

AUSTRIAN  
OMBUDSMAN BOARD



# Annual Report

to the National Council and  
to the Federal Council

2020

Monitoring Public Administration



Annual Report  
of the Austrian Ombudsman Board  
to the National Council and the Federal Council  
2020  
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# Preface

For the first time, the Austrian Ombudsman Board (AOB) is presenting its activity report in three volumes. This is due to the special situation in 2020. The challenges of the pandemic and the associated restrictions on public and private life with which the population was confronted were reflected in the monitoring and control activities of the Ombudsman Board. Abuses and disproportionate encroachments on human rights, which were found in this context, led to the decision to present these problems separately in an additional third volume. This COVID-19 volume contains results from the AOB's *ex-post* control as well as its preventive human rights mandate. A comprehensive picture of the AOB's work in 2020 can therefore only be obtained by looking at all three volumes together.

The main focus of this volume is on *ex-post* control. At first glance, the key figures for the number of complaints and investigative activities do not differ from those of the last few years: around 18,000 people contacted the AOB, and a total of 8,777 investigations were initiated. However, these figures must be viewed against the backdrop that the work and the environment of the AOB have changed significantly as a result of the crisis; this had to be responded to with appropriate measures.

As a result of the contact restrictions caused by the pandemic, the Ombudsman's Office could not be reached to the usual extent by the population. Personal meetings, consultation days and events were not possible for many weeks. Thanks to increased media presence and new communication channels such as the introduction of telephone consultation days, the population could still be reached and addressed in a targeted manner. In addition, the AOB was forced to reorganize its work processes. As was the case for all federal authorities and many companies, generally they switched to home office work during the lockdowns.

The results of the investigations are dealt with in detail in over 150 pages. The individual contributions make it clear with which problems the population is confronted in contact with the authorities and which human fates lie behind the complaints. The investigations carried out form a basis not only for pointing out weaknesses and undesirable developments in the administration but also opportunities for improvement. The subject of this volume is also the work of the Pension Commission to which a separate chapter is devoted.

The result of an IMAS study published in 2020 is gratifying, according to which the AOB is not only very well known among the population, but also enjoys great trust. This is particularly important in times of great uncertainty.

We would like to thank the federal ministries and the other federal, state and municipal bodies for the good cooperation over the past year and the trust they have placed in us. Special thanks go to the employees who, with great dedication and flexibility,

made it possible during this difficult year that the AOB was able to fulfil its function to the usual extent.

Werner Amon

Bernhard Achitz

Walter Rosenkranz

Vienna, June 2021



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## Introduction

The focus of this volume is the monitoring of public administration. It reports on problems that citizens have in their contacts with authorities and which, after examination by the Austrian Ombudsman Board (AOB), turn out to be deficiencies. This volume does not deal with investigations in connection with COVID-19 measures; these are dealt with in a separate volume on "COVID-19".

**Many complaints highlight the crisis**

But complaints that are not directly related to COVID-19 must also be viewed against the backdrop of the pandemic-related crisis: If authorities refuse legitimate claims in times of crisis or if they are not dealt with within a reasonable period of time, the people affected are often particularly hard hit. Many families and individuals are currently in a precarious economic situation and are dependent on state benefits to avert or at least cushion emergencies. The crisis has also exacerbated existing weaknesses in the system. Some of them have already been pointed out by the AOB in earlier reports, such as bottlenecks in the care and health sector, insufficient resources in the prison system and excessively long proceedings in the asylum sector. The ones who suffer are those directly affected.

As an institution for legal protection, the AOB has the function of helping citizens to defend their rights if they do not see their concerns properly dealt with and resolved. In many cases, the AOB can have unlawful actions by the authorities corrected. A single complaint can always be the reason for general recommendations for correcting the behavior of the administration in similar cases. The monitoring of the administration therefore goes beyond the importance of the specific case. It is an ongoing process that should further improve a public administration that functions well.

**Indications of weak points in the system**

The AOB hopes that its reports will trigger necessary changes. The description of grievances should also help to increase the administration's sensitivity to a correct and citizen-oriented application of the laws. This could facilitate better contact between the population and the administration and strengthen trust in legal certainty

The present report is structured as follows: Chapter 1, the "Performance Record", gives an overview of all activities of the AOB in 2020. The various areas of responsibility of the

**Performance record provides information on the most important figures**

Ombudsman and the most important work results are presented in short summaries. The financial and human resources of the Office, the public relations work and the international activities that were set up in the year under review are also described.

Chapter 2 provides information about the work of the Pension Commission. It is entrusted with the compensation of victims of children's homes according to the Pensions for Victims of Children's Homes Act (PVCHA). Since it began its work in 2017, the Pension Commission has received around 2,000 applications from people who have not yet received any compensation for mistreatment and abuse suffered. In 2020, a further 382 applications were submitted. The unchanged high number of applications submitted illustrates once again the decades-long process of clearing up omissions on the part of government agencies.

**Results of the Pension Commission's work**

In Chapter 3, the results and focal points of the audit work are presented in detail; as in the previous reports, they are broken down according to departmental responsibilities. On the one hand, the findings are based on individual complaints received by the AOB. On the other hand, they are the result of official investigations. Not all of the cases of maladministration found can be shown in this report. The presentation focuses on topics that have often been the subject of a complaint or that affect a larger group of people. The conclusion is formed by legislative suggestions that were prompted by the investigative activity.

**Identified deficiencies and legislative suggestions**

# 1. Performance record

## 1.1. Monitoring public administration

The Austrian Ombudsman Board (AOB) controls the public administration in Austria on the basis of the federal constitution. Every citizen can contact the AOB in the case of an alleged maladministration. The AOB is obliged to investigate every admissible complaint and to inform the person concerned of the result of the examination. If the AOB suspects an irregularity, it can also take action on its own and initiate an investigation. In addition, the AOB is authorized to have the Constitutional Court review the legality of ordinances issued by a federal authority.

The AOB investigates every complaint

In the year under review, 17,914 people contacted the AOB. On average, the AOB received 72 complaints per working day. In 8,777 cases – around 49 percent of the complaints – the AOB initiated a formal investigation. Of these, 5,937 related to the federal administration and 2,840 to the state and municipal administration. The AOB was responsible for processing 3,938 other complaints, but there were insufficient indications of maladministration or proceedings before an authority had not yet been completed. In these cases, the AOB helped with information on the legal situation and general information. A total of 5,199 submissions related to questions outside of the AOB's mandate. In these cases, the AOB also provided information and provided information on further counselling offers.

Approximately 18,000 complaints

### Performance Record 2020

Complaints about the Administration	12,715
of these Investigations initiated	8,777
Processing without investigation	3,938
Complaints outside the investigation mandate	5,199
<b>TOTAL Complaints Handled</b>	<b>17,914</b>

## Investigations in the federal administration

At the federal level, the AOB monitors all authorities, offices and agencies that are entrusted with the enforcement of federal laws. In addition to the direct and indirect federal administration, the private sector administration is also the responsibility of the

Federal administration:  
5,937 investigations

AOB. The AOB carried out a total of 5,937 investigations in the federal administration.

As in the previous year, most of the investigations concerned the social welfare and health areas. These areas accounted for 26 percent of all proceedings. COVID-19 measures and health insurance issues gave rise to the complaint in particular. The number of complaints from people with disabilities remains high.

**Majority of Investigations in the areas of social welfare and health**

In the year under review, a total of 1,221 investigations were initiated based on complaints about the judiciary. Measured against all proceedings, this corresponds to a share of 20.6 percent. Compared to the previous year, the number of complaints increased by 9.9 percent. The duration of court proceedings and the execution of sentences gave rise to complaints.

**1,221 Investigations in the area of justice**

A total of 1,137 investigative proceedings were initiated in the area of internal security, which corresponds to around 19.2 percent of all proceedings. The complaints in the year under review related to a considerable extent to aliens and asylum law as well as the police. Complaints about residence permit proceedings have risen sharply compared in comparison to the previous year, but the number of investigative proceedings relating to the duration of asylum proceedings continues to decline.

**Every fifth complaint relates to internal security**

Investigative proceedings in federal administration	Number of Cases	in %
Federal Ministry of Social Affairs, Health, Care, and Consumer Protection	1,540	26.0
Federal Ministry of Justice	1,221	20.6
Federal Ministry of the Interior	1,137	19.2
Federal Ministry of Labour, Family and Youth	578	9.7
Federal Ministry for Climate Action, Environment, Energy, Mobility, Innovation and Technology	454	7.7
Federal Ministry of Agriculture, Regions, and Tourism	309	5.2
Federal Ministry of Finance	259	4.4
Federal Ministry for Digital and Economic Affairs	167	2.8

Federal Ministry of Education, Science and Research	144	2.4
Federal Ministry of European and International Affairs	47	0.8
Federal Ministry of Defence	38	0.6
Federal Chancellery	21	0.3
Federal Ministry for Art, Culture, the Civil Service and Sport	18	0.3
<b>Total*</b>	<b>5,933</b>	<b>100</b>

\* An additional four cases do not fall under the responsibility of a specific ministry; they are kept as files to be handled by the Chairperson of the AOB

## Investigation within regional and municipal administration 2020

In addition to the federal administrations in the seven states, the AOB also monitors state and municipal administrations. Only the *Laender* of Tyrol and Vorarlberg have set up their own regional ombudsman offices. In total, the AOB carried out 2,840 investigative proceedings at the regional and municipal level during the reporting year. Most of the cases were in the most populous *Laender*, Vienna (38.1 percent), followed by Lower Austria with a share of 18.5 percent, and Styria with 13.2 percent.

State and municipal administrations: 2,840 investigations

<i>Land</i>	2020	in %
Vienna	1,081	38.1
Lower Austria	526	18.5
Styria	374	13.2
Upper Austria	353	12.4
Carinthia	196	6.9
Burgenland	166	5.8
Salzburg	144	5.1
<b>Total</b>	<b>2,840</b>	<b>100</b>

As in previous years, clear focal points of the complaints can be identified. Most of the complaints related to social affairs such as minimum income, youth welfare and the affairs of people with disabilities. 26.6 percent of all audit cases dealt with these topics. One in five complaints (21.7 percent) related to spatial planning

Priorities of the *Laender*

and building law. Citizenship and street police issues, as well as community issues, were also frequent complaints.

Investigative focal points at the regional and municipal level	Number of Cases	in %
Minimum Income, Youth Welfare, People with Disabilities, Basic Services	756	26.6%
Spatial Planning, Housing and Settlements, Construction Law	617	21.7%
Citizenship, Voter Registration, Street Police	391	13.8%
Municipal Affairs	347	12.2%
Health and Veterinary Services	187	6.6%
State Finances, State and Municipal Taxes	154	5.4%
Schooling and Education, Sports and Cultural Affairs	101	3.6%
State and Municipal Roads	87	3.1%
Commerce and Energy	46	1.6%
Nature and Environmental Protection, Waste Management	44	1.5%
Offices of Regional Governments, Service and Salary law for State and Municipal Employees	41	1.4%
Agriculture and Forestry, Hunting and Fishing Law	39	1.4%
State and Municipal Road Traffic (excluding Street Police)	29	1.0%
Science, Research, and Art	1	0,0%
<b>Total</b>	<b>2,840</b>	<b>100</b>

## Complaints resolved in the federal and regional administrations in 2020

In the year under review, a total of 9,846 investigative proceedings were completed, of which 8,252 were initiated in the year under review and 1,594 in the previous years. In 1,346 of the proceedings, maladministration was found. This means that around every seventh complaint that led to an investigation was justified. In the case of 3,712 complaints, however, the AOB members saw no cause for complaint. The AOB was not responsible in 4,788 cases.

**Approximately 14 percent of all complaints are justified**

The Federal Constitution authorizes the AOB to initiate investigative proceedings at its own initiative if it has a concrete suspicion of maladministration. The members of the AOB also made use of this right in the reporting year and initiated 101 own-motion investigations.

**There were 101 own-motion investigations**



### Resolved investigative proceedings in 2020

Maladministration	1,346
No Maladministration	3,712
AOB Not Responsible	4,788
<b>Total</b>	<b>9,846</b>

### Community-oriented communication

The high number of complaints allows conclusions to be drawn about the familiarity and acceptance of the AOB in the population. It is essential that the AOB is easily accessible to citizens, even in times of a pandemic. As a citizen-oriented service and monitoring institution, the AOB guarantees simple and informal contact: Complaints can be submitted in person, by telephone or in writing. An online complaint form, available on the AOB homepage, can also be used. A total of 1,707 people made use of it last year. The information service can be reached via a toll free number and also accepts complaints. The information service was contacted 8,089 times in person or by telephone.

**Uncomplicated contact even during the pandemic**

The AOB's consultation days have also been well received. Citizens in all *Laender* have the opportunity to discuss their concerns personally with the ombudsman. In the year under review, a total of 128 consultation days with 1,043 consultations took place, including six telephone and two virtual consultation days. The decrease compared to the previous year (2019: 196 consultation days) is due to Corona-related restrictions. According to the demographic distribution, there were most consultation days in Vienna.

#### Consultation Days 2020

Vienna	39
Lower Austria	20
Styria	20
Upper Austria	8
Carinthia	11
Burgenland	9
Salzburg	8
Vorarlberg	8
Tyrol	6
<b>Total</b>	<b>129</b>

## 1.2. Work of the Pension Commission

An independent Pension Commission has existed at the AOB since July 2017. It deals with applications for the award of a pension under the Pensions for Victims of Children's Homes Act (PVCHA). It is responsible for those people who have not yet been recognized as victims of violence and who suffered violence between 1945 and 1999 in a home, in a foster family or in a health care or psychiatric facility, or a sanatorium. The same applies to people who have been the victim of an act of violence in a private facility, provided that the referral was made by a youth welfare agency.

**New responsibility of the AOB since July 2017**

The multidisciplinary Pension Commission is made up of twelve experts and is headed by Ombudsman Achitz. It is the task of the commission to check whether the conditions for the granting of a pension are met and to submit appropriate proposals to the AOB. In order to make an assessment of the eligibility possible, clearing discussions are arranged between the applicants and the experts in advance and extensive surveys are carried out. The cases are dealt with in detail in the Pension Commission at regular meetings and an assessment is made of whether the descriptions are credible. The Commission makes a proposal for a decision to the members of the AOB. On the basis of the proposals of the Pension Commission, the AOB finally gives the responsible decision-maker a written recommendation as to whether the applicant should be granted a children's home victim's pension.

In the year under review, a total of 382 applications were submitted directly to the Pension Commission or were forwarded to the Pension Commission by other bodies. In addition, around 900 inquiries were answered from people who obtained information from the AOB on pensions for victims of children's homes and how to apply.

**A total of 382 applications in the year under review**

A total of 261 people were invited to a clearing meeting to clarify their eligibility and 217 clearing reports were completed in the reporting year. The Pension Commission met twelve times in the year under review and made 297 suggestions to the AOB. In 279 cases, it was in favour of the award of a pension for victims of children's homes; in 18 cases against it. On the part of the AOB, there were 297 legally grounded written recommendations to decision makers, of which 279 were positive.

**A total of 297 suggestions to the staff of the AOB**

### 1.3. Preventive human rights monitoring

The AOB has the constitutional mandate to protect and promote the observance of human rights. The AOB's mandate as National Preventive Mechanism (NPM) aims to prevent violations of human rights as far as possible. The inspection order relates to public and private institutions in which there are or may be restrictions on freedom. People in these facilities are particularly at risk of abuse or inhuman treatment. The NPM commissions carry out comprehensive and routine checks in prisons, police detention centres, old people's and nursing homes, psychiatric departments and youth welfare institutions. In addition, the AOB controls facilities for people with disabilities in order to prevent exploitation, violence and abuse. The NPM and its commissions also observe and review the exercise of direct command and coercive power by the police, for example during demonstrations, major events, assemblies or deportations.

**Preventing human rights violations**

The legal basis for this comprehensive mandate are two United Nations agreements via which the Republic of Austria has committed itself to certain human rights guarantees: the Optional Protocol to the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) and the UN Disability Rights Convention.

**UN Human rights agreements**

The monitoring is carried out by six commissions. They have unrestricted access to all facilities and receive all information and documents required to carry out their mandate. The commissions each consist of a manager and eight members. They are multidisciplinary and organized according to regional considerations. The NPM commissions report the results of their investigations to the AOB.

## Preventive Monitoring 2020

	Monitoring Visits in Facilities	Observation of Police Operations
Vienna	87	6
Burgenland	38	2
Lower Austria	89	0
Upper Austria	44	1
Salzburg	42	3
Carinthian	25	1
Styria	50	1
Vorarlberg	12	0
Tirol	44	3
<b>Total</b>	<b>431</b>	<b>17</b>
<b>Of these Unannounced</b>	<b>361</b>	<b>6</b>

In 325 cases (i.e. 73 percent of the visits), the commissions felt compelled to object to the human rights situation. The AOB examines these cases on the basis of the perceptions of the commissions and contacts the responsible ministries and supervisory authorities in order to work towards improvements. Many grievances and dangers have already been eliminated. However, the results of this review are also numerous recommendations by the AOB, which are intended to guarantee human rights standards in the facilities.

The AOB is supported in exercising its human rights mandate by the Human Rights Advisory Board. The Human Rights Advisory Council is set up as an advisory body to the AOB and is composed of representatives from non-governmental organizations and federal ministries. The AOB asked the Human Rights Advisory Council for an opinion on various topics of preventive human rights protection and draft recommendations of the NPM. The results of the work of the Human Rights Advisory Council were discussed with the members of the AOB in five plenary sessions.

The NPM activity of the AOB is presented in detail in a separate report.

**Human Rights Advisory  
Council as the advisory  
body of the AOB**

#### 1.4. Budget and personnel

According to the financing proposal, the AOB had a budget of 12,242,000 euros in 2020. According to the result estimate, a total of 12,335,000 euros were available. In the following, only the financing estimate is explained because it represents the actual cash flow (see Federal Budget Statement 2020 sub-booklet for subdivision 05 AOB).

In the financing estimate, payments from personnel expenses accounted for EUR 7,088,000, and payments for operating material expenses amounted to EUR 4,151,000. Operating material expenses include, for example, payments for the NPM commissions and the Human Rights Advisory Council, expenses from legal obligations for the remuneration of the members of the AOB, payments for the Pension Commission and the clearings commissioned by them, administrative internships, printing, energy purchases, and other expenses.

In addition, the AOB also had to make payments of 924,00 euros via transfer, especially for the pensions of the former members of the AOB and the widows of the former members of the AOB. Finally, 53,000 euros were available for payments from investing activities and 26,000 euros for advances.

In order to fulfil the tasks assigned to the AOB since July 1, 2012 according to the OPCAT Implementation Act, a budget of 1,450,000 euros (unchanged from 2019) was provided for disbursements for the commissions and the Human Rights Advisory Council 2020. Of this, around 1,281,000 euros were budgeted for compensation and travel costs for the committee members and around 85,000 euros for the Human Rights Advisory Council; Around 84,000 euros were available for workshops for the commissions and the AOB employees working in the OPCAT area, as well as for expert reports.

A budget of 200,000 euros (unchanged from 2019) has been earmarked in 2020 for the payments to the Pension Commission set up in the AOB since July 1, 2017, in accordance with § 15 Pensions for Victims of Children's Homes Act (PVCHA) and the clearings commissioned by it.

## Federal budget statement of the AOB in millions of Euros

Financing Proposal 2020/2019				Budget of 12.242 Million
2020		2019		
12,242		11,483		
Personnel Expenses		Operating Expenses		
2020	2019	2020	2019	
7.088	6.776	4.151	3.709	
Transfers		Investment Activity and Pay Advances		
2020	2019	2020	2019	
0.924	0.919	0.079	0.079	

As of December 31, 2020, the AOB had a total of 89 permanent positions in the federal personnel plan (2019: 78 positions). The AOB is thus the second smallest supreme body in the Republic of Austria. With part-time workers and people with reduced weekly working hours, administrative internships and seconded workers from other regional authorities, a total of 97 people work at the AOB. The total of 56 members of the six commissions, the 34 members and substitute members of the Human Rights Advisory Council of the AOB, and the twelve members of the Pension Commission in accordance with the Pensions for Victims of Children's Homes Act are not included in the workforce.

89 permanent positions

## 1.5. Public relations

With the aim of providing the population with the best possible support in the event of problems with Austrian authorities as well as protecting and promoting compliance with human rights, the AOB constantly draws attention to its tasks and opportunities. Citizens as well as the media and politics but also experts, are regularly informed about their activities on a daily basis. The most important tools of the AOB's public relations work include, in particular, an extensive online presence with a monthly newsletter and the weekly ORF program "*Bürgeranwalt*" ("Advocate of the People").

Active public relations

## AOB website

On the AOB website, users can find current reports on investigative proceedings as well as all basic information, publications, activity reports and statements on draft laws as well as reports on events and international activities. The website is actively used by citizens and recorded constant interest from the population in the 2020 reporting year with around 160,000 hits. In order to give everyone unrestricted access to AOB information, the website's accessibility was further improved last year. Individual areas have been technically adapted to the Web Accessibility Act.

**Website had approximately 160,000 hits**

## ORF TV show "*Bürgeranwalt*" ("Advocate of the People")

The ORF program "*Bürgeranwalt*" remains the most important communication platform for the AOB's matters of concern. In 2020, it set new record viewer numbers. The program on October 31, 2020, on the topics of fixed cost subsidies for companies and access to the hardship fund for foreign 24-hour caregivers achieved a peak number of almost 800,000 viewers.

**Record number of viewers for the TV show "*Bürgeranwalt*"**

Since January 2002, the AOB has been informing the public about current investigations on a weekly basis. In the studio, the ombudsmen discuss complaints from citizens directly with representatives from the authorities and those affected for an hour. Many problems have already been successfully resolved in this way.

The broadcast begins every Saturday at 6:00 p.m. on ORF 2. Deaf and hearing-impaired people can also follow the "*Bürgeranwalt*" in Austrian sign language or on ORF TELETEXT on page 777 with subtitles. In addition, each program can be viewed on the [ORF TVthek](#) for a week. The very popular studio discussions were followed by an average of 440,000 households in the 2020 reporting year, which corresponds to a market share of around 24 percent and an increase of over 20 percent compared to the previous year.

## The AOB's reporting methods

The AOB regularly presents the results of its work in reports to the National Council, the Federal Council and the *Laender* Diets. In addition to the annual reports to the parliament and the Vienna Diet, the AOB also sent reports on the control of public

**Pandemic-related restrictions**

administration in Styria, Lower Austria and Carinthia in 2020. Due to COVID-19, it was not possible to discuss all of the reports with the members of the respective committees of the *Laender* in the course of the calendar year. In some cases, the AOB switched to web-based technologies for the presentations. For example, because of the lockdown, the members of the AOB took part in a meeting of the Constitutional Committee in Styria via video conference from the AOB office.

### IMAS study in spring 2020

In order to capture the current impression of the AOB in the consciousness of Austrians, IMAS was commissioned to carry out an Austria-wide survey. The focus was on familiarity with and the level of knowledge about the areas of responsibility, the image, establishing contact, and the competencies of the AOB.

**Survey on familiarity with and the level of knowledge about the AOB**

The survey shows that people are generally very satisfied with the AOB's work. The institution is well known. Three out of four respondents know about the AOB. A majority are also well informed about its tasks and appreciate its work. Overall, more women know the AOB (77 percent) than men (72 percent), more older people (83 percent) than younger people (60 percent), and more people with higher education (82 percent) than those with compulsory schooling (66 percent).

**High level of recognition**

The active media work of the AOB - especially in the context of the ORF programme "*Bürgeranwalt*" - contributes significantly to the high level of awareness. According to this, a large part of the population knows the AOB from the media (71 percent), especially from television (60 percent).

**Active media work**

The image of the AOB is clearly positive: fifty-nine percent of the population think that the AOB performs an important function. The majority consider the institution to be close to the citizens, are convinced that it is committed to the citizens, and is doing a very useful job.

**Positive image**

For approximately three quarters of those surveyed, the AOB is also seen as a point of contact for potential problems. The socio-demographic analyses show that younger people express an above-average number of reservations about the AOB. This may be due to the lower level of knowledge. A lack of knowledge,

**AOB as a point of contact**



especially about the tasks and possibilities, is seen as the main obstacle to contacting the AOB.

After all, sixty-four percent of those familiar with the AOB know that protection against arbitrariness by the authorities is one of the main tasks of the AOB, followed by informing citizens about their rights vis-à-vis the state (55 percent) and examining complaints about the administration (52 percent). But 49 percent also suspect that the AOB offers support in private litigation (49 percent) and in the area of consumer protection (45 percent). Seventy-eight percent of the population consider it important that the AOB has been responsible for the protection and promotion of human rights since 2012.

**Knowledge about the main responsibilities of the AOB**

However, almost two fifths (39 percent) have the impression that the AOB has too little authority. Almost two thirds (62 percent) are in favor of examining complaints about outsourced legal entities for the federal, state and local governments. A similar picture emerges when it comes to the demand for control of the course of court proceedings: a total of 57 percent would welcome this legal option.

**Investigation of outsourced legal entities**

In conclusion, it can be said that younger population groups and people with a lower level of education have a comparatively low level of knowledge about the AOB, its areas of responsibility, and contact points. Accordingly, they are also comparatively less willing to contact the AOB if necessary.

**Lack of knowledge as the main obstacle**

In order to be better prepared for the future, the AOB is therefore planning to further expand its information and online offerings. In this way, a younger audience as well as women should be better addressed. Another goal is to create a legal framework in order to be able to present the AOB in the course of political education in schools and thus to increase the awareness of the AOB with younger people. Although the institution is relatively well known among women, they still make less use of the AOB's offerings. Here it is important to set further accents with specific offers such as the annual lecture series "One in Five".

**Future projects**

## Kick-off event on violence against women

The Centre for Forensic Medicine of the Medical University of Vienna in cooperation with the Autonomous Austrian Women's Homes (*Autonome Österreichische Frauenhäuser*) and the AOB organizes the interdisciplinary lecture series "One in Five" every

**Lecture series "One in Five"**

year in order to actively counteract the tabooization and trivialization of violence against women. The AOB uses the lecture series to address violence protection and violence prevention as a political and social challenge, to point out deficits and to initiate training and further education programmes aimed at eliminating them in the legal, health and social professions.

Due to COVID-19, the lecture series could not be held at the Medical University of Vienna in 2020. However, the kick-off event took place online via a live stream from the premises of the AOB and a much wider audience was reached in this way. The focus was on the perpetrators - men who practice violence against women and children - and on victim protection-oriented work with perpetrators. In addition to short presentations by the organizers as well as by the Minister for Women, Susanne Raab, and the Secretary General of the Ministry of Social Affairs, Ines Stilling, a current study was presented that was commissioned by the Autonomous Austrian Women's Homes and the AOB and financially supported by the Ministry of Social Affairs and the Ministry of Women.

**Online event due to Covid-19**

Under the title "Violence against women - Analysis of reporting on violent crimes against women and the role of the media", author Maria Pernegger (*MediaAffairs*) presented on how dissimilar media reports on violence against women are. One of the most important results is that the high-circulation tabloids report significantly more on violence against women than the quality newspapers. The focus of the tabloid media is primarily on the processing of individual cases, particularly female murders. Violence as a social problem and the general discussion of the problem, on the other hand, occupy a more prominent place in the quality media.

**Study and analysis of media reports**

Media analysis shows that there is still great potential for improvement and that more awareness is necessary when reporting on violence against women. The study, therefore, formulated recommendations for action in the media, but also in politics.

**Recommendation for action**

Afterwards, experts presented their approaches to gender-sensitive violence prevention and explained the measures necessary to counter violence against women

**Gender sensitive prevention of violence**

Despite the COVID-19 pandemic, the event was once again very popular. In total, over 250 people watched the live stream. By the

**Great Interest**

end of the year, another 430 interested people had looked up the event on the AOB website.

## 1.6. International activities

### 1.6.1. International Ombudsman Institute (IOI)

Since it was founded in 1978, the International Ombudsman Institute (IOI) can look back on a successful history as the only global network for ombudsman institutions. In September 2009, the AOB took over the IOI General Secretariat and currently looks after 205 independent ombudsman institutions from around one hundred countries worldwide.

The usual form of networking and exchange, for example through training offers, seminars or conferences, was made more difficult in 2020 due to the global corona pandemic. Like many international organizations, the IOI was forced to find other ways to keep communication channels open with its members and to maintain international exchange.

**New challenge for international exchange**

For the first time, the IOI board held its annual meeting virtually via video conference. Among other things, new members from Africa, Asia, Europe and North America were accepted and the IOI regional subsidies to provide financial support for projects in the individual regions for the period 2020-2021 were decided on. A request by Secretary General Werner Amon to organize the planned media training as online training was accepted.

**IOI Board holds electronic meeting**

After the Corona situation deteriorated again in autumn 2020 and the number of infections increased, the IOI Executive Committee discussed the further procedure for the 12<sup>th</sup> IOI World Conference and General Assembly in an online meeting in October. Due to the pandemic, this event, which takes place every four years, had to be postponed from May 2020 to May 2021. According to a status report by the conference host Peter Tyndall, IOI President and Ombudsman of Ireland, it was agreed that both events would not be held in Dublin as planned but that the World Conference and General Assembly in May 2021 would also be held virtually.

**12<sup>th</sup> IOI World Conference and General Assembly**

This year the IOI had a great success in raising awareness about the work of ombudsman institutions in the protection and promotion of human rights.

**Raising awareness**

An important step at the European level was achieved last year when the Venice Commission of the Council of Europe established the first uniform standards for ombudsman institutions. The so-called "Venice Principles" are 25 principles for the protection and promotion of ombudsman institutions. The European region of the IOI played a leading role in this project.

#### **Venice Principles**

The United Nations also deals with the "Role of Ombudsman Institutions in Protecting and Promoting Human Rights" every two years when the relevant resolution is submitted to the UN General Assembly for approval. The resolution is an important step towards making the core principles - independence, transparency and impartiality - and the work of ombudsman institutions visible.

#### **UN Ombudsman Resolution adopted**

The resolution was adopted through consensus by the UN General Assembly on December 16, 2020, and includes far-reaching changes that have been largely shaped by the IOI in close cooperation with regional partner organizations over the past few years.

IOI General Secretary Werner Amon was pleased about this important step in strengthening independent ombudsman institutions worldwide. "This creates international awareness of the elementary role that ombudsman institutions play in protecting and promoting human rights and confirms the importance of close cooperation between the IOI and the United Nations," confirmed Ombudsman Amon.

#### **IOI welcomes strengthening of independent institutions by the UN**

The IOI regularly offers its members training courses on various topics. During the reporting period, the IOI enabled 18 member institutions to take part in online media training.

#### **IOI media training**

After a first individually completed online module on theory and fundamentals, the participants met for the "practical day" in a joint video link. Each group was accompanied by two experienced BBC journalists who provided their expertise on how to prepare for an interview, how to convey the most essential points, which "journalistic traps" to expect and how these can be avoided. The conclusion was made up of 45-minute individual sessions in which what had been learned could be individually and practically practised in short test interviews for radio and television.

IOI General Secretary Werner Amon greeted each group via video message and emphasized: "Especially in times like these,

ombudsman institutions need to hone their media skills. This is the only way they can communicate information about their work to the outside world and reach all those who need their help.”

The COVID-19 pandemic has created major challenges for ombudsman institutions. The changed situation, the restrictions associated with the pandemic, and newly created problem areas make their work more important than ever.

**COVID-19 and  
Ombudsman institutions**

For this reason, the Ombudsman of Israel, in close cooperation with the IOI, organized an online exchange on the subject of “Ombudsman Institutions and the Challenges of COVID-19”. Participants from 50 institutions from all over the world followed the virtual event and learned about the strategies ombudsman institutions are developing in order to remain accessible to the public, maintain their monitoring activities, and continue to guarantee the protection of citizens’ rights.

**Israel webinar**

Ombudsman Werner Amon used his introductory remarks to emphasize the importance of international exchange and emphasized that citizens need an independent and reliable contact point more than ever to deal with their problems and complaints.

The year 2020 was marked by the international exchange of experiences through various online events, so-called webinars, and representatives of the IOI were often invited as guest speakers on a wide variety of topics.

**Webinars as a common  
form of exchange**

In October, the African Ombudsman Association hosted a webinar to discuss the circumstances under which African ombudsman institutions come under pressure or have to operate in the most difficult of conditions. This IOI has been dealing with this topic for several years, and Ombudsman Amon was happy to present the various support mechanisms that the IOI uses to assist colleagues.

**„Ombudsman under  
Threat“**

Further, the IOI supported the Eleventh Seminar of the Institute of Latin American Ombudsman Institutions (ILO), with which the IOI has maintained a close cooperation for several years. Chris Field, Second IOI Vice President and Ombudsman of Western Australia, participated as a speaker at this event, which was themed “Human Rights Protection in Exceptional Situations”.

**ILO seminar Latin  
America**

IOI President Peter Tyndall was also invited as an IOI guest speaker at various online events. Among other things, he spoke about the constantly changing role of ombudsman institutions on

the occasion of the 25<sup>th</sup> anniversary of the European Ombudsman. In his contribution to the Fourth International Conference on Human Rights Protection in Eurasia, President Tyndall addressed the “new realities” created by the Corona pandemic and their effects on human rights protection.

To intensify the exchange of experience and information, the IOI regularly signs cooperation agreements with partner organizations. In the reporting year, the Caribbean & Latin America Region of the IOI was able to intensify its cooperation with GAMIP (Global Alliance for Ministries and Infrastructures for Peace) as part of a virtual congress on the subject of “Restorative Justice”. On the basis of this cooperation in the field of peace-building measures, the IOI and GAMIP signed a cooperation agreement in November 2020.

**Cooperation agreement with GAMIP**

## 1.6.2. International cooperation

### United Nations

As part of Universal Periodic Review (UPR), this United Nations monitoring mechanism regularly reviews the human rights situation in member states. The third Austrian national examination is expected to take place in early 2021.

**Universal Periodic Review (UPR)**

In the third UPR cycle, National Human Rights Institutions (NHRIs) and NGOs were once again invited to present their concerns in so-called “UPR pre-sessions” before the actual national examination.

In his contribution to the UPR pre-session, Ombudsman Werner Amon addressed the human rights situation with regard to the ongoing COVID-19 crisis and the associated hardships, especially in the area of vulnerable groups. He focused on people with disabilities and the fact that the already very tense situation on the labor markets hits this group particularly hard. The crisis is making it difficult for them to access the labor market, driving them more and more into dependency on social benefits and thus increasingly worsening their situation.

**AOB presents human rights situation**

Ombudsman Amon also pointed out that the government’s COVID containment measures are also hitting the elderly hard. These people often live under institutional care and restrictions on contact and visits to old people’s and nursing homes have further promoted the isolation of older people.

Ombudsman Amon visited the UNESCO Competence Centre for Human Rights in Graz during the reporting period and used this meeting to talk to UNESCO Chair University Prof. Gerd Oberleitner, the chairman of the Human Rights Advisory Board, Professor Renate Kicker, and the director of European Training and Research Centre for Human Rights and Democracy (ETC Graz), Dr. Klaus Starl to exchange. The Competence Centre for Human Rights in Graz is the first scientific institution in Austria established as a so-called UNESCO Category II Centre and is thus under its patronage.

**Visit to the UNESCO  
Competence Centre  
Graz**

In the middle of the year, twelve UN special rapporteurs asked ombudsman institutions, NHRIs, and NGOs in a joint questionnaire for input about the COVID-19 measures taken by the governments and for an analysis; the extent to which these measures affect the human rights situation.

**UN Special Rapporteurs  
start survey**

In answering the questionnaire, the AOB initially explained the measures taken by the government to protect against COVID-19 in the period from March to June 2020. After that, reference was made to certain areas, such as the enforcement and control of curfews by the police or the suspension of school lessons, as a result of which children from difficult family situations in particular could be curtailed in their right to an education. The promotion measures put in place by the government and new work models that were launched to avoid high unemployment figures and to cushion financial emergencies were also discussed. Another focus was the isolation of people in institutional care who could not have any or only strictly regulated contact with their relatives and thus were threatened with becoming even more isolated. Here, the AOB stressed the importance of finding a good balance between the right to health and the right to social contact, family, and privacy.

**AOB sets key thematic  
focuses in survey  
response**

As a national human rights institution, the AOB participated in the annual online meetings of the Global Alliance of National Human Rights Institutions (GANHRI) and the European Network of National Human Rights Institutions (ENNHRI). GANHRI represents the interests of national human rights institutions in the UN Human Rights Council and other UN human rights committees. ENNHRI is the regional network of all European national human rights institutions.

**GANHRI and ENNHRI  
annual meetings**

## European Union

The Schengen Evaluation Mechanism and the data regularly collected about it provide a comprehensive picture of the challenges EU member states face when it comes to returns and return programs. At the request of the European Commission, the AOB took part in a telephone conversation with experts and was able to explain the Ombudsman's point of view to the Schengen evaluation to a representative of the European Fundamental Rights Agency.

Schengen evaluation

Also in 2020, the AOB was again invited to the annual meeting of the petition committees of the federal and state governments. The conference highlighted "Changing Public Petitions". Ombudsman Bernhard Achitz addressed the close cooperation with the Austrian National Council from the point of view of the AOB in his keynote speech "Ombudsmen and Citizen Advocates - Tasks, Working Methods and the Relationship to Parliament".

Meeting of the Petition Committees in Dresden

As part of the German EU Council Presidency, a virtual "European Inclusion Summit" took place in November 2020, and an expert from the AOB participated. The focus was on the status of inclusion in Europe and the different experiences in the member states, with the European Legal Act on Accessibility, the protection of women and children with disabilities from violence, digitization as well as inclusive development cooperation on the program.

European Inclusion Summit

## Other events and bilateral contacts

At the beginning of the year, Ombudsman Werner Amon welcomed two delegations to Vienna for bilateral talks. Employees of the Dutch Ombudsman Institution visited the AOB. The content of the intensive exchange of experience at expert level was in particular complaint management and public relations work for both institutions. The discussions focused on the Dutch ombudsman's experience with social media. The guests also had the opportunity to watch a "*Bürgeranwalt*" broadcast with Ombudsman Amon being recorded

Exchange of experiences with the Netherlands

Katherine Chang, Taiwan's new ambassador, also paid an inaugural visit to the AOB and was welcomed by Ombudsman Werner Amon. In his function as IOI General Secretary, Ombudsman Amon emphasized the active work of the Taiwanese IOI member and stressed that he was looking forward

Inaugural visit by the ambassador of Taiwan



to further developing this good cooperation with the Taiwanese monitoring body, the so-called "Control Yuan".

### **National Preventive Mechanism (NPM)**

As the National Preventive Mechanism (NPM), the AOB, together with the commissions it has set up, is always interested in an intensive exchange of experiences with other NPMs. Further details on the international cooperation of the NPM can be found in the volume on the activities of the National Preventive Mechanism.

