

AUSTRIAN
OMBUDSMAN BOARD



Annual Report

of the Austrian Ombudsman Board
to the National Council and
the Federal Council

2024

Monitoring Public Administration

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Preface

The framework conditions for government action are becoming increasingly complex. Challenges can usually only be solved through cooperation, synergies and dialogue. Added to this are the social, economic and political changes and crises that have increased in recent years. In order for the State to be able to meet all these challenges, it needs a well-functioning administration. To function well, today's administrations must be flexible and adaptable and have a positive error culture, but they must also guarantee stability and legal certainty – especially in times of crisis. In this respect, the current crises can and should be seen as a catalyst for improvement. Only stable institutions that act flexibly but with legal certainty and solve challenges, even in difficult times, can ensure people's trust in state structures in the long term.

Since its foundation, the Austrian Ombudsman Board (AOB) has been committed to good administration. By highlighting cases of maladministration, it creates the basis for improvements. As a parliamentary Ombudsman institution, it supports people in asserting their rights against the administration. On the other hand, it mediates between people and the administration, creates understanding for legal provisions and solutions to problems and in this way contributes to trust in state institutions.

The AOB reports annually on its activities to the National Council and the Federal Council. This first volume is dedicated to the work of the AOB in the area of the ex-post monitoring of public administration, i.e. the investigation of the administration in case of complaints. The observations and findings presented in detail document the main areas of activity. However, they also show where the right to good administration is still insufficiently realised and where there is a need for action.

At the same time, however, the AOB is also a National Human Rights Institution. As part of its mandate to protect and promote human rights in Austria, the AOB conducts preventive monitoring visits to check whether human rights are being complied with in institutions and facilities. The second volume, entitled "Protection and Promotion of Human Rights", contains detailed accounts of human rights violations and threats observed in the course of these monitoring visits, as well as recommendations derived from them. A complete picture of the activities of the AOB in 2024 can therefore be obtained only by reading both volumes.

On 24 October 2024, Ombudsman Walter Rosenkranz left the institution after more than five years of service and took over the position of President of the National Council. District Governor Elisabeth Schwetz took over his agendas and the position of Chairperson of the AOB. The Federal President swore her in as Ombudswoman in November 2024. We would therefore like to take this opportunity to pay special tribute to the work of Walter Rosenkranz as Ombudsman and thank him for his commendable work.

We would also like to express our thanks to our employees for their commitment and dedication, without which it would not have been possible to complete the many tasks and respond to the numerous enquiries. We would also like to thank the Federal Ministries and the other bodies of the Federal Government, the *Laender* and the municipalities for their dialogue and excellent cooperation over the past year.



Elisabeth Schwetz



Gaby Schwarz



Bernhard Achitz

Vienna, March 2025

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Introduction

Since 1977, the Austrian Ombudsman Board (AOB) has been an important point of contact for the population in the event of problems with authorities. It helps everyone who feels that they have been treated unfairly by an Austrian administrative authority: when they cannot understand the decision of an authority, when they do not receive a satisfactory solution to their concerns or when they have to wait an unreasonably long time for a matter to be dealt with. The Austrian Ombudsman Board investigates every complaint and examines whether there are cases of maladministration. It observes whether laws have been complied with, whether decisions have been made correctly and whether citizens have been treated in a citizen-friendly manner. The AOB can also make recommendations as to whether laws are accurate or need amendment.

Over the decades, the number of people seeking help has risen continuously and reached new records, particularly in the last few years of the crisis. The approximately 24,000 complaints in 2024 show that there is a great need for such an institution. The ongoing crises of recent years have increased people's need for information and support. Staffing and financial bottlenecks in the health and care sector, in the justice system and in the policeforce have also steadily gotten worse and are affecting the quality of the services provided. All complaints must therefore be seen against this backdrop.

23,955 complaints

The AOB supports those affected and helps them to assert their rights. In around a fifth of all complaints, it turns out that their assessment is correct and that the authority has actually acted incorrectly. In these cases, the Austrian Ombudsman Board's investigative proceedings revealed that there was a case of maladministration. In many cases, the AOB was able to correct an unlawful action by the authorities or find an acceptable solution for those affected.

Solving problems

In order to sensitise the administration to apply laws correctly and in a citizen-oriented manner, the Austrian Ombudsman Board regularly reports to the legislative bodies on its activities. By monitoring the administration, pointing out cases of maladministration and identifying examples of best practice, it makes decision-making processes comprehensible and thus contributes to the transparency and efficiency of the Austrian administration. By helping people to better understand laws and administrative actions, the AOB also acts as a mediator between the population and the administration.

Mediator role between the population and the administration

As the Austrian Ombudsman Board investigates thousands of individual cases every year, it can identify weaknesses in the administration and point out areas of undesirable developments. An individual case can therefore lead to a general recommendation or highlight the need for legislative changes. The aim is to improve public administration. The Austrian Ombudsman Board

Working together to improve public administration

therefore expects that its criticism, recommendations and suggestions will lead to necessary changes in both the administrative authorities and the legislative bodies.

This volume provides an overview of the AOB's ex-post control activities. Chapter 1 summarises the various areas of competence and provides the most important key figures for 2024, as well as information on the AOB's financial and human resources, public relations work and international activities.

Since July 2017, the Austrian Ombudsman Board has been dealing with issues relating to the compensation of care home victims and supporting those affected in enforcing their claims. For this task, an independent Pension Commission has been established at the Austrian Ombudsman Board, which acts as an umbrella organisation under the Pensions for Victims of Children's Homes Act (*Heimopferrentengesetz*). Chapter 2 covers these activities and provides information on the Pension Commission's competence, the course of the proceedings and the main results and observations. Since the Pension Commission was established, over 4,000 applications have been received from people who have not yet received remuneration. Over 560 applications were submitted in 2024.

Legislative recommendations

Chapter 3 presents in detail the results and focal points of investigative mandates in the area of monitoring the public administration. As in previous years, the subject matter is organised by area of departmental responsibilities. This covers investigative proceedings resulting from individual complaints and from ex-officio investigative proceedings. In view of the large number of investigation cases, it is not possible to show all cases of maladministration identified in detail. The focus lies on issues that were frequently the subject of complaints or affected a larger group of people. However, the Austrian Ombudsman Board not only wishes to highlight cases of maladministration, but also to make concrete suggestions as how to achieve improvements. The legislative recommendations are therefore summarised in a table below.

1 Performance record

1.1 Monitoring public administration

The AOB was founded in 1977 and is one of the supreme bodies of the Republic of Austria. Since then, it has monitored the entire public administration based on the Austrian Federal Constitution. The AOB supports all people in the exercise of their rights vis-à-vis the authorities and offers the possibility of solving problems free of charge and in a non-bureaucratic way.

Anchored in the Austrian Federal Constitution

Pursuant to Article 148a of the Austrian Federal Constitutional Law (*Bundes-Verfassungsgesetz*), anyone can turn to the AOB in case of alleged maladministration, if all legal remedies have been exhausted. The AOB investigates every admissible complaint and examines whether decisions by authorities comply with the law and the principles of good administrative behaviour. This may involve inactivity, a legal opinion that does not comply with the law, or rude behaviour.

The confidential complaints procedure begins with the initiation of formal investigative proceedings. Based on the available documents, the AOB obtains an overview, confronts the authority concerned with the complaint and requests a statement of opinion within a certain period of time. The AOB can inspect all files and must be supported in its work by the authorities. In investigative proceedings, the AOB can also hear witnesses, inspect documents and appoint experts.

Confidential complaints procedure

If an investigative proceeding reveals a case of maladministration, the members of the Austrian Ombudsman Board make an explicit observation. The AOB then contacts the authority concerned with a specific recommendation for action. The authority has eight weeks to implement the recommendation or to argue why it does not follow the AOB's opinion. If the authority corrects its error immediately after the AOB intervenes, the investigative proceeding is discontinued. The AOB informs the person concerned of the result of the investigation.

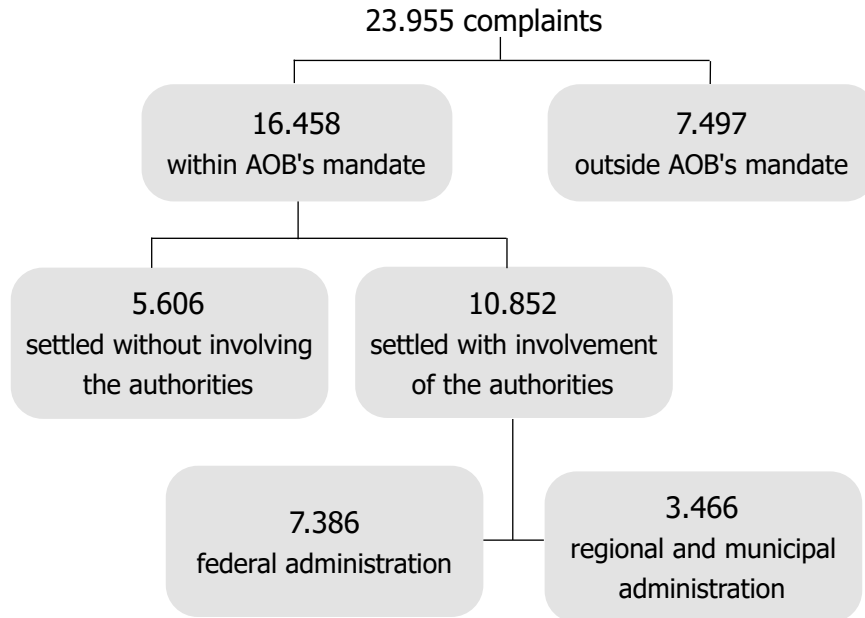
If the AOB suspects a case of maladministration, it can also take action on its own initiative and initiate *ex-officio* investigative proceedings. In addition, the AOB is authorised to request the examination of regulations issued by a federal authority by the Constitutional Court of Austria.

In 2024, 23,955 people approached the AOB with a complaint. This represents an average of around 95 complaints per working day. Of these, 16,458 complaints concerned the Austrian administration. In 5,606 of these cases, it was not necessary to refer the matter to the authorities. Either the AOB could deal with these complaints immediately or they were related to pending proceedings. 7,497 requests concerned issues outside the AOB's

23,955 complaints

investigative mandate and fell within the competence of the independent jurisdiction. In these cases, the AOB informed the persons concerned about the legal situation and pointed at further counselling services.

Monitoring public administration 2024



77 *ex-officio* investigative proceedings

The Austrian Federal Constitution also allows the AOB to conduct *ex-officio* investigative proceedings if it has a concrete suspicion of maladministration. In the year under review, the members of the AOB invoked this right and initiated 77 *ex-officio* investigative proceedings.

2,368 cases of maladministration identified

In 2024, the AOB concluded 12,109 investigative proceedings. In just under one fifth (19.6%), specifically in 2,368 cases, the AOB identified maladministration.

Investigative proceedings in the federal administration

7,386 investigative proceedings

The AOB's investigative mandate covers the entire public federal administration. It therefore monitors all authorities and departments that enforce federal laws. In addition to the indirect and direct federal administration, the AOB also covers administration acting as a private entity. In the area of federal administration, the AOB initiated 7,386 investigative proceedings in 2024.

27.1 % of all investigations in area of internal security

Investigative proceedings in the area of internal security remained roughly the same as in the previous year. With 1,999 files (2023: 2,064), they concerned the most proceedings (27.1%). The majority of complaints

concerned issues relating to asylum, settlement and alien police law, followed by complaints about the police.

The social and health sector accounted for 1,436 (19.5%) investigative proceedings. A further 1,364 investigative proceedings concerned the area of justice and the Data Protection Authority (18.5%).

Federal Ministry investigated	number	in %
Federal Ministry of the Interior	1.999	27,1
Federal Ministry of Social Affairs, Health, Care and Consumer Protection	1.436	19,5
Federal Ministry of Justice and Austrian Data Protection Authority	1.364	18,5
Federal Ministry of Finance and Federal Fiscal Court	822	11,1
Federal Ministry for Climate Action, Environment, Energy, Mobility, Innovation and Technology	641	8,7
Federal Ministry of Labour and Economy	459	6,2
Federal Chancellery	261	3,5
Federal Ministry of Education, Science and Research	163	2,2
Federal Ministry of Agriculture, Regions and Water Management	119	1,6
Federal Ministry for European and International Affairs	74	1,0
Federal Ministry of Defence	35	0,5
Federal Ministry for Arts, Culture, the Civil Service and Sport	4	0,1
TOTAL	7.377	100

Investigative proceedings in regional and municipal administration 2024

In addition to the federal administration, the AOB monitors the regional and municipal administrations in seven *Laender*. Only the *Laender* Tyrol and Vorarlberg have established their own regional Ombudsman Offices. 3,466 investigative proceedings concerned regional and municipal administration in the year under review. Complaints in this area fell by 3.1% compared to the previous year (2023: 3,578). The most investigation cases were carried out in Vienna, the most populous *Land*, (48.5%), followed by Lower Austria with a share of 16.8% and Upper Austria with 11.3%.

3,466 investigations

There were slight shifts with regard to the key focus areas: in 2024, more than a quarter of all complaints related to problems in the areas of citizenship, voter registers and traffic police (26.7%). The areas of

Key areas in the *Laender*

needs-based minimum benefit systems, youth welfare, issues relating to persons with disabilities and reception conditions under the Basic Provision Agreement accounted for just under another quarter of all investigation cases (23.7%). 15.3% of all complaints related to regional planning and building law, followed by community affairs (10.7%).

Land	2024	in %
Vienna	1.681	48,5
Lower Austria	584	16,8
Upper Austria	444	11,3
Styria	373	10,0
Burgenland	162	4,7
Carinthia	156	4,5
Salzburg	144	4,2
TOTAL	3.466	100

Areas of investigation at regional and municipal level		
Subject area	number	in %
Citizenship, voter register, traffic police	924	26,7
Needs-based minimum benefit system, youth welfare, persons with disabilities, reception conditions under the Basic Provision Agreement	821	23,7
Regional planning and housing, building law	530	15,3
Community affairs	372	10,7
Education system, sports and cultural matters	174	5,0
Finances of the <i>Laender</i> , regional and local taxes	164	4,7
Health care system and veterinary sector	163	4,7
Regional and municipal roads	98	2,8
Trade, industry and energy	72	2,1
Transport and traffic on regional and municipal roads (excluding traffic police)	39	1,1
Office of the <i>Laender</i> Governments, public services and compensation law for regional and municipal employees	38	1,1
Nature conservation and environmental projects; waste management	38	1,1
Agriculture and forestry, hunting and fishing laws	32	0,9
Science, research and the arts	1	0,0
TOTAL	3.466	100

Citizen-friendly communication

Since the AOB was established, the number of complaints has risen continuously. The reason for this is not only the high level of awareness, acceptance and trust of the population in the AOB, but also that the people can access its services as easily as possible. This low-threshold access is very important to the AOB. As a citizen-friendly service and monitoring institution, the AOB guarantees simple and informal contact: Complaints can be submitted in person, by post or electronically. All people have the opportunity to submit their documents in person at the AOB Information Centre. They can also call a free service number to obtain initial information. The population used this service 11,921 times in the year under review. The AOB also provides an online complaints form on its website, which was completed by 2,367 people in 2024.

Low-threshold access to the services

In addition, citizens have the opportunity to discuss their concerns with the the Ombudspersons during the consultation days in the Laender. The People welcome this offer and make intensive use of it. In 2024, 113 consultation days with 1,031 consultations took place. In line with the demographic distribution, most consultation days took place in Vienna.

Consultation days 2024	
<i>Land</i>	number
Vienna	30
Lower Austria	16
Upper Austria	17
Salzburg	11
Carinthia	7
Styria	12
Burgenland	7
Tyrol	6
Vorarlberg	7
TOTAL	113

1.2 Activities of the Pension Commission

In 2017, an independent Pension Commission was set up at the AOB. It deals with applications for a pension for victims of homes in accordance with the Pensions for Victims of Children's Homes Act (Heimopferrentengesetz). Persons who suffered violence in a home, foster family or in a hospital, psychiatric institution or sanatorium between 1945 and 1999 are entitled to a pension for victims of homes. They can apply for a pension for victims of homes.

The AOB deals in particular with applications from persons who have not yet received remuneration from a victim support facility or whose application has been rejected. The pension-paying body or the Ministry of Social Affairs Service informs the AOB about these applications. The Pension Commission office of the AOB then contacts the applicants.

The AOB requests the file from the youth welfare authority or the hospital records. The applicant is invited to an interview with a clearing expert. Together with the applicant, they prepare a report that is submitted anonymously to the Pension Commission.

The Pension Commission is chaired by Ombudsman Bernhard Achitz and consists of twelve experts from different disciplines. It makes recommendations on the circumstances established in the clearing proceeding and assesses whether the descriptions are credible. The AOB then submits a written recommendation to the pension-paying body or the Ministry of Social Affairs Service based on the recommendation of the pension commission. The latter finally decides on the application with an administrative decision.

Over 4,000 applications since July 2017

In 2024, the AOB again received many applications and enquiries. In total, the AOB has investigated over 4,000 applications from victims since July 2017. In addition to corporal punishment (such as beatings, spankings and hard physical labour), the clearing reports commissioned by the AOB also include psychological torture, such as being locked in dark rooms and deprivation of food, as well as severe sexual abuse and rape.

Fear and shame of those affected

These acts of violence have a decisive impact on the rest of their lives. Many of those affected find it extremely difficult to contact the AOB and apply for a pension for victims of homes. Repeatedly, in interviews former care home or foster children express fear and shame in connection with the application. They deliberately suppress memories of this time to protect against re-traumatisation. The fear that the flood of memories will overwhelm the person concerned during the clearing interview is omnipresent. At the same time, however, many are willing to come to terms with this dark chapter of the past and face up to these fears.

Number of unreported cases still high

Despite the high number of applications to date, the number of unreported cases of persons who were victims of violence in a home, a foster family or a hospital, psychiatric institution or other sanatorium as children or adolescents between 10 May 1945 and 31 December 1999 is still high. Again and again, those affected tell the AOB that they have only now learnt about the possibility of a pension for victims of homes or lump-sum compensation. Important sources of information are usually other affected persons such as siblings, former fellow students and fellow pupils.

The pension is valorised annually and amounted to EUR 403.10 in 2024. It is paid out monthly gross for net by the competent pension insurance institution or the Ministry of Social Affairs Service and, in accordance with constitutional provisions, is not considered income or assets within the meaning of the Laender laws on minimum benefits or other provisions of Laender law.

Value 2024: 403.10 euros

The pension is due either from the time the standard retirement age is reached (currently 65 years for men; 60.5 years for women), from the time of emoluments of a personal pension, a retirement pension, a rehabilitation allowance or an orphans' pension continued due to incapacity for work.

1.3 Preventive human rights monitoring

On 1 July 2012, the AOB took on a further mandate in fulfilment of its constitutional mandate. Since then, it has been responsible for the protection and promotion of human rights in the Republic of Austria as the so-called "National Preventive Mechanism" (NPM). The mandate is based on two United Nations legal acts: the UN Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) and, the UN Convention on the Rights of Persons with Disabilities (UNCPRD).

Protecting and promoting human rights

The aim is to prevent violations of human rights through regular monitoring visits wherever possible. Risk factors for human rights violations should be recognised and remedied at an early stage. To this end, the NPM regularly monitors public and private facilities throughout Austria, where the freedom of persons may be deprived or restricted. People in these facilities are particularly at risk of becoming victims of abuse or inhumane treatment. These facilities include correctional institutions, police stations and police detention centres, retirement and nursing homes, psychiatric institutions and child and youth welfare services.

Preventing human rights violations

The AOB has appointed seven commissions and entrusted them with these visits. Together with the AOB, they form the NPM. A Federal Commission for the enforcement of penalties and measures and six regional commissions currently carry out these monitoring visits. They include facilities for persons with disabilities to prevent exploitation, violence and abuse there as well. In addition, the AOB monitors the behaviour of the executive when carrying out direct administrative power and coercive measures, for example during forced returns, demonstrations and police operations.

7 expert commissions

Each commission is chaired by a person recognised in the field of human rights and is composed of members appointed by the AOB in accordance with international guidelines, taking into account gender parity and persons with disabilities. They are multiethnic and multidisciplinary.

The commissions have unrestricted access to all facilities all information and documents required to fulfil their mandate. In addition, they conduct confidential interviews with detainees, patients and residents in order to obtain a complete picture of the general conditions. They report to the AOB on the results of their monitoring activities.

458 monitoring visits In 2024, the commissions carried out 458 monitoring visits throughout Austria. 435 monitoring visits took place in facilities, 23 at police operations. In order to obtain as unbiased an impression as possible, the monitoring visits are generally unannounced. In 2024, 13% of the monitoring visits were announced. Most of the monitoring visits took place in Lower Austria and Vienna due to the high density of facilities.

Preventive monitoring 2024		
Land	monitoring visits to facilities	observation of police operations
Lower Austria	85	1
Vienna	76	6
Upper Austria	55	3
Tyrol	52	2
Styria	43	2
Burgenland	33	4
Salzburg	32	3
Carinthia	43	2
Vorarlberg	16	0
TOTAL	435	23
<i>of which unannounced</i>	<i>396</i>	<i>3</i>

The commissions criticised the human rights situation in 67% of the monitoring visits (309 cases). Based on these observations, the AOB examined the cases and contacted the competent ministries and supervisory authorities in order to bring about improvements. As a result, the AOB prevented many cases of maladministration and endangerments. These investigations result in numerous recommendations by the AOB and aim to ensure human rights standards in the facilities.

Human Rights Advisory Council advises AOB on human rights issues

The Human Rights Advisory Council (HRAC) acts as an advisory body to the AOB. It consists of representatives from non-governmental organisations and Federal Ministries. The AOB regularly asks the Human Rights Advisory Council for its opinion on various topics relating to the prevention and

protection of human rights and draft recommendations of the NPM. In the reporting year, the results of the HRAC's activities were discussed with the members of the AOB in six ordinary plenary sessions.

The preventive activities of the AOB are described in detail in the volume "Protection and Promotion of Human Rights".

1.4 Budget and personnel

According to the cash flow statement, in 2024 the AOB had a budget of EUR 15,436,000. According to the operating statement, EUR 15,529,000 was available. This report only explains the cash flow statement below, as this represents the actual cash flow (see Federal Budget Statement 2024, sub-booklet for subdivision 05 AOB).

Federal budget statement of the AOB in million of Euro		
Cash flow statement 2023/2024		
Expenditures	2023	2024
personnel expenses	9,279	9,846
general material expenses	4,338	4,610
transfers	0,938	0,897
capital expenditures and advances on salaries	0,083	0,083
TOTAL	14,638	15,436

In the cash flow statement, outgoing payments for personell expenses accounted for EUR 9,846,000 and outgoing payments for general material expenses for EUR 4,610,000. General material expenses include, for example, payments for the commissions and the Human Rights Advisory Council, expenses from statutory obligations for remuneration of the Ombudspersons, payments for the Pension Commission and its clearing activities, administrative internships, printed materials, supplies of energy and other expenses.

In addition, the AOB had payments relating to transfers, primarily for the pensions of former Austrian Ombudspersons and the widows of former Ombudspersons totalling 897,000 euros. Finally, payments from capital expenditures amounted for EUR 53,000 and advances on salaries for EUR 30,000.

In order to fulfil the tasks assigned to the AOB since 1 July pursuant to the Act on the Implementation of the OPCAT, in 2024 a budget of EUR 1,700,000

(2023: EUR 1,700,000) was earmarked for payments to the commissions and the Human Rights Advisory Council. The majority of this was budgeted for remuneration and travel expenses for the commission members.

In 2024, a budget of EUR 200,000 (2023: EUR 200,000) has been earmarked for payments for clearings commissioned by the Pension Commission (pursuant to Section 15 Pensions for Victims of Children's Homes Act), which was established in the AOB on 1 July 2017.

1.5 Public relations

Information and support

Meeting the information needs of citizens and the media is a major concern of the AOB. With the help of its public relations work, the AOB continuously draws attention to its function as a supervisory body, its investigative mandates and its commitment to those affected. An important goal of the AOB's public relations work is to provide the population with the best possible support in the event of problems with Austrian authorities and to inform them about the observance of human rights. The AOB's public relations tools include a comprehensive online presence with a regular newsletter and the weekly public television programme *Bürgeranwalt* ("Advocate for the People").

In 2024, the AOB continuously informed the public and the media about current developments and priorities in press releases, press documents and press conferences. In addition, the Ombudspersons were available for numerous interviews, media appointments and background discussions.

AOB Website

Website with around 211,000 hits

The website www.volksanwaltschaft.gv.at provides all interested parties with comprehensive information about the AOB and its activities. In addition to daily updates on investigative proceedings, users can find out everything about the institution and its tasks and read all basic information, publications, activity reports and statements of opinion on draft legislation as well as reports on events and international activities. The public actively uses the website. With over 211,000 visits, the number of hits in 2024 was significantly higher than in the previous year (183,000).

Relaunch planned for 2025

As the website has grown enormously over the past ten years, its user-friendliness was no longer optimal. In order to bring the site up to date with the latest technology, in 2024 the AOB worked on a concept for the relaunch of the site. The technical implementation will take place in the course of 2025. In order to facilitate access to the AOB for everyone, great importance is attached to user-friendliness on the one hand, and to barrier-free accessibility and multilingualism of the information on the other.

A particularly low-threshold and easy access is important to the AOB also with regard to the submission of complaints. One option is the AOB's online complaint form, which can be accessed via the website and was used 2,367 times in the year under review.

ORF programme *Bürgeranwalt*

The ORF programme *Bürgeranwalt* ("Advocate for the People") provides an important communication platform in the area of monitoring public administration. Since January 2002, the AOB has been informing the public about current investigative proceedings on a weekly basis. At the beginning of the programme, the public television channel ORF presents a current AOB case in a short film. This film describes the problem and introduces the persons concerned. The Ombudspersons then take turns in the studio to discuss the complaint case directly with the citizens concerned and representatives of the authorities. In addition to one or two current cases per programme, older, unresolved cases are revisited in the "Follow-up" section. Thanks to the efforts of the AOB and the media coverage, the vast majority of problems were successfully resolved.

ORF 2 broadcasts *Bürgeranwalt* every Saturday from 6 pm. Deaf and hearing-impaired people can follow the programme in Austrian sign language or in the public television channel ORF TELE TEXT on page 777 with subtitles. The programmes are then available online on the ORF ON streaming platform at on.orf.at. This platform has replaced ORF's old TVthek since 2024. A major advantage of the change is that the previous seven-day viewing restriction no longer applies due to a change in the law. ORF content is now available on the new platform for up to six months.

New streaming platform

The studio discussions continue to be very popular with viewers. An average of over 350,000 households watched the programme in the reporting year, which equals a market share of around 27%.

Reach: 350,000 households

AOB reports

As a support body of Parliament and the *Laender* Diets, the AOB informs the legislature about the outcomes of its activities at regular intervals. In 2024, the AOB submitted its annual report to the National Council and the Federal Council as well as the annual report to the Diet of the *Land* Vienna. In addition, it submitted state reports on the monitoring of public administration in Lower Austria, Carinthia and Styria. In addition, all *Laender* received the Annual Report on the Protection and Promotion of Human Rights. All reports are available on the AOB website.

Trust in the AOB continues to grow

Public confidence in the AOB is very high and continued to rise in 2024. After a balance of plus 58 in the previous year, the AOB even achieved a value of plus 62 in the APA/OGM Confidence Index 2024. Accordingly, three quarters of Austrians eligible to vote expressed their trust in the AOB. This makes the AOB one of the institutions with the highest trust ratings. (74% "trust" minus 12% "do not trust" = trust balance +62).

Great confidence among all voter groups

One positive aspect is the public observation of the AOB as a non-partisan institution, which is reflected in the very high levels of trust in all voter groups. The voters of the parties, who have not nominated a current Ombudsperson also have great confidence in the AOB.

Need to catch up with regard to women, younger people and human rights

The survey also showed that awareness and trust are below average among both women and younger people. In addition, many people did not know that the AOB is competent for the protection of human rights in facilities such as nursing homes and correctional institutions. Only 33% were aware of this task. In contrast, an impressive 81% of respondents knew that the AOB is competent to protect people from misconduct at public authorities. However, 39% also believed that the AOB is competent to deal with private legal disputes in court – which is not the case.

AOB works free of charge and protects those affected

62% of respondents stated that they could in principle imagine going to the AOB with a problem. The primary reasons for not visiting the AOB despite experiencing a problem were a lack of information, as well as suspected barriers (costs) or fear of being "exploited" by the media (especially among older people). However, the survey results do not indicate any doubts about the competence of the AOB. In future, the AOB will therefore emphasise more strongly that it always works free of charge for those affected and only goes public with specific individual cases at their expressed request.

66% in favour of extending competence

In a press release, the Ombudspersons thanked everyone for their enormous trust and assured that everything will continue to do everything to fulfil this trust. It is particularly important to reach those who are not yet familiar with the AOB. They also pointed out the result of a supplementary question, according to which two thirds of the respondents were in favour of extending the AOB's investigative powers to include divested legal entities, such as hospitals, cemeteries, public baths or the Austrian Federal Railways.

NGO Forum 2024: children's rights

Link between civil society and politics

The AOB is the Austrian National Human Rights Institution. In this role, it works intensively with civil society and civil society organisations and serves as a kind of link between civil society and politics. To this end, the AOB set up the NGO Sounding Board, which enables

a regular exchange between and with representatives of large civil society organisations. There, joint fields of action are discussed. Furthermore, the AOB organises the annual NGO Forum, the topics of which are discussed in advance by the Sounding Board. In consultation with the civil society organisations represented in this body, the AOB selected the topic of "Children's Rights" for the NGO Forum 2024.

The UNCRC expressly calls for the principles and content of the Convention to be disseminated at the broadest level – among children and adolescents as well as adults, to be integrated into school and training programmes and to initiate social discussion processes (see Section 42 UNCRC). At the centre of the UNCRC is the primary consideration of children's best interests. This can only be safeguarded in conjunction with the right to be heard and the unconditional recognition of minors as legal subjects who must be appropriately involved in all decisions affecting them. Participation must be anchored and organised in all policy areas. This in turn requires appropriate funding and preparation as well as a culture of respect for children and their opinions.

Basis: UNCRC

The UN Committee on the Rights of the Child (CRC) has repeatedly recommended that Austria prepares a comprehensive national policy for minors, involving and consulting with children and adolescents as well as civil society, develops programmes for its application and ensures effective coordination and monitoring of activities related to the enforcement of the Convention at all levels of state administration. Children's rights are a crosscutting issue and affect the Federal Government, *Laender* and municipalities in legislation and execution.

When creating the format for the NGO Forum 2024, the AOB worked closely with the Austrian Children's Rights Network, to which 55 organisations and institutions promoting the implementation of the UNCRC belong, and involved the Federal Youth Representation. As the aim was not only to talk about children and adolescents, but also with them, the AOB asked children and adolescents to participate actively in the NGO Forum as experts on their own lives.

Cooperation with the Austrian Children's Rights Network

The AOB also invited representatives from politics and administration to the NGO Forum to discuss the implementation of the UNCRC in Austria. In order to better grasp the very broad topic of "children's rights", it was divided into five blocks: Education/inclusion, protection against violence, climate change/participation, child health and child poverty. There were short presentations on each thematic block by representatives from various ministries and *Laender*: the Federal Ministry of Education, Science and Research, the Federal Ministry for Social Affairs, Health Care and Consumer Protection, the Federal Ministry for Climate Action, the Federal Ministry of Education, Science and Research, the Federal Ministry of Health Care and Consumer

Exchange with NGOs, politics and administration

Protection and the Federal Ministry of Carinthia. The participants then joined the speakers in working groups to discuss the topics. AOB employees, who paid particular attention to a constructive and appreciative dialogue, moderated the working groups.

A further sixth working group guaranteed that the children and adolescents were able to discuss the topics that were most important to them. In addition, the AOB took special care to ensure that children and adolescents were able to express their views on each topic in one way or another.

The AOB recorded the contents of the discussion in writing and presented them to the representatives of the parliamentary parties on the second day of the event as part of a panel discussion.

Conference book The fact that much remains to be done in Austria was already all too clear from the opening statements of the minors themselves. Both the representatives of the authorities and the participants perceived the discussions and exchanges at the NGO forum as very valuable and productive. The AOB summarised the contents of the NGO Forum in a conference volume. Here they showed what ministries and Regional Governments are working on, they conveyed how multi-layered and interwoven key policy areas are relevant to children and showed where there are currently areas for action.

Kick-off event on the topic of violence against women

Lecture series "One in Five" In order to counteract actively the taboo and trivialisation of violence against women, the Centre for Forensic Medicine at the Medical University of Vienna organises the annual interdisciplinary lecture series "One in Five" in collaboration with the Association of Autonomous Austrian Women's Shelters (Verein Österreichische Frauenhäuser) and the AOB. The lecture series aims to encourage students from different disciplines to take an in-depth look at the issue of violence and the resulting health problems for those affected with a view to their future professional practice and in an academic context. The AOB uses the lecture series to address the protection and prevention of violence as a political and social challenge, to point out deficiencies and to initiate training and further education programmes in the legal, health and social professions aimed at remedying them.

Focus: Step by step to a life free of violence In order to draw attention to the full range of challenges, the lecture series focuses on a different topic each year. In 2024, the focus was on "One in Five – step by step to a life free of violence". On seven lecture days from 25 November to 10 December 2024, lecturers from various disciplines discussed the individual steps taken by an affected wife and mother of two on the path to a life free of violence. Together with the students, they also discussed the consequences and support options for the perpetrator.

When victims of domestic violence seek medical help, they do not always disclose the causes of their injuries and complaints due to shame and/or fear. Therefore, correctly interpreting existing injury patterns or recognising the violence as a trigger for existing symptoms is not only crucial for the professional care of those affected, but also for the (secondary) prevention of further abuse.

The spiral of violence can often be permanently interrupted through medical intervention by referring patients to appropriate victim protection and support centres after treatment and detailed documentation of their injuries. The lecture series "One in Five" specified the knowledge required for such needs-based care, counselling and qualified referral. In addition, health professionals, employees of various counselling centres against violence and the Austrian Ombudsman Board presented various measures for prevention and intervention.

The kick-off event took place on 20 November 2024 at the premises of the Austrian Ombudsman Board and could be participated in via livestream. It shed light on a special case of "domestic" violence: when the home is a facility, such as a nursing home, a residential group for persons with disabilities or shared accommodation for children and adolescents. Experts discussed with Ombudsman Bernhard Achitz how violence could be prevented there and what those affected, as well as witnesses, could do in the event of a crisis. The event was well received. Around 100 people watched the livestream. Subsequently, the AOB published a video on its website for viewing.

**Kick-off event as
livestream**

Ombudsperson Schwarz launches #Mutfrauen-initiative

In Austria, one in three women is affected by physical and/or sexual violence. More than one in four women have experienced some form of sexual harassment in the workplace. Support and civil courage are the strongest measures to improve this situation. To encourage women and girls to free themselves from domestic violence, stand up against sexual harassment in the workplace and generally stand up for themselves, Ombudswoman Gaby Schwarz launched the #Mutfrauen initiative.

Under the motto "Support from women for women", she brings inspiring women in front of the curtain on her social media channels. They talk about times when they have had to be brave to encourage others. Anyone interested can find out how to join in on Instagram (@gabyschwarz_official) and LinkedIn (@Gaby Schwarz). Because according to Gaby Schwarz: "Women's rights are human rights and the AOB is the Human Rights House of Austria. Every woman has the right to a life free from violence. That's what I stand up for as a woman and as an Ombudsperson."

Together against hate and defamation on the internet

Ombudswoman Gaby Schwarz and the Women's Media Network invited female journalists to the premises of the AOB to an exchange on the topic of online hate and what can be done to combat it. Whether they are journalists, academics or experts in their own field of interest – together, women have a greater chance of successfully defending themselves against online hate. The aim was to discuss, exchange ideas and support each other, but also to develop tips and project ideas to encourage and empower women who are increasingly affected by hate and defamation on social media and by email.

1.6 International activities

1.6.1 International Ombudsman Institute (IOI)

The International Ombudsman Institute (IOI) is a global network of independent monitoring public administrations at national, regional and local level. The IOI has over 200 members in 100 States worldwide and has its headquarters at the AOB in Vienna since 2009.

IOI World Conference in The Hague

The 13th IOI World Conference and General Assembly, which took place in The Hague in May 2024, dominated the IOI membership year 2023/2024. More than 200 participants from all six regions of the world used the conference to share experiences and renew collaborations.

Under the motto "Acting together for our tomorrow", the conference provided a platform to discuss how Ombudsman institutions can contribute to help vulnerable groups in particular to deal with current ecological and economic issues.

Video message from UN High Commissioner

The United Nations High Commissioner for Human Rights Volker Türk also emphasised this task of the Ombudsman in his video message to the conference.

Unites Nations

UN resolution on Ombudsman institutions

Every two years, the United Nations General Assembly adopts a United Nations resolution on the role of Ombudsman institutions in the protection and promotion of human rights. The important role that Ombudsman institutions play in the implementation of the United Nations Sustainable Development Goals and the 2030 Agenda is now recognised in Resolution 2024, which the IOI was also involved in drafting.

High-level panel in New York

In the reporting year, the President of the UN General Assembly organised a high-level panel discussion for the first time on the topic of "Public accessibility and inclusivity: developing strategic initiatives to raise awareness

of the role and work of Ombudsman and mediator institutions in the promotion and protection of human rights, good governance and the rule of law". The participants discussed how the independence of Ombudsman institutions could be strengthened in accordance with international standards such as the UN resolution or the Venice Principles.

Training and continuous education

Together with the Estonian Ombudsman institution, the IOI organised a two-day seminar on artificial intelligence (AI) in October 2024. This topic is of particular importance as Ombudsman institutions must be prepared to include AI systems used by the authorities in their investigative mandates. The training addressed the legal and ethical dimensions of the use of AI, with a particular focus on the EU directives that came into force in 2024. To this end, an e-learning platform has been facilitated to enable IOI members who were unable to attend the training to view the documents covered in the training.

AI training

The IOI also continued its successful collaboration with the African Ombudsman Research Centre (AORC) – the training and research arm of the African Ombudsman and Mediator Association (AOMA) – and participated in several webinar events. One of these was dedicated to the role of Ombudsman institutions in promoting gender equality.

Webinar cooperation

Visits to the IOI General Secretariat

In her function as IOI Secretary General, Ombudsperson Gaby Schwarz received the Ombudsman of Morocco, who was confirmed as the host of the next meeting of the IOI Board of Directors. Study visits from South Korea were also made possible in Vienna during the period under review and the IOI Secretary General received a delegation from the South Korean Anti-Corruption Commission and the Ombudsman institution of the City of Ulsan.

1.6.2 International cooperation

United Nations

In October, the AOB Ombudspersons received the United Nations High Commissioner for Human Rights, Volker Türk, for an exchange at Singerstrasse. Ombudsperson Schwarz used this meeting to inform the High Commissioner about the latest developments in the IOI.

UN High Commissioner visits AOB

As a National Human Rights Institution, the AOB is in regular dialogue with the Office of the High Commissioner for Human Rights (OHCHR) and regularly participates in surveys conducted by the UN Office of the High Commissioner for Human Rights (OHCHR). During the period under review, these included the following topics: the UN resolution on birth registration

AOB contributes to OHCHR surveys

and the right of everyone to recognition everywhere as a person before the law; access to assistive technologies for persons with disabilities; the rights of persons with psychosocial disabilities, and an AOB contribution to the High Commissioner's report on combatting discrimination against intersex people.

National Human Rights Institutions

GANHRI annual meeting The annual meeting and General Assembly of the Global Alliance of National Human Rights Institutions (GANHRI) took place in Geneva in May 2024. GANHRI's observer status to the United Nations Framework Convention on Climate Change (UNFCCC), which enables A status accredited National Human Rights Institutions (NHRIs) such as the AOB to participate in UN climate conferences in the future, was particularly emphasised.

European Network of NHRIs (ENNHRI) At European level, the AOB actively participates in the exchange of opinions and experiences within the European Network of NHRIs (ENNHRI). The AOB was represented at the ENNHRI General Assembly and took part in meetings of the working group dedicated to NHRI standards.

European Union (EU)

AOB contributes to ENO Network meetings The annual meeting of the European Network of Ombudsman institutions (ENO), which is organised by the Office of the EU Ombudsman, was dedicated to the new EU directive on the protection of whistleblowers and the problems and challenges of the free movement of persons in the EU. Experts from the AOB actively contributed to this exchange and addressed the long duration of proceedings for obtaining a residence permit in the European Union as well as problems with access to family benefits and childcare allowances in their presentations.

FRA Fundamental Rights Forum in Vienna For the fourth time, the Forum of the European Union Agency for Fundamental Rights (FRA) took place at Vienna City Hall with the aim of promoting human rights for a better future for Europe. In 2024, the forum focused on human rights challenges related to climate change and technological progress. In panel discussions, the participants examined digital growth as a driver of change, the role and responsibility of technology companies and security aspects of ever-accelerating digitalisation.

FRA Online Forum on EU Fundamental Rights Charter The FRA also organised an online exchange on the EU Charter of Fundamental Rights of the European Union. This is an initiative of the FRA and the European Commission to improve the application of the rights enshrined in the European Union Charter. The aim of this forum is to intensify the exchange of knowledge and experience as well as cooperation between experts, political decision-makers and other interest groups and thus promote the application of the Charter of Fundamental Rights of the European Union in the Member States.

An online conference organised by the European Economic and Social Committee dealt with "Violence against women: A human rights issue". Various forms of violence against women and girls that are not covered by the new EU directive on gender-based violence were analysed. The aim of the event was to provide a perspective for considering a common policy against gender-based violence in order to offer effective strategies against this human rights violation.

Combating gender-based violence

As in the previous year, the AOB once again contributed to the Rule of Law Report of the European Commission during the period under review. As part of this report, data is determined in order to analyse the situation regarding the rule of law in the individual member states.

Rule of Law Report 2024

In December 2024, the European Parliament elected Teresa Anjinho as the new European Union Ombudsman. Ms Anjinho was a member of the Supervisory Committee of the European Anti-Fraud Office, Deputy Ombudswoman of Portugal, State Secretary for Justice and Member of the Portuguese Parliament. She will take up the public authority in February 2025, replacing the previous European Union Ombudsman, Emily O'Reilly, who has made a significant contribution to ensuring a transparent and accountable European Union administration during her tenure.

New EU Ombudsman

Council of Europe

The European Commission against Racism and Intolerance (ECRI) celebrated its 30th anniversary at the 2024 annual seminar and took stock of ECRI's monitoring work over the past three decades. The seminar also focussed on two specific topics: Racism in health care and structural discrimination and institutional racism, i.e. provisions and patterns of behaviour in institutions that consciously or unconsciously make it difficult for groups or individuals to access equal rights and opportunities.

30 years of ECRI - seminar in Strasbourg

The Parliamentary Assembly of the Council of Europe (PACE) elected the former Director of the European Union Fundamental Rights Agency Michael O'Flaherty as the new Commissioner for Human Rights in January 2024. He was invited to an event in Strasbourg to mark the 25th anniversary of the institution.

New Human Rights Commissioner elected

Other events and bilateral contacts

The Petitions Committees and Ombudsmen of the Federal Republic of Germany meet every two years to exchange experiences. Ombudspersons from neighbouring countries regularly take part in these meetings, including the AOB, which was represented by Ombudsman Achitz. The participants discussed the cooperation between ombudspersons and petitions committees and the extent to which this results in efficiency gains or duplicate structures.

Conference in Bremen, Germany

The participants also discussed the advantages and challenges of digital petition processing as well as the specific problem of hate speech on digital petition platforms and the possibility of achieving constructive and productive petitions through moderation.

**Petitions Committee
Rhineland-Palatinate**

Ombudsperson Schwarz received a delegation from the Petitions Committee and the Ombudsman of Rhineland-Palatinate for an exchange of experiences in Vienna. The differences between the Austrian and German systems of contact points for citizens' complaints were discussed.

**Western Balkans
Scholarship
Programme**

The AOB supported a scholarship programme of the Austrian Parliament and the European Fund for the Balkans and welcomed scholarship holders from the parliamentary administrations of the six Western Balkan states to Vienna for an exchange on the functioning and tasks of the AOB.

**Delegation of
Albanian Parliament
in Vienna**

Also, at the request of the Parliamentary Directorate, the AOB welcomed a delegation from Albania to its premises at the end of the year. The officials from the Albanian Parliament are entrusted with the monitoring of independent institutions and are therefore responsible for the monitoring of 25 facilities that report to the Albanian Parliament on an annual basis. In an open exchange, the guests showed great interest in the work of the AOB, the success rate of the implementation of AOB recommendations and the public relations work of the AOB, above all the TV programme "Citizens' Advocate".

**Central European
University Study
Group**

The AOB also welcomed a group of students from the Central European University in Vienna and offered the guests the opportunity to learn more about the history and organisational structure of the AOB as well as its various mandates.

As part of its bilateral cooperation with other Ombudsman institutions, the AOB also responded to an enquiry from the Latvian Ombudsman on the topic of "freedom of association" and an enquiry from the Czech Ombudsman institution regarding the legal framework for the participation of children with disabilities in physical education.

2 Pension for victims of children's homes

2.1 The most important figures at a glance

In 2024, in total 560 applications for a home victim's pension (2023: 661) were forwarded to the AOB for processing. This corresponds to a decline of 15% as compared to 2023, with 169 applications submitted by deaf people (2023: 288). 97 applications were directly submitted to the AOB, who forwarded them to the relevant decision-makers. 61 of these were benefit applications; 36 people applied for a benefit declaration.

**Slight decline
in number of
application**

Women submitted around 44% of applications (2023: 47%) and men 56% (2023: 53%). This means that applications from men increased by three percentage points compared to the previous year. 15 applications were submitted by a legal adult guardianship. In the previous year, there were 13 applications.

One applicant died before the proceedings were concluded. 15 people withdrew their application for home victim's pension. Four proceedings were terminated without settlement, as the applicants did not participate in the proceedings. In 66 cases proceedings were concluded because a care home operator or competent authorities for child and youth welfare and protection paid a lump-sum compensation.

212 people contacted the AOB by telephone and 44 in writing with complaints or questions about the home victim's pension.

**Over 200 telephone
enquiries**

In 2024, the Pension Commission dealt with 505 cases in ten meetings. After careful investigation, it decided on 485 positive and 19 negative recommendations. The AOB closed one case as the person was awarded a lump sum compensation, which made no further recommendations necessary.

31 psychologists, who were supported by twelve sign language interpreters for deaf applicants, prepared 477 reports with the applicants in 2024. 190 clearing reports related to stories from former "deaf-mute institutions".

The proportion of those affected from former "deaf-mute institutions" and from facilities run by the municipality of Vienna remains high, with around 30% and around 21%, respectively. However, neither the federal government nor the municipality of Vienna paid out lump-sum compensation in 2024.

**"Deaf-mute
institutions" and
Vienna homes**

2.2 Challenges for victims of homes

2.2.1 Differentiation between benefit application and declaratory motion

Complex legal situation

The difference between a benefit application and a declaratory motion is that the former can only be submitted if the person concerned has already reached the standard retirement age or has retired from working life. The AOB can only investigate applications for benefits, irrespective of any one-off remuneration paid out. Declaratory motions can be investigated if either a one-off remuneration is no longer possible or if the former care home provider has rejected the application.

Persons who have a positive declaratory notification must submit a new application to receive the home victim's pension when they retire or inform the paying body of the administrative decision made at the time. This ensures that the pension is paid out as soon as they retire.

Shifts in responsibility time and again

However, many of those affected do not understand why they have to apply for a home victim's pension anew after the declaratory motion has been granted. A further difficulty is that a change of benefit provider can lead to shifts in responsibility, particularly from the pension insurance provider to the Ministry of Social Affairs Service.

An affected person contacted the AOB because she had already received a positive declaratory notification in 2021 on the basis of an one-off remuneration payment. After she reapplied for a disability pension and at the same time submitted an application for home victim's pension, her application for a pension for victims of homes was also rejected to her surprise after her application for her personal pension had been rejected.

Austrian Pension Agency forwarded application for responsibility reasons

Subsequently, the AOB initiated an investigative proceeding, which revealed that the application for a home victim's pension should have been forwarded to the Ministry of Social Affairs Service for responsibility reasons after the application for disability pension was rejected. In this specific case, the Austrian Pension Agency apologised to the affected woman for the inconvenience and assured her that the positive declaratory notification she had obtained in 2021 would not lose its legal effect.

In this specific case, however, the question arises as to whether such transfers of responsibility and new applications are actually necessary after a positive declaratory notification has already been issued. It would seem more sensible to optimise the information exchange between the individual public social insurance carriers and the Ministry of Social Affairs Service and thereby prevent additional burdens for applicants.

2.2.2 Many applications from deaf people

In 2024, the AOB received 169 applications for home victim's pension from deaf people (2023: 282). In contrast to the clearing procedure for hearing people, sign language interpreters must accompany proceedings involving deaf people.

169 deaf victims

The problem here is the lack of sign language interpreters throughout Austria. This not only affects the AOB's clearing procedure, but also the initial contact with deaf applicants.

The AOB often communicated with relatives of applicants or utilised the relay service. Outpatient clinics for deaf persons and associations for the deaf also provided intensive support to the AOB. In 2024, 190 clearing reports were prepared with the assistance of twelve sign language interpreters.

The reports of those affected, who were placed in so-called "deaf-mute institutions", refer to institutionalised violence, both physical and psychological. The ban on communicating in sign language and the inadequate access to school education were particularly formative experiences for those affected. As a result, many still lack reading and writing skills. These limitations in turn sometimes hinder their ability to cope with everyday life.

Institutional violence in "deaf-mute institutions"

2.2.3 Problems in administration of applications

In 33 cases, the AOB had to urge the Austrian Pension Agency to process the applications, in some cases several times, as the Pension Agency had sent the letter requesting a reasoned recommendation to the AOB, but not the corresponding application. In these cases, the AOB was also unable to contact the persons concerned, as this data is usually contained in the application. This delayed the application processing.

AOB has to urge applications

Such idle times also caused letters which were incorrectly forwarded to the AOB. In these, the AOB was asked to confirm the payment of lump-sum compensation. In 2024, this happened 22 times. All but two of these enquiries were submitted by the Austrian Pension Agency. In these cases, the Pension Commission office informed the pension insurance provider that the AOB does not pay such remuneration. These are paid exclusively by the (former) care home or youth welfare organisation.

AOB does not pay remuneration

In addition, the AOB received 26 applications for processing where the person concerned had already received compensation. In these cases, the Austrian Pension Agency could have obtained confirmation from the respective care home or youth welfare organisation without any detours and thus concluded the proceedings quickly.

Forwarding of applications delayed

Further problems with respect to the administration of applications arose from the fact that applications were either forwarded late (in some cases only after a year) or rejected without prior referral to the Pension Commission or no notification of the lack of obligation to cooperate was issued before rejection. In another case, the Austrian Pension Agency forwarded an application to the AOB in autumn 2024 that had already been settled with a recommendation from 2018.

In all cases, the AOB was able to clarify the facts by initiating investigative proceedings and help those affected to receive their pension.

2.2.4 Long duration of proceedings for applications for lump-sum compensations

Long waiting times

In particular, people whose applications the AOB cannot (yet) investigate or process (declaratory proceedings) are sometimes faced with long waiting times for clearing appointments at the contact points for lump-sum compensation. The duration of proceedings is at least one to two years.

In view of the high number of applications for compensation submitted to date, it is of course understandable that applications from elderly or older people are preferred to those who are still actively working, especially as the home victim's pension is only paid out when they retire. However, the purpose of declaratory proceedings is to document the injustice suffered at a time when the person concerned is still mentally able to report what has happened. Waiting times of over two years for an interview are therefore unacceptable.

Demand of the AOB

Memory performance declines with increasing age. In addition, illnesses such as dementia can significantly limit the ability to tell stories. People who have already experienced massive violence at a young age are psychologically vulnerable. It should therefore be ensured that the proceedings do not take unnecessarily long as part of the observation of entitlement to a pension for victims of homes.

2.3 Positive developments

2.3.1 Good cooperation with many authorities

Changes within the Austrian Pension Agency

In 2024, the employees within the Austrian Pension Agency responsible for cases with respect of the Pensions for Victims of Children's Homes Act were merged into individual Home Victims' Pensions departments. Now, each *Land* has a department with around three employees who are competent for processing applications pursuant to the Pensions for Victims of Children's Homes Act. These departments serve as the primary contact for all enquiries

in connection with applications under the Pensions for Victims of Children's Homes Act.

By combining the individual officials in charge into groups, concerns could be clarified much more efficiently and quickly. This significantly improved the communication between the AOB and the Austrian Pension Agency.

Cooperation with many other authorities and victim protection institutions also works very well. Networking between the AOB and victim support facilities is particularly important as the workload and the burden on the individual victims can be minimised by pooling resources in the best possible way. A well-established exchange of information – naturally with the knowledge and consent of each individual victim – is essential to ensure that proceedings can be concluded quickly and easily.

Pooling of resources

2.3.2 Federal government resumes compensation payments for deaf victims

Following interviews with those responsible at the Federal Ministry of Education, Science and Research, a draft contract for the settlement of compensation payments was finalised. It is currently being finalised. The Federal Government is thus fulfilling a long-standing request by the AOB to resume the compensation project, which was discontinued before the introduction of the Pensions for Victims of Children's Homes Act. Many of those affected by the former "deaf-mute institutions" Speising and Kaltenleutgeben will now be compensated in the near future through one-off payments for the injustice done to them.

Speising and Kaltenleutgeben "deaf-mute institutions"

2.3.3 Study in Salzburg on violence in a former "Deaf-mute instituton"

It was also pleasing to hear that the *Land* of Salzburg has officially commissioned the University of Salzburg to investigate incidents of violence at the former "Deaf-mute institution of the *Land* of Salzburg" from 1945 to 1980. According to the persons entrusted with the research project, further investigations will be carried out in the next few months in the regional institution and the archives of the *Land*. The AOB will receive regular reports on this.

Historical reappraisal of violent incidents

It will still take some time to come to terms with this injustice that has taken place over decades. However, it is gratifying that this dark chapter of institutional violence in "deaf-mute institutions" is also gradually being brought to light.

3 Monitoring public administration

3.1 Federal Chancellery

3.1.1 Equal Treatment Commission for the private sector rejects substantive investigation

One of the tasks of the Equal Treatment Commission for the Private Sector is to issue expert opinions at the request of affected parties as to whether discrimination prohibited under the Equal Treatment Act has taken place. If this is the case, the commission must submit a proposal to ensure equal treatment to those responsible and request that they put an end to the discrimination. In addition to court proceedings, this should create the lowest possible threshold for victims of discrimination to access the law in the area of protection against discrimination. The results of such individual case reviews are not legally binding. However, they are important in court proceedings, as the court has to deal with the commission's findings in individual cases and justify any judgement that deviates from them.

However, there is no uniform protection against discrimination, but rather different standards of protection for different grounds of discrimination and different areas of life, for which different bodies are competent according to different legal bases. The AOB and many other bodies have long criticised the fact that this fragmentation in equal treatment law often leads to legal uncertainty and makes access to the law more difficult (e.g. European Commission against Racism and Intolerance (ECRI), Report on Austria 2020, p. 7; <https://rm.coe.int>). It is therefore even more important that the competent bodies apply the existing protection against discrimination correctly and in full, which did not happen in the following case.

**Fragmentation in
equal treatment law**

A woman turned to the AOB and complained that her application for determination of discrimination was not investigated by Senate III of the Equal Treatment Commission (competent for discrimination in other areas based on sex and gender), but was rejected on the grounds that it was not competent for the provided reason for discrimination. This senate is competent for the investigation of suspected discrimination based on sex or ethnicity outside the world of work.

With help from the Ombud for Equal Treatment, the woman had submitted an application to Senate III of the Equal Treatment Commission for determination of discrimination based on sex and ethnicity. She claimed that a boxing club had not allowed her participation in a training session because she wore an Islamic headscarf. She was told: "The majority don't want that".

**Suspected
discrimination
because of headscarf**

**According to
Equal Treatment
Commission only
discrimination on
grounds of religion**

Two months later, she received a letter from the Chairperson of Senate III of the Equal Treatment Commission informing her that her application had been rejected because the facts of the case related exclusively to the effects of her faith, i.e. only discrimination on the grounds of religion had to be investigated, which did not fall within the Senate's competence. The chairperson of the senate went on to explain that a ban on head coverings applied to all persons in the boxing club. Her friends, who were also of a different ethnic origin than the majority population and of the same sex, would not have been denied training because they did not wear a headscarf. Therefore, discrimination based on sex or ethnicity, for which the Senate is competent, could not be credibly established.

In her complaint to the AOB, however, the woman argued that the grounds of discrimination of sex and ethnicity were also affected, which is why the Senate should have investigated the content of the discrimination. According to the affected woman, the Senate knew nothing about the identities of her friends and the question of whether they were observed as foreign nationals. In addition, Islamophobia specifically affects recognisable Muslim women who wear a headscarf.

In her statement to the AOB, the Chairperson of Senate III informed the Equal Treatment Commission that the issue had been intensively discussed, but that the Senate had nevertheless come to the conclusion that the facts of the case were "based solely on possible discrimination on the grounds of religion. There were no indications of a denial of access based on ethnicity or sex without prior reference to a religion [...]. Only if a case of discrimination pursuant to Part III of the Equal Treatment Act is alleged, excluding the religious aspect, i.e. if the unfavourable treatment is not based solely on the religious beliefs of the person concerned, [is] Senate III competent [...]. If discrimination can be argued from the motivation of the person responsible without reference to the religious beliefs of the person concerned (e.g. a refusal of admission based on a headscarf/turban because the woman/man is perceived as foreign and rejected), religious discrimination may also be included if the head covering is religiously motivated, but one of the two grounds of discrimination gender or ethnicity is also justified without (prior) reference to a particular religion [...]. The more one recognises the unfavourable treatment solely on the basis of religious conviction (because the act required for the use of the service is rejected on religious grounds), the more the cause of the unfavourable treatment lies solely in relation to the characteristic of religion and the less the competence of Senate III can be given."

The AOB expressly welcomed it as positive that Senate III of the Equal Treatment Commission had dealt in detail with the question of its competence. However, the AOB could not agree with the result.

An in-depth review of the Equal Treatment Commission's previous decision-making practice as well as of case law and literature revealed that the prevailing view is that discrimination based on the Islamic headscarf is not only investigated as possible discrimination based on religion, but also as possible discrimination based on sex and ethnic origin. As the latter two reasons of discrimination fall within the remit of Senate III of the Equal Treatment Commission, the application of the woman concerned should have been investigated in terms of its content.

Also discrimination based on gender

Senate I of the Equal Treatment Commission is responsible for discrimination based on sex in the world of work. In 2014, Senate I had already observed that if a female applicant is not considered in the selection process because she does not correspond to the uniform appearance of female employees specified by the company due to wearing a Muslim headscarf, this falls under the offence of discrimination based on sex (Equal Treatment Commission I/392/11-M, 26 May 2014).

