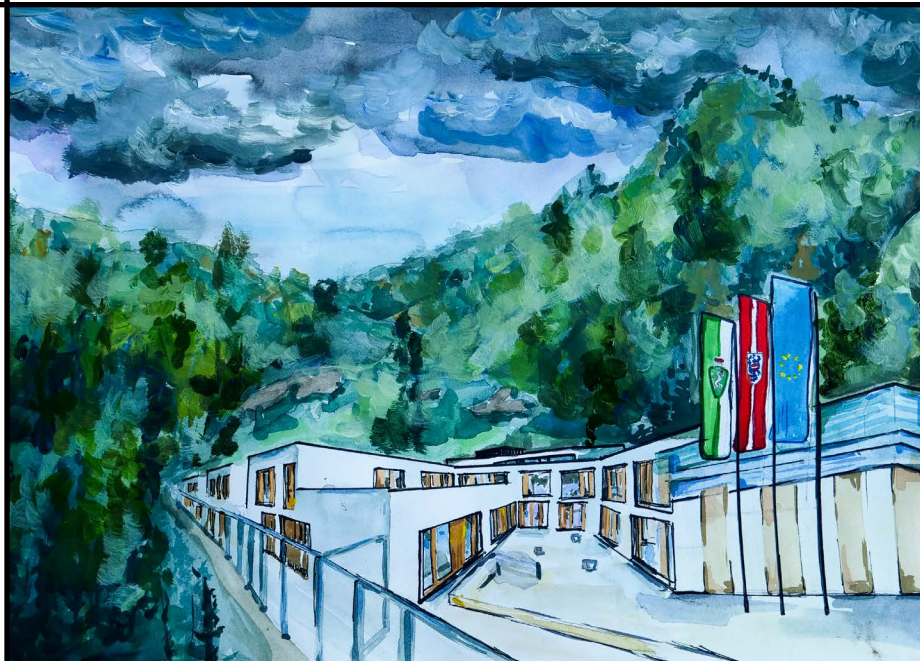


**„There are no laws.
They are the law.”**

**MIGRATION DETENTION
IN AUSTRIA**

Current
conditions in
the Vordernberg
detention centre



A study by Push-Back Alarm Austria and the
Deserteurs- und Flüchtlingsberatung



„There are no laws. They are the law.”

Migration detention in Austria: Current conditions in the Vordernberg detention centre

The study was accompanied by artist **Helen Zeru**.
The interviews have inspired her contributions.

Layout and design: **Maria Cristina**

Push-Back Alarm Austria

Contact: pushbackalarm-austria@riseup.net

Instagram: [/pushbackalarm](#)

Facebook: [/PushBackAlarmAustria](#)

Deserteurs- und Flüchtlingsberatung

Contact: deserteursberatung.at

Table of contents

1 Introduction	s. 2
2 Isolated and politically questionable	s. 4
3 Migration detention in Austria	s. 8
3.1 The concept of migration detention	s. 9
3.2 Legal framework regarding migration detention in Austria	s. 9
3.3 Practical implementation of migration detention	s. 13
3.4 Detention regulation: legal framework conditions for migration detention	s. 14
4 "It was like a prison. It was a prison. It's a closed prison". Personal experiences in Vordernberg	s. 18
4.1 The way to Vordernberg	s. 19
4.2 The general situation in Vordernberg	s. 19
4.3 Staff interaction with inmates	s. 20
4.4 Punishment through solitary confinement	s. 21
4.5 Legal advice	s. 22
4.6 Healthcare	s. 22
4.7 Resistance	s. 23
5 Conclusions	s. 26

Introduction

1

After more than four months in the Hernalser Gürtel detention centre, Mr T. was transferred to the Vordernberg detention centre. His first sight of the building reminded him of the former US maximum security prison Alcatraz. "It was like in a movie," he said during an interview with Push-Back Alarm Austria in a Viennese café. "The place was far away from everything, nothing but wilderness all around; it was very strict and brutal."

The idea of establishing this detention centre was developed in 2001 after years of criticism of the Austrian practice of migration detention by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) and the then Human Rights Advisory Council of the Federal Ministry of the Interior. This proposal was then taken up by the red-black coalition in its 2008-2013 government programme¹. 250 places were to be created to undergird measures to terminate residence.

After initial criticism due to low occupancy rates and a critical report by the Austrian Court of Auditors (ACA) in 2019², public attention to Vordernberg subsided. The location far away from urban centres, poor transport connections and time-restricted visiting hours not only make it difficult for visitors, organisations, independent legal counsellors and lawyers to gain access, but also isolate the detainees even more from the outside world. The main actors in the deten-

tion centre are police officers, employees of a private security company (G4S) and employees of the statutory legal and return counselling service, the Bundesagentur für Betreuungs- und Unterstützungsleistungen (Federal Agency for Reception and Support Services, BBU). Publicly available reports are compiled by official or state institutions and do not reflect the experiences of people in migration detention.

