



VOLKSANWALTSCHAFT

Report

of the Austrian Ombudsman Board
on the activities of the
National Preventive Mechanism

2012

Preface

Since 1 July 2012, the Austrian Ombudsman Board (AOB) is also competent for preventive monitoring: It is now part of its mandate to monitor and control all institutions and facilities, in which persons with and without disabilities may be helpless and at risk of abuse, inhuman treatment and measures that restrict their freedom. This investigative mandate means that a total of more than 4,000 public and private institutions and facilities will be monitored and controlled by the AOB. The Austrian Ombudsman Board shall assume these duties as the National Preventive Mechanism (NPM) jointly with the Commissions that it has established.

While the new competences are consistent with the previous duties of the AOB, they are also expanding the range of competences significantly; therefore, a reorientation of the AOB was required. It was necessary to create new networks and the cooperation with international organisations became an even greater priority. The exchange of information with other groups and experts from various disciplines (e.g. medicine, nursing sciences, psychology) have changed not only the work environment of the Austrian Ombudsman Board but the substance of its work as well.

This report describes the previous activities relative to preventive monitoring and control and provides information about the investigations undertaken in the period under review. For the first time other stakeholders have the opportunity to voice their opinions in a report of the Austrian Ombudsman Board: The Human Rights Advisory Council as an advisory body and the six Commissions of the Austrian Ombudsman Board, which commenced their work mid-year 2012 and which are undertaking monitoring and control activities on an ongoing basis.

The protection of fundamental rights was always a central priority in the Austrian Ombudsman Board's ex-post control activities. The violation of human rights was always considered the most serious form of maladministration on the part of authorities. The new mandate of the Austrian Ombudsman Board now ranges from preventive to ex-post monitoring and control of human rights and the rights of persons with disabilities. This significantly increases the opportunities to protect human rights.

We would like to thank the employees of the Austrian Ombudsman Board, for their active contribution; the commitment with which they have embraced their new competences has been exemplary.



Gertrude Brinek



Terezija Stojsits



Peter Kostelka

Vienna, May 2013

Table of Contents

1. Introduction	7
1.1 The new competences of the Austrian Ombudsman Board.....	7
1.2 Organisational implementation	7
1.3 Implementation for regional administration	8
2. Competence of the AOB	11
2.1 Monitoring and control of institutions and facilities in accordance with OPCAT.....	11
2.2 Monitoring and control of institutions and facilities as well as programmes for persons with disabilities.....	11
2.3 In itinere monitoring of acts of compulsion	12
3. Personnel and financial resources	13
3.1 Budgetary provisions	13
3.2 Commissions of the Austrian Ombudsman Board.....	14
3.3 Human Rights Advisory Council.....	15
4. Investigative proceedings in the year under review	19
4.1 Investigative focal points.....	19
4.2 Investigations in numbers.....	20
4.2.1 The development phase of the National Preventive Mechanism	20
4.2.2 Monitoring and control activities in numbers.....	20
4.3 Procedure of monitoring and control visits.....	22
4.3.1 Visit programmes.....	22
4.4 Reports of the Commissions	22
4.4.1 Familiarization phase	22
4.4.2 Observations made by the Commissions.....	24
5. Report of the Human Rights Advisory Council	33
5.1 The New Human Rights Advisory Council's understanding of its role	33
5.2 Activity profile of the Human Rights Advisory Council	33

5.3 Annual report of the Human Rights Advisory Council	34
6. Additional activities during the period under review	37
6.1 Training and continuing education	37
6.2 Cooperation with NGOs	37
6.3 Public relations	38

1 Introduction

1.1 The new competences of the Austrian Ombudsman Board

With the Act on the Implementation of the OPCAT (OPCAT *Durchführungs-gesetz*) dated 10 January 2012, *Federal Law Gazette (BGBl.)* I No. 1/2012, the AOB's competence under constitutional law has undergone its greatest expansion since its establishment in 1977.

Three new competences of the AOB

The title of the law describes only part of the new competences. Up to now, as a parliamentary ombudsman institution, the AOB was primarily occupied with ex-post control of public administration. Since 1 July 2012, as National Preventive Mechanism (NPM) the AOB's mandate under the UN Optional Protocol of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment of 18 December 2002 (OPCAT) includes preventive monitoring and control of all public and private institutions and facilities where persons are or can be detained. This duty has been extended to include the monitoring and control of institutions and facilities as well as programmes for persons with disabilities in accordance with the UN Convention on the Rights of Persons with Disabilities 2006. The third new area of competence covers the in itinere and observatory monitoring of the conduct of the agencies empowered by the State to exercise administrative power and compulsion. It is the duty of the AOB to charge the Commissions it has established with the actual execution of these tasks. A Human Rights Advisory Council has been established as a purely advisory body.

The AOB was included in the legislative process from the very beginning and the individual provisions have been coordinated with it. In accordance with international requirements, the drafts prepared by the Legal and Constitutional Service of the Federal Chancellery were also discussed with representatives of non-governmental organisations (NGOs), which were invited to comment on them prior to deliberations in Parliament.

Law discussed with NGOs

1.2 Organisational implementation

In accordance with the common understanding of this institution – positioning the AOB as the “Human Rights House of the Republic of Austria” – the members of the AOB began with the preliminary work for the necessary organisational changes as early as autumn 2011. The AOB was advised by Stefan Titscher. In numerous internal events, the entire staff was informed about the new competences and the international framework conditions that had to be adhered to. Two project groups focused on the concrete requirements for business to be conducted as smoothly as possible and on com-

Preliminary work in 2011

piling the international and national standards necessary for the fulfilment of the duties.

Human Rights Advisory Council

After the official publication of the Act on the Implementation of the OPCAT in January 2012, the members of the AOB designated Renate Kicker to be the Chairwoman of the Human Rights Advisory Council and Gabriele Kucsko-Stadlmayer to be the Deputy Chairwoman. The Federal Ministries were requested to name their members and substitute members. In February, the AOB invited more than 100 NGOs, which are dedicated to the protection of human rights, to an informational event. The AOB offered NGOs the opportunity to determine the organisations, which are eligible to nominate members and substitute members of the Human Rights Advisory Council, themselves. The AOB provided organisational support in this process. In its first meeting on 11 April 2012, the designated Human Rights Advisory Council began to discuss the AOB's draft for its rules of procedure.

Formation of the Commissions

Concurrently, the AOB publicly advertised the positions of Chairpersons of the Commissions, as well as additional Commission members. The members of the AOB fixed the number of Commissions at six, each Commission consisting of eight members. The AOB received more than 600 applications for the position of member of a Commission. There were statutory regulations to be complied with when selecting the Chairpersons of the Commissions, according to which each Commission must be chaired by a "person who is recognised in the sector of human rights". Overall, the AOB had to ensure that the Commissions were "independent, interdisciplinary and pluralistic". After several applicant interviews conducted by the members of the AOB in consultation with designated members of the Human Rights Advisory Council, the members of the Commissions were appointed on 11 July 2012.