In a series of further expert opinions, Senate I of the Equal Treatment Commission investigated discrimination based on the wearing of an Islamic headscarf under the aspect of intersectional discrimination based on religion and gender. This refers to a situation in which several discrimination reasons apply and interact with each other in such a way that they cannot be separated from each other. The Senate had observed: "The Islamic headscarf affects women in their religious and female identity, which form a unit from an intersectional anti-discrimination perspective. Only the combination of femininity and (visible) religiosity creates the subject position that is undesirable in the company." (Equal Treatment Commission I/1046/21-M, 24 May 2023 et al.).

Intersectional discrimination

This was also confirmed by the court: "In view of the fact that the plaintiff's headscarf is both a religious symbol and one that exclusively concerns women, there is a prima facie case of discrimination based on sex and religion" (Regional Court for Civil Matters Vienna 21 February 2023, 34 R 19/23f).

The literature also predominantly assumes that discrimination based on the Islamic headscarf is not solely a matter of possible discrimination based on religion, but that the grounds of discrimination based on sex and possibly also ethnic origin must also be investigated. "According to the prevailing view, the ban on the Islamic headscarf must be qualified as indirect discrimination based on religion [...]. But, does it also constitute discrimination on the grounds of ethnicity and gender? There is no doubt that the ban on wearing the Islamic headscarf also constitutes indirect discrimination on the grounds of ethnicity [...] in view of the fact that the headscarf is not only an item of clothing with religious but also gender connotations, it can be assumed that there is indirect discrimination on the grounds of religion and gender

(cf. Dullinger/Windisch-Graetz in Windisch-Graetz (ed.), Commentary on the Equal Treatment Act (2022) section 19 Rz 106 f.).

"The intersection of religion and gender is also a relevant problem with respect to access to goods and services. For example, a woman might be denied a visit to a restaurant because she wears a headscarf. Based on the interpretation presented in this expert opinion, this is a case of intersectional discrimination in which the reason that is more strongly protected prevails. Wearing a headscarf for religious reasons is not just an act based on religious convictions, but also a certain kind of gender performance [...] in this case, in the light of intersectional discrimination, the gender factor would prevail and (one) could claim to have been discriminated against for this reason." (Holzleithner, *Bekleidungsvorschriften und Genderperformance – Gutachten für die Gleichbehandlungsanwaltschaft*, 2015, pp. 49 and 71; <https://www.gleichbehandlungsanwaltschaft.gv.at/Themen/rechtliches/gleichbehandlungsrecht-in-oesterreich/gutachten-zum-gleichbehandlungsrecht.html>).

Equal Treatment Commission should have investigated

The AOB had turned to the Federal Ministry for Arts, Culture, the Civil Service and Sports on the subject of "Access to boxing for women with Islamic headscarves". The Ministry also took the view that discrimination based on a headscarf is intersectional discrimination based on sex, ethnicity and religion and that the Equal Treatment Commission should conduct a substantive investigation of the case based on the bundle of motives theory.

Case of maladministration

Since, according to the prevailing opinion in literature, case law and the Equal Treatment Commission's examination practice, discrimination on the grounds of an Islamic headscarf is not only based on religion, but also on gender and possibly ethnicity, Senate III should have investigated the content of the present case. All the more so as the club justified its ban on participating in boxing training with an Islamic headscarf by stating that "the majority do not want this". The rejection of the application by Senate III of the Equal Treatment Commission due to a lack of jurisdiction is a case of maladministration.

3.1.2 Duration of proceedings before the Equal Treatment Commission

Investigation results delivered late

Pursuant to Section 12 (7) of the Equal Treatment Commission/Ombud for Equal Treatment Act, the results of individual case reviews must be issued and delivered within three months of the Equal Treatment Commission's decision. In investigative proceedings initiated based on a complaint, the AOB observed that the individual case examination result in the case in question was delivered four weeks late.

The Chairperson of Senate III of the Equal Treatment Commission apologised to the AOB for the late delivery of the investigation results on behalf of the Senate. Further, she assured the AOB that intensive efforts are being made to ensure that the deadline of Section 12 (7) of the Equal Treatment Commission/Ombud for Equal Treatment Act is no longer exceeded in future.

Equal Treatment Commission apologises

3.1.3 Long duration of proceedings at the Federal Equal Treatment Commission

One of the tasks of the Federal Equal Treatment Commission is to investigate whether discrimination based on sex, ethnicity, religion or belief, age or sexual orientation has taken place in the Civil Service of the Federal Government. The competent senate of the Federal Equal Treatment Commission must issue its expert opinion within the statutory period of six months from receipt of the application. A woman turned to the AOB because she had been waiting for more than a year for the expert opinion of Senate II of the Federal Equal Treatment Commission on her application for an investigation into the violation of the principle of equal treatment.

Affected person waits more than a year

In her statement, the Chairperson of Senate II of the Federal Equal Treatment Commission stated that the application would be processed after the date of submission. In the meantime, a hearing date had been set and the applicant and other persons had been invited. The written expert opinion would be issued as soon as possible after the decision had been made. This meant that more than double exceeded the statutory deadline of six months for the submission of the expert opinion, which is why the AOB observed a case of maladministration.

Maladministration

The Chairperson of Senate II of the Federal Equal Treatment Commission regretted in her letter to the AOB that the expert opinion could not be provided within the statutory deadline. The reason for this were several factors. The time limit standardised by the legislature could hardly be adhered to in practice simply because of the investigations and deadlines that had to be carried out as part of ordinary proceedings. In addition, applications submitted are often not sufficiently substantiated, which is why improvement orders are necessary. The issues to be examined are also becoming increasingly complex.

Insufficient human resources

In addition, the number of applications is increasing more and more rapidly, which cannot be managed within the planned period with the available staff resources. For example, the case numbers of Senate II of the Federal Equal Treatment Commission had increased massively from 28 applications in 2021, to 54 applications in 2022, 65 applications in 2023 and 75 applications by October 2024. By the end of 2024, the number of cases is therefore expected to have tripled since 2021.

**Evaluation
announced**

The Chairperson also announced that in autumn 2024, a new head of the department would be appointed within the Austrian Chancellery, in which the management of the senates of the Federal Equal Treatment Commission and the Equal Treatment Commission are organisationally located. In the course of this appointment, the distribution of tasks and resources would be evaluated. A number of possible measures – ranging from speeding up meeting modalities and further optimising procedures to increasing the use of personnel resources – will be investigated. In any case, the aim is to shorten the duration of proceedings.

The AOB hopes that all necessary measures will be taken as quickly as possible in order to achieve this goal and to be able to provide the expert opinions of the senates of the Federal Equal Treatment Commission within the legally stipulated deadline.

3.2 Labour and economy

Introduction

In 2024, the AOB conducted 459 investigative proceedings conducted in the area of labour and economic affairs, significantly more than in the previous year (2023: 353). Of these, the AOB initiated the majority, namely 290 investigative proceedings, in relation to the Public Employment Service Austria. This is an increase compared to 2023 (210 investigative proceedings), but the total number of cases was still in line with the long-term average.

More complaints

In addition, the AOB received 169 business-related complaints. Around half of the cases concerned the area of plant permit law. As in previous years, people who felt disturbed by noise, odours and other emissions mainly approached the AOB. Just under a quarter of these complaints related to catering establishments. In 28 cases, entrepreneurs seeking help approached the AOB. 13 submissions concerned surveying offices, nine the Austrian Economic Chamber. 39 cases concerned problems with the processing of the craftsman's bonus. Broken down by the *Laender*, most of the complaints came from Styria, followed by Lower Austria and Vienna. The fewest submissions came from the Land of Salzburg and Vorarlberg.

169 business-relevant complaints

3.2.1 Labour market administration – Public Employment Service Austria

Introduction

As in previous years, cooperation with the Public Employment Service Austria was good. The Public Employment Service Austria responded promptly and comprehensively to the AOB's requests for statements on complaints. If the AOB observed violations of legal provisions or raised objections, the Public Employment Service Austria generally reacted very quickly and made the necessary corrections in the interests of the unemployed persons concerned.

Good cooperation with the Public Employment Service Austria

In many cases, the Public Employment Service Austria accepted the AOB's intervention even if the persons concerned still had legal remedies at their disposal. If the recommendations and objections of the AOB were taken into account and the proceedings ended with a favourable administrative decision (preliminary decision granting the appeal), the Public Employment Service Austria did not have to observe a case of maladministration within the meaning of Article 148a of the Federal Constitutional Law because the AOB itself restored the legally compliant situation within the framework of the ordinary appeal proceedings.

Wide range of complaints In terms of content, no real focal points crystallised in 2024. The complaints and investigative proceedings covered the full range of Public Employment Service Austria's enforcement activities. They concerned both the sovereign area of the Public Employment Service Austria (e.g. blocking or reclaiming unemployment benefits or emergency assistance) and the area of private-sector service provision (placement and caregiver support for jobseekers and the granting of subsidies and grants).

Minor secondary employment: Unlawful instruction of the minister

Compulsory insurance for multiple employment In the second half of 2024, unemployed people complained to the AOB because their unemployment benefits or emergency assistance had been rejected or discontinued. This was done based on Article 12 (3) (h) of the Austrian Unemployment Insurance Act in conjunction with the "Final implementing directive of the Federal Ministry of Labour and Economy on the provisions of the Unemployment Insurance Act 1977 based on the Constitutional Court of Austria's ruling of 6 March 2023 (G 296/2022). According to this people with multiple minor secondary employments will be covered by unemployment insurance from 1 April 2024" (Zl. 2024-0.343.191).

The AOB doubted the legality of the implementation directive and consequently the administrative practice of the Public Employment Service Austria. According to this, someone who has just lost their job would also have to end their minor employment in order to receive unemployment benefits. The AOB contacted the Federal Minister of Labour and Economic Affairs at the end of October 2024.

Relevant factual constellation An unemployed person was receiving unemployment benefits or emergency assistance and at the same time was employed with remuneration (wage or salary) below the marginal earnings threshold under social insurance law (minor employment). This employment was only subject to compulsory accident insurance, but not to unemployment insurance, which is why the person continued to be considered unemployed. The person then took up further employment with a salary above the marginal earnings threshold under social insurance law (fully compulsorily insured employment). Parallel to this new, compulsorily insured employment, the minor employment relationship continued. The receipt of cash benefits from the statutory unemployment insurance scheme ended when the fully compulsorily insured employment commenced. It is important to note that the two employment relationships were with different employers.

The fully compulsorily insured employment was later cancelled, but the minor employment continued uninterrupted. The person concerned again applied for unemployment benefits or emergency assistance. However, the Public Employment Service Austria rejected the claim for cash benefits

with reference to Article 12 (3) (h) of the Unemployment Insurance Act in conjunction with the implementation directive described in more detail above, as there was no unemployment and therefore a central eligibility requirement for unemployment benefits or emergency assistance was not met.

The Public Employment Service Austria stated that as a result of the Constitutional Court of Austria's ruling of 6 March 2023, the low-paid employment subsequently also fell under the statutory unemployment insurance obligation due to the overlap of the employment relationships. This constitutes a case of application of Article 12 (3) (h) of the Unemployment Insurance Act. Remunerations of unemployment benefits or emergency assistance would only be possible if the minor employment was interrupted for at least one month, calculated from the end of the unemployment insurance obligation. In the case of continuous minor employment, there would be no entitlement to unemployment benefits or emergency assistance.

Argumentation of Public Employment Service Austria

This enforcement practice is incomprehensible and disadvantageous for those affected. The AOB had legal concerns against the background of the wording of Article 12 (3) (h) of the Unemployment Insurance Act, which does not refer to case constellations with different employers, but to cases of continued employment with the same employer. In addition, the AOB raised the question of what the general purpose of such an enforcement practice would be in the present constellation and whether this enforcement practice can be reconciled with the purpose of the standard in Article 12 (3) (h) of the Unemployment Insurance Act at all.

Enforcement practice contradicts wording and purpose of the law

Pursuant to Article 12 (3) (h) of the Unemployment Insurance Act, a person who is in minor employment with the same employer (!) is not considered unemployed unless there has been a period of at least one month between the previous employment and the new marginal employment.

The AOB explained to the Federal Minister of Labour and Economic Affairs that the provision of Article 12 (3) (h) of the Unemployment Insurance Act dates back to the Structural Adjustment Act 1996 (Federal Law Gazette 1996/2001), whereby the legislature pursued the goal of preventing the abuse of cash benefits from statutory unemployment insurance. The legislature had in mind the case where an employment relationship with an employer that is subject to full insurance is only terminated in appearance, but is actually continued (at best with a reduced number of hours) with the same employer and in reality, there is no minor employment relationship at all. This law provision also intended to prevent the economic risk of a company (employer) from being passed on to the statutory unemployment insurance scheme and (partial) substitution of a loss of earnings by way of unemployment benefits. The Supreme Administrative Court also referred to this legal purpose in its ruling of 20 April 2024 (no. 2004/08/0073).

"Anti-abuse provision" not applied

The AOB made it clear that the legislative had a completely different set of facts in mind than those underlying the current complaints when writing Article 12 (3) (h) of the Unemployment Insurance Act. The cases brought to the AOB did not deal with the transfer of entrepreneurial risk to the statutory unemployment insurance scheme or possible abuse through the (fictitious) downgrading of fully insured employment to minor employment. It is true that the continuously exercised minor employment temporarily "mutated" into an activity subject to compulsory insurance (i.e. also subject to unemployment insurance) in order to then assume the status of minor employment again. In fact, however, this (temporary) compulsory insurance did not result from a change in the contractual situation with the employer of the minor employment relationship, but exclusively from the temporary parallelism of employment relationships with different (!) employers.

Literature and case law support the AOB's view

The AOB based its argumentation on voices from the specialist literature and on a ruling by the Federal Administrative Court dated 11 July 2024 (case number: W 141 2293095-1/5 E). Subsequently, the legal opinion of the AOB and the Federal Administrative Court was also supported by a decision of the Supreme Administrative Court (Supreme Administrative Court 19 November 2024, Ra 2024/08/0103).

Correction of implementation instruction

The AOB made a recommendation to the Federal Minister to repeal or adapt the implementation directive in order to restore the legally compliant situation. Otherwise, someone who has just lost their job would also have to end their minor employment in order to receive unemployment benefits. At the end of November 2024, the Federal Minister finally announced that the implementing directive would be amended in line with the legal opinion of the AOB and the Supreme Administrative Court.

Contradictory wording in Public Employment Service Austria support plans

Legal basis

According to Article 38 (c) of the Labour Market Service Act, the competent regional office of the Public Employment Service Austria must draw up a "Support plan" for each unemployed person. Based on the expected needs of support, this plan must contain, in particular, the support's type and nature and the measures envisaged as well as a justification for the intended approach. Placement and measures to improve placement opportunities must ground on the unemployed person's qualifications that the labour market can use. These must be maintained as far as possible or expanded if necessary.

The regional Public Employment Service Austria office must endeavour to reach an agreement with the unemployed person on the supervision plan. However, the legislature states that the support plan can or must be determined unilaterally by the regional office if an agreement cannot be

reached despite efforts by the Public Employment Service Austria. The legal text also makes it clear that an unemployed person has no legal entitlement to certain support measures.

In the practice, the Public Employment Service Austria uses the term "support agreement" when they reach an agreement with the unemployed person on drawing up the support plan. If an amicable solution fails, i.e. if directives for support measures are issued unilaterally, the term "support plan" is used.

Support agreement vs. support plan

In 2024, the AOB was repeatedly confronted with cases of unemployed people with whom no agreement could be reached. However, the support plan still contained wording that suggested that measures had been agreed. Those affected met this with incomprehension. The AOB repeatedly observed that many unemployed persons were not aware that the Public Employment Service Austria was authorised to impose support measures or support strategies.

Contradictory formulations harbour potential for conflict

In the case of a Viennese woman, for example, the AOB observed that the computerised template for support agreements and support plans for Public Employment Service Austria employees was titled "Support plan" ("*Betreuungsplan*") after an agreement could not be reached. The heading "Supervision agreement" ("*Betreuungsvereinbarung*"), which is usual in consensual cases, had actually been removed or changed. However, the text itself then contained wording stating that certain measures had been "bindingly agreed". There was also talk of a "new agreement". These formulations, which may not seem significant at first glance, increased the distrust of those affected towards the Public Employment Service Austria.

In the course of the investigative proceedings, the AOB observed that apparently Public Employment Service Austria employees are able only to change the centrally prescribed formulations within certain limits. The Public Employment Service Austria promised to investigate and clarify this issue internally.

Individual customisation options need to be expanded

Educational leave: Reclaiming further education allowance

In 2024, around 30 people on educational leave complained to the AOB. The Public Employment Service Austria had cancelled or reclaimed their continuing education allowance because, in its opinion, it had been wrongly received.

A young woman from Lower Austria had agreed with her employer to go on educational leave directly after her parental leave. In February 2024, she applied to the Public Employment Service Austria Korneuburg for a training allowance to complete the online training course "Dipl. Tierenergetik" via the institute "SITYA" (Institut für neues EnergieBewusstSein GmbH & Co KG).

The Public Employment Service Austria investigated the application and approved the training allowance for one year in April 2024.

No proof of minimum attendance time

From March to April 2024, the woman received a further education allowance of around 2,400 euros. In May 2024, the Public Employment Service Austria informed her that there were problems with the course institute and that the course she had booked was no longer eligible for funding. In June 2024, the Public Employment Service Austria decreed a repayment notice for the amount paid out to date. The reason given was that the woman was unable to provide evidence of the required minimum attendance time for her online training (amounting to 25% of the total weekly hours).

The woman told the AOB that she had not been sufficiently informed about the requirements for receiving further training allowance. She had trusted that the Public Employment Service Austria had investigated the documents she had submitted regarding the course details and had found them to be in order when granting or awarding the further training allowance.

Pursuant to Article 26 (1) of the Unemployment Insurance Act, further training allowance is payable (in addition to other requirements such as the contractual agreement of educational leave) if participation in a further training programme of at least 20 hours per week is proven (16 hours per week in the case of childcare obligations for children up to the age of seven).

Self-study alone is not enough

According to existing administrative practice and relevant Supreme Administrative Court case law (see Supreme Administrative Court of 7 April 2016, Ro 2014/08/0066-5), the actual course times must not fall below a quarter (25%) of the scheduled 20 (or 16) hours per week. Pure "study time" or exam preparation in the context of self-study outside of educational institutions is not sufficient.

Public Employment Service investigated "basic suitability" of the courses

The AOB asked what criteria the Public Employment Service Austria uses to examine the suitability of a training programme as a further training measure that entitles the recipient to receive further training allowance. They replied that they only investigate the "basic suitability", in particular, whether the requirements of Articles 26 et al of the Unemployment Insurance Act (see below) are fulfilled.

Among other things, a seminar component (course component) of at least 25% (online or in person) is mandatory (also according to the Supreme Administrative Court's court rulings). Furthermore, it is necessary to define start and end of the planned training programme and to specify a concrete teaching or training plan. It is imperative that there is the possibility of interaction (whether electronic or otherwise) with the course organisers or with the trainers.

When applying for a continuing education allowance, the Public Employment Service Austria must first investigate whether the training programme offered

by the course institute offers the possibility of appropriate (seminar-based) participation. The Public Employment Service Austria can only examine the actual participation during the course.

The Public Employment Service Austria informs the applicants in advance about the requirements for the continuing education allowance and the evidence they need to provide (course confirmations, etc.).

At the request of the AOB, the Public Employment Service Austria's federal office considered the provided information to be sufficient. Applicants are informed about the specific requirements either during a personal counselling interview (in the case of a personal application) or via a clearly visible hyperlink to the information page on the topic of continuing education allowance (in the case of an application via the eAMS account). Furthermore, it will be communicated that the stipulated prerequisite for the allocation of the allowance is the successful completion of a training programme, with a weekly requirement of 20 hours (or 16 hours in case of caring responsibilities). In the case of online courses, applicants will be sent a form in which they must confirm that they have completed the required 25 per cent of the course.

When the Public Employment Service Austria learnt that incorrect information had been provided (including by the management of the course institute) for training courses already approved by the "SITYA" institute, it reacted immediately and no longer approved any applications for further training allowance. In instances where the stipulated criteria for the continuing education allowance were not (or had ceased to be) fulfilled, revocations or claims for reimbursement were initiated. A case in point is that of a young woman from Lower Austria.

The majority of those affected, whose circumstances were essentially the same, appealed to the Federal Administrative Court to contest the recovery notices. The court dismissed the first of around 70 complaints as unfounded in a decision dated 9 December 2024 (see Federal Administrative Court of 9 December 2024, W141 2293023-2).

**Decision of Federal
Administrative Court**

The Federal Administrative Court gave reasons for its decision by stating that the "courses" completed by the person concerned did not fulfil the legal requirements of Article 26 (1) of the Unemployment Insurance Act "as she acquired the learning content exclusively through self-study and there were no seminar components or interaction with the course institute at a professional level". The actual number of hours spent working on the course content also fell significantly short of the 20 hours per week stated [note: to the Public Employment Service Austria] or the 16 hours per week required (in the case of caring responsibilities).

In consideration of the petitioners' request, the Federal Administrative Court determined that the legal status was unambiguous. This determination was

made in response to the petitioners' assertion that their trust in the legality of benefit receipt had been established subsequent to the approval of their application [note: by the Public Employment Service Austria]. The persons concerned had submitted registration confirmations that contained false information. It was irrelevant whether it would have been possible for the Public Employment Service Austria to recognise the illegality of the benefit receipt – for example through random visits to course institutes. However, in the view of the Federal Administrative Court, under no circumstances the Public Employment Service Austria could be accused of not having protected the person concerned from her own false statements. Furthermore, the Federal Administrative Court did not consider itself obliged to conduct an investigation into the Public Employment Service Austria's practice of basing its decision whether to grant further training allowance on the information provided by course organisers without conducting a thorough check. According to the court, criticism of the Public Employment Service Austria's previous practice could at most be voiced by the insured community, "which may have been unduly burdened by the unlawful benefit granting".

The AOB asked the Public Employment Service Austria whether – and if so, in what form – they investigate to determine whether the courses selected by the customers also fulfil the other criteria of the Unemployment Insurance Act or comply with the Supreme Administrative Court case laws, for example in order to avoid funding purely "hobby courses". As a response, the Public Employment Service Austria referred to corresponding instructions and decrees of the Federal Ministry of Labour and Economy. The criterion for determining the admissibility of a training measure is its potential for utilisation within the context of labour market policy, which depends on the specific circumstances of each individual case.

It is clear that the Unemployment Insurance Act has not provided a legal definition of the term "continued education measure". The provision of Article 26 of the Unemployment Insurance Act is intended to facilitate the employees' further qualification by means of a leave of absence during which a replacement income is due. Employees should be given the opportunity to keep their professional and labour market qualifications up to date. In addition to further education, this also includes training for new occupational fields. The criterion for the admissibility of an education measure will therefore probably be its potential for utilisation and usefulness in terms of labour market policy (see Sauer/Furtlehner in Pfeil/Auer-Mayer/Schrattbauer, AIV-Komm Section 26 of the Unemployment Insurance Act, Rz 17, as of 01.12.2023, rdb.at).

New forms to prevent abuse

In its statement, the Public Employment Service Austria assured that the "SITYA" case had been taken as an opportunity to provide even more detailed and specific information on the legal requirements for applicants to receive continuing education allowance on the Internet. On the other hand,

new forms have been implemented to prevent abuse, which contain both the current legal situation and the legal consequences in the event that the relevant requirements are not met.

Promotion of higher language qualifications

A person entitled to asylum of Syrian origin living in Vienna, who holds a Bachelor's and Master's degree in civil engineering (both recognised in Austria), turned to the AOB. He recently completed two German courses (level A2 and B1) and achieved very good results. The Austrian Integration Fund therefore urgently recommended that he attend another German course at B2 level and has already agreed to cover the costs. However, the prerequisite was that the Public Employment Service Austria would authorise the course, which has so far been refused.

The Public Employment Service Austria argued that language level B1 was sufficient for labour market integration and offered the man jobs as a kitchen assistant that were disproportionate to his qualifications. However, with his current language level, he cannot find a job that corresponds to his training. In order to work in an occupational field that corresponds to his qualifications and in which labour is urgently needed, a B2 language level is essential.

Language level B1 sufficient according to Public Employment Service

The AOB asked the Public Employment Service Austria Vienna whether a (possibly supra-regional) placement in the vocational field of construction technology would not be expedient as well as support for the acquisition of further language skills (at level B2), possibly in the form of an evening course alongside work.

Due to the intervention of the AOB, the Public Employment Service Austria extended the placement activities to the vocational areas of construction technology and building construction and civil engineering. In order to increase the chances of professional integration in these areas, it will also subsidise a German course (B2) for the man.

AOB obtained concessions from Public Employment Service

Public Employment Service Austria disregards suspensive effect of legal remedies

The Public Employment Service Austria issued an administrative decision ordering the discontinuation of benefit payments to an unemployed person from Styria. He filed a legal remedy with suspensive effect in due time: The man should have been provisionally granted the benefit he had been receiving for the duration of the proceedings before the Federal Administrative Court, as the Public Employment Service Austria had not ruled out the suspensive effect in the administrative decision. However, his complaint to the AOB was directed against the fact that not only was his cash benefit cancelled, but he was also deregistered from public health insurance, despite the fact that he had filed his legal remedies within the deadline.

**General exclusion
not possible**

With regard to the provision of Section 13 Proceedings of Administrative Court Act, the Supreme Administrative Court stated in connection with recipients of unemployment insurance benefits: "The decision to grant suspensive effect is the result of weighing of interests to be carried out in each individual case (Supreme Administrative Court 1 September 2014, Ra 2014/03/0028). [...] Section 13 (2) of the Proceedings of Administrative Court Act is designed to address challenges that exist in practice concerning the collection of any cash benefits that may have been received without authorisation. It also ensures that the interest of the community of insured persons in the collectability of benefits granted to an individual insured person are taken into consideration, even in cases where the benefits may have been granted unjustly. This is achieved by allowing the relevant administrative body to consider the public interests affected when weighing up the interest of the benefit recipient. This provision is enacted without the need for a legally binding decision. If, in the course of this balancing of interests, it emerges that the early enforcement of the contested administrative decision is urgently required due to imminent danger, the authority can exclude the suspensive effect of a complaint by issuing a decision".

The Public Employment Service Austria's decision to withdraw the suspensive effect must therefore always include reasons for the decision and reflect the result of a weighing of interests to be carried out in each individual case (see Supreme Administrative Court 01/09/2014, Ra 2014/03/0028). Complaints can be lodged against the exclusion of the suspensive effect which the administrative court must decide on without further proceedings (in summary proceedings, as it were) in accordance with Section 13 (4) of the Proceedings of Administrative Court Act.

**Unconstitutional
intervention**

In fact, the competent Public Employment Service Austria's regional office admitted to the AOB that it had not weighed up any interests in deciding whether to exclude the suspensive effect of the legal remedies and recorded this in the decision, but had instead immediately suspended benefits. This course of action is unlawful and encroaches on spheres protected by fundamental rights. The Constitutional Court of Austria has repeatedly stated that it is contrary to the principle of the rule of law to generally burden those seeking legal protection with the consequences of a potentially unlawful decision until their application for legal protection is finally settled.

The actions of the Public Employment Service Austria's regional office violated the affected person's constitutionally guaranteed right to effective legal protection, as he was unable to defend himself against the immediate cessation of benefit payments by means of summary proceedings. The Federal Administrative Court's decision in the main proceedings dismissed his legal remedies, which is why the Public Employment Service Austria no longer had to make any additional payments.

3.2.2 Trade and commercial law

The AOB already reported on complaints about low-frequency noise, infrasound, structure-borne noise or humming sounds in the Annual Report 2023, volume "Monitoring of public administration", p. 52. The spokesperson of a platform that deals with this issue in Styria also contacted the AOB.

Neighbourhood nuisance due to low-frequency noise

The *Land* of Styria set up a project group to investigate humming sounds. The project report from September 2024 is now available. According to this report, survey sheets were completed from 2021 to March 2024 for 46 complaints about low-frequency noise immissions. Eight of these cases were the subject of the "Brummton Projekt" (humming project) carried out by Department 15 (Energy, Housing and Technology) of the Regional Government of Styria. The project group only selected cases in which a connection between the complaint and an officially approved installation could be established. In the case of unspecific complaints, the public authority of the Styrian Regional Government has no legal means at its disposal to take action and investigate possible sources of the humming sounds.

Styria: Report on humming sounds

The basis for the recommendation was the applicable standard DIN 45680 ("Measurement and evaluation of low-frequency noise immissions in the neighbourhood") from 1997. As part of the project work, the authority observed that the level of protection provided by the standard applied was relatively high in international comparison and that the standard applied in Styria could therefore be described as very good. However, it was not left unmentioned that the DIN 45680 standard is the subject of debate among experts and in public discourse despite the relatively high level of protection. There have been several attempts to revise the standard in recent years. The latest draft dates back to 2020, but has so far failed to gain acceptance.

Measuring devices with low-noise microphones are used for measurements due to hum complaints. These devices are specified by the manufacturer for a frequency range of 6 Hz to 20,000 Hz and therefore cover the infrasound range below 20 Hz as well. As Department 15 has a sufficient number of suitable and calibrated measuring devices that correspond to the state of the art, no new measuring systems were purchased for the hum measurement – apart from an additional low-noise microphone. As this was a temporary project, it was not necessary to increase the number of staff.

Based on the survey sheets received, the Land of Styria drew up a humming sound register. The register makes it possible to recognise particularly polluted areas if there are clusters of complaints in certain regions. So far, they did not identify areas where clusters of complaints have occurred. The spatial distribution of complaints essentially correlated with the population density in Styria.

Humming sound register

Cooperation planned across the *Laender* Finally, the *Land* of Styria informed the AOB that they considered cross-provincial cooperation in the future to ensure a uniform course of action throughout Austria. The 2024 conference of *Laender* environmental experts, under the leadership of Styria, suggested an exchange of information on low-frequency noise immissions with the involvement of the federal government. Relevant bodies such as Forum Schall and the Austrian Working Group for Noise Abatement should be involved in the exchange of information.

Noise nuisance from pelletising plant A couple complained to the AOB about a pelletising plant within the jurisdiction of the Murau district authority. The affected persons were exposed to unreasonable noise nuisance due to chipping and shredding work as well as the manipulation of tree trunks using a wheel loader.

Expert opinion takes 8 months During the investigative proceedings, it emerged that the district authority had commissioned the official noise expert of the public authority of the Regional Government of Styria to prepare a noise expert opinion in February 2024. The expert opinion was not submitted until October 2024. The public authority of the Regional Government of Styria described the delay in preparing the expert opinion as an "isolated case". Due to concerns from the neighbourhood that the location of a measuring point near a hedge would lead to incorrect measurement results, additional surveys and literature research were necessary to determine the influence of vegetation near the measuring point. In addition, the competent official expert had been involved in a large number of complex and labour-intensive administrative procedures in connection with major events. The AOB took note of the authority's reasoning, but noted that the eight-month duration of the expert's report was in any event a case of maladministration.

In his expert opinion, the official noise expert concluded that the operation of the chipper would significantly change the current situation. Without wishing to pre-empt a medical assessment, the official noise expert therefore considered it necessary to implement measures such as additional shielding and a reduction in the sound power level and/or to reduce the operating times.

The expert opinion on noise has since been forwarded to the district authority's medical officer for a medical statement and to the operating company for a statement as part of the hearing of the parties. The AOB's investigative proceedings were still pending at the time of the report.

Noise nuisance from deposit bottle return machine One man described being exposed to noise nuisance from the bottle return system of the neighbouring supermarket. In August 2023, the old deposit return system was replaced with a new one. Since then, the banging and clinking of bottles has been clearly audible in his flat.

The AOB obtained a statement from the competent district authority in Mödling and was able to clarify that the district authority had approved the

original deposit return system for bottles and crates in 1995. The operator had installed a new deposit return system due to the deposit regulation for disposable drinks packaging that came into force on 1 January 2025. The company assumed that this was an equivalent replacement of a machine in accordance with Section 81 (2) (5) of the Austrian Industrial Code 1994, which does not require authorisation.

During an on-site inspection, including an audio test, the legal expert from the district authority observed that the new deposit return system could be heard in the neighbour's flat. The branch management then agreed to insulate the system. After the district authority again noticed noise emissions in March 2024, it decreed a procedural order in accordance with Section 360 of the Austrian Industrial Code and prohibited the use of the new deposit return system. At the same time, it initiated criminal proceedings, as the district authority considered this to be a change to the operating facility that required authorisation. The operator subsequently reported an emission-neutral change in accordance with Section 81 (2) (7) of the Austrian Industrial Code 1994. The district authority commissioned an official expert for noise technology to investigate the facts of the case.

Mödling district authority prohibits operation

During a local inspection at the end of August 2024, the district authority observed that customers were returning deposit bottles at the checkout. The man concerned also confirmed to the AOB that the new machine was not in operation. The AOB concluded the investigative proceedings.

The owner of a property located in the direct vicinity of a grit storage site complaint to the AOB that there were ambiguities or misunderstandings as to whether the mining authority or the trade authority was competent for the facility that was the subject of the complaint. In April 2024, the St. Veit/Glan district authority, as the trade authority, informed the owner that the storage site would fall under the scope of the Mineral Resources Act, as the operator would be carrying out mining activities. Four months later, the district authority informed the neighbour that the trade authority had "ex officio commissioned a comprehensive examination of the facility by official experts from the relevant specialist areas, including all relevant protection interests under trade and commercial law" in response to his complaint.

Competence unclear: industrial or mining authority?

In the investigative proceedings, the AOB was initially able to clarify that the district authority had granted the trade authority approval for the construction of the grit storage site in 1986 and the operating licence for this in 1990. The district authority justified its years of inactivity by stating that it had assumed that the mining authority was competent for the storage site until June 2024, especially as the mining authority itself had initially also affirmed its competence. It was only in June 2024 that the mining authority informed the district authority that investigations had been carried out based on the complaint, which now confirmed the competence of the trade authority.

Trade authority competent, but inactive for years

The trade authority then took over the further complaint processing. In June 2024, the district authority officially commissioned official experts from the relevant departments (Office of the Regional Government, Department 8 – Environment, Nature Conservation and Climate Protection Coordination, sub-departments Noise and Electrical Engineering, Air Pollution Control and Mechanical Engineering as well as Water Ecology and Ecological Water Support) to conduct examinations. According to the opinion from the official expert in the field of noise protection from September 2024, "no operational noise events could have been registered" during unannounced examinations in July and September 2024. During an unannounced site inspection in September 2024, the official expert from the air pollution control department observed, "that the measures taken were sufficient for the activities carried out at the time of the examination".

In September 2024, the noise-plagued man sold his property. As neither the district authority nor the AOB had received any complaints from other people about the storage area, the AOB closed the investigative proceedings.

3.2.3 Craftsman bonus

Only costs for pure labour eligible for funding

During 2024, the AOB dealt with various issues relating to the processing of the craftsmen's bonus. In several cases, the AOB had to inform applicants for funding that, according to the special directive of 15 July 2024 pursuant to Section 8 of the Federal Law to Subsidise the Services of Craftsmen (Federal Law Gazette I No. 31/2014 as amended by Federal Law Gazette I No. 51/2024), only the costs of pure labour are funded. Costs for the purchase or rental of goods, disposal costs, travel costs, planning and consultancy costs are not eligible for funding. The final invoice must show the costs for pure labour separately.

Applications can only be made electronically

The AOB also received complaints about the fact that applications for funding can only be submitted to the processing centre, the Federal Budget Agency, electronically. The AOB explained to those affected that third parties (acquaintances, family, as well as the tradesperson carrying out the work) can also complete the electronic application for people who do not have access to the Internet or who are not as familiar with it. The municipal offices also offer support for applicants.

Difficult to synchronise data with Central Civil Registry

One woman criticised the fact that her funding application had been rejected after her personal data on her photo ID had been compared with the data in the Central Civil Registry. In the investigative proceeding, the Federal Ministry of Labour and Economy confirmed that in some cases "discrepancies" had been observed, "which were due to a particular data constellation in the Central Civil Registry and led to an automated rejection. Specifically, in the case concerned, there were several entries for one and the same person in the Central Civil Registry, which made a clear assignment difficult". The

processing centre had already taken measures to rectify this problem and implemented a technical solution for such special cases. In future, these applications will no longer be rejected automatically. Instead, an additional check loop will be installed to ensure that a correct assignment to a person can be made even if there are several entries in the Central Civil Registry. The Federal Budget Agency informed the applicant of the facts by telephone and informed her that she could resubmit her application.

Some applicants described problems when entering their (postal) addresses. The AOB referred the matter to the Federal Ministry of Labour and Economy and was able to clarify that the address search function in the electronic form for the craftsmen's bonus is based on data from the Address, Buildings and Housing Register. The reasons for the isolated problems vary. For example, as in the case of the City of Vienna, the use "pseudo-building (tents, caravans, etc.)" and not "dwelling" could still be stored in the database in the case of buildings for partly historical reasons ("allotment garden") or in the case of demolition with new construction. However, the competent city or municipality would solve problem reports when entering addresses by correcting them in the Address, Buildings and Housing Register.

Problems when entering addresses

Several submissions related to the problem that the company providing the service could not be found in the company search. The Federal Ministry of Labour and Economy reported that the department was aware of these problems. An optimisation of the company search was implemented in July 2024. Since then, the company search has been narrowed down and simplified by entering the postcode.

Problems when looking for companies

The AOB confronted the Federal Ministry of Labour and Economy with the allegation that enquiries were being dealt with slowly or not at all. The ministry responded that the large number of applications and enquiries could lead to delays in replying to emails and longer waiting times at the Federal Budget Agency's call centre.

Delays

Due to numerous insults and threats, the Federal Budget Agency's project management team has now given instructions not to provide any information about employees in the call centre by name. If required, the call centre employees may only name the project manager and his deputy as contact persons.

No information about employees in the call centres

3.2.4 Surveying offices

For years, the AOB has observed that citizens know little about the competence of the land surveying offices. In 2024, the AOB therefore endeavoured to provide information on the legal situation, for example, about the difference between a property tax register and a property boundaries land register. The AOB repeatedly had to explain to those

Information

affected that the area information is not binding, neither in the land register nor in the property boundaries land register. The AOB also had to point out repeatedly that surveying civil engineers are not subject to the AOB's investigation competence.

3.3 Education, science and research

3.3.1 Education

Introduction

In 2024, the AOB once again recorded an above-average number of cases in the area of education (schools) (117). While the focus of the complaints was on school teaching for many years, the majority of cases in the past year again referred to public employment law: with 62 compared to 40 complaints concerning school teaching and thus more than half of the total number.

**117 business cases
focus on public
employment law**

While the number of complaints in recent years often related to the COVID-19 protective measures in schools and their consequences, this issue receded into the background in 2024. Instead, as in 2023, there was an increase in complaints in connection with the recalculation of teachers' salaries, which was necessary due to the court rulings of the independent judiciary of the European Union (CJEU). The focus was on procedural delays, again primarily at the Department of Education in Vienna. However, a significant success was achieved in the area of enforcement of employment law.

Serious violations of the duty to cooperate with the AOB

In general, cooperation between the AOB and the Federal Ministry of Education, Science and Research and its subordinate Departments of Education in the *Laender* is satisfactory. Exceptions can be observed in particular where the ministry apparently fears increased public attention, which leads to inadequate responses to AOB's enquiries. This was observed, for example, during the time of the school measures against COVID-19 (see Annual Report 2021, volume "Monitoring public administration", p. 46 f.)

**"Ban of information"
regarding sex
education lessons?**

The AOB must present a similar – particularly serious – case at present: At the beginning of July 2024, the AOB initiated an investigative proceeding based on media reports that the content and teaching materials (e.g. presentation of condoms with different flavours) used in sex education lessons at a primary school were – at the very least – not age-appropriate. Shortly afterwards, several affected parents contacted the AOB as well.

In its first statement, the Federal Ministry of Education, Science and Research clarified that a "presentation of 'condoms of different flavours' [...] is not provided for in the curriculum". For the rest, however, the ministry refused to make any comments beyond general statements. It is noteworthy that the Secretary General of the Federal Ministry of Education, Science and Research approved this statement on 29 September 2024, i.e. on the Sunday of the National Council elections.

**First statement
approved on
"Election Sunday"**

The AOB continued insisting on a comprehensive sex education report. It was not until shortly before Christmas that the AOB received the second

statement from the Federal Ministry of Education, Science and Research. This, however, again did not contain even a remotely adequate answer to the AOB's questions. The department even falsely declared itself largely incompetent, even though the quality of school lessons and teaching materials was in question and the Federal Ministry of Education, Science and Research is the highest authority for school quality management. The AOB therefore had to approach the Federal Ministry of Education, Science and Research again, reminding it of its obligations under Article 148b (1) of the Federal Constitutional Law and pointing out possible criminal law implications.

Department of Education Upper Austria also refuses to provide information

The investigation subject also includes aspects of public employment law: Enforcing public employment law for compulsory schoolteachers falls within the responsibility of the *Laender*. Thus, the AOB approached the Upper Austrian Department of Education at the beginning of October 2024. When the AOB did not receive a statement by the end of the year, they sent an urgent request and learnt that the Department of Education did not receive the AOB's enquiry. The department's statement, which was submitted because of the request, can be summarised as follows: The Upper Austria Department of Education had investigated everything and found no misconduct and no deficient teaching materials. There was not even a rudimentary description of the content of the investigations, which could have made them comprehensible to the AOB.

Thus, approximately six months after the investigative proceedings were initiated, the AOB did not receive a substantive statement – neither from the Federal Ministry of Education, Science and Research nor from the Department of Education of Upper Austria. Such a serious disregard of the duty to cooperate pursuant to Article 148b (1) of the Federal Constitutional Law by two bodies simultaneously in the same matter was unprecedented in the recent past.

Delayed salary calculation based on seniority leads to inflation losses

15 new complaint cases

Several times in recent years, the AOB has already reported on problems and delays in salary calculation based on seniority (see most recently Annual Report 2023, volume "Monitoring public administration", p. 63). In view of the Court of Justice of the European Union (CJEU) case law on age discrimination, there is still no sign of any easing in this area. No other specific problem area recorded so many complaints in 2024 (15). Although this is only the tip of the iceberg. As the national provisions were still in breach of EU law, the Court of Justice of the European Union (CJEU) issued another ruling on this topic in 2023, which necessitated further (legal) adjustments and entailed and still entails recalculations.

The AOB's intervention also led to an acceleration of the calculation work in several cases in 2024. The "problem hotspot" continues to be the Vienna Department of Education. For years, the personnel managers there have not been able to allocate staff appropriately to ensure that cases are processed more quickly; this was also the case in at least one other area in the past (see Annual Report 2023, volume "Monitoring public administration", pp. 59 et seq. – topic of home schooling). However, the inconveniences indirectly associated with the long calculation time are not the only ones.

One complaint illustrates this drastically: A teacher approached the AOB in June 2023 because her anniversary bonus, which was already due in July 2022, had not yet been paid. After the AOB intervened, the Federal Ministry of Education, Science and Research instructed the Vienna Department of Education to make the payment in September 2023. The payment – four times the monthly salary – was calculated based on the monthly salary for July 2022 (the month in which the required period of service for the anniversary bonus had been reached and it should actually have been paid out). The AOB received another complaint in connection with an anniversary bonus. In addition, the AOB recorded complaints in which the delay in calculation sometimes amounted to several years (in one case even approx. four years).

Anniversary bonus loses significant value

In times of a relatively stable monetary value, such delays were annoying, but did not generally lead to any serious further disadvantages for employees. In view of the significant increase in inflation since 2022, there is now a considerable reduction in the value of salaries paid too late.

Therefore, the AOB (again) pleaded not only for the rapid payment and for adjustment of staffing levels in the competent organisational units, in particular the Vienna Department of Education, but also for an inflation adjustment by paying compensation. The AOB considers the failure to adjust staffing levels in time in order to complete the calculations in a timely manner to be misconduct (organisational fault) which gives rise to liability. The (personnel) managers have known the problem for several years.

Organisational negligence causes reduction in salary value

Nevertheless, the Federal Ministry of Education, Science and Research refused to pay compensation to the employees concerned and even the statutory default interest. From the AOB's point of view, a judicial clarification would be appropriate as to whether and to what extent compensation or default interest is due in such cases.

Judicial clarification required

Disadvantage at agricultural and forestry schools

The Federal Ministry of Education, Science and Research is responsible for the special directive "*Berufsmatura: Lehre mit Reifeprüfung*" (i.e. a vocational baccalaureate: apprenticeship with school-leaving examination). Only apprentices who fall under the Vocational Training Act

Discrimination by type of school in education funding

(*Berufsausbildungsgesetz*) are eligible to benefit from preparatory courses for the vocational school-leaving examination subsidised under this Directive. Those who fall under the Vocational Training Act for agricultural and forestry schools cannot benefit from these subsidies. For the latter apprentices, there is also no comparable funding for the organisation of preparatory courses, meaning that they have to finance their (unsubsidised) further education themselves.

In the AOB's view, there was a gap here. It therefore initiated *ex-officio* investigative proceedings and enquired about the reasons for the differentiation. Furthermore, it recommended that this Directive also be made applicable to apprentices under the Vocational Training Act for agricultural and forestry schools as soon as possible.

AOB achieves equal treatment

After the AOB intervened, the Federal Ministry of Education, Science and Research announced that from 1 November 2025, apprentices in the field of agriculture and forestry would also benefit from the advantages of the "Berufsmatura: Lehre mit Reifeprüfung" programme. This announcement should be recognised as positive in principle.

However, the statement of opinion does not contain any factual justification as to why this target group was not included in the programme from the outset. From the AOB's point of view, no objectively viable reasons are apparent for the previous differentiation, which is why the AOB identified shortcomings in the programme. The long wait for the announced change is also to be criticised.

Problems in the training of sports teachers

Misleading promises

A man completed a training programme for sports teachers at the Federal Sports Academy. The academy's website, under the heading "Diploma sports teacher training", stated that participants in this course "among other things, [were] given the opportunity to qualify for the subject of "Bewegung und Sport" (movement and sports) in compulsory education [...]". In fact, this was only the case for special contract positions, but not for regular ones. In addition to this misleading wording, the person concerned also criticised the high cost of post-qualification as a regular teacher.

In its statement of opinion dated 31 December 2023, the Federal Ministry of Education, Science and Research announced that it would arrange for the ambiguous passage on the website to be amended. Furthermore, a clear provision should be drawn up regarding the extent to which training participants at the Federal Sports Academy have the opportunity to have their training recognised when starting a teacher's training programme.

Long duration for correction

In mid-2024, the Ministry still did not implement the announced change on the website. The AOB therefore approached the Federal Ministry of

Education, Science and Research again following a new complaint from the person concerned. As a result, the desired clarification was finally provided. The man was also given an explanation of how best to "upgrade" the training at the Federal Sports Academy for the regular teaching profession.

Severance payments upon move to another *Land* and pragmatism

A teacher had worked in Styria for 17 years before her current employment in Lower Austria. In the course of the amicable termination of her employment as a regional teacher in Styria in 2008, she applied for an "old severance payment" by way of a voluntary agreement (there is no legal entitlement in the event of amicable termination). The public authority of the Regional Government of Styria joined this endeavour. However, due to the rejection by the (then) Federal Ministry for Education, Arts and Culture, the severance agreement did not materialise.

On 1 January 2003, the legal changeover from the "old severance pay scheme" to the "new severance pay scheme" also took place in public employment law for teachers. If a teacher terminates their employment relationship with one federal state after this date – which was established when the "old severance payment" was still valid – and establishes a new one with another federal state, the "new severance payment" applies to the new employment relationship in accordance with the wording of the law. Entitlements to the "old severance payment" expire, e.g. in the event of contract termination by the public employees or termination by mutual agreement, if no severance payment agreement is made. In the opinion of the *Laender* involved, the teacher concerned also lost the entitlements she had acquired up to the change of employment and is now seeking to minimise her losses.

However, the Federal Ministry of Education, Science and Research has come up with an employee-friendly solution for such constellations: Regardless of the wording of the law, employees do not lose their entitlement to the "old severance payment", when they move to another federal state. Rather, the meaning of the law suggests a different approach: Teachers who terminate their employment relationship in one *Land* by mutual agreement when moving to another *Land* and then indirectly continue their employment relationship in the new *Land* can remain in the "old severance pay" system. This means that the qualifying periods for the "old severance pay scheme" are not lost, as there is no change to the "new severance pay scheme" despite the formal reestablishment of the employment relationship.

**Ministry finds
employee-friendly
solution**

The AOB knows from other similar cases that some *Laender* had previously taken the opposite view – which was perfectly justifiable given the wording of the law with regards to the formal new establishment of an employment

relationship. The Federal Ministry of Education, Science and Research has now clarified that when state teachers move from one federal state to another, an uninterrupted employment relationship can be assumed. According to this legal interpretation, the entitlements to the "old severance pay" therefore continue and the employees are no longer financially disadvantaged by the change of federal state. This endeavour by the Federal Ministry of Education, Science and Research to find an employee-friendly solution deserves recognition.

Pragmatisation eliminates entitlements to severance payments

Unfortunately, this positive development did not bring any improvement for the teacher concerned: she had been pragmatized soon after moving from Styria to Lower Austria when she took up a position as a school headmaster. Pragmatized teachers are generally not entitled to severance pay. In the past, this was compensated for by higher salaries in the later phase of the employment relationship and, above all, by higher pension entitlements for civil servants. However, this compensatory effect was partially lost, particularly after a pension reform. Employees like the teacher concerned are now caught between two stools, so to speak.

It would therefore have been better for her to remain a contract teacher even as a headmaster. She credibly argued that she had been denied this, while the Federal Ministry of Education, Science and Research pointed out that it would have been legally possible for her to remain a contract teacher. As the events took place some time ago, the AOB could not reliably clarify what had actually happened in the course of the headmaster's appointment.

Due to this particular constellation, the AOB argued in favour of the teacher concerned (and in two parallel cases) for a severance agreement based on the "old" contractual relationship, which would be legally possible. However, the Federal Ministry rejected this proposal.

Incompatible language tests at the transition from kindergarten to school

Doubts about the compatibility of language tests

The MIKA-D test (measuring instrument for competence analysis – German) is used throughout Austria to observe the (extra-)ordinary status of schoolchildren and their allocation to German support classes or German support courses. The BESK KOMPAKT and BESK-DaZ KOMPAKT instruments are used in kindergartens to assess language competence in German as a language of education. As the AOB doubted the compatibility of these test procedures, it initiated an *ex-officio* investigative proceeding.

The reason for these doubts was a complaint from the father of a boy whose mother tongue is Romanian. No need for language support had been observed for his son in the last year of kindergarten. However, based on the school test, he was nevertheless enrolled in a German support class due to a lack of sufficient German language skills.

In the Annual Report 2021, the AOB already identified shortcomings in the lack of data that would allow for an evaluation of German language support during the transition from kindergarten to school ("Monitoring public administration", p. 52).

The Federal Ministry of Education, Science and Research subsequently commissioned Statistics Austria to carry out a special evaluation. According to the data presented, over 90% of all exceptional pupils (in a German support class) had previously attended an Austrian kindergarten, but due to serious deficiencies in the teaching language, admission as regular pupils was not permitted. Neither figures nor evidence-based statements could be provided as to whether these children had previously undergone language assessment in kindergarten.

Insufficient data collection

In the course of the process, the Federal Ministry of Education, Science and Research recognised the importance of the comparability of support planning instruments, especially during the transition from kindergarten to school. In 2023, it therefore commissioned the Federal Government's Institute for Quality Assurance in the Austrian School System (IQS) to conduct a study on the comparability of the MIKA-D and BESK-DaZ-KOMPAKT test procedures. In August 2024, the Federal Ministry of Education, Science and Research stated that these tests were clearly related and that no further harmonisation of the instruments or survey methods was planned.

The AOB repeatedly emphasised the importance of data in order to be able to take appropriate educational evidence-based measures. For example, a nationwide survey could provide information on the compatibility of the two test procedures by determining how many children were not observed as needing language support in their last year of kindergarten but still needed to be enrolled in a German support class. The AOB identified shortcomings in the fact that no empirical data had been determined or submitted to the AOB in this regard. Therefore, it is not sufficiently clear whether the statements of the Federal Ministry of Education, Science and Research regarding the compatibility of the test procedures are evidence-based.

In any case, the Statistics Austria's special analysis produced a sobering result: the nationwide compulsory kindergarten year does not ensure sufficient knowledge of German at the beginning of the first year of primary school. This means that an important time window for the acquisition of the German as a teaching and state language appears to be insufficiently utilised.

Compulsory kindergarten year not very efficient

3.3.2 Science and research

Introduction

In the reporting year 2024, 46 complaints related to science and research. Most of the complaints (17) concerned the enforcement of study law provisions at universities. Seven complaints concerned matters relating to student funding.

Assessment of foreign educational qualifications by the Federal Ministry of Education, Science and Research

- Decision deadline of three months** Section 6 of the Austrian Recognition and Assessment Act (*Anerkennungs- und Bewertungsgesetz*) grants the right to an assessment in the form of an expert opinion to persons with foreign educational or professional qualifications who can credibly demonstrate that they intend to take up corresponding employment in Austria. Such applications must be processed "as quickly as possible, within three months of receipt of the complete documents".
- Significant overruns** Several complainants report that this deadline was significantly exceeded. The reasons for this were attributable to the Federal Ministry of Education, Science and Research. For example, the assessment of an application from an Azerbaijani citizen took around ten months. The assessment of a Ukrainian educational qualification took almost a year in one case and was still pending after more than five months in another case. The Federal Ministry of Education, Science and Research essentially justified this with the sharp increase in the number of applications due to the war in Ukraine. Despite "bundling all available capacities", it is currently not possible to process all cases on time.
- Outsourcing of tasks** Operational agendas were transferred from the Federal Ministry of Education, Science and Research to the Austrian Agency for Education and Internationalisation on 1 October 2024. This primarily concerns processes related to individual recommendation of higher education qualifications. In the course of this, a "reorganisation of work processes" will also take place, which aims in particular at reducing backlogs in assessment procedures. Whether this will lead to a significant reduction in the length of proceedings remains to be seen. The Recognition and Assessment Act is intended to simplify the recognition of foreign educational and professional qualifications. A long processing time contradicts this objective.

Delay in exam recognition – University of Graz

A student contacted the AOB because the University of Graz was late in processing applications from June 2024 and August 2024 for the recognition of exam results from another degree programme. According to Section

78 (4) (4) of the Universities Act, a decision on these applications should have been made no later than two months after receipt.

The University of Graz explained that the Bachelor's degree programme in teaching in question is a jointly established programme offered in cooperation by the eight educational institutions of the Development Network South-East 1. In order to ensure a standardised recognition practice at all participating educational institutions, a "recognition group" is consulted to prepare the decision for recognition applications that have never been submitted in this form before. This group consists of experts from each educational institution. Due to this "preliminary procedure", the decision period of two months for applications for recognition, which were submitted for the first time in the development network, is "generally almost exhausted". Subsequently, similar applications for recognition can be processed very quickly.

Recognition group involved

The applicant's admission to the degree programme in question expired in October 2024. At that time, the evaluation of his applications had not yet been completed. As a valid admission to the degree programme for which recognition is sought is a prerequisite for recognition, such recognition was not (or no longer) required.

Authorisation expired before decision

The AOB deems the involvement of the recognition group in the decision-making process permissible. However, this does not result in an extension of the decision deadline of a maximum of two months stipulated by the legislature. If this deadline had been adhered to, a decision would at least have had to be made on the application from June 2024 (with an administrative decision) before admission to the degree programme expired. The AOB therefore identified shortcomings in the duration of proceedings.

University in default

Maladministration with respect to a Master's thesis supervision – Vienna University of Economics and Business

A student at the Vienna University of Economics and Business (*WU Wien*) claimed that he had submitted a "first final version" of his Master's thesis to his supervisor at the end of July 2023. The supervisor had repeatedly promised a customary "preliminary review" of the thesis. However, he subsequently failed to honour this promise and retired. The supervisor no longer responded to several enquiries.

Caregiver does not keep promise

Furthermore, neither the topic nor the supervisor's name were initially entered in the university's database. As a result, the student was unable to submit his Master's thesis officially for a long time without a "preliminary assessment". However, only the submission would have triggered the two-month period for recommendation provided for in the university's statutes. Ultimately, the person concerned was only able to complete his degree programme with a delay of around eight months due to these circumstances.

Delays in graduation

The criticism that the promises of a "preliminary assessment" were not honoured over a long period of time proved to be justified. The university also admitted an error, as they lacked to enter the supervisor's name in the supervisor's database in the first place.

Improve communication

The AOB recommended that the university investigate whether there are sufficient opportunities for students to get in touch with a retired person, especially in the case of supervisors of academic work, in order to avoid delays in the completion of their studies.

Student grant after changing degree programme

The AOB received complaints regarding student grants in 2024, too. There is no entitlement to study grants if students change the degree programme after the third enrolled semester (or after the second year of study) (Section 17 (1) of the Student Support Act).

The students could not comprehend, why they would not be awarded a student grant for a new degree programme solely based on a previous enrolment, especially for people who had been admitted to a degree programme a long time ago without receiving a student grant.

Student grant only after waiting period

Although pursuant to Section 17 (3) of the Student Support Act, it is possible to receive a student grant after a waiting period, the AOB still questions in principle whether such a change of study programme should be detrimental at all in the cases mentioned.

The AOB explained the legal situation to those affected and pointed out that only the legislature can make a change.

3.4 European and international affairs

Introduction

The AOB received 75 complaints from the Federal Ministry for European and International Affairs in 2024. As in preceding years, it was primarily visa applicants who complained about the proceedings at the Austrian embassies. Most of the complaints concerned the Austrian Embassy Islamabad.

Austrian embassies

Visa applicants reported too few or no appointments available for submitting visa applications and that the reasons given for rejecting the visa applications were inadequate. In many cases, applicants also criticised errors in the conduct of procedure, procedural delays and the allocation of appointments for submitting applications.

In order to avoid procedural delays, the Ministry announced increased monitoring and measures to optimise processes, particularly at the Austrian Embassy Islamabad. The AOB is currently unable to predict whether these monitoring visits and measures will have the desired effect. However, it will continue to observe this.

Increased monitoring

With regard to the lack of appointments, the Federal Ministry for European and International Affairs pointed out that the demand for appointments far exceeded the supply. Efforts were being made, but this structural problem could not be solved to everyone's satisfaction, even by optimising the appointment booking system. A significant increase in the number of appointments is simply not possible for capacity reasons.

Demand exceeds the possible number of appointments

In 2023, the AOB had reported numerous complaints about the "black market" in Iran with regard to the allocation of appointments at VFS Global and the Austrian Embassy Tehran. This problem appears to have been largely resolved because of the changeover and stricter monitoring by the Ministry.