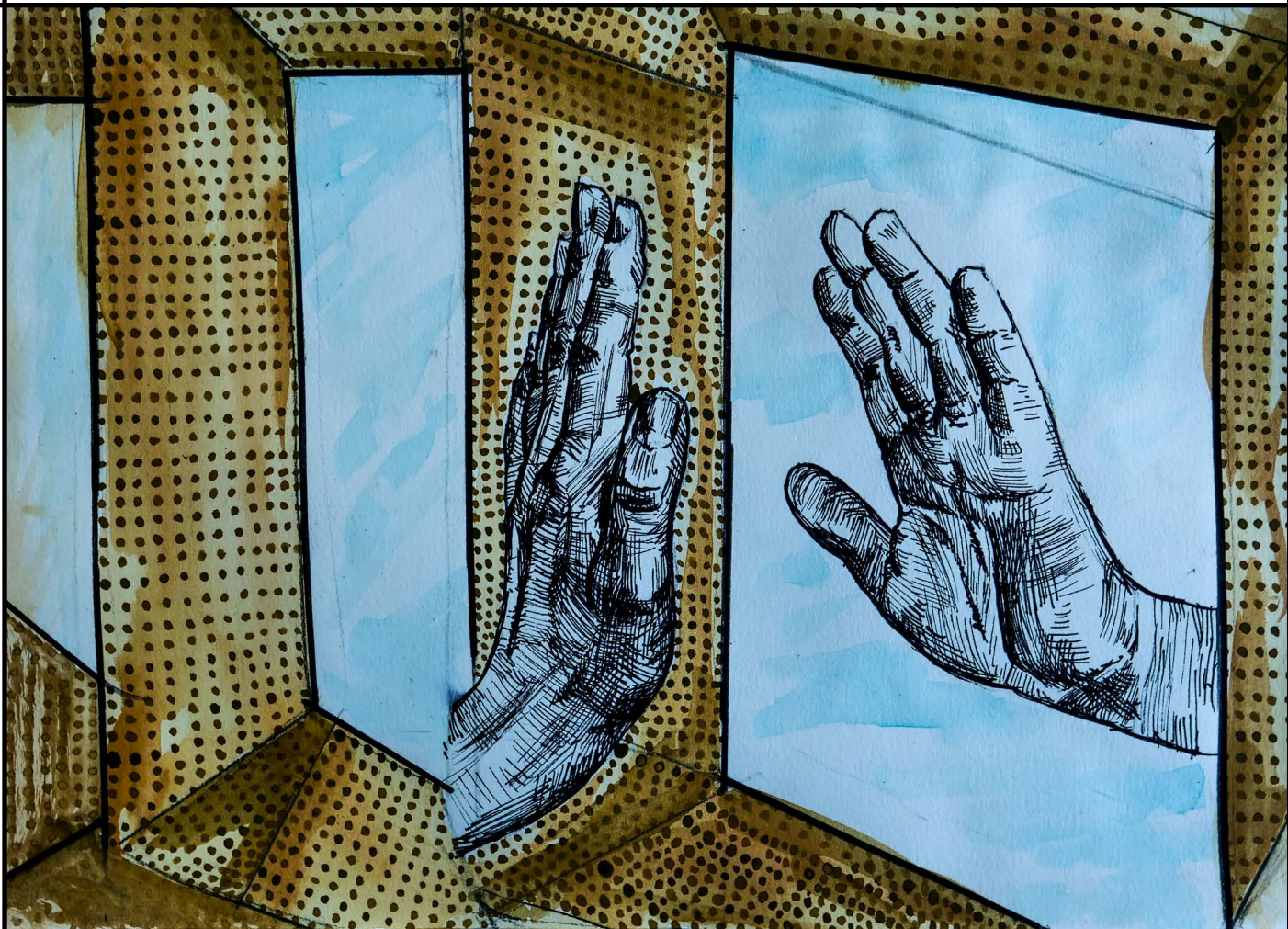
More than ten years after the opening of the detention centre, Push-Back Alarm Austria and the *Deserteurs- und Flüchtlingsberatung* (Counseling service for deserters and refugees) have documented ten testimonials in the present study, enabling those affected to have their say through direct quotes. The interviewees were found using a snowball system; they are made up of people who were already in contact with the two initiatives and people who were referred by them.

All interviewees had been imprisoned in Vordernberg in the last three years. The interviewees report detention conditions that diminish or override the detainees' will to live and control over their own lives and endanger their selves; these conditions in their entirety fulfil the United Nations' legal definition of torture ("torturing environment"³).

¹ Government programme 2008-2013 http://www.konvent.gv.at/K/DE/INST-K/INST-K_00179/imfname_164994.pdf, 110, 2024-10-30.

² https://www.rechnungshof.gv.at/rh/home/home/home_7/Anhaltezentrum_Vordernberg.pdf, 2024-10-30.

³ <https://pmc.ncbi.nlm.nih.gov/articles/PMC9408337/> and <https://www.ohchr.org/sites/default/files/cat.pdf>, Article 1, 2024-10-30.



