

## **Children's Rights Behind Bars**

Human Rights of Children Deprived of Liberty: Improving Monitoring Mechanisms  
(JUST/2013/JPEN/AG/4581)

## **National Report Austria**

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## Abbreviations

<b>AOB</b>	Austrian Ombudsman Board ( <i>Volksanwaltschaft</i> )
<b>BIM</b>	Ludwig Boltzmann Institut für Menschenrechte/Ludwig Boltzmann Institute of Human Rights ( <i>project partner</i> )
<b>CAT</b>	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted by the United Nations General Assembly on 10 December 1984
<b>CPT</b>	European Committee for the Prevention of Torture, based on the EU Convention on Torture and Inhuman or Degrading Treatment or Punishment, adopted by the member states of the Council of Europe on 26 November 1987
<b>CRC</b>	Convention on the Rights of the Child, adopted by the United Nations General assembly on 20 November 1898
<b>DCI Belgium</b>	Defence for Children International-Belgium ( <i>project lead</i> )
<b>ECHR</b>	Convention for the Protection of Human Rights and Fundamental Freedoms
<b>ECtHR</b>	European Court of Human Rights
<b>ESC</b>	European Social Charter
<b>HRAC</b>	Human Rights Advisory Council
<b>NPM</b>	National Preventive Mechanism
<b>OPCAT</b>	Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted on 18 December 2002 at the fifty-seventh session of the General Assembly of the United Nations by resolution A/RES/57/199 entered into force on 22 June 2006
<b>UN Doc.</b>	United Nations Document

## 1. Introduction

### 1.1. About the research institution

Founded in 1992, the Ludwig Boltzmann Institute of Human Rights (BIM) is the largest independent human rights research institution in Austria, dealing with human rights issues on the national, European and the international level. The work of the Institute aims to bridge academic research and expertise about human rights implementation in practice, through co-operation with civil society, state and inter-governmental actors and the private sector. Human rights of children and young people constitute a key area of the Institute's activities, ranging from research to training and awareness-raising. Recent topics covered in research projects include prevention of violence in custody, national referral mechanisms for child victims of trafficking, children's rights in development cooperation, child rights assessments in schools and child participation, participatory research and child rights education.

This National Report under the Children's Rights Behind Bars Project was prepared by Tiphonie Crittin, who has worked for years in the torture prevention field, including for the team of the former UN Special Rapporteur on Torture, Manfred Nowak, and Helmut Sax, team leader for *inter alia* child rights projects with work experience in this area for more than 15 years. The drafters are particularly grateful for the research support by Tamara Majnek and the assistance of Gerrit Zach.

### 1.2. Methodology

The following report draws from both desk and documentary research – partly provided with support from DCI Belgium - about monitoring and complaint mechanisms available to children deprived of their liberty in Austria on the one hand, and field research activities including interviews and on-site visits in relevant facilities in the country. For this purpose the country team has followed guidance prepared by DCI Belgium as project lead through its Methodology Document.

Austria is among the countries having ratified the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT), which in 2012 has led to the establishment of a National Preventive Mechanism envisaged by OPCAT. Consequently the focus of the research in relation to monitoring was laid on the NPM and first experiences in relation to its functioning for the benefit of children deprived of their liberty. Thus, interviewees for the report include the head of one of the six visiting Commissions established by the Austrian Ombudsman Board (AOB, *Volksanwaltschaft*) under OPCAT as well as the responsible person for child and youth services within the AOB; colleagues from coordinating units of two visiting Commissions also provided helpful assistance. This was complemented by on site-visits to two key institutions where children/juveniles may be placed against their will, and which have already received visits by a NPM Commission: one being the main Austrian Juvenile Custody Centre for male juveniles (*Justizanstalt Gerasdorf*) in Lower Austria, the other one being a specialised crisis centre for unaccompanied foreign children (mainly for asylum-seeking children, child victims of trafficking) in Vienna ("*Drehscheibe Wien*"), run by the Vienna Municipality/Child and Youth Services Department.

Furthermore, interviews have been held with the – only – dedicated Ombudsperson for children in alternative care in Vienna, part of the Vienna Child and Youth Ombudspersons Office, and in the context of one more on-site visit to a asylum-seeking children care centre in Lower Austria ("*Laura Gatner-Haus*", Hirtenberg); the latter is run by Diakonie Austria (social assistance branch of the Protestant Churches in Austria), upon agreement with the Lower Austria Child and Youth Services. For professional reasons/following advice from the institutions contacted, direct discussion with detainees was only

possible in two of the three places visited (Juvenile Custody Centre: two young male inmates, from Austria; Laura-Gatner Haus for asylum-seeking children: one young boy, 17, from Afghanistan).

In line with the project methodology, the selection of places for on-site visits was taken after consultation with DCI Belgium. Furthermore, it should be emphasised that this selection was based on the broad definition provided by Art 4/2 OPCAT: "*For the purposes of the present Protocol, deprivation of liberty means any form of detention or imprisonment or the placement of a person in a public or private custodial setting which that person is not permitted to leave at will by order of any judicial, administrative or other authority.*" In light of this and international practice, the Austrian AOB has interpreted its mandate to extent not only to prisons or police detention centres, but also to include, for instance, all socio-pedagogical institutions under the Austrian Child and Youth Services (see ch. 3.1 below).

In addition, the term "children" is generally used in this report to comprise of all persons below the age of 18, in line with Art 1 of the UN Convention on the Rights of the Child. However, in relation to juvenile justice, also the term "juvenile" has been used, in order to highlight this specific legal regime and bear reference to this specific age group (no one would speak of "children in prison" in Austria, as no person below the age of 14 can be imprisoned).

In terms of limitations of the research and findings it should be noted that the field research followed a qualitative approach rather than a quantitative one, which also would not have been possible practically considering the limited timeframe and resources available. Consequently, the research did not aim for representativeness or completeness in terms of approaching all possible institutions where children might be deprived of their liberty in Austria; rather, the focus was on analysis of the existing framework for monitoring and complaints of young people and findings from practice in implementing this – rather recent, as far as the NPM is concerned – framework in Austria.

## 2. The international legal framework

This chapter details the international legal framework related to monitoring and complaint mechanisms for children deprived of their liberty in Austria. First, an overview of relevant international conventions Austria is part of will be provided, followed by an analysis of the recommendations issued by treaty bodies and other international monitoring mechanisms.

### 2.1. Ratified Conventions

#### **Convention on the Rights of the Child (CRC) and its Optional Protocols**

Austria signed the Convention on the Rights of the Child (CRC) in 1990 and ratified it two years later.<sup>1</sup> Austria has made reservations with respect to articles 13, 15 and 17 of the CRC and has made declarations with respect to article 38.

*Reservations:*

*"Article 13 and article 15 of the Convention will be applied provided that they will not affect legal restrictions in accordance with article 10 and article 11 of the European Convention on the Protection of Human Rights and Fundamental Freedoms of 4 November 1950."*

*"Article 17 will be applied to the extent that it is compatible with the basic rights of others, in particular with the basic rights of freedom of information and freedom of press."*

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<sup>1</sup> For a discussion of the domestic legal status of the CRC, see below, ch. 3.1.

*Declarations:*

*"Austria will not make any use of the possibility provided for in article 38, paragraph 2, to determine an age limit of 15 years for taking part in hostilities as this rule is incompatible with article 3, paragraph 1, which determines that the best interests of the child shall be a primary consideration."*

*"Austria declares, in accordance with its constitutional law, to apply article 38, paragraph 3, provided that only male Austrian citizens are subject to compulsory military service."*

Furthermore, the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict (OPCRC-AC) was signed in 2000 and ratified in 2002 with following declaration added by the state:

*Declaration:*

*"Under Austrian law the minimum age for the voluntary recruitment of Austrian citizens into the Austrian army (Bundesheer) is 17 years. According to paragraph 15, in conjunction with paragraph 65 (c) of the Austrian National Defence Act 1990 (Wehrgesetz 1990), the explicit consent of parents or other legal guardians is required for the voluntary recruitment of a person between 17 and 18 years. The provisions of the Austrian National Defence Act 1990, together with the subjective legal remedies guaranteed by the Austrian Federal Constitution, ensure that legal protection in the context of such a decision is afforded to volunteers under the age of 18. A further guarantee derives from the strict application of the principles of rule of law, good governance and effective legal protection."*

The Optional Protocol to the Convention of the Rights of the Child on the sale of children, child prostitution and child pornography (OPCRC-SC) was signed in 2000 and ratified 2004 with no declarations or reservations.

The third optional protocol, namely the Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure was signed in 2012, but has not been ratified yet. However, once this has been achieved the individual complaint as well as the inquiry procedure provided in this instrument could play an important role exactly in relation to the subject of this project, namely providing a tool for young people to review deprivation of liberty standards and practice and eventual means of redress for violations. The Austrian Child Rights Network consisting of more than 40 non-governmental and independent institutions has called on the government to immediately ratify the Protocol.<sup>2</sup>

### **Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) and its Optional Protocol**

Austria signed the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) in 1985 and ratified it in 1987. Additionally, its Optional Protocol (OPCAT) was signed in 2003 and ratified in 2012. Subsequently, an Austrian National Preventive Mechanism was established according to article 3 OPCAT in 2012. With respect to CAT, Austria made the following declaration:

*Declaration*

*"Austria will establish its jurisdiction in accordance with article 5 of the Convention irrespective of the laws applying to the place where the offence occurred, but in respect of paragraph 1 (c) only if prosecution by a State having jurisdiction under paragraph 1 (a) or paragraph 1 (b) is not to be expected."*

*"Austria regards article 15 as the legal basis for the inadmissibility provided for therein of the use of statements which are established to have been made as a result of torture."*

### **European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment**

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<sup>2</sup> See Austrian National Coalition for the Implementation of the CRC, Press statements, 18 November 2013, available at: <http://www.kinderhabenrechte.at/index.php?id=151> (as accessed on 15 September 2014).

Austria signed the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment in 1987 and ratified it in 1989. It was set into force in 1989 without any declarations or reservations. Since then, the European Committee for the Prevention of Torture (CPT), established under the Convention, conducted five periodic visits (1990, 1994, 1999, 2004 and 2009) for the examination of the treatment of persons deprived of liberty in Austria.

