

# FOREIGN PRISONERS IN AUSTRIAN PENITENTIARY INSTITUTIONS

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## 1 INTRODUCTION

### 1.1 Overview Penalties and Measures

The following types of detention are legally admissible in Austria:

- *Police detention (Verwahrungshaft)* (up to 48 hours) to bring someone who is strongly suspected of a criminal offence before the investigating judge (§ 175-179 StPO).
- *Pre trial detention (Untersuchungshaft)* (up to a maximum of 2 years under special preconditions), proposed by the public prosecutor and decided by a judge (§§ 179-181 StPO).
- *Custodial sentence (Strafhaft)* (from 1 day to 20 years, or lifelong, § 18 StGB), after conviction by penal court or after commutation of an irrecoverable fine into a substitute prison sentence (§ 19 para. 3 StGB).
- Placement in *preventive custody (Unterbringung)* (in some cases for an indefinite time span), based on penal court's decision against 'mentally abnormal offenders', 'addicted offenders' or 'dangerous recidivists' (§§ 21-23 StGB).
- *Administrative penal servitude (Verwaltungsstrafhaft)* (from 12 hours to 6 weeks, § 11 VStG), after sentence by an administrative authority or after commutation of an irrecoverable administrative fine into a substitute penal servitude (§ 16 VStG).
- *Police arrest (Polizeihaft)* (up to 24 hours) to ensure an administrative penal procedure (§ 35, 36 para.1 VStG).
- *Administrative detention of irregular migrants (Fremdenpolizeiliche Haft)* (up to 48 hours) to bring somebody before the immigration authorities (§ 39 FPG).
- *Detention pending deportation (Schubhaft)* (10 months within 2 years at maximum) to ensure administrative procedure to enforce ban of residence and removal (§§ 76 and 80 FPG).<sup>1</sup>

### 1.2 Overview of the Prison System

Detention can be executed in different institutions:

- *Police detention* in cells and detention centres of the police.
- *Pre trial detention* (with some exceptions) in prisons at the location of the courts of first instance. In these court prisons there are separate departments for juvenile and female prisoners.
- *Custodial sentences* up to 18 months generally in court prisons, with longer sentences in penitentiaries.
- *Preventive custody* in special institutions provided for by the justice administration, but partly also in penitentiaries. Preventive detention of certified insane offenders due to § 21 (1) StGB to a great extent takes place in general psychiatric hospitals.
- *Administrative penal servitude* in police detention centres, in single cases (if following a custodial sentence) also in penitentiaries.
- *Administrative arrest of irregular migrants* in the police detention centres like police detention of criminal offenders.

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<sup>1</sup> Constraints of freedom are also admissible in connection with less severe means: If ban on residence or removal is deferred a directive is possible not to leave a certain area (§ 68, Para. 2 Ziff. 1 FPG) or to reside in a place which is designated by the immigration authority (§ 77 Para. 3 FPG). The strongest restriction can be made according to § 77 Para. 5 FPG. To ensure the expulsion and deportation, forcible return or transition of immigrants they can be demanded not to leave a designated room for at most 72 hours.

- *Detention pending deportation* in the same institutions as administrative penal servitude or police detention of suspected criminal offenders though these different detainees are kept in separate cells or departments (following a custodial sentence this custody in some cases can also take place in penitentiaries).

The relevance of these penalties and measures may be assessed by the size of the prison population (daily average): While about 6,000 persons are serving a custodial sentence and 2,500 are kept in pre trial detention, preventive custody and detention pending deportation are afflicting about 600 persons each and administrative penal servitude another 200. These figures (daily average prison population) correspond to the aggregate number of years of detention imposed.

Institutions under responsibility of the Ministry of Justice (*Justizanstalten, JA*):

There are 28 JA with 16 small dependent outposts.

Thereof are:

- 16 court prisons (these are institutions for pre trial detention and custodial sentences up to 18 months, housing between 50 [*Steyr*] and 1.300 [Vienna] prisoners, with separate departments for juveniles and women).
- 9 penitentiaries (for longer custodial sentences and a size between about 120 [youth prison in *Gerasdorf*] and 870 inmates [*Stein*]). One of these penitentiaries is designated for juveniles, another one for women.<sup>2</sup>
- Besides these institutions the Ministry of Justice runs three institutions of rather small size for the execution of preventive custody, two of which are designated for mentally ill offenders, one for drug addicts.
- Persons subjected to preventive custody acc. to § 21 (1) StGB are legally under the authority of prisons (of which one, *Göllerdorf*, is a specialised clinic) but most of them are actually placed in psychiatric hospitals. At present there are nine hospitals in eight federal states hosting inmates of this category, partly on closed forensic departments, partly in open sections.<sup>3</sup>

The capacity of justice prisons is 8,068 places (1 Dec 2005).

In February 2005 3,630 employees have been occupied there, thereof 2,970 especially trained guards (further on there are about 300 staff members for special services, about one third of which are social workers, another one qualified nurses and the rest are psychologists, physicians or teachers). In 2005 the total budget for these prisons (without building costs) was 255.2 Mio €, of which 133.8 were spent for personnel.

The justice prisons are directly managed and inspected/controlled by the Ministry of Justice. Prisoners may address their complaints to the director of the prison (§ 11 StVG); if the complaint is directed against the prison management they may address their complaints to a special chamber of the regional court of appeal (§ 11a StVG) or to the Ministry of Justice as a last resort (§ 121 StVG). In the latter case the prisoner has no entitlement to reply (§ 122 StVG).

Prison monitoring committees (*Vollzugskommissionen*) at each regional court should exercise some extra supervision over prisons. These committees consist of seven members of the local

<sup>2</sup> These penitentiaries are all closed prisons which partly contain high security departments, partly (semi-)open departments for the relaxed imprisonment with first offenders.

<sup>3</sup> On 1 Dec 2005 246 mentally ill offenders have been placed acc. to § 21 Para. 2 StGB in psychiatric hospitals (or psychiatric departments of general hospitals). There is no information available about the percentage of foreigners in this population.

The hospitals and the health administration of the federal states are responsible for the treatment of these offenders, yet the time of release falls into the responsibility of penal courts which consult psychiatric experts.

community appointed by the minister of justice after nomination by the head of the local government and by ministers of some other resorts (§ 18 StVG).<sup>4</sup>

The *Volksanwaltschaft* (the national ombudsman-institution) may control the administration of justice, and so of prisons too, may it be self-acting (e.g. because of media reporting) or reacting to citizens' complaints, and is annually reporting to the House of Parliament.<sup>5</sup> The *Committee for the Prevention of Torture and Inhumane or Degrading Treatment or Punishment (CPT)* has visited Austria four times since 1990, the last time in 2004.

Institutions under the responsibility of the Ministry of the Interior (*Polizeianhaltezentren, PAZ*):

- Cells in police stations for temporary police detention (before admission to police detention centres or to court prisons) and 16 police detention centres for administrative penal servitude and detention pending deportation. There are no special centres for juveniles and women, yet care should be taken for their spatial separation according to the law (§ 4 AnhO).

The capacity of police detention centres (PAZ) is 1,118 places, of which 717 are designated for detention pending deportation and 305 for administrative penal servitude.<sup>6</sup> The smallest institution is located at the Vienna airport in *Schwechat* (with 8 places), the largest in Vienna (*PAZ Hernalser-Gürtel* with 304 places).

There are no figures available on budget and employees, because these institutions use personnel from different local police departments.<sup>7</sup>

An important control function is exercised by the *Human Rights Advisory Council (Menschenrechtsbeirat, MRB)* which resides at the Ministry of the Interior but is free from directives. This council has been established through an amendment to the Security Police Act 1999 (introducing §§ 15a/b/c SPG) as a reaction to critiques from *CPT*, dating back to 1990, that living conditions in police detention centres should be controlled by an independent body. The real trigger for the establishment and for a rather wide competence of the MRB was the death of a Nigerian citizen during forced removal in 1 May 1999. Besides its annual activity report the council periodically publishes progress-reports on the implementation of its

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<sup>4</sup> Since the reports of the committees and their recommendations are not published, their impact – if there is any – stays invisible. A draft law from 2000 intended to substitute the committees by advisory boards for each prison. They should also include members of human rights groups and spokesperson for inmates. At the end of the 21<sup>st</sup> legislative period no more agreement on the bill could be reached.

<sup>5</sup> In the 2000-2004 reports a decreasing number of prisoners' complaints is mentioned. The majority of these complaints refer to judicial decrees which are outside the competence of the *Volksanwalt*. There is no evidence from the reports that foreign prisoners complain more frequently, on the contrary. Because of five cases of prisoners' death the *Volksanwaltschaft* in 2001 specifically investigated the penitentiary in Stein. The annual report denies shortcomings and generally acquits the guards stating the growing congestion of the facilities by a 'dramatic change' in the prison population. Apart from a growing readiness to escape, from increasing drug and mental health problems the high number of foreigners among prisoners is seen as a stress factor: 'An additional strain for the personnel results from the high portion of foreign prisoners who do not speak German (presently 30% of prisoners coming from 60 different nations).' (p. 13)

<sup>6</sup> Information obtained from the Ministry of the Interior (Abt. II/3).

<sup>7</sup> After a key date (10 Jan 2001) assessment by the *Human Rights Advisory Council* 458 officials have been busy in police detention centres, thereof 51 women. Social care workers only care for prisoners in detention pending deportation. According to contracts between the Ministry of the interior and private organisations there should be two to three care workers for each detention centre with office hours on every working day.

numerous recommendations.<sup>8</sup> Even the *Volksanwaltschaft* can be appealed in matters of police detention and is regularly reporting its observations to the House of Parliament.<sup>9</sup>

In principle none of the different types of prisons is reserved for foreigners even though detention pending deportation can only afflict foreigners and is spent in spatial separation from the other categories of detainees in police detention centres. Just one PAZ (in *Eisenstadt*) only houses detainees pending deportation.

Yet the mean share of foreigners is highest in PAZ (about 75%) and is higher in court prisons (with mainly pre trial-detainees, 50%) than in penitentiaries (40%). The lowest portion of foreigners can be found in institutions (prisons or hospitals) for preventive detention (13%). The regional differences are substantial. The maximum share of foreigners in a prison under justice administration is 70% (*JA Suben*). Compared with their 9.3 %-rate in the whole population<sup>10</sup> foreigners are strongly over-represented in prisons, except in preventive detention measures, yet compared with their rate in the offender population (29% in total, 46% with felony offenders, in 2004) foreigners are only over-represented in pre trial-detention and not in penitentiaries.

There is no department with special responsibilities for foreigners, neither in prisons under justice nor under police administration, except in the largest Austrian court prison in Vienna. There is a foreigners' advisor (*Ausländerreferent*) who may be consulted by prisoners and guards from other prisons too and who organizes training measures for officers working with foreign prisoners. Within the new curriculum for the basic training for wardens (enacted in 2004) an extended course 'foreign cultures' is mandatory, but there is also considerable demand for similar courses in further education programmes. The situation is similar in police basic and advanced training courses.

