



Statement of the Austrian Ombudsman Board On the Situation of Children's Rights in Austria

INTRODUCTION

Children and adolescents rate among the so-called vulnerable groups. The rights of children and adolescents are non-negotiable. They should be a priority and the appropriate regulatory framework should be created by politics.

The Convention on the Rights of the Child was adopted by the United Nations 28 years ago. According to the convention, children do not only have the right to protection against all forms of violence, they also have the right to protection of their own identity and the right to health, education and participation. The Austrian Ombudsman Board (AOB) deals with children's rights in various areas and has established a close cooperation with the Ombudsman offices for Children and Youths in the nine provinces (*Laender*) of Austria.

Protecting children and adolescents in public institutions and facilities is of particular concern to the AOB. In order to show, which challenges the institutions and the children face, the AOB published a special report on "*The Rights of Children in Public Facilities*" in 2017. This report clearly shows, that much more can still be done when it comes to children's rights; even in Austria.

As National Preventive Mechanism (NPM) the AOB monitors places where people are or can be deprived of their liberty. This also includes facilities for children and adolescents or accommodation centres for unaccompanied minor refugees and asylum seekers. But the AOB also puts a specific focus on children's rights in its ex-post investigative work.

The AOB's annual reports show that living conditions in child and youth welfare facilities have improved. However, the AOB also still witnesses inadequate and problematic situations.

LEGISLATION

„Provincialising“ child and youth welfare and protection

For many years, the AOB has called for uniform federal regulations and standards in child and youth welfare and protection. This includes matters such as the group sizes in assisted living or the qualifications of staff. The UN Committee for the Rights of the Child also criticized the lack of uniform standards and the fact that services vary significantly from *Land* to *Land* in Austria.

By the end of 2018, Parliament approved to hand over the competence of enacting basic law in the field of youth welfare from the federal government to the *Laender* governments. This means that youth welfare legislation as well as its implementation and enforcement will be the sole responsibility of the *Laender* in the future. As a consequence, the federal regulatory framework of the Children's and Youth Assistance Act (*Bundes-Kinder- und Jugendhilfegesetz, B-KJHG 2013*), will no longer apply.

The AOB voiced its concerns about this shift of competencies in a written statement during the assessment procedure as well as in the media, arguing, that this step will not harmonise the field but only exacerbate existing problems by causing even more fragmentation and unequal treatment. There is reason to fear that already existing differences in the operation of youth welfare facilities will only be further cemented and that the *Laender* will see this as an opportunity to withdraw from the necessary financial obligations to offer high-quality child and youth welfare.

The same reservations were expressed by the Association of the Austrian Operators Organization, the Federal Association of Austrian Youth Welfare Institutions, the Federal Association of Social Workers and the Ombuds offices of Children and Youths.

In its special report from 2017, the AOB referred to the numerous regulatory differences of the *Laender*, proof of which are the significantly differing numbers in out-of-home care, in the return of children to their parental homes, the payment of foster parents or the staffing ration and the different standards for staff training and education.

The Austrian Institute for Family Studies, which was commissioned by the Federal Ministry of Families and Youth to carry out an evaluation of the Children's and Youth Assistance Act, also observed substantial differences between the *Laender* and recommended that uniform standards should be developed as soon as possible. Reforms of the Children's and Youth Assistance Act should always be made with a view to strengthen uniform standards nationwide. This evaluation

should have provided the basis for further initiatives of the Federal Government to create uniform and nationwide standards in the field of child and youth welfare. The AOB therefore regrets that the results of this evaluation were not considered when deciding the constitutional amendments.

In order to counter the public criticism, the Federal Government and the *Laender* made a commitment to enter into a national agreement pursuant to Article 15a of the Federal Constitution before the shift of competencies will enter into force. This agreement should guarantee that the existing level of protection in the field of child and youth welfare will be maintained and that the collection of data about the developments in the different *Laender* will continue. The AOB calls upon all *Laender* to not only capture the present standards in this agreement, but also eliminate the existing differences and thus contribute to a uniform and high-quality system of child and youth welfare and protection.

ALTERNATIVE CARE & ACCOMMODATION IN YOUTH WELFARE FACILITIES

Out-of-home care

The number of minors living in out-of-home care, compared to the total number of minors living in Austria, differs significantly. In 2017 a total of 13,617 children and adolescents were accommodated in out-of-home care in Austria.

In percentages, Vienna has the highest number of children living in out-of-home care (1.2%); it is closely followed by Carinthia. The lowest number of children living in out-of-home care (0.65%) can be seen in Tyrol. The AOB requests to identify the reasons for this significant difference and to widen the offer of outpatient measures for family support.

The AOB followed-up with Vienna, Carinthia, Salzburg and Styria, i.e. those *Laender*, which had higher number of minors living in out-of-home care, to verify which measures had been taken to improve the situation. All four *Laender* declared to put a focus on expanding the offer of outpatient and mobile support. This was accomplished partly by organizational changes and partly by providing additional services. All of the four *Laender* agree that an increase in preventive measures will help reduce cases of out-of-home placements in the future.

Vienna intensified its outpatient crisis support work and widened its mobile support for families. Styria initiated systemic changes by introducing a project called "Youth Welfare New", which should help families by providing a broad package of services. An additional focus is put on

preventive work and measures. Carinthia also widened its offer of early support and introduced a management tool to enable a comprehensive social work care and child and adolescent psychiatric diagnosis. High priority is also given to upgrading outpatient and mobile support. Salzburg reports that outpatient support has been increased to up to 20% since the Children's and Youth Assistance Act entered into force. It is however not yet possible to tell if these measures will help reduce the number of placements in out-of-home care. In addition to this, the *Land* offers support in the field of parental guidance to counter out-of-home care already at an earlier stage. A decrease in the number of children living in out-of-home care was only noted in Styria and Salzburg, in comparison with the previous year. It is to be hoped that the positive effects of the broader offer of outpatient measures will be noticeable soon. Preventive measures to avoid out-of-home care must continue to be expanded.

Quality development in inpatient child and youth welfare

In the AOB's point of view, all minors, who live in out-of-home care, have the right to the highest possible quality of care, irrespective of the *Land* that is responsible for providing such care. In order to be able to provide adequate, transparent and comparable care to the children, socio-pedagogical institutions need to offer professional support in guidance and decision-making, to ensure that workflow and care procedures can be well organized and that an internal quality management systems can be developed.