## 2. Pensions for victims of children's homes

For many decades, children and young people were mistreated and tortured in institutions and with foster families. The violence and also the emotional neglect in the early years of life had an extremely negative effect on the later social and economic life of those affected, in addition to the health consequences. As recognition of the injustice, the National Council unanimously passed the Pensions for Victims of Children's Homes Act (PVCHA) in the summer of 2017. For more than three years now, beneficiaries have been receiving a monthly supplementary pension. The pension amounts to 337.30 euros (amount in 2021) and is paid out gross for net twelve times per year.

**A total of 337.30 euros  
gross for net**

People who were children or young people in a children's or youth home (full boarding school), a hospital, psychiatric institution or sanatorium, a comparable institution or such a private institution between May 10, 1945, and December 31, 1999, are entitled to the Pension Victims for Children's Homes (if assigned there by a youth welfare agency) or were placed in a foster family and were victims of an act of violence during this placement.

**Violence during  
placement**

The Pension for Victims of Children's Homes is paid out when a pension or rehabilitation allowance is drawn and when a permanent minimum income benefit is drawn due to incapacity to work. The pension is also paid out to people with disabilities who are insured as relatives in the social insurance system because they are unable to work. In addition, the pension is due once the statutory retirement age has been reached.

**Supplementary pension  
for retirees**

Before these conditions are met, those affected have the opportunity to apply for a pension entitlement to be determined. An investigation is carried out; the pension is only paid out when you retire. A Pension for Victims of Children's Homes is awarded either after a clearing proceeding at a victim protection agency and subsequent payment of financial compensation by the institution or child and youth welfare agency or after a review proceeding with the AOB Pension Commission. Pension insurers or Ministry of Social Affairs Service will decide on the applications with an administrative notification.

## 2.1. Overview of the most important figures

Since the Pensions for Victims of Children's Homes Act (PVCHA) entered into force in July 2017, the AOB has dealt with a total of around 1,000 applications for the granting of a home victim's pension through a recommendation by the AOB's committee and another 550 applications through the decision to grant flat-rate compensation from a victim protection agency.

**A total of 1,550 applications processed**

In the year under review, the pension commission was commissioned by the decision-makers to examine a total of 382 applications. These included 45 requests for a declaration. 60 people took the opportunity to submit the application directly to the AOB. Forty-four percent of the applications were made by women and 56 percent by men. This ratio has remained unchanged compared to the previous year. Only about four percent of the cases (seventeen applications) to the Pension Commission are concerned with a legal adult representative. In the previous year this value was around fifteen percent.

**A total of 382 new applications**

In 2020, too, the AOB provided comprehensive information on the claims of home victims and helped to resolve problems and rectify grievances. 76 people wrote to the AOB with their concerns about the Pensions for Victims of Children's Homes Act and 828 people by telephone. An investigation was initiated by the AOB because 20 percent of the concerns and a third of the complaints were found to be justified. Most of the inquiries concerned the application process, the course of the proceedings, and the payment of the pension or flat-rate compensation. There were also uncertainties with regard to possibly losing Pensions for Victims of Children's Homes or flat-rate compensation, for example in the case of applications for minimum income or housing allowances. According to the provisions of the Pensions for Victims of Children's Homes Act, the pension does not count as income.

**Approximately 900 questions about the PVCHA were answered**

In the year under review, the Pension Commission met in twelve meetings and dealt with a total of 299 applications for a Pension for Victims of Children's Homes. A total of 279 applications were approved by the Pension Commission and 18 applications were rejected. Two applications were postponed for further research and were no longer completed in the year under review. The board of the AOB followed the proposal of the Pension Commission in all cases.

**Approximately 300 applications were completed through resolution by the AOB**

The most common reason for a rejection was that no placement according to the Pensions for Victims of Children's Homes Act was presented or ascertained. In about a third, the allegations of violence were assessed as not credible, in the remaining rejections, according to the assessment of the Pension Commission, there was no intentional violent offense within the meaning of the Pensions for Victims of Children's Homes Act. The Pension Commission did not initiate an examination of 25 applications because the applicants had already received a lump-sum compensation (11), withdrew the application (8) or did not participate in the proceeding (6). Another three victims unfortunately died before the end of the proceedings. 200 applications were dealt with by initiating proceedings at a victim protection agency and the granting of lump-sum compensation by the institution or child and youth welfare agency.

From a pool of 64 external clinical psychologists, a total of 261 orders for clearing discussions were assigned and 217 clearing reports were completed in the year under review

In the year under review, those affected described over 400 places of violence. The majority of those affected experienced violence in a home or boarding school (90 percent), seven percent in a foster family and only three percent in a hospital.

Acts of psychological violence were mentioned most frequently, such as withholding food or being forced to eat vomit under threat of physical violence, a ban on speaking, being forced to stand in a corner for hours or locked in a dark room. Seventy percent of the acts of violence described concerned physical and psychological violence. Physical abuse was frequently mentioned, such as blows with hands and rods that led to welts, bruises and nosebleeds. A third of the descriptions concerned sexual assault.

## 2.2. Effects of COVID-19

The outbreak of COVID-19 and the associated restrictions led to uncertainty among applicants. A large part of the population are elderly; many are chronically ill

### Risk groups

The discussions with the clearing experts were basically still possible during the COVID-19 lockdown provided that protective measures were taken. Many of those affected and also therapists did not participate in conversations in order to keep the risk of

infection as low as possible. Some said they were at risk because of their age or a chronic illness.

There were also delays in file research: In some cases, files could not be removed from the archives due to the switch to home office. On the other hand, the state authorities requested an extension of the deadline, since all human resources were tied up in the fight against COVID-19.

The annual exchange of experiences with the clearing experts was also carried out digitally this year.

Finally, it should be noted that COVID-19 has led to a longer duration in individual proceedings due to delays in the transfer of files or the postponement of clearing dates.

### 2.3. Pension Commission and proceedings at the AOB

The legislature authorized the AOB to set up the Pension Commission. The pension insurers and the Ministry of Social Affairs Service instructed the Pension Commission to examine the applications for the granting of a Pension for Victims of Children's Homes. The Pension Commission is a committee at the AOB that consists of experts from various disciplines. It researches accommodation and assesses the credibility of the experience of violence.

Applicants report about their experiences of violence in clearing discussions with clinical psychologists. In particular, child and youth welfare files, children's home files, school attendance confirmations, certificates, proof of registration and photos serve as proof of accommodation.

**Clearing talks**

In monthly meetings, the Pension Commission discusses the applications and submits a proposal to the staff of the AOB for a recommendation to the decision-makers. Pension insurers and the Ministry of Social Affairs Service make a decision about the application based on the recommendation of the AOB with an administrative notification that is sent directly to the applicant.

**Monthly meetings of the Pension Commission**

## 2.4. Compensation through institutions or child and youth welfare agencies

Many of those affected who are entitled to the monthly Pension for Victims of Children's Homes can also apply for lump-sum compensation and the assumption of costs for psychotherapy. The Pension Commission informs all applicants comprehensively about possible compensation and refers them to the competent authorities. Furthermore, the Pension Commission accompanies those affected in proceedings at the victim protection agencies and ensures that the information about a compensation payment is also passed on to the decision-makers and that they can issue the administrative notification to the victims of children's homes.

Those affected who have received lump-sum compensation because of the violence suffered during placement in the sense of the Pensions for Victims of Children's Homes Act are automatically entitled to the home victim's pension.

In 2020, victims of violence in homes, hospitals and foster families had contact points at the Protestant and Catholic Churches, at all state governments (except Vienna), at the municipal authorities of the Cities of Linz and Innsbruck, and at SOS Children's Villages Austria at their disposal. At the time of going to press, the Vienna Hospital Association (now: Vienna Health Association) announced that it would resume its compensation project for victims of violence in the former Pavilion XV of the Otto Wagner Hospital (Steinhof).

Seventeen contact points, fourteen still open

In the year under review, the Pension Commission initiated a survey among all victim protection agencies. The survey showed that the prerequisites for a lump sum compensation are regulated very differently in Austria. No contact point is available for affected persons in Viennese institutions, federal government institutions within the area of responsibility of the Federal Ministry of Justice and the former Federal Ministry for Education, Arts and Culture (e.g. the Educational Institute Kaiserebersdorf, the Federal Institute for the Deaf and Mute) as well as people who were mistreated in private homes (with the exception of SOS Children's Villages) or in hospitals

Survey by the Pension Commission

Styria alone takes into account all accommodations in the sense of the Pensions for Victims of Children's Homes Act. Carinthia and Tyrol also recognize incidents in the curative education departments of the state hospitals. Some *Laender*, such as Styria and Vorarlberg, also take into account accommodation in private

homes, provided that there was a connection via child and youth welfare.

Upper Austria, Lower Austria, Carinthia and Vorarlberg limit the period of relevant violence to that of the Pensions for Victims of Children's Homes Act (May 1945 to December 1999). This period was also relevant in the compensation project of the City of Vienna. The Vienna Hospital Association (now: Vienna Health Association) limited its compensation to the period from 1945 to 1989, the state of Tyrol to cases up to 1991 and the Linz magistrate to the period from 1945 to today. The Regional Government of Burgenland and the Regional Government of Styria take into account all cases without time restrictions, provided that possible claims for damages are already legally statute-barred. There are no time restrictions at the contact points for the State of Salzburg, the city of Innsbruck, the Catholic Church, and SOS Children's Villages.

**Time periods for relevant incidents of violence are restricted**

Styria compensates all those affected who suffered violence during placements after the Pensions for Victims of Children's Homes Act in Styria. The *Laender* of Lower Austria, Burgenland, Vorarlberg, Salzburg and the City of Linz grant financial benefits, provided that the placement was provided within the framework of their child and youth welfare and the duty of supervision was with the respective state or the magistrate; the State of Salzburg only as long as the child has not been sent to an institution outside the *Land*. The municipality of Vienna also awarded compensation to all those affected by violence during their placement by the Vienna Child and Youth Welfare Service. The city of Innsbruck, the Catholic Church and SOS Children's Villages recognize all incidents of violence in their own facilities. The Vienna Hospital Association only compensated those affected by violence in Pavilion XV, Upper Austria and Carinthia only compensate state homes and foster families in the respective federal state. On the part of the federal government, there were contact points for those affected in institutions of the Federal Ministry of Justice and Federal Ministry for Education Art and Culture (now: Federal Ministry of Education, Science and Research).

**Not all placements are considered**

The majority of the victim protection agencies only grant benefits in the case of incidents that occurred during placement. In addition, the State of Carinthia also recognizes abuse by the former head of the curative education department at the Klagenfurt Regional Hospital (LKH), Dr. Wurst that occurred in his practice in the outpatient area as worthy of compensation. The Salzburg Regional Government and the Styrian Regional

**Compensation for violence outside of a placement is also possible**

Government also award compensation for incidents of violence that have occurred within the framework of the state's statutory duty of care and supervision, for example in the event of violence by the welfare worker. The Catholic Church also recognizes violent attacks by officials of the Catholic Church. In the cases mentioned, there is no automatic entitlement to the victim's pension, as the violence was not suffered during placement in the sense of the Pensions for Victims of Children's Homes Act.

As a result, some contact points are less generous than others, which means that many victims of violence in private homes have no possibility of lump-sum compensation, even if they were admitted to the home at the instigation of child and youth welfare authorities. In addition to the cash benefits, some contact points also grant other benefits, such as the assumption of costs for the purchase of insurance months and therapy costs. Therapy costs were approved by all victim protection agencies except for Burgenland the Vienna Hospital Association (now: Vienna Health Association) and the Linz Municipal Authorities. No figures could be given for Carinthia, as these have not yet been recorded separately.

In the reporting period (2010 to June 2020), a total of 7,435 people received a lump sum compensation payment in the sense of the Pensions for Victims of Children's Homes Act. Since the Pensions for Victims of Children's Homes Act came into force (July 2017 to June 2020) a total of 1,891 payments have been made to 766 women and 1,125 men. A total 1,069 applications have been rejected.

**A total of 7,435 lump-sum compensation payments and 1,069 rejections**

Most of the compensation was granted by the municipality of Vienna, totaling over 2,300 cases. However, this project was only open for reports between 2010 and 2016. More than 1,800 other people were compensated by the Catholic Church and around 900 who had been affected by Lower Austria in the period up to July 2020. Around 500 people received financial benefits from Tyrol, 370 from Upper Austria, 270 from Styria, around 250 from Vorarlberg, 170 from the city of Innsbruck and around 140 from the Evangelical Church and the federal government (Federal Ministry of Justice and Federal Ministry for Education Art and Culture). Carinthia and SOS Children's Villages Austria have compensated around 100 people by July 2020, the Vienna Hospital Association (now: Vienna Health Association) and Salzburg around 70. The fewest affected were from the City of Linz (around 30 people) and Burgenland (10 people).



In total, lump sums of EUR 91,911,191.92 were paid out. The payments made so far were between 250 and 35,000 euros before the Pensions for Victims of Children's Homes Act came into force and between 250 and 25,000 euros after the Pensions for Victims of Children's Homes Act came into force.

**Nearly 92 million euros paid out**

The lower limits of the compensation are very different: in Tyrol 250 euros, in Vorarlberg and the Municipality of Vienna 500 euros, in Lower Austria, the Vienna Hospital Association (now: Vienna Health Association) and in the Protestant and Catholic Churches 1,000 euros, in Carinthia 2,000 euros, in Upper Austria and the Municipal Authority of the City of Linz 2,500 euros, in Salzburg and Styria 3,000 euros and from the SOS Children's Villages and the City of Innsbruck 5,000 euros.

The *Laender* values only reflect the previous compensation practice, they may therefore be under or overrun in the future. For reasons of data protection, no exact upper or lower limits are being reported from Burgenland since the small number of reports would allow conclusions to be drawn about the number of individual payments.

In addition, 4,887 people received payment for treatment costs. The therapy costs granted differ considerably depending on the victim protection agency. A maximum of 200 hours of therapy were paid for in the compensation project of the municipality of Vienna. At the victim protection centers that are currently still open, a maximum of 100 hours are approved by SOS Children's Villages Austria and in Tyrol, a maximum of 90 hours per person by the City of Innsbruck Administration, a maximum of 80 hours in Lower Austria, 70 hours in Vorarlberg and 50 hours in Salzburg. In the Federal Ministry for Education Art and Culture project, an average of 56 hours were approved and 29 in that of the Federal Ministry of Justice. The Carinthian Regional Government could not report any figures; the Styrian Regional Government and the Protestant Church did not announce any upper limits. In Burgenland and by the Magistrate of the City of Linz, no (additional) therapy costs were covered.

**Therapy for 4,887 people**

Therapy costs were awarded for around 57 percent of the reports (approvals and denials). Despite the denial of financial compensation, therapy costs could be awarded.

The effects the Pensions for Victims of Children's Homes Act had on the contact points were also examined. In Vorarlberg, Tyrol, and at the contact point in Innsbruck, applications for flat-rate

compensation decreased slightly after the Pensions for Victims of Children's Homes Act came into force. All other victim protection agencies, whose offer was continuously available, experienced an increase in the number of requests. At SOS Children's Villages and in Upper Austria, the numbers rose by around 15 percent, and in Salzburg and for the Catholic Church by 40 percent. In Burgenland, 80 percent more people reported, whereby only 10 affected people contacted the contact point. At the Victim Protection Centre in Lower Austria, the number of reports has doubled and at that of the Linz City Administration even more than doubled, from an average of 2.5 people to 6 people per year. The victim protection office in Styria recorded the largest percentage increase compared to the period before the Pensions for Victims of Children's Homes Act came into force. Here, the reports have increased twenty-fold, from an average of 4.2 to 84 people compensated per year.

If you compare the flat-rate compensation amounts paid before the Pensions for Victims of Children's Homes Act (PVCHA) came into force with those that were paid out after the Pensions for Victims of Children's Homes Act came into force - with the exception of those projects that had already been discontinued before the Pensions for Victims of Children's Homes Act came into force - the result is a 38 percent increase in the flat-rate compensation amount. This shows that there is a need for a contact point for former children's home and foster children.

**Since the PVCHA came into force: 38 percent more flat-rate compensation**

The AOB appeals to the Municipality of Vienna and the Federal Government to reopen the compensation projects for victims of violence in institutions that were within their sphere of influence and to follow the example of the Vienna Health Association, which recently announced that the compensation project would be resumed

**Appeal to Vienna and the Federal Government: reopen victim protection centers**

Furthermore, the *Laender* governments should assume their responsibility and compensate all those affected who were admitted to a children's home as a result of child and youth welfare measures; this regardless of whether the home provider was public, church or private.

**Also compensation for private children's homes**

## 3. Monitoring public administration

### 3.1. Labor, family and youth

#### Introduction

In 2020, the AOB initiated a total of 300 investigations in the area of the Public Employment Service Austria (*Arbeitsmarktservice*, AMS). Securing the livelihood of unemployed people and securing employment through the new COVID-19 short-time working model have challenged the AMS as a service provider for job seekers and companies. From the point of view of the AOB, the AMS has not only shown itself to be an organization that is system-relevant but has also distinguished itself through constant adaptation of its own processes. It should be positively emphasized that the AMS accepted the intervention of the AOB even in ongoing proceedings. If a positive decision (e.g. preliminary decision on a complaint) was made, taking into account suggestions or objections of the AOB, the AOB did not consider the complaints to be justified, as the AMS had responded in a sufficient time as part of the ordinary appeals process.

**Good cooperation with the Austrian Public Employment Service (AMS) despite difficult conditions**

The AOB would like to expressly point out that the cooperation with the Austrian Public Employment Service (AMS) was also extremely good in 2020. The AMS responded promptly and comprehensively to requests to submit comments on complaints. If, in the course of the AOB's investigations, violations of legal regulations were found or complaints had to be made in individual cases, the AMS usually responded quickly and took necessary steps.

In terms of subject matter, "classic" complaints about the Austrian Public Employment Service (AMS), in particular about training and reintegration measures as well as the blocking of unemployment benefits or emergency assistance as a result of not accepting a job offered by the AMS or as a result of failure to comply with monitoring appointments, tended to be pushed into the background. The focus shifted to topics related to the COVID-19 crisis: The main subjects of complaints or inquiries were the newly introduced "one-off payments" by the AMS and COVID-19 short-term work. These topics are dealt with in detail in the volume "COVID-19" (Ch. 4.1.1). In the following chapter "Labor Market" (Ch.

**New priorities as a result of the COVID-19 crisis**

3.1.1.), The AOB deals with two subject areas that often give rise to complaints and are not specifically related to COVID-19.

A total of 278 complaints concerned family-related benefits; in most cases (222), the payment of family allowances, child care allowances and maternity allowances. Compared to the previous year, there was a slight increase in this area.

The Annual Report 2019 reported in detail on the findings about grievances and the recommendations of the AOB from January 2020 on family benefits in cross-border cases. The reaction of the responsible department was still pending in the previous year and is assessed in this report (Section 3.1.2). There are also new developments with regard to the hardship cases identified by the AOB in relation to the Mother-Child Passport Regulation. The AOB also dealt with hardship cases resulting from the provisions of the Childcare Allowance Act (*Kinderbetreuungsgeldgesetz*), such as the rejection of income-related childcare allowance for expectant mothers who struggle with health problems during pregnancy and therefore received sick pay. Another topic was the rejection of the multiple allowance for twins whose mothers receive the so-called "Special Benefit I".

In 2020, fifty-six complaints were closely related to the COVID-19 pandemic and related to support and aid for families who slid into financial need as a result of the corona crisis. These include Family Hardship Compensation ("Corona Aid"), the Family Crisis Fund and the Child Bonus, all of which were created through amendments to the Family Allowance Act (*Familienlastenausgleichsgesetz*). Central points of criticism as well as a collegial assessment of grievances by the AOB due to the disadvantage of the self-employed in payments from Family Hardship Compensation are presented separately in the COVID-19 report (Ch. 3.1.1).

The fact is that months of lockdown with limited classroom teaching or the temporary closings of kindergartens and after-school care centers put the compatibility of family and work to the test. In addition, there were financial emergencies due to short-term working or job loss. Lower income in 2020 due to the COVID-19 crisis may lead to a reduction in income-related childcare allowances for parents whose children will be born in 2021. An amendment to the Childcare Allowance Act therefore provides that, as an exception, the income from 2019 should be used to calculate this benefit if this results in a higher daily rate for the parents. The AOB welcomes this as well as the extension of the

**Cushioning of  
foreseeable  
emergencies**

entitlement period for family allowances by six months, as provided for in the Family Allowance Act, because the course of study was impaired as a result of the COVID-19 crisis.

### 3.1.1. Labor market

#### Excessive threats of criminal charges

Regional offices of the Public Employment Service (AMS) sent standardized letters to people who had overdrawn unemployment benefits, unemployment benefits or an allowance (e.g. start-up allowance). You were asked to acknowledge the AMS's claim for repayment in writing and to make a corresponding repayment or at least to apply for the payment of installments. A form for the recognition of the repayment claim was attached to the letter. In the event of non-recognition, a criminal complaint (for fraud or commercial fraud) was threatened. The AMS also referred to the legal institution of active repentance and announced that it would refrain from reporting criminal charges if the request for recognition of the repayment claim was met quickly and a correspondingly voluntary repayment was made. These letters from the AMS were sent before the ordinary administrative proceeding set out in Sections 24 and 25 of the Unemployment Insurance Law (*Arbeitslosenversicherungsgesetz*) was carried out. This raised concerns from the AOB, which were subsequently confirmed.

**Threat of criminal charges instead of administrative proceedings**

This approach by the Public Employment Service Austria (AMS) was inadmissible from the point of view of the AOB because the suspicion of intent to deceive and enrich themselves did not arise. Rather, the AOB gave the impression that standardized letters were routinely sent in order to exert pressure without a correspondingly careful examination of the subjective facts relating to the individual case. The threat of criminal action against innocent citizens is likely to create fear, even if no unlawful acts had previously been committed. Nobody has to put up with being accused of a property offense by an authority for no reason. This also applies if an overpayment is neither due to the concealment of performance-influencing circumstances nor to untrue information and was used in good faith.

A job seeker from Carinthia was shocked by the "threatening letter" he received from the Austrian Public Employment Service (AMS) and reported to the AOB that from September 14 to 18, 2020, he received sickness benefit and emergency assistance in

**AMS overlooks notifications and threatens to report a criminal offense**

parallel, and the resulting excess receipt had come to 106 euros. He was able to prove with appropriate evidence that he had complied with all reporting obligations. The overpayment was therefore not actually due to him, but resulted from an oversight by the Austrian Public Employment Service (AMS).

There was a similar case in Upper Austria in which an objectively unlawful overdraft of unemployment benefits for the period from January 11 to 29, 2020 occurred. During this period, Ms. N.N. was in a mental institution and was therefore entitled to sick pay. Due to the clear file situation, the job seeker was not at fault for the overdraft, as the timely notification of her hospital stay was documented. However, the Austrian Public Employment Service (AMS) had overlooked this. Nevertheless, a letter was sent to her with the threat of criminal charges on suspicion of fraud.

Another complaint concerned the Austrian Public Employment Service (AMS) Upper Austria: Ms. N.N. was employed by a non-profit organization, Her employment ended at the end of August 2019. Immediately afterwards she worked for the same institution on a minor basis. In such a constellation, the regulation of § 12 (3) (h) of the Unemployment Insurance Law applies. According to this, a person is not considered unemployed if he was initially employed by an employer with full insurance under the General Social insurance Act (*Allgemeines Sozialversicherungsgesetz*) and then takes up minor employment as part of an employment relationship with the same employer and there is not at least one period of time of a month between the fully insured employment relationship and the new minor employment relationship. As of September 1, 2019, Ms. N.N. could not objectively and legally fulfil the central eligibility requirement of unemployment for the receipt of unemployment benefit. The Austrian Public Employment Service (AMS) overlooked this and paid out the cash benefit. In the course of the AOB's investigation, the AMS admitted that the unlawful receipt was not recognizable to the benefit recipient and that she had received the unemployment benefit in good faith.

Although the AMS has expressly recognized that the threat of criminal charges was unjustified in the individual cases mentioned, the AOB took up the problem to avoid further inconvenience for those affected and contacted the Federal Ministry for Labor, Family and Youth. The minister was confronted with the fact that the stricter pace of the Austrian Public Employment Service (AMS) began in 2019 but was not provided for by the legislature. This enforcement practice also did not lead to a significant increase in criminal convictions of former benefit

**AOB initiates official investigation at Federal Ministry for Labor, Family and Youth**

recipients but gave the impression that any objective overpayment could be traced back to fraud on the part of the benefit recipients. However, the fact that the Austrian Public Employment Service (AMS) could have made errors and mistakes is not taken into account.

In the event of an objective overdraft of cash benefits from the statutory unemployment insurance, the legislature has regulated the recovery in Sections 24 and 25 of the Unemployment Insurance Law. There is no mention of the threat of criminal action being used to exert pressure. Rather, as part of a constitutional proceeding, it must be checked whether there is actually a claim for reimbursement within the meaning of Section 25 of the Unemployment Insurance Law and whether the fact that a benefit is not due is due to a breach of obligation on the part of the recipient. In contrast, the request for reimbursement of excess payments, combined with the threat of criminal consequences, is also suitable for quietly remedying official errors. This is the case if a request for reimbursement is apparently “voluntarily” complied with, although on closer inspection the prerequisites for a reimbursement according to § 25 of the Unemployment Insurance Law do not exist at all.

The Federal Ministry for Labor, Family and Youth pointed out to the AOB that authorities and public services, including the Austrian Public Employment Service (AMS), are obliged to report criminal offenses to the criminal police or the public prosecutor's office. In this context, a task force “Social Security Fraud” (TF-SOLBE) was created in July 2018 and an inter-ministerial steering group was set up. At the suggestion of the Justice Department, a new decree on the subject at hand had been drawn up, whereby - in contrast to the previous procedure - a notification obligation of the Austrian Public Employment Service (AMS) was stipulated regardless of the amount of the overdraft or the amount to be repaid. The Federal Ministry for Labor, Family and Youth also referred to § 167 of the Criminal Code, according to which criminal liability is lifted through active repentance, which, however, presupposes that damage compensation must be done without coercion. In this respect, the Austrian Public Employment Service's approach is justified; active repentance can no longer be realized after a recovery notice has been issued.

The minister's arguments are fundamentally understandable, but it must be pointed out decidedly that the instrument of criminal reports or the threat of such reports may never be used across the board and in an undifferentiated manner. Under no

**AOB warns against  
undermining Rule-of-  
Law Standards**

circumstances should there be an erosion of rule of law standards, which are guaranteed by a recovery procedure according to the Unemployment Insurance Law. Should the increased use of criminal “clarifications” therefore be pursued, a corresponding training or retraining of the respective Austrian Public Employment Service (AMS) employees proves to be indispensable from the point of view of the AOB. Every fraud requires intent to deceive, intent to damage, and intent to enrich. All three must be present at the time of the offence in order to be able to assume a property offence. Under no circumstances should the Austrian Public Employment Service (AMS) encourage undifferentiated criminalization of service recipients.

### **Austrian Public Employment Service falsely equates “earnings” with “income”**

Ms. N.N. contacted the AOB and complained that her application for unemployment benefits had been rejected by the Regional Austrian Public Employment Service (AMS) Office in Vienna on May 1, 2020. The AMS was of the opinion that Ms. N.N. had earned an average monthly gross income from self-employment above the marginal earnings threshold. In this respect, the eligibility requirement for unemployment according to § 12 of the Unemployment Insurance Law was not met.

Ms. N.N. described to the AOB how in parallel to a job subject to unemployment insurance, she was self-employed as a physical therapist and also held seminars and lectures in this area on an independent basis. As part of this activity, she provided services until the lockdown on March 16, 2020; Ms. N.N. received income from her job up to and including April 2020 (from previously performed services). After registering as unemployed or after claiming unemployment benefits on May 1, 2020, she did not generate any income until the end of her unemployment on June 29, 2020. Operating expenses, in particular rent payments for office space and the costs for a website, continued to run.

In the course of the investigation, the AOB determined that the Austrian Public Employment Service had misunderstood the concept of income under unemployment insurance law within the meaning of § 36a of the Unemployment Insurance Law and that Ms. N.N. had not been properly informed in this regard by her Austrian Public Employment Service advisor. The term “income” was mistakenly equated with the term “revenue”. The AOB had to

**Difference between  
“earnings” and “income”**



make it clear that the terms “income”, “revenue” and “earnings” must be clearly distinguished from one another.

According to § 36a (2) of the Unemployment Insurance Law, “income” in the sense of the Unemployment Insurance Law is to be understood as the tax law income according to § 2 (2) Income Tax Act (*Einkommenssteuergesetz*). Accordingly, income is the total amount of all taxable income. The tax income is, in turn, the difference between income minus business expenses

The Austrian Public Employment Service (AMS) admitted the error in law and followed the arguments of the AOB. The unemployment benefit was awarded to Ms. N.N. retroactively and the rejection notice officially rectified.

**AOB achieves correction of AMS decision**

### 3.1.2. Family benefits

In the year under review, the AOB once again dealt with some provisions of the Childcare Allowance Act (*Kinderbetreuungsgeldgesetz*), which it has been calling for for a long time to be changed. With the Childcare Allowance Act amendment 2013, the possibility was created to be able to change the selected variant of the childcare allowance, i.e. income replacement system or account system, once within 14 days. However, this option is ineffective: All the parents concerned had only recognized their mistake after this period had expired - when they were notified of the benefit receipt. In the event of a mistake in the choice of the reference system, those affected could suffer major financial losses. For one family from Salzburg the monthly difference was 500 euros, in another case in Styria it was even 700 euros.

**Childcare allowance**

In order to be able to choose the most suitable variant and duration of benefits, you have to know the complicated provisions of the Childcare Allowance Act. Despite ongoing revisions and adjustments, application forms and information messages are often misunderstood. In its current report on benefits under the Childcare Allowance Act (BUND / 2020/24 series), the Austrian Court of Audit also states that the complex system of options requires a comprehensive range of advice and information from the authorities. The information messages that will be available prior to submitting the application would be very detailed. However, they focused on the full description of all legal provisions and not on supporting the parents in their decision on the optimal design of the benefit entitlement. Without appropriate

**Great need for advising**

help, many parents are overwhelmed. The AOB therefore agrees with the recommendation of the Austrian Court of Audit to adjust the resources for information and advice more closely to the needs of the parents.

The requirement of a mandatory joint main residence registration as a prerequisite for childcare allowance also continues to cause problems. Parents reported ambiguities in the registration process, which resulted in the late registration of the main residence of the children. As a result, they did not receive any benefits for certain periods of time or had to repay the childcare allowance.

In many cases, the AOB was able to inform those affected about the eligibility requirements for family allowance (e.g. in the case of residential accommodation and certain training) and the duration of the proceeding. Furthermore, the AOB dealt with the contradicting assessment of the ability to work in the context of the increased family allowance on the one hand and by the pension insurance on the other hand. The application of a young woman from Salzburg for increased family allowance was rejected because the reduction in workability of 70 percent could only be accepted from June 2017. At the same time, the Austrian Pension Agency ascertained that disability already existed when first starting work, thus already in September 2015, and that the disability was thus original. The disability pension was refused due to insufficient contribution months. This decision was confirmed by the judgment of the Regional Court Salzburg as a labor and social court. The court referred to the expert reports prepared in the context of the family allowance proceedings and compared them with the reports prepared in the pension proceedings or court proceedings:

**Family allowance**

The expert opinions prepared when the entitlement to increased family allowance was examined came from the general medicine department and the examination only lasted 30 minutes. In contrast, the judicial experts are those from the fields of psychiatry / neurology or neuropsychology who assessed the plaintiff's ability to work as part of an overall assessment. The contradictory decisions were, of course, incomprehensible to those affected. The AOB contacted the Federal Ministry for Labor, Family and Youth and was able to find a solution: If additional documents or input are presented, the Tax Office will arrange for a further medical expert opinion to be sent to Ministry of Social Affairs Service as part of a retrial.

**Increased family allowance**

Fortunately, a solution could be found for a schoolgirl with down syndrome: After moving, she was no longer able to use the transport service to school from her new place of residence. With the help of the Federal Ministry for Labor, Family and Youth, the AOB achieved a resumption of her transport service.

**School transport**

### **Income-related childcare allowance: one paid sick day too many**

The topic is not new, but it continues to occupy the AOB: the entitlement to the income-based child care allowance is lost if sick pay was received for more than 14 days in the time before the child was born. This affects those women who try to continue their work during pregnancy despite health problems in a particularly hard way.

In some complaint cases, expectant mothers received 15 or 16 days of sick pay during the relevant period instead of the "allowable" 14 days. They credibly argued that they had tried to resume work. For them, it was very disappointing that they were not entitled to income-related childcare benefits because they had received sick pay for one or two days longer. This is because the financial losses are considerable: The amount of childcare allowance is often reduced by about half as a result. For example, one of those affected had expected a daily amount of 66 euros and received only 33 euros per day. This corresponds to an annual loss of about 12,000 euros.

**One paid sick day too many**

However, the legal provisions are clear: Entitlement to income-related childcare allowance only exists if the parent was actually continuously employed in the 182 days prior to the start of the employment ban or the birth of the child. Interruptions of no more than 14 days in total do not harm (§ 24 Childcare Allowance Act). In addition, the Supreme Court determined (February 25, 2014, 10 ObS 5 / 14d) that periods of sick leave - as soon as sick pay is received by the employer after the end of the continued payment of wages - do not constitute gainful employment. The entitlement to income-related childcare allowance is linked to very specific conditions that must be met cumulatively and the interpretation of which must be based strictly on the wording. The legislature may - constitutionally permissible - restrict the granting of income-related childcare allowance to a certain group of people who meet very specific criteria. There is a general risk in life that circumstances arise, such as receipt of sickness benefit, which prevent entitlement to the income-related childcare allowance.

**Text of the law and jurisprudence clear**

The AOB has proposed a change in the law for a long time in order to avoid hardship cases. Those periods in which sickness benefits are drawn could be included in the employment definition for the income-related child care benefit. This would also ensure uniformity with the EU legal definition of employment. Because the sickness benefit is to be viewed as a cash benefit according to Art. 11 Paragraph 2 of Regulation (EC) 883/2004 and therefore to be seen as exercising an employment (Supreme Court March 24, 2015, 10ObS117 / 14z).

**AOB proposes amendment to the Childcare Allowance Act**

The Federal Ministry for Labor, Family and Youth rejected a change suggested by the AOB. The regulations are accurate because the benefits are tailored to those parents who are career-oriented and do their job every day, at least during the observation period. With regard to the lump-sum variants, which are generous from the Federal Minister's point of view, as well as the minimum amount due in any case in the income replacement system, additional hardship regulations are not required. Also, under European law, the Federal Ministry for Labor, Family and Youth does not consider a change to the provisions necessary and contradicts the legal opinion of the Supreme Court: There is agreement among the member states that the design of the national eligibility requirements for various cash benefits is and should remain reserved for the individual member states.

**Federal Ministry rejects proposed amendment**

The negative effects of receiving sickness allowance for more than 14 days are clearly pointed out in the information material on child care allowances. Nevertheless, this legal regulation leads in some cases to not understandable and burdensome consequences.

### **No multiple supplement for twins**

The application for an income-related childcare allowance for a mother of twins in Styria was rejected because all requirements were not met. She therefore had to switch to the lower "Special Benefit I" provided for this purpose. As a result, her application for the multiple allowance, according to which the childcare allowance for the second child is increased by 50 percent, was rejected. This does not apply to the "special service I". That meant a loss of more than 6,000 euros for the family. The same thing happened to a mother of twins in Upper Austria who, for health reasons, had agreed on unpaid special leave with her employer and was therefore not entitled to the income-related childcare

**No supplement for twins**

allowance. She also lost around 500 euros a month because the multiple allowance was not granted.

In the Childcare Allowance Act, there are two different benefit systems, the income replacement system and the account system (formerly: "flat-rate system"), which differ in numerous details. It is therefore not possible to switch between the two systems. If one of the parents does not meet all eligibility requirements for income-related childcare allowance, the "Special Benefit I", which is regulated in § 24d of the Childcare Allowance Act, is due upon application. This amounts to 33.88 euros per day and is therefore the same as the performance of the account variant for a one-year withdrawal period. § 24e of the Childcare Allowance Act lists some provisions that also apply to childcare allowances as a substitute for earned income. The multiple surcharge is not one of them. This is understandable in view of the higher income-related childcare allowance. However, it is questionable whether this also applies to "Special Benefit I". This constitutes a catch-all offense if the requirements for income-related childcare allowances are not met. However, it is doubtful that the legislature also wanted to exclude the right to the multiple allowance. Even if the "Special Benefit I" is part of the system of income-related childcare allowances according to the systematics of the law, its lower amount corresponds exactly to the childcare allowance as an account for a period of one year. However, a multiple supplement is due for this flat-rate variant of the childcare allowance. For the parents concerned, it is therefore incomprehensible that they receive a lower daily rate with "Special Benefit I", but still no multiple allowance.

The AOB has contacted the Federal Ministry for Labor, Family and Youth. They referred to the systematics of the law and the materials. Accordingly, in the explanations of the 17<sup>th</sup> Amendment to the Childcare Allowance Act (Federal Law Gazette I 2016/53), the legislature explicitly cited the multiple allowance as an example of the fact that certain regulations of the Childcare Allowance Act in income replacement systems should not apply. The Federal Ministry for Labor, Family and Youth therefore maintains that the multiple surcharge is only paid in the account system. A legal change or clarification that the surcharge is also due together with "Special Benefit I" would be desirable from the AOB's point of view.

## Family allowance notifications should contain legal grounds in the future

When a family benefit entitlement arises or lapses, families receive a notification from the Tax Office. However, these notifications only contain information about the start and end of the family allowance benefit. They do not contain a reason why the entitlement no longer exists after a certain point in time. This repeatedly leads to ambiguity and confusion for the parents making the application. A brief justification for the discontinuation or discontinuation of the family allowance would be an important service for citizens.

Notifications without legal grounds

The AOB had already contacted the Federal Ministry for Family and Youth, which was responsible at the time in 2016 and learned that the new family allowance procedure would also include the possibility of justifying hiring. Since this has not yet been the case, the AOB contacted the responsible department under review again in the year. They informed the AOB that the messages will be created and sent automatically by the respective clerk in EDP according to the current family allowance procedure. No additional justification can be attached to these automatically generated written communications. At the moment, however, a new family allowance procedure is being developed as part of the "FABIAN" project. With the use of this system, the clerks in the Tax Offices should be able to write additional information on every family allowance notification. However, as the Austrian Court of Audit found (Bund 2018/36 series), IT applications have been postponed again and again in recent years. The AOB hopes that the project will now be implemented quickly.

Project "FABIAN"

## Long waits for cross-border childcare allowances

The AOB has long been reporting on the problems that families have with childcare allowance when one parent works in another EU country. Although AOB staff unanimously determined in January 2020 that there was a maladministration, there has been no improvement in sight. Many new complaints from those affected, further court decisions and a current report by the Austrian Court of Audit have confirmed the AOB's criticism.