Success: combating appointments on the black market

3.4.1 No appointments for visa application – Austrian embassies

In 2024, visa applicants from Iran and Pakistan in particular complained about the fact that no or not enough appointments were available for applying for a visit visa at the Austrian embassies or the private service provider VFS Global. In most cases, the AOB pointed out to those affected that, according to the Federal Ministry for European and International Affairs, the demand for visit visas for Austria was generally too high and asked for patience for the time being.

Insofar as the visa applicants were prospective students or other persons who, according to their own statements, planned to stay in Austria for longer than six months, the AOB also pointed out that they required a residence permit for Austria and not a visa.

Difference between visa and residence permit

3.4.2 Problem with appointments in individual cases – Austrian Embassy Tehran

An Iranian couple contacted the AOB due to a missing appointment. The couple had already succeeded in submitting applications for a residence title in Austria to the Austrian Embassy Tehran. However, there was simply no application date available for their daughter. This made their own travel plans superfluous.

Situation in Iran justifies interest in emigration

The Federal Ministry for European and International Affairs first pointed out that all available dates for applying for residence permits at the Austrian Embassy Tehran were fully booked until the end of 2024. This is due to the deteriorating economic and political situation in Iran and the associated strong interest of many people in emigrating from Iran. At present, an increase in the number of appointments is simply not possible for capacity reasons. In a few cases, however, the embassy cancelled appointments and reallocated them manually. Against the background of the circumstances described by the AOB, such an appointment could also be allocated for the couple's daughter, who had already received positive clearance for Austria pursuant to the Settlement and Residence Act (*Niederlassungs- und Aufenthaltsgesetz*).

Efforts of the Federal Ministry

The AOB took positive note of the efforts of the Federal Ministry for European and International Affairs in this individual case and passed on the good news to the Iranian couple and their daughter. The couple was asked to contact the Austrian Embassy in Tehran directly to arrange an appointment for their daughter, referring to the AOB's investigative proceedings.

3.4.3 Change of local competence by instruction – Federal Ministry for European and International Affairs

Embassy Islamabad is representative authority for Afghanistan

An Austrian citizen requested assistance from the AOB for his wife, who is originally from Afghanistan. She has been in Iran on a visit visa since October 2023. According to his information, this visa could be extended until July 2024 at the latest. His wife had wanted to apply for a residence permit for Austria at the Austrian Embassy Tehran. Despite having an appointment for the application, she had been rejected there and told that she could only apply for the residence permit in Pakistan. However, travelling to Pakistan would be extremely dangerous and difficult for his wife.

The AOB first pointed out to the Austrian complainant that the correspondence he had submitted showed that his wife had booked a "special appointment", i.e. not the correct category for the application for the residence permit she wanted. For this reason, the application could presumably not have been submitted.

The Austrian stated to the AOB that he had received different information about the application for the desired residence permit. He wanted to prevent his wife from having to travel under life-threatening conditions via Afghanistan to Pakistan or through Iran to Pakistan to the Austrian Embassy Islamabad. The AOB requested information from the Federal Ministry for European and International Affairs as to whether and under what conditions it was possible for his wife to submit the application for a residence title for Austria to the Austrian Embassy Tehran.

**Life-threatening
journey to Pakistan**

The Federal Ministry for European and International Affairs replied immediately. The ministry investigates the question of local jurisdiction, as provided for by law, upon the submission of the application. According to the Settlement and Residence Act), the Federal Minister for European and International Affairs could instruct the authority to change the local competence after the application has been submitted. Such an instruction would also be issued in the present case – in line with long-standing practice – if the local competence of the Austrian Embassy Tehran was not already given. The AOB drew the attention of the Austrian and his wife, who lives in Iran, to the problem solution outlined by the Federal Ministry for European and International Affairs.

**Change in local
competence**

3.4.4 Spam folder not checked – Federal Ministry for European and International Affairs

The submissions of a lawyer representing clients with Chinese citizenship in two different visa procedures at the Austrian Embassy Shanghai remained unanswered. The AOB provided the Federal Ministry for European and International Affairs with the data of the relevant submissions and requested an investigation.

**Austrian Embassy
Shanghai does
not respond to
submissions**

The Federal Ministry for European and International Affairs initially referred the AOB to a "data line disruption" at the Consulate General of the Republic of Austria in) Shanghai over a three-day period. The AOB requested a further investigation. The data line disruption could possibly have affected one of the submissions, but did not explain why the other submissions remained unanswered.

After consulting the Consulate General Shanghai again, the Federal Ministry for European and International Affairs announced that it had once again not found any submissions from the lawyer. However, further examinations by the ministry's ICT department had revealed that the lawyer's emails from October and November 2023 had landed in one of the ministry's spam folders. As a result, the submissions had not been delivered to the Austrian representative authority in Shanghai. Technical precautions had now been taken for the email address concerned to prevent such a case from occurring

**Automated
spam filter**

again. The AOB took note of the result and assumes that the spam folders will be regularly checked in the future.

3.4.5 No translation of a standard form into English – Austrian Embassy Moscow

**No legal remedies
due to lack of
German**

A Maltese national living in Austria wanted to invite her mother from Russia to Austria. The Austrian Embassy Moscow refused to issue the requested visit visa with an emergency administrative decision and used the standard form in German. The inviting daughter told the AOB that her mother had filled out an English application form. She did not speak German and for this reason was unable to determine legal remedies against the emergency administrative decision.

**Translation not
provided**

The Federal Ministry for European and International Affairs stated that "generally no English working translation of the emergency administrative decision is offered" at the Austrian Embassy Moscow. A translation into English or Russian was not provided at the Moscow office "for reasons of labour efficiency".

The AOB countered this by stating that previous files of the proceedings submitted to the Austrian Embassy Moscow had contained English translations ("INOFFICIAL TRANSLATION") of emergency administrative decisions and instructions about legal remedies. In addition, the present emergency administrative decision is a pre-printed standard form with tick marks, which does not contain any additional, separate justification. The claim that an English translation could not be provided for "labour-saving reasons" was therefore not comprehensible to the AOB.

Since it was apparent from the file of the proceedings that the correspondence had been conducted in English and the emergency administrative decision did not contain any reasons other than those indicated by the tick marks, the AOB would consider it appropriate to provide a translation 'INOFFICIAL TRANSLATION' of the standard form 'Notification of the reasons for refusal, annulment or revocation of a visa' – as in other cases.

No indirect obligation

Even though the Visa Code does not contain an indirect obligation to provide translations, the AOB believes that, contrary to the statements of the Federal Ministry for European and International Affairs, this would be easy to implement with little administrative effort. The AOB therefore recommended the provision of a translation of the standard form in English not only in individual cases.

3.4.6 Inadequate statement of reasons – Austrian Embassy New Delhi

An Austrian woman complained about the Austrian Embassy New Delhi on behalf of a friend with Indian citizenship. She had invited her family's long-time friend to Austria. The Austrian Embassy had refused to issue a visit visa with a prefabricated standard refusal. The reason why her friend could not accept her invitation was not comprehensible.

The Federal Ministry for European and International Affairs confirmed to the AOB that the Indian national had submitted an application for a visit visa. The reason given for the visit was to visit his friend and her family in Austria for a period of around five weeks. According to the embassy, the application had been "thoroughly investigated", taking into account all the documents submitted. Due to contradictory information, a lack of social and economic roots and insufficient financial means, an emergency administrative decision had been issued. The Indian national had determined the legal remedies of appeal against this decision. Overall, it had not been possible to dispel the doubts of the Austrian Embassy New Delhi, whereby the electronic letter of guarantee submitted had also been assessed as unsustainable.

"Detailed examination"

The Federal Ministry stated that "according to the considerations of the Austrian Embassy New Delhi", the Austrian as the inviting person had claimed that the Indian national was a "very good friend of the family" and that she had known him for nine years. There was "however" an age difference of 36 years between the inviting person and the applicant. The Austrian woman had also stated that she continuously rented a house in Kerala where she and her husband spent the winter. The friend "looked after" this house. He was "reliable, honest and responsible". The constellation and the used adjectives indicated that the Indian national could be "in the service" of the Austrian woman and that the applicant provided these services in return for payment only. The Austrian had also provided the Indian with the money for the flight costs. There were "therefore" considerable doubts about the inviting party's statement that the Indian was invited for reasons of friendship. On the contrary, there was a suspicion that it could be an invitation as a favour or in return for services rendered.

The embassy also had considerable doubts about the Indian's intention to return because he was unmarried and the appeal did not address his social roots in India. The fact that the Indian national, who had already travelled to Austria in the past, was erroneously referred to as a "first traveller" was due to an oversight in the working translation, according to the Austrian embassy.

The AOB found the reasons for the administrative decision to be inadequate. The "considerations" stated by the Federal Ministry were neither included in the emergency administrative decision nor in the grounds of the subsequent administrative decision of Austrian Embassy New Delhi. The reasons for the

"Embassy considerations" not in the administrative decision

administrative decision merely contained prefabricated general formulations according to which the intention to return was not recognisable and there were doubts about the purpose of the stay. The "considerations of the embassy" were also not apparent from the file of the proceedings submitted. In this regard, the AOB stated that the Federal Ministry for European and International Affairs could no longer amend administrative decisions of the embassies that had already become final.

Age difference does not rule out friendship

Apart from this, it was not clear to the AOB, for example, why an age difference of 36 years between the inviting and the invited person and the transfer of money for the flight tickets should refute the existence of a friendship. For example, the fact that the Indian national takes care of the house in India could indicate a friendship. Furthermore, no reasons were given as to why, despite the last visit visa and the timely return in 2018 and despite the information about the visa applicant's property in India, his parents living in India and his newly founded company in India, it was assumed that there was no intention to return. The submitted invitation to the Austrian woman's birthday party in June 2024 and the submitted photos, which suggest a friendship between the Indian and the Austrian woman's family, were also not given any significance.

No concrete justification in individual cases

To summarise, it was not possible to ascertain from the prefabricated standard justifications of the administrative decisions submitted and the contents of the file, which specific reasons led the Austrian Embassy New Delhi to assume that the invitee had not credibly demonstrated the purpose and conditions of his stay and had not sufficiently substantiated his intention to return.

3.4.7 Consulting the Federal Ministry of the Interior – Austrian Embassy New Delhi

No response from the Embassy New Delhi

An Indian national living in Austria complained in May 2024 that his mother and sister had already submitted visa applications at the end of March 2024 but had not received any feedback. The failure to process the applications had paralysed the family plans. The embassy had also held the passports for two months. Enquiries to the Embassy in New Delhi had not been successful.

Consultation Federal Ministry of the Interior

With regard to the 15-day decision period stipulated in Article 23 (1) of the Visa Code, the AOB requested the Federal Ministry for European and International Affairs to investigate. After consulting with the Austrian Embassy New Delhi, the Federal Ministry for European and International Affairs stated that the embassy had received the visa file at the beginning of April 2024. As the Austrian Embassy experienced "uncertainties regarding the inviting party", the ministry arranged a consultation with the Federal Ministry of the Interior. This consultation was still open at the beginning of June 2024. Finally, the Federal Ministry of the Interior responded to the enquiry in

mid-June 2024 by stating that the competent sub-authorities of the Federal Ministry of the Interior had still not issued a statement of opinion. However, Indian nationals are "not subject to consultation" and the decision-making process lies with the embassy itself.

The Federal Ministry for European and International Affairs pointed out that the consultation result was "rather ambiguous" and that there were no reliable grounds for refusal. The Austrian Embassy New Delhi now intends to issue the requested visas and to contact the two applicants. It expressly regrets the long duration of proceedings.

The AOB pointed out the 15-day deadline for deciding on applications admissible under Article 19 of the Visa Code and identified the long duration of proceedings as a case of maladministration. It was not clear to the AOB on what legal basis the Federal Ministry of the Interior was consulted in the visa matter in question. This was apparently the reason for exceeding the 15-day deadline.

No legal basis for consultation

According to the AOB's legal opinion, pursuant to Article 1 of the Visa Code in conjunction with Section 7 (1) and Section 8 (1) of the Aliens' Police Act (*Fremdenpolizeigesetz*), the decision on the visa applications submitted lies solely with the Austrian Embassy New Delhi. This legal opinion appears to be shared by the Federal Ministry of the Interior, which did not consider itself competent.

Decision is sole responsibility of Embassy

3.4.8 General process optimisation – Austrian Embassy Islamabad

Against the background of the complaints described below and other complaints submitted to the AOB about perceived cases of maladministration at the Austrian Embassy Islamabad, the Federal Ministry for European and International Affairs recognised structural problems at this office. In advance of any further investigative proceedings by the AOB, it announced increased monitoring of the embassy. If the processes do not improve as a result of the increased monitoring from Austria alone, the Federal Ministry for European and International Affairs would take additional measures on site.

Increased monitoring of Austrian Embassy Islamabad

In view of this announcement, the AOB asked those affected by any further errors to be patient for the time being until the measures announced by the Federal Ministry for European and International Affairs to optimise the procedures have had their first effect. It remains to be seen whether the improvement measures that have already been implemented or announced will lead to an optimisation of the procedures in the longer term. The AOB will continue to observe this closely and is in ongoing contact with the Federal Ministry for European and International Affairs with regard to the Austrian Embassy Islamabad.

3.4.9 Falsified documents for visas – Austrian Embassy Islamabad

Visitor visas for Austria obtained fraudulently

According to the online newspaper report on "False lawyers swindled visas for European Union", the Federal Ministry for European and International Affairs confirmed that the Austrian Embassy Islamabad had issued 35 visas as a result of falsified documents. The AOB asked the Federal Ministry for European and International Affairs for background information on the cases of fraud described in the media. It asked the Federal Ministry for European and International Affairs to explain what steps it had taken since vis-à-vis the Austrian Embassy Islamabad and what precautions were planned for similar cases in the future.

Forged letter of recommendation

The Federal Ministry for European and International Affairs also reported to the AOB that 35 persons had applied for visas at the Austrian Embassy Islamabad "upon presentation of a letter of recommendation from a Pakistani Austrian Bar Association". This is "a chamber of lawyers who are authorised to provide legal representation at the Supreme Court of Pakistan". The chamber that had written the letter of recommendation was a highly respected local institution. All applications had been "investigated in accordance with the applicable legal framework and consulted with the partner countries of the Schengen system and with the Federal Ministry of the Interior". This consultation had "in one case led to a rejection of the visa application". In addition to the "otherwise planned verification measures", the list was submitted to the embassy's lawyer of trust, who confirmed the letter's authenticity. The stationery was genuine, but the content of the letter and the signatures were not.

It remained unclear to the AOB why 35 visit visas were issued on the basis of an alleged letter from a Pakistani Austrian Bar Association, what the (falsified) content of the letter of recommendation mentioned by the Federal Ministry for European and International Affairs was, and why the consultation with the Federal Ministry of the Interior had only led to a refusal in one of the 35 cases. The AOB therefore asked the Federal Ministry for European and International Affairs for a supplementary statement of opinion in this regard. Furthermore, it asked for information on whether the remaining 34 visa applicants had since left the country and what steps the Federal Ministry for European and International Affairs had taken after the cases of fraud became known.

System being planned at EU level

In addition, the Federal Ministry for European and International Affairs stated that the Austrian Embassy Islamabad had been instructed to react particularly sensitively in similar cases in the future so that fraud cases such as the present one would not be repeated. With regard to the AOB's question concerning re-entry, the Federal Ministry for European and International Affairs referred to a large-scale system currently being planned at European Union level.

Irrespective of the Federal Ministry for European and International Affairs's responsibility, the AOB requested that the Federal Ministry of the Interior provide the relevant information as soon as it was put into operation. To date, it has not received any information in this regard.

3.4.10 Forwarding complaint to Federal Ministry of the Interior instead of Federal Administrative Court – Austrian Embassy Islamabad

In March 2023, a Pakistani national applied to the Austrian Embassy in Islamabad for a visit visa for Austria. In an emergency administrative decision dated April 2023, the Austrian Embassy Islamabad refused to issue the visa because the intention to return was not certain and the purpose of the trip was not credible.

The visa applicant determined her appeal against the emergency administrative decision in May 2023 within the deadline. The Austrian Embassy Islamabad subsequently rejected the visa application. The administrative decision was served to the Pakistani national in August 2023. She determined a complaint to the Federal Administrative Court.

In the AOB's investigative proceeding, it emerged that the Austrian Embassy Islamabad had not submitted the complaint of August 2023 to the competent Federal Administrative Court within two months, but instead after four and a half months (in January 2024) with a draft preliminary decision on the complaint to the Federal Minister of the Interior. The latter issued a directive in March 2024 to forward the physical files to the Federal Administrative Court. When asked by the AOB, the Federal Ministry for European and International Affairs stated that the files had since been sent to the Federal Administrative Court. The Austrian Embassy Islamabad regrets having been late in complying with this "request".

Submission to Federal Ministry of the Interior

The AOB asked when exactly the files had been submitted to the Federal Administrative Court and whether the person concerned had been informed of this – as required by law. The AOB also enquired about the legal basis on which the complaint had been forwarded to the Federal Ministry of the Interior.

In addition, the Federal Ministry for European and International Affairs stated that the file of the proceedings and the complaint were only submitted later. The person concerned had not been notified. The Federal Ministry for European and International Affairs answered the question as to the legal basis for forwarding the complaint addressed to the Federal Administrative Court to the Federal Ministry of the Interior by stating that the Federal

Legal agreement on submission disregarded

Ministry of the Interior is generally responsible for enforcing the Aliens' Police Act. Pursuant to Section 127 Alien's Police Act 2005, in agreement with the Federal Ministry for European and International Affairs, the Federal Ministry of the Interior is responsible for proceedings before the Austrian representation authorities in visa matters.

Pursuant to Section 14 (1) and (2) of the Proceedings of Administrative Court Act (*Verwaltungsgerichtsgesetz*), the Austrian Embassy Islamabad was free to issue a preliminary decision on the complaint of August 2023 within two months or to submit the complaint to the Federal Administrative Court, attaching the files of the administrative proceedings. If it decided in favour of the latter, it had to notify the visa applicant of the submission of the complaint to the Federal Administrative Court.

Submission to Ministry of the Interior instead of Federal Administrative Court

However, the Austrian Embassy Islamabad did not submit the complaint from August 2023 to the competent Federal Administrative Court within two months, but instead to the Federal Ministry of the Interior after four and a half months with a draft preliminary decision on the complaint. Despite the Federal Ministry of the Interior's directive to submit the complaint and the file to the Federal Administrative Court, the complaint and the file of the proceedings were only submitted to it after the AOB had initiated investigative proceedings.

Not within the competence of the Ministry of the Interior

The AOB did not share the legal opinion held by the Federal Ministry for European and International Affairs, according to which the competence of the Federal Minister of the Interior arose from Section 127 Aliens' Police Act, (see Chapter 3.4.7). However, the AOB took positive note of the ministry's announcement that the case in question would be taken as an opportunity to remind the Austrian representation authorities of their duty pursuant to Section 14 (2) of the Proceedings of Administrative Court Act.

3.4.11 Procedural errors – Austrian Embassy Islamabad

A Pakistani couple legally resident in Austria wanted to invite a relative to visit them in Austria. They stated that they urgently needed temporary support because of the birth of their premature twin daughters. The couple complained to the AOB that the Austrian Embassy Islamabad had refused to grant their relative a visa, despite the submission of numerous documents and supporting evidence, merely with a standardised emergency administrative decision and had not decided on the appeal submitted.

First and second appeal unfinished

The invited relative had determined an appeal in September 2023, which had not yet been decided upon. She submitted a new application in December 2023. This new application was also refused with a standardised justification. The Austrian Embassy Islamabad had not decided on the relatives' second

appeal in January 2024, either. The embassy had not responded to the numerous enquiries made by the inviting couple, nor to the legal remedies of the invitees.

The Federal Ministry for European and International Affairs stated that the Austrian Embassy Islamabad had decided on the first appeal in April 2024 and regretted the seven-month decision period. With regard to the second appeal, the Federal Ministry for European and International Affairs stated that the Austrian Embassy Islamabad had mistakenly assessed this as having been submitted too late and had therefore incorrectly rejected it. The relevant proceedings had now been resumed. The Federal Ministry for European and International Affairs had instructed the Austrian Embassy Islamabad to process visa applications with particular care in future.

**Decision after
7 months**

The AOB identified a maladministration in the procedural delays with regard to the first appeal and took note of the resumption of the proceedings with regard to the second appeal due to the initiation of its investigative proceedings.

3.4.12 Late verification of criminal record certificate – Austrian Embassy Islamabad

A student from Pakistan asked the Austrian Embassy Islamabad to verify his criminal record. He complained to the AOB that the embassy in Islamabad did not respond, but that he needed a current criminal record certificate to start his studies in Austria.

After consulting the Austrian Embassy Islamabad, the Federal Ministry for European and International Affairs stated that the student's application in this regard had been forwarded to the embassy's liaison lawyer in June 2024. In August 2024, the Austrian Embassy Islamabad received the liaison lawyer's report. In the meantime, the Austrian Embassy Islamabad had assigned the student a legalisation date in December 2024. The delay between the receipt of the trust lawyer's report and the allocation of the legalisation date was due to the general backlog of verifications and legalisations at the Austrian Embassy. The Austrian Embassy Islamabad has actively worked to reduce this backlog in recent months by restructuring the appointments' allocation.

**Backlog of
verifications**

In view of the fact that the criminal record notification in Austria may not be older than three months in most cases, the AOB considered the six-month period between the forwarding of the criminal record certificate to the trust lawyer in June 2024 and the certification in December 2024 to be too long.

3.4.13 Appeal and appeal against administration's failure to decide "overlooked" – Austrian Embassy Islamabad

A Pakistani family applied for a visit visa, which the Austrian Embassy Islamabad refused with emergency administrative decisions. Subsequently, two family members determined the legal remedies of the appeal, of which only one was decided.

The AOB's enquiry revealed that the Austrian Embassy Islamabad had overlooked the second appeal and had therefore not processed it. Subsequently, the Austrian Embassy Islamabad also overlooked the appeal against the administration's failure to decide. It was only after the AOB's enquiry that the embassy finally submitted the complaint to the Federal Administrative Court together with the file of the proceedings.

Here, too, the Federal Ministry for European and International Affairs once again called on the Austrian Embassy Islamabad to handle legal remedies in the visa procedure more carefully.

3.5 Family and youth

3.5.1 Focus on children's rights

In May 2024, the AOB organised an NGO forum on the implementation of children's rights in Austria. One of the working groups dealt with the topic of protection against violence. With the age of criminal responsibility from the age of 14 and the Juvenile Court Act, Austria has a legal situation in line with international standards (including the UNCRC). However, there are massive deficiencies in the conceptual understanding and legal anchoring of the primacy of the child's best interests as well as in the implementation in practice. For this reason, the AOB, NGOs and authorities have discussed how delinquency by minors under the age of criminal responsibility could or should be responded to in accordance with children's rights if it can be assumed that delinquency in childhood coincides with negative social or health-related stress factors. The background to the age of criminal responsibility is the principle of guilt, according to which penalty presupposes guilt – and guilt requires the ability to decide freely and responsibly in favour of right or wrong.

NGO Forum on Children's Rights

The participants agreed that there is no evidence that the threat of punishment has a decisive influence on deviant, rule-breaking and harmful behaviour in children. From a scientific point of view, there is also no way to determine a universally valid point in time from which people are of criminal age. The point in time depends on the individual's stage of development and a number of other factors. The Juvenile Court Act takes this fact into account by denying criminal liability for behaviour even in children over the age of 14 due to delayed maturity.

A recent study on the causes of juvenile delinquency revealed that 90% of detainees suffer from at least one psychiatric disorder and over 60% even have two or more co-existing disorders. The AOB took the discussion as an opportunity to determine in *ex-officio* investigative proceedings to which youth welfare services minors have access to if they have violated criminal law but cannot be sentenced due to their age (or after the age of 14 due to delayed maturity).

Investigative proceedings determine offers from the *Laender*

All Regional Governments reported back to the AOB that it makes little sense to reduce the age of criminal responsibility, as delinquency cannot be reduced in this way. Analyses of particularly challenging care situations show a worrying accumulation of family, health and social burdens on children. As a result, it is becoming increasingly difficult to care for, teach and provide medical care for these highly stressed children.

Reducing the age of criminal responsibility is not a solution

If delinquency among minors becomes known, the child and youth welfare services investigate whether there is a need for help. According to the Regional Government, social work contacts the families and conducts

Assistance from child and youth welfare services

interviews with the minors and the family system. As a rule, they initiate a risk assessment and, if the child's best interests are at risk, provide individualised help in the form of therapy or anti-violence training. In addition, the guardians receive outreach, family-accompanying parental support. In some cases, children have to be placed in socio-pedagogical shared accommodation or crisis centres for their protection. According to the *Laender*, these measures are the core task of child and youth welfare services and are also provided.

However, the experiences of the AOB and its commissions show that facilities quickly reach their limits in such cases. This is also because the networking of the systems involved in prevention and intervention (parents, police, social workers, psychotherapeutic or psychiatric care and care facilities) does not function sufficiently. There is a lack of nationally harmonised standards.

Youth welfare organisations deny sole competence

In all statements of opinion, however, the Regional Governments emphasise almost verbatim that the in-depth prevention of juvenile delinquency and the therapeutic treatment of underlying psychiatric disorders is not the sole responsibility of child and youth welfare services. It is primarily the responsibility of the justice and health care systems. In the Regional Government's view, the education sector also has a special role to play, particularly in the early identification of problematic developments.

The AOB was informed that in October 2024, the Child and Youth Welfare Conference of the *Laender* therefore requested the Federal Minister of Justice to set up a working group that involves the ministries competent for the health and education sectors as well as the *Laender*. This working group shall aim to develop a proposal for a legal, organisational and financial framework to create mobile and inpatient settings at the interfaces of health, justice, education and child and youth welfare services for particularly vulnerable and at-risk children and adolescents. By the time, the annual report was prepared, such a working group had not yet been established.

AOB: Align offers with children's best interest

Currently, the AOB recognises a pronounced diffusion of responsibility, which impairs the primacy of the child's best interests guaranteed by the UNCRC and the Federal Act on the Rights of the Child.

Examples

There are individual initiatives that show new ways:

- Vienna launched a pilot project in March 2024 in cooperation with the Vienna Police Department. The aim was to reduce the number and intensity of delinquent behaviour among five so-called prolific offenders. Short-term successes were achieved. A working group with representatives from the Vienna Police Department, Municipal Department 11, Municipal Department 13, the public prosecutors' office, the courts, the Psychosocial Services, the Ombuds Office for Children and Youths and various private owners and operators is working on measures

to prevent careers of prolific offenders. The working group mainly focuses on offenders who have reached the age of criminal responsibility.

- The *Land* of Upper Austria set up a cross-sectoral working group to analyse data on the health history of 50 children. They observed parallels in the biographies of the children with high-risk development. All of them had sustained early childhood deficiencies. As a result of the working group's findings, the *Land* of Upper Austria announced the expansion of preventative services and a research project that will take a closer look at the children's biographies.

3.5.2 Many ambiguities in official notifications of endangerment

Certain professional groups are obliged to notify the child and youth welfare services if, in the course of their professional activities, a reasonable suspicion arises that the welfare of children or adolescents is at significant risk. The courses of action within the scope of this reporting obligation are regulated in Section 37 of the Federal Children's and Youth Assistance Act (*Bundes-Kinder- und Jugendhilfegesetz*) 2013. The provision aims to uncover risks to children's welfare by incorporating knowledge from, for example, courts, authorities, childcare facilities, medical facilities, etc. Professional confidentiality regulations do not prevent the fulfilment of the duty of disclosure.

Duty to inform child and youth welfare services

The "Protection against violence" working group at the NGO forum also addressed the duty to report suspected cases of child endangerment. Participants reported challenges in practice, in particular uncertainties among institutions subject to the obligation to notify with regard to the legal framework governing the obligation to notify and specific requirements. A lack of knowledge about the primacy of the child's best interests – also over data protection – enshrined in Article 1 of the Federal Act on the Rights of the Child makes interdisciplinary cooperation in the interests of minors more difficult.

Uncertainties in practice

The AOB therefore contacted the Ombuds Offices for Children and Youth in all *Laender* and requested information on observations regarding the challenges mentioned. In their statements, they confirmed that they were dealing with uncertainties regarding the obligation to notify in enquiries from a wide variety of areas and from different legal entities. This reveals major gaps in knowledge. These concern, for example, the correct assessment of moments of risk, the question of the obligation to notify as such and the specific data and observations to be passed on. There is also repeated confusion about the form of the notification. What is particularly striking are the different levels of information available to the agencies under obligation

Experience reports and offers from the Ombuds Office for Children and Youth

to notify, as well as their different resources for dealing with observations of child welfare risks. There is also often a lack of knowledge about the legal mandate of the other agencies involved in the area of child protection and, in particular, about the role of data protection in working together for the child's best interests.

In order to counter concerns and uncertainties, the Ombuds Offices for Children and Youths offer counselling, training and further education, especially in the school and social pedagogical field, and carry out various information activities. The Ombuds Office for Children and Youths in Burgenland, for example, cooperates with the Burgenland University of Teacher Education and organises training courses for federal school doctors in Burgenland. For the Ombuds Office for Children and Youths Upper Austria, counselling and information activities on children's rights, child protection and obligations to notify were a separate annual goal for 2023/24. The Ombuds Office for Children and Youths of the *Land* of Vorarlberg also offers training for the education sector. The Ombuds Offices for Children and Youths in Carinthia and Styria also offer corresponding educational programmes. In Styria, a network consisting of the Ombuds Office for Children and Youths, the Department of Education and specialist division 11 of the Regional Government's public authority intends to ensure a practice-oriented interface between educational institutions and child and youth welfare services, with a focus on the obligation to notify, among other things.

However, uncertainties about data protection limits continue to hinder the exchange of information between facilities in the help system and immediate networking. For example, it can happen that different facilities have indications that a child's welfare is at risk, which, although not on their own, would lead to the early involvement of the competent authorities for child and youth welfare and protection.

Great demand for information

To overcome the challenges mentioned above, the Ombuds Offices for Children and Youths recommend sufficient support and training programmes tailored to the respective area of activity for institutions with an obligation to notify. Modelled on the German Act on Cooperation and Information in Child Protection, a low-threshold contact point for cases of child endangerment could help to eliminate uncertainties quickly and unbureaucratically and provide certainty in action. There is also a need for an accompanied scientific debate on how the legal basis for constructive cooperation between all the facilities involved could be designed in the interests of child protection – especially taking into account the applicable data protection rules.

Official notification of endangerment as a one-way street

At the NGO Forum, the discussions surrounding the reporting obligation were also accompanied by criticism that there was one-sided communication to child and youth welfare services in connection with reports of child endangerment. For example, authorities with an obligation to notify would

not receive any feedback from the child and youth welfare services about the steps taken by the authorities because the authorities invoke the duty of confidentiality (enshrined in the Children's and Youth Assistance Act of the *Laender*). The laws do provide for an exception to this obligation if there is a predominantly legitimate interest of the minors concerned. However, this would hardly ever be applied.

The Ombuds Offices for Children and Youths deal with this issue repeatedly. It is obvious that a lack of feedback following official notifications of endangerment can lead to a lack of clarity regarding official action and the feeling that a report has been submitted in vain. This in turn has a negative impact on the submission of future reports.

Some *Laender* are already taking steps to improve cooperation:

- In Upper Austria, several district administrative authorities introduced a standardised written feedback-document after an official notification of endangerment. This should be rolled out to all districts.
- The competent specialist division of Styria instructed the official social workers to inform the reporting institutions that the relevant reports had been received and were being processed.
- In the *Land* of Vorarlberg, facilities or persons who submit their information in writing must receive written confirmation that the information has been received and is being processed.

Improvement approaches

In terms of child protection, we should take into consideration whether it would be expedient to provide institutions subject to the obligation to notify with additional information. These informations could regard the initiation of a clarification procedure, the existence of a risk to the child's welfare and any educational support. The Protection of personal data should be safeguarded as far as possible.

Additional measures necessary

In view of the explanations to Section 37 of the Federal Children's and Youth Assistance Act, the disclosure of more specific information appears to be intended in any case. According to these, cooperation between competent authorities for child and youth welfare and protection and facilities that are obliged to provide information is essential in order to ensure the child's best interests. For this purpose, information about steps taken, such as the initiation or completion of the risk assessment and the start of educational support – but not facts about private or family life – may be passed on, subject to the limits of the duty of confidentiality (government bill – explanations with impact-oriented impact assessment, p. 29).

Section 4 (4) of the German Act on Cooperation and Information in Child Protection explicitly stipulates that in the event that the Youth Welfare Office was notified of indications of a risk to the child's best interests, the Office

AOB recommends legal clarification

should promptly provide feedback to the person making the notification. This feedback should include information on whether it considers the strong indications of a risk to the child's or adolescent's best interests to be confirmed and whether it has taken or is still taking action to protect the child or adolescent. It makes sense to amend the *Laender* laws in terms of child protection in Austria correspondingly. The AOB recommends such an amendment.

3.5.3 Family and childcare allowance and maternity benefit

In 2024, the AOB dealt with 190 complaints regarding family allowances, childcare allowances and maternity benefits. This represents a slight decrease in the number of complaints compared to the previous year.

AOB recommends reorganisation of legal situation

The AOB welcomes the fact that the legislature eliminated the so-called "maternity benefit trap" in 2024 (see Annual Report 2023, "Monitoring public administration", pp. 83 et seq.). The old provision was associated with massive disadvantages for women who were expecting a second child relatively soon after their first child: No maternity benefit – and consequently no income-related childcare allowance – was due if a new pregnancy occurred during parental leave but after the end of the childcare allowance for the first child. The Supreme Court had already observed in 2022 (8ObA42/22t) that this provision was contrary to European Union law and thus inapplicable due to the primacy of European Union law. Those affected were able to invoke the indirect provisions of the Maternity Protection Directive 92/85/EEC against the health insurance carrier.

Legislature eliminated "maternity benefit trap"

In the view of the AOB, it was nevertheless necessary to reorganise the Austrian legal situation in order to create a clear legal situation that complies with EU law and thus avoid further court proceedings. In July 2024, the National Council passed the "Special Maternity Benefit Act", which closed the legal loophole described above and introduced a "special maternity benefit" with retroactive effect from 1 September 2022 under Section 163 of the General Social Insurance Act. The maternity benefit is paid out if the mother has not worked or has worked for less than three months in the last three months before maternity protection. Furthermore, it is paid if the mother worked marginally or part-time before the child's second birthday, if maternity protection begins before the second birthday and the if the special weekly allowance would be higher than the regular maternity benefit.

Limit on additional income raised

Previously, a child lost their entitlement to family allowance if they earned more than 15,000 euros per year. This limit was raised to 16,455 euros with retroactive effect from 1 January 2024. In addition, the limit on additional income will be adjusted annually in line with inflation and now stands at 17,212 euros for 2025.

The AOB's efforts to achieve an improvement in the mother-child booklet penalties were successful insofar as the introduction of the electronic parent-child booklet was decided last year (Parent-Child Booklet Act Federal Law Gazette I No. 82/2023). This means that the health insurance carriers can be provided with fully automatic proof that the necessary examinations of pregnant women and children have been carried out. However, this new electronic verification method will not come into force until 2026. Until then, parents must submit the proof of examinations to the health insurance carrier in paper form by the child's 18th month of life at the latest. If they miss this deadline, the childcare allowance will be reduced by 1,300 euros (see also Annual Report 2023, volume "Monitoring public administration", p. 86). In 2024, some affected families also turned to the AOB. They had all carried out the examinations properly, they just had missed the deadline for submission and had not received the reminder letters sent by the health insurance carriers due to various circumstances. One father claimed that he was only able to take care of his son's medical examination certificates relatively late for health reasons. He then missed the grace period by just one day. The AOB had recommended the creation of a transitional provision in the Parent-Child Booklet Act until 2026 to avoid such hardship cases. However, the Minister for Family Affairs rejected this as unnecessary.

Mother-child booklet

The AOB has repeatedly criticised the restrictive conditions for receiving the income-related childcare allowance, in particular the employment requirement (see Annual Report 2020, volume "Monitoring public administration", p. 49 et seq.): In the relevant period before the birth, the parent must have been in continuous gainful employment for 182 days; only an interruption of 14 days does not affect this. In some cases, this leads to results that are difficult to understand and stressful for the families concerned. For example, one mother exceeded the "permitted" 14 days by just three days on which she received sick pay. Another affected person received unemployment benefits for eleven of the 182 days and thus did not fulfil the requirement of continuous gainful employment, either. Both had to switch to the lower special benefit I.

Strict requirements for income replacement system

The period within which an error in the selection of the childcare allowance variant can be corrected is still too short. It is only 14 days, calculated from the date of application. However, the applicant usually notices the error only when they receive the notification of receipt of the emoluments or when they receive the confirmation of receipt of the application. This was demonstrated by the case of a young mother. She had misunderstood the information during the counselling interview and, due to her mistake, received the lump sum instead of the significantly higher, income-dependent variant. This presented the young family with existential financial problems.

Error in variant selection - deadline too short

It is pleasing that many complaints were again resolved positively in 2024 and errors made by the authorities were corrected.

Increased family allowance granted after all

For example, the case of a mother from Upper Austria, who was supposed to pay back over 6,000 euros in increased family allowance to the Tax Office, could be solved. The son is diagnosed with an autism spectrum disorder, is not independent, had to drop out of an apprenticeship and suffers from severe social anxiety. Nevertheless, a Ministry of Social Affairs Service expert opinion downgraded the degree of disability to 30% and denied permanent incapacity for work. This is a prerequisite for the receipt of family allowance for adult children who are not undergoing vocational training. The AOB pointed out to the authority that the expert opinion was inconclusive and suggested that a further expert opinion be obtained from a specialist at the Ministry of Social Affairs Service. The AOB could also obtain a deferral. Ultimately, the appeal proceedings showed that there was an inability to work after all. The reclaim was therefore non-relevant and the mother was paid the family allowance for the outstanding periods.

Tax Office corrected mistakes

A Styrian woman received the increased family allowance for her daughter due to a diagnosis of coeliac disease and a degree of disability of 50%. From the beginning of adulthood, i.e. when she reaches the age of 18, the so-called Classification Ordinance stipulates that the disability is generally downgraded to 20%, as it can be assumed that the disease is then better and easier to "manage". From this point onwards, no further increase in the family allowance is due. The daughter turned 18 in April 2024, but the Tax Office rejected the application for April 2024. The Ministry of Social Affairs Service expert opinion was inconclusive, it contained three different dates for the end of the increased family allowance entitlement. The AOB suggested a further investigation and referred to Section 10 (2) of the Family Compensation Act (*Familienlastenausgleichsgesetz*), according to which the entitlement to the increased amount only expires at the end of the month in which the eligibility condition ceases to apply. As the "minor" condition for entitlement did not cease to apply until April 2024, the AOB deemed that the increased family allowance was still due for this month. The Tax Office corrected the error and made an additional payment.

Duration of proceedings for "dad's moth"

Upon the birth of his daughter, a man from Vienna took parental leave and submitted his application for a family leave bonus, including all the necessary documents, to the competent health insurance carrier in mid-July 2024. In October, his application had not yet been processed. He was informed by telephone that this could take even longer. After the AOB intervened, the public health insurance company regretted the procedural delays and then positively completed the application in November 2024.

Timely renewal of residence permit

The prerequisite for receiving family benefits is legal residence in Austria. The same applies if an application for an extension of the residence title is submitted in good time and the title is granted. A young mother living in Vienna asked the AOB for help because she had not received the childcare allowance from the birth of her child, but only from when her

new residence title was granted in April 2024. However, she stated that she had also legally resided in Austria before this date and had submitted the extension application on time. The AOB informed her that a certificate was absolutely necessary in which the municipal department 35 confirmed that the extension application had been submitted on time. The person concerned received such a confirmation and the AOB forwarded it to the health insurance carrier. The latter thanked her, as their previous enquiry sent to municipal department 35 had still been unanswered. The childcare allowance was granted for the entire period from the birth of the child, which meant an additional payment for the young woman for six months.

3.5.4 Switch to special benefit I

The AOB has long criticised the administrative practice whereby families are informed in an informal letter that they do not meet the requirements for the income-related childcare allowance and should therefore switch to the – considerably lower – special benefit I pursuant to Section 24d (1) of the Childcare Allowance Act. This was done without information about the legal consequences of this step and about the appeal options (see Annual Report 2022, "Monitoring public administration", p. 92). Even if the AOB acknowledges the authorities' endeavours to take a low-threshold approach, this practice continues to be a problematic respect of the rule of law: applications for benefits must be rejected with an administrative decision that can be appealed against.

In 2024, a mother living in Lower Austria turned to the AOB. She had applied for the income-related childcare allowance for her daughter and had previously been employed as a carer for the disabled for a year. The health insurance carrier asked her informally, but with reference to her legal obligation to cooperate, to sign and return the application for special benefit I within 14 days, otherwise her application would not be processed. She did not fulfil the requirements for the benefit, as she had not been in gainful employment subject to health and pension insurance for 182 days before the birth. The woman complied with the authority's request, as she believed she was legally obliged to do so. In her letter, however, she also emphasised that she was still applying for income-related childcare allowance and requested an administrative decision if the application was rejected. The health insurance carrier then informed her that she would not receive an administrative decision because she had signed the application for special benefit I.

AOB achieved solution in individual case

After the AOB became involved, the health insurance carrier investigated the case again and concluded that there was an entitlement to the income-related childcare allowance after all. The health insurance carrier regretted the processing error and paid the woman concerned a corresponding back payment.

AOB criticism under the rule of law remains valid

In this specific case, the subject of the complaint was resolved. However, the AOB's criticism of the administrative practice was confirmed and remains valid.

3.5.5 Duration of proceedings and problems with health insurance protection

Decline in complaints

The number of complaints about the duration of proceedings in the area of family allowances had already fallen significantly in 2023 compared to previous years and remained roughly the same in 2024. In her statement of opinion on the Annual Report 2023, the Minister for Family Affairs noted that the Tax Offices have now worked through the backlog caused by the COVID-19 crisis. She also cited a number of successful measures to speed up the process. These included the family allowance transfer without an application when a child is born in Austria and the extension of emoluments for four months between completion of school education and the start of further education in order to prevent interruptions to benefits.

Inflation continues to burden families

Long proceedings' durations continue to cause problems for affected families, even though the statutory maximum processing time of six months is usually no longer exceeded. Despite the downward trend in the inflation rate, this is also due to the general rise in prices, which families still feel. Longer waiting times for the family allowance combined with increased costs are a burden, especially if this also delays the childcare allowance payment. For example, a family applied for the lump-sum childcare allowance for the first time in February 2023. In the proceedings of the health insurance carrier, it turned out that the administrative decision on the award of the family allowance did not match the electronic data transmission of the Tax Office. A data clearing procedure therefore had to be initiated to reconcile the data, whereby the Tax Office only transmitted the correct data after around five months and only then could the entitlement to childcare allowance be observed.

A young Viennese woman turned to the AOB because she had not yet received any childcare allowance for her young daughter one year after her application in March 2023 and was already having problems covering all the costs for the child. One of the reasons for the delay was that the Tax Office did not finally confirm the family allowance until January 2024 and this confirmation was a prerequisite for the payment of the childcare allowance.

In another case, the Tax Office cancelled the family allowance without written notification seven months before the age limit of 24 was reached. After repeated enquiries by the person concerned, the Tax Office cited an expired residence permit as the reason, but he did not receive a written explanation. However, the residence permit had actually been extended. It was only about two years later and after many conversations between his mentor and legal representative and the Tax Office that it was clarified

that the latter had mistakenly assumed an incorrect date of birth. The family allowance was paid retrospectively.

Of course, missing information or documents from the applicants themselves can also delay the proceedings. However, those affected repeatedly tell the AOB that they are asked to submit evidence, documents and records twice or more. The problem of extremely extensive and often piecemeal requests for documents also occurs time and again in proceedings involving cross-border childcare allowances (see chapter "Continuing problems with family benefits in cross-border cases"). In some cases, evidence is apparently only requested from families for the first time a long time after the application has been submitted. For example, a father applied to the Tax Office in August 2023 for compensatory payments towards the family allowance for his three children. However, the Tax Office did not initiate the procedure to obtain further documents until January 2024, i.e. six months later.

Even if those affected bring legal remedies against a rejection or reclaim, there is sometimes a long duration of proceedings. In the case of a woman from Lower Austria, for example, it became apparent that there were repeatedly long periods of inactivity between individual procedural steps by the Tax Office. The woman had lodged a complaint against the rejection of her application for increased family allowance in November 2022. After the electronic data exchange with the Slovakian authority had taken several months without it being possible to obtain medical information abroad about any disability of the child, a new request was only made to the Ministry of Social Affairs Service after a further four months. It was still not completed in June 2024.

In April 2022, a court-appointed adult representative lodged a complaint against the rejection of her client's increased family allowance. She turned to the AOB two years later, because she had only been given vague answers to her telephone enquiries. In the statement of opinion obtained by the AOB, the Minister for Family Affairs did not address the long duration of proceedings, but merely announced a negative decision by the Tax Office. In another case, the Tax Office only forwarded the referral application to the Federal Fiscal Court after about five months and after the AOB had intervened. In these and other cases, the Minister for Family Affairs' replies provided little or no information about the reasons for the long duration of proceedings.

Due to the waiting period for family benefits, problems with health insurance protection can arise if co-insurance with the other parent is not possible. Hardship cases are particularly common for single parents. For example, waiting for the childcare allowance and paying for medical treatment caused a young mother financial hardship. She had submitted the application several months before and provided all the required documents. During a visit to the doctor due to kidney disease, she learnt that she no longer had health

Delays also in appeal proceedings

Insufficient statements of opinion from the Ministry

Problems with health insurance protection

insurance. She was then able to get her e-card (i.e. the ID-card for Austrian health insurance) activated, but she had to pay the treatment costs of over 400 euros herself, at least for the time being.

In the case of a family from Vienna, there were also massive problems with health insurance protection despite immediate application for childcare allowance and great efforts on the part of the parents. The father had received childcare allowance for the first-born child and was therefore covered by health insurance, while the mother and child were also insured with him. The second-born daughter was born during this period of emoluments and the mother applied for childcare allowance for her. This also ended the father's insurance cover. Despite the family's intensive efforts, there were delays in the proceedings for childcare allowance for the second child, and when the family checked the online social insurance system, they observed that no one in the family of four had health insurance. By telephone, it was possible to temporarily activate the insurance cover for the mother and the two children for two months. Despite further enquiries by the father to the health insurance carrier, a visit to the doctor revealed that only the second-born child was insured. It was only when the man contacted the authority again that his first-born child was also co-insured. However, co-insurance was still not possible for him. Three months after the application, the childcare allowance was finally granted and the problem was solved.

**AOB achieved
adaptation of
proceedings**

The AOB had asked the health insurance carrier for clarification in the specific case as well as for information on the general procedure on how to enable continuous health insurance protection in such cases. The health insurance carrier apologised to the family and announced to the AOB that it would sensitise its staff and adapt its processing procedures. Specifically, enquiries are now to be investigated daily in advance according to urgency. Furthermore, in similar cases the e-card will be activated immediately in future if it is very likely that the childcare allowance will be granted and there is no ongoing health insurance protection.

3.5.6 Still many problems with family benefits in cross-border cases

If one parent works or lives abroad, there are often major problems with family benefits. Families sometimes have to wait months or even years to receive the family benefits to which they are entitled. In the meantime, they are confronted with very complex proceedings and sometimes-unrealisable demands from the authorities and have problems with health insurance protection. This also affects single parents, which sometimes leads to existentially threatening situations.

The AOB has been pushing for an improvement for many years. In 2020, the AOB observed that there were cases of maladministration and that the working instructions issued by the Minister of Family Affairs for the health insurance carriers to implement the childcare allowance were contrary to European Union law. The Minister for Family Affairs held out the prospect of a change. This has still not been forthcoming after five years.

AOB found case of maladministration in 2020

Although the number of complaints about the enforcement of cross-border childcare allowances has fallen compared to previous years, families in cross-border cases continue to be affected by a variety of problems, as the following cases show:

Still many problems

A family has four children who, like their parents, have Austrian citizenship and live in Austria. The husband works in Germany, which is why he receives family benefits primarily from Germany in accordance with the EU's country of employment principle. In Austria, as the country of residence, he is entitled to the difference to the higher Austrian benefit in accordance with European Union law. However, the family received far less from the Austrian health insurance carrier than the difference to the lower German benefit. Not only the amount that the family was actually awarded in Germany was offset against the German family benefits, but also the amount that they could have notionally received if not only the mother but also the father had gone on maternity leave. The father informed the health insurance carrier that he had deliberately not applied for parental leave because he is the sole breadwinner and there was no alternative for financial reasons. Nevertheless, he was asked several times to also apply for the parental leave allowance in Germany.

In its statement of opinion to the AOB, the health insurance carrier referred to the working instructions of the Minister for Family Affairs, which have been criticised by the AOB for five years as being contrary to European Union law and are still in force. The AOB objected to the fact that foreign benefits that could only hypothetically be received, but which do not correspond to the family's private decision, should not be taken into account. The family finally received an additional payment of more than 7,000 euros for the child, who is now one year old.

Work instruction contrary to EU law still not changed

In the case of another family, the German parental leave benefit for the father was also taken into account and he was asked to apply for the benefit in Germany, although the family had decided that he would not go on parental leave. Here too, the family only received the remaining childcare allowance of more than €7,000 to which they were entitled after the AOB became involved. The child was already four years old at the time.

Unreasonable demands on families

An Austrian citizen lives and works in Austria. She is a single mother of two children. Ten months after she submitted her application for childcare allowance, the health insurance carrier informally informed her that she

Foreigner benefits wrongly credited

was not entitled to it because the father was receiving allowances from his employer, a European Union institution, which were to be offset against the childcare allowance. The authority did not listen to the mother's objection that these allowances were not comparable with the childcare allowance and should therefore not be taken into account when calculating the childcare allowance, which is why the woman turned to the AOB.

AOB achieved back payments

The AOB referred to the case law of the Supreme Court, according to which benefits granted to families by a European Union authority do not constitute a foreign family benefit within the meaning of the Childcare Allowance Act and therefore may not lead to a reduction of the Austrian childcare allowance. However, the applicant only received the childcare allowance one and a half years after submitting her application.

Long wait for family benefits

In another case, a woman from Austria had moved to Germany to live with the child's father during her pregnancy. Due to domestic violence, she returned to Austria with her young child, where she initially lived in emergency accommodation and applied for family allowance and childcare allowance with the support of her counsellor. After more than a year of waiting, the carer contacted the AOB on behalf of her client, who immediately contacted the authorities. However, it took another year for the woman to receive the family benefits to which she was entitled in Austria, as it was unclear to the Austrian authorities whether Germany, where the father received welfare benefits, might not be primarily competent.

In the case of a family living and working in Austria, the Tax Office stopped the family allowance payment following an enquiry by the German authorities. As a result, payment of the childcare allowance was also stopped. The family did not receive any family benefits for more than half a year. It was only after the AOB became involved that the payment of benefits was resumed and the missing amounts were paid in arrears.

A woman and a man live and work in Austria. Their daughter lives with her grandmother in Germany, where she is completing her school education. The parents pay maintenance for their daughter. In this case, Austria, as the State of employment of the parents, is competent to grant the family benefits, with priority over the pension-paying State of Germany. However, the Tax Office had rejected both the parents' and the grandmother's application for family allowance – contrary to the requirements of European Union law – as it was apparently not recognised that this was a cross-border case. The AOB succeeded in having the proceedings reopened and a new decision made.

A family lives in Austria, where both parents also work, and has another residence in Germany. After the parents had submitted many documents at the authorities' request, they were informed that they would have to change their residence in Germany from their main residence to a secondary residence or give it up completely in order to receive childcare allowance

in Austria. The family then tried to explain to the Tax Office that, according to German residence registration law, it was not possible to register as a secondary residence in Germany without a German main residence, but that their centre of vital interests was clearly in Austria. As this was also unsuccessful, the family turned to the AOB.

The AOB had already pointed out in a case in 2021 that a further main residence registration abroad does not automatically speak against the existence of the centre of vital interests in Austria and therefore entitlement to childcare allowance exists if all other requirements are met. The court also confirmed this at the time and the family was awarded the childcare allowance from Austria. In the current case, too, the childcare allowance was paid out to the family after the AOB made representations.

This problem affected another family from Germany, who had been living in Austria for more than two years and still had a residence in Germany. The health insurance carrier also required them to give up their main residence in Germany. The man is employed in Austria. The wife was sent to Austria by her German employer. Like many families, the father only found out during a visit to the doctor that there was no valid health insurance protection for parents and children because the childcare allowance had not yet been granted. Although the problem with health insurance protection was resolved relatively quickly, the awarding of the cash benefit was further delayed.

Problems with health insurance protection too

It was only after the family had submitted numerous documents to the health insurance carrier to prove their centre of vital interests that they received the childcare allowance one year after submitting their application. A few days later, however, the authority asked the family to pay back the benefit. In her statement of opinion to the AOB, the family minister justified this step by stating that the family still had a main residence in Germany and had not deregistered it, which was a further indication against a permanent relocation of the centre of vital interests to Austria.

The AOB also pointed out the contrary court rulings of the independent judiciary in this context. The Supreme Court has repeatedly recognised in comparable cases that employees can move the centre of vital interests several times due to increased mobility in the professional world and that this must also be taken into account much more in cross-border family benefit proceedings so that problems such as those already described or the following do not continue to arise.

Mobility in the professional world must not lead to problems

A family – the father and children are Austrian citizens, the mother is a German citizen – lives in Austria, where the husband works. The wife is self-employed in Austria and Germany and, in addition to the family's main residence in Austria, has another residence in Germany that is also registered as her main residence. The family was also asked to deregister their main residence in Germany if they wanted to receive childcare allowance for

their twins, although they were able to submit a variety of documents to prove their centre of vital interests in Austria, but omitted to deregister for professional reasons.

However, the family's continued main residence in Germany apparently did not prevent them from receiving childcare allowance from Austria, albeit not in the desired amount. Eight months after submitting their application, the family received an informal notification from the health insurance carrier, without any further explanation, that they were not entitled to the income-related childcare allowance they had applied for and would therefore have to apply for the much lower Special Benefit I, otherwise they would not receive any benefit at all. As the family was already so worn down by the previous proceedings and urgently needed the money, they signed the application, but turned to the AOB with a complaint.

Major burden for families with small children

An excerpt from the family's letter to the health insurance carrier illustrates the difficulties faced by families with young children as a result of this enforcement practice: "I've been waiting for almost eight months for my application to be approved and have had to get by without money for about nine months in a situation that is challenging for families anyway – life turns upside down when you have a new family, especially with twins. I have always enjoyed working and earning my own money. I have no desire to enrich myself with the childcare allowance, it's simply something we urgently need to live on at this time and I can't work with 2 babies in my arms. My living expenses, insurance and other fixed costs will of course continue, taxes are due in January, I'm not allowed to earn any extra money and I can't at the moment either. The childcare allowance is intended for this period and we urgently need it now! It's a huge burden for me to fulfil your ever-changing requirements for the fifth time now. I have to phone tax advisors and insurance companies, make enquiries with the insurance companies, make requests to the German authorities. I know you are bound by certain requirements, but I don't understand why all the additional demands come in bits and pieces and not in one letter. That would save me (and probably you too) a lot of work! [...] I can't understand why after eight months you come to the conclusion that I'm not entitled to the (income-related) childcare allowance after all." (Emphasis added by the person concerned).

Long-standing criticism from AOB

The AOB had already addressed all of the points of criticism raised in this letter many times before. In the determination of maladministration and recommendation of 23 January 2020, which was unanimously adopted on the basis of 40 complaint cases, the AOB criticised the long duration of proceedings involving cross-border childcare allowances as well as the multiple, extremely extensive and often piecemeal requests for documents (Annual Report 2019, p. 46). Supreme Court rulings have also continuously confirmed the AOB's criticism (see most recently Annual Report 2023, p. 89). In addition, the AOB has already criticised the informal, constitutionally

questionable rejection of the income-related childcare allowance (Annual Report 2022, ", p. 92; see also chapter "Switching to special benefit I", p. 98).

Nevertheless, another family had to wait more than four years to receive the childcare allowance to which they were entitled. The mother is an Austrian citizen. She lives in Austria with her child and studies here. Her husband is employed by an Italian company. As she had still not received a decision three years after submitting her applicant, she turned to the AOB. It was clear from the correspondence with the authorities, which now ran to tens of pages, that the family had always endeavoured to fulfil the extensive requirements of the Austrian authorities. They had submitted countless documents. They had submitted applications for family benefits in Italy, as the health insurance carrier repeatedly informed them that they should submit several applications and that they would have to wait for the foreign decisions before they could receive a benefit from Austria. In the meantime, the mother and her child had to insure themselves.

The family submitted several letters from the Italian authorities to the health insurance carrier confirming that, from the Italian authority's point of view, they were not entitled to any other Italian family benefits apart from the benefits already stated when the applicant submitted their application. However, the Austrian health insurance carrier did not recognise these letters, as they were "only confirmations, but not legally binding administrative decisions", which also did not take into account the requirements of European Union law. Despite their best efforts, it was not possible for the family to submit further documents.

This approach is reminiscent of the case, which the AOB had already presented in 2019 in the television programme *Bürgeranwalt* ("Advocate for the People"). Furthermore, it was the reason for a determination of maladministration and recommendation by the AOB in 2020. There, too, the health insurance carrier had accused the family that the foreign confirmations they had submitted were not sufficient and therefore no Austrian childcare allowance could be granted. After the AOB had already observed that this was a case of maladministration, the Supreme Court also confirmed this and awarded the family concerned the full childcare allowance from Austria more than eight years after the applicant had submitted their application.

**Supreme Court
confirms criticism**

In its letter to the Minister for Family Affairs regarding the current complaint, the AOB recalled this determination of maladministration and the Supreme Court's established court rulings of the independent judiciary. The AOB pointed out that there is an urgent need for improvement here, not only from the perspective of the families concerned and due to European Union legal requirements, but also in terms of administrative efficiency. The family's correspondence with the health insurance carrier consisted of dozens of pages and clearly showed the high level of effort that the administrative

practice imposes not only on the families concerned but also on the health insurance carriers responsible for enforcement.

Family Minister only answered AOB after one year

The AOB only received a response from the Minister for Family Affairs after more than a year and several letters of formal notice. In it, the Minister for Family Affairs referred to infringement proceedings that had been initiated against Italy before the Court of Justice of the European Union (CJEU) in the meantime. These confirmed that the Italian authorities were clearly acting in violation of European law. The case could not be finally settled until the end of the proceedings. In addition, the exchange of data with the Italian authorities has been contradictory. The family minister continued: "According to Regulation 883/2004, health insurance carriers must make their decisions in cross-border cases exclusively on the basis of the information provided by the other Member State involved."