FICE-Austria, the Austrian department of the International Federation of Educative Communities, initiated a project called "Quality development in inpatient child and youth welfare" with the active involvement of the AOB. From autumn 2017 to spring 2019 a nationwide process of debate and coordination was triggered which brought together 20 different organizations operating in this field. The aim of this process was to provide institutions as well as monitoring bodies with concrete and practical guidance for the development of care procedures. With a view to include the experiences of young people who lived in out-of-home care, additional workshops with care leavers were held in autumn 2018. This was further complemented by meetings with experts and specialists from public child and youth welfare.

The result of this cooperative process was the development of a manual with scientific support. Based on the UN Convention on the Rights of the Child and the UN Convention for Persons with Disabilities, the manual is divided into 11 quality chapters. It sets a total of 66 standards and

describes the necessary measures and objectives to ensure the operative implementation of these standards. The first quality chapter deals with the evaluation of danger and the planning of help and support. The second chapter covers the admission of minors and the individual care plan they need when placed in care facilities. Chapter 3 puts a focus on the area of participation and chapter 4 on the protection against and the handling of danger, abuse and violence. Chapter 5 covers the topic of trauma-sensitive care; chapter 6 deals with health care, sex education and how to handle hazardous addictive behaviour of minors. Chapter 7 handles in more details how children, who grow up in care facilities, can learn about their origin and background. Chapter 8 puts a focus on how to structure the day-to-day life for the children and chapter 9 explains how to promote formal as well as informal educational processes in minors.

The manual will be officially launched at an expert conference, which will be hosted by the AOB in May 2019. It should serve as guidance material for public as well as private child and youth welfare providers and help them when implementing internal quality management systems. The technical supervisors of the *Laender* are also advised to give particular attention to the quality chapters of this manual.

Child and youth welfare facilities

The Austrian NPM visited 97 care facilities for children and adolescents in 2018. It is remarkable that the visited facilities did not only welcome the positive feedback but also embraced criticism, which was largely perceived as important input. In many cases the concluding meetings already led to a commitment from the part of the facility to implement proposals and solve problematic situations. Follow-up visits then showed significant improvement in many of the facilities.

In 2018 Burgenland met a long-standing demand and reduced the group size in care facilities with a draft regulation to the Children's and Youth Assistance Act. This was met with great opposition from the operator's organization, as they were afraid, that they may not be able to meet these higher standards. After an intensive exchange between experts, a consensus could be reached: the new regulation reduces the group size in socio-pedagogical residential groups to a maximum of ten minors and to a maximum of eight minors in socio-therapeutic residential groups. At the same time, the regulation includes provisions which help improve the quality of the provided care.

For the first time, Burgenland also defined the qualification and composition of care staff in child and youth welfare facilities. In the future there will only be two groups of care personnel: Group 1

consists of people who have a degree in social pedagogy and persons who can at least present three years of tertiary education in the field of social work, social pedagogy, pedagogy, psychology or a recognized, equivalent level of education. Group 2 includes people, who have completed vocational training as a social welfare worker with a primary focus on family support or a recognized, equivalent level of education.

Burgenland also followed the recommendation to only admit staff with subject-specific training in institutions and facilities for minors. In Burgenland, persons will only be employed in the youth care sector if they are able to prove, that they have completed at least two-thirds of on-the-job training. Even then, they are not allowed to work alone, but must work together with colleagues who already have completed their training.

Staff in socio-therapeutic and socio-psychiatric residential groups have to present a completed education as requested for group 1 plus basic training in psychosocial care in the extent of 100 training units. Care work in socio-psychiatric residential groups must be handled by multi-professional teams, which have access to the conciliar services of a juvenile psychiatrist. Burgenland now also stipulates exact staffing ratios: This is an equivalent of 6.5 full-time employees in socio-pedagogical residential groups and 7.5 full-time employees in socio-therapeutic and socio-psychiatric residential groups. The regulation should bring about quality improvements in child care facilities.

Carinthia has not yet presented a regulation to the Children's and Youth Assistance Act, although it has been in force for six years. However, the legislator provided for the adoption of such regulations, as the act itself neither stipulates concrete definitions for the qualifications and educational requirements of staff, nor the necessary number of specialist staff in care facilities. The AOB therefore calls upon Carinthia to establish such binding guidelines. According to the Carinthian Government, such regulation is currently being drafted.

On 1 July 2018 a long-standing recommendation of the AOB was put into practice: the scope of application of the Nursing and Residential Homes Residence Act (*Heimaufenthaltsgesetz*) was widened to include care facilities for minors with cognitive and mental impairments. If these minors are deprived of their liberty, they now enjoy the same legal protection adults have had since 2005.

The amendment of the legislation requires new organizational arrangements. A new procedure as described in detail by law must be applied in all cases of deprivation of liberty that are not age-specific. The changes to the legal provisions often bring about a feeling of insecurity for staff. Upon

recommendation from the AOB, the Federal Ministry of Constitutional Affairs, Reforms, Deregulation and Justice therefore published an information brochure tailor-made for child and youth welfare institutions, which provides an excellent overview. The brochure explains the criteria for admissibility of measures that restrict freedom and lists obligations to give information, to documentation and to report pursuant to the Nursing and Residential Homes Residence Act.

The AOB repeatedly criticized the fact that minors often have too little possibilities to participate. As a consequence, some facilities created ways and methods for them to be included. Some facilities installed mailboxes for complaints; others revised old-fashioned house rules and abolished untimely punishments or sanctions. It is important to develop rules when living together, but it is also important to include the minors affected by these rules, in this process.

Barrier-free accessibility has also been improved in many facilities. An operator in Tyrol took the necessary precautions when re-modelling a facility, so that – in case of need – the building can be easily modified to guarantee absolute barrier-free access. Another facility was re-modelled in a way that provides full, barrier-free access for minors with physical impairments.

Care operators frequently complain that the daily allowances they receive from child and youth welfare do not suffice to offer high-quality care. To ensure such high-quality care, many of these non-profit institutions make use of donations and other funds. Operators who do not collect donations are often no longer able to fulfil the required care standards.