EU law stipulates that the state in which the parents work has to pay its family benefits as a matter of priority. If these are lower than the family benefits in the country of residence, the latter has to pay the difference. To do this, the authorities of the EU states have to exchange ideas with each other, which often takes longer

or does not always end immediately with an agreement on responsibility. However, EU law contains provisions designed to ensure that families receive benefits as quickly as possible in these cases too. In practice, however, it looks different.

Mostly Austrian families who live with their children in Austria are affected, often single parents. The Austrian authorities ask you to submit countless, often very private documents and to apply for family benefits abroad as well. Against a rejection, they should also raise legal remedies there. Only then will a decision be made on your application in Austria. It often takes months or years for the families to receive the benefits to which they are entitled. In some cases, they do not get any benefit at all. This puts many of those affected, especially single parents, in a situation that threatens their very existence.

In the last Annual Report, the AOB reported in detail on the findings of maladministration and the recommendations linked to it. The same was taken up in parliamentary questions. The statement of the Federal Ministry for Labor, Family and Youth to the AOB is detailed, but in terms of content it is unsatisfactory. The only positive thing is the announcement by the Federal Ministry for Labor, Family and Youth that it will work with the other EU states and EU organs to accelerate the process, to reduce bureaucratic hurdles and to consider the points objected to by the AOB in the next revision of the work instructions.

**Maladministration**

In general, the Federal Ministry for Labor, Family and Youth rejects the AOB's criticism of the failures of the Austrian authorities and sees the reason for the delays solely in the lack of cooperation on the part of the families and the foreign authorities concerned. The AOB does not agree with this opinion. After all, the families regularly give them thick files full of correspondence with the authorities and documents that have already been submitted.

While the AOB has given detailed legal justification for its legal view and substantiated it with literature and jurisprudence, the Federal Ministry for Labor, Family and Youth did not address these legal arguments at all in its statement. In the statement of the Federal Ministry for Labor, Family and Youth, it is said that the cases criticized by the AOB are "special cases that have been torn out" and that most of them have already been resolved. Both are wrong: Most of those affected have never received a negative decision they could fight in court, although the requested benefit was not granted or not granted in full. Some cases were only

**Statement from the  
Federal Ministry  
unsatisfactory**

resolved after years of proceedings. This is also a case of maladministration.

The AOB has called on the authorities to no longer require those affected to submit applications for various family benefits abroad, to wait for decisions about them and, if necessary, to fight them before further investigations in Austria. The ministry objects that these formal applications are not required by Austria, but by the other EU countries. The complaints received by the AOB show this differently: The foreign authorities have already confirmed in many cases that there is no entitlement to the service there. However, these confirmations are not accepted by the Austrian authorities. The ministry continues to insist that those affected submit formal foreign notices, which is often impossible or difficult to accomplish.

So that the families do not have to wait endlessly for the childcare allowance, the AOB recommends paying the money or the provisional difference to benefits from other countries no later than eight months after submitting an application and issuing a administrative notification whenever the full amount requested is not paid. This has also been rejected by the Federal Ministry for Labor, Family and Youth. For this, the authority would have to know how high the expected foreign benefits would be, the ministry explains, and the authority cannot be expected to have an overview of all family benefits in all 31 countries concerned.

The AOB cannot agree to this either. A basic principle of the rule of law is that you receive a decision against which you can appeal. This also applies to decisions on provisional performance obligations, as has already been determined by the highest court. The authorities do not even have to keep track of all foreign family benefits, as only those that are comparable with the Austrian childcare allowance are to be taken into account. From the point of view of the AOB, this can be expected of the authority, and there is also an EU database for this.

The Federal Ministry for Labor, Family and Youth also rejected the AOB's warning to publish the work instructions for the authorities on the grounds that this would lead to "abuse of performance through the exploitation of knowledge". This is also not understandable for the AOB.

The cases listed in the statement of maladministration have largely not yet been settled in accordance with the rule of law. More are being added all the time. In the 2020 reporting year

**Forty new complaints in one year**



alone, AOB received more than 40 new complaints about delays in childcare allowances in cross-border cases.

The criticisms by the AOB have also been confirmed by further recent court decisions. For example, the Supreme Court recently stated that families must quickly receive the highest benefit to which they are entitled, even in cross-border cases (October 13, 2020, 10 ObS 111/20a). With this decision, the mother finally received a childcare allowance for her child, who is now almost six years old. The Labor and Social Affairs Court also confirmed in a final decision that if there is not yet sufficient information about the foreign jurisdiction and benefit amount, the full Austrian benefit must be paid provisionally (Labor and Social Affairs Court Vienna from October 6, 2020, 32 Cgs 41/20h-6).

**Court decisions confirm criticisms by the AOB**

Now the Austrian Court of Audit has also determined that there is a need for improvement here. In its recent report, it generally criticized the length of time it takes to process childcare benefits, especially in cross-border cases (Austrian Court of Audit report "Benefits according to the Childcare Allowance Act". Series Bund 2020/24, p. 53).

While the Federal Ministry for Labor, Family and Youth assumed an average processing time of 28 days and no waiting times or disbursement gaps between weekly and childcare allowance, the Austrian Court of Audit came to completely different results in its investigation. The average processing time in the risk-oriented example cases examined by the Austrian Court of Audit was 45 days in Germany and in cross-border cases it was 211 days. Eight of 18 cross-border cases examined took more than 100 days to resolve; in two of the eight cross-border cases even over two years.

**The Austrian Court of Audit also calls for improvement**

Like the AOB, the Austrian Court of Audit also came to the conclusion that the delays are not solely due to a lack of involvement by foreign authorities or affected families. The Austrian Court of Audit found, among other things, that cases had not been dealt with for a long time by the health insurance funds or that requests for information that were not required were sent to applicants. Just like the AOB, the Austrian Court of Audit also criticized the fact that the possibility provided by EU law of receiving compensation payments as a provisional benefit is not lived in practice. In the absence of cooperation between the health insurance institutions responsible for childcare allowance

and the tax offices responsible for family allowances, there are further delays in cross-border cases.

In the Austrian Court of Audit report "Benefits according to the Childcare Allowance Act" (Bund 2020/24 series, p. 67) it says literally: "From the point of view of the Austrian Court of Audit, the 51 sample cases examined showed that the processing (especially in cross-border cases ) sometimes took a long time and health insurance carriers were jointly responsible for delays. Waiting times for payments, gaps between maternity allowance and childcare allowance receipt and periods without health insurance cover could therefore not be ruled out."

The Austrian Court of Audit, therefore, recommended that measures be taken to shorten the processing time and that the advice and information offered on childcare allowances be adapted to the needs of the parents.

The AOB can only agree with this and repeat its recommendation, which has been made regularly for many years, to accelerate the processing of the cross-border childcare allowance, if necessary through legal means.

### **Changes to mother-child passport certificates are necessary**

In 2020, many parents, who had had to repay a considerable part of the child care allowance because they had not submitted the confirmation of the required mother-child passport examinations to the health insurance institution in a timely manner again contacted the AOB.

According to the clear legal provisions, the parents must have the prescribed examinations carried out by the 14<sup>th</sup> month of life at the latest and submit the proof of this to the health insurance institution by the 18th month of life at the latest. If this is not the case, the childcare allowance will be reduced by 1,300 euros for each parent. In its last Annual Report, the AOB lodged the criticism that this harsh consequence not only affects those parents who do not carry out the examinations or do not carry them out in time but also those who do not send the confirmations about them to the health insurance institution on time. It also pointed out that there are problems with the transmission that are not always the fault of the parents.

**Dire consequences for late submission of the confirmation**

The AOB sees an unobjective hardship here and suggested a legal change. In most cases, the examinations are carried out by doctors with a health insurance contract. This means that the required examination confirmations are available from the health insurance company anyway. He could therefore easily determine himself whether the prescribed examinations had been carried out in a timely manner. The Federal Ministry for Labor, Family and Youth rejects an amendment. The AOB's criticism is now also underpinned by the Austrian Court of Audit and the Austrian Public Health Insurance.

**Austrian Court of Audit and the Austrian Public Health Insurance (are also in favor of changes to the law**

The Austrian Court of Audit also recommends a legal change, according to which the data on mother-child passport examinations already available from the health insurance carrier should be used to check entitlement for the childcare allowance. According to the Austrian Court of Audit, this could reduce the administrative burden for the authorities and avoid cuts for affected families (Austrian Court of Audit report "Benefits according to the Childcare Allowance Act", Bund 2020/24 series, p. 44).

The Austrian Public Health Insurance, which is entrusted with the implementation of the regulation, is also critical of the current legal situation, since minor omissions that are often understandable from the perspective of the Austrian Public Health Insurance have serious consequences for those affected. It is also in favor of a change. The AOB hopes that these voices will help to finally reduce the bureaucracy here and relieve the parents.

## 3.2. Education, science, and research

### Introduction

In the reporting year, there were 144 cases at the AOB in the area of the Federal Ministry of Education, Science and Research. A total of 97 cases were recorded in the field of education, an almost unchanged number of complaints compared to the previous year (99). The main thematic focus was on complaints about teaching (60 percent), with the "lead" in service and salary law (20 percent) again increasing significantly. Two percent of the cases concerned religious matters; eighteen percent various other matters. The fact that the main focus of the complaints was on teaching can be attributed to the coronavirus crisis: Well over half of the complaints about teaching included measures by the Federal Ministry of Education, Science and Research to combat COVID-19.

**A total of 144 cases**

A total of 47 submissions related to science and research. Most of the complaints (20) were made in connection with the enforcement of study regulations at universities. The subjects of the complaints were also issues relating to student grants, legal issues and questions relating to tuition fees.

### 3.2.1. Education

#### Serious disciplinary problems at Higher Technical Institute Ottakring

In the spring of 2019, mobile phone videos spreading across the Internet caused a sensation, showing a physical attack against a teacher and other lack of discipline at the Higher Technical Institute Ottakring. The AOB investigated officially.

**Mobile phone video as a reason for the investigation**

The students involved in the attack were also highly conspicuous. For some, given the absenteeism and general bad behavior (severe disrespect for teachers, disruptions to teaching and exams), the question arose whether they really wanted to attend school at all. An effective backlash from (senior) teachers was not discernible.

Instead, despite twelve documented entries in the class register, one of the students received the grade "very satisfactory" - partly because of assaults against a teacher. Another received "only" five entries in the class register, but other serious incidents did not result in any entries in the class register. In the case of this student,

**Serious rule violations initially without consequences**

the documents showed his mother's astonished reaction to the "very satisfactory" rating given in spite of everything. Another student disrupted not only classes but also exams.

In its statement, the Federal Ministry of Education, Science and Research grants three of the students involved in the "mobile phone video incident" an excessively favorable grade of conduct "from (misunderstood) consideration for a necessary holiday internship". Such action is criminally risky for the teachers responsible: According to the prevailing opinion, a knowingly incorrect assessment or grading can mean abuse of office (§ 302 of the Criminal Code). The fact that the wrong grade was given "in good faith" does not eliminate the risk of such behavior being punishable.

**Good conduct grades despite misconduct**

The §§ 47 ff School Education Act (*Schulunterrichtsgesetz*) provides for a number of countermeasures in the event of disciplinary problems with pupils: admonitions from those in charge of the school or the school authorities, discussions with parents, transfer to a parallel class, threats to submit applications for dismissal, and possibly even reports to the youth welfare agency. Ultimately, it was also possible to expel four of the six students involved in the incident.

The Federal Ministry of Education, Science and Research and the Vienna Education Directorate stated that in the run-up to the school suspensions, more moderate measures had been taken but not documented. The AOB considered this representation to be untrustworthy. If the school had been properly organized, serious rule violations and sanctions would have been documented. Only after the videos were published on the Internet were strict disciplinary measures apparent.

However, even in the event of a physical attack on a teacher, expulsion from school is not easily possible but requires the previous unsuccessful use of milder educational tools. The fact that these could not be proven by the school authorities was one of the main reasons why the Federal Administrative Court overturned the expulsion from school of a student who appealed (see decision of August 21, 2019, GZ W224 2221285-1 / 2E). This failure also contradicts the duty of care towards the teachers particularly affected by the lack of discipline. In particular, the school administration as well as the department and class boards are to be blamed.

**Federal Administrative Court overturns school dismissal**

Nevertheless, no legal measures were taken due to the breach of the duty of care and the too favorable grades. Such measures under civil service law could have led to a final clarification of the (disciplinary) responsibility of the teachers involved at all levels. The ad hoc "Investigation Commission" could not replace investigations not replace the possibilities using civil service or disciplinary law.

**No disciplinary proceedings under civil service law**

From the perspective of the AOB, the incidents also show a need for legal action: For example, the term "serious" breach of duty according to Section 49 (1) School Education Act is too general, so that it causes difficulties in enforcement. Therefore, a demonstrative enumeration of breaches of duty in the law that are to be regarded as serious would be appropriate in any case. It would be conceivable, for example, for pupils to disregard a teacher's instructions, preventing the undisturbed holding of examinations, repeatedly prolong or disrupt lessons as well as physically attack or threaten teachers.

**Legal need for specification and honing**

Apart from these specifications, sanctions to be imposed should also be mandatory in the event of serious breaches, such as immediate suspension from lessons before further measures are determined ("cooling off phase") in the event of serious threats or physical attacks against teachers. Teachers cannot be expected to teach pupils who pose a threat to them.

According to the Federal Ministry of Education, Science and Research, an internal administrative discussion process on the necessity and expediency of legal measures was started a long time ago. Due to the political (new elections in 2019) and social developments (COVID-19 pandemic), this process has not yet been ended.

### **Back payment of statute-barred salary amounts**

In its Annual Report 2017, the AOB presented in detail its supportive position on the back payment of statute-barred salary amounts after the removal of illegal, low-salary classifications. The Federal Ministry of Education, Science and Research supported the refusal of back payment mainly due to the 2015 salary reform. In the past, however, predecessor departments of the Federal Ministry of Education, Science and Research had occasionally made back payments of statute-barred salaries.

**2015 salary reform violates European law according to the ECJ**

A man contacted the AOB in spring 2019 because he had had an incorrect salary classification as a music teacher since 2005. The AOB achieved a correction including additional payment on February 1, 2016. The Federal Ministry of Education, Science and Research refused to make a further correction or additional payment, referring to the statute of limitations.

During the investigation, the European Court of Justice (ECJ) declared in its rulings of May 8, 2019 in cases C-24/17 and C-396/17 central provisions of the 2015 salary reform to be contrary to European law. The legislature implemented these decisions with the 2<sup>nd</sup> amendment to service law in 2019. Thus, the legal situation against the subsequent payment of statute-barred salary amounts no longer existed. The AOB therefore again suggested the full back payment. The Federal Ministry of Education, Science and Research continued to reject the additional payment in a less factual than polemical statement. A systematically elaborated, factual definition of the position of the Federal Ministry of Education, Science and Research on the subsequent payment of statute-barred salaries is still missing.

**Subsequent payment  
still refused**

Another case with similar problems concerned employees of the University of Applied Arts (see Chapter 3.2.2).

### **Obstacles to viewing documents for the external exam**

A mother de-registered her daughter for home schooling, which was viewed critically by the father, who lived separately from her but had joint custody. He followed his daughter's progress at school all the more closely. He encountered several obstacles and found inconsistencies. The AOB's investigations have already been the subject of reports on several occasions (see most recently Annual Report 2019).

**Restricted access to files**

Most recently, the father submitted that he had received an appointment from the school to inspect the documents for his daughter's external exam. He had come to the appointment with a person of trust (a retired teacher), but the school had forbidden the person accompanying him to take part in the file inspection. As an educational layman, this made it difficult for him to ask well-founded questions about the examination process. In addition, the submitted documents were incomplete, for example a certificate was missing.

The examination by the AOB showed that, according to the documents, the student had achieved positive results, especially in mathematics and German. According to the protocol summaries, the same also applied to the other checked items. The documentation of this external exam was much more meaningful than the last exam reviewed at the initiative of the father. The grading was also easier to understand. In this respect, the efforts of the AOB so far seem to have had positive effects.

The Federal Ministry of Education, Science and Research clarified the reported problems with accessing files: The examination candidates and their legal guardians have the right to inspect the complete examination documents upon request. The authorized persons can also consult experts for a better understanding of the documents. Furthermore, you are entitled to have duplicates and copies of it made on site at your own expense. The Federal Ministry of Education, Science and Research promised to inform the Education Directorate Styria, which is responsible for the school criticized, in this regard.

**Improvements to examination documentation and grading**

### **False declarations about the performance assessment of a teacher**

The events reported below occurred in 2017 in Upper Austria and Tyrol. At that time, the Regional School Board still existed, which was only replaced by the Education Directorate in 2018. The AOB did not receive the complaint until the end of 2019.

A former music teacher (staff position: Regional School Board for Upper Austria) submitted that he or his lawyer had not been given negative assessments of his services, but had been passed on to the Regional School Board for Tyrol. This meant that his initially promising application to the Regional School Board for Tyrol and to a private school association based there ultimately remained unsuccessful. The AOB investigation largely confirmed this information.

The AOB criticized the fact that an official of the Regional School Board for Upper Austria had demonstrably incorrectly informed the lawyer in July 2017: he stated in an email that he was aware of "no negative assessments". A few months earlier, he himself had forwarded a critical assessment by the school director to the Ministry of Education. According to this, the music teacher "did not give the lessons satisfactorily in the last two years" and "did not respond to the assistance offered or only to a limited extent".

**Lack of transparency in performance assessment**



The AOB also criticized the fact that the music teacher was not made aware of several assessments from 2015 to 2017. This left him in the dark about the assessment of his service by his superiors. The teacher only received a written instruction aimed at eliminating certain points of criticism from 2015. In the interest of comprehensible and constructive personnel management, clear and open communication with employees is necessary. The teacher could have got a realistic picture of the impression of his work and strive for improvement.

Finally, the teacher was dismissed because of a lack of need - and not because of poor service. The Ministry of Education was able to successfully enforce the dismissal in court.

**Termination for lack of need**

The music teacher then tried to find a new job. He seemed to have found one at a private school association in Tyrol. The chairwoman of the association showed interest and even helped him to find accommodation, but suddenly she changed her mind and rejected the application. The teacher therefore suspected that the Regional School Board for Upper Austria (possibly via the Regional School Board for Tyrol) might have passed on detrimental information to the school association for his job search. The AOB's investigations confirmed the suspicion, although the Federal Ministry of Education, Science and Research denied disclosure of information.

**School administration thwarted job search**

### **Incorrect statement of grounds for decision as the result of IT problems**

A student attending the 6<sup>th</sup> grade of an academic secondary school in the 2018/19 school year has had diabetes since he was born. Due to this illness, according to his mother, he was only able to attend school irregularly in the 2019 summer semester. Teachers did not respond appropriately to her son's needs. As a result, his clinical picture worsened, so that he was not assessed in several subjects. The investigation did not provide sufficient evidence of misconduct on the part of teachers.

However, the mother raised another objection: According to the written reasons given in the class conference, her son had not received an assessment after taking the supplementary examination. However, her son never took a supplementary examination. The Federal Ministry of Education, Science and Research reported to the AOB that the digital school management software "*Socrates Bund*" specified the wording "after taking the supplementary examination" regardless of whether a

**Incorrect grounds for decision**

supplementary examination had actually been taken or not. The Federal Ministry of Education, Science and Research showed no effort to remedy this deficiency.

The AOB criticized the inaction of the Federal Ministry of Education, Science and Research. Especially in the sensitive area of the grading of minors, the legal guardians depend on transparent, complete and factually correct information about decisions made by the school. The AOB therefore recommends checking the digital school administration software "*Socrates Bund*" for imprecision or inaccuracies, especially in the area of written communication with legal guardians, and having it changed if necessary.

IT problem not remedied

### 3.2.2. Science and research

#### Exclusion from studies

A student at the Medical University of Vienna was excluded from studying human medicine on the basis of § 68, para. 1, Item 8 of the Universities Act (*Universitätsgesetz*). At this point in time, he was in the ninth semester, and therefore relatively close to completing his studies.

According to this provision, admission is voided if the student is excluded by the Rector's Office for an "action or actions that represent a permanent or serious risk to other university members or third parties during the course".

Admission is voided by suspension

According to § 63 (7) Universities Act, in such a case, renewed admission is permitted in the third semester at the earliest. Readmission to this course requires that all admission requirements be met. At the Medical University of Vienna, this includes (repeated) completion of the "regular" admission procedure for first-year students.

In addition, the university enables admission for students with certain preliminary studies ("lateral entry"). A lateral entry is only possible if free spaces are available in the courses with a limited number of spaces in the introductory semester. There are no such vacancies at the Medical University of Vienna in the ninth semester of human medicine studies for the foreseeable future. The eventual completion of the "regular" admission procedure does not change that.

Readmission only if there are vacancies

It was not clear to the student whether he could continue his studies at all in the ninth semester after the expiration of the exclusion. If, however, it is not possible to continue studying, there would ultimately not be a exclusion for two semesters, but de facto an indefinite suspension from the course of study. In the opinion of the student, this would not be in line with the will of the legislature.

**De facto permanent suspension**

The Federal Ministry of Education, Science and Research saw no need for changes in connection with the legal regulations mentioned. From the point of view of the AOB, however, legal requirements should be reconsidered, which prevent a de facto open-ended exclusion, especially when continuing studies with restricted access.

### **Contesting an exam - delay by the University of Vienna**

Because a student was given a negative grade at his last possible chance for an exam, the University of Vienna informed him that he had been expelled from his course of study. In October 2019, he submitted an application to cancel the examination in a timely manner, as it had a serious flaw in the sense of § 79 of the Universities Act. The student complained to the AOB in March 2020 that the university had not made a decision on his application despite urgent requests. He, therefore, does not know whether he can continue his studies. He also had problems with his residence permit.

At the request of the AOB, the University of Vienna announced that the application would be dealt with in June 2020. The university was unable to explain why it would not have been possible to issue a decision more quickly without unnecessary postponement, but no later than six months after receipt of the application (§ 73 (1) General Administrative Procedure Act). The AOB complained about the length of the proceedings.

**Length of the proceeding incomprehensible**

### **Back pay for university employees**

Thirteen civil servants from the University of Applied Arts Vienna contacted the AOB because they had incorrectly been classified by the former Academy of Applied Arts in Vienna in the salary schedule between 1994 and 1996 when they were first appointed as university assistants. The errors were initially not noticed by those affected and the university's personnel administration only

**Incorrect salary classifications**

noticed them in 2016. The university employees were therefore paid too low a salary for more than 20 years. There would also be losses in later retirement benefits. The employer did not instruct actual active remuneration until October 1, 2016. Back payments were refused.

The Rector of the University of Applied Arts Vienna admitted the failures of the service authority and the financial disadvantages in a statement to the AOB. According to inquiries from the Federal Ministry of Education, Science and Research, there is no possibility of indemnification with regard to the statute of limitations in § 13b (1) Salary Law (*Gehaltsgesetz*). The Federal Ministry of Education, Science and Research also pointed out that the right to benefits expires if it is not asserted within three years.

**The Rector and the Federal Ministry reference the statute of limitations**

The Federal Ministry of Education, Science and Research, however, agreed with the AOB's argument, according to which a statute-barred claim according to the judicature and prevailing doctrine constitutes a natural obligation. An assertion of salary claims can therefore be countered with the objection of the statute of limitations, but the claims still rightly exist and have not expired.

The decision to settle a debt that is no longer actionable is, however, characterized by considerations of equity against the background of the principles of economy, efficiency and expediency of administration in relation to the interests of the employees. The "omissions in their own salary-related matters hardly justify the acceptance of a special protective interest of the complainants which breaches the statute of limitations and thus legal security as well as the fundamental principles of federal budget law". Therefore, "even after considering the principles of equitable discretion, their interest in financial compensation for the already statute-barred period, not the community of citizens who ultimately have to raise the cost of the coveted payments."

**Additional payment unreasonable according to the Federal Ministry**

The AOB stated that the wrong salary classifications are to be assigned to the enforcement area of the Federal Ministry of Education, Science and Research as the highest service authority over civil servants of the university. The employees of the university can rightly expect that the consequences of these failures will be eliminated with regard to the employer's duty of care by exhausting all legally permissible options. However, the AOB welcomed the fact that the Federal Ministry of Education, Science and Research did not consider an additional payment of the lost earnings to be entirely inadmissible. However, the AOB did not share the view that an additional payment would contradict the

principles of economy, economy and expediency and would be unreasonable.

From the point of view of the AOB, the indemnification of those affected does not entail any additional burdens on the public sector, as it is a matter of remuneration that in some cases would have been paid out over decades. The fact that the "state" should retain a pecuniary advantage due to illegal action by its organs, which it would not have had had it been legally enforced, cannot be conclusively justified with the principles mentioned.

**Back payment justifiable and necessary**

Also incomprehensible was the argument of the Federal Ministry of Education, Science and Research, according to which the complexity and the changes in the salary law should lead public employees to take special care in salary issues, which in the present cases should be carried out by the employer's personnel administration experts, has not been exposed to a sufficient degree. The employees concerned rightly saw a "perpetrator-victim reversal".

It did not seem sensible to the AOB to make the existing legal questions (legal force and scope of the administrative notices, statute of limitations, etc.) the subject of lengthy civil service law proceedings, which is why an out-of-court agreement or "goodwill solution" should be sought. A corresponding result was not available before going to press.

### 3.3. Digitalization and business location

#### Introduction

In the reporting year 2020, a total of 167 cases were brought before the AOB, which are in the area of the Federal Ministry for Digitalization and Business Location. More than half of the submissions concerned problems in the area of plant law. As in previous years, the majority of people who contacted the AOB felt they were being harassed by the operating facilities. Almost a third of these neighborly complaints related to hospitality businesses. A total of 33 cases included questions relating to the COVID-19 pandemic. Twelve submissions were from *Land* Surveying Offices and 14 from the Chamber of Commerce. Broken down by the *Laender*, most of the complaints came from Lower Austria, followed by Vienna and Upper Austria. The fewest submissions came from Vorarlberg and Burgenland.

**A total of 167  
complaints**

#### 3.3.1. Trade law

##### General

A properly functioning administration is characterized by structures that guarantee efficient and effective service provision and secure the trust of the population in their implementation. In the last few years, the AOB has generally observed a positive development in implementation. In individual cases, the AOB nevertheless has had to identify errors or delays by the trade authorities and lodge complaints (for more details, see the section "Failures by Trade Authorities").

Personnel management is of great importance in administration. The efficiency of authorities depends to a large extent on the availability of sufficient staff. In an investigation, the District Authority Wolfsberg pointed to a "personnel situation which has been unsustainable for years and which has long been a decisive factor in the enforcement of all legal matters". Due to maternity leave and a dismissal, the District Authority was only occupied by five lawyers from July 2019 and only four lawyers including heads of authorities from September 2019. The two vacancies were only filled in February 2020. At the request of the AOB, the State Office Director stated that the Carinthian Regional Government was not aware of any personnel requirements from the Wolfsberg District Authority, and that all replacement procedures were generally

**Unsustainable  
personnel situation at  
the District Authority  
Wolfsberg**

carried out quickly. However, the submission will be discussed with the District Authority Wolfsburg.

In the reporting period, the AOB was repeatedly confronted with delays, which were declared as a COVID-19-related emergencies. The AOB found delays both with the trade authorities and with the commissioned official experts. Due to the workload of the medical specialists in the course of the COVID-19 measures, official medical expert opinions could often only be created with considerable delays, but the official experts were also behind in the implementation of necessary measurements.

**Delays caused by COVID-19**

In 2020, the AOB received several complaints about supermarkets. Neighboring residents complained about noise pollution, especially from ventilation and cooling systems. Some of those affected complained of psychological and physical ailments such as insomnia, palpitations and a whistling sound in the ears. In these cases, the AOB has to demand a particularly sensitive approach from the trade authorities. The trade authority can only take measures to improve the situation if the subjective perceptions are objectified through on-site inspections and noise-related surveys.

**Noise nuisance from supermarkets**

The AOB welcomes voluntary efforts by companies to reduce emissions and improve neighborhood impairments. The AOB criticizes, however, when official measures are not taken based on entrepreneurial motives. An example is a case in the area of responsibility of the District Authority Linz-Land: The owner of a residential complex contacted the AOB and argued that his tenants were exposed to an unreasonable odor nuisance from the neighboring plant, which produces roofing sheeting sealed with bitumen. Despite numerous complaints, the trade authority did not take any measures. The District Authority described improvements that the operator has voluntarily implemented or is planning. The AOB criticized the fact that the District Authority had not taken any measures to restore the lawful state for three years. Only after the AOB intervened did the District Authority initiate emission measurements, the results of which were still pending at the time of going to press.

**Entrepreneurial efforts are not a substitute for action by the authorities**

In August 2019, a resident near an operating facility described that a large number of emission-relevant system components had been operating without consensus. The AOB was able to clarify that in December 2014 the operator had submitted two applications to the District Authority Deutschlandsberg for the approval of changes to the plant. A year and a half passed

**Long proceeding times at District Authority Deutschlandsberg**

between the applications and the first hearing, and two and a half years between the first and the second hearing. The AOB criticized the fact that during this time the trade authority had limited itself to urgent requests, requests to supplement the project documents and threats to reject the applications. Only after the intervention of the AOB did the District Authority obtain statements from the official experts for air pollution control technology and sound technology, as well as an expert opinion from official medical experts. The trade authority announced that the proceedings would be completed by the end of September 2020 and informed the AOB that administrative criminal proceedings were and are being carried out due to the changes made to the plant without consensus.

The AOB received several complaints from residents about noise and dust nuisances caused by driving on public roads with company vehicles. In these cases, the AOB clarified, referring to the judicature of the Administrative Court, that a fundamental distinction must be made between commercial facilities in the sense of § 74 (1) Austrian Industrial Code 1994 and roads with public traffic within the meaning of § 1 (1) of the Austrian Road Traffic Act 1960 (*Straßenverkehrsordnung*). Driving company vehicles on a street with public traffic cannot be seen as part of the operations of a commercial plant (Administrative Court of May 25, 1993, 92/04/0233). Only approaching and driving away from the plant (in the narrower local area of the operating facility) is essentially part of the operational activities in an operating facility but simply driving past on a street with public traffic cannot be assigned to the events associated with an operating facility (Administrative Court from. July 7, 1993, 91/04/0338).

**Company vehicles on public roads**

### **Failure of the trade authorities**

Already in its Annual Report 2019 (the AOB reported about a local resident who had complained since January 2017 about unreasonable noise pollution from a neighboring hospitality business, which consists of two local parts. The AOB was initially able to clarify that the "Café" part of the business can be operated until 10 p.m. and the "Stüberl" part of the business, which is located diagonally below the apartment, may be operated until midnight. The neighbor described noise pollution from the operation of the guest garden and the music system as well as impact noise (back of the chair). Despite numerous complaints, the trade authority did not take any suitable measures to improve

**City of Linz Administration**



the noise situation. The AOB complained that the trade authority had only carried out checks on the operating times of the restaurant and the outdoor dining area in front of it, as well as investigations in the plant.

Only after the AOB became involved again did the trade authority also initiate site inspections in the woman's apartment. In June 2020, the official expert stated after metrological surveys that the music could be heard quietly, but clearly. The planning base level for impact sound insulation after 10 p.m. would be exceeded considerably. Sound level peaks of up to 45 dB were clearly perceptible. Due to their unpredictability, their irregular distribution and their occurrence during the night, which is worth protecting, they are particularly annoying. In October 2020, the medical expert considered both a limitation of the sound level of the music system and structural measures regarding footfall noise to be necessary in order to exclude a health risk. In January 2021, the Linz magistrate finally stipulated the additional conditions deemed necessary by the experts.

Noise pollution from a neighboring pizzeria with delivery service caused a neighbor to contact the AOB. The AOB was initially able to clarify that the facility was approved for hospitality use the first time in an administrative notification from 2013. With an administrative notification from 2016, changes to the operating facility were approved, including the delivery via two parking spaces in front of the restaurant on private property. The woman moved into an apartment directly adjacent to the restaurant in August 2019. From November 2020 she contacted Municipal District Office 12 with noise complaints.

The investigations carried out by the trade authorities revealed that the scope of the permit only included the delivery of goods via the two parking spaces in front of the restaurant, but not the delivery of food. The operator then applied for knowledge of the emission-neutral change to the operating system through the operation of a delivery service. In March 2020, however, the official acoustic expert from the Municipal Authority 36-A determined that the operation of the delivery service represented a change requiring approval due to the vehicles used and the resulting noise emissions during the day, evening, and night.

In the change approval proceeding, the Municipal District Office 12 requested the operator with an informal letter in March 2020 to refrain from the delivery service until the final approval. A trade authority check as to whether the operator had complied with this

**Municipal District Office  
12 in Vienna**

request, however, did not take place. The trade authority admitted to the AOB that it had previously only initiated its actions on the basis of the complaints and the information provided by the operator, but not on the basis of its own official perceptions.

It was only when the AOB discovered an irregularity that the authority took action and initiated administrative criminal proceedings on the basis of the reports. It also initiated regulatory reviews, particularly with regard to the delivery service. When the acoustics official ascertained in an October 2020 survey that there was no consensus for delivery activities, the Municipal District Office 12 ordered the operator to suspend the delivery service with a procedural order under threat of the official closure of the parking spaces. In November 2020, it approved the change to the operating facility and thus the food delivery service via the two parking spaces.

In August 2019, a property owner contacted the AOB with a complaint about an odor nuisance from a neighboring biogas plant. The AOB was able to clarify that the permit for the construction and operation of the biogas plant for the generation of electrical and thermal energy had been granted with an administrative notification from the District Authority Graz-Umgebung from December 2004 in accordance with Styria GasG 1973. During the approval process, the official expert for air pollution control technology determined that the odor situation was difficult because the system was practically located in the residential area. It will be up to the careful operation to keep the unavoidable odor emissions as low as possible so as not to unduly annoy the neighborhood.

In August 2019, the operator applied for approval to expand the substrate list. In the course of the gas law negotiation in October 2019, the air pollution control official determined that additional substrates had already been stored without a consensus and that the requirements of the 2004 decision had not been met. In addition, storage of a compressor and a diesel tank as well as machines and devices without consensus was found in the explosion protection zone. Since the District Authority Graz-Umgebung - apart from a report according to the Styria GasG - did not take any measures to restore the legal status either because of the non-fulfilment of legally binding conditions or because of the storage without consensus, the AOB found a case of maladministration.

It was not until 16 years after the administrative notification was issued and one year after the flaws were discovered that it was possible to provide evidence that all the requirements of the 2004 administrative notification had been met. During a review of the plant in November 2020, it was found that the plant was now being operated in accordance with consensus. The non-consensual storage found during the official act in October 2019 had been removed. There were also no machines or devices in the explosion protection zone.

The biogas plant was originally used in agriculture. In February 2020, the operator announced the transition of the biogas plant to commercial law. In the future, in addition to the company's own operation, neighboring houses and a drying system are to be supplied with heat and the electricity fed into the public grid. Furthermore, waste will be brought in, some of which will be taken over by third parties. Simultaneously with the transition of the biogas plant to commercial law, the operator also indicated an adjustment of the substrate list as an emission-neutral change. A final assessment of whether the changes should also be classified as emissions-neutral from the point of view of the official experts was still pending at the time of going to press.

**District Authority Graz-Umgebung**

The delays complained about by the AOB were partly due to the fact that the District Authority submitted the file to the Styrian Regional Government in March 2020 to clarify whether the biogas plant was subject to the Waste Management Act's (*Abfallwirtschaftsgesetz*) approval requirement. During and because of the waste management inquiries, which lasted nearly five months, the District Authority took no commercial action. After obtaining a waste management expert opinion, the waste authority came to the conclusion that the biogas plant does not fall under the Waste Management Act regime. At the beginning of August 2020, the file was sent back to the District Authority.

**No surveys for years due to compliance with the requirements**

From the AOB's point of view, checking the consensus-based condition was always the responsibility of the District Authority Graz-Umgebung as a trade authority and not that of the waste authority, as the operator had applied for the plant to be transferred through the Austrian Industrial Code. As the waste authority, the state merely carried out its responsibility to check, and at no time had an application for the biogas plant to be incorporated into the Waste Management Act.

**District Authority or State responsible?**

A similar such case of a “conflict of competencies” is shown in the Federal Ministry for Climate Action’s enforcement area (see Section 3.10.4).

### 3.3.2. Digitalization

During the reporting period, AOB had to deal with various issues relating to electronic delivery. Several people who had received information from the Companies Service Portal (*Unternehmensserviceportal*) that they as a company were obliged to participate in electronic delivery in accordance with § 1b E-Government Law, contacted the AOB and denied their corporate status.

**Electronic delivery**

The AOB clarified that the company term used in the E-Government Law is broadly defined. In addition to companies that are registered in the commercial register, it also includes persons who are operationally assessed as part of the financial management. These are, for example, people with income from agriculture and forestry, from self-employed work, from commercial operations, and from renting and leasing. However, people with a sustained participation in a partnership, with income from capital assets or other income (such as real estate sales) as well as associations are managed as companies in this context.

**Broadly defined company term**

One man suspected an unjustified request for consent from the Companies Service Portal. The AOB worked with the Federal Ministry for Digitalization and Business Location and succeeded in adapting the existing consent text so that users are informed of the consequences of their participation in electronic delivery and the data protection processing basis is presented transparently.

The notification from a user that when the mobile phone signature was logged in an “advertisement” appeared for the “speed-sign” app from the company *A-Trust GmbH* also prompted the AOB to approach the Federal Ministry for Digitalization and Business Location. The AOB was able to clarify that this is not an advertisement, but a reference to the most up-to-date mobile solution in terms of security when using the new electronic proof of identity. Due to the intervention of the AOB, the department promised that *A-Trust GmbH* would also include a reference to the “digital office” app, which has been offered since 2019 as an alternative to the “speed-sign” app when the program is next

**Mobile phone signature:  
Advertising for the app?**

adjusted. This app also ensures the use of the mobile phone signature at the latest security level.

### 3.3.3. Land surveying offices

The AOB repeatedly notes that many people are not aware of the tasks and responsibilities of the Land Surveying Offices. The AOB therefore tried to clarify the legal situation in 2020 and provided information about the difference between property tax and border cadaster as well as the fact that the area information in the land register, the property tax or border cadaster is not binding. The AOB also had to point out that civil engineers for surveying are not subject to AOB's investigative mandate.

**Legal clarification by  
AOB**

One man complained that his mail was not being delivered correctly addressed. The name of the town and not that of the municipality is used as the place of delivery. The AOB informed the man that all addresses officially assigned by the municipalities are stored in the Austrian Address Registry of the Federal Office for Metrology and Surveying in the notation specified by the municipality. This address inventory is part of the border cadaster. It is managed by the municipalities and cities via a central reporting line and updated daily. According to the Address Registry Ordinance of 2016, the place of delivery is generally the name of the municipality. If there are several street names with the same name in a municipality, the delivery location can be the village name or it is made up of the municipality and the village name.