<b>Table 1: Prisoners in Austria, by date 1 Dec 2005</b>				
	total	Austrians	Foreigners	% Foreigners
<b>Court prisons (CP)</b>				
<b>total CP</b>	<b>4918</b>	<b>2406</b>	<b>2512</b>	<b>51,1%</b>
<b>Penitentiaries (P)</b>				
Penitentiaries (men)	3354	2039	1315	39,2%
Gerasdorf (juveniles)	126	60	66	52,4%
Schwarzau (women)	165	105	60	36,4%
<b>total P</b>	<b>3645</b>	<b>2204</b>	<b>1441</b>	<b>39,5%</b>
<b>Facilities for preventive custody (PC)</b>				
<b>total PC</b>	<b>403</b>	<b>350</b>	<b>53</b>	<b>13,2%</b>
<b>total (justice prisons)</b>	<b>8966</b>	<b>4960</b>	<b>4006</b>	<b>44,7%</b>
<b>Police Prisons, by date 23 Nov 2005</b>				
	total	Austrians	Foreigners	% Foreigners
Administrative penal custody	178	148	30	16,9%
Police detention	14	6	8	57,1%
Detention pending deportation	424		424	100,0%
<b>total (police prisons)</b>	<b>616</b>	<b>154</b>	<b>462</b>	<b>75,0%</b>
<b>all prisons</b>	<b>9582</b>	<b>5114</b>	<b>4468</b>	<b>46,6%</b>
Source: IVV-Data (based on prisoners' electronic files), provided by Ministry of Justice, February 2006				

<sup>8</sup> CPT is demanding an even greater independence of the MRB with regard to budget and selection of members and also an extension of its competence to prisons under justice administration (CTP 2005, 15).

<sup>9</sup> In fact only very few complaints against police relate to forcible action or detention measures, even less to actions taken against foreigners. The bulk of complaints refer to police service, respectively to omission of service.

<sup>10</sup> In the age-group >15-64 the foreigners' rate in 2004 was 10.6% (*Statistisches Jahrbuch Österreichs* 2006, p. 191). In addition population statistics are fairly incomplete with respect to non-residents. If we consider a daily average of about 320,000 tourists in the country, the growing number of statistically neglected seasonal workers and the illegally present – estimated at about 80,000 (*Futo/Jandl* 2005, *National Contact Point* 2005) – the rate of foreigners in the population might come up to at least 15%.

### **1.3 Overview Involvement Consulates, Embassies, Ministries Home Country, Probation Service Home Country, NGO's etc**

See 2.6

### **1.4 Overview of Trends**

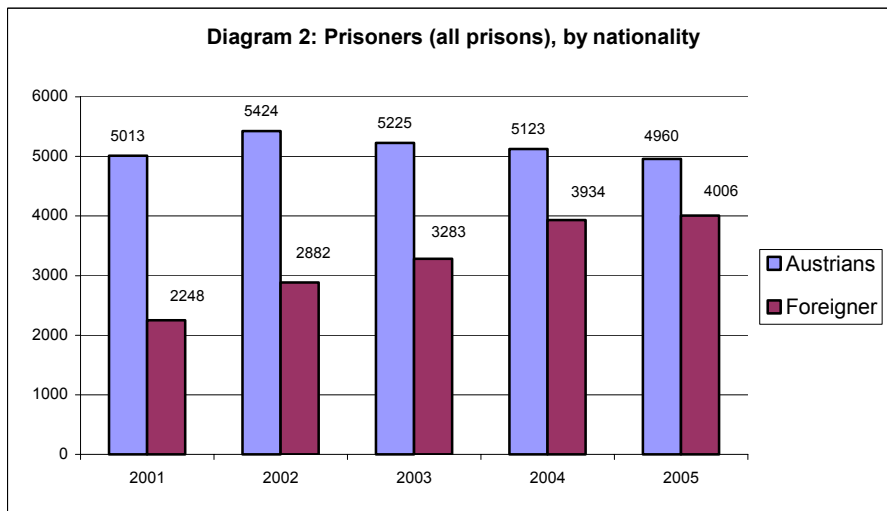
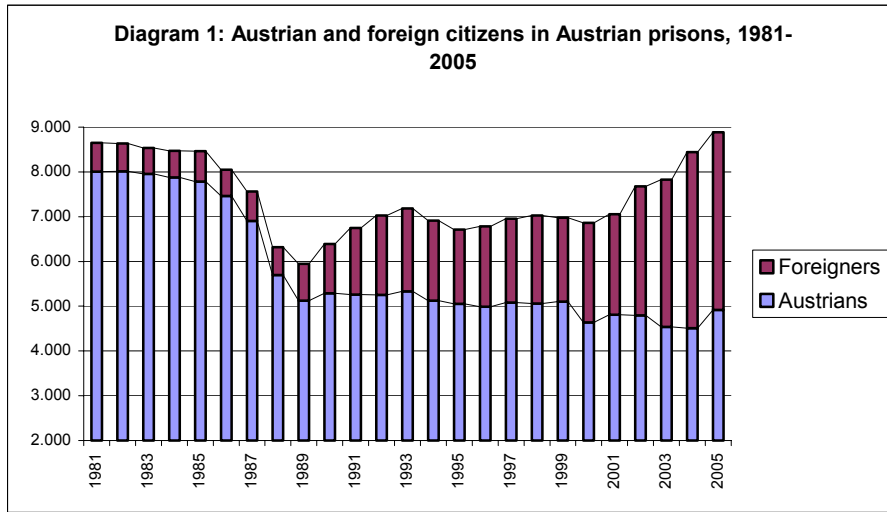
At present the number of prisoners in Austria has reached the highest level since the early 1980s. The marked rise since 2000 is the result of increasing prison input (offenders detected by the police) and of missing political counter-measures. Such measures have been repeatedly taken between 1987 und 1998, namely a series of penal code and penal procedure law reforms (ranging from the penal law amendment in 1987 to the juvenile court law in 1988 and the so called diversion law in 1998; see: Pilgram 2004).

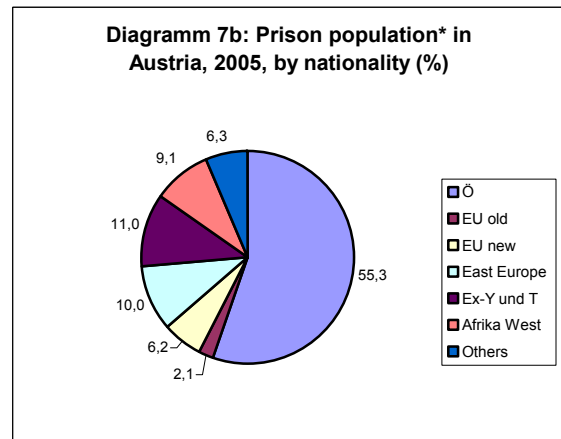
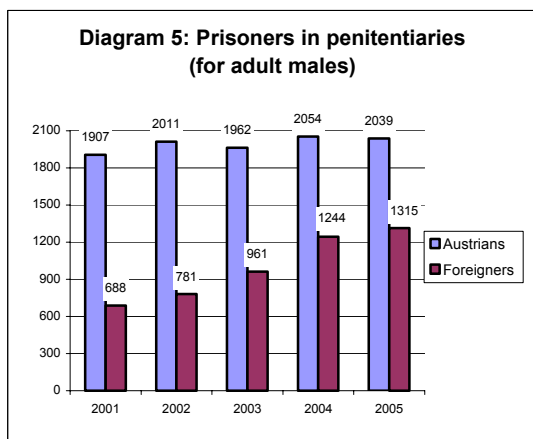
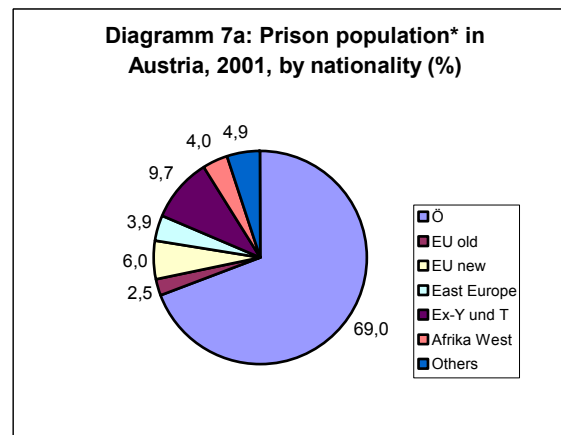
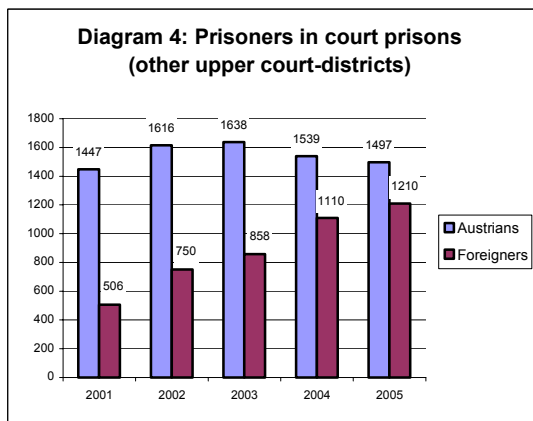
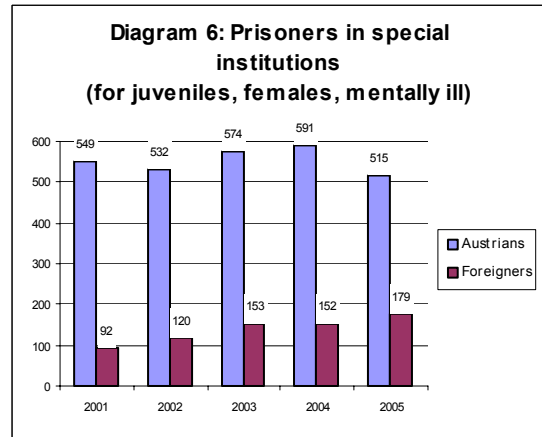
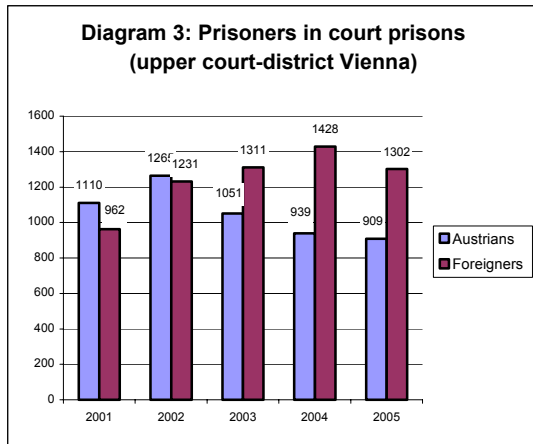
Even a first crime wave caused by foreigners after the opening of the Eastern borders in the early 1990s was at the time still responded on by liberal reforms (e.g. Penal Procedure Law amendment 1993 and Code of Imprisonment 1993). These could not completely prevent rising numbers of prisoners. Notably the Austrian citizens profited from this policy to avoid pre trial detention and prison sentences, whereas the growth of the prison population (daily average in justice institutions) from about 5,900 to 7,200 between 1989 and 1993 and from about 6,900 to 8,400 after 2000 is exclusively due to rising numbers of foreigners imprisoned. Criminal policy today, however, affirms imprisonment and prison construction. Criminal policy shows itself as security policy in the face of perceived crime threats originating abroad, and is no longer primarily guided by principles of compensation and re-integration.

The increase of foreigners in prisons at the beginning of the 1990s was first effectuated by new 'tourist groups' from the neighbouring countries (Czechoslovakia, Hungary, but also from Poland), second by migrants from the disintegrating Yugoslavia (by people fleeing civil war). Labour migrants to Austria typically originate from these regions (Pilgram 2003a). These groups committed primarily property crimes (occasionally even on a commercial scale).

The foreign prisoners' increase after 2000 can be traced back almost exclusively to citizens from more distant Eastern European regions (e.g. Rumania, Bulgaria, former Soviet Republics) on one hand and to persons from Western African states an the other hand (Pilgram 2003b). They usually only have a provisional residence status (as asylum seeker) or stay illegally in the country.