Pursuant to the UN Convention on the Rights of the Child, the Federal Constitutional Act on the Rights of Children (*BVG Kinderrechte*) and Article 8 of the European Convention on Human Rights (ECHR), Austria has an obligation to guarantee the protection, support and care of children and adolescents in out-of-home care. As child and youth welfare operators, the *Laender* have the duty to provide the necessary financial means, if they outsource child care to private operators. Daily allowances must be provided in a way that private operators are able to meet the requirements established in human rights conventions. If this is not the case, and if operators need to generate additional funding, this is regarded as an attempt by the public sector to pass on its duties and obligations to the private sector; this is unacceptable. The AOB therefore demands that the payment of daily allowances must be in line with the requested performances and services.

Measures to prevent all forms of violence

Children who cannot grow up in their own family are entitled to receive special protection and support from the state. It is therefore essential, that child and youth welfare facilities dispose of a concept to prevent all forms of violence but also of a concept for sex education, and that the entire staff is involved in the development of the latter. An extensive knowledge about sex education as well as risk analysis and guidelines for action are indispensable to raise children in an appropriate manner, but also to recognize problematic sexual behaviour. Otherwise a number of differing perceptions collide, and this can lead to conflicts within the team and bring about the risk that signs of sexual breaches are not recognized by staff.

In 2018 the AOB once again observed that concepts to prevent violence and concepts for sex education are still not implemented nationwide. In Vienna, Lower Austria and Tyrol the availability of a sex education concept is a prerequisite to obtain a permit to open up new residential groups for children and adolescents or when re-modelling existing units. Operators in Upper Austria developed a conceptual framework for sex education, which may be used as a basis for the development of individual concepts in each institution; institutions are obliged to develop such concepts. The new regulation in Burgenland also stipulates the development of sex education concepts. Carinthia – which is in the process of drafting a regulation – is encouraged to include a mandatory provision for the establishment of a socio-pedagogical concept as well.

Another important point is to clarify the terminology of sexual abuse and to make a clear distinction between violation, sexual assault and sexual violence, because it has been observed, that operators of public as well as private child and youth welfare facilities are often not aware of the differences.

Sexual violation includes all forms of action, which have a sexual component, which happen once or more often, deliberate or – in most cases – unintentionally and which are not punishable under criminal law. Sexual assault includes all types of action with sexual connotations – verbal or non-verbal – which aim at or result in violating the dignity or sexual self-determination of a person. These actions are often not punishable under criminal law, but may be a precursor. Actions that are punishable under criminal law, such as physical or sexual violence, torture, extortion or coercion, are defined by law. Even experts do not always use these terms correctly. This bears the risk that incidents, which would be punishable by law, are played down. It is therefore recommended, to use these terms in a precise way, in order to avoid the trivialization of sexual violence.

Insufficient awareness of the technical supervisors

The AOB's findings are often in line with the observations of the technical supervisors of the *Laender*. The *Laender* then report back that they are aware of certain problems and have already initiated measures to solve them. On some occasions however, the AOB got the impression that the technical supervision only examined formal necessities. At times the problems indicated by the AOB were recognized and addressed, but the mandatory measures dictated by the technical supervision soon were no longer driven forward or did not bring about the desired effect. It is therefore important that all *Laender* improve the quality and efficiency of the technical supervision by hiring additional staff and by carrying out unannounced control visits, especially at "problematic" facilities.

A very negative example for the inefficiency of the technical supervision was observed in three residential groups in Lower Austria, which were closed entirely in 2018. An own motion investigation of the AOB showed that staff had already reported the application of inadequate measures to restrict freedom and inadmissible punishments in 2012 (e.g. reducing the meal to water and bread for days, shaving the head, showering with cold water or prohibition to speak). The only reaction from the technical supervision however, was to call the director of the residential groups. Never did it investigate which punishments were applied or if any inhuman and degrading treatment occurred in these facilities.

The technical supervision also overlooked the fact that some of the employed staff did not fully meet the statutory requirements and some had no training or education at all. Again, the supervisory body was content with the promise that changes will be made soon and abstained from any control visits. In one of the residential groups, security personnel was involved in the care work and even applied measures to restrict freedom, even though no approved concept was available for this course of action.

Right from the beginning staff shortages and fluctuations were evident in these residential groups. However, the technical supervision still approved that the maximum group size and the minimum age requirements were suspended for a longer period of time. The supervisory body tacitly accepted that the permanent double shifts, which are requested in order to obtain a permit for running such facilities, were never put into practice.

When a special commission detected all of these shortcomings, the child and youth welfare authority immediately shut down all three establishments. However, transfer of the children to

other residential groups was organized without observing the most basic children's rights. The minors were neither included in the decision making process, nor informed or prepared about the planned transfer to another facility. A follow-up visit at the new facilities and interviews with the children and their new caregivers showed, that the transfer had been completely unexpected for the minors and that they had no opportunity to say goodbye to their former caregivers and friends. In addition, they were frightened by the fact that they were picked up by 15 strangers, who were accompanied by the police.

The caregivers at the new facility reported that the children arrived in a state of shock. Two of them even had to be admitted to psychiatric facilities for children and adolescents. The caregivers themselves had not received any information in advance. As a consequence, an adolescent, who so far had only received individual care, was going to be included in the regular group setting, which was of course impossible due to his specific psychological profile.

When interviewing the children, the AOB detected cases of severe posttraumatic stress disorder and they were further traumatized by the ambush-like transfer, and the fact that it was carried out in the presence of the police. Minors who already show mental health problems, anxiety and attachment disorders are further distressed by such major interventions. The AOB therefore ascertained a case of maladministration.

VIOLENCE

"One in five" – violence against women and children

For the third time, the AOB participated in a project called "One in five", which is organised by the Department of Forensic Medicine at the Medical University of Vienna in close cooperation with the Austrian Women's Shelter Network. The aim of this initiative is to raise awareness about the startling extent of violence against women in Austria. Every year, more than 3,000 women seek refuge with their children in one of Austria's women's shelters. One in five women living in Austria is exposed to physical and/or sexual violence. In 2018, the interdisciplinary ring lecture "One in five" put a specific focus on how children are affected when they experience domestic violence.

