



**COUNTRY REPORT**  
**IMMIGRATION DETENTION IN**  
**AUSTRIA: WHERE THE REFUGEE "CRISIS"**  
NEVER ENDS

*JANUARY 2020*



**GLOBALDETENTIONPROJECT**

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## THE GLOBAL DETENTION PROJECT MISSION

The Global Detention Project (GDP) is a non-profit organisation based in Geneva that promotes the human rights of people who have been detained for reasons related to their non-citizen status. Our mission is:

- To promote the human rights of detained migrants, refugees, and asylum seekers;
- To ensure transparency in the treatment of immigration detainees;
- To reinforce advocacy aimed at reforming detention systems;
- To nurture policy-relevant scholarship on the causes and consequences of migration control policies.

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**Front cover images:** (L-R) Floor plan of Vordernberg Immigration Detention Centre (© Franz & Sue); Austrian police stage a simulated response to border arrivals in an exercise at Spielfeld border crossing, June 2018.

This report is also available online at [www.globaldetentionproject.org](http://www.globaldetentionproject.org)

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## GLOSSARY

<b>AOB</b>	Austrian Ombudsman Board
<b>BFA</b>	Federal Office for Immigration and Asylum ( <i>Bundesamt für Fremdenwesen und Asyl</i> )
<b>CAT</b>	UN Committee against Torture
<b>CPT</b>	European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment
<b>HRC</b>	UN Human Rights Committee
<b>NPM</b>	National Preventive Mechanisms
<b>OHCHR</b>	Office of the UN High Commissioner for Human Rights
<b>PAZ</b>	Police Detention Centre



## KEY FINDINGS

- Between 2015 and 2018, the annual number of immigration detainees in Austria more than tripled, from 1,436 to 5,252.<sup>1</sup>
- During that same period, the number of new asylum applicants fell dramatically, from 88,160 to 13,710.<sup>2</sup>
- Officials explain the rise in detention numbers as a result of renewed emphasis on removals; however, the annual rates of return have only increased marginally (just 15 percent between 2016 and 2018)<sup>3</sup> even as detention has skyrocketed.
- Domestic and international observers have expressed concern over Austria's failure to adequately document immigration detention operations.
- The list of criteria for determining a risk of absconding, a key consideration for a detention decision, is long and non-exhaustive.
- Legislation permits the detention of unaccompanied children over the age of 14; children under the age of 14 may be detained as a measure of last resort if they are detained with a parent or legal guardian.
- The maximum length of detention is six months for adults and three months for children.
- Detainees are required to pay for their own detention (in Vordernberg Detention Centre, they are supposed to pay 70 EUR a day, while the daily costs at this facility exceed 800 EUR).
- Although they have long been criticised for having unsuitable conditions, police detention centres (or "PAZ") continue to be used for immigration detention purposes, in some cases for periods that exceed seven days.
- Austria employs private companies for the provision of various services to detainees, in particular at the Vordernberg centre, where the controversial multinational security company G4S has long operated.

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<sup>1</sup> European Council on Refugees and Exiles (ECRE), "Austria: Increasing Use of Detention According to Latest Statistics," June 2019, <http://www.asylumineurope.org/news/19-06-2019/austria-increasing-use-detention-according-latest-statistics>; Federal Interior Ministry, "Response to a Parliamentary Request, 1001/AB," 9 August 2018, [https://www.parlament.gv.at/PAKT/VHG/XXVI/AB/AB\\_01001/imfname\\_706803.pdf](https://www.parlament.gv.at/PAKT/VHG/XXVI/AB/AB_01001/imfname_706803.pdf)

<sup>2</sup> Eurostat, "Database," January 2020, <https://ec.europa.eu/eurostat/data/database>

<sup>3</sup> Eurostat, "Enforcement of Immigration Legislation," January 2020, <https://ec.europa.eu/eurostat/data/database>



## 1. INTRODUCTION

Austria represents a *prima facie* case of how the refugee “crisis” of 2015-2016 translated into a seemingly permanent crisis in both political discourse and popular perception across the European Union (EU). The sharp increases in asylum seeker arrivals in Austria and other EU countries that occurred during this period sparked divisive and bitter debates over their treatment. The resultant hostile political environment has had an important impact on policy objectives across the region, aided and abetted by the adoption of key EU migration-related laws and regulations.

In Austria, the “crisis” was—and continues to be—an important driving force behind the emergence of anti-migrant populist political forces, who have used their gains to advocate numerous controversial policies and political agendas. These developments have in turn spurred persistent increases in Austria’s detention and removal efforts despite the fact that the number of asylum applications has been plummeting for several years, returning to levels not seen in nearly a decade.

The Austrian government has also been an important promoter of restrictive policies at the EU level. When the country held the presidency of the Council of the EU in the second half of 2018, it prioritised immigration control and the protection of the EU’s external borders.<sup>4</sup> In September 2018, during a press conference concluding a summit of EU leaders in [Salzburg](#), the Austrian chancellor emphasised fighting irregular immigration by deepening cooperation with North African countries and strengthening Frontex capacities.<sup>5</sup>

Shortly after the onset of the “crisis” in 2015, Austria advanced a host of measures in response to the surge in asylum applications. It introduced temporary controls at its borders with [Hungary](#) and [Slovenia](#);<sup>6</sup> imposed additional security measures at its border with [Italy](#); and pushed the idea of building a border fence at the Brenner Pass, a key gateway for people seeking passage to Northern Europe.<sup>7</sup> Although asylum applications have decreased since 2016, and by early 2017 the main migratory route appeared to have shifted from Austria to [Switzerland](#),<sup>8</sup> 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 persons who leave

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<sup>4</sup> Austrian Presidency of the Council of the European Union, “Agenda Priorities,” <https://www.eu2018.at/>

<sup>5</sup> European Commission, “Salzburg Informal Summit: Press Conference,” 20 September 2018, [https://www.youtube.com/watch?v=2x\\_rDV7heh8](https://www.youtube.com/watch?v=2x_rDV7heh8)

<sup>6</sup> R. Akkoc, “Refugee Crisis: Europe’s Borders Unravelling as Austria and Slovakia Impose Frontier Controls,” *Telegraph*, 14 September 2015, <https://bit.ly/2th6frY>

<sup>7</sup> N. Nielsen, “Alpine Village Dragged into Brenner Refugee Dispute,” *EU Observer*, 19 May 2016, <https://euobserver.com/migration/133458>

<sup>8</sup> N. Nielsen, “Migrants Head to Switzerland Amid Austria Border Crackdown,” *EU Observer*, 16 February 2017, <https://euobserver.com/migration/136926>

voluntarily.<sup>9</sup> In addition, the Aliens Police Act was amended in 2017 to provide an obligation on asylum seekers to reside in designated federal provinces during the asylum procedure, introduced heavier fines and imprisonment for people failing to comply with return decisions, and increased the maximum length of detention for both adults (from four to six months) and children (from two to three months).<sup>10</sup>

Between 2015 and 2018, the annual number of immigration detainees in Austria more than tripled, from 1,436 to 5,252.<sup>11</sup> This upward trend in detention pending deportation followed a period during which the number of detainees had been decreasing. Between 2010 and 2014, for example, annual detention numbers decreased from approximately 6,200 to nearly 1,900.<sup>12</sup> According to Austria's Interior Ministry, this surge in detention is due to an increased emphasis on return and removal.<sup>13</sup> However, while the number of detainees increased by approximately 115 percent between 2016 and 2018, the number of returns increased by just 15 percent during this same period (from approximately 5,900 in 2016 to 6,800 in 2018).<sup>14</sup>

In October 2018, the [Office of the UN High Commissioner for Human Rights \(OHCHR\)](#) visited Austria to assess the human rights situation of migrants, with a focus on return-related measures. With respect to immigration detention, OHCHR urged Austria to use detention as a measure of last resort, for the shortest possible period, and only when it is necessary and proportionate; to prioritise non-custodial measures; and to conduct individualised vulnerability assessments when deciding on detention. OHCHR also recommended that the country amend its laws and practices to ensure that children, including accompanied children, are not placed in immigration detention and that authorities instead find alternatives to detention for the entire family.<sup>15</sup>

Efforts to push ever more aggressive immigration policies have continued apace. In 2019, the government announced plans to amend the Constitution to provide for "preventive security detention." This would greatly expand the government's detaining powers, allowing for detention without an initial court order of asylum seekers who are deemed potential threats to the public. However, such a constitutional amendment would require a two-thirds majority in Parliament, which presents a formidable obstacle to its adoption.<sup>16</sup>

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<sup>9</sup> B. Stur, "Austria Doubles Cash Handout For Migrants Going Home," 23 March 2017, <https://www.neweurope.eu/article/austria-doubles-cash-handout-migrants-going-home/>

<sup>10</sup> Asylkoordination Österreich, "Country report: Austria 2017 Update," Asylum Information Database (AIDA), European Council on Refugees and Exiles (ECRE), March 2018, <https://www.asylumineurope.org/reports/country/austria>

<sup>11</sup> European Council on Refugees and Exiles (ECRE), "Austria: Increasing Use of Detention According to Latest Statistics," June 2019, <http://www.asylumineurope.org/news/19-06-2019/austria-increasing-use-detention-according-latest-statistics>; Federal Interior Ministry, "Response to a Parliamentary Request, 1001/AB," 9 August 2018, [https://www.parlament.gv.at/PAKT/VHG/XXVII/AB/AB\\_01001/imfname\\_706803.pdf](https://www.parlament.gv.at/PAKT/VHG/XXVII/AB/AB_01001/imfname_706803.pdf)

<sup>12</sup> Rechnungshof, "Vollzug der Schubhaft mit Schwerpunkt Anhaltezentrum Vordernberg," 2016, <https://bit.ly/30rvyDY>

<sup>13</sup> S. Heilemann and R. Lukits, "The Effectiveness of Return in Austria: Challenges and Good Practices Linked to EU rules and standards," *EMN Study*, September 2017, <https://bit.ly/38y2LAu>

<sup>14</sup> Eurostat, "Enforcement of Immigration Legislation," January 2020, <https://ec.europa.eu/eurostat/data/database>

<sup>15</sup> Office of the United Nations High Commissioner for Human Rights (OHCHR), "Report of Mission to Austria Focusing on the Human Rights of Migrants, Particularly in the Context of Return," 15-18 October 2018, <https://www.ohchr.org/Documents/Issues/Migration/AustriaMigrationMissionReport.pdf>

<sup>16</sup> DW, "Austria Proposes Preventative Detention for Asylum-Seekers Deemed 'Dangerous'," *DW*, 25 February 2019, <https://bit.ly/36jPWle>





## 2. LAWS, POLICIES, PRACTICES

**2.1 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 that governs 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 Procedures Act of the Federal Office for Immigration and Asylum (*Bundesamt für Fremdenwesen und Asyl, BFA*) (*BFA-Verfahrensgesetz*) sets forth various procedural rules and the 1999 Interior Ministry 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 Interior Ministry 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.

**2.2 Grounds for detention.** The BFA Procedures Act provides several grounds for issuing a short-term arrest order. These include: breaching the conditions imposed on a person during a voluntary departure procedure; failing to leave the country as per the terms of a return decision; or withdrawing from an asylum procedure. Detention based on this type of arrest (*Verwaltungsverwahrungshaft*) order may not exceed 72 hours.<sup>17</sup>

Under Article 76(2) of the Aliens Police Act, various grounds for the detention of non-citizens are laid out. These include: if it is necessary to carry out a procedure in order to terminate the person's residence or when deportation is necessary and there is a risk of absconding; or, pursuant to the [EU Dublin Regulation](#), to secure a transfer to a country responsible for examining the person's asylum application but there is a risk of absconding.

