United Nations CAT/C/AUT/7

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Distr.: General
4 May 2020

Original: English
English, French and Spanish only

Committee against Torture

Seventh periodic report submitted by Austria under article 19 of the Convention pursuant to the simplified reporting procedure, due in 2019*

[Date received: 25 February 2020]

* The present document is being issued without formal editing.

GE.20-06306(E)
2006306

Replies to the list of issues prior to reporting (CAT/C/AUT/QPR/7)

A. Reply to paragraph 1 of the list of issues

Austrian Ombudsman Board

1. The Austrian Ombudsman Board (AOB) has been responsible for protecting and promoting human rights in the Republic of Austria since 1 July 2012.

2. Together with six regional commissions, the AOB inspects institutions in which there is or can be a deprivation or restriction of personal liberty, such as prisons, police detention centres, old people's homes and nursing homes, psychiatric hospitals and youth welfare institutions. A total of around 4,000 public and private institutions in the territory of the Federal Republic of Austria are covered, and around 500 (mostly unannounced) visits are conducted by the regional expert commissions each year.

3. The inspection also extends to institutions and programmes for people with disabilities. The AOB monitors facilities for people with disabilities with the aim to prevent exploitation, violence and abuse towards this group of people.

4. In addition, the AOB examines direct orders issued and coercive measures carried out by the executive authority, e.g. during demonstrations, large public events, gatherings or deportations. The essential purpose of the above is to recognise and remedy risk factors for human rights infringements at an early stage.

5. In addition to preventive monitoring, anyone may lodge a complaint for an alleged violation of human rights with the AOB at any time. The AOB, which is fully independent in its actions, has to examine each such complaint. The constitutional mandate for protecting human rights as a National Preventive Mechanism (NPM) reflects inter alia the OPCAT and the CRPD.

6. The AOB is obliged to report annually to the UN Subcommittee on Prevention of Torture about its work as a NPM for the prevention of torture.

Public prosecution office/Courts

7. An independent mechanism for the investigation of allegations of ill-treatment raised against the security authorities exists in the form of the public prosecution offices, in charge of conducting the investigations, as well as of the independent judiciary.

8. In response to recommendations regarding allegations of ill-treatment raised against law enforcement officials, the approach of the public prosecution offices and the criminal police was subjected to an external evaluation. At the request of the (then) Federal Ministry of Justice (hereinafter Ministry of Justice), the Austrian Center for Law Enforcement Sciences (ALES), an interdisciplinary research unit established at the University of Vienna which has profound knowledge of the contents and processes relating to the police forces and the justice system, prepared a study on this topic.

9. In its (preliminary) final report dated 09/02/2018, ALES recommended to optimise the relevant internal instructions of the Ministry of Justice and the Federal Ministry of the Interior (hereinafter Ministry of the Interior), by stating a series of specific suggestions, some of which were addressed to the Ministry of the Interior, some to the Ministry of Justice and some to both Ministries. The internal instructions were revised because of and based on these suggestions.

10. The suggestions made by ALES:

- Time limit for the criminal police reporting to the public prosecution office: The previous obligation for the criminal police to report on allegations of ill-treatment raised against police officers to the public prosecution office within 24 hours met with difficulties in practice. Due to the short period of time available for initial investigations, reports submitted by the criminal police often have little substance and thus contribute little to the proceedings but nevertheless cause a certain workload. At

the same time, the public prosecution offices need to be informed by the criminal police without delay;

- Documentation of contacts between criminal police and the public prosecutors: Extensive contacts between the criminal police and the public prosecution office should be recorded in an official note (*Amtsvermerk*) pursuant to Section 95 of the Code of Criminal Procedure (*Strafprozessordnung*, CCP) – not least for reasons of the investigations' traceability – as such contacts qualify as significant for the proceedings;
- Raising awareness on the part of judges and public prosecutors in respect of selecting offence identifiers (*Deliktskennungen*) in the registers of the "Verfahrensautomation Justiz (VJ)" judicial process automation system: ALES showed inconsistencies in applying the several offence identifiers which make the evaluation of statistical data more difficult.

11. Based on this, the Ministry of Justice, on 25/06/2018, issued an internal instruction[1] as to the approach to be applied in the event of allegations of ill-treatment being raised against the security authorities and employees of the penal service system. Likewise, the Ministry of the Interior published an internal instruction[2] for the police amending earlier internal instructions.

12. Two key issues were changed in the internal instructions of both Ministries: for one, the time-limit for reporting to the public prosecution office was extended from 24 to 48 hours. Secondly, it was pointed out expressly, that any face-to-face or telephone contacts between the criminal police and the public prosecution office have to be recorded in writing in the file to optimise the traceability of the investigations. Another recommendation emphasised the importance of avoiding any duplication of effort in the conduct of proceedings.

13. The suggestions were taken into account in the internal instruction as follows:

- The report to the public prosecution office shall now be submitted "within 48 hours if possible". Furthermore, it is explicitly stated that the public prosecution offices shall be at liberty at any time (Section 20 (1) CCP) to issue specific orders in the investigations or to take charge of all or part of the investigations. In addition, the internal instruction issued by the Ministry of the Interior also takes into account that, in cases of particular public interest, the public prosecution should be informed in a timely manner, not least to be able to competently answer possible media inquiries, i.e. the public prosecution office must be informed orally (or by telephone) prior to submitting the written report pursuant to Section 100 (2) CCP;
- In addition, it is expressly emphasised that any (telephone) contacts with the criminal police and, in particular, any oral orders issued by the public prosecution office (e.g. concerning the sequence of the interrogations to be carried out or the measures to be taken) have to be recorded in an official note (*Amtsvermerk*) pursuant to Section 95 CCP – not least for reasons of the traceability of the investigations;
- Furthermore, the attention of both public prosecutors and judges was drawn to the importance of the identifiers for having accurate and meaningful data as a basis for analysis and the relevant offence identifiers, which are available in the judicial process automation system, were presented again.

14. ALES examined the new internal instructions and stated the following result in its supplementary report of 30/08/2018:

> "Generally, in the internal instructions published now, both Ministries have taken account of the presented recommendations and use precise wording easy to understand for the addressees of the internal instructions to describe how the police force and public prosecution offices have to – also in the light of international specifications – handle allegations of ill-treatment raised against police officers or prison staff." (translation of quote taken from page 8, supplementary report of ALES).

[1] BMVDRJ-S880.014/0013-IV/2018 (Text available in German only).

[2] Internal instruction of the Ministry of the Interior of 19/06/2018 on allegations of ill-treatment, documentation, establishment of facts and assessment, organisation and operation (BMI-OA1305/0147- II/1/c/2018) (Text available in German only).

15. The outcome of the study was presented at a joint press conference on 16/11/2018. The study was made available to the media and the public and can be downloaded from the website of the Ministry of Justice.

Police

16. The independence of the Federal Bureau of Anti-Corruption (*Bundesamt zur Korruptionsprävention und Korruptionsbekämpfung*, hereinafter BAK) is ensured by its organisational position outside the General Directorate for Public Security and by the requirement stipulated in Section 7 of the BAK-G[3] that any instructions ordering the BAK to deal with a matter in specific proceedings must be given in writing and comprise a statement of reasons.

17. Pursuant to the BAK-G, the Federal Bureau of Anti-Corruption is not originally competent to investigate alleged cases and allegations of torture and ill-treatment having been committed by officers with police powers. In such cases, the Federal Bureau of Anti-Corruption will start to act only if instructed to do so by a court or a public prosecution office (Section 4 (1) (5) of the BAK-G). The public prosecution office is in charge of conducting the investigations and has to determine the Regional Police Directorate which shall carry out the inquiries.

18. Nevertheless, security authorities and police stations obtaining knowledge of an offence within the meaning of Section 4 (1) (1) to (15) BAK-G have to immediately report to the BAK in writing pursuant to Section 5 BAK-G, irrespective of any reporting obligation under the Code of Criminal Procedure.[4]

Justice

19. Regarding the investigation of allegations of ill-treatment raised against prison guards, reference is made to the answers to questions 1a and 2b.

Military services

20. Investigations of allegations of ill-treatment raised against military personnel are based on the Military Powers Act (*Militärbefugnisgesetz*, MBG) (FLG I No 86/2000). Pursuant to Section 54 (1) of the MBG, the Federal Administrative Court (*Bundesverwaltungsgericht*, BVwG) shall rule, pursuant to Article 130 (1) (2) of the Federal Constitution Act (*Bundesverfassungsgesetz*, B-VG), on complaints of persons alleging that their rights have been infringed by the issuance of direct orders and the execution of coercive measures in accordance with the provisions of the MGB.

21. Furthermore, Section 54 (2) MBG provides that the Federal Administrative Court shall rule on complaints lodged by persons alleging that their rights have been infringed in any other way due to the performance of military national defence tasks, unless the infringement occurred by way of a written order (*Bescheid*). However, that option is not available to persons who may request the complaints centre of the Austrian armed forces (*Parlamentarische Bundesheerkommission*) to deal with such matters pursuant to Section 4 of the 2001 Defence Act (*Wehrgesetz 2001*) (FLG I No 146/2001). These groups of persons are listed exhaustively in Section 4 (4) of the 2001 Defence Act.

22. Pursuant to Section 54 (3) MBG, complaints according to (1) addressing a deprivation of personal freedom based on the MBG may be lodged, during the detention, with the station executing such a measure, which then has to immediately forward the complaint to the Federal Administrative Court.

B. Reply to paragraph 2 of the list of issues

23. The foreseen penalty ranging from one to ten years in prison is the common basic threat of punishment under the Criminal Code for crimes of comparable gravity. This basic threat of punishment applies, for example, in case of the crime of assault causing death

[3] Federal Act on the Establishment and Organisation of the Federal Bureau of Anti-Corruption (BAK-G); Federal Law Gazette (hereinafter FLG) I No 72/2009.

[4] 1975 Code of Criminal Procedure (CCP) (*Strafprozeßordnung 1975, StPO*); FLG No 631/1975.

pursuant to Section 86 Criminal Code, the crime of robbery pursuant to Section 142 Criminal Code or in case of serious sexual abuse of a person under the age of 14 pursuant to Section 206 Criminal Code.

24. This range of penalties shall enable courts to pass decisions which are as specific as possible to the individual case; in this respect, this also reflects the independence of the judiciary.

C. Reply to paragraph 3 of the list of issues

25. It is the responsibility of the public prosecutor or the court to assess whether an aggravating factor exists. Sections 33 and 34 of the Criminal Code list a series of special factors for the assessment of penalties of different kinds. Keeping statistics on whether and which sentencing factors are applied is not envisaged, thus no such data is available.

26. Only the aggravating factor stipulated in Section 33 (1) (5) of the Criminal Code (acted out of racial, xenophobic or other particularly reprehensible motives) is subject to a reporting obligation. No such reporting was made within the reporting period.

D. Reply to paragraph 4 of the list of issues

Preventive human rights monitoring

27. The Austrian Ombudsman Board (AOB) is responsible for monitoring public and private institutions in which personal liberty is restricted (see answer to question 1 (a)).

28. In doing so, the AOB has established international connections and became a recognised and esteemed dialogue partner. In the active public debate on the requirements for compliance with human rights, it furthers the creation of humane and dignified conditions in the institutions mentioned and contributes to the human rights education.

29. In the course of implementing the AOB's constitutional mandate, the Ministry of the Interior issued internal instructions on 17/05/2013 and 02/06/2014 stipulating that the AOB shall be informed in advance of accompanied deportations and demonstrations classified as dangerous.

30. In 2018, for example, the AOB's expert commissions performed 520 monitoring visits. 476 monitoring visits were performed in places of detention. 44 police operations were observed. 94% of the monitoring visits were carried out without prior notice in order to obtain an impression as accurate as possible.

31. In connection with 428 preventive monitoring visits (82% of all visits), the commissions felt obliged to criticize the human rights situation. In particular in areas, where systemic shortcomings were identified, the AOB tasks the responsible ministries and supervisory authorities with ensuring that improvements are made. As a consequence, many grievances were resolved. Such monitoring activities led to numerous recommendations and implementation initiatives of the AOB. Their objective is to consistently and permanently guarantee and improve human rights standards in the respective institutions.

Monitoring of the public administration

32. For many years, the AOB has been placing a special focus on how accusations of ill-treatment raised against law enforcement officials are dealt with by the police and/or the Ministry of the Interior. In order to follow up on the criticism raised that only in very few cases, of those notified to the public prosecution office, law enforcement officials are brought before court or even convicted, the Ministry of Justice tasked the Austrian Centre for Law Enforcement Sciences (ALES) with carrying out a study (see answer to question 1 part a).

33. Following a review under criminal law – and in cases of allegations of ill-treatment which do not constitute an offence under criminal law – such acts shall be subject to an assessment under administrative law with regard to their proportionality. Such evaluation shall, as specified in the internal instruction, enable the detection of an organisational fault and the identification of facts of the case which are in line with the law but still require improvement for other reasons. In the case of inhuman or degrading treatment not

constituting an offence under criminal law, settlement talks between all parties involved should be strived for.

34. According to its 2018 activity report, the AOB processed 291 complaints concerning the police (2017: 232). 20 complaints referred to ill-treatment or degrading treatment by the police. The AOB could not identify any grievances; however, several investigative proceedings had not been completed at the time of the editorial deadline.