Even if the violent acts are not directed at the children as such, the mere fact that they watch the abuse or ill-treatment of their mothers is to be considered an act of violence against the children themselves. Children are disoriented and traumatized, when they witness violence within the

family or when they are victims of domestic violence themselves. They feel responsible and are often not able to build up normal relationships when they grow up. Experiencing violence – no matter if directly or indirectly – causes stress and hampers the physical, psychological and social development of the child. It can lead to posttraumatic stress disorders and other health problems or disturb the learning performance of the minors. Children, who grow up in a violent domestic environment, find themselves within a vicious cycle, which is further intensified and can bring about drastic consequences and defects. Boys for example, who experience domestic violence, are more ready to use violence themselves at a later stage, whereas girls run a higher risk to tolerate violent partners as adults.

The interdisciplinary lecture series consisted of seven days, during which experts from various fields (police force, child protection associations, crisis intervention centres, women's shelters, Ombuds Office for Children and Youths and the AOB etc.) talked about possible protective measures, presented different services of assistance and support, and explained how to react and handle different situations of domestic violence. The lecture series pointed out the still missing gaps in research. It criticised the remaining lack of shelters offered to those in danger and it further underlined the traumatic effects domestic violence has on children and adolescents. The interdisciplinary approach of this initiative combines theory and practice and shows different ways of intervention and how to recognize problematic situations. Moreover, it provides concrete – and also preventive – examples of how to react to domestic violence.

Crisis de-escalation placement in case of acute danger to the child

In case of acute danger within the family, the children should be brought to a crisis centre as an emergency measure. Such crisis de-escalation placement is necessary to protect the children and adolescents, to de-escalate the family situation and to move on and develop solutions together with the affected family. However, these crisis de-escalation places are not available nationwide and also not in sufficient numbers.

In Vienna, the first crisis centre already opened its doors in 1996. Every city district has such a crisis centre, some even more than one. For years these crisis centres are always fully occupied; in most of the cases even overcrowded. Crisis de-escalation facilities are usually designed to accommodate a maximum of eight minors. However, this number is often increased to a maximum of twelve children. The reason for this overcrowding is a general lack of crisis de-

escalation places and a long waiting period for aftercare services. Also, in cases of overcrowding, no additional staff is provided, which further hampers an effective crisis intervention.

One of the first steps Vienna undertook in 2018 to solve this situation was to outsource the crisis intervention work to five additional facilities which provide family care. In addition to this a residential group was established, which puts a special focus on siblings and takes care of children for a certain transitional period after they leave the crisis de-escalation places. A private operator introduced a small residential group for children in need of especially intensive care. Outpatient offers and services are supposed to be further developed as well, to take the main workload away from the crisis centres. Increasing the offer of outpatient measures is expected to bring additional success. Vienna started these organizational changes in July 2018 and hopes that the effective addition of in- and outpatient crisis facilities will help to further ease the situation. Crisis intervention work faces another problem in Vienna when it comes to new-borns and infants. There are not enough foster parents who take in children below the age of 3 that come from crisis backgrounds. As a consequence, children between 0-3 years of age are more and more often placed in regular crisis centres, even though these facilities are not designed to take care of such young children. A large-scale marketing campaign with information events as well as a new employment model for foster parents for children from acute crisis backgrounds, which guarantees better conditions to provide their services, should help raise the number of people interested in taking on this important responsibility.

A recommendation to establish a crisis centre for the specific needs of minors with psychiatric diagnoses and children, who suffer from posttraumatic stress disorder, has not yet been considered. During the monitoring visit at a crisis centre, the NPM observed the placement of a psychotic girl, who has to be brought to the psychiatric ward on a regular basis. The adolescent tried to hurt the smaller children, insulted them and kept hitting the pedagogues. In all the documented outbreaks of violence, the police had to be called, to guarantee safety.

This example clearly shows that a crisis centre for minors with psychological problems is necessary. From a human rights point of view it is not acceptable that other children are re-traumatized by situations like this. Also, the other children may associate the frequent appearance of the police with traumatizing experiences from their past and come to the conclusion that the crisis centre is not the protected shelter it is supposed to be. Even the staff believed that a crisis centre is not the right place for minors with severe psychological problems.

Crisis intervention places are scarce in Lower Austria as well and the waiting period for placement in after care is far too long. Places in socio-therapeutic facilities are especially rare, which is why the intended stay at a crisis centre is often inadequately prolonged. In 2018 it even happened, that minors had to return to their family, because they had to wait until a room became available in one of the residential groups. This is unacceptable. There is an immediate and urgent need to act and to establish new and additional places in crisis facilities for children and adolescents.

Burgenland made provisions for the establishment of crisis de-escalation places for the first time in its regulation to the Children's and Youth Assistance Act. Besides the general care work, the crisis centre is supposed to develop recommendations for the care of minors after they leave the crisis centre. These recommendations are to be made based on crisis intervention expertise and psychological and pedagogical diagnoses. Care staff is set up in a multidisciplinary way and it provides for seven full-time employees and one permanent position for an expert in the field of clinical psychology. The group size is limited to a maximum of eight children. This number may only be exceeded to secure the well-being of a minor and if so, only for a short period of time.

The AOB once again underlines the importance of providing a sufficient number of crisis de-escalation places and stresses that Vienna needs to establish a crisis centre for children and adolescents with psychiatric diagnoses, which must be staffed in a multidisciplinary way. It is also unacceptable, that children are brought back to a violent family environment, which threatens their safety, only because there is a lack of suitable care facilities and they need to wait until a room becomes available in one of the existing after-care facilities.

Inadequate care for traumatized minors

Some minors are in need of special care due to their diagnoses and the seriousness of their impairment. Such care cannot be provided by the regular socio-pedagogical facilities. Nonetheless, many severely traumatized minors still live in residential groups, which do not provide adequate pedagogical care and support. The composition of staff is often not multidisciplinary enough and clinical psychologists are not employed, although this knowledge and expertise would be highly needed when taking care of minors with such problems.

The number of minors in out-of-home care is higher in socio-pedagogical accommodations than in socio-therapeutic ones. This means that the staffing ratio is too low. Caregivers put their main focus on children with behavioural difficulties and this leaves less time for the other kids. As a

consequence the system is failing both sides, the minors, who need more and/or specific care and the minors, who share the residential group with them.

