

Austria Immigration Detention Profile

May 2017

- Introduction
- Laws, Policies, Practices
- Detention Infrastructure

INTRODUCTION

For many years, a key feature of Austria's immigration detention system was its use of "Police Detention Centres" (PAZ). Along with immigration detainees, these facilities confine people who have committed "administrative" offenses as well as criminal suspects. Under pressure from various international human rights bodies—including the European Committee for the Prevention of Torture and the UN Committee against Torture—the country opened its first long-term detention centre in January 2014. Labelled "the most modern immigration detention facility worldwide,"¹ the centre appears not to be used as frequently as the PAZ because of its remote location and high operating costs.² Providing many core services at the facility is the controversial multinational security company G4S.

In 2015, as increasing numbers of refugees and migrants began transiting its territory, Austria introduced temporary controls at its borders with [Hungary](#) and [Slovenia](#).³ The country subsequently imposed additional security measures at its border with [Italy](#) and threatened to build a border fence at the Brenner Pass, a key gateway for people

¹ Tiroler Tageszeitung, "Anhaltezentrum Vordernberg: Von der Kuschel- bis zur Gummizelle," *Tiroler Tageszeitung Online*, 18 December 2013, www.tt.com/panorama/7641441-91/anhaltezentrum-vordernberg-von-der-kuschel-bis-zur-gummizelle.csp.

² Rechnungshof, *Vollzug der Schubhaft mit Schwerpunkt Anhaltezentrum Vordernberg*, 2016, http://www.rechnungshof.gv.at/fileadmin/downloads/_jahre/2016/berichte/teilberichte/bund/Bund_2016_22/Bund_2016_22_2.pdf.

³ Raziye Akkoc, "Refugee crisis: Europe's borders unravelling as Austria and Slovakia impose frontier controls," *Telegraph*, 14 September 2015, <http://www.telegraph.co.uk/news/worldnews/europe/eu/11863246/Refugee-crisis-EU-ministers-Germany-border-control-Austria-army-live.html>.

seeking passage to Northern Europe.⁴ Although by early 2017 the main migratory route appeared to have shifted from Austria to [Switzerland](#),⁵ Austria's Interior Minister announced a plan to speed up the removal of some 50,000 asylum-seekers—mainly from Iraq, Iran, Afghanistan and sub-Saharan Africa—by doubling the amount of money it offers to people who leave voluntarily.⁶

The figures collected by the Eurostat confirm that in 2015-2016, Austria faced considerable pressure on its immigration and asylum system. The number of asylum applications increased from some 28,000 in 2014 to 88,000 in 2015, and then dropped to 42,000 in 2016. In 2015, Austria received the fourth highest number of asylum applications in the EU, and the fifth largest in 2016. The number of people found to be irregularly staying in Austria increased dramatically: from approximately 33,000 in 2014 to 86,000 in 2015. In 2016, 11,850 persons were ordered to leave and nearly 6,000 were removed.⁷

Detention numbers have risen dramatically. In the first half of 2016, Austria detained 14,661 for migration-related reasons; during the same period in 2015, 857.⁸ Until 2016, there had been a notable downward trend: from around 6,200 persons detained in 2010 to 1,900 in 2014.⁹ Various reasons were given by authorities to explain the decrease, such as changing courts practice and increased focus on voluntary departure. Yet, one main reason may have been a growing reliance on short-term detention. While the daily average number of detainees in Austria dropped between 2010-2015 by 86 percent (from 357 to 52); these figures increased for migrants in a short-term detention by 636 percent (from 25 to 183).¹⁰ In 2015, around 56 percent of migrants placed in short-term detention were from Syria, Afghanistan, and Iraq.¹¹

⁴ Nikolaj Nielsen, "Alpine village dragged into Brenner refugee dispute," *EU Observer*, 19 May 2016, <https://euobserver.com/migration/133458>.

⁵ Nikolaj Nielsen, "Migrants head to Switzerland amid Austria border crackdown," *EU Observer*, 16 February 2017, <https://euobserver.com/migration/136926>.

⁶ Beata Stur, "Austria doubles cash handout for migrants going home," 23 March 2017, <https://www.neweurope.eu/article/austria-doubles-cash-handout-migrants-going-home/>.

⁷ Eurostat, *Asylum and Managed Migration*, visited on 12 April 2017, <http://ec.europa.eu/eurostat/web/asylum-and-managed-migration/data/database>.

⁸ Federal Ministry of Interior, *Response to a Parliamentary Request*, 9803/AB, 15 November 2016; Rechnungshof, *Vollzug der Schubhaft mit Schwerpunkt Anhaltezentrum Vordernberg*, 2016,

⁹ Rechnungshof, *Vollzug der Schubhaft mit Schwerpunkt Anhaltezentrum Vordernberg*, 2016, http://www.rechnungshof.gv.at/fileadmin/downloads/_jahre/2016/berichte/teilberichte/bund/Bund_2016_22/Bund_2016_22_2.pdf.

¹⁰ Rechnungshof, *Vollzug der Schubhaft mit Schwerpunkt Anhaltezentrum Vordernberg*, 2016, http://www.rechnungshof.gv.at/fileadmin/downloads/_jahre/2016/berichte/teilberichte/bund/Bund_2016_22/Bund_2016_22_2.pdf.

¹¹ Rechnungshof, *Vollzug der Schubhaft mit Schwerpunkt Anhaltezentrum Vordernberg*, 2016, http://www.rechnungshof.gv.at/fileadmin/downloads/_jahre/2016/berichte/teilberichte/bund/Bund_2016_22/Bund_2016_22_2.pdf.

LAWS, POLICIES, PRACTICES

Key norms. The 2005 Federal Act on the Exercise of Aliens' Police, the issuing of Documents for Aliens and the Granting of Entry Permits (Aliens Police Act) ([*Bundesgesetz über die Ausübung der Fremdenpolizei, die Ausstellung von Dokumenten für Fremde und die Erteilung von Einreisetitel*](#)) provides the legal framework governing immigration detention (*Schubhaft*). In addition, there are provisions in the 2005 [*Federal Act concerning the Granting of Asylum*](#) (Asylum Act) ([*Bundesgesetz über die Gewährung von Asyl*](#)) that regulate deprivation of liberty at airports. Both laws have been amended several times.

The 2012 Federal Office for Immigration and Asylum Procedures Act ([*BFA-Verfahrensgesetz*](#)) sets forth various procedural rules and the 1999 Ministry of Interior Ordinance on Detention Conditions ([*Verordnung der Bundesministerin für Inneres über die Anhaltung von Menschen durch die Sicherheitsbehörden und Organe des öffentlichen Sicherheitsdienstes \(Anhalteordnung\)*](#)) addresses conditions of detention. Finally, the 2005 Ministry of Interior Ordinance Implementing the Aliens Police Act ([*Verordnung der Bundesministerin für Inneres zur Durchführung des Fremdenpolizeigesetzes 2005 \(Fremdenpolizeigesetz-Durchführungsverordnung – FPG-DV\)*](#)) includes rules on the costs relating to detention and alternatives to detention.

Grounds for detention. Grounds for migration-related detention are provided in both immigration and asylum-specific legislation. When transposing the [*EU Reception Conditions Directive*](#) in 2015, Austria amended its relevant legislation. However, unlike most EU countries, Austria did not adopt all the grounds for detention of asylum-seekers provided in the Directive, including for verification of an asylum-seeker's identity or because of national security or public order considerations.

The Asylum Act provides for detention at the border, called “measures to guarantee rejection at the border” (*Sicherung der Zurückweisung*). Under article 32(1) of the Asylum Act, a non-citizen who has been transferred to an initial reception centre at the airport may be required to remain at a specific place in the border control area or in the area of this initial reception centre for as long as his entry is not permitted. He is entitled to leave Austria at any time. Under article 32(4), the confinement is to be terminated if the Federal Office for Immigration and Asylum permits the asylum seeker's entry to the country. The detention measure can be enforced for up to six weeks. Border detention under the Asylum Act is carried out in the Vienna airport “special transit area”¹² (see below under the “Detention Infrastructure”).

The Federal Office for Immigration and Asylum Procedures Act provides several grounds for issuing a short-term arrest order, including for breach of conditions imposed on a person during a voluntary departure procedure; failure to leave the country as per the terms of a return decision; or withdrawal from an asylum procedure. Detention

¹² Christoph Riedl and Christoph Steinwendtner, *Completed Legal Questionnaire for the project MADE REAL: Austria*, MADE REAL, 2015, <http://odysseus-network.eu/made-real-national-reports/>.

based on this type of arrest (*Verwaltungsverwahrungshaft*) order may not exceed 72 hours.¹³

The main detention-related provisions are laid down in the Aliens Police Act. Under article 76(2) of the Aliens Police Act, non-citizens may be detained if it is necessary to carry out a procedure to issue a measure terminating the person's residence or—during asylum proceedings—to issue a measure terminating the person's residence or complete his deportation. Secondly, detention may be ordered on grounds laid down in the [EU Dublin Regulation](#), namely to secure a transfer to a country responsible for examination of the person's asylum application. In all cases, the detention measure can be ordered only if there is a clear risk of absconding.