Isolated and politically questionable

At the beginning of 2012, the Bundesimmobiliengesellschaft (Federal real estate company, BIG) began building the detention centre for the Federal Ministry of the Interior (BMI) under the project name "Neubau Anhaltezentrum Vordernberg" (Building construction detention centre Vordernberg). The centre was completed at the same time as the establishment of the Bundesamt für Fremdenwesen und Asyl (Federal Office for Immigration and Asylum, BFA), which has been responsible for imposing detention pending deportation since 1 January 2014. The construction costs for the 9,600 square metre site, 6,000 of which are intended for the detention of up to 200 people, amounted to around €24 million (net)⁴. The choice of location and the award procedure were subsequently criticised by the Court of Audit for their lack of transparency. The choice of the municipality of Vordernberg was not reasonable from either a strategic or an economic perspective. Although Leoben was on the shortlist as a suitable location, among other things due to its connection to Vienna and Schwechat and a pre-existing prison, this location was rejected because of resistance at "regional level"⁵.

In 2009, the mayor of the municipality of Vordernberg

proposed the construction of the detention centre within the municipality. According to the Federal Ministry of the Interior, there was no other location where the detention centre could have been built, as Vordernberg was the only municipality that had expressed an interest. The Court of Audit criticised that the aspects that would have weighed in favour of the Leoben location did not apply in the case of the municipality of Vordernberg⁶. The location was chosen by the Federal Ministry of the Interior at the suggestion of a remote market town with very poor accessibility. The location leads to follow-up costs for trips to court and medical treatment. However, the main consequences of the inadequate allocation procedure are borne by the people who have been detained in isolation in Vordernberg since 2014. They are difficult to visit and have no access to independent legal advice or other services offered by NGOs.

The BMI did not set a budget limit for the project and economic viability and appropriate pricing appeared doubtful. In addition to the aforementioned construction costs of €24 million net, there are rental costs of €2.66 million per year, which the BMI has to pay to the BIG; the rental agreement includes a 33-year (!) waiver of termination⁷.

⁴ https://www.big.at/fileadmin/user_upload/03_Projekte/063_anhaltezentrum-vordernberg/Folder_Schubhaftzentrum_Vordernberg.pdf, 2024-10-30.

⁵ https://www.rechnungshof.gv.at/rh/home/home/Vollzug_der_Schubhaft_mit_Schwerpunkt_Vordernberg.pdf, 158, 2024-10-30.

⁶ Ibid, 158f

⁷ Ibid, 107.

The architectural firm SUE Architekten (now Franz&Sue) won the tender in June 2010 and was heavily criticised at the time for accepting such a commission, but vehemently defended the realisation of the project and praised itself for the “innovative” implementation. “Our task was to make the stay of prisoners awaiting deportation as bearable as possible. We wanted to do without anything that smacks of punishment”⁸, according to the firm. The analysis of the interviews clearly demonstrates that this plan has failed miserably.

The municipality of Vordernberg was commissioned by the Federal Ministry of the Interior as the general contractor for the detention centre. This step in the award-

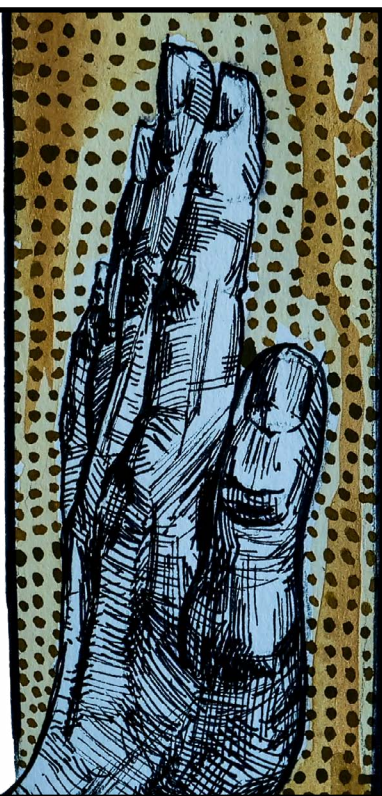
for 15 years. Since then, the commissioning of the global security company G4S has been heavily criticised by various parties. First and foremost, there are constitutional concerns regarding the division of tasks between the police and G4S, and the non-transparent award procedure by the municipality of Vordernberg has also been a focus of debate. Finally, it is worth mentioning that Matthias Wechner, former deputy head of cabinet in the ÖVP-led Federal Ministry of the Interior, was the managing director of G4S at the time of the award of contract⁹.

In 2013/2014, the Austrian Ombudsman Board dealt with the question of the constitutional admissibility of this constellation between the Federal Ministry of the Interior, the municipality and G4S with regard to the tasks assumed by the private security company and the question of whether these would not actually constitute sovereign tasks of the state. The Austrian Ombudsman Board considered the outsourcing of sovereign powers to be “highly problematic under constitutional law”¹⁰.