Group size can be a reason for the problematic behaviour of traumatized minors, as they can feel overwhelmed by the situation. Another cause for problems can be age diversity, for example if minors, who are far younger than the average age intended for a residential group, are still placed in this same group, because they cannot be accommodated anywhere else, due to their problems.

The children's and youth welfare acts of the *Laender* stipulate that the assistance given to the minors, has to be re-evaluated on a regular basis and adjusted if need be. If it becomes evident that the type of accommodation or placement is not or no longer adequate for a child, an urgent reaction is necessary. However, it is not always easy to find new and suitable places in other care facilities, because all *Laender* have a lack of places in socio-therapeutic and socio-psychiatric care. The facility in question often has to wait for a long time, until a solution is found, and is left on its own in the meantime. In many cases the only possibly solution for the facility is to admit the minors to psychiatric wards, provided they have free spaces available themselves.

The AOB finds examples for this problem again and again. In Lower Austria 11-year old boys were accommodated in the same residential group as young adults, although the group as such is designed to accommodate only adolescents from the age of 14 onwards. The young boys could not be placed in another facility, because they had already shown aggressive behaviour against other kids or caregivers in the past. The adolescents had to leave their former residential groups, because they had become delinquent. Individual interviews soon showed that the younger boys were afraid of the adolescents and that the adolescents felt annoyed by the younger boys. Due to the different background of violence and sexual abuse, the group size and the age diversity, the staff was not able to prevent assaults from the adolescents against the younger boys effectively.

SOS Children's Villages developed a model to keep children, who cause problems, in the care facilities and to introduce a socio-therapeutic care place if need be. If approved by the child and youth welfare operator, the facility receives a higher daily allowance for the child in question and can then employ an additional caregiver. One of the advantages is that problematic disruptions of close relationships can be avoided with this method. However, such approval is always made for a limited period of time. In a Viennese facility the contract with the additional caregiver could not be extended, because the permit for the socio-therapeutic care place had expired. Although the facility had applied in time to prolong this permit, it had to wait for three months, as these permits

are only approved on a quarterly basis. It is therefore recommended, to start the application process not only in time, but even earlier in order to make sure that no vacancies occur due to specific deadlines or time constraints.

A facility in Upper Austria, which provides care for difficult male adolescents, who made traumatizing experiences in their past, had an inadequate staffing ratio. There had already been incidents of arson, theft and incitement to criminal behaviour. The AOB recommended adapting the staffing ration to the existing care concept, in order to guarantee the best possible development for the minors and their safety. The facility agreed with the AOB's observation. However, it also explained that the staffing ratio is set by the *Land* and in accordance with its economic framework directives. It is therefore the competence and responsibility of the *Land*, to check the staffing ratio and to adapt it accordingly.

The *Laender* must widen the offer of socio-therapeutic care in facilities for children and adolescents. The staffing ratio must meet the demand. Minors, who cannot or no longer be taken care of in a socio-pedagogical setting, must be transferred to adequate and multidisciplinary socio-therapeutic or socio-psychiatric facilities without delay.

JUVENILES IN PRISON

As of 1 September 2017, 143 juveniles were in prison, four of which were only 14 years old. In 2014, the number of juveniles in prison counted 96 at the exact same date. This means that the number of juveniles in prison is increasing significantly. The majority of them are imprisoned for a period of less than six months and because of criminal offences against property; above all theft and robbery. But more severe custodial sentences also exist. In theory, a lifelong deprivation of liberty is possible, when preventive measures are imposed. A reason for this increase in numbers lies in the fact that – as criminal statistics show – young people become delinquent at an earlier age, and psychological problems increase as well. At the same time, there is a considerable lack of socio-pedagogical facilities as an alternative to imprisonment, which can often be attributed to a lack of support and assistance by the competent authorities for child and youth welfare and protection.

The AOB's special report on the rights of children and adolescents contains a series of recommendations in the field of juveniles in prison. In general the imprisonment of adolescents should be avoided when- and wherever possible. Special regulations have been put in place for adolescents by the legislator; to ensure that juvenile delinquency is not necessarily met with

imprisonment. When it comes to children and adolescents, all legal sources demand the least-intrusive procedure possible. Regarding the enforcement of custodial sentences, the Federal Ministry of Constitutional Affairs, Reforms, Deregulation and Justice issued a decree to establish minimum standards for the juvenile penal system and the detention of adolescents.

Wherever juveniles are detained or imprisoned, these minimum standards must be adhered to. Language barriers must not hinder juveniles to establish contact with a lawyer; video interpretation services should be made available when juveniles are admitted to prison.

Early support in the every-day life of juveniles in prison will ensure sustainable effects at a later stage. A sentence of imprisonment is a life-altering experience for young people. The necessary support can therefore only be given by very experienced and well-trained prison officials. With the right professional care, longer sentences provide an opportunity to catch up on school education and vocational training. The respective training offer should be in line with the juveniles' interests and girls must not be put at a disadvantage in comparison to boys.

Flexible visiting hours make it easier for working parents to maintain contact with their children. Child appropriate visitor areas enable them to bring along younger siblings or family members, which ensures that juveniles in prison maintain contact with the entire family. Internet calling is a cost-effective means of communication and should therefore be open to all juveniles in prison.

ASYLUM & REFUGEE

Facilities for unaccompanied minor refugees

In its special report from 2017, the AOB put a specific focus on unaccompanied minor refugees (UMR) and made clear that UMRs, who arrive in Austria after several years of strenuous travelling, are in need special protection. It has been further underlined, that UMRs must be treated in the same way and receive the same support as Austrian children in out-of-home care. They are entitled to the special protection and support from the state.

The Reception Conditions Directive of the European Union explicitly recognizes the need of special protection for UMRs; special provisions were put in place for this specific group. As a consequence, member states must guarantee, that asylum seekers receive benefits to ensure an adequate standard of living, which secures their subsistence and protects their physical and mental health.

When it comes to minors, the well-being of the child always ranks first. Offers must be appropriate to guarantee the physical, mental, emotional, moral and social development of the child.

In 2018 the AOB once again observed that these provisions are not entirely met by Austria. The unequal treatment of UMRs in comparison to Austrian children is already evident by the fact that facilities, which care for UMRs in accordance with the basic care provision, receive a significantly lower daily allowance than child and youth welfare facilities.