Article 76(3) details the circumstances required to conclude that the person will evade a removal procedure or render deportation “considerably” more difficult. This determination procedure is broader in scope than what is provided in the [EU Returns Directive](#) and the EU Dublin Regulation. The circumstances include: 1) the person avoids or hampers a deportation order; 2) the person has violated a re-entry ban; 3) an expulsion order has already been made or the person had withdrawn from the asylum procedure or a procedure to issue a measure terminating legal stay; 4) the de facto protection against deportation has been lifted in case of subsequent asylum application; 5) the person has already been issued a measure ending his legal stay, in particular when he is in pre-removal detention, at the time he lodges the asylum application; 6) other country is responsible for the asylum procedure under the Dublin Regulation, in particular where the person has lodged multiple applications or made false statements or tried to move to another country or it is probable that he will try to do so; 7) the person fails to fulfil the conditions relating to alternatives to detention; 8) the person does not comply with cooperation or reporting duties; and 9) whether there is a sufficient link with Austria such as family relations, legal employment, sufficient resources or place of residence. According to the NGO [Asylkoordination Österreich](#), these criteria are non-exhaustive and thus article 76(3) leaves broad discretion to the authorities to find a risk of absconding and order detention.

In cases where a person applies for international protection after being detained, he may be kept in detention if there is reason to suspect that the application was made in order to delay the enforcement of a measure terminating the person's residence (Aliens Police Act, article 76(4)).¹⁴

In 2016, the [UN Committee against Torture](#) urged Austria to ensure that asylum seekers are held in detention only as a last resort and, if this becomes necessary, that

¹³ Rechnungshof, *Vollzug der Schubhaft mit Schwerpunkt Anhaltezentrum Vordernberg*, 2016, http://www.rechnungshof.gv.at/fileadmin/downloads/_jahre/2016/berichte/teilberichte/bund/Bund_2016_22/Bund_2016_22_2.pdf.

¹⁴ Asylkoordination Österreich, “Country report: Austria,” *Asylum Information Database (AIDA)*, European Council on Refugees and Exiles (ECRE), February 2017, www.asylumineurope.org/reports/country/austria.

they are held for as short a time as possible and that alternatives to detention are used whenever feasible.¹⁵ The Committee made similar recommendations in 2010.¹⁶

Minors. Article 76(1) of the Aliens Police Act provides that children below the age of 14 may not be detained.¹⁷ Children above the age of 14 are to be afforded non-custodial alternatives to detention, unless certain facts justify the assumption that the objective of detention cannot be achieved with these measures (Aliens Police Act, article 77(1)). Children under the age of 16 may be detained if the facility ensures accommodation and care that are appropriate to their age and level of development (Aliens Police Act, article 79(2)). Detention of minors may not exceed two months (Aliens Police Act, article 80(1)(2)(1)).

According to article 79(5), if the facility ensures family and child-appropriate accommodation, migrants detained shortly before deportation may be allowed to be accompanied by their children. In 2011, the Human Rights Advisory Board at the Ministry of Interior found that children under 14 were held in detention with their families when their parents agreed to keep the child with them rather than being separated from them.¹⁸ In 2017, the Asylkoordination Österreich reported that families with young children tended to be detained solely for 24 hours before removal.¹⁹

The Aliens Police Act provides that minors and adults are to be detained separately. If detention pending deportation is also imposed on a parent or legal guardian, minor detainees are to be detained jointly with them unless their best interests require separate detention (Aliens Police Act, article 79(3)). Minors are usually detained in the Zinnergasse Family Detention Centre (see below under “Infrastructure”).

In 2015, the [UN Human Rights Committee](#) expressed concern over the provision in the Aliens Police Act allowing detention of children over the age of 14 for up to two months. The Committee recommended that Austria review its detention policy to ensure that children are not deprived of their liberty except as a measure of last resort and for the shortest appropriate period of time.²⁰

¹⁵ Committee against Torture, *Concluding observations on the sixth periodic report of Austria*, CAT/C/AUT/CO/6, 27 January 2016, <http://www.ohchr.org/EN/Countries/ENACARRegion/Pages/ATIndex.aspx>.

¹⁶ Committee against Torture, *Concluding observations of the Committee against Torture: Austria*, CAT/C/AUT/CO/4-5, 20 May 2010, <http://www.ohchr.org/EN/Countries/ENACARRegion/Pages/ATIndex.aspx>.

¹⁷ Manfred Zirnsack (Ministry of Interior), *Email exchange with Izabella Majcher* (Global Detention Project), October 2014.

¹⁸ Menschenrechtsbeirat, *Kinder und Jugendliche im fremdenrechtlichen Verfahren*, Interior Ministry, 2011, www.bmi.gv.at/cms/BMI_MRB/mrb/berichte/2011.aspx.

¹⁹ Asylkoordination Österreich, “Country report: Austria,” *Asylum Information Database (AIDA)*, European Council on Refugees and Exiles (ECRE), February 2017, www.asylumineurope.org/reports/country/austria. See also, Ulrike Brandl, *Completed Legal Questionnaire for the project MADE REAL: Austria*, MADE REAL, 2015, <http://odysseus-network.eu/made-real-national-reports/>.

²⁰ Human Rights Committee, *Concluding observations on the fifth periodic report of Austria*, CCPR/C/AUT/CO/5, 3 December 2015, <http://www.ohchr.org/EN/Countries/ENACARRegion/Pages/ATIndex.aspx>.

In 2012, the [UN Committee on the Rights of the Child](#) issued a detailed recommendation to Austria urging the country to ensure that children under the age of 14 are not placed in detention under any circumstances. It also recommended that detention measures for unaccompanied refugee and asylum-seeking children above 14 years only be used as a measure of last resort, when non-custodial measures are unavailable. Additionally, the Committee recommended that Austria ensure that detention conditions are of a non-punitive character and in line with the special status of children as minors who are not suspected or convicted of any crime; that the age determination procedure applied to unaccompanied children be based on scientifically approved methods; and that each unaccompanied child be provided with a legal guardian.²¹

In 2010, 172 children were detained, of whom 18 were between 14-16 and 154 between 16-18. That year, 449 minors benefitted from non-custodial alternatives (of whom 365 were between 14-16 and 84 between 16-18). In 2009, 146 children were detained while 435 were granted alternatives.²²

Stateless persons. The Aliens Police Act and the Asylum Act fail to provide specific protections for stateless persons. According to data provided by Statistics Austria, at the beginning of 2016, 4,142 stateless persons, 543 individuals with unknown nationality, and 6,943 persons with an undetermined nationality were registered by the Central Register of Residents. However, at the end of 2015, the Settlement and Residence Statistics of the Interior Ministry recorded only 595 stateless persons, 212 persons of undetermined nationality and 21 individuals with unknown nationality. The Asylum Statistics of the Ministry of the Interior show an increase in the number of stateless persons applying for asylum from 253 in 2013 to 2,235 in 2015. According to the statistics of the Ministry of Interior, 21 stateless persons or persons with unknown nationality were detained in 2012 and 13 in 2013.²³

Length of detention. The Aliens Police Act explicitly provides that the Federal Office for Migration is required to ensure that detention is as short as possible (article 80(1)) and contains detailed rules on the maximum duration of detention.

The length of detention, except from Dublin-related detention, should in principle not exceed four months (article 80(2)(2)). Asylum seekers may be detained for up to one month following a legally binding negative asylum decision. The duration of detention may be longer in two sets of circumstances. First, if a non-citizen cannot be deported because an appeal against deportation has not yet been finally decided, detention may

²¹ Committee on the Rights of the Child, *Concluding observations on the combined third and fourth periodic report of Austria*, CRC/C/AUT/CO/3-4, 3 December 2012, www.ohchr.org/EN/countries/ENACARRegion/Pages/ATIndex.aspx.

²² European Migration Network (EMN), *The use of detention and alternatives to detention in the context of immigration policies: Synthesis Report for the EMN Focussed Study 2014*, 2014, ec.europa.eu/dgs/home-affairs/what-we-do/networks/european_migration_network/reports/docs/emn-studies/emn_study_detention_alternatives_to_detention_synthesis_report_en.pdf.

²³ UNHCR Austria, *Mapping STATELESSNESS in Austria*, European Network on Statelessness (ENS), 2017, <http://www.statelessness.eu/resources/unhcr-mapping-statelessness-austria>.

last up to six months (article 80(3)). Secondly, detention may be prolonged up to six months during a given one-year period in cases if a non-citizen cannot be deported because identity and nationality cannot be established; there is no permission by another state for his entry or transit; or the person hampers the removal by resisting coercive measures. However, if the failure to deport a non-citizen is due to his conduct, detention can be extended to 10 months during an 18-month period. The same maximum period of detention applies if deportation appears to be threatened because the person has previously absconded (article 80(4)) or appealed the measure terminating his legal stay (article 80(5)).