**Austrian address  
register - Place of  
delivery**

### 3.4. European and international affairs

#### Introduction

In the year under review, the AOB handled 47 complaints from the Federal Ministry for European and International Affairs.

Most of the complaints concerned the repatriation of people who could no longer return to Austria because air traffic was suspended due to the COVID-19 pandemic. Please refer to the detailed description in the volume "COVID-19".

Numerous complaints also related to the rejection of visa applications. On the one hand, those affected could not understand the reasons that led to the refusal of their application. On the other hand, the complaints were directed against alleged errors in proceedings. Overall, the AOB gained the impression that some applicants have linguistic difficulties in understanding the legally prescribed procedures or in complying with verbal instructions. The (permissible) raising of legal remedies against negative decisions by the embassies seemed to fail in some cases simply because of such problems of understanding. In some cases, AOB assistance came too late because the time for planned trips had already passed. This is particularly serious because it is often associated with high additional costs - such as cancellation costs for flight or hotel reservations.

**Focus on visa proceedings**

#### 3.4.1. Visa proceedings and passport applications

##### Visa proceedings – Austrian Embassy Islamabad

A Pakistani national was planning to take part in a medical conference in August 2019. Twelve weeks before the conference, the doctor submitted a visa application to Austrian Embassy in Islamabad. Since she received no response despite repeated inquiries, she withdrew her visa application on the last day of the conference.

**Planned conference participation**

The person concerned incurred costs such as plane tickets, hotel bookings, etc. It was incomprehensible to her why she was not contacted by the Austrian Embassy.

**Costs incurred**

In the statement from the Federal Ministry of European and International Affairs, it was pointed out that there was a negative entry from the Spanish Embassy in the visa information system. In

**Alleged improvement order via e-mail**

addition, at the end of June 2019, the person concerned was asked by email to improve her application and submit additional documents. However, the applicant did not respond to the improvement request. The claim regarding the lack of communication is therefore incomprehensible.

After the improvement order of June 26, 2019 mentioned by the Federal Ministry of European and International Affairs was not found among the submitted documents, the AOB asked about subsequent submission. It turned out that the person concerned never received an improvement order.

**Missing improvement order**

The AOB complained that the doctor could not take part in the conference due to the procedural error of the Austrian Embassy and that she incurred considerable additional costs. The AOB asked the Austrian Embassy Islamabad to apologize to the doctor concerned for the procedural error. The Austrian Embassy immediately complied with this request.

### **Visa proceedings - Consulate General Istanbul**

In December 2019, an Iraqi citizen residing in Turkey applied for a C Visa to be issued by the Austrian Consulate General in Istanbul for herself and her minor daughter. Together with her underage daughter, she wanted to visit her twin brother and her sick father, who was unable to travel, for about three weeks in February 2020. Her twin brother submitted an electronic Declaration of Commitment to prove that the financial means were available. He demonstrably had a net income of 1,997.81 euros, with his rental costs totaling 630 euros. The inviting party had neither duties of care nor any repayment obligations. The two flight tickets already booked for the return trip after 19 days were presented.

**Planned family visit**

The Austrian Consulate General in Istanbul refused to issue the visa because the purpose and conditions of the intended stay had not been proven. The applicant also had not provided evidence of sufficient means of subsistence for the duration of the intended stay or for the return to her home country. The last reason for refusal was that the intention to leave the country was not recognizable.

**Administrative notice**

As a consequence, the Consulate General issued a notice with which the visa application was again rejected. In the reasoning, it was initially stated that the applicant had "within the deadline brought an appeal for presentation pursuant to § 57 (2) General

**Concept**

Administrative Procedure Act". In relation to the brother's electronic Declaration of Commitment, the Consulate General stated that it was sustainable. However, it is not understandable with which means a secure lifestyle in Turkey can be financed. The applicant is a housewife and does not have her own income. In addition, she had not submitted her "own" concept and was "neither family nor economically tied to her home country". There are therefore well-founded doubts about the intention to leave the country.

For the AOB, the refusal of the requested visitor visa was inadequately justified. On the one hand, the information about the survey of the concept contradicted itself. First of all, in its justification, the Consulate General assumed the "timely collection of the concept" (and also discussed the content of this). Subsequently, the applicant was accused of having not provided her "own" concept.

**Contradictory  
Justification**

The reason for the denial, according to which the purpose of the stay was not justified, was incomprehensible to the AOB, as the parents were repeatedly referred to in the proceedings, their inability to travel, the father's illness, and the desire to visit the parents.

**"Family visit" not  
recognized as a visa  
purpose**

Why the authorities assumed without checking that the applicant was not family related to her home country could not be understood in view of the arguments about the other two children and the husband in Turkey. A corresponding extract from a family book can also be found in the procedural file. In view of the strong family ties in Turkey and the unsolicited submission of the return flight tickets already booked, the authorities should have justified their doubts about the intention to leave the country in more detail from the AOB's point of view.

**"No family ties" despite  
having family in Turkey**

Last but not least, the refusal mentioned in the administrative notice due to a lack of financial resources also appears questionable. Foreigners who require a visa and who do not have sufficient or verifiable financial means to cover their planned stay in Austria can be issued with a visa if, on the basis of the electronic Declaration of Commitment of an inviting person whose main place of residence is in Austria, all costs are guaranteed. The inviting twin brother made such a declaration. In view of his verifiable net income, the authority recognized the declaration of the inviting party as "sustainable". The flight tickets that had already been paid for for the return journey to Turkey were also presented. The authority's assumption that proof of the existence

**No financial means for  
the return journey  
despite viable  
declaration of  
commitment**



of the “means of subsistence for the duration of the planned stay as well as for the return journey to the country of residence” had not been provided is therefore unfounded.

The applicant did not lodge a complaint with the Federal Administrative Court against the decision of the Consulate General. The applicant’s father, who lived in Austria, has since passed away.

### **Unfriendly behavior of embassy staff - Austrian Embassy Brussels**

An Austrian living in Belgium complained about unfriendly treatment at the Austrian Embassy Brussels when he applied for a new passport for his son. In response to his questions about the application process, he was told that he could read everything on the website. Even when he asked again, he was treated very rudely. When the applicant complained about the unfriendly behavior, the situation escalated further. The AOB asked the Federal Ministry of European and International Affairs for a brief statement of clarification.

**Questions upon  
issuance a passport**

The Federal Ministry of European and International Affairs immediately sought a statement from the Austrian Embassy in Brussels. It turned out that in addition to his complaint to the AOB, the applicant had also sent a direct letter of complaint to the Austrian Embassy in Brussels and the Ambassador to Belgium immediately contacted the applicant by telephone. In the course of the very positive telephone conversation, the two personal appearances of the applicant were constructively explained. The submission was taken as an opportunity to discuss the principles of communication with the staff of the embassy.

The AOB was pleased to note the unbureaucratic, exemplary response of the Ambassador of Belgium.

**Exemplary reaction from  
the Austrian Embassy**

## 3.5. Finances

### Introduction

In the reporting period, the AOB received a total of 259 complaints that could be attributed to the tax authorities. Numerous complaints related to the relief measures taken by the Austrian Federal Government to cope with the financial effects of the pandemic (see volume "COVID-19").

Those petitions in which the tax authorities' approach was criticized concerned in particular the lengthy duration of proceedings and questions in connection with employee tax assessments. The main topics discussed were the tax consideration of medical expenses as an extraordinary burden and the distribution of the Family Bonus Plus for separated or divorced parents.

Multiple people contacted the AOB about problems with the exemption from the Standard Fuel Consumption Tax for persons with severe walking impairments. They were not aware that the length of the exemption depends on when a corresponding application is submitted to the locally responsible licensing office.

The need for information from pensioners who receive a pension from Germany continues unabated. Increasingly, however, there was criticism of the decisions of the German tax office in Neubrandenburg, which is responsible for pension recipients living abroad. Due to a lack of investigation, the AOB only left a reference to the possibility of contacting the petitions committee of the Mecklenburg-Western Pomeranian state parliament.

A greater portion of the investigations were completed promptly, also thanks to the efforts of the Federal Ministry of Finance to answer enquiries quickly and comprehensively.

#### 3.5.1. Exemption from Standard Fuel Consumption Tax for persons with severe walking impairments

Several people contacted the AOB and lodged the criticism that an exemption from the Standard Fuel Consumption Tax (*Normverbraucherabgabe*) is only possible for people with severe walking impairments if they buy a vehicle themselves (self-financed or externally financed), but not for leased vehicles.

Since October 30, 2019, paragraph 3 (5) of the Fuel Consumption Tax Law has stipulated that when purchasing a motor vehicle, those people who have an additional entry in their disability pass that the use of public transport is unreasonable are exempt from the Fuel Consumption Tax. This change to the Fuel Consumption Tax Law was based on a motion for a resolution by several members of the National Council in the course of the debate on the Tax Reform Act of 2020. Leasing vehicles were not included in the change.

**Exemption for purchase but not for leasing**

Since all of the acquisition costs (including the Fuel Consumption Tax Law) are usually included in the leasing installments for leased vehicles, the AOB suggested that the Federal Ministry of Finance check whether there had been unequal treatment.

**The AOB's Suggestion**

The Federal Ministry of Finance emphasized that the factual preparation of the aforementioned amendment to the law was not the responsibility of the government or the Federal Ministry of Finance. The problem pointed out by the AOB will be discussed in the course of the implementation of the tax reform plans of the federal government and the Fuel Consumption Tax Law will be adjusted if necessary.

On the basis of a resolution dated November 20, 2020, a further amendment to the Fuel Consumption Tax Law was resolved in the National Council and the Federal Council in December 2020. Since July 1, 2021, there has been an exemption for leased vehicles that are used by people with severe walking impairments for personal transport.

The AOB's concerns were thus fully taken into account. The delay of entry into force of the law was due to a fundamental greening reform of the Fuel Consumption Tax Law.

**Suggestion being implemented**

### 3.5.2. Income Tax Act

In principle, the inflow principle applies in tax law, i.e. income is to be taken into account in the calendar year in which it accrues to a taxable person, who can therefore dispose of it economically. Paragraph 19(1)(2) of the Income Tax Act (*Einkommenssteuergesetz*) provides for exceptions to this principle, inter alia, in the case of subsequent payments of pensions, the receipt of which is subject to an official decision, and in the case of subsequent payments in insolvency proceedings.

**Exceptions to the inflow principle**

These payments are deemed to have been received in the calendar year for which the claim exists.

Due to a court ruling, the exceptions to the inflow principle do not include additional payments due to a retroactively awarded rehabilitation allowance or additional salary payments to which an employer is obligated. They are therefore only considered for tax purposes in the year of payment, even when the additional payment was made for several years.

In either case, the taxpayer cannot influence the time lag between claim establishment and payment. Due to the progression of the tax rate, he or she must bear a significantly higher tax burden from the additional payment than would be imposed on him or her if it were divided according to the claim periods.

**Higher tax burden for additional salary payments and backpaid rehabilitation money**

The Federal Ministry of Finance undertook to investigate, within the framework of forthcoming legislative work, whether it would be appropriate to extend the inflow principle in order to avoid the unfavorable tax result described above.

### 3.5.3. Use of computer programs in the Federal Ministry of Finance

If tax returns are selected for the (more precise) declaration check, a computer program has been used since 2020 in which a supplementary query is automatically created without individual involvement from Tax Office employees. Text modules are used that attempt to cover every possibility and question that could result from the likewise automated processing information. In this way, the proceedings are sped up and contribute to the efficient use of human resources.

**Supplementary queries are created automatically**

However, the use of the computer program also means that the taxpayer concerned is asked questions in the supplementary query, the answers to which the tax Office already knows from the previous files. The same applies to the obligation to submit certain documents (again).

Even contradictory queries are addressed to the taxpayers. For example, in one of the text modules used, a severely disabled person is asked to submit a notice of exemption from the Vehicle Tax, even though he or she does not have a vehicle of his or her own and is therefore unable to submit this notice.

**Absurd questions**

This procedure contributes to the confusion or annoyance of those who receive such a supplementary query. It also results in

considerable additional expense for them, either by making (basically unnecessary) copies and sending them or by attempting to clarify the matter via telephone.

Although the Federal Ministry of Finance emphasizes that it is constantly working on improving the IT program, the AOB is still critical of the fact that a program that is obviously not yet fully developed is already being used.

#### 3.5.4. Delays in Tax Office proceedings

In the reporting period, the number of complaints due to excessively long proceedings remained largely the same as in previous years.

The AOB has repeatedly identified a backlog of allocation updates in recent years, following the assessment of the main unit values of agricultural and forestry operations in 2014, that seems to have been resolved in the meantime. In several cases, however, taking these updates into account was obviously overlooked when setting the property tax levy or when stipulating the levy on agricultural and forestry operations.

Delayed determination  
of the correct property  
tax levy

On a positive note, the tax authorities attempted to conclude the proceedings quickly after the AOB intervened, and the people concerned received letters of apology from the Federal Ministry of Finance.

#### 3.5.5. Property tax assessment following change in ownership

In this reporting year and prior, the AOB increasingly dealt with complaints about property tax assessments after property sales. The former owners criticized the fact that the municipalities continue to impose property taxes on them. The sales were sometimes a long time ago, sometimes years, and the municipalities knew about the change of ownership.

In an ex-officio investigation, the AOB surveyed the process in the *Laender*. Apart from Vorarlberg, which in this case is not subject to the AOB's testing competence, all other offices of the regional governments willingly provided information. Several *Laender* confirmed the problems and the associated legal uncertainty.

In some of the *Laender* (e.g. Tyrol, Carinthia) property tax is easily collected from the new owner by sending the direct debit notification. In other (e.g. Lower Austria and Burgenland), however, the municipalities impose property taxes on the former owner until the Tax Office has issued a new standard assessment. The AOB criticized this approach as not being citizen-friendly.

**Procedure different in various *Laender***

Paragraph 28c of the Property Tax Act (*Grundsteuergesetz*) stipulates that the new owner will become the legal successor. According to § 9 Property Tax Act, the person to be taxed is determined by the current standard assessment. Only when this has been issued can property tax be imposed on the new owner. The transfer of the direct debit to the new owner with reference to the legal succession is therefore from the AOB's point of view the most sensible, gentlest and most citizen-friendly procedure for all parties involved.

**Tax Office only issues standard value notices after years**

Because the problem is mainly due to the fact that the tax offices are in default of several years in issuing standard value notices the AOB suggested that the Federal Ministry of Finance should extend § 9 of the Property Tax Law that legal successors should also be deemed to be taxpayers. The Federal Ministry of Finance judged the proposal to be constructive and, therefore, agreed to examine the possibility of implementation.

**Legal suggestion – Federal Ministry of Finance examines implementation**

### 3.5.6. Unjustified garnishment Measures – Tax Office Vienna 4/5/10

Ms. N.N. from Vienna complained that her bank account had been garnished by the Federal Ministry of Finance and that the entry of a lien on her property had also been applied for, although she had already paid her tax arrears.

The tax debt was transferred on a Friday. The deposit period ended the following Monday. On this day the deposit was also credited to the Tax Office's account. Without checking whether the arrears had been paid, the Tax Office ordered the garnishment of the account this Monday and at the same time submitted an application to the court for a lien on the property belonging to Ms. N.N.

**Punctual payment**

The Federal Ministry of Finance explained the criticized approach the tax authorities took by saying that a punctual payment by Ms. N.N. was not to be expected. In an earlier telephone conversation with a Tax Office employee, she indicated that she did not want

**Monitoring not viewed as necessary**

to pay her tax liability if her request for forbearance were not granted. A daily check of the tax account was therefore not necessary.

Due to the technical booking process and the large number of daily bookings, the Tax Office only noticed that the tax liability had been paid in full nine days later, in the course of a "routine appointment check". The seizure measures were then immediately lifted.

That argumentation does not make sense. According to the AOB, there is no room for "assumptions" by a Tax Office about the willingness to pay of those affected in connection with collection measures. The reasons given for the late acknowledgment of the payment are all exclusively in the area of financial administration and must not be detrimental to the taxpayer.

**Criticism from the AOB**

It should be expected, not only with regard to the effects for those affected, that the Revenue Assurance will carry out surveys on the status of a tax account before the seizure of a bank account is ordered or the establishment of a lien is applied for with the court.

### 3.6. Interior

#### Introduction

In the area of responsibility for the Federal Ministry of the Interior, 1,137 cases occurred in the reporting year. A total of 40.2 percent of them related to asylum, settlement, and alien police law. A total of 25.8 percent of the cases involved the police, followed by concerns about the right to report and service law (2.6 percent and 2.1 percent). Further complaints related to civil status law, weapons law, and passport law (3.8 percent in total). Few cases concerned the enforcement of the Pyrotechnics Act, the right to vote, and the right of association.

**A total of 1,137 cases**

A total of 224 complaints were directed against the duration of the proceedings at the Federal Administrative Court as an appeal instance in asylum proceedings (see Section 3.6.1).

The AOB carried out 22 *ex-officio* investigations, which were based primarily on media reports, perceptions of the NPM commissions or information from people who were not affected. The subjects of the examinations were, for example, police acts, federal care, flight deportations, entries of gender and name in the civil status register, stopping poor conditions in the Police Detention Centre, police investigations before the terrorist attack in Vienna. Not all investigations were completed; the AOB found cases of maladministration in two proceedings.

The number of complaints about residence permit proceedings has risen sharply. Most of the complaints relate to the federal capital. The Municipal Department 35 is the largest settlement authority in Austria. In 2020, a total of 336 people (including Vienna: 283) complained, in 2019 there were 194 people (including Vienna: 134). In Vienna the complaints have more than doubled. For years, the examination of proceedings in Vienna has shown that the Municipal Department 35 does not always carry them out quickly (see Section 3.6.1). There was a sharp increase in residence permit proceedings.

**Sharp increase in residence permit proceedings**

A total of 294 people complained about the police (2019: 274). Reasons for complaint were, among other things, the non-receipt of administrative notifications, inadequate investigations or assistance, inaction, unfriendliness and inadequate information. Complaints were received about arrests, searches, seizures, traffic controls, failure to give the service number, evictions or

**Complaints about the police**



entry bans, surveillance or persecution by the police, as well as about legal procedures and failure to be accepted to join the police force.

The AOB found maladministration in ten cases; in 99 investigations no maladministration was found. In 152 cases, the AOB was unable to handle the complaint because either proceedings were pending, there was no concern, a court decision had been made, or no comprehensible and therefore verifiable submissions had been made. Further investigations have not yet been completed.

The AOB received nine complaints about abuse or degrading treatment. The AOB was unable to identify any grievances, and an investigation had not yet been completed. In 2019, there were 20 allegations of abuse (no maladministration), 2018 20 (one case of maladministration), 2017 ten (one case of maladministration), 2016 17 (one case of maladministration), 2015 six (three case of maladministration), 2014 eleven (two cases of maladministration), 2013 nine (no maladministration), in 2012 eight (one case of maladministration) and in 2011 seven allegations of mistreatment (no maladministration) either brought up to the AOB through individual complaints or officially examined.

**Allegations of mistreatment**

Already in 2015, the AOB had recommended setting up a separate, external investigative authority to investigate allegations of abuse by law enforcement officers. In the following years, the AOB observed the further development. In 2018, the Federal Ministry of the Interior issued a new decree drawn up with the Federal Ministry of Justice on how to deal with allegations of abuse. Due to the intention in the government program to set up an independent investigative body, the AOB also observed developments in this reporting year (see Section 3.6.2).

### **3.6.1. Asylum and immigration law**

#### **Lengthy proceedings at Federal Office for Immigration and Asylum**

As stated in the AOB's Annual Report, complaints about the length of asylum proceedings reached a peak in 2017 with 2,175. Since then, the number of complaints has fallen sharply, mainly due to the massive increase in staff at the Federal Office for Immigration and Asylum and the decline in asylum applications. In 2020, 17 people contacted the AOB with complaints about the duration of

**A total of 17 complaints about the length of asylum proceedings**

proceedings under the Asylum Act. Eight complaints were justified because of a breach of the duty to make decisions.

One complaint related to proceedings that had been pending since 2011 and another to proceedings that had not been resolved since 2015. In both cases, the AOB found maladministration. Since 2018, proceedings regarding a humanitarian residence permit (residence permit plus) have been pending, and the AOB criticized the length of the proceedings in this case as well. In three cases in which proceedings from 2019 were still pending, the AOB found maladministration, with the Federal Office for Immigration and Asylum having closed one proceeding.

The Federal Office for Immigration and Asylum closed two of the 17 asylum proceedings that were appealed in the reporting year. Of the 27 cases that were appealed in 2019, the Federal Office for Immigration and Asylum reported 16 as closed. Of the 320 proceedings that were appealed in 2018, the Federal Ministry of the Interior or the parties concerned reported 190 closed proceedings and of the 2,175 appeals in 2017, a total of 1,893 closed closings.

In December 2015, a man from Benin applied for asylum. After drawing up an age assessment, the Federal Office for Immigration and Asylum Lower Austria forwarded the file to the Federal Office for Immigration and Asylum Vienna in October 2016. It was not until December 2017 that the man was questioned and a language expert commissioned. The Federal Office for Immigration and Asylum did not investigate between October 2016 and November 2017. From February 2018, the Federal Office for Immigration and Asylum contacted the language assessor regularly, but it was known that the only available language assessor was overloaded.

The AOB had already criticized this in its Annual Report 2019. The language expert was responsible for Myanmar and Benin. There have also been significant delays in asylum proceedings for people from Myanmar. The Federal Office for Immigration and Asylum must have already been aware of the overloading of this expert. The Federal Office for Immigration and Asylum should have taken organizational measures such as the use of video interpreters in a timely manner.

**Only one language expert for Benin and Myanmar**

In an asylum proceeding pending since December 2015 for a man from Afghanistan, the AOB found that the Federal Office for Immigration and Asylum had not taken any procedural steps for

**Application made in 2015 – decision handed down in 2018**

two years. The Federal Ministry of the Interior justified the delay in the proceeding with the fact that the application was made in the migration crisis in 2015 and 12,500 asylum applications were made in December 2015 alone. The Federal Office for Immigration and Asylum closed the process in 2018.

A family from Afghanistan appealed to the Federal Administrative Court against decisions by the Federal Office for Immigration and Asylum denying their asylum applications. During the complaint process, the father applied to the Federal Office for Immigration and Asylum to change the date of birth on the residence card. The Federal Office for Immigration and Asylum did not make a decision for over a year, wrongly believing that the application fell within the jurisdiction of the Federal Administrative Court.

In the asylum proceeding of a Ukrainian family with a seriously ill child, the AOB found that the Federal Office for Immigration and Asylum regularly took steps in the proceeding from September 2018 to September 2019 in order to determine facts relevant to the decision. After questioning the parents in September 2019, the Federal Office for Immigration and Asylum waited until the end of July 2020 before deciding on the follow-up applications.

**Months of inactivity on follow-up applications**

An asylum seeker from Bangladesh was interrogated for the first time in July 2015, and in November, the Federal Office for Immigration and Asylum granted a hearing. No further steps were taken until August 2020. The reasons given by the Federal Ministry of the Interior were a "filing error in the administrative act" and the COVID-19 pandemic.

**Almost five years of inaction**

After the Federal Office for Immigration and Asylum received a statement from another asylum seeker from Bangladesh in October 2019, the process stalled for over four months before the Federal Office for Immigration and Asylum rejected the application in February 2020 and issued a decision for return.

After the announcement of a negative probability forecast, the Federal Office for Immigration and Asylum granted an asylum seeker from Syria the opportunity to comment, which he did in November 2019. Since then, the Federal Office for Immigration and Asylum has taken no further steps. The AOB also found that a previous entry application was only rejected after an 18-month proceeding. The duration of the proceeding was incomprehensible, as it already failed because of a general granting requirement.

**Processing standstill for a year**

In the asylum proceeding of a mother and her daughter from Syria, the Federal Office for Immigration and Asylum did not take any investigative steps between the mother's interrogation in October 2019 and a request to the state documentation in July 2020. The Federal Office for Immigration and Asylum remained inactive in the subsidiary's proceedings between February and July 2020. It also did not answer inquiries from legal advisors to inspect files. The reasons for this could no longer be determined.

In February 2019, the Federal Office for Immigration and Asylum received outstanding documents and statements in a proceeding for the issuance of a humanitarian residence permit (residence permit plus). It was not until a year later that the Federal Office for Immigration and Asylum invited the man from Cameroon for an interrogation. The authority did not give reasons for this delay in the process.

**Humanitarian residence permit**

A man from Kosovo applied for a residence permit plus to the Federal Office for Immigration and Asylum in August 2019. The residence permit was issued in March 2020. During the entire period, the Federal Office for Immigration and Asylum only checked to see whether the requirements had been met.

An asylum seeker from Gambia stated in proceedings that he had no identity documents. In the course of an inspection of the files, however, he legitimized himself with his passport. On the basis of the initial submission, the Federal Office for Immigration and Asylum secured the document for the purpose of checking the authenticity by the State Criminal Police Office. However, it did not give the asylum seeker any confirmation of the seizure because he refused to sign the original. The Federal Office for Immigration and Asylum should have handed over the confirmation from the point of view of the AOB. The Federal Ministry of the Interior acknowledged that the failure to surrender was illegal.

**Passport seizure without receipt**

The Federal Office for Immigration and Asylum not only enforces the Asylum Act, but also is responsible for proceedings under the Aliens' Police Act (*Fremdenpolizeigesetz*). The AOB also found delays in these proceedings:

**Aliens Police proceeding**

A man from Somalia applied for an extension of a extension of the so-called *Duldungskarte*, i.e. a card that provides evidence that the person's stay in the country is tolerated, in November 2019. A few days later, the Federal Office for Immigration and Asylum recorded a note on the file that the requirements for this were met and that an identification card for tolerated persons was

to be issued. However, the application was not processed further and the ID card was only issued in June 2020.

Another Somali national applied for an identification card for tolerated persons from the Federal Office for Immigration and Asylum in May 2019. As a consequence, he began his criminal detention. At the end of May 2019, the Federal Office for Immigration and Asylum requested the Correctional Facility to deliver the notification of the result of the evidence gathering. Thereafter, the Federal Office for Immigration and Asylum did not take any further steps in the proceeding until at least December 2020.

**Inaction regarding ID cards for tolerated persons**

In one case of a Vietnamese national, the Federal Office for Immigration and Asylum failed to keep a copy of the file when it relinquished it in June 2015 in a humanitarian residency case before the Federal Administrative Court. Although this was noticed a year later, the Federal Office for Immigration and Asylum did not take steps again in the proceeding with regard to the ID card for tolerated persons until March 2019. The AOB also criticized the fact that a further nine months had passed between an application for voluntary return (March 2019) and the Federal Office for Immigration and Asylum's efforts to obtain a certificate of return home.

A Russian national filed a complaint with the Federal Administrative Court against the revocation of her asylum status in March 2017. In July 2017, she applied for a convention passport with the Federal Office for Immigration and Asylum. The Federal Office for Immigration and Asylum assumed that the outcome of the proceedings in the Federal Administrative Court had to be awaited and did not process the application until March 2020. It was only through the intervention of the AOB that the Federal Ministry of the Interior clarified the Federal Office for Immigration and Asylum about the legal error and arranged for the convention passport to be issued.

**Convention passport**

The Federal Office for Immigration and Asylum issued a permanent ban on a German citizen. He did not take his family life into account and, among other things, gave his age as the reason for assuming the risk in the risk prognosis. The Federal Office for Immigration and Asylum also issued a permanent ban on his wife. Despite knowing the residential address, the Federal Office for Immigration and Asylum deposited the notification in the file without attempting to deliver. The Federal Office for

**Residence ban - insufficient basis**

Immigration and Asylum used age as a justification for the risk prognosis.

The administrative notice, with which the indefinite residence ban was issued against the woman, contained further shortcomings: the findings were based partially on a violation of file protocol and partially on illogical conclusions. The AOB, therefore, suggested that the residence ban be officially removed. This was promptly done.

**Immediate  
implementation of AOB  
recommendations**

When preparing the hazard prognosis, the person's overall behavior must be considered. Based on specific findings, the Federal Office for Immigration and Asylum must assess whether and why the assumption of endangerment is justified. Art. 8 ECHR protects private and family life. The Federal Office for Immigration and Asylum must weigh interests in every proceeding for issuing a ban on residency. The public interests in ending the stay must be contrasted with the private and/or family interests in remaining. In both cases this did not take place or only inadequately.

The settlement authorities are responsible for carrying out the residence permit proceeding. Over and over, having the Federal Office for Immigration and Asylum involved in the proceedings causes delays because it has to have the police conduct investigations or issue opinions.

**Residence permit  
proceedings**

In June 2017, Mr. N.N. submitted an application to the Municipal Department 35 for a permanent residence card to be issued. It turned out that he had given his name incorrectly in the asylum application in 2003. The Municipal Department 35 notified the Federal Office for Immigration and Asylum in November 2017 and at the same time filed a complaint with the Public Prosecutor's Office. The Federal Office for Immigration and Asylum did not take any further steps in the proceeding, apart from a request for additional documents, until the end of November 2018.

Significant delays are also due to inadequate communication between the Municipal Department 35 and the Federal Office for Immigration and Asylum authorities. Proceedings are carried out particularly slowly if there are no urgent reminders.

**Inadequate  
communication  
between authorities**

In March 2019, Ms. N.N. submitted an application to the Municipal Department 35 for a registration certificate to be issued. In the absence of fulfilment of the prerequisites, the Federal Office for Immigration and Asylum was brought before the Federal Office

for Immigration and Asylum about a possible termination of residency. The Federal Office for Immigration and Asylum already had all the documents in May 2019, but did not discontinue the proceedings until August 2019. Only Ms. N.N. was informed about this, but not the Municipal Department 35. It was not until October 2019 and again in November 2019 that the Municipal Department 35 asked the Federal Office for Immigration and Asylum about the status of the proceedings. The Federal Office for Immigration and Asylum notified the Municipal Department 35 in November 2019.

In a proceeding to issue a residence card for relatives of an EEA citizen, the Municipal Department 35 referred the Federal Office for Immigration and Asylum about a possible termination of residence (in the absence of the prerequisites) in September 2018. The applicant submitted further documents. In order to clarify the question of whether the prerequisites were met - the applicant had submitted further documents - the Federal Office for Immigration and Asylum asked the Municipal Department 35 in October 2018 to announce the status of the proceedings, but did not receive this information, despite several inquiries, at least not by May 2020.

In November 2018, Mr N.N. submitted an application to the Municipal Department 35 to issue a permanent residence card, which he modified in April 2019 to issue a residence card. In the absence of the prerequisites, the Municipal Department 35 asked the Federal Office for Immigration and Asylum to examine the termination of residence in May 2019. Due to the inactivity of the two authorities, communication difficulties between them, the failure to comply with initial requirements and the lack of a deadline for the submission of documents, the proceeding before the Federal Office for Immigration and Asylum was still not completed in December 2020.

### **Asylum - duration of appeal proceedings at the Federal Administrative Court**

In 2014, a total of 974 people complained about the length of their asylum complaint proceedings, and the number of complaints fell sharply in the following years. In 2020, 224 people complained, 54 of them not only for themselves but also for (one or more) family members. In 189 cases, the AOB found a breach of the duty to make decisions and thus the Federal Administrative Court's fault.

**A total of 224 complaints about the duration of the proceedings**

Most of the complaints came from asylum seekers from Afghanistan (68) and Iran (45). Other asylum seekers came from Iraq, Somalia, Syria and several other countries.

One complaint related to proceedings from 2020, twenty-two complaints related to proceedings from 2019. A total of 117 complaints related to proceedings pending since 2018. Fifty-four complaints related to proceedings had been pending since 2017. Five people, three nationals from Afghanistan, one citizen from Iraq and one citizen from Somalia, complained about cases pending since 2016. The Federal Administrative Court closed three of these long-pending cases in 2020.

**"Oldest" proceeding  
from 2016**

The AOB considers the long length of proceedings for default complaints to be particularly problematic. Due to the non-treatment for years, those affected are doubly burdened because – in contrast to people who have already received a negative decision from the Federal Office for Immigration and Asylum and are referring it to the Federal Administrative Court - they have not yet received a decision. In addition to the default of the Federal Office for Immigration and Asylum, there is that of the Federal Administrative Court, although the default complaint was actually intended to remedy the situation. The AOB received justified complaints in 2020 as well.

A man from Somalia filed a late payment complaint in November 2016. The Federal Administrative Court announced that it would have to await the outcome of criminal proceedings and announced that it would be dealt with before summer 2020. Since this did not take place, the AOB approached the Federal Administrative Court again. It reported that a hearing was scheduled for November 2020 and that further steps would result from it. In another case, a Libyan man filed a late payment complaint that was received by the Federal Administrative Court in March 2017. The Federal Administrative Court initially promised that the proceedings would be concluded by January 2020. In June 2020 the proceedings were still not completed, but (at least) one negotiation had been planned. The AOB was not informed of the conclusion of the proceedings by the end of 2020.

**Delay in handling delay  
complaints**

Since 2013, the Federal Administrative Court (previously the Asylum Court) has regularly informed the AOB about the conclusion of proceedings that have been the subject of complaints to the AOB. The following settlement figures were announced: 2020: 224 complaints, 48 process closings; 2019: 268 complaints, 194 procedural closings; 2018: 220 complaints,



152 procedural closings; 2017: 265 complaints, 163 closings of proceedings; 2016: 152 complaints, 99 process closings; 2015: 238 complaints, 115 procedural closings; 2014: 974 complaints, 449 procedural closings; 2013: 683 complaints, 368 procedural closings.

## Federal support for asylum seekers

In February 2020, the AOB received a letter in which it was pointed out that the minors housed in the return counselling facility in Schwechat could be endangered. The AOB initiated an official investigation.

The Federal Ministry of the Interior presented its final report, written together with UNHCR, on the human rights situation in the support and return counselling facilities in Fieberbrunn and Schwechat. In its statement, the Federal Ministry of the Interior emphasized that it had already implemented some UNHCR recommendations to improve care and accommodation. For example, there are now mandatory support interviews, psychological support, case monitoring and a revised daily structure.

**The UNHCR worked with the Federal Ministry on improvements**

In the final report, UNHCR came to the conclusion that the accommodation of children in the support and return counselling facility in Schwechat was not compatible with the best interests of the child: The accommodation in poorly insulated containers, the secluded location, the lack of green areas as well as playgrounds and sports fields were criticized high noise levels due to air traffic. A "kindergarten" in the playroom offered in the morning and evening is limited to the supervised play of the children. The "school-like" operations offered cannot be seen as an adequate substitute for attending school due to the lack of an educational concept and qualified staff. Accommodation with other adults, who are often in bad shape, is also questionable.

**Not a suitable environment for children**

The Federal Ministry of the Interior announced the implementation of the measures that were still outstanding in a timely manner and justified the delays with the existing COVID-19 situation. The support facility in Schwechat has been used for home quarantine since the end of March 2020. Families with school-age children would primarily be accommodated in the more suitable return counselling facility in Bad Kreuzen.

**Families are accommodated in the return counselling facility in Bad Kreuzen**

The AOB criticized the unsuitable accommodation of minors in the support and return counselling facility in Schwechat from January 2020 to March 2020. However, it also welcomed the improvements. As long as all the recommendations of UNHCR are not implemented, the AOB takes the view that, in order to protect the best interests of the child, no children and young people should be accommodated in the support and return counselling facility Schwechat.

### 3.6.2. Police

#### Dealing with allegations of abuse

For years, the AOB has dealt with how the police and the Federal Ministry of the Interior have dealt with allegations of abuse that are brought against law enforcement officers. In its Annual Report 2015, the AOB already recommended the creation of an investigative authority separate from the police in order to ensure that the allegations of abuse are handled in a manner satisfactory to both sides.

**The AOB has been working on this issue for many years**

In 2016, the Federal Ministry of the Interior set up a central reporting point to collect and categorize allegations of abuse. The Federal Ministry of the Interior, with the involvement of the Federal Ministry of Justice, took significant steps that led to a new decree on how to deal with allegations of abuse.

**New decree in 2018**

According to the Federal Ministry of the Interior, the Reporting Office for Coercive Acts and Allegations of Abuse (hereinafter the Reporting Office) recorded all incidents reported in a central database. This is preceded by corresponding reporting obligations: At the same time as the police department, the police station concerned inform the Reporting Office by means of a final sheet. When submitting the final sheet, the police department informs the Reporting Office of the result of the administrative or organizational assessment. The Reporting Office records the closing sheets so that a complete data set is created for every incident. In addition to processing the allegations of abuse, the Reporting Office sifts through the cases, documents abnormalities and creates an annual report in which it presents the data and assessment results. These would be communicated within the Federal Ministry of the Interior.

**Reporting office in the Federal Ministry of the Interior records and evaluates allegations of abuse**

From the point of view of the AOB, the establishment of this Reporting Office is an important first step. However, it is not an

independent investigative authority. The government program 2020–2024 now provides for the creation of an independent investigative authority. The preparatory work for the implementation of this project began in the year under review. According to its own information, the Federal Ministry of the Interior can build on the work carried out in the course of the “Police.Power.Human.Rights” (“*Polizei.Macht.Menschen.Rechte*”) project and the specialist group established there in 2018.

It remains to be seen how the new investigation center will be structured and into which hierarchy it will be embedded. The Federal Ministry of the Interior put together a committee (also made up of external experts to discuss the structure and tasks of this investigative body in the summer of 2020. The AOB also offered its expertise to the Federal Ministry of the Interior and will continue to monitor the project.

**Independent  
Investigative agency in  
the making**

### **No reference to on-call legal service**

A man complained about repeated misconduct by law enforcement officials after he was arrested by order of the court. When he was arrested, he was not read his rights, allowed to contact a lawyer, his mobile phone was damaged, and he was harassed while he was being arrested. He further claimed that he had not received breakfast or lunch and that he had had to pay the cost of his dinner himself.

**Desire for legal  
assistance**

The AOB was unable to verify all of the allegations in the course of the audit. However, the Federal Ministry of the Interior confirmed that the man refused to sign the first transcript without consulting a lawyer. At this point in time, however, he was unable to name a lawyer. The AOB criticized the fact that the police officers did not actively refer the man to the on-call legal service at the time of his first questioning after learning of his desire to contact a lawyer.

### **Flawed documentation of an arrest**

Mr. N.N. complained that he was unable to contact his lawyer when he was arrested by officers from Police Station Wies. He was only given this opportunity a day and a half after his arrest as an inmate at the Police Detention Centre Roßbauer Lände after

the Federal Office for Immigration and Asylum had questioned him there.

The Federal Ministry of the Interior admitted, however, that it had been incorrectly documented in the record of Mr. N.N.'s arrest that he had requested a lawyer to be contacted. The AOB criticized the incorrect logging. It also suggested that the author of the minutes should be reminded of the importance of correct documentation.