As a consequence, the service provided to UMRs at basic care provision facilities is inadequate, unless special needs are considered separately or volunteer systems intervene to provide additional support. It is to be criticised that UMRs are left to themselves for a considerably long period of time in many of the facilities. They would need support in everyday, practical things such as buying groceries, cooking well-balanced meals or cleaning the living areas with the right supplies. In many cases such support is not given to them, which results in dirty kitchens or living spaces and eating habits that are far from being healthy and well-balanced. UMRs should be given advice and instructions on how to independently maintain their lives. This calls for an adequate setting and the support from staff. In practice, UMRs are required to perform daily housework, even though they are not sufficiently capable of doing so.

Deficits in the pedagogical field were attributable to the missing qualifications from staff in many of the facilities. In one Viennese facility, only one of the six caregivers had the adequate education. This is inconsistent with the provisions of the international "Quality 4 Children" standards. Deficits in qualification on the part of the personnel resulted in a lack of educational work with UMRs and merely ensured supervision by adults. This is unacceptable; especially for traumatized UMRs.

Instead of providing the necessary multi-professional type of care to UMRs, who are in need of more attention, they are at times stigmatised in public. In Lower Austria for example, the responsible regional minister commanded that several UMRs were transferred to a special facility for "conspicuous and delinquent juveniles"; a facility which was fenced with barbed wire and guarded by security staff with watchdogs. The UMRs were labelled as aggressive troublemakers although some of them had no criminal record at all. The facility that had been opened up especially for them was assessed unsuitable by the Ombuds Office for Children and Youths and shut down four days after its launch by the Lower Austrian Governor. Some of the UMRs were brought back to their old residential groups. Others were transferred to new ones. It is unquestioned, that some UMRs may cause troubles and therefore pose a challenge for the youth welfare system. However, there is good reason why the legal system prohibits the establishment

of prison-like accommodations within the basic reception conditions and the isolation of bothersome UMRs by way of detention, threat or coercion.

In a different case a violent death happened at a facility in Lower Austria and all UMRs who lived at this facility were transferred to other care homes within a few days after the incident. Although it is perfectly clear that a thorough investigation and risk analysis of the entire situation is essential in such cases, the transfer was carried out immediately and without sufficient preparation. Minors were not involved in the decision-making process and only informed about it at very short notice. Moving so quickly to another facility has a severe impact on the children – especially those, who are diagnosed with psychiatric diseases. Furthermore, the new facilities were inadequately informed about the medical history of the new arrivals and the treatment they should get.

It must be said, that facilities for UMRs were closed nationwide due to the fact that they were no longer or not at all needed. In fact, applications for asylum by minors declined considerably. As a result, large centres are no longer necessary. At the beginning of December 2018 the NPM visited a recently opened facility in Lower Austria, which was designed to accommodate 48 people; a size which already contains the risk of violence and aggression in itself. Adolescents at this facility reported that uniformed security guards are present from 5.00 pm onwards and instructed to hinder UMRs under the age of 16 from leaving the facility. In addition, the personal belongings of the minors living at this facility are searched on a regular basis and without concrete cause or suspicion. This interferes inadmissibly with the fundamental rights of the affected persons.

UMRs must receive support by way of integrative care. Problems should not be met with inadmissible forms of detention and measures that restrict their freedom. Daily allowances for UMRs must be equivalent to the ones given to child and youth welfare facilities, in order to provide qualified staff and to ensure needs-based care. UMRs need assistance and training in practical life-skills and they must be able to participate in the decision-making processes concerning them.

Asylum and immigration law: Dublin consultative proceedings for separated families

Families on the run are often separated. Sometimes only a few family members leave the country of their origin to seek asylum elsewhere. As a result, the members of one family can end up applying for asylum in different states. Due to joint asylum regulations, all states, which signed the Dublin agreement (i.e. EU member states, Switzerland, Norway and Iceland), are required to

reunite these family members. As members of the Council of Europe, these countries are furthermore obliged to foster the right to respect for family life.

Asylum authorities from states, which signed the Dublin-agreement (Dublin-states), can retrieve information from the central fingerprint database of the European Union for asylum matters. With this database, the authorities can verify if family members of the person who applies for asylum currently reside in one of the other Dublin-states. If this is the case, a consultative proceeding is initiated, which helps member states to establish who is going to be responsible for the asylum proceedings of the entire family.

The AOB carried out an own initiative investigation into such a consultative proceeding. The Federal Office for Immigration and Asylum did not approve the reunification of family members who lived in Greece with an unaccompanied minor refugee who came to Austria. As an explanation, the authority said, that this decision was in the best interest of the child.

The 13-year-old boy was eligible for asylum. However, the Office for Immigration and Asylum turned down an application from his mother and his siblings, who resided in Greece, explaining that the minor came to Austria with another relative. From this fact, the authority concluded that the boy separated from his family on purpose.

The authority did not consider the response from the Greek colleagues, although they specifically noted that the minor was forced to leave Syria as the first one of his family and now suffered from the separation. The positive prognosis from the Austrian Embassy in Damascus regarding the family reunification with the father and two other siblings did not change the opinion of the Federal Office for Immigration and Asylum.

It took an additional note from the Greek authorities on the pending asylum proceedings of the father and the two brothers as well as the investigative proceeding of the AOB to change the opinion of the Office for Immigration and Asylum and to ensure that it agreed to admit the boy's family members who resided in Greece.

The AOB criticised that the Federal Office for Immigration and Asylum did not accept the application proceedings from the family members in Greece right from the beginning, when the positive prognoses for the rest of the family was available, but took 5 months to change its opinion and take the next steps. This delay in action interferes with the boy's right to respect for family life.

HEALTH & HEALTH CARE

Situation of chronically ill children in the school system

In Austria, about 190,000 children suffer from a chronic disease (e.g. diabetes, asthma, epilepsy or cystic fibrosis). Chronically ill children must not be excluded or hindered from participating in every-day social life by cumbersome bureaucratic burdens.

Coping with such diseases is challenging for the children and their parents, but they usually deal with the situation quite well. Nobody will notice anything "different" with these children, as long as they are within their family environment. They will only reach a boundary when they find themselves outside their families and in public care. It already starts with kindergarten and continues in the school system, where they will make first negative experiences such as marginalization, discrimination or reservations.