Article 76(3) details the circumstances required to conclude that the non-citizen will evade a removal procedure or render deportation "considerably" more difficult. The circumstances include: 1) the person avoids or hampers a deportation order; 1a) the person has failed to obtain a travel document for their removal; 2) the person has re-entered the territory of the Federal Republic contrary to a valid entry ban, a valid residence ban, or in the course of a valid order of expulsion; 3) an expulsion order has already been issued or the person has withdrawn from either an asylum procedure or a procedure to issue a measure terminating legal stay; 4) *de facto* protection against deportation has been lifted due to a subsequent

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<sup>17</sup> Rechnungshof, "Vollzug der Schubhaft mit Schwerpunkt Anhaltezentrum Vordernberg," 2016, <https://bit.ly/36X6qHI>

asylum application; 5) the person has already been issued a measure ending their legal stay, in particular when they lodge their asylum application from pre-removal detention; 6) another country is responsible for the asylum procedure in accordance with the Dublin Regulation, in particular where (a) the person has lodged multiple applications or made false statements, (b) tried to move to another country, or (c) it is probable that they 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 duties, territorial restrictions, reporting obligations, or designated accommodation; and 9) the person has sufficient links with Austria such as family relations, legal employment, sufficient resources, or a secure place of residence. In 2018, OHCHR noted that this list of criteria is non-exhaustive and that the broad scope of these criteria may undermine the principle that detention should be a measure of last resort. OHCHR thus urged the country to ensure that detention is a measure of last resort, and applied only if it is considered necessary and proportionate.<sup>18</sup>

**2.3 Criminalisation.** Section 15 of the Aliens Police Act provides penal sanctions. According to Article 120, entering Austria without authorisation is an administrative offence that can be punishable with a fine of up to 1,000 EUR or imprisonment for up to two weeks. If it is a repeated offence, the fine rises up to 5,000 EUR and imprisonment for up to three weeks. An unlawful stay in Austria is also an administrative offence, punishable with a fine of up to 2,500 EUR, or where irrecoverable, with imprisonment for up to two weeks. If the non-citizen has already been punished for unlawful stay, they can be fined up to 7,500 EUR, or be sentenced to prison for up to four weeks.<sup>19</sup>

**2.4 Asylum seekers.** Austria amended its relevant legislation when it transposed the [EU Reception Conditions Directive](#) in 2015. However, unlike most EU countries, Austria did not adopt all of the grounds for detaining asylum seekers that are provided in the directive, such as detention to verify their identity, or detention due to national security or public order considerations. However, in September 2018 an amendment to the Aliens Police Act entered into force. Under Article 76(2) of this act, non-citizens may be detained during asylum proceedings to issue a measure terminating their residence, or if their stay endangers public order or security and there is a risk of absconding.

The Asylum Act provides for detention at the border—which it refers to as “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 for as long as their entry is not permitted. They are entitled to leave Austria at any time. Under Article 32(4), confinement is to be terminated if the BFA permits the asylum seeker’s entry to the country. Border detention under the Asylum Act is carried out in Vienna Airport’s “special transit area”<sup>20</sup> (see 3. Detention Infrastructure).

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<sup>18</sup> Office of the United Nations High Commissioner for Human Rights (OHCHR), “Report of Mission to Austria Focusing on the Human Rights of Migrants, Particularly in the Context of Return,” 15-18 October 2018, <https://www.ohchr.org/Documents/Issues/Migration/AustriaMigrationMissionReport.pdf>

<sup>19</sup> 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>

<sup>20</sup> C. Riedl and C. Steinwendtner, “*Completed Legal Questionnaire for the Project ‘Made Real’: Austria*,” Made Real, 2015, <http://odysseus-network.eu/made-real-national-reports/>

When a person applies for international protection after being detained, they 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 their residence (Aliens Police Act, Article 76(6)).

In 2016, the [UN Committee against Torture](#) (CAT) urged Austria to ensure that asylum seekers are held in detention only as a last resort and that, if detention is necessary, they are held for as short a time as possible and that alternatives to detention are used whenever feasible.<sup>21</sup> CAT had also made similar recommendations in 2010.<sup>22</sup>

**2.5 Children.** Children below the age of 14 may not be detained (Aliens Police Act, Article 76(1)).<sup>23</sup> (Other EU countries, including [Latvia](#), also set the age at 14.) However, if a detention facility can ensure family and child-appropriate accommodation, children below the age of 14 may accompany their families for a brief period in detention prior to deportation (Article 79(5)), a policy that is common across much of the EU even though it prevents children from individually accessing important rights and protections.<sup>24</sup> In practice, families with children tend to be detained for 48-72 hours prior to return.<sup>25</sup>

Children over 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)).

Children may not be detained for longer than three months (Aliens Police Act, Article 80(2)(1)). This upper limit was introduced with the amendment to the Aliens Police Act, which entered into force in November 2017.<sup>26</sup> Previously, the limit was set at two months—a limit that had already been criticised by the [UN Human Rights Committee](#) (HRC) in 2015.<sup>27</sup>

The Aliens Police Act provides that children and adults are to be detained separately. If detention pending deportation is also imposed on a parent or legal guardian, child detainees are to be detained jointly with them unless their best interests require separate detention

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<sup>21</sup> UN Committee against Torture (CAT), “Concluding Observations on the Sixth Periodic Report of Austria, CAT/C/AUT/CO/6,” 27 January 2016, <http://www.ohchr.org/EN/Countries/ENACARegion/Pages/ATIndex.aspx>

<sup>22</sup> UN Committee against Torture (CAT), “Concluding Observations of the Committee Against Torture: Austria, CAT/C/AUT/CO/4-5,” 20 May 2010, <http://www.ohchr.org/EN/Countries/ENACARegion/Pages/ATIndex.aspx>

<sup>23</sup> Manfred Zirnsack (Interior Ministry), Email exchange with Izabella Majcher (Global Detention Project), October 2014.

<sup>24</sup> See, for instance, Global Detention Project, “Newsletter - The Convention on the Rights of the Child: Thirty Years On,” 20 November 2019, <https://www.globaldetentionproject.org/the-convention-on-the-rights-of-the-child-thirty-years-on>

<sup>25</sup> Asylkoordination Österreich, “Country Report: Austria 2017 Update,” *Asylum Information Database (AIDA), European Council on Refugees and Exiles (ECRE)*, March 2018, <https://www.asylumineurope.org/reports/country/austria>

<sup>26</sup> Asylkoordination Österreich, “Country Report: Austria 2017 Update,” *Asylum Information Database (AIDA), European Council on Refugees and Exiles (ECRE)*, March 2018, <https://www.asylumineurope.org/reports/country/austria>; M. Bassermann and A. Spiegelfeld, “Unaccompanied Minors Following Status Determination in Austria,” *EMN Study*, February 2018, [https://ec.europa.eu/home-affairs/sites/homeaffairs/files/01\\_austria\\_uam\\_2018\\_en.pdf](https://ec.europa.eu/home-affairs/sites/homeaffairs/files/01_austria_uam_2018_en.pdf)

<sup>27</sup> UN Human Rights Committee (HRC), “Concluding Observations on the Fifth Periodic Report of Austria, CCPR/C/AUT/CO/5,” 3 December 2015, <http://www.ohchr.org/EN/Countries/ENACARegion/Pages/ATIndex.aspx>

(Aliens Police Act, Article 79(3)). Children are usually detained in the Zinnergasse Family Detention Centre (see 3. Detention Infrastructure).

According to its 2017 report on immigration detention of children, the European Union Agency for Fundamental Rights could not obtain any data regarding how many children were detained in Austria at given dates in 2015 and 2016.<sup>28</sup> Additionally, the Austrian Interior Ministry, in its response to a 2018 parliamentary request demanding how many asylum seeking families and children were detained in the country, claimed that such statistics were not recorded.<sup>29</sup> However, in other 2018 responses to parliamentary requests, the Interior Ministry claimed that in 2017 there were 23 children aged between 16 and 18 in immigration detention<sup>30</sup> and 27 in 2018.<sup>31</sup> In 2009, 146 children were detained while 435 were granted alternatives.<sup>32</sup> In previous years, the number of detained children tended to be higher. In 2010, 172 children were detained, of whom 18 were between 14 and 16 and 154 between 16 and 18. That year, 449 children benefitted from non-custodial alternatives (of whom 365 were between 14 and 16 and 84 between 16 and 18).<sup>33</sup>

In 2015, the HRC 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.<sup>34</sup> Three years earlier, the [UN Committee on the Rights of the Child](#) (CRC) 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 over the age of 14 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.<sup>35</sup> Likewise, upon its visit to Austria in 2018, OHCHR recommended that the country amend its laws and practices to ensure that children, including accompanied children, are not placed in

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<sup>28</sup> European Union Agency for Fundamental Rights (FRA), “European Legal and Policy Framework on Immigration Detention of Children,” 2017, <http://fra.europa.eu/en/publication/2017/child-migrant-detention>

<sup>29</sup> Federal Interior Ministry, “Response to a Parliamentary Request, 1001/AB,” 9 August 2018, [https://www.parlament.gv.at/PAKT/VHG/XXVI/AB/AB\\_01001/imfname\\_706803.pdf](https://www.parlament.gv.at/PAKT/VHG/XXVI/AB/AB_01001/imfname_706803.pdf)

<sup>30</sup> Federal Interior Ministry, “Response to a Parliamentary Request 1681/AB,” 13 November 2018, [https://www.parlament.gv.at/PAKT/VHG/XXVI/AB/AB\\_01681/imfname\\_721304.pdf](https://www.parlament.gv.at/PAKT/VHG/XXVI/AB/AB_01681/imfname_721304.pdf)

<sup>31</sup> Federal Interior Ministry, “Response to a Parliamentary Request 2633/AB,” 20 March 2019, [https://www.parlament.gv.at/PAKT/VHG/XXVI/AB/AB\\_02633/imfname\\_741843.pdf](https://www.parlament.gv.at/PAKT/VHG/XXVI/AB/AB_02633/imfname_741843.pdf)

<sup>32</sup> 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, <https://bit.ly/2FSsya8>

<sup>33</sup> 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, <https://bit.ly/2um8oTk>

<sup>34</sup> UN Human Rights Committee (HRC), “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>

<sup>35</sup> UN Committee on the Rights of the Child (CRC), “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](http://www.ohchr.org/EN/countries/ENACARRegion/Pages/ATIndex.aspx)

immigration detention and that alternatives to detention are instead applied for the entire family.<sup>36</sup>

**2.6 Other vulnerable groups.** During its visit to Austria in October 2018, OHCHR noted with concern that persons with special needs were sometimes detained. Detention centres' personnel, including medical staff, were frequently not prepared to deal with such cases, mainly due to training and capacity gaps. OHCHR urged the country to ensure that an individualised vulnerability assessment is conducted during detention procedures.<sup>37</sup>

With regards to 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 an 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. Interior Ministry asylum statistics highlight an increase in the number of stateless persons applying for asylum from 253 in 2013 to 2,235 in 2015.<sup>38</sup> According to official statistics, three stateless persons and six with an unknown nationality were detained in 2015; six stateless persons and five with an unknown nationality in 2016; 14 stateless persons and 11 with an unknown nationality in 2017; and 10 stateless persons and 11 with an unknown nationality between January and October 2018.<sup>39</sup>

**2.7 Length of detention.** The Aliens Police Act explicitly provides that the BFA is required to ensure that detention is as short as possible (Article 80(1)) and contains detailed rules on the maximum duration of detention.

Following the adoption and entry into force of the amendment to the Aliens Police Act in 2017, the maximum length of detention for various groups has increased.<sup>40</sup> With the exception of Dublin-related detention, immigration detainees should in principle not be detained for longer than six months (Article 80(2)(2)). Until November 2017, however, this limit had been set at four months. (The maximum length of detention for children was also been raised from two to three months (Article 80(2)(1)) (see 2.5 Children.))