Incorrect notation of facts in the police-stop report

### **Doubts about the reason for a complaint to the police**

Ms. N.N. wanted to file a complaint against her mother-in-law at police station Klagenfurt-Landhaushof. She attacked, beat, pinched, insulted and threatened her that she would accuse her of theft if she did not leave Austria. The police officer refused to take the complaint. He had sent an officer from another police station to see the mother-in-law because he doubted Ms. N.N.'s story. In addition, the police officer is said to have insulted Ms. N.N., used the informal "you", and made fun of her name.

In the course of its investigations, the AOB could not find any evidence of the insults, the use of the informal „you“ or any xenophobic behavior. Police Station Klagenfurt-Landhaushof also correctly recorded the woman's complaint and subsequently reported it to the public prosecutor's office. However, the AOB criticized the fact that the police officer who had received the charge of bodily harm had first contacted the mother-in-law – the potential perpetrator – in order to check the credibility of Ms. N.N.'s statements. Only then did he take the complaint. For the AOB, it was understandable that this procedure was met with incomprehension by the person concerned.

Understandable incomprehensibility about the actions of the police from the AOB

### **Inadequate statement to adolescents**

In a video that circulated on the Internet and also generated media interest, an executive officer shouted to young people or young adults: "*Des is mei Land!*" (This is my Country). This video prompted the AOB to initiate an *ex-officio* investigation.

The video and media reports revealed that the police officer tried to disperse a group of young people after an alleged brawl. Apart from the fact that he called the adolescents and young adults by the informal "you", he threatened them with arrest and justified

his rude expressions towards them with the reference: "*Des is mei Land!*"

The Federal Ministry of the Interior justified the statement with the fact that the police officer had averted an imminently dangerous attack by using the informal "you" with adolescents or young adults. He wanted to point out compliance with Austrian laws, but the behavior was "unorthodox and unusual".

**"Unorthodox" use of language by a police officer**

The AOB pointed out that, according to § 5 (2) of the Guideline Ordinance, organs of the public safety service must address all people with the formal "you" ("*Sie*"). The AOB also did not share the view of the Federal Ministry of the Interior, according to which the informal "you" ("*du*") had averted a dangerous attack. This could not be deduced from the video. Adolescents and young adults want to be taken seriously, the formal "you" is a sign of that necessary respect.

The statement revealed that the young people were not of Austrian origin. Therefore, from the point of view of the AOB, a police officer should not have tried to provoke them by emphasizing that he was Austrian. Rather, regardless of the origin of the people, he should have carried out the official act professionally and without resentment.

The AOB credited the police officer, however, with the fact that he wanted to prevent an escalation, which he ultimately succeeded in doing. Nevertheless, the AOB suggested it be pointed out to the police officer in a conversation that, despite the emotionality, he must act professionally in certain official acts and in compliance with the applicable regulations.

**More professional behavior and less emotionality**

### **Trivializing a sexual assault after an emergency call**

Ms. N.N. contacted the AOB because she felt abandoned by the police after a sexual assault. She called the emergency number that night after sexually assaulting a man by trying several times to put his hand in her pants. It was only through her resistance that the attacker let go of her.

**Sexual assault emergency call**

The emergency call was received at the Neunkirchen Police Station district control center at 3:12 a.m. An executive officer told Ms. N.N. on the phone that "nothing had happened anyway" and that the police would therefore only come in the morning.

The Federal Ministry of the Interior announced that the facts of the suspicion of abuse of office had been sent to the Federal Office for the Prevention of Corruption and the Fight against Corruption and a final report on the criminal law assessment of the behavior of the executive officer of the Public Prosecutor's Office Wiener Neustadt had been transmitted. Regardless of this, the Federal Ministry of the Interior also announced a legal review by the Police Department in Lower Austria.

Regarding the official's statement that "nothing happened anyway", the Federal Ministry of the Interior announced that there were no tapes of incoming emergency calls. When questioned, however, the police officer stated that he could not remember the use of this phrase, but that he had used a similar phrase in terms of its meaning. The Federal Ministry of the Interior was able to understand the woman's subjective feeling that she had been abandoned in this situation and regretted what had happened.

The AOB stated that the remark "nothing happened anyway" or any similar remark was inappropriate. Apart from the fact that this statement was likely to play down what had happened and to degrade the victim, attempted rape or sexual harassment are also criminal offenses that must be investigated by the police immediately.

**Trivialization degrades victims**

### **Questioning a witness despite exemption from testimony**

During a visit to a facility, a commission of the AOB expressed the suspicion that an executive officer of a police station in Tyrol had questioned a witness about an official act despite being exempted from giving evidence. According to Section 156, Paragraph 1, Item 1 of the Code of Criminal Procedure, persons who are supposed to testify against a relative in the proceedings are exempt from the obligation to testify. The AOB initiated an official investigation.

She found that the wife of an inmate – after instruction – made use of her exemption from the obligation to give testimony. Nevertheless, she was questioned by a police officer as a witness about the proportionality of the arrest of her husband. The Federal Ministry of the Interior justified this with the fact that the police officer had erroneously assumed that such information was not covered by the right to refuse to testify. The police officer was

**Federal Ministry of the Interior acknowledged errors and took action**

informed of his misconduct at a meeting. In addition, a training course was carried out to avoid similar cases.

### **No barrier-free access to police station**

A wheelchair user contacted the AOB and criticized that due to the lack of a door intercom and a lift, he had not been able to get in touch with employees at the Sillian Police Station in order to obtain information. A police officer who happened to come to the office finally took care of his request.

The AOB asked the Federal Ministry of the Interior for an opinion and referred to the visit of one of the NPM's commission in January 2017. At that time, the Federal Ministry of the Interior promised to relocate the call system as soon as possible and to make the service accessible by the end of the statutory deadline of December 31, 2019. From the statement of the Federal Ministry of the Interior it emerged that steps had been taken towards barrier-free access since mid-2018. The implementation has not taken place due to a lack of agreement with the property owner of the building and the Federal Ministry of the Interior has been examining alternatives since March 2020.

**Federal Ministry of the Interior failed to deliver on 2017 commitments**

In 2010, the Federal Ministry of the Interior drew up a plan of when which departments should be designated as barrier-free. The deadline for implementation expired on December 31, 2019. The AOB criticized the fact that the Sillian Police Station still cannot be reached with no discrimination, even though it appears in the step-by-step plan for federal buildings, and suggested that it be made accessible immediately.

**Police stations have had to be barrier-free since 2020**

### **Higher job category – length of proceedings**

Since the merger of the Security Directorate and the Lower Austrian Regional Police Directorate in 2012, a police officer has been given additional enforcement tasks. The former clerk responsible for these areas in the Lower Austrian Security Directorate had a job evaluation of A2/4. The police officer, who "only" had to perform these tasks in addition to his regular duties, nevertheless stayed with his previous (lower) job category A2/3.

The police officer applied to have his job upgraded to A2/5 in 2013. This application was supported from a technical point of view by his superior and the Lower Austrian Regional Police

**Seven year delay in proceedings**

Director. Nevertheless, this matter remained unresolved until autumn 2019. Multiple inquiries in the last seven years, both at the Federal Ministry of the Interior and at the Federal Chancellery and Federal Ministry for the Civil Service and Sport, remained inconclusive, and not even an approximate time frame for a decision was given.

In the course of the audit, the Federal Ministry of the Interior announced that the revaluation and subsequent payment of the difference in salary would take place retroactively for three years in a timely manner. The Federal Ministry of the Interior stated that the reason for the long delay was “that this was an unfortunate combination of several internal or cross-departmental organizational delays”.

The AOB was not satisfied with the back payment for only for three years, especially since the difference in salary had already arisen in 2013. However, the remaining difference would hardly have been legally enforceable due to the statute of limitations. From the point of view of the AOB, however, statute-barred salary claims remain valid and can be legally fulfilled. After a detailed discussion, the Federal Ministry of the Interior agreed with the AOB and initiated the instruction of the salary difference from 2013.

**Increase and subsequent payment of the difference in salary from 2013**

### **Length of disciplinary proceedings before the Federal Administrative Court**

A police officer complained that it took the Federal Administrative Court more than four-and-a-half years to rule on his complaint against a disciplinary ruling by the Federal Ministry of the Interior.

According to § 135c (1) Civil Servants Act (*Beamten-Dienstrechtsgesetz*), the Federal Administrative Court has to decide on certain matters (e.g. dismissal, transfer, change of assignment) within three months.

The president of the court admitted that the judge did not rule on the complaint received in January 2015 until August 2019. Supervision measures have remained ineffective for a long time. The AOB criticized the fact that the court far exceeded the statutory decision-making period with lengthy proceedings of more than four-and-a-half years.

**Decision took four-and-a-half years**



### 3.6.3. Registration law

#### Official de-registration – inaction by the Residence Registration Authority

Ms. N.N. complained about the Residence Registration Authority had not followed up on the information that her registration was incorrect. This caused financial disadvantages (no heating subsidy, higher assessment base for community fees, no support for her child to attend music school).

According to § 15 (1) of the Residence Registration Act, the authorities must correct the registry if they have reason to believe that a report has been made contrary to the provisions of the Residence Registration Act. The Act does not grant third parties the right to actually register or de-register within a certain period of time. Only the person who is required to report has the status of a party in an official correction proceeding.

The Federal Ministry of the Interior announced that Ms. N.N. had informed the Municipality of Pöfing-Brunn in May 2019 of Mr. N.N.'s registration of secondary residence. After a survey of the facts in October 2020, the municipality deregistered Mr. N.N. The AOB determined that the municipality had only taken action after the initiation of the investigation and had not taken any steps in the proceeding between the beginning of May 2019 and the end of July 2020.

Residence Registration Authority remained inactive for 15 months

Even if the Residence Registration Act does not set a deadline for an official correction, the inactivity of the municipality for a period of 15 months contradicts the principles of good administrative management; in particular because Ms. N.N. stated that she had suffered financial disadvantages due to the fact that Mr. N.N. had a valid registration at her home address.

Investigation led to deregistration

### 3.6.4. Passport law

#### Delayed passport issuance

Ms. N.N. contacted the AOB because the passport authority in Vienna had not made a decision on her applications for a passport and an identity card, although she had submitted all the necessary evidence.

The Federal Ministry of the Interior acknowledged that it had taken the passport authority five months to issue the requested

documents. When comparing the data in the central population register, it turned out that Ms. N.N. may have had another nationality. The passport authority therefore consulted the Municipal Department 35 responsible for citizenships several times. The Municipal Department 35 initiated a determination proceeding.

While the investigation was still ongoing, the Federal Ministry of the Interior instructed the passport authority to issue the requested documents immediately, as all the necessary documents had been presented. The authority followed this instruction.

**Passport issuance took five months**

From the point of view of the AOB, the passport authority wrongly assumed that the proceeding officially pending at the Municipal Department 35 to determine citizenship was relevant for the issue of passports. Since there were no doubts about the correctness of the submitted proof of citizenship, the passport authority should have issued the passport no later than three months after the application was submitted. The procedure for determining citizenship also ultimately turned out to be unfounded.

**Authority unclear despite clear legal situation**

In June 2020, Ms. N.N. complained to the AOB that her underage daughter had not received her passport from the Austrian Embassy Abuja. In response to her written inquiries, she was informed that she would only be able to apply after it had been clarified whether her daughter was an Austrian citizen.

The examination proceeding showed that the child's father had previously contacted the Austrian Embassy and submitted various documents. According to the authorities, this resulted from the fact that the minor and her mother had Nigerian passports, even though they were only registered as Austrian citizens in the Central Citizenship Registry.

The Federal Ministry of the Interior announced that the Austrian Embassy had initiated proceedings at the Municipal Department 35 to determine citizenship because it suspected an unauthorized resumption of Nigerian citizenship. The Municipal Department informed the Austrian Embassy six months later about the initiation of the assessment proceeding.

**Doubts lead to determination proceeding**

The Federal Ministry of the Interior shared the legal opinion of the AOB that a minor is entitled to a passport as long as the lack of Austrian citizenship has not been established and there are no grounds for denial. The Federal Ministry of the Interior

**Right to passport issuance**

subsequently informed the Austrian Embassy about the correct procedure.

### 3.6.5. Civil Status Law

#### Civil status registry - registration of intersex people

The AOB has already dealt in the past with entries for intersex people in the civil status registry. In June 2018, the Constitutional Court had made it clear that no change to the Civil Status Law (*Personenstandsgesetz*) was required in order to enter a variant of gender development. Art. 8 para. 1 ECHR guarantees every person that their individual gender identity is adequately expressed.

Right to individual  
gender identity

In order to achieve uniform enforcement, the Federal Ministry of the Interior issued a decree for the civil status authorities in December 2018. This envisaged "diverse" as the entry variant, which from the point of view of those affected was too narrow. In 2020, the civil registry office in Steyr issued a person a birth certificate with the entry "inter" following a long-term proceeding and a decision by the Upper Austrian Regional Administrative Court. Previously, this was apparently refused on the grounds that the software would not allow for such an entry.

Based on the existing criticism, the Federal Ministry of the Interior and the Federal Ministry of Social Affairs, Health, Care and Consumer Protection worked out a new decree, which was sent to the *Laender* in September 2020. According to the Federal Ministry of the Interior, improvements have also been made to the technical implementation.

New decree drawn up

An expert opinion is not necessary for birth entries, but it is for a desired change or correction of the existing birth entry. Such a change is subject to application. The request does not require any special justification. The civil status authority has to carry out a proceeding according to § 41 or 42 of the Civil Status Law. The terms have been expanded, which is why "inter", "diverse" and "open" can now be entered.

In contrast to the first decree, the now valid decree only requires the submission of an expert opinion that provides information on whether it is a person who, due to their chromosomal, anatomical and/or hormonal development, has a gender cannot be

assigned as male or female. If documents and expert opinions are already available, this expert opinion can be dispensed with.

The AOB criticized the fact that the variation in sexual characteristics boards listed in the first decree were not set up. The path for those affected was blocked or at least made considerably more difficult to get to the desired entry. This was also the result of a conversation with an association that represents and advises those affected. The restriction to the designation "diverse" made in the first decree - not specified by the Constitutional Court - proved to be too restrictive, as the last proceeding before the Regional Administrative Court Upper Austria showed (Regional Administrative Court from Feb. 18, 2020, Regional Administrative Court-750727/5 / MZ).

**Requirements in the first decree not implemented and too narrow**

## 3.7. Justice

### Introduction

In the year under review, the AOB received 1,221 complaints that were attributable to the judiciary. A significant number of the submissions concerned Police Departments and Facilities for the Detention of Mentally Ill Offenders

**1,221 complaints**

Questions in connection with the Data Protection Act and the EU General Data Protection Regulation were raised in many cases. The processing time of the data submitted to the data protection authority or the waiting for official decisions was often seen as being very burdensome.

Some concerns related to the length of legal proceedings. It was often not necessary to contact the Federal Ministry of Justice since the delays were due to measures to prevent the spread of COVID-19.

As in previous years, a large number of the submissions concerned facts, the clarification of which fell within the exclusive competence of the independent courts. The problems addressed in the submissions included adult guardianship, foreclosures, probate matters and the Land Registry.

#### 3.7.1. Duration of court proceedings

##### Duration of an appeal – Regional Court Innsbruck

One plaintiff complained that, after one year of appeals by the defendants against judgment in the first instance, no decision had been made in the appeal proceedings.

**No decision after a year**

According to the opinion of the Federal Ministry of Justice, the file was submitted to the appellate court after the appeal responses had been received (end of July 2019). It was not until the planned settlement in January 2020 that the Innsbruck Regional Court realized that the first defendant had come of age in the course of the first instance proceedings, which was not taken into account by either the first court or the parties' representatives. The file was returned to the first court for approval of the procedural steps taken after the first defendant came of age. With a letter from the

end of February 2020, the subsequent approval was given and the file was submitted to the appellate court again.

According to the chairman of the senate, completion of the proceeding was planned for June 2020.

The AOB criticizes the duration of the appeal proceedings insofar as the file was submitted to the appellate court at the end of July 2019 and the settlement was only planned for January 2020, i.e. after five months. It was only at this point that it became apparent that the approval of the procedural steps taken after the first defendant reached the age of majority was missing, so that the file had to be returned to the first court.

### Long duration for entry into the *Land* registry – District Court Liesing

The owner of a flat acquired in December 2016 complained that - after the flat was sold at the end of September 2019 - the order of precedence for the intended sale could not be entered; this is because the district court had not yet processed the application for the establishment of residential property almost three years after the flat was purchased.

**Sale of a flat after three years**

According to the statement from the Federal Ministry of Justice, an extremely extensive application for the establishment of residential property (264 applicants, 691 documents with a total of more than 23,000 pages) had reached the court three months before the apartment was resold by the complainant. Just printing out and assigning the certificates took several weeks. At the District Court Liesing, only one land registry clerk was on duty, but in addition to her ongoing work, she was unable to cope with this application, which would have taken several weeks to process.

**Intabulation of the order of precedence in the land registry not possible**

After the District Court Liesing obtained personnel support from the Higher Regional Court of Vienna by assigning an additional land registry administrator (for two to three days per week), an overview of the entire file was achieved after six months and the applicant representative was informed that the application could not be approved because of errors in the application for the establishment of flat ownership.

The AOB criticizes this month-long delay. The overburdening of the court justifies an organizational failure in the departments dealing with the staffing. In order to establish clarity and legal

certainty, delays are to be avoided, especially in land registry matters.

### 3.7.2. Delays by the Data Protection Authority

Mr. N.N. submitted that at the end of April 2019 he had lodged a complaint against a decision by the Data Protection Authority and had not yet received a decision after around nine months. In its statement, the Data Protection Authority states that the data protection complaint was rejected in an official decision at the end of October 2018 because an order to remedy the defect was not fulfilled. On the other hand, Mr. N.N. filed a notice of appeal at the end of April 2019. It was admitted that this was only submitted to the Federal Administrative Court with a statement from the Data Protection Authority as the authority concerned in January 2020 - after an urgent reminder from Mr. N.N.

**Submission of a notification complaint to the Federal Administrative Court after nine months**

The results of the investigation were communicated to the person who submitted the complaint to the Data Protection Authority, but after a year, there was still no notification about terminating the proceeding.

**No notification about terminating the proceeding after one year**

The AOB complained about the length of the proceedings in these two exemplary cases. The Data Protection Authority justified the delays in these and similar cases with an acute shortage of staff.

**Acute staff shortages**

### 3.7.3. Adult guardianship

In 2020, the number of complaints about adult guardianship brought to the AOB continued to decline. A total of 123 complaints were registered with the AOB.

**Number of complaints continues to decline**

The Second Adult Protection Law (*2. Erwachsenenschutzgesetz*) came into force in July 2018. An evaluation of the implementation of the law took place at the invitation of the independent monitoring committee at a round table in November 2020, in which representatives from the Federal Ministry of Justice and AOB, judges, adult guardians and self-advocates took part. The AOB's view was generally shared, according to which the implementation of the Second Adult Protection Law should be judged as largely positive. At a follow-up event, the proposals are to be discussed with a wider group of people and that will lead to further improvements to the Adult Protection Law.

**Evaluation of the Second Adult Protection Law**

The complaints addressed to the AOB by those represented or their relatives often concerned court orders for appointing adult guardians as well as the inadequate supervision of the activities of adult guardians by the court. Another complaint was that the adult guardianships did not provide enough funds for the personal needs or medical treatment of those represented.

**Insufficient funds,  
involuntary change of  
residence**

The Pension Commission for Victims of Children's Homes set up by the AOB noted complaints from victims of children's homes that pensions awarded to them were withheld and that they were seen as income in measuring compensation for adult guardianship. The Federal Ministry of Justice reacted promptly and informed the judges via the justice system's intranet that the pension benefits in the sense of the Pensions for Victims of Children's Homes Act are not income and cannot be withheld or seized.

**Pension benefits are not  
income**

### **3.7.4. Police departments and facilities for the detention of mentally ill offenders**

#### **Introduction**

Due to the general health policy situation, the AOB was only able to offer a limited number of consultation days in correctional institutions and facilities for the detention of mentally-ill offenders in 2020.

During lockdown period, attendance appointments were refrained from taking into account the tense staff situation in the individual buildings and in an effort not to contribute to the spread of the COVID-19 virus. Before and after, consultation days were held in the facilities; a total of nine consultation days with 226 presentations took place. In the last quarter, complaints were also received via video telephony.

How great the need for discussion is is shown by the fact that alone in the Correctional Facility Stein, a total of 88 inmates came to one consultation day.

Thanks to the support of the prison warden, the majority of the concerns could be discussed day with the decision-makers and the specialist services on the same, so that the AOB was able to inform the inmates promptly of the completion. The contacts with the executive and non-executive staff representatives were also



continued. The encounters were and are based on mutual appreciation.

A total of 650 detainees contacted the AOB in the reporting year.

### 3.7.4.1 Structural condition and furnishings

#### Deficiencies in furnishings and structural deficits - Correctional Institution St. Pölten

There are thirty six-person cells and one eight-person cell in the Correctional Institution St. Pölten. One of these cells was visited on the occasion of the consultation day in June 2020.

**Many multi-person inmate cells**

In the cell, the two high windows could be opened and closed; However, they could only be reached via a climbing aid (stepping stool). The beds are equipped with a slatted frame, but the mattresses are worn, partly dirty, stained, and with cigarette holes. The lockers are made of wood and cannot be locked. Retrofitting with locks was promised on the day of the visit. Overall, the cell is shabby, but it is not below average. There is a table and seating for all inmates. The toilet has a brick wall separating it, but the ventilation system is old, so that the inmates' complaint that the exhaust air is only inadequately discharged can be understood. The cover of the light fixture was missing in the toilet.

**Condition: below average**

The Correctional Institution St. Pölten does not have a single barrier-free inmate cell. The inmate cells were also not equipped to be handicapped accessible. If necessary, inmates must be relocated to the Correctional Institution Vienna-Josefstadt.

**Stairs in all tracts**

The new kitchen, which was added to the main building in the inner courtyard, was also viewed. The manager of the company was involved in the planning, so that the design and equipment were as desired. For financial reasons, however, no basement could be dug. In the event of a line damage, the floor must therefore be pried open; Until the repair work has been completed, no kitchen operations are possible. One floor below the operations level on the mezzanine could be used for changing rooms and sanitary facilities.

**New kitchen – with a weakness**

## Numerous structural deficiencies – Correctional Institution Feldkirch

Due to complaints from inmates about the living and residence conditions, the Correctional Institution Feldkirch was visited on the consultation day at the end of January 2020.

The building looks worn, is obviously too small and does not meet the requirements of a modern, contemporary penal system. The offices for the prison management and their representatives are tiny, and the visitor area, which can only be entered via a small anteroom, is also insufficient. Since not everyone can wait there until the call, visitors have to wait up to two hours outside in winter temperatures in the courtyard of the Regional Court.

**Waiting in the cold**

The six-person cells criticized by the inmates were inspected. They were occupied by four or five people on the day of the visit. The inmate cells are in a worn condition, the wooden lockers cannot be locked and the foam mattress covers are full of stains.

**Worn-out inventory**

It is questionable whether the partitioning of the toilet complies with the legal requirements. Instead of a structural separation, it is a construction made of pressboard. The occupants complained that the exhaust air system was not working, so that when the toilet was used, there was a nuisance in terms of noise and smell. If the inmate cell then has to be ventilated, the room temperature drops rapidly, especially during the winter months.

**Provisional toilet installation**

In addition, the facility management responded that the central exhaust air system complied with the structural space requirements (extraction performance in relation to the building's cubature) and would be serviced according to the intervals specified by the standard. The regular maintenance of the system was also confirmed by the Directorate General. In the event of a massive increase in suction power, permanent ventilation noises and a constant draft would be the result.

**Exhaust air in the inmate cells**

## Structural deficits and cool room temperatures – Correctional Institution Feldkirch, Dornbirn Branch

At the consultation day at the end of January 2020, several inmates complained that the communal showers in the building were infested with mold and that some shower heads were broken. The windows in the cells are built so high that they can only be reached if you are physically fit. You first have to climb onto a bunk bed in order to reach the window handle from there.

**Mold and cold temperatures**

There were also complaints that it was too cool in the building in the evenings and on weekends. These complaints were confirmed by the staff at the facility. They pointed out that the heating system also supplies the nearby regional court and that the temperature is reduced there after office hours have ended. The consequence of this is that, especially during the cold season in the correctional facility, there are extremely low room temperatures.

The inspection of the cells on the ground floor showed that the inmates' complaints were justified. It was also found that the radiators installed in the inmate cells are very small, so that the complaints that they are not warm enough can be understood.

**Tiny radiators**

Regarding room temperature, the Federal Ministry of Justice announced that an energy-saving contract had been concluded in November 2018 for both the Correctional Institution Feldkirch and its satellite facility in Dornbirn, which came into force at the beginning of 2019. This meant that heating, lighting and hot water preparation would be controlled by the contractor *Innsbrucker Kommunalbetriebe AG (IKB)*.

**Temperature externally determined**

The two users of the building – the Correctional Institution Feldkirch and the Dornbirn satellite facility - only have a limited influence on the control adjustments. On the one hand, this is due to the district heating, especially since both buildings are supplied by different energy providers. On the other hand, there is no control option because this is exclusively available to the *IKB* company.

Since there were no complaints - neither from employees nor from inmates - about room temperatures that were too low up to the point at which the AOB was involved, an evaluation of the temperature at the Dornbirn satellite facility was immediately initiated by the contractor. If deviations in the temperature outside of the standards are found, they will be asked to adjust the settings.

**Temperature protocol**

The prison guards were provided with an additional heat source in the form of a small heater for night duty.

**Heater purchased**

### **Defective emergency call system – Correctional Institution Linz**

An inmate of the Correctional Institution Linz pointed out that the emergency call buttons did not work in the inmate cells. When

asked, he named two inmate cells that had been inspected after the consultation day.

In one of the inmate cells, it was noted that the light signal was not working. When the emergency button is pressed, therefore, it cannot be determined whether the emergency call has been made. In this case, the inmates have no choice but to hit the cell door hard until an officer becomes aware of it.

**Uncertain waiting**

The Federal Ministry of Justice admitted that the cell intercom and emergency call system in the Correctional Institution Linz was made in 1993. In contrast to more modern digital systems, it has an analogue operating system.

**Old facility**

Due to the defects found, a specialist company was immediately commissioned to rectify the problem, which was carried out promptly.

The General Directorate also advocates renovation of the security and communications technology. Work is taking place on the implementation.

**Renovation desirable**

### **Furnishings and fittings of specially secured cells – Correctional Institution Graz-Karlau**

In February 2020, an inmate was visited in a specially secured cell after threatening suicide to a guard that morning. The inmate complained that the transfer to the security cell was excessive and disproportionate. His statement was not meant that way.

**Special security measure**

The inmate had to be shown that the institution would react immediately in the event of a suicide threat. It was up to the psychological service and the psychiatrist to judge whether the threat was meant seriously or not. Relocation as an immediate measure was not objectionable.

However, it was objectionable that the detention room was only equipped with a cube chair and a 10 cm high mattress on the floor. The temperature of the room was average. The inmate was only wearing a tear-resistant shirt and no socks. He complained about the cold rising from the floor.

**Cold floor**

The AOB suggested removing the mattress and equipping the specially secured cells with cuboid furniture.

**No lying on the floor**

It is incomprehensible that the Federal Ministry of Justice ignored this suggestion. In response to the objection that the cuboid furniture could be used as a climbing aid to reach the video surveillance system, it should be noted that there are cuboids in the security inmate cells of other correctional institutions that have a much lower ceiling height. If there is concern that the camera can be destroyed, it should be secured accordingly. For this reason alone, there is no need to refrain from purchasing the sitting and reclining blocks.

**Sitting and reclining cuboids in many correctional institutions**

### **Lack of toilet facilities in the courtyards – Correctional Institution Stein**

In the previous year, inmates of the Stein Correctional Institution complained about the lack of toilet facilities in the courtyards. These complaints were brought up again at the consultation day at the end of May 2020.

**Bad hygiene**

The lack of toilets means that prisoners urinate in the telephone booths set up in the courtyard, which leads to a corresponding odor nuisance. The prison guard is aware of the problem, but the officers look the other way. Some inmates, on the other hand, have inhibitions about taking part in the courtyard walk if they cannot hold their urine.

In the final meeting, it was agreed that the current situation is unsustainable. However, the prison warden pointed out that a sewer system would have to be laid for the construction of toilet facilities, which would require more extensive construction work. The Federal Ministry of Justice should therefore be consulted.

**Intolerable conditions**

The General Directorate of Prisons stated that the telephone booths should be removed and instead a more open design for the telephone system should occur. Although this eliminates the hygiene deficiency, it does not solve the problem.

**Dismantling the phone booth**

The AOB cannot tell why the effort should be less when inmates turn to the prison guards if necessary and are escorted by them to a toilet in the main building than when one unlocks a toilet facility in the courtyard for them. If the toilet facility remains locked otherwise, it cannot become a trading point for prohibited items.

### **Outdated drainpipes – Correctional Institution Favoriten**

Several inmates in the Correctional Institution Vienna-Favoriten complained that the toilets in their cells were only functioning to a

**Impending blockage**

limited extent. The flush is too weak. During the lock-up period from 11 p.m. to 7 a.m., they feared that if the toilet facilities were used, they would become clogged.

According to the Penitentiary System Act (*Strafvollzugsgesetz*), sanitary facilities should be hygienic and designed in such a way that prisoners can meet their needs in a clean and decent manner at all times. A toilet that is not permanently functional does not comply with this legal requirement.

As was evident when inspecting the inmate cells, not only is the water inlet different in the toilets, but also the drainage pipes are too narrow. The pipes would need to be replaced.

**Pipes too narrow**

So far, the problem has not arisen because the Correctional Institution Vienna-Favoriten has had an open living group implementation for many years without being locked in during the night. The previously housed addictive inmates were available around the clock in the common sanitary facilities in the corridor and the toilet facilities in the inmate cells were only used very sporadically.

As the warden of the Correctional Institution Favoriten announced, the structural deficiencies are known to both the Federal Real Estate and Property Corporation (*Bundesimmobiliengesellschaft*) and the General Directorate of Prisons. Apart from a lack of financial resources, however, renovation is not possible during ongoing operations. The Federal Ministry of Justice added that all detention room toilets had already been checked for functionality and any deficiencies had been remedied by a commissioned company. In individual cases there could still be problems with the water pressure. A rehabilitation of the pitfalls is pending, although this is very costly and must first be subjected to an examination.

**Renovation postponed**

At the moment, during the lock-up period, there is, therefore, only the possibility for inmates to ring for guards, who will then lead them to a toilet in the corridor. Since this is also currently the common practice at the Correctional Institution Mittersteig, no excessive disadvantage for the inmates (temporarily housed there) is seen in the existing inmate cell situation in the Correctional Institution Favoriten.

**Inmate has to call officer**

### 3.7.4.2 Living and residence conditions

#### Violation of the separation requirement – Correctional Institution Asten

During the AOB consultation day in the Correctional Institution Asten, it was noted several times that the two facilities that would have to be spatially separated are strongly intertwined. The therapeutic part of the building is connected to the prisoner's wing. The prisoners function as system maintainers and are used, among other things, for cleaning services in the therapeutic wing. The daily encounters between inmates and prisoners and the knowledge about their living and residence conditions lead to complaints about unequal treatment.

Daily contact

From the prisoner's point of view, for example, it is not clear why they only receive bread or pastries with no side dishes for breakfast; they also see themselves at a disadvantage when it comes to sports.

Multiple disadvantages

In fact, the AOB cannot understand why the prisoners are not allowed to use the outdoor sports facilities if they are not used by the inmates. In particular, prisoners should not be excluded from using the fun court. The objection that there should be no meeting with inmates is not convincing. Because the likelihood of encountering inmates in the detention facility for mentally-ill offenders is significantly higher on the way to the fitness room, which can only be reached via the forensic-therapeutic wing.

Both the Federal Ministry of Justice and the institution agree with the AOB that the use of in-house workers appears "hardly justifiable" and does not correspond to the implementation of the separation requirement and compliance with professional hygiene regulations in the therapeutic environment. Only with the completion of the expansion of the Correctional Institution Asten and the creation of concepts can it be said how a violation of the separation requirement can be avoided.

Systemic weakness

As a result of the intervention of the AOB, prisoners and inmates now receive the same breakfast offerings starting immediately from now on. In addition, prisoners are allowed to use the fun court in their free time outside of therapy hours provided they are accompanied by a prison guard. The grass pitch can also be used by the prisoners under the specified conditions.

AOB brings about improvements

The AOB views the elimination of this obviously unequal treatment approvingly. The fundamental criticism that a forensic-therapeutic

Fundamental criticism remains

facility and a prisoner's wing are so close together that everyday encounters are unavoidable is noted.

### **Unlawful detention of a juvenile – Correctional Institution Klagenfurt**

In mid-October 2020, a 17-year-old inmate contacted the AOB. He has been in custody for five months. His conviction was already final. The end of his sentence will be in June of next year.

**Social isolation**

As the only youth currently in the Correctional Institution Klagenfurt, he is excluded from the leisure activities of the other inmates. It is true that he takes part in the adult's courtyard walks; he was also housed on the same floor with them and assigned to work there. However, he was denied common leisure activities. In a few weeks, he will turn 18.

As the AOB found out, the youth is assigned to work from 7 a.m. to 12 p.m. and 1 p.m. to 3 p.m. in the workrooms. During the one-hour break, he can be outdoors. While the adults have free time activities after work, he is locked in his cell.

**Locked up instead of being able to move around**

It was objectionable that the youth was denied the right to spend two hours a day outdoors because of his work schedule. It was also not possible to see why the youth was the only inmate to be excluded from leisure time activities, especially since he was going to reach adulthood in a few weeks.

**Limitation of rights**

The prison warden promised an immediate elimination of the illegal situation with regard to being outdoors. In addition, a benevolent examination was promised about involving the youth in the sports activities of the adults, who are always accompanied and monitored anyway.

### **Composition of breakfast – Correctional Institution Linz**

Complaints about the first meal of the day persist. The AOB already addressed this issue in its Annual Report 2019.

At the end of June 2020, an inmate of the Correctional Institution Linz complained that the bread distributed for the morning was not accompanied by butter or jam every day.

**Some days dry bread**

As an inspection of the menu submitted by the head of the economic department last month shows, the additional item is limited to serving a boiled egg on five days a month. On three days, there was no additional item at all. Butter is served four days



per month. For the AOB, doubts arose as to whether these irregularities correspond to the basic decree regarding the meal and kitchen system of the correctional facility.

The Federal Ministry of Justice replied that butter, jam and nougat cream contain a high proportion of fat and sugar. As far as the serving of boiled eggs is concerned, the 2016 Meal Regulation does not provide for a minimum quantity; it also makes no statement about the composition of the breakfast. There are no regulatory measures to be taken. In any case, the detainees would also have the opportunity to regularly purchase necessities.

**Federal Ministry of Justice sees no need for change**

For the AOB, the present statements cannot explain why no fat-free margarine is served. The mere fact that there are no condiments at all for several days a month is to be criticized as a grievance.

**Condiments expected**

According to the relevant provision of the Penitentiary System Act, food must correspond to nutritional knowledge and be tasty. The prison administration cannot negate its obligation to provide sufficient institutional food by pointing out that the detainees have the possibility to "regularly purchase of necessities".

**The state is responsible for food**

### **Insufficient breakfast – Correctional Institution Leoben**

During the consultation day in the Correctional Institution Leoben, several inmates also complained that breakfast was not served regularly.

**No condiments**

The prison warden assured the AOB that black and white bread and fortnightly jam or honey as well as tea bags and margarine would be distributed. The inmates could prepare their own breakfast. The prisoners were unable to confirm this. There is still no jam or honey as a condiment.

The Federal Ministry of Justice conceded that the previous assumption that there was always a condiment was due to a misunderstanding. The intervention of the AOB was taken as an opportunity to compare the type and amount of breakfast served in Leoben with other correctional institutions and, if necessary, to adapt it to prison practices.

**Comparison with other correctional institutions**

Since November 2020, the inmates have received – in addition to rations of bread, tea and margarine – an additional 700 g of jam per month.

**Improvement of breakfast**

### **Defective kitchen appliances – Correctional Institution Leoben**

One inmate complained that the microwave oven in the living group kitchen had been rusted through for some time. The oven was also missing a pane of glass. He reported this several times without any remedial action being taken.

The microwave oven was promptly replaced after the complaint. In view of the planned renovation of the kitchenette, the oven was initially only secured so that there was no risk of injury. Three and a half months after the consultation day was held, the oven was also replaced.

**Defects fixed**

### **3.7.4.3 Outside contact and access to information**

#### **Excessive costs for telephone calls – Federal Ministry of Justice**

Inmates at several correctional facilities complained about the high cost of telephone calls.

In the opinion of the Federal Ministry of Justice, landline calls that are handled nationwide by a single provider are not comparable with the rates on the “free market”. The operator not only acts as a “telephone provider” but also has additional tasks from the Penitentiary System Act. A contract is concluded between the detainees and the provider. The costs are also the subject of the contract.

**Additional effort for the operator**

According to the AOB, it is undoubtedly correct that a contract be concluded between the user and the operator when using the system. However, since inmates have no choice due to the provider’s unique position, the comment by the Federal Ministry of Justice that they are free to refuse the offer is incorrect.

**De facto monopoly**

It is also comprehensible that total costs increase due to the obligations arising from the Penitentiary System Act. However, this is an expense that does not result from providing the “telephone” service.

**Allocation of costs**

In the opinion of the AOB, the federal government should thus bear the additional costs that result from performing a sovereign

task due to the additional technical effort, such as call monitoring and the management of activated telephone numbers. Those costs that the operator simply incurs through the operation of the telephone system, as well as the call costs, have to be borne by the inmates.

### **Long duration for money transfers – Federal Ministry of Justice**

An inmate at the Correctional Institution Stein contacted the AOB criticizing that one month after a money transfer had been approved, the money had still not reached his wife's account.

The Federal Ministry of Justice stated that the request was approved immediately. According to the Federal Budget Ordinance, there is the principle of functional separation between arrangement and execution. This four-eyes principle is to be applied both by the paying and economic agents as well as by the Federal Budget Agency (*Bundeshaushaltsagentur*). The transfers are first checked using internal control systems and then approved. As a result, the transfers are sent to the Federal Budget Agency for further review. The Federal Budget Agency then makes the actual transfer. Therefore, there are longer waiting times.

**Complex process**

For reasons of efficient, economical and expedient administrative management, no individual receipts for the approval of the transfer to the Federal Budget Agency could be presented. In order to keep the administrative effort low, it is customary to submit so-called "bulk receipts" to the Federal Budget Agency on a weekly basis. If - as in the present case - a transfer order turns out to be faulty, an improvement must be made.

**Bundled release**

The AOB considered this procedure to be problematic, as there is a delay if only a single transfer order is incorrect. A mistake by one detainee thus hinders the processing of transfers from everyone else.