Concerned parents reported that teachers asked them to be on call and available at any time, in case their child would need support. In other cases, teachers did not allow a child to eat during classes and insisted that lunch had to be taken during the regular school breaks, regardless of the child's diabetic condition. Sometimes children are requested to go to separate rooms to perform simple medical procedures, so that they will not disturb or interrupt the lessons. Complaints from parents showed that in some cases children were even refused admission to a certain kindergarten or school.

There are of course also teachers, who are very committed to provide their full and unprejudiced support. Also, it needs to be said that legal uncertainties exist as to whether medical assistance provided to chronically ill children falls within the official duties of a teacher. Training for teachers does not offer a solid and reliable basis for medical support. This then quickly raises the question, who will be liable when the teacher makes a mistake?

The AOB demands that further steps need to be taken, so chronically ill children can fully participate in every-day school life. Pedagogues need to be informed in a thorough and comprehensive way. Medical knowledge must be a part of teacher education and training and pedagogues need to be fully informed about the legal situation and the problems that may be implied. Furthermore, the teaching staff should include a specially trained contact persons and it is also recommended to implement a so-called "School-Nurse-System", i.e. healthcare and nursing staff with paediatric knowledge.

First positive steps were made after the AOB's initiative. The Education Reform Act 2017 made sure that certain medical activities, which are carried out by teachers, are finally recognized explicitly as official duties. In case mistakes occur, the state rather than the teacher is primarily liable by way of public liability as employer. This brings a lot of benefits for everybody involved: injured parties are no longer subject to the risks of insolvency on the part of the injuring party, and the teachers can now only be prosecuted in the recourse proceedings of the employer, in cases of qualified fault.

Care of children and adolescents in adult psychiatric wards

In Austria about 165,000 children and adolescents are in need of psychiatric care. Structural deficits are evident in both, the outpatient and inpatient area of child and adolescent psychiatry. The capacity of child and adolescent psychiatric wards is still far from being adequate. As a consequence, minors, who are in need of inpatient psychiatric care, are admitted to adult psychiatric wards.

The confrontation with adults with mental illnesses is extremely stressful for minors, as their needs cannot be adequately met in this environment. Adult psychiatry does not provide age-appropriate care, a pedagogical programme or allow minors to be with others of the same age. It is therefore a long-standing demand of the AOB, not to treat children and adolescents in psychiatric wards for adults. In order to reach this goal, it would be essential to expand the availability of inpatient as well as outpatient treatment by specialists in child and adolescent psychiatry.

Current case law therefore emphasises the right to receive treatment in a psychiatric ward dedicated to child and adolescent psychiatry and by specialist staff. This explains the rule of separation for children and adolescents in psychiatric care, which serves to protect them from the possible bad influence of (generally stronger) adults or from isolation. The success of the treatment can be further impaired, if minors witness how chronic clinical patterns can influence the life and behaviour of the adults. Psychiatric diseases are still well treatable in children. However, an early diagnose and the consistent, child-appropriate treatment are essential.

Accommodating minors with adults can also lead to assault. This risk can be significantly reduced, if child and adolescent psychiatric care is offered in specialised wards. The AOB does not understand, why concepts to improve the situation, are not put into practice with more determination and why it is further ignored, that the psychiatric treatment of minors differs considerably from the psychiatric treatment of adults.

A recent incident at a psychiatric ward in Vienna, where an adult patient allegedly assaulted a 13-year old girl, showed the extent of the problem and the AOB once again confronted the City of Vienna with its shortcomings in the provision of specialised wards for child and adolescent psychiatry. Even the plan to increase the capacity of beds for child and adolescent psychiatry at the Vienna North Hospital and to widen the capacities at Vienna General Hospital and Hietzing Hospital will only create 95 beds for child and adolescent psychiatry and 14 day-care places in Vienna in the foreseeable future. More efforts were undertaken recently to widen the offer for child and adolescent psychiatry. However, the Austrian Health Care Structure Plan still foresees 128 hospital beds for minors. This means that Vienna has to recruit additional child and adolescent psychiatrists and increase the places for specialist training in child and adolescent psychiatry.

In a statement the City of Vienna explained, that the hospital itself filed charges for the suspected sexual abuse of a minor patient. Preventive measures had been taken immediately: the minor patient was transferred to a child and adolescent psychiatric ward, an investigative procedure was opened, campaigns were launched to make staff aware about the issue of violence against women and girls, and interviews were conducted with the directors of the hospital and the psychiatric ward in question.

Until capacities in child and adolescent psychiatry are expanded in 2019, the 2nd psychiatric ward of Hietzing Hospital offers 15 beds, which are exclusively available for the care of minors. The comprehensive care of these patients is guaranteed by specialist doctors and nursing staff, as well as a child-appropriate offer of different pedagogic and psychological therapies.

When two psychiatric units of Otto-Wagner-Hospital moved into the newly renovated Pavilion 1 at Hietzing Hospital, one of the wards was re-assigned for the treatment of 16-year-old adolescents. This should improve the treatment and care of patients below the age of 16 in the departments for child and adolescent psychiatry and ensure that adolescents, who find themselves in the transitional phase from childhood to adulthood, are also treated appropriately. With this measure, a recommendation was met, which says that adolescents should get special treatment and care in this transitional phase. This would however require more than just dedicating a special unit to this specific stage of life. Special programmes for transition psychiatry need to be offered in vocational training and education, in order to impart the necessary knowledge and expertise to the respective professional groups.

Adolescence and young adulthood are very critical stages of life, especially when it comes to the development of chronic psychiatric diseases. The best possible care and treatment is therefore

essential. The transitional phase from adolescent to adult psychiatric treatment brings about specific challenges regarding development-related issues. The specific needs of mentally ill patients between the age of 16 and 24 depend on the different levels of development and maturity. Gaining maturity is not a linear process. Young people with psychiatric problems very often experience setbacks in their development or face severe struggles to gain independence. Social problems or criminal tendencies are another risk factor for these adolescents or young adults. As far as the psychological development is concerned, international data surveys show that the transitional phase from adolescence to adulthood is becoming increasingly longer. Psychiatric care therefore faces the challenge of how to assist young patients during this phase of their lives in the best possible way, to help them solve all the problems they are facing when coming of age.