35. Number of allegations of ill-treatment (either submitted to the AOB in the form of individual complaints or investigations initiated by the authorities):

- 2017: ten (no grievances).
- 2016: 17 (no grievances).
- 2015: six (three grievances).
- 2014: eleven (two grievances).
- 2013: nine (no grievances).
- 2012: eight (one grievance).
- 2011: seven (no grievances).

36. In addition, the AOB examined some cases of ill-treatment, which had attracted media attention, in the course of investigative proceedings initiated by the authorities.

Selection procedure of members of the AOB

37. The three members of the AOB are elected by the National Council (i.e. lower house of the Parliament) based on a proposal, by way of which each of the three parties with the largest number of parliamentary seats may propose one member. This election procedure guarantees the Board's legitimation in the parliamentary democracy.

38. With this parliamentary minority right in place, it is also possible for one or more of the opposition parties to propose members to the AOB.

39. Its members are entirely independent and can neither be voted out, recalled or removed from office before the end of their six-year term of office. A re-election is possible.

40. Such independence is in line with the Paris Principles which provide for autonomy from government and independence guaranteed by statute or constitution. The commissions within the National Preventive Mechanism act also in full independence.

41. Recommendations issued by the AOB to the relevant authorities relating individual complaints, the submission of a comprehensive annual report on its activities to the Parliament and optional reports on individual observations have proved to be effective instruments for raising awareness, and advance the development of appropriate solutions.

Resources

42. In 2018, the budget available to the AOB amounted to EUR 11,601,000 with staff costs accounting for some EUR 6,635,000 and non-personnel operating costs accounting for EUR 3,927,000. For the fulfilment of their tasks pursuant to the OPCAT Implementing Act (FLG No 1/2012), a budget in the amount of EUR 1,450,000 (the same as in 2017) was allocated for payments to the commissions and the Human Rights Advisory Council (*Menschenrechtsbeirat*) (that is the NPM). Some EUR 1,264,000 of this amount were budgeted for remunerations for and travel expenses incurred by the commissions' members and about EUR 83,000 were allocated for the Advisory Council. Some EUR 103,000 were available for workshops organised for the commissions and AOB's officials working in the field of OPCAT as well as for expert opinions.

43. 78 permanent posts were placed at the disposal of the AOB, 14 of which are tasked with fulfilling the OPCAT mandate, as well as 56 commission members and 34 members and deputy members of the Advisory Council.

44. Since 2017, the AOB has been involved in the training and further education of prison guards at the Penal Service Academy (*Strafvollzugsakademie*). About 280 officers in four countries participated in 2017.

E. Reply to paragraph 5 of the list of issues

In the judiciary

45. The recommendations of the NPM are reviewed by the respective responsible specialist departments of the Directorate General for the Prison Service and Preventive Detention within the Ministry of Justice. It is of great importance to the DG to provide and safeguard the organisational framework conditions (staff, financial means, spatial capacities, etc.) required for the implementation of the recommendations considering its obligation to ensure a prison service which complies with the law and respects human rights.

In the police sector

46. Over a period of several years, the Ministry of the Interior and representatives of the Austrian Ombudsman Board cooperated in a working group creating standards for various aspects of the detention service.

47. One of the tasks of the department for fundamental and human rights within the Ministry of the Interior includes the coordination of matters of the National Preventative Mechanism (NPM) within the Ministry and keeping an up-to-date record of the recommendations of the NPM and their implementation by the responsible ministerial departments. Based on this concentration of tasks, the department for fundamental and human rights acts as the central point of contact for the NPM within the Ministry of the Interior.

48. Each implementation process is examined on a regular basis within the scope of the ongoing proceedings conducted by the NPM. Together with the NPM, the Ministry of the Interior developed human rights standards for detention in police detention centres and for suicide prevention during detention. These standards have been implemented to a large extent by an internal instruction issued in January 2018, its re-announcement in June 2019 and the necessary organisational measures. Moreover, the NPM's recommendations and the recommendations of international visiting and monitoring bodies are considered in the implementation of measures.

F. Reply to paragraph 6 (a) of the list of issues

49. Under Austrian law the suspect/accused person is allowed access to a defence counsel at any time throughout the proceedings. Section 58 (1) of the CCP entitles the accused to contact, authorise and discuss matters with a defence counsel at any time throughout the proceedings.

50. Any person to be questioned must be summoned in writing. The accused must be informed of his/her essential rights in relation to the proceeding in the summons, including the right to contact, authorise and discuss matters with a defence counsel. Prior to questioning, the accused person has to be informed of his/her right to consult a defence counsel prior to questioning. By exercising this right, the questioning must be postponed until the defence counsel has arrived.

51. If the accused person participates in an identity parade or a confrontation, his/her defence counsel is also entitled to participate. The same applies to the re-enactment of a crime.

52. Pursuant to Section 59 (1) CCP an accused, who is arrested or arraigned for immediate questioning and does not yet have a defence counsel, must be given the opportunity to inform, consult and authorize a defence counsel, unless he/she expressly declares to waive this right for the period of arrest by the criminal investigation authority.

53. If the accused person does not consult a defence counsel freely chosen by himself/herself (Section 58 (2) CCP), upon request and until a decision to remand the accused in custody has been made, he/she must be given the opportunity to contact a "defence counsel on standby" provided by the Austrian Bar Association who has given his/her consent to such defence.

54. The parties involved and their representatives must be summoned to the main trial. In doing so, the presiding judge has to determine the day of the main trial in a way that the

defendant and his or her defence counsel have a minimum period of eight days to prepare for the trial, unless they consent to reducing this period. If it is to be expected that the trial will be of longer duration, 14 days shall be granted for the preparation of the defence..

55. The defence counsel on standby service established by the Ministry of Justice together with the Austrian Bar Association within the meaning of Section 59 (4) CCP has proven highly successful as an adequate instrument for ensuring the guarantee of fundamental rights. Within the scope of the periodic coordination between the cooperation partners, the organisational processes are also subject to ongoing monitoring for the purpose of quality assurance.

G. Reply to paragraph 6 (b) of the list of issues

56. The accused has the right to have his/her defence counsel present during his/her questioning. By exercising this right, the questioning must be postponed until the defence counsel has arrived unless awaiting his/her arrival would cause an inappropriate extension of the detention. An example for such an inappropriate extension would be the fact that the deadline of 48 hours for the decision about the accused person's pre-trial detention would be missed and thereby the possibility of immediate exculpation and thus release would be impaired.

57. The defence counsel must not participate in the questioning but may pose questions to the accused and make statements upon completion of questioning or following thematically connected parts. However, the accused may not consult his/her defence counsel when answering individual questions.

58. The participation of the defence counsel in the questioning of the accused can be denied only if this appears to be absolutely necessary for particular reasons, i.e. in order to prevent a significant risk to the investigation or interference with evidence through immediate questioning or through other immediate investigations. In such cases, the reasons for the limitation must be served on the accused in writing by the criminal investigation authority immediately or within 24 hours. Additionally, an audio or video recording (Section 97 CCP) of the questioning shall be made, if feasible (Section 164 (2) CCP).

H. Reply to paragraph 6 (c) of the list of issues

59. The instruction of detainees about their rights is defined in the laws applicable to the arrest (in particular, e.g. Sections 50 and 171 CCP and Section 36a of the Administrative Penal Act (*Verwaltungsstrafgesetz*)). Police officers are also obliged to document these instructions in a verifiable manner. Moreover, information sheets covering the grounds for the arrest are available in the most commonly used languages, and their handing over is documented. In principle, the arrival of the legal counsel must be waited for, unless if, in the case of imminent danger, the purpose of the official act would otherwise be frustrated.

60. Any justified suspicion of a failure to comply with professional obligations in connection with the restriction of personal liberty must result in the launching of necessary investigations by the immediate superior. If a failure to comply with professional obligations is proven in the investigations, the immediate superior must file a disciplinary complaint with the competent administrative authority. Should the investigations under disciplinary law lead to the suspicion of an act punishable by the courts, the result of the court investigations must be waited for.

61. No statistics are kept on violations of professional obligations in cases where personal liberty is restricted.

I. Reply to paragraph 7 of the list of issues

62. Already in June 2014, the former Minister of Justice set up a working group comprising – in plenary and in extended expert groups – more than 40 experts from the different fields of the penal and preventive detention system (especially psychiatrists, psychologists, lawyers, representatives of the Ministry of Justice, judges, legal scholars, social scientists, social workers, other practitioners in the penal and preventive detention

system). The task of this working group consisted in evaluating the status of preventive detention pursuant to Section°21 of the Criminal Code, identifying the existing problem areas and the need for reforms in technical, organisational and legislative respects and concretising them.

63. Due to the final report of the working group "*Massnahmenvollzug*", the Ministry of Justice elaborated a first bill, which was subsequently revised by the Institute for Criminal Law and Criminology of the University of Vienna in cooperation with other practitioners in the preventive detention law and the *Massnahmenvollzug* system and updated according to the changed circumstances. As a result of the discussions, the bill proposed a fundamental reorganisation of the criminal preventive detention law. The bill was presented to the public in the course of a survey in summer 2017 and published on the Ministry's website. Furthermore, it was subjected to a scrutiny procedure, which could only be performed informally due to the new elections.

64. The Government programme for the years 2017–2022 highlighted "ensuring public security and the necessary medical treatment" as "primary purposes of the preventive detention" under the title "Reform of the preventive detention (*Massnahmenvollzug*) – Increasing the security of the general public". It stressed that interruptions of the *Massnahmenvollzug* only take place under electronic monitoring ("ankle cuff") and that a "release of detained offenders" should only be possible "in the event that the danger is no longer present (irrespective of the duration of the detention)".

65. Due to the respective work assignment of the Minister of Justice, the 2017 bill was revised. At the end of 2018, the new bill was finalised at the competent department level and was sent to about 20 stakeholders and/or experts for a preliminary scrutiny until 30/01/2019. The initial plan was to finalise the bill for the general legislative scrutiny by mid-2019.

66. Due to the premature termination of the legislative period, however, the reform bill did not enter the stage of scrutiny by the Parliament any more.[5]

67. Regardless of this, the following reforms of the *Massnahmenvollzug* system were put into practice:

Competence centre for the *Massnahmenvollzug* system

68. The competence centre established in the Directorate General of the Ministry of Justice acts as the supreme law enforcement authority for the *Massnahmenvollzug* system, where all of the operating tasks and decisions converge. In addition to performing general official tasks, the competence centre considers itself an interface, which communicates directly with the institutions of the *Massnahmenvollzug* system, the clearing house and other external cooperation partners.

Clearing house for preventive detention pursuant to Section 21 (2) Criminal Code

69. The clearing house is an institution directly linked to the treatment and support services and constitutes a unity with the responsible departments contentwise. Together with them, it is entrusted with the professional assessment of the detainees, which concerns forensically relevant issues with regard to personality, path to criminality and capability or willingness to undergo therapy.

Quality standards

70. On the basis of the recommendations of the working group "Maßnahmenvollzug" and the basic internal instruction, new nationwide quality standards were formulated, at the instruction of the Director General for the penal service, by the competence centre and clearing house *Maßnahmenvollzug* jointly with the specialised facility (*Sonderanstalt*) at Wien-Mittersteig and the departments in charge of detention measures (*Maßnahmen-Departments*).

71. A key aspect of the implementation of this task was to focus on the detainees with their individual criminogenic needs and their respective offence- and risk-related factors.

[5] Reply to a Parliamentary question concerning 3605/J (XXVI.GP).

Departments

72. The request for the abolishment of the segregated divisions in the regular prisons and the creation of specialised institutions was met insofar as the divisions for preventive detention in the prisons Garsten, Graz-Karlau and Stein have been run as individual units independent from the conditions of the penal service since January 2016.

73. The departments were provided with a proper governance and decision-making structure and specially assigned expert personnel and prison staff. The departments are headed by clinical psychologists, who are responsible for the preparation of individual detention and treatment plans and their implementation. The communication of the employees is based on clear scheduling and team structures. The new staffing ratio of the professional services is 1 (e.g. psychologist) for 30 detainees.

Clinical case management

74. The establishment of the form of care "clinical case management" is a direct measure to intensify and individualise the treatment. A key feature of the case management is the allocation of one key person to each client. He or she plans, coordinates, accompanies and monitors the use of necessary care services and assesses the effects on the individual situation of the client.

Uniform instrument for risk prognosis

75. The "Violence Risk Scale" (VRS) and the version for sex offenders (VRS:SO) were implemented as common terminology for risk communication for mandatory use within the *Maßnahmenvollzug*.

76. This application provides a suitable basis for a common risk communication between the treatment facilities and the court responsible for the examination of the further detention as well as between the attending professional personnel and the detainees.

Expansions

77. To cope with the strong increase in occupancy rates in the institutions for preventive detention, additional treatment places for the *Maßnahmenvollzug* will be established in all of the justice institutions involved. These measures require extensive structural changes and further staffing resources by the justice administration.

Autonomy of the Forensic Centre Asten

78. One of the key requests in the area of preventive detention is the establishment of the Forensic Centre Asten as an autonomous entity as the second central entity in addition to the prison Göllersdorf.

79. The purposes of the *Maßnahmenvollzug* are ensured lege artis in a sovereign institution. The autonomous structure provides public security and the required treatment.