Asylum seekers may be detained for up to ten months following a legally binding negative asylum decision. Prior to November 2017, this limit was set at four weeks (Article 80 (5)). If a non-citizen cannot be deported because an appeal against deportation has not yet been

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<sup>36</sup> Office of the United Nations High Commissioner for Human Rights (OHCHR), "Report of Mission to Austria Focusing on the Human Rights of Migrants, Particularly in the Context of Return," 15-18 October 2018, <https://www.ohchr.org/Documents/Issues/Migration/AustriaMigrationMissionReport.pdf>

<sup>37</sup> Office of the United Nations High Commissioner for Human Rights (OHCHR), "Report of Mission to Austria Focusing on the Human Rights of Migrants, Particularly in the Context of Return," 15-18 October 2018, <https://www.ohchr.org/Documents/Issues/Migration/AustriaMigrationMissionReport.pdf>

<sup>38</sup> UN High Commissioner for Refugees (UNHCR) Austria, "Mapping Statelessness in Austria," *European Network on Statelessness (ENS)*, 2017, <http://www.statelessness.eu/resources/unhcr-mapping-statelessness-austria>

<sup>39</sup> Federal Interior Ministry, "Response to a Parliamentary Request 1681/AB," 13 November 2018, [https://www.parlament.gv.at/PAKT/VHG/XXVI/AB/AB\\_01681/imfname\\_721304.pdf](https://www.parlament.gv.at/PAKT/VHG/XXVI/AB/AB_01681/imfname_721304.pdf)

<sup>40</sup> Asylkoordination Österreich, "Country Report: Austria 2017 Update," *Asylum Information Database (AIDA)*, *European Council on Refugees and Exiles (ECRE)*, March 2018, <https://www.asylumineurope.org/reports/country/austria>

finally decided, detention may last up to six months (Article 80(3)). Detention may be prolonged for a maximum of 18 months if a non-citizen cannot be deported because their identity and nationality cannot be established; there is no permission from another state for their entry or transit; the person hampers their removal by resisting coercive measures or deportation appears to be jeopardised by the fact that they have already once withdrawn from the proceedings or are otherwise responsible for an obstacle to deportation (Article 80(4)). Before Article 80 was amended in 2017, detention could only be prolonged for a maximum of 10 months within an 18-month period.<sup>41</sup>

In 2015, the average length of detention was approximately 11 days; in 2014, 14 days; and in 2013, 14 days.<sup>42</sup> In October 2018, a parliamentary inquiry submitted to the Federal Interior Ministry demanded to clarify, amongst other issues, the average length of immigration detention in Austria from 2015 to 2018.<sup>43</sup> The ministry responded that such statistics were not recorded.<sup>44</sup> Upon their visits to Austria in 2018, OHCHR and the [UN Working Group on the use of mercenaries](#) urged the country to ensure that detention is applied for the shortest period possible.<sup>45</sup>

**2.8 Procedural guarantees.** The BFA is responsible for issuing detention orders.<sup>46</sup> Those subject to a detention order should 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.<sup>47</sup>

Under Article 80(6) of the Aliens Police Act, the BFA must review *ex officio* the proportionality of detention every four weeks. After four months, this review should be conducted by the Federal Administrative Court (BFA Procedures Act, Article 22a). However, according to [Asylkoordination Österreich](#), judicial review after four months of detention is insufficient.<sup>48</sup>

Detainees have the right to appeal detention before the Federal Administrative Court. If a non-citizen is still held in detention when the appeal is submitted, the court has to render its

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<sup>41</sup> S. Heilemann and R. Lukits, “The Effectiveness of Return in Austria: Challenges and Good Practices Linked to EU Rules and Standards,” *EMN Study*, September 2017, [https://ec.europa.eu/home-affairs/sites/homeaffairs/files/01a\\_austria\\_return\\_study\\_2017\\_final\\_en.pdf](https://ec.europa.eu/home-affairs/sites/homeaffairs/files/01a_austria_return_study_2017_final_en.pdf)

<sup>42</sup> Rechnungshof, “*Vollzug der Schubhaft mit Schwerpunkt Anhaltezentrum Vordernberg*,” 2016, <https://bit.ly/36X6qHl>

<sup>43</sup> S. Krisper et al., “*Daten zur Schubhaft*, Parliamentary Request 1818/J,” 4 October 2018, [https://www.parlament.gv.at/PAKT/VHG/XXVI/JJ\\_01818/fname\\_712268.pdf](https://www.parlament.gv.at/PAKT/VHG/XXVI/JJ_01818/fname_712268.pdf)

<sup>44</sup> Federal Interior Ministry, “Response to a Parliamentary Request, 1831/AB,” 30 November 2018, [https://www.parlament.gv.at/PAKT/VHG/XXVII/AB/AB\\_01831/imfname\\_724422.pdf](https://www.parlament.gv.at/PAKT/VHG/XXVII/AB/AB_01831/imfname_724422.pdf)

<sup>45</sup> Office of the United Nations High Commissioner for Human Rights (OHCHR), “Report of Mission to Austria Focusing on the Human Rights of Migrants, Particularly in the Context of Return,” 15-18 October 2018, <https://www.ohchr.org/Documents/Issues/Migration/AustriaMigrationMissionReport.pdf>; Working Group on the Use of Mercenaries as a Means of Violating Human Rights and Impeding the Right of Peoples to Self-Determination, “Visit to Austria, A/HRC/42/42/Add.2,” 26 July 2019, <https://www.ohchr.org/EN/Countries/ENACARRegion/Pages/ATIndex.aspx>

<sup>46</sup> Rechnungshof, “*Vollzug der Schubhaft mit Schwerpunkt Anhaltezentrum Vordernberg*,” 2016, <https://bit.ly/36X6qHl>

<sup>47</sup> Asylkoordination Österreich, “Country Report: Austria,” *Asylum Information Database (AIDA), European Council on Refugees and Exiles (ECRE)*, March 2019, [www.asylumineurope.org/reports/country/austria](http://www.asylumineurope.org/reports/country/austria)

<sup>48</sup> Asylkoordination Österreich, “Country Report: Austria,” *Asylum Information Database (AIDA), European Council on Refugees and Exiles (ECRE)*, March 2019, [www.asylumineurope.org/reports/country/austria](http://www.asylumineurope.org/reports/country/austria)

decision within one week (BFA Procedures Act, Article 22a). If the Federal Administrative Court finds detention unlawful, detainees are entitled to compensation of 100 EUR per day of detention.<sup>49</sup>

The state provides free legal assistance to detainees. However, following the 2014 amendment to the Aliens Police Act, legal advisers are not required to represent detainees during proceedings—instead, they merely take part in hearings (BFA Procedures Act, Articles 51-52). The legal aid provider receives a lump sum of approximately 200 EUR 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.<sup>50</sup> 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 they were needed.<sup>51</sup>

Two organisations are contracted to provide state-sponsored legal aid: ARGE Rechtsberatung ([Diakonie Flüchtlingsdienst](#) and [Volkshilfe Oberösterreich](#)) and [Verein Menschenrechte Österreich](#). ARGE provides genuine legal advice and files appeals. On the other hand, 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 conflicts of interest. Asylkoordination Österreich assumes that VMÖ rarely submits appeals against detention.<sup>52</sup>

Under the Ordinance on Detention Conditions, detainees are entitled to complain to the director of the facility when their rights are violated (see 2.11 Regulation of detention conditions). If the director considers the complaint well-founded, the facility is to improve conditions and treatment so that it complies with the ordinance (§23).

**2.9 Non-custodial measures (“alternatives to detention”).** The Aliens Police Act explicitly states that the BFA may order immigration detention if the purpose of detention cannot be attained by non-custodial measures (“*gelinderes Mittel*”—literally “more lenient means”) (Articles 76(1) and 77(1)). To be eligible for these “alternative” measures 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)).<sup>53</sup>

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<sup>49</sup> Asylkoordination Österreich, “Country Report: Austria,” *Asylum Information Database (AIDA)*, European Council on Refugees and Exiles (ECRE), March 2019, [www.asylumineurope.org/reports/country/austria](http://www.asylumineurope.org/reports/country/austria)

<sup>50</sup> Asylkoordination Österreich, “Country Report: Austria,” *Asylum Information Database (AIDA)*, European Council on Refugees and Exiles (ECRE), February 2017, [www.asylumineurope.org/reports/country/austria](http://www.asylumineurope.org/reports/country/austria)

<sup>51</sup> 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>

<sup>52</sup> Asylkoordination Österreich, “Country Report: Austria,” *Asylum Information Database (AIDA)*, European Council on Refugees and Exiles (ECRE), March 2019, [www.asylumineurope.org/reports/country/austria](http://www.asylumineurope.org/reports/country/austria); Asylkoordination Österreich, “Country Report: Austria 2017 Update,” *Asylum Information Database (AIDA)*, European Council on Refugees and Exiles (ECRE), March 2018, <https://www.asylumineurope.org/reports/country/austria>

<sup>53</sup> 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, <https://bit.ly/3aljski>

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 BFA. In practice, residence restrictions and reporting obligations are used most frequently, and 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 200 percent of the reference rate under Article 293(1)§a(bb) of the General Social Security Act (Ordinance Implementing the Aliens Police Act, Article 13).<sup>54</sup> Based on this, as of 2018, the amount of the deposit was a maximum of approximately 1,800 EUR. Two days under non-custodial measures count as one day in detention.<sup>55</sup>

However, as observed by Asylkoordination Österreich, in practice authorities perceive alternatives to detention as insufficient for ensuring deportation.<sup>56</sup> Moreover, authorities rarely examine the suitability of alternatives in each individual case<sup>57</sup> and detention orders frequently merely state that more lenient measures do not serve the purpose of deportation.<sup>58</sup>

Persons ordered alternatives to detention may 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.<sup>59</sup>

Since October 2011, Zinnergasse Detention Centre in the outskirts of Vienna has served as a non-secure facility housing vulnerable people benefitting from a non-custodial measure. The Zinnergasse facility also includes a detention section, called a family detention facility, which is located on the second and third floors of the building (see 3. Detention

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<sup>54</sup> International Organisation for Migration (IOM) (EMN National Contact Point Austria), “The Use of Detention and Alternatives to Detention in the Context of Immigration Policies in Austria,” 2014, <https://bit.ly/35PxIDK>; U. Brandl, “Completed Legal Questionnaire for the Project ‘Made Real’: Austria,” *Made Real*, 2015, <http://odysseus-network.eu/made-real-national-reports/>

<sup>55</sup> Asylkoordination Österreich, “Country Report: Austria,” *Asylum Information Database (AIDA)*, European Council on Refugees and Exiles (ECRE), March 2019, [www.asylumineurope.org/reports/country/austria](http://www.asylumineurope.org/reports/country/austria)

<sup>56</sup> Asylkoordination Österreich, “Country Report: Austria,” *Asylum Information Database (AIDA)*, European Council on Refugees and Exiles (ECRE), March 2019, [www.asylumineurope.org/reports/country/austria](http://www.asylumineurope.org/reports/country/austria); Asylkoordination Österreich, “Country Report: Austria,” *Asylum Information Database (AIDA)*, European Council on Refugees and Exiles (ECRE), February 2017, [www.asylumineurope.org/reports/country/austria](http://www.asylumineurope.org/reports/country/austria)

<sup>57</sup> C. Riedl and C. Steinwendtner, “Completed Legal Questionnaire for the Project ‘Made Real’: Austria,” *Made Real*, 2015, <http://odysseus-network.eu/made-real-national-reports/>

<sup>58</sup> U. Brandl, “Completed Legal Questionnaire for the Project ‘Made Real’: Austria,” *Made Real*, 2015, <http://odysseus-network.eu/made-real-national-reports/>

<sup>59</sup> Asylkoordination Österreich, “Country Report: Austria 2017 Update,” *Asylum Information Database (AIDA)*, European Council on Refugees and Exiles (ECRE), March 2018, <https://www.asylumineurope.org/reports/country/austria>; Asylkoordination Österreich, “Country Report: Austria,” *Asylum Information Database (AIDA)*, European Council on Refugees and Exiles (ECRE), February 2017, [www.asylumineurope.org/reports/country/austria](http://www.asylumineurope.org/reports/country/austria); C. Riedl and C. Steinwendtner, “Completed Legal Questionnaire for the Project ‘Made Real’: Austria,” *Made Real*, 2015, <http://odysseus-network.eu/made-real-national-reports/>



Infrastructure).<sup>60</sup> In 2015, the non-secure section housed 154 people, 10 percent of whom were children.<sup>61</sup> Non-citizens accommodated in this non-secure area can leave at will, but they must notify officers. There are always two police officers in place.<sup>62</sup>

As of 2017, another facility for “alternatives to detention” measures is operating in Bad Vöslau. Previously, both facilities were jointly operated by the police and the [Menschen.Leben association](#).<sup>63</sup> The association’s team was present during the day and was in charge of admission to the facility, daily care, advice, food distribution, crisis intervention, interpretation, and conflict prevention.<sup>64</sup> In December 2018, the association went bankrupt<sup>65</sup> and its role in Zinnergasse was taken over by Verein Menschenrechte. The Bad Vörschlau facility, meanwhile, no longer appears to function.<sup>66</sup>

According to official statistics, in the first five months of 2018, 120 non-citizens were granted alternatives to detention; 348 in 2017; 178 in 2016; and 571 in 2015.<sup>67</sup> Previously, the number of non-citizens granted alternatives to detention was higher: 771 in 2013; 925 in 2012; 1,012 in 2011; and 1,404 in 2010. Between 2010 and 2015, 16 to 26 percent of persons were afforded alternatives to detention,<sup>68</sup> compared to five to seven percent between 2016 and 2018.<sup>69</sup>

In 2015, the HRC urged Austria to ensure that detention pending deportation is applied only after due consideration of less coercive means, with special regard being given to the needs

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<sup>60</sup> International Organisation for Migration (IOM) (EMN National Contact Point Austria), “The Use of Detention and Alternatives to Detention in the Context of Immigration Policies in Austria,” 2014, <https://bit.ly/35XJlh4>; S. 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](http://www.bmi.gv.at/cms/BMI_OeffentlicheSicherheit/2012/05_06/files/Zinnergasse.pdf)

<sup>61</sup> Asylkoordination Österreich, “Country Report: Austria,” *Asylum Information Database (AIDA), European Council on Refugees and Exiles (ECRE)*, February 2017, [www.asylumineurope.org/reports/country/austria](http://www.asylumineurope.org/reports/country/austria)

<sup>62</sup> International Organisation for Migration (IOM) (EMN National Contact Point Austria), “The Use of Detention and Alternatives to Detention in the Context of Immigration Policies in Austria,” 2014, <https://bit.ly/38ahwsG>

<sup>63</sup> Asylkoordination Österreich, “Country Report: Austria,” *Asylum Information Database (AIDA), European Council on Refugees and Exiles (ECRE)*, February 2017, [www.asylumineurope.org/reports/country/austria](http://www.asylumineurope.org/reports/country/austria); Anny Knapp (Asylkoordination Österreich), Email exchange with Izabella Majcher (Global Detention Project), March 2017.