**System prone to errors**

The Federal Ministry of Justice replied that any other form of processing than processing by means of "bulk receipts" - in the sense of a possibly less time-consuming procedure - could not be implemented by the economic agencies. The AOB maintained that at least a differentiation between important (e.g. deadline observing) and less urgent transfers should be sought, which the Federal Ministry of Justice finally accepted. In the case of requests for money transfer with a high level of urgency - provided the

**Urgent cases will be given priority in the future**

priority of the treatment is evident from the request - a single account line entry will be carried out in the future.

In the opinion of the AOB, this represents a clear improvement.

### **No space for books – Correctional Institution Innsbruck**

One inmate said he had books sent to him for training purposes. However, the shipment marked as a “book package” was not accepted by the Correctional Institution Innsbruck.

**Package rejected**

The Federal Ministry of Justice initially announced that due to the severely limited storage capacity, only “approved” specialist books or magazines could be received. The acceptance of further books is only possible when the prisoner has put some books in personal effects’ storage

The AOB stipulated that objects that are removed from a prisoner when he is admitted or that arrive later for him but are not left to him must be recorded and kept. Only items that require special precautions or premises or that are subject to spoilage are to be rejected. A permit for the purchase of books is not required.

**Further training serves resocialization**

As a result, the Federal Ministry of Justice changed its argument and announced that usually no special arrangements and premises are required, which is why it was “justifiable” in the present case to keep the books in the correctional facility.

This view is not convincing either. Rather, the package should have been checked and the content assessed. There was also no evidence that special precautions and/or premises were required for safekeeping (which may be the case with high-priced or antiquarian works).

It would therefore not only have been “justifiable” to keep the books in the correctional institution. If there was not enough space in his cell, the detainee should have been informed that the books were being kept in the storage room and that he was free to put books from the cell into the depot and, in return, to receive the books sent from the depot. This would also take into account the idea of security and order, according to which the inmate cell should clearly be laid out.

**Storage space for deposits**

### 3.7.4.4 Right to family and privacy

#### Visitor processing – Correctional Institution Feldkirch

At the AOB consultation day in the Correctional Institution Feldkirch, several inmates complained that relatives had to wait up to two hours in the cold before entering to visit. The reason is that 130 to 140 prisoners receive table visits and only three visits can be carried out at the same time in the room provided for this purpose.

Waiting for hours in the cold

In addition, at least one of the speech devices in the visitation room is defective, so that when you have a “glass visit” you can hear what the visitor is saying, but you cannot make yourself understood.

Defective intercom

The prison warden confirmed that handling the visit was problematic. He is considering the introduction of a numbering system, especially since there have already been disputes among the waiting visitors and the anteroom to the visitors' room is too small to accommodate all those waiting. It was also agreed that the intercoms would be checked and technical defects fixed.

Number system should help

#### Costs for a special transport – Correctional Institution Graz-Karlau

During the consultation day in the Correctional Institution Graz-Karlau, an inmate contacted the AOB: He was a native of Tyrol and had been sentenced by the Innsbruck Regional Court. By virtue of classification, he was serving his prison sentence and placement in the penal system in Graz. His behavior has been impeccable for some time. The last fine was years ago.

Long distance

In order to spare his family the long journey from Tyrol, he asked several times to be temporarily transferred to the Correctional Institution Innsbruck and to spend a week there. He has repeatedly received a commitment for this. Three days before departure, he was then informed that due to staff shortages and unforeseeable events, the prison guards planned for the transport service would have to be reassigned.

Limited possibility for visitation

He has a wife and three children. The family could visit him in Graz-Karlau, but the children can only come during the holidays. The journey would also be expensive for the family.

As the prison warden learned in the debriefing, it is primarily a problem of the central transfer service, so that the Federal Ministry

Bottlenecks in the transfer service

of Justice was asked for an opinion. The General Directorate confirmed that the inmate had already contacted the Federal Ministry of Justice last year and complained that there were too few places in the central transfer service and that he could not consume a week visiting the Correctional Institution Innsbruck. Even then, he was told that the transfer service had to set priorities if people were to be relocated due to a change of prison or had to be transferred due to a court hearing. The inmate was also informed about the possibility and the costs of an application for transfer by means of special transport from the head of detention for mentally ill patients. However, no such application was subsequently filed

When asked how high the costs of a special transport were, the General Directorate submitted a list: taking into account the distance from Graz to Innsbruck (464 kilometers), which should be estimated at five hours, the inmate having to be accompanied by two prison guards, and in view of the fact that the route has to be driven four times, costs are estimated at between 2,940 and 3,407 euros.

**Special transports very expensive**

In view of these considerable costs, which are not affordable for inmates if they do not have substantial resources of their own, the inmate had to be advised to take advantage of an offer from the prison chaplain. He stated that he knew of accommodations where the family could spend the night cheaply, so that in addition to the expenses for the trip there would not be excessive costs. The family would have the opportunity to visit the inmate on several consecutive days in Graz.

**Costs not affordable for inmates**

Since, due to the general health policy situation, it is to be expected that visits to the window will still be sufficient for some time and that long-term visits cannot be consumed, the inmate had to be advised to consider this option.

#### **3.7.4.5 Indications of torture, ill-treatment, abuse, neglect and degrading treatment**

##### **Multiple illegal searches – Correctional Institution Linz**

During the consultation day at the Correctional Institution Linz, a prisoner complained that he had witnessed the search of another person involving physical exposure. A fellow inmate had initially refused to remove his undergarments for reasons of faith. When

**Degrading remark**

he finally complied, an officer – turning to a colleague – acknowledged this with derogatory remarks.

In order to clear up the allegations, the AOB asked the warden of the Linz Correctional Institution to question the staff members present during the official act as well as the persons searched, namely how the search took place, which people were present in the room and what words were spoken during the search.

**Request for an enquiry**

What is certain is that the suspicions (unauthorized possession of a cell phone) in the Correctional Institution Linz led to a visit of a cell and a search of the four inmates housed in it in the evening hours of June 26, 2020.

In the recreation room, two prison guards were carrying out a body search. The four inmates were admitted individually and asked to take off their clothes. A male and a female jail guard stood in the hallway. The door was open during the search so that (at least) the officer who is said to have made the incriminating remark could see the official act. Upon completion of the physical visitation, those searched were ordered to remain in the room and turn their faces toward the wall.

As one of the officers questioned stated, this procedure was “deliberately ordered by us”. However, she contradicts § 102 (2) of the Penitentiary System Act (*Strafvollzugsgesetz*), according to which a physical search associated with exposure must be carried out in the absence of fellow prisoners.

**Deliberate arrangement**

The fact that two of the searched persons not only had to witness the visitation of the third inmate acoustically but also had visual contact with him confirms their statements that after they turned around the situation escalated. The third inmate indicated that for reasons of faith he was not allowed to undress in front of other men. Although he finally complied, he made it clear through his behavior how much he disliked the arrangement. At that moment, the two inmates saw the naked inmate.

**View of naked fellow inmates**

It could not be ascertained whether the official who – as the statement of the Federal Ministry of Justice stated– called on the angry inmate to “calm down” expressed himself in a derogatory manner. Contrary to the express request of the AOB, neither the officers nor the inmates were questioned. In view of the emotionally charged situation and the fact that the third inmate covered his genitals with both hands out of shame and initially

**Omitted investigations**

refused to allow a look at them, it cannot be ruled out that degrading words might have been uttered.

To make matters worse, a female prison guard was standing in front of the recreation room during the searches and the door to the recreation room was fully open when the situation escalated.

For the above reasons, the AOB determined there was a case of maladministration. This was accompanied by a request to the Federal Ministry of Justice to ensure that searches involving physical exposure are carried out in accordance with the law in the future at the Correctional Institution Linz.

**Multiple violations of the law**

### **Forced medication after taser use - Correctional Institution Asten**

The AOB was made aware that in February 2020 there was allegedly a disproportionate use of a weapon by a prison guard at the Correctional Institution Asten. Shortly before the administration of compulsory medication, one of the inmates was tasered. Since the patient had already been restrained at this point in time, use of the weapon did not serve internal or external security.

**Disproportionate use of weapons?**

As the AOB found out, the Taser X2 has been in regular use as a service weapon since October 2018. Three of them are available at the prison guard station in Asten.

In 2019, four taser deployments occurred, namely at the Correctional Institutions Wiener Neustadt, Eisenstadt, Graz-Karlau, and Vienna-Josefstadt. On two occasions, the taser was discharged in contact mode, and on two occasions in distance mode. In the deployments conducted in distance mode, the electrodes were removed by specialized personnel. All four cases were found to be proportionate and justified by the General Directorate.

**Deployments to date**

In 2020, the Correctional Institution Asten recorded two taser deployments in the first few weeks of the year. Both deployments were in contact mode, so there were no electrodes to remove.

**Cluster in Correctional Institution Asten**

The compulsory treatment in question was carried out after prior authorization by the Federal Ministry of Justice. At the request of the medical director, five prison guards arrived at the station. They were told that the detainee had been spoken to beforehand, that

**About this incident**



he was no longer being negotiated with, and that they should restrain him so that he could receive "his" injection without harm.

It is undisputed that the detainee resisted what situation the detainee was in when he was tased.

The nurses were outside the prison room due to the instructions of the head of the task force. At this point, they were either distracted or, according to their own account, "instinctively turned away" when they heard the sound of the taser. An attending physician was also in front of the cell. It can no longer be said whether the medical director was near the cell or went back to the base.

**No medical monitoring**

It is undisputed that the patient was lying fixed on the floor when the two nurses entered the room and administered the medication. A physician was not present. After that, first the nurses and then the guards left the room.

A few minutes later, the two nurses went to the inmate's cell again and inquired about his physical condition via the feed flap. He stated that he still felt pain in the tasered area. It was not until two hours later that he was examined by a doctor.

**Medical check hours later**

The AOB objected to the fact that there were no awareness of the attending physician being consulted regarding the – foreseeable – use of the taser, that he did not ascertain the physical condition of the tasered person after taser use, and that he did not ensure beforehand that the patient's state of health did not stand in the way of compulsory treatment. The AOB also criticized the fact that it took more than two hours before the patient was examined by a physician, despite the pain expressed.

**Multiple objections**

#### **3.7.4.6 Health**

##### **What are "highly personal records"? – Federal Ministry of Justice**

When reviewing the records of an inmate's attempted suicide, the AOB became aware of the lack of documentation about discussions with the Psychological Service in the Correctional Institution Graz-Jakomini.

**Incident**

As can be seen from the documents ultimately submitted, the time and duration of the conversations with the inmate, the

**Incomplete documentation**

current psychopathological status and an indication of which interventions were carried out are missing.

In the case at hand, the employee from the psychological service had made several calls to the guard room with the request to bring in the inmates. However, this did not happen due to a lack of staff. The documentation does not record the time of these calls or the name of the person spoken to. Parts of the handwritten note were also blacked out before they were handed over to the AOB, with the notation that these were "highly personal records".

The partial blacking out of documents is seen as problematic. The Federal Ministry of Justice has been asked to clarify what the Ministry believes are "personal records".

**Documents partially  
blacked out**

The General Directorate of Prisons stated: "Highly personal records" that are not subject to inspection and therefore not monitored by the AOB, and their contents can only be highly personal subject-related reminders and pertinent notes by psychologists.

**Federal Ministry of  
Justice clarifies**

With the introduction of electronic prison management in the care area and its constant expansion, the documentation of the psychological service will in future be uniform and electronic within this system.

Over the long term, the electronic prison management in the care area will also replace the relevant modules of the integrated prison administration and the documentation of inmate-related content on the protected shared drive structure of the correctional facility.

The complete changeover to this system for the psychological service will take place at the beginning of 2021. It is planned for all content that is relevant for the treatment of inmates to be documented in the electronic prison management in the care area. The psychologists are obliged to professionalize their entries. This replaces the loose documentation of the care process. The contents of the electronic prison management in the care area thus become part of the respective electronic inmate file and must be made available to the AOB on request.

From the perspective of the Federal Ministry of Justice, the suggestion of the AOB regarding a clean separation between highly personal records and documents from the Correctional

Facility is being taken into account accordingly. The AOB shares this view.

### **Long waiting time for a screen reader – Correctional Institution Vienna-Josefstadt**

One inmate claimed to be almost completely blind. In order to make everyday life a little more bearable, a “screen reader” was approved for him. However, he had been waiting for the device to be delivered for a long time.

**Urgently necessary  
visual aid**

The Federal Ministry of Justice confirmed that a suitable device had been selected with the prisoner shortly after a visit to the “Vision School of St. Pölten University Hospital”. However, the entrepreneur did not send a cost estimate and the prison administration did not urgently remind him.

**Device selected**

In addition, the inmate was moved from the Correctional Institution Vienna-Josefstadt, Wilhelmshöhe satellite facility, to the Correctional Institution Stein. There, the prison doctor first established contact with the medical director of the Correctional Institution Vienna-Josefstadt, who confirmed approval of a screen reader. It was only afterwards that the transmission of the cost estimate was undertaken.

**Not ordered**

What is certain is that there was a loss of information when the prisoner was transferred. Since the inmate said he had received the screen reader in the meantime, no further steps were required.

### **Cost contribution calculation for the electronic ankle cuff – Federal Ministry of Justice**

In the spring of 2020, an inmate serving her sentence in electronically monitored house arrest complained that she had to pay too high a contribution to the cost of her ankle cuff. The calculations are incomprehensible, and she says she does not even reach the income subsistence level.

A person who is held in electronically monitored house arrest has to contribute to the costs, which are currently set at 22 euros for each calendar day. Under the Penitentiary System Act, this obligation does not apply to the extent that the maintenance of the prisoner and of the persons he is obliged to maintain would be jeopardized.

**Reimbursement of costs  
for implementation**

How the cost reimbursement component is to be calculated is set out in an implementation decree. There, reference is made to the "Information brochure of the Federal Ministry for Constitution, Reforms, Deregulation and Justice for employers as third-party debtors" with regard to the maintenance necessary for a simple lifestyle. The tables contained in this document are also referred to as "subsistence level tables" according to the enforcement regulation. In this context, case law speaks of "poor maintenance" (Supreme Court, 9/22/1964, 3 Ob 104/64). The prison administration equates the "necessary maintenance" with the "makeshift maintenance".

"Necessary maintenance" is not the same as "makeshift maintenance"

The term "necessary maintenance" is not defined in the Penitentiary System Act. In the literature, reference is made to decisions on legal aid under the Code of Civil Procedure or the Federal Fiscal Code (*Bundesabgabenordnung*) and on the enforceability of fines under the Administrative Penal Act (*Verwaltungsstrafgesetz*). All of this legislation focuses on "necessary maintenance". According to these decisions, it lies between the average monthly income of an employed person and the subsistence level, but in any case, well above the subsistence level.

Interpretation suggests the use of uniform terminology

The AOB has therefore recommended that the basic decree for electronically monitored house arrest be changed so that the calculation basis analogous to the provisions of the Code of Civil Procedure, Federal Fiscal Code, and the Administrative Penal Act are used to determine cost reimbursement. The Federal Ministry of Justice will follow this recommendation and promises to amend the policy.

#### 3.7.4.7 Personnel

##### Inappropriate response to a serious duty breach – Federal Ministry of Justice

The AOB opened an investigation following publication of the article "*Findest du mich schlimm?*" ("Do you find me bad?") in the weekly newspaper "Falter" on June 23, 2020.

According to the article, a social service agent at a correctional facility abused the nude photo of an inmate's wife and sent her a photo of himself with a bare lower body along with the suggestive text messages. For the AOB, the question arose as to why the service authority initially advocated dismissal but subsequently refrained from doing so.

Indecent ingratiating

As can be seen from the files submitted, the wife of one of the inmates sent the inmate a nude photo. The letter was routinely opened. The prison management decided not to hand the photo over to the inmate, but to put it in his or her depository. The photo was previously shown to a social services employee with the request that the inmate's wife be notified by telephone and that she should refrain from mailing such items in the future. The next day, the office director contacted the woman via "WhatsApp" from his private phone number. He described his sexual arousal to her in relation to the photo and made advances to her. Finally, he submitted a nude photo of himself.

**Penis photo**

A preliminary investigation conducted by the Vienna Public Prosecutor's Office was unable to confirm the suspicion of the crime of "abuse of official authority". The reasoning given in the project report to the head prosecutor's office in Vienna is that the accused did not commit any abuse of authority but only used officially acquired knowledge privately. He did not photograph, reproduce or even distribute the photo, nor did he make any enquiries. The existence of the offense of the violation of official secrecy and data processing with the intention to profit and damage was also denied.

**No criminally relevant behavior**

The service authority initially considered the unilateral termination of the employment relationship. Due to the Corona crisis, however, the next steps could no longer have been taken. A timely appointment could no longer be arranged with the Minister of Justice. In view of the urgent need for personnel in the social services area and because the service in the correctional institution could not have been managed differently due to the introduction of the group system, the social worker was requested to start work again immediately.

**Instead of dismissal only transfer**

Among other things, the prospect of a dismissal from his position and a simultaneous transfer to another correctional institution as well as a written warning about his misconduct outside of the office were considered. In addition, the employee would be obliged to undergo coaching at the staff unit of the psychological service in the prison academy. He will only carry out his work in the social service under strict monitoring by the management of the social service and without contact with female relatives of inmates. He will also be excluded from any performance bonuses and rewards.

**Accompanying measures**

The AOB recognizes these arrangements. It should be noted, however, that a departure from the envisaged unilateral termination of the employment relationship with regard to the “urgent staffing requirement” mentioned by the Social Service of the correctional institution is not understandable.

**Ambivalent reaction from Federal Ministry of Justice**

If, as assumed by the employer and supported by the AOB, there is such a massive breakdown of trust that the employment relationship cannot be maintained, a shortage of personnel cannot be a reason to ignore these employee deficits.

**Criticism from the AOB**

### **Careless handling of sensitive data – Federal Ministry of Justice**

A staff representative of the executive service criticized the negligent handling of the health data of employees. For example, an expert report on the ability of a colleague to serve was brought to the knowledge of numerous people for whom it was not intended. In fact, it would have been enough for the General Directorate of Prisons to inform the prison management that the officer was again fully fit for executive service.

**Privacy breach**

The Federal Ministry of Justice confirmed that a third party was mistakenly aware of the contents of the medical report. The report should only have been available to the General Directorate and the staff of the correctional institution dealing with personnel matters. The person concerned and the data protection authority were informed. The recipients of the message were instructed to keep silent about its contents, not to distribute it and to delete it.

**Federal Ministry of Justice endeavors to limit damage**

In order to prevent further data protection violations, separate functional mailboxes were set up in the correctional institution for the transmission of health data, to which only a limited group of people have access. The Federal Ministry of Justice also assured us that it would place a special focus on raising awareness in dealing with health data. Accordingly, the responsible specialist department in the General Directorate will point out at every opportunity that health data should be handled carefully and discreetly. This was done most recently during the prison wardens’ conference.

**Additional measures**

## 3.8. Climate action, environment, energy, mobility, innovation and technology

### Introduction

In the 2020 reporting year, the AOB processed 454 cases in the area of the Federal Ministry for Climate Action, Environment, Energy, Mobility, Innovation and Technology. Most of the complaints related to the transportation sector (260). The main reasons for complaints were about driver's licenses and toll matters, as well as the enforcement of the Motor Vehicle Act (*Kraftfahrzeuggesetz*). Sixty entries were assigned to the environmental area. Twenty-seven submissions related to the energy sector. The remaining complaints were on various other topics.

**A total of 454 cases**

### 3.8.1. Driver's license system

#### High costs for driver's license expert opinions

Chronically ill people are required to submit specialist medical expert opinions on their state of health to the authorities at regular intervals as part of the extension of their limited driving licenses. The fact that the costs for this have to be borne in full by those affected also led to criticism in 2020. Here the AOB continues to see cost relief as necessary.

**High financial burden**

#### Letter of notification about expiration of deadlines for driver's licenses

Usually, holders of limited driver's licenses and probationary driver's licenses are informed about deadlines with letters of notification from the authorities. These letters are sent directly via the central driver's license register set up by the *Bundesrechenzentrum GmbH* (the IT-provider for Federal Departments in Austria) and bear the letterhead of the relevant driver's license authority.

The AOB points out generally that those affected must not rely on these reminders as these are only informational messages that have no legally binding effect. In this respect, it is the responsibility of the driver's license holder to keep the respective deadlines on record. From the point of view of the AOB, however, the people

**Services offered**

contacted should be able to rely on the correctness and completeness of the information.

In one complaint case, when the letter of understanding was sent in the driver's license register, an error occurred insofar as the later date was automatically (only) listed on the reminder letter for different deadlines for different classes (truck driver's license class C and C1) within one month. The person concerned, who had relied on the completeness of the information in the letter, had to pay a higher fee for the reassignment of his class C driving license because the deadline had expired. The Federal Ministry for Climate Action corrected the error in the driver's license register, but refused to refund the difference between the normal and the increased fee. This was not comprehensible for the AOB.

### Transfer of driver's license for students

A woman told the AOB that she had changed her place of residence from Germany to Tyrol when she started studying at the University of Innsbruck. There, she submitted an application to the Kufstein District Authority for the conversion of her driving license issued in the People's Republic of China into an Austrian driver's license.

The authority rejected her application because it did not have jurisdiction. The woman is only entitled to apply if she has a place of residence in Austria. Such is the case if the person "has demonstrably stayed in Austria for at least 185 days within the last twelve months due to their personal and – if there are any – professional ties or if it can be made credible that they intend to stay in Austria for at least 185 days." These conditions were not met.

**Authority declares it is not responsible**

The woman criticized the fact that the District Authority Kufstein did not at all or incorrectly assessed the question of whether the authority had not already been given responsibility due to her studies in Innsbruck. According to § 5 (1a) Driver's License Act (*Führerscheinggesetz*), "an application for the granting and extension of a driver's license may be submitted if the applicant can prove that he has attended or attended a school or university in Austria for at least 185 days".

The District Authority Kufstein was of the opinion that this provision should only be applied to schoolchildren and students with regard to the issuing and renewal of driver's licenses but not

**Federal Ministry clarifies the legal situation**



when converting driver's licenses. The Federal Ministry for Climate Action, which was concerned with this question, made it clear that this interpretation did not correspond to § 23 (3) of the Driver's License Act, which refers to the "granting" of an Austrian driver's license with regard to the conversion of driver's licenses. This means that it is also possible to transfer a student's driver's license in the sense of § 5 (1a) Driver's License Act. The District Authority Kufstein announced the completion of a new application by those affected in accordance with the legal opinion of the Federal Ministry for Climate Action.

### 3.8.2. Transportation

#### Counting rule when transporting children in school buses

In its activity reports to the National Council and the Federal Council, the AOB has for many years addressed the 3:2 counting rule for school transport in buses in regular motorized traffic. According to § 106 (1) of the Motor Vehicle Act (*Kraftfahrgesetz*), three children under the age of 14 are currently counted as two people and children under the age of six do not count at all. If there is not enough (seating) space, transport in buses is not only difficult for the children, but the AOB also sees a potential danger to their safety.

**Overcrowded school buses are a safety risk**

In its Annual Report 2019, the AOB provided information on a cost estimate made by the Federal Ministry for Transport, Innovation and Technology in 2018 in the event of the introduction of a 1:1 counting rule. According to this, investment costs of approx. 180 million euros could be assumed for all of Austria only for overland traffic and while maintaining standing room. This estimate relates to the purchase of approximately 900 buses (excluding operating costs or drivers). That is around 25 percent of the existing vehicle capacity.

In the meantime, the AOB has also received statements from the *Laender* in this *ex-officio* investigation.

They pointed out that standard buses in regular motor vehicle traffic are not only permitted with seats but also with standing room and are often used not only by schoolchildren but also by other passengers. The introduction of a 1:1 counting rule alone does not mean that standing places are no longer available and that a seat is available for every child up to the age of 14. If this

group of people is to be guaranteed a seat, this would have to be regulated separately.

The *Laender* also indicated that significantly higher costs could be expected if every child up to the age of 14 were to be given a seat. If children were given priority in seating, this would also lead to a lack of understanding among other groups of passengers (older people, people with disabilities, etc.) according to the perspective of some *Laender*. In practice there is also the problem that the bus drivers have to check the age of the children in order to determine who is entitled to a seat.

**Concerns of the *Laender***

These problems could be solved if, ultimately, each passenger was given a seat. However, the *Laender* countered that the number of passengers on regular public transportation was difficult to calculate and that a seat could hardly be financed for everyone. The additional need only exists at peak times (e.g. the start of school). Accordingly, there are unproductive idle times (also on weekends and public holidays) with regard to the newly purchased vehicles or the newly hired bus drivers.

Some *Laender* were, therefore, fundamentally negative about any change in the counting rule. Other countries did not express their fundamental disapproval, but the federal government would have to assume the additional costs. Lower Austria and Styria stated in their statements that the 3:2 counting rule was in fact not being applied.

***Laender* against payment of costs**

In summary, the AOB states that the introduction of a 1:1 counting method for the transport of schoolchildren in buses in regular motorized traffic while maintaining standing room would entail not inconsiderable additional costs. The reliability of the available figures seems questionable, especially since the present rough estimates largely do not include the purchase of used vehicles and the annual costs for staff and operations. The complete abolition of standing room in regular motor vehicle traffic would undoubtedly lead to significantly higher additional costs. However, the AOB does not have an estimate for the whole of Austria.

**Additional costs difficult to estimate**

A change in the counting rule, in which children are counted like adults, but are allowed to use the permitted standing room, would in any case lead to fewer passengers per bus and thus to more space on the buses (ultimately also for other groups of passengers). In addition to increasing safety, this would also be welcomed in view of the existing pandemic and the associated

**Safety has precedence**

requirement to keep your distance. Who will bear the additional costs (federal government, states, municipalities, transport associations, bus companies, etc.), of course, still needs to be clarified.

### Equipping lorries and buses with turning assistance systems

In February 2019, the AOB led an official investigation into a tragic accident in which a nine-year-old boy was overlooked and fatally injured on the way to school by a lorry turning right. In particular, the subject was the question of whether, in view of the considerable number of such accidents and the serious consequences, the authority is authorized to prescribe an obligation to equip or retrofit lorries and buses with turning assistance systems on the basis of the Motor Vehicle Act (*Kraftfahrzeuggesetz*) or whether there is a possibility of such a legislative initiative.

Official investigation

The Federal Ministry took the perspective that provisions under Union law were contrary to both national regulations and statutory regulations. Essentially Directive 2007/640 / EC of the European Parliament and of the Council of September 5, 2007 on the creation of a framework for the approval of motor vehicles and motor vehicle trailers as well as Regulation (EU) 2018/858 were discussed.

However, reference was also made to Regulation (EU) 2019/2144 of the European Parliament and Council from November 27, 2019. Article 9 (3) of the regulation contains special requirements for trucks with a total weight of over 3.5 t and for buses with more than eight seats in view of "sophisticated systems that can detect pedestrians and cyclists who are in close proximity to the front or on the passenger side of the vehicle and issue a warning or prevent a collision with such vulnerable road users". In order to be approved throughout the EU according to this regulation, new vehicle types do not have to have turning assistance systems until July 6, 2022. Equipping new vehicles with such systems is only mandatory from July 7, 2024. An obligation to retrofit vehicles that are already in use at the specified time is not provided for under Union law.

EU-wide regulation agreed upon

In the course of an amendment to the Austrian Road Traffic Act (Traffic Regulations, Federal Law Gazette I No. 77/2019), the authorities were given the opportunity, from September 1, 2019, by ordinance for an entire local area, parts of local areas or

Earlier equipping or retrofitting is required

specific areas for lorries without assistance systems with a maximum permissible total weight of over 7.5 t to issue right-turn bans under certain conditions. The AOB, however, sees on-board precautions as much better suited to counter the risk of accidents. Since new lorries and buses will only have to have turning assistance systems from July 2024 and these vehicles will generally be used for a long time, an earlier obligation to equip new vehicles and an obligation to retrofit old vehicles should be aimed for at the EU level.

The Federal Ministry for Climate Action agreed with this view, especially since a study published on April 14, 2020 by the European Commission's Directorate-General for Mobility and Transport confirmed the efficiency of turning systems to protect cyclists and pedestrians in particular. Furthermore, a positive cost-benefit ratio was found.

Most recently, the Federal Ministry for Climate Action announced that, with regard to the early introduction of turning assistance systems in lorries and buses, the European Commission had been advised in a committee meeting that Austria would support a legislative proposal for mandatory retrofitting of existing vehicles. In addition, the German Transport Minister and the Austrian Federal Minister asked the EU Transport Commissioner to examine whether the rapid introduction of mandatory retrofitting at EU level was possible. AOB had not yet received a response to this request at the time this report went to press.

**Request to the EU Commission**

## **Confirmations of license plate removals**

When investigating a complaint, the AOB found that it was unclear whether a certificate had to be issued for the acceptance of removal of the license plates of a vehicle and the registration certificate in the course of a traffic stop. People who drive vehicles could thus prove to the registered owners or owners of the vehicle why and for what reason the license plates or the registration certificate were removed by the police.

**Confirmation makes sense**

The Lower Austrian Regional Police Directorate did not consider a certificate to be necessary, especially since the Motor Vehicle Act does not provide for it to be issued. The Federal Ministry for Climate Action stated that the purpose of such a confirmation could not be recognized and otherwise referred to the competence of the Federal Ministry of the Interior. The Federal Ministry of the Interior noted that a corresponding form had been

**Federal Ministry of the Interior issues reminder to use form**

available since 2009 as confirmation or notification when license plates and/or the registration certificate were accepted. Even if there was no express legal obligation to provide a confirmation, the Federal Ministry of the Interior issued a reminder to use the form. This should serve as information for those affected and as documentation of the official act.

### **Failure to process an objection – Vienna Police Department**

A Polish citizen who moved to Vienna for professional reasons in the summer of 2019 complained that the Vienna Police Department had imposed a fine of 630 euros on him for violating the Motor Vehicle Act. According to the Police Department Vienna, as a user of a vehicle with a foreign registration number, he used it for more than a month after it was brought to Austria for the first time.

**Punishment according to the Motor Vehicle Act**

After one month Mr. N.N. had failed to deliver the registration certificate and the license plate to the authorities in whose local area the vehicle was located. The vehicle was thus used even though it was not approved for use on public roads. Therefore, mandatory liability insurance did not exist for the vehicle.

After receiving the penal order, Mr. N.N. went to the Simmering police station and raised an oral objection. He also presented all his evidence. His objection was recorded and signed by him. However, the authority did not respond to his objection. Instead, he received a reminder from the Vienna Police Department in March 2020. Due to language barriers and fear of further negative consequences, he has paid the penalty. However, he still denies having committed the violations.

**Warning instead of preliminary investigation**

The Federal Ministry of the Interior stated that the objection of the police station Simmering had been lost for reasons unexplained and promised that the penalty amount paid, including reminder costs of 635 euros, would be refunded.

**Mistake admitted**

### **Cargo Transportation Act – proof of lorry parking spaces**

A freight contractor contacted the AOB and submitted that he had had to provide evidence of the required parking spaces for his vehicles in the course of the renewal of the trade license required every five years. According to § 5 (1) of the Cargo Transportation Act (*Güterbeförderungsgesetz*), these must be located in the

**Local restriction**

“local municipality or another municipality in the same or an adjacent administrative district”.

The company's business premises are located in the Deutschlandsberg district. The company mainly transports apples from the “Styrian Apple Region”, i.e. from the Feldbach, Hartberg and Fürstenfeld area. It would, therefore, be advantageous for the company if it could rent parking spaces in this area. However, the aforementioned legal regulation stands in the way of this since only the districts of Voitsberg, Graz-Umgebung, Leibnitz and Wolfsberg border on the Deutschlandsberg district. Relocation is not affordable for the company.

It is incomprehensible why the law restricts itself to the location district or an adjacent administrative district. This leads to irrelevant results, as it ultimately depends on the location of the company and how large the “catchment area” for parking spaces or the relevant travel route is. This is made clear by the fact that entrepreneurs from the Liezen district are allowed to position their parking spaces in eleven different political districts, but companies from the Dornbirn district only in three districts. Since numerous companies seem to be affected by the regulation, the AOB asked the Federal Ministry for Climate Action for its opinion.

**The legislature's transportation policy considerations**

According to the Federal Ministry for Climate Action, the legislature assumed that roads with public transport or limited parking spaces could not be withdrawn from public use for private reasons. The objective is thus that every freight transport company have permanent parking spaces away from roads with public traffic. This objective could only be considered in connection with the concerns of the freight company if a legal obligation were provided to continuously inform the licensing authority of the current location of the vehicles and to provide evidence. However, this would lead to greatly increased effort on their part. An initiative towards changing the law is therefore not being considered.

The freight company countered by stating that the authority only checked the existing parking space at cyclical intervals of five years in the course of the license extension. If the reference to the siting district or an adjacent administrative district were cancelled, there would in fact be no additional effort. The regulation, on the other hand, represents an unnecessary hurdle for the companies and also leads to increased environmental pollution since the vehicles are not parked as close as possible to the area of

**Unnecessary hurdle for companies?**

operation. In light of this argumentation, the AOB suggests reconsidering the current legal situation.

### Unclear subvention criteria for E-vehicles

A man contacted the AOB about a subvention for his e-vehicle. He had applied for this, but had not yet received it. The Federal Ministry for Climate Action gave the following reason: his vehicle did not meet the eligibility criterion of a prescribed minimum range of 50 km. Moreover, his vehicle did not appear in a “list of eligible vehicles”. This list was to be found in a separate document from a bank or the website of the vehicle manufacturer or the website [www.autoverbrauch.at](http://www.autoverbrauch.at), thus exclusively from external sources.

**No subvention for an e-vehicle**

In contrast, the “Guide to E-Mobility for Private Individuals”, which is available on the Federal Ministry’s website, neither explains how to calculate the ranges for e-vehicles nor provides a list of eligible vehicles. The guide also contains no reference to where this list can be found. Therefore, applicants for funding can have no knowledge of the “list of eligible vehicles” or of the calculation method used to determine the range only on the basis of the guide and without additional information.

The AOB criticized the procedure as intransparent. The range calculation and the “list of eligible vehicles” should be disclosed directly in the guide on the Federal Ministry for Climate Action website.

**Disclosure of eligibility necessary in the guidelines**

### Digital toll sticker

In its Annual Report 2019, the AOB presented complaints in connection with the digital annual toll sticker, which in particular related to multiple requests by ASFINAG, which is responsible for planning, building, financing and maintaining Austrian motorways, to pay a replacement toll. What all these cases had in common was that after they had been assigned a new license plate number, which was usually associated with a change of residence, drivers overlooked having the digital sticker they had acquired for the previous license plate re-registered with ASFINAG for the new license plate number. The long processing time before requests were sent was also criticized.

**Criticism of ASFINAG**

The AOB was not directly responsible for investigating this matter, as ASFINAG is a legal entity that has been outsourced from public administration. In the course of correspondence with the management of ASFINAG, however, improvements were achieved that have now been included in the toll regulations.

If you fail to re-register the digital annual toll sticker and provide evidence that you would have been authorized to re-register, you will only have to pay one replacement toll, even if, for example, two or more replacement toll claims have arisen. In the case of multiple violations, the replacement toll claims are capped at a maximum of three. According to ASFINAG, an average delivery time of two weeks has been implemented for replacement toll requests for Austrian motor vehicles (compared to often more than eight weeks previously).

**Improvements implemented**

Further reasons have been added to the toll regulations that entitle the holder to re-register a digital annual toll sticker. This means that, for example, when a desired number plate is assigned or when a desired number plate is waived, as well as when a new number plate is assigned because it is no longer easy to read, it is possible to re-register.

With regard to customer information in connection with the re-registration, ASFINAG reported about optimizations in its web shop. In addition, the area managers would regularly sensitize ASFINAG's sales partners to the fact that they should expressly point out the consequences or possibilities of re-registration in the event of a license plate change when selling digital products. Furthermore, an information brochure was sent to around 1,400 registration offices throughout Austria with the request that they be displayed on the business premises.

Despite these positive developments, the Federal Road Tolls Act (*Bundesstraßen-Mautgesetz*) should consider further regulations to increase flexibility and customer-friendliness when using digital toll stickers. What needs to be addressed here is the fact that the possibility of re-registration is still limited to the same registered owner.

**Need for further improvement**



### 3.8.3. Aviation law

#### Operators' licenses for unmanned class one aircraft

In its Annual Reports for 2018 and 2019, the AOB determined that *Austro Control GmbH* had issued notices merely granting a restricted operator's license in an unlawful manner in its enforcement of § 24f of the Aviation Act (*Luftfahrtgesetz*) for an unnamed class one aircraft.

Illegal restrictions on the operator's license

In 2020, complaints against the enforcement practices of Austro Control were also brought before the AOB. In addition, complaints were made that Austro Control did not approve "operating times" in the populated or densely populated area to the extent "daily from after the beginning of civil dawn (BCMT) to before the end of civil twilight (ECET)", although this would have been legally required as a result of the decision of the Federal Administrative Court of January 20, 2020, GZ W 249 2223191-1 / 11E.

Deficiencies in the area of enforcement of the Aviation Act

#### Years of inactivity by the Federal Safety Investigation Office

Mr N.N. complained to the AOB that the responsible investigative body had been inactive for more than a decade (!) in preparing an aircraft accident investigation report. Specifically, he complained that no report had been submitted for an aircraft accident that took place on July 15, 2006, after more than eleven years.

Years of delays in investigating an aircraft accident

As already stated in the Annual Report 2017, the investigating body did produce an interim report within a relatively short period of time by the end of October 2017 after the AOB's investigation had been initiated. However, there were once again serious procedural delays. Finally, in August 2018, the head of the Federal Safety Investigation Office (*Sicherheitsuntersuchungsstelle des Bundes*) appointed a new investigator who concluded the investigation with a final report dated August 4, 2020. In view of the fact that the proceedings lasted more than fourteen years, the AOB felt compelled to determine the existence of maladministration. Because the goal pursued by the legislature, the obligation to conduct safety investigations to increase safety in civil aviation by preventing future accidents and disruptions insofar as possible, is almost entirely thwarted by such a long proceeding. Research results presented after more than 14 years

An investigation period of 14 years is not acceptable

can hardly increase safety in civil aviation thanks to technical progress.

### 3.8.4. Environment

#### Noise pollution from waste treatment facility

Several people contacted the AOB because of noise pollution from a waste treatment plant that was operating around the clock. Approved in 2006, the facility has been modified several times. Waste is mechanically processed and waste (including hazardous waste) is temporarily stored, and a research facility for waste processing is also operated.

The official medical expert concluded from the sound insulation report from October 2019 that all measured sound level peaks would be well above the value of 42 dB, which should not be exceeded. Even in healthy adults and children, there is a medically unacceptable nuisance, which is increasingly developing into a health risk. After criticism from the AOB, the Styria regional governor initiated new noise measurements from January 2020. Noise-related measures, some of which the company took of its own accord, led to a reduction in noise pollution, according to the authorities.