The legal parameters for fulfilling the new competences were created with the official publication of the Rules of Procedure of the AOB, its Commissions and the Human Rights Advisory Council (ROP of the AOB 2012) on 13 July 2012, *Federal Law Gazette (BGBl.) II No. 249/2012*, and the allocation of duties of the AOB, its Commissions and the Human Rights Advisory Council (Allocation of Duties of the AOB 2012) published on the same date, *Federal Law Gazette (BGBl.) II No. 250/2012*.

1.3 Implementation for regional administration

Eight Laender entrust competences to AOB

So far, it was up to the Laender to entrust monitoring and control of regional and municipal government administration to the AOB or to set up their own regional ombudsman boards. Due to the obligations of the Republic of Austria under international law to implement OPCAT, the options were restricted. The Laender were obligated to either entrust the new competences under the Act on the Implementation of the OPCAT to

the AOB or to entrust their own institutions with these responsibilities by 31 December 2012.

With the amendment to the Regional Constitution (*Landesordnung*), *Regional Law Gazette (LGBI.)* No. 147/2012, the *Land* of Tyrol declared the AOB to be competent “for the control and monitoring duties required for the protection and promotion of human rights”. The regional ombudsman board continues to be competent for monitoring and control of maladministration in the regional administration. Vorarlberg, on the other hand, entrusted these duties to its regional ombudsman board. It is therefore possible that there may be overlap in some of the competences, particularly in the monitoring and control of retirement and nursing homes, as the measures that restrict freedom are within the federal area of authority under the Nursing Home Residence Act (*HeimAufG*) and the Compulsory Admission Act (*Unterbringungsgesetz, UbG*). The AOB and the Commission that is competent for Vorarlberg have already begun discussions regarding cooperation and coordination of their activities.

The AOB offered to familiarise the administrative departments of the regional governments with the new competences. As these offices also have monitoring and control competences, possible ways of collaboration will be discussed in advance in order to prevent duplication of activities.

2 Competence of the AOB

2.1 Monitoring and control of institutions and facilities in accordance with OPCAT

It is the duty of the AOB and the Commissions it has established to monitor and control all venues where persons “are deprived or can be deprived of their freedom as a result of a decision by a government agency or at its behest or with its explicit or implicit agreement” (see Art. 4 OPCAT). Due to this broad mandate, the AOB is assuming a figure of more than 4,000 public and private institutions and facilities, which are to be visited, monitored and controlled by the Commissions on a regular basis either with or without prior notification.

OPCAT

Several *Laender* expressed doubts about the authority of the AOB with respect to socio-pedagogical facilities operated by youth welfare authorities. It should be noted, however, that the Constitutional Committee of the National Council determined during its deliberations that „socio-pedagogical facilities where measures under youth welfare law are being implemented are also subject to the jurisdiction of the AOB in this context”. In its statement, the AOB also pointed out that measures by a government youth welfare authority that restrict the residents’ freedom must be classified pursuant to Art. 5 of the European Convention on Human Rights (*EMRK*) and/or Art. 2 of the Federal Constitutional Act on the Protection of Personal Freedom (*PersFrBVG*). This is also consistent with the relevant international commentaries on the UN-Convention against Torture (CAT) that also consider care homes, children’s homes, foster homes, homes for the young and other family residences as encompassed under the OPCAT mandate.

Questions regarding jurisdiction with respect to youth welfare

The AOB has also approached the Human Rights Advisory Council with the question of whether facilities providing a basic level of social services for asylum seekers are in and of themselves subject to monitoring and control. In the opinion of the AOB, jurisdiction exists only if, in the case of unlawful acts of detention, it must be presumed that there is explicit or at least implicit agreement on the part of the competent authorities.

Basic services and benefits for asylum seekers

2.2 Monitoring and control of institutions and facilities as well as programmes for persons with disabilities

Part of the AOB’s mandate is to visit and/or inspect institutions and facilities as well as programmes for persons with disabilities. The aim is to prevent any form of exploitation, violence and abuse (see Art. 16 (3) of the UN Convention on the Rights of Persons with Disabilities (CRDP)). Based on the discussion that led to the final wording of the provision in the UN Convention,

UN Convention on the Rights of Persons with Disabilities

the AOB presumes that it has jurisdiction over those institutions and facilities where special treatment is provided for persons with disabilities and/or if they are especially geared towards persons with disabilities. This applies, for example to inclusion kindergartens and classes.

The scope and meaning of the terms “exploitation, violence and abuse” in Art. 16 (3) of the UN Convention on the Rights of Persons with Disabilities cannot be answered definitively. The Convention itself does not contain an authentic interpretation of these terms. Furthermore, at this time there are no general comments by the UN Committee on the Rights of Persons with Disabilities. In any case, the prohibition against “any form” of exploitation, violence and abuse makes the area of applicability especially large. Therefore, the AOB has referred back to additional international UN and Council of Europe documents.

In its memorandum of understanding, the organisation Austrian Initiative for Independent Living (*Selbstbestimmtes Leben Initiative Österreich, SLIÖ*) agreed to “extensive portions” of the statements set out by the AOB. It referred specifically, but not exclusively to the past remarks of the Independent Monitoring Committee for the Implementation of the UN Convention on the Rights of Persons with Disabilities that was established within the Federal Ministry of Labour, Social Affairs and Consumer Protection that has dealt comprehensively with this subject. Additionally, the Austrian Initiative for Independent Living suggested including peer counsellors in the activities of the Commissions. The AOB made the memorandum of understanding available to the Commission and pointed out the possibility of consulting additional experts.

2.3 In itinere monitoring of acts of compulsion

As far as the police are concerned, the in itinere monitoring and control of the conduct of agencies empowered to exercise administrative power and compulsion was hitherto within the remit of the Human Rights Advisory Council, which had been established as part of the Ministry of the Interior pursuant to Section 15a of the Law Enforcement Bodies Act (*SPG*). Now this competence has been included in the mandate of the AOB and the Commissions it has established. In this area, the AOB can take advantage of the experience of the previous Human Rights Advisory Council. In accordance with a decree issued by the Federal Ministry of the Interior, the AOB is informed specifically, but not exclusively with respect to targeted campaigns, major raids, major events, assemblies, as well as forced returns by air or land. Additionally, the AOB receives reports from the Association of Human Rights Austria (*Verein Menschenrechte Österreich, VMÖ*) about their observations of police conduct during forced returns by charter plane. The AOB is also informed about any allegations of abuse against police authorities,

as well as with respect to any deaths or suicide attempts in police custody. A six-month observation period was agreed with the Federal Ministry of the Interior in order to determine if the Commissions have received all the necessary information.