Almost half of the 20%-increase of the average prison population between 2001 and 2004 (from 7,059 to 8,443) originates from citizens of Eastern European states (n=655, 47%), more than a third (n=508; 37%) of Western African states. The first groupes typically get incriminated because of recurrent property crimes, the second group because of drug dealing (street running). While the share of Austrian citizens in prisoners is falling and the share of citizens of states traditionally providing for labour migrants (Yugoslavia, Turkey) keeps stagnant the portion of prisoners from distant Eastern Europe states rises from 3.9 to 10.3% (maximum 2004) and that of prisoners from Western Africa from 4.0 to 9.1% (2005). (See diagrams 1-7)





**Source:**

Diagram 1: Annual 'Statistische Übersicht über den Strafvollzug'; Bundesministerium für Justiz (1996): Unterlagen zur Budgetdebatte 1997, own calculations; data 2000-2004: personal communication Mag. Gneist (Ministry of Justice); 2005: IVV-Daten, provided by Federal Computing Centre of Austria, March 2006: Mean number of Austrian prisoners; foreign prisoners on key date Sep. 1st (since 2001: Dec. 1st).  
 Diagram 2 to 7b: IVV-Data (based on prisoners' electronic files, not including police prisons), provided by Ministry of Justice, February 2006

**Nationality:**

EU-new: Estonia, Latvia, Lithuania, Malta, Poland, Slovakia, Czech Republic, Hungary, Cyprus  
 East Europe: Albania, Armenia, Azerbaijan, Bulgaria, Georgia, Kazakhstan, Bishkek, Moldova, Romania, Russia, Ukraine, Uzbekistan, Tajikistan, Belarus  
 Ex-Y and T: Bosnia and Herzegovina, Yugoslavia, Croatia, Macedonia, Serbia, Turkey  
 Africa West: Angola, Equatorial Guinea, Benin, Burkina Faso, Cote d'Ivoire, Gabon, Gambia, Ghana, Guinea, Guinea Bissau, Cameroon, Congo, Liberia, Mali, Mauritania, the Niger, Nigeria, Senegal, Sierra Leone, Togo, Chad, Central African Republic



Though in the long range a diminishing number of people is sentenced (namely native born and naturalized persons, but even foreigners integrated into the labour market) prison sentences become more frequent – in particular against certain groups of foreigners. They endure more frequently pre trial detention and short term prison sentences. Austrians, however, a priori do not experience pre trial-detention and imprisonment as often, but if they do their sentences, these sentence are longer and more often combined with preventive detention.

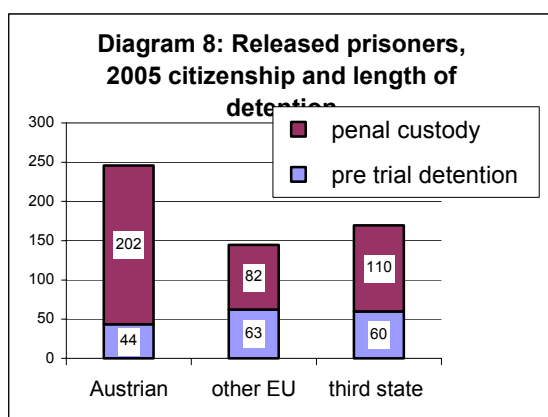
Criminal policy shows a kind of polarization along the line Austrian – foreign offenders. A slightly growing proportion of juveniles and women among prisoners in recent times is a consequence of the increasing rate of foreigners in prisons. Alternatives to prison sentences are less often used with foreign offenders. (Pilgram 2002; see: Table 2 and 3)

by date 01.12	Austrian					other EU-citizenship					third state citizenship*				
	pre trial detention	penal servitude	preventive custody	others	total	pre trial detention	penal servitude	preventive custody	others	total	pre trial detention	penal servitude	preventive custody	others	total
2001	769	3603	532	94	4998	252	337	6	22	617	555	1000	32	45	1632
2002	859	3862	554	75	5350	231	372	8	14	625	872	1159	42	52	2125
2003	815	3708	605	76	5204	262	312	4	15	593	1074	1506	48	57	2685
2004	834	3578	642	52	5106	326	441	8	16	791	1127	1909	56	45	3137
2005	703	3570	657	35	4965	268	443	16	14	741	935	2213	59	41	3248
percentage															
2001	15,4	72,1	10,6	1,9	100,0	40,8	54,6	1,0	3,6	100,0	34,0	61,3	2,0	2,8	100,0
2002	16,1	72,2	10,4	1,4	100,0	37,0	59,5	1,3	2,2	100,0	41,0	54,5	2,0	2,4	100,0
2003	15,7	71,3	11,6	1,5	100,0	44,2	52,6	0,7	2,5	100,0	40,0	56,1	1,8	2,1	100,0
2004	16,3	70,1	12,6	1,0	100,0	41,2	55,8	1,0	2,0	100,0	35,9	60,9	1,8	1,4	100,0
2005	14,2	71,9	13,2	0,7	100,0	36,2	59,8	2,2	1,9	100,0	28,8	68,1	1,8	1,3	100,0

Source: Source: IVV-Data (based on prisoners' electronic files, not including police prisons), provided by Federal Computing Centre of Austria, March 2006, own calculations  
 \* Including stateless persons

	citizenship				
	Austrian	other EU	third state	foreign state total	total
Released prisoners	6620	1741	5940	7681	14301
after days (mean) of					
pre trial detention	44	63	60	122	53
penal custody	202	82	110	192	149
total (pre trial d./penal cust.)	246	145	169	314	202
percentage penal custody	82,2	56,8	64,7	61,1	73,9

Source: Source: IVV-Data (based on prisoners' electronic files, not including police prisons), provided by Federal Computing Centre of Austria, April 2006, own calculations



With respect to police detention centres statements of trends cannot be made, because there is no steady data reporting by the Ministry of the Interior. The administration only offered very limited statistics, the total number of detentions in 2003 and 2004 (accession data), and the stock of detainees at two key dates (special inquiry at the turn of 2005/2006). From these sources it can be concluded that more persons are passed through PAZ than through prisons under justice administration, while the average time of detention is rather low there: 14 hours with police detention, 11 days with administrative penal custody and 16 days with detention pending deportation.

Table 4: Entrances to police prisons in	Population in police prisons by		mean stay (days)*		
	2003	2004	23 Nov 2005	23 Jan 2006	
<b>total</b>	26.263	25.889	616	790	9,8
thereof foreigners	18.184	17.807	462	652	11,3
% foreigners	69,2	6	75,0	82,5	
thereof % women	13,7	14,2	7,6	14,3	
thereof % juveniles	6,7	6,7	3,0	1,5	
<b>administrative penal custody</b>	5.932	6.212	178	198	11,3
thereof foreigners	1.255	1.307	30	56	12,3
% foreigners	21	21,0	16,9	28,3	
thereof % women	7,6	6,8	0,0	21,4	
thereof % juveniles	1,3	2,4	6,7	0,0	
<b>police detention</b>	8.028	8.740	14	13	0,6
thereof foreigners	4.626	5.563	8	4	0,4
% foreigners	57	63,6	57,1	30,8	
thereof % women	9,8	7,6	0,0	0,0	
thereof % juveniles	15,8	13,8	0,0	0,0	
<b>detention for the purpose of removal</b>	12.303	10.937	424	592	16,0
% foreigners	100,0	100,0	100,0	100,0	
thereof % women	15,7	18,4	8,3	13,7	
thereof % juveniles	3,8	3,6	2,8	1,7	

Source: Personal communication from Ministry of the Interior, Dept. II/3; own calculations  
 Comment: Data not including administrative detention facility in Bludenz  
 \* Mean of entrance and population data used for calculation of mean stay.

Forecasting future trends is quite difficult and risky. Since the last year there are some hints that the wave after 2000 of offences committed by foreigners already might have transgressed its peak. Through extension of EU and intensified co-operation in police and justice matters, but also through migration policy agreements within the EU and with accession countries and, last but not least, through bi-lateral conventions with third countries prison populations might even decrease. Yet in principle more restrictive regulations concerning residence, occupation, settlement and naturalisation for not privileged nationals, respectively for citizens lacking full citizen status in Austria will lead to illegalising of parts of the foreigner population and to migration control also by means of criminal law.<sup>11</sup> Two classes of foreigners even with respect to sentencing practice and implementation of prison sentences towards them are a quite presumable scenario for the future.

<sup>11</sup> The effects of the Immigration Police Law from 2005 on the numbers of detainees pending deportation slowly become apparent now. According to a press release from the Association for Human Rights Austria on 29.01. in 2006 a doubling of the numbers can be expected as compared with the year before.

## 1.5 Overview of National Legislation

The legal grounds for deprivation of freedom can be:

- Security Police Law (*Sicherheitspolizeigesetz*, SPG) and Penal Procedure Law (*Strafprozessordnung*, StPO) – regulating arrest, police detention and pre-trial detention
- Penal Law (*Strafgesetzbuch*, StGB) – including principles of sentencing, later modification of sentences and release
- Code of Imprisonment (*Strafvollzugsgesetz*, StVG) – determining the exertion of prison sentences and of preventive measures
- Imprisonment Decree (*Vollzugsordnung*) – instructions by the Ministry of Justice for the administration of the code of imprisonment
  
- Several administrative state laws or province laws imposing administrative penal custody sanctions on norm violations, or allowing for commutation of irrecoverable fines into penal custody
- Administrative Penal Law (*Verwaltungsstrafgesetz*, VStG) – determining the imposition and exertion of administrative penal sanctions
- Police Detention Order (*Anhalteordnung*, AnhO) – instructions by the Ministry of the Interior for the administration of detention in police cells and police detention centres

All these laws are applicable to Austrians and foreigners.

Penal Procedure Law, Code of Imprisonment, and Imprisonment Decree in some articles consider particular requirements for foreigners, therefore the law formally rather entitles than discriminates them. Exclusion from certain rights and benefits usually takes place without reference to nationality, but with reference to rather undefined risk criteria. Actually risk attributions – like inclination to escape or similar assumptions – are more frequently made towards foreigners.

While the Administrative Penal Law (VStG) only marginally considers foreign detainees the Police Detention Order (AnhO) acknowledges the situation of foreigners in a similar way as the Code of Imprisonment does. In doing so detainees pending deportation, however, in principle were not treated differently from other police detainees or from persons in administrative penal custody before an amendment to the Decree of Police Detention which came into force on 1 Jan 2006.

- The Immigration Police Law (*Fremdenpolizeigesetz*, FPG) is a law exclusively affecting foreigners and it is a significant part of the so called Immigration Law Package (*Fremdenrechtspaket*) 2005). It allows arrest of foreigners to bring them before the immigration authority and defines the preconditions for putting somebody into detention pending deportation.  
Illegal entering and stay in the country are no criminal offence, though an extended range of supporting acts are.

Detention pending deportation can be applied to assure the administrative procedure for interdiction of residence or removal till enforceability, or to assure rejection, passage in transit or deportation (§ 76 Para.1 FPG). Foreigner can also be detained if the authorities determine that they are not eligible for asylum in Austria, since they have travelled through a so called safe third country (§ 76 Para.2 FPG). The use of more lenient instruments can be bound to conditions (adherence to residence and notification obligations) whose violation may also lead to detention pending deportation (§ 77 Para. 4 and 5 FPG).