Noise level hazardous to health

Since spring 2020, the AOB has received input from all people intervening that the noise situation has not improved significantly. Activities on the part of the authorities have been slow. The AOB determined that a proceeding to erect a noise protection wall was carried out and completed in autumn 2020. Whether fears that after completion of the noise protection wall the night noise will not be reduced and that there will be no noise reduction for the higher floors of the residential building opposite can only be seen after construction is complete. The AOB criticized the fact that the AOB's investigation was the first to initiate official measures. The steps taken since then, however, have reflected the good will of the company and the Styrian regional government to improve the situation.

Official activities moving slowly

#### Odor nuisance from composting plant

A woman contacted the AOB because of the noise, dust and, above all, odor nuisance emanating from a neighboring

composting facility. The authority has also received other complaints from various people since 2004.

The composting plant is operated jointly with a farm. If the composting plant is carried out as an ancillary business to agriculture, the Governor of Styria is responsible according to the Waste Management Act (*Abfallwirtschaftsgesetz*). However, if it is not a mere ancillary trade to agriculture, the District Authority Leoben is responsible on the basis of the Austrian Industrial Code. The file was therefore sent back and forth between the Styrian Regional Government and the District Authority Leoben several times due to the unresolved authority within the authorities.

Responsibility unclear  
for years

The authorities started activities such as inspections and initiated administrative penal proceedings. Overall, however, they remained too passive and did not exhaust official funds. In addition, for years they could not agree whether it was a business under commercial law or an agricultural ancillary trade. In part, however, this was due to the situation that the operator changed within the family and was therefore legally either a farmer or an entrepreneur.

In the course of the investigation by the AOB, the District Authority Leoben issued a notification in November 2020 that the composting activity was not subject to the Austrian Industrial Code. Thus, according to the Waste Management Act, the Styrian Regional Government is responsible. This resolved the internal authority dispute, but improvements for the neighborhood are still pending. In a technical mission statement, the official expert stated in January 2020 that the guideline value for "very high potential for nuisance" had been exceeded. The AOB criticized the sluggish approach taken by the authorities involved in solving the problem.

Responsibility clarified,  
problem unsolved

A similar case of such a "conflict of competencies" is shown in the area of responsibility of the Federal Ministry for Digitalization and Business Location (see Chapter 3.3.1).

### **Illegal garbage dumping**

A man contacted the AOB because his neighbor was illegally dumping garbage. Although he had informed the District Authority Klagenfurt-Land as the waste management authority,

they did not intervene. An employee of the authority also treated him in an unfriendly manner.

The AOB found that the conversations were not handled as would be expected from an authority. Even if the choice of words of the employee was a reaction to improper behavior on the part of Mr. N.N., it was not suitable for creating a de-escalating effect. In such situations, employees at an authority should maintain the required form. Of course, people who go to the authority must also observe the requirement of objectivity.

**Objective conversation management is important**

In the matter itself, the AOB criticized several deficits and failures. The official inspector had carried out an on-site inspection and found violations in various legal matters. However, the District Authority extended the removal deadlines for no justified reason and did not request proof of removal.

**Extension of deadline without comprehensible reason**

The District Authority did not conduct the proceeding precisely either, in particular there was a lack of evidence of disposal, the documentation of further investigations deemed necessary by the official expert, and the final investigation report. The AOB could not understand whether the deposits were removed at all. It also saw as insufficiently documented and justified why the District Authority did not initiate any administrative penal proceedings despite disregard for the deadlines and orders it had given.

**Insufficient inquiries and documentation**

The Office of the Carinthian Regional Government checked the proceedings and had a clarifying discussion with the head of the authority.

### 3.8.5. Energy sector

#### Smart meter

As in previous years, several people criticizing the replacement of analogue electricity meters with smart meters have contacted the AOB. In these cases, the AOB has explained the legal situation and stated that neither the regulations of the Electricity Industry and Organization Act (*Elektrizitätswirtschafts- und -organisationsgesetz*) nor the Intelligent Meter Implementation Regulation (*Intelligente Messgeräte-Einführungsverordnung*) grant the end consumer a right to keep the analogue Ferraris meter. The AOB also informed about the possibility of referring to the regulatory commission at E-Control and fighting their decision in court.

**Retention of Ferraris electricity meter not possible**

### Incorrect information from the E-Control Arbitration Board

Although the E-Control Arbitration Board is not subject to monitoring by the AOB, the AOB nevertheless dealt with the E-Control board of directors in the case of a customer of *Wiener Netze GmbH*, who complained about the charging of flat-rate costs in order to separate their property from the gas network or to reconnect to it.

In addition, the customer criticized the content of a letter sent to her by the E-Control Arbitration Board, which contained a reference to the regulation in § 54 (2) of the Electricity Industry and Organization Act. According to this, electricity network operators can provide flat-rate services for comparable network users for network access fees.

On the reproach from the AOB that the case did not concern an electricity but a gas issue, E-Control announced that the reference to § 54 (2) Electricity Industry and Organization Act (instead of § 75 (2) of the Gas Industry Act ) was based on a technical error. E-Control reported that it had rectified the error and pointed it out to the employees of the arbitration board.

Reference to wrong Act

### 3.8.6. Patent Office

#### Delay in proceedings

On April 15, 2019, Mr N.N. submitted an invention to the Austrian Patent Office. After he had not received a preliminary decision or other messages from the Patent Office by February 24, 2020, he contacted the responsible officer. This promised a first preliminary decision by mid-March 2020 at the latest.

However, the decision was also subsequently delayed until Mr N.N. contacted the AOB. The patent office reported a chain of unfortunate incidents. Among other things, the responsible examiner was ill. The patent office apologized for the delays and emphasized that this was an absolute exception.



### 3.9. Art, culture, civil service and sport

#### Introduction

In the year under review, the AOB processed 18 business cases in the area of responsibility of the Federal Ministry for Art, Culture, Civil Service and Sport. Four concerns related to legal questions from civil service employees, one complaint related to a sporting matter.

Eighteen cases

The State Secretariat for Art and Culture is located in the Federal Ministry for Art, Culture, Civil Service and Sport. The protection of monuments, for which the AOB received thirteen complaints, also falls within its jurisdiction. On the one hand, there were concerns from committed people where the Federal Office for the Care of Monuments (*Bundesdenkmalamt*) did not pay sufficient attention to a monument in their environment that they considered worthy of protection and, on the other hand, complaints from people who had their way of life restricted as a result of injunctions from the Federal Monuments Authority.

#### 3.9.1. Monument protection

##### Changes to the monument for war dead at the University of Innsbruck

At the Ludwig Franzens University Innsbruck there is a “memorial” in memory of the members of the University of Innsbruck who died in the First World War. It was supplemented in 1952 with the names of those who died in the Second World War. The University applied for a change to this monument and justified this with an open and self-critical approach to history and a commitment to the responsibility of the University. The Federal Office for the Care of Monuments approved the change to the monument.

Paragraph 5 of the Monuments Protection Act (*Denkmalschutzgesetz*) grants the authority a wide margin of discretion when approving changes to or the destruction of monuments, which is also recognized by the jurisprudence. On the basis of complaints, the AOB checked whether the Federal Office for the Care of Monuments had acted within the scope of this discretion.

The Federal Office for the Care of Monuments orients itself according to “standards of monument preservation”. These

Transparent standards  
for monument  
preservation

stipulate that structural measures are only justifiable from a historical point of view if there are no significant changes to the historical substance, the artistic-architectural expression, and the traditional appearance. Design changes should respect the existing and not dominate it. The primary goal is to preserve the historical substance, the traditional appearance, and the architectural effect.

After examining the approval procedure and taking into account comparable cases, the AOB came to the conclusion that the Federal Office for the Care of Monuments had not observed its own standards. In the case of the monument, the artistic expression and appearance and thus the message of the monument as a whole were greatly changed. In the process of monument law, there was no need to set the artistic intervention to achieve the political memory goals - which were not questioned by the AOB. According to the standards, such an intervention is only permissible if there are serious reasons; the Ludwig Franzens University Innsbruck did not bring forward any such reasons.

**Alteration of monuments contradicts standards of monument preservation**

For example, an additional plaque could have been attached to the monument to illuminate the historical context of the monument as intended by the University. As shown by comparative cases checked by the AOB, such a procedure was chosen even for monuments that were historically significantly more heavily contaminated. With this, the preservation of the historical substance, the traditional appearance, and the architectural effect, according to the standards, and the historical contextualization intended by the University could have taken place.



### 3.10. Defence

#### Introduction

In 2020, the AOB dealt with 38 complaints and inquiries regarding the Federal Ministry of Defence.

Thirty-eight cases

Overall, there was a slight decrease in complaints in the area of national defence compared to the previous year, which the AOB attributes to the increased number of complaints to the Parliamentary Federal Armed Forces Commission (*Parlamentarische Bundesheerkommission*). In contrast to the complaints to the Parliamentary Federal Armed Forces Commission, the inquiries and complaints to the AOB were not about the different salary approaches among the soldiers but primarily medical examination issues. In most cases, the AOB was able to provide clarification on inquiries about the physical examination before entering the army.

Focus on medical examination proceedings

With regard to those complaints related to COVID-19, please refer to the COVID-19 report

#### 3.10.1. Drafted despite civil service

A conscript who had been declared fit for military service contacted the AOB because he received a draft order despite submitting a civil service declaration on time. The conscript had already started his civil service when suddenly a draft order was sent to him by the Vorarlberg Military Command.

The Federal Ministry of Defence pointed out that the conscript had submitted his civil service declaration late. The Central Database of the Army rejected the conscript's civil service declaration. On January 20, 2020, the conscript received a draft order from the Vorarlberg military command for June 2, 2020. The conscript had lodged a complaint against the draft order, which had been rejected by the Vorarlberg military command on February 15, 2020.

Drafted after rejection of the civil service declaration

The AOB's investigations revealed that the conscript had also lodged a complaint with the Federal Administrative Court against the Central Database of the Army's dismissive decision. This complaint was granted with the decision of the Federal Administrative Court on April 23, 2020 and the commencement of civil service was determined retroactively as of September 4,

Retroactive entry into the civil service after a successful complaint

2019. The complainant could have the work already done count towards his civil service time.

The AOB referred the Federal Ministry of Defence to the current decision of the Federal Administrative Court and presented its legal view, according to which the Vorarlberg Military Command must now *ex officio* overturn its preliminary appeal decision of February 15, 2020.

Since the Vorarlberg Military Command erroneously revoked the original draft notice from January 20, 2020 and not the preliminary appeal decision, the AOB pointed out that the preliminary appeal decision of the Vorarlberg Military Command from February 15, 2020, was the same as the original draft decision from February 20, 2020. January 2020 was derogated, i.e. it took the place of the original draft notice.

In the meantime, the AOB's request has been complied with and the preliminary appeal decision of the Vorarlberg military command has been officially revoked. The conscript was able to complete his civil service without having to worry about completing basic military service at the same time.

*Ex officio* repeal

### 3.10.2. Forest fires at the Allentsteig military training area

As a result of a media report about alleged omissions by the Austrian Federal Army in relation to forest fires at the Allentsteig military training area, the AOB initiated an official investigation.

In the report, there was a particular allegation that the number of fires had noticeably increased in recent years but that there was no longer any adequate response to the fires. In particular, attention was placed on sniper exercises on extremely hot days in July 2019 despite the prevailing drought. This led to 56 hectares of forest and other areas at the Allentsteig military training area catching fire. The Austrian Federal Armed Forces had insufficient or unsuitable measures in place to extinguish fires.

Increasing number of forest fires

In a report by the Austrian Court of Audit on the Allentsteig military training area from 2015, among other things, a safety deficit in firefighting in a part of the military training area at risk for duds was pointed out. In the final recommendations of the Austrian Court of Audit, the following point can be found: "(40) With regard to the safety deficit in firefighting in the area of the military training

No suitable firefighting vehicles

area endangered by duds, a decision on the procurement of suitable fire engines should be made as soon as possible (...)"

With reference to this report, the Federal Ministry of Defence was asked to comment on the fires in summer 2019.

The Federal Ministry of Defence admitted that the fires in the summer of 2019 were probably actually due to the sniper drills. Since the fires broke out in Zone A, no active firefighting could be carried out due to the lack of splinter-protected fire engines. However, the civilian population was never in danger.

**No danger to the civilian population**

The AOB pointed out that fires that arose from general training operations should be avoided insofar as possible. Regardless of this, care should be taken to be able to react in the event of a fire by taking appropriate countermeasures and using fire trucks. Even if there was no danger to the population in this case, it is also important to prevent forest fires for environmental reasons.

The Federal Ministry of Defence promised to show greater sensitivity in assessing the risk of fire in dry spells. From the AOB's point of view, there is also an urgent need to purchase extinguishing containers to actively fight fires.

**Purchase of fire trucks necessary**

### 3.10.3. Target practice in residential area

A couple from Stammersdorf complained to the AOB about the noise coming from the adjacent shooting range of the Austrian Federal Army. The apartment blocks adjoining the shooting range were all on land intended for building – some in the mixed construction area, some in the residential area. The noise pollution caused by the daily use of firearms between 8 a.m. and 6 p.m. for years was unbearable. Even on Saturdays, target practice took place until 1 p.m. Sometimes you felt like you were in a war zone. Previous complaints from local residents had not shown any success.

**War zone**

In the investigation, the Federal Ministry of Defence first emphasized that target practice by the Austrian Federal Army was essential for maintaining the constitutional obligation to national military defence. The shooting range in Stammersdorf is the only shooting range in Vienna. However, the Federal Ministry of Defence admitted that there had already been several complaints. In the period from March 22, 2019 to April 8, 2019, noise measurement was carried out on behalf of the Army Sport

**Noise measurement 2019**

Club Vienna / Shooting. A maximum noise index of around 45 dB was determined for the day-evening-night period. This value is 15 dB below the threshold value for road traffic noise and 10 dB below the threshold value for industrial plants. In contrast, the calculated sound pressure level caused by the traffic noise on motorway Brünner Strasse B7 directly in front of the couple's house is 60 to 65 dB.

Even if the noise measurements carried out thus far showed that the noise pollution emanating from the shooting range was below the legal requirements, the complaints of the neighbors had to be taken into account. The construction of shooting walls and a further reduction in shooting times are planned. The AOB's suggestion to relocate target practice to the northern part of the shooting range in the future will also be implemented if possible. For safety reasons, however, relocation to the northern part is not possible for all target practice.

**Noise reduction  
measures announced**

In view of the noise measurement results presented, the AOB was unable to deny that the determined average noise exposure was below the legally stipulated threshold. At the same time, however, it could be inferred from the documents submitted that the measurable shooting noise is heavily dependent on the measurable shooting noise is heavily dependent on the measuring point and the type of weapon used. The intensity of the noise also fluctuates over the course of the day.

The AOB welcomed the measures announced by the Federal Ministry of Defence. In view of the fact that – as the Federal Ministry of Defence itself admitted – there are repeated complaints from local residents about the noise pollution from target practice, the AOB suggested that it be implemented quickly. Furthermore, the AOB recommends carrying out an (unannounced) current noise measurement in 2021, if possible immediately after the announced measures have been implemented. The Federal Ministry of Defence has been asked to continue reporting unasked to the AOB about further developments in this matter.

**AOB recommendation**

### 3.11. Agriculture, regions, and tourism

#### Introduction

In the reporting year, the AOB received 309 submissions in the area of the Federal Ministry of Agriculture, Regions and Tourism.

**A total of 309 cases**

Of these, eighty related to water rights issues. Sixteen submissions related to forest law, thirteen related to questions of administrative funding, six submissions each related to issues relating to the energy industry as well as mineral raw materials law, and ten complaints related to community service.

Most of the cases were in the area of "Broadband, Telekom and Postal Service". The broadcasting usage fees and the approach taken by *GIS Fee Info Service GmbH* were a particular cause of complaints (see Chapter 3.11.4)

#### 3.11.1. Water rights

In contrast to previous years, there were few complaints about the duration of water law proceedings in the 2020 reporting period. It remains to be seen whether a positive trend for the future can be derived from this or whether this circumstance is related to the corona pandemic. The main focus of the submissions was the protection of drinking water, flood protection, disputes in water cooperatives, and questions of the party position in water rights proceedings.

**Few complaints about the length of the proceedings**

#### Garbage deposits in the Traunsee

The owner of a property on the Traunsee (a lake in Upper Austria) complained that large amounts of driftwood, garbage, etc. had been washed ashore in an adjacent bay in the mouth of the Traun for many years. By 2013, the bay and the banks were regularly cleared. Since then, despite numerous complaints, the eviction has not been carried out because no one considers himself responsible. After obtaining statements from the Federal Ministry of Agriculture, Regions and Tourism, the Office of the Upper Austrian Regional Government and the Austrian Federal Forests, the following picture emerged for the AOB:

**No one responsible for removal?**

The Traunsee is a public body of water and is owned by the Republic of Austria. The water bed is managed by the Austrian Federal Forests. The water waves are for common use.

In terms of the Water Rights Act, the Federal Ministry of Agriculture, Regions and Tourism stated that the water quality of the Traunsee is regularly monitored and is in good condition. An obligation to remove alluvial debris cannot be derived from the cleanliness obligation of § 31 of the Water Rights Act. According to the jurisprudence from the Administrative Court, a requirement for removal by the water rights authority would require that someone caused or at least contributed to the removal of the floating debris through his behavior. Such a polluter could not be determined.

**No ability to take action under the Water Rights Act**

If the floating debris is trash or garbage in the sense of the Water Rights Act, it is primarily the polluters who are obliged to dispose of it in accordance with § 73. The property owner could be made subsidiarily responsible according to § 74 of the Waste Management Act (*Abfallwirtschaftsgesetz*) if he or she consented to the deposit or if the deposit was tolerated and he or she had failed to take reasonable defensive measures. From the authority's point of view, these prerequisites were not met.

If there is unlawfully deposited municipal waste in the bay, the municipality is obliged, in accordance with § 74 (4) of the Waste Management Act, to remove it at its own expense and to have it treated in an environmentally friendly manner. Driftwood, however, is not municipal waste because it does not come from households. If the driftwood reaches the Traunsee via torrents, § 101 (6) of the Forest Act regulates that the locally responsible municipality has to remove any pollution found, such as wood or other objects that obstruct the flow of water.

**Separation of floating debris and municipal waste not possible**

The Municipality of Ebensee called attention to the high costs regarding the possibility of placing a treatment order for the municipal waste contained in the floating debris. In the opinion of the Office of the Upper Austrian Regional Government, such an order is in fact not feasible since the treatment order should only include municipal waste but not driftwood. The removal of the municipal waste would be unsatisfactory as a mere partial solution since it would not clear up the overall situation.

The AOB shared this view and asked the Upper Austrian Regional Government to examine whether - regardless of official orders - a possibility of (co-) financing of measures was seen in order to

**Complete solution necessary**

achieve the required overall solution. There was no response to this at the time this report went to press.

### 3.11.2. Agriculture and forestry

#### Forest damage from bark beetles

In its Annual Report 2019, the AOB presented the effects of the large-scale forest damage caused by bark beetles, especially in 2018 and 2019.

The Federal Ministry of Agriculture, Regions and Tourism is obliged in accordance with § 141 of the Forest Act (*Forstgesetz*) on behalf of the federal government to promote forestry with regard to its effects in the public interest. This also includes the preservation, development and sustainable management of forests. With regard to this obligation, the Federal Ministry of Agriculture, Regions and Tourism 2020 reported on some further measures, such as the possibility of storing damaged wood on eligible areas until the end of March 2021, the promotion of the construction of wet storage facilities or the support of research projects in the field of climate-friendly forests.

Federal Ministry of  
Agriculture, Regions  
and Tourism's

In addition, the National Council passed the Forest Fund Act (*Waldfondgesetz*) on July 7, 2020. The law is the basis for the establishment of a forest fund in the amount of 350 million euros. The law provides for the support of numerous measures in the fight against the bark beetle. These include, for example, reforestation and maintenance measures after damaging events, measures to develop climate-friendly forests and compensation for loss of value caused by bark beetle damage.

Forest Fund Act passed

For the implementation of the funding, the Federal Ministry of Agriculture, Regions and Tourism had to issue funding guidelines, whereby the Federal Ministry for Climate Action must be agreed with regard to some funding measures. The guidelines were not yet available when this report was finalized, as they were submitted for a notification procedure at the European Commission before they came into force.

Allocation guidelines  
being prepared

#### Forest closures due to ash dieback

The AOB was occupied with a complaint that the District Authority Korneuburg had issued forest entry bans for large areas of the

Danube-accompanying wetlands between Korneuburg and Tulln at least since 2017 and repeatedly extended these at the request of the forest owners. The reason for this is the ash dieback that is occurring there. With this ban, which has now lasted for several years, the right to enter the forest for recreational purposes is disproportionately restricted. It is also not foreseeable whether it will be possible to enter the forests in the next few years.

The District Authority pointed out that the fungal pathogen causing ash dieback was first detected in Austria in 2005. Today, according to scientific findings, there are hardly any healthy ash trees left in forest areas. Since around autumn 2016, massive ash deaths have been rampant in the alluvial forests along the Danube. The peculiarities of this fungal attack mean that healthy looking trees of all strength classes tip over without warning because the roots have rotted off. The forest operations are trying to eliminate this risk, which, however, turns out to be quite tedious in some areas of the forest.

**Danger for those seeking relaxation**

Forest closures due to forest work are incumbent on the forest owners, provided these do not last longer than four months. Longer bans require approval. The forest authorities have issued appropriate permits to some companies.

**Multiple permits granted**

The AOB noted that, in accordance with § 33 (1) of the Forest Act, anyone can enter and stay in the forest for recreational purposes. According to § 34 Forest Act, however, the forest can be exempted from being used for recreational purposes. Temporary closures are permitted for "areas at risk from felling and bringing wood to the removal point for the duration of the wood harvesting work". The purpose of this provision is to give forest owners the opportunity to impose temporary entry bans to protect those seeking relaxation from the dangers of logging and harvesting work.

The AOB informed the District Authority as the Forest Authority that, due to the risk situation described, the approval of temporary forest closures for felling and moving the trees was not objectionable.

Since some forest areas have been closed for several years, the forest authorities must ensure that the forest is not permanently closed when granting future permits or extending existing forest closures. Such a closure is not provided for in the Forest Act for logging and logging work. Particular attention should be paid to the fact that the permit is only granted for those forest areas

**Forest may not be permanently closed**



where forest work is actually carried out. Furthermore, the forest areas are to be released for recreational purposes again immediately after the forest work has been completed.

### **Impaired landscape due to street protection system**

The owners of an approx. 150-year-old chapel in Molln / Upper Austria, which was restored with private funds and re-inaugurated in 2016, contacted the AOB. They stated that they had agreed to a rockfall protection structure on their property next to the chapel, which served to protect the municipal road below and an object on the other side of the road.

**Street protection system next to private chapel**

The facility was planned and built by the Forest Technology Service for Torrent and Avalanche Control on behalf of the town of Molln. An approx. 50 m long and 3 m high steel net with massive posts was built right next to the chapel. The landowners were not informed in advance about the specific design of the facility, and they were "shocked" by its dimensions and design. A relocation or at least a redesign of the facility so that it fits better into the townscape and landscape was refused by all concerned bodies.

**Owner shocked at implementation**

The AOB shared the view that the rockfall protection structures by no means fit harmoniously into the townscape and landscape. Rather, the appearance of the chapel and its surroundings are significantly impaired.

A building permit proceeding in which, according to the Upper Austrian building regulations, the question of interference with the townscape and landscape would have to be assessed, was initially neglected by the town of Molln, contrary to its duty. This proceeding could not be made up for, since due to an interim amendment to § 1 Upper Austrian Building Regulations, "structural systems to protect against or to ward off natural hazards that are erected by a regional authority, unless it is a question of buildings" are excluded.

**No building permit proceeding**

In the area of the Forest Technology Service for Torrent and Avalanche Control, it remained to be clarified how it took into account the question of the protection of the site and landscape and the building permit eligibility of the facility in the planning. The Federal Ministry stated that the integration into the landscape was taken into account by the Flood and Torrent Control in the course of the planning to the extent that it was compatible with the

protective effect of the system in terms of the standard of technology.

The AOB stated that - even if the building authority is responsible for compliance with the construction regulations - the question of whether a facility can be approved for administrative reasons (funding from the public sector) should include coordination by the Forest Technology Service for Torrent and Avalanche Control with the authorities responsible for issuing the permit in the planning process. The consideration of the integration of protective systems in the local and landscape image is particularly necessary in the planning process in those cases in which - as in Upper Austria and in other *Laender* - protective barriers are excluded from the scope of building regulations and, therefore, there is no examination of these questions in the construction permit process.

**Considering approval eligibility in planning**

The Forest Technology Service for Torrent and Avalanche Control then planted around the facility in order to make it more compatible with the locality and landscape - without impairing the protective effect. Since the owners of the chapel were satisfied with this, the AOB did not have to take any further action in this matter.

**Forest Technology Service for Torrent and Avalanche Control takes action**

### **Handling of park supervision in the Innsbruck court garden**

One woman said she joined the "LGBTIQ + community" in June 2020 after an approved rally with the motto "Still here. Still Queer" at the Anna Column in Innsbruck with a few other people in the Innsbruck *Hofgarten* (Court Garden). Some people there used "rainbow flags" to sit on to protect themselves from the damp lawn.

The rainbow flags disturbed a park attendant. He said they were a political symbol and had no business in the *Hofgarten*. When the people pointed out that they were only trying to protect themselves from getting wet, the park attendant called the police to have the group removed. In doing so, he incorrectly stated that an attempt had been made to hold an unauthorized event. The police could not find anything illegal and left the park. From the point of view of the woman, the behavior of the park attendant was based on "hatred, exclusion and discrimination" based on "homophobic and transphobic motives". The attempt to hold a hearing about this with the Higher Federal Teaching and

**Discrimination against park visitors?**

Research Institute for Gardening and Federal Gardens as the park administrator failed.

The Federal Ministry of Agriculture, Regions and Tourism (as the highest service authority) stated that a group of 20 to 30 people “entered the courtyard garden with flags hanging over their shoulders” in the incident. After the park attendant had the impression that this was an organized event within the meaning of § 2 (5) of the park regulations, he pointed out that such an event was not permitted in the *Hofgarten* without permission. The park attendant informed the police, as he assumed that other visitors to the park felt disturbed by the group. Furthermore, this measure should “provide additional security”.

**Event organized by the Federal Ministry**

The provisions of the park regulations are as follows: “Any commercial activity, such as selling, filming or photographing, distributing leaflets or similar activities, is prohibited in the park without the written consent of the Austrian Federal Gardens or the *Burghauptmannschaft*, the authority responsible for the efficient management and conservation of historic buildings. This prohibition also applies to making music and begging as well as holding commercial or charitable events or other events, such as removals, insofar as these are not permitted in accordance with the statutory provisions. ”

**Events subject to approval**

According to the Federal Ministry of Agriculture, Regions and Tourism, “other events” in the sense of the park regulations include everything that “takes place in groups in the park”. These are, for example, not only sporting and game events but also “rallies, demonstrations or the like”. The Federal Ministry of Agriculture, Regions and Tourism also noted that the park attendant was doing his first week of service in this role in the week of the incident and therefore wanted to “do everything in accordance with the protocol”. The park attendant’s immediate superior describes him as a calm, level-headed employee. Intolerant, discriminatory motives are inconceivable for the superior.

In order to be able to assume an unauthorized “event” in the sense of the interpretation of the park regulations by the Federal Ministry of Agriculture, Regions and Tourism, from the point of view of the AOB, those affected would have to have had done activities that amount to a rally or demonstration. The group should therefore have met in order to be organized and active in the park in line with their project. However, entering the park with rainbow flags hanging over their shoulders did not constitute a

**Calling the police excessive**

process that would suggest such an “event”. It was also incomprehensible why simply entering the *Hofgarten* would have caused disturbance to other people. This behavior alone could not give rise to any security concerns that would have justified calling the police.

The AOB suggested retraining the park attendant in line with the findings made. The focus should be placed on ensuring that all groups of people are treated equally in the course of monitoring compliance with the park regulations and that this is done in a non-discriminatory manner.

**AOB encourages follow-up training**

### 3.11.3. Mining

#### Noise and dust nuisance from stone quarry

A resident near a quarry in the Mal Valley complained about the noise caused mainly by blasting and the proximity of the quarry to several of his properties. He also criticized dust emissions from the quarry. The Office of the Carinthian Regional Government forwarded the negotiation letter to the AOB regarding monitoring of the quarry by the District Authority of Spittal an der Drau in June 2020. The statements contained therein, especially those of the official experts consulted, were able to refute most of the objections.

**Noise and dust emissions**

The mining authority did not find any dust creation in the quarry during the inspection. However, they commissioned an official air pollution control expert to check, unannounced and regularly, whether the quarry operation was complying with the requirements for avoiding dust emissions. The AOB concluded from this measure that the district authority had previously failed to monitor compliance with these requirements with sufficient accuracy.

**Commissioning of unannounced and regular checks**

### 3.11.4. Broadband expansion, Telekom and the Postal Service

Since the amendment to the Federal Ministries Act 2020 came into force, the Federal Ministry of Agriculture, Regions and Tourism has also been responsible for the areas of “broadband expansion, Telekom and Postal Service” that were previously part of the Federal Ministry for Transportation, Innovation and Technology. The system relevance and reliability of this area during the corona lockdowns have been demonstrated by both

the Postal Service, its partners and the operators of the telecommunications networks, even under difficult conditions. The digital infrastructure and the availability of postal services were subjected to a stress test in the event of otherwise applicable exit restrictions, entry bans and school closings; they passed this despite increasing demand. As in the previous reporting years, most of the complaints in this area related to the broadcasting usage fees and the procedures of the GIS Usage Fee Information Service.

A large number of citizens complained to the AOB both by telephone and in writing about what they considered to be no longer up-to-date legal regulations regarding the payment of broadcasting usage fees. At the moment it is still the case that "pure internet households", which can consume programs of Austrian Public Broadcasting (ORF) to a certain extent, do not have to pay a broadcasting usage fee (and also no ORF program fee). On the other hand, those households have to pay in full if they use their old television, for example, exclusively as a screen that does not offer any access to ORF programs. In the opinion of the AOB, this is extremely questionable in terms of legal policy and can hardly be justified objectively.

**Need for reform in  
Broadcasting Usage Fee  
Law**

### **Problems with the field workers of *GIS Fee Info Service GmbH***

In the year under review, there was a significant increase in the number of complaints to the AOB regarding the behavior of field service employees of the *GIS Fee Info Service GmbH*, the agency responsible for administering the fees for the public broadcaster ORF (the complaints were directed exclusively against men). On the one hand, their very brusque demeanor was criticized; on the other hand, the fact that the people who were surprised by their visit were almost urged to confirm the presence of a broadcasting reception system with their signature even though they did not have such a system. As the AOB found in this reporting year, minors, persons with a low knowledge of the German language, as well as people who did not have a place of residence at the address in question, were urged to sign. At least in the last-mentioned case constellations, the AOB was without exception able to find a solution in the interests of those affected.

**Frequent criticism of the  
behavior of *GIS* field  
workers**

The AOB would like to highlight the exemplary cooperation of the *GIS Fee Info Service GmbH*, which has promised increased training of its field staff.

**Improved training  
promised**



### 3.12. Social affairs, health, care and consumer protection

#### Introduction

The AOB recorded a record of complaints in 2020 both in health insurance matters (2020: 268, 2019: 239) and in health matters (2020: 545, 2019: 116). A high number of these complaints were related to complaints about COVID-19 measures; they are dealt with in a separate "COVID-19" report.

**Record number of complaints in the health sector**

In health insurance, there is always a lack of understanding that despite the merging of the regional health insurance funds into the Austrian Public Health Insurance Office (*Österreichische Gesundheitskasse*), there are still significant differences in the level of benefits, depending on the place of employment or residence of the insured. Among other things, the regulation of § 718 (6) General Social Insurance Act (*Allgemeines Sozialversicherungsgesetz*) is decisive for this. According to this, the divergent overall contracts concluded by the earlier regional health insurance funds with the health care providers continue to apply. Different tariff positions mean that, for example, the amount of the reimbursement within the framework of benefits in kind or after the use of optional medical help is not standardized. In the investigation initiated by the AOB for this purpose, the Austrian Public Health Insurance Office pointed out that the conclusion of nationwide general contracts with the health care providers would be difficult because this would require the consent of the interest groups. However, the Austrian Public Health Insurance Office assured the AOB that it would endeavor to harmonize benefits as quickly as possible in the interests of the insured.

**Varying services of the Austrian Public Health Insurance**

Although the legislature has taken precautions for beneficiaries so that they do not suffer any financial disadvantages from the merger of the former regional health insurance funds, there are repeated complaints that this is disregarded in practice.

A total of 365 complaints from 2020 related to pension insurance and nursing and care allowance proceedings. As in the previous year, several insured people complained that they could not make use of the deduction-free "manual laborer rule", which came into force on January 1, 2020, and that they had to accept a permanent pension reduction. In November 2020, the legislature decided to end the discount-free "manual laborer rule". Accordingly, from 2022, it will no longer be possible to retire

**Pensions and nursing and care allowances**

at the age of 62 after 45 years of work without deductions. In the future, people who have been insured long-term will receive an "early starter bonus" for the time they worked before the age of twenty (a maximum of 60 euros per month or 840 euros per year).

A large number of the complaints related to medical reports or the time pressure and the unfriendly behavior of experts. The AOB has been aware of problems with examinations for years. They are not related exclusively to expert opinions in connection with the granting of an invalidity, occupational or disability pension. Complaints about individual investigation situations were also made in the case of nursing and care allowance proceedings or the classification of the degree of disability as a prerequisite for benefits for people with disabilities (additional entries in disability passes and parking permits).

**Perennial issue: expert opinions**

The AOB was also increasingly concerned by people in need of nursing and care who receive a low foreign pension and were not entitled to care allowance in Austria. The care allowance is a cash benefit in the event of illness. In accordance with European law, the EU member state in which an income is earned and that also provides health insurance coverage is responsible for awarding nursing and care-related benefits. According to § 3a Federal Care Allowance Act (*Bundespflegegeldgesetz*), Austria is only responsible for granting care allowances if no other state is responsible for benefits under Regulation 883/2004. In principle, according to the jurisprudence of the Supreme Court, it is irrelevant whether a member state actually knows care-related benefits in kind or in cash. This legal situation is extremely unsatisfactory for people in need of care who have been living in Austria for decades.

**No claim to nursing and care allowance**

Another 362 complaints related to various social issues. In most cases, it was about concerns people with disabilities had such as mobility subsidies, cost subsidies for medical aids or questions about the issuing of handicapped passes and parking permits.

Homosexual men are still not allowed to donate blood in Austria. If you answer the question "Have you had sex with a man as a man in the last 12 months" with "yes" in the anamnesis questionnaire, which must be completed before donating blood, you will not be allowed to donate blood. In the anamnesis questionnaire, homosexuality of men is seen as a risk behavior as is having "sexual performed services for money or drugs" or "having more than three sexual partners". The AOB already pointed out the highly discrimination nature of the blood-donation

**Blood donation ban for homosexual men**



ban for homosexual men in 2010. People whose sexual behavior carries a high risk of infection are excluded from donating blood according to legal requirements. However, this does not justify a general exclusion of homosexual men. As with all other people who want to donate blood, the individual's risk behavior should be determined on an individual basis and not as the result of belonging to a specific group. Even then, the then Federal Ministry of Health spoke out in favor of a change and stated that guaranteeing the greatest possible safety for blood products and non-discrimination are not a contradiction in terms. More than ten years later, homosexual men are still excluded from donating blood. The AOB contacted the Federal Ministry of Social Affairs, Health, Care and Consumer Protection on the occasion of a current complaint. A statement had not yet been received at the time this report went to press.

### 3.12.1. Health

#### Competence centers for intersexuality

According to estimates approximately thirty children are born in Austria every year who cannot be clearly assigned as either male or female. In 2018, the Constitutional Court decided that intersex people have the right to a corresponding entry in the civil status register.

**A total of 30 children with ambiguous gender**

A first decree by the Federal Ministry of the Interior stipulated that an expert opinion from a "Variants of Sexual Development Board" was required for entry in the civil status registry. However, these boards were not set up in a single state. This led the community to the conclusion that neither the Federal Ministry for Social Affairs, Health, Care and Consumer Protection nor the Federal Ministry of the Interior intended to immediately take into account the findings of the Constitutional Court

In September 2020, the Minister of the Interior ensured legal security for entries for third gender people in the civil status registry by means of a new decree (for more details see Ch. 3.6.5, article "Civil Status Registry - Entry of Intersex People").

However, self-advocacy organizations continue to criticize the fact that gender reassignment operations are carried out on children at an early age or that pressure is exerted on the parents in this regard. As early as the Annual Report 2019, the AOB therefore called for competence centers to be set up across Austria (for

**Austria-wide establishment of competence centers**

example based on the model of the outpatient clinic for variants of gender development at the Vienna General Hospital). The recommendations on variants of gender development of the now Federal Ministry of Social Affairs, Health, Care and Consumer Protection should be revised.

### 3.12.2. Health insurance

#### Different licensing procedures for physical therapists

Mr. N.N., who completed his training as a qualified physical therapist in 2020, wanted to work as an elective therapist in Salzburg. However, the *Land* office of the Austrian National Health Insurance Office informed him that, in contrast to the regulations in other *Laender*, he could not be licensed as an elective therapist and his patients could not be reimbursed because he had not yet been able to prove that he was employed under medical supervision.

In the field of physical therapy service provision, there are individual contracts with the respective professional associations in some *Laender*, in which, for example, qualification requirements are specified. The current version of these contracts was adopted by the Austrian Public Health Insurance Office on January 1, 2020, because these contracts continue to apply until nationwide general contracts were concluded in accordance with § 718 (6) of the General Social Insurance Act (ASVG).

Different qualification requirements

Paragraph 39 (4) of the health regulations of the Austrian Public Health Insurance Office regulates the extent to which an insured person is entitled to reimbursement of costs after using an elective therapist. Elective therapists are, therefore, considered to be corresponding contractual partners for whose services a reimbursement of costs can be provided, in particular if they belong to the same professional group and organizational form as the contracted partner and meet at least the same training and other qualification requirements (e.g. practical treatment experience) have been contractually bound in the same way they are for the contracted partners

Because contracts with freelance physical therapists were concluded in Salzburg before January 1, 2020, these are still decisive for entry into the list of elective therapists and for the processing of cost reimbursement applications.

These contracts stipulate that therapists in Salzburg can only conclude a contract if, among other things, they can provide evidence of at least one year of full-time responsibility for themselves after completing their training in an employment relationship with the provider of a hospital or other provider under medical supervision standing treatment facilities or freelance specialists in physical medicine. This qualification requirement is therefore also a prerequisite for inclusion in the list of elective therapists and for the insured to be entitled to reimbursement of costs.