In 2015, the average length of detention was approximately 11 days; in 2014, 14 days; and in 2013, 14 days.²⁴

Procedural guarantees. The Federal Office for Immigration and Asylum (*Bundesamt für Fremdenwesen und Asyl*) is responsible for issuing detention orders.²⁵ Those subject to a detention order must receive a written notification (Aliens Police Act, article 76(4)). The detention decision and information about the right to lodge an appeal is to be provided in a language the detainee understands.²⁶

By virtue of article 80(6) of the Aliens Police Act, the Federal Office for Immigration and Asylum must review ex officio the proportionality of detention every four weeks. After four months, the Federal Administrative Court must review the lawfulness of detention on its own motion (Federal Office for Immigration and Asylum Procedures Act, article 22a). According to the Asylkoordination Österreich judicial review only after four months of detention does not seem to be sufficient.²⁷

Detainees have the right to appeal detention before the Federal Administrative Court. The Court has to decide within six months. However, if a non-citizen is still held in detention when the appeal is submitted, the Court has to render its decision within one week (Federal Office for Immigration and Asylum Procedures Act, article 22a). If the Federal Administrative Court finds detention unlawful, detainees are entitled to a compensation of 100 euros per day.²⁸

²⁴ Rechnungshof, *Vollzug der Schubhaft mit Schwerpunkt Anhaltezentrum Vordernberg*, 2016, http://www.rechnungshof.gv.at/fileadmin/downloads/_jahre/2016/berichte/teilberichte/bund/Bund_2016_22/Bund_2016_22_2.pdf.

²⁵ Rechnungshof, *Vollzug der Schubhaft mit Schwerpunkt Anhaltezentrum Vordernberg*, 2016, http://www.rechnungshof.gv.at/fileadmin/downloads/_jahre/2016/berichte/teilberichte/bund/Bund_2016_22/Bund_2016_22_2.pdf.

²⁶ Asylkoordination Österreich, "Country report: Austria," *Asylum Information Database (AIDA)*, European Council on Refugees and Exiles (ECRE), February 2017, www.asylumineurope.org/reports/country/austria.

²⁷ Asylkoordination Österreich, "Country report: Austria," *Asylum Information Database (AIDA)*, European Council on Refugees and Exiles (ECRE), February 2017, www.asylumineurope.org/reports/country/austria.

²⁸ Asylkoordination Österreich, "Country report: Austria," *Asylum Information Database (AIDA)*, European Council on Refugees and Exiles (ECRE), February 2017, www.asylumineurope.org/reports/country/austria.

The state provides free legal assistance to detainees. However, following the 2014 amendment to the Aliens Police Act, legal advisers are not obligated to represent detainees during proceedings but rather merely to take part in the hearings (Federal Office for Immigration and Asylum Procedures Act, articles 51-52). The legal aid provider receives a lump sum of around 200 euros per case, which Asylkoordination Österreich deems insufficient. This sum comprises the cost of hiring an interpreter and thus the Asylkoordination Österreich suspects that interpreters are not always present.²⁹ However, during its 2014 visit to two establishments, the Vordernberg centre and the PAZ Hernalser Gürtel, the [European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment](#) (CPT) noted that in both facilities, interpreters were called in whenever it was needed.³⁰

Two organisations are contracted to provide state-sponsored legal aid: ARGE Rechtsberatung ([Diakonie Flüchtlingsdienst](#) and [Volkshilfe Oberösterreich](#)) and [Verein Menschenrechte Österreich](#). Verein Menschenrechte Österreich (VMÖ) collaborates with and is funded by the Interior Ministry to provide advice on voluntary return assistance and helps authorities with Dublin transfers. This can lead to the conflict of interests. Asylkoordination Österreich assumes that VMÖ rarely submits appeals against detention.³¹

Under the Ordinance on Detention Conditions, detainees are entitled to complain to the director of the facility when their rights are violated (see below “Regulation of detention conditions”). If the director considers that the complaint is well founded, he is to improve conditions and treatment so they comply with the Ordinance. Otherwise, he should submit the complaint to additional authorities (§23).

Trends and statistics. According to official sources, in the first half of 2016, Austria detained 14,661 migrants, including 1,959 in Vordernberg, 1,191 in Zinnergasse, 2,355 in the PAZ Vienna Rossauer Lände, 2,996 in the PAZ Vienna Hernalser Gürtel, and 6,160 in the PAZ Salzburg.³² These figures reveal an important increase in detention numbers. In the first half of 2015, Austria detained only 857 migrants; in 2014, 1,920; and in 2013, 4,171.³³

During the period 2010-2014, annual detention numbers decreased from approximately

²⁹ Asylkoordination Österreich, “Country report: Austria,” *Asylum Information Database (AIDA)*, *European Council on Refugees and Exiles (ECRE)*, February 2017, www.asylumineurope.org/reports/country/austria.

³⁰ European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), *Report to the Austrian Government on the visit to Austria carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 22 September to 1 October 2014*, CPT/Inf (2015) 34, 6 November 2015, <http://www.coe.int/en/web/cpt/austria>.

³¹ Asylkoordination Österreich, “Country report: Austria,” *Asylum Information Database (AIDA)*, *European Council on Refugees and Exiles (ECRE)*, February 2017, www.asylumineurope.org/reports/country/austria.

³² Federal Ministry of Interior, *Response to a Parliamentary Request*, 9803/AB, 15 November 2016.

³³ Rechnungshof, *Vollzug der Schubhaft mit Schwerpunkt Anhaltezentrum Vordernberg*, 2016, http://www.rechnungshof.gv.at/fileadmin/downloads/_jahre/2016/berichte/teilberichte/bund/Bund_2016_22/Bund_2016_22_2.pdf.

6,200 to nearly 1,900. According to official sources, the reasons for this downward trend included the court practice, adherence to the last resort principle, reinforced protection for non-deportable non-citizens (from Syria, Iraq, and Afghanistan), and increased focus on the voluntary departure.

In addition, since 2014 the Federal Office for Immigration and Asylum has increased the use of short-term detention (*Verwaltungsverwahrungshaft*) based on arrest orders to secure removal. This form of detention is prioritized over regular pre-removal detention in cases where deportation is possible within 72 hours. Non-citizens placed in such detention are not recorded in the statistics. In 2016, the Court of Auditors criticized the lack of statistics about the short-term detention orders, which rendered it impossible to assess the extent to which this practice helped lead to a reduction in the number of immigration detention cases.³⁴

The daily average number of detainees in Austria was 52 in 2015; 67 in 2014; 155 in 2013; and 186 in 2012. In 2015, the daily average number of detainees was around 37 in the PAZ Vienna Hernalser Gürtel; 8 in the Vordernberg centre; 3 in the PAZ Salzburg; and 2 in the PAZ Vienna Rossauer Lände. While the daily average number of detainees in Austria dropped between 2010-2015 by 86 percent (from 357 to 52), these figures increased for migrants in a short-term detention by 636 percent (from 25 to 183).³⁵ The increase in the numbers of short-term detentions was related to the increased used of this form of detention by migration authorities (less than one percent of the persons placed in the short-term detention were Austrians).

In 2013, of the 4,171 immigration detainees, 741 were asylum seekers. The percentage of asylum seekers in relation to the total number of immigration detainees has remained stable in recent years, hovering at 17-18 percent.³⁶

Between 2010 – (August) 2015, 27 percent of detainees were from Africa (mainly Nigeria and Algeria), 26 percent from the EU countries (Poland, Romania, and Slovakia), 26 percent from non-EU countries (Serbia, Kosovo, Georgia, and Russia), 20 percent from Asia (mainly China and India), and 5 percent from typical countries of origin of asylum seekers (Syria, Afghanistan, and Iraq). On the other hand, in 2015, around 56 percent of migrants placed in short-term detention (*Verwaltungsverwahrungshaft*) were from Syria, Afghanistan, and Iraq.³⁷

³⁴ Rechnungshof, *Vollzug der Schubhaft mit Schwerpunkt Anhaltezentrum Vordernberg*, 2016, http://www.rechnungshof.gv.at/fileadmin/downloads/_jahre/2016/berichte/teilberichte/bund/Bund_2016_22/Bund_2016_22_2.pdf.

³⁵ Rechnungshof, *Vollzug der Schubhaft mit Schwerpunkt Anhaltezentrum Vordernberg*, 2016, http://www.rechnungshof.gv.at/fileadmin/downloads/_jahre/2016/berichte/teilberichte/bund/Bund_2016_22/Bund_2016_22_2.pdf.

³⁶ International Organization for Migration (EMN National Contact Point Austria), *The Use of Detention and Alternatives to Detention in the Context of Immigration Policies in Austria*, 2014, ec.europa.eu/dgs/home-affairs/what-we-do/networks/european_migration_network/reports/docs/emn-studies/01a.austria_detention_study_en_version_final_2014.pdf.