According to the ACA’s report, the tender by the municipality of Vordernberg was so narrowly formulated that only one provider applied¹¹. The Court of Auditors is not responsible for auditing municipalities with fewer than 10,000 inhabitants. In addition, the documents provided to the ACA by the Federal Ministry of the Interior regarding the award procedure were incomplete and an audit was therefore not possible¹². Although the Federal Ministry of the Interior was basically responsible for the award procedure, due to the implementation mandate being transferred to the municipality of Vordernberg, the Federal Ministry of the Interior was “unable to provide sufficient information on the award procedure and the determination of criteria regarding suitability, exclusion and evaluation on which the award procedure was based, despite that fact that it was responsible for the Vordernberg detention centre and was represented on the award committee”¹³. The ACA report also criticises the implementation of the project and the first two years of its operation. For example, the report criticises the extremely long contractual obligations regarding the building (33 years) and the private security company (15 years) as well as the high costs incurred, which are independent of capacity utilisation and already amounted to €8 million per year in 2016¹⁴.

ing process has been widely criticised, as the competence for detention pending deportation lies with the federal government, which has passed it on to the municipality in the case of the Vordernberg detention centre.

The municipality has awarded the contract for security services, provisioning, medical care, recreational services and cleaning at the detention centre to the British security company G4S and is contractually bound to them



⁸ <https://www.franzundsue.at/projekte/schubhaftzentrum-vordernberg-steiermark/>, 2024-10-30.

⁹ <https://www.derstandard.at/story/1381369626069/vordernberg-vertraege-bleiben-geheim>, 2024-10-30; <https://www.profil.at/home/anhaltelager-vordernberg-ernst-strasser-g4s-368292>, 2024-10-30.

¹⁰ https://www.parlament.gv.at/dokument/XXV/III/188/imfname_430266.pdf, 50, 2024-10-30.

¹¹ https://www.rechnungshof.gv.at/rh/home/home/Vollzug_der_Schubhaft_mit_Schwerpunkt_Vordernberg.pdf, 100.

¹² *Ibid*, 108f; <https://steiermark.orf.at/v2/news/stories/2814585/>, 2024-10-30.

¹³ https://www.rechnungshof.gv.at/rh/home/home/Vollzug_der_Schubhaft_mit_Schwerpunkt_Vordernberg.pdf, 110.

¹⁴ *Ibid*, 99.





A dark, atmospheric photograph of a tent interior. The scene is dimly lit, with silhouettes of people and birds visible against a slightly lighter background. The tent's structure, including poles and a striped canopy, is faintly discernible. The overall mood is somber and confined.

Migration detention in Austria

3

The concept of *migration detention* 3.1

In this study, the usual term “detention pending deportation” is replaced by “migration detention”, as the term “detention pending deportation” suggests a direct connection between deprivation of liberty and deportation. For example, the Federal Chancellery as publisher of [oesterreich.gv.at](https://www.oesterreich.gv.at), the cross-authority platform “Information and Services of the Austrian Administration”, explains the term “detention pending deportation” in its lexicon of terms as follows:

Detention pending deportation is the detention of a legal alien to ensure that this person is forcibly removed from the country (deportation). The reason for deportation may be the existence of a return decision, a deportation order, an expulsion order or a ban on residency

Detention pending deportation is not a criminal detention or a court-ordered detention, but is issued and enforced by the administrative authority by order¹⁵.

This gives the impression that detention pending deportation is preceded by a procedure and that only a negative decision in this procedure constitutes detention pending deportation. However, both the legal framework and the practical implementation are far more complex, which is why the term “migration detention” was chosen for this study.

Basically, it can be summarised that there is no compelling connection between detention pending deportation and deportation. On the one hand, not every detention pending deportation is preceded by proceedings and/or a negative decision. On the other hand, the Federal Ministry of the Interior, which is responsible for both ordering and enforcing detention pending deportation, cannot provide any information as to whether the purpose of the measure can actually be achieved, as there is no technical link between detention pending deportation (measure) and deportations (purpose). Furthermore, there is also no data available on the number of cases of detention pending deportation in which complaints were lodged and partially or completely won¹⁶.

Legal framework regarding migration detention in Austria 3.2

Domestic legislation as well as legal requirements at EU level (directives and regulations) create the basis for the deprivation of the personal freedom of “aliens”¹⁷. The term “aliens” refers to all non-Austrian nationals, i.e. third-country nationals and EU citizens. The current study does not address the legal and factual framework conditions for citizens of EU Member States, although they are exposed to the same conditions in the same facilities as third-country nationals, but in most cases for a shorter duration than third-country nationals.

Non-Austrian nationals can be deprived of their personal freedom for various reasons by imposing detention pending deportation:

- 1 to secure the asylum procedure with regard to the issuing of a measure terminating residence;
- 2 to secure the procedure for issuing a measure terminating residence or to secure deportation;
- 3 to secure the deportation of third-country nationals to another EU/EEA country in accordance with the Dublin III Regulation.

¹⁵ <https://www.oesterreich.gv.at/lexicon/S/Seite.991282.html>, 2024-10-30.

