



AUSTRIA

ISSUES RELATED TO IMMIGRATION DETENTION

Submission to the European Committee for the Prevention of Torture
and Inhuman or Degrading Treatment or Punishment (CPT)

in Preparation for its Visit to Austria

Submitted in May 2021

THE GLOBAL DETENTION PROJECT MISSION

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

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

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GLOBAL DETENTION PROJECT

SUBMISSION TO THE EUROPEAN COMMITTEE FOR THE PREVENTION OF TORTURE AND INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT (CPT)

IN PREPARATION FOR ITS VISIT TO AUSTRIA

1. INTRODUCTION

The Global Detention Project (GDP) is an independent research centre based in Geneva, Switzerland, that investigates the use of detention as a response to international immigration. Its objectives are to improve transparency in the treatment of detainees, to encourage adherence to fundamental norms, to reinforce advocacy aimed at reforming detention practices, and to promote scholarship of immigration control regimes.

The GDP is pleased to provide the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) the following submission in preparation for its visit to Austria in 2021. The submission concerns the detention of migrants and refugees. As such, it is informed by the CPT's relevant standards as included in "Foreign Nationals Detained Under Aliens Legislation" (7th General Report of the CPT, CPT/Inf (97)10, 1997) and "Safeguards for Irregular Migrants Deprived of their Liberty" (19th General Report of the CPT, CPT/Inf (2009)27, 2009).

2. CONCERNS RAISED BY THE CPT DURING ITS PREVIOUS VISIT

During the CPT's previous visit to Austria, the delegation reviewed the situation of foreign nationals in detention pending deportation (*Schubhaft*), visiting the then newly opened Vordernberg Detention Centre, as well as the Vienna Hernalser Gürtel PAZ (Police Detention Centre).¹

When visiting the PAZ Hernalser Gürtel, the delegation noted numerous concerns, including "appalling" hygiene conditions in sanitary facilities; the placement of significant numbers of detainees within the closed section of the facility in which they face long hours locked in cells and only limited access to outdoor space; the delegation of nurse functions to police officers; poor medical confidentiality; a lack of medical screening for transmissible diseases; and a ban on the use of mobile phones. Meanwhile, although the delegation was generally impressed by the "high standards of detention conditions" at Vordernberg Detention Centre, some concerns were also noted here, including the lack of systematic screening for transmissible diseases and poor medical confidentiality.²

¹ Council of Europe, "Report to the Austrian Government on the Visit to Austria Carried Out by European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 22 September to 1 October 2014," CPT/Inf (2015) 34, 6 November 2015, <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680653ec7>

² Council of Europe, "Report to the Austrian Government on the Visit to Austria Carried Out by European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 22 September to 1 October 2014," CPT/Inf (2015) 34, 6 November 2015, <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680653ec7>

Given the multitude of concerns raised during the CPT's previous visit, it is important that both centres be visited again to assess whether the committee's recommendations have been implemented. Crucially, many of these concerns have become increasingly important in the wake of the COVID-19 crisis—particularly those relating to hygiene facilities and medical services—and the GDP would encourage the CPT to assess the conditions that detainees face amidst the pandemic. (For more on the pandemic, see 5. COVID-19 Considerations.)

This submission is based in part on the GDP's 2020 report on Austria,³ as appended. The key findings of our research include:

- Between 2015 and 2018, the annual number of immigration detainees in Austria more than tripled, from 1,436 to 5,252.⁴
- During that same period, the number of new asylum applicants fell dramatically, from 88,160 to 13,710.⁵
- Officials explain the rise in detention numbers as a result of renewed emphasis on removals; however, the annual rates of return have only increased marginally (just 15 percent between 2016 and 2018)⁶ even as detention has skyrocketed.
- Domestic and international observers have expressed concern over Austria's failure to adequately document immigration detention operations.
- The list of criteria for determining a risk of absconding, a key consideration for a detention decision, is long and non-exhaustive.
- Legislation permits the detention of unaccompanied children over the age of 14; children under the age of 14 may be detained as a measure of last resort if they are detained with a parent or legal guardian.
- The maximum length of detention is six months for adults and three months for children.
- Detainees are required to pay for their own detention (in Vordernberg Detention Centre, they are supposed to pay 70 EUR a day, while the daily costs at this facility exceed 800 EUR).
- Although they have long been criticised for having unsuitable conditions, police detention centres (or "PAZ") continue to be used for immigration detention purposes, in some cases for periods that exceed seven days.
- Austria employs private companies for the provision of various services to detainees, in particular at the Vordernberg centre, where the controversial multinational security company G4S has long operated.