Though, in principle, the duration of detention pending deportation should not exceed two months there are some exceptions. If a procedure is pending whether removal is admissible at all, the custody may take up to six months (§ 80 Para.2 FPG), if the detainee is responsible for non-deportability (for instance, because of covering his identity or resisting police force) the custody may be extended to ten months within a period of two years (§ 80 Para.4 FPG).<sup>12</sup> Complaints against detention pending deportation can be brought before the Independent Administrative Senate and have to be decided within one week (§ 83f FPG). Minors in custody have to be separately accommodated, if their parents are also detained, they might be detained with them, except their well-being demands separate accommodation (§ 79 Para.3 FPG).

The devolution of execution of prison sentences imposed on foreigners by Austrian courts, the take over of the execution of sentences against Austrians imposed by courts abroad and the assistance in law enforcement in general, including extradition<sup>13</sup>, is subject matter of the

- Extradition and Legal Assistance Law (ARHG).

In principle this law under strict conditions also allows the transfer of sentenced persons outside the frame of European conventions and bilateral agreements. Practically this leeway is irrelevant. The large majority of transfers is done on the ground of multilateral and bilateral agreements. The actually most important legal basis for prisoners' transfer is the European Convention on the Transfer of Sentenced Persons from 1983 (accomplished in a Council of Europe framework and ratified in Austria in 1986). Austria belongs to the states having also ratified the Additional Protocol to the European Convention from 1997 in 2001, that first legalized the transfer without consent of sentenced persons if they had evaded penal execution by escape or got a final and executable ban of residence. While at the present no requests for taking over the execution of sentences are made to Georgia or Ukraine, though they already have ratified the Additional Protocol, a memorandum of understanding between Austria and Romania was signed in 2004 to enforce the transfer of sentenced persons by speeding up the procedure through recognizing sentences as a matter of principle.

Further bilateral agreements exist between Austria and Thailand and Cuba. These agreements are of minor relevance and primarily are to ease the execution at home of prison sentences imposed in these countries against Austrians.

With substantial groups of convicts in Austrian prisons, like persons from Nigeria and other Black-African states, the prerequisites for transfer requests are lacking as are formal inter-state agreements.

In 2005 the Austrian Ministry of Justice made 230 requests to foreign states to take over the execution of prison sentences imposed by Austrian courts on their citizens - two to three times more frequent than in the years before - in 76 cases requests were agreed to.<sup>14</sup> This

<sup>12</sup> Regarding the potential consequences see fn. 11.

<sup>13</sup> The documentation of extradition is deficient in Austria. We know about the number of extradition requests from Austria on foreign states and vice versa. On an average 94 request were made on Austria in the period 2000-2004 (with 215 in 2004). Yet how many persons have been put into custody on request of extradition from abroad, and how many actually have been extradited is still unknown.

<sup>14</sup> On top are requests addressing Romania (n=52), followed by Poland (n=36), Hungary and the Netherlands (n=20, each) and to German federal states (n=17, aggregate). The reasons for not making requests or for their failure cannot be figured out statistically. According to expert opinion the main reasons are the duration of the procedure as compared to the length of sentences, the missing consent or undecided residence status of the prisoner (no legally effective ban). From 2000 to 2005 662 requests to foreign states to take over the execution of prison sentences imposed by Austrian courts on their citizens have been made in all. In this period 315 requests (48%) have been agreed to. No accurate figures exist about prisoners having actually been transferred to their home countries. In at least 41 documented cases the transfer did not take place because of the prisoners having already served their sentence or having been paroled in the meantime, or because of revocation of their consent.

corresponds to only about 2% of those foreigners who had been unconditionally sentenced to a prison term of one year or more, with Romanians the transfer rate is 5 out of 43 such cases.

## **2 TREATMENT OF FOREIGN PRISONERS**

The following report on the situation of foreigners in Austrian prisons is based on 14 interviews with experts in selected penitentiary institutions.<sup>15</sup> Managing officials, social workers, a psychiatrist, a psychologist, a pastor, an expert in the field of aftercare and probation as well as an advocate and officials from the Ministry of Justice gave information about the situation of foreigners in Austrian prisons.<sup>16</sup> Whenever possible the qualitative interviews are backed up by quantitative data for the whole of Austria by referring to IVV-data, the statistics of the Austrian penitentiary system, based on electronic prisoners' files, on the *Integrierte Vollzugsverwaltung*).

Unfortunately there are no research projects about the situation of foreign prisoners in Austria. While the *Human Rights Advisory Council (Menschenrechtsbeirat)* of the Ministry of the Interior reports on police detention, no regular public reports exist for the penitentiary system. Information from the *CPT*, the *European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment* could partly be used for this chapter.<sup>17</sup>

### **2.1 General**

The Penal Procedure Code, the Code of Imprisonment and the Imprisonment Decree are, in general, equally applicable to foreigners and Austrians. Individual paragraphs prescribe special treatment for foreigners intending to compensate disadvantages.<sup>18</sup> In the treatment of foreigners, the wording of the laws in question does not discriminate between those with or without residence permits or whether foreigners are expelled after their detention or not. What does this legal equality or even this form of 'positive discrimination' mean in practise? The interviews showed a typical attitude on the part of employees and officials in Austrian penitentiary institutions that can be summarised as follows: 'We do not discriminate, we treat Austrians and foreigners the same way!' It was admitted that there may be a (small) part of the staff with prejudices against foreigners – but basically there *could* actually be no different treatment because of the high share of foreigners.

On a daily basis, however, foreign detainees are disadvantaged in many ways. They often do not or hardly speak German, they do not have relatives nearby, they are confronted with prejudice, and in addition to their sentencing, they have to face the decisions of the immigration authorities. Even though nationality is no grounds for exclusion from semi-open places, better equipped facilities, courses, work and so on, foreigner status has negative consequences, such as, for example, the assumption that non-integrated foreigners are more likely to attempt escape. Language barriers often lead to information deficits and reduce the chances that individual wishes and needs are respected. Therefore the question arises: *Shouldn't* foreigners be treated *differently* in order to meet their special needs?

<sup>15</sup> The interviews were conducted at the largest court prison (*Wien-Josefstadt*), at the largest penitentiary (*Stein*), in *Suben*, the penitentiary with the highest share of foreigners (70% on 1 Dec 2005) as well as in two other court prisons and one other penitentiary.

<sup>16</sup> In the scope of this study it was not possible to hold interviews with foreign prisoners themselves. It should not be forgotten that their situation is only described by 'the other side' in the following.

<sup>17</sup> The CPT has visited several Austrian penitentiaries since 1990. The report cited in this chapter refers to the 2004 visit to *Wien-Josefstadt*, *Linz* and *Wien-Mittersteig*. For the CPT reports as well as the Austrian government's response see <http://www.cpt.coe.int/en/states/aut.htm>.

<sup>18</sup> See also s. 1.5

In some spheres (as for example religious practice, food, equipping of libraries, events or German lessons) concrete steps were taken to fulfil the special needs of foreigners and to compensate disadvantages to a certain degree. When different penitentiary institutions are compared, however, it seems that the implementation of these and other compensating measures depends to a great extent on the atmosphere in the institution, its director, and on the commitment of individuals.

Communication ought to be improved. The language problem is more serious in court prisons than in penitentiary institutions where foreign prisoners usually arrive after having spent some time in the penal system. Particularly with people from former Soviet Republics and Eastern Europe, a common language is often lacking. This leads to mistrust, fear and incomprehension. Some officials scarcely differentiate and refer to Moldavians, Chechens, Georgians, Armenians, Ukrainians simply as ‘the Russians’, a group that is attributed various bad attitudes and characteristics.

Professional translators are not used in daily prison life – too costly and too much effort. Most translations are done by other prisoners or the staff. Even at disciplinary procedures professional translators are the exception.<sup>19</sup>

## 2.2 Living Conditions and Facilities

Pre-trial detainees are held in the prison of the court in charge of the case.<sup>20</sup> Sentenced prisoners are classified by the Ministry of Justice (§ 134 StVG) and assigned a place in a penitentiary somewhere in Austria.

There are no special penitentiary institutions for foreign prisoners. The share of foreign prisoners varies according to the type of regime and differs regionally. The prison in *Suben* is a special case with its high share of foreigners (70 % on 1 Dec 2005). Foreigners (particularly Africans) are sent to this remote prison,<sup>21</sup> since it is presumed that they do not have relatives in Austria and therefore no long journeys for visitors would be necessary (as they receive no visits at all).

Legal regulations for accommodating detainees in prisons follow criteria different to nationality. They define for example that those sentenced for intentionally committed offences are to be accommodated separately from those who had committed offences of negligence; first offenders not together with repeat offenders; pre-trial detainees without prior sentences not together with sentenced prisoners; young offenders separated from adults, men from women, and smokers from non-smokers. Sexual offenders are accommodated separately in some prisons; preventive custody is also spatially separated.

In none of the penitentiaries under investigation were there special sections for foreigners. Allocation depends on the type of regime or the prisoner’s workplace. When allocating prisoners to cells, attempts are made to put people of the same provenance and/ or the same language together.<sup>22</sup> If possible the prisoners’ wishes are considered, but massive overcrowding minimizes the opportunities and makes even legally prescribed separations

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<sup>19</sup> The CPT also criticised this fact after its visit (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, Strasbourg, July 2005, s.103, p.46). The Republic of Austria’s response refers to a draft decree of the Ministry of Justice: The head of the prison will have to document the approval of the prisoner if another prisoner is translating at a disciplinary procedure (Response of the Austrian Government 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 14 to 23 April 2004, Strasbourg, July 2005, s.103, p. 43).

<sup>20</sup> If necessary the Ministry of Justice may impose detention in another court prison (§ 185 StPO).

<sup>21</sup> *Suben* is a village in Upper Austria. Some years ago the closure of the prison had been discussed.

<sup>22</sup> Only in *Stein*, the largest Austrian penitentiary did an interviewee regret that it was no longer possible to separate ethnic groups because of recent overcrowding. It was said that there were still ‘mixed’ cells.

(such as first offender – repeat offender) sometimes impossible. In practice it comes down to cells with for example only Africans or only Georgians, a fact that is judged differently by the interviewees. While some don't see it as a problem and refuse any kind of 'mixing' as generating further conflicts, others warn against the creation of subcultures. The opinion was occasionally expressed that certain groups of foreigners (e.g. Africans) would actually like to be in cells accommodating eight to ten people, and that they would not mind overcrowded conditions. One interviewee notes that solitary cells – a highly appreciated option in a prison – were inhabited more by Austrians than by foreigners.

### **2.3 Reception and Admission**

The Imprisonment Decree points to the fact that prison social services should talk to prisoners with communication problems and 'provenance based adaptation problems' when they are admitted. It is also the role of prison social services to help to establish contact with families or consulates and embassies.

On admission prisoners receive information sheets in different languages – statements on the number of languages available vary from nine (EU) languages up to 'in all languages'. The Austrian government's response to the *CPT* report states that house regulations are available in 13 languages and that the Ministry of Justice regularly reminds the institutions' directors of their duty to hand out these regulations. The *CPT* had reported earlier that prisoners they had talked to on their visits had complained about lack of information.<sup>23</sup>

During pre-trial detention information from the court is of crucial importance, and the question arises whether official notifications and application forms are written in a language the prisoner understands. The current situation has been partly criticised in interviews. While information on court procedures exists in many languages, official notifications are said to be usually only in German (at least as far as Vienna is concerned).

Some prisons have further information materials. The prisons *Wien-Josefstadt* and *Stein* contain special medical departments (so called *Sonderkrankenanstalten*) and in both institutions information sheets on medical issues are available in different languages.<sup>24</sup> A director of a court prison reported on his initiative to provide prisoners with information brochures in 20 languages and with application forms (e.g. for conditional release or for the permission to go out) in languages used in prison.