³⁷ Rechnungshof, *Vollzug der Schubhaft mit Schwerpunkt Anhaltezentrum Vordernberg*, 2016, http://www.rechnungshof.gv.at/fileadmin/downloads/_jahre/2016/berichte/teilberichte/bund/Bund_2016_22/Bund_2016_22_2.pdf.

Alternatives to detention. The Aliens Police Act explicitly states that Federal Office for Immigration and Asylum may order immigration detention if the purpose of detention cannot be attained by alternatives to detention (article 76(1) and 77(1)). To be eligible for alternatives a person must consent to identification procedures (article 77(2)). The decision on the application of alternatives to detention must be provided in writing and can be appealed within two weeks (article 77(8)).³⁸

Article 77(3) of the Aliens Police Act provides three types of alternatives: 1) residing at a particular address determined by the authority; 2) reporting periodically to a police station (every 24 hours); and 3) providing a financial deposit to the Federal Office for Immigration and Asylum.

In practice, two alternatives are most frequently applied, the residence restrictions and reporting obligations. These measures are usually applied together. Release on bail has been adopted more recently and is rarely applied. The amount of the deposit is to be decided in each individual case, must be proportionate and must not exceed 1,718 euros (Ordinance Implementing the Aliens Police Act, article 13).³⁹ However, as observed by the Asylkoordination Österreich, in practice authorities perceive alternatives to detention as insufficient to ensure deportation.⁴⁰ In practice, authorities rarely examine the suitability of alternatives in each individual case⁴¹ and detention orders frequently merely mention that more lenient measures do not serve the purpose of deportation.⁴²

People benefiting from alternatives to detention stay in their own flats, regular reception facilities, facilities rented by the police, or NGO premises. They are to present themselves at a police office every other day. They are not entitled to basic medical care but can receive necessary or emergency medical treatment.⁴³

³⁸ European Migration Network (EMN), *The use of detention and alternatives to detention in the context of immigration policies: Synthesis Report for the EMN Focussed Study 2014*, 2014, ec.europa.eu/dgs/home-affairs/what-we-do/networks/european_migration_network/reports/docs/emn-studies/emn_study_detention_alternatives_to_detention_synthesis_report_en.pdf.

³⁹ International Organization for Migration (EMN National Contact Point Austria), *The Use of Detention and Alternatives to Detention in the Context of Immigration Policies in Austria*, 2014, ec.europa.eu/dgs/home-affairs/what-we-do/networks/european_migration_network/reports/docs/emn-studies/01a.austria_detention_study_en_version_final_2014.pdf, Ulrike Brandl, *Completed Legal Questionnaire for the project MADE REAL: Austria*, MADE REAL, 2015, <http://odysseus-network.eu/made-real-national-reports/>.

⁴⁰ Asylkoordination Österreich, "Country report: Austria," *Asylum Information Database (AIDA)*, European Council on Refugees and Exiles (ECRE), February 2017, www.asylumineurope.org/reports/country/austria.

⁴¹ Christoph Riedl and Christoph Steinwendtner, *Completed Legal Questionnaire for the project MADE REAL: Austria*, MADE REAL, 2015, <http://odysseus-network.eu/made-real-national-reports/>.

⁴² Ulrike Brandl, *Completed Legal Questionnaire for the project MADE REAL: Austria*, MADE REAL, 2015, <http://odysseus-network.eu/made-real-national-reports/>.

⁴³ Asylkoordination Österreich, "Country report: Austria," *Asylum Information Database (AIDA)*, European Council on Refugees and Exiles (ECRE), February 2017, www.asylumineurope.org/reports/country/austria; Christoph Riedl and Christoph Steinwendtner, *Completed Legal Questionnaire for the project MADE REAL: Austria*, MADE REAL, 2015, <http://odysseus-network.eu/made-real-national-reports/>.

Since October 2011, Zinnergasse centre in the outskirts of Vienna has served as a non-secure facility to house vulnerable people benefitting from a non-custodial measure. The Zinnergasse facility also has a detention section, called a family detention facility, which is located on the second and third floors of the building (see below under the “Infrastructure”).⁴⁴ The non-secure section of the centre accommodates up to 17 families (or 50 persons) in family apartments. In 2015, 154 people were accommodated in Zinnergasse, 10 percent out of whom were children.⁴⁵ Non-citizens accommodated in this facility can leave at will, but they must notify officers. There are always two police officers in residence.⁴⁶ Another facility for alternative to detention measures is located in Bad Vöslau. Both facilities are jointly operated by the police and the [association Menschen.Leben](#).⁴⁷ The association’s team is present during the day and is in charge of admission to the facility, daily care, advice, food distribution, crisis intervention, interpretation, and conflict prevention.⁴⁸

According to official statistics, in the first half of 2015, 309 migrants were granted alternatives to detention; in 2014, 701; in 2013, 771; and in 2012 925.⁴⁹ Between 2010-2015, the percentage of persons afforded alternatives to detention has been around 16-26.

In 2015, the UN Human Rights Committee urged Austria to ensure that detention pending deportation is applied only after due consideration of less invasive means, with special regard being given to the needs of particularly vulnerable persons.⁵⁰ Likewise, a

⁴⁴ International Organization for Migration (EMN National Contact Point Austria), *The Use of Detention and Alternatives to Detention in the Context of Immigration Policies in Austria*, 2014, ec.europa.eu/dgs/home-affairs/what-we-do/networks/european_migration_network/reports/docs/emn-studies/01a.austria_detention_study_en_version_final_2014.pdf; Sonja Jell, “Alternative zur Schubhaft: In einem Haus in der Zinnergasse in Wien-Simmering sind Familien mit Kindern sowie unbegleitete mündig Minderjährige untergebracht, die in ihr Herkunftsland zurück müssen,” *Öffentliche Sicherheit*, 2012, www.bmi.gv.at/cms/BMI_OeffentlicheSicherheit/2012/05_06/files/Zinnergasse.pdf.

⁴⁵ Asylkoordination Österreich, “Country report: Austria,” *Asylum Information Database (AIDA)*, *European Council on Refugees and Exiles (ECRE)*, February 2017, www.asylumineurope.org/reports/country/austria.

⁴⁶ International Organization for Migration (EMN National Contact Point Austria), *The Use of Detention and Alternatives to Detention in the Context of Immigration Policies in Austria*, 2014, ec.europa.eu/dgs/home-affairs/what-we-do/networks/european_migration_network/reports/docs/emn-studies/01a.austria_detention_study_en_version_final_2014.pdf.

⁴⁷ Asylkoordination Österreich, “Country report: Austria,” *Asylum Information Database (AIDA)*, *European Council on Refugees and Exiles (ECRE)*, February 2017, www.asylumineurope.org/reports/country/austria; Anny Knapp (Asylkoordination Österreich), *Email exchange with Izabella Majcher* (Global Detention Project), March 2017.

⁴⁸ Menschen.Leben, “Gelinderes Mittel Bad Vöslau,” *Website*, visited 3 April 2017, <http://www.menschen-leben.at/einrichtungen/gelinderes-mittel-wien-zinnergasse/>; Menschen.Leben, “Gelinderes Mittel Wien Zinnergasse,” *Website*, visited 3 April 2017, <http://www.menschen-leben.at/einrichtungen/gelinderes-mittel-wien-zinnergasse/>.

⁴⁹ Rechnungshof, *Vollzug der Schubhaft mit Schwerpunkt Anhaltezentrum Vordernberg*, 2016, http://www.rechnungshof.gv.at/fileadmin/downloads/_jahre/2016/berichte/teilberichte/bund/Bund_2016_22/Bund_2016_22_2.pdf.

⁵⁰ Human Rights Committee, *Concluding observations on the fifth periodic report of Austria*, CCPR/C/AUT/CO/5, 3 December 2015, <http://www.ohchr.org/EN/Countries/ENACARRegion/Pages/ATIndex.aspx>.

few years earlier the UN Committee against Torture urged Austria to consider alternatives to detention.⁵¹

Criminalisation. Section 15 of the Aliens Police Act provides penal sanctions. According to article 120, entering Austria without authorization is an administrative offense that can be punishable with a fine up to 1,000 euros or imprisonment for up to two weeks. If it is a repeated offense, the fine rises to up to 5,000 euros and imprisonment up to three weeks. An unlawful stay in Austria is also an administrative offence, punishable with a fine up to 2,500 euros, or where irrecoverable, with imprisonment up to two weeks. Where a foreigner was already once punished for unlawful stay, the fine would amount up to 7,500 euros, or a prison sentence of maximum of four weeks.⁵²

Privatisation. Several private contractors have been involved in migration-related detention and accommodation in Austria. These include G4S, Menschen.Leben, ORS Service, and European Homecare.