### **European Convention on Human Rights and Fundamental Freedoms**

Austria ratified the European Convention on Human Rights and Fundamental Freedoms in 1958. In terms of incorporation, it has been given Constitutional status in Austria and its provisions are directly applicable for all courts and authorities, making it the main legal source on fundamental rights in Austria till today.

### **European Social Charter (ESC)**

The (Revised) European Social Charter was signed by Austria in 1999 and ratified in 2011; it has not signed the 1995 Collective Complaints Protocol.

## **2.2. Recommendations of international monitoring bodies and inspections and complaint mechanisms available to minors under these Conventions**

### **Convention on the Rights of the Child (CRC)**

In its Concluding Observations of 2005 the UN Committee on the Rights of the Child highlighted several areas of concern relevant for this Report in respect to Austria, with further recommendations. With regard to unaccompanied minors, for instance, it recalled that the state should ensure that detention pending deportation is a measure of last resort and take into account the best interest of the child. In general, the Committee raised concerns about the increasing number of minor detainees and recommended to implement alternatives to detention, to strictly separate minors and adults, to ensure well-trained staff, and to improve the collection of data on all relevant aspects of the juvenile justice system.<sup>3</sup>

In 2012, the Committee urged its more recent Concluding Observations the authorities to ensure that children under the age of 14 are not placed in detention centres under any circumstances, and, again, to use administrative detention of unaccompanied refugee and asylum-seeking children above 14 years only as a measure of last resort when non-custodial alternatives are unavailable. The Committee also urged the authorities to ensure a separation of minors and adults, to provide adequate access to medical and psychological treatment, take measures to provide a full reintegration of juvenile offenders into society, and to proceed with the feasibility study for the construction of juvenile detention facility in Vienna to reduce overcrowding in existing facilities.<sup>4</sup>

### **European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment**

In its visiting report of 2004, the European Committee for the Prevention of Torture (CPT) published several recommendations for the improvement of the treatment of persons deprived of liberty to the Austrian authorities. The CPT received complaints about the regulations of the detainee's hygiene and urges the authorities to allow more frequent showers to juvenile prisoners (in particular female juveniles) which until then had access to shower only twice a week. Regarding the adequate quantity and quality

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<sup>3</sup> UN Doc. CRC/C/15/Add.251.

<sup>4</sup> UN Doc. CRC/C/AUT/CO/3-4

of food, the CPT raised its concerns about the situation in the prison facilities of Gerasdorf and Vienna-Josefstadt. The CPT also criticised the insufficient duration of time which juvenile detainees are allowed to spend out-of-cell at the prison facilities of Innsbruck, Klagenfurt, Linz and Vienna-Josefstadt. One of the main concerns of the CPT, mentioned in its report, was **the quality of complaint and monitoring mechanisms available in Austria**. The CPT recommended to review the internal complaint mechanism in terms of duration, record, confidentiality and transparency. In addition, the CPT highlighted the importance of an independent monitoring body.<sup>5</sup>

In 2009, the CPT repeated most of the concerns of its previous visit including the lack of sufficient shower possibilities, inadequate food and the insufficient out-of-cell activities. Regarding the prison facility of Vienna-Josefstadt the CPT criticised that detainees were locked up early in the afternoon until the following morning. Furthermore, it recommended maintaining a regular presence of a qualified medical specialised in psychiatric issues. Lastly, the CPT assessed that the maximum duration of solitary confinement of 14 days for juveniles was of an inappropriate duration.<sup>6</sup>

### **Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)**

In its Concluding Observations of 2005 the UN Committee against Torture mentioned concerns about the conditions of detention of juveniles, in particular the separation from adults, which was not always executed. The Committee recommended the authorities to develop alternative measures to juvenile detention, to ensure a strict separation of juveniles and adults, to establish preventive measures to avoid ill-treatment of juveniles (including specific training of prison staff) and to clearly issue instructions that abusive conduct towards juveniles would not be tolerated.<sup>7</sup>

In 2010, the Committee published Concluding Observations in which it criticised evidence that juvenile offenders had been subjected to police questioning, sometimes for prolonged periods, and had been requested to sign statements without benefiting from the presence of a lawyer.<sup>8</sup>

## **3. The national legal framework**

This chapter will provide an overview on the legal and regulatory framework concerning children deprived of liberty. In addition, places of deprivation will be described as well as monitoring and complaint mechanisms available to children and juveniles detained in one of those facilities.

### **3.1. Legal and regulatory framework for the deprivation of liberty of children**

Since Austria has ratified the most of the main international and European treaties on the subject, as well as a Member State of the European Union, these documents have influenced the Austrian jurisdiction at the national level in general, as well as with regard to juvenile justice, in particular: the UN Convention against Torture with its Optional Protocol and the UN Convention on the Rights of the Child

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<sup>5</sup> UN Doc. CPT/Inf (2010) 5

<sup>6</sup> UN Doc. CPT/Inf (2005) 13

<sup>7</sup> UN Doc. CAT/C/AUT/CO/315.

<sup>8</sup> UN Doc. CAT/C/AUT/CO/4-5.

(CRC) with its first two Optional Protocols; the European Convention on Human Rights and Fundamental Freedoms (ECHR) and its Protocols and the Charter of Fundamental Rights of the European Union.

At the national level, as stated before, the ECHR has been incorporated into the Austrian legal system as Constitutional law, and thus Art 5 together with the more detailed Federal Constitutional Act on the Protection of Personal Liberty (*Bundesverfassungsgesetz zum Schutz der persönlichen Freiheit*, 1988) also serves as the main reference document for standards on deprivation of liberty. The CRC has a much weaker legal status, ranking only as ordinary legislation; moreover, during ratification in 1992 in the Austrian Parliament, a domestic reservation was declared by the National Council Chamber, which would require specific legislation for implementing the CRC (which as such was never enacted). Eventually, the CRC entered into force in Austria on 5 September 1992, but only on a formal level - substantially it was not directly applicable by any court or authority. This was criticised by NGOs as boldly insufficient legal implementation for more than a decade, until in 2009 the government political parties initiated constitutional legislation to enact at least key CRC principles in separate constitutional law. These principles include *inter alia* the requirement for comprehensive best interest of the child consideration, right to participation, special protection for children out of their family environment and a wide-ranging prohibition of violence and exploitation, including a right to compensation. In February 2011 this new “Federal Constitutional Act on the Rights of Children” (*Bundesverfassungsgesetz über die Rechte von Kindern*) entered into force in Austria.<sup>9</sup> Despite a controversial statutory limitation in this Act, it nevertheless sets standards for ordinary legislation, and bears relevance also for children deprived of their liberty – especially in regard to prevention and protection from violence. However, no case-law has been built around this law so far.

As an overview, and in terms of further relevant legislation the juvenile justice sector is regulated mainly by the Juvenile Court Act, the Criminal Code and Criminal Procedure Code and the Prison Act. Regarding the provision of services to children and families, this is mainly regulated in the Federal Child and Youth Services Act (together with the Civil Code) and concerning placement in psychiatric facilities the Hospitalisation Act bears relevance. In the following more details are given depending on the respective context.

### **Deprivation of liberty and juvenile justice/administrative detention**

Austria has established a distinct administration of juvenile justice, which generally follows the principles as enshrined in Article 40 of the CRC. The Juvenile Court Act (*Jugendgerichtsgesetz*) of 1988 constitutes the main legislative act in this regard, containing provisions on material and procedural issues from a juvenile justice perspective, which take precedence over more general criminal justice legislation, including the Criminal Code (*Strafgesetzbuch* 1974), the Criminal Procedure Code (*Strafprozessordnung* 1975) and the Prison Act (*Strafvollzugsgesetz* 1969). These more specific provisions allow, for instance, for a stronger role of the prosecutor to decide on alternatives to court trial or for judges to pass shorter sentences, and they require specific qualifications for judges and prosecutors dealing with such cases. From 1920 to 2003 a separate Juvenile Court existed as a specialised court in Vienna, but following political controversy it was abolished.

In Austria, Article 74 of the Criminal Code defines that everyone under the age of 14 is to be considered a minor (*unmündig*), and together with Article 4 of the Juvenile Court Act this means that criminal responsibility starts at this age of 14.<sup>10</sup> This provision is repeated in Article 4 of the Administrative Penalty Law (*Verwaltungsstrafgesetz* 1991).

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<sup>9</sup> See, Sax, Kinderrechte in der Verfassung – was nun?, in EF-Z 2011, 127.

<sup>10</sup> Initially, application of the Juvenile Court Act was limited to juveniles from 14 to reaching majority at 18; in 2001 some procedural aspects may apply now also to young adults up to 21, see Art. 46a.

In general, the objective of the juvenile justice system is to prevent juveniles from committing crimes; furthermore, the length of (adult) sentences is generally cut by half in case of juveniles (15 years maximum in case of 16+, 10 years maximum in case of 14+, see Article 5 Juvenile Court Act). According to Article 35 of the Juvenile Court Act, pre-trial detention of juveniles can only be imposed if the expected negative impact of detention on the individual's personality and development is not disproportionate to the severity of the act committed and the expected sentence. Additionally, Article 35 defines that juvenile offenders must be released of pre-trial detention if they are deprived of liberty for more than three months or, if the case is under responsibility of the provincial court, for more than one year. Apart from that a wide range of alternative measures is available for prosecutors and judges when dealing with juvenile offenders.

In a related field, the Aliens Police Act (*Fremdenpolizeigesetz*, 2005) Article 76 (1) defines that children below the age of 14 must not be held in detention pending deportation. Article 77 states that in the case of children below the age of 16 "more lenient means" (*gelindere Mittel*, eg regular reporting obligations) have to be applied as a general rule; this specific requirement is lost for those between 16 to 18.

In all cases, juveniles must in principle be separated from adults in all detention facilities in Austria.<sup>11</sup>

### **Deprivation of liberty and child and youth support service/socio-pedagogical institutions**

First of all, it should be explained that in the field of child and youth support services (*Kinder- und Jugendhilfe*, known before 2013 as youth welfare services/*Jugendwohlfahrt*) legal competences are divided in great complexity in Austria between the federal/central government/Ministry for Family and Youth and the nine regional governments (*Länder*), with further devolution to political districts and municipalities implementing such services through Child and Youth Authorities (*Jugendamt*). In principle, the federal government only has competence to issue "guiding legislation", whereas the *Länder* are responsible for the implementing legislation and the implementation itself, e.g. through running crisis centres or residential homes/small group accommodation for children (either on their own or by contracting private service providers).