<sup>64</sup> Asylkoordination Österreich, “Country Report: Austria,” *Asylum Information Database (AIDA), European Council on Refugees and Exiles (ECRE)*, February 2017, [www.asylumineurope.org/reports/country/austria](http://www.asylumineurope.org/reports/country/austria); Menschen.Leben, “Gelinderes Mittel Bad Vöslau,” <http://www.menschen-leben.at/einrichtungen/gelinderes-mittel-wien-zinnergasse/>; Menschen.Leben, “Gelinderes Mittel Wien Zinnergasse,” <http://www.menschen-leben.at/einrichtungen/gelinderes-mittel-wien-zinnergasse/>

<sup>65</sup> Salzburger Nachrichten, “Verein “menschen.leben” insolvent,” *Saalzburger Nachrichten*, 20 December 2018, <https://www.sn.at/politik/innenpolitik/verein-menschen-leben-insolvent-62833213>

<sup>66</sup> Asylkoordination Österreich, “Country Report: Austria 2017 Update,” *Asylum Information Database (AIDA), European Council on Refugees and Exiles (ECRE)*, March 2018, <https://www.asylumineurope.org/reports/country/austria>

<sup>67</sup> Federal Interior Ministry, “Response to a Parliamentary Request, 1001/AB,” 9 August 2018, [https://www.parlament.gv.at/PAKT/VHG/XXVII/AB/AB\\_01001/imfname\\_706803.pdf](https://www.parlament.gv.at/PAKT/VHG/XXVII/AB/AB_01001/imfname_706803.pdf)

<sup>68</sup> Rechnungshof, “Vollzug der Schubhaft mit Schwerpunkt Anhaltezentrum Vordernberg,” 2016, <https://bit.ly/36X6qHl>

<sup>69</sup> Federal Interior Ministry, “Response to a Parliamentary Request, 1001/AB,” 9 August 2018, [https://www.parlament.gv.at/PAKT/VHG/XXVII/AB/AB\\_01001/imfname\\_706803.pdf](https://www.parlament.gv.at/PAKT/VHG/XXVII/AB/AB_01001/imfname_706803.pdf)

of particularly vulnerable persons.<sup>70</sup> In 2010, CAT similarly recommended that Austria consider alternatives to detention.<sup>71</sup>

**2.10 Detaining authorities and institutions.** The Federal Office for Immigration and Asylum (*Bundesamt für Fremdenwesen und Asyl*), which is under the Interior Ministry, is responsible for immigration detention in Austria. Prior to the creation of the BFA in 2014, migration-related detention fell under the authority of the Aliens Police.<sup>72</sup>

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)).

**2.11 Regulation of detention conditions.** Detailed rules on conditions of detention are spelled out in the 1999 Interior Ministry Ordinance on Detention Conditions. Accordingly, immigration detainees should be accommodated, if possible, separately from “administrative detainees” (*Verwaltungshäftlinge*) and criminal suspects (*Verwahrungshäftlinge*). Women and men, as well as minors and adults, should be accommodated separately from each other (§4(3)). Children should be placed together with their families or guardians (§4(5)). Detainees are to be confined in communal cells, however if they are violent towards others, if a court requires it, if they may spread diseases, or if their behaviour would seriously burden other detainees, they are to be placed in solitary confinement (§5(1)).

Immigration detainees should be afforded an open regime. If this is not possible, other solutions should be sought, including opening the cells' doors and ensuring 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, albeit at their own expense (§10). Detainees are required to keep their body and cells clean (§12). They should have access to warm water and a warm shower at least once a week; toiletries should be provided to detainees who lack the means to purchase such materials themselves; and sufficient food, including one hot dish a day, and drinking water is to be provided to detainees. The quantity, quality, and taste of the food are to be checked daily by the commander and regularly by the physician (§13). Detainees are entitled to at least one hour of outdoor exercise each day (§17).

If it does not pose an organisational burden or disturb the daily schedule, detainees are allowed 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. If a person lacks the sufficient means to make a call, the centre should facilitate free calls to relatives,

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<sup>70</sup> UN Human Rights Committee (HRC), “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>

<sup>71</sup> UN Committee against Torture (CAT), “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>

<sup>72</sup> Asylkoordination Österreich, “Country Report: Austria,” *Asylum Information Database (AIDA)*, European Council on Refugees and Exiles (ECRE), February 2017, [www.asylumineurope.org/reports/country/austria](http://www.asylumineurope.org/reports/country/austria); Federal Office for Immigration and Asylum (BFA), “Asylum Procedure,” [https://www.bfa.gv.at/files/broschueren/Informationsbroschuere\\_Asylverfahren\\_in\\_Oesterreich\\_EN.pdf](https://www.bfa.gv.at/files/broschueren/Informationsbroschuere_Asylverfahren_in_Oesterreich_EN.pdf)

legal counsels, authorities, and diplomatic representations (§19). Each week, detainees are also entitled to one thirty-minute visit (§21).

It is an administrative offence to intentionally breach duties under the Ordinance on Detention Conditions or to try to escape the facility. If a detainee does commit such an offence, the director of the facility should investigate the facts and may impose a punishment; freeze detainees' entitlements in relation to social activities, shopping possibilities, and telephone calls; or place them in solitary confinement for up to three days (§24). Detainees can also be placed in solitary confinement if they request it, for organisational reasons, as a disciplinary measure, to maintain order during night rest, or if there are reasons to believe the detainee is jeopardising their life or health (§5(3)).

Supervisory authorities are authorised 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).

**2.12 Domestic monitoring.** National human rights institutions and civil society organisations visit immigration detention facilities in Austria. The Austrian Ombudsman Board (AOB) (*Volksanwaltschaft*) acts as the National Preventive Mechanism (NPM). The AOB is in charge of monitoring centres and facilities in which individuals are deprived of liberty,<sup>73</sup> including immigration detention facilities. Generally, the AOB does not announce its monitoring visits. In 2017, the AOB visited the Vordernberg centre, the Zinnergasse family detention centre, and the PAZ Vienna Hernalser Gürtel (as well as other 21 PAZ). The AOB recommended improving leisure time activities, hygiene standards for detention in police detention centres, and documentation of the placement in security cells.<sup>74</sup>

With regards to civil society, agreements are in place between pastoral groups and the police, permitting such groups to visit detainees on a regular basis. NGOs meanwhile need to obtain authorisation to act as detainees' legal representatives.<sup>75</sup> ARGE Rechtsberatung (*Diakonie Flüchtlingsdienst* and *Volkshilfe Oberösterreich*) and *Verein Menschenrechte Österreich* provide state-funded legal aid however, as described above (see 2.8 Procedural guarantees) only ARGE is independent.

**2.13 International monitoring.** Austria's detention practices are subject to monitoring by the Council of Europe and UN bodies and mechanisms. As a state party to the *European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment*, Austria receives regular monitoring visits from the *European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment* (CPT). During its most recent visit to Austria in 2014, the committee visited the Vordernberg Detention Centre and PAZ at Hernalser Gürtel. The committee found the conditions at the Vordernberg centre to be of a very high quality and applauded the varied activities offered to detainees. In turn, the material conditions at the PAZ Hernalser Gürtel were generally acceptable but most of the detainees were placed in a closed regime under which out-of-cell activities were mostly

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<sup>73</sup> Austrian Ombudsman Board (AOB), "Preventive Human Rights Monitoring," <https://volksanwaltschaft.gv.at/en/preventive-human-rights-monitoring>

<sup>74</sup> Austrian Ombudsman Board (AOB), "Annual Report on the Activities of the National Prevention Mechanism (NPM)," August 2018, <https://volksanwaltschaft.gv.at/downloads/ctjmf/aob-npm-report-2017.pdf>

<sup>75</sup> Asylkoordination Österreich, "Country Report: Austria," *Asylum Information Database (AIDA)*, European Council on Refugees and Exiles (ECRE), March 2019, [www.asylumineurope.org/reports/country/austria](http://www.asylumineurope.org/reports/country/austria)

limited to just one hour of outdoor exercise per day.<sup>76</sup> The committee visited several PAZ during its previous visits, including in 2009,<sup>77</sup> 2004,<sup>78</sup> and 1999.<sup>79</sup> and the transit zone at the Vienna airport in 1999 and 1990.<sup>80</sup>

In October 2018, a team from OHCHR visited Austria to assess the human rights situation of migrants, with a focus on return-related measures. With respect to immigration detention, it urged Austria to use detention as a measure of last resort, for the shortest possible period, and when it is necessary and proportionate; to prioritise non-custodial measures; and to conduct individualised vulnerability assessments when deciding on detention. OHCHR also recommended that the country amend its laws and practices to ensure that children, including accompanied children, are not placed in immigration detention and to instead find alternatives to detention for the entire family.<sup>81</sup>

A few months earlier, during its visit to Austria, the UN Working Group on the use of mercenaries focused on migration management issues, in particular privatisation of the Vordernberg centre. The Working Group recommended that the country ensure that the contracting of private security companies for detention facilities is the exception and not the norm and that functions performed by companies do not involve those reserved for state institutions. More broadly regarding immigration detention, the Working Group urged Austria to impose detention for the shortest period possible; ensure that children are not detained; provide detainees with psycho-social support, medical care, and legal assistance; and ensure that detention is not punitive in nature.<sup>82</sup>

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<sup>76</sup> 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>

<sup>77</sup> 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>

<sup>78</sup> 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 2005, <http://www.coe.int/en/web/cpt/austria>

<sup>79</sup> 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 19 to 30 September 1999*, CPT/Inf (2001) 8,” 21 June 2001, <http://www.coe.int/en/web/cpt/austria>

<sup>80</sup> 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 20 May 1990 to 27 May 1990*, CPT/Inf (91) 10,” 3 October 1991, <http://www.coe.int/en/web/cpt/austria>

<sup>81</sup> Office of the United Nations High Commissioner for Human Rights (OHCHR), “*Report of Mission to Austria Focusing on the Human Rights of Migrants, Particularly in the Context of Return*,” 15-18 October 2018, <https://www.ohchr.org/Documents/Issues/Migration/AustriaMigrationMissionReport.pdf>

<sup>82</sup> Working Group on the Use of Mercenaries as a Means of Violating Human Rights and Impeding the Right of Peoples to Self-Determination, “*Visit to Austria, A/HRC/42/42/Add.2*,” 26 July 2019, <https://www.ohchr.org/EN/Countries/ENACARRegion/Pages/ATIndex.aspx>

In the past few years, three UN human rights treaty bodies have made immigration detention related recommendations to Austria, notably CAT (2016)<sup>83</sup> and (2010),<sup>84</sup> HRC (2015),<sup>85</sup> and CRC (2012).<sup>86</sup> In general, the treaty bodies urged Austria to use detention as a last resort, when there are no alternatives to detention available, and for the shortest period, as well as to avoid detaining children. The committees also recommended that detainees be held in facilities specifically designed for such a purpose.