Answer contradicts Supreme Court rulings

However, the now established court rulings of the Supreme Court state the opposite. At the time the statement of opinion of the Minister for Family Affairs was received, the Supreme Court had already observed in several decisions that a notification of an existing entitlement to benefits sent by the other Member State is of no material significance. Rather, the Austrian authorities themselves must determine ex officio whether and to what extent an entitlement to a foreign family benefit exists (Supreme Court 10 ObS 105/23y, 10 ObS 48/24t, 10 ObS 123/23w; for previous case law, see already Annual Report 2023, Volume "Monitoring public administration", p. 89).

The Austrian Supreme Court also observed that the health insurance carriers themselves must use the European Union MISSOC comparison table to determine how high the actual benefit entitlement is when applied abroad in accordance with European Union law and may only offset this – not a fictitious maximum amount of the foreign benefit – against the Austrian benefit. The Supreme Court rejected the Austrian authority's request to refer the question to the Act Amending the Immigration Law (*Fremdenrechtsänderungsgesetz*) for a preliminary ruling.

This proves once again that the administrative practice of demanding foreign administrative decisions from families that comply with European Union law before an Austrian benefit is paid out, which has long been criticised by the AOB, is unlawful. The administrative practice – also criticised by the AOB for a long time – of offsetting a fictitious maximum amount of foreign family benefits against the Austrian childcare allowance and thus paying out no or only a very low childcare allowance is also not in line with the court rulings of the Supreme Court.

Complex proceedings

Neither the fact that there is no foreign administrative decision nor the fact that Austria considers this to be contrary to European Union law justifies Austria not paying benefits to the families concerned. The Family Minister's reference to currently pending disputes or preliminary ruling proceedings against several European Union states is therefore also in vain.

The AOB's criticism is not intended to deny that the enforcement of cross-border cases is very time-consuming and complex for the authorities due to the European Union legal basis alone. Nor should it be denied that other European Union Member States sometimes do not behave in accordance with European Union law, which poses a further difficulty for the authorities. However, this should not be at the expense of the families concerned.

But not at the expense of families

The case of this family was positively resolved shortly before this report went to press. The family was awarded childcare allowance totalling almost 7,000 euros. The child is now almost five years old.

Case solved after almost five years

3.5.7 Problems with "dad's month" for adoptive or foster parents

A father turned to the AOB because he was unable to claim the family time bonus, also known as the *Papamonat* ("dad's month"). The Family Time Bonus Law (*Familienzeitbonusgesetz*) also provides for an entitlement to the dad's month for adoptive or foster parents. Biological parents and adoptive or foster parents are treated equally in this respect. However, the application must be submitted within 121 days of the birth. However, this is not possible if adoptive or foster children are older than four months when they are taken in by the adoptive or foster parents.

No "dad's month" for older babies

Such children can still be babies, but there is still no option to take advantage of the dad's month. The dad's month makes sense because the first time with a new family member at the age of less than one year is always particularly challenging. Building a bond is a process – and it takes time. This is especially true for the relationship between adoptive child and adoptive parents. Adoptive fathers should not be deprived of the acclimatisation process during the dad's month simply because it can take several weeks or months from birth until an adoption procedure is completed.

The first weeks are those most challenging

The Ministry for Family Affairs did not recognise any problems. According to the ministry, paternity leave and childcare allowance are available for adoptive and foster fathers of children older than four months, which is sufficient. Paternity leave is possible from the moment the child is taken into care. If there is a change of carer for the first time, up to 31 days can be taken in parallel from the second month after the child is taken into care. The ministry therefore believes that a legal amendment is unnecessary.

Ministry sees no need for change

However, the AOB points out that the legal consequences of paternity leave and the dad's month are different. This does not only apply to the amount of benefit. If fathers take paternity leave instead of the family time bonus, the period of time during which childcare allowance can be drawn is shortened for the family.

Paternity leave vs. dad's month

3.6 Finances

Introduction

During the period under review, the AOB received 822 complaints relating to the Federal Ministry of Finance. In 2024, the AOB still received numerous complaints in connection with the Energy Costs Credit Act (*Energiekostenausgleichsgesetz*) and the supplementary subsidy for electricity costs for larger households.

Drop-of-points no longer available

Citizens have increasingly criticised the fact that it is no longer possible to submit tax returns or requested documents to the departments of the Tax Office Austria and receive proof of receipt in the form of a stamp. Those affected were not aware that an appointment could be requested at the departments.

Numerous people also complained about the sometimes very long duration of proceedings or problems that arose when using FinanzOnline. It was also unclear why assessment procedures were resumed. Difficulties arose with taxation when pensions from other States were drawn in addition to an Austrian pension. The AOB also repeatedly received questions about the "application-free income tax return".

The majority of investigative proceedings were conducted and concluded quickly. The Federal Ministry of Finance endeavoured to answer enquiries from the AOB quickly. In urgent cases, it thankfully even provided the requested reports within just a few days.

Recommendation implemented

In spring 2024, the ministry implemented the AOB's recommendation contained in the Annual Report 2023 (Volume "Monitoring of public administration", p. 97) to supplement the information sheet on the Family Bonus Plus published on the Federal Ministry of Finance's website with regard to the division in the case of parents living separately.

3.6.1 ORF Fee Service Ltd.

General criticism

Since the Austrian Broadcasting Corporation Act (*ORF-Gesetz*) came into force in 2024, the AOB has been confronted with a greatly increased number of complaints, receiving hundreds of complaints. Initially, the focus was on general criticism of the switch to a household fee. The AOB could only refer the matter to the legislature.

Incorrect reporting data

The number of complaints increased abruptly, when ORF Fee Service Ltd. (*ORF-Beitrags Service GmbH*), was entrusted with this task of collecting the mandatory fees and began to impose and collect this household fee. Numerous complaints concerned incorrect reporting data. However, corrections in the Central Civil Registry can only be requested by those

affected and not by ORF Fee Service Ltd. In some cases, misleading information was provided to the fee payers.

The ORF Fee Service Ltd. also obviously underestimated the number of those who applied for an observation of their tax liability and those who applied for an exemption. It is to be hoped that the large backlog will be cleared up quickly.

In this context, those liable to pay the fee found it incomprehensible that an exemption from the fees not only depends on household income, but is also linked to the receipt of a state benefit. This mainly affected students, but also visually and hearing-impaired people. Although ORF Fee Service Ltd. does not entirely lie within the AOB's investigative mandate, the AOB could find solutions in many cases in cooperation with the management of ORF Fee Service Ltd.

3.6.2 Austrian Postal Service

The AOB received seven complaints about delivery problems in 2024. In several cases, those affected criticised the fact that no delivery attempts were made, even though persons authorised to receive the mail were present. This was a particular burden for addressees for whom it was difficult to collect items from a postal service point or pick-up station due to their advanced age or limited mobility. The Austrian Postal Service referred to the possibility of digitally redirecting mail items or issuing drop-off authorisations. These, however, proved inadequate in such cases. In turn, some cases concerned the lack of acceptance of proof of identity when picking up letters from authorities due to the lack of a middle name on the mail item.

Delivery problems

With regard to the AOB's criticism of the limited use of stamps for PRIO items (see Annual Report 2023, volume "Monitoring public administration", p. 93), no satisfactory solution could be found in 2024 either. Furthermore, the PRIO labels used as a stamp surrogate since September 2023 have no basis in the General Terms and Conditions of Austrian Postal Service. Instead, the Post continues to regard the option of accepting pre-franked letters as priority mail at the counter in the post office as a "goodwill gesture".

Goodwill gesture: stamps for PRIO consignments

3.6.3 Energy cost credit

The complaints that the AOB received in connection with the energy costs credit in 2024 concerned cases in which the Federal Ministry of Finance only carried out the initial review of the vouchers provided for in the law after the energy provider had already issued a final invoice due to the cancellation of the electricity supply contract.

Final invoice before initial audit

To this end, the Federal Ministry of Finance issued a "List of final invoices before initial review". The ministry informed the electricity suppliers separately about the positive outcome of the initial review and instructed them to correct the respective final invoice and pay the bonus to the former electricity customer.

Hotline discontinued This took a considerable amount of time for some electricity providers. The various customer service centres repeatedly informed the people concerned that no voucher had been sent for them. As the hotline originally set up by the Federal Ministry of Finance for the energy costs credit had been discontinued at the end of 2023, they had no way of obtaining information on the status of their case.

The Federal Ministry of Finance reported to the AOB that the correction of the final invoices and the bonus payments were being monitored and that the electricity suppliers had to be urged several times in some cases. In the course of 2024, the outstanding cases were finally concluded.

3.6.4 Incorrect entries in IT system of Ministry of Finances

During the period under review, the Federal Ministry of Finance repeatedly cited errors in the fiscal authorities' IT system as the reason for mistakes made by the Tax Office Austria. This caused considerable confusion and impacted the affected taxpayers.

Old address In one case, a woman who had moved abroad was registered in the Central Civil Registers with an (old) address, which did not exist for ten years. Income tax return notices were sent to this address, of which the person concerned only became aware by chance.

Incorrect entries in basic database The Tax Office had mistakenly entered in the basic tax database for a woman from Lower Austria that she wished to receive annual income tax return forms. When no tax return was subsequently submitted, she received an (automatically sent) reminder letter with the threat of a penalty.

System prevents decisions from being sent The incorrect transfer of a data record led to the Tax Office requesting a tax return for 2022 for a person who had already died in 2021. Here too, a penalty was threatened if the required declaration was not submitted.

"IT-related difficulties", which the Federal Ministry of Finance did not define in more detail vis-à-vis the AOB, meant that administrative decisions were not released by the "system" for over a year without being noticed or that a request for a supplement was only sent just before the decision deadline expired.

Although these cases could be clarified, the AOB called on the Minister of Finance to ensure that appropriate measures are taken to prevent errors "in

the system". The employees of the fiscal authorities should also be reminded in an appropriate manner to be more careful when making reservations and other entries in the basic financial database.

3.6.5 Non-response to enquiries

In the opinion of the AOB, simple enquiries addressed to the fiscal authorities must be answered promptly. Not responding for months does not correspond to a service-orientated administration.

A Carinthian asked for the reference number of the settlement case based on which his assessment had been suspended. However, he did not receive an answer from the Tax Office Austria.

Those affected are left in the dark

A man from Vienna contacted the fiscal authorities via FinanzOnline for legal information in connection with loss compensation. Around five months later, and only as a result of the AOB's enquiry, he received the requested written explanation.

A man from the Czech Republic urged the Tax Ombudsman Service to process his application for a refund of withholding tax. Initially, the service centre informed him that the decision would unfortunately be delayed. They did not reply to a further reminder email because the requested administrative decisions had been issued in the meantime, of which the applicant had not been informed.

A man from the *Land* of Salzburg submitted his repayment application by fax. After around three months, the Federal Ministry of Finance's complaints management team informed him that the further processing of his request was still dependent on the clarification of a legal issue and asked him for a little more patience.

No indication of incorrect type of contribution

A further two months later, the fiscal authorities concluded that the application had been submitted via an unauthorised channel and was therefore deemed not to have been submitted in accordance with Supreme Administrative Court case law.

The Salzburg resident was not notified. This was despite the fact that, in the AOB's opinion, the notification of the Federal Ministry of Finance's Complaints Management certainly gave the impression that a written settlement would be issued.

A managing director from Vienna was informed that his company's accounts had been inspected. In the course of a telephone call, an employee of the Tax Office Austria explained the reason for this measure. Nevertheless, he indirectly sent a written enquiry to the fiscal authorities. The tax office did not (or no longer) respond to this enquiry. In the AOB's opinion, however,

it should have been concluded from the new enquiry that the verbal explanations had not been understood or had not been fully understood.

3.6.6 Incorrect attribution of a property

**Error of
Tax Office Austria**

A Styrian woman, together with around 30 other people, was entitled to inherit. The estate assets also included a property. She had been instructed by the community of heirs to sell the property. This apparently prompted the Tax Office Austria to erroneously attribute the property to her for tax purposes for the period up to the sale, rather than to the estate, and to prescribe the contributions and levies for agricultural and forestry operations in her name.

**Incorrect legal
information**

During an interview, the tax office department Styria-East assured her that the administrative decision was a mistake and that she did not need to pay attention to it. Nevertheless, a short time later she received a demand for payment together with the threat of collection measures. As a precaution, she then paid the requested amount.

The AOB's investigative proceedings revealed that the tax attribution of the property to the Styrian woman had been incorrect. As a result, the order to pay the contributions and the levy for agricultural and forestry operations was also unlawful.

**Adjustment
following AOB
recommendation**

The Federal Ministry of Finance then proposed a solution which might have been the most convenient way for the Tax Office Austria, but which contradicted civil law regulations. In the Federal Ministry of Finance's opinion, the co-heir concerned should reclaim the paid amount from the probate trustee, even though the payment order had been issued to her. It was only as a result of the AOB's recommendation that the Federal Ministry of Finance cancelled the payment order pursuant to Section 299 of the Federal Fiscal Code and refunded the amount paid.

3.6.7 Multiple failures in one set of proceedings

The income tax assessments of a Lower Austria resident had already been finalised. According to him, his income from renting out two flats in Germany had been taken into account.

Irrespective of this, he received two "supplementary requests" from the Austrian Tax Office some time later. In these, he was asked to provide evidence of his foreign income. It was not clear from the letters for which period the evidence was requested.

**No concretisation in
terms of time**

The Federal Ministry of Finance emphasised to the AOB that the lack of temporal concretisation was intentional. The fiscal authorities had received

control notifications from Germany, which indicated that higher income had been generated there in several years than had been declared in the tax returns.

In the AOB's opinion, the authority must indicate the assessment years for which evidence must be submitted. It is unreasonable to leave taxpayers in the dark as to which years they must subsequently submit documents for.

The AOB also criticised the fact that supplementary requests had been sent, which are only permissible in proceedings that are still pending. If the fiscal authorities intend to reopen already finalised proceedings, requests for information must be sent to the person concerned in preparation.

Supplementary request instead of request for information

Based on the answers and evidence provided by the Lower Austria taxpayer, the Tax Office Austria came to the conclusion that the information in the tax returns had been checked for plausibility and that no further action was required. There was no notification that the investigations were completed because – according to the Federal Ministry of Finance's justification – there was no need for this for reasons of economical use of resources.

Not informed about completion of determinations

In the AOB's opinion, this reasoning cannot be accepted. If the fiscal authorities have doubts about the correctness of proceedings that have already been completed and ask the taxpayer to submit documents at a later date, they must also inform the affected person if the concerns are not substantiated. Leaving them in the dark as to whether, and if so when, the assessment procedures will be resumed is contrary to a service-orientated administration.

3.6.8 Incomprehensible multiple booking processes

A lawyer, who was commissioned to process a purchase contract, reported the self-calculated real estate income tax to the Tax Office Austria, which was paid at the same time. Two months later, he corrected the calculation, which was initially too low. The additional amount was also paid.

The first accounting report prepared by the fiscal authorities did not – correctly – show any arrears. The Tax Office Austria recognised that an incorrect, factual period had been stated in the lawyer's correction report and corrected it.

However, the fiscal authorities subsequently sent three further accounting notifications, each of which contained "corrections" and showed tax arrears in different amounts. These "corrections" were not comprehensible and could not be conclusively explained by the Federal Ministry of Finance. The matter was only resolved when the AOB intervened. The amount incorrectly shown as arrears was finally corrected.

Untraceable bookings

3.6.9 Procedural delays

Procedural delays are annoying and unpleasant for taxpayers. Especially if tax credits are expected in the assessment and the Tax Office Austria only starts processing the tax returns shortly before the decision deadline (six months from receipt of an application) and sends out supplementary requests.

**Cancellation of
seizing an account**

A delayed decision on an application to cancel the seizing of an account can lead to considerable difficulties for those affected.

**Interrupted
proceedings to
be suspended by
administrative
decision**

If, for "reasons of administrative economy", it is necessary to wait until the Federal Fiscal Court has ruled on the income tax return notices for previous years before decreeing an assessment, a suspension notice must be issued. At the very least, however, the taxable person concerned should be informed of the Tax Office Austria's delay.

The AOB is aware that the fiscal authorities' employees have to deal with a large number of proceedings and that the staffing situation at the Federal Ministry of Finance is strained at the same time. Nevertheless, it must be ensured that decision deadlines are met.

3.7 Interior

Introduction

In the year under review, the AOB handled 1,999 cases within the jurisdiction of the Federal Ministry of the Interior. 75% (1,503 cases) related to asylum law, settlement law and aliens' police law. The police accounted for 17% (345 cases) of the cases. As is usual in years in which elections are held at federal level, the AOB received some complaints (2 %, 38 cases) relating to both the European Union elections and the National Council elections. 6% (117 cases) concerned residence registration law, public employment law, civil status law, weapons law, association law, passport law and the Austrian Pyrotechnic Safety Act (*Pyrotechnikgesetz*).

1,999 cases

Complaints about the duration of proceedings for obtaining a residence permit decreased again. The majority of complaints still relate to the federal capital. In 2024, a total of 289 people complained, 248 of them in Vienna. For many years, the AOB has drawn attention to shortcomings in the implementation of settlement and residence law, particularly in its reports to the Diet of Vienna. However, the situation has improved in this area. Complaints about the duration of proceedings to obtain citizenship, especially in Vienna, are rising sharply every year (2024: 633, 2023: 437, 2022: 399, 2021: 223).

Duration of proceedings for residence permits and citizenship

In addition, complaints about the Federal Office for Immigration and Asylum also rose sharply. In 2024, 999 people (2023: 771, 2022: 418) complained about proceedings at the Federal Office for Immigration and Asylum, mainly about the duration of asylum proceedings (see chapter 3.7.1 on the duration of proceedings at the Federal Office for Immigration and Asylum).

Proceedings of the Federal Office for Immigration and Asylum

13 complaints concerned the subject of "domestic violence", mainly relating to barring orders and prohibitions to return to the common home. It was mainly people against whom the police took these measures who approached the AOB to complain about the appropriateness of the police's official acts.

345 people complained about the police (2023: 295). Reasons for complaints included the non-acceptance of reports, inadequate investigations, inactivity, unfriendliness and inadequate provision of information. Further, the AOB received complaints about arrests, searches, confiscations and traffic controls. The AOB found seven cases of maladministration in police complaints and in 76 investigative proceedings they found no maladministration. In 230 cases, the AOB was unable to deal with the complaint because proceedings were pending, there was no affected party or court decision, or it was a non-comprehensible and therefore verifiable request. Some investigative proceedings had not yet been finalised at the time of going to press.

Police complaints

In 2024, the AOB received 37 complaints of abuse or degrading treatment and found no cases of maladministration. The following table provides an

Allegations of misconduct

overview of the allegations of misconduct in recent years and the number of cases of mistreat found. The AOB became aware of these allegationsthrough individual complaints or in the course of AOB’s *ex-officio* investigations.

Allegations of ill-treatment		
year	number of complaints	determination of maladministration
2024	37	0
2023	21	0
2022	14	1
2021	23	1
2020	9	0
2019	20	0
2018	20	1
2017	10	1
2016	17	1
2015	6	3
2014	11	2
2013	9	0
2012	8	1
2011	7	0
TOTAL	212	11

3.7.1 Asylum and immigration law

Duration of proceedings at the Federal Office for Immigration and Asylum

After complaints about the Federal Office for Immigration and Asylum – especially about the duration of asylum proceedings – rose again from summer 2022 and this trend continued in 2023, a further increase was observed in 2024. A total of 1,000 people approached the AOB with complaints about the Federal Office for Immigration and Asylum, 929 of which related to the duration of proceedings under the Asylum Act (*Asylgesetz*). 771 of these complaints were justified, mainly due to a violation of the duty to make a decision. In 58 investigative proceedings, the Federal Ministry of the Interior or the persons concerned announced the conclusion of proceedings. The following examples aim to illustrate the specific situations of those affected.

From time to time, the AOB receives complaints regarding family reunification proceedings under the Asylum Act. Members of the "nuclear family", i.e. partners (marriage or registered partnership that already existed when the person entitled to asylum entered the country) and minor children, can apply for international protection in Austria after visas have been issued by the Austrian embassies abroad. However, the Austrian embassy only issues visas after the Federal Office for Immigration and Asylum has issued a favourable decision.

Delays in family reunification

In one of these cases, a Syrian family submitted applications for entry to the Austrian Embassy Beirut in August 2023, which the embassy immediately forwarded to the Federal Office for Immigration and Asylum. The Federal Office for Immigration and Asylum received the applications for entry in mid-August 2023, but did not take any recognisable procedural steps until mid-December 2023. Here, the AOB observed a case of maladministration.

In April 2022, a Turkish national submitted an application for an extension to the Vienna municipal department 35 for the award of a residence title for the purpose of "student". According to the person concerned, the municipal department 35 rejected his application for an extension, against which he lodged a complaint with the Vienna Administrative Court. In January 2023, the Vienna Administrative Court subsequently sent the file to the Federal Office for Immigration and Asylum to investigate removal measures, which immediately opened proceedings in the IT tool Integrated Foreigners Administration (IFA).

Delay in removal measures

In February 2023, the person concerned submitted a statement of opinion and further documents. It was not until January 2024, one year after the Vienna Administrative Court had submitted the file to the Federal Office for Immigration and Asylum, that the Federal Office for Immigration and Asylum informed the Vienna municipal department 35 and the Administrative Court that it intended to issue a return decision.

During proceedings to terminate residence, the expiry of the time limit is suspended in accordance with Section 8 Proceedings of Administrative Court Act (Verwaltungsgerichtsverfahrensgesetz). Nevertheless, such proceedings must be conducted without delay. The Federal Office for Immigration and Asylum did not take any visible procedural steps from April 2023 to December 2023, thereby delaying the proceedings. According to the Federal Ministry of the Interior, the delay in this specific case was caused by the high number of applications and the investigation into removal measures.

High application numbers do not justify delays

In another set of proceedings, a Croatian woman applied in person to the municipal department 35 in November 2016 for a registration certificate for the purpose of "other matters". In these proceedings, the deadline expiry set out in Section 8 Proceedings of Administrative Court Act was also suspended due to a termination of residence. After receiving the notification from

Organisational deficiencies: restructuring implemented

the Federal Office for Immigration and Asylum in July 2023, the municipal department 35 did not take any procedural steps until February 2024, thereby delaying the proceedings. The Federal Office for Immigration and Asylum also did not take any visible procedural steps from October 2018 to July 2023 either. They regretted to the AOB that such delays had occurred in the current proceedings during the investigation for the decree of removal measures, which is why an internal organisational restructuring had already taken place to avoid such delays.

One year of inactivity and poor communication

In April 2023, the Federal Office for Immigration and Asylum initiated proceedings for the decree of removal measures against a Mexican national. It was not until over a year later, in August 2024, that the Federal Office for Immigration and Asylum discontinued the proceedings without having taken any significant procedural steps in the meantime. The Federal Office for Immigration and Asylum did not respond to enquiries from the man's representative. The municipal department 35, where proceedings for obtaining a residence permit were pending, waited for the day release of the proceedings conducted by the Federal Office for Immigration and Asylum. Through its inaction, the Federal Office for Immigration and Asylum also delayed the proceedings for obtaining a residence permit conducted by the municipal department 35. The municipal department 35, in turn, did not make a single request to the Federal Office for Immigration and Asylum over a period of more than a year.

Month-long standstill in proceedings

According to the Geneva Refugee Convention, the entry of a person entitled to asylum into the country of origin or the application for and issuance of a passport from the country of origin is considered to be grounds for terminating asylum. Although a Kosovar who has been entitled to asylum since 2005 submitted a statement of opinion to the Federal Office for Immigration and Asylum in November 2023 and a copy of his Kosovar passport issued in November 2023 in the following month, the Federal Office for Immigration and Asylum only took action after receiving the AOB's complaint in October 2024.

In August 2023, a Syrian man submitted an application to the Federal Office for Immigration and Asylum for the issue of an alien's passport for persons entitled to subsidiary protection. It was not until April 2024 that the Federal Office for Immigration and Asylum took the first recognisable procedural step and rejected the application.

No steps taken for 13 months

A Somali man submitted an application for a "Residence Permit Plus" to the Federal Office for Immigration and Asylum in June 2022. The authority did not take any recognisable procedural steps in these proceedings between November 2022 and July 2023 and between October 2023 and March 2024 without justification. As the Federal Office for Immigration and Asylum was inactive for a total of 13 months, the AOB observed a case of maladministration.

In October 2023, an Afghan person entitled to subsidiary protection submitted an application to the Federal Office for Immigration and Asylum to extend his residence permit. In January 2024, he asked the Federal Office for Immigration and Asylum to inform him of the status of the procedure. The Federal Office informed him that they did not receive any application for an extension of the residence permit for persons entitled to subsidiary protection and sent him an application form. After the AOB's complaint was forwarded in September 2024, the Federal Office for Immigration and Asylum found out, that the administrative file had been filed in the archive and that the application received in October 2023 had been included in it. The Federal Office for Immigration and Asylum's inadequate filing led to a delay of around one year in processing the application.

Inadequate filing system

The Federal Office for Immigration and Asylum not only enforces the Asylum Act, but is also competent for proceedings under the Aliens' Police Act. The AOB received 28 complaints relating to proceedings under the Aliens' Police Act, such as the issuing of convention passports, alien's passports and cards for tolerated persons.

Shortcoming in Aliens' Police Act proceedings

In May 2022, a national of the Russian Federation applied to the Federal Office for Immigration and Asylum for a card for tolerated persons. The Federal Office for Immigration and Asylum intended to reject the application because he had been subject to a final expulsion order since 2008 and an enforceable return decision since 2010. As early as 2023, the AOB observed that the Federal Office for Immigration and Asylum remained completely inactive in these proceedings and did not take any procedural steps for over a year. In January 2024, the person concerned contacted the AOB again, as the Federal Office for Immigration and Asylum had still not made a decision on his application for a card for tolerated persons. The AOB's renewed investigative proceedings revealed that the Federal Office for Immigration and Asylum had once again failed to take any procedural steps. Overall, the Federal Office for Immigration and Asylum remained inactive in these proceedings, at least for a period of almost two years.

Inactivity for two years regarding card for tolerated persons

3.7.2 Federal support for asylum seekers

As a rule, an application for asylum is submitted to public security officers. After an initial interview, the police ask the Federal Office for Immigration and Asylum for a directive on further proceedings. The Federal Office for Immigration and Asylum usually issues a directive to take asylum seekers to a Federal Government care centre during the admission proceedings. After admission to asylum proceedings, the *Laender* are competent for the care of asylum seekers. Asylum seekers should be transferred to a basic reception conditions facility in one of the *Laender*.

For many years, the AOB has pointed out that the transfer of asylum seekers admitted to proceedings to basic state care has been slow. As a result, asylum seekers often remain in federal care for longer than intended. Due to the sharp drop in the number of asylum applications since 2023, some federal care facilities have been closed (see Annual Report 2023, pp. 108 et seq.).

Steyregg federal care facility Due to media reports of vandalism, an AOB's commission visited the Steyregg federal care facility in January 2024. This facility was intended exclusively for unaccompanied minor refugees and asylum seekers:

Numerous shortcomings The commission criticised the fact that some of the unaccompanied minor refugees and asylum seekers had already been placed in the facility for seven months despite having completed their asylum proceedings. It was concerned about the lack of psychological caregivers on site. Furthermore, it criticised the presence of security staff, the lack of staff training, the catering for the adolescents and the lack of a crisis plan in the event of acute violent situations. The federal care facility lacked a common room for the adolescents as well as leisure facilities in the outdoor area. The commission recognised the staff's efforts to provide good care for the unaccompanied minor refugees and asylum seekers, but criticised the rudimentary educational and employment opportunities on offer.

The Federal Ministry of the Interior acknowledged the deficiencies identified. Due to low capacity-utilisation, the Federal Ministry of the Interior closed the facility at the end of April 2024. Following the visit, de-escalation training was held with the staff, a meeting room was converted into a common room and more German courses, workshops and excursions were offered. Due to the closure, further planned improvements were no longer implemented. The data presented showed that the lower attendance figures from February 2024 and the sharp increase in the number of supervision activities led to a significant decrease in reports of negative incidents involving adolescents.

No guarding of unaccompanied minors by security personnel The AOB recommended to the Federal Ministry of the Interior to intensify its efforts to speed up the transfer of vulnerable asylum seekers to the state's basic care centre. The AOB considered the presence of security personnel in this facility for unaccompanied minor refugees and asylum seekers for several weeks to be inadequate. It welcomed the measures outlined and considered the admitted deficiencies in the placement and care of asylum seekers at the Steyregg federal care facility to have been remedied.

3.7.3 Police

Delayed response to information request

A man complained that the Vienna Police Department had not responded to his request for information from July 2024 in a timely manner for

incomprehensible reasons, although he had urged the authority in August 2024. The AOB's investigations determined that the Vienna Police Department processed the letter with delay due to a change of officer. The authority was not aware of the man's request. His letter had been forwarded to the Federal Bureau of Anti-Corruption for investigation due to possible allegations under criminal law. The Vienna Police Department finally responded to the request for information at the end of October 2024. The Federal Ministry of the Interior and the Vienna Police Department regretted the delay in responding to the submission.

In the AOB's view, the change of the officer responsible was attributable to the authority as the reason for the delay. The complaint was justified in this respect. As the authority had answered the submission in the meantime, no further action was necessary.

No response due to change of responsible officer

Salary execution despite dubious service of a penal order

A man from Munich criticised the fact that the Kitzbühel district authority was carrying out a salary execution against him, although he had not received the underlying penal order. Instead, he had only received it "informally" by email after he had learnt of the execution proceedings. The person concerned asked the AOB to cancel the account attachment, as he had had no opportunity to take action against the penal order within the deadline.

Surprised by execution proceedings

The AOB observed that the man initially received a penalty order at the beginning of May 2023, which he appealed against in mid-May 2023. According to the authority, the penal order was then issued in May 2023. After the authority received neither a complaint nor a payment within the appeal period, it initiated enforcement proceedings.

In a letter from June 2024 to the Kitzbühel district authority, the person concerned criticised the seizure of his accounts. After investigating the facts, the Kitzbühel district authority acknowledged that there were justified doubts about the legally effective delivery of the penal order. The authority promised the man that it would (re)send the administrative decision by post to enable legal remedies. The Kitzbühel district authority withdrew the request for enforcement by way of mutual legal assistance to the German authorities.

Doubts about correct delivery

The AOB identified shortcomings in the fact that the possible incorrect notification was only recognised after the person concerned or the AOB intervened. As the authority agreed to redeliver the administrative decision, no further action by the AOB was necessary.

Incomplete information on fees for criminal record certificates

A citizen of Lower Austria complained about the amount of fees charged by the authority for criminal record certificates. The AOB informed the

citizen that the fees charged by the authority were correct. As a review of the website of the Police Department of Lower Austria and the website "oesterreich.gv.at" revealed that no information on the enclosure fee for criminal record certificates was included, the AOB made recommendations to the Federal Ministry of the Interior to supplement the entries accordingly.

The Federal Ministry of the Interior immediately complied with the AOB's recommendation. The AOB welcomed the measure to implement good administration and considered the lack of information to have been remedied.

Investigation and Complaints Office for Allegations of Police Ill-treatment

The Investigation and Complaints Office for Allegations of Police Ill-treatment began its work on 22 January 2024. As explained in the last Annual Report and criticised by the AOB, the Investigation and Complaints Office was established within the Federal Bureau of Anti-Corruption and thus within the Federal Ministry of the Interior. It therefore remained questionable for the AOB whether the necessary independence of the Office is guaranteed.

Cooperation with the AOB

Cooperation between the Investigation and Complaints Office and the AOB is currently going very well. The Investigation and Complaints Office informs the AOB of all incoming cases of abuse on an ongoing basis. In addition, the AOB is in regular contact and dialogue with the Investigation and Complaints Office. In October 2024, the AOB invited a representative of the Investigation and Complaints Office to the annual exchange of experiences between the AOB and its commissions. An employee of the office then gave a presentation on the institution and its advisory board together with Professor Murschetz and provided an initial interim report. Professor Murschetz is head of the AOB's commission for Tyrol and Vorarlberg and also a member of the independent advisory board of the Investigation and Complaints Office.

Investigation and Complaints Office reports to AOB

In his presentation, the employee of the Investigation and Complaints Office explained the responsibilities and tasks of the new investigation centre and showed the initial results. From 22 January to mid-October 2024, there were 395 reported cases, 56% of which resulted in complaints being investigated under the Code of Criminal Procedure. Four out of seven gun offences involving danger to life ended fatally.

The independent advisory board in the Investigation and Complaints Office began its activities in March 2024 and is responsible for monitoring visits. It reports annually to the Federal Minister of the Interior and submits ad hoc reports and recommendations to him if necessary.

Independent Advisory Board makes recommendation

In its first interim report, the advisory board emphasised, among other things, the need to fill all permanent positions as quickly as possible in view of the high number of complaints. In addition, the advisory board recommended creating at least 30 new permanent positions.

The AOB will continue to observe the development of the Investigation and Complaints Office for Allegations of Police Ill-treatment, exchange information with them and offer its expertise.

Official act in the "wrong" flat

A police patrol was called to a block of flats during the night due to disorderly noise, including objects being thrown around. The arriving officers could not observe any noise, so they contacted the woman who had complained. She gave them the door number from which the noise was allegedly coming.

The officers then knocked on the door. The woman who answered stated that she had already slept with the children and that she had neither heard nor made any noise. Once the officers had ascertained the situation, they left the location again.

No noise from the flat

The AOB was unable to verify the woman's accusation that the officers had shouted with her and her children and had been unfriendly. However, the AOB criticised the fact that the officers had not apologised to the mother after they knew that no noise had come from this flat.

No apology to woman and children

No help after emergency call

A woman called the emergency services because she had been physically attacked and slightly injured outside a supermarket. After no police arrived for 30 minutes, she called the emergency services again, who advised her to report an incident to Keplerplatz police station. According to the victim, the police station officers were very unfriendly and sent her home. About one to two hours later, officers came to her home and took a report of the incident.

The Federal Ministry of the Interior replied that after the first emergency call, officers had been at the scene about 30 minutes later, but it had not been possible to contact the victim by telephone. The Federal Ministry of the Interior was unable to conclusively clarify her allegation that no report of an incident had been taken at Keplerplatz police station and that she had been sent home due to the high deployment density, the constant traffic between parties and the large number of telephone calls made to various parties. However, the Department for Internal Investigations (*Referat für interne Ermittlungen*) was called in. It subsequently reported to the public prosecutors' office, which refrained from opening an investigation.

No help in police station

The AOB criticised that the cooperation and communication with the woman could and should have worked better. For this reason, the Favoriten municipal police headquarters held a sensitisation meeting with the law enforcement officers at Keplerplatz police station.

Sensitisation meeting

Police officer insults man by e-mail

Officer overreacts because of threat against his children

A man complained about an officer and submitted an e-mail-conversation in which a police officer verbally abused him via an official email account. The Federal Ministry of the Interior regretted that the officer had allowed himself to be "carried away" into this reaction. However, it went on to explain that the man, who wrote under a pseudonym, had threatened the officer's children in previous emails, which is why the officer had overreacted. Investigations have already been initiated against the man in question for making a dangerous threat.

Even if the officer's reaction was understandable for the AOB from a human point of view, such a reaction should never be made from an official e-mail account, which is why the AOB considered the complaint to be justified.

Unfriendly treatment at Vienna Schwechat Airport

A woman complained that an official at the passport control at Vienna Schwechat Airport had insulted her and her mother, both Turkish citizens. The reason was that on arrival at passport control, both were directed to the European Union counter by a "signaller" because there was no queue at this counter. However, as neither of them were European Union citizens, they were insulted and verbally abused by the officer working there, according to the woman.

Communication problem

The Federal Ministry of the Interior confirmed that there may have been a misunderstanding due to poor communication between the border control staff deployed there and the airport staff. It is generally possible and common practice to direct passenger flows to other control lanes.

Schwechat municipal police headquarters takes measures

The Police Department Lower Austria regretted that officers had behaved or intervened inappropriately during the border control. The Schwechat municipal police headquarters therefore conducted interviews with the competent department regarding the complaint. The aim of this interview was to sensitise the border control officers in their interaction with passengers in order to avoid such incidents and complaints in the future.

AOB criticises and welcomes measures

The AOB criticised the conduct of the official, however, it welcomed the steps taken by the authority.

Pressure on 15-year-olds to pay penalty straight away

A police car stopped a 15-year-old young woman in the street. The officers fined her under the Anti-Face-Covering Act for covering her face with a niqab. She paid the penalty notice on the spot.

The young woman's mother stated that her daughter had not worn a niqab because she was not religious, but had worn a scarf. She also criticised the

fact that the police car had driven onto the pavement to block her daughter's path, which had made her feel very insecure. The officers then confronted the 15-year-old with the administrative offence. They demanded her expulsion and offered her the opportunity to pay the administrative penalty on the spot by allowing her to withdraw money from the nearest ATM. This behaviour caused her pressure and stress, so she went to an ATM and paid the penalty on the spot.

However, the young woman or her parents then no longer had the opportunity to fight the penalty by legal means, which they said they would have done.

No possibility of legal remedies

The AOB found that it could not conclusively clarify whether the girl had worn a niqab and whether the administrative penalty was therefore justified. However, the AOB critically noted that the circumstances of the official act were certainly suitable for intimidating a 15-year-old girl and causing her stress. Consultation with her parents should certainly have been made possible in view of the daughter's legal protection. This was particularly the case as the daughter's accounts and those of the officers contradicted each other.

3.7.4 Right to vote

Incorrect address on polling card envelope

An Austrian living abroad complained to the AOB that he had not received a polling card for the 2024 European elections. In the investigative proceedings, the Federal Ministry of the Interior explained that an unfortunate combination of several factors had been the cause of the non-delivery of the absentee ballot:

As the person concerned had filled in the application for his entry in the voter register as an Austrian living abroad incorrectly, the competent home municipality in Lower Austria had recorded his address without a house number in the Central Voter Register inadequately. As a result, the authority had incorrectly addressed the envelope containing the election documents. The Dutch postal service provider had apparently not been able to properly deliver the polling card without a house number.

Although the incorrectly completed application form was not attributable to the authority, the inadequate dispatch of the election documents was. Due to the correction of the address in the voter register, the AOB considered the deficiency to have been rectified.

Inappropriate statement by the authority in polling station

A father contacted the AOB on behalf of his adult daughter after the 2024 National Council election. He claimed that her surname had been joked

about loudly in front of several people present during the identity check. The granddaughter, who had the same name, had also observed this.

Immediate sensitisation

In its statement of opinion, the Federal Ministry of the Interior acknowledged misconduct on the part of the electoral authority. A person of trust had carelessly commented on the surname of the person concerned that had been read out. Immediately after the incident, the person had been informed by the Chief Electoral Officer to refrain from making such comments to persons entitled to vote. In addition, the municipal authority of Vienna had held out the prospect of sensitising the ward electoral staff.

The AOB hopes that the planned training courses will raise awareness of the need to treat all persons visiting the polling station with respect. The AOB considered the admitted misconduct to have been remedied.

Incorrect information from the electoral authority

A man from the Land of Salzburg complained that he had not received a polling card for which he had applied. In addition, he had been incorrectly educated about the voting period.

The municipalities must collect uncollected absentee ballots from the post office on the last business day before election day and have them ready for delivery to eligible voters on election day. This option, known as "second chance", allows eligible voters to pick up their polling card at the respective polling station and vote. However, polling cards that arrive at the polling station after 5 p.m. on election day are not included in the results.

Inadequate provision of information

The investigative proceeding did not reveal any errors on the part of the municipality of Piesendorf in issuing and sending the polling card. In its statement of opinion, however, the Federal Ministry of the Interior admitted two errors made by the authority during the citizen's visit and regretted them: The staff member of the municipality had mistakenly assumed that the polling card would be sent without a registered letter. She had therefore incorrectly stated that she did not have a consignment number. The person concerned had thus been prevented from tracking his absentee ballot by Austrian Postal Service.

During the explanation of the "second chance", the municipal clerk mentioned that the evaluation of absentee ballots received or deposited on election day would only take place after election day. Apparently, there had been a misunderstanding that voting was possible until 2 October 2024.

As the investigative proceeding led to a reappraisal of the events at the electoral authority, the AOB considered the admitted deficiencies to have been remedied.

Polling card sent abroad to the wrong address

An Austrian living abroad criticised the fact that he had not received his polling card for the 2024 National Council elections despite notifying his change of address in good time. In the investigative proceeding, the Federal Ministry of the Interior admitted that the competent municipality of Röhrenbach had not entered the change of address in the Central Voters' Register. This circumstance was the cause of the polling card being sent to the wrong address.

Central voter register not updated

The Federal Ministry of the Interior stated that the municipality had corrected the address in the Central Voters' Register during the investigative proceeding and expressed its regret about the error to the person concerned. Due to the awareness of the problem described above, the AOB considered the faulty dispatch of the polling card to have been rectified.

3.7.5 Residence registration law

Deregistration by the Residence Registration Authority without proceedings

A Styrian woman contacted the AOB on behalf of her adult son. She suspected that the authority had not proceeded correctly when officially deregistering her son.

If the Residence Registration Authority has reason to believe that a registration has been made or omitted contrary to the provisions of the Residence Registration Act (*Meldegesetz*), it must carry out the registration or deregistration. The person who is obligated to register themselves must be informed in writing of an official deregistration and given the opportunity to make a statement of opinion within a specified period of time. Only if the person concerned does not make a statement of opinion after receiving the notification is the official deregistration to be carried out without further proceedings.

Person obligated to register has right to be heard in case of deregistration

The Federal Ministry of the Interior acknowledged that the municipality of Bruck an der Mur had deregistered the son without conducting any proceedings. As the supreme Residence Registration Authority, the Federal Ministry of the Interior instructed the authority to cancel the deregistration during the investigative proceeding. The AOB identified shortcomings in the unlawful deregistration and considered the reason for the complaint to have been resolved due to the instruction given.

Refusal to issue a registration confirmation

A Viennese woman turned to the AOB. She criticised the fact that the Residence Registration Authority had twice refused to issue a confirmation of

registration for her adult daughter whose adult guardian she is, despite the submission of the relevant court document. The employees of the Municipal District Office for the 4th and 5th districts were of the opinion that the woman should have presented her daughter's ID in any case.

Adult guardian was denied registration confirmation

In the investigative proceeding, the Residence Registration Authority admitted the misconduct. In order for an authorised person to receive a registration confirmation, they must identify themselves and present a power of attorney. The staff had been reminded of the correct procedure. Finally, the person concerned was asked to make contact in order to resolve the matter quickly.

The AOB welcomed the awareness measures. As the requested confirmation was issued immediately after the investigative proceedings were completed, the AOB considered the admitted misconduct to have been rectified.

Delayed correction of a registration address

A resident of Vienna contacted the AOB because in 2021 it was only possible to register his residential address digitally when entering a door number. However, there was actually only one residential unit at the address. The Residence Registration Authority had not complied with the request for a retroactive correction in May 2024.

Correction made

The Federal Ministry of the Interior stated that due to the lapse of more than three years, it was no longer possible to clarify why it was not possible to register without a door number at that time. The door number of the registration address had been cancelled retroactively to January 2021 during the investigative proceeding and the person concerned had been sent a corresponding confirmation of the notification.

The AOB welcomed the fact that the Residence Registration Authority immediately made a correction and the complaint was rectified by sending a correct confirmation of registration.

No identity verification despite existing information block

A man from Lower Austria turned to the AOB on behalf of his partner: The authority had issued a confirmation of registration without presentation of an identity document and only after disclosure of the date of birth, although an information block had been in place.

Authority should have required expulsion

In its statement of opinion, the Federal Ministry of the Interior acknowledged the incorrect courses of action taken by the Hirtenberg Residence Registration Authority. While investigative proceedings were still ongoing, the Federal Ministry of the Interior informed the authority that, in this specific case, the presentation of a photo ID would have been necessary to clearly establish identity.

In principle, the Residence Registration Authority is obliged to provide information on whether and where a person is registered in the federal territory. To this end, persons requesting information must prove their identity. This is particularly important in the case of information blocks, which represent a justified restriction of registration information. As awareness was raised, the AOB considered the admitted deficiency to have been remedied.

3.7.6 Passport law

Passport and identity card issues with wrong date

An Upper Austria citizen complained that the district authority in Gmunden had issued his passport and identity card with an incorrect place of birth and refused to cover the costs of the incorrectly issued identity card.

In the investigative proceeding, the Federal Ministry of the Interior stated that during the 2001 census, the place of birth of the person concerned was not recorded as Gmunden but as Ebensee in the Central Civil Registry. This had led to the creation of an incorrect data record in the identity document register and subsequently to the two incorrectly issued documents.

Incorrect place of birth in the register

The Federal Ministry of the Interior took the complaint as an opportunity to draw the attention of the Gmunden district authority to the correct processing of passport applications. In addition, the Federal Ministry of the Interior recommended that the Gmunden district authority should pay the fees for the reissue of the ID card.

The AOB identified shortcomings in the processing of the two applications for a travel document and an identity document by the passport authority. As the Gmunden district authority was sensitised, the AOB considered the admitted error to have been rectified.

Delayed issuance of identity card

A resident of *Land* of Salzburg contacted the AOB and criticised the fact that he had been waiting a year for an ID card to be issued. In the investigative proceeding, the Federal Ministry of the Interior confirmed that the application had been submitted in December 2022. The district authority in Hallein had initially remained inactive because the applicant had been put out to tender for residence enquiries. It was only when the person concerned contacted the authority again in September 2023 that investigations were carried out. There were no longer any grounds for refusal and the authority released the ID card for production. Despite being summoned to collect the document in October 2023, the person concerned did not appear at the authority. In December 2023, he made a telephone call to the Hallein district authority to arrange for the ID card to be sent by post. The document was sent the following day.

Decision only then months after the application

According to Section 17 of the Passport Act 1992, authorities must decide on applications for the issue of a passport within three months. In its statement of opinion, the Federal Ministry of the Interior conceded that this three-month decision period had been far exceeded in this specific case. In addition, it stated that the Hallein district authority had been informed of the legal situation and the correct course of action in the investigation of grounds for refusal.

The AOB welcomed the fact that the identity card was issued while investigative proceedings were still ongoing. The reason for the complaint was thus resolved. The AOB considered the awareness measures taken to be expressly positive.

3.7.7 Civil status law

Missing name entry in marriage certificate

A Viennese woman lodged a complaint with the AOB on behalf of her son and his US-American wife. She complained that the authority refused to correct the national and international marriage certificate even though her daughter-in-law's name was not entered in full. The couple needed a marriage certificate that matched the passport due to an upcoming longer stay abroad.

Austrian naming law only recognises first names and surnames. The registration of other name components, such as a middle name common in the USA, is only possible in the Austrian Central Civil Registry as an "other name". International marriage certificates are issued on the basis of the Convention on the Issue of Multilingual Extracts from Civil Status Records and do not provide for other names.

Civil registry office admits error

In the investigative proceeding, the Federal Ministry of the Interior conceded that the competent civil registry office had forgotten to notarise the applicant's middle name when making the entry in the Central Civil Registry and consequently also when issuing the national marriage certificate. The Central Civil Registry had been amended accordingly during the investigative proceedings. The agreement, which is binding for international marriage certificates, does not provide for the listing of further name elements and Austrian authorities cannot make any unilateral adjustments.

Federal Ministry proposed solution

As a solution, the Federal Ministry of the Interior suggested applying to the civil registry office for the Austrian marriage certificate with a multilingual translation in accordance with a European Union regulation and using this when submitting the document to a foreign authority. The middle name could also be stated in this document.

The AOB identified shortcomings in the missing entry of the applicant's middle name as her other name in the Central Civil Registry and in the national marriage certificate. As the civil status authorities took action, the AOB considered the admitted errors to have been rectified.

3.7.8 Public employment law

Hesitant improvement of workplace for employees with disabilities

An employee of the Police Department Styria with a visual impairment criticised the fact that the service authority had not processed her request to install the necessary magnification software at her workplace for months. The Federal Ministry of the Interior confirmed the delay in installing the required software. It cited communication problems as the reason for the delay, in particular in forwarding the occupational health expert opinion submitted by the employee and the clarification of licence fees. An evaluation of the processes had been carried out in the meantime.

With regard to the needs of the staff members, the AOB criticized that the approval and installation of the special magnification software by the employer took nine months. As the necessary equipment had been installed and the Federal Ministry of the Interior had improved the approval processes, the AOB considered the admitted delay in processing the staff members' application to have been rectified.

Nine months waiting time for required equipment

Several months of inactivity by the public service authority

A Vienna resident complained to the AOB for the Federal Ministry of the Interior's delay in processing his applications under public employment law from May and June 2023 due to the reassessment of his job. In principle, an authority must make an administrative decision on applications within six months. Once an appeal against the administration's failure to decide has been determined, the authority can issue an administrative decision within three months.

The Federal Ministry of the Interior confirmed the two applications under public employment law. The staff member had been informally informed of the authority's legal opinion. After the person concerned had determined an appeal against the administration's failure to decide in January 2024, a decision was made on the applications in February 2024 by administrative decision. The Ministry's statement of opinion did not provide any reasons as to why the official authority had remained inactive for months. The AOB identified shortcomings in a procedural standstill of seven and six months respectively, which was solely attributable to the service authority.

Authority only able to take action due to appeal against inactivity

Duration of proceedings under public employment law before the Federal Administrative Court

In December 2023, an executive employee contacted the AOB and asked for assistance because the Federal Administrative Court had not yet ruled on the complaint he had lodged in February 2023 against an administrative decision under public employment law. If law provides for no other deadline, a statutory decision period of six months applies to the Federal Administrative Court.

**Federal
Administrative
Court inactive
for 11 months**

The AOB identified shortcomings in the fact that the Federal Administrative Court had not taken any procedural steps over a period of eleven months. As the court concluded the proceedings at the end of January 2024, the AOB considered the reason for the complaint to have been resolved.

Incorrect and delayed advertising of permanent position

A man from Lower Austria complained about the Police Department Lower Austria's courses of action when advertising a position he was seeking. In the investigative proceedings, the Federal Ministry of the Interior explained that the permanent position had been vacant since July 2022. It conceded that the first advertisement in February 2023 had been based on a job description that had not been approved by the Federal Ministry for Arts, Culture, the Civil Service and Sports. The appointment therefore had to be suspended. At the end of January 2024, the position had been advertised again based on a job description that had now been approved by the ministry and the application deadline had expired at the end of February 2024. The Federal Ministry of the Interior was unable to provide any reasons for the incorrect advertisement.

According to Section 5 (3) of the Civil Service Job Tender Act (*Ausschreibungsgesetz*) 1989, the advertisement must be published three months before the position or job becomes vacant, if possible, but at the latest within one month. If it is not certain whether the function is to remain or be discontinued, the deadline is extended to three months.

Both invitations to tender, the one issued prior to approval by the Federal Ministry for Arts, the Civil Service and Sports and the one issued at the end of January 2024, were considered late. The service authority must accept responsibility for this delay.

As the competent Police Department of Lower Austria had advertised the vacant permanent position in the meantime, the AOB considered the delays in advertising the permanent position as well as the admitted error of the job description not having been approved in the course of the first call for tenders to have been rectified.

Delayed provision of information by authority

One Vienna resident criticised the fact that the Federal Ministry of the Interior had not responded to his request for information. According to the deadline stipulated in the Duty to Grant Information Act (*Auskunftspflichtgesetz*), information must be provided within a maximum of eight weeks.

During the investigative proceedings, the Federal Ministry of the Interior admitted that it had only responded to the request for information after more than nine weeks. The reason given was the large number of other enquiries regarding admission to the executive service. As the Federal Ministry of the Interior had answered the enquiry immediately upon initiating the investigative proceedings, the AOB considered the delay to have been rectified.

3.8 Justice

3.8.1 Judicial officers

Introduction

Many submissions in the year under review concerned matters that fall exclusively within the competence of the independent courts. The problems mostly related to estates, executions or bankruptcies. The AOB endeavoured to explain the legal situation to those affected. It also referred to the independent court rulings of the independent judiciary.

Denial of judicial officers

In a number of complaints, however, those affected also criticised procedural delays and poor communication with court personnel. It is understandable that decisions take time, especially in complex cases. However, the submissions each illustrate how stressful it is for those affected when proceedings take an excessively long time. A long duration of proceedings is often perceived as a denial of judicial officers. This will be illustrated below using individual cases.

3.8.1.1 Procedural delays

Long duration of probate proceedings – district court Horn

Sustained default

A relative of a deceased person contacted the AOB and complained that the probate proceedings had been pending for over two years. The investigative proceeding revealed that the competent notary's office in Eggenburg had failed to make appropriate steps. The district court Horn had repeatedly requested the court commissioner – also with regard to party complaints – to deal with the matter more quickly and to submit the files. Despite the court commissioner's persistent default, the district court did not revoke her order.

This is because there is only one other notary's office in the district court of Horn, which, according to its own information, was fully utilised and had no capacity for temporary help. Surrounding notary's offices in other court districts were also only prepared to take on urgent individual cases due to their high workload.

Report to the Chamber of Notaries

In October 2022, the Horn district court submitted a written report to the Chamber of Notaries for Vienna, Lower Austria and Burgenland with the recommendation to provide assistance to the notary. In the AOB's opinion, the Chamber of Notaries should have been informed at an earlier stage.

The Federal Ministry of Justice regretted the objectively long duration of proceedings and pointed out that the situation had improved in the meantime – due to the consistent supervisory control exercised – and that backlogs had been cleared. It assured that the Chamber of Notaries for Vienna, Lower Austria and Burgenland will continue to be involved.

Delayed dispatch of payment order – district court Floridsdorf

An Upper Austrian citizen turned to the AOB. He described how he had been served with a payment order six months late. Nevertheless, the court had authorised the enforcement of the driving execution. In the meantime, the amount of 400 euros had been transferred to the enforcing creditor by way of salary execution.

Delivered six months later

The Federal Ministry of Justice confirmed that the service of the payment order had been delayed. The cause was a lack of staff in the Floridsdorf district court's office. The staff of the execution departments are endeavouring to clear the existing backlogs. In the meantime, the district court had explained to the citizen the reasons for the delay in serving the payment order and had provided legal advice regarding an application for reinstatement.

Delayed settlement of application – district court Gänserndorf

At the end of October 2023, a debtor applied to the Gänserndorf district court to have the enforceability of the payment order cancelled. In May 2024, the citizen contacted the AOB and complained that he had still not received a settlement. The Federal Ministry of Justice confirmed this. The file was with the competent judicial officer. Due to the heavy workload, it had not been possible for her to promptly investigate whether the electronic delivery had been carried out correctly. There had also been a delay because the judicial officer was on sick leave. Finally, the district court scheduled an interview with the debtor for June 2024 to clarify the electronic service of the payment order.

Seven months of waiting

3.8.2 Public prosecutor's office

In the year under review, the AOB received numerous enquiries and concerns relating to the activities of the prosecuting authorities. The AOB was able to point out the possibility of an application for continuation (Section 195 of the Code of Criminal Procedure) in the case of discontinuation of preliminary proceedings. In the case of decisions pursuant to Section 35c of the Criminal Procedure Act ("refraining from initiating preliminary proceedings") however, it was only possible to point out an investigation by the technical supervision.

3.8.2.1 Procedural delays

Standstill of a preliminary investigation – public prosecutor's office Graz

In January 2024, the AOB learnt that a guardianship judge had filed a report with the public prosecutors' office in Graz because there had been suspicion

of fraud by an adult guardian. The granddaughter of the damaged party had seen the notes of the public prosecutors' office. A request for an enquiry had been made to the Styrian State Office of Criminal Investigation, the last diary entry was from February 2023.

The Federal Ministry of Justice informed that the final report of the State Office of Criminal Investigation in Styria was received at the end of April 2023 and regretted the delay. It cited a change of case officer and more urgent matters as the cause. The proceedings had been concluded at the end of February 2024 and the granddaughter's legal representative had been informed.

Procedural delays in legal remedies – public prosecutor's office Vienna

In August 2023, a defendant determined an objection to the seizure of his mobile phone as a violation of the law. As the public prosecutors' office did not grant the objection, he demanded a decision from the court. He complained that the court had failed to rule on this objection.

Objection left pending As the AOB determined, the Vienna Public Prosecutors' Office received the application at the end of August 2023; however, it did not forward it to the Regional Court for Criminal Matters Vienna until the beginning of March 2024. The Vienna Public Prosecutors' Office had failed to forward the objection to the court without delay.

Further delays The Federal Ministry of Justice stated that processing the objection had initially been overlooked. In addition, there had been staff changes and long-term sick leave. An apology had been made to the person concerned by telephone and he had been promised that the mobile phone would be handed over immediately. However, the handover of the device was again delayed until January 2024, as the Criminal Police had to hand over the mobile phone to an external company to unlock it due to a lack of in-house capacity.

After the management of the Vienna Public Prosecutors' Office inspected the file again in March 2024, they observed that the objection had still not been submitted to the court despite directives to the contrary. Ultimately, the file was forwarded to the Regional Court for Criminal Matters Vienna in March 2024, which ruled at the beginning of April 2024.

Measures by the supervisory authority The Federal Ministry of Justice assured that the district attorney competent for the proceedings and the supervisory prosecutor responsible had been sensitised in the meantime.

3.8.2.2 Technical supervision

Processing a complaint – Ministry of Justice

A man from Graz complained about the actions of the Vienna Public Prosecutors' Office to the Federal Ministry of Justice's Legal Defence Office. The latter referred him to the Chief Public Prosecutor's Office in Vienna.

According to Section 37 of the Public Prosecutors' Office Act, complaints against a public prosecutors' office can be lodged with any superior office. If the complaint is not submitted to the public prosecutors' office with direct superiority, it must generally be forwarded to this office for further official acts, if necessary – with a reporting order.

No forwarding

The Federal Ministry of Justice took the view that the Legal Protection Unit of the Federal Ministry of Justice did not exercise technical supervision over the public prosecutors' office. It serves to relieve the specialist divisions by – as far as possible – answering enquiries independently.

However, this did not explain why the submission had neither been forwarded to the competent specialist division nor assigned to the Chief Public Prosecutor's Office and why no notification of charges had been sent to the Graz resident concerned. The citizen only received a general reply from the Chief Public Prosecutor's Office stating that the investigation under supervisory law had not identified any grounds for shortcomings.

Empty phrases of justification

The AOB does not share the opinion of the Federal Ministry of Justice that a statement of reasons was "not indicated in the specific case". Rather, it considers it necessary to inform every affected person as fully as possible, provided that there are no provisions of official confidentiality or data protection to the contrary.

No knowledge of a complaint for administrative review – Ministry of Justice

If there is an initial suspicion, criminal proceedings must be started. There are sometimes differences of opinion as to whether certain indications give reason to believe that a criminal offence has been committed.

Previously, the following applied: If the public prosecutors' office did not initiate preliminary proceedings, it had to notify the person reporting the incident. In doing so, it had to inform the person reporting the incident that he was not entitled to file an application for continuation. This meant that the person reporting the incident had to accept the decision of the public prosecutors' office.