The legal basis is found in the new Federal Child and Youth Support Act (*Bundes-Kinder- und Jugendhilfe-Gesetz*, 2013), which replaced the earlier Federal Youth Welfare Act/*Jugendwohlfahrtsgesetz* of 1989) and entered into force in May 2013.<sup>12</sup> It covers the services available to children and families as well as procedures in case of possible threats to the best interests of the child. In such cases, and together with civil law provisions under the Civil Code of 1811 custody rights of parents may become limited or even transferred to the state child and youth support administration, thus taking over guardianship functions for the child concerned. Such transfer of responsibilities can be based on agreements between parents and the state administration, or, if parents do not agree, based on a court decision. In any such case, children will be placed in (temporary) crisis centres and small group homes as socio-pedagogical institutions (or with foster parents). The duration of a placement within such a facility depends on the child's circumstances and can last from a temporary placement to permanent housing until the age of 18. The child will be under the responsibility of the child and youth support services as long as his/her guardians/mostly parents are not able to grant the child's best interests.

When the Austrian National Preventive Mechanism under the Austrian Ombudsman Board was established in 2012 some discussion arose with some *Länder* whether the NPM's mandate actually covers such placement of children in socio-pedagogical institutions of the child and youth support services administration. For, in terms of the Austrian context, there are no closed institutions/detention

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<sup>11</sup> Article 79 (3) Aliens Police Act, Art 55 Juvenile Courts Act.

<sup>12</sup> Consequently, the *Länder* also had to pass new corresponding legislation on child and youth support services over the following months.

centres (like e.g. specific “correctional institutions” for children in some other countries) for children under the age of 14 under the child and youth service administration.<sup>13</sup>

After all, however, it was accepted by the *Länder* that the NPM mandate also extends to those socio-pedagogical institutions under the legal regime of the child and youth support service administration, as a form of placement of children, where children are not allowed to leave upon their own will. In its first NPM report, the Austrian Ombudsman Board (AOB) explains on this:

*“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.*

*Several Länder 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.”<sup>14</sup>*

During the interviews with the AOB and the head of one visiting commission it was confirmed that the mandate of the NPM is now accepted also in practice to cover those socio-pedagogical institutions for children.

### **Deprivation of liberty of children and psychiatric facilities**

Under the Hospitalisation Act (*Unterbringungsgesetz*, 1990), persons with a mental disorder, including children, can be deprived of their liberty against their will in psychiatric facilities if such measures are necessary to avert a serious and considerable threat to their own health or the health of others, and there is no alternative for non-closed treatment.<sup>15</sup> Article 5 (2) specifies that a child can only be placed there when his/her legal guardians give consent and, if he/she is already 14 years of age, he/she also requests such placement him-/herself.

In all such cases of non-voluntary placement a mandatory assignment of a patient’s advocate (*Patientenanwalt, Patientenanwältin*) takes place who takes over responsibility of advice and representation at court for all matters relating to the justification of the placement and any measures taken without/against the will of the person.

Patient’s advocates have been active in psychiatric institutions in Austria since 1991; in 2007 such patients’ advocate services together with those dealing with persons placed in other care institutions or with limited legal capacities were brought together under one non-profit association called

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<sup>13</sup> See, however, references to a public discussion in Austria in the context of trafficked children, in Nowak/Sax/Weichselbaum, *Kinderhandel in Österreich – aktuelle öffentlich-rechtliche Fragestellungen zu Kooperation und Opferschutz*, LexisNexis 2013, 17.

<sup>14</sup> AOB, Report of the Austrian Ombudsman Board on the activities of the National Preventive Mechanism 2012, 2013, 11.

<sup>15</sup> Hospitalisation Act (*Unterbringungsgesetz*), Article 3: “Everyone can be placed in a psychiatric department who (1) suffer from a mental illness and who, related to this, seriously and gravely endangers his/her life or health or the life or health of others and (2) who cannot be adequately medically treated or supervised differently, especially outside a psychiatric department.”

“VertretungsNetz” (“representation network”); according to their information funding is mainly received from the Ministry of Justice.<sup>16</sup>

In July 2014, VertretungsNetz publicly criticised insufficient legal protection of those children who suffer from difficult mental conditions, but who do not live in psychiatric facilities but in socio-pedagogical institutions. The association claims an apparent legal gap in the Federal Child and Youth Support Services Act with unclear regulation of responsibilities for monitoring conditions of such placement and representation; furthermore the use of netted beds (“Netzbetten”) for such children was criticised.<sup>17</sup>

### 3.2. Mapping of facilities for children deprived of their liberty

#### Juveniles in prison/administrative detention

The penal system is under the responsibility of the state with the Ministry of Justice as supreme authority and head of the prison administration (*Vollzugsdirektion*), an agency that is established to operate the Austrian prison regime.

Pre-trial detention and sentences up to 18 months are served in one of the 15 *Länder* detention facilities (*landesgerichtliche Gefangenenhäusern*), which are located in Eisenstadt, Feldkirch, Graz-Jakomini, Innsbruck, Klagenfurt, Korneuburg, Krems, Leoben, Linz, Ried im Innkreis, Salzburg, St. Pölten Wels, Vienna-Josefstadt and Wr. Neustadt. In each facility, separated departments exclusively for juveniles are available in principle.<sup>18</sup> The prison facility of Juvenile Custody Centre in Gerasdorf/Lower Austria, however, is the only dedicated facility in Austria which is exclusively established for - male - young prisoners (juveniles and young adults), who have been convicted to sentences of more than 18 months; it has a capacity of 122 places. According to the Ministry of Justice, the priorities for the care of the juvenile prisoners in Gerasdorf during their stay are provision of education, therapy and meaningful spare-time occupation.<sup>19</sup> Female juveniles who are charged for more than 18 months imprisonment are detained in Austria's only facility (in separate wards) for women offenders in Schwarzau/Lower Austria.

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<sup>16</sup> VertretungsNetz, Patientenrechte in der Psychiatrie – Unterbringung, 2013, available at: [http://www.vertretungsnetz.at/fileadmin/user\\_upload/1\\_SERVICE\\_Publikationen/Broschuere\\_PatRechte\\_2013\\_web.pdf](http://www.vertretungsnetz.at/fileadmin/user_upload/1_SERVICE_Publikationen/Broschuere_PatRechte_2013_web.pdf); for short information in English,

see: [http://www.vertretungsnetz.at/fileadmin/user\\_upload/5\\_SERVICE\\_Materialien/Info\\_zur\\_Unterbringung/paninfo-englisch08.pdf](http://www.vertretungsnetz.at/fileadmin/user_upload/5_SERVICE_Materialien/Info_zur_Unterbringung/paninfo-englisch08.pdf); the organisation covers representation of persons with limited legal capacity (*Sachwalterschaft*), of persons with difficult mental conditions (*Patientenanwaltschaft*) and of persons in residential group homes (*Bewohnervertetung*).

<sup>17</sup> VertretungsNetz, Rechtsschutz für Kinder und Jugendliche verbessern, Press release, 11 July 2014, available at: <http://www.vertretungsnetz.at/news/news-meldung/26-rechtsschutz-fa14r-kinder-und-jugendliche-verbessern/>.

<sup>18</sup> Ministry of Justice (2013): “Strafvollzug in Österreich” p. 18.