80. As of 01/01/2019 the prison Asten became autonomous (see the explanations on "departments" above).

J. Reply to paragraph 8 of the list of issues

81. In spite of various measures taken in order to increase the number of female prison personnel, the percentage of woman was only 15.74% as at the reporting date, 01/01/2019. However, there are considerable differences between the various prisons. Especially prisons where long sentences are served have relatively few women among their personnel. The following measures taken to increase the percentage of female prison personnel are emphasised:

- In job postings relating to areas and functions where women are underrepresented, women are expressly invited to apply for the advertised positions. The postings also include information that, if equally qualified, women are to be preferred over the best suited male candidate when it comes to admission to the Federal Civil Service or being entrusted with a function;

- Pro-active public relations work including advertising campaigns at job fairs, in schools, in print media, etc. to provide adequate information about the job profile (tasks, services, objectives of the job of prison guard).

82. In order to increasingly diversify the ethnic composition, information was provided in job postings that, in particular, persons with a migrant background and adequate written and oral German language skills are invited to apply. When assessing the personal suitability of candidates for the job of prison guard, the psychologists take care to ensure that the candidates maintain a sensitive and appreciative attitude towards people of different religious and cultural background.

83. In the justice area: Statistical data on the number and percentage of female candidates for positions offered, and on the number of employees and candidates with a migrant background, are not available and are not collected either.

84. In the police area: Austria has approximately 29,800 police officers. The percentage of women is 17.24%. Some 565 officers work at police detention centres. There, the percentage of women is 21.36%. Statements concerning the ethnic background of police officers cannot be made as only the Austrian citizenship at the time of joining the police force is relevant. Whether citizenship was acquired by birth or granted later is irrelevant.

K. Reply to paragraph 9 of the list of issues

85. Since the migration crisis in 2015, the headcount at the Federal Office for Immigration and Asylum has been increased. In 2016, regional directorates (one for each region were introduced. As at 01/06/2019, 1,275 persons worked at the Federal Office. Due to the increase in staff, it was possible to reduce the backlog of ongoing asylum proceedings and the average duration of new application proceedings. Currently, the duration of new proceedings pending at first level is less than three months.

The financial resources are shown in the following table (in EUR million):

Year	*Personnel costs*	*Cost of material*
Expenses in 2016	42.108	37.154
Expenses in 2017	56.786	42.032
Expenses in 2018	63.092	39.552
Budgeted for 2019	68.592	48.668

L. Reply to paragraph 9 (a) of the list of issues

86. Asylum seekers are entitled to free advice and representation both at the beginning of the proceedings (during the admission procedure) and (since 01/10/2016) also during appeals before the Federal Administrative Court. Legal advice[6] is provided by the association "Verein Menschenrechte Österreich (VMÖ)" and the joint venture "ARGE Rechtsberatung" (made up of the NGOs Diakonie and Volkshilfe).

87. In the period 2015–2018, 22,498 legal counselling sessions were held within the first part of the asylum proceedings, namely the admission procedure.

88. In the second part of the first-level asylum proceedings, namely the admitted procedure, asylum seekers have no legal entitlement to legal advice; however, upon request, legal advice is available across Austria within the scope of projects promoted at the regional directorates. Such legal counselling sessions are held by VMÖ as well as by Caritas Graz Seckau.

89. In the period 01/07/2015 to 15/10/2018, a total number of 27,986 asylum seekers received legal assistance free of charge in the admitted procedure (first instance proceedings).

[6] Federal Act on the Establishment of a Company Serving as Federal Agency for Supervision and Support Services (BBU GmbH) BBU-G) (FLG I No 53/2019).

90. Given the split competencies, it is not possible to establish in detail how many legal counselling sessions were provided during the appeals proceedings before the Federal Administrative Court.

M. Reply to paragraph 9 (b) of the list of issues

91. Every application for international protection is evaluated individually. This includes applications filed by persons arriving from a safe country of origin or a safe third country.

92. Protection is deemed to be available in a safe third country if a third country national has access to proceedings granting him/her the legal status of refugee under the Convention Relating to the Status of Refugee in a country where he/she is not at risk pursuant to Article 2 or 3 of the ECHR, Protocol No 6 or Protocol No 13, or is secured by way of any other third country (asylum proceedings), is entitled to stay in that country during such proceedings and is protected against deportation to the country of origin if he/she is at risk there.

93. Countries where neither torture nor inhuman or degrading treatment or punishment nor danger resulting from arbitrary violence in the context of an international or domestic armed conflict need to be feared and where the principle of non-refoulement enshrined in the Refugee Convention is demonstrably warranted qualify as safe countries of origin.

94. The presence of these prerequisites will be assessed on a case-by-case basis and can be rebutted in individual cases. In addition, the remedy of lodging an appeal against the decision with the Federal Administrative Court is available to the applicants.

N. Reply to paragraph 9 (c) of the list of issues

95. Potential vulnerability is taken into account during the entire course of the proceedings. For instance, the internal instructions issued by the Federal Office for Immigration and Asylum provide special guidelines for dealing with and interviewing vulnerable persons. Potential vulnerability is also considered when looking for suitable accommodation and care facilities.

96. If suspicion that the person may be a victim of human trafficking arises in the course of the proceedings, the competent authorities (police, public prosecution office) and a specific NGO (Intervention Agency for Victims of Trafficking of Women, hereinafter LEFÖ-IBF) will be informed.

97. With respect to victims of violence (victims of “severe forms of psychological, physical or sexual violence”), Section 30 of the 2005 Asylum Act (*Asylgesetz 2005*) provides for easier admission to the proceedings and requires that due consideration shall be given to the person’s specific needs.

O. Reply to paragraph 9 (d) of the list of issues

98. Asylum seekers receive basic welfare support (*Grundversorgung*) during ongoing procedures in Austria. In addition to accommodation and food, such basic welfare support also includes medical care.

99. As to the confidentiality of medical examinations within the scope of basic welfare support: In terms of data protection law, the specialist physician in charge is the controller collecting and processing medical data within the meaning of the 1998 Medical Practitioners Act (Ärztegesetz 1998). Accordingly, he/she is responsible for data protection and for the relevant documentation.

100. Only doctors and other healthcare professionals have access to the electronic healthcare module in the federal support institutions. Therefore, only these groups of persons can record the diagnoses.

101. The Ministry of the Interior only makes available the means required to perform the examinations (x-ray equipment, computer, etc.).

102. In cases where an infectious or contagious disease is suspected, the local hospital and/or district authority (*Bezirkshauptmannschaft*) is contacted immediately.

103. Data relating to the initial medical examination are kept at the doctor's station and can be inspected only by healthcare professionals.

P. Reply to paragraph 9 (e) of the list of issues

104. See answer to question 16 (c).

Q. Reply to paragraph 10 of the list of issues

105. It should be noted that the European Convention on Human Rights (ECHR) has the status of constitutional law in Austria and the rights guaranteed by the Convention apply in all proceedings. The 2016 Aliens Legislation Amending Act[7] introduced the possibility to determine by means of an ordinance (*Verordnung*) that, for the preservation of public order and the protection of domestic security, special provisions shall be applied during the operation of border controls and registration points shall be established.

106. To date, this emergency clause has never been applied.

107. The procedure relating to the application of the emergency clause is as follows: Applications for international protection by aliens who are not entitled to enter and reside in the federal territory shall be filed in person, at the time of the border crossing, with an agent of the public security service at the internal border (filing applications for asylum at the border).

108. Applications for international protection by aliens who have unlawfully entered the country by evading border controls and who are not entitled to reside in the federal territory shall be filed in person with an agent of the public security service at a registration point (filing applications for asylum within the country).

109. The admissibility of rejecting an alien filing an application for asylum at the border (during border control) or removing an alien (staying in the federal territory illegally), who files an application for asylum within the country, shall be determined prior to the interrogation. If applicable, the rejection at the border or the removal measure shall be executed.

110. Before any rejection at the border or removal may be implemented, a compulsory detailed assessment pursuant to Articles 2, 3 and 8 of the ECHR is required.

111. If it results from this assessment that a rejection at the border or a removal is not admissible due to a potential violation of Articles 2, 3 or 8 of the ECHR, the regular asylum proceedings will resume.

R. Reply to paragraph 11 of the list of issues

112. Unaccompanied minors are housed in a separate building in the Reception Centre East in Traiskirchen and the Special Care Centre South in Reichenau/Rax. Special accommodation is required due to the increased vulnerability and also in order to provide the best possible care while ensuring the children's welfare.

113. The minors are subject to a 24h care. A personal counsel is assigned to each unaccompanied minor who acts as the point of contact for any kind of issue. Only suitable and competent personnel with completed education in the pedagogy and social care sector with a minimum of three years of practical experience in the social care sector is employed.

114. Such care includes in particular an extended structuring of the daily routine, psychological support, imparting social skills, and additional measures (attending school, controlling leisure-time activities within the scope of supervisory and educational obligations, preventing conflicts etc.).

[7] Federal Act amending the 2005 Asylum Act, the 2005 Aliens Police Act and the Code of Procedure for the Federal Office for Immigration and Asylum FLG I No 24/2016.

115. The focus is on German classes, integration and education programmes, leisure-time activities and other topics (such as raising awareness of drugs and criminality).

116. The leisure-time activities offered are appropriate for children. Among other things, instructed game-playing as well as handicraft or group activities are provided for. Playgrounds or playrooms as well as facilities similar to a kindergarten have been prepared for persons under the age of 14.

117. Asylum seekers who are of compulsory school age may attend so-called "bridging classes" organised within the federal reception centres or regular school classes. School supplies and the organisation of transport are taken care of in coordination with the respective schools.

118. One of the primary goals of the provided care is to prepare young people for leading an independent life (i.e. managing a household, handling money, structuring the daily life).

119. The issue of accommodation of refugee minors is also dealt with by a working group of the Human Rights Advisory Council.

S. Reply to paragraph 12 of the list of issues

120. There are two initial reception centres in Austria: The first one, having a total capacity of 800 spots, is located in Traiskirchen (Eastern Austria); the second one, having a total capacity of 185 spots, is located in St. Georgen im Attergau (Western Austria). The admission conditions in Traiskirchen were improved by the following measures:

- In the course of the admission process in the initial reception centre, applicants must go through three "phases" which are marked with colours. During the "red phase" (initial admission) personal data are collected and immediate needs such as food, clothing, acute medical care and transit accommodation are met. During the "yellow" phase, an initial medical examination (including an X-ray of the lungs) and an admission interview are carried out in the respective mother tongue. The third, "green" phase comprises a thorough instruction as to the daily routine in the care institution and the special care as well as moving into an accommodation facility in the initial reception centre. This three-step admission process has been subject to repeated evaluation in the past years, and has proved very useful;
- A colour coding system facilitates finding the way to important locations within the care institution by applying different-coloured arrows on the floor for orientation. Especially during the first days, this helps applicants to find their bearings within the facility;
- Minor improvements to the organisational processes (e.g. video screen instead of notice boards) are being implemented on an ongoing basis.

T. Reply to paragraph 13 of the list of issues

Status each as at 31/12 of the current year and/or 31/05/2019	*Number of applications for asylum*	*Number of cases in which asylum was granted with final legal effect*	*Number of subsidiary protections granted with final legal effect*	*Number of successful applications*
2015	88 340	14 413	2 478	16 891
2016	42 285	22 307	3 699	26 006
2017	24 735	21 767	7 081	28 848
2018	13 746	14 696	4 191	18 887
Jan–May 2019	4 819	4 293	963	5 256

121. No statistics are kept on the reasons for the granting of international protection as, for the asylum proceedings as such, it is irrelevant based on which of the five reasons stated in the Convention relating to the Status of Refugees (race, religion, nationality, membership of a particular social group, or political opinion) a person is granted asylum.

122. Where there is a real risk of torture in the case of returning to the home country, the principle of non-refoulement hinders repatriation. It is applied without exception.

123. With regard to repatriated persons view answer provided on question 18.

124. The Austrian legislation provides for the following options to lodge a complaint:

Complaint with the Federal Administrative Court

125. Against decisions of the Federal Office for Immigration and Asylum usually a complaint with the Federal Administrative Court can be lodged (in general, within four or two weeks).

126. In principle, a complaint has suspensive effect. This means that the applicant may remain in Austria until the Federal Administrative Court has passed a decision. In certain cases, the suspensive effect may be withdrawn by the Federal Office for Immigration and Asylum (e.g. arrival from a safe country of origin, danger to public safety and security, use of false identity) or may be granted by the Federal Administrative Court, however, only after the prior filing of an application.

Appeal before the Supreme Administrative Court

127. Against a decision of the Federal Administrative Court, an ordinary or an extraordinary appeal may be filed with the Supreme Administrative Court within six weeks. The prerequisite is the allegation that the proceedings raise a legal question of significant importance.

128. The appeal may be granted suspensive effect.

Complaint with the Constitutional Court

129. Against decisions of the Federal Administrative Court, a complaint with the Constitutional Court may be filed, too. The prerequisite for such complaint is the allegation that the decision violates a constitutional right (e.g. violation of Article 2, 3 or 8 ECHR as well as violation of the prohibition of arbitrariness or serious procedural deficiencies) and/or that the applicant was violated in his/her right by an unconstitutional law or regulation being applied.