3 Personnel and financial resources

3.1 Budgetary provisions

Every treaty state that has ratified the OPCAT is obligated under international law to provide its NPM with sufficient funds. The AOB initially based its budgetary planning on the expenditure for the previous Human Rights Advisory Council pursuant to the Law Enforcement Bodies Act (*SPG*), which, however, had significantly fewer duties to fulfil than the current NPM. Merely the number of institutions and facilities that are to be monitored and controlled has quadrupled to more than 4,000. The AOB anticipates that the number of visits and investigations by the Commissions will increase to around 700 as a result of the expanded mandate. All Commission members receive financial compensation for their activity, and are reimbursed for travel and accommodation costs.

An adequate budget

On top of this are the expenses for other AOB obligations that result from the OPCAT. In particular, the AOB is now obligated to work together with international bodies, such as the UN Subcommittee on Prevention of Torture, and to provide it with a report each year. Within the scope of its mandate, the AOB must also participate in evaluation proceedings with respect of the enactment of general legislation by the Federal Government and the *Laender*. As the National Preventive Mechanism, the AOB has the special duty of cooperating with the scientific community, academia and educational institutions, as well as providing information to the public about its activities.

As a body that manages its own budget, the AOB must manage and bear all of its personnel and material costs. Therefore, the National Council took into consideration the increased staff requirements for the additional administrative tasks.

In total, the AOB was allocated 15 additional permanent positions and had a budget for the second half of 2012 of EUR 1,947,000. For 2013, expenditures in the amount of EUR 2,960,000 have been budgeted in the 2013 Federal Finance Act (*BFG*) for fulfilment of the new competences.

Increased personnel requirements

The AOB is proceeding on the assumption that the current budget is quite sufficient.

3.2 Commissions of the Austrian Ombudsman Board

Six regional Commissions

The members of the AOB decided to establish six Commissions, each consisting of eight members. This corresponds to the minimum number of Commissions required under the law. After hearing the Commissions, they were structured according to regional criteria (ROP of the AOB 2012, *Federal Law Gazette (BGBl.) II No. 250/2012*). Alone the regionally highly differentiated number of institutions and facilities to be monitored and controlled can result in unequal work loads for the Commissions. This was taken into consideration when distributing the budget available for the Commissions. Likewise, the monitoring and control activities can result in a need for cross-regional Commissions or Commissions that are structured according to objective criteria. It was agreed with the Commissions to wait until more information was available and, if needed, to revise the ROP of the AOB in 2013.

Commissions

Commission 1	Commission 2
Tyrol/Vorarlberg	Salzburg/Upper Austria
Chairwoman: Karin TREICHL	Chairman: Reinhard KLAUSHOFER
Commission members	Commission members
Susanne BAUMGARTNER	Markus FELLINGER
Sepp BRUGGER	Wolfgang FROMHERZ
Elif GÜNDÜZ	Katalin GOMBAR
Max KAPFERER	Esther KIRCHBERGER
Lorenz KERER	Robert KRAMMER
Monika RITTER	Renate STELZIG-SCHÖLER
Hubert STOCKNER	Hanna ZIESEL
Commission 3	Commission 4
Styria/Carinthia	Vienna (districts 3 - 19, 23)
Chairwoman: Angelika VAUTI-SCHEUCHER	Chairman: Ernst BERGER
Commission members	Commission members
Klaus ELSENSOHN	Andrea BERZLANOVICH
Odo FEENSTRA	Sandra GERÖ
Daniela GRABOVAC	Helfried HAAS
Ilse HARTWIG	Christine PEMMER
Sarah KUMAR	Petra PRANGL
Silke-Andrea MALLMANN	Nora RAMIREZ-CASTILLO
Erwin SCHWENTNER	Walter SUNTINGER

Commission 5	Commission 6
Vienna (districts 1, 2, 20 - 22)	Burgenland/Lower Austria (political districts Amstetten, Baden, Bruck a.d. Leitha, Lilienfeld, Melk, Mödling, Neunkirchen, Scheibbs, St. Pölten, Waidhofen a.d. Ybbs, Wiener Neustadt, Wien Umgebung)
Lower Austria (political districts Gänserndorf, Gmünd, Hollabrunn, Horn, Korneuburg, Krems, Mistelbach, Tulln, Waidhofen a.d. Thaya, Zwettl	
Chairman:	Chairman:
Manfred NOWAK	Franjo SCHRUIFF
Commission members	Commission members
Susan AL JAWAHIRI	Karin BUSCH-FRANKL
Lisa ALLURI	Süleyman CEVIZ
Harald P. DAVID	Corina HEINREICHESBERGER
Marijana GRANDITS	Siroos MIRZAEI
Sabine RUPPERT	Cornelia NEUHAUSER
Maria SCHERNTHANER	Elisabeth REICHEL
Hans Jörg SCHLECHTER	Karin ROWHANI-WIMMER

3.3 Human Rights Advisory Council

The Human Rights Advisory Council has been established as the AOB's advisory body. Its responsibility is to advise the AOB with respect of its new competences, including but not limited to the determination of general investigative focal points and prior to issuing determinations of maladministration and recommendations. Furthermore, it can make suggestions to the AOB on how to ensure a unity of action and investigative standards. The Human Rights Advisory Council consists of the chairperson and deputy chairperson who are appointed by the AOB and 32 additional members and substitute members who are delegated on the basis of parity by the Ministries, *Laender* and NGOs.

Advisory body to the
AOB

Human Rights Advisory Council

Chairwoman: Renate Kicker
 Deputy Chairwoman: Gabriele Kucska-Stadlmayer

Name	Function	Institution
Mathias VOGL	Member	Federal Ministry of the Interior
Konrad KOGLER	Supstitute member	Federal Ministry of the Interior
Anna SPORRER	Member	Federal Chancellery
Brigitte OHMS	Supstitute member	Federal Chancellery
Gerhard AIGNER	Member	Federal Ministry of Health
Irene HAGER-RUHS	Supstitute member	Federal Ministry of Health
Christian PILNACEK	Member	Federal Ministry of Justice
Gerhard NOGRATNIG	Supstitute member	Federal Ministry of Justice
Billur GÖKAL	Member	Federal Ministry of Defence and Sports
Karl SATZINGER	Supstitute member	Federal Ministry of Defence and Sports
Helmut TICHY	Member	Federal Ministry for European and International Affairs
Ulrike NGUYEN	Supstitute member	Federal Ministry for European and International Affairs
Hansjörg HOFER	Member	Federal Ministry of Labour, Social Affairs and Consumer Protection
Alexander BRAUN	Supstitute member	Federal Ministry of Labour, Social Affairs and Consumer Protection
Waltraud BAUER, Government of Styria	Member	Representation of the <i>Laender</i>
Shams ASADI, Municipality of Vienna	Supstitute member	Representation of the <i>Laender</i>
Heinz PATZELT	Member	Amnesty International Austria in collaboration with SOS Children's Villages
Barbara WEBER	Supstitute member	Amnesty International Austria in collaboration with SOS Children's Villages
Bernd WACHTER	Member	Caritas Austria in collaboration with <i>VertretungsNetz</i>