In contrast, a corresponding proof of qualification for physiotherapists in other *Laender* was not contractually agreed, which is why Mr N.N. was able to work as an elective therapist in Vienna, but not in Salzburg.

In the investigation initiated for this purpose, the Austrian Public Health Insurance Office informed the AOB that negotiations had already been started with the professional associations of the MTD professions in order to conclude an Austria-wide uniform overall contract or a framework agreement. In this contract, which is to apply as early as 2021, the prerequisites for contract work for physiotherapists should also be uniformly regulated throughout Austria.

**A uniform contract should be concluded quickly nationwide**

From the perspective of the AOB, however, it should be noted that the different regulations on qualification requirements for the work of physiotherapists that had been in force up to that point at the expense of social health insurance led to an objectively unjustified unequal treatment, which is why a nationwide uniform regulation should have been made earlier.

### **No harmonization of the services of the Austrian Public Health Insurance Office**

If insured people use elective doctors for treatment, they are entitled, in accordance with § 131 (1) General -Social Insurance Law, to assume the costs of 80 percent of the amount that the Austrian Public Health Insurance Office would use for corresponding contractual partners, taking into account the relevant contractually stipulated tariffs that would be paid.

**Amount of reimbursement after treatment by a doctor as a private patient**

In such cases, reimbursement of costs is therefore not to be made based on the fee actually invoiced, but taking into account the Austrian Public Health Insurance Office tariffs agreed with the doctors. As a result, the reimbursement of costs is usually - in

some cases considerably - below the fee actually charged for treatment by a doctor.

In addition, the former regional health insurance funds each concluded general contracts with the state medical associations in which the fee rates for certain services were sometimes agreed at different levels.

In § 718 (6) of the General Social Insurance Act, it was therefore provided that after the regional health insurance funds have been merged, these deviating overall contracts will continue to apply until new contracts are concluded by the Austrian Public Health Insurance Office.

Since the Austrian Public Health Insurance Office has not yet concluded a nationwide general contract with doctors, the reimbursement amounts can continue to differ from one another after using elective doctors in the *Laender*.

**Varying cost  
reimbursements in the  
*Laender***

This is exemplified by the case of a woman from Lower Austria who received a reimbursement of 49.42 euros for carrying out an echocardiography of the heart and a blood flow measurement according to the claim of a doctor of choice. On the other hand, reimbursement of costs of 110.51 euros is provided for those insured in Vienna.

The Austrian Public Health Insurance Office admitted to the AOB that this situation is undoubtedly unsatisfactory for the insured and must be changed. So far, however, it has not been possible to standardize the general medical contracts of the regional health insurance funds because a consensus with the medical associations has to be reached for this. It is a complex project that will have a significant impact on social health insurance costs and requires careful planning. This will probably take some time.

Standardization of the general medical contracts is undoubtedly difficult. The fact that, despite the cash merger, reimbursements for those insured with the Austrian Public Health Insurance Office are not uniform, but depend on the *Land* in which a service is used, is still unacceptable. The AOB therefore emphatically advocates nationwide harmonization in all service areas.

**Rapid harmonization  
necessary in all service  
areas**

### **Assumption of costs for institutional nursing and care**

Mr. N.N. contacted the AOB because he was treated as an inpatient due to a serious mental illness in April 2019, for which

he was prescribed care fees of 10,704.40 euros. The Austrian Public Health Insurance Office had rejected the cost assumption declaration because he was only insured until 14 January 2020 due to sickness benefit.

In a medical report, however, it was confirmed that the illness diagnosed in Mr. N.N. had developed over a longer period of time and that he was also not able to take care of everyday business.

**Assumption of costs via the obligation to provide benefits**

In the course of the AOB investigation, it was possible to provide evidence that Mr N.N.'s depressive adjustment disorder in April 2019 is due to the same illness as his mental disorders in December 2018 and January 2019. This means that Mr N.N.'s illness, which was the cause for his inpatient hospital stay in April 2019, had already occurred during his ongoing health insurance coverage due to the receipt of special sickness benefits until January 14, 2020. The Austrian Public Health Insurance Office therefore declared that it would take over the costs for this inpatient stay within the scope of the obligation to provide benefits in accordance with § 134 (2) in conjunction with § 144 (1) General Social Insurance Act.

### **Difficult acquisition of photos for the E-card**

From January 1, 2020, a photo must be attached to all newly issued or exchanged e-cards, which clearly shows the cardholder. All e-cards that do not have a photo must be exchanged by December 31, 2023. Foreign citizens have complained to the AOB about the fact that photo registration is very difficult for them, while this does not mean any additional effort for nationals.

**Exchange of e-cards**

The legislature has authorized the umbrella association of Austrian social insurance agencies to use an online query to provide the photos required for the creation of e-cards

**Sources for photos**

1. from the holdings of the passport authorities,
2. from the stocks of the authorities entrusted with the registration of electronic proof of identity,
3. from the holdings of the Driver's License Registry and
4. from the holdings of the Central Aliens' Register

to be processed automatically.

If there is no photo in the stocks mentioned, the cardholder is obliged to provide a photo

1. optionally within the framework of an official procedure provided for the stocks pursuant to § 31a (8) items 1 to 3 of the General Social Insurance Act, or
2. for such a procedure at the offices of the social insurance institutions or if the person concerned is not an Austrian citizen, at the Regional Police Department

In principle, the AOB cannot recognize any unobjective differentiation in the legally stipulated different authorities' responsibilities for providing a photo to reissue an e-card for Austrian citizens and foreigners (Union or EEA citizens or third-country nationals). It is true that the prohibition of discrimination on grounds of nationality (Art. 18 TFEU) requires that, within the scope of Union law, Union citizens not be placed in a worse position than citizens. A worse position or disadvantage cannot be derived solely from the fact that strangers have to hand in photos to the regional police headquarters and not to an office of the social insurance agency like Austrian citizens; especially because the fundamental obligation to provide a photo, if access to other photo holdings is not possible, affects citizens and foreigners alike.

**Differentiation according to citizenship**

Irrespective of this, the provision of a photo for the e-card for foreign citizens is associated with considerable bureaucratic hurdles. In Upper Austria there are only three registration offices for non-Austrians in Linz, Steyr and Wels. Those affected, therefore, often have to make long trips to the nearest registration office and deal with waiting times.

**Bureaucratic hurdles for foreign citizens**

In the investigation initiated by the AOB for this purpose, the Austrian Public Health Insurance Office announced that a cooperation with the Police Department Linz has been sought for a long time. For example, consideration is being given to providing locations at the customer service points of the Austrian Public Health Insurance Office, where officials from the registration offices for non-Austrians can take photos. From the AOB's point of view, photo registrations for this group of people should generally be made possible in all departments of the Austrian Public Health Insurance Office in order to facilitate access to health insurance coverage and to avoid gaps in health insurance coverage.

A working group has been set up in which the Austrian Public Health Insurance Office and the responsible ministry will clarify an expansion of the offerings for photo registrations for non-Austrians.

Furthermore, those affected should generally be informed if their health insurance coverage had to be terminated due to a lack of photo registration.

### **Long waiting times for reimbursement after treatment by an elective doctor**

In the reporting period, the AOB received several complaints about the long processing time for a reimbursement of costs after the Austrian Public Health Insurance Office had called upon an elective doctor. On the occasion of these complaints, the Austrian Public Health Insurance Office admitted that the number of processed elective doctor's fee notes and the processing time for reimbursement depend on various factors and can vary considerably over the course of the year. It is therefore a primary goal of the Austrian Public Health Insurance Office to define uniform processes and procedures for processing benefit applications as part of the harmonization of benefits in order to reduce waiting times for the insured. The increased automation of processes and electronic communication options (e.g. the *MeineSV* (My Social Insurance) portal), the use of which is to be promoted by both the insured and the service providers in the future, play a special role.

The AOB welcomed these efforts of the Austrian Public Health Insurance Office, but it would also be worth considering, in the event of an increased number of cost reimbursement applications, to provide additional staff in order to speed up the processing. Older insured persons in particular often do not have the necessary electronic communication options to submit cost reimbursement applications in this way. In addition, a general increase in the use of elective doctors is still to be expected. This can already be seen from the fact that the number of elective doctors in relation to contract doctors has increased considerably in recent years.

**Additional personnel  
required**

### **Subsidy for dietary food discontinued after merger of health insurance providers**

Around one percent of the world's population suffers from the chronic metabolic disease celiac disease. In this case,

hypersensitivity to gluten components causes inflammation in the mucous membrane of the small intestine, which can lead to digestive disorders, deficiencies and fatigue, among other things. Celiac disease should not be confused with gluten or wheat intolerance, even if the clinical picture is similar. Celiac disease is incurable and requires a strict gluten-free diet and the avoidance of foods that contain wheat, spelled, rye, oats or barley. This means a considerable additional financial burden, since gluten-free foods are usually much more expensive than conventional foods.

Due to the additional costs for his gluten-free diet and because of his low income, Mr N.N. received repeated grants from the support fund of the then Carinthian Regional Health Insurance. Since the regional health insurance funds were amalgamated, the newly created Austrian Public Health Insurance Office refused to provide financial support for the diet without giving any further reasons. The favorability clause of § 53 (6) of the Austrian Public Health Insurance Office Statutes 2020 provides that the benefits that were granted to insured persons based on the provisions that were in effect until the regional health insurance funds were merged can continue to be provided by the Austrian Public Health Insurance Office in individual cases. The grants made so far were voluntary support services from the Carinthian Regional Health Insurance to which there was no legal entitlement. However, the AOB pointed out in the investigation that the favorability clause resulted in the endeavor to continuously award services after the regional health insurance funds were merged. The merger of the health insurance companies should not lead to any disadvantage for the individual insured. Therefore, the AOB advocated the continued granting of the previously paid financial subsidies for Mr. N.N.'s gluten-free diet to the Austrian Public Health Insurance Office. A final statement by the Austrian Public Health Insurance Office was not yet available at the time of going to press.

**Repeated subsidies are not available from support funds**

### **No reimbursement of costs for extra-light walker**

Due to her balance disorders, the 79-year-old Ms. N.N. is dependent on a walker or a walking stick/cane. The Austrian Public Health Insurance Office pays the costs for medically prescribed medical aids such as rollators and other walking aids up to a certain maximum amount. The remainder is to be borne by the insured as a deductible. The majority of the medical aids required can be obtained directly from a contractual partner of



the Austrian Public Health Insurance Office with the corresponding medical prescription. In these cases, the contractual partner deducts the collectively agreed subsidy by the Austrian Public Health Insurance Office from the purchase price and settles this independently with the Austrian Public Health Insurance Office. A separate application for reimbursement of costs by the insured is therefore not necessary.

Ms. N.N. also wanted to obtain her medically prescribed rollator and walking stick from an orthopedic specialist shop and contractual partner of the Austrian Public Health Insurance Office. Given their small size and light weight, the standard models were too heavy and too tall. So she was forced to buy the much more expensive special models. Since the Austrian Public Health Insurance Office, according to the information provided by the contractual partner, only provides a cost subsidy for the respective standard model, Ms. N.N. had to bear the full costs for her rollator in the amount of 568 euros and for her walking stick in the amount of 49.95 euros herself.

The application for reimbursement of costs from Ms. N.N. was initially rejected by the Austrian Public Health Insurance Office on the grounds that contractual partners have to settle subsidies for collectively agreed products such as walkers and walking sticks directly with the Austrian Public Health Insurance Office. Ms. N.N. must therefore contact the accountant - i.e. the contractual partner or the orthopedic specialist shop. After the latter ruled out a reimbursement of costs even after Ms. N.N. contacted her again, the elderly lady contacted the AOB. This succeeded in convincing the Austrian Public Health Insurance Office that the current standard models could not be used by Ms. N.N., which led to the reimbursement of the expenses made by Ms. N.N.

### **Lower reimbursement for eye treatments after merger of insurance providers**

A woman from Burgenland suffers from wet macular degeneration, a chronic eye disease the course of which can only be alleviated. Without regular treatment, Ms. N.N. is at risk of complete blindness. That is why she has to undergo optical coherence tomography, OCT for short, on a monthly basis. The cost for this is 60 euros each time. The Public Regional Health Insurance Office of Burgenland reimbursed 47 euros after the invoice had been submitted. From January 2020, Ms. N.N. was granted only 20 euros per month as a cost subsidy without any

**Lower cost subsidy after merging the regional health insurance providers**

further reasons. For the severely visually impaired woman it was incomprehensible that the medically necessary treatment suddenly became a non-contractual service.

In the course of merging the regional health insurers, the services were harmonized. Based on the previous statutory cost subsidies from the former Styrian Regional Health Insurance and the Lower Austrian Regional Health Insurance, in Annex 7 of the statutes of the Austrian Public Health Insurance Office only a cost subsidy for the OCT insurance treatment is fixed at 20 euros.

As a result of intervention by the AOB, the Austrian Public Health Insurance Office applied the favorability clause of the Austrian Public Health Insurance Office's statutes. Insured persons who have received a reimbursement of 47 euros by December 31, 2019, will continue to receive a reimbursement of the same amount. Ms. N.N. was also paid the difference in her refunded cost subsidies.

**Favorability clause applies**

Ms. N.N. contacted the AOB again because an "increased" cost subsidy was paid only twice in the amount of 47 euros and then only the reduced cost subsidy was granted again.

The renewed intervention of the AOB led to the Austrian Public Health Insurance Office again paying out the difference and a corresponding note about the application of the favorability clause was saved for Ms. N.N.

### **3.12.3. Accident insurance**

#### **Reimbursement of costs for dental treatment after school accident**

Ms. N.N. contacted the AOB and stated that after an accident, dental treatment was required for her son during the afternoon care in elementary school. This accident resulted in a loosening of the front upper incisors. These incisors were temporarily rebuilt and observed for months. One tooth could be saved, the second tooth required a complicated root canal treatment.

However, the family's health insurance contract dentist refused treatment on the grounds that she was not up to the task because the tooth was not yet fully developed. The only doctor wanting to take on this complicated procedure was a specialist who only works as a doctor of choice. However, only a small portion of the

**Root canal treatment by a doctor of choice required**

treatment costs were covered by the responsible health insurance company by way of reimbursement.

The Austrian Social Insurance for Occupational Risks (*Allgemeine Unfallversicherungsanstalt*) assumed the costs of acute treatment and any long-term damage but refused to assume the costs for the root canal treatment. This was justified by the health insurance's obligation to pay in advance, which also includes conservative dental treatment.

However, due to the special circumstances, the AOB was able to ensure that the Social Insurance for Occupational Risks assumed the remaining costs of 537.20 euros for the conservative dental treatment as a one-time voluntary special support in accordance with § 196 of the General Social Insurance Law ASVG.

Accident Insurance assumes remaining costs

### 3.12.4. Pension insurance

#### Pension entitlement made possible by changes in the law

The Austrian Pension Fund informed Ms. N.N. in 2009 that her qualifying period for entitlement to an old-age pension would not be fulfilled until May 1, 2015, at the earliest. This presupposed that she pay the amounts for voluntary continued insurance and starting in July 2009, would acquire 50 more months of compulsory or voluntary insurance or 63 months of compulsory or voluntary insurance. Ms. N.N. decided against this and contacted the AOB after her 65th birthday because she could not understand how she could not be entitled to an old-age pension.

No pension claim?

The investigation showed that Ms. N.N. was correctly informed by the Austrian Pension Fund in 2009. According to the legal situation valid until December 31, 2016, only insurance periods that were acquired from January 1, 2005 could be considered for the fulfilment of the minimum insurance period for the entitlement to the old-age pension according to § 4 Paragraph 1 of the General Pension Law (*Allgemeines Pensionsgesetz*). Only previous alternate periods of child-rearing and certain periods of care that were associated with self-insurance or continued insurance also came into play.

Only months within General Pension Law considered

As part of the Social Insurance Amendment Act 2016, however, there was a change in the area of the minimum insurance period for entitlement to an old-age pension. Accordingly, from January 1, 2017, all insurance periods that were acquired before 2005 can

be used to meet this eligibility requirement for the old-age pension in accordance with § 4 (1) General Pension Law. Ms. N.N. was informed in detail about the present factual and legal situation. After applying, Ms. N.N. was awarded a retirement pension.

### **Incorrect legal information led to rejection of the old-age pension**

In July 2017, a Styrian contacted the Austrian Pension Fund to find out about her pension entitlement and the start of her old-age pension. Since she was still missing 21 months of insurance for a pension claim, the employee in charge recommended that she accept part-time employment and take out self-insurance in accordance with § 19a of the General Social Insurance Law (ASVG). According to this information, Ms. N.N. took on a marginal job shortly before she turned 61 and took out self-insurance.

According to § 4 (1) General Pension Law, which applies in the case of Ms. N.N., there is an entitlement to an old-age pension upon reaching the standard retirement age if at least 180 months of insurance - of which at least 84 months are due to gainful employment - have been acquired. However, periods of self-insurance in the case of marginal employment in accordance with § 19a General Social Insurance Act do not count as insurance months that are "acquired as a result of gainful employment".

When Ms. N.N. submitted an application for an old-age pension in May 2019, it was, to her surprise – and legally correctly – rejected. Although she met the requirement for 180 months of insurance, she did not meet the requirement that at least 84 months of that had to have been earned as a result of gainful employment. Ms. N.N. contacted the AOB and assured them that she had taken up or concluded the marginal employment and self-insurance only on the basis of – apparently inaccurate – legal advice from the Austrian Pension Fund. Otherwise, she would not have taken these steps.

**Incorrect information**

As a result of the AOB investigation, the Austrian Pension fund initiated another review and came to the conclusion that their advice had been incorrect. Against this backdrop, the insurance company decided, in application of social law, to grant Ms. N.N. an old-age pension after all.

## Delay in payment of tax relief

With the Economic Stimulus Act of 2020, there was a change in the tax rates in the Income Tax Act, which promised to roll up overpaid taxes by the end of September at the latest. At the beginning of October 2020, pensioners complained to the AOB because the initial tax rate for their pensions was reduced from 25 percent to 20 percent retroactively as of January 1, 2020, but the tax relief was not taken into account by the Austrian Pension Fund in good time. Delays in the retroactive payment for recipients of low pensions were also criticized in the media.

**No repayment of overpaid wage tax?**

Around one million pensioners were affected by the legal change. The Austrian Pension Fund reported to the AOB that the calculation of the reimbursements required a high level of technical effort due to the complexity of the cases. Therefore, the wage tax paid could only be paid out with a delay. An information letter including an apology in September 2020 would have saved the Austrian Pension Fund further trouble and ongoing enquiries.

**One million pensioners affected**

## No recognition for periods of care

A Styrian cared for her seriously ill mother, who was granted a level 3 care allowance on September 6, 2017. It was only in December 2019 that Ms. N.N. was made aware of the possibility of self-insurance for the time she cared for her mother. After her application was submitted, her entitlement to self-insurance was only recognized retroactively from December 1, 2018. The decision was legally correct.

**Partly no self-insurance**

The caregiving daughter complained to the AOB on the one hand that she would have submitted the application for self-insurance earlier if the information had been provided in the care allowance notification. On the other hand, she criticized the fact that access to self-insurance for family caregivers – in contrast to caring for a disabled child – is only open for one year retrospectively from the application date and that the legislature uses two standards here.

The legal situation is actually unsatisfactory for many caregiving relatives. An amendment suggested by the AOB in the past for a recognition of periods of nursing and care for close relatives that extends further into the past was not and is not endorsed by the Ministry of Social Affairs.

**Unsatisfactory situation**

The AOB also found it incomprehensible that no corresponding reference to the possibility of voluntary self-insurance can be provided in the nursing and care allowance notification. The Austrian Pension Fund considers the information on the Internet, in brochures and folders as well as the advice offered on consultation days to be sufficient. The Austrian Pension Fund pointed out to the AOB that it was within the reasonable responsibility of those affected to obtain appropriate information. The AOB criticizes this succinct justification, especially in view of the extreme stress to which relatives providing care are exposed.

No reference in the administrative notification for care allowance

### Unjustified chargeback

A widow alleged that the Austrian Pension Fund wrongly carried out a chargeback of 277.89 euros from the account of her husband who had passed away in March 2019.

Chargeback from the deceased's bank account

Upon request, the Austrian Pension Fund informed AOB that no transfer in this amount had been reclaimed or booked. The AOB was able to find out from the supervising bank on the basis of the booking receipt that it had indeed been a reverse booking by the Austrian Pension Fund.

Chargeback negated

After submitting the booking receipt to the Austrian Pension Fund, it was possible to use the insurance number given as the intended payment purpose to clarify that the letter from the Austrian Pension Fund on which the direct debit was based did not concern the deceased, but a pensioner who had also died in March 2019. The unjustified chargeback was due to an oversight by the financial institution.

After repeated enquiries from the widow, this error was only cleared up thanks to the efforts of the AOB. As a result, the Austrian Pension Fund immediately instructed the transfer of the amount incorrectly debited from the account.

Clarification only via efforts of the AOB

### Reclamation despite the statute of limitations

The Social Insurance for the Self-Employed (*Sozialversicherung für Selbstständige*) reestablished a widow's pension awarded in 2001 and has now asked the widow to return 7,500.99 euros. The reason for the reimbursement was that the widow's pension was recalculated from July 2004 due to receiving a Dutch personal pension. According to the widow, the Social Insurance for the Self-

High repayment of a widow's pension

Employed had been informed about the receipt of the Dutch pension.

During the investigation, it emerged that the Social Insurance for the Self-Employed had not responded to a letter about the granting of a foreign pension from the Austrian Pension Fund in 2015. The Social Insurance for the Self-Employed only initiated an investigation following a new notification from the Austrian Pension Fund at the beginning of 2019. They found that the widow had been receiving a personal pension from the Netherlands for years, which she had not reported.

**No reaction to reporting of foreign pension**

As a result of intervention by the AOB, the issue of the statute of limitations was re-examined. There is an absolute statute of limitations of three years for the assertion of reimbursement from the point in time at which the insurance carrier became aware that the benefit had been wrongly provided. In this case, despite the breach of the reporting obligation, the payment reclamation was statute-barred and, therefore, inadmissible.

**Statute of Limitations**

### **No pension payment when changing residence**

A pension recipient relocated from Vietnam to Vienna in December 2019. Although he had announced his change of residence to the Social Insurance for the Self-Employed in a timely manner, his pension benefits for December 2019 and January 2020 were transferred to his already closed account at his Vietnamese bank. A reversal of the pension payments could not be achieved by contacting the embassy and consulate.

**Payment transfer to the "old" account**

The Social Insurance for the Self-Employed took the AOB's request as an opportunity to contact with the Vietnamese Embassy. The outstanding pension payments were returned and repaid at the beginning of August 2020 by the Thai Vietcombank via Deutsche Post AG. A solution was also found for the very high expenses incurred by the foreign bank.

**Chargeback**

### **Unjustified reduction of widow's pension**

The recipient of a widow's pension worked part-time during early retirement. Since her earned income did not reach the minimum protective amount, the widow's pension was increased. The Austrian Pension Fund informed the widow that her pension had been increased by mistake and reduced the widow's pension, no

**Reduction of the pension**

longer granting an increase. The widow could not understand this procedure because her income was below the minimum protective amount.

Based on a letter from the AOB, the Austrian Pension Fund immediately reset the amount of the widow's pension with an administrative notice.

**Increase**

### **Austrian Pension Fund fails to transmit pay slip data**

The recipient of a pension from the Austrian Pension Fund receives a supplementary pension from England. The pensioner complains that the Austrian Pension Fund did not electronically transmit her annual wage slip (L 16) for 2018 to the responsible Tax Office despite multiple inquiries and corresponding promises. The Austrian Pension Fund provided her with incomplete or incorrect information in this regard on several occasions. In September 2019 she was asked by the responsible Tax Office to present a "manual" copy of the annual wage slip. However, a handwritten paper form would be rejected by the Austrian Pension Fund.

**No transmission of the pay slip**

During the investigation, it was found that incomplete data entry prevented the creation and sending of the pay slip data for 2018. It was only through the letter from the pensioner in December 2019 that the Austrian Pension Fund became aware of this grievance. The transmission of the pay slips for 2018 was then initiated immediately, but the electronic transmission to the data collection system and ultimately to the responsible Tax Office could not take place before the end of April 2020 because the transmission is tied to fixed periods. Even "manual" pay slips are no longer created as handwritten paper forms but via an online platform developed for this purpose.

**Flawed data entry**

The AOB found a maladministration due to the failure to create and send the pay slip data to the clearing house and the incomplete or incorrect information provided by the Austrian Pension Fund.



## Long proceedings for awarding survivors' pensions

A widow applied for a widow's pension in February 2018. Since the Austrian Pension Fund had still not made a decision after two years, she asked the AOB for help.

In order to determine the individual base percentage of the widow's pension, inquiries to the Vienna Regional Health Insurance, the Czech Health Insurance, the Austrian Public Employment Service and the former employer of the deceased husband were necessary in order to collect the income for the last four calendar years. As a result, it was found that the length of the proceedings was also due to circumstances that were within the sphere of influence of the Austrian Pension Fund. Finally, the Austrian Pension Fund granted the widow's pension in February 2020 from February 3, 2018.

**Length of proceedings  
two years**

In another case, a woman from Upper Austria applied for a widow's pension after the sudden death of her husband in April 2020. The responsible registry office only issued the husband's death certificate in August 2020 because the exact date of death was initially unknown. The widow's pension application remained unprocessed for the time being. It was only in response to a letter from the AOB in September 2020 that the Austrian Pension Fund initiated the award of a provisional widow's pension. Shortly afterwards – with a view to the now confirmed date of death on February 18, 2020 – the widow's entitlement to a survivor's benefit from March 1, 2020 (with advance payment for February 2020) was recognized via an administrative notice. In view of the excessive length of the proceedings, the AOB found maladministration, which the Austrian Pension Fund also conceded with regret in its statement to the AOB.

**Unprocessed  
application**

Due to the lengthy proceedings in the area of Social Insurance for the Self-Employed, a student also contacted the AOB. The student's father had passed away on November 28, 2018, and on January 7, 2019, she filed an application for an orphan's pension with the - then - Social Insurance Institution for Trade and Industry. For months, there was no response, which is why the student's mother regularly sent urgent requests to the Social Insurance Institution for Trade and Industry starting in September 2019. After the AOB intervened, the Social Insurance for the Self-Employed informed the student in February 2020 that the investigations still had not been completed but that the student would be granted a provisional orphan's pension benefit.

**No response for months**

### Invalidity pension must not hinder rehabilitation

Ms. N.N. suffers from malignant ovarian cancer at a very advanced stage. Therefore, she wants to claim rehabilitation benefits from the Austrian Pension Fund until she recovers. The Austrian Pension Fund granted an unlimited pension without a prior medical assessment and refused to pay any further care allowance. Ms. N.N. contacted the AOB in despair, saying that she was not permanently incapacitated and could lose her job because of the unlimited pension award; moreover, any rehabilitation was advocated by attending physicians. The actions of the Austrian Pension Fund put a great strain on Ms. N.N. and were likely to destroy her motivation to actively work on improving her state of health.

**Permanent inability to work**

In investigation, Ms. N.N. was first informed that a pension application must be treated primarily as an application for rehabilitation benefits.

The letter from the AOB with the enclosure of medical findings from attending physicians was taken as an opportunity by the Austrian Pension Fund to conduct a new investigation. The chief medical officer ultimately reached the conclusion that there was no distant metastasis of the ovarian carcinoma and that the medical findings provided a better prognosis and allowed for making a better case for the still existing need for long-term care.

As a result of the Austrian Pension Fund's investigation, rehabilitation benefits were awarded and the nursing and care allowance was reinstated. This also shows that it is necessary to carry out careful assessments and not to ignore the findings of the insured person. The principle of rehabilitation before pension also applies if there is a temporary need for care and a lot of energy and time need to be invested in convalescence.

**Allocation of rehabilitation, nursing, and care allowances**

### 3.12.5. Disability

#### No parking permit despite significant physical limitations

Many people with severe physical impairments cannot use public transportation. For them, participation in life is often only possible with a car. The parking permit according to § 29b Austrian Road Traffic Act (*Straßenverkehrsordnung*) entitles people with disabilities to use disabled parking spots and short-term parking zones without limitation. The prerequisite for the issuance is the

**Use of public transport an unreasonable burden**

additional entry of the “unreasonableness of using public transport because of a permanent mobility restriction due to a disability” in the disabled person’s disability pass.

Numerous individuals contacted the AOB because this additional entry in their disability pass had been denied by the Ministry of Social Affairs Service despite serious health impediments.

**Numerous complaints**

In September 2020, the ORF program “*Bürgeranwalt*” took up the case of a single mother who was dependent on the use of a car to continue working as a social worker. Ms. N.N. suffers from a rapidly progressing form of multiple sclerosis and can only walk a very short distance. In the course of the day, there are increasing muscle weakness, balance disorders, strong reflexes, symptoms of fatigue and falls. In spite of the findings submitted, the medical unit of the Ministry of Social Affairs Service (*Sozialministeriumservice*) did not recognize the dynamics of her illness and once again refused the additional entry of unreasonableness in the use of public transport, also via the preliminary appeal decision. The Federal Administrative Court ultimately granted the appeal and awarded the supplemental rating.

Those affected often complain not only about the result of medical assessments but also about the way they are conducted. Appraisal appointments often last only a few minutes and the behavior of the experts is often perceived as unfriendly and dismissive. In many cases, there is also criticism that the findings submitted are not considered and that, even in the case of serious health restrictions, general practitioners rather than specialists are commissioned to draw up the expert opinions.

**Criticism of the assessment practice**

The AOB, therefore, calls for a careful consideration of the effects of disability, the involvement of specialists in assessing rare diseases and complex medical conditions, a revision of the guidelines, and an interpretation of the requirements for the additional entry of the “unreasonableness of the use of public transport” in the interests of those affected.

**Interpretation of the provision in the interests of those affected**

## **Exemption from the Motor-Based Insurance Tax**

Holders of a disability pass with the additional entry “unreasonableness of the use of public transport” or “blindness”

are entitled to an exemption from the Motor-Based Insurance Tax under certain additional conditions.

Starting December 1, 2019, a new legal situation has applied to the exemption from this tax. Since then, beneficiaries have had to contact the vehicle registration offices (and not, as was previously the case, the respective vehicle insurance companies).

**New legal situation starting December 1, 2019**

In the reporting period, the AOB received complaints that the current information sheets from the Ministry of Social Affairs Service still included the respective vehicle insurance companies as the contacts for exemption from the Motor-Based Insurance Tax. As a result, the AOB wrote to the Federal Ministry of Social Affairs, Health, Care and Consumer Protection in mid-August 2020 and suggested that the information sheet of the Ministry of Social Affairs Service in question be corrected. That was implemented.

**Information sheet changed at the suggestion of the AOB**

In addition, the relevant specialist section of the Federal Ministry of Social Affairs, Health, Care and Consumer Protection has instructed the Ministry of Social Affairs Service that it should refer to the additional changes already in effect since December 1, 2019, regarding the exemption from the Motor-Based Insurance Tax when advising people with disabilities .

**Reference to the new legal situation is now given in advisory meetings**

### 3.12.6. Pensions for victims of children's homes

#### No entitlement to those unable to work due to household community

A 59-year-old Viennese was a victim of violence in Viennese homes in his childhood. He was recognized as a children's home victim by the Municipality of Vienna and was awarded a one-time lump sum compensation payment.

The life of the person concerned turned out to be changeable and he could never really gain a foothold. For several years, Mr. N.N. has been seriously ill and can no longer work. However, since he was unable to acquire a sufficient number of months of insurance in the pension insurance, he does not receive his own pension. His wife is entitled to a pension in the amount of the equalization supplement reference rate. Mr. N.N. is therefore not entitled to benefits.

**No entitlement to pension**

Regardless of their age, those affected receive a Pension for Victims of Children's Homes if they are pension recipients or if they are permanently unable to work, meet the requirements for

**No PVCHA pension before age 65**

drawing a minimum income benefit or have never been able to work. Since none of these criteria apply to the 59-year-old, he now has to wait another six years - until he turns 65 - until he too is entitled to the Pension for Victims of Children's Homes. The fact that there is a household community with the wife and she pays for the living of both with her low income prevents the current emergency situation from being taken into account.

The AOB suggests reconsidering the relevant legal provisions and awarding the Pension for Victims of Children's Homes to all those affected who are no longer able to work.

### **Pension for victims of children's homes in addition to rehabilitation allowance**

Since a reform of the Pensions for Victims of Children's Homes Act (PVCHA) in the summer of 2018, the pension is also available to recipients of the rehabilitation allowance. The provision came into effect retroactively on July 1, 2017.

**Amendment to the  
PVCHA**

Exactly these requirements were met by a Salzburg resident. He has been receiving the rehabilitation allowance for a long time and was recognized as a children's home victim by the *Land* of Salzburg in the summer of 2017. Mr. N.N. also submitted confirmation of this to the Austrian Pension Fund. His entitlement for the Pension for Victims of Children's Homes was not examined.

It was only when Mr. N.N. was awarded a permanent pension that his application for Pension for Victims of Children's Homes was also approved, but because he had not received a pension for the period of the rehabilitation allowance, he contacted the AOB.

In the AOB investigation, the Austrian Pension Fund confirmed that his recognition as a children's home victim had been known since November 2017. The pensioner was, therefore, awarded the Pension for Victims of Children's Homes retrospectively from July 1, 2017.

**Pension awarded  
retroactively**

### 3.12.7. Animal protection

#### Pig farming not in conformity with EU law

The current version of point 2.1 of Annex 5 of the First Animal Husbandry Regulation (*Tierhaltungsverordnung*) standardizes that pig pens must be built in such a way that the pigs have access to a lying area that is comfortable in terms of size and temperature. As the AOB already emphasized in the report of the previous year, this formulation does not entirely correspond to that of the Council Directive 2008/120 / EC of December 18, 2008, on minimum requirements for the protection of pigs in the correction made in the Official Journal of the EU in February 2016.

**EU legal requirements only partially implemented**

It is indisputable that Austrian regulations must always be in line with EU legal requirements. This is still not the case, although a research project specifically financed by public funds examined questions about the structural design, animal welfare, economic efficiency and production safety of crate stall systems. The final report of the Vienna University of Veterinary Medicine has been available since July 2017 and was sent to the ministries commissioning at the time (Federal Ministry for Health and Women and Federal Ministry for Agriculture and Forestry). Already in July 2019, both the correction in accordance with the EU directive and an amendment to the First Animal Husbandry Regulation were promised to the AOB and delays in implementation were explained, among other things, with the fact that an audit report by the European Commission on the tail docking of pigs was still pending. This has been made available in the meantime.

**AOB calls for adjustments**

In March 2020, the federal minister responsible for animal protection announced that a corresponding amendment to the First Animal Husbandry Regulation was being prepared at civil servant level to correct the problems under Union law and that this was to "promptly" be subjected to an assessment procedure. The relevant ordinance was not amended by the time this report went to press, despite the obvious need for adjustments.

**Promised regulation still pending**

#### Long-distance transport of cattle

An official veterinarian complained to the AOB that Austrian veterinary authorities were not only signing logbooks for breeding cattle imports through Belarus, Russia, Azerbaijan, Kazakhstan, and Uzbekistan but also along these routes to Iran without further verification. The

**Cattle transports to distant countries contrary to animal protection?**

consequence of this is that the transports are approved even though they are regularly carried out under conditions that are not in accordance with animal protection requirements. According to the case law of the European Court of Justice, the approval of a transport that involves a long transport of horses, cattle, pigs, sheep or goats by the competent authority of the place of dispatch requires that the organizer of the transport submit a logbook that contains realistic information and suggests that the provisions of the relevant EU regulation on the protection of animals during transport are also complied with for the transport zone outside the Union.

The responsible Federal Minister for Social Affairs, Health, Care and Consumer Protection informed the AOB as part of an investigation that his ministry had advised all authorities that the necessary human resources had to be shown for long-distance transports in order to comply with the rest period regulations. The authorities are also said to have been instructed to pay attention to the weather conditions as well as to planned suitable resting places and monitoring points. Furthermore, attempts are now being made to improve the system of retrospective monitoring in order to facilitate decision-making in specific cases.

Ultimately, the Federal Minister promised the AOB that he would work at the European level as well as within the framework of his ministerial office to improve the situation in the assessment by the first instance authorities. The AOB welcomes this pledge and hopes that in the future long-distance cattle transports will only be approved when compliance with all relevant animal welfare regulations has been guaranteed.

**The Federal Minister  
offers prospect of  
improvement**

## Legislative recommendations

### Federal Ministry of Labor, Family, and Youth

Legislative Suggestion	Reaction of the Department	Details
Childcare Allowance Act (): Multiple Supplement also when receiving Special Benefit I		Parliamentary Report 2020, Monitoring Public Administration, p. 45

### Federal Ministry of Education, Science and Research

Legislative Suggestion	Reaction of the Department	Details
From the AOB's perspective, legal requirements in the Education Law that prevent a de facto unlimited exclusion from continuing studies with restricted access should be reconsidered	The Federal Ministry of Education, Science and Research does not see any need for a change.	Parliamentary Report 2020, Monitoring Public Administration, p. 57

### Federal Ministry of Finance

Legislative Suggestion	Reaction of the Department	Details
Back payments of rehabilitation money or salary payments should also be included in the exceptions to the inflow principle (19 para. 1 no. 2 Income Tax Act).	The Federal Ministry of Finance agreed to examine this suggestion within the context of upcoming legal work.	Parliamentary Report 2020, Monitoring Public Administration, p. Fehler! Textmarke nicht definiert.
In § 9 of the Real Estate Tax Act, it should be added that the subsequent person is deemed to be liable for tax if the legal succession has taken place, e.g. through the sale of the property without changing the valuation.	The Federal Ministry of Finance views this suggestion positively and has agreed to look into implementation.	Parliamentary Report 2020, Monitoring Public Administration, p. 83

### Federal Ministry for Climate Action, Environment, Energy, Mobility, Innovation and Technology

Legislative Suggestion	Reaction of the Department	Details
The AOB suggests reconsidering the local restrictions with regard to truck parking spaces in § 5 Sec. 1 of the Cargo Transportation Act.	The Federal Ministry for Climate is not considering initiating a change to the law.	Parliamentary Report 2020, Monitoring Public Administration, p. 129



## Federal Ministry for Social Affairs, Health, Care and Consumer Protection

Legislative Suggestion	Reaction of the Department	Details
Payment of home victims' pensions additionally to persons who are not yet 65 years of age and who are permanently incapable of work and who are not entitled to public assistance because they live with someone else in a household		Parliamentary Report 2020, Monitoring Public Administration, p. 172

Editor

Austrian Ombudsman Board (*Volksanwaltschaft*)

1015 Vienna, Singerstrasse 17

Phone: +43 (0)1 51505-0

Web: <http://www.volksanwaltschaft.gv.at>

Vienna, June 2021