Feeling of powerlessness

This gap in legal protection was lamented in the specialist literature and also recognised by the Federal Ministry of Justice (Jablöner, Wahrnehmungsbericht

des Bundesministers für Verfassung, Reformen, Deregulierung und Justiz, Befund Maßnahmen für eine moderne und qualitätsvolle Justiz [2019] 6). The AOB also advocated a change (Annual Report 2022, chapter 3.8.3, p. 136 et.seq.).

Incomplete form The only option the person reporting an incident had left was to determine a supervisory complaint. However, only a few knew about this. The AOB therefore referred the question to the Federal Ministry of Justice as to why there was no reference to this on the notification form.

The Federal Ministry of Justice took the view that a complaint could always be determined by someone who considered themselves to be aggrieved. From this perspective, every action taken by the public prosecutors' office would have to give rise to such a complaint. However, this was neither intended by the legislature nor feasible.

The AOB does not share this view: the wording of the law did not preclude instruction. In addition, the legislature had decided to inform the "person reporting an incident". In doing so, however, it had singled him out from the general group of those who can determine a complaint for administrative review.

If the notice were clear, the persons reporting incidents would not expect to be entitled to a settlement. The AOB could only understand that this would lead to a higher number of complaints. However, this argument was not convincing against the background of the legislature's intention.

Amendment adopted The AOB therefore issued a determination of maladministration in cases in which the members of the AOB jointly determined maladministration. The legislature decided to remedy the problem and introduced legal protection in the event of failure to initiate an investigation. The changes entered into force on 1 January 2025.

3.8.3 Data protection – duration of proceedings at Data Protection Authority and Federal Administrative Court

In the area of data protection, the AOB mainly received complaints about the long duration of proceedings at the Data Protection Authority. It should be noted that it was predominantly one person who has also been making exceptional use of the authority for a long time.

Enormous workload This case's dimensions can be seen from an administrative decision issued by the Data Protection Authority in June 2024, which states that the Data Protection Authority has to decide on submissions from the person concerned totalling 3,390 pages. In addition, attachments and further submissions from

the man would be submitted to the Data Protection Authority for a decision. A total of 3,570 emails were involved.

In the period from 2018 to June 2024, the man had 231 complaint proceedings pending with the Data Protection Authority, divided into 107 domestic and 124 foreign proceedings (mostly against persons responsible or Italian authorities based in Italy).

Despite repeated instructions about competence and knowledge of the legal situation, the person concerned persistently lodged complaints against data controllers in South Tyrol with the Data Protection Authority and not with the Italian data protection supervisory authority. He also referred 118 cases to the Federal Administrative Court.

**Federal
Administrative court
also affected**

The Data Protection Authority now assumes frequent repetition within the meaning of Article 57 (4) of the General Data Protection Regulation (*Datenschutz-Grundverordnung*) and refuses to deal (further) with complaints from this citizen.

3.8.4 The penitentiary system and forensic institutions

Introduction

In 2024, the AOB received 899 complaints from inmates of the penitentiary system and forensic institutions. In addition, the AOB held 17 consultation days in correctional institutions, forensic therapeutic centres and forensic departments of public hospitals. The overarching theme was always coping with the oppressive overcrowding.

Consultation days

Overcrowding and issues relating to human resources, in particular with regard to the looming shortages due to upcoming retirements, also dominated the meeting with the management of the facilities to which the AOB invited at the beginning of May 2024 at its premises. The Director General for the penitentiary system and the enforcement of liberty deprivation measures, his deputy and senior officials from the Federal Ministry of Justice also attended the meeting.

**Meeting with the
management of the
facilities**

The meeting provided an opportunity to express thanks for the support provided so far, especially during the consultation days. In the discussion that followed, these topics were raised: the increasing number of complaints about applications' handling; the copying of mail that is now practised in many correctional institutions; efforts to curb the illicit trade in medicines and the carrying out of body searches, with or without physical exposure.

The AOB also participated in several Federal Ministry of Justice working groups last year. The operational working group on the detention of juveniles

**Participation in
working groups**

met for the first time at the beginning of January 2024. The results of seven subsequent meetings on the topics of standards in the detention of juveniles, treatment and care, education and employment, and daily structure and leisure can be found in a final report, which concludes with a series of recommendations. The Federal Ministry of Justice incorporated these into a concept for minimum standards and presented them to the working group's advisory board at the end of November 2024.

The AOB also participated in working groups on the topics of "Online Recruiting Day for Civilian Staff", "Employee Satisfaction" and "Health and Caregivers". They are part of the working platform "Making work in facilities of the penitentiary system and forensic institutions more attractive – improving the staffing situation in prison guards and other professional groups". According to the Federal Ministry of Justice, some of the results have already been adopted, while others have been analysed and compiled.

The AOB also participated in the research project "Efficient, secure and structural detention design in correctional institutions in Austria". This is a joint project between the FH Campus Vienna, the Federal Ministry of Justice, the Institute for Sociology of Law and Criminology at the University of Innsbruck, a civil engineering firm and a project management company. The project results were presented at the end of October 2024.

3.8.4.1 Suicides and suicide attempts

Many suicides Despite the sensitisation of all police departments and facilities of the penitentiary system and forensic institutions, the number of suicides and suicide attempts is not decreasing, on the contrary. By the end of 2024, the AOB had become aware of 47 suicide attempts and 9 suicides by inmates in facilities for the penitentiary system and forensic institutions. As in previous years, strangulations were the most common, followed by cuts and the ingestion of medication.

Although all incidents must be reported to the General Directorate and are passed on from there to the AOB, doubts repeatedly arise as to the completeness of the reports. On several occasions, the AOB had to request additional reports from the Federal Ministry of Justice due to information received from detainees.

Recommendations not implemented One of the most important demands in the final report of the working group "Security and care settings in crisis situations" is to determine the suicidal tendencies of inmates again after a period of around eight weeks following their admission to a correctional institution. This recommendation has not yet been implemented. Nor have caregiver criteria that indicate a special need for care been expanded or minimum standards for the care of segregated persons been established (cf. Annual Report 2023, chapter 3.7.2.1).

The AOB can only urge the rapid implementation of the recommendations once again. The following examples may illustrate this.

Lack of protection against self-harm – Schwarzaau correctional institution

During a patrol, it was noticed that a prisoner was staying in the toilet longer than usual. The officer contacted the inmate. She stated that she had swallowed razor blades. The ambulance took her to the Wiener Neustadt regional hospital, where doctors attempted to remove the foreign objects endoscopically. The officers promptly investigated the woman's inmate cell and found letters indicating a suicide attempt.

**Razor blades
swallowed**

When asked, the Federal Ministry of Justice announced that the woman had been engaging in self-harming behaviour of a manipulative nature since her imprisonment. She not only wanted a change of place of detention, but also repeatedly demanded an increase in her medication. She was also known to have attempted suicide before detention. The AOB still had to clarify why the prisoner was categorised as "green" according to VISCI in view of her emotionally unstable personality disorder.

VISCI (Viennese Instrument for Suicidality in Correctional Institutions) is a system for assessing the suicide risk of detainees. It works like a traffic light: red means a high-risk, amber means there is no immediate need for action, green means that there is no recognisable risk. If there is an increased risk, the person concerned should be examined immediately by a specialist doctor or a specialist doctor, who will then initiate further steps.

Originally, the woman was given an "amber" light. Based on psychiatric expertise around six months after entering prison, the traffic light was changed to "green". According to professional judgement, the inmate's disorder was not suicidal, but rather her actions were purely manipulative.

**State has a duty to
protect**

The AOB cannot share this view: Irrespective of the question of the psychiatric expertise' accuracy, the prison administration's duties to protect and care extend not only to the prevention of suicidal behaviour, but also to the prevention of self-harm. Self-harming behaviour can unintentionally end fatally.

Defective defibrillator – Feldkirch correctional institution

In mid-February 2023, an inmate at Feldkirch correctional institution strangled himself with a shoelace that he had attached to the window cross. During the immediately initiated resuscitation measures, the officers used a defibrillator, but it did not work. They succeeded in restarting circulation by performing a cardiac massage.

Cardiac arrest

Device did not work As subsequent research has shown, the Feldkirch correctional institution regularly services all devices. The device in question was last investigated in 2022 and received a sticker valid until 09/2024. The battery compartment of each device is sealed separately. Tampering can therefore be ruled out.

The correctional institution immediately carried out an investigation of all defibrillators. The device in question received a new inspection sticker valid until 09/2026. It was not possible to observe the reasons why it had not worked on the day it was used.

Inmate died Although the immediately summoned replacement device did not recommend shock delivery and resuscitation of the occupant was possible, he succumbed to his injuries two days later in hospital.

3.8.4.2 Structural conditions and fittings

Overcrowded penitentiary system due to construction work

In the year under review, the situation in terms of space, especially for male adults, remained tense nationwide. There was no correctional institution in which inmates and staff did not complain about the cramped conditions. For example, several detainees at Graz-Karlau correctional institution contacted the AOB. They reported that additional (bunk) beds had been set up in the inmate cells and expressed concern that the cramped living conditions would lead to refusals to occupy the inmate cells, conflicts and physical altercations.

Graz-Karlau correctional institution The reasons for the cramped conditions include urgently needed construction and reorganisation measures, particularly in the detention of inmates with mental health care needs. This means that no placements can be made in the affected wing during the construction work. In future, there will be 68 prison places instead of 81 beds. The construction work should be completed in 2025.

The Federal Ministry of Justice confirmed that additional beds had been installed in Graz-Karlau correctional institution. In one wing, several inmate cells designed for two inmates were each equipped with an additional bunk bed. Furthermore, an additional bed was placed in several communal detention rooms, so that up to seven people can now be detained in one inmate cell, depending on its size.

Outermost limit The Federal Ministry of Justice refers to these additional beds as "systematised additional beds" and has already recorded some of them in the detention room management project in the Integrated Prison Administration (the correctional institution's IT system for managing the stock of remand and convict prisoners). It ensured that this measure only applies to inmate cells that still fulfil CPT standards even under these stricter conditions. If the number of inmates continues to rise, then the inmate cells in the newly renovated "A wing" would also have to be equipped with bunk beds.

The general refurbishment of Vienna-Josefstadt correctional institution began in October 2023 and is expected to last until 2033. The detention wings will be refurbished between 2025 and 2033 (construction phases II to VII), which will result in a reduction in capacity of up to 200 detention places. The first prison wing to be refurbished will be the "D wing" in 2025, which will affect at least 123 prison places according to the Federal Ministry of Justice.

**Vienna-Josefstadt
correctional
institution**

In view of the increased occupancy situation nationwide, the Federal Ministry of Justice set up the occupancy management task force. It is intended to ensure a regionally coordinated approach with regard to official changes to enforcement locations in order to be able to react to developments as quickly as possible and make the best possible use of bed capacities. The task force was facilitated on 1 July 2024 and was limited to six months. In February 2025, the Federal Ministry of Justice announced that, following an evaluation, the continuation of the Occupancy Management Task Force was provisionally set for a further six months.

**Occupancy
Management Task
Force**

Inadequate building structure – forensic department at Graz-Karlau correctional institution

On the occasion of the consultation day in October 2024, the AOB visited the almost completed forensic department. The department currently consists of three wings that have already been put into operation, two of which are exclusively equipped with single-bed rooms. The AOB visited the part of the wing that contains ten rooms with two beds each. The rooms are functionally furnished, with light-coloured PVC flooring, wooden beds, desks, two permanently installed televisions, cooking facilities and a refrigerator, lockable lockers and a structurally separate WC on one side and a shower (wet room) on the other side of the room.

**Contemporary
equipment**

However, the AOB considers it a disadvantage that the station base, where the officers are located, is structurally separated in the anteroom and the parts of the wing that branch off in a star shape are closed off by doors that only have narrow viewing slits. The only monitoring is carried out via monitors in the officers' common area. There is no personal contact. Officers can monitor the corridors and communal areas of the departments via screens, but cannot see into the rooms. Interaction between the officers on duty in the department and the detainees is not possible.

**Support point outside
the department**

Detainees can also no longer approach officers directly at the departmental base; this means that officers can no longer observe their social behaviour to the extent that was previously the case.

**Relationship-hostile
solution**

The AOB is aware that this disadvantage is due to the centre's building structure and can no longer be compensated for. This makes it all the more important to ensure that the integration of the department officers into the everyday lives of those accommodated there is not prevented or thwarted by

structural measures when new buildings or extensions are being built, as is the case in the Göllersdorf forensic therapeutic centre.

Structural deficiencies – Vienna-Mittersteig forensic therapeutic centre

On the occasion of the consultation day at the beginning of February 2024, the AOB visited the security department and the access department of the forensic therapeutic centre in Vienna-Mittersteig. Both departments were renovated after the fire in September 2021. They were in perfect hygienic condition on the day of the inspection.

Many steps The visible efforts to make the living and accommodation conditions bearable for the residents do nothing to change the unsuitability of the building. As a former district office, it gives the impression of an official building. The departments attached to the administrative wing have narrow corridors. They are only accessible via stairs. There is no elevator into the lock-up. If an occupant were in a wheelchair, the officials would have to lift them up or down the stairs. Visitors who depend on a wheelchair also need the help of others to get into the building. The inmate cells are cramped and there are limited opportunities to spend time outside your own cell in the department. Overall, the building does not give the impression that one would expect from a therapeutic centre.

Narrow aisles After years of construction work, during which the inner courtyard was blocked off, work is now once again underway, this time on the outer façade of the building. Outdoor sports activities were only possible to a limited extent until autumn 2024. There were no indoor training facilities to compensate. There is a common room in the access ward, the security ward lacks even that. Inmates can only spend time there in the tube-like corridor.

Long distances Finally, the AOB also visited the two specially secured cells located on the ground floor. They were also renovated. The AOB welcomes that the black floor has been removed and replaced with a light grey covering. The video surveillance now covers the entire inmate cell, the toilet area is pixelated, there is a self-determined water withdrawal facility and both inmate cells are soon to be equipped with a television set behind shatterproof glass. One weak point is the metal shoring of the radiator and the fact that both cells are only monitored from the guardroom and the way there leads through the inner courtyard or across the ward's barricade.

Infrastructural deficiencies – Feldkirch correctional institution

Working premises in the cellar A modern penitentiary system cannot be realised in Feldkirch correctional institution. Even minor improvements, such as in the entrance area of the visitor zone, do not change this. Corridors and stairwells have been repainted since the last consultation day, and a space has been found for the company

operations in the basement. However, the plaster there had to be removed because the brickwork was soaked through. The room is located in the basement and only has small skylight windows. It is not suitable for a stay of several hours.

The condition of the two specially secured cells is also below average. In both inmate cells, the inner bars were covered with a Perspex screen, but some of these were fitted with sharp-headed screws, so there is an acute risk of injury. The cutlery is made of wood and therefore not injury-proof. There are no clocks in both inmate cells. In addition, the window in one of the inmate cells has a sharp-edged metal frame. The AOB already criticised this case of maladministration at the last consultation day in February 2022; it had still not been rectified at the beginning of June 2024.

Acute risk of injury

A new building with bright, spacious rooms and sufficiently large outdoor facilities would be desirable. Space is currently limited. Women only have access to an approximately 20 metre long section of the L-shaped inner courtyard, which is completely asphalted. Very little exercise is possible in this area. Women cannot play table tennis outdoors either. The table is (already) in the part of the courtyard that can be seen by the men. It is firmly anchored to the ground and cannot be moved.

Women at a disadvantage

Possibility to listen to conversations in inmate cells – Garsten forensic therapeutic centre

An inmate in the Garsten forensic therapeutic centre criticised the fact that officers were able to listen in on inmates' conversations because there was no "signal tone" before the detention room intercom was activated.

According to the Federal Ministry of Justice, inmates are informed visually when the audio connection is established. Each time the inmate cell is dialled, a red LED light lights up on the intercom panel. It is therefore not possible to listen in on detainees' conversations without their knowledge.

Red LED lamp

However, as the illumination of an LED lamp can be overlooked, the AOB asked the Federal Ministry of Justice for additional information on the issue of an acoustic signal. According to the Federal Ministry of Justice, retrofitting the system basically depends on the age of the intercom system. The technical feasibility and the associated costs would be discussed with the IT architects. Currently, interviews in eight correctional institutions are announced with a signal tone.

Often no sound

Inadequate fittings of inmate cells – Ried correctional institution

In August 2024, an inmate at Ried correctional institution complained that the toilet in his single cell was only separated by a curtain, which was "blown away" when the door was opened, so that the officers entering had a clear view of him when he was sitting at the toilet. He found this degrading.

Unworthy conditions

The inspection of the inmate cell revealed that the curtain could indeed be moved. The AOB recommended that the curtain on the side facing the door be fixed to the wall with adhesive tape. The management of the facility agreed to do this, but did not honour the promise by December 2024. Instead, the in-house workshop manufactured and installed wooden mouldings. In the end, they said that the correctional institution first had to order fireproof curtains. The purchase is not expected until the first quarter of 2025 and installation in the second quarter of 2025.

Worn-out seniors' department – Suben correctional institution

In mid-July 2024, 340 prisoners were placed in Suben instead of 260. Some of the beds in the seniors' department were bunk beds. Up to 10 inmates have to share a small communal fridge. There are no bedside cabinets in the cells for multiple inmates. Glasses and dentures have to be placed on the floor under the bed at night so that fellow inmates do not trip over an armchair on the way to the toilet. There are no rubber mats in the sanitary facilities. The floor there is slippery.

There are several eat-in kitchens in the department. However, each kitchenette only has a single hob and a microwave oven. Crockery and food are distributed in cardboard boxes and banana boxes, some of which are on the floor. There are no wall shelves for storing food and crockery.

Overall, the ward gives the impression of being run-down and dreary. It cannot be said that it specifically meets the needs of older inmates. The AOB discussed individual possibilities for improvement with the prison guard commander during a consultation day.

Worn-out visitors' rooms – Suben correctional institution

The consultation day at the Suben correctional institution provided an opportunity to inspect the room for longer visits and the room that is available for table visits. The room for longer consists of a small wet room and the main room, which has a fridge, cooking facilities, an old pull-out settee and a side table. One enters the room through a small anteroom with a built-in cupboard. At the time of the visit, the room appeared to be in a perfectly hygienic condition. The fixtures and fittings looked very worn.

Indirectly adjacent to the room for longer visits is the room where table visits can be received. There are three side tables next to each other in the small room. The room was in use at the time of the visit, with visits taking place at all three tables. The AOB was able to understand the inmates' complaint that conversations could not be conducted undisturbed due to the small size of the room and the short distance between the individual tables.

Sports room located in damp cellar – Suben correctional institution

The location of the old building near the River Inn means that the rooms in the basement have a high level of humidity. This applies in particular to the vaulted cellar, which has been available to inmates as a sports room for many years. Another sports room is to be opened there in the near future. However, the humidity is so high that mould formed on the sports equipment even before it was put into operation.

Although some of the brickwork is chipped and a dehumidifier runs day and night, it seems difficult to reduce the humidity, especially during the summer months. The only alternative would be to close the sports room, which would mean that inmates would no longer be able to do weight training.

Lack of sports facilities – Vienna-Mittersteig forensic therapeutic centre

Once again, a detainee complained that it was almost impossible to do sports in the Vienna-Mittersteig correctional institution. Apart from spending time outdoors every day, there is only the opportunity to play table football in a multi-purpose room in the ward. There is an ergometer there and a dartboard hangs on the wall. If necessary, yoga mats can also be laid out. However, there is no actual sports room and, in particular, no equipment for training.

Few indoor activities

The AOB has already criticised the lack of opportunities for detainees to engage in sporting activities on several occasions (see most recently Annual Report 2022, p. 145). The management of the facility agrees that the spatial conditions leave little room for manoeuvre. The only larger room on the third floor of the main building, where service meetings also have to be held, is used for group therapies, religious gatherings and film screenings. If sports equipment were installed there, it would have to be repurposed. Multiple use would then no longer be an option.

To make things worse, after years of construction, during which the courtyard could only be used to a very limited extent, exterior work was once again due. Scaffolding was erected for the façade renovation. A lift and building materials to be stored blocked part of the courtyard, meaning that it could not be used for outdoor sports activities.

Yard closed again

Clear improvements – Floridsdorf satellite facility of Vienna-Mittersteig forensic therapeutic centre

There have been positive changes since the last consultation day. The relocation of the command centre has made it possible to create urgently needed meeting rooms on the ground floor opposite the guardroom area. It is no longer necessary to use a room in the department or a duty office for

New rooms

therapy sessions and meetings. The rooms are small but naturally ventilated, the walls freshly painted and the floor newly laid.

Renovation work in the building

In addition, a new riser system was installed, a fire smoke reduction system was installed, fire doors were installed in the departments to separate the individual wings and the emergency lighting was modernised. The guardroom area was also redesigned, and duty offices and officers' rest rooms were fitted with functional, light-coloured furniture. The next step will be to add an external lift that is accessible to people with disabilities, enabling wheelchair users to reach the individual levels of the building without barriers.

The Federal Ministry of Justice has received a feasibility study that envisages an extension to the annex building in the inner courtyard. An additional 20 detention places are to be created there. The extension is also to include a group room for the people accommodated there, a kitchen and a standby room.

Permanent defects

The weak point in the main building remains the two specially secured cells in the basement, which are a long way from the guardroom. Emergency call buttons have now been installed there (albeit indirectly next to the French toilet at a floor height of 10 cm). Both inmate cells were not completely free of defects. Even if, as the management of the facility assured us, the rooms are only rarely used, they should be safe to use.

New visitors' zone – Sonnberg correctional institution

Long awaited extension

At the beginning of March 2024, the shell of the new visitor zone in the Sonnberg correctional institution was almost complete. The extension was put into operation in the summer. Since then, the centre has also had two long-term visiting rooms at its disposal. This eliminates the need for time-consuming and labour-intensive transfers to Korneuburg correctional institution for visiting purposes.

The extension has a separate, barrier-free entrance. It contains four to five interview booths, which are also available to lawyers, caregivers and therapists and allow for glass-window visits. Furthermore, there is a large open area for table visits. In addition to rooms for the staff, there is also a room for the X-ray machine, where incoming parcels are examined. This room could also be used for the drug scanner that the Sonnberg correctional institution applied for two and a half years ago.

Space for therapy rooms at last

The laundry will also be located in the extension. It is currently placed in the main building. Once the machines have been relocated and the concrete plinths on which the equipment stands have been removed, the hall will be refurbished and divided up so that each room has sufficient daylight. This should finally provide sufficient therapy rooms. In future, a section of the hall will be used as a storage area for the outfeed.

New location for acute psychiatry – Pavillon 20 at Hietzing Clinic

Seven months after the closure of Pavilion 23/2 at the Otto Wagner Hospital and the move to the Hietzing Hospital, the AOB visited the "Forensic Acute Psychiatry" ward there. Of the 12 beds available on the ward, the eight available beds were in use on the consultation day.

Elaborate adaptations

The ward is staffed by four doctors and 18 nurses. Two psychologists, an occupational therapist and a social worker are assigned to the ward.

The pavilion previously housed the geriatric psychiatry department. Considerable adaptations are required in view of the change of purpose. New beds need to be purchased, sources of danger in the sanitary facilities defused, locks replaced, ceiling lighting fixed, nurse call systems renewed, toilet cisterns replaced and doors better secured; all of this without interrupting operations.

Four more beds are to be released in mid-2024. They will not be sufficient either. During the consultation day, the doctor on duty received a call from a correctional institution requesting the admission of a patient. The request had to be turned down due to a lack of free space.

High demand for more beds

The pavilion is divided into two wings (acute and sub-acute areas), at the end of which are the patient rooms. They are accessed via another airlock. From this enclosed area, patients can access the fresh air. Two inner courtyards have been created for this purpose, which are enclosed by high concrete walls. The courtyards are open twice a day for an hour at a time and allow patients to spend time outdoors individually or in groups under the observation of a caregiver and member of the in-house security service.

On the ward, the AOB liked the bright, light-flooded rooms and the wide corridors. However, it is much further from the ward base to the patient rooms than in Pavilion 23/2. All rooms are newly furnished and equipped with patient-appropriate fixtures and fittings that are injury-proof. Patients, who are under constant video surveillance, are able to move freely within the lock. They can use a chip bracelet to open and lock their room door independently and can stay in a smoking room or a common room, where a television set is available to them behind shatterproof glass.

Impressions from the wards

The more spacious room design guarantees a patient-friendly, open atmosphere. A change of setting in combination with close caregiver support often helps to quickly stabilise persons with mental illnesses without the need for restraints.

Few therapies

The therapeutic programme could be expanded. Doctors and caregivers would like to see music therapy and physiotherapy for patients. The occupational therapist should also be increased from 20 to 40 hours. A broader range of programmes geared towards specific clinical pictures would help patients to regenerate more quickly and reduce tension.

More staff In this regard, the Federal Ministry of Justice announced that it was working on increasing the number of medical, therapeutic and diagnostic healthcare professionals. It must first be determined which services are required and to what extent these are actually carried out on patients. Furthermore, which measures were planned but could not be carried out due to other circumstances (no security, doctor's appointments, etc.) and which services were requested (referrals were made) but could not be carried out due to a lack of staff or with what delay.

In the area of physiotherapy, it is hoped that the number of hours will be increased. The occupational therapy post could be filled with 20 hours from June 2024.

3.8.4.3 Living conditions

Chronic overcrowding – Eisenstadt correctional institution

Living in confined quarters A former detainee contacted the AOB and reported on the current detention conditions in Eisenstadt correctional institution. The woman described how she had been placed in a single cell together with a second prisoner, where she had to sleep on a mattress on the floor. She was later transferred to a cell for multiple inmates, which was equipped for three people. The inmate cell was occupied by up to five people, so that she had to sleep on a camp bed. This bed stood in front of the three existing lockers, which the five inmates had to share. It was almost impossible to get to the lockers. The situation was very stressful for everyone. It was equally stressful that the women's section was now occupied by male detainees due to overcrowding.

The Federal Ministry of Justice confirmed that there has already been a significant increase in the number of tugboat arrivals at the Eisenstadt correctional institution since mid-2022. This regularly means overcrowding of up to 20% of normal capacity.

Camping beds Inmate cells have to be occupied by more detainees than planned. Camping beds are set up for this purpose. The bed can be folded up in the morning, creating more space for freedom of movement during the day.

The Federal Ministry of Justice confirmed the accounts of the former prisoners. As an additional measure, the upper floor of the women's section also had to be temporarily occupied by male inmates. This reduced the number of prison places and accommodation capacity in the women's section.

Sleeping on the floor It was also true that the woman concerned had been placed in a one-person inmate cell together with a second inmate for one night, where she had to sleep on a mattress on the floor. She was then moved to a larger inmate cell.

The AOB replied that cell's equipment with four beds and three boxes is insufficient if an inmate cell designed for up to five people is not only

temporarily occupied by five people. It also emphasised that detainees should not sleep on mattresses on the floor or in folding beds.

The AOB has already called in the past for prompt short and long-term measures to be taken to combat the overcrowding of correctional institutions across the country. As early as 2020, the experts of the "Prison Package – NEW/Safe Ways out of Crime" working group recommended an expansion of electronically monitored house arrest in their final report. This measure would not only counteract the current pressure on prisoners in correctional institutions; it would also promote resocialisation (see also NPM Report 2023, p. 127 et seq.).

Men in the women's section – Ried correctional institution

A former prisoner complained that men were detained in the women's section of Ried correctional institution. Open inmates housed in shared accommodation could only be practised to a limited extent while male inmates were detained in the women's section.

The Federal Ministry of Justice confirmed that in the period from January to the beginning of March 2024, one inmate cell in the women's section of Ried correctional institution had been occupied by male inmates. This was necessary as Ried correctional institution has had to accommodate an increasing number of accomplices since the beginning of 2024. In order to ensure their separation, an inmate cell in the women's section also had to be occupied by male inmates. Only after the transfer of the male inmates had been arranged was it possible to restore the applicable standards for the women's penitentiary system at Ried correctional institution and the inmate cells were once again open daily from 7 am to 6 pm.

Separation rules

Not enough employment – Eisenstadt correctional institution

As a result of the oppressive occupancy situation, it is not always possible to hold detainees awaiting trial and prisoners separately. In addition, there are (also) only limited employment opportunities in Eisenstadt correctional institution. Not all detainees are able to participate in a sports and leisure group. To make matters worse, the recreation room was closed from the beginning of June to mid-October 2024 due to a faulty piece of equipment.

Adverse circumstances

A maximum of ten detainees can take part in a sports and leisure group in the gym at any one time. Due to the high demand and with more than 50 detainees per department, it cannot be guaranteed that detainees will be able to exercise at least once a week.

In view of the fact that only around 45% of detainees have a job, there is an urgent need to expand other activities. Lock-up times of 23 hours a day can lead to tensions and assaults.

High risk

Acute fire hazard – Göllersdorf forensic therapeutic centre

Fire with fatal consequences At the end of July 2023, an inmate died in a fire at the forensic therapeutic centre in Göllersdorf. He had lit a cigarette in the lounge of a residential group after midnight and then fell asleep. Three fire brigades, the ambulance service and the police were deployed for around one and a half hours. Six officers were injured during the extinguishing work; they had to be taken to the nearest hospital with suspected smoke inhalation. Numerous people were brought to safety. All help came too late for the victim. He succumbed to his injuries.

Lasting fear During the consultation day at the end of January 2024, one inmate expressed concern that there could be another fire in the ward. Time and again, inmates would go out into the corridor at night, light a cigarette and then return to their inmate cell. If they fall asleep in bed, a fire could start again.

The management of the facility could understand the concern. Although all patients were asked to hand in their lighters after the fire, there were still some left over in the inmate cells. In addition, those accommodated in the residential group unit can also leave their rooms at night and go out into the corridor. Although they are required to smoke exclusively in the smoking room, they sometimes light a cigarette at the electric cigarette lighter in the corridor and then return to their room.

Danger not averted Deactivating the fuse so that the cigarette lighter does not work at night would only partially solve the problem, as this would make lighters a prohibited commodity. At present, it can only be pointed out that there are fire alarms in all rooms. The residents will be reminded of the ban on smoking in the rooms.

Opening the food flap in hot weather – Suben correctional institution

Heat in the inmate cells An inmate approached the AOB during the consultation day in mid-July 2024. He was suffering from a rare autoimmune disease and therefore always had a high temperature. The midsummer heat was particularly stressful, leading to temperatures in the inmate cell of up to 32° during the day and around 29° in the evening. The prisoner therefore requested that the officers open the food hatch after lock-up. The draught would bring relief. This was also possible in Graz-Karlau correctional institution. After all, this is a high-security prison.

Safety has priority Although the concern is understandable, the management of the facility did not want to honour the request. If the food flaps were opened during the night, inmates would be able to see when patrols were being carried out in the ward. The inmate cells are open until 7.30 pm anyway. Inmates would

also be free to purchase ventilators. The measure had also been withdrawn in Graz-Karlau correctional institution.

Vegan nutrition in the penitentiary system – Ministry of Justice

Although the European Court of Human Rights recognised veganism as a "world view", there is no subjective public right to vegan catering (Higher Regional Court Vienna 32 Bs 274/20h). In April 2024, the Federal Ministry of Justice announced that the catering regulations would be adapted in light of the court rulings of the independent judiciary and that vegan catering would be offered in future.

A first draft was available at the end of August 2024. However, in view of the recommendations of the nutritional societies (DGE – German Nutrition Society, AGES – Austrian Agency for Health and Food Safety), which have since been amended, the Federal Ministry of Justice stated that an external consultation on the consumption and requirement recommendations was necessary. Only then can the decree be finalised.

Lockable refrigerator – Suben correctional institution

During a consultation day, the AOB learnt that there was a fridge with a padlock in a residential group. The houseworker in the ward had the key. The fridge was broken. The replacement appliance could not be locked. It is used by seven inmates. There are fears that food stored in the fridge could be stolen.

Dispute inevitable

The AOB recommended purchasing a refrigerator with individually lockable compartments. This would mean that each inmate would have a key for the compartment assigned to them and would not have to contact a third party if they wanted to put food in the fridge or take it out.

The Federal Ministry of Justice countered that a lockable communal fridge in the corridor was not permitted either for reasons of space or fire safety. However, the replacement appliance purchased would be fitted with a lock in the near future. Appropriate arrangements had already been made.

Refrigerator fitted with lock

No handover of electrical appliances – Sonnberg correctional institution

At the consultation day at the beginning of March 2024, an inmate complained that the Sonnberg correctional institution withheld equipment from him that he had received as a benefit in Stein correctional institution. The items in question were a toaster, a blender, an Xbox and a CD player. He had been transferred in October 2023. However, he had not yet received the electrical appliances.

Unjustly retained

In the final discussion with the management of the facility, the AOB pointed out that benefits continue to have an effect, that there is established case law on this legal issue and that the prisoner must not be deprived of the handover of the items. It also referred to the explanations in the Enforcement Handbook.

Attitude incomprehensible

The management of the facility was not forthcoming. It was not prepared to hand over the items because the Xbox and the CD player were internet-enabled. It ignored the advice that the Sonnberg correctional institution was thus disregarding both the practice of the enforcement courts and the General Directorate's general instructions.

This means that the prisoner only has the option of submitting a new application for the items to be handed over and, in the event of a refusal, appealing to the enforcement court. The AOB drew the attention of the Federal Ministry of Justice to the fact that the General Directorate's directives were not complied with.

No computer – Vienna-Mittersteig forensic therapeutic centre

No possibility to listen to learning CD

Once again, a detainee at the forensic therapeutic centre Vienna-Mittersteig contacted the AOB and complained that he was not able to play a CD-ROM that was part of a book available in the library. Neither the possession of a PlayStation nor a PC was permitted in the Floridsdorf satellite facility.

This would not only hinder his resocialisation. It would also not be possible for him to improve his English skills, especially as he would not have the opportunity to have texts spoken to him in English and to practise repeating them.

Unyielding approach

The head of the institution confirmed that there was only one inmate in both, the main building and the satellite facility, who possessed a PC. The only reason the device could not be taken away from him was that he had brought it from another house as a favour. Computers had been abused on several occasions, so it was not justifiable to hand them over.

Behaviour contrary to decree

The AOB could therefore only point out that the management of the facility was thus disregarding a General Directorate directive to allow all inmates in Austria to have a PC for the purpose of resocialisation. It also made it clear that it could not understand the deviating position of the forensic therapeutic centre Mittersteig. The AOB therefore emphatically demanded compliance with official directives.

The AOB was only able to understand the wish of the management of the forensic therapeutic centre Vienna-Mittersteig to receive an updated version of monitoring software that enables devices to be continuously monitored for possible abuse. In this case, the head of the forensic therapeutic centre Vienna-Mittersteig could imagine equal treatment with other centres.

CD drives not handed over – Garsten forensic therapeutic centre

One inmate stated that he had previously been allowed to use his private PC with an external drive from the forensic therapeutic centre in Garsten. However, the drive belonging to the centre had been withheld for a week. There had been an incident with a fellow inmate. Everyone was now being penalised for the misconduct of one individual. He could not play films. The software could no longer be updated without the drive. The devices would be useless in the foreseeable future.

Collective sanction

The management of the facility confirmed that laptops with DVD drives are generally permitted. However, due to technical developments, the devices are usually no longer equipped with built-in drives, but with USB ports. An internet connection is required to activate the operating system and programmes.

As internet access is not permitted, it was agreed with the contractor from whom the devices were purchased that they would (pre-) install the software. In addition, two external drives were purchased from the Garsten forensic therapeutic centre in March 2022. This means that inmates have the option of coming to the effects magazine in the event of technical problems with their device and having the operating system or programmes reinstalled there by the IT management team. It was not intended that the drives would be issued to inmates.

Unauthorised use

Unfortunately, "confusing processes" had occurred and the drives had to be withdrawn immediately. The aim now is to enable their use again. Inmates who have a PC can apply to use the external PC drive. It may only be used under the supervision of a clerk from the IT control centre. The directive is to be implemented within one month.

Order restored

Restriction of laundry parcels – Ministry of Justice

Following a complaint from an inmate, the AOB became aware of the problem that the receipt of "laundry parcels" is handled differently. The AOB therefore determined the procedure nationwide. This revealed that in some correctional institutions there are no restrictions at all. In other centres, only two parcels per year may be sent.

Unequal treatment

In the opinion of the Federal Ministry of Justice, nothing stands in the way of a restriction; however, there must be an exception for reasons worthy of consideration. Accordingly, it sent a circular to the facilities on 30 September 2024.

New decree

The AOB does not share this view: According to the Austrian Penitentiary System Act, inmates are entitled to wear their own underwear and simple and appropriate outer clothing, provided that regular cleaning of the underwear is possible in the institution or can be organised outside the institution and there is no danger to security and order.

A provision that allowed the excluding the parcels' receipt due to a disproportionate control effort was repealed by Federal Law Gazette I No. 142/2009.

No general restriction Based on the literature and case law (Regional Court Innsbruck 28 Bl. 24/19t), the AOB therefore assumes that the number of "laundry packages" per time unit is not limited. However, a limit on the number of items of laundry in the inmate cell remains permissible, depending on the situation.

Excessive number of visits – Suben correctional institution

Violation of privacy A prisoner at Suben correctional institution complained about the excessive number of visits by people from outside the institution. Whole streams of visitors were guided through the prison. Some guests were even secretly taking photos with mobile phones. The result was a "display of inmates".

The Federal Ministry of Justice stated that guided tours would generally be organised on Wednesdays from 12 noon. However, organisational adjustments are being considered in order to minimise the number. In future, guided tours will be limited to a maximum of four times per month, which will take place on Fridays between 10.30 am and 12 noon. Only after the detainees have returned to their departments from work will the working premises be visited. At this time, the prisoners would be in their inmate cells or outside.

No monitoring visits The secret taking of photos is already ruled out because the visitors are "informed in advance that mobile phones may not be taken along". The groups are also accompanied. The AOB stated that a correctional institution is a security area. It remained unclear why there is no monitoring with a metal detector, which also prevents mobile phones from being brought in. The AOB made the recommendation to ensure that guests are only allowed into the restricted area of the institution after appropriate monitoring.

Ministry of justice reacts Furthermore, the AOB welcomed the fact that the Federal Ministry of Justice instructed the competent specialist division to revise the security precautions for prison visits/inspections, which should include, among other things, monitoring by means of metal detectors.

Exercising the right to vote – Krems correctional institution

No information One detainee at Krems correctional institution criticised the fact that he had not been informed that he should have applied for a polling card for the European Parliament elections himself in good time. The investigative proceedings revealed that prisoners at Krems correctional institution had to actively contact the social service to obtain information about the procedure or to receive assistance in obtaining a polling card.

If they are authorised to vote, detainees must be informed about the possibility of exercising their right to vote during detention. Therefore, Krems correctional institution should have actively informed all prisoners about the need to apply for a voting card. The procedure whereby detainees must first contact the social services in order to obtain the necessary information is not sufficient.

Obligation to actively inform those concerned

The Federal Ministry of Justice stated that Krems correctional institution had been made aware of this fact. In addition, the Federal Ministry of Justice promised that Krems correctional institution (with a view to the 2024 National Council elections) would prepare a corresponding letter and inform the inmates by posting a notice in each department.

Stamps too expensive – Vienna-Mittersteig forensic therapeutic centre, satellite facility Floridsdorf

One inmate complained that he regularly had to overfrank letters because he could not buy stamps at the ECO rate in the out-of-cell facility. As evidence, he cited his letter to the AOB, which he had to frank with two 0.55 cent stamps.

The satellite facility approached the tobacconist about the problem. They offer stamps for 1 euro and 1.35 euros. Letters up to 20 g are to be franked at 1.40 euros, letters up to 75 g at 1.90 euros and letters up to 2 kg at 6.50 euros. It would not sell any other stamps.

Unnecessary costs

The AOB drew the attention of the management of the forensic therapeutic centre Vienna-Mittersteig to the applicable postal rate regulations, as available at www.post.at. The tobacconist was asked to provide sufficient stamps worth EUR 0.95 and EUR 1.50 for letters so that inmates do not have to overfrank ECO-Post letters. The tobacconist then promised not to charge the inmates for the additional costs until the stock had been reduced.

The AOB also discussed the issue in a contact meeting with the General Directorate. They asked the General Directorate to ensure that the operators of the outfeeds in the individual correctional institutions and forensic therapeutic centres store sufficient stamps in accordance with the applicable postal rate regulations and that these can also be purchased there.

Unauthorised disclosure of data – Ministry of Justice

As early as 2022, the AOB criticised the fact that inmates' personal data was disclosed to third parties during ordering processes. Specifically, this concerns electrical appliances for which the inmate's name is given when ordering. However, the data is not required to fulfil the order. The Federal Ministry of Justice announced two years ago that the competent specialist division would ensure a data protection-compliant solution in all correctional institutions.

Disclosure not necessary

Ministry is in default Following a complaint of the same nature, the AOB approached the Federal Ministry of Justice again in mid-March 2024. The response letter revealed that a standardised federal provision had still not been drawn up. The Federal Ministry of Justice was also unable to provide any information on the date of finalisation.

Data in discharge certificates – Ministry of Justice

The AOB took note of the fact that release confirmations in Graz-Jakomini correctional institution always state the offences for which the prisoner was convicted. This seems to stand in the way of resocialisation.

The Federal Ministry of Justice stated that this was not an isolated course of action by a correctional institution. The concerns are shared. Therefore, the Federal Ministry of Justice instructed the Austrian Federal Computing Centre to adapt the confirmation accordingly and to delete the paragraphs mentioned in the judgment.

Good Practice: Youth department – Graz-Jakomini correctional institution

The consultation day in mid-January 2024 provided an opportunity to visit the youth ward of the Graz-Jakomini correctional institution. On the day of the visit, ten adolescents were placed in the unit. Three young adults were detained in other wards of the facility.

Dedicated caregiver The AOB was impressed by the extremely open-minded atmosphere. The prison officers regularly exchange information with the special services. They see themselves as a team and endeavour to make the adolescents' time in detention meaningful. The AOB was also impressed by the great commitment of the teachers, who teach the adolescents in rooms separate from the detention area in the mornings. In addition to the conventional teaching materials, stand-alone PCs are available for ELIS training courses for initial and continuing training.

Sufficiently trained staff must be available to manage the youth department professionally. Psychological impairments and stress resulting from traumatic experiences are also becoming increasingly common among adolescents. In addition, some inmates still appear very immature and childlike in terms of their level of development and require special support.

3.8.4.4 Handling of requests and administrative penalties

Rejecting requests without explanation – Ministry of Justice

Objective arbitrariness In an *ex-officio* investigative proceeding, the AOB found that some correctional institutions do not justify the rejection of requests. Inmates address their request to the management of the facility in the appropriate

form. However, the form is only filed in the file with the note: "not granted". The reason why the request was not granted cannot be said in retrospect. This makes decisions appear "arbitrary".

The prohibition of arbitrariness is part of the principle of equality. It applies to both legislation and enforcement. The fundamental right is violated if decisions of the authority contain no reasons at all or lack essential elements or have no reasoning value. (See Basic Law on the General Rights of the Austrian Constitutional Court (VfSlg. 12.101, 13.302, 14.506 and others; Muzak, Federal Constitutional Law ((6) [2020] Article 2 of the Basic Law on the General Rights of Nationals Rz 19).

The General Directorate reminded correctional institution staff at the prison governors' meeting that applications should include a justification in the event of a rejection. The AOB also took advantage of the exchange of ideas with the management of the facility in mid-May 2024 and pointed out the need for at least a brief statement of reasons.

Duty to give explanation

Best practice is the Garsten forensic therapeutic centre, which records all applications electronically, sorted by subject, date of receipt, processing status, completion and justification of the main parts. This not only makes it possible to track decision-making processes. It is also possible to observe at a glance whether a particular application was submitted for the first time or repeatedly and how it was dealt with.

Non-transparent processing of applications – Innsbruck correctional institution

Time and again, inmates complain that they have to wait a long time before applications are processed, that application forms disappear or are occasionally torn up in front of them. This was also the case during the consultation day at Innsbruck correctional institution at the beginning of June 2024.

Pile of pieces of paper

The fact that forms are still being added to the enforcement file as unpaginated slips of paper is outdated. All applications should be recorded electronically. This would make it possible to observe at any time who submitted which request to the management of the facility and when. It would also be easier to determine the status of processing and the type of completion.

Requests remain open due to transfer – Klagenfurt correctional institution

One detainee complained that his application for a money transfer had not been processed. He had submitted the request before his transfer from Klagenfurt to Sonnberg correctional institution.

Transfer The Federal Ministry of Justice acknowledged that this request had not been processed. As electronic access for the former prison is restricted after the change of location, the application could not be processed.

The AOB identified shortcomings in the fact that the application had not been processed promptly and that the target correctional institution had not been informed that the request could no longer be processed before the transfer. In addition, the Klagenfurt correctional institution could have taken precautions to ensure that the detainee would not have to apply a second time after a transfer.

New application avoidable This makes it possible to create a link so that access to the account is maintained even after the transfer and the booking can be carried out. Alternatively, account lines for "external institutions" could be released manually; this would allow the target institution (Sonnberg) to release a booking line for the former institution (Klagenfurt).

In this specific case, both were omitted so that the inmate had to submit a new application. In order to avoid such cases, the Federal Ministry of Justice instructed the Klagenfurt correctional institution to communicate open transfer requests to the target institution in future, if it was not possible to process them in a timely manner.

In order to avoid further complaints, the Federal Ministry of Justice arranged for the guidelines to be updated and made available to all correctional institutions in the relevant area of the intranet.

Request for day release rejected – Sonnberg correctional institution

A prisoner at Sonnberg correctional institution complained to the AOB that he had been refused an escorted day release with the words "not good behaviour and not sufficient therapy". He admitted that he had received three reports more than three months ago, in his opinion for minor offences such as a damaged joystick for a PlayStation, possession of an assault lighter and a money transfer to the account of a former cell mate. However, the rejection was also based on the reason "not yet sufficient therapy". In view of the confirmations submitted by him, the AOB asked itself which therapies he still had to undergo in order to overcome the reason for his refusal.

The Federal Ministry of Justice pointed out that the prisoner had received six administrative penalties in the current prison block and that another one was being processed. It was true that he had completed therapeutic measures in the Sonnberg correctional institution. Nevertheless, he is a high-risk offender for whom a specialised release prognosis must be drawn up. Furthermore, he had not stated a suitable purpose for the day release.

Although these reasons for obstruction may be correct, it was not explained which therapeutic measures still need to be completed in order to remove the stated reason for obstruction. The AOB requested the Federal Ministry of Justice to advise the Sonnberg correctional institution to justify rejections of applications more carefully.

Collective sanctions in the event misdemeanour – Graz-Karlau correctional institution

Several inmates complained that an unauthorised object that did not belong to anyone had been seized in their cell for multiple inmates. They had all been sanctioned until the matter had been clarified. One had been denied a long-term visit that had already been authorised. Another had been cancelled a day release.

Everyone must pay

As the AOB determined, a USB stick was found in the inmate cell. As it was not clear to whom the data carrier belonged, contact with the outside world was restricted for all inmates until further notice. The correctional institution also confirmed that a long-term visit had been cancelled. Contrary to the perception of the inmates, this was not a "collective punishment", but the measures taken were intended to restore order in the correctional institution, according to the management of Graz-Karlau correctional institution.

The AOB criticised this approach: The cancellation of already approved day releases requires appropriate justification, which must not be limited to pending administrative penalty proceedings. According to the case law of the enforcement courts, the mere reporting of an administrative offence or a possible reference to pending investigation proceedings does not indicate that the prisoner is particularly dangerous and therefore does not constitute a reason to refuse a requested day release. The presumption of innocence applies.

Presumption of innocence violated

The legal situation is different for long-term visits, which may only be granted "if there are no objections". This is a discretionary decision that must be based on objectively comprehensible considerations. In this respect, administrative penalty proceedings that are still open may prevent authorisation.

Disproportionate punishment – Sonnberg correctional institution

One prisoner complained that he was being dealt with excessively harshly. For years, there had been no administrative offence against him. After a positive urine test, he had been stripped of all his relaxations. He had been transferred back from relaxed detention to regular detention, was not allowed to receive table visits, and day releases were blocked. In addition, his file for conditional release had not been submitted to the court.

Impression of multiple punishment

The AOB learnt that the inmate had been suspected for some time not only of consuming illicit substances himself, but also of bringing them into the correctional institution in various ways and dealing with them. In the case in question, it had been possible to prove that he had consumed Pinaca.

Accumulation of sanctions

The AOB then inspected the offence file. It was able to see that the inmate had taken synthetic cannabinoids before March 2024, which had been detected in a drug urine test. He received an administrative penalty of 50 euros for this misconduct. On the day the administrative penalty order was issued, the correctional institution also decreed an "order", which is also part of the administrative penalty file. The subject of the order is: "Withdrawal of the table attendance privilege and further relaxations".

Misuse of legal form

The decision gave the impression that the prisoner had (at least) been deprived of a benefit. The AOB stated that neither the table visit, nor the day release are benefits, but relaxations. The fact that the intention was to deprive him of a benefit is clear from the three-month deprivation period, as stated in the second paragraph of the "order". However, the imposition of administrative penalties must be formalised. Orders must contain instructions about legal remedies.

In terms of content, the correctional institution not only confused "relaxations" and "benefits". Even if it wanted to withdraw a "benefit", it also violated the procedural rules to be observed, which included respecting the right to be heard and being informed of the possibility to determine a complaint. Overall, the impression was created of a disproportionate punishment for one and the same behaviour.

Unlawful practice

The AOB expressed its criticism on site when inspecting the disciplinary file. It learnt that it was a practice of the facility to link administrative penalties to the loss of relaxation and to have these "orders" confirmed by the prisoner in the administrative penalty file. The AOB then asked the Federal Ministry of Justice to ensure that this practice is stopped as soon as possible.

Grossly incorrect judgement on administrative penalty – Sonnberg correctional institution

One prisoner complained that he had been given the administrative penalty of strict house arrest with a 14-day work suspension. The considerable risk to security in the correctional institution associated with the uncontrolled use of "psychoactive substances" was cited as a special aggravating circumstance.

Anticipatory evaluation

According to the prisoner, the substance had not yet been analysed when the penal order was issued. This meant that he was charged with an aggravating circumstance that had not yet been established.

As the inspection of the offence file revealed, the prisoner returned from a day release in mid-January. As he was suspected of smuggling unauthorised

objects or substances in his body, the correctional institution issued a directive to take him to the Hollabrunn hospital for an X-ray. During the preparations for the take-out, the person concerned told the officers that he "had something in his body" and therefore did not want to go for an X-ray. The inmate was then transferred to the Vienna-Josefstadt correctional institution in the bodypacker station, where 11 bodypacks were seized. These were handed over to the Hollabrunn police for further analysis.

The penalty of simple or strict house arrest may only be imposed if aggravating circumstances prevail. If strict house arrest is imposed, the penal order must at least order either a restriction on the time during which the inmate cell is artificially lit or the withdrawal of work for the duration of the house arrest.

Severest penalty

It was not apparent from the file that the defendant admitted which substances he had ingested, nor was the chemical analysis of the excreted substances available at the time the penal order was issued. The person concerned was therefore wrongly charged with a fact that had not even been established when the penal order was issued.

As the penal order was not contested and the house arrest had been enforced in the meantime, the AOB had to leave it at an identified shortcomings in the case.

Case of maladministration

3.8.4.5 Torture, abuse and degrading treatment

No substitution treatment – Korneuburg correctional institution

One detainee on remand described how he had used heroin for years in freedom. He had therefore been prescribed Subutex for five years before his imprisonment. In detention, he was denied this medication. The medication prescribed instead would only inadequately alleviate the withdrawal symptoms.

Long-term dependency

As determined by the AOB, a psychiatrist holds consultations at fortnightly intervals at the Korneuburg correctional institution. However, she has not been allowed to prescribe substitution medication since February 2024, as her authorisation to do so has expired. A former prison psychiatrist was therefore appointed as an external specialist. He prescribes weekly on Fridays, sometimes also taking over his colleague's appointments.

The Federal Ministry of Justice confirmed that the detainee in Korneuburg correctional institution had only been offered treatment to alleviate withdrawal symptoms. This was because the external specialist had not carried out any treatment with Subutex and also did not consider the administration of other opiates to be indicated. The prisoner was released in August 2024 without having been admitted to the substitution programme.

Severe withdrawal symptoms

No substitution therapy The AOB has repeatedly stated that opioid-dependent patients must be given access to appropriate (opioid substitution) therapy on the day of admission or upon admission to enforcement (within 24 hours at the latest) (see Preventive recommendations for the protection and promotion of human rights 2012–2023, p. 39). In the event of non-admission to the substitution programme, extensive clarification and documentation is required. Suspicion of passing on medication is not sufficient justification for refusing treatment.

In order to clarify the case, the head physician of the General Directorate together with the competent physician carried out an evaluation. The competent physician was reminded of his obligation to carry out substitution treatment in accordance with the principles of OST (opioid substitution therapy). This means that in the event of non-inclusion in the substitution programme, extensive clarification or documentation is required. This may also have to clearly show that the patient refuses to take the substitution medication. The mere suspicion that medication is being passed on is not enough to refuse treatment. In addition, the questionnaires regarding substance abuse must be completed and uploaded to the medical records for documentation purposes.

However, this evaluation did not take place until the beginning of 2025. The AOB criticised the fact that the head physician had not taken up the case after the AOB's enquiry in May 2024. Prompt confirmation of the medical records could have ensured that the detainee received appropriate substitution medication if this was medically indicated and there was no risk of abuse. In addition, it could have been ensured that other detainees in Korneuburg correctional institution who suffer from a substance use disorder would also receive adequate therapy.

Unnecessary suffering Substitution treatment should not only be offered directly upon entering prison (Kastelic/Pont/Stöver, *Leitfaden zur Substitutionsbehandlung im Gefängnis* [2007] 39). If a person with a long-standing substance use disorder who has no realistic prospect of overcoming their addiction and who has received substitution treatment for many years is denied or withheld treatment in detention, this can lead to a violation of Article 3 of the ECHR (European Court of Human Rights 1 December 2016, Appl 62303/13 Wenner v. Germany = NLMR 2016/5, 1 et seq.).

The Federal Ministry of Justice assured that the other detainees in Korneuburg correctional institution had been and were being examined by (other) medical staff for possible addiction and were being monitored and treated accordingly.

Inappropriate statement by a doctor – Innsbruck correctional institution

The mother of an inmate criticised the medical care and an inappropriate statement made to her son by the prison doctor. The doctor had compared the medical treatment with conditions in Ukraine. The exact wording could not be investigated. However, the Federal Ministry of Justice also admitted that the doctor had made a statement related to the war in Ukraine. In its statement of opinion, it pointed out that the inmate sometimes displayed very demanding and disrespectful behaviour towards the staff in the surgery. The prison doctor's response that the inmate should not make unreasonable demands was cancelled with a reference to the war in Ukraine. He wanted to express that the detainees in the correctional institution were very well looked after, but that there still had to be a medical reason for treatment measures.

Distasteful comparison

The Federal Ministry of Justice stated that the statement – however it was made or understood – was inappropriate in a medical setting. This had also been pointed out to the doctor in a clarifying interview.

Lack of respect of privacy – Suben correctional institution

One inmate complained that he had been taken out for a prostate examination. A prison officer was in the room during the entire examination process and also afterwards, when he had to clean himself. He had found this stressful and degrading. He also complained that it was not possible to conduct confidential interviews with the doctor in the correctional institution in Suben. A third person was always present in the room.

Shameful situation

In the course of a consultation, the AOB determined that the doctor attaches great importance to not being alone in the room with inmates. A prison officer is therefore always present. Two nurses are also present, but if the patient expresses a wish for a confidential interview or has to undress, they withdraw of their own accord and leave the consulting room.

Unauthorised image recording – Vienna-Josefstadt correctional institution

A former detainee criticised the fact that a staff member at Vienna-Josefstadt correctional institution had made fun of his erectile dysfunction, which was due to paraplegia; she had also taken a photo of him during detention and sent it via WhatsApp.

Photo sent

Photographing a person without their consent constitutes an unauthorised encroachment on their general personal rights. Even the photographic recording of a certain activity or situation can be perceived as unpleasant by those depicted.

Ministry intervened The Federal Ministry of Justice assured that the staff member who had taken and sent the photo had been warned and that the photo had been irrevocably deleted. An interview was also conducted with the recipient of the photo and she was also instructed to irrevocably delete the photo. In addition, she is no longer employed at the Vienna-Josefstadt correctional institution. By the way, she rejected the allegations.

3.8.4.6 Health care

No monitoring of body weight – Linz correctional institution

One inmate complained that he had lost 17 kg during his three months in prison due to insufficient food in Linz correctional institution. The Federal Ministry of Justice stated that all inmates were fed in accordance with the existing obligations and Directives and in compliance with the corresponding duties of care.

Weight as disease indicator

The statement of opinion showed that the inmate weighs 137 kg with a height of 179 cm, which corresponds to obesity grade III. Obesity is classified according to the International Statistical Classification of Diseases and Related Health Problems (ICD 10) depending on its type and severity.

According to the Penitentiary System Act, the inmate's state of health and body weight must be monitored. If an inmate falls ill, the prison doctor must ensure that they receive the necessary medical treatment and care, including specialised medical treatment if necessary.

No monitoring visits

The fact that the patients do not express any corresponding complaints is not relevant. It would also not have been sufficient to ask the patient – as the Federal Ministry of Justice stated – "to be weighed at regular intervals". Rather, the Medical Service should have obtained a comprehensive picture of the patient's state of health. The AOB identified shortcomings in the fact that no follow-up checks were carried out at Linz correctional institution for several months despite the diagnosis.

Input error in medication prescription – Vienna-Josefstadt correctional institution

Due to an unstable personality, a detainee in Vienna-Josefstadt correctional institution was prescribed antipsychotics and a medication for suspected ADHD and cocaine withdrawal. As the doctor made an input error in the system (or saved it incorrectly), he was not given the two drugs for a period of around three weeks. The Federal Ministry of Justice assured that this issue would be discussed by the office of the medical superintendent during the next training session.

No physiotherapy – Vienna-Mittersteig forensic therapeutic centre

Following a complaint, the AOB learned that there is no intramural physiotherapeutic care for inmates in the Vienna-Josefstadt correctional institution and the forensic therapeutic centres in Vienna. After no one applied in response to a call for applications, the position of physiotherapist at Vienna-Josefstadt correctional institution was cancelled. This means that no physiotherapy can be offered without the need to carry it out. In view of the transport and monitoring costs and the difficulty of finding physiotherapy treatment for prisoners and inmates outside of enforcement, the AOB is concerned that inmates are not receiving appropriate treatment, even though this is medically indicated.

Consequences of undersupply

The position of physiotherapist at the Vienna-Josefstadt correctional institution has now been filled. However, there are no transfers there or to external physiotherapists. The undersupply therefore continues.

Postponed surgery not rescheduled – Garsten forensic therapeutic centre

One inmate stated that he was suffering from a shortened flexor tendon, which was not being treated in detention. The AOB determined that the patient had been referred to trauma surgery for clarification and a procedure was planned. However, this had to be cancelled due to the coronavirus pandemic.