Susanne JAQUEMAR	Supstitute member	Caritas Austria in collaboration with <i>VertretungsNetz</i>
Martin SCHENK	Member	Diakonie Austria in collaboration with <i>Volkshilfe</i>
Erich FENNINGER	Ersatz-mitglied	Diakonie Austria in collaboration with <i>Volkshilfe</i>
Michael FELTEN	Member	Pro Mente Austria in collaboration with HPE
Angelika KLUG	Supstitute member	Pro Mente Austria in collaboration with HPE
Bernadette FEUERSTEIN	Member	Austrian Initiative for Independent Living
Martin LADSTÄTTER	Supstitute member	Austrian Initiative for Independent Living
Philipp SONDEREGGER	Member	<i>SOS Mitmensch</i> in collaboration with <i>Integrationshaus</i> and <i>Asyl in Not</i>
Nadja LORENZ	Supstitute member	<i>SOS Mitmensch</i> in collaboration with <i>Integrationshaus</i> and <i>Asyl in Not</i>
Barbara JAUK	Member	Violence prevention centers: <i>Ver ein für Gewaltprävention, Opferhilfe und Opferschutz</i> (Graz, Styria) in collaboration with <i>Gewaltschutzzentrum Salzburg</i>
Renate HOJAS	Supstitute member	Violence prevention centers: <i>Ver ein für Gewaltprävention, Opferhilfe und Opferschutz</i> (Graz, Styria) in collaboration with <i>Gewaltschutzzentrum Salzburg</i>
Katrin WLADASCH	Member	ZARA (Association for civil courage and anti-racism work) in collaboration with <i>Neustart</i>
Roland MIKLAU	Supstitute member	ZARA (Association for civil courage and anti-racism work) in collaboration with <i>Neustart</i>

4 Investigative proceedings in the year under review

4.1 Investigative focal points

While taking the AOB's general investigative focal points into consideration, it is the duty of the Commissions to proceed so that all areas are covered seamlessly as a matter of routine. Due to this statutory requirement, the National Preventive Mechanism must fulfil its competence equally with regard to all the duties with which it has been charged. Additionally, however, investigative focal points should be defined in order to ensure that the available capacities are utilised as efficiently and effectively as possible.

Seamless and routine procedures

In accordance with the NPM, the intensity with which the Commissions pursue their duties is decisive for the determination of the investigative focal points. Merely the specification how many of the available financial resources should be spent, for example, for the investigation of the various types of institutions and facilities does not, in and of itself, indicate, what the delegations should focus on during their visits. The purpose of the visit is therefore determined by the defined issue to be investigated and the relevant international and national standards for this issue. It should also be kept in mind that the Commissions should develop a uniform methodology for how they proceed and their approach with regard to content. This is the only way to ensure that the subsequent evaluation of their on-site observations and findings is possible.

Subject, standards and methodology are decisive

For the initial phase of the NPM, the members of the AOB and the Commissions decided to first of all visit the largest and most important institutions and facilities of the respective regions. In this context, the Chairpersons of the Commissions expressed the desire that the AOB suggests issues regarding the penal system based on its previous handling of individual complaints.

The performance of urine and drug testing in penal institutions was mutually agreed as the issue to be investigated. During recent years, there have been repeated complaints that these tests are not conducted with the necessary respect or with optimum protection of the privacy of the test subject. The AOB made the criteria, which it intends to use subsequently to evaluate the determinations it has made, available to the Commissions in advance. In particular, it asked the Commissions to ascertain when urine and drug tests are ordered in correctional institutions as well as where – and especially – how they are conducted.

Initial investigative focal point

Previous reports showed that there is a need for improvement that should not be ignored in order to exclude human rights violations in the future to the greatest possible extent. A number of investigative proceedings were

initiated with the Federal Ministry of Justice in accordance with the Commissions' observations.

Human Rights Advisory Council advises NPM

The members of the AOB will define several investigative focal points for 2013 jointly with the Chairpersons of the Commissions. During this process, suggestions by the Human Rights Advisory Council, which advises the AOB with regard to determining general investigative focal points, will be taken into account

4.2 Investigations in numbers

4.2.1 The development phase of the National Preventive Mechanism

Kick-off workshop

In the constitutive meeting on 10 July 2012, the AOB and the Commissions decided that the first activities would not begin until after a joint kick-off workshop, which took place in mid-September. The primary objective of the kick-off workshop was to provide some basic knowledge regarding the fundamental legal principles of a National Preventive Mechanism. At the same time, the goal was to develop a common understanding of the applicable investigative standards and to develop a keener awareness of the competences of the Commissions and the AOB.

Shadow Monitoring

Additionally, in November the AOB organised a shadow monitoring training module in collaboration with the Council of Europe. In this three-day seminar, the NPM shared its initial experiences with six experts from the Council of Europe. The methodology for preparing monitoring and control visits, conducting visits in six selected institutions and analysis of the findings were at the forefront of the training. Not least because of the extremely positive feedback by the Commission members, additional seminars of this kind are planned with international participants.

4.2.2 Monitoring and control activities in numbers

An overview of the 133 cases investigated by the Commissions thus far makes it clear that the first months were defined by the set-up and development of the NPM. Around 23.5% concerned the *in itinere* observation of forced returns and manifestations. With regard to the first institutions and facilities visited, the focus was on police departments and prisons.

Direct administrative power and compulsion

	Forced returns	Manifestations raids / events
Vienna	17	4
Burgenland		
Lower Austria	1	
Upper Austria	3	1
Salzburg		
Carinthia		
Styria		2
Vorarlberg		
Tyrol		3
total	21	10
of which unannounced	4	2

Types of institutions and facilities

	Police	Ret. + nur.h.	YW	Inst. f. disabl.	Psych. depts.	CIs	BAR.
Vienna	9	7	2	3	3	1	
Burgenland	2	1					
Lower Austria	7	5		4	3	5	
Upper Austria	12		1		1	2	
Salzburg	1	1				1	
Carinthia	2			2	1	1	
Styria	2	1	1		1	3	
Vorarlberg	2					2	
Tyrol	2	5			4	2	
total	39	20	4	9	13	17	
of which unannounced	36	19	4	7	10	12	

Legend:

- Ret. + nur.h. = Retirement and nursing homes
 YW = Youth welfare
 Inst. f. disabl. = Institutions and facilities for persons with disabilities
 Psych. depts = Psychiatric departments in hospitals and medical facilities
 CIs = Correctional institutions
 BAR. = Barracks

4.3 Procedure of monitoring and control visits

4.3.1 Visit programmes

Visits from Sep. 2012

As the NPM, the AOB is obligated by law to visit places of detention on a regular basis and it is its duty to charge the Commissions it has established with this task. The Chairpersons of the Commissions must prepare visit programmes in accordance with the ROP. As the monitoring and control visits did not begin until mid-September 2012, a period of time until the end of the year was agreed with the members. The visit programmes enable the AOB to provide advance information to the Commissions about its previous observations during investigations of individual complaints. At the same time, they represent important information for the AOB, which comparable types of institutions and facilities should be visited Austria-wide.