The University Hospital for Child and Adolescent Psychiatry of the Vienna General Hospital and the Medical University Vienna will move to a new building in the first half of 2020. The new building will offer a floor area of 9,000 m², which means about three times the size it has available now. This expansion provides the Medical University with the opportunity to intensify research and education in this field. The AOB took positive note of this development.

The AOB also took positive note of the fact that the establishment of a child and adolescent psychiatric department was made possible at the Regional Hospital University Clinic Graz (Styria) with the establishment of a study programme for child and adolescent psychiatry and psychotherapeutic medicine for the period of 2019-2024. The implementation and funding of a clinical unit has been demanded for a long time. The Styrian Hospitals Limited Liability Company and the Medical University Graz have started the planning phase of this project.

Measles vaccination programmes

The number of cases of measles increased significantly all over Europe. More than 41,000 children and adults were infected with the highly contagious disease in the first half of 2018. The World Health Organization calls upon member states to take comprehensive measures. In Austria dangerous lapses in vaccination occur among small children as well as young adults. Experts therefore already speak of imminent danger.

The measles are not a harmless children's disease. In 20 out of 100 cases complications will occur such as bronchitis, middle ear infection or pneumonia. One out of 1,000 patients may even suffer from life-threatening meningitis. Complications associated with the vaccine however only happen

in one out of one million vaccinations. Only vaccination coverage of 95% will guarantee that people, who cannot be vaccinated themselves (e.g. new-borns, tumour patients or persons with a weakened immune system) will also be protected. A higher percentage of people who are not vaccinated will inevitably increase the risk of infection for individuals. The more people get vaccinated, the higher the chances that the measles will not spread.

Awareness raising campaigns from health policy have so far not brought the desired results. In the AOB's opinion steering efforts through public benefits would have a higher impact. The so-called "mother-child-passport", which was introduced to ensure health examination during pregnancy, is in the process of being reformed. This reform could be used to introduce compulsory vaccination against the measles. The amount of childcare benefits already depends on the proof of at least ten health care exams, which need to be reported in this "mother-child-passport". Including the vaccination against the measles, would bring about higher vaccination coverage.

Sex assignment surgery violates human rights

It is estimated that up to 30 children are born in Austria each year, which cannot be clearly assigned to the male or female sex. Neither the medical field, nor the legal system address this matter sufficiently. Doctors tend to remove the "irritating" sexual characteristics through surgery as soon as possible. The persons affected often perceive this surgery as "mutilation" afterwards.

Sex assignment surgery, which is performed at an early stage and without being necessary from a medical point of view, constitutes a severe human rights violation. In addition to this, Article 24 of the UN Convention on the Rights of the Child stipulates the right of the child to the highest attainable standard of health. Member states are hence obliged to take the necessary measures, in order to abolish customs, which have harmful and health-damaging effects. As far as national law is concerned, it must be noted, that cosmetic surgery, which is not necessary from a medical point of view, must not be performed on persons, who have not yet completed 16 years of age.

When the AOB initiated investigative proceedings in September 2017, the former Federal Ministry of Health and Women's Affairs established a working group which brought together experts and persons concerned, to discuss and establish a set of recommendations for sex assignment surgery. The AOB got in touch with the current Federal Ministry of Labour, Social Affairs, Health and Consumer Protection, when it heard from different self-help organizations, that a first draft of such guidelines was now available and that this first draft clearly recommended that sex assignment

surgery – if not medically indicated – should be postponed until the person affected can make the decision him- or herself. The general prohibition of sex assignment surgery in early childhood – as requested by self-help organizations – is still not included in this draft. It is further reported that the publication of this guideline will be slightly delayed, because regulations concerning entries in the civil registry still need to be taken into account. The AOB still awaits a statement from the Ministry.

DISCRIMINATION

Child poverty and how it is portrayed in the media

Minors who live in households, which rank below the income limit, are not only exposed to poverty, but also to social marginalization. Public defamation and the stimulation of prejudice foster to the fact, that these children do not have the same chances in society. The media plays an important role as well. It creates and forms the public and political opinion and therefore assumes the important function of an intermediary.

In March 2018, the AOB, together with the Austrian Anti-Poverty Network (*Armutskonferenz*), presented a study on how socially underprivileged children and adolescents are portrayed in Austrian mass media. A specific focus was put on minors, who are or can be discriminated against based on the family's income level and origin, disabilities and other forms of threats or endangerments towards the child.

The sobering results of the study showed that Austrian mass media portrays the every-day life of socially disadvantaged children in a very unilateral, selective and distorted way. It can be said that child-related issues are generally marginalised and underrepresented in the media. It is thus all the more important, to include the children's concerns and to promote their rights.

Key findings of the study showed that reports on charity events for seriously ill children or children with disabilities rank among the most important topics, covered by the media in this field. It has to be noted here, that these stories only involve children with no migration background. When it comes to children or adolescents, media reports also focus on deficits and problems. Rarely do they report about the potentials, talents and strengths of socially underprivileged children; this only happened in 3% of the investigated cases.

A gender-gap was also detected. When analysing the different media, it became evident, that boys are much more visible, compared to girls.

The child's origin is also a key subject. Discussions about foreigners dominated media coverage as well as the political debate and it did not stop at the topic of socially disadvantaged children and adolescents. This is where significant differences in content can be noted. If the children's origin is not mentioned, the media covers topics such as charity events or school expenses. If a migrant or refugee background is mentioned, media coverage usually focuses on juvenile crime or the lack of language knowledge.

In the course of this study, a guideline was developed on "children's rights in media coverage". It is based on the UN Convention on the Rights of the Child and is addressed to the media and other organizations, which publically portray children and adolescents. It includes recommendations for action on how children's rights should be considered in media coverage and how the media can ensure that the content is handled in a sensitive way and in line with children's rights.

The key recommendations of the survey are the following: Socially underprivileged children need more attention from the media. Reports on this group need to be objective and factual as well as sensitive, to ensure that minors are portrayed without prejudice and in accordance with children's rights. Children must be able to present their own views, concerns, problems and wishes in the media. Girls must have equal representation as boys. Children must not become a part of the migration and refugee debate. Journalists themselves need to reflect about their practice by way of workshops or other training measures, which should – at best – include experts from the field and people affected by poverty and social disadvantages.