<sup>19</sup> *Ibid.*, p. 51

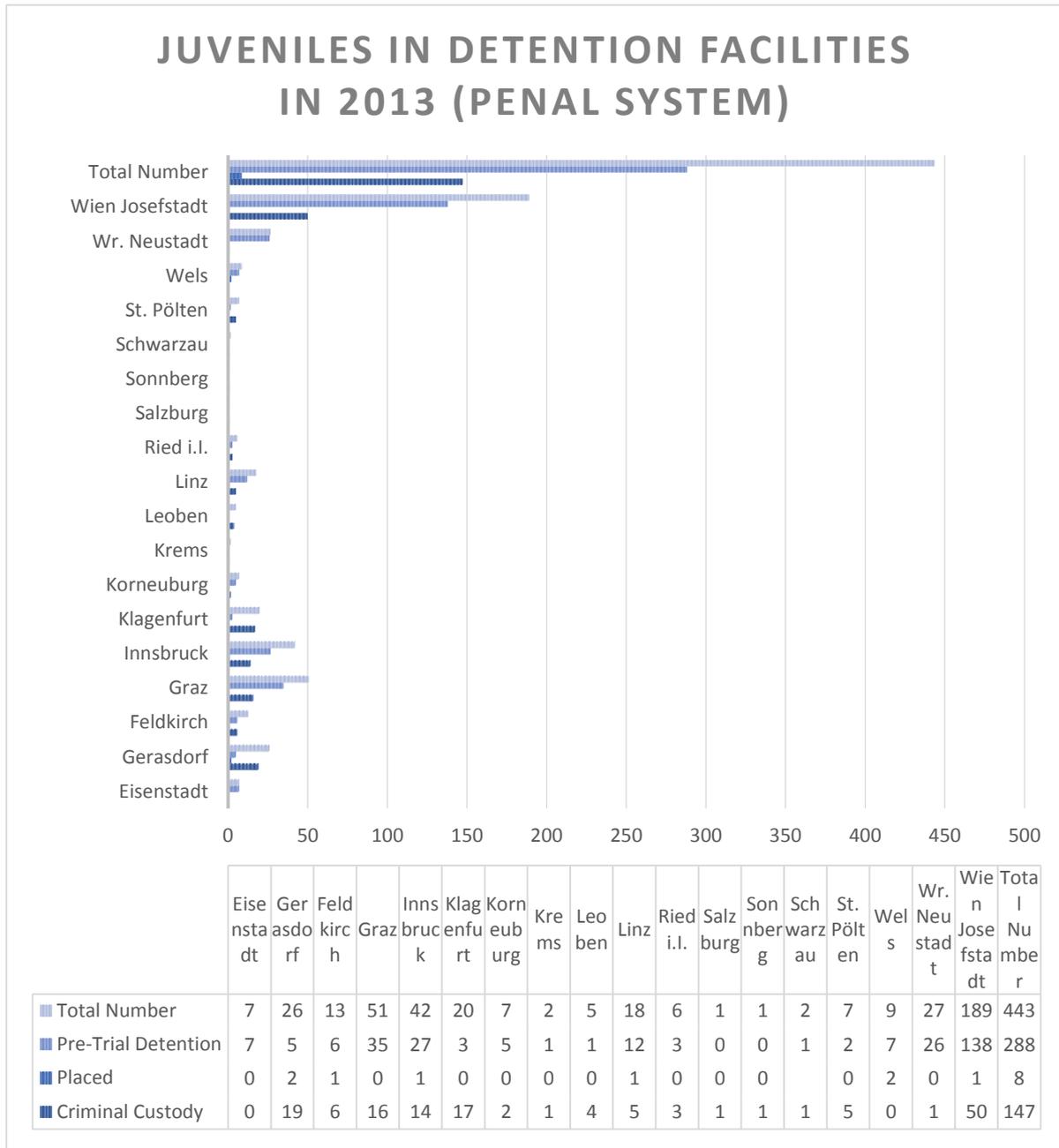


Figure 1: Data from statistics of the head of the prison administration

In 2013, 443 juveniles were deprived of liberty in Austria's prison facilities.<sup>20</sup> 147 minors have been detained under criminal custody and 288 were in pre-trial detention. Eight juveniles were placed in special facilities (in case of e.g. drug addiction, severe cases of recidivism, mental disability - *Maßnahmenvollzug*). Among all juveniles deprived of liberty in prison facilities 39 were females, 404 males.<sup>21</sup> 174 minors detained (66 in criminal custody, 7 placed and 101 in pre-trial detention) were Austrian, and 269 had a foreign nationality.<sup>22</sup>

<sup>20</sup> As of 3 September 2014 – the date of the on-site visit in the Gerasdorf facility – a total of 89 inmates was present, including 8 juveniles/young adults for pre-trial detention, 19 cases of special placement/*Maßnahmenvollzug*.

<sup>21</sup> Statistics given by the head of the prison administration (Email 07.07.2014).

<sup>22</sup> Nationality (Numbers of persons deprived of liberty): Afghanistan (17), Egypt (1), Algeria (39), Belgium (1), Bosnia and Herzegovina (19), Brasilia (1), Bulgaria (7), Germany (1), Dominican Republic (1), France (2), Gabon (1), Gambia (1), Ghana (2), Iraq (3), Iran (1), Italy (2), Cameroon (2), Kosovo (1), Croatia (1), Cuba (3), Libya (3), Lithuania (1), Morocco (25), Macedonia (1), Moldova (5), Nigeria (8), Pakistan (5),

As far as administrative detention is concerned, since 2012, each *Land* of Austria has its own *Länder* police directorate (*Landespolizeidirektion*), which operates under the responsibility of the Ministry of Interior. These police directorates head the police detention centres (*Polizeianhaltezentrum*) which are established for administrative custody/detention pending deportation, but not for criminal custody. Such detention centres are located in Bludenz, Eisenstadt (1+2), Graz, Innsbruck, Klagenfurt, Leoben, Linz, Salzburg, Schwechat, St. Pölten, Villach, Wels, Wr. Neustadt, Vienna (Rossauer Lände and Hernalser Gürtel). In addition, the detention facility of Vordernberg was established in 2014, which is exclusively dealing with detention pending deportation. While in police detention centres, juveniles have to be separated from adults.

Juveniles deprived of liberty in police detention facilities are not included in the figures mentioned above since no public information is available.

### **Children in Child and Youth Support Service Institutions**

As stated before, the Child and Youth Support Service and its institutions are regulated under the Federal Child and Youth Support Act 2013. The facilities are very heterogenic and are under the responsibility of the respective child and youth support departments (one for each political district/municipality under the authority of each *Land*). Those facilities include socio-pedagogical institutions, such as crisis centres, children homes/group homes or foster homes; they are partly provided by the state and partly by private service providers, like Caritas, Diakonie or SOS Children's Villages.

Crisis centres have on average a capacity for 10-15 children; they may be temporarily placed there usually for up to six weeks until a proper accommodation is found. This would then be a children home or group setting, or they may return to their former living environment when their best interests can be better granted.

Generally, children are taken to crisis centres when their best interests are threatened by their family/relatives/etc. and they therefore have to leave their original environment in order to be protected from any (further) harm or abuse. This decision falls on the respective Child and Youth Department (*Jugendamt*), in particular on the social worker who is in charge of the minor. The process is regulated under sect. 26 of the Federal Child and Youth Support Service Act.<sup>23</sup> For such placement out of the family, the Child and Youth Department needs a decision from court; only in case of emergency/imminent danger to the child, the Department may take immediate measures for up to eight days, as stated in sect. 28 (2) of the Federal Child and Youth Support Act, in conjunction with the Civil Code (*Allgemeines Bürgerliches Gesetzbuch*, ABGB, 1811).<sup>24</sup>

Group homes have a capacity for up to ten children per unit on average. In some cases, several communities are sharing one building; in other cases each community has its own facility (a flat or a house etc.). Besides those living communities which are rather small in terms of capacity, several children homes are available still in Austria with up to 100 places (and more). In either case, children may live here for years, until reaching majority, or until their original environment does not pose any expectable harm to their best interests any more.

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Poland (2), Rumania (18), Russia (18), Sweden (1), Senegal (1), Sierra Leone (2), Serbia (10), Zimbabwe (2), Slovakia (8), Slovenia (1), Stateless (4), Sudan (3), Syria (4), Chad (2), Tunisia (6), Turkey (14), Unknown (1), Hungary (5)

<sup>23</sup> Sect. 26: "(1) If the well-being of the child is endangered and it is to be expected that the danger can only be repelled through supervision outside the family and the previous living environment, then full upbringing has to be granted to the children and juveniles, in case the Child and Youth welfare service is fully in charge of the upbringing and care. (2) Full upbringing encompasses particularly the supervision by relatives, foster parents and within socio-pedagogic facilities."

<sup>24</sup> Sect. 28: "(1) If the parents or other persons in charge of care and education do not agree on the permission of educational assistance, then the child and youth welfare service has to apply at the court for necessary legal orders, for example the withdrawal of custody or parts of the custody (§ 181 ABGB). (2) In cases of imminent danger the child and youth welfare service has to grant the necessary educational assistance without delay and has to file the relevant applications at the court (§ 211 ABGB)."

Following not least reports and enquiries about major cases of violence and exploitation in state-run (and also church-based) children's homes in Austria over the last five years, authorities of the *Länder* have embarked on further deinstitutionalization processes, however, not as part of a nation-wide consistent and coordinated strategy. Vienna, for instance, focuses now on small group homes, after a much debated report of a Commission of Inquiry about one major institution at Wilhelminenberg in Vienna, which had at times up to 200 children living there.<sup>25</sup>

The situation of unaccompanied foreign children separated from the legal guardians presents also a very diverse picture, depending on e.g. the status of the asylum procedure (admission stage or already at examination of merits stage) and approaches taken by the *Länder* to deal with the children's situation (services provided following standards of basic care support/*Grundversorgung* or child and youth support service standards).<sup>26</sup> There is no national referral mechanism for child victims of trafficking in Austria, only one crisis centre of Vienna municipality can offer some targeted services.<sup>27</sup>

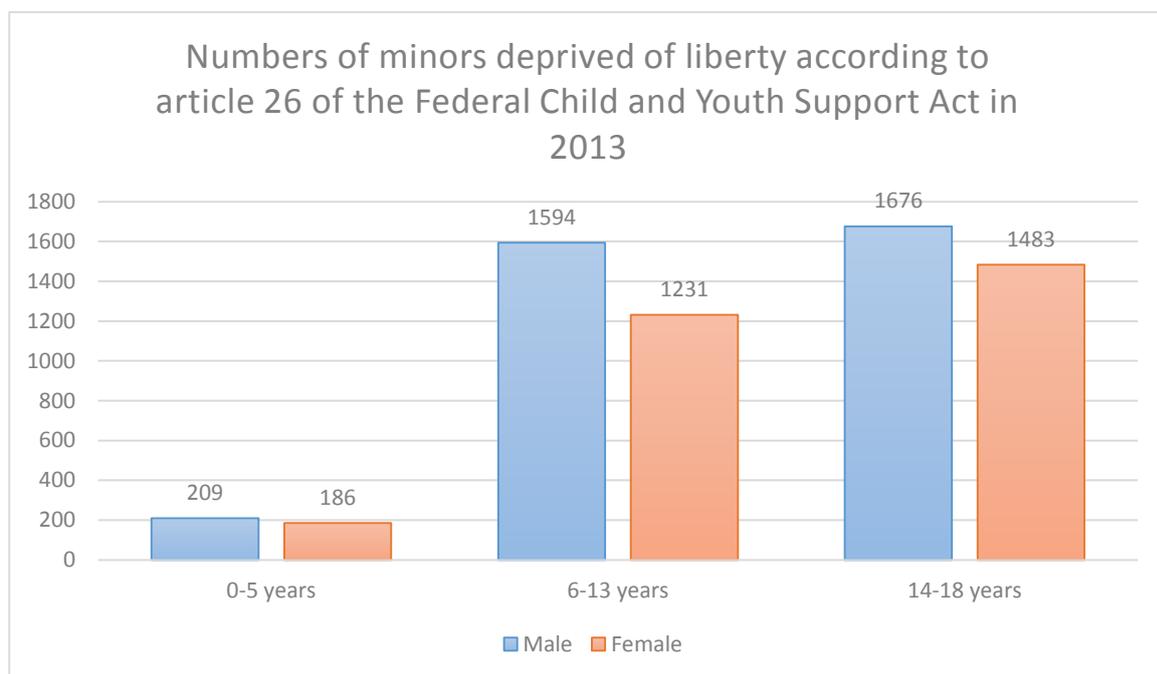


Figure 2: Data from child welfare service "Jugendwohlfahrtsbericht 2013"

Altogether 6.379 children (395 until the age of 5/ 2.825 between the age of 6 to 13/ 3.159 between the age of 14 to 18) have been removed from their original environment to child and youth service facilities for "full educational measures" under Article 26 of the Federal Child and Youth Support Service Act. An additional 4.468 children were placed in foster families in 2013.<sup>28</sup> No further detailed information about each individual facility under the responsibility of the child and youth support services administration is available, not least due also to inadequate consistent data collection and monitoring.