At the detention centre in Vordernberg, which opened in January 2014, several tasks have been outsourced to G4S, including security, psychological care, leisure activities, and food provision. Involvement of the private security firm has spurred many critics. Responding to a parliamentary query in 2013, the Interior Ministry explained that G4S agents, called administrative assistants, are only intended to assist police officers who keep all the sovereign functions.⁵³

The association Menschen.Leben is involved in managing centres in Vienna Zinnergasse and Bad Vöslau, which accommodate migrants benefiting from non-custodial alternatives to detention. The association's team is in charge of admission to the facility, daily care, advice, food distribution, crisis intervention, interpretation, and conflict prevention⁵⁴

Until 2011, the German firm European Homecare managed four Austrian reception centres, where asylum seekers are accommodated during the asylum procedures (in

⁵¹ Committee against Torture, *Concluding observations of the Committee against Torture: Austria*, CAT/C/AUT/CO/4-5, 20 May 2010,

<http://www.ohchr.org/EN/Countries/ENACARRegion/Pages/ATIndex.aspx>.

⁵² European Union Agency for Fundamental Rights (FRA), *Criminalisation of migrants in an irregular situation and of persons engaging with them*, 2014,

<http://fra.europa.eu/en/publication/2014/criminalisation-migrants-irregular-situation-and-persons-engaging-them>.

⁵³ Tiroler Tageszeitung, "Anhaltezentrum Vordernberg: Von der Kuschel- bis zur Gummizelle," *Tiroler Tageszeitung Online*, 18 December 2013, www.tt.com/panorama/7641441-91/anhaltzentrum-vordernberg-von-der-kuschel-bis-zur-gummizelle.csp; Orf, "Vordernberg: Einblick in genaue Aufgabenteilung," *Orf*, 30 December 2013, steiermark.orf.at/news/stories/2622985/.

⁵⁴ Asylkoordination Österreich, "Country report: Austria," *Asylum Information Database (AIDA)*, *European Council on Refugees and Exiles (ECRE)*, February 2017,

www.asylumineurope.org/reports/country/austria; Menschen.Leben, "Gelinderes Mittel Bad Vöslau," Website, visited 3 April 2017, <http://www.menschen-leben.at/einrichtungen/gelinderes-mittel-wien-zinnergasse/>; Menschen.Leben, "Gelinderes Mittel Wien Zinnergasse," Website, visited 3 April 2017, <http://www.menschen-leben.at/einrichtungen/gelinderes-mittel-wien-zinnergasse/>.

Traiskirchen, Thalham, Bad Kreuzen, and Reichenau). European Homecare terminated the contract with the Interior Ministry because diminishing numbers of asylum seekers in the country made the business no longer profitable. In January 2012, the Swiss firm ORS took over management of the reception centres.⁵⁵ In 2015, ORS became a target of criticism because of the conditions of accommodation in the Traiskirchen centre.⁵⁶

Regulation of detention conditions. The Aliens Police Act stipulates that immigration detention is to be carried out in facilities of the Police Administrations of the Federal Provinces (*Landespolizeidirektionen*) (article 78(1)) and is to be regulated by the 1991 Administrative Offences Act (*Verwaltungsstrafgesetz*) (article 79(1)). If necessary for the purpose of deportation, detention may be carried out in detention areas located en route to the country's border (article 78(4)).

Detailed rules on conditions of detention are spelled out in the 1999 Ministry of Interior Ordinance on Detention Conditions. Accordingly, immigration detainees should be accommodated, if possible, separately from "administrative detainees" (*Verwaltungshäftlinge*) and criminal suspects (*Verwahrungshäftlinge*) (§4). Women and men, as well as minors and adults, should be accommodated separately. Children should be placed together with their families or guardians. Detainees should be placed in communal cells. They are to be placed in solitary confinement if they are violent against others, may spread diseases or their behaviour would seriously burden other detainees (§5).

Immigration detainees should be afforded an open regime. If this is not possible, other solutions should be sought, including opening the cells' doors and easier access to communal areas (§5a). Detainees should be allowed to wear their own clothes (§4).

Detainees are to be ensured medical care and they are free to seek medical assistance from a doctor of their choice at their expense (§10). Detainees should have access to warm water and a warm shower at least once per week. Toiletries should be provided to detainees lacking means to buy them by themselves. Detainees are required to keep their body and cells clean (§12). Sufficient food, including one warm dish per day, and drinking water is to be ensured to detainees. The quantity, quality, and taste of the food is to be checked daily by the commander and regularly by the physician (§13). Detainees are entitled to at least one-hour outdoor exercise (§17).

If it does not pose organizational burden or disturb daily schedule, detainees should be able to make phone calls at their own expense and without supervision. Personal mobile phones can be handed over for the duration of the requested phone call. Persons without sufficient means should have the possibility to call free of charge their

⁵⁵ Unzensuriert, "Schweizer Firma macht Millionengeschäft der Asylbetreuung," *Unzensuriert.at*, 19 March 2012, www.unzensuriert.at/content/007716-Schweizer-Firma-macht-Millionengesch-ft-der-Asylbetreuung; Die Presse, "Asyl: Fekter sucht neue Traiskirchen-Betreiber," *Die Presse*, 6 July 2010, diepresse.com/home/politik/innenpolitik/579243/Asyl_Fekter-sucht-neue-TraiskirchenBetreiber.

⁵⁶ Christian Zeier, "Asylunterkünfte als Geschäft," *Zeit*, 7 September 2015, <http://www.zeit.de/2015/36/asylunterkunft-traiskirchen-schweizer-firma-ors/komplettansicht>.

relatives, legal counsels, authorities, diplomatic representations (§19). Detainees are entitled to one half-an-hour visit per week (§21).

Detainees, who intentionally breach their duties under the Ordinance on Detention Conditions or try to escape, commit an administrative offence. The director of the facility should investigate the facts and may impose reprimand; freeze detainee's entitlements in relation to social activities, shopping possibilities and telephone calls; or order a solitary confinement up to three days (§24).

Supervisory authorities are authorized to enforce their orders by direct force, if it is necessary for the physical security of the people or security and order in the facility (§26).

Cost of detention. According to the Ministry of Interior, the total cost of the operation of the Vordernberg centre, the PAZ Salzburg, the PAZ Vienna Hernalser Gürtel, and the PAZ Vienna Rossauer Lände was over 32 million euros in 2015 and over 18.5 million euros in the first half of 2016. Of the total costs in 2015, around 6.4 million euros was spent on the Vordernberg centre, 2.5 million on the PAZ Salzburg and 23 million jointly on the two PAZ located in Vienna. Of these total costs, personnel costs amounted to around 3 million euros in the Vordernberg centre, 2 million in the PAZ Salzburg, and 18 million jointly in the two PAZ located in Vienna.⁵⁷

DETENTION INFRASTRUCTURE

As of March 2017, Austria employed five facilities for long-term immigration detention purposes. Two of these are dedicated immigration detention facilities, the **Vordernberg detention centre** and the **family detention centre Zinnergasse**. The remaining three were Police Detention Centres (PAZ), which also confine other kinds of detainees. These PAZ were located in **Salzburg, Vienna Hernalser Gürtel, and Vienna Rossauer Lände**.⁵⁸

In addition, the country confined non-citizens at the **Vienna Airport transit zone** for up to 40 days and in six facilities (PAZ in **Bludenz, Eisenstadt, Graz, Innsbruck, Klagenfurt, Linz**) for up to seven days.⁵⁹

In 2016, the UN Human Rights Committee urged Austria to ensure that immigration detainees and held in facilities specifically designed for that purpose.⁶⁰ Likewise, a few

⁵⁷ Federal Ministry of Interior, *Response to a Parliamentary Request*, 9803/AB, 15 November 2016.

⁵⁸ Asylkoordination Österreich, "Country report: Austria," *Asylum Information Database (AIDA)*, *European Council on Refugees and Exiles (ECRE)*, February 2017, www.asylumineurope.org/reports/country/austria; Anny Knapp (Asylkoordination Österreich), *Email exchange with Izabella Majcher* (Global Detention Project), March 2017.