**2.14 Transparency and access to information.** There is limited access to detention-related data, which has long been a source of controversy in Austria. In 2016 the Court of Auditors, in a report on immigration detention, recommended that the Interior Ministry compile “significant and differentiated statistics” on the subject of detention pending deportation and on end of residence decisions.<sup>87</sup> In June 2018, parliamentary members addressed a request to the Interior Ministry, demanding data on immigration detention from 2015 to 2018. The parliamentarians criticised the lack of access to data, especially in light of the Court of Auditor’s recommendation.<sup>88</sup> In its reply, the Interior Ministry argued that statistics on immigration detention serve internal control purposes and that not all statistics were recorded.<sup>89</sup> In October 2018, a parliamentary inquiry addressed to the Interior Ministry again referred to the recommendations of the Court of Auditors to denounce the fact that comprehensive statistics on immigration detention remained unavailable.<sup>90</sup> The UN has similarly expressed concern that detention statistics are not disaggregated by sex or age.<sup>91</sup>

Previous governments have been more forthcoming with detention data. In 2013, two years before the onset of the refugee “crisis,” the Interior Ministry responded to a joint Global Detention Project-Access Info Europe questionnaire about detention operations with a lengthy and **nearly complete set of requested statistics**.<sup>92</sup> The one issue that the Interior

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<sup>83</sup> UN Committee against Torture (CAT), “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>

<sup>84</sup> UN Committee against Torture (CAT), “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>

<sup>85</sup> UN Human Rights Committee (HRC), “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>

<sup>86</sup> UN Committee on the Rights of the Child (CRC), “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](http://www.ohchr.org/EN/countries/ENACARRegion/Pages/ATIndex.aspx)

<sup>87</sup> Rechnungshof, “Vollzug der Schubhaft mit Schwerpunkt Anhaltezentrum Vordernberg,” 2016, <https://bit.ly/2Ts7lpR>

<sup>88</sup> A. Zadić et al., “Schubhaft in österreichischen (Polizei)Anhaltenzentren, Parliamentary Request 1018/J,” 11 June 2018, [https://www.parlament.gv.at/PAKT/VHG/XXVI/JJ\\_01018/imfname\\_698051.pdf](https://www.parlament.gv.at/PAKT/VHG/XXVI/JJ_01018/imfname_698051.pdf)

<sup>89</sup> Federal Interior Ministry, “Response to a Parliamentary Request, 1001/AB,” 9 August 2018, [https://www.parlament.gv.at/PAKT/VHG/XXVI/AB/AB\\_01001/imfname\\_706803.pdf](https://www.parlament.gv.at/PAKT/VHG/XXVI/AB/AB_01001/imfname_706803.pdf)

<sup>90</sup> S. Krisper et al., “Daten zur Schubhaft, Parliamentary Request 1818/J,” 4 October 2018, [https://www.parlament.gv.at/PAKT/VHG/XXVI/JJ\\_01818/fname\\_712268.pdf](https://www.parlament.gv.at/PAKT/VHG/XXVI/JJ_01818/fname_712268.pdf)

<sup>91</sup> Office of the United Nations High Commissioner for Human Rights (OHCHR), “Report of Mission to Austria Focusing on the Human Rights of Migrants, Particularly in the Context of Return,” 15-18 October 2018, <https://www.ohchr.org/Documents/Issues/Migration/AustriaMigrationMissionReport.pdf>

<sup>92</sup> G. Reisher (Interior Ministry), Letter to Lydia Medland (Access Info) and Michael Flynn (Global Detention Project), 30 September 2013, [https://www.globaldetentionproject.org/wp-content/uploads/2019/11/Austria\\_detention\\_response\\_30\\_09\\_2013.pdf](https://www.globaldetentionproject.org/wp-content/uploads/2019/11/Austria_detention_response_30_09_2013.pdf)

Ministry was unable to provide data on was the number of detained unaccompanied children, about whom they claimed “such statistics are not collected.”<sup>93</sup>

**2.15 Trends and statistics.** Between 2015 and 2018, the number of people placed in immigration detention increased more than three-fold. 1,436 non-citizens were issued a detention order in 2015; 2,434 in 2016; 4,962 in 2017; and 5,252 in 2018.<sup>94</sup> According to the Interior Ministry, this surge in detention is due to an increased emphasis on return and removal.<sup>95</sup>

This upward trend in detention pending deportation follows a period in which the number of detainees had actually been decreasing. Between 2010 and 2014, annual detention numbers decreased from approximately 6,200 to nearly 1,900. According to official sources, the reasons for this downward trend included court practice, adherence to the last resort principle, reinforced protection for non-deportable non-citizens (from Syria, Iraq, and Afghanistan), and increased focus on voluntary departure.<sup>96</sup>

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 approximately 37 in the PAZ Vienna Hernalser Gürtel; eight in the Vordernberg centre; three in the PAZ Salzburg; and two in the PAZ Vienna Rossauer Lände. While the daily average number of immigration detainees in Austria dropped by 86 percent between 2010 and 2015 (from 357 to 52), these figures increased for migrants in a short-term detention by 636 percent (from 25 to 183).<sup>97</sup>

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 between 17 and 18 percent.<sup>98</sup>

In 2018, the nationalities which received the highest number of detention orders were Nigerian (809), Slovakian (412), Serbian (331), Afghan (323), Pakistani (281), and

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<sup>93</sup> See also: Global Detention Project & Access Info Europe, “The Uncounted: Detention of Migrants and Asylum Seekers in Europe,” December 2015, <https://www.globaldetentionproject.org/the-uncounted-the-detention-of-migrants-and-asylum-seekers-in-europe>

<sup>94</sup> European Council on Refugees and Exiles (ECRE), “Austria: Increasing Use of Detention According to Latest Statistics,” June 2019, <http://www.asylumineurope.org/news/19-06-2019/austria-increasing-use-detention-according-latest-statistics>; Federal Interior Ministry, “Response to a Parliamentary Request, 1001/AB,” 9 August 2018, [https://www.parlament.gv.at/PAKT/VHG/XXVI/AB/AB\\_01001/imfname\\_706803.pdf](https://www.parlament.gv.at/PAKT/VHG/XXVI/AB/AB_01001/imfname_706803.pdf)

<sup>95</sup> S. Heilemann and R. Lukits, “The Effectiveness of Return in Austria: Challenges and Good Practices Linked to EU Rules and Standards,” *EMN Study*, September 2017, [https://ec.europa.eu/home-affairs/sites/homeaffairs/files/01a\\_austria\\_return\\_study\\_2017\\_final\\_en.pdf](https://ec.europa.eu/home-affairs/sites/homeaffairs/files/01a_austria_return_study_2017_final_en.pdf)

<sup>96</sup> Rechnungshof, “*Vollzug der Schubhaft mit Schwerpunkt Anhaltezentrum Vordernberg*,” 2016, <https://bit.ly/30mU5tw>

<sup>97</sup> Although short-term detention can be imposed on various grounds, its widest use is within migration related proceedings.

<sup>98</sup> International Organisation for Migration (IOM) (EMN National Contact Point Austria), “The Use of Detention and Alternatives to Detention in the Context of Immigration Policies in Austria,” 2014, <https://bit.ly/2svKMeA>

Hungarian (248).<sup>99</sup> Detainees holding an EU nationality represented approximately 22 percent of the total number of detainees in 2018 (4,005 January to October), compared to 17 percent in 2017.<sup>100</sup> In 2015, around 56 percent of migrants placed in short-term detention were from Syria, Afghanistan, and Iraq.<sup>101</sup>

It is important to note that available detention statistics may not reflect overall trends in the country. A key reason for this is that there has been a growing reliance on short-term detention (*Verwaltungsverwahrungshaft*) based on arrest orders to secure removal. Non-citizens placed in such detention are not recorded in statistics. In 2016, the Court of Auditors criticised the lack of statistics documenting short-term detention orders, which rendered it impossible to assess the extent to which this practice may have led to a reduction in the number of reported immigration detention cases prior to 2015.<sup>102</sup>

**2.16 Privatisation.** Both private for-profit contractors and non-profit charities have been provided services in migration-related detention and non-secure accommodation centres in Austria. These include G4S, Humanocare, PoorReal, Menschen.Leben, ORS Service, and Caritas. However, Parliament recently proposed curtailing the involvement of private actors in detention centres.<sup>103</sup>

At Vordernberg Detention Centre, several tasks have been outsourced to G4S, including security, psychological care, leisure activities, and food provision. The private security firm's involvement has spurred considerable criticism. 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 retain sovereign functions.<sup>104</sup> Health care has been subcontracted by G4S to Humanocare, which runs the outpatient clinic at the centre through GFV, a subsidiary company created for this purpose.<sup>105</sup> Cleaning services have also been subcontracted by G4S to PoorReal.<sup>106</sup> In 2018, the cost of G4S services at the Vordernberg Detention Centre amounted to 5.7 million EUR (including health care costs). During its 2018 visit to Austria, the Working Group on the use of mercenaries examined the scope of privatisation at the Vordernberg centre, and recommended that Austria not expand

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<sup>99</sup> European Council on Refugees and Exiles (ECRE), "Austria: Increasing Use of Detention According to Latest Statistics," June 2019, <http://www.asylumineurope.org/news/19-06-2019/austria-increasing-use-detention-according-latest-statistics>. Also in 2016 and 2017, Nigerians were the most represented nationality among immigration detainees, accounting for around 17 to 20 percent of issued detention orders (896 out of 4,627 in 2017, 412 out of 2,434 in 2016), see: Federal Interior Ministry, "Response to a Parliamentary Request, 1001/AB," 9 August 2018, [https://www.parlament.gv.at/PAKT/VHG/XXVI/AB/AB\\_01001/imfname\\_706803.pdf](https://www.parlament.gv.at/PAKT/VHG/XXVI/AB/AB_01001/imfname_706803.pdf)

<sup>100</sup> Federal Interior Ministry, "Response to a Parliamentary Request 1681/AB," 13 November 2018, [https://www.parlament.gv.at/PAKT/VHG/XXVI/AB/AB\\_01681/imfname\\_721304.pdf](https://www.parlament.gv.at/PAKT/VHG/XXVI/AB/AB_01681/imfname_721304.pdf)

<sup>101</sup> Rechnungshof, "Vollzug der Schubhaft mit Schwerpunkt Anhaltezentrum Vordernberg," 2016, <https://bit.ly/2Ril30v>

<sup>102</sup> Rechnungshof, "Vollzug der Schubhaft mit Schwerpunkt Anhaltezentrum Vordernberg," 2016, <https://bit.ly/30mU5tw>

<sup>103</sup> Orf, "Flüchtlingsbetreuung obliegt nun dem Staat," 16 May 2019, <https://orf.at/stories/3122538/>

<sup>104</sup> Tiroler Tageszeitung, "Anhaltezentrum Vordernberg: Von der Kuschel- bis zur Gummizelle," 18 December 2013, [www.tt.com/panorama/7641441-91/anhaltezentrum-vordernberg-von-der-kuschel-bis-zur-gummizelle.csp](http://www.tt.com/panorama/7641441-91/anhaltezentrum-vordernberg-von-der-kuschel-bis-zur-gummizelle.csp); Orf, "Vordernberg: Einblick in genaue Aufgabenteilung," 30 December 2013, [steiermark.orf.at/news/stories/2622985/](http://steiermark.orf.at/news/stories/2622985/)

<sup>105</sup> Humanocare, "Ambulanz des Anhaltenzentrums Vordernberg," Humanocare Ambulatorien, <http://www.humanocare.at/einrichtungen.html>; Federal Interior Ministry, "Response to a Parliamentary Request 2377/AB," 28 January 2019, [https://www.parlament.gv.at/PAKT/VHG/XXVI/AB/AB\\_02377/imfname\\_736427.pdf](https://www.parlament.gv.at/PAKT/VHG/XXVI/AB/AB_02377/imfname_736427.pdf)

<sup>106</sup> Federal Interior Ministry, "Response to a Parliamentary Request 2377/AB," 28 January 2019, [https://www.parlament.gv.at/PAKT/VHG/XXVI/AB/AB\\_02377/imfname\\_736427.pdf](https://www.parlament.gv.at/PAKT/VHG/XXVI/AB/AB_02377/imfname_736427.pdf)

the outsourcing of government functions to private companies (see 3.3 Conditions and regimes in detention centres.)<sup>107</sup>

For several years, Menschen.Leben was involved in managing centres in Vienna Zinnergasse and Bad Vöslau, both of which accommodate non-citizens benefiting from non-custodial alternatives to detention. The association's team was in charge of admission to the facility, daily care, advice, food distribution, crisis intervention, interpretation, and conflict prevention.<sup>108</sup> In December 2018, the association went bankrupt<sup>109</sup> and it was replaced in Zinnergasse by Verein Menschenrechte.<sup>110</sup>