### **Children in psychiatric facilities**

According to data from *VertretungsNetz*, the non-profit organisation dealing with legal support and representation of various groups of persons affected by deprivation of liberty, the following numbers can

<sup>25</sup> See the Commission's final report, which finds evidence of various forms of physical and mental violence as well as "massive forms of sexual abuse", Endbericht der Kommission Wilhelminenberg, 2013, 208-218, at <http://www.kommission-wilhelminenberg.at>.

<sup>26</sup> For updated information, see the website of the Child Refugee Working Group at <http://umf.asyl.at>.

<sup>27</sup> See the report of the Child Trafficking Working Group under the Task Force against Human Trafficking, Arbeitsgruppe Kinderhandel im Rahmen der Task Force Menschenhandel, Bericht 2009-2011 „Prävention von Kinderhandel und Schutz der Opfer von Kinderhandel“, 2012, at <http://www.bmeia.gv.at/europa-aussenpolitik/menschenrechte/schwerpunkthemen/kampf-gegen-menschenhandel/>.

<sup>28</sup> Data taken from the statistics of the 2013 Youth Welfare Report "Jugendwohlfahrtsbericht 2013", available at the website of the Federal Ministry for Families and Youth, <http://www.bmfj.gv.at/familie/kinder-jugendhilfe/statistik.html>.

be shared. In the context of psychiatric facilities, 54 patients' advocates have been established, working with 32 psychiatric hospitals and departments throughout Austria. On average they represented patients at court in about 1.349 instances per month; in 2013 a total of 22.830 placements took place within the mandate of the patients' advocates.<sup>29</sup> The figures show a continuous increase to previous years, starting with about 14.000 placements in 2000; on average, placement lasted rather shortly, about 11 days, and a majority of placements is lifted after five days.<sup>30</sup>

Unfortunately, no disaggregated data on children has been available.

### 3.3. Monitoring mechanism available to children

#### Austrian Ombudsman Board – National Preventive Mechanism

Austria established its National Preventive Mechanism (NPM) in July 2012. The NPM consists of the Austrian Ombudsman Board (AOB – *Volksanwaltschaft*) and its six visiting Commissions. Three Ombudspersons are heading the AOB, with alternate chairpersonship annually; altogether, some 90 staff are employed at the AOB. Half of them are legal experts who handle the case investigations, whereas the other half works in the information service centre and the secretariat. The six Commissions of the AOB carrying out regional monitoring consist of 48 independent experts with various professional backgrounds (law, psychiatry, social work, nursery, etc.).<sup>31</sup> Additionally, the AOB established the Human Rights Advisory Council (HRAC), which is a consultative body that does not form part of the NPM structure. The HRAC has an advisory mandate to the NPM and can make non-binding recommendations, particularly in determining monitoring priorities. A chairperson, deputy chairperson and 32 members (16 nominated by the Ministries and States and 16 nominated by NGO's) constitute the HRAC.<sup>32</sup>

The heads of the AOB are elected by the National Council of the Austrian Parliament for a period of six years. The members of the Commissions also hold their mandate for six years. Since the NPM was established in 2012, it is still the first period of Commission membership. It has thus been decided that half of them would be mandated for only three years. This measure has been implemented to ensure a smooth rotation of members. Nevertheless, there is the possibility to apply for more than one commission term<sup>33</sup>. In 2013, the budget for the Commissions and the Human Rights Advisory Council of the AOB amounted to 1,450.000 Euro. For the compensation and travelling costs of the Commission members, approximately 1,148.029 Euro have been calculated (2012: 574.000 Euro). The Human Rights Advisory Council had a budget of 95.000 Euro (2012: 50.000 Euro). 200.000 Euro (2012: 100.000 Euro) had been budgeted for workshops for Commission members and AOB's personnel in charge of OPCAT-related tasks, as well as for expert advices.<sup>34</sup> The budget for 2012 was significantly lower since the AOB received its NPM mandate only in July 2012.

Originally, the AOB focused on the examination of individual complaints of citizens and investigates cases of malfunctioning of public administration. It was only in 2012 that the AOB has acquired an additional mandate, which includes preventive control and monitoring visits as required under OPCAT as well as under the UN Convention on the Rights of Persons with Disabilities (CRPD).<sup>35</sup> Therefore, the AOB is allowed to visit "any place under its jurisdiction and control where persons are or may be deprived

<sup>29</sup> VertretungsNetz, Jahresbericht 2013, 2014, available at <http://www.vertretungsnetz.at/?id=50>.

<sup>30</sup> [http://www.vertretungsnetz.at/fileadmin/user\\_upload/5\\_SERVICE\\_Materialien/Info\\_zur\\_Unterbringung/paninfo-englisch08.pdf](http://www.vertretungsnetz.at/fileadmin/user_upload/5_SERVICE_Materialien/Info_zur_Unterbringung/paninfo-englisch08.pdf).

<sup>31</sup> The Commissions are arranged in six regions across Austria, with the exception of Vorarlberg in the west, which has its own Länder Ombudsman Board and Commission.

<sup>32</sup> Austrian Ombudsman Board: Organisation (<http://volksanwaltschaft.gv.at/die-volksanwaltschaft/organisation> on 10.06.2014)

<sup>33</sup> Interview with Mrs. Caroline Paar, coordinator of NPM's Commission 5.

<sup>34</sup> Austrian Ombudsman Board: Annual Report 2013, p. 37.

<sup>35</sup> Following the ratification of the CRPD in 2008 a Monitoring Committee was established by law; its main tasks are advice and counselling as well as requests for information following alleged violations of rights. It holds public consultations but does not conduct preventive visits; see [www.monitoringausschuss.at](http://www.monitoringausschuss.at).

of their liberty, either by virtue of an order given by a public authority or at its instigation or with its consent or acquiescence” as stated in Article 4 OPCAT. In addition, Article 16 of the CRPD states that “in order to prevent the occurrence of all forms of exploitation, violence and abuse, States Parties shall ensure that all facilities and programmes designed to serve persons with disabilities are effectively monitored by independent authorities.” Regarding children and juveniles, the AOB refers to the *travaux préparatoires* of its mandate in Parliament that all facilities working under the child welfare service regime will fall under the monitoring mandate of the AOB. This includes amongst others care homes, children homes and foster homes.<sup>36</sup>

Quarterly, the Commissions decide which facilities should be visited. The Commissions coordinate their plans with the AOB and take its already examined complaints into consideration in order to take a decision. Additionally, the Commissions consider the recommendations and monitoring priorities of the HRAC.<sup>37</sup> Apart from this aspect (the first and so far only one is urine and drug screenings in detention facilities) the Commissions mostly visit those places where cases of grievances have recently occurred. Regarding children and juveniles, the Commissions have concluded a cooperation agreement with the Child and Youth Ombudsoffices, which provides further help in priority setting, but also allows for better arrangement of visits.<sup>38</sup> A similar agreement was adopted with *VertretungsNetz*.<sup>39</sup>

The Commissions of the AOB conducted 465 visits to places of deprivation of liberty in 2013, including 89 police facilities, 52 detention facilities, 84 facilities of the youth welfare service, 67 facilities for persons with disabilities, 106 homes for elderly and nursing homes, 63 psychiatric departments in hospitals and four military caserns. In addition, the Commissions monitored 28 deportations and 37 police operations including demonstrations, assemblies and events. Since the AOB obtained its NPM mandate in July 2012 there is no previous comparable data available.<sup>40</sup>

In most of the cases, the Commissions undertake unannounced visits. Visiting teams are composed of two to eight people depending on the size of the facility, and between two and six hours are planned for every visit. Their monitoring mandate includes all aspects of human rights protection of persons deprived of liberty. In particular, the Commissions monitor all measures of protection and deprivation of liberty, signs of torture and other ill-treatment as well as health care. Additionally, the Commissions examine capacity/ occupancy rates, staff, complaint mechanisms and the facility's infrastructure, which includes *inter alia* general environment and living conditions. At the end of each visit, the Commission delegates have a closing meeting with the head of the visited institution to inform him/her about improvements that can be taken up immediately and also generally about positive and negative impressions. Afterwards, the Commission prepares a monitoring protocol, which is transmitted to the AOB and on which the AOB, with advice of the Human Rights Advisory Council, then decides whether e.g. ill-treatment has been committed or not.<sup>41</sup>

### **Child and Youth Ombudspersons - Vienna**

Following not least the reports and findings about violence in state institutions for children also in Vienna,<sup>42</sup> a new Ombudsoffice for children and young people in socio-pedagogical institutions (*Ombudsstelle für Kinder und Jugendliche in sozialpädagogisch betreuten Wohngemeinschaften*) has been established in March 2012 in Vienna. In fact this post consists of Mr. Peter Sarto himself, with administrative support from the Vienna Child and Youth Ombudsoffice, which also hosts the premises of the alternative care Ombudsperson. The mandate of the Ombudsman covers all children who are

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<sup>36</sup> Austrian Ombudsman Board: Annual Report 2013, p. 13; see also ch. 3.1. above.

<sup>37</sup> *Ibid.*, p. 43.

<sup>38</sup> Interview with Mrs. Stephanie Krisper and Mrs. Caroline Paar, coordinators of NPM's Commissions 4 and 5.

<sup>39</sup> Interview with Mr. Markus Huber, 21 August 2014.

<sup>40</sup> Austrian Ombudsman Board: Annual Report 2013, p. 41.

<sup>41</sup> *Ibid.*, p. 44.

<sup>42</sup> Interview with Mr. Peter Sarto, Ombudsman of the Child and Youth Ombudsoffice on 28.08.2014.

registered in Vienna and who are placed in an institution of the child welfare service and therefore under the responsibility of the state.