¹⁶ See also: https://www.parlament.gv.at/dokument/XXVII/AB/15846/imfname_1595293.pdf, 2024-10-30.

¹⁷ Particularly relevant for third-country nationals: Reception Directive 2024/1346 of 14.05.2024, Return Directive 2008/115/EC of 16.12.2008, Dublin III Regulation 604/2013 of 26.06.2013.

Any deprivation of personal liberty must be preceded by an examination of the legal requirements, the risk of absconding¹⁸ and proportionality¹⁹; in particular, it must also be examined whether an alternative to detention (so-called “less severe measure”)²⁰ can achieve the same objective as detention.

If the Federal Office for Immigration and Asylum (BFA) as the competent authority concludes that detention pending deportation is proportionate and that there is a risk of absconding, a so-called emergency administrative decision (Mandatsbescheid) is issued. In contrast to an ordinary decision, which is preceded by a balanced investigation procedure, an emergency administrative decision is issued if, among other things, there is an imminent danger and therefore no time for a comprehensive examination of the facts (e.g. in the case of “imminent danger”). To illustrate: If the competent authority suspects the danger of a building collapsing, the evacuation of the building is ordered as an immediate measure. Only after the building has been evacuated is a proper investigation conducted.

The length of detention is also not determined at the time of imposition, whereas the length of imprisonment is determined in cases of criminal or administrative offences. People who are not accused of anything other than unlawful residence are thus placed in a more precarious situation than people convicted of criminal or administrative offences. As a rule, detention may not last longer than six months, but under certain conditions the period of detention may be extended from six to eighteen months²¹. Whether such conditions exist is only checked by the BFA shortly before the six months expire. In many cases, the reason given for further detention is that a “return home certificate” (Heimreisezertifikat/HRZ) must be obtained due to the lack of a travel document.

The BFA informs the current legally appointed legal counselling service, the Federal Agency for Reception and Support Services (BBU), about the issuing of the emergency administrative decision. The BBU is instructed to provide counselling regarding this decision as soon as possible and to offer information about the possibility of lodging an appeal. Such an appeal can be lodged during the entire period of detention and up to six weeks after release. If the complaint is rejected, there is a cost risk of around €400 to €800 for the person concerned. If the detained person wishes to lodge a complaint, the BBU must draft and submit it and represent them in the event of a hearing. If no complaint is asked for, the BBU has no further mandate. The person will then no longer be visited and counselled by the BBU unless a new procedural order is issued.

After the imposition of detention pending deportation by means of an emergency administrative decision, the necessity of the deprivation of personal liberty is reviewed by the BFA itself every four weeks without due process. Only after four months have elapsed is an official review of detention carried out by the second instance, the Federal Administrative Court (BVG).

The low requirements for the procedure and the emergency administrative decision, the cost risk in the event of an appeal, the legally limited scope of statutory legal advice, the lack of access to parts of the file relevant to the proceedings and the time limit of four months until the first official detention review by the second instance clearly show that the legal situation already takes insufficient account of the interests of the persons concerned and their right to legal certainty and understanding of the legal situation.

¹⁸ The risk of absconding must be substantiated by “certain facts” based on the criteria specified in the law: On the basis of the criteria, the “facts” existing in the individual case are to be determined by the authority in order to be able to weigh up the probability of a risk of absconding. (§76 Para. 3 Zi3 FPG)

¹⁹ It must always be weighed up on a case-by-case basis as to which is more important: the public interest in the security measure or the protection of the alien’s personal freedom. Accordingly, both the personal situation and condition (e.g. medical reasons) and the likelihood of the authority actually realising the purpose must be taken into account.

²⁰ Massive interference with the human right to freedom, which is particularly worthy of protection, is always the last resort (ultima ratio), which is why the authorities are obliged to choose less intrusive means whenever possible.

²¹ §80 FPG (Fremdenpolizeigesetz/Aliens Police Act).



Migration detention after undocumented entry into the federal territory

3.2.1

As an authority, the BFA is responsible, among other things, for the examination of merits of asylum procedures, issuing measures to terminate the residence of “aliens” (EU citizens and third-country nationals) and imposing detention pending deportation.

The agents of the public security service, i.e. police officers, carry out supporting activities for the BFA such as initial questioning, detention and the implementation of migration detention.

Application for international protection after crossing the border

3.2.1.1

The Austrian law stipulates that an application for international protection can be made to any organ of the public security service. In practice, however, only at certain locations fulfilling the technical and infrastructural requirements are specially assigned police officers responsible for the initial interview with the assistance of a language-proficient interpreter in the asylum procedure. The police officers’ mandate is as follows:

- to collect personal data and information on (living and deceased) family members in the country of origin, in Austria and other EU/EEA member states,
- to secure any documents in original or copy (e.g. passport, birth certificate, identity card, marriage certificate, military service records, etc.),
- to document any evidence and/or indications of any stays in other EU/EEA Member States as well as their basis (e.g. visas, residence permits, ongoing/completed asylum procedures, undocumented transit, fingerprints, cash, SIM cards, etc.),
- to record the time of departure from the country of origin and of entry into Austria,
- to request information on the (il-)legal departure from the country of origin, the means of transport used and the costs incurred until entry into Austria, and
- and, finally, to briefly record the reason for fleeing and the imminent danger of returning.