Date was fixed

The forensic therapeutic centre in Garsten stated that the inmate had not raised his concerns again after the pandemic had subsided, despite several visits to the doctor. He would now be presented to the prison doctor again. The doctor observed that the inmate needed treatment and possibly even surgery. From the patient's point of view, it would have been useful to remind the prison that the surgery had not been carried out.

No further treatment

However, the AOB considers it to be the duty of the prison administration to continue interrupted treatment once an obstacle has been removed or at least to investigate the possibility of continuing it. The office of the medical superintendent in the General Directorate took up this recommendation. The implementation is being investigated in cooperation with the IT managers.

Data that should be protecting displayed on door of inmate cell – Sonnberg correctional institution

A prisoner complained that he suffered from diabetes, which could be seen on the nameplate on the door of his cell. The Federal Ministry of Justice conceded that the sign next to the door of the inmate's single cell contained a reference to the type of diet ("diabetic diet") in addition to the inmate's name and cell number. The specialist division of the General Directorate

had this note removed. Such notices may no longer be used in future (in Sonnberg correctional institution).

No dentist's office – Ried correctional institution

Many transports The AOB learnt about the lack of dental care in Ried correctional institution from an inmate. All examinations and treatments have to be organised, whereby inmates are mainly transported to Wels correctional institution in accordance with the General Directorate's mandate. The personnel costs for this are considerable.

Independent dental care has long been a concern of the Ried correctional institution. The Federal Ministry of Justice approved the conversion of an inmate cell into a treatment room for a dentist (including an adjoining X-ray room) in 2023. The corresponding funds are available. Construction work is scheduled to begin in autumn 2024.

Doctor's office without a doctor? However, it remains to be seen whether a doctor will agree to take over the care in the Ried correctional institution under the conditions offered. Feedback from the committee of the Upper Austria Provincial Medical Association raises doubts as to whether a dentist can be found at the salary offered.

No staff for NADA project – Leoben correctional institution

Grateful patients "The first therapy session was very relaxed and had full effect. I'm looking forward to the second session! Thank you very much in advance". "The second session was even better. I therefore believe that I can stop taking the sleep medication and the midday medication, as the NADA therapy is having a very good effect. Thank you very much".

These are two letters received by the Leoben prison doctor after she offered ear acupuncture and ear acupressure using magnetic patches as a complementary treatment method to people suffering from addiction. The acupuncture therapy developed in the USA according to the "NADA protocol" (National Acupuncture Detoxination Association) is very effective for people with a substance use disorder. It reduces the pressure of addiction and makes patients calmer.

Lack of nursing staff It is therefore all the more regrettable that this treatment programme cannot be maintained due to a shortage of nursing staff. If one nurse is on holiday and the other on sick leave, the Leoben correctional institution is not provided with nursing care. If sufficient staff capacity is not available, the prison doctor cannot continue to offer treatment in Austria that is already standard in Germany.

Dying in freedom and dignity – Ward 50, Mauer regional hospital

In mid-April 2024, an inmate approached the AOB with a request for help. He had had lung cancer since August 2023. He had completed chemotherapy. However, metastases had now appeared in his brain. He will receive radiotherapy from Monday. His wish is to be released because he is not fit for prison. However, the fact that no nursing home wants to admit him due to his forensic history is an obstacle.

In the debriefing, the ward's medical director confirmed that the patient would need palliative care in the foreseeable future. It would not be good for him or the other patients if he remained on the ward. He had therefore already contacted the Lower Austria nursing care centre in Mauer and was looking for a humane solution with the commercial director. As soon as a place was available, the patient would be transferred there by way of an interruption to his placement.

Search for a bed

If palliative care is not possible in the Mauer area, he is in favour of a classification in the Wilhelmshöhe satellite facility of the Vienna-Josefstadt correctional institution, which can provide care in the last stage of a person's life. It was true that several nursing homes had refused to accept the forensic patient.

3.8.4.7 Personnel

Slow determination of heavy labour times

Since the extension of the Federal Government's regulation on particularly heavy labour occupations came into effect on 1 January 2023, prison officers who have reached the age of 50 can now also apply for an official determination of the number of months of heavy labour they have performed. A prison guard at the Vienna-Simmering correctional institution submitted such an application in May 2023, which had not yet been completed by the end of December 2023.

Long duration

The Federal Ministry of Justice reported that an investigation had been initiated to clarify the situation. Following the submission of a current job description in mid-December 2023, a further reporting order was issued to the head of the Vienna-Simmering correctional institution. The head of the correctional institution was able to submit a comprehensive report to the Federal Ministry of Justice within a week. The staff member was granted a hearing in January 2024.

The AOB notes that the duration of the proceedings is – objectively speaking – long. Precisely because the possibility of taking early retirement had been known since mid-2022, it would have been appropriate to make provisions for the expected number of applications. However, the AOB did not receive any information on this.

Many applications

The Federal Ministry of Justice reported that 345 applications had been submitted by February 2024, of which 224 had already been settled with administrative decisions. 63 cases are at the stage of being heard by the parties. 58 applications, all of which were submitted just a few months ago, are currently still being processed.

As the proceedings were expedited after the AOB was consulted and the person concerned only reached his total pensionable service period at the end of March 2024, no further steps were necessary.

3.8.4.8 Detention in forensic institutions

Placement of detainees – Vienna-Josefstadt correctional institution

Makeshift solution At the end of January 2024, the AOB inspected the two departments for detainees with mental health care needs. These are located on one level and merge seamlessly into one another. Formally, it is a satellite facility of the Göllersdorf forensic therapeutic centre. Its status was last extended until the end of 2027 (Section 4 (2) of the Regulation, Federal Law Gazette II No. 399/2023). Structurally, there is no discernible difference to the other premises of the detention centre.

In each of the two departments, 26 people are detained in accordance with Section 21 (1) Austrian Criminal Code. There are also two houseworkers. Placement is in cells for multiple inmates (for two, three and four people) as well as an acute room, which is a normal inmate cell with a radio but no television. Detainees are taken to this room if they want to or if there are signs of a deterioration in their state of health. In individual cases, the Hietzing hospital can also be used, but there is rarely a place there. There is also a lack of places for relaxation and interruptions to placement in follow-up care facilities.

Dreary everyday life Both departments had not yet been refurbished in January 2024. The inmate cells have a black floor. The cells contain iron beds and wooden lockers that cannot be locked. The detainees can decide for themselves where to place their beds. Many try to find some privacy in a corner. The toilet is structurally separated by a wooden wing door.

The wet room is located in the corridor and is accessible. It consists of a communal shower and a bathtub (no nursing bathtub). There is also a social room in the ward where table tennis can be played. Several ergometers are pushed together on the side. They are rarely used.

Lots of idle time The inmate cells are open for three hours in the morning and three hours in the afternoon. In the mornings, some detainees receive social, occupational or group therapy. Overall, neither the therapeutic programme nor the opportunities for occupation are sufficient. There is a lack of space and personnel resources. Many inmates spend the day in their inmate cells. They

lie in bed and appear sedated. The inmate cells are full of stale cigarette smoke.

Despite these unfavourable circumstances, the officers in both departments made a committed impression. The AOB asked them how they had been prepared for the caregiver role. They stated that there had been a seminar at the Correctional Services Academy, but that they had taught themselves most of the skills.

The commitment of the staff should not obscure the poor spatial situation, which in no way meets the expectations of a forensic therapeutic centre. It is a unit of the Vienna-Josefstadt correctional institution that has not been structurally adapted and where inmates are placed housed in shared accommodation, with caregivers admitting that inmates spent most of the time in the inmate cell without therapy.

Urgently needed extension – Göllersdorf forensic therapeutic centre

In January 2024, the architectural competition for the extension to the Göllersdorf forensic therapeutic centre was completed and the General Directorate released the funds for implementation. The extension is to take the form of a separate structure from the main building. In view of the tense spatial situation of detainees in forensic institutions, the extension is urgently awaited. On the one hand, its commissioning should relieve the pressure on the Vienna-Josefstadt correctional institution, where 60 people are accommodated in two wards. A further 16 patients are accommodated in other wards (in violation of the segregation order). On the other hand, detainees in an acute psychiatric crisis who require temporary inpatient care will also be admitted to the forensic therapeutic centre in Göllersdorf in future. Ten beds are to be reserved for them. The catchment area extends to the Sonnberg, Krems, St. Pölten and Stein correctional institutions. It remains to be seen whether a forensic outpatient clinic will be established. In order to relieve the forensic therapeutic centre in Asten, a separate ward is also to be created for women who are placed in accordance with Section 21 (2) of the Austrian Criminal Code.

**Multifunctional
supply centre**

The expansion of the building will require additional staff. A total of 90 additional civilian employees are to be taken on. In addition to social workers, caregivers and doctors, positions for teachers will also be advertised. In January 2024, the extent of the additional requirements for the executive service was still unclear.

**Additional personnel
requirements**

Insufficient therapies – Garsten forensic therapeutic centre

One inmate at the forensic therapeutic centre in Garsten complained that he felt that contacts to caregivers were too rare. Although the Federal

Ministry of Justice was able to report to the AOB on conversations/contacts with the case management, there was no documentation of the monthly conversations or attempted conversations.

According to the quality standards for the detention in forensic institutions pursuant to Section 21 (2) of the Austrian Criminal Code, outreach contact must be observed and documented at least once a month. The prison administration is responsible for providing evidence. Due to a lack of appropriate documentation, the AOB was unable to observe the frequency of contact attempts. It must therefore assume that contact only took place in the context of documented interviews, which is too low given the length of detention.

The Federal Ministry of Justice announced that it would draw the attention of the Garsten forensic therapeutic centre to the importance of quality standards for detention in forensic institutions pursuant to Section 21 (2) of the Austrian Criminal Code. AOB recommendations aimed at this were therefore not necessary.

Long detention due to lack of relaxed detention – Vienna-Mittersteig forensic therapeutic centre, satellite facility Floridsdorf

Frustrated inmates Contrary to expert opinion recommendations, treatment providers and caregivers in correctional facilities sometimes do not favour a relaxation of the sentence. The enforcement court does not issue conditional releases without a relaxation of the sentence. Why do judges order external expert opinions if they do not follow their recommendations, but rather the view of the specialist team as expressed in the forensic statement of opinion? This question has been asked more often by those in custody recently.

One of the persons concerned is placed in the Floridsdorf satellite facility of the Vienna-Mittersteig correctional institution. He complained that the expert opinion in his case was that his dangerousness had been reduced to such an extent that conditional release was justifiable. However, his treatment providers and caregivers disregarded this assessment.

Contradictory assessments In interviews with the specialist team, the AOB learnt that the team did not believe that the therapeutic process had progressed far enough for it to be able to argue for a relaxation of the sentence. The court-appointed expert only sees the offender for a short period of time and his assessment is not always shared.

Reform brings relief If the enforcement court itself does not try to clarify a contradictory view between an external expert opinion and the view of the caregivers in forensic institutions, the only option at present is to wait for reform in the area of detention in forensic institutions. The current draft text provides for every person in detention to be legally represented by a patient advocate, which

only ends upon release. Detainees are free to appoint a defence counsel of their own choosing.

In the release proceedings, the person in custody must have a defence counsel (necessary defence). The court decides on the conditional release from a criminal law placement upon application or *ex officio*. Before making a decision, the enforcement court must not only form an opinion based on the case file, but also hold an oral hearing. The public prosecutors' office, the person in custody, their legal representative and their defence as well as the management of the forensic therapeutic centre and the probation service must be heard. Existing care plans must be discussed. The public prosecutors' office and the person in custody may request additional observations from the file. The inmates and the public prosecutors' office may appeal against the decision.

This ensures that the detainees and their representatives can discuss the duration of their detention as well as "downtimes" between therapies. It also ensures that contradictory assessments are addressed in court proceedings and that factual and legal issues are discussed comprehensively before the court. It is to be hoped that the draft will be implemented soon.

No notification of a case conference – Vienna-Mittersteig forensic therapeutic centre

At the consultation day at the beginning of February 2024, caregivers reported that some inmates who would have been released under the Amendment to the Detention in Forensic Institutions Act (*Maßnahmenvollzugsanpassungsgesetz 2022*) had reacted very violently when they learnt that they would not be released (after all). One of them banged his head against the wall several times.

Frustrated inmates

One candidate, who should also definitely have been dismissed, complained that his case conference had taken place in November. He had been told that he would be informed of the outcome in January. This had not happened. He is now 36 years old and has spent more of his life behind bars than in freedom. Hopelessness dominates his everyday life. He had to come to terms with the fact that he would never leave the correctional institution alive. He was increasingly troubled by suicidal thoughts.

If a placement pursuant to Section 21 of the Austrian Criminal Code for a juvenile offence has already lasted ten years, the management of the facility must convene a case conference. In any case, the psychiatrist or psychologist in charge of the case, the head of a probation office or a representative named by the latter, as well as a representative of one or more facilities that may be considered for follow-up care must be present. The case conference must clarify which specific measures can be taken to prevent or reduce the

Case conference instead of discharge

danger – which the criminal law placement counteracts – to such an extent that a future conditional release is possible.

The participants in a case conference are authorised to transmit personal data to each other. They are obliged to treat the data confidentially. The management of the facility must inform the enforcement court of the outcome of the case conference.

Pending notification It is disconcerting that the detainee who is the subject of the decision at the case conference is not consulted. They are only informed of the outcome afterwards. This makes it all the more important to adhere to the promised time horizons. It is understandable that people who have been accommodated for many years want to be given an administrative decision on how to proceed. The appointments promised to them should be kept punctually. The absence of a psychologist on holiday cannot be an excuse for this.

Mixed occupancy of departments – Göllersdorf forensic therapeutic centre

A person in placement asked the AOB how long he would remain in the forensic institutions. The AOB took this enquiry as an opportunity and discussed with the care team at the Göllersdorf forensic therapeutic centre, which accommodates patients with chronic psychotic disorders who can only be offered therapy at a very low threshold.

Real inclusion If the danger posed by these individuals is manageable, the management of the facility is in favour of mixing the wards. The aim is to avoid stigmatisation. At the same time, it can be stimulating for persons who are difficult to reach therapeutically if they are in a ward with inmates who have already made significant progress in therapy. The AOB welcomes this attitude of the management of the facility.

Problems of a "mixed ward" – Rankweil regional hospital

Ongoing triage One consequence of the staff shortages is not only that one ward and one living area have been closed for years. Due to chronic understaffing in the nursing service, doctors and nursing staff at Rankweil regional hospital have to decide on a daily basis which patients are placed on which ward.

For example, patients are admitted to the acute ward of the adult psychiatric ward in accordance with the Hospitalisation of Persons with Mental Illnesses Act (*Unterbringungsgesetz*) before being offered the option of moving to either the super-acute ward or the forensic ward. If a place is available, many choose a room on the forensic ward as it is quieter there. In doing so, they accept measures which restrict freedom, such as permanent video surveillance.

Whether consent can be given for measures which restrict freedom that are not indicated has – as far as can be seen – not been adjudicated (for example, Schmoller, SbgK Section 99 of the Austrian Criminal Code Rz 44). It is also challenging for patients and staff on duty to cope with the frequently changing conditions, depending on whether a ward is open or closed. It is also difficult to convey to forensic patients that patients have a different status under the Hospitalisation Act and are not subject to the ward's lockdown model. A change could not be promised at the beginning of June 2024 in view of the acute nursing shortage.

A lot of explanation required

Minor structural weakness – Station 50, Mauer regional hospital

The AOB gained an excellent impression of the forensics centre during its consultation day in April 2024. House 50 is still in mint, immaculate condition. The AOB liked the wide, bright corridors as well as the spacious rooms. Upon consultation, the nursing staff assured us that they not only contribute to a good working atmosphere, but also make patients feel comfortable.

Solid structures

Under the careful, empathetic medical management, a professional team of doctors and nurses is visibly concerned about the well-being of the patients. All patients had a sufficient therapeutic programme and a daily structure. There is a wide range of activities to keep their everyday lives varied. In addition to accompanied walks in the hospital grounds and beyond, excursions are undertaken by bike or bus, whether in larger or smaller groups, to events, cinema visits, ice cream, swimming, etc. Participation in the garden project group, where vegetables are grown in raised beds and then harvested and eaten together, is very popular.

The AOB was particularly impressed by the fact that the forensics department is opening up new follow-up care facilities that accept patients with mental illnesses. A dedicated case manager is competent for making contact. The facilities are located at a distance that can be travelled to by the forensic clinic's treatment staff and caregivers, so that a personal picture of the patients' state of health and living situation can be obtained at any time. The facility furthest away is in Styria. All other facilities are located in Lower Austria or Upper Austria.

Good networking

A single weakness came to light when a patient came forward. He was initially placed on the ward on the ground floor and was able to go out into the garden on his own. This also includes a hard rubber court with a basketball hoop, where he had regularly exercised. As a result of a relaxation programme, the patient is now placed on the upper floor of the building. Although residents can go out onto the terrace there at any time, they cannot go into the garden area unaccompanied. Anyone who wants to exercise or go out into the courtyard is dependent on the walking times or the fulfilment of a special request. This depends on the staff capacity available in the home.

Small shortcoming

3.9 Climate protection, environment, energy, mobility, innovation and technology

Introduction

641 cases In 2024, the AOB processed 641 submissions in the area of the Federal Ministry for Climate Action, Environment, Energy, Mobility, Innovation and Technology. Most of the complaints in the area of transport concerned driving licence matters and the enforcement of the Motor Vehicle Act (*Kraftfahrzeuggesetz*) as well as toll matters.

3.9.1 Driving licences

Expensive expert opinions to maintain driving licence

The AOB is regularly confronted with criticism, particularly from chronically ill people, about the high costs incurred in the course of renewing temporary driving licences. Since 1 August 2022, these people have been exempted from stamp duty and administrative charges when renewing their licence.

High financial burden However, by far the greater part of the expenditure relates to specialist medical findings and expert opinions, which must be submitted regularly in order to maintain the driving licence. These costs, which often amount to several hundred euros, still have to be borne by those affected under the current legal situation.

Restriction of driving licence without sufficient medical basis

Feldkirch district authority restricts driving licence A driving licence holder complained about the Feldkirch district authority limiting his driving licence. Furthermore, he had to submit regular internal medical progress reports. The legal requirements for these restrictions were not met, especially as his state of health was described as "unchanged and stable" in an internal medical statement of opinion. According to the findings, there are no objections to the desired driving licence categories. Check-ups should take place annually.

The driving licence authority based its administrative decision on an expert opinion from a public medical officer. It stated that regular check-ups and the time limit were necessary in order to minimise the risk of a deterioration in the driving licence holder's state of health. The authority stated the following in the reasons for its administrative decision: "We base our decision on the results of the investigation".

Inadequate justification The AOB found that the mere reference to the result of the investigation procedure did not fulfil the obligation to justify administrative decisions

(Section 60 of the General Administrative Procedure Act). It was also not comprehensible why the suspensive effect of a possible complaint against the administrative decision due to "imminent danger" was revoked in this case.

It should also be noted that it is not sufficient for the prescription of check-ups or a limitation of the driving licence that regular examinations are indicated from a medical point of view to maintain health. Rather, the prescription of check-ups is only permissible under driving licence law if an illness has been observed in which, according to the state of medical science, a deterioration leading to the loss or restriction of fitness to drive motor vehicles must be expected in the specific case.

However, it was not clear from the internal medical statement of opinion and the public medical officer's expert opinion that these conditions were met. The authority therefore lacked a suitable basis for a decision to restrict the driving licence.

Insufficient basis for decision-making

The Feldkirch district authority subsequently sent the AOB an amended recommendation from the public medical officer regarding the health suitability of the person concerned, which was brought to his attention. The person concerned was informed that he was free to submit an application to the authority for a permanent driving licence.

Withdrawal of driving licence due to adult guardianship

A court appointed adult guardianship for a driving licence holder due to a mental illness. This included representation in administrative proceedings and administrative court proceedings. However, according to the court order, there were no indications of a need for a directive to reserve authorisation within the meaning of Section 242 (2) of the Austrian Civil Code. Section 242 of the Austrian Civil Code reads as follows:

Court-appointed adult guardian

"(1) The capacity of a represented person to act shall not be restricted by a health care proxy or adult guardianship.

(2) Insofar as this is necessary to avert a serious and significant danger to the represented person, the court shall order in the area of activity of the judicial adult guardianship that the validity of certain legal acts of the represented person or certain procedural acts before administrative authorities and administrative courts, such as pursuant to Section 865 (3) and (5), requires the approval of the adult guardian and, in the cases of Section 258 (4), also that of the court."

In an administrative decision dated November 2021, the Police Department of Upper Austria requested the driving licence holder to undergo a public medical officer's examination to observe his fitness to drive motor vehicles. The person concerned filed a complaint against this and pointed out that

Police Department requests examination by public medical officer

there was no reservation of authorisation for his adult guardianship with regard to the submission. The adult guardian informed the authority that the complaint was not supported.

Legal remedies considered non-relevant

Based on the declaration of the adult guardianship, the authority assumed that there was no submission by the person concerned that could trigger legal effects. There was therefore neither a preliminary decision on the complaint nor a submission of the complaint to the Regional Administrative Court of Upper Austria.

As the driving licence holder did not comply with his obligation to undergo a public medical officer's examination, which the authority considered to have become legally binding, the Police Department of Upper Austria withdrew his driving licence in an emergency administrative decision dated January 2022 until the directive was complied with. The person concerned determined a legal remedies appeal against this.

The adult guardianship representative again informed the authority that he did not support the person he was representing in this matter. He also stated the following: "Whether the document should therefore be regarded as non-relevant would have to be investigated internally by the authority, as in the previous proceedings".

New driving test

The driving licence authority was of the opinion that the appeal was also unable to trigger any legal consequences and should be considered non-relevant. The withdrawal of the driving licence therefore became legally binding and expired after a withdrawal period of more than 18 months. In order to regain the licence, the person concerned not only had to undergo the "fitness to drive", but also to re-take the practical driving test. The person concerned complained that the driving licence authority had wrongly denied him the capacity to act with regard to the submission of legal remedies.

Ability to act is fundamentally retained

The AOB observed that under the adult guardianship law that has been in force since 2018, a person's capacity to act and conduct legal proceedings pursuant to Section 242 (1) of the Austrian Civil Code is not restricted by the appointment of an adult guardian – unlike under the previously applicable legal guardianship law. If a represented person is capable of making decisions, they are deemed to have legal capacity and can also take effective legal and procedural action within the scope of the appointed adult guardianship. According to the case law of the Supreme Administrative Court and the Federal Administrative Court, decision-making capacity requires an understanding of the significance and consequences of one's own actions in the respective context and must be investigated ex officio in each individual case.

Authority does not investigate

However, it was not apparent from the procedural documents submitted that the driving licence authority had carried out investigations and made

observations on the issue of the driving licence holder's decision-making capacity. In this context, it should be noted that despite the clinical picture that led to the appointment of an adult guardianship, the court did not recognise any indications of a need for a directive to reserve authorisation within the meaning of Section 242 (2) of the Austrian Civil Code. Furthermore, due to the wording of the submissions, it could be assumed that the submitter did not lack an understanding of the significance and consequences of the legal remedies.

The AOB therefore identified shortcomings in the fact that the driving licence authority considered the legal remedies to be "non-relevant" from the outset. As a result, this meant that the person concerned received his driving licence again after a public medical officer's examination was carried out, during which his current "fitness to drive" was observed. The authority refrained from conducting a practical driving test.

Procedure to be criticised

"Cold withdrawal" of driving licence due to long administrative penalty proceedings

The Police Department of Styria revoked the driving licence and taxi driver's licence of a driver who had been driving a motor vehicle under the influence of alcohol. Administrative penalty proceedings were also initiated.

Driving licence and taxi driver's licence revoked

The person concerned disputed the allegation and determined legal remedies against the administrative decisions. He complained to the AOB about delays in the (legal remedies) proceedings.

The AOB observed that the person concerned had lodged an appeal against the administration's failure to decide with regard to the revocation of the taxi driver's licence and identified shortcomings in the fact that the Police Department Styria had only submitted this to the Regional Administrative Court Styria more than five months later.

Authority defaults

At the time of the complaint to the AOB, the administrative penalty proceedings had already lasted around one year. The authority did not take any procedural steps for a period of more than five months.

With regard to the duration of proceedings, the Police Department Styria referred to the statute of limitations provisions of Section 31 (2) of the Administrative Penal Act (*Verwaltungsstrafgesetz*). It assumed that there was no default, as no penal order may be issued after the expiry of three years after the date specified in the law.

However, it should be noted that in the present case, in which the Police Department of Styria suspended the proceedings to withdraw the driving licence and the taxi driver's licence until a decision had been made in the administrative penalty proceedings, the person concerned had a comprehensible interest in a swift conclusion of the proceedings. This

Quick decision necessary

was primarily in order to keep the so-called "cold withdrawal" of the aforementioned authorisations associated with this procedure as short as possible in the event that the administrative penalty proceedings were discontinued.

With particular regard to the right to good administration (Article 41 of the Charter of Fundamental Rights of the European Union), which also includes that their matter is dealt with within a reasonable period of time, the AOB requested the authority to ensure that the administrative penalty proceedings are concluded swiftly.

Transferring "F category" to Austrian driving licence

**Police Department
refuses transfer**

The Police Department Vienna, transport authority, refused to register a driving licence holder for category F (i.e. for tractors, other tractor units, etc.) in the course of transferring his Serbian driving licence. The transport authority did not provide any legal justification for this.

The person concerned referred to Section 9 (1) of the Driving Licence Act implementation regulation, from which no restriction of equivalence with regard to individual driving licence categories could be derived. According to the aforementioned provision, a driving licence issued in Serbia "shall be deemed to have been issued under the same conditions as in Austria" pursuant to Section 23 (3) (5) of the Driving Licence Act.

After enquiring at the transport authority in Vienna, the Federal Ministry for Climate Action, Environment Energy Mobility, Innovation and Technology confirmed that a non-EEA driving licence is only converted without taking a practical driving test for the categories harmonised by the European Union Driving Licence Directive. For national categories, such as a "tractor category" in the present case, there is no transfer without a driving test.

**No legal basis for this
practice**

The Federal Ministry for Climate Action, Energy, Mobility, Innovation and Technology is of the opinion, however, that there is no evidence for such a restrictive approach in the provisions of Section 23 of the Driving Licence Act and Section 9 of the Driving Licence Act implementation regulation. The federal ministry therefore clarified in the Driving Licence Act implementation decree that a transfer of a non-EEA driving licence to countries with which there is equivalence extends to all driving licence categories, provided that there is a corresponding category in Austrian driving licence law. The AOB welcomed this with regard to the necessary legal certainty and uniform enforcement.

Transfer of driving licence delayed

If the holder of a non-European Union or non-EEA driving licence transfers their place of residence to Austria, they are generally only permitted to drive motor vehicles for six months. After this period, the foreign driving licence

loses its validity in Austria and must be transferred to an Austrian driving licence. The persons concerned therefore have a special interest in having the driving licence authority deal with the matter quickly.

During the period under review, the length of time it took to transfer licences led to justified complaints in some cases, as the reasons for this were essentially the responsibility of the respective driving licence authority. For example, the transfer of a Pakistani driving licence by the Police Department Vienna, Transport Authority, took around nine months. The same authority took around eight months to transfer a British driving licence and around seven months for a Swiss driving licence. The transfer of a Ukrainian driving licence by the Police Department of Upper Austria also took around seven months.

Outdated payment method by payment slip

One affected person criticised the fact that the Vienna Police Department, transport authority, had issued a payment slip for the payment of the fee (47.20 euros) for a public medical officer's examination in a driving licence matter with the following note: "Only a postmark or a bank cashier's stamp is valid as proof of payment".

Police Department requires cash register stamp

It turned out that a cash stamp was not available at a bank, as only self-service machines were available here. A cash deposit at a post office cost 12 euros. It was incomprehensible that the transport authority required a stamp and that electronic transfers were not possible.

The transport authority justified the reference to a postmark or a cashier's stamp of the bank on the payment slips by stating that the bank's confirmations, which are issued in the self-service machines, only prove that the payment order has been accepted by the bank, but not that the payment has been made.

However, the transport authority has taken this complaint as an opportunity to no longer use these payment slips. In future, the parties will be given the transport authority's bank details for a bank transfer. The clearing centre of the transport authority will then examine the receipt of payment before a party is assigned to a public medical officer.

Transport authority changes procedure

3.9.2 Motor vehicles

Approval of a driving school practice area

A neighbour complained about the approval of a driving school practice area by the Zell am See district authority, the operation of which caused unreasonable nuisance, in particular due to noise and dust. The training area was unsuitable in view of its location near the town centre.

Zell am See district authority grants approval

According to Section 110 (1) of the Motor Vehicle Act (*Kraftfahrgesetz*), driving schools must have a "suitable practice area". Section 64a (2) of the Motor Vehicle Implementation Regulation stipulates that a "suitable" practice area of at least 2,000 m², separated from public traffic, must be permanently available during the driving school's operating hours. The authority had granted the approval without investigation of these authorisation requirements. The neighbours of the practice area did not have the right to have a say or be a party. This is incomprehensible insofar as a practice area can cause considerable disturbance to the neighbourhood when practising with lorries, cars, motorbikes, etc. Especially as the Austrian Industrial Code (*Gewerbeordnung*) does not apply here, the authority cannot prescribe specific operating hours for the driving school.

Requirements not examined

Based on the statements of opinion obtained from the authorities and the file of the proceedings, the AOB was unable to ascertain whether or which investigations the authority had carried out with regard to the fulfilment of the licensing requirements. In particular, the question of the separation of the practice area from public traffic and the constant availability during the operating hours of the driving school was neither stated in the submission documents nor observed by the authority in the file of the proceedings.

According to a decision issued by the Regional Administrative Court of Salzburg (11 November 2023, no. 405-4/5460/1/4-2023) in the case in question, neighbours of driving school training grounds are not granted a subjective public right to protection from immissions in the Motor Vehicle Act. This decision did not indicate that the authority should have investigated the "suitability" of the training ground beyond the approval requirements laid down in the provisions of motor vehicle law with regard to the impact on the neighbourhood.

Include neighbour protection

At least where no provisions of building or law on regional planning apply, those affected are therefore limited to asserting immission control claims under civil law procedures. It would therefore be worth considering a provision that also includes neighbour protection in the recommendation of the suitability of an area as a driving school training ground.

Federal Ministry decree on windscreen films

Retroactive tightening?

A man contacted the AOB and asked for an examination of provisions in a "2011 decree on windscreen films" issued by the Department of Transport. Point 6 of the decree states: "Old stock: This decree also applies retroactively to modifications to vehicles by fitting windscreen films that were approved before this decree came into force". In his view, there is no legal basis for this provision of the decree if it means that vehicles that were registered before the decree came into force are also covered by the stricter provisions of the decree with retroactive effect.

The Federal Ministry for Climate Action, Energy, Mobility, Innovation and Technology pointed out that the purpose of the decree was to summarise the application of the regulations for windscreen films and their installation on motor vehicles – and in particular the simplifications introduced by the 56th and 57th amendments of the motor vehicle implementation regulation – and to specify certain points. It was appropriate to state that vehicles approved before the entry into force of these provisions also benefit from the simplified procedure.

Based on this information, the AOB assumed that the concerns expressed were unfounded. It recommended that a corresponding clarification be made (by decree) in order to ensure uniform enforcement and avoid misunderstandings.

Recommendation for clarification

Occasional Transportation Act – scope of taxi licence inspections

To prove professional aptitude for the passenger transport industry with a car taxi (taxi licence), the applicant must take an oral investigation, among other things. The content of the examination is set out in a "Professional Licence Regulation for Regular and Occasional Passenger Transport" from 2001, which is based on the Occasional Transportation Act (*Gelegenheitsverkehrsgesetz*).

Examination material established by regulation

One licence applicant failed the investigation at the public authority of the Regional Government of Vienna, primarily due to the fact that inadmissible questions were asked during the investigation. She pointed out that the requirement of three years' professional experience for a taxi licence had been removed from the law in 2019 as part of an amendment to Section 5 (5a) of the Occasional Transportation Act. The motive for this can be found in the legislative materials:

"In addition, the three years of professional experience previously required for the taxi industry no longer applies. While this was originally aimed at a relevant commercial activity, this requirement was recently – not least due to relevant case law – increasingly interpreted to mean that at least three years' experience as a taxi driver was both required and considered sufficient. This view seems neither up-to-date nor necessary, especially as it concerns the granting of a business licence and not requirements for the driving personnel.

Legislature provides for facilitations

The examination board has now also asked questions in areas relating to requirements for drivers and not for commercial management. This applies in particular to knowledge of the state taxi operating regulations, the drivers' obligations under motor vehicle law and the Austrian Road Traffic Act as well as traffic geography.

Questions relating to driving personnel only

These areas are not relevant for the management of a taxi company, but are still provided for as examination areas in the Professional Licence Regulation. The regulation was therefore incomprehensibly not adapted to the amendment to the Occasional Transportation Act and the legislature's intention expressed therein.

Ministry considers examination material still relevant

The Federal Ministry for Climate Action, Environment, Energy Mobility, Innovation and Technology explained that the examination material listed in the Professional Licence Ordinance was the theoretical part of the examination, which had already been required in addition to the three-year professional activity requirement before it was abolished. The purpose of the theoretical investigation is to ensure the professional suitability of those authorised to practise in order to fulfil their legal responsibility towards employees, customers and the authorities. The ministry therefore sees no need to amend the Professional Licence Ordinance.

Legislature's will implemented?

The Occasional Transportation Act does not contain any provisions that would legally contradict the ministry's view. However, if the enforcement practice described does not correspond to the legislature's intention, the legal requirements would have to be adapted accordingly.

Federal Road Tolls Act – digital road toll sticker lacks flexibility

Re-registration restricted to licence holder

As in previous years under review, the fact that the legislature has restricted the right to re-register the digital annual toll sticker to the same registration holder in the Federal Roads Tolls Act (Section 11 (5)) has led to complaints. If the vehicle is transferred during the year and a new licence plate number is assigned, the new owner cannot use the road toll sticker even though the purchase price has been paid for a full year.

Re-registration with costs

Those affected also expressed incomprehension about the fact that after a new licence plate has been issued – e.g. due to a change of residence – they had to pay a "reimbursement of expenses" (18 euros), although they have to arrange the re-registration with ASFINAG, the state owned responsible for planning, financing and maintaining Austrian motorways themselves.

No goodwill if licence plate was entered incorrectly

In a number of cases, those affected only realised that they had mistakenly entered the wrong number plate when ordering the road toll sticker in the webshop ("transposed digits") after receiving a replacement toll request from ASFINAG. In this context, those affected criticised the fact that no "goodwill solution" could be found with ASFINAG. However, the AOB had no investigative mandate in this regard. Nevertheless, it does see potential for improvement in terms of customer friendliness.

3.9.3 Aviation law

Years of delay in aviation accident investigations

Because the investigation of aviation accidents had taken far too long, the AOB observed cases of maladministration in the area of the Supreme Civil Aviation Authority in recent years (e.g. Annual Report 2020, p. 134; Annual Report 2021, p. 168, Annual Report 2022, p. 183 f. and Annual Report 2023, p. 162 et seq.).

In April 2023, the AOB's investigation once again revealed massive cases of maladministration: it took more than ten years to complete final reports following aviation accidents between 2006 and 2012 in 43 cases, and even more than 15 years in 21 of them. In 45 cases from the years 2000 to 2005, an investigation was not initiated without explanation.

Still pending after more than ten years

The AOB recommended that the competent Federal Minister ensure that the final reports in the aforementioned 43 proceedings are completed as quickly as possible, but no later than 31 December 2024. The necessary emoluments relating to the aviation accidents in the years 2000 to 2005 must also be issued as quickly as possible, but no later than 31 December 2024.

AOB calls for rapid investigation

The AOB determined this maladministration because at the end of 2022, six out of ten of the proceedings initiated in 2008 had still not been concluded. Of 13 proceedings initiated in 2007, nine were still ongoing, and of 15 proceedings initiated in 2006, twelve were still ongoing. This means that of 28 proceedings initiated in the years 2006 to 2007, 21 – i.e. three quarters – were not concluded within 15 years. For the years 2008 to 2012, 22 of 53 proceedings could not be concluded by the end of 2022 – i.e. still more than 40%.

75% of proceedings from 2006 to 2007 open after 15 years

The legal system expressly limits the duration of investigations into aviation accidents. Section 15 (3) Accident Investigation Act 2005 stipulates that the Supreme Civil Aviation Authority must publish the final investigation report "as soon as possible and, if possible, no later than twelve months after the incident". As there is no corresponding reference in Section 21 (2) Accident Investigation Act 2005, this provision is not applicable to safety investigations in the field of civil aviation, but Section 21 (1) Accident Investigation Act 2005 expressly states that the provisions of Regulation (European Union) No. 996/2010 apply. Article 16 (6) of this regulation stipulates that the final report must be published as soon as possible and, if possible, within twelve months of the accident. In the event that this is not possible, Article 16 (7) of the Regulation directs that an interim report be published at least on each anniversary of the accident, outlining the progress of the investigation and any safety problems.

Supreme Civil Aviation Authority bound by legal requirements

In view of these clear requirements, it cannot be at the discretion of the Supreme Civil Aviation Authority to complete safety investigations in the field of civil aviation only after many years or even decades. The Supreme Civil Aviation Authority has discretionary powers, which also include prioritisation. However, it is not unlimited. The Supreme Civil Aviation Authority must ensure that the provisions of Article 15 (6) and (7) of Regulation (European Union) No 996/2010 are complied with.

Ministry pledges to settle pending cases

The competent Federal Minister informed the AOB that investigation reports will be prepared by 31 December 2024 in the cases of unresolved proceedings from the years 2000 to 2005. Final reports were announced by 31 December 2025 for the unresolved cases relating to the period 2006 to 2012.

12 cases still open; 12 cases can no longer be processed

As at 1 December 2024, 43 of the 45 open aviation accidents that occurred between 2000 and 2005 had been closed with a simplified investigation report. The Supreme Civil Aviation Authority did not have enough information on the two remaining accidents to prepare a simplified investigation report.

Of the 43 aviation accidents in the years 2006 to 2012, which the AOB's determination of maladministration and recommendation had cited as not completed in 2023, 21 were concluded with an investigation report as at 1 December 2024. A further twelve investigations are expected to be completed by the end of 2025, while in the remaining ten cases the Supreme Civil Aviation Authority's information situation is so inadequate that a safety investigation is no longer possible in view of the time that has elapsed since the incidents.

The AOB welcomes the fact that the number of outstanding investigations has finally been reduced. However, the fact that twelve accidents that occurred many years ago can no longer be investigated at all confirms the AOB's criticism. For both legal and aviation safety reasons, it is not possible to wait for years before carrying out investigations. On the positive side, new aviation accidents are investigated promptly.

AOB calls for swift conclusion

The AOB will continue to press for the outstanding investigation reports to be prepared by 31 December 2025 at the latest, as promised by the Federal Ministry for Climate Action, Environment Energy Mobility Innovation and Technology.

3.9.4 Railway law

Lack of barrier-free access

Old suburban trains still in use

Every year, the AOB deals with complaints about the lack of accessibility at Austrian Federal Railways. For years, it has seen a need for action with regard to the 4020 series railcars still in use in the greater Vienna area,

which were designed in the mid-1970s and are not barrier-free. This series will probably remain in service in large numbers (approx. 30 sets) until 2026. It is de facto impossible for people with walking impairments to use them due to the high step access.

There are also repeated complaints that small railway stations are not accessible. In the year under review, the AOB was able to obtain a promise from Austrian Federal Railways that Pottendorf-Landegg station will be accessible by 2027.

Not all railway stations are accessible

Serious vehicle shortage in the greater Vienna area

In 2024, the AOB received several complaints about massive train cancellations and the operation of short trains in the greater Vienna area. Austrian Federal Railways acknowledged that there is a serious shortage of vehicles, which leads to train cancellations and the running of short trains. The company is aware of the problem and endeavours to improve the situation.

Shunting noise in Graz

Numerous neighbours complained to the AOB that the shunting noise in the Gösting district of Graz had reached unbearable levels. The AOB took up this issue and discussed it repeatedly in the *Bürgeranwalt* ("Advocate for the People") television programme.

Over the course of years of efforts, the AOB succeeded in obtaining the construction of three noise barriers, the raising of an existing noise barrier and a programme to promote noise barriers. Austrian Federal Railways also installed new brake pads. This significantly reduced the noise.

AOB achieves reduction in noise nuisance

AOB assists with additional fare claims in hardship cases

It happens from time to time that additional fare claims are issued correctly in accordance with the tariff, but their full settlement would result in disproportionate hardship for the passengers in view of the particular situation of the individual case. Fortunately, thanks to the good cooperation between the AOB and Austrian Federal Railways, it is always possible to find a solution acceptable to all sides in such cases.

3.9.5 Energy and environment

Introduction

In 2024, more than 100 people approached the AOB regarding problems with the payment of the climate bonus for 2022. More than 50 people

Over 160 complaints about climate bonus

criticised not having received the climate bonus for 2023. More than ten people criticised the fact that the climate bonus for 2024 had not been paid out. 16 complaints concerned problems with the payment of both climate bonuses for the years 2022 and 2023 and for the years 2023 and 2024.

Photovoltaic and electricity storage subsidies

More than 40 complaints concerned the processing of subsidies for photovoltaic systems or electricity storage systems. Many of those affected identified shortcomings in the way applications for subsidies were rejected or subsequently cancelled because they did not meet the eligibility requirements. These requirements are already set out in the Renewable Energy Expansion Act (*Erneuerbaren-Ausbau-Gesetz*), which is why the AOB was often unable to observe any deficient implementation of this law.

Smart meter and electricity price control

In addition, the AOB received over 20 submissions on smart meters. The AOB had already dealt with this topic in detail in previous years (see most recently Annual Report 2020, volume "Monitoring the administration", p. 137). More than ten concerns related to the so-called electricity price control, which is regulated in the Electricity Costs Subsidies Act (*Stromkostenzuschussgesetz*). In particular, those affected criticised the aliquoting of the subsidy in accordance with the agreed, in some cases monthly, billing period by the companies supplying the electricity, as provided for in Section 5 para. 1 Electricity Costs Subsidies Act.

Problems regarding the payment of the climate bonus

In order to compensate for the additional burdens resulting by the pricing of greenhouse gas emissions, the Climate Bonus Settlement Act provides for the payment of a regionally differentiated climate bonus. This bonus is to be paid to all natural persons who have a registered main residence in Austria for at least 183 days of the respective entitlement year. In 2024, the amount of the climate bonus was between EUR 145 and EUR 290 for adults, depending on the main residence category of the beneficiaries. Persons who had not yet reached the age of 18 in 2024 were entitled to half of the amount. Payment by bank transfer or alternatively by sending vouchers should be made in the autumn of the respective entitlement year or in the spring of the following calendar year. In accordance with Section 7 of the Climate Bonus Settlement Regulation (*Klimabonus-Abwicklungsverordnung*), the climate bonus is due on 1 June of the year following the year of entitlement, unless all the data required for determining entitlement and payment is already available before then.

Ex-officio investigative proceedings continued

In 2024, the AOB continued its official investigations into the climate bonus in order to investigate the effect of the improvement measures announced or reported by the Federal Ministry for Climate Action, Environment, Mobility Energy, Innovation and Technology in 2023 (see Annual Report 2023, p. 167 et seq.). The AOB deduced that the measures had a positive effect

from the drastic reduction in complaints received on this topic from over 900 in 2023 to just over 160 in 2024.

The AOB was also able to deduce from the Federal Ministry for Climate Action, Environment, Mobility, Mobility, Innovation and Technology's statement of opinion on the Annual Report 2023 received in May 2024 that the discussion of numerous problems had positive effects. For example, the Federal Ministry for Climate Action reported that the number of successful climate bonus transfers had increased by 200,000 to around eight million transfers compared to 2022 and 2023. The federal ministry also assured that it would continue the information campaign suggested by the AOB in 2023 to draw attention to the need to keep the account data stored in FinanzOnline up to date and the cut-off date for determining the bonus.

Referral rate already increased in 2023

In this statement of opinion, the Federal Ministry for Climate Action, Environment, Energy, Mobility, Innovation and Technology also stated that in several individual cases, the processing of enquiries at the "Climate Bonus Service Line" had not met the ministry's quality standards. These cases had given rise to corresponding improvements and regular training for the staff of the "Climate Bonus Service Line".

Improving service quality

The Federal Ministry regretted the excessive waiting times for telephone contacts with the "Climate Bonus Service Line" in the first weeks of the climate bonus payment during the year in October and November 2022. According to the authority, the unexpected number of over 562,000 enquiries would have led to a fundamental revision of the quality of the service. As a result of this measure, the average response time of the "climate bonus service line" for calls was around two minutes in 2023 and only around 30 seconds in 2024.

In view of these statements, the AOB saw its criticism of the many problems with the payment of the climate bonus and the handling of enquiries by the "climate bonus service line" confirmed. It considered the deficiencies discussed to have been remedied due to the reported improvements.

As reported in the Annual Report 2023 (see p. 168), in June 2023, the Federal Ministry for Climate Action, Environment and Technology amended the Climate Bonus Settlement Regulation, which is based on the Climate Bonus Settlement Act, by announcing the Federal Law Gazette II No. 189/2023. The ministry added a third sentence to Section 9 (1) of the settlement regulation, which contains provisions on the payment of the climate bonus by voucher. In doing so, the Federal Ministry for Climate Action, Environment, Energy Mobility Innovation and Technology created the option of sending the voucher by registered mail (RSb) instead of the return receipt letter (RSa) "in justified cases". Such consignments can also be accepted by substitute recipients such as household members.

Problematic wording of regulation

Undefined legal term in the regulation As the Climate Bonus Settlement Regulation did not define the term "in justified cases" in more detail, the AOB requested information from the Federal Ministry for Climate Action, Environment, Energy, Mobility, Innovation and Technology as early as 2023. The ministry justified the new provision by stating that it would simplify the processing of climate bonus payments in individual cases. The Federal Ministry for Climate Action, Environment, Energy, Mobility, Innovation and Technology referred to the "Explanatory Notes" to the Climate Bonus Settlement Regulation's amendment and stated that the exemption applied to beneficiaries who, for example, are minors or are unable to collect the return receipt letter deposited at the post office for health reasons.

After reviewing the "Explanatory Report", the AOB had to observe that this document did not contain a conclusive definition of the term "in justified cases" either and that it was only a preliminary working draft. It therefore doubted that the content of the administrative action could be determined as required by the principle of legality pursuant to Article 18 (1) of the Federal Constitutional Law. As there were no clear guidelines for the interpretation of the undefined legal term, it was unclear which circumstances are or are not "justified cases".

Vouchers by registered mail only to minors The Federal Ministry for Climate Action assured that climate bonus vouchers would only be sent by registered mail to eligible minors and in as few cases as possible due to the lower security of the mailings compared to return receipt letters. In addition, it stated that, with regard to persons with limited mobility, it could be assumed that these persons had usually issued a power of representation or postal authorisation in favour of other persons for all official mailings anyway. Despite corresponding questions from the AOB, the Federal Ministry for Climate Action, Energy, Mobility, and Technology left open whether there are written guidelines that must be used for the department's internal interpretation of the criticised, undefined legal term. Moreover, it is unclear whether a clarification of the legal term is considered in the course of an amendment to the Climate Bonus Settlement Regulation.

AOB's constitutional concerns In the opinion of the AOB, these explanations could not dispel its constitutional concerns for several reasons. Firstly, they contradicted the content of the Federal Ministry for Climate Action, Environment, Energy, Innovation and Technology's earlier statements on this topic. Secondly, entitled persons such as adults with or without mobility restrictions cannot deduce from the criticised wording that they do not constitute a "justified case" according to the Federal Ministry for Climate Action, Environment, Energy, Mobility Innovation and Technology's explanations. Those seeking information would therefore have to contact the Federal Ministry for Climate Action, Environment, Energy, Mobility Innovation and Technology or its service centres for clarification, which in turn can lead to avoidable additional administrative work.

In addition, the AOB was unable to understand the need to send climate bonus vouchers to minors with registered mail, as they are *ex lege* represented by the persons authorised to take care of them. If necessary, these persons would be authorised to remove any return receipt letters deposited at the post office for the underage beneficiaries. In the course of the conclusion of the *ex-officio* investigative proceeding, the AOB therefore identified shortcomings in the use of the undefined legal term.

Despite the reported improvements in climate bonus payments and the quality of enquiry processing on the part of the Federal Ministry for Climate Action, Environment, Energy Mobility, Innovation and Technology, several complaints received in 2024 prompted the AOB to intervene. One Vienna resident criticised the fact that, as in the previous year, his climate bonus for 2023 was paid out in the form of a voucher, even though his account details were complete and up to date. The Federal Ministry regretted that a problem had apparently occurred when updating the account data of the person concerned. It stated that it was also in its interest to increase the number of climate bonus payments via bank transfers. It could, however, not provide a specific reason for the problem.

Voucher delivery despite updated account details

In the case of a Viennese woman who complained that she had received the payment of climate bonuses for the years 2022 and 2023 by voucher delivery, the Federal Ministry for Climate Action, Environment, Energy Mobility, Innovation and Technology initially referred to a problem that had occurred when updating the account data. Only upon enquiry did the authority state that it had originally arranged for both climate bonuses to be transferred to the bank account provided by the Federal Ministry of Finance in both years. However, as the bank account had been closed, the payments had been returned to the Federal Ministry for Climate Action, Environment, Energy, Mobility, Innovation and Technology and therefore a delivery had been made by means of vouchers.

The AOB took note of these statements and the Federal Ministry for Climate Action, Environment, Energy Mobility, Innovation and Technology's advice to the person concerned that the Federal Ministry of Finance, as the department responsible for the data, should be contacted in order to update her account details. However, the Viennese woman's complaint proved to be justified.

No response from the Federal Ministry

Despite having urged the Federal Ministry for Climate Action, Environment, Energy Mobility Innovation and Technology, it did not explain in its statements of opinion why it had not responded to a registered letter from the woman dated January 2024. In this letter, she asked the Federal Ministry for Climate Action, Environment, Energy Mobility Innovation and Technology to justify the payment of the climate bonus for 2022 with the delivery of a voucher and to transfer the climate bonus for 2023 to a bank account whose details differed from those of the bank account reported as closed.

After an Upper Austria resident learnt that his climate bonus for 2022 had been transferred to a bank account he did not know, he informed the "Climate Bonus Service Line" of this in two online contact forms at the beginning of January 2024. When there was no response, he filled out two more online contact forms at the beginning of February 2024. As he did not receive a response either, he contacted the AOB two weeks later.

No notification of the "ticket" closure

The Federal Ministry for Climate Action, stated that the person concerned had not attached the required documents to the first two contact forms submitted. These "tickets" were therefore closed. As the necessary documents had only been attached to the two contact forms submitted at the beginning of February 2024, the Federal Ministry promised that the climate bonus arbitration board would investigate the case. At the same time, however, it asked for patience because the investigation of such "unknown account cases" takes several weeks. In view of the expected duration of the investigation, the AOB recommended that the case be clarified quickly.

Processing time of over nine months

In 2023, a woman from Klagenfurt used the online contact form to contact the "Climate Bonus Service Line" three times to request information on why the climate bonus for 2022 had not been paid. At the beginning of January 2024, the "Climate Bonus Service Line" informed her by telephone that the Federal Ministry for Climate Action, Environment, Energy, Mobility, Innovation and Technology had rejected her last application from October 2023 because she had not provided a copy of a photo ID. After she had immediately submitted a new online contact form, she had been told during several telephone enquiries that it would take a few more months to process the case. After the AOB intervened, the Federal Ministry for Climate Action, Environment, Energy Mobility, Innovation and Technology admitted in October 2024 that it could not understand why the case had not yet been closed and promised to transfer the outstanding climate bonus in the same month.

Incorrectly produced return receipt letters

Two justified complaints related to delays in the payment of the climate bonus for 2022, which resulted from errors in the production of the RSa return receipt letters for the delivery of the climate bonus vouchers, which the Federal Ministry for Climate Action, Environment, Energy Mobility Innovation and Technology regretted.

In the case of an Upper Austria resident, the Federal Ministry for Climate Action, Environment, Energy, Mobility Innovation and Technology stated that the person concerned had entered incomplete account details in the online contact form in October 2022 and therefore no payment had been possible. As he had provided valid account details in another online contact form at the beginning of December 2023, the climate bonus had already been transferred in mid-December 2023, two months before he had lodged his complaint to the AOB. In the case of a woman from Salzburg, the Federal Ministry for Climate Action Environment asked the person concerned via

the AOB to provide her account details so that the climate bonus could be transferred.

In the case of an 88-year-old beneficiary, the AOB was able to achieve a favourable solution for the payment of the climate bonus for the year 2024. The bedridden person concerned was unable to redeem the climate bonus voucher deposited at the post office. Nor was she able to apply for a new passport, have a new passport photo taken or appear in person at the authority. Her son therefore sent an online contact form to the "climate bonus service line", enclosing a copy of the expired passport. He was then informed several times that the requested expulsion would require the presentation of a valid passport.

Expired password accepted as proof of identity

After the AOB had drawn the attention of the Federal Ministry for Climate Action, Environment, Energy, Mobility, Innovation, and Technology to the situation of those affected, the Ministry accepted the expired passport as proof of identity due to the special circumstances and announced that the climate bonus would be transferred as soon as possible.

Inadequate consideration of a funding application

In November 2022, the community of owners of a residential complex in Linz commissioned a limited liability company (property management company) appointed as administrator pursuant to Section 16a of the Austrian Condominium Act (*Wohnungseigentumsgesetz*) to place an order with an electrical company to install a photovoltaic system and submit a subsidy application pursuant to Section 56 of the Renewable Energy Expansion Act (*Erneuerbaren-Ausbau-Gesetz*). Even before submitting the subsidy application to OeMAG (the settlement centre for *Ökostrom AG*) in March 2023, the community of owners made an advance payment to the electrical company.

Homeowners' association applies for funding

Although the "start of the work", which also included advance payments for the measure to be subsidised, therefore took place before the application was submitted, contrary to the wording of Section 55 (2) of the Renewable Energy Expansion Act at the time, the homeowners' association was certain that it would receive the desired subsidy. In accordance with the provision in Section 8 (2) of the Renewable Energy Expansion Act, Environment Energy, Mobility, Innovation and Technology Investment Subsidy Ordinance, which was in force at the time, applicants for subsidies who are consumers within the meaning of Section 1(1)(2) of the Consumers Protection Act (*Konsumentenschutzgesetz*) could also submit applications for investment subsidies after the "start of work". In this case, however, the "start of work" must not have taken place before 21 April 2022. The owners' association considered this exception to be fulfilled because, according to Supreme Court case law (see Supreme Court ruling of 23 November 2021, 4 Ob 119/21k),

homeowners' associations do not generally carry out any economic, i.e. entrepreneurial, activity and consumer protection applies to them.

Funding initially rejected

However, during the investigation into the final settlement of the funding application, the funding agency took the view that the exception rule in Section 8 (2) Renewable Energy Expansion Act, Environment Energy, Mobility, Innovation and Technology Investment Subsidy Ordinance did not apply. It justified this by stating that the applicant was a company – the property management company with the legal form of a limited liability company – and therefore the down payment to the electrical company before the application was submitted ruled out funding.

In the subsequent correspondence, the funding agency did not address the objection of the homeowners' association that the application form only offered the option of choosing between the entries "natural person" and "company", which were unsuitable for the homeowners' association. The reference to the consumer status of homeowners' associations within the meaning of the Supreme Court case law cited above was also ignored. As the contacted Federal Ministry for Climate Action, Environment, Energy Mobility, Innovation and Technology stated that it was unable to influence the processing of the subsidy, an owner representative and the managing director of the property management company contacted the AOB.

Initially, the Federal Ministry for Climate Action, Environment, Energy Mobility Innovation and Technology also stated to the AOB that the property management company, i.e. a company, had submitted the subsidy application. However, the Federal Ministry for Climate Action, Environment, Energy, Mobility, Innovation and Technology revised this opinion after the AOB pointed out that the correct name of the owners' association was noted in the "Company data" section of the electronic overview of the subsidy project.

Erroneous change in applicant name

The Federal Ministry for Climate Action, Environment, Energy, Mobility, Innovation and Technology then stated that irregularities had occurred both in the application process and in the processing of the subsidy. In addition, the new investigation by the funding agency revealed that one of its employees had mistakenly replaced the correct name of the owners' association with the company name of the property management company in the IT system. As the new investigation of the funding application yielded a positive result, the Federal Ministry for Climate Action, Environment, Energy Mobility, Innovation and Technology announced that the investment grant would be paid out in autumn 2024.

Federal Ministry inaccurately refers to legal situation

In the course of the investigative proceedings, the AOB also criticised the written information provided by the Federal Ministry for Climate Action, Environment, Mobility Innovation and Technology to the owner representative that the legislature had adopted the requirements in the Renewable Energy

Expansion Act. The AOB considered this information to be legally incorrect and misleading, as the Federal Ministry for Climate Action Environment was responsible for the decree of this regulation in accordance with Section 58 Renewable Energy Expansion Act.

As suggested by the AOB, the Federal Ministry for Climate Action, Environment, Mobility, Mobility, Innovation and Technology arranged for the standardised notice to be amended in order to correctly inform about the validity of the Renewable Energy Expansion Act in future submissions to the AOB.

Cash investments excluded from funding pursuant to Renewable Energy Expansion Act

In the year under review, several people contacted the AOB and criticised the fact that OeMAG (the settlement agency for *Ökostrom AG*) informed them that their investments made by means of cash payments could not be taken into account for the photovoltaic system to be subsidised.

The subsidising body based this recommendation on the provision in Section 13 (3) (2) of the Renewable Energy Expansion Act). According to this provision, persons applying for funding must submit proof of payment in addition to invoices and other documents as part of the mandatory final statement for the photovoltaic systems or electricity storage systems to be subsidised. However, according to the wording of the provision, "cash payments" (!) are excluded.

"Cash payments" not permitted under the Renewable Energy Expansion Act

The affected parties were unable to understand this provision because, on the one hand, the companies that had sold them the equipment (parts) to be subsidised would only have accepted cash payment. On the other hand, the affected parties submitted cash payment receipts to the funding agency, in which the companies noted not only their contact details, account details and VAT numbers, but also the sales tax or VAT for the specific services invoiced and the receipt of the invoice amount. According to the parties concerned, the funding agency could therefore have determined the actual payment of the invoiced amounts from the companies or arranged for monitoring visits by the fiscal authorities if there were reasonable doubts.

The AOB initially only confronted the Federal Ministry for Climate Action Environment with these concerns in one complaint case. It argued that cash payment is a permissible form of payment and that its exclusion or the exclusion of cash payment receipts as proof of payment contradicts the principle of equality laid down in the Austrian Federal Constitution.

AOB's constitutional concerns

In its first statement of opinion, the Federal Ministry for Climate, Environment, Energy Mobility, Innovation and Technology stated that the criticised provision prevents fraud or money laundering and ensures that

Prevention of fraud and money laundering

the payments made can be verified before the funding is granted, especially as the exclusion of cash payments is a common requirement in funding regulations.