### **2.4 Work – Education – Training – Sports – Recreation**

The wording of the law concerning allocation of work does not differentiate between nationals and foreigners, but names criteria such as the prisoner's state of health, age, knowledge, duration of the sentence and behaviour in prison as well as preferences and advancement after release (§ 47 StVG). Pre-trial detainees are, unlike sentenced prisoners, not obliged to work.

Participation in courses is not bound to the Austrian citizenship either, but for programmes that are conducted in cooperation with the Austrian Public Employment Service (AMS) preferably those detainees are chosen who have permission to work in Austria after release.

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<sup>23</sup> 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, Strasbourg, July 2005, s.108, p.49.

<sup>24</sup> See also 2.5 medical care.

Austrian prisons are overcrowded<sup>25</sup> which makes work and training positions in prison scarce. The CPT judges the situation as ‘far from satisfactory’ in the visited prisons and apparently throughout the Austrian prison system.<sup>26</sup> Apart from overcrowding, several prisons and their workshops suffer from lack of orders. Another problem evolves because prisoners often do not have the necessary qualifications. The situation varies greatly in the different prisons, the lowest employment rate is found in court prisons.<sup>27</sup>

For prisoners employment in prison is very important. Sentenced prisoners who are not able to work receive a small amount of money. Many detainees, and especially foreigners, depend on what they earn in prison, because many of them don’t receive money from outside. Employment in prison also entitles a prisoner to unemployment benefit after release. Furthermore many privileges in prison are connected to employment.

It can be said from the interviews that the prisoner’s skills and qualifications are the most important criteria for the allocation of work, i.e. a sentenced prisoner with useful qualifications usually gets work in a penitentiary. Prisoners who don’t speak German have more difficulties in getting work. One prison director states: ‘If I have 200 detainees and only 100 places for work, then the Russian or Georgian prisoners will be the last to get the job.’ On the other hand, efforts to give work to all prisoners are made in several institutions. Some groups of foreigners enjoy the reputation that they work hard and do it well. There is a small enterprise in Vienna’s court prison where only juveniles and ‘young adults’ from Africa work. In the prison at *Suben* we were told that only newcomers or people not willing to work were unemployed; after three to six months everyone who wanted to found employment – independently from their nationality.

The statistics of the Austrian penitentiary system show that foreigners are altogether less often employed than nationals. Austrians earn in average more than twice as much as foreigners per day in prison. The main reason for this difference is that foreigners are more frequently in pre-trial detention.<sup>28</sup> Another index for measuring the difference is obtained when one does not compare the average income earned during the whole period in prison but when income is set in relation to a detainee’s time in prison after being sentenced: Austrian sentenced prisoners earn only 1.3 as much as foreign sentenced prisoners.

With regard to training and courses two types have to be distinguished: courses especially for foreigners, i.e. German (and English) classes, and courses open to everyone who fulfils certain selection criteria. Nationality is again no reason for exclusion and even when a detainee is expelled from Austria following his release, he is formally not excluded from courses. There are different tests and selection mechanisms, lack of language competence being a substantial disadvantage. All juveniles and ‘young adults’ can study for a compulsory school leaving certificate – a chance taken by foreign young prisoners too. Furthermore computer classes, first aid courses, ‘fork-lift truck driving’ courses and training in the form of apprenticeships is offered. The supply of training and courses varies a lot from prison to prison; there are no nationwide minimum standards.

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<sup>25</sup> At a capacity of 8,068 places, an average of 8,885 persons were imprisoned in 2005. In March 2006 more than 9,000 prisoners were reported (*die Presse*, 2006-03-22).

<sup>26</sup> *Ibid.* s.70, p.35.

<sup>27</sup> In Vienna’s court prison only about 30% of the prisoners can be occupied.

<sup>28</sup> The share of foreigners of all pre-trial detainees was 63% in 2005. 89% of all foreigners, who have only been in pre-trial detention, did not work one day in prison. Within the larger group of sentenced prisoners the share of Austrians is higher (57% in 2005).



‘German as foreign language’ is offered almost everywhere; English classes for prisoners are provided in some places. Some prisoners are able to study German by themselves on a computer. German classes are in the interest of both sides: not only foreigners but also staff benefit when prisoners speak at least a little German. In most institutions demand is greater than supply.<sup>29</sup> This results mainly from financial problems and shortage of space caused by overcrowding. Some interviewees expressed their disapproval that there were no German courses designed for foreigners from former Soviet Republics.

All prisoners are entitled and obliged to ‘exercise’ outdoor for one hour a day (juveniles two hours). Gym halls and fitness rooms are preferentially open to those prisoners who are employed. In many institutions – especially in older penitentiaries – a shortage of such facilities must be stated. The situation in some prisons is equally bad for all detainees. One disadvantage for foreigners that was mentioned is that jogging-groups organised outside a prison with insufficient facilities are not open to foreigners because of the presumed higher risk of escape.<sup>30</sup>

‘Instructive, artistic or amusing’ events have to be held once quarterly (§ 65 StVG). In this section the Code of Imprisonment explicitly refers to foreign language prisoners (§ 65a StVG): when organising events and activities their special needs should be taken into account. Examples include concerts, cabaret, slideshows, drum groups, and even belly dancing performances.

The penitentiaries under investigation have large libraries (e.g. 16,000 books in Wien-Josefstadt or 13,000 books in Stein) containing a lot of foreign language literature.<sup>31</sup> Furthermore the foreigners’ advisor (‘*Ausländerreferent*’) sends international magazines to prisons all over Austria.<sup>32</sup> Reading has become less important with the distribution of television.<sup>33</sup>

### **2.5 Food – Religion – Personal Hygiene – Medical Care**

The Code of Imprisonment (§ 38 StVG) regulates that religious guidelines concerning nutrition have to be respected. In all institutions where interviews were conducted, the daily preparation of several different meals was practised (ritual food, diets, vegetarian meals, etc.). The interviewees also reported that certain group preferences were respected (e.g. to serve white bread or rice for Africans). The impression gained from the interviews is that there are relatively few problems in this aspect of daily prison life.

The sphere of religious practice within prison walls is also regulated by the Code of Imprisonment. § 85 StVG entitles prisoners to take part in religious services and to address themselves to a spiritual advisor. If there is no such contact person sharing someone’s religion in a particular prison, the head of the prison may allow the visit of a spiritual advisor. An official of the Ministry of Justice states that supply was generally adequate: On the one hand, there are still a few employed catholic pastors, on the other hand there is an increasing number of spiritual advisors from Austria’s recognised religious communities<sup>34</sup> that work in the prisons on a contract basis with the state. In the two largest Austrian prisons (*Wien-Josefstadt* and *Stein*) once every two weeks a Muslim preacher visits. Interviewees in Vienna

<sup>29</sup> Even in the largest penitentiary (*Stein*), the demand is estimated to be higher than supply despite German lessons four times a week.

<sup>30</sup> See also 2.8 re-integration activities – prison leave.

<sup>31</sup> § 65a StVG prescribes that foreign prisoners have to be considered when equipping libraries.

<sup>32</sup> More about the foreigners’ advisor see 2.12 projects.

<sup>33</sup> More about television see 2.7 contact with the outside world.

<sup>34</sup> At the moment, 13 religious communities are officially recognised in Austria, among them the Muslim and the Jewish community.

reported that this was not enough to satisfy demand. Jewish prisoners from all over Austria are brought to Vienna's court prison twice a year to celebrate their highest holidays. The prison houses a synagogue, a Catholic church, a Protestant chapel and for the last few years a mosque. In Stein, there is also a Catholic church and a mosque.

This is not the case in all prisons. In one prison visited, religious services are held in the refectory and not all religious groups are catered for. It is argued that there was no demand or that requests to the religious communities to send someone remained unanswered. A widespread attitude is one of not having anything against religious activities per se but it is seen as the churches' and communities' duty to take the initiative. Language barriers play a role in the religious sphere too: there is a demand for religious services in a language the prisoners understand.

For the interviewees there was no doubt that all prisoners would get the same medical treatment. Language difficulties are met in different ways. The institutions partly employ medical staff with foreign language competence. But also other members of the staff or other prisoners translate – a practice that is not unproblematic, not only because of the lack of medical confidentiality but also because of the quality of the translation (special medical terms). A professional interpreter is hardly ever used. An information sheet in several languages on medical issues exists in the special medical departments (in *Wien-Josefstadt* and *Stein*).

Statistical data (based on the IVV) contains information on the number of transfers to hospitals, to special medical departments of other prisons, and information on the consultation of a medical specialist or a doctor other than the prison doctor. Analysing this data shows that foreigners are less often taken out (76% of all foreigners are never referred externally in comparison with 68% of all Austrians).

	Austrians	other EU countries	non EU countries	total
	4,477	1,327	4,506	10,310
no transfers	67.6%	76.2%	75.9%	72.1%
	1,795	370	1,268	3,433
up to 5 transfers	27.1%	21.3%	21.3%	24.0%
	348	44	166	558
more than 5 transfers	5.3%	2.5%	2.8%	3.9%
total	6,620	1,741	5,940	14,301
	100%	100%	100%	100%
Mean number of transfers	1.2	0.7	0.7	0.9
* I.e. 'Ausführungen' acc. to §§ 70, 71 (1) and (2) StVG				
Source: IVV-Data, provided by the Austrian Federal Computing Centre, April 2006, own calculations				

Psychological and psychiatric care is barely possible when the professional does not speak the prisoner's language (or at least a language a prisoner understands). It happens now and then that psychiatrists or psychologists speak (even unusual) languages, but this is more the result of coincidence than of systematic recruitment.

The practise of drug substitution seems to vary extensively between the different prisons and depends to a considerable extent on the attitude of the attending physician.

## 2.6 Consular and Legal Help

The Penal Procedure Law prescribes that prisoners on remand have to have a defence lawyer in court (cases of mandatory defence, § 41 StPO). If the accused person can not afford a lawyer, the court assigns a lawyer to the prisoner on remand (as to all persons who do not understand the language of the court). Nationals and foreigners receive a lawyer when it comes to hearings concerning pre-trial detention. In all these cases there has to be an interpreter if the prisoner is not able to speak the language of the court. The interpreter is paid by the court (§ 38a (2) StPO).

In Austrians' largest court prison in Vienna we were told that the assignment of a lawyer for foreigners by the court did not usually cause any problems. But again and again some lawyers would come to meet prisoners without an interpreter or too late (right before the trial).

Prisoners can get in contact with the representations of their country if necessary with the support of prison social services. Not everyone wants this contact and not all consulates and embassies are interested in the fate of their fellow countrymen. The extent of cooperation between the detention centres and the representations varies: many interviewees pointed to the good relationships with Western European representatives (esp. the Netherlands, Germany and Britain), with the Turkish embassy and partly with the Romanian. They would come regularly, bring movies and magazines and would 'collaborate'. Little to no contact at all existed with the former Yugoslavian states, the former USSR or with African representations.

## 2.7 Contact with the Outside World

Prisoners on remand and prisoners serving a sentence are subjected to different regulations with regard to contact with the outside world. In pre-trial detention, the decision over whom a prisoner is allowed to stay in contact with depends on the investigating judge. In the following section we consider contact with the outside world through visits, phone calls, and through TV information.

Prisoners on remand have the right to a 15-minute visit at least twice a week (§187 StPO) unless it endangers the aim of detention. Prisoners serving sentence do not need authorisation from a judge. They are entitled to receive longer visits and in the case of relatives having to make long journeys to the prison, the length of visits has to be extended (§93 StVG). As expected foreigners receive fewer visits than nationals, and many of them none at all. In most of the prisons, visiting hours are extended when relatives come from far away. In the largest court prison we were told that even when the visitor had to make a long trip to the prison, visiting hours were seldom accumulated (to half an hour a week). In the largest penitentiary visiting hours are dealt with generously (prisoners can get up to a whole day of visit). In *Suben*, a prison away from the urban areas, the proportion of foreigners who never receive visits was estimated at 50%. Apart from friends and relatives there are visiting services, partly from organisations specialised in the care for foreigners.