130. The period available for filing the complaint is six weeks. The complaint may be granted suspensive effect.

U. Reply to paragraph 14 of the list of issues

131. Austria applies diplomatic assurances mainly in cases, where this is provided for by international or European law, for instance to exclude that the death penalty is carried out or to set out certain rules which must be respected by the receiving country. A diplomatic assurance may only be relied upon if it is suitable to eliminate the danger for the person affected. It must be considered binding and reliable by the court. A diplomatic assurance must

- Be sought on an individual basis;
- Be binding on regional and local authorities if issued by the central government of a receiving country;
- Take into account the length and strength of bilateral relations between the sending and the receiving country, and
- Compliance with such assurances must be objectively verifiable by diplomatic or other monitoring mechanisms.

132. With regard to extradition, the Ministry of Justice agreed to the extradition of two persons in the reporting period since the end of 2015 subject to additionally obtaining diplomatic assurances that they will be protected against the risk of ill-treatment, and did actually hand these two persons over to the requesting country. In both cases, in addition to the two generally responsible instances, the Supreme Court, too, examined and confirmed the admissibility of the extradition in terms of human rights guarantees. In the above cases -

although no concrete risk of a violation of Article 3 ECHR could be determined - the courts nevertheless obtained diplomatic guarantees providing, in particular, for the right to unsupervised on-site visits to be carried out by the Austrian diplomatic representation at any time.

133. Austria does not use the instrument of diplomatic assurances in cases of deportation and repatriation. In such cases, the representation of the respective country of destination is contacted in order to obtain a substitute travel document for persons not having a valid travel document but being obligated to leave the country. The procedure following such an application may be concluded either by granting or denying such an application (for the issuance of a substitute travel document) and not with a diplomatic assurance being issued.

V. Reply to paragraph 15 of the list of issues

134. In general, Section 64 of the Criminal Code stipulates the application of the Austrian Criminal Code – regardless of the laws of the place where the offence occurred – inter alia for the crime of torture, if

- The perpetrator or the victim is an Austrian national;
- The offence has infringed on other Austrian interests, or
- The perpetrator was a foreign national at the time of committing the offence and either has his/her place of habitual residence in Austria or is present in Austria and cannot be extradited.

135. In the reporting period since the end of 2015, no case of extradition of an individual suspected of having committed the crime of torture has been rejected by the Federal Minister of Justice.

W. Reply to paragraph 16 of the list of issues

136. In particular, the training of candidate judges includes two mandatory curricula offered in periodic intervals which cover fundamental rights in the judicial history and within the present context.

137. One compulsory curriculum is dedicated since 2017 to the judicial and contemporary history. Its key objective is to ensure that fundamental and human rights education is offered at an early stage in the training and to teach basic knowledge of the judicial history of the 19th and 20th century. In particular, it serves for dealing in detail with anti-Semitism, racism and National Socialism and for raising awareness of these topics and the atrocities they have led to, including torture.

138. The curriculum on fundamental rights has been a key and mandatory part of the training of candidate judges since 2008. It is organised by the regional courts of appeal in collaboration with the Ludwig Boltzmann Institute of Human Rights Vienna, the European Training and Research Center for Human Rights and Democracy Graz (ETC) and the Austrian Human Rights Institute Salzburg (ÖIM).

139. Fundamental and human rights have also been part of the judicial office examination since 2008. This ensures that all judges and all public prosecutors will obtain a thorough understanding of the fundamental rights, including the prohibition of torture pursuant to the European Convention on Human Rights and the UN Convention against Torture.

140. In addition, further education courses on the topics of fundamental and human rights are available on a regular basis, with each course focusing on a different area. Such further education courses allow for new perspectives to be examined, and they raise awareness of fundamental and human rights. The target audience are all judges, as well as all public prosecutors; their participation in these courses falls under the performance of their duties.

141. In the prison service, human and fundamental rights and freedoms (in particular, the prohibition of torture and ill-treatment), the European Prison Rules and the Code of Conduct issued by the Council of Europe applying to employees of the penal service system constitute key elements of the basic training of all prison personnel.

142. The subject "criminal law" specifically addresses all offences relating to ill-treatment, neglect and torture of inmates. In the subject dealing with the "use of appropriate physical force in operations", particular attention is given to the principle of proportionality in the use of the individual techniques (gripping technique, striking technique, etc.); furthermore, it is clearly pointed out that the use of deviating techniques or of excessive physical force have consequences under criminal and/or disciplinary law. It is also mandatory for prison guards to complete a two-day training session on human rights at the beginning of their training as well as later in the course of their professional advancement. Since 2010, the Penal Service Academy has been covering the universal subject of human rights and, within its scope, also the United Nations Convention against Torture. In preparing the training sessions on human rights in collaboration with the Ministry of the Interior, selected teachers were sensitised to the subject and prepared with regard to the didactic approach; they were tasked with educating prison guards also as to the recommendations of the European Committee for the Prevention of Torture (CPT). Since 2012, the participation in human rights trainings has been mandatory for the entire prison personnel; thus, the trainings constitute an integral part of the education offered by the Penal Service Academy. The Manual on the Effective Investigation and Documentation of Torture (Istanbul Protocol) is discussed in the human rights trainings; relevant in-depth training is provided only to medical personnel.

143. No additional special training is offered to prison doctors; however, they are obligated to document any physical marks or injuries determined in inmates, to thoroughly question the inmates about their cause and, subsequently, to notify the prison management. If inmates raise allegations of ill-treatment or if circumstances indicate ill-treatment of inmates, the prison management must immediately inform the public prosecution office competent to commence a legal investigation of the matter.

144. Within the scope of the police training, officers receive education and training in two stages as follows:

- Basic training:
    - Prohibition of torture (eight lessons on the meaning of torture, controlling and enforcement mechanisms, case studies);
    - Professional ethics and social science (16 lessons covering the values and the role of the police force in society; professional ethics and the European Code of Police Ethics);
    - Applied psychology (five lessons on the abuse of power, disobedience and dehumanisation).
- Continuing education for management and special purpose positions:
    - Human rights: in-depth case analyses and covering case law of the ECtHR;
    - Professional ethics: the use of coercive measures by the police and the responsibility of superiors, in many cases by way of practical examples;
    - "Criminal violations of official duties and crimes of corruption" are covered extensively;
    - The programme is greatly concerned with shaping the attitude of the police officers. The seminar series "A World of Difference", which was developed together with the Anti-Defamation League (ADL), enables officers to reflect on their attitude and its effect on their actions;
    - A separate programme (16 lessons) focuses on police officers who work in detention centres; this programme must be completed repeatedly in intervals of two to three years. Its content focuses on changes in legislation, relevant socio-political developments, the detection of victims of smuggling or human trafficking, special safety aspects of the detention service, etc;
    - On all levels of training, the international conventions and their verification mechanisms are covered in great detail. Extensive training with regard to the conventions against torture (CAT, OPCAT), their national implementation as well as Article 3 ECHR and the respective jurisdiction is carried out;

- A special mandatory training programme was developed for police doctors. The result is a well-founded, high-quality and nation-wide uniform training standard for the service of police doctors. The training programme comprises a total of 97 lessons. 129 doctors have already been trained. The curriculum developed for the training of police doctors not only covers the subject of human rights but also the contents of the Istanbul Protocol;
- In order to ensure that medical care and expert opinions are based on an up-to-date practice-oriented standard of knowledge, further education courses for medical personnel having direct contact with inmates and asylum seekers are organised in addition to the annually offered training programme.

X. Reply to paragraph 17 of the list of issues

Justice

145. The training and further education opportunities described in answering question 16 are subject to constant evaluation by the Penal Service Academy and the responsible department of the Ministry. The human rights trainings attribute great importance to the protection of human dignity and to the prohibition of any form of torture; their aim is not only to provide knowledge on human rights but, in addition, to help guide the actions of the participants.

146. Training on human rights is particularly important for prison guards, since they are directly responsible for ensuring the protection of the human rights of those who are within their custody. The participating officers are provided with the understanding that this type of training benefits them in their day-to-day work. All measures taken to improve the training and further education aim at strengthening the professional, social and personal skills of employees of the penal service system and furthering their ability to adapt to new developments and tasks.

Police

147. The entire basic police training is subject to evaluation. Each year, a report is drafted on the number of officers trained in the seminars which are organised in collaboration with the Anti-Defamation League.

148. The evaluation of further education courses is carried out by way of standardised questionnaires to be filled in by participants and speakers; in this way, quantitative and qualitative feedback can be gained. An individual assessment of each seminar is carried out by the Anti-Defamation League. The results are then summarised in detailed annual and semi-annual reports.

Y. Reply to paragraph 18 of the list of issues

149. The following list contains the number of deportations and detentions pending deportation in the period since 2016 including the most important countries of origin. A classification according to the gender and age of the deported persons is not possible. Figures on return have not been structured according to whether an application for asylum was previously submitted or not.

150. Deportations:

- 2016: 2,289 deportations. Numerically on top of the list were Romania with 362, followed by Hungary with 357 and Slovakia with 341 deportations;
- 2017: 3,162 deportations. Numerically on top of the list were Slovakia with 418, followed by Romania with 340 and Hungary with 322 deportations;
- 2018: 4,698 deportations. Numerically on top of the list were Slovakia with 579, followed by Serbia with 538 and Hungary with 454 deportations;
- January to May 2019: 2,299 deportations. Numerically on top of the list were Slovakia with 375, followed by Serbia with 282 and Hungary with 225 deportations.

151. Detention pending deportation:

- In 2016 detention pending deportation was imposed 2,434 times and 178 more lenient measures were[8] adopted;
- In 2017 detention pending deportation was imposed 4,627 times and 348 more lenient measures were adopted;
- In 2018 detention pending deportation was imposed 5,010 times and 303 more lenient measures were adopted;
- From January to May 2019 detention pending deportation was imposed 2,127 times and 124 more lenient measures were adopted.

152. Over a period of several years and jointly with the Austrian Ombudsman Board, different measures were prepared to improve the standards of the detention service. Subsequently, these standards have been regulated via an internal instruction[9]. (See also the answer to question 5.)

153. The report of the Committee for the Prevention of Torture of the Council of Europe (CPT) of 06/11/2015 about the visit in Austria from 22/09/2014 to 01/10/2014 refers in detail to the police detention centre (PAZ) Hernalser Gürtel and the Detention Centre Vordernberg:

> "In neither establishment did the delegation receive any allegations of ill-treatment by staff. On the contrary, all foreign nationals interviewed by the delegation spoke favourably about the manner in which they were treated by both custodial police officers and private security staff. The CPT's delegation was very much impressed by the high standard of detention conditions at the Vordernberg Detention Centre for Foreigners, both in terms of material conditions and activities offered to foreign nationals. In particular, foreign nationals could move freely within their living unit throughout the day. Further, the Centre employed several caretakers (Betreuer) who organised a comprehensive activity programme (including sports activities, language classes, computer training and handicrafts). The CPT welcomes the fact that the number of immigration detainees in the PAZ Hernalser Gürtel had drastically decreased since the 2009 visit and that foreign nationals were usually being held in the PAZ for short or even very short periods only."

154. The CPT issued a number of recommendations with regard to the detention in the PAZ (concerning the open prison, visits, the separation of the function of the treating doctor from the one of the public health doctor (*Amtsarzt*), nursing services by trained personnel, systematic examination for communicable diseases upon internment, respecting the medical confidentiality...), to which Austria provided detailed reactions in its response of 15/10/2015.

155. In the PAZ Hernalser Gürtel the detention it was possible to further improve the conditions:

- The open prison on the first floor was expanded. The capacity of the open prison was doubled by doing so;
- Up to now, only one TV set was available for the entire floor in the open prison. Now there is one TV set available for each shared cell in the open prison. This led to a strong reduction of the conflict potential;
- Pictograms informing the detainees about the daily routine and the schedule for the week were implemented in the cells;
- All of the sanitary and shower facilities were refurbished.

[8] Instead of imposing pre-deportation detention, the Federal Office for Immigration and Asylum has to order more lenient measures, provided that there is reason to assume that the purpose of pre-deportation detention can be achieved by applying a more lenient measure. The following are eligible in particular:

- To take residence in certain accommodations determined by the Federal Office for Immigration and Asylum;
- To report in periodic intervals at a contact point of a Regional Police Directorate or
- To leave an adequate financial deposit with the Federal Office for Immigration and Asylum.

[9] OA 1320/0007-II/1/b/2018 of 18/01/2018.

156. Pursuant to Section 76 of the Aliens Police Act (FPG (FLG I No 100/2005)) aliens can be arrested and detained (detention pending deportation) if the purpose of the pre-deportation detention cannot be achieved by applying a more lenient (Section 77 of the FPG) measure.

157. Due to the Federal Constitutional Law on the Protection of Personal Liberty, detention pending deportation for asylum seekers is only possible, within very strict limits, at a time close to the imminent departure abroad:

- In cases subject to the Dublin Regulation;
- If the application for asylum is filed during detention pending deportation with the intention to delay deportation;
- If the decision is already enforceable and feasible;
- If consecutive asylum applications are filed (in case of withdrawal of de facto protection from feasible deportation or in case of denial of de facto protection from deportation).

158. Pursuant to Section 80 of the Aliens Police Act, the duration of detention pending deportation shall be as short as possible. Also, underage minors must not be subjected to detention pending deportation.