His tasks are a combination of both preventive monitoring and complaints or mediation. According to him, posters with his contact information are available to basically all children in care in Vienna. His mandate allows him to undertake both announced and unannounced visits to the institutions, in order to meet directly with both children and the staff. Children and juveniles can complain about various issues including, amongst others, complaints about housemates, staff, living conditions, contact to the outside world, abuse or violence.<sup>43</sup> Complaints can be filed via phone, post or e-mail. Additionally, complaints can be made in the office of the Child and Youth Ombudsoffice or during the visits of the Ombudsman. Depending on the case, personal appointments are arranged.

Over the last two years he has visited 90 group homes, talked to 700 children, including 150 cases of more in-depth counselling.<sup>44</sup> The Ombudsman focuses also on promoting and explaining children's rights.

If the Ombudsman finds grievances during the visit or if he/she certifies a complaint, he/she then transmits a written statement to the relevant authorities. So far, the authorities reacted in every case properly. If this would not be the case, the Ombudsman would, however, have no power for further actions. However, the Child and Youth Ombudsoffice publishes annual reports in which the work of the Ombudsman is documented and where he/she can make comments on grievances etc.<sup>45</sup>

Despite lobbying efforts from other Child and Youth Ombudsoffices, such post has been established thus far only in Vienna.

### **3.4. Complaint mechanisms available to children**

#### **Austrian Ombudsman Board**

Again, mention should be made of the role of the AOB. Established already in 1977, the AOB examines complaints of citizens and assesses if the public administration acts within the legal framework and with respect to human rights standards. All citizens with or without Austrian citizenship, minor or adults, are permitted to complain at the AOB if they have any problems regarding national authorities; moreover, as discussed previously, since 2012, it now also functions as part of the National Preventive Mechanism.

Complaints do not have to be made only at the Commission but can also be made personally at the office of the AOB in Vienna, directly to the three Ombudspersons, who offer days for public consultation on different dates in Austria (200 per year) or via phone, fax, email, post or electronic complaint forms on the website of the AOB.<sup>46</sup> However, complaints must satisfy some formal criteria to fall under the mandate of the AOB. The complaint must concern an Austrian federal, provincial or municipal administrative institution (except in the provinces of Tyrol and Vorarlberg which have their own ombudspersons for the provincial and the municipal levels). Additionally, all legal remedies have to be exhausted before the complaint can be taken up by the AOB, except for complaints concerning process duration, denied access to information or disrespect of public officials.

The AOB is mandated to take action by itself if it suspects any issues of concern.

No period is defined in which complaints must be investigated, whether individual ones or complaints issued from the Commission's reports. The AOB states that the average time required from the start of the investigation into a case until the client is informed of its outcome was 47 days in 2009.<sup>47</sup> If the AOB

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<sup>43</sup> Kinder und Jugendanwaltschaft (2013): Annual Report p. 48f.

<sup>44</sup> Vienna Child and Youth Ombudsoffice, Report 13, 47-49.

<sup>45</sup> Interview with Mr. Peter Sarto, Ombudsman of the Child and Youth Advocacy on 28.08.2014.

<sup>46</sup> Austrian Ombudsman Board: FAQ (<http://volksanwaltschaft.gv.at/beschwerden/faq-beschwerden> on 10.06.2014).

<sup>47</sup> Austrian Ombudsman Board: FAQ (<http://volksanwaltschaft.gv.at/beschwerden/faq-beschwerden> on 10.06.2014).

confirms the case of maladministration several measures can be taken. The AOB can contact the affected institution and urge it to correct the problem. In the case of grave maladministration the AOB can initiate an official “grievance investigation”, in which recommendations are made on how the authorities have to act in this individual case and also how they can avoid similar incidents. The authority must implement those recommendations within eight weeks or argue why it refuses to do so. The last option for the AOB is to make an appeal at the Constitutional Court if it considers that a regulation is not within the Austrian law.<sup>48</sup>

As will be discussed later on, one of the challenges the new NPM is facing relates to the different approaches and “work cultures”, between the “classical” ex post assessment of individual cases on the one hand, and the new mandate of preventive monitoring, which has a strong ex-ante and structural assessment dimension.

### **Child and Youth Ombudspersons in Austria - Vienna**

Following the adoption of the previous Youth Welfare Act 1989, provision was made for the establishment of independent Child and Youth Ombudspersons (*Kinder- und Jugendanwält/-anwältin*) in all nine of the *Länder* across Austria. However, implementing legislation on the *Länder* level led to inconsistent approaches among them, in terms of concrete mandate and structures. Consequently, there are now large Ombudsoffices e.g. in Salzburg with more than ten persons of staff, contrasted to e.g. Burgenland with only one Ombudsperson and a secretary.<sup>49</sup> In addition, a Federal Child and Youth Ombudsperson has been installed, as a public official based in the Ministry for Family and Youth.<sup>50</sup> He lacks formal status of independence, and has no monitoring function in terms of visiting places of detention. Generally, he also does not provide individual counselling for children, but instead focuses on a promotional function, including for children’s rights, and expert advice within the administration.

All Ombudspersons have in common a strong emphasis on the CRC as their substantial basis of work; over the years, they have thus become a leading structure for advocacy on children’s rights in Austria. As stated above, mandates may vary, but among the core competences free and anonymous advice to children and families is included; they lack a formal mechanism for receiving complaints similar to the AOB, but still may act on individual cases brought to their attention; they also usually give comments to draft legislation relevant to children.

In the case of Vienna (only), a separate Ombudsperson for children and young people in socio-pedagogical institutions was established in 2012 in order to allow for better transparency in institutions (see above).

### **Detention facilities**

The 27 prison facilities (12 prisons as well as 15 *Länder* detention facilities) in Austria have their own complaint procedure for adults and minors equally. The Ministry of Justice points out that detainees have the right to make oral or written requests/complaints. For filling a request, different options are available: one possibility is to use a request template, which is provided in each prison. In addition, consulting hours of persons responsible for handling complaints are written in the house rules. In urgent cases, complaints can be made to any prison staff member available who then is in charge to take further steps.

In general, the head of the prison makes a decision on the complaint without any formal investigation process. The claimant is informed orally about its outcome. If necessary, the complaint and the decision are noted in form of a personnel record.

In exceptional cases, namely in administrative penal proceedings and complaints, an investigation is conducted and a written notification is issued upon request. The decision about the complaint against

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<sup>48</sup> Austrian Ombudsman Board: Beschwerde. Ablauf (<http://volksanwaltschaft.gv.at/beschwerden/ablauf> on 10.06.2014).

<sup>49</sup> See, for an overview, [www.kija.at](http://www.kija.at).

<sup>50</sup> See, <http://www.kinderrechte.gv.at/kinder-und-jugendanwaltschaft/>.

an administrative penalty proceeding must be made by the second instance of appeal, the so-called “*Vollzugskammer*”, of the Higher Regional Court (*Oberlandesgericht*) which consists of one head and two other members according to Art.6 ECHR. The decision of the “*Vollzugskammer*” can be appealed by the Higher Administrative Court (*Verwaltungsgerichtshof*).<sup>51</sup>

## 4. From theory to practice: Analysis

### 4.1. Monitoring mechanisms available to children

The following analysis is based on feedback from practitioners dealing with the existing monitoring instruments, both from the side of the monitors and from those being monitored, including as far as possible children themselves. To the first group belong interviews with a representative of the Ombudsman Board<sup>52</sup> and the head of one of the six visiting Commissions of the AOB.<sup>53</sup> This was complemented by an on-site visit in the main juvenile custody centre in Gerasdorf/Lower Austria, where first an extensive group discussion of 2,5 hours was arranged, in which the director of the institution as well as the heads of the social services, the psychological services and the security guards participated.<sup>54</sup> Next to this discussion a separate meeting was held with two prison inmates, one of them being a spokesperson for inmates for several months. This instrument dates back to earlier discussions within the institution on the question of how to improve inmates’ participation, feedback and transparency.<sup>55</sup> In 2013 earlier efforts to establish such a position of a spokesperson for inmates elected by the peers, who would meet regularly with staff for updated exchanges on current developments.

The experiences with the State of the implementation of the NPM following four visits by the NPM Commission so far have been subject of the debate with the prison (both with the staff and the inmates); furthermore, such views were shared also during the visit to the *Drehscheibe* crisis centre of Vienna municipality,<sup>56</sup> which also has received a visiting Commission two times already (here, none of the young persons was available for direct feedback).<sup>57</sup>

As it has been mentioned earlier, the overall mandate of the NPM visiting Commissions is not questioned by the Child and Youth Support Service Administration of the *Länder* anymore. However, controversy still exists between the AOB and the Ministry of Interior regarding access to the asylum reception centres (especially the largest one in Traiskirchen, Lower Austria), including access to children, and also to some extent in relation to other accommodation of persons detained pending deportation.

After all, the AOB estimates that the NPM covers a total of about 4.000 state and private institutions in Austria falling under its mandate,<sup>58</sup> which includes several hundred institutions for children (in Vienna municipality alone, more than 130 socio-pedagogical institutions for children exist). It is evident that it is impossible to visit all of these locations with six Commissions comprising of seven members (although

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<sup>51</sup> Ministry of Justice (2013): *Strafvollzug in Österreich* p. 21f

<sup>52</sup> Interview with Mr. Markus Huber, 21 August 2014.

<sup>53</sup> Interview with Mr. Ernst Berger, head of NPM visiting Commission No. 4, responsible for the Vienna districts Nos. 3-19 and 23, 4 August 2014; he himself was involved in at least five visits to institutions including children.

<sup>54</sup> Group discussion with Mrs. Neuberger-Essenther, Mrs. Friedrich, Mr. Recher, and Mr. Binder, 3 September 2014.

<sup>55</sup> This discussion is partly also reflected in the outcome documents of a two-year EU-Daphne funded project Ending Violence against Children in Custody, led by the Children’s Rights Alliance for England (CRAE), and to which BIM was the national partner for Austria, next to other partners in The Netherlands, Belgium, Cyprus and Romania, see CRAE (ed), *Speaking freely – Children and Young People in Europe Talk about Ending Violence Against Children in Custody/Research Report*, London 2013, CRAE (ed), *Speaking freely – Children and Young People in Europe Take Action on Ending Violence Against Children in Custody/Campaign Report*, London 2013, and a user-friendly summary of findings on Austria in BIM, *Länderberichte Österreich – Zusammenfassende Ergebnisse*, 2013; all documents are available at BIM’s website at <http://bim.lbg.ac.at/en/story/children-and-young-people-across-europe-call-end-violence-custody>.