Prisoners on remand who want to make a telephone call have to apply for a permit to the investigating judge (something that according to an interviewee not all foreigners know). Approval is a lengthy process. Difficulties arise because there are not enough telephone boxes in many prisons (especially in the old ones). Mobile phones are forbidden. Calls are only allowed during business hours. Besides that many foreign prisoners (esp. on remand) do not have enough money to make phone calls.

Depending on the prison the number of TV channels differs. Sometimes it varies among the different parts of a single prison. In all detention centres where no foreign language programmes are available at the moment, it is intended to rectify this deficiency.

## 2.8 Re-integration Activities - Prison Leave

If educational and vocational training measures and incorporation into the working process is seen as re-integration activity, then foreigners and nationals are basically equal, at least in theory. The situation is different when activities are related to leaving prison for a certain time. The wording of the relevant laws does not mention nationality but it is a fact that foreign prisoners are rarely allowed to leave prison (on ‘*Ausgang*’ or ‘*Freigang*’ i.e. to regulate important affairs, to work outside the prison, etc.) especially when they will be expelled from Austria after custody.<sup>35</sup> Foreigners integrated in Austria have better chances of leaving prison for a certain time than foreigners without residence permits or asylum-seekers.

During imprisonment the authorities often do not know whether a prisoner will be expelled from Austria afterwards. The interviews revealed that prison directors<sup>36</sup> dealt with this problem differently: while some refused categorically every prison leave in case of uncertainties about expulsion after custody, other prison directors let foreigners leave prison even when the immigration authority has not taken its decision yet.

Another precondition for leaving prison for a certain time is that prisoners can name specific reasons why they need to go out (e.g. arranging important affairs) as well as a contact address (if they want to stay overnight). If the aim of prison leave is not re-integration and if the prisoner has no social contacts in the country, it will hardly ever be granted.

Statistical information is available about how often a prisoner leaves the prison and to which aim. A distinction is made between ‘*Ausgang*’ (prison leave to regulate important personal, economic or legal affairs, for educational training, etc.; single days, not more than five days) and ‘*Freigang*’ (the prisoner works regularly outside prison). 89% of all foreigners who have been serving sentence<sup>37</sup> did not get a single day of ‘*Ausgang*’ – in comparison to only 36% of nationals in this category. The situation is especially bad for some groups of foreigners: Hardly anybody from the former Soviet Republics left an Austrian prison on ‘*Ausgang*’ (1% of all sentenced Georgians, Russians, Moldavians, Ukrainians). Austrians are allowed to leave prison on an average of 3.4 per 100 days while prison leave for foreigners only amounts to 5 per 1,000 days.

		no prison leave	prison leave	total
Austrians	number	1,654	2,983	4,637
	%	35.7	64.3	100
EU citizens	number	951	60	1,011
	%	94.1	6.0	100
non EU citizens	number	2,988	445	3,433
	%	87.0	13.0	100
all foreigners	number	3,939	505	4,444
	%	88.6	11.4	100
total	number	5,593	3,488	9,081
	%	61.6	38.4	100

<sup>35</sup> A decision of the Austrian Supreme Administrative Court stated that only concrete indications that the inmate might misuse prison leave to escape justify the refusal of an application for permission to leave prison (Supreme Administrative Court, decision 2003/20/0502 from 2004-02-19). A blanket refusal of all applications from foreigners is not permitted.

<sup>36</sup> The prison director allows prison leave.

<sup>37</sup> Prisoners who were only on remand were not considered in the calculation because prison leave during pre-trial detention is something very atypical.

<b>Table 7b: Average number of prison leaves ('Ausgang')</b>	number of persons	mean per 100 days in prison*
Austrians	4,637	3.4
<i>EU citizens</i>	1,011	0.3
<i>Non EU- citizens</i>	3,433	0.5
foreigners	4,444	0.5
total	9,081	2.0

\* Per day in prison after being sentenced  
 Source: IVV-Data, provided by the Austrian Federal Computing Centre, April 2006, own calculations

'Freigang' means that a prisoner works outside prison in a factory, a company, etc. without surveillance. 96% of all foreign prisoners (who were not only on remand but have been sentenced) did not work one single day outside prison while 31% of all nationals did leave the penitentiary for work. On average Austrians work outside prison 10 per 100 days but foreigners only 1 per 100 days. There are special departments or even houses (the so called '*Freigängerhaus*') for those who work outside the prison – in these semi-open places few foreigners can be found.

<b>Table 8a: Prison leave to work outside prison ('Freigang')</b>				
		no prison leave	prison leave	total
Austrians	number	3,199	1,438	4,637
	%	69.0	31.0	100
<i>EU citizens</i>	number	991	20	1,011
	%	98.0	2.0	100
<i>non EU citizens</i>	number	3,276	157	3,433
	%	95.4	4.6	100
all foreigners	number	4,267	177	4,444
	%	96.0	4.0	100
total	number	7,466	1,615	9,081
	%	82.2	17.8	100

<b>Table 8b: Average number of prison leaves to work outside prison ('Freigang')</b>	number of persons	mean per 100 days in prison*
Austrians	4,637	9.7
<i>EU citizens</i>	1,011	0.5
<i>Non EU- citizens</i>	3,433	1.1
foreigners	4,444	1.0
total	9,081	5.4

\* Per day in prison after being sentenced  
 Source: IVV-Data, provided by the Austrian Federal Computing Centre, April 2006, own calculations

All prisoners have the right to parole. Comparing the frequencies of conditional release between nationals and foreigners shows that – on a nationwide level and for all duration of sentences – prisoners without Austrian citizenship are released on parole slightly less often than nationals (Pilgram 2005). But there are regional differences and differences depending on the length of a sentence. Nationals with short term sentences (three to six month) are

conditionally released twice as often as foreigners. One reason for this is that Austrians do serve short sentences whereas foreigners often do their time on remand. When medium-length sentences (six to twelve months) are considered there are no noteworthy differences concerning conditional release between nationals and foreigners. Foreigners are more often released conditionally from long sentences (one to three years) than nationals.<sup>38</sup>

## 2.9 Release - Expulsion

On the occasion of release social workers speak to nationals as well as to foreigners. Prisoners get information sheets with contact addresses. The mission of social workers changes when advising foreigners who are not allowed to live and work legally in Austria. They then have to give legal advice in the field of immigration law, and clarification of what happens after release. Help upon release in the sense of helping to find a flat or a job is not possible in these cases. Social workers get the necessary knowledge in training sessions (at the ‘*Strafvollzugsakademie*’, the Austrian prison staff academy, or at *Neustart*).

Courts and prisons have to inform the immigration police on convictions of foreigners and on the start/end of a sentence. At the latest when the prisoner is released, there ought to be a decision by the immigration police as to whether the prisoner will be detained in custody for the purpose of removal or not. Several interviewees pointed to the fact that this decision is not always taken until the end of custody and that there was a lot of insecurity during detention about what might happen after release.

The decision to expel or remove foreigner after imprisonment depends on his or her legal status, the time he or she had spent in Austria before conviction, and on the length of the sentence. It is taken by the immigration authorities. In any case the removal to the country of origin must be admissible. Even if removal is not possible, a ban on residence can be declared. A foreigner will be expelled (and removed) if he or she is seen as a ‘danger to public interest’ which is usually assumed after a prison sentence of more than three months or a (semi-)conditional sentence of six months. But also incorrect information given to the Austrian authorities, lack of means of sustenance, illicit work and other (administrative) offences can lead to a ban on residence (§ 60 FPG 2005). For foreigners who have spent much of their lives in Austria the expulsion criteria of being are less restrictive depending on the extent of integration and on the intensity of family relations. For asylum seekers special regulations are valid (AsylG 2005).

In practice, it very often happens that removal (especially to countries outside Europe) is not possible - people are not removed but at the same time they don’t have the right to stay and work legally in Austria. One reason for the rejection of a removal is the existence of a concrete danger in the country of origin, or that the country refuses to ‘take back’ the person. After release from prison, ex-offenders are often detained in custody for the purpose of removal for a certain time<sup>39</sup> and released after that time because they can not be removed to their country of origin.

The expulsion-decision can be challenged. Legal remedies against expulsion decisions basically have suspensive effect.

## 2.10 Aftercare - Probation

In Austria help upon release as well as probation services are provided nationwide by the association *Neustart*. When the proportion of foreigners rose in Austrian prisons the

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<sup>38</sup> One reason for this inverted ratio might be that Austrians with long sentences usually have more prior convictions.

<sup>39</sup> The upper time limit has been extended to a maximum of 10 month custody for the purpose of removal as of 1 Jan 2006.

proportion of foreigners also increased in aftercare facilities. This caused difficulties: Apart from increasing numbers of clients the classic social work concepts designed for ex-offenders were no longer appropriate. *Neustart*'s reaction was a minimum programme for foreigners without legal status, which meant no intensive, long-term support and no legal remedies in cases with no chances of obtaining legal status (permission of residence, asylum, etc.). Since a system of basic support for asylum seekers (the so called '*Bundesbetreuung*') was established by the Austrian government, tensions eased and demand was distributed all over Austria. But still the staff working in aftercare facilities face the difficult situation that they should 'integrate' people into Austrian society that are actually excluded from it, because every legal status is denied to them.

Probation after custody for foreigners is rare. It is difficult in general for social workers to find jobs or flats for foreign ex-offenders (again language barriers, prejudices against ex-offenders and against foreigners, etc). If a foreigner with insecure legal status is put on probation, it is an even more difficult task: How can a social worker find a job for someone who is not allowed to work? How to find a residence for someone without permit to stay?

### 2.11 Staff

When staff are recruited foreign language competence is not a required criteria. There are very few prison officers with a background in migration. Language competence or migration experience can be an advantage when applying for a job in prison but it remains within the prison director's discretion and is not actively encouraged as a criteria.

Since 2004, prison officers-in-training are informed about 'foreign cultures' (16 hours during basic training) and they are taught English (32 hours, technical terminology). As voluntary further training, prison staff can attend courses on migration, globalization, foreigners in Austrian prisons, a special course on the 'Slav cultural area' and English classes. Many employees attend these seminars.

Over the last few years the increasing presence of foreigners has changed daily prison life. In some prisons more than half the detainees are foreigners from altogether over 100 countries. This meant new challenges for the staff. Information from the interviews points to the presumption that after a period of change and conversion, adaptation to the new situation was achieved. It is admitted that some staff members were prejudiced against foreigners (much like prejudices existed in the rest of the population). But apart from these elements, the treatment of foreigners and relations with them are described as relatively unproblematic. Only in the treatment of people from the former Soviet Republics are problems admitted.

### 2.12 Projects

In 1989 a special department for foreigners (the so called '*Ausländerreferat*') was founded.<sup>40</sup> The project started with a headquarters in Vienna's court prison *Wien-Josefstadt* and contact persons in the other Federal States. Today there is only one contact person outside Vienna left and the responsible social worker in Vienna has to share his time between his work in the court prison (in a section of the prison) and his responsibility for all foreigners in penitentiary institutions in Austria. His aim is to inform people in the justice system on issues connected to foreigners. The last remaining contact person (in *Stein*) sees his duty in managing contacts between the prison and the consulates and embassies of foreign countries.