³ Global Detention Project (GDP), "Immigration Detention in Austria: Where the Refugee "Crisis" Never Ends," January 2020, <https://www.globaldetentionproject.org/immigration-detention-in-austria-where-the-refugee-crisis-never-ends>

⁴ European Council on Refugees and Exiles (ECRE), "Austria: Increasing Use of Detention According to Latest Statistics," June 2019, <http://www.asylumineurope.org/news/19-06-2019/austria-increasing-use-detention-according-latest-statistics>; Federal Interior Ministry, "Response to a Parliamentary Request, 1001/AB," 9 August 2018, https://www.parlament.gv.at/PAKT/VHG/XXVII/AB/AB_01001/imfname_706803.pdf

⁵ Eurostat, "Database," January 2020, <https://ec.europa.eu/eurostat/data/database>

⁶ Eurostat, "Enforcement of Immigration Legislation," January 2020, <https://ec.europa.eu/eurostat/data/database>

3. DETENTION FACILITIES IN AUSTRIA

In 2020, Austria operated five facilities for immigration detention purposes:

- Vordernberg Detention Centre
- Vienna Rossauer Lände PAZ
- Vienna Hernalser Gürtel PAZ
- Zinnergasse Family Detention Centre
- Vienna Airport Transit Zone

In addition, the country confines non-citizens in other PAZ (Bludenz, Eisenstadt, Graz, Innsbruck, Klagenfurt, Linz, Salzburg, St. Pölten, Villach, and Wels) for up to seven days.

It is a peculiarity in the EU context to carry out immigration detention in the PAZ, as these facilities function akin to police stations. (They are under the authority of the Interior Ministry and are managed by the police.) Although the number of PAZ used for immigration detention has decreased (from ten to two) since the country opened Vordernberg Detention Centre in 2014, many observers—including the UN Human Rights Committee (2015) and the UN Committee on Torture (2010)—have urged Austria’s authorities to cease their use for such purposes altogether.⁷

During the past year and half, some asylum reception facilities also functioned as *de facto* temporary sites of deprivation for periods of time within the context of the COVID-19 pandemic. The following table (Table I), which we reproduce from the Asylum Information Database’s April 2021 report on Austria, lists the facilities that may be considered as having functioned in such a manner.⁸

Table I

Federal Accommodation Facilities During COVID-19		
Federal Accommodation Facility	Start of Quarantine	End of Quarantine
BBE EAST Traiskirchen	24 March 2020	13 April 2020
BBE Villach	7 November 2020	22 November 2020
BBE Bergheim	19 March 2020	5 May 2020
	12 November 2020	23 November 2020
BBE Bad Kreuzen	18 July 2020	30 July 2020
	24 October 2020	11 November 2020
	21 November 2020	Open
BBE Fieberbrunn	6 November 2020	16 November 2020
BBE EAST Thalham	11 September 2020	23 September 2020

⁷ UN Human Rights Committee (HRC), “Concluding Observations on the Fifth Periodic Report of Austria, CCPR/C/AUT/CO/5,” 3 December 2015, <http://www.ohchr.org/EN/Countries/ENACARRegion/Pages/ATIndex.aspx>; UN Committee against Torture (CAT), “Concluding Observations of the Committee against Torture: Austria, CAT/C/AUT/CO/4-5,” 20 May 2010, <http://www.ohchr.org/EN/Countries/ENACARRegion/Pages/ATIndex.aspx>

