz - StVG](#)), Federal Law Gazette No. 144/1969.

<sup>266</sup> Austria, Austrian Criminal Code ([Strafgesetzbuch](#)), Federal Law Gazette No. 60/1974.

<sup>267</sup> Austria, Penitentiary System Act ([Bundesgesetz vom 26. März 1969 über den Vollzug der Freiheitsstrafen und der mit Freiheitsentziehung verbundenen vorbeugenden Maßnahmen, Strafvollzugsgesetz - StVG](#)), Federal Law Gazette No. 144/1969.

<sup>268</sup> Austria, Federal Ministry of Justice, [Extremismus und Deradikalisierung in Justizanstalten](#).

<sup>269</sup> Austria, DERAD, [website](#).



*The Federal Commission for the enforcement of penalties and measures examines the extent to which special care and therapy offers (DERAD) are made.*<sup>270</sup>

*In any case, there is awareness of the problem in the prisons; the extent to which sensitisation and therapy measures are also tailored to the individual case and thus ideally taken depends in part on available resources and sometimes also on the people involved.*<sup>271</sup>

## 17. Inspections and monitoring

### a. Inspections

In order to be able to fulfil its tasks as the Republic's human rights body, the Austrian Ombudsman Board has set up, inter alia, a federal commission.<sup>272</sup> This "Federal Commission for the enforcement of penalties and measures" is responsible for monitoring penal and forensic institutions nationwide. The expert commission has unrestricted access to all institutions and may receive all the information and documents required to exercise its mandate. The commission also has, for example, comprehensive access to the medical data of detainees. The commissions can hold private conversations with people in detention if they wish to do so.

### b. Access to detention facilities by national authorities

The "Federal Commission for the enforcement of penalties and measures" has unrestricted access to all institutions and may receive all the information and documents required to exercise its mandate in line with the Federal Law on the Austrian Ombudsman Board.<sup>273</sup>

### c. Access to detention facilities by international bodies

In its latest report, the CPT states that "The delegation enjoyed rapid access to all the places it wished to visit [...]."<sup>274</sup>

### d. NPM assessment

No such assessments to be reported for the reporting period.

*The Federal Commission for the enforcement of penalties and measures indeed has unrestricted access to all institutions and usually receives all the information and documents required to exercise its mandate in line with the Federal Law on the Austrian Ombudsman Board.*<sup>275</sup> *The Commission enjoys a good*

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<sup>270</sup> Information provided by members of the Federal Commission for the enforcement of penalties and measures (part of the Austrian NPM) during repeated consultations in March and April 2024.

<sup>271</sup> Information provided by members of the Federal Commission for the enforcement of penalties and measures (part of the Austrian NPM) during repeated consultations in March and April 2024.

<sup>272</sup> Austria, Federal Law on the Austrian Ombudsman Board ([Bundesgesetz über die Volksanwaltschaft, Volksanwaltschaftsgesetz 1982 – VolksanwG](#)), Federal Law Gazette No. 433/1982.

<sup>273</sup> Austria, Federal Law on the Austrian Ombudsman Board ([Bundesgesetz über die Volksanwaltschaft, Volksanwaltschaftsgesetz 1982 – VolksanwG](#)), Federal Law Gazette No. 433/1982.

<sup>274</sup> CPT (2023), [Report to the Austrian Government on the periodic visit to Austria carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment \(CPT\) from 23 November to 3 December 2021](#), CPT/Inf (2023) 03, p. 9.

<sup>275</sup> Information provided by members of the Federal Commission for the enforcement of penalties and measures (part of the Austrian NPM) during repeated consultations in March and April 2024.

reputation among the prisons heads and is perceived as a supporter for requests to the Federal Ministry of Justice.<sup>276</sup>

## 18. Access to remedy

### a. Legal remedies

Under the Penitentiary System Act (*Strafvollzugsgesetz*)<sup>277</sup> detainees may file a complaint about any decision or order affecting their rights and about any conduct of prison staff affecting their rights according to § 120 Penitentiary System Act (*Strafvollzugsgesetz*). Complaints shall be submitted in writing or orally to the prison officer in charge at the time of day to be determined by the prison head.

§ 121 Penitentiary System Act (*Strafvollzugsgesetz*) stipulates further that the prison head shall decide on complaints against prison staff or their orders. If a complaint is directed against a decision, order or conduct of the prison head or against the violation of the prison head's duty to decide, and, if the prison head does not remedy the complaint himself/herself, the prison court shall decide on it.