Until 2011, the German firm European Homecare managed four Austrian reception centres, where asylum seekers are accommodated during asylum procedures (in Traiskirchen, Thalham, Bad Kreuzen, and Reichenau). European Homecare terminated its contract with the Interior Ministry because the diminishing numbers of asylum seekers in the country resulted in the business no longer being profitable. In January 2012, the Swiss firm ORS took over the management of reception centres.<sup>111</sup> However in 2015 the company became a target of criticism because of the conditions of accommodation in the Traiskirchen centre.<sup>112</sup> This notwithstanding, ORS continued to provide services in refugee centres as well as in other accommodation facilities, and since 2017 it has provided services at the Vienna Airport detention centre (see 3. Detention Infrastructure).<sup>113</sup>

In May 2019, Parliament announced a proposal to cease outsourcing services to companies such as ORS and civil society organisations such as Caritas and Diakonie. These would be replaced by a Federal Agency for Supervision and Support Services, which would be responsible for the provision of care in reception centres, legal assistance, and return assistance, and would also monitor deportation. This agency was reportedly set up before the end of 2019.<sup>114</sup> However, the transition is intended to be gradual, with responsibilities over issues like accommodation and legal counselling are to be shifted to the new agency during the course of 2020-2021. Ultimately, this shift to the new agency is intended to

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<sup>107</sup> Working Group on the Use of Mercenaries as a Means of Violating Human Rights and Impeding the Right of Peoples to Self-Determination, "Visit to Austria, A/HRC/42/42/Add.2," 26 July 2019, <https://www.ohchr.org/EN/Countries/ENACARRegion/Pages/ATIndex.aspx>

<sup>108</sup> Asylkoordination Österreich, "Country Report: Austria," *Asylum Information Database (AIDA), European Council on Refugees and Exiles (ECRE)*, February 2017, [www.asylumineurope.org/reports/country/austria](http://www.asylumineurope.org/reports/country/austria); Menschen.Leben, "Gelinderes Mittel Bad Vöslau," <http://www.menschen-leben.at/einrichtungen/gelinderes-mittel-wien-zinnergasse/>; Menschen.Leben, "Gelinderes Mittel Wien Zinnergasse," <http://www.menschen-leben.at/einrichtungen/gelinderes-mittel-wien-zinnergasse/>

<sup>109</sup> Salzburger Nachrichten, "Verein 'menschen.leben' insolvent," 20 December 2018, <https://www.sn.at/politik/innenpolitik/verein-menschen-leben-insolvent-62833213>

<sup>110</sup> Asylkoordination Österreich, "Country Report: Austria 2018 Update," *Asylum Information Database (AIDA), European Council on Refugees and Exiles (ECRE)*, March 2019, <https://www.asylumineurope.org/reports/country/austria>

<sup>111</sup> Unzensuriert, "Schweizer Firma macht Millionengeschäft der Asylbetreuung," 19 March 2012, [www.unzensuriert.at/content/007716-Schweizer-Firma-macht-Millionengesch-ft-der-Asylbetreuung](http://www.unzensuriert.at/content/007716-Schweizer-Firma-macht-Millionengesch-ft-der-Asylbetreuung); Die Presse, "Asyl: Fekter sucht neue Traiskirchen-Betreiber," 6 July 2010, [diepresse.com/home/politik/innenpolitik/579243/Asyl\\_Fekter-sucht-neue-TraiskirchenBetreiber](http://diepresse.com/home/politik/innenpolitik/579243/Asyl_Fekter-sucht-neue-TraiskirchenBetreiber)

<sup>112</sup> C. Zeier, "Asylunterkünfte als Geschäft," *Zeit*, 7 September 2015, <http://www.zeit.de/2015/36/asylunterkunft-traiskirchen-schweizer-firma-ors/komplettansicht>

<sup>113</sup> ORS, "Meilensteine," <https://www.orsservice.at/leistungen/meilensteine/>; Der Standard, 'Aus für Caritas-Flüchtlingsbetreuung am Flughafen', 13 January 2017, <http://bit.ly/2kxmmsn>.

<sup>114</sup> Interior Ministry, Mag. Andreas Achrainger zum neuen Geschäftsführer der "Bundesagentur für Betreuungs- und Unterstützungsleistungen"(BBU) bestellt, December 2019, <https://bit.ly/2RAAd4wU>



reduce costs and dependency on external service providers and improve the quality of service provision. Opponents, however, have expressed concern that this will end of restricting refugees' rights as the new agency is under the Interior Ministry.<sup>115</sup>

**2.17 Cost of detention.** According to the Interior Ministry, the total cost of operating Vordernberg centre, the PAZ Salzburg, the PAZ Vienna Hernalser Gürtel, and the PAZ Vienna Rossauer Lände exceeded 32 million EUR in 2015 and 18.5 million EUR in the first half of 2016. Of the total costs in 2015, approximately 6.4 million EUR were 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 approximately three million EUR in the Vordernberg centre, two million in the PAZ Salzburg, and 18 million jointly in the two PAZ located in Vienna.<sup>116</sup> In 2018, costs for G4S services at the Vordernberg centre, including health care, amounted to 5.7 million EUR.<sup>117</sup>

As in the [Czech Republic](#), [Poland](#), and [Slovakia](#), detainees are required to pay for their own detention (Aliens Police Act, Articles 19 and 113). In Vordernberg, daily fees amount to 70 EUR. If a detainee is unable to cover such fees, the charges will be waived, but those with sufficient funds will be debited directly. Moreover, in order to be able to re-enter Austria at a later point, non-citizens must have covered these costs. According to the Working Group on the use of mercenaries, this practice “disregards the indigent state and already vulnerable and difficult situation detainees were in.”<sup>118</sup>

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<sup>115</sup> Orf, “*Flüchtlingsbetreuung obliegt nun dem Staat*,” 16 May 2019, <https://orf.at/stories/3122538/>; ECRE, “Austria: Proposal for new Agency for Asylum Support would bring independent legal assistance to an end,” April 2019, <https://bit.ly/3atWF5X>

<sup>116</sup> Federal Interior Ministry, “Response to a Parliamentary Request, 9803/AB,” 15 November 2016.

<sup>117</sup> Federal Interior Ministry, Response to a parliamentary request 2377/AB, 28 January 2019, [https://www.parlament.gv.at/PAKT/VHG/XXVI/AB/AB\\_02377/imfname\\_736427.pdf](https://www.parlament.gv.at/PAKT/VHG/XXVI/AB/AB_02377/imfname_736427.pdf); M. Wagner, “*Nach Panne in Wien werden Sicherheitsleute geprüft*,” *Die Kronen Zeitung*, 6 February 2019, <https://www.krone.at/1857997>

<sup>118</sup> Working Group on the Use of Mercenaries as a Means of Violating Human Rights and Impeding the Right of Peoples to Self-Determination, “Visit to Austria, A/HRC/42/42/Add.2,” 26 July 2019, <https://www.ohchr.org/EN/Countries/ENACARegion/Pages/ATIndex.aspx>



## 3. DETENTION INFRASTRUCTURE

**3.1 Summary.** As of 2019, Austria operated five facilities for immigration detention purposes, notably Vienna Hernalser Gürtel PAZ (police detention centre (*Polizeianhaltezentrum*)), Vienna Rossauer Lände PAZ, the Vordernberg Detention Centre, the Zinnergasse Family Detention Centre, and the Vienna Airport Transit Zone.<sup>119</sup> In addition, the country confines non-citizens in other PAZ (Bludenz, Eisenstadt, Graz, Innsbruck, Klagenfurt, Linz, Salzburg, St. Pölten, Villach, and Wels) for up to seven days.<sup>120</sup>

It is a peculiarity in the EU context to carry out immigration detention in the PAZ, as these facilities function akin to police stations. (They are under the authority of the Interior Ministry and are managed by the police.) Austria only opened its first dedicated long-term detention centre in 2014, the Vordernberg facility; the number of PAZ used for immigration purposes has decreased since then. As of 2014, 10 PAZ were used for this purpose, compared to two as of 2019. In 2015, the UN Human Rights Committee urged Austria to ensure that immigration detainees are held in facilities specifically designed for such a purpose.<sup>121</sup> Likewise, a few years earlier, the UN Committee against Torture recommended that Austria end the practice of detaining asylum seekers in police holding centres.<sup>122</sup>

**3.2 List of detention facilities.** Vienna Hernalser Gürtel PAZ, Vienna Rossauer Lände PAZ, Vordernberg Detention Centre, the Zinnergasse Family Detention Centre, and Vienna Airport Transit Zone.

### 3.3. Conditions and regimes in detention centres.

**3.3a Overview.** According to official sources, non-citizens are detained in single cells measuring approximately 10 square metres or multi-person cells that provide four or six square metres of space per person. The cells hold up to six persons, and are equipped with a single bed or bunk beds, tables, chairs, lockers or shelves, as well as sinks and separate toilets. Mobile phones are confiscated but can be given to detainees to retrieve telephone numbers. Detainees may receive two 30-minute visits each week, although this does not

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<sup>119</sup> Asylkoordination Österreich, “Country Report: Austria 2018 Update,” *Asylum Information Database (AIDA), European Council on Refugees and Exiles (ECRE)*, March 2019, <https://www.asylumineurope.org/reports/country/austria>; Federal Interior Ministry, “Response to a Parliamentary Request, 1831/AB,” 30 November 2018, [https://www.parlament.gv.at/PAKT/VHG/XXVII/AB/AB\\_01831/imfname\\_724422.pdf](https://www.parlament.gv.at/PAKT/VHG/XXVII/AB/AB_01831/imfname_724422.pdf)

<sup>120</sup> Asylkoordination Österreich, “Country Report: Austria,” *Asylum Information Database (AIDA), European Council on Refugees and Exiles (ECRE)*, March 2019, [www.asylumineurope.org/reports/country/austria](http://www.asylumineurope.org/reports/country/austria); Anny Knapp (Asylkoordination Österreich), Email exchange with Izabella Majcher (Global Detention Project), March 2017.

<sup>121</sup> UN Human Rights Committee (HRC), “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>

<sup>122</sup> UN Committee against Torture (CAT), “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>

apply to visits from legal and consular authorities, which may take place at any time, when necessary.<sup>123</sup>

There were 25 suicide attempts by 17 persons at the facility in 2018 (January to October) and 24 attempts by 19 persons in 2017. From January to October 2018, moreover, authorities registered 485 hunger strikes in immigration detention centres. In 2017, there were 903 hunger strikes.<sup>124</sup>

**3.3b Vordernberg Immigration Detention Centre.** In January 2014, Austria opened its first long-term dedicated immigration detention facility, in Vordernberg (Styria region).<sup>125</sup> According to reports, 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 for detaining migrants.<sup>126</sup> With space for 193 persons,<sup>127</sup> 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.<sup>128</sup>

The centre appears to rarely be at capacity. According to the Interior Ministry, the average occupancy rate was 28 percent in 2015, 22 percent in 2016, 64 percent in 2017, and 68 percent in 2018 (January – September).<sup>129</sup> According to media reports, in February 2018 an average of 150 non-citizens were detained each day.<sup>130</sup> Since March 2015, a considerable proportion of detainees confined in Vordernberg were subject to short-term detention (see 2.2 Grounds for detention and 2.15 Trends and statistics).<sup>131</sup>

According to the Court of Auditors, the location of the centre has proved problematic. With approximately 80 percent of deportations carried out via border crossing points close to the PAZ in **Vienna**, the centre's location in the Styria region is considerably less practical. Between January 2014 and August 2015, the PAZ Vienna Hernalser Gürtel detained 2,500 migrants, while the Vordernberg centre held just 400. In addition, the Court of Auditors noted that compared to other PAZ, costs of detention in the Vordernberg facility were high: in 2015 the daily costs per person in the PAZ **Vienna** Rossauer Lände were 207 EUR, in the PAZ Hernalser Gürtel 244 EUR, in the PAZ Salzburg 405 EUR, and the daily cost of detention in **Vordernberg** reached 834 EUR. The high costs were due to fixed costs and low occupancy

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<sup>123</sup> European Migration Network (EMN), "EMN Ad-hoc Query on Detention and Material Conditions, Requested by FR EMN NCP on 21<sup>st</sup> February 2018," 2018, <https://bit.ly/2tj9crZ>

<sup>124</sup> Federal Interior Ministry, "Response to a Parliamentary Request 1681/AB," 13 November 2018, [https://www.parlament.gv.at/PAKT/VHG/XXVII/AB/AB\\_01681/imfname\\_721304.pdf](https://www.parlament.gv.at/PAKT/VHG/XXVII/AB/AB_01681/imfname_721304.pdf)

<sup>125</sup> Prior to this, a dedicated facility had been operating in Zinnergrasse, which solely confined families and children.