This initial interview is forwarded to the BFA, which makes a so-called prognosis decision regarding the further procedure as well as the accommodation. Regardless of whether the BFA assumes the responsibility of another member state (in accordance with the Dublin III Regulation), does not assume sufficient grounds for the asylum application due to the origin of the alien from a country deemed a “safe third country” by Austria, does not initially see any new grounds in an asylum procedure that has already been completed in Austria or carries out an examination of the validity of flight reasons in an asylum procedure, the “alien” is usually accommodated in a federal basic care centre.

This form of interview only takes place if an initial or subsequent application for international protection has been made.

The prerequisite for detention in such cases is that the personal behaviour of the person concerned poses an actual, present and significant danger. This means, for example, that a conviction for a criminal offence²² is not sufficient in itself, and a continuing threat must be argued after imprisonment.

²² Crimes are defined as criminal offences that carry a penalty of at least three years under the Criminal Code, i.e. capital offences against property and life.

In cases where no asylum application is supposedly or actually filed, an interview does take place, but not to this extent. This is used by the BFA to impose detention pending deportation to secure the procedure for issuing a measure terminating residence and deportation.

Despite the statutory responsibility of the BFA, the detention of an alien immediately after entering Austrian territory depends solely on the first contact with a member of the public security service. A standardised procedure of police officers only exists insofar as the BFA is contacted in the case of aliens if their residence status is unclear. Which information is (or must be) recorded by police officers and subsequently passed on to the BFA varies depending on situation and circumstances:

The police officers decide on their own authority whether their own language skills outside of the official language in Austria and those of the alien person outside of the first language are sufficient for communication or whether they call in a language-proficient interpreter. In the event of detention, the alien must be informed of the reason for and duration of the detention and provided information on possible legal remedies. There is no provision for instruction on the requirements and possibilities under residence law, aliens police measures or the asylum procedure. It is dependent on the information obtained

by police officers whether the formal requirements for filing an asylum application are considered to be met (see point 2.2.1.1.) or whether detention pending deportation is imposed by the BFA.

The BFA therefore first orders detention pending deportation and only then conducts the procedure to establish whether a measure terminating residence (deportation) is even called for. In this procedure, the interests of the person concerned in being able to remain in Austria are weighed against the interests of the Republic in an "orderly" immigration system. As a rule, Article 8 of the European Convention on Human Rights (ECHR), the constitutionally guaranteed and protected right to private and family life, is examined.

If this examination turns out in favour of the person concerned, a residence permit is issued, a so-called "Bleiberecht" or "right of residence".

In the event of a negative decision, the BFA or the court must combine this decision with a finding on the admissibility of the deportation to a specific country; this forms the legal basis for the deportation.

Legal basis and organisational conditions for deportation

The legal basis for every deportation is a legally valid return decision.

In the event of a return decision, the person concerned is requested to leave the federal territory of Austria. In most cases, a period of 14 days is granted for voluntary departure. After this period has expired, however, the BFA can only deport the person if a document allowing entry into the destination country and, depending on the route of the deportation, a document authorising transit through other countries is available.

In theory, if a travel document from the country of origin is available, there is nothing left preventing a deportation. If no travel document is available, the alien can be instructed to obtain such a document from the foreign representative authority of their country of origin (embassies or consulates).

The BFA can also carry out a procedure itself to obtain a

travel document or, alternatively, a so-called "return home certificate" (HRZ); this is the rule if the person concerned is in migration detention. For this purpose, the competent department of the BFA contacts the representation authorities of the country of origin in order to confirm the person's nationality and subsequently obtain a travel or replacement travel document for the person from the representation authorities.

Whether a person is identified by the representation authorities and subsequently issued an HRZ depends on many factors over which the persons concerned have for the most part no influence. The foreign representation authorities follow different internal procedures and policies regarding who they identify and to whom they issue travel or replacement travel documents. Furthermore, the modalities often change with the regular change of representation personnel. The duration of procedures for ob-

taining documents also often varies from person to person, and it is rarely possible to generalise about how long it will actually take to obtain a document from the representation authorities. However, the duration of this procedure and the likelihood of the document being issued determine the length of detention for those who are in migration detention to "secure deportation". Even though the authorities may anticipate such a document being issued within a few months, it often fails to materialize.

These examples only represent a subset of the possible constellations in migration detention. There are count-

less constellations in which a person can be taken into migration detention, for example if they do not have a valid residence or entry permit (or if the police deem this to be the case) or if proceedings are to be secured in this way. In all constellations, detention pending deportation can be imposed regardless of the existence or validity of a travel document, a copy of a travel document or birth certificate or identity card, an unclear or clarified procedural identity, the consent or right of residence of another member state, the actual possibility of issuing HRZs from a representative authority, i.e. the overall feasibility of deportation.