⁵⁹ Asylkoordination Österreich, "Country report: Austria," *Asylum Information Database (AIDA)*, *European Council on Refugees and Exiles (ECRE)*, February 2017, www.asylumineurope.org/reports/country/austria; Anny Knapp (Asylkoordination Österreich), *Email exchange with Izabella Majcher* (Global Detention Project), March 2017.

years earlier, the UN Committee against Torture recommended that Austria end the practice of detaining asylum seekers in police holding centres.⁶¹

Vordernberg Immigration Detention Centre. In January 2014, Austria opened its first long-term dedicated immigration detention facility, which is located in Vordernberg (Styria region) (previously there was already in operation dedicated facility at Zinnergasse, which confines solely families and children). Reportedly, the government was persuaded to build a dedicated facility in part to comply with CPT recommendations dating back to the mid-90s, which had been critical of the country's use of criminal facilities to detain migrants.⁶² With the capacity of 193,⁶³ Vordernberg is generally used to confine people who in principle agree to leave Austria. Detainees who protest their deportation can be transferred to a PAZ.⁶⁴

During its 2014 visit, the CPT found that material conditions and activities offered to detainees were of the high standard. The centre had eight units, including one for women, one for juveniles, and one for families, each of which comprised several well-equipped rooms, a large dining area with sofas, kitchenette and a balcony. The family unit had an apartment-like design with access to a large terrace. In addition, the facility featured a few activity rooms for table tennis, table football, gymnastics, TV, a library with seven computers, and a multi-confessional prayer room. During the day, detainees could move within their living unit and the rooms are locked only at night. The centre employed several caretakers who organized a comprehensive daily activity programme, including sport activities, language classes, computer training, or handicrafts.⁶⁵

The CPT noted that the health-care services were adequate. The medical staff comprised four general practitioners, one of whom was always present during each working day, as well as a psychiatrist, who was on duty three days per week. In addition, a qualified nurse was present around the clock and a psychologist during the days. The centre was visited daily by a police doctor and employed two police officers working as medical personnel but their tasks and roles have been separated from those

⁶⁰ Human Rights Committee, *Concluding observations on the fifth periodic report of Austria*, CCPR/C/AUT/CO/5, 3 December 2015,

<http://www.ohchr.org/EN/Countries/ENACARRegion/Pages/ATIndex.aspx>.

⁶¹ Committee against Torture, *Concluding observations of the Committee against Torture: Austria*, CAT/C/AUT/CO/4-5, 20 May 2010,

<http://www.ohchr.org/EN/Countries/ENACARRegion/Pages/ATIndex.aspx>.

⁶² Herbert Langthaler (Asylkoordination Österreich), *Phone conversation with Michael Flynn* (Global Detention Project), 30 August 2011. See more in detail Global Detention Project Austria's 2014 profile <https://www.globaldetentionproject.org/immigration-detention-in-austria>.

⁶³ Rechnungshof, *Vollzug der Schubhaft mit Schwerpunkt Anhaltezentrum Vordernberg*, 2016, http://www.rechnungshof.gv.at/fileadmin/downloads/_jahre/2016/berichte/teilberichte/bund/Bund_2016_22/Bund_2016_22_2.pdf.

⁶⁴ Tiroler Tageszeitung, "Anhaltezentrum Vordernberg: Von der Kuschel- bis zur Gummizelle," *Tiroler Tageszeitung Online*, 18 December 2013, www.tt.com/panorama/7641441-91/anhaltezentrum-vordernberg-von-der-kuschel-bis-zur-gummizelle.csp.

⁶⁵ European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), *Report to the Austrian Government on the visit to Austria carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 22 September to 1 October 2014*, CPT/Inf (2015) 34, 6 November 2015, <http://www.coe.int/en/web/cpt/austria>.

of other doctors. However, the CPT noted several shortcomings in relation to the health care and urged the authorities to ensure that all newly-admitted detainees be systematically tested for transmissible diseases and that medical records be more comprehensive. In addition, medical confidentiality was inadequate and Austria was urged to ensure that medical examinations are conducted out of hearing and (unless the doctor requests otherwise) out of sight of police officers and detainee's medical files are not accessible to non-medical staff.⁶⁶

The CPT applauded the existing arrangements for contact with the outside world. Detainees could receive visits twice a week, without any specific time limit, in a pleasantly decorated room with tables and chairs. Migrants were offered the possibility to call their family once a week for ten minutes free of charge and that they were allowed to use their mobile phone in a designated room.⁶⁷

The Vordernberg centre appears to rarely be at capacity. According to the Interior Ministry, the average occupancy rate was 22 percent in 2015 and 18 percent in the first half of 2016.⁶⁸ Since March 2015, most migrants confined in Vordernberg were placed in short-term detention, based on arrest orders (see also "Grounds for detention" and "Trends and statistics.") Indeed, according to the Court of Auditors, in 2015, the centre confined in average around 75 persons (both immigration detainees and non-citizens in short-term detention) per day, resulting in an average occupancy rate of 39 percent.⁶⁹

According to the Court of Auditors, the location of the centre has proved problematic. Around 80 percent of deportations are carried out via border crossing points close to the PAZ in **Vienna**. This makes the location of Vordernberg in the Styria region less practical. Between January 2014 – August 2015, the PAZ Vienna Hernalser Gürtel detained 2,500 migrants, while the Vordernberg centre only some 400. In addition, the Court of Auditors noted that compared to other PAZ, costs of detention in the Vordernberg facility were high. While in 2015 the daily costs per person in the PAZ **Vienna** Rossauer Lände was 207 euros, in the PAZ Hernalser Gürtel 244 euros, in the PAZ Salzburg 405 euros, the daily cost of detention in **Vordernberg** were significantly higher, reaching 834 euros. The high costs were due to fixed costs and low occupancy rate. With the facility detaining at its maximum capacity, the average daily costs per person would be 165 euros.⁷⁰

⁶⁶ European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), *Report to the Austrian Government on the visit to Austria carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 22 September to 1 October 2014*, CPT/Inf (2015) 34, 6 November 2015, <http://www.coe.int/en/web/cpt/austria>.

⁶⁷ European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), *Report to the Austrian Government on the visit to Austria carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 22 September to 1 October 2014*, CPT/Inf (2015) 34, 6 November 2015, <http://www.coe.int/en/web/cpt/austria>.

⁶⁸ Federal Ministry of Interior, *Response to a Parliamentary Request*, 9803/AB, 15 November 2016.

⁶⁹ Rechnungshof, *Vollzug der Schubhaft mit Schwerpunkt Anhaltezentrum Vordernberg*, 2016, http://www.rechnungshof.gv.at/fileadmin/downloads/jahre/2016/berichte/teilberichte/bund/Bund_2016_22/Bund_2016_22_2.pdf.

⁷⁰ Rechnungshof, *Vollzug der Schubhaft mit Schwerpunkt Anhaltezentrum Vordernberg*, 2016, http://www.rechnungshof.gv.at/fileadmin/downloads/jahre/2016/berichte/teilberichte/bund/Bund_2016_22/Bund_2016_22_2.pdf.

While the overall responsibility for operations at Vordernberg is with the Provincial Police Headquarters of the Styria region, many services related to the running of the centre have been outsourced to the private company G4S.⁷¹ In a parliamentary inquiry, the government explained that the legal enforcement tasks and organizational matters relating to the facility would remain in the hands of the state, while the private contractor would deal with daily management, security, basic health care services, psychological and social consulting, food distribution, and escort during the transfers. Some observers have argued that it is not clear to whom detainees should complain in cases of grievances against private security personnel.⁷²

The municipality of Vordernberg, which hired G4S, receives more than 460,000 euros per month from the Interior Ministry for the services provided.⁷³ The municipality has signed a 15-year contract with G4S with a total value of 64 million Euros.⁷⁴ As of 2013, facility staff included 55 police officers and 68 private security guards from the G4S.⁷⁵

During the 2014 visit, the CPT was informed that private staff performed their duties under the supervision of police office officers and were not allowed to use physical force vis-à-vis inmates (except in cases of self-defense). The delegation was told that all private staff had followed a training programme of more than 300 hours (including in crisis intervention, de-escalation, first aid, and human rights). All security staff were carrying pepper spray canisters. The Committee urged authorities to ensure that pepper spray does not form part of the standard equipment of private staff and that it is never used in confined spaces.⁷⁶

[2/Bund_2016_22_2.pdf](#). Asylkoordination Österreich, "Country report: Austria," *Asylum Information Database (AIDA)*, European Council on Refugees and Exiles (ECRE), February 2017, www.asylumineurope.org/reports/country/austria.

⁷¹ Asylkoordination Österreich, "Country report: Austria," *Asylum Information Database (AIDA)*, European Council on Refugees and Exiles (ECRE), February 2017, www.asylumineurope.org/reports/country/austria; European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), *Report to the Austrian Government on the visit to Austria carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 22 September to 1 October 2014*, CPT/Inf (2015) 34, 6 November 2015, <http://www.coe.int/en/web/cpt/austria>; Corporate Watch, "G4S," *Website*, Last updated: 2016, www.corporatewatch.org/company-profiles/g4s.

⁷² Irene Brickner, "Securitys auf Rundgang in der neuen Schubhaft," *derStandard*, 2 April 2014, derstandard.at/1395363920947/Securitys-auf-Rundgang-in-der-neuen-Schubhaft.

⁷³ Government of Austria, *Response of the Government of Austria to the Report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) on its visit to Austria from 15 to 25 February 2009*, March 2010, www.cpt.coe.int/documents/aut/2010-06-inf-eng.pdf; Orf, "Vordernberg: Einblick in genaue Aufgabenteilung," *Orf*, 30 December 2013, steiermark.orf.at/news/stories/2622985/.

⁷⁴ Wolfgang Zaunbauer, "Die (fast) privatisierte Schubhaft," *Wiener Zeitung*, 17 October 2013, www.wienerzeitung.at/nachrichten/oesterreich/politik/581389_Die-fast-privatisierte-Schubhaft.html.