⁸ Asylkoordination, “Country Report: Austria,” *Asylum Information Database (ECRE)*, April 2021, <https://asylumineurope.org/reports/country/austria/>

4. DETENTION CONDITIONS

4.1 Vordernberg Detention Centre

Since the CPT's 2014 visit, the Austrian Ombudsman Board (AOB) has observed several deficiencies regarding health care in this facility. These have ranged from the lack of electronic records, to issues related to the treatment of ill detainees. During visits in 2017 for example, it noted that care provided to opioid-addicted detainees was inadequate and that improper medication was distributed. The AOB has also criticised the centre's decision to systematically place detainees on hunger strike within the facility's closed section.⁹ In 2018, the AOB also criticised the fact that the centre's psychiatrist only visited once a week (usually on Sundays); the lack of shade in the centre's courtyard; and poor quality and quantity of food.¹⁰ In 2019, the need for additional medical, psychiatric-specialist, and clinical-psychological staff was again raised, and the board was informed that efforts were being made to provide psychiatric counselling and treatment via video consultation.¹¹

4.2 Police Detention Centres (PAZ)

Despite the CPT's noting of concerns in 2014, observers have continued to highlight worrying detention conditions in police detention centres (PAZ). In its most recent annual report, the AOB issued various recommendations regarding conditions in police detention centres, including *inter alia*, the need for: access to natural daylight and adequate ventilation; provision of occupational and leisure activities; access to hygienic sanitary facilities; transfer of detainees awaiting removal to an open section within 48 hours; and open "table visits" for detainees.¹²

In June 2019, a Hungarian immigration detainee in poor health held in PAZ Rossauer Lände died in his cell. According to Austrian NGO *Diakonie Österreich*, the man had been visited by a member of Diakonie's team the day before for legal advice, and had appeared extremely unwell and unable to stand up. Diakonie immediately called for an investigation into the man's detention and death.¹³

4.3 Recommendations

We urge the Committee to visit the **Vordernberg Detention Centre**, the **PAZ Hernalser Gürtel**, and the **PAZ Rossauer Lände** to investigate whether the detention of migrants at these facilities meets the required standards for such detention, and to assess whether the problems reported at these facilities, both during the CPT's previous visit and more recently by other observers and experts, have been adequately addressed.

⁹ Austrian Ombudsman Board (AOB), "Annual Report on the Activities of the National Preventive Mechanism (NPM) – 2017," August 2018, <https://volksanwaltschaft.gv.at/downloads/ctjmf/aob-npm-report-2017.pdf>

¹⁰ Austrian Ombudsman Board (AOB), "Annual Report on the Activities of the National Preventive Mechanism (NPM) - 2018," 2019, https://volksanwaltschaft.gv.at/downloads/2ga09/report-on-the-activities-of-the-npm-2018_en.pdf

¹¹ Austrian Ombudsman Board (AOB), "Annual Report on the Activities of the National Preventive Mechanism (NPM) – 2019," 2020, https://volksanwaltschaft.gv.at/downloads/e9p6l/npm-report-2019_en_web.pdf

¹² Austrian Ombudsman Board (AOB), "Annual Report on the Activities of the National Preventive Mechanism (NPM) – 2019," 2020, https://volksanwaltschaft.gv.at/downloads/e9p6l/npm-report-2019_en_web.pdf

¹³ Kurier, "Wien: Mann kam in Schubhaft ums Leben," 13 June 2019, <https://kurier.at/chronik/wien/mann-kam-in-schubhaft-ums-leben-staatsanwaltschaft-ermittelt/400522732>

5. COVID-19 CONSIDERATIONS

5.1 Immigration Detention Centres

Austria's response to COVID-19 in its migration-related detention centres led to a number of harmful situations: "In 2020, there was a significant increase of the duration of detention for rejected asylum seekers as deportations could not be implemented during Covid-19 due to travel restrictions. The average duration of detention increased from 28.9 in 2019 to 83.3 days in 2020. Nevertheless, it should be noted that the use of alternatives to detention also increased which was due to COVID-19. It was applied in 677 cases in 2020, compared to approximately 270 cases between 2016 and 2018. Access of NGOs to detention facilities was further restricted in the context of COVID-19."¹⁴