The Federal Ministry for Climate Action, Environment, Energy, Mobility and Technology also stated that the principle of equality prohibits arbitrary and not objectively justified differentiations in the granting of subsidies. However, it also referred to the Constitutional Court of Austria's established case law, according to which the legislature or the legislator has a wide margin of discretion when determining support measures and the factual requirements for granting them (see, for example, the Constitutional Court of Austria's ruling of 5 October 2023, G172/2022 and others). The Federal Ministry for Climate Action, Energy, Mobility Innovation and Technology therefore took the view that the criticised provision, which all persons applying for funding must comply with, was not based on an unobjective or arbitrary differentiation and refused to make a new recommendation on the funding case.

The AOB could not understand this position because the Federal Ministry for Climate Action, Energy, Mobility, Innovation and Technology left the question unanswered as to why cash payment receipts were inherently less credible as proof of payment for investments than bank transfer receipts. In this regard, the AOB pointed out that transfer receipts or other non-cash forms of payment cannot completely rule out the repayment of the transfer amount to the person making the transfer, for example with an undocumented cash payment.

The AOB therefore additionally requested the Federal Ministry for Climate Action, Energy Mobility Innovation and Technology – in this and also in a comparable complaint case – to provide information on the extent to which the funding body had specifically investigated the submitted transfer documents in order to rule out cases of fraud or money laundering.

**Formal investigation
only**

The statements of opinion of the Federal Ministry for Climate, Environment, Energy, Mobility, Innovation and Technology showed that the funding body only investigates the submitted transfer documents on the basis of the basic transfer data and the invoice amount stated therein to determine whether it corresponds to the invoices submitted and whether there is a clear invoice reference. According to the Federal Ministry for Climate Action, Energy, Mobility, Innovation and Technology, this basic data would include the transfer date, the data on the person making or receiving the transfer and the persons who hold the bank accounts used.

In the AOB's opinion, these statements could not invalidate its doubts about the higher probative value of bank transfer receipts compared to cash payment receipts as stated by the Federal Ministry for Climate Action, Environment, Energy Mobility, Innovation and Technology. The cash payment

receipts discussed would have also withstood the examination method described because they also contained the investigated data on the (cash) payment transaction. This assessment could not be changed by the ministry's statement that the public interest in the prevention of money laundering and fraud was the objective justification for the provision in Section 13 (3) (2) of the Renewable Energy Expansion Act.

The Federal Ministry for Climate Action, Environment, Energy Mobility, Innovation and Technology also did not respond to the AOB's request to name those subsidy provisions that, according to the ministry, would exclude cash payments as a customary requirement. Rather, an investigation by the AOB revealed that, in addition to the criticised provision in Section 13(3) (2) of the Renewable Energy Expansion Act, only Section 12(3) and (4) Renewable Energy Expansion Act for Gas provided for such an exclusion in the area of responsibility of the Federal Ministry for Climate, Environment, Energy, Mobility, Innovation and Technology.

As a result, the AOB observed that the exclusion of cash payment vouchers was based on a differentiation between two different forms of payment that was not objectively justified. The AOB therefore criticised that the provision of Section 13 (3) (2) of the Renewable Energy Expansion Act violates the principle of equality of the Austrian Federal Constitution, as it excludes persons who fulfil all other requirements for the granting of an investment subsidy under the Renewable Energy Expansion Act from this subsidy solely on the basis of the cash payment of their investments.

Discrimination

3.10 Defence

Introduction

35 complaints In the area of national defence, the AOB only received 35 complaints in the year under review 2024. These related in particular to noise nuisance caused by the Austrian Armed Forces' exercises at the Stammersdorf shooting range. The other submissions mainly concerned conscription to the Austrian Armed Forces, emplacement, disciplinary and service-related matters. The AOB attributes the rather low number of complaints to the possibility of turning to the Parliamentary Commission for the Armed Forces in the event of problems.

3.10.1 Noise nuisance from shooting range in Stammersdorf

Suffering residents Neighbours of the Stammersdorf shooting range once again complained about the noise nuisance emanating from the shooting range. This is unacceptable for the population living near the range. The "gunfire" could often be heard as far away as the neighbouring areas of Gerasdorf, Strebersdorf and Jedlersdorf. At times it felt "like being in a war zone".

Training to protect the population The AOB already conducted investigative proceedings in 2020 with regard to noise nuisance (cf. description in the Annual Report 2020, volume "Monitoring of public administration", p. 143 et seq.). When initiating the current investigative proceedings, the AOB emphasised in advance that it in no way disregarded the Federal Ministry of Defence's previous efforts and the measures already taken to reduce noise. The AOB also does not deny that professional marksmanship training is essential for the soldiers of the Austrian Armed Forces and serves the preventive protection of the population. If the Vienna Military Command is responsible for compliance with the firing times stipulated in the rules of use, the AOB can of course not identify the firing exercises of the Austrian Armed Forces within this time frame as shortcomings, especially since the area has been used as a military training area for several decades.

Obligation of the operator In the view of the AOB, however, the Austrian Armed Forces, as the operator of the training ground, must ensure that the noise nuisance remains tolerable for the population in the neighbouring residential area. In the current investigative proceedings, the AOB also pointed out that the neighbours primarily complained about the apparent significant increase in noise nuisance since 2018 – when the Vienna Police started training.

No willingness for new noise measurements In its current statement of opinion to the AOB, the Federal Ministry of Defence stated that the situation at the Stammersdorf firing range had "hardly changed" in the last five years. The conditions, utilisation times and

results of the noise measurement from 2019 had already been presented in the last investigative proceedings mentioned above. The current utilisation figures are almost identical. This also applies to the ongoing, sometimes intensive use of the shooting range by the police, who hold shooting exercises in Stammersdorf several times a week. The Federal Ministry of Defence was unable to answer the AOB's question as to why the opening of the Süßenbrunn training centre had no impact on the police use of the Stammersdorf firing range. The Federal Ministry of Defence is aware of the problem and therefore implemented a noise protection tunnel on one of the firing ranges in the summer of 2023 to reduce the noise nuisance further. However, according to the Federal Ministry of Defence, this means that almost all noise-reducing measures have been exhausted. Due to a noise measurement in 2021, the Federal Ministry of Defence does not consider a new noise measurement to be useful. In order to "actually be able to make a comparison with 2021, the same conditions would have to be met for a new noise measurement as for the noise measurement in 2021 (number of people firing, number of shots, weather conditions, etc.)". The only expected change would be a noise reduction at the shooting range with the new noise protection tunnel. A dissolution of the administrative agreement or adjustment to the effect that the police could "no longer use the firing range according to their needs" was "not in the interests of the Federal Ministry of Defence".

The Federal Ministry of Defence also sees the reason for the continuing noise complaints in Stammersdorf in the fact that residential buildings or residential complexes are being built near the firing range or flats are being sold "in a quiet location" without providing sufficient information in advance about the firing range, which has existed for more than 100 years.

Zone dedicated as residential area

The AOB once again drew the attention of the Federal Ministry of Defence to the numerous complaints to which it had to respond. These were not directed against the firing exercises of the Austrian Armed Forces as such, but in particular against the constantly increasing noise nuisance in recent years. In the view of the AOB, the Austrian Armed Forces, as the operator of the range, must ensure that the noise nuisance remains tolerable for the population in the surrounding residential area, regardless of the most profitable utilisation of the firing range. In addition, a police training centre was recently built in Süßenbrunn, which was described in the media as the "most modern and largest of its kind in Central Europe". It therefore remains unclear to the AOB why the Vienna police exercises are not increasingly being moved to the new operations centre. This should reduce the noise nuisance and not, as the neighbours observe, increase it.

It was not clear to the AOB why a situation comparable to that in 2021 would have to be created or would be necessary for a new noise measurement. The refusal to carry out a current noise measurement during the training

Lack of budget prevents solution

times of the Vienna police gave the population the impression that the operator of the field was well aware of the enormous noise level, but did not want it to be observed. The AOB also drew the attention of the Federal Ministry of Defence to the numerous reactions to the report on shooting noise in the TV programme *Bürgeranwalt*. These had by no means shown a lack of understanding for the firing exercises of the Austrian Armed Forces: The viewers' criticism was directed in particular against the apparent lack of willingness to deal with modern, scientifically sound solutions.

**Recommendation
for new noise
measurements**

In conclusion, the AOB pointed out to the neighbours that it could not oblige the Federal Ministry of Defence to terminate the administrative agreement with the Vienna Police. Nor could it force the ministry to build noise-reducing firing ranges in accordance with new technical standards, regardless of the lack of budget. However, it could point out the suffering of the neighbours at regular intervals and had asked the Federal Ministry of Defence to carry out a new noise measurement.

**3.10.2 Noise nuisance due to helicopters from the
Austrian Armed Forces**

**National defence and
assistance mission**

In two individual cases, affected persons also reported to the AOB about the noise nuisance caused by low-flying helicopters of the Austrian Armed Forces in residential areas. In one of the cases, the Federal Ministry of Defence stated that the helicopter flights in question in the Mitterkirchen area in Upper Austria were training flights by the Austrian Armed Forces as part of mission preparation. Helicopter mission flights of the Austrian Armed Forces in lower airspaces do not only take place in the context of military national defence, but also in the course of assistance missions, in particular to fight forest fires, floods or snow disasters. Regular training flights are essential for flight safety. Low-flying routes of the Austrian Armed Forces are mostly located in sparsely populated areas and are distributed throughout Austria in order to distribute noise nuisance for the population. The minimum flight altitude for helicopters in undeveloped areas 5 metres above ground level; between the low-flying routes, the minimum flight altitude is 150 metres above ground level. Towns and villages are always flown around, but if this is not possible, the minimum flight altitude is 300 metres above ground. As a rule, the training flights take place from Monday to Thursday between 8 am and 4 pm and on Fridays between 8 am and 12 noon. In the winter months, flights are flown until 10 p.m. on Tuesdays in order to be able to practise in the dark.

Military airfield

The other case concerned the airbase in Langenlebarn. Here, the Federal Ministry of Defence pointed out that the Austrian Armed Forces use this military airfield primarily for air support (transport tasks, reconnaissance and liaison flights). The majority of the new Leonardo AW-169 multi-

purpose helicopters are also stationed in Langenlebarn. Langenlebarn is also home to the aviation and air defence school with its training operations for prospective military pilots of the Austrian Armed Forces. As at every major airfield, internationally recognised approach and departure procedures must also be observed at the military airfield in Langenlebarn.

The neighbour concerned had settled only about 1.5 km from the threshold of one of the runways of the military airfield. This explains the low flight altitude of the overflying aircraft described by him. Normal flight operations at the military airfield in Langenlebarn have been taking place for decades from Monday to Thursday from 8 am to 4 pm and on Friday from 8 am to 12 pm. On Tuesdays, night flights (generally until 11.30 p.m. at the latest) are also carried out in order to train operational capability in the dark. There are generally no military flight operations at the weekend. Exceptions are missions, such as the assistance mission by the Austrian Armed Forces during the flood disaster in September 2024.

The Federal Ministry of Defence emphasised that the population density in the Langenlebarn area had changed and was increasingly being built closer to the airfield. As in the case in question, this is usually done at the expense of the long-standing noise emissions from flight operations.

Change in population density

Even though the AOB considers regular training flights of the Austrian Armed Forces to be indispensable, it will continue to take reports from those affected who complain about noise nuisance in residential areas seriously and will continue to observe them. The Austrian Armed Forces and the Federal Ministry of Defence have the difficult task of serving the preventive protection of the population while at the same time taking their residential needs into consideration. From the AOB's point of view, the respective municipalities that take the dedications are also responsible for the conflicts of interest described with regard to noise nuisance in residential areas.

Dedication as a residential area is responsibility of municipalities

3.10.3 Sexual harassment – Austrian Armed Forces

A staff member of the Austrian Armed Forces complained that she had been sexually harassed during her apprenticeship and that representatives of the Federal Ministry of Defence had not supported her after she had reported it. The Federal Ministry of Defence stated to the AOB that it communicates a "zero tolerance policy" in relation to sexual harassment. Accordingly, a ministerial directive issued in October 2022 stated that any sexual harassment within the Federal Ministry of Defence would be subject to disciplinary action and that the full range of penalties would be applied. A close-knit network of contact women has been created throughout the department to provide initial rapid and unbureaucratic assistance to those affected. In addition, the Army Psychological Service offers a low-threshold counselling and support system. The person concerned had not only turned

"Zero tolerance policy"

to the AOB, but also to the Federal Equal Treatment Commission at the Federal Chancellery. A comprehensive statement of opinion can only be issued after the proceedings have been concluded.

**Expert opinion
of Federal Equal
Treatment
Commission**

The AOB then requested the Federal Ministry of Defence to submit the Federal Equal Treatment Commission's finding and the announced statement of opinion without being asked to do so as soon as the two proceedings mentioned had been concluded. However, the Federal Ministry of Defence only submitted the expert opinion of the Federal Equal Treatment Commission after repeated requests by the AOB. The expert opinion observed that the behaviour of the work colleague of the person concerned constituted sexual harassment pursuant to the Federal Equal Treatment Act and that the Federal Ministry of Defence was at fault for not taking the appropriate remedial action required by law.

**Inform those
affected about their
claims**

The AOB took note of both the Federal Ministry of Defence's reference to its "zero tolerance policy" and the Federal Equal Treatment Commission's final negative recommendation. The AOB emphasised to the Federal Ministry of Defence that it can be assumed that the Federal Ministry of Defence and the Austrian Armed Forces will react quickly and appropriately in the future if further reports are made. In addition, the AOB assumes that after the court-appointed expert opinion of the Federal Equal Treatment Commission is available, irrespective of any compensation payment to be determined by the court and irrespective of any disciplinary measures against the parties involved, a further explicit apology will be made to the person concerned. The AOB finally informed the person concerned of her claims under the Federal Equal Treatment Act.

3.11 Agriculture, forestry, regions and water management

Introductin

In 2024, the AOB dealt with 119 complaints in the area of jurisdiction of the Federal Ministry for Agriculture, Forestry, Regions and Water Management. These mainly concerned water law matters (77 submissions) and the enforcement of forest act (15 submissions). 9 complaints were submitted in connection with the activities of the Austrian Federal Forestry Office, for which, however, there is no investigative mandate.

119 cases

3.11.1 Water law

Compared to previous years, there was a slight increase in complaints in the area of water law during the period under review (2023: 67, 2024: 77).

Slight increase in complaints

In addition to legal issues relating to party status in the authorisation and collauding procedures, the water law complaints concerned requests for information on the maintenance of bank protection facilities, remuneration for flood protection projects and disputes with water cooperatives. Furthermore, water police orders and their enforcement were also the subject of complaints.

Failure to comply with an application to restore legally compliant state – Governor of Upper Austria

A neighbour stated that he approached the public authority of the Upper Austria Regional Government in May 2022 with objections in a water law review procedure regarding the approval of changes to a surface water channel. Furthermore, he had also submitted an application to restore legality (Section 138 of the Water Rights Act (*Wasserrechtsgesetz*)).

The Governor of the *Land* of Upper Austria concluded the review procedure with its administrative decision of March 2024. In this administrative decision, the authority ruled on the objections to the subsequent authorisation under water law. However, for incomprehensible reasons, no decision was made on the application to restore legality.

Entry only partially completed

In its statement of opinion, the water law authority denied that such an application had been made. Rather, the submission would have been limited to applications. Moreover, no water police order would have to be issued anyway, as the natural drainage conditions had not been changed to the detriment of the neighbour as a result of the project.

Authority denies application

Inaction identified as shortcoming For the AOB, the wording of the affected party's submission alone showed undoubtedly a corresponding application ("I request the establishment of the legally compliant status in accordance with Section 39 of the Water Rights Act (in conjunction with Section 138 of the Water Rights Act and justify this as follows [...])."). In any case, the water law authority should have issued an official decision on this. The AOB therefore identified shortcomings in the fact that the authority had not categorised the application as such and had not dealt with it by administrative decision.

Delays in issuing a declaratory notification – Bruck-Mürzzuschlag district authority

Declaratory motion Neighbours of a stream criticised the fact that the issue of competence for the maintenance of bank protection measures had not been clarified. The district authority of Bruck-Mürzzuschlag had failed to issue an administrative decision on the declaratory motion submitted in this regard.

The AOB's investigation revealed that the application in question dated from August 2023. At the end of February 2024, an improvement order issued by the authority in January 2024 was complied with. The Bruck-Mürzzuschlag district authority then granted a hearing to a power plant operator in March 2024.

Proceedings take more than a year Subsequently, the district authority submitted the file to the Governor of the Land of Styria as the higher authority for notification of its legal opinion. Furthermore, the water law authority commissioned an official hydraulic engineering expert to recommend the condition of the stream. The declaratory motion had not been completed by the end of the AOB's investigative proceedings at the end of August 2024.

The AOB did not fail to recognise that the proceedings were extensive and labour-intensive due to the complexity of the factual and legal situation. Nevertheless, the reasons cited by the authority could not justify the long duration of proceedings overall. The district authority Bruck-Mürzzuschlag was ultimately responsible for the time it took to obtain expert opinions and a legal recommendation from the higher authority. The AOB therefore identified shortcomings in exceeding the statutory decision period (Section 73 (1) of the General Administrative Procedure Act) of a maximum of six months. It requested the water law authority to continue and conclude the proceedings swiftly.

Omission of final inspection – St. Veit an der Glan district authority

Problems with the water supply A woman complained to the AOB that the private water supply system from which she obtained her drinking water was not being operated in accordance

with the permit. The system was in such a desolate state that the water quality was being impaired. The water law authority was in default of restoring the legality of the system.

The AOB determined that the district authority of St. Veit an der Glan initially decreed a maintenance order for the plant in accordance with Section 50 of the Water Rights Act. However, the Regional Administrative Court of Carinthia cancelled this order on the grounds that although the plant was not being operated in accordance with the permit, there was no final inspection. However, such a final inspection is a prerequisite for a maintenance order.

The authority admitted to the AOB that the person in charge at the time had already archived the file at the end of the 1990s. The files did not allow any conclusions to be drawn as to the reasons why the water supply system had not yet been finally inspected. However, it was now planned to establish a cooperative, which would subsequently submit a water supply project to the authority for approval under water law.

Final review not performed

The AOB identified shortcomings in the fact that a final inspection of the water supply system had not been carried out. However, due to the measures announced, no further action was required.

No licence for "mobile pig farming" – St. Pölten district authority

A farmer turned to the AOB because the St. Pölten district authority had denied him a water law licence for an existing pig farm (up to approx. 500 animals) in mobile outdoor shelters including a space to move around.

The AOB observed that the water law authority had essentially rejected the licence application because the applicant had not countered the expert opinions of official experts, which assumed intensive livestock farming and groundwater hazards, on the same technical level. The rejection was not identified as shortcomings in the case. Subsequently, the Regional Administrative Court of Lower Austria confirmed the authority's order to move the pigs.

Groundwater hazard assumed

In view of the novelty of the project, the AOB asked the Federal Ministry for Agriculture, Forestry Regions and Water Management, as the supreme water law authority, about the legal and technical enforcement framework. The Federal Ministry for Agriculture, Forestry Regions and Water Management referred to Section 32 of the Water Rights Act, according to which impacts on water bodies that impair their quality are subject to authorisation. This also applies to pollutant discharges from livestock farming if, in the natural course of events, livestock farming is expected to have more than a minor impact on water bodies.

Authorisation requirement in case of more than minor impacts

Federal Ministry considers legal framework sufficient

In the water law authorisation procedure, the authority has to make recommendations on the quantities of pollutants generated by the project, the nature of the subsoil at the location where the animals are to be kept and its planned design. If a project applied for has a negative impact on the quality of the water, which cannot be eliminated even by imposing conditions, a project cannot be authorised due to impairment of the public interest. The Federal Ministry for Agriculture, Forestry Regions and Water Management does not see a need to concretise this legal framework with regard to "mobile pig farms".

New form of livestock keeping to be researched

In 2024, several meetings were held between the St. Pölten district authority and the farmer with the involvement of official experts and representatives of the water management planning body regarding the possibility to research free-range pig farming as part of a water management trial. In the meantime, the project *"Rüssel.Schwanz.Boden.Wasser: Entwicklung eines innovativen Schweinehaltungsverfahrens sowie Identifizierung von Erfolgsfaktoren zur Sicherung des Tierwohls, Auswirkungen auf die Mikrobiologie des Bodens, Nährstoffkreisläufe sowie Funktionalität hinsichtlich Arbeitswirtschaft"* (i.e. "Truffle. Tail. Soil. Water: Development of an innovative pig farming method and identification of success factors for ensuring animal welfare, effects on soil microbiology, nutrient cycles and functionality in terms of work efficiency"), in which the University of Natural Resources and Applied Life Sciences is also involved, has been applied for funding and approved. The farmer's business was also named as a possible co-operation partner for the project.

From the AOB's point of view, the research project mentioned is to be welcomed, especially in order to create clarity regarding the environmental impact of "mobile pig farms".

3.11.2 Forest law

Clearing authorisation for dry grassland

Baden district authority grants clearing licence

The representative of a citizens' initiative for the protection of the forest in Bad Vöslau complained that the district authority of Baden had issued a licence under forest law to clear forest areas for the purpose of creating and connecting dry and semi-dry grasslands. Most of the areas affected are pine forests, which retain water and protect the neighbouring settlements against soil erosion and wind. Furthermore, in the same administrative decision, the district authority ordered exceptions to the validity of the provisions of Section 13 (reforestation), Section 16 (forest devastation) and Section 80 (protection of stands not ready for felling) of the Forest Act (*Forstgesetz*) for other forest areas, without sufficiently investigating the requirements in accordance with Section 32a of the Forest Act.

The investigative proceedings of the AOB revealed that there was a special public interest in the preservation of the affected clearing areas as forest with regard to the protective, welfare and recreational functions. In such a case, according to the Supreme Administrative Court's established court rulings on Section 17 of the Forest Act, it is up to the Forestry Authority to demonstrate whether and to what extent there is a public interest in the clearing purpose. If necessary, it must be observed whether and for what reasons this public interest in another use of the area applied for deforestation outweighs the public interest in forest conservation. These are legal questions that must be recommended by the Forestry Authority on the basis of an expert opinion from an official forestry expert.

Weighing of interests required

After preparing a report, the official expert stated in his expert opinion that "due to the above circumstances", from a forestry point of view, the permanent clearing for the networking, preservation and establishment of dry grasslands "is to be assessed as a higher public interest than that of forest conservation". The following was stated in the explanatory memorandum to the clearing authorisation decision: "In conclusion, the expert opinion of the official forestry expert stated that the clearing [...] can be approved from a forestry point of view. Based on the results of the investigation procedure, the authority therefore came to the conclusion that [...] the legal requirements for granting the clearing permit on the areas intended for clearing are met".

Authority refers to official expert

The AOB noted that the assumption of a public interest in the clearing purpose in terms of nature conservation could be based on the outcome of the proceedings and, in particular, on statements of opinion and expert opinions on nature conservation. However, it identified shortcomings in the clearing permit and the file of proceedings, noting that neither the document contained an independent assessment by the Forestry Authority of whether the public interest in clearing outweighed the interest in preserving the forest.

No independent investigation

The observations made by the district authority of Baden in this regard in the grounds for the clearance permit were rather limited to quoting the expert opinion of the official forestry expert. Although the latter is at liberty to express an opinion in this regard, the recommendation of the legal issue in question was the sole responsibility of the Forestry Authority. In addition, although the official expert stated that, from a forestry point of view, permanent clearing was to be considered a higher public interest than that of forest conservation, it remained unclear what specific observations the official expert was referring to when he merely referred to "the above circumstances", which were not explained in detail.

Expert opinion insufficient

The AOB was therefore unable to observe that the Forestry Authority had carried out a legitimate weighing of interests in accordance with the legal

requirements. The directive pursuant to Section 32a of the Forest Act criticised by the representative of a citizens' initiative is a discretionary decision by the Forestry Authority, which (also) has to be taken after balancing the interests involved.

Directive not comprehensible

The Baden district authority based its decision on expert opinions from an official expert for nature conservation and an official expert for forestry. These experts expressed no objections to the directive being issued if certain conditions were imposed. In this case, shortcomings were identified in the fact that the administrative decision of the Baden district authority and the file of the proceedings did not contain an independent examination by the Forestry Authority of the legal question of whether the requested directive was contrary to the public interests of forest conservation. In this respect, too, the Forestry Authority's justification for its opinion was limited to a reproduction of the expert opinions of the official experts.

The AOB's investigative proceedings did not reveal any grounds for interfering with the legal force of the Forestry Authority's administrative decision in the sense of amending or cancelling it. It was therefore not possible to take any further action.

Compliance with a commitment by the torrent and avalanche control authority

Afforestation promised

In a letter dated June 2020, the Forest Engineering Service in Torrent and Avalanche Control, Bregenz area construction management, gave a landowner a written commitment to carry out reforestation measures on two properties listed by "summer 2021" and "autumn 2022" at the latest. The affected person stated that she had fulfilled her part of the agreement made with Torment and Avalanche Control in the course of the project. However, as the measures promised by authority had still not been implemented by December 2023, the landowner turned to the AOB.

Hunters want to use private path

The Federal Ministry for Agriculture, Forestry Regions and Water Management essentially justified the omission of the promised reforestation measures by stating that appropriate game regulation was necessary for the success of the restoration project. In order to carry this out in an economical, efficient and expedient manner, the landowner had to authorise the use of a private path by hunters. Incidentally, the father of the person concerned had already agreed to this as the former owner of the property.

The woman credibly denied the latter and referred to alternative access options to the project area. In addition, the question of the use of her private road had not been an issue when the afforestation measures were approved. It was only for reasons of convenience that she did not want to make her private road available to the hunters.

Ultimately, the AOB found no evidence that the authorisation to use the private path for hunting purposes had been the subject or even the basis of the agreement of June 2020. It was therefore also not comprehensible why such authorisation would be a factual or legal prerequisite for compliance with the promise of the Torment and Avalanche Control.

No legal connection

In addition, if the afforestation was not realised, the authority would have to remove around 100 massive "wooden trestles" erected for this purpose on the affected areas. This would entail considerable costs for the public authorities, which would be difficult to reconcile with the principles of economy, efficiency, expediency and effectiveness of administration. Irrespective of this, citizens are entitled to expect that public authorities in particular will fulfil their contractual obligations without having to take legal action.

The Federal Ministry for Agriculture, Forestry, Regions and Water Management announced that a "legal clarification" of the matter had been initiated by the *Finanzprokurator* (the lawyer and legal advisor of the Republic of Austria). A result was not yet available at the time of going to press for this report.

***Finanzprokurator*
involved**

Responding to an information request

An association submitted a request for information to the directorate of the Raumberg-Gumpenstein Federal Institute for Higher Education and Research in Agriculture in May 2024. This request regarded "herd protection model" developed there. If the information was not provided, the association applied for the decree of an administrative decision that is subject to appeal. As there was no response to this petition despite urgent action, the association contacted the Federal Ministry for Agriculture, Forestry Regions and Water Management in July 2024. After no response was received in August 2024, the association lodged a complaint with the AOB.

No reaction

The Federal Ministry for Agriculture, Forestry, Regions and Water Management subsequently reported that the request for information was completed in September 2024 and apologised for the long processing time. The reason for this was a corresponding coordination effort during the school's main holiday months.

However, it should be noted that the request for information was submitted to the Directorate in May 2024 and therefore well before the start of the holidays. The AOB therefore identified shortcomings in the fact that the matter was ultimately only dealt with after around four months.

**Time for completion
criticised**

3.12 Social affairs, health, care and consumer protection

Introduction

Number of complaints The number of complaints relating to public health insurance matters increased (2023: 358, 2024: 421). Due to the discontinuation of complaints relating to COVID-19 pandemic management, however, the number of complaints in the health sector fell significantly (2023: 392, 2024: 144).

3.12.1 Health

Structural deficits in the medical care of post-viral diseases

As in the previous year, many people suffering from post-viral diseases, particularly myalgic encephalomyelitis and chronic fatigue syndrome (ME/CFS), contacted the AOB in 2024. They reported inadequate and inadequately specialised medical care.

ME/CFS as a multisystem disease ME/CFS is a severe chronic multisystem disease. People who suffer from ME/CFS often have many physical complaints. Some of these are so severe that leaving the house or often even the bed is no longer possible or only possible with great effort. There is a risk of a permanent worsening of the condition. The main characteristic of ME/CFS is post-exertional malaise (PEM). It causes massive worsening of symptoms or the emergence of new symptoms (the so-called "crash") even after minor exertion due to a disturbed activity-recovery reaction of the body. These "crashes" can lead to a permanent worsening of the condition. Due to the severe functional limitations and the high disease burden, the disease leads to a very low quality of life.

This complex clinical picture, the specific limitations and the risk of a permanent deterioration of the condition make comprehensive, specialised medical care essential. It is also difficult to find a specialist in this field due to the massive limitations that this clinical picture entails and the fact that the disease is still unknown. Many of those affected found their first port of call in the Covid outpatient clinics at hospitals. The gradual closure of these outpatient clinics has therefore had a devastating impact on those affected.

Ex-officio investigation proceedings 2024 In 2023, the AOB therefore initiated *ex-officio* investigative proceedings to obtain an overview of specialised medical facilities for people with Long Covid or ME/CFS. The feedback varied, but it became clear that many of the outpatient clinics had already closed or were about to close.

In 2024, the AOB again enquired with those owners and operators (Tyrol, Vorarlberg, Austrian Public Health Insurance Office) whose outpatient clinics and drop-in centres were not yet closed in 2023.

The *Land* of Vorarlberg has announced that the coordination centre for post-Covid care at Hohenems hospital has been extended until the end of May 2025. A decision will be made in spring 2025 on whether to continue or adapt the centre. However, doctors in private practice are referring fewer and fewer patients. There is still regular dialogue with the pneumology department at Innsbruck University Hospital.

Coordination centres in Vorarlberg and Tyrol still open

The Tyrol Post-Covid Coordination Centre at the Institute for Integrated Care of the *Land* Tyrol is also continuing its activities, the *Land* announced. This is to be further developed into a coordination centre for the care of patients with other post-infectious clinical pictures. The reorganisation is currently being worked on.

The Austrian Public Health Insurance Office announced that its Long Covid clearing centre at the Mariahilf health care centre (Vienna) would be closed in 2024. This was due to the lack of a neurological outpatient clinic and a shortage of staff. Care is now to be provided in the specialised outpatient clinics. The Long Covid clearing centre at the health care centre in Graz also ceased operations. The Austrian Public Health Insurance Office assumed that, in addition to the reference centre, the Federal Ministry of Social Affairs, Health Care, and Consumer Protection could also set up competence centres for Long Covid and Long Covid clearing centres staffed by appropriately trained experts. At the time the report was finalised, there were no standardised Federal Government Directives on this, nor had funding been arranged.

Covid clearance centres of Austrian Public Health Insurance Office to be closed

In autumn 2024, the reference centre for post-viral syndromes announced by the Federal Ministry of Social Affairs, Health Care and Consumer Protection began its work at the Medical University of Vienna. The reference centre is purely a research centre and is intended to serve as a "knowledge hub", collect scientific findings on post-viral syndromes, advance research and offer training for healthcare professionals. There are no contact options for patients.

Reference centre for post-viral diseases since 2024

The Federal Ministry of Social Affairs, Health Care and Consumer Protection did not set up individual medical care structures. This means that there is still a huge gap in care that urgently needs to be closed. Shifting responsibility to one another does not help those affected and is not conducive to a constructive solution to the problem in the view of the AOB.

The AOB welcomes the facility of the reference centre, as well as efforts by individual *Laender* to maintain coordination centres in order to facilitate access to healthcare for those affected. Nevertheless, it is absolutely necessary to establish specialised treatment centres to which those affected can turn and where they can receive support and medical care. For many, the search for a doctor who has sufficiently familiarised themselves with the diverse clinical picture and possible treatment methods is still a gauntlet.

Great need for specialised treatment centres

Medical advice is associated with long waiting times, and those affected often have to bear the costs of treatment and medication themselves. The reference centre is a necessary component of a comprehensive care structure, but does not take on any direct care tasks.

Action plan for PAIS developed

There are also recommendations in the Action Plan on Post-Acute Infectious Syndromes (PAIS) on the need for specialised care facilities for those affected by post-viral diseases (including ME/CFS). At the beginning of 2024, the Federal Ministry of Social Affairs, Health, Care and Consumer Protection commissioned the Austrian National Health Institute to draw up this action plan. This was developed in a broad participation process in the first half of 2024 in various multi-professional and interdisciplinary working groups with 61 experts. Experts from the AOB also took part and were able to contribute their findings from the AOB's activities.

Recommendations for specialised treatment centres

This action plan is intended to provide health policy with an overview of the most important fields of action in the area of PAIS. The "Care" section is one of the objectives. It primarily includes low-threshold and comprehensive access to healthcare, direct medical treatment and support from qualified caregivers, healthcare professionals and social workers. In addition, the expansion of telemedical services is important in order to ensure access to healthcare for people with serious illnesses. The recommendations contain measures for the establishment of decentralised, interdisciplinary contact points and specialised treatment facilities as well as the creation of a care pathway.

Social security as another important goal

Another important goal from the AOB's point of view is "social protection". Post-acute infection syndromes are often accompanied by social precarisation. Those affected lose their job, their social environment and are under great financial strain. Access to social services that are intended to provide help during this time is particularly difficult due to the clinical picture. The recommended measures include in particular the adjustment of support services and the assessment process. In addition, if those affected do not receive any of these benefits, they may lose their health insurance protection, which is naturally an untenable situation, especially for seriously ill people.

AOB continues to call for care centres

In 2024, although some things have moved in the right direction in the care of ME/CFS and other post-viral diseases, there is still a lack of individualised care and coverage. Those affected have no medical care centres to turn to and where they can receive individual and adequate medical care. The AOB therefore renews its call for specialised care structures that are as decentralised and easily accessible as possible. People affected by ME/CFS need rapid, uncomplicated and free access to the best possible medical care based on the latest scientific findings, as well as financial and social security that is as unbureaucratic and rapid as possible. This is the only way

to ensure adequate care at an individual level. Care and social security for seriously ill people should be a matter of course in Austria.

Police and rescue services ignore assisted suicide decree

A man contacted the AOB and stated that he had agreed to assist a woman in assisted suicide. After the woman had taken the preparation legally obtained from the pharmacy herself, a sleep phase occurred, which was associated with increasing physical exhaustion.

Around a quarter of an hour after taking the medication that led to her death, two police officers turned up. They pushed the man aside despite his reference to the legally valid notarised suicide decree. They laid the dying woman on the floor and began resuscitation by applying pressure to her chest. In response to the man's objections, the officers stated that it was their duty to save lives "regardless of the claimed dying wish and other paperwork". They were not aware of any official information on the Assisted Suicide Act (*Sterbeverfügungsgesetz*). The flat was declared a "crime scene" and the man was ordered to leave and wait in the stairwell for further directives.

Resuscitation attempts by police and rescue service

Shortly afterwards, paramedics and an emergency doctor arrived and relieved the police officers of the chest compressions. The man handed over the assisted suicide decree and again gave details of the medication she had taken. Despite his protests, the paramedics brought a defibrillator and continued resuscitation measures with the emergency doctor until all signals on the ECG went out.

It was only later that the man learnt that a friend of the deceased had triggered the police operation. The person who wanted to die had said goodbye to her by phone and refused to be dissuaded from her wish to die.

As early as 2020, the Constitutional Court of Austria derived from several fundamental rights, in particular the right to private life, the right to life and the principle of equality, that the constitutionally guaranteed right of the individual to free self-determination includes both the right to a dignified death and the right of those willing to commit suicide to seek the help of third parties willing to do so (Constitutional Court of Austria on G 139/2019). The Assisted Suicide Act (Federal Law Gazette I No. 242/2021) has been in force in Austria since 2022. It defines an assisted suicide decree as an instrument "to provide evidence of a lasting, free and self-determined decision to commit suicide" (Section 1 (1) of the Assisted Suicide Act). According to the legal definition in Section 3 Z1 Assisted Suicide Act this is "a declaration of intent by which a person who is willing to die records their lasting, free and self-determined decision to end their life."

Basic right to assisted suicide

A current or directly imminent threat to life or health is always an indispensable premise of the first general duty to provide assistance pursuant to Section 19 Austrian Security Police Act (*Sicherheitspolizeigesetz*). Furthermore, security authorities only have to notify the rescue services if the defence against danger falls within their competence (Z 2 leg cit). Once the rescue service has intervened, the security authorities' first general duty to provide assistance ceases ex lege (Section 19 (4) second sentence Austrian Security Police Act).

In the case in question, the person willing to die had already gone through the "process" provided for by the Penitentiary System Act to obtain a lethal preparation, which also gave her the opportunity to commit suicide in private. What happened next, however, turned into a nightmare for the caregiver. The initiation of criminal law investigation proceedings against him was refrained from due to a lack of initial suspicion. However, in his request to the AOB, he emphasised his wish that no one else should find themselves in a similar situation.

Interfering with the rights of those who want to die by suicide

In the AOB's view, there are serious doubts as to whether the actions of the police officers and the emergency ambulance personnel were not an objectively unjustified interference with the constitutionally protected sphere of both the dying person and the man. Neither the police nor the emergency services were aware of the penalties and civil liability for psychological and physical harm that could have been caused by interrupting the deliberate and freely chosen process of dying. Nor were they aware of the legal situation created by the Assisted Suicide Act.

Fundamental rights are primarily intended to protect the individual's sphere of freedom from interference by public violence. They are rights of defence against the State. Fundamental rights also include so-called duties to protect, meaning that the State is not only obliged to refrain from violating them itself, but also to provide appropriate protection against violations by third parties. In its ruling of 12 December 2024 (G 2272/2023 – G 2273/2023, G 229/2023 – G 230/2023), the Constitutional Court of Austria emphasised that the Assisted Suicide Act guarantees a truly free, self-determined decision about their own death, takes the necessary precautions to prevent haste and abuse and also creates legal certainty for third parties providing assistance (margin no. 166). This refers to people who are terminally or seriously and permanently ill and therefore particularly in need of protection and support. As the case in question shows, the practice is different.

Obligation to provide first aid?

In the AOB's investigative proceedings, the Chief Executive Office of the City of Vienna stated that it saw no need for action to change the previous practice, because even after investigation of the complaint, the rescue services had acted in accordance with the law. This is because the rescue service is obliged under Section 1 of the Vienna Rescue and Patient Transport Act to provide immediate first emergency medical assistance to persons in

direct danger of death, which is not otherwise guaranteed. The AOB does not share this legal opinion.

The "Agreement(s) on Safeguarding Patients' Rights (Patient Charter)" concluded between the Federal Government and most Laender already refer to the fact that patients have the right "to express their wishes in advance, in which they wish to refrain from treatment or certain treatment methods in the event that they lose their capacity to act, so that this can be taken into account as far as possible in future medical interventions" (cf. Article 18 of the Patient Charter Federal Government-Vienna). Such a declaration binds the doctor in the same way as a current treatment decision by the patient (Traar / Pesendorfer / Lager-Zach / Fritz / Barth, *Erwachsenenschutzrecht*2 Section 252 of the Austrian Civil Code).

The purpose of the medical consultations required by Section 7 para. 1 of the Assisted Suicide Act is to enable persons suffering from incurable or serious, permanent illnesses to make an informed decision; only this gives them access to a lethal preparation within the meaning of Section 11 of the Assisted Suicide Act. If the people who wishes to die subsequently bring about their own death, the AOB does not consider this to be a danger that triggers a legal obligation to provide assistance. Rather, a will to commit suicide that is accepted by the legal system and must be respected by the police and emergency services is realised. If, applying the conventional methods of interpretation according to the wording, purpose, context and history of the law, several interpretations are possible, of which only one leads to a constitutional result, the AOB considers the latter to be necessary.

This means that the rescue team should have refrained from life-sustaining measures against the repeatedly documented will of the woman. This is also supported by the fact that the Constitutional Court of Austria considers the general "waiting period" of two to twelve weeks (Section 8 Assisted Suicide Act between the initial medical consultation and the drawing up of an assisted suicide decree before notary's offices or legally qualified employees of patient representatives to be necessary in order to ensure the permanence and voluntary nature of the decision of the person willing to die.

A binding advanced healthcare directive in accordance with Sections 4 et seq. of the Advance Healthcare Directives Act obliges the paramedics and emergency doctors involved in the rescue operation not to carry out the measures rejected in the directive. An assisted suicide decree can also be used for the recommendation of the patient's presumed will, even if the Assisted Suicide Act does not expressly provide for this.

On closer examination, however, this circumstance cannot, in the view of the AOB, lead to the assumption that an effectively issued assisted suicide decree cannot be interpreted as a refusal of life-sustaining measures in emergency situations, at the same time. Rather, the Constitutional Court of Austria's case

law and the legal purpose of the Assisted Suicide Act allow the conclusion that the free and self-determined establishment and implementation of the assisted suicide decree also includes the rejection (binding for the police and emergency services) of subsequent life-saving or life-sustaining measures. If the person willing to die refrains from his or her death wish, the assisted suicide decree loses its effectiveness (Section 10 (2) Assisted Suicide Act). However, if one were to assume that the establishment and implementation of the assisted suicide decree does not also fundamentally include the rejection of all life-sustaining measures, every assisted suicide decree would essentially be empty of content. This is also because it would then not be guaranteed what the federal legislator wanted to achieve, namely that the person who wishes to die can always "retain control over the life-ending course". The person who wishes to die must be able to decide "whether", "when" and "how" to end their life (ErIRV 1177 BlgNR XXVII. GP 8).

In this context, the Federal Ministry of Social Affairs, Health, Care and Consumer Protection admitted to the AOB that neither the Assisted Suicide Act itself nor the "Guidelines for the Practice of Advance Directives" drawn up by the department address the problem of the relationship between the assistance provided by the security police forces, emergency medical services and emergency doctors and the obligation to avert danger. In the meetings of the Euthanasia Dialogue Forum, only the relationship between advanced healthcare directives and assisted suicide decrees was discussed, which is why the effects of an advanced healthcare directive are also an obligatory part of the consultation in accordance with Section 7 (2) 1 and 3 of the Assisted Suicide Act

**Federal Ministry
promised measures**

The Federal Ministry of Social Affairs, Health Care and Consumer Protection assured the AOB that it would approach the Federal Ministry of the Interior in agreement with the Federal Ministry of Justice in order to clarify the legally required approach of security authorities in connection with matters relating to the Assisted Suicide Act – with the aim of avoiding comparable cases. It also promised that, following consultation with the Federal Ministry of Justice, which is competent for the enforcement of the Assisted Suicide Act, the Federal Ministry of Social Affairs, Health, Care and Consumer Protection would issue an addition to the practical guidelines.

**Clarification urgently
needed**

In the view of the AOB, clarification is required in order to ensure an undisturbed process of voluntary dying for those who wish to commit suicide and those who assist within the scope of what is legally permitted. This could also be done in the course of the amendment of the Assisted Suicide Act, taking into account the court rulings of the Austrian Constitutional Court, according to which the principle of sufficient certainty of statutory offences derived from Article 18 of the Federal Constitutional Law is of particular importance, especially in the case of particularly intrusive laws (cf. VfSlg. 15.468). The AOB also considers training of emergency organisations to be essential.

Treatment for patients with anorexia nervosa

A young female patient suffering from anorexia with severe underweight (37 kg and body mass index of 12) contacted the AOB and reported her problems in finding a suitable inpatient treatment programme. The care on offer is inadequate, especially for psychiatric-orientated inpatient treatment. For example, in the case of severe underweight, sufficient and adequate inpatient and corresponding outpatient therapy is said to be impossible or only possible after a long waiting period.

Report of an affected person

The AOB initiated investigative proceedings to determine the range of care available to patients with anorexia throughout Austria. To this end, it contacted the *Laender* and the health insurance carriers (Austrian Public Health Insurance Office, Social Insurance Institution for the Self-Employed, and the Insurance Institution for Public-Sector Employees, Railways and Mining).

The statements of opinion showed that there are inpatient and outpatient treatment programmes for patients with anorexia nervosa in all provinces. Only Burgenland has no inpatient child and adolescent psychiatric care, which is why children and adolescents are cared for in the neighbouring provinces of Lower Austria and Styria. In 2024, however, the first four psychosomatic beds were created, at least at the Department of Paediatrics and Adolescent Medicine at the Hospital of St. John of God, where patients with eating disorders can also be treated. However, inpatient care for patients was generally not provided in specialised hospital departments, but as part of the general care mandate.

Treatment offering

The admission criteria are based on the S3 guideline, Diagnosis and Treatment of Eating Disorders. For adult patients, this results in a treatment recommendation for a Body Mass Index below 15. To calculate the Body Mass Index, the weight in kilograms is divided by the height in metres squared (kg/m^2). For children and adolescents, falling below the 3rd weight percentile is defined as an indication for inpatient treatment.

Admission criteria

However, these criteria relate primarily to acute treatment. In the case of severe underweight, treatment to stabilise and gain weight in an internal medicine department is necessary. If, on the other hand, psychiatric symptoms are in the foreground, admission to a psychiatric department may be considered. A minimum Body Mass Index is required for certain further psychiatric or psychotherapeutic treatments. For example, the Department of Inpatient Psychiatry at the regional hospital in Mauer (Lower Austria) offers a ten-week inpatient therapy programme for people with eating disorders. A Body Mass Index of at least 15 is required for this. In the Department of Child and Adolescent Psychosomatics at the Department of Child and Adolescent Psychiatry at Wels-Grieskirchen Hospital, a Body Mass Index of over 14 is required for treatment in order to enable inpatient treatment

based on a disorder-specific treatment concept if stable vital parameters are available.

With low Body Mass Index values after significant weight loss from the initial body weight, it should be borne in mind that the patient's cognitive function is significantly impaired and fatigue, negative mood, low affect and lack of drive are also common. For this reason, disorder-specific psychotherapy in the true sense of the word is not yet possible, and internal care is required for the time being.

Long waiting times for scheduled treatments Acute cases are usually admitted without any significant waiting time. However, there are waiting times of several months for planned admissions. The AOB will take a closer look at the specific situation in its reports to the Diets.

Lack of specialised facilities The care situation is problematic in the case of necessary rehabilitation following inpatient (acute) treatment in a medical facility. This particularly affects the long-term follow-up care of severely ill patients with a low Body Mass Index. There are no rehabilitation facilities in Austria that continue to treat these patients, nor are there assisted living and housing or day-care treatment options. However, these patients require months or years of inpatient or day-care treatment in order to remain stable in everyday life, which cannot be guaranteed as part of acute treatment in a medical facility. As a result, health insurance carriers have to approve stays in specialised clinics in Germany and Switzerland for longer-term rehabilitation.

AOB demand: expand capacities The AOB therefore considers it necessary to create specialised treatment places in medical facilities in Austria in order to shorten waiting times and to create specialised rehabilitation facilities in order to ensure successful treatment in the long term. It is also necessary to expand outpatient treatment services, clearly define the criteria for the various treatment options and communicate them clearly to patients.

Still no cost subsidy for Herpes Zoster vaccine

High costs In 2024, many people also contacted the AOB and complained that the vaccination against herpes zoster was very expensive and – despite the vaccination recommendation for people aged 50 and over – was not subsidised. A full immunisation costs around 500 euros. Due to the recent sharp rise in the cost of living, many people, for example those with a low pension income, have difficulty raising this sum.

Shingles, which is caused by the varicella zoster virus, is a serious and painful disease. The likelihood of contracting it increases with age. Every year, up to 40,000 people in Austria contract shingles – half of them are older than 50.

Vaccinations are not health treatment in the sense of public health insurance, but preventive health care measures. Costs are therefore only covered by

the statutory health insurance carriers if the vaccination can be categorised as early medical treatment in individual cases. This is the case, for example, in the event of significant immunodeficiency.

As early as the beginning of 2024, the Federal Ministry of Social Affairs, Health Care and Consumer Protection announced in a parliamentary question response (17290/AB XXVII. GP) that it was continuously working on bringing public vaccination programmes up to date with the latest medical standards and expanding them to include professionally recommended vaccinations. From 2024, the Federal Government, Laender and social insurance will provide EUR 90 million per year for a period of five years as part of the healthcare reform. As far as the vaccination against herpes zoster is concerned, there are no signs of an agreement on subsidisation.

The AOB once again emphasises the health, social and economic benefits of this vaccination and strongly recommends introducing a cost subsidy for it.

AOB recommends cost subsidy again

3.12.2 Public health insurance

Elective doctors and MRI examinations

Many complaints concerned the long waiting times for medical treatment and MRI examinations. Many patients had to use private institutes or elective doctors. They received only a small reimbursement from the health insurance carriers in relation to the fees paid. In fact, private X-ray centres are not reimbursed at all because only equipment included in the large equipment plan can be used at health insurance companies' expense.

Long waiting times

In the view of the AOB, the intended expansion of health insurance fund posts and the establishment of further primary care centres should therefore be implemented as quickly as possible. Furthermore, there should be ongoing evaluation on whether the planned inclusion of additional MRI equipment in private practices in the large equipment plan and the increased use of MRI equipment in medical facilities will actually meet the demand for care.

Authorisation for thickening agents

A Styrian woman contacted the AOB because her mother is unable to swallow liquids due to her illness (cerebral multi-infarction and bleeding in the oesophagus, in addition to advanced dementia of the Alzheimer's type). For this reason, liquids have to be thickened for her, for which the hospitals treating her recommended the product "Thicken Up". It is well tolerated and costs around 26 euros per pack. As the patient needs one pack for three days, she incurs costs of around 360 euros per month.

High costs

Alternatives recommended by Austrian Public Health Insurance are unsuitable The Austrian Public Health Insurance Office did not want to cover these costs and recommended that the family thicken the food with agents such as rice starch, cornflour and flour. However, this was of little help because the patient only eats pureed food (e.g. as pureed cream soup) and the thickening agent is needed to ensure sufficient fluid intake. The possibility of infusion solutions mentioned by the Austrian Public Health Insurance Office would also not be feasible in practice due to the home visits required for this.

Court decisions to the contrary The Labour and Social Court Vienna (24 ZGS 74/20b) has now clarified the conditions under which health insurance carriers must cover the costs of a powder for thickening liquids. Accordingly, such a powder qualifies as an aid for physical disabilities within the meaning of Section 154 (1) lit. b of the General Social Insurance Act, as it is used to facilitate the (safe) ingestion of liquids. Consumable means or objects can fall under the term "aids".

This decision also emphasises that such a powder is a sufficient and appropriate means of achieving disability compensation, which is why the criterion of necessity within the meaning of Section 133 (2) of the General Social Insurance Act is also fulfilled. This is because alternative thickening agents (flour, maize starch, potato starch, gelatine, pectins, agar-agarine) are not suitable for achieving the goal of ensuring sufficient fluid intake as safely as possible. A supply with a PEG tube is also by no means preferable to a supply with a powder in terms of the cost ratio.

Austrian Public Health Insurance follows AOB's argumentation The AOB therefore argued to the Austrian Public Health Insurance Office that, in analogous application of these principles formulated by the ASG Vienna, the costs of "Thicken Up" should also be considered in the present case. The Austrian Public Health Insurance Office followed the AOB's reasoning.

The case is an example of how health insurance carriers should provide the necessary aids to overcome health problems, especially for insured persons with serious illnesses, comprehensively and after careful investigation within the framework of the existing legal possibilities.

Cost coverage for mobile sleep laboratory

Mobile sleep laboratory required The AOB repeatedly receives complaints about the inadequate range of services offered by the Austrian Public Health Insurance Office in private practice. For example, a woman contacted the AOB because a sleep laboratory was required for her 16-year-old daughter in order to make a further diagnosis. Due to her severe disability, only a mobile sleep laboratory was an option. The Austrian Public Health Insurance Office refused to cover the costs and pointed out without further justification that a "sleep adjustment" was not a health insurance benefit.

No contracts in the private practice sector In the investigative proceedings, the AOB succeeded in having the costs of around 80 euros reimbursed for the daughter. However, full reimbursement

of the fee of around 230 euros was not possible because this service is reserved for hospitals. In the private practice sector, on the other hand, it is not a health insurance benefit because no contracts have yet been concluded.

In the interest of comprehensive health planning, it should generally be investigated whether certain services could also be offered by private practitioners at the expense of the health insurance funds in order to relieve the burden on hospitals. This could also reduce waiting times for operations in hospitals. If necessary, funding would have to be reallocated, as otherwise conflicts of responsibility between the service providers would continue to be resolved at the expense of the insured.

Supply structures should be evaluated

Gaps in HIV pre-exposure prophylaxis

As part of the Health Reform Measures Financing Act, the reimbursement of costs for HIV pre-exposure prophylaxis was regulated. However, this only applies to insured persons of the health insurance carriers established under federal law (Austrian Public Health Insurance Office, Social Insurance Institution for the Self-Employed, Railways and Mining).

An insured person of the Vienna Health Insurance Fund turned to the AOB because no reimbursement of costs was provided for him. The AOB obtained statements of opinion from the Vienna Health Insurance Fund and the Chief Executive Office of the City of Vienna, which stated that no cost reimbursement was provided for insured persons of the Vienna Health Insurance Fund due to a lack of financial support from the federal government. For this reason, the Conference of Health Experts from the *Laender* recommended in May 2024 that the health care institutions should be included in the federal law funding for HIV pre-exposure prophylaxis.

The AOB therefore made a recommendation to the Federal Ministry of Social Affairs, Health Care, Health Care and Consumer Protection that in coordination with the *Laender* a cost subsidy for HIV pre-exposure prophylaxis should be made possible for insured persons in health care facilities that have been established under *Laender* laws.

Expansion to healthcare centres required

Relatives' deductible for hospital care

Anyone requiring inpatient care must either pay a cost contribution in accordance with Section 27 a of the Hospital and Convalescent Homes Act (*Kranken- und Kuranstaltengesetz*) or a cost contribution in accordance with Section 447 f (7) of the General Social Insurance Act for co-insured relatives. These cost contributions may not be prescribed for the same hospital care at the same time. Contributions can be collected for a maximum of 28 days per calendar year.

Different cots contributions

No exemption in case of social vulnerability An exemption due to special social need for protection is only provided for the cost contribution in accordance with the provisions of hospital law. As a result, people with a low income can be considerably burdened by the imposition of a deductible for relatives in accordance with Section 447 f (7) of the General Social Insurance Act. There are considerable differences in the amount of these two cost contributions: For co-insured relatives, a significantly higher cost contribution must be paid, from which no exemption is permitted due to social vulnerability.

Only support services possible Due to this legal situation, the health insurance carriers can only reimburse a prescribed and paid cost contribution in accordance with Section 447 f (7) of the General Social Insurance Act from the support fund in particularly deserving cases, taking into account the income situation of the families concerned. However, this is not a satisfactory solution for those affected. Many are also unaware of this possibility.

From the AOB's point of view, the cost contributions should therefore be harmonised at the low contribution level of the provisions under hospital law. In addition, the possibility for exemption should be expanded – especially in cases of social vulnerability, analogous to the exemptions for other cost contributions in the area of public social insurance carriers.

Statement of opinion by the Federal Ministry The Ministry of Health explained to the AOB that the social insurance system provides for non-contributory family insurance in order to achieve social equality. This means that an insured family provider has to pay health insurance contributions for themselves, but not for their co-insured dependants. Accordingly, these dependants can claim all public health insurance benefits without paying contributions, which is why it is justified that in some areas insured persons are required to share the costs when claiming benefits for dependants.

Case law of the Constitutional Court The Constitutional Court of Austria confirmed this view in its court rulings of the independent judiciary. Accordingly, from a constitutional point of view, the legislature cannot be opposed if, within the scope of its legal policy leeway, it stipulates a cost contribution obligation under social insurance law as a kind of deductible of the insured person for his or her co-insured dependants, as provided for in Section 447 f (7) of the General Social Insurance Act in the case of institutional care. Accordingly, the legislature is also not obliged to provide the same favourable treatment for such a cost contribution obligation as applies to comparable contribution obligations under hospital law for persons covered by social insurance.

General exemption necessary in case of social vulnerability The AOB nevertheless argued (Annual Report 2008, p. 174 et seq.) that the deductible for dependants pursuant to Section 447 f (7) of the General Social Insurance Act should not be levied in the case of social vulnerability and should generally be reduced in order to avoid hardship for those affected. However, the legislature has so far only followed this recommendation of

the AOB to the extent that an exemption has been provided for co-insured children up to the age of 18.

Higher prescription fees due to small pack sizes

Time and again, people complain to the AOB because bulk packs of medication are not available or because only packs containing a small number of the medication are dispensed. As a result, those affected have to pay higher prescription fees.

Only "small" pack sizes available

The umbrella organisation of public social insurance carriers has to draw up a reimbursement code that lists all medicines that are either freely prescribable or can be prescribed according to certain prescription criteria (indications) at the expense of public health insurance companies. This is intended to concretise the legal requirements according to which medical treatment must be sufficient and appropriate, but must not exceed what is necessary. The drugs are included in strength and pack size in accordance with the recommendations of the Therapeutic Products Evaluation Commission, which proceeds on the basis of scientific criteria, health economic evaluation and taking into account the type and duration of the illness.

Admission criteria for reimbursement code

Neither the Ministry of Health nor the health insurance carriers or the umbrella organisation of public social insurance carriers can directly influence the pack sizes offered by the pharmaceutical companies or the design of the packaging. The manufacturers of medicines act as independent entrepreneurs, taking into account economic considerations and technical production possibilities, who also act to optimise profits.

Pharmaceutical companies are profit-orientated

In the view of the AOB, however, when negotiating with with pharmaceutical companies, the ministry should take care to ensure that they at least market packs that cover the monthly needs for insured persons. Furthermore, the health insurance carriers should also authorise bulk packs covering several months' needs for long-term therapies and well-adjusted patients. This can also reduce the number of medical consultations and save costs.

Demands of the AOB

Cost coverage for wound care

An Upper Austrian woman was suffering from a chronic wound on her left heel, which had been colonised by a multi-resistant germ. After several weeks of unsuccessful treatment by her family doctor, she turned to various hospitals for wound treatment. Treatment appointments would only have been available there after a wait of several months. However, the woman was in a lot of pain, so a waiting period of several months would not have been acceptable. She turned to a wound management facility, where she was successfully treated. An impending amputation was avoided. However, the Austrian Public Health Insurance Office refused to subsidise the costs of the treatment, which cost around 3,000 euros.

No prompt and satisfactory wound care

It is also the AOB's experience that, despite intensive searches – even when travelling long distances – insured persons do not receive satisfactory quality wound care from private practitioners or in medical facilities, or do not receive it promptly. One reason for this is that chronic wounds usually require months of intensive treatment and the available contractual partners of the health insurance carriers are not always sufficiently specialised in the field of wound care.

The health insurance carriers can only cover the costs of health treatment in accordance with the relevant social insurance provisions if it is provided by certain service providers listed in the social insurance laws.