The visit programmes are, however, not carved in stone, if for no other reason than that each Commission must fulfil all three new competences within the limits of its allocated budget. Furthermore, the Commissions must have the necessary flexibility to undertake "ad hoc" visits in urgent cases or to act for the AOB upon its request in the AOB's ex-post control of public administration.

Inclusion of experts
possible

Apart from their activities within the scope of the defined investigative focal points, the Commissions themselves determine the subject of their visit and the size of the delegation. It is at their discretion to include additional experts insofar as this seems necessary due to the type of institution or facility or the selected subject of the visit. In any case, a concluding discussion must be conducted with the management of the facility, the documented content of which is to be sent to the management of the home, the head of the public agency or the management of the facility upon its request. In the course of their work, the Commissions must show consideration for the requirements of the operation of the institution or facility, especially as the visits are generally unannounced.

The Commissions' observations are recorded in the visit reports that are provided to the AOB, which reviews them and uses them as the basis for its decision as to whether this is a case of maladministration. The Human Rights Advisory Council advises the AOB during this process.

4.4 Reports of the Commissions

4.4.1 Familiarization phase

Familiarization phase

The first half of the year was defined by the familiarization phase. The six Commissions consist of both experienced members and new members who are serving on such a commission for the first time. Therefore, it was necessary to work on team building and to develop work methodologies. The

shadow monitoring training, which was conducted jointly with the Council of Europe, brought sweeping and important insights for the Commissions' work. Therefore, the Commissions welcomed the fact that the AOB intends to conduct other thematic workshops.

The teamwork between the Commissions and the AOB is a decisive factor for their success as the NPM. In the joint meetings of the AOB members and the Commission Chairpersons, a very good and cooperative modus operandi was developed within an extremely short time. It was important for the Commissions that they have the necessary flexibility during their visits in order to be able to react to the situations they were confronted with on-site. Besides, they did not want to lose valuable time with excessive requirements regarding the gathering of information about the institutions and facilities. A reporting tool was jointly developed that can be applied equally to various types of institutions; it simplifies the AOB's process of evaluating the reports by the Commissions.

The further work on the creation of a database that will be available to all the Commissions should be completed quickly. In this database, the Commission members will not only be able to access all visit reports, but also the international and national documents that are necessary for preparation and the human rights assessment.

Many of the first visits were organised as inaugural and introductory visits and combined with a "pilot monitoring visit" that enabled the Commission members to get to know new areas, such as institutions and facilities for persons with disabilities, youth welfare facilities, psychiatric institutions and correctional facilities. Based on the experience of the prior Human Rights Advisory Council in the Federal Ministry of the Interior, the Commissions know that it is necessary to build a relationship of trust with the management of the facilities. This is the only way to enable the solution of observed shortcomings immediately on site. The Commissions found a fundamental willingness to cooperate among their counterparts. The most frequent reaction during the visits can be described as "sceptical curiosity". Occasionally, the delegations encountered attitudes on the part of the managers of the institutions and facilities that ranged from mistrustful to hostile.

Inaugural visits

It became obvious during the initial visits that conducting the visits requires a larger number of Commission members. For certain institutions and facilities, in particular for those for persons with disabilities, the inclusion of peer counsellors is necessary.

In this context, the list of relevant professional associations that the AOB provided to the Commissions is a valuable aid. The AOB is also grateful to the associations governed by the Legal Trusteeship for Associations, Patients and Inhabitants of Homes and Institutions Act (*VSPBG*) and to the children and youth advocates for their willingness to cooperate. Based on the cooperati-

The AOB's collabora-tions

on agreements that have been executed, the Commissions now have access to competent contact persons in these institutions. The contacts with NGOs have also provided valuable information.

4.4.2 Observations made by the Commissions

The following will provide an overview of the Commissions' observations thus far.

On several occasions, the initial assessments of the reports by the Commissions resulted in the initiation of investigative proceedings by the AOB, which have not yet been concluded.

a) Monitoring and control of institutions and facilities in accordance with OPCAT and Art. 16 (3) of the UN Convention on the Rights of Persons with Disabilities

Correctional institutions

In the year under review, the Commissions conducted investigations of a total of 17 correctional institutions. With the exception of the defined investigative focal point of the conduct of urine and drug testing, the Commission delegations did not have any additional thematic parameters. The comparison of the visit reports, however, shows that the Commissions observed the same problems Austria-wide during these initial, generally unannounced visits.

Structural problems
and personnel
shortages

Some of these problems seem to be of a structural nature and the result of shortages of corrections personnel. The UN Subcommittee on Prevention of Torture (SPT) had already mentioned the long hours inmates are held in their cells with some concern (see Item 71 in the report on the visit to correctional institutions in Innsbruck and Vienna-Josefstadt in February 2009). A lack of financial resources for activity programmes was increasingly noted, as well as phased out educational and work opportunities as a result of workshops and trade enterprises that had been closed.

Investigative proce-
dings initiated

Deficits in medical care seem to be particularly alarming. The Commissions determined independently of one another that the presence of a doctor in correctional institutions at night or on weekends and often even during the afternoons is not ensured. As a result, emergency decisions in crisis situations are made by medical laypersons and adequate medical care of suicidal inmates is not guaranteed. As far as any correctional or therapeutic treatment is concerned, due to a lack of resources, no psychotherapy or sociotherapy is available, leaving only psychopharmacological treatment. Therefore, the inmates are largely left to their own devices. In the meantime, the Federal Ministry of Justice has been notified of these observations. The AOB views

adequate medical care of prisoners who have gone on a hunger strike as particularly urgent.

To the extent that the Commissions observed deficits in the living conditions of the inmates that could be quickly remedied, such as a defective socket or the inadequate ventilation of rooms, the prospect of a prompt remedy was held out by the management of the facility in the concluding discussion. Insofar as the Commissions found that treatment of the prisoners by the correction officers was committed and respectful despite the shortage of resources, they mentioned this fact in their concluding discussions.

In late August, the AOB received several complaints, according to which prisoners had been abused in the course of a drug raid in the correctional facility in Feldkirch. Upon the AOB's request, the Commission competent for this region conducted an ad-hoc visit within one week. The AOB's investigative proceeding in this regard has not yet been concluded. Likewise still ongoing is an investigation by the local Public Prosecutor's Office which has jurisdiction and was involved by the management of the facility after the allegations became known.