Z. Reply to paragraph 19 of the list of issues

159. The occupancy rate in the Austrian prisons has been high for years. Various efforts of the Ministry of Justice could only provide short-term relief. The reason for this is the necessary remediation work in the prisons, which poses restrictions to the occupancy rate for a medium-term period, in addition to the steadily increasing numbers of convictions.

160. Among others, the following measures against overcrowding were taken:

- Optimisation of the so-called "classifications" pursuant to Section 134 of the Enforcement of Sentences Act[10]: This concerns the determination of a suitable prison facility by the Ministry of Justice ex officio in case the duration of the penalty exceeds 18 months, in consideration of the character of the prisoner, his/her personal circumstances, his/her past life, the nature of the offence committed and the best possible use of the prisons. Also the changes of the correctional locations are optimised accordingly;
- Regular monitoring on the part of the "Directorate General for the Prison Service and Preventive Detention" to control the evolution of occupancy;
- In spring 2019, the prison managements were asked to create appropriate conditions for an occupancy rate of up to 105% in the individual prison autonomously by taking appropriate measures which might be, for example, the increase of the relaxed regime detention ("*gelockerter Vollzug*") or offering occupancy of the free places in the "day release units" ("*Freigängerhäuser*");
- The detention of prisoners by way of an ankle cuff in selected cases of the relaxed regime detention and the electronically monitored home detention can be seen as good alternatives for prison detention.

161. Persons arrested by the police on a suspicion of having committed a criminal offence may only be detained for up to 48 hours. The responsible public prosecution office has to be informed about such an arrest. Subsequently, it has to issue a relevant order, i.e. it must either cancel the arrest and lay charges without arresting the offender or impose pre-trial detention. In this case the arrested persons are to be transferred to a prison facility immediately. For the duration of such a CCP custody, the arrested persons shall be detained in solitary confinement to prevent a possible risk of collusion or suppression of evidence in the investigations. Hence, there is no possibility of overcrowding in this context.

[10] Federal Act of 26 March 1969 on the Enforcement of Sentences Involving Imprisonment and Preventive Detention, FLG. No 144/1969.

162. Overcrowding in the police detention centres or in the Detention Centre Vordernberg is not possible, since an admission to enforce administrative penalties or for the purpose of securing deportation is permitted only, if a free place in the centre is available.

163. The country-wide occupancy rate of Austrian prisons from

	2016	*2017*	*2018*	*2019 (till May)*
Total	**92,13%**	**93.52%**	**93.79%**	**97.52%**
court prisons (main institutions):	92,05%	95.64%	96.49%	100.87%
specialised prisons (main institutions):	73.59%	79.15%	81.03%	82.59%
correctional prisons (main institutions):	96.14%[11]	93.54%	92.71%	96.21%
branch offices of correctional prisons:	68.31%	72.28%	65.92%	66.48%

164. The statistical data regarding pre-trial detention and correctional detention in the period from January 2016 to June 2019 is provided in the following attachment: Attachment – Question 19 – Occupancy including two data sheets.

AA. Reply to paragraph 20 of the list of issues

165. One of most effective measures for improving detention conditions is to ensure that a sufficient number of staff including, but not limited to, prison guards as the first point of contact for inmates are available. Therefore, in the context of the negotiations relating to the next budget, the department head of the Ministry will reiterate efforts to further improve the budgetary and human resources situation in the institutions concerned with the enforcement of prison sentences and preventive detention measures.

166. In Austria, the enforcement of sentences and preventive detention measures is to be considered as a modern care system focused on supervision and support which is based on international requirements and pursues as primary objective the reintegration of the inmates into society. The conditions of detention are steadily improved by setting minimum standards, including specific ones for women and young people. To foster out-of-cell activities, the prisons are requested to annually submit concepts for leisure-time activities as well as for training and further education to the Federal Ministry. Approved concepts are then implemented by each prison.

Work opportunities

167. Every prisoner, or detainee pursuant to Sections 22, 23 or 21 (2) of the Criminal Code, is obligated to perform work assigned to him/her unless this is associated with a risk of serious damage to health or even with danger to life. There is no legal entitlement to work, though. Prisoners who have not learned a trade or profession or cannot be employed in a trade or profession they have learnt shall, if possible, be educated for a professional occupation corresponding to their knowledge, skills and aptitudes.

168. In the case of juveniles, the obligation to work is restricted to the effect that juveniles may only be assigned work that is useful from an educational perspective. However, with juvenile inmates the focus is not on work but on providing them with education and/or training pursuant to the Compulsory Education and Training Act (*Ausbildungspflichtgesetz*). Depending on their age, they shall either be given compulsory schooling or the opportunity to receive education and training. As regards preparing inmates for their release from prison

[11] In May 2016 the renovation of the sector called Zöglingstrakt in the prison Wien-Simmering started and at the same time the number of available places was reduced by 78, which results in the high occupancy rate of this prison.

or detention, the Ministry of Justice started years ago to cooperate with the Youth Coaching (*Jugendcoaching*) service. In addition, minimum standards for the juvenile penal system were worked out to ensure that inmates of Austrian prisons are taken care of appropriately to their age.

Relaxations of the prison regime

169. In addition, it is worth noting the various kinds of relaxation of the enforcement regime granted by the prisons within their own sphere of influence, such as short-term permission to go out (*Ausgang*), interruption of the prison sentence etc. Relaxations should be granted increasingly as the date of release is drawing nearer.

AB. Reply to paragraph 21 of the list of issues

Solitary confinement in prisons

170. Since the last periodic review, there have been no changes to the provisions of the Enforcement of Sentences Act (StVG) concerning solitary confinement.

171. In general, Section 51 of the Juvenile Court Act (*Jugendgerichtsgesetz 1988*, JGG) provides that, unless stipulated otherwise in the JGG, the enforcement of prison sentences imposed on juvenile delinquents is governed by the general provisions for the enforcement of sentences. Every juvenile convict kept in solitary confinement must be given the opportunity for a conversation at least twice a day.

AC. Reply to paragraph 21 (a) of the list of issues

172. As a rule, Section 124 (1) StVG provides for inmates to be accommodated in residential groups or otherwise without locking up cells or common rooms during the day, provided that this is feasible according to the type of penal service and other circumstances. There is a legal entitlement to communal confinement during the day.

173. Communal confinement during the day shall be excluded if this is necessary for health reasons or otherwise to achieve the purposes of enforcement specified under Section 20 StVG for the inmate himself/herself or for fellow inmates.

174. In contrast, and except in case of special security measures or disciplinary sanctions, solitary confinement during the night may be refrained from only for spatial or organisational reasons or if an inmate wishes to share a cell with others. In addition, an inmate shall not be alone in a cell during the night if there is reason to assume that this would cause danger to the inmate's physical or mental state.

175. Section 125 (1) StVG provides that a suitable employee of the penal service system must at least once a day visit those convicts placed in solitary confinement to the extent they do not get visitors.

176. Special security measures may be ordered if there is a risk of absconding, danger of violence being used against persons or objects or danger of an inmate committing suicide or injuring himself/herself or if a prisoner otherwise poses a material threat to safety or good order. Placing a prisoner in solitary confinement requires that he/she will be held in community either during his/her daily work or during the daily leisure time of at least two hours. Special security measures shall be maintained if and for as long as they are required due to the extent and continued existence of the danger that led to the relevant order. According to case law of the Supreme Administrative Court, these security measures must be absolutely necessary as regards the danger leading to the relevant order being issued; this means that the existing danger cannot be averted by any other reasonable means.

177. Solitary confinement may be maintained for more than four weeks against the prisoner's will only if so ordered by the court having local jurisdiction over the prison (*Vollzugsgericht*).

178. Special security measures may be ordered by the supervising prison official. He/She has to promptly report any such order to the director of the prison facility who shall decide whether the special security measure shall be maintained. The remedy of a complaint is

available against orders imposing special security measures. If the director of the prison facility maintains solitary confinement as a special security measure, the prisoner may appeal to the *Vollzugsgericht*.

179. New regulations for appeals procedures in the penal system were introduced already by the Administrative Jurisdiction Amendment Act (*Verwaltungsgerichtsbarkeits-Anpassungsgesetz*) (FLG I No 190/2013) which entered into force on 01/01/2014 (incorporation of the enforcement panels (*Vollzugskammern*) into the system of ordinary court jurisdiction).

180. Detention in a specially secured cell from which all objects enabling a prisoner to cause damage are removed may be maintained for more than one week only if so ordered by the *Vollzugsgericht*.

181. The disciplinary sanction of "house arrest" (*Hausarrest*) may be imposed only if aggravating circumstances are predominant. The duration of house arrest shall not exceed four weeks. House arrest is not permitted for as long as imposing it would constitute a health hazard as stated by the prison doctor. While under house arrest, the prisoner is to be detained in a special single room. He/She may neither receive letters, nor have visitors, make telephone calls or watch television. In minor cases, the order by which the sanction is imposed may permit prisoners detained in solitary confinement to serve their house arrest in their usual cell.

AD. Reply to paragraph 21 (b) of the list of issues

182. On this, see Attachment – Question 21 – statistical data – Solitary Confinement (2 data sheets) for the period ranging from January 2016 to June 2019.

AE. Reply to paragraph 21 (c) of the list of issues

183. The duration of the disciplinary sanction of "house arrest" shall not exceed four weeks.

184. Detention in a specially secured cell from which all objects enabling a prisoner to cause damage are removed may be maintained for more than one week only if so ordered by the *Vollzugsgericht*.

185. A prisoner may be detained in solitary confinement against his/her will for an uninterrupted period of more than four weeks only if this is ordered by the *Vollzugsgericht* which shall decide on the detention upon an application from the director of the prison facility. If the *Vollzugsgericht* orders that solitary confinement shall be maintained, it shall at the same time determine for how long.

186. A prisoner may be detained in solitary confinement for an uninterrupted period of more than six months only upon his/her request and only with the consent of the prison doctor.

AF. Reply to paragraph 21 (d) of the list of issues

187. In principle, the first-level law enforcement authority shall decide on the imposition of disciplinary sanctions. However, if the infraction affects the director of the prison facility personally, the decision has to be taken by the Ministry of Justice. In the proceedings relating to disciplinary sanctions for infractions, the prisoner has the right to be heard and to apply for further investigations. If a prisoner's command of the German language is not sufficient, translation aid shall be provided in the proceedings relating to disciplinary sanctions for infractions.

188. The prisoner may lodge a complaint with the *Vollzugsgericht* against the disciplinary sanction order issued by the director of the prison facility as the first-level law enforcement authority. Disciplinary sanction orders issued by the Ministry of Justice (in case of an infraction affecting the director of the prison facility personally) may be appealed to the Vienna Court of Appeal.

Solitary confinement in police custody

189. The Code of Criminal Procedure (CCP) provides that, for security reasons (risk of collusion and of suppression of evidence), detainees in police custody shall on principle be placed in solitary confinement, with the detention lasting no longer than 48 hours before they are transferred to a prison facility.

190. Furthermore, solitary confinement is permitted only in cases of long-term detention within the police detention service as a disciplinary measure (up to 72 hours) or as a security measure in case of the detainee endangering himself/herself and/or others for as long as such danger persists. Regular assessments of these measures are mandatory and have to be documented accordingly. In case of self-endangerment, recurring examinations by a public health doctor (*Amtsarzt*) are also required.

191. No statistics regarding the number of detained persons placed in solitary confinement under policy custody and the duration of such placement are kept. Detained persons regularly volunteer for solitary confinement. If there is sufficient room in the detention facilities, such requests of detained persons are always fulfilled. This is also documented as solitary confinement, and the corresponding records cannot be analysed without disproportionate effort, since the note as to voluntariness can be found only in the individual documents.

AG. Reply to paragraph 22 of the list of issues

Deaths in judicial custody

192. For statistical data on deaths in places of detention, including the cause of death (January 2016–January 2019) – please see Attachment – Question 22 – Statistical Data – Cases of Death.

Deaths in police custody

193. Since 2009, a total of four cases of death with unknown cause were registered in the context of police custody. All occurred in one of the two police detention centres in Vienna.

194. In all cases, an autopsy was ordered by the Public Prosecution Office for Vienna after immediate investigations and reporting by the regional office of criminal investigation had taken place. In three cases, the Regional Police Directorate for Vienna was subsequently informed by the Public Prosecution Office for Vienna that investigations had been discontinued. The results of the autopsies have not been transmitted. In one of these four cases, the Public Prosecution Office pressed charges against two public health doctors of the Regional Police Directorate Vienna who were then found guilty of negligent killing and sentenced to a fine.

195. As a consequence, not only mandatory emergency exercises, which have to be performed on a regular basis in the police detention centres, were introduced. Also a supplementary documentation form "Thorax – upper abdominal pain" ("*Thorax-Oberbauchschmerz*"), which needs to be followed mandatorily in case of a defined symptom complex, was developed.

196. Moreover, five suicides of persons held in police custody occurred during the same period. As the investigations showed no third-party negligence in any of these cases, they were discontinued by the responsible public prosecution offices.

Deaths in military prisons:

197. There have been no deaths in military prisons.

Deaths in psychiatric hospitals:

198. No country-wide data collection is carried out with regard to deaths in psychiatric hospitals.

Investigations of deaths

199. In case of a death occurring at a prison or police custody detention facility such institution is obligated to immediately inform the respective responsible public prosecution

office. The public prosecution office, on its part, has to order an autopsy to verify the exact cause and circumstances of death. Depending on the results of the autopsy the public prosecution office decides whether the case is further investigated or discontinued. As in most cases it is not necessary to inform the respective prison of the results of the autopsy, often no specific cause of death is stated in the electronic Integrated Administration of the Penal System (IVV).