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<sup>40</sup> The department was founded by a decree by the Ministry of Justice in 1989. The Imprisonment Decree (1995) describes its function as supporting and advising foreign prisoners with regard to their special needs concerning language problems and cultural differences. They are to be supplied with reading and audiovisual material; special events should be organised for them.

Special projects for foreigners exist in different prisons to a varying extent. Usually these projects are based on the initiatives of individuals. For example an ‘integration group’ was mentioned where Austrian and foreign women met once a week to exchange experiences or an information evening about the situation of refugees from the Caucasian region. Repeatedly it was reported that the so called ‘group counselling’ was successfully held with groups of foreigners. Language courses and cultural events have already been mentioned above.<sup>41</sup> After the CPT had criticised the treatment of foreign prisoners by some staff members and the situation of foreigners in the court prison in Linz in general, the new prison director founded an expert group with representatives from a human rights association (*SOS-Menschenrechte*) and from *Neustart*. They developed a ‘10-point-programme’ listing for example language training for prison officers, TV in foreign languages, and information sheets in a sufficient number of languages. This programme can be seen as an example of how attempts were made to improve the situation of foreigners in the wake of a critical report from an independent committee.

### **3. ADMINISTRATIVE DETENTION OF FOREIGN PRISONERS**

Statistical and administrative reporting on police detention is extremely deficient in Austria.<sup>42</sup> This paper is based on very limited information given by the Ministry of the Interior (Dept. II/3); this information in turn is based on unpublished annual reports from the Security Directorates of the provinces and on two special surveys on two key-days.

However, the most profitable data source for this chapter on police detention stems from the *Human Rights Advisory Council (Menschenrechtsbeirat, MRB)* because of its proactive and systematic control activities (differing from the singular instance and reactive control by the state ombudsman/*Volksanwalt*). Since its foundation the *MRB* delivered 13 targeted reports, five of which directly focus on matters of police detention.<sup>43</sup> These reports regularly integrate observations made by *CPT*. Moreover, since 1999 annual activity reports of the *MRB* are published. The reports always contain clear recommendations to the minister of the interior. The implementation of the recommendations is periodically evaluated by workgroups of the council.<sup>44</sup>

The following *MRB*-reports are directly touching matters of detention. The reports on:

A/ The problem of minors in custody pending detention (2000)

B/ Human rights questions in connection with detention of women through police agents (2001)

C/ The problem of information of detainees (2002)

D/ Medical care for detainees (2002)

E/ Conditions of detention an police facilities (2005).

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<sup>41</sup> See 2.4 Work, Education, Training, Sports, Recreation

<sup>42</sup> The annual Governmental Report on Internal Security surprisingly lacks a chapter on police detention centres and a particular one on detention pending deportation. Correspondingly there is lacking scientific and media attention paid to the issue.

<sup>43</sup> Further general reports of the *MRB* refer to the linguistic usage of police officers, to the use of force by police, or to police training and further education. More significant for this paper are some priority reports of the *MRB* concerning single detention facilities or the report on ‘problem-removals’ which not at least may result from inadequate preparation and administration of detention pending deportation. See:

[http://www.menschenrechtsbeirat.at/de/index\\_berichte.html](http://www.menschenrechtsbeirat.at/de/index_berichte.html)

<sup>44</sup> In particular the last interim report of the *MRB* evaluation working group (dating from quarter 4/2004) on the recommendations for detention pending deportation is a very informative one. See:

[http://www.menschenrechtsbeirat.at/de/index\\_evaluierung.html](http://www.menschenrechtsbeirat.at/de/index_evaluierung.html)



### 3.1 General

In principle all different categories of detainees in police detention centres are to be treated equally according to the Police Detention Order (AnhO), whereby for detainees pending deportation a better standard ought to be realized. Even though their separated accommodation, if possible, from other detainees (in administrative penal custody or in police detention for criminal reasons) has already been demanded by former Decrees on Police Detention (§ 4 AnhO), the revised law by 1 Jan 2006 for the first time explicitly introduces ‘custody in open sections’ with detainees for the purpose of removal, if not safety considerations (particularly infectious disease, aggressiveness, escape attempts) are objecting. This regulation at least partly takes into account recommendation No. 274 of the *MRB* from Oct 2004. Yet the administration of detention in open sectors is still legally bound to sufficient spatial facilities and personnel capacities of detention centres. Not even the administration of ‘custody with temporary open cells’ (§ 5a Para. 4 AnhO) is a binding rule and not yet realized in each centre.<sup>45</sup>

Apart from that only the supervision of phone calls and visits is more generously regulated for detainees pending deportation than for other inmates, other standards being quite the same. This is also problematic insofar as it actually prevents the common accommodation of spouses and relatives (in particular of children of opposite sex) during detention pending deportation. This unnecessarily violates the right to have a protected private and family life (that means: recommendation No. 130 of the *MRB* from March 2002 is not yet implemented for lack of spatial and other provisions).

While administrative penal custody of juveniles under age 16 is ruled out (§ 7 Para.5 AnhO), detention pending deportation is admissible even with minors of lower age if accommodation and care according to age can be warranted (§ 4 Para. 4 AnhO). Although the *MRB* from July 2000 on (see recommendations no. 33-37) repeatedly denies the existence of appropriate police detention facilities for minors, the numerous invocations of the advisory council to abolish detention pending deportation with minors under age 14, to restrict it with elder minors, to stipulate the administration of lenient measures, to reduce the maximum time to 2 months and to advance juvenile welfare measures remained without response. Yet actually the detention of minors and juveniles in detention pending deportation has been markedly cut back throughout the last years as the co-operation between police and juvenile welfare agencies improved.

A particular problem is identified by the *MRB* when it comes to the joint accommodation of detainees pending deportation and of criminal prisoners taking place in institutions under justice administration. Though at present no use is made of the rule that detainees in detention pending deportation may be kept in court prisons or penitentiaries if police detention centres are overcrowded (§ 78 Para. 1 FPG), detention for the purpose of removal following prison sentences is still practised in general prisons. Detainees at the same time are subjected to general prison rules (to the Code of Imprisonment) without relief and have no access specialized social services like in police detention centres. Because of lacking co-ordination between immigration authorities and justice administration, measures to end residence and stay in the country sometimes cannot be put into effect immediately after the prison sentence.

### 3.2 Living Conditions and Facilities

The Decree of Police Detention (§ 4 Para. 1a) requires detention facilities ‘worthy of human beings’. Nevertheless the *MRB* in his report on ‘Conditions of detention in police facilities’ points to the problem of the administration of detention for the sake of nothing else than detainment in ‘historically grown prisons’ (*MRB*, 2005, 8). Though the facilities are not essentially below national and international standards and though there is only sporadic

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<sup>45</sup> This fact was heavily criticised by several NGOs (e.g. refugee service of *Diakonie* and *Caritas*) when they rendered an expert opinion on the draft of the current Police Detention Order.

critique by the *MRB* concerning the location, size, occupancy, ventilation, lightening or the sanitary installations (and usually remedying construction measures have been prompted by the critiques) the advisory council recommends better standards in particular for detainees in detention pending deportation. As non-offenders they would deserve more privacy (e.g. lockable boxes, access to lavatories, washing machines and dryers) as well as more free movement.

Detainees pending deportation appear unreasonably burdened by the living conditions in prisons under police administration. Yet it cannot be decided on the basis of available data, whether foreigners in police detentions centres are discriminated in other ways as well.

### **3.3 Reception and Admission**

In his report 'The problem of information of detainees' (2002) the *MRB* recommends the translation (in additional languages) and availability of more comprehensive and complete information sheets (and as alternative of sound carriers) for detainees in general and those in detention pending deportation in particular (recommendation no. 131-162). Similar improvements are demanded regarding information politics on the Decree of Police Detention, the house rules, and the social service for detainees pending deportation (*Schubhaftbetreuung*). Since detainees pending removal are under severe stress, when it comes to deportation, the *MRB* has suggested to improve the flow of information. Deportees should be informed in due time and social services should be more easily available to them to prevent situations of crisis and problematical removals. Only a few of these recommendations have been implemented so far.

### **3.4 Work – Education – Training – Sports – Recreation**

To be sure, inactivity is a greater problem when it comes to pre-trial detention or to penal custody in prisons under justice administration than with relatively short-term detentions in police prisons. Yet also short periods of detention do not justify the denial of meaningful activities. *CPT* complains about inadequate access to recreation areas, books, games and also to useful domestic work or paid work in Austrian police detention centres. The committee misses an activity regime which is structuring the day time. Open cells and access to TV alone are not accepted as substitute (*MRB* 2005, 44ff).

### **3.5 Food – Religion – Personal Hygiene – Medical Care**

In 2005 *CPT* recommends to assure free direct access to drinking water for everybody in police custody, the *MRB* urges uniform regulations regarding mealtimes and a general directive for the quality of nutrition, further on the provision of complete cutlery and a more generous absorption of costs for board by the institution. Detainees should have the opportunity to prepare their own meals. The *MRB* also repeatedly worries about the lack of sufficient clothing for detainees and of clothing which reduce suicide risks. Effective local remedy measures must not belie the defects in central management. This is also true in case of suicide prevention and medical care in PAZ (recommendations 163-222 from May 2002; *MRB-AG* Evaluierung, III. Quartal 2004). On different occasions the lack of sensibility and of special training of the personnel (including police officers and physicians) is pointed out, in particular the lack of regular supervision of and communication (enabled by proper interpreters) with persons at risk and the avoidance of solitary confinement. With respect to medical care the lacking differentiation between administrative, official expert and medical duties of police doctors is criticised. The same holds for paramedics. For police detainees the contact to independent medical examiners is improperly complicated. Discrete medical examination and treatment out of sound and visual range of fellow detainees and comprehensible mother tongue clarification as well as medical after care of the released are still not generally granted.

Verified by *MRB*, progress has been made in informing hunger striking detainees about pending sanitary harms and in the handling of hunger striking detainees by the personnel (communication through social care workers instead of restrictions and punishment) (*MRB-AG Evaluierung*, III. Quartal 2003).

### **3.6 Consular and Legal Help**

Although the right to free access to lawyers also applies to police detainees the practice evidently does not fully comply with the norm. The confidential talk to a lawyer, the stand-in of a lawyer in interrogations, the legal assistance free of charge for the destitute, the calling in of a trusted person or lawyer in juvenile cases are not granted without any exception (*MRB* 2005, 70ff).

According to *MRB* the social care for detainees pending deportation is no full surrogate for free of charge legal advice throughout the administrative procedure before the immigration authority (*MRB* 2005, 75f).<sup>46</sup> *CPT* on the occasion of its 2004 visit also argued that the information of foreign prisoners about the state of procedure could be substantially improved and that the obligation of external agents (diplomatic missions) to give support does not exempt the state from information duties.

### **3.7 Contact with the Outside World**

Written correspondence is not subject to restrictions due to the Police Detention Order (even if some controls are admissible, except with advocates, national administrative and representative bodies of the home country and international organisations for the protection of human rights) and must be made available also for destitute persons. Regarding phone calls these rights are under the discretion of the authorities They have to be granted, unless the effort would be disproportionate. The *MRB* (2005, 82ff) argues for the permanent (and not only during a call) availability of mobile phones to detainees pending deportation, respectively for enabling passive reception of phone calls, particularly because destitute prisoners only may have the first call to relatives free of charge.

At least one half hour visiting time per week has to be permitted according to law, detainees pending deportation should be allowed more visits without supervision as a rule to maintain family and other social relations, however organisational resources and constraints should be considered. (A special recommendation of *MRB* refers to visiting rights of prisoners in hunger strik. These rights should not be restricted even in sickrooms.)