In 2020, at the height of the COVID-19 crisis, the GDP received information from Austria's Interior Ministry confirming that no systematic testing system was in place, and that instead detainees were only tested for the virus if an infection was suspected. The ministry added that detainees awaiting results of their test are placed in "protective isolation" and that there is "no appropriate legal basis for an initial screening to detect infections among all detainees."¹⁵

This lack of legal basis for testing was reiterated by the Interior Ministry in 2021, when the ministry's spokesman explained the lack of compulsory COVID-19 testing amongst immigration detainees. According to the spokesman, no statistics about positive cases were being gathered.¹⁶

Although lock-down requirements prevented the AOB from conducting visits to Austrian detention facilities in the early days of the pandemic, by November 2020 they had resumed their visits, and had conducted visits to several police detention facilities. During such visits they identified concerns including visiting modalities, staffing levels, solitary confinement, and access to the outdoor yard.¹⁷

5.2 Federal Accommodation Facilities

Reports indicate that Austria's federal accommodation centres for asylum seekers operated as *de facto* detention facilities during certain periods after the onset of the pandemic, as lengthy quarantines were imposed that deprived asylum seekers (including children) of liberty, forcing them to remain locked inside sometimes cramped facilities for many weeks or months at a time. (See Table I, page 5 of this submission.)¹⁸

¹⁴ Asylkoordination, "Country Report: Austria," *Asylum Information Database (ECRE)*, April 2021, <https://asylumineurope.org/reports/country/austria/>

¹⁵ Bundesministerium für Inneres, "Austria – Ministry of Interior – COVID-19 Survey Response," 2 July 2020, <https://www.globaldetentionproject.org/austria-ministry-of-interior-covid-19-survey-response>

¹⁶ EU Factcheck, "Mostly False: 'Around 20 Percent of Illegal Migrants are Bringing the Coronavirus to Austria,'" 31 March 2021, <https://eufactcheck.eu/factcheck/mostly-false-around-20-percent-of-illegal-migrants-are-bringing-the-coronavirus-to-austria/>

¹⁷ EU Agency for Fundamental Rights, "Migration: Key Fundamental Rights Concerns, 1.7.2020 – 30.9.2020," https://fra.europa.eu/sites/default/files/fra_uploads/fra-2020-migration-bulletin-4_en.pdf

¹⁸ Asylkoordination, "Country Report: Austria," *Asylum Information Database (ECRE)*, April 2021, <https://asylumineurope.org/reports/country/austria/>

According to Asylkoordination in its April 2021 report for the Asylum Information Database, the Ministry of Interior's poor management of the COVID-19 crisis was reported in 2020, and resulted in lengthy quarantine periods in federal facilities as well as inadequate reception conditions for asylum seekers. This also affected vulnerable groups such as a high number of unaccompanied children who had to stay in inadequate federal facilities due to a lack of communication between states and inadequate COVID-19 test strategies. The decree restricting the freedom of movement of asylum seekers in reception centres was challenged and two cases are currently pending in front of the Constitutional Court.”¹⁹

The impact of COVID-19 restrictions on asylum reception in Europe remains a critical area of human rights inquiry, especially in cases where these restrictions led to *de facto* detention but without the provision of procedural guarantees that are intended to protect people from harm and abuse while in detention. While the COVID-19 crisis forced governments, in Austria and elsewhere in Europe and the world, to make tough decisions and impose extraordinary measures in order to prevent the spread of disease, limitations on freedom and liberty require in all cases meaningful oversight and attention. The problems that have been reported in Austria's COVID-19 response in asylum centres merit critical attention in light of the Committee's mandate to visit all places of deprivation of liberty, thus we urge the Committee to investigate this matter fully.