200. In 2019, five suicides were committed until 04/07/2019 (three by strangulation, two by wrist cutting).

201. The Ministry of Justice (Directorate General) committed to preventing suicides in the penal service and preventive detention (*Maßnahmenvollzug*) to the largest extent possible by engaging in comprehensive prevention work, organised and coordinated by a special group for suicide prevention. The special group consists of four internal and two external experts (clinical psychologists and psychiatrists).

202. This special group analyses all suicides committed in the Austrian penal system and issues recommendations for further improvements in the prevention work on a regular basis. After a "suicide reflection" has been carried out with the employees of the prison involved, a "psychological autopsy" is performed with respect to each completed suicide case. In addition, uniform standards were developed for suicide prevention. Each prison has an institution-specific prevention concept in place. Every two years, these concepts are evaluated by the members of the special group, with outstanding concepts being recognised as "Good Practice Models".

203. Thanks to a system (cell allocation programme) which was developed specifically for the purpose of suicide prevention, the penal service now has an internationally renowned screening tool for initial assessment of suicidality among newly admitted prisoners at its disposal.

204. Regular, target group-specific training and further education programmes for prison personnel related to suicide prevention ensure up-to-date knowledge and increased awareness for this subject.

205. Regrettably, despite all these extensive preventive measures, it is not and will never be possible to prevent every single suicide in prisons from happening. It is a globally well-established scientific fact that the (statistical) probability of a suicide being committed is about five to ten times higher in prison than with regard to the general population.

AH. Reply to paragraph 23 (a) of the list of issues

206. Prisons: Medical care is primarily ensured by prison doctors (general practitioners) employed at every prison. Furthermore, each prison also employs psychiatrists with their allotment of hours depending on the prison's size. Other specialist doctors are consulted when required – by way of escorted outings either to the respective specialist doctor or to the hospital. Depending on the demand, the specialist doctor may come to the prison to examine the inmates.

207. It has not been possible to increase the number of doctors at Feldkirch, Graz-Karlau and Graz-Jakomini prisons.

208. There is enough nursing personnel at the Wilhelmshöhe satellite facility so that other inmates do not provide nursing activities to inmates with mental conditions. Occasionally, however, so-called Listeners, i.e. trained inmates who make themselves available as conversational partners for inmates with mental conditions, are employed who make a genuine, irreplaceable contribution to suicide prevention.

209. There are no infirmaries in police detention centres. With regard to detention service facilities (*Anhaltevollzug*), a doctor is available at every location at all times. Depending on the time of day, a doctor is either on site or on on-call duty. If necessary, and in cases of emergency, inmates are either visited by an emergency doctor or taken to a hospital.

AI. Reply to paragraph 23 (b) of the list of issues

210. Prisons: The requirement of performing an admission examination of all new inmates within 24 hours of their internment cannot be met in all institutions. New inmates are presented to the prison doctor during the next medical consultation. Should a situation of particular urgency occur, the inmate is either escorted to the nearest medical facility or presented to the chief physician.

211. Police detention centres: Pursuant to the Detention Regulation (*Anhalteordnung*) all prisoners shall be medically examined for fitness for detention without undue delay, however, not later than 24 hours after admission. Persons whose unfitness for detention has been established during the examination or whose unfitness for detention is obvious are to be released immediately and must not be detained any longer.

AJ. Reply to paragraph 23 (c) of the list of issues

212. Prisons: There is no difference as to the preparation of diagnostic findings between inmates and patients outside of prison. The diagnostic findings of each inmate are uploaded into the electronic medical record and may be accessed at any time. When the inmates are released from prison, they are offered to take these findings with them.

213. Police detention centres: Findings from external facilities are scanned and added to the medical record as electronic attachments. In police detention centres which do not keep electronic medical records, diagnostic findings are kept under lock and key subject to explicit compliance with the General Data Protection Regulation (GDPR) for sensitive data and can only be accessed by healthcare professionals.

AK. Reply to paragraph 23 (d) of the list of issues

214. Already now, an exemption from their confidentiality obligation permits healthcare professionals to report serious physical injuries related to torture.

215. Prisons: In the course of each training unit, healthcare professionals are reminded of the issue of torture and are given the opportunity to make an anonymous report to the chief physician. Injuries caused during internment must be documented and, if possible, a picture has to be included in the medical record.

216. Police detention centres: Within the scope of the basic training of public health doctors employed by the police, various aspects of torture and inhumane / degrading treatment are covered and participants are sensitised to the subject. Among other things, specific indications for torture-related injuries form part of the training. Public health doctors employed by the police are obligated to precisely document any and all visible injuries, both in writing and by way of a graphic, in the detention protocol.

AL. Reply to paragraph 24 of the list of issues

Measures taken in case of allegations of ill-treatment

217. The discrepancy between the high number of allegations of ill-treatment and the low number of convictions results from the fact that in the majority of reported cases there is no sufficient suspicion of crime having been committed which is why the competent public prosecution office refrains from initiating investigations or discontinues them. In the few remaining cases, an examination under disciplinary law usually leads to the result that there has been no violation of professional obligations, which is why there is no basis for initiating disciplinary proceedings.

218. Investigations conducted by the Regional Police Directorate which is competent for investigations related to allegations of ill-treatment are performed in an objective and best possible manner; this is also how they are passed on to the competent public prosecution office.

Statistical data

Justice system (period 2016 to 2018)

	2016	*2017*	*2018*
Number of investigation proceedings marked with the ID "mjb" (allegation of abuse prison guard (*Missbrauchsvorwurf Justizbeamter*, mjb))	75	96	96
Indictments	7	3	3
Discontinued (*Einstellung*)	49	63	60
Dropped (*Abbrechung*)	0	1	0
Eliminated (*Ausscheidung*)	0	8	2
Other	19	21	31
Conclusion (conviction)	2	2	1
Conclusion (acquittal)	0	0	1
Complaint to senior public prosecutor	32		
Allegations of ill-treatment by inmates against employees of the penal system		80	61

219. Police officers: As for statistical data on allegations of ill-treatment filed against police officers, the following figures relate to all allegations of ill-treatment throughout Austria which have been reported and notified to public prosecution offices.

220. In such cases, the reporting is based on Section 83 Criminal Code (Assault causing physical injury) in conjunction with Section 313 Criminal Code (Offences committed by abusing an official position).

221. In 2018, a total of 328 allegations of ill-treatment were filed against 631 law enforcement officials, of which:

- In 47 cases no investigations were initiated;
- In 11 cases the investigations were dropped (*abbrechung*);
- In 239 cases the investigations were discontinued (*einstellung*);
- On 31 investigations, there has been no response by the public prosecution offices to date.

222. In the first half of 2019, a total of 174 allegations of ill-treatment were filed against 285 law enforcement officials, of which:

- In 36 cases no investigations were initiated;
- In two cases investigations were dropped (*abbrechung*);
- In 105 cases investigations were discontinued (*einstellung*);
- On 31 investigations, there has been no response by the public prosecution offices to date.

Study

223. See answer to question 1.

Justice

224. The following internal instructions issued by the Ministry of Justice are worth mentioning:

- Internal instruction of 06/05/2015 on the procedure in case of reports on misconduct of prison personnel subject to criminal law, or in case of serious incidents concerning inmates where misconduct cannot be ruled out a priori;

- Supplementary internal instruction of 02/07/2015 on the procedure in case of reports on misconduct of personnel subject to criminal law, or in case of serious incidents concerning inmates where misconduct cannot be ruled out a priori; and
- Internal instruction of 25/06/2018 on the procedure in case of allegations of ill-treatment filed against security authorities and prison officials.

225. The content of these internal instructions can be summarised as follows. With a view to avoiding any appearance of bias, prison managers are requested to address reports on the behaviour of prison officials which might be of relevance under criminal law, or on incidents with inmates where misconduct cannot be ruled out a priori directly to the relevant senior public prosecution office instead of the public prosecution office having territorial jurisdiction.

226. The appearance of bias might be caused by the fact that in many cases regional court prisons are located in the same building or in immediate proximity to the respective public prosecution office having territorial jurisdiction. This immediate proximity and the personal contact between public prosecutors and prison guards or employees of the prison service often resulting therefrom, can give rise, from the outside perspective, to an appearance which is objectively suitable for raising doubts as to whether duties are performed in an impartial manner.

227. At the same time, it must be ensured that investigative steps which cannot be delayed can be taken (also on weekends or public holidays). In this context, it needs to be taken into account that there is no stand-by duty in senior public prosecution offices. Thus, it has been set out that in case of decisions, and/or investigative steps, which cannot be delayed the complaint has to be passed on directly to the public prosecution office with territorial jurisdiction (being on stand-by duty) which, if necessary, takes the required unpostponable steps and passes the case on to the respective senior public prosecution office to continue the proceedings.

228. With regard to the internal instruction of 25/06/2018 on the procedure in case of allegations of ill-treatment filed against security authorities and prison officials, reference is made to the statements on question 1/a/i and ii.

Police

229. On 19/07/2018, a revision of the internal instruction by the Ministry of the Interior was announced. The internal instruction entered into force on 01/09/2018. It regulates the nation-wide uniform documentation, establishment of facts and assessment which need to be conducted if anyone raises allegations of ill-treatment against law enforcement officials.

230. Ill-treatment is to be deemed to have taken place if:

- Physical injury is caused intentionally and without correlation to the use of coercion (ill-treatment);
- There is a causal relation between physical injury and the use of coercion but it is evident that the physical injury caused might be a consequence of evidently disproportionate violence (evidently disproportionate violence while using coercive measures), or
- An inhumane or degrading treatment takes place which does not entail physical injury.

231. Thanks to the Basic Training Regulation (*Grundausbildungsverordnung*) of 12/06/2017, all levels of training of law enforcement officials (basic police training, continuing education of police officers for management and special purpose positions and for senior management positions) were transformed into a human rights-based competence system. While the number and scope of human rights modules remained the same, the operational training was extended by human rights-related analytical approaches which provide for a direct correlation between acting in compliance with human rights and the lawfulness of an intervention. The focus is thus constantly directed towards interventions in compliance with human rights.

AM. Reply to paragraph 25 of the list of issues

232. Anybody can expressly lodge a complaint to the Austrian Ombudsman Board within the framework of preventive human rights monitoring, if he/she believes that there has been an infringement of human rights.

Prisons

233. Imprisoned persons have the right to lodge a complaint about the decisions, instructions and behaviour of employees of the penal service system. The so-called "*Aufsichtsbeschwerde*", i.e. a complaint to a supervisory authority against the conduct of a public officer, is a suggestion for the (higher) penal system authorities to exercise their right of supervision. The *Aufsichtsbeschwerde* is non-formal and can be lodged anonymously.

234. The detainees are informed about the possibility of lodging such a complaint by the house rules and by information sheets. Moreover, the provisions of the Enforcement of Sentences Act (StVG) concerning the behaviour of detainees also have to be available in each cell.

235. In case the behaviour of employees constitutes an offence under criminal law (allegation of ill-treatment), the prisons are obliged to file a report with the senior public prosecution office (*Oberstaatsanwaltschaft*), which subsequently determines which public prosecution office shall take charge to exclude even the slightest appearance of bias.

Police detention centres

236. The regulation on the detention of persons by law enforcement authorities and public security officers (Detention Regulation) (*Anhalteordnung* - AnhO) stipulates the following:

Complaints, requests and applications

> *Section 23 (1) During detention prisoners shall have the right to complain to the Commander in writing or orally, claiming the ongoing violation of a right granted to them in this regulation. For this purpose they shall be brought before the Commander at their request without undue delay.*
>
> *(1a) If abuse is alleged in the course of a complaint, a medical expert opinion shall be obtained without undue delay.*
>
> *(2) If upon immediate review of the complaint pursuant to para. 1 the Commander finds the complaint to be justified, he shall establish the lawful status; otherwise he shall present the facts to the authority, which has to review the facts without undue delay. If the authority concludes that the complaint is justified and the complainant is still being detained, the Commander shall be instructed to establish the lawful status without undue delay; otherwise the authority shall inform the person concerned of the result of the review, without proof of service, if an address is known or can be determined without difficulty.*
>
> *(3) If the behaviour complained about is legally protected otherwise, this legal protection shall remain unaffected.*
>
> *(4) In other respects, all prisoners may submit requests and applications orally or in writing at their discretion. For this purpose they shall be brought before the Commander at their request without undue delay.*

237. Each detainee shall be informed about the Detention Regulation in a verifiable manner upon admission, if necessary, in a language understood by the detainee. The possibility of a complaint is also pointed out specifically. The Detention Regulation is available in German, the official languages of the United Nations and numerous additional, commonly used languages at any time.

Psychiatric Institutions:

238. The Involuntary Placement Act (UbG)[12] provides for the compulsory judicial monitoring of restrictions of liberty (involuntary placement) in psychiatric hospitals and psychiatry departments. What is more, restrictions of any other rights are to be reviewed by an ordinary court of law upon request. The patient is represented by the responsible Patients' Ombudsman according to the location of the psychiatric hospital, also with the possibility of choosing a representative himself/herself. The patient has to be provided with information on who his/her Patients' Ombudsman is. The patient shall have the possibility to discuss matters with the Patients' Ombudsman.