Ad-hoc visit upon the AOB's request

Police agencies

From the beginning of their activities until the end of the year, the Commissions conducted 39 visits to police agencies. The majority of the visits was to police stations and police detention centres. Police detention centres are prisons where primarily detainees awaiting forced returns and prisoners serving an administrative penalty are being held. The conditions in these police detention centres were always subject of criticism by NGOs and by the former Human Rights Advisory Council. The AOB Commissions also found that these confinement conditions often had structural problems, which applied, for example, to the practice of day release, inadequate work and occupational opportunities, questions regarding health care, supervision of high-security cells and access to information and legal advice. Training and supervision of the personnel was also an important issue for the previous Human Rights Advisory Council.

Conditions in police detention centres

The AOB evaluated the Commissions' reports received thus far and has initiated comprehensive investigative proceedings. The objective is to develop framework conditions for confinement in police detention centres that is consistent with national and international human rights standards. Recommendations will be made to the Federal Ministry of the Interior based on these findings. The AOB also sees room for improvement in the detention regulations that govern the conditions in police detention centres.

During their visits to police detention centres, several Commissions were not allowed to access or given only limited access to the medical records of the detainees by the management of the detention centre. Therefore, one of the Commissions was not able to view the medical records of a detainee on hun-

Access to medical records

ger strike until he had provided his consent. In other cases, the Commissions were given access to medical records of detained persons or persons awaiting forced returns; however, they were prohibited from making copies of the documents or from subsequently transmitting documents.

Thereupon, the AOB contacted the Federal Ministry of the Interior to find a solution that ensures comprehensive access to medical records by the Commissions. At the time of the editorial deadline of this report, a result had not yet been achieved in this regard.

Protection of victims of human trafficking

During an investigation in the police detention centre Klagenfurt (Carinthia), the suspicion arose that a woman from the Ukraine could be a victim of human trafficking. This suspicion was confirmed after the woman was questioned by officers of the State Office of Criminal Investigation. In light of this visit, the competent Commission recommended that a good practice guideline for dealing with suspected victims of human trafficking be developed for police officers and training on the subject of "human trafficking" be intensified, thus building on recommendations made by the previous Human Rights Advisory Council, which had dealt with this subject in great detail.

In late June 2012, the former Human Rights Advisory Council published a report on the subject of identifying and protecting victims of human trafficking. It submitted recommendations to the Federal Ministry of the Interior on how to expand support and protective structures Austria-wide, a good practice guideline for police officers and guidelines on how to identify these victims. According to the Federal Ministry of the Interior, some measures have already been or will be implemented.

Engagement with issues handled by former Human Rights Advisory Council

One can say that the Commissions have already reached some conclusions that are consistent with observations made by the former Human Rights Advisory Council. Therefore, some of the AOB's ex-officio investigative proceedings are dealing with problems that this Human Rights Advisory Council was not able to resolve. In any case, the AOB would like to continue to engage with these issues to further the protection and promotion of human rights.

Support facilities for asylum seekers

Place of detention?

The failed visit by a Commission to a support facility for asylum seekers led to a dispute about the scope of the mandate of the NPM. Federal support offices have been set up at the reception centres East in Traiskirchen (Lower Austria) and West in Thalham (Upper Austria), which are part of the Federal Asylum Office. Asylum seekers receive care and support there. In the opinion of the Federal Ministry of the Interior, the federal support facility East cannot be classified as a place of detention. According to the Ministry, it must differentiated in which building on the site the asylum seekers are located and what stage of the asylum proceedings they are in. This was the reason why the Federal Ministry of the Interior ordered that the AOB Commission be denied access to this facility.

The AOB will have to examine the Federal Ministry of the Interior's interpretation of law from the perspective of whether asylum seekers in the federal support facility East are subject to legally inadmissible acts of detention (see also Chapter 2.1).

Using the example of the Saualm (Carinthia) as a controversial, privately operated facility that provides a basic level of services, the AOB has defined throughout the *Laender* that the operators of such facilities are not permitted to undertake measures depriving asylum seekers of freedom or to specify such measures in house rules, etc. If unlawful measures depriving them of freedom are nevertheless undertaken and the competent supervisory authority is aware of these practices without taking action against them, or if it could have become aware of these practices, if it had undertaken proper supervision and exercised its authority, then establishments providing a basic level of social services in the *Laender* would also have to be classified as places of detention under Art. 4 of the OPCAT.

Facilities for health and social services

Up until the end of the year, 46 investigations of social institutions took place: 20 facilities for the elderly and the aged, 9 facilities for persons with disabilities, 4 children's and youth welfare facilities, and 13 psychiatric hospitals or departments.

46 investigations

Without exception, the Commissions met with a willingness to cooperate. It should be highlighted that the Commissions can attest that the personnel – across all the different types of institutions and facilities – showed expertise and professionalism, as well as empathetic treatment of the persons under their care.

High degree of willingness to cooperate

After being notified by NGOs, a Commission visited a facility for unaccompanied minors twice within three weeks. It was determined that three caregivers working 24-hour shifts were alternately responsible for 17 (occasionally 20) minors aged 8 to 18. The facility is set up for the care of ten minors and was devised to be a temporary solution. One of the adolescents has, however, already lived in this facility for an entire year. Overcrowding and a shortage of personnel, the long working hours and the lack of a sociopedagogical concept have resulted in unacceptable conditions for everyone involved. Additional factors are that intake case histories have not been taken and no therapy in the native languages of the minors is available, although obvious trauma symptoms and attachment disorders were observed. There are reports of self-mutilation and violence-prone incidents. An emergency report to the AOB recommended an immediate increase in personnel and the creation of more care capacity that corresponds to customary standards in youth welfare. The AOB took immediate action.