⁷⁵ Tiroler Tageszeitung, "Anhaltezentrum Vordernberg: Von der Kuschel- bis zur Gummizelle," *Tiroler Tageszeitung Online*, 18 December 2013, www.tt.com/panorama/7641441-91/anhaltezentrum-vordernberg-von-der-kuschel--bis-zur-gummizelle.csp.

⁷⁶ European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), *Report to the Austrian Government on the visit to Austria carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 22*

Police Detention Centres (PAZ). The Aliens Police Act stipulates that immigration detention can be carried out in facilities of the Police Administrations of the Federal Provinces (*Landespolizeidirektionen*) (article 78(1)). These facilities are police detention centres (*Polizeianhaltezentrum* or PAZ).⁷⁷ PAZ are under the authority of the Interior Ministry and operated by police.⁷⁸

PAZ also confine other, non-immigration-related “administrative detainees” (*Verwaltungshäftlinge*) for up to six weeks. Administrative detainees include people detained for administrative law infractions, including traffic offences and offences under the Security Police Act.⁷⁹ In addition, PAZ confine criminal suspects (*Verwahrungshäftlinge*) for up to 48 hours before they are transferred to prison.⁸⁰ Since PAZ are authorized to detain people in police custody for committing a variety of infractions, they thus appear to function as police stations.⁸¹

Reportedly, authorities comply with the requirement spelled out in the 1999 Ministry of Interior Ordinance on Detention Conditions that immigration detainees should be accommodated, if possible, separately from “administrative detainees” (*Verwaltungshäftlinge*) and criminal suspects (*Verwahrungshäftlinge*) (§4).⁸² The authorities in the PAZ Vienna Hernalser Gürtel informed the GDP in April 2017 that the centre confined up to five “administrative detainees” (*Verwaltungshäftlinge*), who were

September to 1 October 2014, CPT/Inf (2015) 34, 6 November 2015, <http://www.coe.int/en/web/cpt/austria>.

⁷⁷ Rechnungshof, *Vollzug der Schubhaft mit Schwerpunkt Anhaltezentrum Vordernberg*, 2016, http://www.rechnungshof.gv.at/fileadmin/downloads/_jahre/2016/berichte/teilberichte/bund/Bund_2016_2/Bund_2016_22_2.pdf.

⁷⁸ International Organization for Migration (EMN National Contact Point Austria), *The Use of Detention and Alternatives to Detention in the Context of Immigration Policies in Austria*, 2014, ec.europa.eu/dgs/home-affairs/what-we-do/networks/european_migration_network/reports/docs/emn-studies/01a.austria_detention_study_en_version_final_2014.pdf.

⁷⁹ Albert Grasel (Ministry of Interior), *Email correspondence with Izabella Majcher* (Global Detention Project), November 2014; Emanuel Matti (Diakonie Flüchtlingsdienst), *Email correspondence with Izabella Majcher* (Global Detention Project), November 2014; Karin Keil (Caritas Austria), *Email correspondence with Michael Flynn* (Global Detention Project), May 2011.

⁸⁰ Albert Grasel (Ministry of Interior), *Email correspondence with Izabella Majcher* (Global Detention Project), November 2014; Emanuel Matti (Diakonie Flüchtlingsdienst), *Email correspondence with Izabella Majcher* (Global Detention Project), November 2014; European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), *Report to the Austrian Government on the visit to Austria carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 15 to 25 February 2009*, CPT/Inf (2010) 5, 11 March 2010, <http://www.coe.int/en/web/cpt/austria>; European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), *Report to the Austrian Government on the visit to Austria carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 14 to 23 April 2004*, CPT/Inf (2005) 13, 21 July 2015, <http://www.coe.int/en/web/cpt/austria>.

⁸¹ Emanuel Matti (Diakonie Flüchtlingsdienst), *Email correspondence with Izabella Majcher* (Global Detention Project), November 2014.

⁸² Claudia Schmidt (Caritas Österreich), *Email exchange with Izabella Majcher* (Global Detention Project), April 2017.

kept separate from immigration detainees.⁸³ The authorities of the remaining two long-term PAZ did not respond to the GDP's request for information.

The PAZ are frequently used for holding people in a short-term detention (up to 72h) prior to deportation, based on an arrest order (see above under "Grounds for detention" and "Trends and statistics").

Until a few years ago, authorities used approximately 15 PAZ for confining migrants.⁸⁴ Since the opening of the Vordernberg centre in January 2014, the number of PAZ has gradually reduced. As of March 2017, only three PAZ were used to detain migrants for periods exceeding one week, in Salzburg, Vienna Hernalser Gürtel and Vienna Rossauer Lände.⁸⁵ As of 2014, immigration detainees-specific capacities of these centres were 253 in Hernalser Gürtel, 118 in Salzburg, and 108 in Rossauer Lände.⁸⁶ The GDP was not able to obtain more recent information about these capacities. Of these PAZ, only the PAZ Hernalser Gürtel responded to requests for information. Yet, the PAZ was not able to give this specific capacity but merely a total capacity for whole the facility.⁸⁷

In 2015, the average occupancy rate in the PAZ Salzburg was 33 percent, in the PAZ Vienna Hernalser Gürtel 23 percent, and in PAZ Vienna Rossauer Lände 46 percent. To compare, in the first half of 2016, the average occupancy rate in the PAZ Salzburg 36 percent, PAZ Vienna Hernalser Gürtel 26 percent, and in PAZ Vienna Rossauer Lände 31 percent.⁸⁸

Most PAZ are now only used to hold migrants detainees for periods of less than seven days. The GDP classifies these medium-term. As of 2014, ten PAZ were used for this purpose with the combined capacity of 254. These PAZ were located in Bludenz, Eisenstadt, Graz, Innsbruck, Klagenfurt, Linz, St. Pölten, Steyr, Villach and Wels.⁸⁹ As of March 2017, the number of PAZ confining migrants up to seven days had been reduced to six. They were located in Bludenz, Eisenstadt, Graz, Innsbruck, Klagenfurt,

⁸³ Josef Zinsberger (Landespolizeidirektion Wien, Abteilung Fremdenpolizei und Anhaltevollzug), *Email exchange with Izabella Majcher* (Global Detention Project), April 2017.

⁸⁴ Eva Caroline Pfleger (Interior Ministry), *Letter to Access Info Europe and the Global Detention Project responding to freedom of information request*, 30 September 2013.

⁸⁵ Asylkoordination Österreich, "Country report: Austria," *Asylum Information Database (AIDA), European Council on Refugees and Exiles (ECRE)*, February 2017, www.asylumineurope.org/reports/country/austria; Anny Knapp (Asylkoordination Österreich), *Email exchange with Izabella Majcher* (Global Detention Project), March 2017.

⁸⁶ International Organization for Migration (EMN National Contact Point Austria), *The Use of Detention and Alternatives to Detention in the Context of Immigration Policies in Austria*, 2014, ec.europa.eu/dgs/home-affairs/what-we-do/networks/european_migration_network/reports/docs/emn-studies/01a.austria_detention_study_en_version_final_2014.pdf.

⁸⁷ Josef Zinsberger (Landespolizeidirektion Wien, Abteilung Fremdenpolizei und Anhaltevollzug), *Email exchange with Izabella Majcher* (Global Detention Project), April 2017.

⁸⁸ Federal Ministry of Interior, *Response to a Parliamentary Request*, 9803/AB, 15 November 2016.

⁸⁹ International Organization for Migration (EMN National Contact Point Austria), *The Use of Detention and Alternatives to Detention in the Context of Immigration Policies in Austria*, 2014, ec.europa.eu/dgs/home-affairs/what-we-do/networks/european_migration_network/reports/docs/emn-studies/01a.austria_detention_study_en_version_final_2014.pdf.

and Linz.⁹⁰ As of 2014, immigration detention-specific capacities of these PAZ were: 37 in Bludenz, 26 in Eisenstadt, 82 in Graz, 69 in Innsbruck, 67 in Klagenfurt, and 45 in Linz.⁹¹

In its 2015 report, the Ombudsman, operating as the National Preventive Mechanism, noted that persons placed in PAZ have very few activities. Frequently reading material and board games are not available. In most of PAZ, there is a (poorly equipped) library, TV set in the social room, and bleak walking yards. The NPM recommended improvement of the free time activities and parts of the facilities where detainees spend their out-of cell time.⁹²

Following its 2012 visit to Austria, the [Council of Europe's Commissioner for Human Rights](#) noted that many persons awaiting their expulsion were still held, in some cases for months, in police detention centres which had been regularly criticized for their material conditions. The Commissioner expressed concern at limited access to legal counsel and very limited possibilities for occupational activities.⁹³

The CPT has visited PAZ on several occasions. In 2014, the CPT visited the PAZ Hernalser Gürtel, which tends to confine most of the migrants. In 2015, 37 non-citizens were detained in average per day in the PAZ Hernalser Gürtel, 3 in the PAZ Salzburg, and 2 in the PAZ Rossauer Gürtel.⁹⁴ The Committee found that material conditions in the PAZ Hernalser Gürtel were generally acceptable and all foreign nationals were placed in multi-occupancy cells, with four, six, or eight beds. However, some of the sanitary facilities were in a poor state of repair and in appalling conditions of hygiene. Also, the outdoor exercise yards were not equipped with any shelter against rain and the CPT called on authorities to remedy these shortcomings.⁹⁵

However, the CPT expressed misgiving at the regime applicable to immigration detainees in the PAZ Hernalser Gürtel. Only a small fraction of immigration detainees were placed in open regime, under which they could move freely within their detention

⁹⁰ Anny Knapp (Asylkoordination Österreich), *Email exchange with Izabella Majcher* (Global Detention Project), March 2017.