### **3.8 Re-integration Activities - Prison Leave**

Preparation for release is confined to an absolute minimum in police detention centres. According to the new § 25 AnhO released prisoners are at least entitled to an attestation of detention time and to demand documents on medical evidence and treatment. For detainees pending deportation only the law now provides for some minimum social care through employees of private organisations. The Ministry of the Interior is eventually denounced to contract preferably with such organisations that pose advice for returning before counselling in right of asylum and support during asylum procedure. Help for returnees includes advice in bureaucratic matters and financial support.

### **3.9 Release - Expulsion**

There are no precise data available and no research has been conducted to what extent the release of foreign prisoners – from whatever institution – comes along with measures terminating the residence of the released person in Austria. In 2003 und 2004 11,173 resp. 9,041 imposed custodies compare to 8,073 resp. 5,811 removals carried out

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<sup>46</sup> This is also stated by the UN High Commissioner für Refugees in his written comment on the Police Detention Order (AnhO) 2005.

(Sicherheitsbericht der Bundesregierung, 2005, p. 331). Since there are no statistics on the reasons for release from detention pending deportation this difference can hardly be interpreted. We do not know whether the release was because of bad physical condition, so the person could no longer be kept in prison, whether a transgression of maximum time of detention has occurred, whether successful legal claims, or postponement of expulsion (§ 46 Para. 3 FPG), or impracticality or inadmissibility of removal (§ 50 FPG) provide the reason for release. Therefore information about the legal status after release, whether it is a regular, precarious or irregular one, remains unclear too.

### **3.10 Aftercare - Probation**

see 3.8

### **3.11 Staff**

Questions regarding qualification of staff in PAZ have been raised in different contexts. For a long time the *MRB* has been concerned about detention of women (*MRB* 2001). One impact of this concern is the ruling of the now amended Police Detention Order (§ 3 AnhO) that supervision in principle ought to be done by staff of the same sex. In view of insufficient space and staffing in smaller police detention centres the *MRB* felt disposed to recommend avoidance of females' accommodation there and to employ more women in the police administration (recommendations no. 93-116, July 2001). Facing the disproportionate high share of women among detainees pending deportation (18%) foreigners are particularly affected by respective deficiencies.

According to the latest evaluation (*MRB* Evaluierung I/2004) only 9 out of 16 PAZ dispose of sufficient rooms and personnel to properly accommodate females in separate sections. In particular at small facilities (e.g. border control posts) shortcomings still have to be conceded. The *MRB* several times also recommended training measures, especially for officers enforcing removal and wardens in PAZ, who deal with minors. The improvement of language capabilities and of capacities for intercultural communication through further education courses, the improvement of communication between police officers, social care workers and medical personnel and improved training of the paramedics to recognize mental abnormalities and illness were up to now widely neglected recommendations of the *MRB* (Evaluierung I/2004).

### **3.12 Projects**

In nearly every domain, whether spatial arrangements, social and medical care in general and for women in particular, legal aid or co-operation between professionals or authorities are concerned, the committees of the *Human Rights Advisory Council* find out local models of 'good practise', yet they also see too little exchange, centrally binding standards and quality management.

## **4. NATIONALS DETAINED ABROAD**

By 30 Jan 2006, 151 Austrians had been detained abroad on long-term prison sentences. Furthermore 119 Austrians were imprisoned in short-term detention in 2005.<sup>47</sup> The statistics only contain cases that are reported to the Austrian Federal Ministry for Foreign Affairs. If a national detained abroad does not want contact to be established, the Ministry is unaware of the detention. Most Austrian detainees are imprisoned within the European Union.

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<sup>47</sup> The Austrian Foreign Ministry (section IV.1) differentiates in its statistics between long-term and short-term detention in relation to custody of under 12 months or more than 12 months.

	actual number of long-term detainees *	short-term detentions 2005
EU- Europe	92	76
Central and South America	22	4
Asia	15	17
Non EU-Europe	11	7
North America	9	11
Australia and Oceania	2	2
Africa	0	2
	151	119

Source: Austrian Federal Ministry for Foreign Affairs  
\* by 30 Jan 2006

The main reasons for imprisonment are offences related to drugs (smuggling, trafficking and possession). Offences related to drugs account for about 50% of all long-term detentions. Nationals detained abroad are supported by different ministries: The Ministry of the Interior establishes contact with the prisoners' family; the Ministry of Justice organises transfers to Austria. The Ministry for Foreign Affairs supports the offender in cooperation with the consulates and embassies on-site, coordinates help, stays in contact with the relatives, manages the so called *Depot-Verkehr* (e.g. money transfers from relatives to nationals detained in foreign countries), and the *Red Cross Campaign* (sending presents or money to detainees abroad at Christmas).

60 percent of (officially reported) Austrian detainees are supported by consulates and embassies on-site. Outside the European Union the share of supported prisoners is higher (80 percent). If someone is not cared for, it is usually because he or she does not want any support from the Austrian representations (which often happens when someone is detained in another European country). If support is not possible because there is no Austrian representation in a particular country, the Austrian Foreign Ministry asks embassies or consulates from other (European) countries, or (Christian) NGOs to take care of the prisoner.

The organisation *Neustart* is the nation-wide provider for probation and help on release. They do not support nationals detained abroad unless a detainees themselves get in contact with them (e.g. to inform himself about aftercare facilities or because he or she wants to serve the rest of a sentence in Austria). Back in Austria all aftercare facilities are open to them. There are no bi- or multilateral agreements concerning probation services.

The media rarely reports on nationals detained abroad unless the case is politically charged.

## **5. EVALUATION AND RECOMMENDATIONS**

There is no manifest legal discrimination against non-Austrians with respect to entitlements and living conditions in police or justice prisons. The law on the contrary demands to take into account the particular situation and needs of imprisoned foreigners. As a matter of fact religiously founded claims thereby seem to get more easily accepted while rights to legal information in particular and information in general are less readily respected. Yet general social marginality and the attribution of risks to foreigners become effective in the prison

<sup>48</sup> The number of long-term detentions is available as *stock (prevalence)* data (number of detainees on January 30<sup>th</sup> 2006) while the number of short-term detentions refers to incoming *flow (incidents)* of short-term detainees in the year 2005. The two statistics therefore must not be merged. For both groups of detainees no statistical information on age, gender or social background is available.

context too and leads to social exclusion. The lack of language competence, non-existing social networks and prospects for social integration also affect social opportunities in prison. Whether it comes to alternatives to detention (in particular to pre-trial detention with its less favourable conditions) or to participation in prison labour, related income and consumption opportunities, leisure time activities, relaxation of prison conditions and preparation for release, the accumulating deficiencies of non-Austrian prisoners operate against them. There are no mandatory standards regarding the institutional duties to compensate for disadvantages of foreigners. It is largely up to the single institution how much it effectively cares about foreigners. There are occasional informal attempts to improve living conditions of foreigners in prison, but no state-wide official policy is implemented in this regard.

The growing number of foreigners in severely overcrowded prisons has some contrasting consequences. On the one hand it shows a clearly preserving function. The closing down of old, remote and ill-equipped institutions and departments is interrupted, it becomes more difficult to stop and overcome an un-communicative locking away of prisoners and to simply leave them to the rule of prison subcultures. On the other hand the rising number of foreigners causes a new routine and normality in relations among foreign and native inmates and between foreign inmates and staff, everyday racism is mitigated. Certain challenges through the new prison population also lead to innovations (for instance in the field of medical and social care for prisoners, language education, cable television etc.) and certain groups are even appraised as a 'gain' for the prison system. However, at the same time new unwanted 'problem groups are identified, with whom communication and co-operation is said to fail – not only because of language barriers. Top ranking among these problem groups are prisoners from former Soviet Republics. Arguments for a more harsh prison regime lean onto this new fraction of the prison population.

Bearing the Austrian situation in mind strict separation of administrative detention for the purpose of removal of irregular migrants from other kinds of detention of suspected or sentenced criminals has to be postulated. Detention pending deportation should be the ultimate resort to enforce the ban on residence and removal, it should be reserved for special risk groups (previously convicted, with disposition to escape or to behave violent) and precluded with minors and traumatised persons. If special institutions for detention pending deportation are established, their regime should not resemble that of traditional prisons. Open sections and common residence for family members, free access to media of communication with the outside world should be the rule.

With every kind of detention of foreigners due information about legal procedures and their respective status has to be granted. The fact of imprisonment should speed up decision making on the residence status of the detainee to reduce doubtfulness and psychic stress, to minimize denial of freedom and to prevent critical situations (e.g. in case of unprepared removal). Advice for returning must not curtail legal information and legal aid in asylum and other procedures before the immigration authorities. The transfer of offenders for the execution of sentences to their home country (against the will of the person, according to the Additional Protocol from 1997 to the European Convention on the Transfer of Sentenced Persons from 1983) must not ignore the real social integration in Austria.

The handicaps of many non-Austrian prisoners concerning language and other cultural skills should not be underrated. These handicaps prevent recourse to social, psychological and medical care and to legal grants and they cause social dependencies and disproportional private costs. Multi-lingual information, enhanced language skills of police and justice prison staff (as employment criterion), contracting with private organisations with multilingual personnel for visiting, educational and medical services are the order of the day.

Considering the low articulation and conflict potential of foreign prisoners the opening of prisons for independent pro-active control agencies furnished with substantial legal power of audit and resources turns out to be very important. By comparing the activities of the *Human Rights Advisory Council* (competent for police detention centres) and of the Prison Monitoring Committees (for prisons under justice administration) the significance of public presentation of findings and the transparency of administrative reactions to critique and recommendations can be demonstrated. Control boards reporting in closed sessions exclusively to the state administration are not a proper solution of the problem. Though the *Human Rights Advisory Council* at the Ministry of the Interior regularly issues focal reports there is a total lack of statistical and political routine reporting by the state administration on the execution of police detention and only fragmentary reporting on justice prisons. The annual Government Report on Internal Security, to be sure, offers a lengthy crime report but pays little attention to institutional detention and penal practise. The current study, anyhow, contributed to cause a redesign of statistical reporting on prisons under Ministry of Justice administration. For the future the data will enable to identify groups of prisoners which are discriminated with respect to access to work, education and training, and to social and medical care. However, the residence status of detained and released prisoners and the administrative measures taken by the immigration police against them still remains undocumented and unreported by the Austrian police and justice administration.

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### **Links:**

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- <http://www.bmi.gv.at/kriminalstatistik/> (police crime statistics)
- <http://www.bmj.gv.at/> (Ministry of Justice)
- <http://www.emn.at/> (European Migration Network, Austrian Contact Point)
- <http://www.emn.at/module-Documents-maincat-cid-1-idx-11.phtml> (migration statistics)
- <http://www.ris.bka.gv.at/bundesrecht/> (Austrian Law Data Base)
- [http://www.menschenrechtsbeirat.at/de/index\\_berichte.html](http://www.menschenrechtsbeirat.at/de/index_berichte.html) (*Human Rights Advisory Council*, reports)
- [http://www.menschenrechtsbeirat.at/de/index\\_empfehlungen.html](http://www.menschenrechtsbeirat.at/de/index_empfehlungen.html) (*Human Rights Advisory Council*, recommendations)
- [http://www.menschenrechtsbeirat.at/de/index\\_evaluierung.html](http://www.menschenrechtsbeirat.at/de/index_evaluierung.html) (*Human Rights Advisory Council*, evaluations)
- <http://www.cpt.coe.int/en/states/aut.htm> (CTP-reports on Austria)
- <http://www.asylanwalt.at/> (NGO, legal aid information on asylum etc.)