Urgent need for action in a facility for minors

Inadequate freedom of choice with regard to housing	A problem area that the activities of the Commissions have confirmed is the placement of younger patients with mental disorders and/or persons with multiple disabilities in geriatric centres and retirement or nursing homes. In a senior citizens' home, a Commission came across a 53-year-old man who is under guardianship, but has unrestricted mobility. He stated to the Commission that he rarely leaves his room and has no interest in contact with others. The psychiatric after-care that the Commission believes to be necessary cannot be provided by this institution. It was recommended to specify other possibilities to the 53-year-old and his legal guardian in order to enable the freedom of choice with regard to housing required under human rights law. In another case, a Commission found that persons under the age of 50 needing increased care were living in a geriatric centre. This Commission also recommended that the AOB take action.
Resource shortages in homes	Numerous problems that the Commissions found in homes were due to a shortage of resources. During shift changes the employees do not have sufficient time for information sharing and briefings or for supervision. Due to personnel shortages, the residents of the homes are subject to restrictions, for example, therapy kitchens are used too rarely or persons with mobility impairments cannot get daily assistance to use the gardens that have been landscaped for dementia care. Inadequate psychological care, particularly with regard to end-of-life care, was also observed.
Malnutrition	A common issue were the menus that cannot be categorised as balanced and that can result in malnutrition. In one case, the sole alternative to a meat-based diet were sweet dishes. In one psychiatric clinic, the excessively small servings were criticised.
Safety risks	With regard to a group home for dementia patients, part of which was in a completely separate building, a Commission questioned its safety, as personnel was never present during the night in one part of the facility, even though the facility guarantees the 24-hour presence of qualified care personnel (orderlies) in both residential wings in its contracts. The initiation of an investigative proceeding was recommended.
Inadequate accessibility	In several facilities, inadequate accessibility for persons with disabilities was found. In the case of one facility for senior citizens, for example, the thresholds at the access to the showers and at the exits to the terrace were too high and the corridors too dark. The doors could not be opened automatically so that access for persons in wheelchairs was almost impossible without assistance.
Nursing Home Residence Act	In the assessment of the question whether measures restricting the freedom of these persons are "suitable", "absolutely necessary" and "reasonable" to avert hazards and/or whether the hazards could have been averted by means of alternative, more benign measures, the Commissions found significant differences in the culture of how the law is applied. Statutory obligations

were interpreted differently and not pursued with the same vigour. Furthermore, when examining the psychopharmacological medications that were prescribed, the Commissions found that some prescriptions could not be explained based on the diagnosis. This subject area will be pursued in depth by all the Commissions and the AOB.

The Commissions determined further that the SPT recommendation [see SPT/Inf (2010) 5, margin no. 139] to set up a central register, in which all restrictions on freedom in psychiatric institutions be recorded centrally according to type, reason and duration, was not carried out seamlessly. This also applies with respect of the use of cage beds that, according to the opinion of the SPT, must be phased out as a means of depriving agitated patients in psychiatric institutions and nursing homes of their freedom [see SPT/Inf (2010) 5, margin no. 134]. In Western Austria, their use has already been discontinued for some time. Institutions in Eastern Austria sometimes use them frequently – as was determined – and additionally use security services. The AOB will investigate this matter.

Psychiatric institutions
– Compulsory Admission Act

b) In itinere monitoring of coercive acts

In 31 cases, the Commissions observed the conduct of authorities that are empowered to exercise direct administrative power and compulsion. The Commissions specifically, but not exclusively attended forced returns, manifestations, major events and targeted campaigns.

Role of the Association of Human Rights Austria during forced returns

As a result, the Commissions often criticised the conduct of the representatives of the Association of Human Rights Austria. They are called in by authorities – in various roles – in the case of forced returns. They also found the assistance provided by a representative of the Association of Human Rights Austria to a man being deported as inadequate. The representative of the Association of Human Rights Austria did not even note the man's request for clothing and toys for his children.

The Association of Human Rights Austria was requested by the Federal Ministry of the Interior to accompany forced returns by way of charter flights as an “independent human rights observer”. Furthermore, the Association of Human Rights Austria is active in providing legal advice, in the assistance of persons being detained pending their forced return and in repatriation counselling of aliens.

The Human Rights Advisory Council that was active within the Federal Ministry of the Interior until the end of June 2012 (also see chapter 2.3) criticised that solely the Association of Human Rights Austria that has been entrusted with the observation of forced returns by air. Furthermore, it was alleged that the concurrent exercise of different tasks within the scope of the same official act leads to a conflict between the tasks. The former Human Rights Advisory Council recommended that other institutions and persons

be assigned as human rights observers. Role conflicts, such as the concurrent use as interpreter and human rights observer should, in any case, be avoided. The Federal Ministry of the Interior did react to these recommendations; however, some questions have remained unresolved.

Prompted by the observations of the Commissions and the criticism by the former Human Rights Advisory Council, the AOB initiated an ex-officio investigative proceeding about the role of the Association of Human Rights Austria in forced returns.

Access to the airplanes
by the Commissions

During the observation of a forced return from Vienna to Lagos, the question of the scope of the Commissions' rights arose. The case involved a charter flight by Air Italia which was being carried out within the scope of FRONTEX with the participation of seven other European countries. At the Vienna International Airport, the AOB's delegation wanted to enter the passenger area for the flight, which was not yet ready for boarding, because it had observed an altercation – apparently with police involvement. The members of the delegation were prevented from doing so by a member of the deportation team. Therefore, the delegation could not fulfil its duty of observing the exercise of direct administrative power and compulsion by police. It should be clarified – for future cases as well – whether the Commissions may accompany persons being deported during the flight. After all, the reason for the establishment of the former Human Rights Advisory Council was the death of Marcus Omofuma, whom a police officer had „restrained“ on the airplane.

In this case, the AOB contacted the Federal Ministry of the Interior in order to come to a common understanding of the scope of the rights of the NPM as quickly as possible.

Transfer of an asylum
seeker to Hungary

In light of an individual complaint regarding a pending forced return of an asylum seeker to Hungary, the AOB has been vigilantly following the reports about Hungary since January 2012.

Apart from this investigative activity that was initially on a case-by-case basis, a Commission visited an Afghan family in the family housing in the Zinnergasse. The planned forced return of the family of five to Hungary had previously failed because the mother had suffered a self-inflicted injury. The family stated that it had entered Austria via Hungary and had spent one month in detention pending forced return. Their cell had not had any furnishings and their sick children had not received any medical attention. The father related that his brother had been transferred from Hungary to Serbia as part of a chain of deportations. The Commission stated that it considered the (planned) forced return of the family to Hungary alarming.

Reports from international NGOs gave rise to doubts that the Hungarian asylum system offers sufficient protection. According to a report by the UNHCR from October 2012, asylum seekers who have travelled via Serbia are

at risk of a chain of deportations to Serbia. According to the UNHCR, Serbia is not deemed a safe third country (i.e. a country outside the EU). The Federal Ministry of the Interior considers a general ban of deportations to Hungary unnecessary; however, it emphasised that the situation for asylum seekers in each EU member country is evaluated if necessary.

5 Report of the Human Rights Advisory Council

5.1 The New Human Rights Advisory Council's understanding of its role

The Human Rights Advisory Council is a new body with an advisory function to assist in the fulfilment of the competences with which the AOB, as the National Preventive Mechanism (NPM), has been charged; these competences include the prevention of torture and abuse in Austria, prevention of any form of exploitation, violence and abuse in institutions and facilities, as well as programmes that have been established for persons with disabilities. Its legal foundation is in the Act on the Implementation of the OPCAT, which builds on already well-known structures. The model for this advisory body was the Human Rights Advisory Council that had operated within the Federal Ministry of the Interior until the end of June 2012; it had the responsibility of addressing any structural inadequacies within the police force in order to safeguard human rights and to recommend countermeasures to the Federal Minister of the Interior. The AOB's Human Rights Advisory Council not only bears the same name but it is comparable to the former Human Rights Advisory Council of the Federal Ministry of the Interior in its composition of representatives of the Federal Chancellery and several Ministries, as well as NGOs. It is in part staffed with the same persons. This continuity ensures that the valuable experience of the former Human Rights Advisory Council, especially with regard to collection of data and the setting of standards concerning the security authorities, will be carried forward to the new body.