⁹¹ International Organization for Migration (EMN National Contact Point Austria), *The Use of Detention and Alternatives to Detention in the Context of Immigration Policies in Austria*, 2014, ec.europa.eu/dgs/home-affairs/what-we-do/networks/european_migration_network/reports/docs/emn-studies/01a.austria_detention_study_en_version_final_2014.pdf.

⁹² *Volksanwaltschaft, Bericht der Volksanwaltschaft an den Bundesrat*, 2015, https://www.parlament.gv.at/PAKT/VHG/XXV/III/III_00235/index.shtml.

⁹³ Commissioner for Human Rights of the Council of Europe, *Report by Nils Muižnieks Commissioner for Human Rights of the Council of Europe Following his visit to Austria from 4 to 6 June 2012*, CommDH(2012)28, September 2012, www.asylumineurope.org/sites/default/files/resources/commdh201228_e.pdf.

⁹⁴ Rechnungshof, *Vollzug der Schubhaft mit Schwerpunkt Anhaltezentrum Vordernberg*, 2016, http://www.rechnungshof.gv.at/fileadmin/downloads/_jahre/2016/berichte/teilberichte/bund/Bund_2016_2_2/Bund_2016_22_2.pdf.

⁹⁵ European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), *Report to the Austrian Government on the visit to Austria carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 22 September to 1 October 2014*, CPT/Inf (2015) 34, 6 November 2015, <http://www.coe.int/en/web/cpt/austria>.

unit during the day. The majority of detainees were held under the closed regime in which regular out-of-cell activities were generally limited to one hour of outdoor exercise per day. In the remaining time, they were locked up in their cells. The CPT reiterated that the placement of non-citizens in the open regime should be the rule and the closed regime the exception and urged the authorities to review the detention regime in the PAZ Hernalser Gürtel accordingly. In addition, those placed in closed regime should be offered a wider range of out-of-cell activities.⁹⁶

The health-care staff in the PAZ Hernalser Gürtel included a police doctor present half of the day in the working days and on call during the weekend and several uniformed police officers with basic first-aid training who acted as medical personnel and were present around the clock. In addition, a psychiatrist from the association Dialog was present in the morning in working days. The CPT expressed concern that contrary to the situation found in 2009, the centre no longer employed a (part-time) nurse. The CPT urged authorities to cease the practice of delegating nursing functions to police officers. Instead, regular visits by a qualified nurse should be arranged, the length of time depending on the needs. In addition, the CPT noted several shortcomings and urged the authorities to ensure that all newly-admitted detainees are systematically tested for transmissible diseases and improve medical confidentiality.⁹⁷

Detainees were allowed to have two half-an-hour visits weekly and could make telephone calls every day, including one call free of charge per week. Detainees were allowed to use their mobile phones only in exceptional case and the CPT recommended that authorities ensure the practice established in the Vordernberg facility.⁹⁸

During its 2009 visit, the CPT noted that the material conditions in the Innsbruck, Klagenfurt, and Vienna Hernalser Gürtel PAZ were generally acceptable. Yet, it found that facilities at the Vienna Hernalser Gürtel centre required significant improvements.⁹⁹

⁹⁶ European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), *Report to the Austrian Government on the visit to Austria carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 22 September to 1 October 2014*, CPT/Inf (2015) 34, 6 November 2015, <http://www.coe.int/en/web/cpt/austria>.

⁹⁷ European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), *Report to the Austrian Government on the visit to Austria carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 22 September to 1 October 2014*, CPT/Inf (2015) 34, 6 November 2015, <http://www.coe.int/en/web/cpt/austria>.

⁹⁸ European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), *Report to the Austrian Government on the visit to Austria carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 22 September to 1 October 2014*, CPT/Inf (2015) 34, 6 November 2015, <http://www.coe.int/en/web/cpt/austria>.

⁹⁹ European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), *Report to the Austrian Government on the visit to Austria carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 15 to 25 February 2009*, CPT/Inf (2010) 5, 11 March 2010, <http://www.coe.int/en/web/cpt/austria>.

The CPT also concluded that detention regimes varied between PAZ. For instance, it found that in Innsbruck and Klagenfurt the majority of detainees benefited from an open-door-regime and could move freely within the detention area during most of the day. Immigration detainees also had unlimited access to a communal recreation room, equipped with TV and table tennis. In contrast, at Vienna Hernaiseil Gürtel PAZ, detainees were looked for all but one-hour each day.¹⁰⁰

The CPT also found it problematic that at Vienna Hernaiseil Gürtel a nurse was present for only two hours each day, while in other PAZ nursing functions were delegated to police officers with basic first aid training. The CPT reported that there was a lack of medical confidentiality because police officers were usually present during medical consultations and examinations, and medical records were often accessible to police officers.¹⁰¹

Vienna Family Detention Facility. Families and unaccompanied children are detained at the Zinnergasse family detention facility. Established in 2010, the facility has 12 apartments, where 12 families or 50 people can be detained.¹⁰² In 2015, the average occupancy rate was 23 percent, and in the first half of 2016, 33 percent.¹⁰³ The facility offers an open regime - during the day, detainees can move around freely on their floor.¹⁰⁴

The centre has also premises that are used as non-secure housing for people granted alternatives to detention (see above under the “Non-custodial measures”). Alarm-protected doors serve to separate the different sections of the centre. Since the

¹⁰⁰ European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), *Report to the Austrian Government on the visit to Austria carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 15 to 25 February 2009*, CPT/Inf (2010) 5, 11 March 2010, <http://www.coe.int/en/web/cpt/austria>.

¹⁰¹ European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), *Report to the Austrian Government on the visit to Austria carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 15 to 25 February 2009*, CPT/Inf (2010) 5, 11 March 2010, <http://www.coe.int/en/web/cpt/austria>.

¹⁰² International Organization for Migration (EMN National Contact Point Austria), *The Use of Detention and Alternatives to Detention in the Context of Immigration Policies in Austria*, 2014, ec.europa.eu/dgs/home-affairs/what-we-do/networks/european_migration_network/reports/docs/emn-studies/01a.austria_detention_study_en_version_final_2014.pdf; Sonja Jell, “Alternative zur Schubhaft: In einem Haus in der Zinnergasse in Wien-Simmering sind Familien mit Kindern sowie unbegleitete mündig Minderjährige untergebracht, die in ihr Herkunftsland zurück müssen,” *Öffentliche Sicherheit*, 2012, www.bmi.gv.at/cms/BMI_OeffentlicheSicherheit/2012/05_06/files/Zinnergasse.pdf; Asylkoordination Österreich, “Country report: Austria,” *Asylum Information Database (AIDA)*, *European Council on Refugees and Exiles (ECRE)*, February 2017, www.asylumineurope.org/reports/country/austria.

¹⁰³ Federal Ministry of Interior, *Response to a Parliamentary Request*, 9803/AB, 15 November 2016.

¹⁰⁴ International Organization for Migration (EMN National Contact Point Austria), *The Use of Detention and Alternatives to Detention in the Context of Immigration Policies in Austria*, 2014, ec.europa.eu/dgs/home-affairs/what-we-do/networks/european_migration_network/reports/docs/emn-studies/01a.austria_detention_study_en_version_final_2014.pdf; Sonja Jell, “Alternative zur Schubhaft: In einem Haus in der Zinnergasse in Wien-Simmering sind Familien mit Kindern sowie unbegleitete mündig Minderjährige untergebracht, die in ihr Herkunftsland zurück müssen,” *Öffentliche Sicherheit*, 2012, www.bmi.gv.at/cms/BMI_OeffentlicheSicherheit/2012/05_06/files/Zinnergasse.pdf; Asylkoordination Österreich, “Country report: Austria,” *Asylum Information Database (AIDA)*, *European Council on Refugees and Exiles (ECRE)*, February 2017, www.asylumineurope.org/reports/country/austria.

authority over persons in both detention and alternatives to detention lies with the Interior Ministry and both sections are run by the police, presumably both sections are operated as a single administrative unit. Thus, in the GDP security regime typology, the Zinnergasse centre is coded as a mixed regime, with both “secure” and “non-secure” sections. Additionally, because it has two distinct functions, the facility has a dual typology, “immigration detention centre” and “reception centre.”

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