Practical implementation of migration detention

3.3

The law defines detention pending deportation as a measure averting "imminent danger" and gives the BFA the right to impose this form of detention without a proper investigation. A rough examination of the risk of absconding and proportionality must nevertheless be carried out, as shown above, although this is handled differently by the field offices and regional offices of the BFA: Some conduct written interviews, others only refer to the procedural file in general terms. The purpose of the detention and the information on legal remedies in the emergency administrative decision must be translated into a language that the person concerned

understands; the reasons for the detention and the legal basis must only be stated in the official language German.

The BFA's activities related to the legally mandated implementation of the security objectives in HRZ proceedings are often difficult to understand or, in some cases, inaccessible: access to the files of the proceedings to obtain an HRZ is not provided for statutory legal counsellors and is often denied to independent legal representatives. The restriction of inspection rights of both the BBU and other legal representations means that it is not possible for them to mount a well-founded opposition to the BFA in court.



Detention order: legal framework conditions in migration detention

3-4

The Vordernberg detention centre is a detention facility of the Styrian safety authority, which means that the coercive power of detention is carried out by the Styrian Provincial Police Directorate and the detention regulation (Anhalteordnung, AnhO) regulates detention conditions. In principle, any form of detention is subject to the principle that detainees must be detained with respect for human dignity and with the

greatest possible protection of their person.

The AnhO is a rather concise law compared to the impact it has on detainees. In addition, there are very few supreme court decisions on the AnhO, and concrete causes can only be assumed in this study. Without legal knowledge or legal representation, it is almost impossible for those affected to fight any measures.

Information on everyday life, rights and obligations

3-4.1

The AnhO (§1, para. 3) stipulates that, taking into account conditions in respective detention areas as well as the reason and the expected duration of the detention, provisions regarding daily routine must be published in abbreviated form, as must the specified rights and obligations of the detainees.

Obligation of the police

The AnhO (§3, para. 1) obliges the police to "protect detainees from unlawful interference with their rights, to exercise the necessary restraint towards them and to treat them with calm seriousness and firmness, fairly and

with respect for their sense of honour and human dignity and with the greatest possible protection of their person". The police are also authorised to temporarily restrict the rights of detainees in special circumstances, i.e., if the detainees are "unable to look after their own health and physical safety" (§3, para. 2); these restrictions must be lifted as soon as the reason no longer exists.

3-4.2

Solitary confinement

In the AnhO (§5), detention in solitary confinement is possible under certain conditions:

- danger to others and self,
- risk of infection,

- at the request of the prisoner,
- to ensure a good night's sleep if this requires the solitary confinement of a detainee,
- as a disciplinary measure,
- if there is a risk of collusion before the first interrogation.

3-4.3

The AnhO thus allows for detainees who allegedly, imputedly or actually do not comply with the AnhO and do not fulfil their obligations under it to be punished²³.

“If a detainee is suspected of having committed an offence, the supervising officer must report this, unless, in the opinion of the supervising officer, a warning is sufficient” (cf. section 24 (2) AnhO). Responsibility for the investigation procedure lies with the commanding officer, who must also hear the detained person. No clear stipulations are made regarding whether, given the diversity of languages, interpreters must be called in to discuss the facts of the case. If the commanding officer comes to the conclusion, without formal proceedings (!), that an of-

fence has been committed, they have the option of issuing a reprimand, restricting the right to activity, shopping and telephone calls for a maximum of one week or ordering detention in solitary confinement for a maximum of three days. The detained person can only complain about the punishment to the same commander who imposed it. They make a decision on the measure that they themselves have imposed and, if the complaint is upheld, shall either restore a legally compliant situation or forward the complaint to the next instance.

Solitary confinement as a special security measure

Special security measures can be imposed on detainees who are at risk of absconding, committing violence against persons or property, committing suicide or self-harm or who pose a “considerable threat to security and order” (Section 5b, Para. 1 AnhO). In these cases, the following measures are possible: more frequent searches of the detainee, including their belongings and the cell, night-time lighting of the specially secured cell in addition to a night light, removal of furnishings or articles of daily use or clothing whose misuse is to be feared, placement in a specially secured cell from which all objects with which the detainee could cause harm others or themselves are removed (Section 5b (2)). If one of these measures is imposed, the right to visits and telephone calls (with the exception of legal representation and persons of trust) is denied for the duration of the measure.

Special security measures (solitary confinement) shall only be maintained to the absolutely necessary extent and duration required by the severity and persistence of the danger that led to their implementation. The supervisory body in charge is authorised to order special security measures. The latter must report any such order to the commanding officer as soon as possible and no later than the next working day. The commanding officer shall

immediately decide whether to maintain the special safety measure. A daily medical examination must be carried out. There is no indication of the maximum duration.

Overall, the detention regulation allows considerable freedom of decision and hardly defines any rights for those affected or control mechanisms. In this respect, it differs significantly from the Involuntary Placement Act (Unterbringungsgesetz, UbG)²⁴, which regulates detention in psychiatric wards, although the basic principle is very similar in both cases.