In this regard, it is relevant to quote the statement of Malcolm Evans, former chair of the UN Subcommittee on Prevention of Torture, in his statement to the UN General Assembly in October 2020:

“The experiences of the last six months have put many new questions ‘on the table’ concerning the OPCAT system or prevention. One particular issue that has arisen is whether places of quarantine are places of ‘detention’ for the purposes of the OPCAT. Let me take this opportunity to answer this clearly: they are, and access cannot be denied to them (whilst all proper precautions must also be respected).”²⁰

5.3 Recommendations

We urge the Committee to fully assess Austria's COVID-19 response in its migration-related detention facilities, including the PAZ, to see if they adequately reflected the COVID-related recommendations issued by the UN Subcommittee on Prevention of Torture, in its 25 March 2020 “Advice of the Subcommittee on Prevention of Torture to States Parties and National Preventive Mechanisms relating to the Coronavirus Pandemic.”²¹ It would also be valuable if the Committee could request that the government provide statistics concerning the number of COVID-19 cases in these facilities and to enquire if “protective isolation” continues to be used for those with suspected infections.

Also, in light of Austria's COVID-19 response in its asylum reception system, we encourage the CPT to visit at least one or two of these facilities—including, for instance, **BBE Bad Kreuzen**, which has undergone multiple extended quarantines—and investigate whether

¹⁹ Asylkoordination, “Country Report: Austria,” *Asylum Information Database (ECRE)*, April 2021, <https://asylumineurope.org/reports/country/austria/>

²⁰ UN General Assembly, “Statement by Sir Malcolm Evans,” 15 October 2020, www.globaldetentionproject.org/wp-content/uploads/2020/11/Statement_OPDAT_GA75.pdf

²¹ UN Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, “Advice of the Subcommittee on Prevention of Torture to States Parties and National Preventive Mechanisms Relating to the Coronavirus Pandemic (Adopted on 25th March 2020),” 25 March 2020, <https://www.ohchr.org/Documents/HRBodies/OPDAT/AdviceStatePartiesCoronavirusPandemic2020.pdf>

people held in those facilities during lengthy quarantines periods were able to access appropriate safeguards that are required for all situations of deprivation of liberty, and to inquire whether the government has adopted protocols to avoid abuses in these centres should new forced quarantines be ordered at its asylum reception centres.

6. CHILDREN

Austria's legislation provides that unaccompanied children over the age of 14 may be detained, and that children under the age of 14 may be detained as a measure of last resort if they are detained with a parent or legal guardian. Additionally, reports suggest that children were *de facto* detained in asylum reception centres after the onset of the COVID-19 pandemic.

Despite the fact that Austria has neglected to embrace the strengthening norm prohibiting the detention of children, it has long been challenging to get information from government agencies about the extent of detention of children, which is a critical gap in transparency that must be addressed to ensure that all people deprived of liberty in Austria are afforded proper protections and safeguards.

According to its 2017 report on immigration detention of children, the European Union Agency for Fundamental Rights could not obtain any data regarding how many children were detained in Austria at given dates in 2015 and 2016.²² In 2018, the Austrian Interior Ministry, in its response to a 2018 parliamentary request demanding how many asylum seeking families and children were detained in the country, claimed that such statistics were not recorded.²³ However, in other 2018 responses to parliamentary requests, the Interior Ministry claimed that in 2017 there were 23 children aged between 16 and 18 in immigration detention²⁴ and 27 in 2018.²⁵

Previously, in a 2015 joint report with Access Info Europe, the GDP reported that Austria, in its response to access to information requests about migration-related detention statistics, informed the GDP and Access Info that it did not collect statistics on the numbers of children in any form of migration-related detention.²⁶

In 2015, the UN Human Rights Committee recommended that Austria review its detention policy to ensure that children are not deprived of their liberty except as a measure of last resort and for the shortest appropriate period of time.²⁷ Three years earlier, the UN Committee on the Rights of the Child (CRC) issued a detailed recommendation to Austria urging the country to ensure that children under the age of 14 are not placed in detention under any circumstances. It also recommended that detention measures for unaccompanied