<sup>56</sup> Interview with Mrs. Karin Hirschl, deputy head of the Centre, 25 August 2014.

<sup>57</sup> There was no visit to the Laura Gatner-Haus for unaccompanied asylum-seeking children in Hirtenberg, Lower Austria, so far.

<sup>58</sup> AOB, Report of the Austrian Ombudsman Board on the activities of the National Preventive Mechanism 2012, 2013, 11.

usually splitting up in smaller teams for carrying out the visits) within a four-year long cycle, for instance. Consequently the AOB explained that they will focus on larger institutions per regions as a priority; furthermore a quality-oriented process was adopted, which means that the visits do not aim at covering as many institutions as possible, but rather to focus on selected few ones with follow-up visits to the same institution to monitor eventual progress.

In this regard it can be observed from the discussions that there is still a need to further reflect on the process. While there was agreement by those being monitored that such a selective quality approach should be preferred to a mere quantity approach, it appears that there is no consistency yet among all stakeholders involved (six Commissions across Austria, AOB) on how to manage such process as transparent as possible.

Formally, according to the AOB the visiting process is organised in the following way. The AOB may forward complaints/files to the Commission and recommend to them to conduct visits to the respective institutions, but the Commission may also select the places on its own initiative. Nevertheless, the AOB sets specific monitoring priorities – like in 2014: prevention of violence against children, or use of technical means for physical restraint – based on its own observations from the complaint mechanism, feedback from the Commissions and upon advice of the Human Rights Advisory Council.

At the end of each visit the Commission has a final briefing with the head of the institutions and submits a report – within four weeks - to the AOB afterwards. The AOB then gets in contact with the responsible higher authority and asks for a statement. The best practice example, which is reportedly rather rare, would be if the authority itself would immediately set steps to clear the grievances. If the deficiencies are remedied, the case will be closed (eventually with the note that the Commission should conduct a follow-up visit); if not, the AOB starts further discussions with the authorities. If the authority does not react, then the AOB may initiate a more in-depth “grievance investigation” (*Misstandsfeststellung*); other than that, the AOB may only apply “pressure” through its reporting instruments/annual reports to the Parliament, and/or through working with the media. However, many visits so far have ended without any findings of maladministration. If any grievances have been discovered, the authorities generally reacted positively on the AOB’s recommendations. The AOB also stated that so far no challenges have been reported on efforts to illicitly influence findings or limit the independence of the AOB and its Commissions. There are only individual cases in which the authorities refused a follow-up, for example in the case of “cage-like netted beds” used in some psychiatric facilities in Vienna.<sup>59</sup> In terms of length of proceedings, the process starting from the visit of the institution to the closure of the case may last six months on average, according to the AOB.

However, differences in the visiting process have been observed by monitored institutions and acknowledged also by one Commission in Vienna. While it was explained that, in the two Commissions dealing with Vienna, efforts were made by the Commissions to initiate a dialogue in order to ensure follow-up and for this purpose, to give direct written feedback to the institutions monitored (next to reporting, of course, to the AOB) - which was explicitly considered by the Commission representative as a good practice -, this practice was not reported in Lower Austria. The juvenile custody centre there has received four visits so far, but apart from a debriefing right at the end of the visit, no follow-up information from the Commission/minutes of the visit were shared – which was reportedly different from experiences with CPT visits, to be considered a good practice approach. This inconsistency also may impact the relationship between the visiting Commissions and the AOB itself – apparently there have been cases of divergent views about findings between Commissions and the AOB, and consideration was given already to the possibility of having kind of dissenting opinions of Commission members attached to findings from the AOB. Moreover, it appears that the profile of the Human Rights Advisory Council still needs to be further developed, and its relationship to the AOB.

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<sup>59</sup> However, by order of the Ministry of Health, this practice will now become prohibited with effect of 1 July 2015, see Press release by VertretungsNetz of 9 September 2014, <http://www.vertretungsnetz.at/news/news-meldung/28-netzbetten-endlich-verboten/>.

In terms of publication of findings, the main instrument is the Annual Report of the AOB to the Austrian Parliament; furthermore it has the possibility to publish Special Reports, which is however rarely used for specific issues. Nevertheless, in 2013 a special report on the first findings from the NPM mechanism during its inception year has been published.<sup>60</sup> However, the AOB does not publish reports on individual visits; the visiting Commission themselves cannot at all publish their own work.

Concerning standards for what to monitor during the visits, it appears there is still room for improvement. While the AOB refers to existing legal standards for child and youth support services and some basic inception training received at the launch of the NPM, it also acknowledges that there are currently no formal standards for interviewing children, for instance, in place. The Commission representative – himself one of the few specialised child psychiatrists in Austria – also explained to have developed more concrete and practical guidance e.g. on violence against children, on his own initiative for his Commission. Another challenge in this regard is the composition of the visiting Commissions, with not all of them having sufficiently qualified members e.g. in relation to child and youth services.

According to the AOB, common deficiencies observed so far in the field of child and youth support services have been issues around space and infrastructure (e.g. lack of privacy/possibility to lock doors, surveillance cameras on floors), conflicts between children as well as between children and staff, and insufficiently trained staff – this was specifically reported also for night shift staff in institutions. Furthermore, the linkages between child and youth support services and psychiatric assessments needs to be improved.

The AOB admitted that despite working on this for quite some time, there is still no data collection tool/database in place at the AOB in order to systematically assess findings in relation to children and to better identify underlying structural issues.

In order to partly compensate for this the AOB stressed regular meetings between the AOB and the heads of the Commissions about four to six times a year. Moreover, the VA has an agreement with the Child and Youth Ombudsoffices to meet one to two times per year to exchange information and experience and in order to avoid overlap of monitoring visits. It appears here that also on the level of the Child and Youth Ombudsoffices approaches to such visits vary – while such visits have been reported from Vienna, no such visits have been conducted e.g. in the Gerasdorf facility by the Child and Youth Ombudsperson of Lower Austria yet. A similar cooperation agreement was also concluded with *VertretungsNetz*.

Cooperation with institutions to be monitored was considered satisfying by both the AOB representative and the Commission head; what was considered still a kind of missing link by the latter relates to better coordination with internal oversight and inspection mechanisms within the child and youth support services administration – currently, no such coordinated approach exists.

One of most difficult questions relate to the role of children themselves in the monitoring process. While in principle, information about the NPM should be available in all child and youth support service institutions – like information about the Child and Youth Ombudsoffices – in practice, awareness of the NPM among young people – prior to the visit – is not existent; this was highlighted specifically in relation to psychiatric facilities. During the visit, Commissions are requested to check for availability of information about external monitoring instruments, and to directly talk to young people (usually two Commission members together), which has been confirmed e.g. also by juveniles in the Gerasdorf facility. But as there is a general inconsistency in the follow-up to visits, no feedback was given to the juveniles on the results of the process they have been consulted upon – a significant shortcoming in the current process. Moreover, it was also stated that so far the AOB does not collect specifically any eventual feedback from young people on the NPM.

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<sup>60</sup> See <http://volksanwaltschaft.gv.at/berichte/sonderberichte>.

When asked about good practice experiences in the current NPM, the AOB mentioned speedy proceedings, including reporting from the Commissions; the high level of professional preparation of Commissions prior to the visits and the debriefing held at the end of the visit.

Among the challenges it was noted also the need to further distinguish among monitoring priorities – what are serious human rights violations, what are rather small practical problems of daily routine; from the Commission point of view further discussion is also necessary in relation to the different “cultures” of work, between ex-post assessment of grievances and ex-ante prevention work through the NPM.

Experiences from the *Drehscheibe* crisis centre in Vienna<sup>61</sup> with the NPM appeared quite mixed, not least after having received two quite critical NPM reports. While on the one hand stating the over-all usefulness of such external monitoring, it was critically observed that some complaints have been well-known to the institution already by itself (insufficient staff numbers, infrastructure), but should be addressed to higher levels in the hierarchy. However, the current renovation of the location in Vienna was attributed partly to the concerns voiced in the NPM process. In general, room for improvement was seen in better networking and exchange of institutions, as well as in the language dimension of social work. Although interpretation services are available under the child and youth support service, sometimes access to Romans dialects proved difficult.

In relation to observations by the Vienna Ombudsperson for children in alternative care, Mr. Sarto highlighted various inconsistencies in practice among the institutions on how they deal, for instance, with child participation in their development plans, with regard to involvement of family members, but also in relation to the services available at the various institutions, which may lead to discrimination; this is also reflected in different daily rates depending on the *Länder*, but even within one *Land*, depending for instance on being a state or private-run service provider. Where to place a child and what will be available to him/her sometimes reminds Mr. Sarto of a “bazaar”.

In terms of process, Mr Sarto both uses formal and informal (mediation) approaches; on a formal level he writes a report on his findings to the pedagogical director of the institution, as well as to the head of socio-pedagogical region and to the social worker in the youth services authority, sometimes also to the legal department of the authority. In addition, his work is documented as part of the Vienna Child and Youth Ombudsoffice Annual report. Mr. Sarto also engages with the NPM Commissions in Vienna to coordinate their activities to prevent overlapping but also to recommend follow-up visits.

Most complaints so far have concerned relations with other children, including cases of various forms of violence. Mr Sarto stated that his contacts relate to 50% of minors, 25% of parents and 25% of social workers/social pedagogues. Posters with his contact details should be available in all institutions in Vienna, and he has been contacted by children starting from the age of 10.

On a positive note, he mentions that after the launch of his mandate in 2012 he has now fairly established his mandate as a respected and accepted instrument by both children and staff, not “as an enemy from the outside”; on the challenging side, he considers language barriers in institutions as a persistent problem, due to missing personnel with respective language skills (especially therapists); he repeated concerns regarding the lack of cooperation between child and youth services and psychiatric services.

Feedback on the NPM visits – four of them so far - from the Juvenile Custody Centre in Gerasdorf was positive in terms of conduct of visit, and discussions. What is missing, however, is follow-up to the process, as the debriefing at the end is not considered sufficient. Last time, the director herself wrote the minutes of that debriefing and sent them on her own initiative both to the central prison administration and to the NPM visiting Commission. She also intends to discuss this issue with other prison directors.