These are primarily doctors and medical facilities. In addition, the services of certain healthcare professions (physiotherapists, speech therapists, occupational therapists, clinical psychologists, psychotherapists and massage therapists) are treated in the same way as medical assistance and can also be utilised by insured persons at the expense of public health insurance.

No cost coverage for wound managers

However, this legal situation means that the costs of wound managers have to be borne by those affected, which often leads to financial hardship. The AOB last pointed out this problem in its Annual Report 2021 (p. 228 et seq.). In response to the complaint mentioned above, the AOB once again turned to the Federal Ministry of Social Affairs, Health, Care and Consumer Protection.

Since 2024, qualified nurses and health care staff may also prescribe medical devices

The Ministry pointed out that since 2024, members of the higher intermediate service for healthcare and nursing have also been authorised to prescribe medical devices in certain areas, subject to a medical or nursing diagnosis. Other remedies, therapeutic appliances and aids (including wound dressings and bandages) may be dispensed on the basis of a regulation issued by a nurse practitioner, provided this is within the scope of their professional authorisation, and by pharmacies at the expense of public health insurance. This innovation in the field of wound care is a significant step towards improved care. In addition, the Federal Ministry of Social Affairs, Health, Care and Consumer Protection is considering improving the provision of material services in the wound area on the basis of the existing statutory basis and closing existing gaps in care in the long term.

However, services provided by freelance wound managers cannot be billed to public health insurance as they are not equivalent to medical assistance. For this reason, equating their services with those provided by doctors would be an extremely far-reaching step that would certainly require further investigation.

Expansion of primary care units

Finally, the Federal Ministry of Social Affairs, Health Care, and Consumer Protection pointed out that the nationwide care mandate for primary care units also provides for wound care by way of benefits in kind. As of mid-

February 2024, 60 primary care units were already in operation; work is ongoing to further expand primary care.

The independent wound treatment centres are already making an important contribution in the field of outpatient wound care due to the expertise bundled there. The AOB therefore reiterates its recommendation that the conditions should be created to enable these centres to be used at the expense of public health insurance.

AOB reiterates call for change in law

Bonus for dental prophylaxis only with ID Austria

Some people complained to the AOB because they did not understand the requirements for participating in the "Smile Together" health campaign organised by the Social Insurance Institution for the Self-Employed. One Viennese woman, for example, described how participation in the campaign would only have been possible if she had previously registered for "ID Austria". The (annual) bonus of EUR 100 for utilising dental services can only be earned if "svsGO", the Social Insurance Institution for the Self-Employed's digital service, is used via ID Austria.

People who are unable to obtain an ID Austria due to their age or lack of technical possibilities, for example, complained that they were excluded from the above-mentioned campaign, even though they demonstrate the same health-promoting behaviour through regular visits to a dentist. This is an incomprehensible discrimination against those insured persons who are less tech-savvy than others.

Discrimination against insured persons without ID Austria

In its statement of opinion, the Social Insurance Institution for the Self-Employed stated that in recent years – in addition to the other prevention programmes – it had carried out additional prevention initiatives, participation in which was rewarded with 100 euros and which were linked to various requirements (e.g. submission of a copy of the vaccination certificate in 2022 as part of the "Vaccinated Healthier" campaign).

The initiative to promote dental health in 2024 required the use of ID Austria and registration on the svsGO portal. As the successor to the mobile phone signature, ID Austria is already used in many areas of public administration and has proven itself accordingly. Registration is straightforward and appropriate support is available if required. Owning a smartphone is also not absolutely necessary for registration or use.

The Social Insurance Institution for the Self-Employed pointed out that the "Smile Together" programme is a voluntary benefit provided by the Social Insurance Institution for the Self-Employed and there is no legal entitlement to it. Alternatively, insured persons can also take part in other Social Insurance Institution for the Self-Employed prevention programmes (such as the "Health Hundred").

Amendment to the E-Government Act In the course of an exchange meeting with the AOB in October 2024, however, the Social Insurance Institution for the Self-Employed referred to an amendment to the E-Government Act, in the course of which the principle of freedom of choice between communication methods for citizens was enshrined in law (see Federal Law Gazette I 117/2024).

Registration modalities changed For the Social Insurance Institution for the Self-Employed Health Campaign 2024, this means that insured persons now have a choice when registering. You can either register via svsgO (using the app or the customer portal) or in person at one of the Social Insurance Institution for the Self-Employed customer centres. It is also possible to register close to home at one of the Social Insurance Institution for the Self-Employed counselling days.

AOB welcomes relaxation The AOB welcomed the relaxation of the registration modalities for the bonus of the Social Insurance Institution for the Self-Employed campaign "Smiling Together". From the AOB's point of view, it must also be ensured in future that (also voluntary) benefits provided by health insurance carriers are as low-threshold as possible and accessible to all insured persons.

Cost coverage for suction cup for funnel chest

Suction cup as minimally invasive therapy The mother of a minor from the *Land* of Vorarlberg approached the AOB and claimed that her son had been diagnosed with a funnel chest. Following an assessment at Vienna General Hospital (specialised outpatient clinic for thoracic malformations, funnel chest and keel chest), a suction cup was recommended, especially as the complexity of the malformation and the boy's young age meant that conservative treatment should be sought initially.

High costs The family bought the suction bell from Ortoproban in accordance with the relevant Regulation. They paid the costs of over 1,000 euros privately. They submitted the invoice (including the corresponding findings) to the Austrian Public Health Insurance Office. However, the Austrian Public Health Insurance Office refused to reimburse the costs due to the lack of a Haller index (which could only be measured using CT or MRI).

According to a subsequent letter from the doctors at the General Hospital, an MRI of the chest was neither necessary nor medically indicated to confirm the diagnosis due to the boy's very young age. Similarly, a lung function test at this age was not methodologically meaningful. Nevertheless, the Austrian Public Health Insurance Office refused to cover the costs of the suction bell.

The situation was similar in the case of a minor from Vienna who was also diagnosed with funnel chest and visited the specialised outpatient clinic at Vienna General Hospital for treatment. In this case too, the doctors recommended a suction cup, as this could avoid a later (and more cost-intensive) operation.

Following the AOB's intervention, the Austrian Public Health Insurance Office agreed to cover the costs of the suction bell in both cases after a further investigation and on the basis of the necessity repeatedly justified by the specialised outpatient department of Vienna General Hospital.

Austrian Public Health Insurance assumed costs after AOB intervened

Cost coverage for a long cane (white cane for the blind)

A Burgenland resident with a severe visual impairment (complete blindness in his right eye, severe visual impairment in his left eye) contacted the AOB. He had been recommended and prescribed a long cane (white cane for the blind) and accessories by an ophthalmologist. The Austrian Public Health Insurance Office refused to cover the costs. This was incomprehensible to the man, especially as the cane is essential for him to move around safely in public spaces, comparable to crutches or a rollator for people with a walking disability.

According to the Austrian Public Health Insurance Office, the assumption of costs for canes for the blind is regulated differently from region to region within the Austrian Public Health Insurance Office until the harmonisation of services in the area of the provision of such aids. In Upper Austria, for example, the Austrian Public Health Insurance Office covers the costs of canes for the blind as part of an agreement with the *Land* of Upper Austria. In Burgenland, on the other hand, there is still the provision – adopted by the former Public Regional Health Insurance Office of Burgenland – that no costs are covered for canes for the blind, which is why the reimbursement of costs was rejected in this case.

Cost coverage varies from region to region

However, in the interests of a policyholder-friendly solution, the costs of the cheapest cane for the blind can be reimbursed on the basis of the existing provision in Upper Austria up to the statutory maximum limit (less a deductible).

The AOB has repeatedly addressed the issue of benefit harmonisation and advocated the implementation of nationwide harmonisation in all benefit areas as quickly as possible. On the occasion of the present case, it reiterates this demand. Efforts to conclude a corresponding overall agreement should be intensified and expedited in the interests of all insured persons.

Harmonisation of services urgently needed

Transgender person: treatments abroad

The term transgender person describes people whose gender does not match the sex assigned to them at birth. In a medical context, this is also referred to as gender incongruence. In Austria, a diagnosis with several expert opinions (psychotherapeutic, clinical-psychological and psychiatric diagnosis) is required before medical measures can be carried out. Gender reassignment surgery in the form of genital surgery is only possible after

Gender incongruence

about a year of hormone therapy and requires further expert attention. Based on the court rulings of the independent judiciary of the Supreme Court, treatment costs are only covered by public health insurance if the inner tension between the physical sex and the psychological identification with the opposite sex is so pronounced that severe psychological symptoms can only be remedied or alleviated in this way. Prior to this, it is important to carefully weigh up with the support of the doctors and therapists treating you whether and which treatments are desired and medically appropriate at a particular stage of life.

A transgender person has felt a sense of belonging to the male gender since childhood and has long lived as a man in everyday life. According to psychiatric findings, he has already credibly and clearly moved closer to the male gender. This was also confirmed by other medical and psychotherapeutic expert opinions. However, in order to be able to fully identify with his body, he wanted to have genital surgery. Although the regional hospital in Graz confirmed the medical indication, it was unable to offer him an operation date before 2027. This was unacceptable for the patient; unfortunately, other specialised clinics in Austria were also unable to help him. He therefore enquired at a clinic in Munich, which offered him a much earlier surgery date.

In the case of an operation abroad, the prior consent of the Austrian public social insurance carrier is required for reimbursement of costs due to European legal provisions. This is granted if a certain treatment cannot generally be carried out in Austria or cannot be carried out within a medically justifiable period of time. However, the Austrian Public Health Insurance Office initially only wanted to cover a small part of the treatment costs.

Public Health Insurance: low capacities for surgeries in Austria

After the AOB intervened, the Austrian Public Health Insurance Office authorised the planned treatment abroad. The reason given was the low surgical capacity in Austria and the low number of cases of such operations.

In a second case, the AOB also managed to have the costs covered by the health insurance carrier. A transgender person also felt he belonged to the male gender as a child, was already living as a man and had also had his documents changed accordingly. Only his still female body did not match his male identity. He wanted to have all the necessary gender reassignment surgeries carried out at a German clinic in one appointment. In Austria, this would require six to nine operations, which would be more stressful, risky and costly overall.

Insurance for Public Sector Employees also assumed costs

The Insurance Institution for Public-Sector Employees initially only approved a small part of the costs. After the AOB intervened, the insurance company agreed to bear the actual costs of the operation in Germany, as the duration of treatment in Germany would have been longer than average.

No sick pay despite no conviction

A man from Lower Austria was seriously injured in the leg during fisticuffs at work. Due to the injury, he had to take a longer sick leave, but did not receive any sick pay from the Austrian Public Health Insurance Office. The insurance office initially refused to pay the sick pay because it was suspected that he had sustained the injury while culpably participating in a scuffle (Section 91 of the Austrian Criminal Code). In this case, the Austrian Public Health Insurance Office could refuse to pay the sick pay to the man (Section 142 (1) (1) of the General Social Insurance Act). However, the legal requirement for this would be a court conviction. In the present case, a police investigation was conducted, but no charges were brought, let alone a conviction.

Court conviction as a prerequisite

The AOB then approached the Austrian Public Health Insurance Office and pointed out that the legislature wanted to base the denial of sick pay on the criminal law conviction. Waiting until the conclusion of the legal proceedings to receive payment is neither in the spirit of the law nor reasonable for the person concerned – especially as the preliminary proceedings and the subsequent legal proceedings can take several months to years. The Austrian Public Health Insurance Office finally relented and the man received his sick pay. He was informed about the possibility of reclaiming the benefit in the event of a court conviction.

Clear provision by the legislature

Lack of support for persons requiring ventilation

People requiring mechanical ventilation are still complaining because they do not receive adequate support to finance intensive care at home. Unfortunately, despite lengthy efforts by the Federal Commission for the Implementation of Health Targets and a dedicated working group in the Federal Ministry of Social Affairs, Health Care and Consumer Protection, there is still no agreement between the *Laender* and the public social insurance carriers on standardised nationwide funding for this intensive care that replaces institutional care. As a result, those affected and their relatives are often left in the dark for many months by the respective health insurance carrier or the *Laender*.

Increase in complaints

Supreme Court rulings mean that the health insurance carrier is obliged to pay at least the statutory cost subsidy. However, this is nowhere near enough to cover the costs of intensive care at home. People requiring respiratory care are therefore dependent on support from the respective *Laender* in order to be able to finance caregivers at home. However, the *Laender* often refuse to contribute to these costs.

Some *Laender* remain on a confrontational course

For example, a woman from Lower Austria turned to the AOB who had been trying in vain for over a year to obtain support from the *Land* of Lower Austria to finance the intensive care at home for her spouse who required

Still no support after more than a year

ventilation. The Austrian Public Health Insurance Office promised a statutory subsidy if the intensive home care was provided by qualified carers. However, these carers can only be paid if the *Land* also contributes to the costs. The *Land* refused to contribute to the costs on the grounds that this was not provided for in the Lower Austria Social Assistance Act and referred to the possibility of inpatient placement. After the AOB intervened, the *Land* did grant funding for intensive home care.

In other cases, the *Land* made advance payments, but the health insurance carrier jeopardised the continuation of adequate caregiver services because the statutory cost subsidy was only granted for a few hours per day, even though 24-hour intensive care was necessary.

Public Health Insurance Office violates legal obligation

On 8 July 2024, for example, the AOB reported in the public television programme *Bürgeranwalt* about a 19-year-old Viennese man who suffers from a rare neurological-degenerative disease and therefore needs to be ventilated around the clock via a tracheostoma. The Vienna Social Fund agreed to cover the entire cost of intensive care at home until the Austrian Public Health Insurance Office agreed to contribute to the costs. However, the Austrian Public Health Insurance Office jeopardised the financing of 24-hour intensive care by only granting a cost subsidy for ten hours a day for a long time, although intensive care around the clock is absolutely necessary according to doctors' letters and care documentation. It was only after the AOB intervened that the statutory cost subsidy was finally increased to the required level of 24 hours a day.

Nationwide standardised provision required

Intensive care at home for patients requiring mechanical ventilation covers both medical treatment and care. Therefore, both the health insurance carriers and the *Laender* are competent for this type of care. Nevertheless, there are still diverging legal opinions between the public social insurance carriers and the *Laender*. The AOB therefore urgently calls on all parties involved to agree on standardised nationwide funding for home intensive care so that the legal uncertainty and the long wait for adequate support for people requiring respiratory care at home can finally come to an end.

Delays in the approval of wheelchairs

For people with severe disabilities, a power wheelchair is often the only way to get around independently. Nevertheless, they are often denied this aid by health insurance carriers.

No authorisation despite clear medical indication

A 54-year-old man from Tyrol, who has suffered from spinal muscular dystrophy (progressive muscle wasting) for 20 years and is therefore dependent on an electric wheelchair adapted to his needs, contacted the Austrian Public Health Insurance Office. His first wheelchair was broken after 17 years and could no longer be repaired due to a lack of spare parts.

Although it was clear from his clinical picture that he was still dependent on an electric wheelchair and he had submitted all the necessary documents (Regulation, cost proposal, medical justification) to the Austrian Public Health Insurance Office in Tyrol with his application, the Austrian Public Health Insurance Office refused to approve the electric wheelchair for a year. It was only when filming for the television programme *Bürgeranwalt* was already underway that the Austrian Public Health Insurance Office agreed to cover the costs after all.

The applicant had to live without a suitable wheelchair for a year and had to put up with numerous restrictions as a result. Furthermore, the Austrian Public Health Insurance Office was obviously not aware of how painful it is for people with disabilities to have to sit in an aid that is not adapted to their needs. The AOB therefore called for Austrian Public Health Insurance Office employees to be sensitised.

Health insurance carriers are obliged to provide their insured persons and their relatives with the necessary aids to enable them to lead as independent a life as possible. This is a mandatory task of the health insurance carriers. The UN CRPD also stipulates that people with disabilities must have access to the highest quality mobility aids in order to lead as independent a life as possible.

In another case, the Austrian Public Health Insurance Office denied an electric wheelchair to a 47-year-old woman suffering from multiple sclerosis, also for months. The Austrian Public Health Insurance Office Tyrol gave reasons for its decision that the flat was not accessible and therefore the wheelchair could not be used in the flat. Irrespective of the fact that the installation of the stairlift had already been ordered, the woman needed an electric wheelchair primarily to be able to participate in life outside the home.

Waiting time of several months for electric wheelchair

The installation of a stairlift is not a legal requirement for the granting of an electric wheelchair. The Austrian Public Health Insurance Office should therefore have approved this wheelchair quickly. The Austrian Public Health Insurance Office's decision was therefore in breach of its duty and the right to participation under the UN CRPD.

Rejection violates UN CRPD

On the day of filming for the television programme *Bürgeranwalt*, this woman also received a call from the Austrian Public Health Insurance Office stating that the wheelchair had been approved after all. The AOB called on the Austrian Public Health Insurance Office to change its authorisation practice so that there would be no more excessive waiting times in future.

One reason why approvals are not granted promptly is that, in addition to the public social insurance carriers, other bodies such as the *Laender* (from social or disability assistance funds) are often also competent for funding assistive products. The AOB has therefore been calling for years for assistive

devices to be approved immediately if the requirements are met. The authorities involved should agree in the background how the costs are to be shared.

Central contact point necessary The AOB has long been calling for a central point of contact and a switch to a one-stop shop principle. The task of this centre would be to simplify communication processes for persons with disabilities, to clarify which cost subsidies and benefit entitlements exist after an application has been submitted and to ensure that the required assistive device is made available as quickly as possible. Digital retrieval and reuse of documents already available at the time of application – with the consent of the user, of course – would save time and minimise administrative costs.

Problems in finding rehabilitation facility that allow assistance dog

In 2024, several persons with disabilities contacted the AOB and reported their difficulties in finding a rehabilitation facility that would accept them with their authorised assistance dogs. However, refusal is not in line with the principles of the UN CRPD.

UN CRPD guarantees self-determination The aim of the UN CRPD is for persons with disabilities to be able to make self-determined decisions about the organisation of their lives and to have full participation in all areas of life. Article 9 of the UN CRPD guarantees equal and barrier-free access to the physical environment, in particular to medical facilities and services. Article 20 of the UN CRPD standardises the right to personal mobility with the greatest possible independence, in particular with technological, human and animal assistance.

The use of assistance dogs serves precisely these purposes. According to Section 39a of the Federal Act on Persons with Disabilities (*Bundesbehindertengesetz*), assistance dogs are to be used to increase the self-determination and participation of persons with disabilities in all areas of life. An assistance dog supports persons with disabilities in the area of mobility and helps with everyday tasks that would be difficult or impossible without assistance.

Access bans only permitted for hygienic reasons Since 2016, the carriage of assistance dogs in medical facilities has been regulated by law (see also Annual Report 2017, p. 53). According to Section 6 (1) (i) of the Hospital and Convalescent Homes Act and the corresponding implementing provisions of *Laender* laws, the respective hospital regulations must specify the areas in which assistance and therapy dogs are not permitted for reasons of hygiene. The legislative materials state that it is not permissible to prohibit the use of assistance dogs in medical facilities in general, i.e. in all areas. The materials cite operating theatres as an example of where assistance dogs may be excluded for reasons of hygiene.

However, those affected report that this is often not the case in practice – especially in rehabilitation facilities. For example, one woman, who is a doctor herself and is also supported by her assistance dog in her professional activities, had planned a rehabilitation stay at an Austrian Pension Agency facility. However, she was only allowed to take her assistance dog into her patient room, but not into the surgery or therapy rooms. This would have meant that she would have been dependent on the help of other people during her therapy and medical appointments, which would have massively restricted the high degree of self-determination that she had already achieved with her assistance dog. The affected person – herself an expert in this field – pointed out that more and more scientific publications are proving that such far-reaching expulsion of assistance dogs is not necessary for hygienic reasons.

Excessive access bans in many facilities

The AOB approached the Austrian Pension Agency and pointed out that more and more institutional regulations allow much more extensive access to assistance dogs in healthcare facilities. Assistance dogs are usually allowed to be taken into medical facilities. The Austrian Medical Chamber also amended its hygiene regulations in 2022; assistance dogs must be granted access to consultation rooms and type 1 treatment rooms.

The AOB also referred to a decision by the German Federal Constitutional Court in which a ban on assistance dogs entering doctors' surgeries was recommended as unconstitutional. The court observed that, from a hygiene perspective, there are generally no objections to assistance dogs being taken into surgeries and hospital rooms. According to the court, the constitutional ban on discrimination is intended to enable persons with disabilities to lead a self-determined life as far as possible. "It is not compatible with this goal and the underlying concept of humanity to refer the complainant to chaining her guide dog outside the practice and making her dependent on the help of foreign nationals or people she does not know." (BVerfG 30 January 2020, ref. 2 BvR 1005/18).

Access bans in doctors' surgeries are unconstitutional in Germany

This was successful. The Austrian Pension Agency's Directives have since been amended. Assistance dogs are now allowed in all areas of the Austrian Pension Agency's rehabilitation centres to which patients also have access. The access bans are now essentially limited to areas such as the kitchen, food storage and laundry.

Austrian Pension Agency amends Directives for its facilities

Such provision has yet to be made in other facilities. Those affected report similar problems in a wide range of rehabilitation centres – including in many contract facilities run by public social insurance carriers. One woman reported to the AOB, for example, that even after a long search she was unable to find a neurological rehabilitation facility that would accept her and her assistance dog. This was also the case for several acquaintances, who would therefore no longer go on rehabilitation stays since they had an assistance dog.

Problems continue in other facilities

Conciliations negative The AOB also has a number of visit reports on conciliations, all of which were negative.

At the beginning of 2025, the AOB reported on a top paraclimbing athlete in the television programme *Bürgeranwalt*. She was looking for an Austrian Social Insurance for Occupational Risks rehabilitation facility that would have accepted her and her assistance dog in order to fit her with orthoses so that she could walk again. This was not possible.

In its statement of opinion to the AOB, the Austrian Social Insurance for Occupational Risks stated that the woman was not refused admission with an assistance dog. She was merely informed that, for reasons of hygiene, it was not permitted to take her to the wards, dining rooms or treatment and therapy areas. In the opinion of the AOB, such a far-reaching ban on access is excessive and not necessary for reasons of hygiene.

At the time of going to press, several investigative proceedings were pending on this topic. The AOB expects that excessive access bans for assistance dogs in the regulations of the institutions will be changed quickly so that people who require a rehabilitation stay can also live independently during this time with the support of their assistance dogs.

3.12.3 Accident insurance

Accident insurance coverage for female and male firefighters

In Austria, the fire service is largely organised on the basis of volunteer fire brigades), which are provided on a voluntary basis by the population. Volunteer firefighters are an essential pillar of society. They are firmly anchored in the disaster relief laws of the *Laender* as disaster relief organisations. As the operations are not without danger, they require adequate insurance cover. This is also provided in principle. All members of volunteer fire brigades (adolescents, active and reserve) are insured against accidents during training, exercises and deployments as well as commuting accidents with Austrian Social Insurance for Occupational Risks (without paying contributions). This is regulated by law in the General Social Insurance Act (Section 175 (1) in conjunction with Section 176 (1) (7a) of the General Social Insurance Act).

The disability pension is of the greatest financial importance. This is paid out if the injured member of the fire service suffers a reduction in earning capacity of at least 20 per cent for longer than three months. The amount of this pension depends on the extent of the reduction in earning capacity and the amount of the assessment basis, which is generally the same as the last annual income. Nevertheless, members of fire brigades sometimes suffer considerable damage without Austrian Social Insurance for Occupational

Risks recognising the accident insurance cover. This also happened to a 19-year-old woman from Upper Austria.

She has been a member of the volunteer fire brigade in her home town since she was a child and is now struggling with the consequences of a lifelong severe disability as a result of her commitment. She therefore had to end her training. In late summer 2021, she was still asleep when the fire engine siren went off. She hurriedly put on her firefighting gear and fell while running down the stairs leading to the ground floor of her house. Her partner found her lying unconscious and began resuscitation. The victim was then flown to hospital by rescue helicopter. There she was diagnosed with hypoxic brain damage with pronounced bilateral visual impairment, deficiencies in all aspects of memory and survived sudden cardiac death. There is a permanent disability to the extent of a 100 per cent reduction in earning capacity.

Social Insurance for Occupational Risks rejects application despite severe disability

The court rulings of the independent judiciary define an accident in the area of statutory accident insurance to mean that it must be a temporary event – an external influence, deviant behaviour, extraordinary stress – that led to physical injury (or death). This is only a list of examples. The definition of an accident does not require the occurrence of a special, unusual event. According to case law, an event that is part of a normal (protected) activity (such as a fall) can also be an accident, provided it is only temporary.

In its administrative decision of September 2022, the Austrian Social Insurance for Occupational Risks did not recognise the accident as a commuting accident. In the subsequent court proceedings, the Regional Court of Linz obtained two expert opinions including several supplements. A specialist in internal medicine came to the conclusion that the accident was more than likely due to a rare but malignant form of cardiac arrhythmia. Thus, although the fire alarm could be assumed to have triggered the acute event, it could not be assumed to have caused it. The second expert, a cardiologist, was of the opinion that both a primary arrhythmia due to a long QT syndrome (heart disease) and a fall could not be ruled out with certainty as a cause for the sudden cardiac death. A previously unrecognised and asymptomatic predisposition to disease was so easily triggered that it did not require any acute external influences of a specific nature, but rather any other everyday event occurring at the same time would have triggered the the same consequence.

Trigger or cause

When the former firefighter approached the AOB, the proceedings were still pending in court. Her lawyer had requested a further expert opinion. However, the Upper Austrian woman herself still did not understand why it was not recognised that a triggered fire alarm, which requires immediate action and reports an incident per se, entails an unusual burden and can lead to a tragic fall. In the proceedings, it was undisputed that in the event of an alarm, the emergency response begins at home. In her opinion, the

allegation that her deployment and the associated strain on the volunteer fire brigade were not equivalent or nearly equivalent to the occurrence of the damage, but rather an uninsured occasional cause, is misleading. If she had been able to sleep peacefully on the day of the incident, her life would have gone on without disability and without financial worries. Now, however, she finds herself in a situation where she is unable to provide evidence.

If young people already have difficulties providing evidence, this is even more likely to be the case for long-serving firefighters. Many volunteer caregivers have been working for firefighting organisations for decades and show signs of wear and tear.

Legal measures necessary However, it is essential to maintain the important motivation of volunteer fire brigades. For this reason, it is therefore necessary to take additional (legal) measures to ensure social security in the event of severe disabilities.

3.12.4 Pension insurance

General information

503 complaints In the year under review 2024, 503 complaints related to pension insurance, meaning that the number of complaints remained roughly the same as in the previous year. The unbureaucratic and rapid course of action taken by the pension insurance institutions in the AOB's investigative proceedings should be emphasised. In urgent cases, solutions were also found immediately by telephone.

Duration of the proceedings Complaints about the excessive duration of proceedings have decreased significantly compared to previous years and in 2024 they were always concluded immediately after the AOB's investigative proceedings were initiated. For example, in the case of a Lower Austria pensioner who complained about the slow processing time of the special higher insurance amount by the Austrian Pension Agency. Also, immediately after the AOB intervened, the Insurance Institution for Public-Sector Employees, Railways and Mining decreed the final pension decision on the retirement pension of a Vienna pensioner after three years. In the case of a widower, the application submitted in January 2023 for the benefits for surviving relatives of his deceased wife was finally settled at the end of September 2024 as a result of the AOB's intervention and the additional payment was transferred.

Medical examinations Many complaints concerned the medical declaratory proceedings following applications for disability pensions. Those affected reported bad experiences with the doctors carrying out the assessments: Lack of empathy, brief and superficial examinations and the feeling of not being taken seriously. The fact that the assessment does not take place as part of a home visit was also frequently criticised, although those affected are demonstrably unable

to appear in person for an assessment at the Austrian Pension Agency. While home visits are carried out in care allowance proceedings, this option is usually not offered in disability pension proceedings. This is an additional burden for seriously ill people.

Obligation to cooperation and consideration

Post-acute infection syndromes (PAIS) can occur after infections with viral and bacterial pathogens and affect adults as well as children and adolescents. These include post-viral syndromes following a SARS-CoV-2 infection, myalgic encephalomyelitis/chronic fatigue syndrome (ME/CFS), postural tachycardia syndrome (POTS), fibromyalgia, reactive arthritis, chronic Epstein-Barr virus infection, etc. They are increasingly the focus of medical research as they have a massive impact on the patients' quality of life. The number of cases has been rising since the COVID-19 pandemic.

The PAIS challenge

In 2024, the AOB again received numerous complaints from patients who complained about the lack of medical care as well as the lack of understanding of complex clinical pictures (see also chapter 3.12.1).

Deterioration with minimal load

Many people affected by PAIS reported to the AOB that they experience the assessments at the Austrian Pension Agency as physically very stressful and that even travelling there is associated with risks of a deterioration in their state of health. However, the insurance provider ignores this.

The fact that there is too little knowledge about urgently needed new diagnostic and therapeutic approaches does not lead to a considerate approach to vulnerable groups, which ME/CFS patients in particular experience time and again. From the AOB's point of view, it is necessary to adapt procedural steps for the observation of incapacity to work to specific clinical pictures. Assessments must be organised in such a way that a deterioration in the state of health is avoided at all costs. This concerns both the type and duration of assessments by appropriately sensitised and trained experts, as well as the recognition of external certificates and statements of opinion from medical specialists. In the television programme *Bürgeranwalt* ("Advocate for the People"), the AOB pointed out that home visits are necessary for patients who are unable to leave their houses.

Rethink assessment practice

The tolerated stay of a medical examination ordered by the social insurance carrier is always caught between the interests of the social insurance carrier – and thus the interests of the community of insured persons – on the one hand and the individual's right to physical integrity on the other. Any medical examination ordered by the social insurance carrier must therefore be proportionate within the meaning of Article 8 of the ECHR, i.e. suitable, necessary and adequate (Supreme Administrative Court 2003/08/0271; Kneihls in *SV-Komm* [236th edition] Section 366 of the General Social Insurance Act Rz 1, 9; Schratlbauer, *AIV-Komm*, Section 8 of the

Unemployment Insurance Act Rz 35; in detail Auer-Mayer, *Mitverantwortung*, p. 171 et seq.). The prerequisite for a breach of the obligation to cooperate that is detrimental to benefits would therefore be that this breach is based on culpable, i.e. at least slightly negligent behaviour on the part of the insured person (Auer-Mayer, *Mitverantwortung* 402 FN 1835 mzwH). It can only be judged according to the circumstances of the individual case whether such behaviour exists if the directive for an assessment at the Austrian Pension Agency or at a doctor's practice is not complied with.

Lack of knowledge Since 1969, ME/CFS has been classified by the WHO under the ICD-10 code G93.3. International institutions such as the Centers for Disease Control and Prevention (CDC) in the USA have drawn up guidelines on the clinical picture. Nevertheless, those affected repeatedly report to the AOB that obligations to cooperate are overstretched and that they are threatened with the refusal or withdrawal of benefits, even though expert opinions know nothing about PAIS disorders and do not believe those affected that they must remain within their individual benefit limits and that any activation beyond this leads to a worsening of their condition. Without a sound knowledge and understanding of PAIS disorders, recommendations for complex conditions cannot be guaranteed. For example, the mother of a young Viennese woman suffering from ME/CFS criticised not only the lack of empathy, but also the lack of knowledge of the doctors entrusted with the assessment by the Austrian Pension Agency: "Some did not know the disease and were of the opinion that it was a mental illness. The training of doctors, the facility of easily accessible competence centres, the possibility of home visits and online caregivers are urgently needed."

In many cases, the pension insurance providers do not take sufficient account of (specialist) medical assessments or ignore them completely. For example, a 40-year-old Styrian woman has been suffering from a severe form of ME/CFS since 2018. After initially progressing in waves, the disease has been severe since 2023; this has also been documented. The Austrian Pension Agency rejected her pension application by administrative decision in January 2024 because she had not complied with the summons to an assessment and, in the view of the Austrian Pension Agency, had therefore breached her obligation to cooperate. However, medical certificates submitted to the insurance provider prove the necessity of a home visit, as otherwise further deterioration in her state of health is to be expected.

External findings ignored The Austrian Pension Agency ignored these medical findings and insisted on a personal appearance before the experts it had appointed, basing its negative decision solely on an outdated discharge report from a rehabilitation clinic in 2022. In the AOB's view, insured persons cannot reasonably be expected to risk considerable and sometimes even irreversible deterioration in health because of a summons to a control centre of the Austrian Pension Agency. The prerequisite for a breach of the obligation

to cooperate that is detrimental to benefits is that it is based on culpable, i.e. at least slightly negligent, behaviour on the part of the insured person (Auer-Mayer, *Mitverantwortung* 402 FN 1835 mzwH). Whether this is the case, however, is to be recommended according to the circumstances of the individual case, which often does not happen from the AOB's point of view. When deciding in favour of or against home visits, it is essential that public social insurance carriers take into account the risks associated with external assessments, the consequences, taking into account any necessary follow-up or subsequent treatment and the associated pain or impairment. According to the established court rulings of the independent judiciary of the Supreme Court, such recommendations should not be made in general, but always on an individual basis. Unfortunately, this is not the case.

For example, one ME/CFS patient already answered the question "Are you able to walk and can you attend a medical assessment?" in the application form for disability pension in the negative. Despite submitting findings from two neurology specialists who strongly recommended a home visit, the Austrian Pension Agency invited him for an assessment. In this case, however, the insurance provider relented due to the AOB's intervention. The Austrian Pension Agency carried out an assessment as part of a home visit and granted rehabilitation benefits.

A Viennese woman who was almost permanently bedridden was summoned for a three-hour psychodiagnostic examination following two specialist medical examinations. In view of the concentration disorders that had already been demonstrably diagnosed, the woman expressed her concerns. Because she feared financial disadvantages, she nevertheless appeared before the expert. As feared, the assessment had to be cancelled prematurely because the patient was not up to it. The consistently considerate handling by the assessor did nothing to change the fact that the patient was in severe pain for a long time as a result of the overload.

Cancellation of assessment

Another ME/CFS patient also turned to the AOB in complete despair. She applied for care allowances and occupational disability pension in mid-June. Due to her diagnosed stress intolerance and severe exhaustion, she requested an assessment at home. Her repeated efforts were unsuccessful because – as she was told – there were too few doctors available for home visits. Despite the poor staffing situation, the Austrian Pension Agency was able to organise a home visit after the AOB intervened.

Shortage of doctors

The mother of a 26-year-old woman who is seriously ill with ME/CFS and in need of care complained to the AOB that the Austrian Public Health Insurance Office persistently insisted on a personal assessment. Her daughter is currently bedridden and cannot leave the flat because she can no longer sit in a wheelchair. The AOB's intervention with the Austrian Public Health Insurance Office led to an assessment being carried out on

the basis of the available findings, which confirmed that she was bedridden, and her incapacity to work was recognised. Although this case concerns the assessment in the area of public health insurance, the issue is the same and shows that, despite initial difficulties, decisions can be made in individual cases without putting people with limited mobility under massive pressure. In particular, there is no obligation to cooperate if the person concerned cannot reasonably be expected to fulfil it for an important reason. An important reason is understood to be the circumstances that determine the decision-making process, which excuse the refusal and make it appear justified (RS0084353 [T16]; 10 ObS 4/16k, SSV-NF 30/33 with further references).

PAIS action plan with 50 recommendations

In order to close gaps in care and improve the living situation for those affected, the Ministry of Health drew up the PAIS action plan with the expertise of 60 experts, including representatives of the AOB as well as those affected, carers and representatives of the *Laender* and social insurance. It sets out eight fields of action and 50 measures.

The AOB agrees with the measures of the PAIS action plan with regard to improvements in the assessments to the effect that these must be carried out in a "resource-friendly" and "reasonable" manner for those affected. In particular, the AOB also supports the call for flexible and alternative assessment methods that are adapted to the clinical picture and emphasises the urgency of having more experts with expertise available. External findings should also be increasingly included in expert opinion decisions.

At the kick-off meeting for the PAIS action plan on 19 December 2024, it was stated that implementation is a high priority.

Temporary or permanent incapacity to work

Improvement not likely

Time and again, people with serious, irreversible illnesses turn to the AOB and cannot understand why they are not granted a permanent disability or occupational disability pension. The law distinguishes between merely temporary and presumably permanent incapacity to work. Only in the case of permanent disability or occupational incapacity is it possible to receive a pension if occupational rehabilitation measures are not reasonable and appropriate. Permanent means that "it is highly unlikely that the insured person's state of health will improve". According to Supreme Court case law, the insured person must provide this evidence (Supreme Court 10 ObS 40/15b and 10 ObS 89/15h and others).

Years of irreversible serious illness

A 46-year-old man, who had been observed to have a degree of disability of 80% 24 years ago and had been receiving a transitional allowance from the Social Insurance Institution for the Self-Employed since 2019, turned to the AOB. For years, his everyday life has been characterised by serious and progressive impairments, including scoliosis due to an accident that severed seven cranial nerves, a traumatic brain injury, epileptic seizures and cardiac

problems that had to be treated with three stents. Despite his incurable and constantly worsening state of health, he had to undergo annual examinations and submit new findings that always confirmed the same thing, namely his clearly irreversible clinical picture. The insured person felt that the procedure of Social Insurance Institution for the Self-Employed was nothing but harassment. The efforts of the AOB ultimately led to the man being awarded an unlimited disability pension following a specialist examination in the field of neurology and psychiatry.

The Austrian Pension Agency granted a woman rehabilitation benefits for the further duration of her temporary occupational disability from April 2024. The 56-year-old turned to the AOB because her application for occupational disability pension had been rejected, which contradicted the medical findings of the Vienna General Hospital – University Clinic for Neurology (Memory Specialist Outpatient Clinic). The university clinic unequivocally diagnosed progressive Alzheimer's dementia and ruled out the possibility of improvement. After the AOB intervened, she was granted a permanent occupational disability pension.

If no permanent disability or occupational disability pension is observed in the course of the application for disability or occupational disability pension, but a disability or occupational disability lasting at least six months is observed, insured persons must be supported in regaining their ability to work. The Austrian Pension Agency rejected a Lower Austrian woman's application for an occupational disability pension on the grounds that she was neither temporarily nor permanently disabled. Following the initiation of investigative proceedings by the AOB, further assessments were carried out on the basis of preliminary findings, which led to the recognition of temporary incapacity for work. In this case, a pension was ruled out, but the woman was granted access to rehabilitation measures and a rehabilitation allowance.

No follow-up examination due to age

In May 2021, the Austrian Pension Agency awarded an unlimited occupational disability pension to a driving school instructor. Three years later, the man informed the Austrian Pension Agency that, contrary to expectations, his state of health had improved significantly after undergoing medical treatment and rehabilitation, so that his status as a person with severe disabilities was revoked. He considered himself fit for work again and asked the Austrian Pension Agency for a medical follow-up examination. The Austrian Pension Agency did not respond to this enquiry.

Request for follow-up examination initially ignored...

In the AOB's investigative proceedings, the Austrian Pension Agency expressed its regret at the lack of response and added that "no further follow-up examination will be commissioned anyway" because the requirements for an old-age pension will be met from 1 December 2024.

...then rejected

"Significant change" According to Section 99 (1) of the General Social Insurance Act, benefits are to be withdrawn if "the conditions for entitlement to a current benefit no longer exist". According to Supreme Court case law, the withdrawal of benefits pursuant to Section 99 (1) of the General Social Insurance Act "requires a significant, decisive change in the circumstances, whereby the circumstances at the time of the award of benefits must be compared with the circumstances at the time of the withdrawal of benefits." (Supreme Court 20 November 1990, GZ. Supreme Court 10 ObS 363/90).

Disability not set in stone An unlimited occupational disability pension or disability pension is based on a prognosis that the ability to work can no longer be restored. Disability or incapacity for work is not a rigid construct, but a process. Medical research and treatment methods are constantly evolving. Diseases that were previously considered permanent or difficult to treat can now be treated more effectively. Panhölzl points out in DRdA (*Das Recht der Arbeit*) 2011/18, 153 (155 f.) that "findings of fact can never be made with absolute certainty" and "any evidence can only lead to a certain degree of probability".

The only decisive question was whether there had been a recovery or improvement in the form of a significant change in the insured person's physical or mental condition. However, this could not be clarified because the Austrian Pension Agency categorically refused to conduct a medical follow-up examination.

No energy cost subsidy for artists

Health insurance pursuant to General Social Security Act A visual artist who has pension insurance under the Social Security Act for Trade and Commerce and health insurance under the General Social Insurance Act as a so-called "pending case" complained that he did not receive an energy cost subsidy of EUR 410 because he is not insured with the Social Insurance Institution for the Self-Employed.

Energy cost subsidy only for those insured pursuant to Social Security Act for Trade and Commerce Pursuant to Section 408a (1) of the Social Security Act for Trade and Commerce (Federal Law Gazette I No. 189/2023), persons who were compulsorily insured under Section 2 (1)(4) or Section 3 (1)(2) in the period from 1 February 2022 to 31 December 2022 are entitled to an energy cost subsidy if the final or provisional monthly contribution base for the month of December 2022 does not reach the maximum contribution base. The amount is to be credited to the insured person's contribution account as part of the contribution forecast for the 4th quarter of 2023.

Anyone who, like the person concerned, was insured under the General Social Insurance Act did not receive an energy cost subsidy due to the clear wording of the statutory provision. The AOB requested information from the Federal Ministry of Social Affairs, Health, Care and Consumer Protection as to whether and when a solution would be considered. The Department of Social Affairs was aware of the problem and had already conducted interviews with

the public social insurance carriers concerned and the Federal Ministry for Arts, Culture, the Civil Service and Sports.

On 5 March 2024, a motion was tabled in the National Council's Committee for Economic Affairs, Industry and Energy which stipulated that persons who remained within the regulatory scope of the General Social Insurance Act with regard to public health insurance due to the transitional provisions of Section 572 (4) in conjunction with Section 581 (1a) of the General Social Insurance Act and Section 273 (6) of the Social Security Act for Trade and Commerce (*Gewerbliches Sozialversicherungsgesetz*), but are to be regarded as "new self-employed persons" according to their activity, are also entitled to an energy cost subsidy. Finally, the Social Insurance Institution for the Self-Employed paid the subsidy to the artist concerned.

Request to "repair" the provision

No recalculation for old-age pension

A man from Vienna had been drawing an occupational disability pension since February 2011 and in May 2021 applied for the occupational disability pension to be converted into an old-age pension. In June 2021, the Austrian Pension Agency granted him an old-age pension, but without recalculation. The man from Vienna doubted the correctness of the calculation and the amount of his old-age pension. In December 2023, the Austrian Pension Agency explained to him that the pension would not be recalculated.

As a result of the AOB's intervention, the Austrian Pension Agency clarified the inaccuracy of this information and carried out a recalculation, which ultimately led to a higher pension with retroactive effect from 1 June 2021.

Higher pension

Benefit for the bereaved calculated incorrectly

A man from Lower Austria received a disability pension from May 1986, most recently in the amount of around EUR 470. From April 1987 until his death in February 2024, he earned a further 426 months of contributions due to full employment. His surviving relatives were therefore surprised at the low amount of the widow's pension of less than 170 euros gross. She filed a complaint and also turned to the AOB.

35 years of gainful employment alongside pension

In the investigative proceedings, the Austrian Pension Agency conceded that the deceased's pension benefit had been erroneously recalculated in accordance with the legal provisions of Section 7 of the General Pension Act (*Allgemeines Pensionsgesetz*), taking into account the months of insurance acquired after May 1986. As the disability pension awarded in 1986 had not been calculated in accordance with the General Pension Act, these calculation rules were therefore not applied in this case.

Calculation according to General Pension Act instead of General Social Insurance Act

In its response, the Austrian Pension Agency pointed out that the correction alone resulted in a higher widow's pension of almost EUR 250 and limited

Higher pension for the widow

the dismissal of the claim to this amount. It remains to be seen whether the court proceedings will confirm this amount or whether the statutory settlement calculation will result in an even higher benefit.

Incorrect calculation leads to low pension

Lower pension In the Annual Report 2023, the AOB presented the case of a woman who paid around €12,550 to buy back a transfer amount in order to receive a higher pension. The decision to do so was based on an incorrect pension projection by the Austrian Pension Agency. Instead of the expected higher pension, she now receives a lower pension that is only just above the equalisation supplement reference rate.

Incorrect calculation was the basis for the decision The Austrian Pension Agency explained that its advice and information are based on fictitious calculations that "do not, however, trigger any legal entitlement". These "are intended to provide our customers with guidance and help them make decisions. [...] Customers are informed of the pension amounts (gross) and the amount of the repayment amount for independent assessment." The fact is, however, that precisely this calculation, which – as the Austrian Pension Agency itself states – was intended as a decision-making aid, was incorrect.

Deficits in the assessment of care allowance entitlements

Care allowance for Long Covid or ME/CFS The assessment of entitlement to care allowances for people with Long Covid or Chronic Fatigue Syndrome (ME/CFS) continues to give rise to criticism. Those affected are severely restricted in their ability to function and are often no longer able to carry out even simple everyday tasks themselves. Many are bedridden and can no longer leave the house. In most cases, they therefore need at least help with housework (cleaning the home, etc.), preparing meals and travelling outside the home (shopping, etc.) and, depending on the severity of the illness, help with personal hygiene and dressing and undressing. Despite the considerable need for care and the severity of the impairment, in most cases those affected are only awarded care level 1 (currently € 200.80 per month) in accordance with the Classification Ordinance under the Federal Care Allowance Act. But even this low level of care is denied to many applicants.

Little has changed in the way Long Covid or ME/CFS are dealt with during the assessment process. Despite the scientific knowledge that now exists on these clinical pictures, experts often still show a lack of understanding for the condition and limitations of those affected. Those affected often find the assessment situation very unpleasant. Complaints include, for example, cynical remarks, an unfriendly tone or a lack of empathy on the part of the experts.

The AOB therefore continues to call for a more sensitive approach to those affected, a detailed examination of the effects of Long Covid and ME/CFS in the expert opinions and special training for experts on these clinical pictures.

Another group that is also often affected by inadequate assessments of entitlement to care allowances are people with dementia or other mental or psychological impairments. The reasons for this are that the guidelines and minimum values of the Classification Ordinance under the Federal Care Allowance Act continue to be based primarily on the need for assistance and care in the case of physical impairments, that experts do not always have the necessary knowledge to assess the effects of mental or psychological impairments on care needs and therefore the hardship allowance is not taken into account, or that relatives, carers and care documentation are not sufficiently involved in determining the need for care.

Inadequate assessment of care allowance entitlement in case of dementia

The AOB therefore continues to call for an evaluation of the Classification Ordinance, an improvement in the quality of expert opinions by using appropriately trained (specialist) doctors and carers and greater involvement of relatives in the care allowance process. People affected by dementia often try to present the situation in a better light than it actually is during the assessment. This can be counteracted by involving relatives and carers in the assessment.

For care allowance levels 5, 6 and 7, additional qualitative care criteria are required in addition to a care requirement of more than 180 hours per month. The recommendation of these additional care criteria often causes difficulties in practice, especially if observations are not included in the expert opinion.

Difficult recommendations for care levels 5, 6 and 7

For example, despite determining that a pensioner required 183 hours of care per month, the Austrian Pension Agency only awarded care level 4, because it was assumed that no care measures were necessary at night and therefore no requirements for exceptional care needs within the meaning of care level 5 were met. However, it overlooked the fact that the pensioner also had to be accompanied to the toilet at least twice during the night and therefore did meet the requirements for care level 5. The Austrian Pension Agency subsequently revised its decision and recognised the pensioner a level 5 care allowance after all.

3.12.5 Persons with disabilities

Long duration of proceedings to obtain disability pass and parking permit

A man applied for a disability pass and a parking permit in January 2023. An expert opinion took place in May 2023 and he submitted further findings in

Waiting time for assessment date

July 2023. He then received no further feedback from the Ministry of Social Affairs Service. After more than a year without a decision on his application, he turned to the AOB.

The proceedings for issuing a disability pass in accordance with the Section 40 et seq. of the Federal Act on Persons with Disabilities (Disabilities Act) are carried out on the basis of the General Administrative Procedure Act, taking into account the deviating procedural standards in the Disabilities Act. Around 56,800 applications for disability passes were submitted in 2023. On a nationwide average, the provincial offices of the Ministry of Social Affairs Service were able to complete such proceedings in less than 110 days (see parliamentary enquiry response to 18420/AB XXVII. GP).

The AOB's investigative proceedings revealed that a neurological expert frequently consulted by the Ministry of Social Affairs Service had ceased his expert opinion work and that another specialist expert was unable to offer any free appointments in the longer term. A (new) assessment appointment for the man could only be restrained for April 2024.

Inform applicants in the event of delays

In view of the shortage of experts from individual medical specialities, the AOB calls for at least (interim) information to be sent to the applicants in the event of delays in the appointment of experts. In addition, more recruitment measures (adverts, networking by senior doctors) should be taken to interest suitable experts in working for the Ministry of Social Affairs Service.

3.12.6 Animal protection

Keeping mice and rats as feed animals

Objective of the Act on the Protection of Animals

Following a complaint, the AOB initiated ex-officio investigative proceedings to clarify whether Annex 1, point 5 of the 2nd Animal Husbandry Regulation (*Tierhaltungsverordnung*) on keeping mice and rats as feed animals complies with the law. The Federal Act on the Protection of Animals (*Tierschutzgesetz*) serves the species-appropriate life and welfare of all animals and prohibits the infliction of pain, suffering or harm on the one hand and their killing "without good reason" on the other. The Federal Act on the Protection of Animals also classifies vertebrates such as mice, rats, hamsters, guinea pigs and rabbits, which are bred as a food source for carnivorous reptiles, as "feed animals". Section 13 of the Federal Act on the Protection of Animals requires animal-friendly husbandry "in accordance with the recognised state of scientific knowledge" and demands that husbandry systems are designed "taking into account the species, age and degree of development, adaptation and domestication of the animals in accordance with their physiological and ethological needs". Section 24 of the Federal Act on the Protection of Animals authorises the Ministers of the Federal Ministry for Agriculture, Forestry Regions and Water Management to lay down specific minimum

requirements for such husbandry conditions and to issue regulations on permissible interventions.

In Annex 1, points 3.5 and 3.8 of the 2nd Animal Husbandry Regulation of Animals, the cage areas and heights of domestic mice and rats and, in point 5.2, the explicit wording "in deviation from Section 13 of the Federal Act on the Protection of Animals", significantly reduced cage areas and halved cage heights for conspecifics that are fed or marketed alive or dead (frozen) in animal shelters, zoos and animal husbandry as part of commercial activities. This was justified by the fact that feed animals live much shorter lives than those kept in pets or zoos. However, this justification does not hold water, as the Federal Act on the Protection of Animals does not differentiate between animal husbandry conditions depending on utilisation or lifespan. There is also no other legal provision that would suggest that minimum standards for the keeping of feed animals should be lowered. Today, more is known about the sentience, behaviour, cognitive abilities and needs of small rodents, and the administration cannot ignore this or legal requirements. In the course of these investigative proceedings, the Federal Ministry for Agriculture, Forestry Regions and Water Management expressly conceded in spring 2023 that the provision in question does not comply with the law.

"Second-class" protection for food animals?

As unlawful provisions of the ordinance are in tension with the principles of the rule of law, the AOB called on the Federal Ministry of Social Affairs, Health, Care and Consumer Protection to take action: It should prepare a draft review. Although the Federal Ministry of Social Affairs, Health Care and Consumer Protection is said to have drafted a corresponding amendment to the 2nd Animal Husbandry Regulation in 2024, it was not published. This is not solely the fault of the ministry.

AOB demands legal situation in conformity with the law

If the legislature directs that an ordinance may only be issued in agreement with another authority or only with the approval or at the request of another body, the acts of the other authorities required to issue the ordinance are acts of will that only complete the competence of the administrative authorities primarily appointed. However, as consent is an act in the area of sovereign administration, the principle of legality of Article 18 (1) of the Federal Constitutional Law applies to it without restriction.

The Federal Ministry for Agriculture, Forestry Regions and Water Management remained inactive and the situation they themselves recognised as unlawful therefore remains. The AOB cannot understand this.

Transporting calves abroad

Following two complaints, the AOB initiated *ex-officio* investigative proceedings in autumn 2023 concerning several aspects of calf transports abroad. These proceedings led to the following results:

Administrative agreement AUT/ITA terminated at the beginning of 2024

The bilateral administrative agreement between Austria and Italy to ensure a high level of animal welfare during calf transports from Austria to Italy, the content and enforcement of which were criticised in several respects, was terminated at the end of January 2024 at Austria's initiative.

During the investigative proceedings, the European Commission submitted a proposal for a new Regulation of the European Parliament and of the Council on the protection of animals during transport. According to this proposal, in future, means of transport that transport unweaned calves for longer than eight hours must be equipped with an approved feeding system. Furthermore, unweaned calves must be supplied with water without restriction and fed with species-appropriate milk or a milk substitute every nine hours, calculated from the start of the journey and regardless of the means of transport used.

Compliance with animal protection requirements to be strictly investigated

With regard to enforcement practice, the AOB came to the conclusion that the signing of the documentation slip by the competent official veterinarians is a simple sovereign administrative act that only serves for documentation purposes if no identified shortcomings in the documentation are observed. This is done as part of official monitoring to ensure compliance with animal welfare requirements during transport. If a violation of the relevant legal provisions is observed during monitoring, appropriate measures (such as those provided for in Article 21 of the European Union Control Regulation – OCR) must be taken.

New animal transport regulation issued

The AOB asked the Federal Ministry of Social Affairs, Health Care and Consumer Protection to investigate ways in which the control system could be improved. This led to the decree of the National Animal Transport Ordinance (Federal Law Gazette II No. 254/2024), which provides for stricter provisions for the transport of live animals. The innovations concern provisions on transportability, watering and feeding, protection from heat and cold, better monitoring and minimum heights in connection with the space available for the transported animals.

4 Legislative recommendations

4.1 New recommendations

Federal Ministry of Education, Science and Research

Legislative recommendation	Reaction of department	Details
It should be reconsidered whether enrolment for more than three semesters in a previous degree programme should lead to a waiting period when emoluments for a new student grant are received.	The Federal Ministry of Education, Science and Research has not yet considered a change to be necessary.	Annual Report 2024, Monitoring Public Administration, chapter 3.3.2

Federal Ministry for Women, Family, Integration and Media

Legislative recommendation	Reaction of department	Details
The AOB suggests that the <i>Laender</i> laws be amended so that the Youth Welfare Offices promptly inform the person making the report of any endangerment of the child's welfare, whether they have confirmed indications of the endangerment and have taken action to protect the children or adolescents.		Annual Report 2024, Monitoring Public Administration, chapter 3.5.2
The AOB recommends a statutory solution for the application for family time bonus for foster and adoptive fathers, because they cannot apply for it after the birth and subsequently cannot meet the deadline due to the length of the proceedings.	The Federal Ministry for Women, Family, Integration and Media believes that a legal amendment is unnecessary.	Annual Report 2024, Monitoring Public Administration, chapter 3.5.7

Federal Ministry for Climate Action, Environment, Energy, Mobility, Innovation and Technology

Legislative recommendation	Reaction of department	Details
Consideration should be given to a provision that also includes neighbour protection in the recommendation of the suitability of an area as a driving school practice area.	There is no statement from the Federal Ministry for Climate Action, Energy, Mobility and Technology with regard to any initiative in this regard.	Annual Report 2024, Monitoring Public Administration, chapter 3.9.2

Legislative recommendation	Reaction of department	Details
Easier access to the taxi licence examination should be reconsidered if the enforcement practice does not correspond to the legislature's intention.	The Federal Ministry for Climate Action, Environment, Energy, Mobility, Innovation and Technology saw no need for changes.	Annual Report 2024, Monitoring Public Administration, chapter 3.9.2

Federal Ministry of Social Affairs, Health, Care and Consumer Protection

Legislative recommendation	Reaction of department	Details
The AOB calls for clarification in order to ensure an undisturbed process of voluntary dying for suicidal persons and caregivers within the framework of what is legally permitted.	The Federal Ministry of Social Affairs, Health Care and Consumer Protection promised to approach the Federal Ministry of the Interior in agreement with the Federal Ministry of the Justice in order to clarify the procedures of security authorities. It also undertook to supplement the Federal Ministry of Social Affairs, Health, Care and Consumer Protection's practical guidelines after consultation with the Federal Ministry of Justice.	Annual Report 2024, Monitoring Public Administration, chapter 3.12.1
The AOB made a recommendation to the Federal Ministry of Social Affairs, Health Care, Care and Consumer Protection to enable a cost subsidy for HIV pre-exposure prophylaxis for insured persons in health care institutions in coordination with the <i>Laender</i> .		Annual Report 2024, Monitoring Public Administration, chapter 3.12.2
The relative's deductible pursuant to Section 447f (7) of the General Social Insurance Act in the event of social vulnerability should not be levied and should generally be reduced in order to avoid hardship for those affected.	The legislature followed this recommendation of the AOB only to the extent that an exemption was provided for co-insured children up to the age of 18.	Annual Report 2024, Monitoring Public Administration, 3.12.2
From the AOB's point of view, conditions must be created so that wound treatment in independent wound treatment centres can be used at the expense of public health insurance.		Annual Report 2024, Monitoring Public Administration, 3.12.2

Legislative recommendation	Reaction of department	Details
The AOB asked the ministry for a solution so that artists can also receive an energy cost subsidy.	The Ministry of Social Affairs was aware of the problem and had already conducted interviews with the public social insurance carriers concerned and the Federal Ministry for Arts, Culture, the Civil Service and Sports. In March 2024, a corresponding motion was submitted to the competent committee of the National Council.	Annual Report 2024, Monitoring Public Administration, chapter 3.12.4

4.2 Implemented recommendations

Federal Ministry of Education, Science and Research

Legislative recommendation	Reaction of department	Details
The AOB suggested a clarification in the Universities Act to the effect that academic degrees awarded in the United Kingdom before Brexit can continue to be registered in public documents in Austria.	Following an amendment to Section 88 (1a) of the Universities Act, academic degrees awarded in former European Union or EEA member states are also eligible for registration from 1 May 2024.	Annual Report 2023, Monitoring Public Administration, pp. 65 et seq.

Federal Ministry for Climate Action, Environment, Energy, Mobility, Innovation and Technology

Legislative recommendation	Reaction of department	Details
The AOB made the recommendation to reconsider exemptions under the Austrian Road Traffic Act (e.g. from stopping and parking bans) for emergency vehicles outside of emergency drives.	With effect from 1 July 2024, emergency vehicles were included in the list of "beneficiary" vehicles in Section 26a (1) of the Austrian Road Traffic Act.	Annual Report 2023, Monitoring Public Administration, pp. 160 et seq.

4.3 Open recommendations

Federal Ministry of Social Affairs, Health, Care and Consumer Protection

Legislative recommendation	Reaction of department	Details
The AOB once again emphasises the health, social and economic benefits of the herpes zoster vaccination and strongly recommends introducing a cost subsidy for it.		Annual Report 2024, Monitoring Public Administration, p. 217

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Vienna, March 2025