<sup>126</sup> Herbert Langthaler (Asylkoordination Österreich), Phone conversation with Michael Flynn (Global Detention Project), 30 August 2011. For more details, see: Global Detention Project, "Immigration Detention in Austria – 2014 Report," 1 December 2014, <https://www.globaldetentionproject.org/immigration-detention-in-austria>.

<sup>127</sup> Rechnungshof, "Vollzug der Schubhaft mit Schwerpunkt Anhaltezentrum Vordernberg," 2016, <https://bit.ly/2uQtc5L>

<sup>128</sup> Tiroler Tageszeitung, "Anhaltezentrum Vordernberg: Von der Kuschel- bis zur Gummizelle," 18 December 2013, [www.tt.com/panorama/7641441-91/anhaltezentrum-vordernberg-von-der-kuschel-bis-zur-gummizelle.csp](http://www.tt.com/panorama/7641441-91/anhaltezentrum-vordernberg-von-der-kuschel-bis-zur-gummizelle.csp)

<sup>129</sup> Federal Interior Ministry, "Response to a Parliamentary Request 1681/AB," 13 November 2018, [https://www.parlament.gv.at/PAKT/VHG/XXVII/AB/AB\\_01681/imfname\\_721304.pdf](https://www.parlament.gv.at/PAKT/VHG/XXVII/AB/AB_01681/imfname_721304.pdf)

<sup>130</sup> ORF Steiermark, "Neues Sicherheitskonzept für Vordernberg," 23 February 2018, <https://steiermark.orf.at/news/stories/2896973/>

<sup>131</sup> Rechnungshof, "Vollzug der Schubhaft mit Schwerpunkt Anhaltezentrum Vordernberg," 2016, <https://bit.ly/2RmNhYQ>

rates. If the facility were at its maximum capacity, the average daily costs per person would be 165 EUR.<sup>132</sup>

Compared to PAZ, Vordernberg stands out for its open-door regime and for its implementation of the right to receive visits—there are even specific rooms for family members wishing to visit detainees overnight.<sup>133</sup> However, following some escape attempts in 2017, the director of the centre announced in early 2018 that new security measures would be implemented. Barbed wire and additional security cameras have been installed and the police presence has been expanded.<sup>134</sup>

During its 2014 visit, the CPT found that material conditions and activities offered to detainees were of a high standard. The centre consisted of 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, sport, and TV, as well as 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 organised a comprehensive daily activity programme, including sport activities, language classes, computer training, and handicrafts.<sup>135</sup>

With regards to health care, during its 2017 visits, the AOB observed several deficiencies, ranging from a lack of patient electronic records (although this matter was pointed out by the AOB in previous years and the Interior Ministry declared that they were going to address it), to issues regarding the treatment of ill detainees. In particular, during its visits in September and October 2017, the AOB observed that care granted to opioid-addicted detainees was inadequate and that these persons were provided with improper medication. In addition, the AOB found that staff used the closed section inappropriately—in particular, it appeared that migrants on hunger strike were systematically moved into the closed section. The AOB urged the authorities to discontinue such practice and emphasised that isolating people on hunger strike should not constitute the rule but rather an exceptional decision based on valid arguments (such as a medical decision or a security concern). Other deficiencies included the lack of work opportunities and the lack of dedicated rooms for counselling sessions.<sup>136</sup>

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<sup>132</sup> Rechnungshof, “Vollzug der Schubhaft mit Schwerpunkt Anhaltezentrum Vordernberg,” 2016, <https://bit.ly/2RmNhYQ>; Asylkoordination Österreich, “Country Report: Austria,” *Asylum Information Database (AIDA)*, European Council on Refugees and Exiles (ECRE), February 2017, [www.asylumineurope.org/reports/country/austria](http://www.asylumineurope.org/reports/country/austria)

<sup>133</sup> Asylkoordination Österreich, “Country Report: Austria 2018 Update,” *Asylum Information Database (AIDA)*, European Council on Refugees and Exiles (ECRE), March 2019, <https://www.asylumineurope.org/reports/country/austria>

<sup>134</sup> ORF Steiermark, “Neues Sicherheitskonzept für Vordernberg,” 23 February 2018, <https://steiermark.orf.at/news/stories/2896973/>

<sup>135</sup> 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>

<sup>136</sup> Austrian Ombudsman Board (AOB), “Annual Report on the Activities of the National Prevention Mechanism (NPM),” August 2018, <https://volksanwaltschaft.gv.at/downloads/ctjmf/aob-npm-report-2017.pdf>

During its 2014 visit, meanwhile, the CPT noted that the health care services were adequate. Medical staff comprised four general practitioners, one of whom was present from Monday to Friday, as well as a psychiatrist who was on duty three days a week. In addition, a qualified nurse was present around the clock and a psychologist was available during the day. The centre was visited daily by a police doctor and employed two police officers working as medical personnel but their tasks and roles had been separated from those of other doctors. However, the CPT noted several shortcomings in relation to centre's health care provision and urged the authorities to ensure that all newly-admitted detainees are systematically tested for transmittable diseases and that medical records are more comprehensive. In addition, medical confidentiality was found to be 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 that non-medical staff cannot access detainees' medical files.<sup>137</sup>

During the same visit, 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 of calling their family once a week for ten minutes free of charge and they were allowed to use their mobile phones in a designated room.<sup>138</sup>

The committee was also informed that private staff performed their duties under the supervision of police officers and were not allowed to use physical force vis-à-vis inmates (except in cases of self-defence). The delegation was told that all private staff had completed a 300-hour training programme which included crisis intervention, de-escalation, first aid, and human rights. All security staff were found to carry pepper spray canisters. The committee thus 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.<sup>139</sup>

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.<sup>140</sup> In a parliamentary inquiry, the government explained that the legal enforcement tasks and organisational matters relating to the facility

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<sup>137</sup> 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>

<sup>138</sup> 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>

<sup>139</sup> 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>

<sup>140</sup> Asylkoordination Österreich, "Country Report: Austria," *Asylum Information Database (AIDA)*, European Council on Refugees and Exiles (ECRE), February 2017, [www.asylumineurope.org/reports/country/austria](http://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," [www.corporatewatch.org/company-profiles/g4s](http://www.corporatewatch.org/company-profiles/g4s); European Migration Network (EMN), "EMN Ad-hoc Query on Recreational Activities and Leisure Equipment in Detention, Requested by FR EMN NCP on 21<sup>st</sup> February 2018," 2018, <https://bit.ly/2QSsGg6>

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 consultations, food distribution, and escort during transfers. Some observers have argued that it is not clear to whom detainees should complain in cases of grievances against private security personnel.<sup>141</sup> In 2018, costs for G4S services at the centre, including health care, amounted to 5.7 million EUR.<sup>142</sup>

The municipality of Vordernberg, which hired G4S, receives more than 460,000 EUR per month from the Interior Ministry for the services provided.<sup>143</sup> The municipality has signed a 15-year contract with G4S for a total value of 64 million EUR.<sup>144</sup> In 2013, facility staff included 55 police officers and 68 private security guards from G4S.<sup>145</sup> As of 1 September 2018, the policing staff at the centre were composed of 50 operational employees, two management employees, two administrative employees, and six employees with other functions. G4S staff comprised 57 operators, one psychologist, and two social workers. Humanocare staff—in charge of health care—included three doctors, one psychiatrist, six nurses, and one care assistant.<sup>146</sup>

During its 2018 visit to Austria, the UN Working Group on the use of mercenaries focused on the scope of privatisation of the Vordernberg centre. At the time of the visit, the staff of the centre included 60 persons from the Interior Ministry, 55 from G4S, and 15 from Humanocare. The Working Group applauded the fact that G4S was involved merely in administrative matters (such as the provision of technical help to the centre) and services for detainees (such as providing food, monitoring the open-door regime, arranging for cultural and sporting activities, and arranging interpreters). The company was not permitted to use force, intervene, or impose security measures. Overall, detainees reported good relationships with G4S, particularly when compared to the police. According to the Working Group, this could be linked to specific functions performed by the company, which did not involve decision-making powers. The Working Group recommended not expanding outsourcing government functions to private companies.<sup>147</sup>

**3.3c 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

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<sup>141</sup> I. Brickner, “*Securitys auf Rundgang in der neuen Schubhaft*,” *derStandard*, 2 April 2014, [derstandard.at/1395363920947/Securitys-auf-Rundgang-in-der-neuen-Schubhaft](https://derstandard.at/1395363920947/Securitys-auf-Rundgang-in-der-neuen-Schubhaft).

<sup>142</sup> Federal Interior Ministry, “Response to a Parliamentary Request 2377/AB,” 28 January 2019, [https://www.parlament.gv.at/PAKT/VHG/XXVI/AB/AB\\_02377/imfname\\_736427.pdf](https://www.parlament.gv.at/PAKT/VHG/XXVI/AB/AB_02377/imfname_736427.pdf); M. Wagner, “*Nach Panne in Wien werden Sicherheitsleute geprüft*,” *Die Kronen Zeitung*, 6 February 2019, <https://www.krone.at/1857997>

<sup>143</sup> 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](http://www.cpt.coe.int/documents/aut/2010-06-inf-eng.pdf); Orf, “*Vordernberg: Einblick in genaue Aufgabenteilung*,” 30 December 2013, [steiermark.orf.at/news/stories/2622985/](http://steiermark.orf.at/news/stories/2622985/)

<sup>144</sup> W. Zaunbauer, “*Die (fast) privatisierte Schubhaft*,” *Wiener Zeitung*, 17 October 2013, [www.wienerzeitung.at/nachrichten/oesterreich/politik/581389\\_Die-fast-privatisierte-Schubhaft.html](http://www.wienerzeitung.at/nachrichten/oesterreich/politik/581389_Die-fast-privatisierte-Schubhaft.html)

<sup>145</sup> *Tiroler Tageszeitung*, “*Anhaltezentrum Vordernberg: Von der Kuschel- bis zur Gummizelle*,” 18 December 2013, [www.tt.com/panorama/7641441-91/anhaltezentrum-vordernberg-von-der-kuschel--bis-zur-gummizelle.csp](http://www.tt.com/panorama/7641441-91/anhaltezentrum-vordernberg-von-der-kuschel--bis-zur-gummizelle.csp)

<sup>146</sup> Federal Interior Ministry, “Response to a Parliamentary Request 1681/AB,” 13 November 2018, [https://www.parlament.gv.at/PAKT/VHG/XXVI/AB/AB\\_01681/imfname\\_721304.pdf](https://www.parlament.gv.at/PAKT/VHG/XXVI/AB/AB_01681/imfname_721304.pdf)

<sup>147</sup> Working Group on the Use of Mercenaries as a Means of Violating Human Rights and Impeding the Right of Peoples to Self-Determination, “Visit to Austria, A/HRC/42/42/Add.2,” 26 July 2019, <https://www.ohchr.org/EN/Countries/ENACARRegion/Pages/ATIndex.aspx>

centres (*Polizeianhaltezentrum* or PAZ),<sup>148</sup> which are under the authority of the Interior Ministry and operated by police.<sup>149</sup>

Until a few years ago, authorities used approximately 15 PAZ for confining non-citizens.<sup>150</sup> Since the Vordernberg facility opened in January 2014, the number of PAZ has gradually been reduced. As of March 2019, only two PAZ were used to detain migrants for periods exceeding one week: Vienna Hernalser Gürtel and Vienna Rossauer Lände.<sup>151</sup> In the first half of 2016, the average occupancy rate in the PAZ Vienna Hernalser Gürtel was 26 percent and in PAZ Vienna Rossauer Lände it was 31 percent.<sup>152</sup>

Most PAZ are now only used to hold detainees for periods of less than seven days, while they await transfer to a long-term facility.<sup>153</sup> The GDP thus classifies these as medium-term facilities. As of 2014, ten PAZ were used for this purpose with a combined capacity of 254. These PAZ were located in Bludenz, Eisenstadt, Graz, Innsbruck, Klagenfurt, Linz, St. Pölten, Steyr, Villach, and Wels.<sup>154</sup> Ten PAZ were used for this purpose in 2018 (Bludenz, Eisenstadt, Graz, Innsbruck, Klagenfurt, Linz, St. Pölten, Villach, Wels, and Wiener Neustadt).<sup>155</sup>

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.<sup>156</sup> In addition, PAZ confine criminal suspects (*Verwahrungshäftlinge*) for

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<sup>148</sup> Rechnungshof, “Vollzug der Schubhaft mit Schwerpunkt Anhaltezentrum Vordernberg,” 2016, <https://bit.ly/2Rjz4Ms>

<sup>149</sup> International Organisation for Migration (IOM) (EMN National Contact Point Austria), “The Use of Detention and Alternatives to Detention in the Context of Immigration Policies in Austria,” 2014, <https://bit.ly/2QsSvI2>

<sup>150</sup> Eva Caroline Pfleger (Interior Ministry), Letter to Access Info Europe and the Global Detention Project responding to freedom of information request, 30 September 2013.