Advisory function

5.2 Activity profile of the Human Rights Advisory Council

The purpose of the Human Rights Advisory Council is to contribute by way of its advisory activities to the proper wording of recommendations by the AOB when maladministration has been determined and to help ensure that the AOB can properly utilise its options for action. It is also the task of the Human Rights Advisory Council to advise the AOB in defining investigative focal points to be applied as a top priority Austria-wide during preventive monitoring and control of institutions and facilities, in which persons are detained or where measures restricting their freedom can be implemented, as well as in the monitoring and control of institutions and programmes for persons with disabilities. Concurrently with defining these investigative focal points, the investigative standards that are to be applied by the Commissions and their visiting delegations as monitoring bodies of the AOB must be set out in advance. The intention is to guarantee consistent action. As a forum for dialogue for representatives of human rights organisations and the relevant Ministries, the Human Rights Advisory Council has the potential of adapting international human rights standards and incorpo-

Recommendations
for investigative focal
points and standards

rating them into national investigative standards. The uniform investigative standards then become the benchmark for the Human Rights Advisory Council when it advises the AOB in the determination of maladministration and a guideline for the assessment of whether the provided recommendations can attain the predefined human rights standards.

5.3 Annual report of the Human Rights Advisory Council

The constitutive meeting of the Human Rights Advisory Council took place on 11 April 2012 in order to ensure the entry into force of the Act on the Implementation of the OPCAT on 1 July 2012 and to enable the appointment of the members as of this date. Furthermore, this made it possible to guarantee the Council's right to be heard with regard to the appointment of the Commission members and with respect of the enactment of its own rules of procedure.

Participation in the selection of the Commission members

The Council was heard prior to the appointment of the Chairpersons of the six Commissions in a meeting of the Human Rights Advisory Council on 14 May 2012. At this meeting, the two chairwomen of the Human Rights Advisory Council reported on the hearings, which had taken place with regard to the applications that were on the shortlist and which it had actively participated in upon invitation of the AOB. The Human Rights Advisory Council took note of the AOB's recommendation that ensued after consultation with the two chairwomen of the Human Rights Advisory Council. The members of the Commissions were appointed using a similar process. One of the two chairwomen and one additional member or substitute member of the Human Rights Advisory Council took part in the hearings. At the meeting of the Human Rights Advisory Council on 18 June 2012, it took note of the AOB's recommendation, which was adopted after consultation with the members and the substitute members of the Human Rights Advisory Council and with the Chairpersons of the Commissions who had been present at the hearings. The Chairpersons of the Commissions also attended this meeting. They introduced themselves to the entire Human Rights Advisory Council and responded to questions.

Right of the substitute members to attend meetings

The hearing of the Human Rights Advisory Council with regard to its own ROP, which is an integral part of the AOB's and the Commissions' ROP, was conducted by way of written statements regarding the draft submitted by the AOB. This draft was discussed at the Human Rights Advisory Council's meeting on 14 May 2012 and accepted by consensus between the AOB and the Human Rights Advisory Council. It is especially worthy of attention that the concurrent and equal participation of members and substitute members in the deliberations of the Human Rights Advisory Council was incorporated into the ROP upon the suggestion of the Human Rights Advisory Council. This is intended to specifically, but not exclusively ensure that all

non-governmental organisations, which participated in the process of self-nomination and, due to the excessive number, could, in some cases, not be appointed as a member but only as a substitute member can attend all the meetings. Only the voting rights shall remain the exclusive prerogative of members.

Initial deliberations by the Human Rights Advisory Council regarding the investigative focal points of the Commissions' investigations shall take place at the Human Rights Advisory Council meeting on 10 July 2012, in which the members and substitute members will be invited to submit suggestions in written form. They were discussed within the "Investigative Focal Point" working group on 13 September 2012. An already existing catalogue of thematic focal points was discussed at the Human Rights Advisory Council's meetings on 4 October 2012 and 6 December 2012. A list of focal points that was revised in light of the previous discussions will be prepared in early 2013.

Initial deliberations
regarding investigative
focal points

6 Additional activities during the period under review

6.1 Training and continuing education

Cooperation with the Council of Europe

A shadow monitoring training module was carried out in cooperation with the Council of Europe. The Council of Europe has extensive and long-standing expertise in the area of monitoring and control of places of detention in accordance with the European Convention for the Prevention of Torture (CAT). Jointly with international experts, the Commission members and AOB employees visited six selected institutions and facilities. This seminar gave the participants the opportunity to coordinate and develop the modalities for preparatory work, the visits themselves and the processing of the findings in accordance with international standards. Due to the very positive reactions of the Commission members, the cooperation will be continued.

Cooperation with the Council of Europe

Currently, the AOB, jointly with the Chairpersons of the Commissions, is developing a continuing education programme for 2013. Several workshops that address special topics are planned in order to further harmonise the work of the six Commissions and the collaboration with the AOB.

Education plan 2013

6.2 Cooperation with NGOs

Cooperation with civil society is not only required by law, but it is also very important for the effectiveness of the AOB's work.

This cooperation has been institutionalized by the inclusion of representatives of NGOs in the Human Rights Advisory Council. As an advisory body, the Human Rights Advisory Council is also a forum for information sharing between representatives of Ministries and non-governmental organisations. A result of this collaboration is, for example, the definition of investigative focal points and is therefore an essential factor in deciding which institutions and facilities and which subject areas will be selected by the expert Commissions of the AOB.

Furthermore, the cooperation with NGOs is crucial because, due to their wide experience, they are able to point to possible maladministration and thus provide an important impetus for monitoring and control visits. The AOB is endeavouring to ensure this collaboration by way of cooperation agreements, thus putting the sharing of information on an effective basis that provides reliable expectations.

Going beyond its statutory mandate, the AOB views itself as a forum for sharing information with and among non-governmental organisations. The creation of a proper platform is being planned.

6.3 Public relations

The AOB is obligated by law to inform the public about its new competences and especially about the results of its work. In addition to the classic ways of providing information via the website and publishing informational folders, the AOB is aiming to establish a greater degree of cooperation with the Political Science faculties at institutions of higher learning. The purpose is to place a greater emphasis on the importance of protecting human rights as an essential part of a democratic system.

Editor:

Austrian Ombudsman Board
1015 Vienna, Singerstrasse 17
Tel. +43 (0)1 51505-0
<http://www.volksanwaltschaft.gv.at>

Vienna, May 2013