²² European Union Agency for Fundamental Rights (FRA), "European Legal and Policy Framework on Immigration Detention of Children," 2017, <http://fra.europa.eu/en/publication/2017/child-migrant-detention>

²³ Federal Interior Ministry, "Response to a Parliamentary Request, 1001/AB," 9 August 2018, https://www.parlament.gv.at/PAKT/VHG/XXVII/AB/AB_01001/imfname_706803.pdf

²⁴ Federal Interior Ministry, "Response to a Parliamentary Request 1681/AB," 13 November 2018, https://www.parlament.gv.at/PAKT/VHG/XXVII/AB/AB_01681/imfname_721304.pdf

²⁵ Federal Interior Ministry, "Response to a Parliamentary Request 2633/AB," 20 March 2019, https://www.parlament.gv.at/PAKT/VHG/XXVII/AB/AB_02633/imfname_741843.pdf

²⁶ Global Detention Project and Access Info Europe, "The Uncounted," 2015, <https://www.globaldetentionproject.org/the-uncounted-the-detention-of-migrants-and-asylum-seekers-in-europe>

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

refugee and asylum-seeking children over the age of 14 only be used as a measure of last resort, when non-custodial measures are unavailable. Additionally, the Committee recommended that Austria ensure that detention conditions are of a non-punitive character and in-line with the special status of children as minors who are not suspected or convicted of any crime; that the age determination procedure applied to unaccompanied children be based on scientifically approved methods; and that each unaccompanied child be provided with a legal guardian.²⁸ Likewise, upon its visit to Austria in 2018, the UN Office of the High Commissioner for Human Rights (OHCHR), recommended that the country amend its laws and practices to ensure that children, including accompanied children, are not placed in immigration detention and that alternatives to detention are instead applied for the entire family.²⁹

6.1 Recommendations

We urge the Committee to investigate whether Austria has any plans to amend its legislation in line with OHCHR's 2018 recommendations, and to enquire whether the country will consider eventually adopting a prohibition on the immigration detention of children, in line with the recommendations of the UN Committee on the Rights of the Child, which has stated: "Every child, at all times, has a fundamental right to liberty and freedom from immigration detention. The Committee on the Rights of the Child has asserted that the detention of any child because of their or their parents' migration status constitutes a child rights violation and contravenes the principle of the best interests of the child. ... Any kind of child immigration detention should be forbidden by law and such prohibition should be fully implemented in practice."³⁰

Additionally, in light of the repeated failure by Austria to make available statistics on the numbers of migration or asylum seeking children placed in detention and the critical role that transparency plays in enabling agencies like the CPT and other monitoring bodies to adequately perform their critical functions, we urge the Committee to request that Austria provide disaggregated statistics on all children placed in any form of migration- or asylum-related detention, going back as many years as possible and including children who may be in family groups or with a parent or guardian, who often go uncounted in official statistics.³¹

²⁸ UN Committee on the Rights of the Child (CRC), "Concluding Observations on the Combined Third and Fourth Periodic Report of Austria, CRC/C/AUT/CO/3-4," 3 December 2012, www.ohchr.org/EN/countries/ENACARegion/Pages/ATIndex.aspx

²⁹ Office of the United Nations High Commissioner for Human Rights (OHCHR), "Report of Mission to Austria Focusing on the Human Rights of Migrants, Particularly in the Context of Return," 15-18 October 2018, <https://www.ohchr.org/Documents/Issues/Migration/AustriaMigrationMissionReport.pdf>

³⁰ United Nations, "Joint general comment No. 4 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and No. 23 (2017) of the Committee on the Rights of the Child on State obligations regarding the human rights of children in the context of international migration in countries of origin, transit, destination and return," 16 November 2017.

³¹ Office of the United Nations High Commissioner for Human Rights (OHCHR), "Report of Mission to Austria Focusing on the Human Rights of Migrants, Particularly in the Context of Return," 15-18 October 2018, <https://www.ohchr.org/Documents/Issues/Migration/AustriaMigrationMissionReport.pdf>

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