<sup>151</sup> Federal Interior Ministry, “Response to a Parliamentary Request, 1831/AB,” 30 November 2018, [https://www.parlament.gv.at/PAKT/VHG/XXVII/AB/AB\\_01831/imfname\\_724422.pdf](https://www.parlament.gv.at/PAKT/VHG/XXVII/AB/AB_01831/imfname_724422.pdf)

<sup>152</sup> Federal Interior Ministry, “Response to a Parliamentary Request, 9803/AB,” 15 November 2016.

<sup>153</sup> Federal Interior Ministry, “Response to a Parliamentary Request, 1831/AB,” 30 November 2018, [https://www.parlament.gv.at/PAKT/VHG/XXVII/AB/AB\\_01831/imfname\\_724422.pdf](https://www.parlament.gv.at/PAKT/VHG/XXVII/AB/AB_01831/imfname_724422.pdf)

<sup>154</sup> International Organisation for Migration (IOM) (EMN National Contact Point Austria), “The Use of Detention and Alternatives to Detention in the Context of Immigration Policies in Austria,” 2014, <https://bit.ly/2uQs3es>

<sup>155</sup> Federal Interior Ministry, “Response to a Parliamentary Request 1681/AB,” 13 November 2018, [https://www.parlament.gv.at/PAKT/VHG/XXVII/AB/AB\\_01681/imfname\\_721304.pdf](https://www.parlament.gv.at/PAKT/VHG/XXVII/AB/AB_01681/imfname_721304.pdf)

<sup>156</sup> Albert Grasel (Interior Ministry), 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.

up to 48 hours before they are transferred to prison.<sup>157</sup> Since PAZ are authorised to detain people in police custody for committing a variety of infractions, they thus appear to function as police stations.<sup>158</sup>

Reportedly, authorities comply with the requirement spelled out in the 1999 Interior Ministry Ordinance on Detention Conditions that immigration detainees should be accommodated, if possible, separately from “administrative detainees” (*Verwaltungshäftlinge*) and criminal suspects (*Verwahrungshäftlinge*) (§4).<sup>159</sup> 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 kept separate from immigration detainees.<sup>160</sup> The authorities of the remaining two PAZ operating as long-term immigration detention facilities at that time did not respond to the GDP’s request for information.

In its 2017 report, the AOB regretted that in PAZ Hernalser Gürtel, open detention standards were repeatedly being violated (because of lengthy lockup times). The AOB had already highlighted this and urged amendments in 2016.<sup>161</sup> Closed detention in PAZ Hernalser Gürtel appears to be a longstanding problem, with the CPT criticising the practice in 2014. The AOB also criticised the lack of details in the records kept by the staff at the Hernalser Gürtel PAZ. Reportedly, detainees placed in single cells faced impediments in accessing outdoor activities.<sup>162</sup>

In its 2015 report, the AOB noted that persons placed in PAZ are able to engage in very few activities. Reading material and board games are frequently unavailable. In most PAZ, there is a (poorly equipped) library, TV set in the social room, and bleak walking yards. The NPM recommended improving the provision of leisure activities as well as areas of the facilities where detainees spend their out-of-cell time.<sup>163</sup>

The CPT has visited PAZ on several occasions. In 2014, the CPT visited the PAZ Hernalser Gürtel, which tends to confine most non-citizens. The committee found that material

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<sup>157</sup> Albert Grasel (Interior Ministry), 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>

<sup>158</sup> Emanuel Matti (Diakonie Flüchtlingsdienst), Email correspondence with Izabella Majcher (Global Detention Project), November 2014.

<sup>159</sup> Claudia Schmidt (Caritas Österreich), Email exchange with Izabella Majcher (Global Detention Project), April 2017.

<sup>160</sup> Josef Zinsberger (Landespolizeidirektion Wien, Abteilung Fremdenpolizei und Anhaltevollzug), Email exchange with Izabella Majcher (Global Detention Project), April 2017.

<sup>161</sup> Austrian Ombudsman Board (AOB), “Annual Report on the Activities of the National Prevention Mechanism (NPM),” August 2018, <https://volksanwaltschaft.gv.at/downloads/ctjmf/aob-npm-report-2017.pdf>

<sup>162</sup> Austrian Ombudsman Board (AOB), “Annual Report on the Activities of the National Prevention Mechanism (NPM),” August 2018, <https://volksanwaltschaft.gv.at/downloads/ctjmf/aob-npm-report-2017.pdf>

<sup>163</sup> *Volksanwaltschaft*, “*Bericht der Volksanwaltschaft an den Bundesrat*,” 2015, [https://www.parlament.gv.at/PAKT/VHG/XXV/III/III\\_00235/index.shtml](https://www.parlament.gv.at/PAKT/VHG/XXV/III/III_00235/index.shtml)



conditions in the PAZ Hernalser Gürtel were generally acceptable and that 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, hygiene conditions were found to be appalling, and the outdoor exercise yards were not equipped with any form of shelter to protect detainees from the rain. The CPT thus urged the Austrian authorities to remedy these shortcomings.<sup>164</sup>

The CPT also expressed misgivings regarding the regime applicable to immigration detainees in the PAZ Hernalser Gürtel. Only a small fraction of immigration detainees were placed in an open regime, under which they could move freely within their detention unit during the day. The majority of detainees were instead held under the closed regime in which regular out-of-cell activities were generally limited to one hour of outdoor exercise each day. Aside from this hour, they were forced to remain locked 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 facility accordingly. In addition, those placed in a closed regime should be offered a wider range of out-of-cell activities.<sup>165</sup>

Health care staff in the PAZ Hernalser Gürtel included a police doctor who was present each working day for half a day and who was on call at 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 each weekday morning. The CPT expressed concern that contrary to the situation found in 2009, the centre no longer employed a (part-time) nurse and 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 needs. In addition, the CPT noted several shortcomings and urged the authorities to ensure that all newly-admitted detainees are systematically tested for transmittable diseases and to improve medical confidentiality.<sup>166</sup>

Detainees were allowed to have two weekly half-an-hour visits 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 cases, prompting the CPT to recommend that authorities ensure the practice established in the Vordernberg facility.<sup>167</sup>

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<sup>164</sup> 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>

<sup>165</sup> 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>

<sup>166</sup> 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 Put 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>

<sup>167</sup> 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 Put 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>

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 facility required significant improvements.<sup>168</sup>

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 for most of the day. Immigration detainees also had unlimited access to a communal recreation room, equipped with a TV and table tennis. In contrast, detainees were locked in the rooms for all but one-hour each day at Vienna Hernalser Gürtel PAZ.<sup>169</sup>

The CPT also found it problematic that at Vienna Hernalser Gürtel a nurse was present for just 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 police officers could often access medical records.<sup>170</sup>

**3.3d Vienna Family Detention Facility at Zinnergasse.** Families and unaccompanied children are detained at the Zinnergasse family detention facility. Established in 2010, as of 2014 the facility had 12 apartments, where 12 families or 50 people could be detained.<sup>171</sup> As of 2017, the capacity had increased to 69.<sup>172</sup> In 2015, the average occupancy rate was 23 percent, and in the first half of 2016, it was 33 percent.<sup>173</sup>

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<sup>168</sup> 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>

<sup>169</sup> 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>

<sup>170</sup> 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>

<sup>171</sup> International Organisation for Migration (IOM) (EMN National Contact Point Austria), “The Use of Detention and Alternatives to Detention in the Context of Immigration Policies in Austria,” 2014, <https://bit.ly/30o7bXF>; S. 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](http://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)*, March 2019, [www.asylumineurope.org/reports/country/austria](http://www.asylumineurope.org/reports/country/austria)

<sup>172</sup> S. Heilemann and R. Lukits, “The Effectiveness of Return in Austria: Challenges and Good Practices Linked to EU Rules and Standards,” *EMN Study*, September 2017, [https://ec.europa.eu/home-affairs/sites/homeaffairs/files/01a\\_austria\\_return\\_study\\_2017\\_final\\_en.pdf](https://ec.europa.eu/home-affairs/sites/homeaffairs/files/01a_austria_return_study_2017_final_en.pdf)

<sup>173</sup> Federal Interior Ministry, “Response to a Parliamentary Request, 9803/AB,” 15 November 2016.

The facility, where families and unaccompanied minors are usually held for 48 hours prior to removal,<sup>174</sup> offers an open regime.<sup>175</sup> Detention conditions in this facility are considered good and the staff receive psychological training and do not wear a uniform.<sup>176</sup> The facility was visited in 2017 by the AOB, which commended the professional manner in which meetings preceding deportation were carried out.<sup>177</sup>

The centre also has premises that are used as non-secure housing for those granted alternatives to detention (see 2.9 Non-custodial measures (“alternatives to detention”). Alarm-protected doors serve to separate the different sections of the centre. Since the Interior Ministry retains authority over both sections, and both sections are thus run by the police, it is reasonable to presume that 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.”

**3.3e Vienna Airport Transit Zone.** Austria also uses the Vienna Airport transit zone to detain persons whose asylum applications lodged at the airport were channelled through the airport procedures, and they may be detained here for up to six weeks.<sup>178</sup> The facility is under the authority of the border police. With space for up to 35 persons, the centre has 12 rooms, two kitchens, one social room, and a small outside yard. In December 2016, the government ended its contract with Caritas Vienna, which had provided care to detainees, and instead contracted ORS.<sup>179</sup>

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<sup>174</sup> Asylkoordination Österreich, “Country Report: Austria 2017 Update,” *Asylum Information Database (AIDA)*, European Council on Refugees and Exiles (ECRE), March 2018, <https://www.asylumineurope.org/reports/country/austria>

<sup>175</sup> International Organisation for Migration (IOM) (EMN National Contact Point Austria), “The Use of Detention and Alternatives to Detention in the Context of Immigration Policies in Austria,” 2014, <https://bit.ly/2QUcGz1>; S. 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](http://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](http://www.asylumineurope.org/reports/country/austria)

<sup>176</sup> S. Heilemann and R. Lukits, “The Effectiveness of Return in Austria: Challenges and Good Practices Linked to EU Rules and Standards,” *EMN Study*, September 2017, [https://ec.europa.eu/home-affairs/sites/homeaffairs/files/01a\\_austria\\_return\\_study\\_2017\\_final\\_en.pdf](https://ec.europa.eu/home-affairs/sites/homeaffairs/files/01a_austria_return_study_2017_final_en.pdf); European Migration Network (EMN), “The Effectiveness of Return in EU Member States: Synthesis Report for the EMN Focussed Study 2017,” February 2018, [https://ec.europa.eu/home-affairs/sites/homeaffairs/files/00\\_eu\\_return\\_study\\_synthesis\\_report\\_final\\_en.pdf](https://ec.europa.eu/home-affairs/sites/homeaffairs/files/00_eu_return_study_synthesis_report_final_en.pdf)

<sup>177</sup> Austrian Ombudsman Board (AOB), “Annual Report on the Activities of the National Prevention Mechanism (NPM),” August 2018, <https://volksanwaltschaft.gv.at/downloads/ctjmf/aob-npm-report-2017.pdf>

<sup>178</sup> Asylkoordination Österreich, “Country Report: Austria,” *Asylum Information Database (AIDA)*, European Council on Refugees and Exiles (ECRE), March 2019, [www.asylumineurope.org/reports/country/austria](http://www.asylumineurope.org/reports/country/austria); Anny Knapp (Asylkoordination Österreich), *Email exchange with Izabella Majcher* (Global Detention Project), March 2017.

<sup>179</sup> I. Brickne, “Aus für Caritas-Flüchtlingsbetreuung am Flughafen,” *Der Standard*, 13 January 2017, <https://www.derstandard.at/story/2000050723183/aus-fuer-caritas-fluechtlingsbetreuung-am-flughafen>



[www.globaldetentionproject.org](http://www.globaldetentionproject.org)