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<sup>61</sup> Interview with Ms. Karin Hirschl, deputy director, 25 August 2014.

Meetings with inmates took place, but it was criticised both by the Centre and the inmates that there was no feedback to the juveniles.

On the positive side, the NPM findings (e.g. insufficient personnel, daily lock-up times too long) were used to constructively reflect on the situation and even led to a reform project in 2013 called “quality services in custody during times of scarce resources”; implementation for “Gerasdorf new”, including both improvements in infrastructure, but also renewed efforts to even establish an “inmates Parliament” which should improve feedback and exchange with staff, but also serve as a tool to motivate positive engagement of inmates for common interests, will start in October 2014, and there is already a concept for reform steps in 2016.

## 4.2. Complaint mechanisms available to children

The availability of complaint mechanisms and their use in closed settings are dependent on various dynamics and contexts. Speaking of the juvenile justice context, not least through the public debate and media interest in cases of violence in detention over the last years in Austria, prevalence of violence in such situations has become evident. There are many informal mechanisms of exerting power, establishing hierarchies and groups, sometimes resulting in violent resolution of conflicts. If such pressure is further built up by inadequate facilities (cells of four, excessive lock-up times almost 24 hours, lack of meaningful education, training, spare time occupation), as it was evidenced to some extent in the remand ward of the Vienna-Josefstadt central prison, conflicts easily escalate.<sup>62</sup> It seems that inmates consider it a taboo to, in such situations, formally apply and use existing complaint procedures, including available templates disseminated and processed through prison bureaucracy.<sup>63</sup> During the visit in September, concern was raised both by staff as well as by inmates interviewed about recent new dynamics following more and more juveniles entering the Centre with heterogenic backgrounds, such as juveniles from Arab communities, or from Afghanistan,<sup>64</sup> but also few cases of juveniles with disabilities as a form of special placement (*Maßnahmenvollzug*). According to the inmates, many of them prefer to stay within their groups, thus new levels of language barriers arise, and traditional efforts by inmates serving longer sentences, who offer “integration assistance”/buddy model to new-comers, work increasingly less.

There is hope, again both by staff of the Centre and the inmates, that the on-going reform process within the institution, including the **proposed “inmates Parliament”** (*not just a single spokesperson, but rather a group of juveniles, comprising initially those inmates with already good records during their stay in the prison, and further rotation later on to ensure balanced representation of inmates, combined with a three phase-model of benefits, which on its highest level would allow for even kind of group accommodation of inmates within the institution*<sup>65</sup>), as well as current increased political interest in the situation of juvenile custody in Austria, may lead to better management of these dynamics. Interestingly, the inmate once acting as a spokesperson also felt quite satisfied with his role and did not encounter negative impact on his status. This, however, may be attributed to his already pre-existing rather high prestige among inmates considering his lengthy stay in the prison of several years already.

There might be lower levels of tension in ordinary socio-pedagogical institutions, but ultimately, throughout the field research for this project, no well-functioning formal complaint regime, with documented numbers of complaints which could form the basis for at least annual internal assessment of typical situations of conflict, could be identified.

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<sup>62</sup> See, for instance, the findings from the 2011-13 Daphne project end violence in custody, BIM, Länderberichte Österreich – Zusammenfassende Ergebnisse, 2013.

<sup>63</sup> Ibid., 12.

<sup>64</sup> In terms of nationality/background, out of 89 inmates present on that day of the visit, 36 were non-Austrian nationals, and taken together with migrant background the proportion would be about 70%.

<sup>65</sup> All inmates in Gerasdorf are placed in single cells.

Instead, in all institutions contacted, the regular process of admission of new-comers to the institution includes basic information of house rules, which typically also addresses how to prevent conflicts and violence. In this context, it is noteworthy to mention the comprehensive information package for newly arrived children in the Laura Gatner-Home for unaccompanied asylum-seeking children (Hirtenberg, Lower Austria), which includes not only house rules (in at least four different languages), but also written information about consequences for non-compliance with these rules (including procedures) as well as information on services and assistance they have a right to access to during their stay. Moreover, they strongly rely on functioning relations between the clients and staff working there. At the time of the visit on 16 September 2014,<sup>66</sup> 44 young people and 9 additional young adults lived in the institution; they are cared for by 26 staff personnel, including social pedagogues, one psychologist, a legal counsellor, a German class teacher and various support staff. After all, one social pedagogue should not be responsible to work with more than six to eight clients. In addition, the head of the institution emphasised his efforts to employ basically only full-time staff in order to facilitate trust-building between the young people and staff. In case of any conflicts – ranging from complaints about food to privacy issues and stealing – this staff worker should be the primary person to address issues to, sometimes also the psychologist. Again, the importance of language support to ensure minimum levels of communication was highlighted during the visit, both by the director and the boy from Afghanistan – who spoke German very well, after three years in Austria.

The Ombudsman for children in alternative care also confirmed language support and easy, low-threshold accessibility as key prerequisites for a functioning complaint system. Similarly, the director and heads of services participating in the group discussion at the Gerasdorf facility stressed their willingness to be approached also informally to discuss issues. Formal complaints processed to the director only happen “one or two times a year”; complaints from the outside (relatives, in few cases a lawyer) appear rather seldom. As a tool for anonymous complaints, a letter box is available at the prison for informal messages/drawing attention to certain issues. Interestingly, expectations about the acceptance and relevance of this tool differed significantly between staff and inmates – the latter were of the view that there would be quite many complaints to be found inside, whereas the staff confirmed the opposite.

## 5. Conclusions and Recommendations

Before outlining some more specific aspects of the findings, some general observations can be drawn. All interlocutors interviewed during the field research welcomed the existence of the preventive mechanism as a potentially useful tool to break through closed institutions and support transparency and accountability. Less positive is the assessment of availability and accessibility of formal complaint mechanisms. Linked to this is the finding of the importance to more explicitly reflect on the language dimension of accommodating children with diverse backgrounds in one place. This is not only true for institutions explicitly targeting children from abroad, such as asylum-seeking separated children or victims of trafficking, but also for other institutions across the field of child and youth support services, as confirmed by the Ombudsman for children in alternative care.

Another general difficulty encountered through the research has been the continuously weak links between child and youth social support services and related stakeholders, although necessary for a comprehensive assessment of needs and follow-up for constructive perspectives for the children's future. This relates to difficulties in engaging social work for children with the justice sector, especially in cases before children reach the age of criminal responsibility (and who nevertheless can get already in conflict with the law), and with the health sector, more specifically psychiatric health.

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<sup>66</sup> Interview with Mr. Wilhelm Raber, director, and later on, separately with one client, 17, from Afghanistan.

## Regarding monitoring

As mentioned before, on the positive side, the NPM appears to be seen as a welcome instrument with large potential to improve human rights protection of children deprived of their liberty. Its mandate is widely accepted by now, with the exception of asylum-seeker reception centres. In this regard, further negotiations and reflection with the Ministry of the Interior are needed.

A good practice to be highlighted is the process orientation of the monitoring by visiting Commissions, i.e. not to focus on individual shortcomings, but to address the broader, structural picture from a comprehensive prevention perspective – as per what OPCAT requires. This has been advocated by many regional and international actors, such as the Council of Europe and the European Union, to promote integrated child protection systems centred on child rights protection.<sup>67</sup>

Moreover, early arrangements with Child and Youth Ombudspersons and legal representatives under the *VertretungsNetz* proved useful, and the independence of the visiting Commissions has not been compromised so far.

Most importantly, the willingness to directly work with children as stakeholders in the NPM process should be highlighted.

As far as obstacles to successful implementation are concerned, it may be stated that the positive elements are still overshadowed by several unresolved issues (bearing in mind the rather recent development of the establishment of the NPM as such). One of the biggest challenges relates to the lack of concrete standards and tools for monitoring the situation of children deprived of their liberty – existing legislation is not sufficiently detailed to allow for an assessment of whether privacy in a group home is respected, or to what extent children receive visits from their parents or other persons of trust. And if they do not, what is the reason behind it.

It also requires specific skills to be able to work with children with potentially traumatic experiences, thus there is a clear need for training. Structural issues should be at the core of the investigative interest, including systematic assessment to what extent child protection policies are in place to prevent violence and abuse in institutions.

Furthermore, there should be an urgent move to establish tools for analysis of findings across Austria, in order to better identify structural problems. Moreover, further joint reflection between visiting Commissions about findings and more consistent approaches (and, eventually, an agenda for further research) should be developed. This also leads to the need to review current perceptions and expectations of work within the NPM/AOB system, as well as to analyse how the preventive approach can better benefit them. More reflection should also be made on how to ensure a focus on human rights problems, and not on minor deficiencies, when providing care services.

Finally, ways should be explored to ensure feedback directly to the children deprived of their liberty about findings and possible ways of improving their situation and clarifying accountability.

## Regarding complaint mechanisms

On the “internal” level, concerning mechanisms to ensure accountability and prevent rights violations through complaints within the institutions, it has already been stated that less promising examples could be identified in the field research.

The preparation for an “inmates Parliament” (*“Insassenparlament”*), as currently envisaged in the Gerasdorf Juvenile Custody Centre, was already highlighted at this stage as a good practice; it

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<sup>67</sup> See for instance, the 2009 Council of Europe’s Policy Guidelines on Integrated National Strategies for the Protection of Children from Violence, [http://www.coe.int/t/dg3/children/News/Guidelines/Adoption\\_guidelines\\_en.asp](http://www.coe.int/t/dg3/children/News/Guidelines/Adoption_guidelines_en.asp).

underlines the importance of **working not only for young people, but with them**. It is indeed crucial to build on their expertise if such a project should ever be successful in the so difficult and complex setting of a juvenile prison.

For the sake of transparency and mutual respect the Laura Gatner-Home for unaccompanied children in Lower Austria offers comprehensive written information in several languages about rights and responsibilities for newly arrived children. More efforts should be made, finally, in strengthening informal, easy access mechanisms for complaint and feedback, especially through trust building between staff and children in those institutions. The *Drehscheibe* has referred to positive experiences e.g. with interpreters, who - apart from providing interpretation services - can bridge to home communities for children from abroad. In general, in addition to building strong structures, the - at least equal - relevance of working personal relations between staff and children deprived of liberty should be highlighted.

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