Detainees may further file a complaint to the police.

### b. Legal assistance

Letters from, inter alia, legal advisers to a detainee may only be opened in the detainee's presence and only under certain conditions set out in § 90b Penitentiary System Act. Pursuant to § 90b Penitentiary System Act letters addressed by a detainee to, inter alia, legal advisers with the correct sender's details may be placed in a sealed envelope for dispatch.

According to § 96a Penitentiary System Act detainees shall be allowed to make telephone calls also to legal advisors. The content of conversations between detainees and the legal advisors shall not be monitored.

### c. Request and complaints

§ 119 Penitentiary System Act (*Strafvollzugsgesetz*)<sup>278</sup> provides that detainees shall have the right to submit requests in an appropriate form, either orally or in writing, concerning the execution of their sentence. For this purpose, they must contact the prison officer who can be reached first in cases that cannot be postponed, otherwise they must contact the prison officer responsible for this at the time of day to be specified in the house rules.

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<sup>276</sup> Information provided by members of the Federal Commission for the enforcement of penalties and measures (part of the Austrian NPM) during repeated consultations in March and April 2024.

<sup>277</sup> Austria, Penitentiary System Act ([Bundesgesetz vom 26. März 1969 über den Vollzug der Freiheitsstrafen und der mit Freiheitsentziehung verbundenen vorbeugenden Maßnahmen, Strafvollzugsgesetz - StVG](#)), Federal Law Gazette No. 144/1969.

<sup>278</sup> Austria, Penitentiary System Act ([Bundesgesetz vom 26. März 1969 über den Vollzug der Freiheitsstrafen und der mit Freiheitsentziehung verbundenen vorbeugenden Maßnahmen, Strafvollzugsgesetz - StVG](#)), Federal Law Gazette No. 144/1969.

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#### d. Independent authority

§ 121 Penitentiary System Act (*Strafvollzugsgesetz*) stipulates further that the prison head shall decide on complaints against prison staff or their orders. If a complaint is directed against a decision, order or conduct of the prison head or against the violation of the prison head's duty to decide, and, if the prison head does not remedy the complaint himself/herself, the prison court shall decide on it.

Detainees may also file a complaint to the Austrian Ombudsman Board. The Austrian Ombudsman Board may initiate formal investigative proceedings.

#### e. NPM assessment

*Die systematische Erfassung und Auswertung von Beschwerden ist eine Voraussetzung, rasch und zielgerichtet auf Fehlentwicklungen zu reagieren und präventiv Menschenrechtsverletzungen gegenzusteuern.*<sup>280</sup>

The systematic recording and evaluation of complaints is a condition for reacting quickly and in a targeted manner to undesirable developments and countering human rights violations preventively.<sup>281</sup>

*So-called administrative penalties (Ordnungsstrafen) and their handling (interrogation, completion time, etc.) are checked during visits. Complaints (possibilities) from detainees are also examined, although in fact this is only possible to a limited extent because requests and complaints are not handled completely transparently and not always formally. However, satisfactory informal handling and completion are also reported. However, since prisons are a closed system with a specific subculture, the possibility of anonymous complaints represents an unresolved problem.*<sup>282</sup>

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<sup>279</sup> Austria, Penitentiary System Act ([Bundesgesetz vom 26. März 1969 über den Vollzug der Freiheitsstrafen und der mit Freiheitsentziehung verbundenen vorbeugenden Maßnahmen, Strafvollzugsgesetz - StVG](#)), Federal Law Gazette No. 144/1969.

<sup>280</sup> Austria, Austrian Ombudsman Board (2023), [Bericht der Volksanwaltschaft an den Nationalrat und an den Bundesrat 2022 - Präventive Menschenrechtskontrolle](#), Vienna, p. 117.

<sup>281</sup> Austria, Austrian Ombudsman Board (2023), [Annual Report of the Austrian Ombudsman Board to the National Council and the Federal Council 2021 Protection and Promotion of Human Rights](#), Vienna, p. 108.

<sup>282</sup> Information provided by members of the Federal Commission for the enforcement of penalties and measures (part of the Austrian NPM) during repeated consultations in March and April 2024.

## Part II: National case-law

No relevant national case-law to be reported for the reporting period. The standards reported in Part I do not build on national case-law.