239. The court shall first of all hear the patient within four days and obtain a personal impression. In case that the involuntary commitment is not reversed, a hearing shall take place - with the consultation of an expert – within seven days. The district court issues a decision, which can be appealed by the patient, his/her representative or a relative. The patient and his/her representative have to be informed of the possibility to resort to appeals.

240. The involuntary placement is to be reversed without undue delay if it was declared inadmissible. In this context, reference is made to the report of Gesundheit Österreich GmbH regarding the execution of the UbG. It is published every two years (current report concerns 2016/2017). In homes or other institutions, where at least three mentally ill persons or persons with mental disabilities can permanently be cared for or nursed, the Nursing Home Residence Act (*Heimaufenthaltsgesetz*, HeimAufG) applies, which also provides for a judicial monitoring of restrictions of liberty upon request.

AN. Reply to paragraph 26 of the list of issues

Neglect of a 74-year-old in Stein Prison

241. The Public Prosecution Office Vienna conducted investigations against four employees of the penal service systems, three of them being prison guards and one of them working in the psychological services, because of Section 312 (2) and (3) of the Criminal Code (Tormenting or Neglecting Prisoners) and Section 302 (1) of the Criminal Code (Misuse of Official Authority).

242. The investigations were based on the allegation that the four employees in their role as government officials violated their duty towards a prisoner under their care or in their custody by failing to ensure the treatment of the venous diseases in the legs of the inmate, to arrange the changing and control of the bandages and to ensure a respective leg hygiene by himself or third parties in the period from 26/02/2008 to 10/03/2014 and thus caused, even if only negligently, significant damage to his health.

243. The detainee, who refused all of the care services, was provided basic psychiatric and medical services. Psychological and/or psychotherapeutic treatment was not possible due to the lack of compliance by the detainee.

244. After threatening the detainee with forced presentation before a doctor, he ultimately agreed to an examination. Massive hygienic neglect on both legs of the detainee was detected and documented in photographic form by the doctor.

245. The investigations against all four of the employees were discontinued pursuant to Section 190°(2) of the Code of Criminal Procedure (CCP), because it was found that they had not grossly violated their duty towards the prisoner under their care or in their custody within the meaning of Section 312 (2) of the Criminal Code.

246. It was not established with the necessary certainty for the purpose of criminal proceedings that the detainee suffered from a significant damage to his health or physical or mental development within Section 312 (2) of the Criminal Code. Thus, there were no indications for the committal of an offence pursuant to Section 302 (1) of the Criminal Code (Misuse of Official Authority).

[12] Federal Act of 01/03/1990 on the Involuntary Placement of Mentally Ill Persons in Hospitals (Involuntary Placement Act (*Unterbringungsgesetz* UbG)) FLG No 155/1990.

247. Subsequently, the disciplinary proceedings against one of the four employees for the culpable breach of service obligations pursuant to Section 118 (1) (2) of the Federal Civil Servants Act (*Beamten-Dienstrechtsgesetz,* BDG) of 1979, which had been interrupted for the duration of the criminal proceedings, were discontinued.

Beatings against detainee in Graz-Karlau in July 2014

248. The facts of the criminal matter are as follows: On 09/07/2014 around 21:30 an inmate accommodated in the section for preventive detention (*Massnahmenvollzug*) of the prison Graz-Karlau started screaming and banging a chair on the door of the cell. As the inmate could not be calmed by talking to him, the night duty commander ordered his segregation. The inmate's transfer into a monitored cell was then performed by six prison guards supervised by the night duty commander. The inmate had initially to be immobilized on the floor for a short period of time because of his resistance, before he could be taken out of the cell.

249. The allegation was raised that in the course of this official act one of the prison guards had punched the detainee in the face, who had already been on the floor and immobilized.

250. This prison guard was acquitted of causing physical injury intentionally pursuant to Section 259 (3) of the Code of Criminal Procedure (CCP) by the Regional Court For Criminal Matters Graz.

251. After the termination of the proceedings, criminal proceedings on suspicion of false accusation to the detriment of the acquitted prison guard were initiated against one of the other prison guards, whose descriptions had caused the commencement of the investigations, and eventually resulted in a conviction. Until the final termination of the criminal proceedings, the employee worked in areas of the prison Graz-Karlau where he had no contact with the inmates when unaccompanied.

252. Disciplinary proceedings against the employee were not initiated.

253. Section 259 CCP reads as follows:

> *"The defendant is acquitted of the charges through the judgment by the panel of professional and lay judges (Schöffengericht) (...)*
>
> *3. if the Schöffengericht finds that the action giving rise to the charges is not punishable by law or that the facts have not been established or that it is not proven that the defendant has committed the offence for which he or she is accused or that circumstances exist which render the action non-punishable or exclude prosecution for reasons other than those set forth in para. 1 and 2."*

AO. Reply to paragraph 27 of the list of issues

254. As far as could be established, in the justice area no claims for torture under the Liability of Public Bodies Act (*Amtshaftungsgesetz*) have been asserted in the past few years.

255. The Ministry of Justice does not allocate special financial means to be used for possible payments arising in connection with Article 14 of the CAT.

256. However, the means for covering any future payments are guaranteed (i.e. in case compensation should be granted), as these would constitute costs which are not controlled by the justice administration (costs of the independent judiciary) and for which sufficient budget must be made available at all times.

257. With regard to the police sector, a compensation payment in the amount of EUR 1,500 was made pursuant to the Liability of Public Bodies Act in 2017. Allegations of ill-treatment were raised in connection with an official act from 2014; as a consequence, the responsible regional administrative court determined that the arrest itself had already been unlawful.

258. In Austria, further compensation programmes are provided at the regional level.

259. The following types of compensation are also available. Persons who suffered a physical injury or a damage of health due to an intentional and unlawful act liable to be punished by more than six months of imprisonment are entitled to assistance under the Victims of Crimes Act (*Verbrechensopfergesetz,* VOG, FLG No 288/1972).

260. Under these conditions, victims of torture or ill-treatment are also able to receive compensation.

261. The requirements establishing the entitlement to compensation are reviewed in administrative proceedings, taking into account the results of police and court investigations (or judgments, if available).

262. The Victims of Crimes Act provides for the following benefits:

- Compensation for loss of income;
- Income-dependent supplementary benefits;
- Therapeutic care (for example, costs for psychotherapy);
- Crisis intervention;
- Orthopaedic care;
- Compensation for damaged aids (for example glasses or dentures);
- Professional, social and medical rehabilitation measures;
- Nursing allowance or blindness allowance;
- Flat-rate compensation for pain and suffering.

263. Benefits under the Victims of Crimes Act have to be applied for at the Federal Social Office (*Bundessozialamt*), which is also the first-level authority deciding on applications. It has to be emphasized that – according to the information of this institution – there are no known applications by victims of torture to state authorities for these benefits.

AP. Reply to paragraph 28 of the list of issues

Judiciary

264. In the justice area, the use of tasers is restricted to persons who have undergone appropriate training, and must meet strict requirements of proportionality.[13]

265. The direct use of coercion, the weaponry carried and the use of weapons by employees of the penal service system are regulated by law (Section 104 StVG). In general, the use of force must be limited to the degree necessary and preceded by a warning, unless such warning would jeopardise the purpose of the use of force (Section 104 (2) StVG).

266. Within the Austrian penal system, the low-impulse weapon Taser X2 is being used. It has no life-threatening effect if it is used properly. As a precaution, the use of tasers against pregnant women and persons with indications of cardiac damage is not allowed.

267. It may only be used by specially trained prison guards participating in operations, the taser instructors, the officers responsible for maintaining service weapons and other means used during operations, and the members of the international transferring unit.

268. During an operation, the falling of a target person is to be averted, if possible, in order to prevent or reduce injuries caused by falling.

269. After the Taser X2 - or any other weapon - has been used, a medical examination is carried out without delay (Section 66 StVG), in particular to determine possible injuries caused by the falling, to assess the condition of the cardiovascular system and the necessity of follow-up care.

270. The basic training for the carrying and the use of Taser X2 includes at least ten weapon-specific training lessons (four lessons theory and six lessons practical exercise, during which at least four shots must be fired in interactive scenarios using a training weapon) as well as four lessons in first aid including life-saving measures and the use of defibrillators.

271. It is mandatory for the concerned persons to complete weapon-specific training in the amount of at least four lessons as well as two lessons in first aid including life-saving

[13] Cf. Draft of the General Comment No. 36 (2018) on the International Covenant on Civil and Political Rights - right to life, margin note 14.

measures and the use of defibrillators on an annual basis. In order to obtain the permission to carry and to use the taser, at least two shots with a taser used for training purposes are required. Training may only be provided by certified instructors.

272. No cases of inmates complaining about the use of this weapon have been recorded. Only one relevant case has become known in 2019; an inmate suffered a secondary injury (laceration to the head) as a result of a fall which was caused by the use of Taser X2 (distance mode).

Police

273. The Federal Ministry of the Interior is concentrating all efforts to guarantee that police officers only apply electrical discharge weapons (tasers), as and when and to the extent absolutely necessary. For this purpose, strict regulations and training instructions were established. Only specially trained officers (having completed the basic training and taking further education courses annually) are allowed to carry and use tasers. To minimize the risk of causing ventricular fibrillation, they also have to carry along a defibrillator. Law enforcement operations with tasers have been continuously evaluated, in particular with regard to the effects after a taser application.

274. To achieve the highest possible protection for persons affected, a number of independent scientific studies were conducted in Austria. The Institute of Health Care Engineering with European Notified Body of Medical Devices of the Graz University of Technology took technical measurements of different taser devices concerning current and electrical discharges and made risk assessments of the ventricular fibrillation caused. The results of these studies, as well as of the operational evaluation and of the training standards, were discussed with members of the Human Rights Advisory Council. The Taser X26E was used by law enforcement officers during the period from 01/06/2006 to 30/06/2017 (12 years and one month). The Taser X2 has been in use for two years now.

275. After a field test, the Taser X26E was introduced as a service weapon in May 2012. The arguments in favour of using tasers are the immobilizing effect and the low acceptable risk of this device, as well as the fact that the taser helps officers to save lives, disarm aggressors and avoid the use of firearms. The operational experiences are consistently positive. During fourteen years and one month, 249 taser-operations were conducted against persons without any real problems and with no need for using the defibrillator. There have not been any complaints by detainees with regard to the use of tasers. The accompanying measures have proven successful. Since the proportional and appropriate use of tasers could be necessary to protect the life and health of detained persons, a change of the existing regulations is not intended.

AQ. Reply to paragraph 29 of the list of issues

276. Pursuant to Section 38d (2) of the Federal Act on Hospitals and Convalescent Homes (*Bundesgesetz über Krankenanstalten und Kuranstalten*, KAKuG)[14] as amended on 15/01/2019,

> *"psychiatric hospitals and psychiatry departments have to maintain electronic documentation (...), from which the following data are available on a daily basis:*
> *1. the name of the persons accommodated,*
>
> *2. further restrictions (Section 33 (3) UbG) for persons pursuant to Subsection 1,*
> *3. beginning and end of accommodation and further restrictions,*
> *4. prescribing doctor,*
> *5. any injuries suffered by the sick person or by personnel in connection with further restrictions.*
> *This documentation must also enable statistical evaluations to be carried out".*

277. In order to ensure control, according to paragraph 3 of this provision, the Austrian Ombudsman Board and the members of the commissions appointed by it, acting as independent authorities, as well as international visiting mechanisms (CPT and CAT) may

[14] Federal Act on Hospitals and Convalescent Homes (KAKuG); FGL No 1/1957 amended in FGL I No 13/2019.

inspect the documentation according to paragraph 2. After many years, request by the NPM has thus been met. The AOB is of the opinion that an efficient instrument for the reduction of measures restricting liberty was created by the obligation to establish a register for recording detailed information, disaggregated by type, reason for use and duration, on all measures used for restricting liberty in psychiatric hospitals.

278. Section 3 UbG provides that a person may only be accommodated if this person

"1. suffers from a mental illness and, in connection therewith, seriously and significantly endangers his/her life or health or the lives or health of others; and

2. cannot be given adequate medical treatment or care in any other way, in particular outside a psychiatric ward".

Section 33 UbG regulates the restrictions on the freedom of movement of patients.

"(1) Restrictions of the patient's freedom of movement are only permissible in terms of type, extent and duration insofar as they are indispensable in individual cases for averting a danger within the meaning of Section 3 (1) as well as for medical treatment or care and are not disproportionate to their purpose.

(2) In general, the patient's freedom of movement may only be restricted to several rooms or to certain spatial areas.

(3) Restrictions of the freedom of movement to one room or within a room must be specially ordered by the treating doctor, documented in the patient's medical history stating the reason and communicated without delay to the patient's representative. At the request of the sick person or his/her representative, the court shall decide without delay whether such a restriction is admissible."

279. The accommodation itself is subject to judicial monitoring. Further restrictions are subject to judicial review at the request of the person affected. The explanations given also apply to the Otto Wagner Hospital.

280. With regard to the question of alternative measures in connection with the prohibition of the use of net beds, reference is made to the recommendations of the Austrian Society for Psychiatry, Psychotherapy and Psychosomatics (*Österreichische Gesellschaft für Psychiatrie, Psychotherapie und Psychosomatik*, ÖGPP) on measures restricting liberty in psychiatry and psychotherapeutic medicine.

281. By internal instruction of 01/09/2014, the Ministry of Social Affairs (BMASGK, Health division), in agreement with the Ministry of Justice, stated that the use of psychiatric intensive care beds ("net beds") and other "cage-like" beds no longer corresponds to the European standard and is therefore inadmissible, taking into account the protection of human dignity and the principle of proportionality of the restriction of liberty. Such means may therefore no longer be used since 01/07/2015.

282. The recommendation which had been issued by the AOB and its Human Rights Advisory Council for several years has thus been met. The commissions of the NPM performed 42 monitoring visits to hospitals, 26 of which took place in psychiatric and 16 in psychosomatic hospitals or departments. All visits were performed without prior notice.

AR. Reply to paragraph 30 of the list of issues

283. Section 110 Criminal Code (*Medical Treatment without Consent*) subjects any medical treatment provided without the patient's consent to a punishment, even if the treatment follows medical standards. Thus, any medical treatment requires the respective patient's consent. There are no special regulations regarding gender reassignment within the scope of civil law.

AS. Reply to paragraph 30 (a) of the list of issues

284. Section 173 Austrian Civil Code (*Allgemeines Bürgerliches Gesetzbuch*, ABGB) regulates the consent to medical treatments of minors. Pursuant to Section 173 (1) consents to medical treatments can only be granted by the child having decision-making capacity

itself; if in doubt, such decision-making capacity is deemed to exist in case of minors having reached the age of discretion (14 year of age and above). In the absence of the required decision-making capacity, the consent of the person who is the minor child's legal representative in matters of care and education is required.

285. If a minor child having decision-making capacity consents to a treatment, which usually results in a severe or lasting negative impact on a person's physical integrity or personality, the treatment can only be made if also the person who is the minor child's legal representative in matters of care and education consents to such treatment (Section 173 (2) Austrian Civil Code).

286. The consent of the child having decision-making capacity as well as the consent of the person responsible for care and education are not required if the treatment is so urgent that the delay in connection with obtaining consent or approval would endanger the life of the child or would be connected with a risk of severe damage to health (so-called imminent danger provision; Section 173 (3) Austrian Civil Code).

AT. Reply to paragraph 30 (b) of the list of issues

287. Medical treatment of adult persons without decision-making capacity is regulated by Sections 252–254 Austrian Civil Code. The medical treatment of a person of full age who does not have decision-making capacity requires the consent of the *Vorsorgebevollmächtigter* (i.e., the person appointed under an enduring power of attorney) or *Erwachsenenvertreter* (i.e. the relevant person's elected, statutory or court-appointed representative) whose sphere of influence comprises this matter. In addition, even a person not having decision-making capacity at the time of the treatment must be informed of the reasons for and the importance of the medical treatment to the extent possible and bearing in mind the person's well-being. If the person not having decision-making capacity makes it known to his/her *Vorsorgebevollmächtigter* or *Erwachsenenvertreter* (hereinafter "respective representative") or to the doctor that he/she rejects the medical treatment or its continuation, the consent given by the respective representative becomes subject to approval by the court.

288. In this context, medical treatment refers to a diagnostic, therapeutic, rehabilitative, obstetrical or disease prevention measure carried out by a doctor or at a doctor's order. The provisions apply mutatis mutandis also to similar measures carried out by members of other health professions regulated by law (Section 252 (1) Austrian Civil Code).

289. Decision-making capacity is deemed to exist if the patient is capable of understanding the reason for and the importance of the treatment and can form his/her will on that basis. The patient thus must be capable of understanding the consequences of his/her actions in the respective context (cognitive element), forming his/her will on that basis (volitive element) and acting accordingly.

290. A special provision (Section 255 Austrian Civil Code) regulates the sterilisation of adult persons without decision-making capacity: The respective representative must not consent to a medical treatment which aims at the permanent infertility of the represented person not having decision-making capacity, unless otherwise, due to a permanent physical condition, danger to life or the risk of severe damage to health or great pain exists. Furthermore, the consent given by the respective representative is subject to approval by the court.

291. Reference is made to the 2017 Opinion of the Bioethics Commission of the Federal Chancellery on Intersexuality and Transidentity.

292. In addition, attention is being drawn to the special protection of certain groups of persons under the Federal Act on the Performance of Aesthetic Treatments and Surgeries.[15]

293. Section 7 of the Federal Act on the Performance of Aesthetic Treatments and Surgeries thus stipulates the following:

[15] Federal Act on the Performance of Aesthetic Treatments and Surgeries (*Bundesgesetz über die Durchführung von ästhetischen Behandlungen und Operationen,* ÄsthOpG).

"(1) Performing aesthetic treatments or surgeries on persons up to the age of 16 is inadmissible.

(2) Aesthetic treatments or surgeries on persons above the age of 16 but under the age of 18 may be performed only if

1. written consent has been granted by the parent or guardian in a verifiable and written form (pursuant to Section 6 (2)) based on an adequate and comprehensive medical consultation (pursuant to Section 5), and

2. written consent has been granted, in a verifiable and written form (pursuant to Section 6 (2)) by the patient who, based on an adequate and comprehensive medical consultation (Section 5), is capable of understanding the nature, importance, consequences and risks of the aesthetic treatment or surgery and forming his/her will on that basis.

In case of an aesthetic surgery, in addition, an assessment as to any mental disorders including a consultation by a clinical psychologist, a psychiatric or psychotherapeutic specialist or a specialist for child and adolescent psychiatry must be carried out in a verifiable form before the procedure. The presence of a mental disorder classifiable as illness precludes performing the procedure if such prior consultation showed that the wish to perform the procedure results from the disorder.

(3) Aesthetic treatments or surgeries on persons who, due to a mental illness or a comparable impairment of their ability to make decisions, have a statutory representative in matters of their medical treatments, may be performed only if written consent has been granted by the patient in a verifiable and written form (pursuant to Section 6 (2)) to the extent that, based on an adequate and comprehensive medical consultation (Section 5), the patient is capable of understanding the nature, significance, consequences and risks of the aesthetic treatment or surgery and forming his/her will on that basis. If the patient is not capable of making a decision, the statutory representative must, based on an adequate and comprehensive medical consultation (Section 5), grant his/her consent in verifiable and written form.

(4) If consent is withdrawn by persons above the age of 16 but under the age of 18 or by persons who, due to a mental illness or a comparable impairment of their ability to make decisions, have a statutory representative in matters of their medical treatments, and such withdrawal takes place no later than one week before the date of the treatment or the surgery, no financial disadvantage shall arise to the patient.

(5) An aesthetic treatment or surgery on persons above the age of 16 but under the age of 18 or on persons who, due to a mental illness or a comparable impairment of their ability to make decisions, have a statutory representative in matters of their medical treatments may be performed no earlier than 4 weeks after the required consents have been obtained ((2) and (3)).”

AU. Reply to paragraph 31 of the list of issues

294. In the fight against hate speech and hate crime, acts constituting the offence of hate speech (*Verhetzung*) pursuant to Section 283 of the Criminal Code are of special practical relevance. The rising numbers are to be highlighted here (doubling since 2015). The reasons for the rise are the generally increasing use of the internet (key word “Facebook posts”) and the growing willingness of the population to file a report. Numerous reporting points have become established, which enable an unbureaucratic filing of report for everyone and exchange views among each other in the national “No hate speech committee”.

295. The vast majority of the proceedings due to Section 283 of the Criminal Code concerns Facebook posts inciting hatred, which are mostly directed against refugees, asylum seekers and/or Muslims.

296. The numbers of indictments and convictions have been decreasing slightly since 2018 – however, this is explained by the increase in the number of diversional measures since 2018. In this context, the transformation taking place in 2019 of the project “Dialogue instead of Hatred” (Dialog statt Hass) from trial to regular operation should be noted. The project is an intervention programme for authors of inflammatory posts. Offered by the probation

service association Neustart, it is a combination of classic probationary services and special modules individually tailored for the clients' needs. The modules are to be completed individually or in groups and involve media literacy focussing on social media, uttering critique without degradation, introducing the victims' perspective and a historical part including political education. The objectives are the sensitisation for the issue of discrimination, raising awareness and a reflected confrontation with instigating and degrading behaviour.

297. The described measures – which are considered very effective – are applied by the public prosecution offices and courts in the context of diversional measures pursuant to Section 203 of the CCP (probation with obligations) and as an instruction in addition to a conviction, in each case combined with probationary services.

Statistics regarding Section 283 of the Criminal Code (Hate Speech) 2015–2019

Country-wide	*2015*	*2016*	*2017*	*2018*	*2019*
Number	516	679	892	1003	465
Indictments	80	114	187	154	99
Diversional measures					
Offered (including court)[16]	19	25	76	115	74
Convictions	49	52	108	72	43
Acquittals	9	23	27	32	6
Proceedings discontinued	254	233	197	245	229
Non-initiation of preliminary investigations due to lack of initial suspicion pursuant to Section 35c Public Prosecutor's Act	89	153	141	215	140

AV. Reply to paragraph 32 of the list of issues

298. Austria has continually been striving to improve existing legislation during the last few years. With the 2018 Penal Legislation Amending Act (*Strafrechtsänderungsgesetz*) (FLG I No 70/2018) the provisions regarding terrorist associations and offences and those on the financing of terrorism (Sections 278 b–d of the Criminal Code) were adapted and travelling for the purpose of terrorism (Section 278 g of the Criminal Code) was made punishable. The EU Directive on combating terrorism[17] was also transposed into national law.

299. Police work to combat terrorism was facilitated by the Act concerning Police Protection of the State (*Polizeiliches Staatsschutzgesetz*) entering into force on 01/07/2016[18]. It constitutes the main legal basis for the Federal Office for the Protection of the Constitution and Counterterrorism (*Bundesamt für Verfassungsschutz und Terrorismusbekämpfung*, BVT) and the respective regional organisational units. The PStSG thereby expands existing tasks and competences. The provisions of the Security Police Act (*Sicherheitspolizeigesetz*) continue to apply for the area of state protection where the PStSG does not have specific regulations in that respect. Roughly speaking, the newly created law is aimed at combatting terrorism and extremism, espionage and intelligence activities, as well as proliferation and arms trafficking.

300. Law enforcement officials can attend seminars in the areas of terrorism and human rights held by the Security Academy (SIAK). The basic trainings of law enforcement officials are also organised and held by the Academy. During the "special training on the protection of the Constitution" participants are trained in the BVT's areas of responsibility, including the task of fighting terrorism (operational training not included).

[16] This includes offers of diversional measures (Section 200 CCP) and preliminary waivers of prosecution (Section 201, 203, 204 CCP).

[17] Directive (EU) 2017/541 on combating terrorism and replacing Council Framework Decision 2002/475/JHA and amending Council Decision 2005/671/JHA, OJ L 88, 15/03/2017, p. 6.

[18] FLG I No 5/2016.

301. The operational training for all law enforcement officials is organised by the Ministry of the Interior and is performed by the Regional Police Directorate for the employees of the BVT. Relevant training programmes are also offered by MEPA (Central European Police Academy) and CEPOL (European Police College).

302. Any persons who are subject to anti-terrorist law have the legal guarantees and legal remedies set out in the CCP.

303. The objective of a more effective combat against terrorism was most recently met by the 2018 Penal Legislation Amending Act , which served, inter alia, for fully transposing the Directive (EU) 2017/541 on combating terrorism and the UN Security Council Resolution 2178 (2014) and entered into force on 01/11/2018.

304. In particular, the 2018 Act resulted in:

- An extension of the national jurisdiction in the context of terrorism;
- An extension of the catalogue of terrorist offences;
- An extension of the catalogue of offences qualifying as terrorist financing and;
- The introduction of the new offence definition “travelling for the purpose of terrorism” (section 278g of the criminal code);
- Furthermore, the group of persons entitled to process assistance (*prozessbegleitung*) was extended with regard to the victims of terrorist offences.

305. Regarding the number of anti-terrorist cases see: Attachment – Question 32 – Statistical Data – Anti-terrorism.

AW. Reply to paragraph 33 of the list of issues

306. The implementation of the CAT obligations is achieved with the involvement of the Human Rights Advisory Council (*Menschenrechtsbeirat*), whose members include representatives of civil society. The human rights coordinators of the Federal Ministries and the *Länder* regularly follow up on the reports.

307. The Committee for the Prevention of Torture of the Council of Europe (CPT) visits Austria at regular intervals, most recently from 22/09/2014 to 01/10/2014. Austria submits statements on all of the reports and obligated itself to the automatic publication of the reports (automatic publication procedure).

308. The preventative protection of human rights by the Austrian Ombudsman Board and its commissions as the national preventative mechanism (NPM) reflect the CPT standards.

Further changes

309. There is only one disciplinary authority as of 2020 for federal civil servants. The Constitutional Committee of the National Council adopted a respective bill on 01/07/2019. A central authority should increase legal certainty through a professionalisation of the decisions and more consistent case law. Like in the previous disciplinary commissions, the decisions will be taken in disciplinary panels comprising one full-time chair of the panel and one member each nominated by employers and employees respectively. In principle, both such members should come from the same ministry as the defendant.