²³ These include, for example: escape attempts, hunger strike, possession and use of a mobile phone, other steps taken by the persons concerned to obtain their early release.

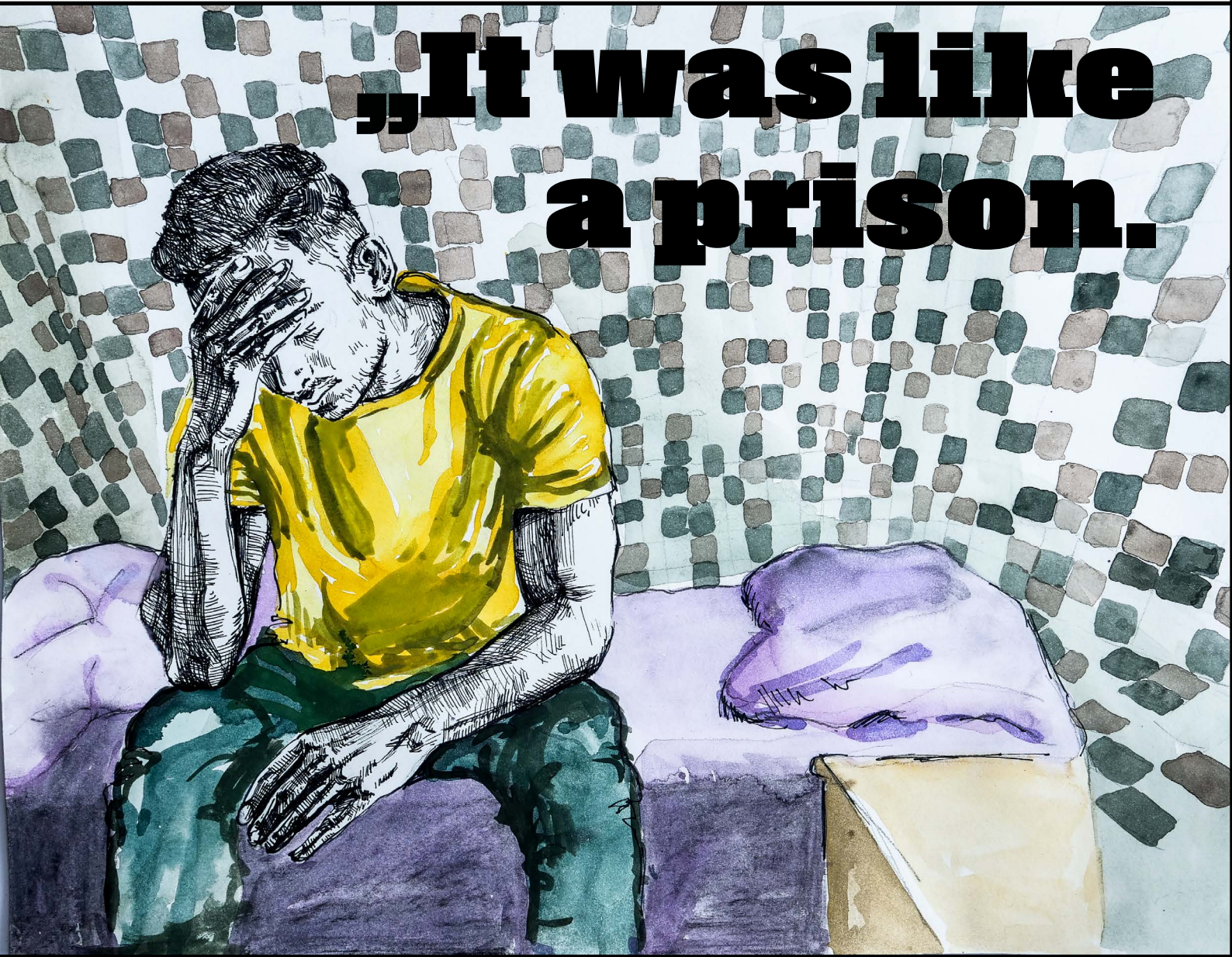
²⁴ <https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10002936&FassungVom=2017-08-02,2024-11-10>.

Detainees have the right to complain in writing or verbally about the non-respect of their rights²⁵. If allegations of ill-treatment are the subject of the complaint, a medical report must be obtained. The central problem of all complaints within the detention centre is that any complaint that is not a measures complaint (which is submitted to the Federal Administrative Court) must be addressed to the commanding officer, to whom all police officers on duty in the detention centre report. Only if the commanding officer considers the complaint to be justified is the content of the complaint submitted to the authority, which must examine the facts of the case. It is impossible to establish how many such complaints are made by detainees to commanders and how many of these complaints are eventually submitted to the authority.



²⁵ E.g. Disposition of clothing § 9 - Medical care of prisoners § 10 - Pastoral care § 11 - Hygiene § 12 - Catering § 13 - Employment § 15 - Shopping § 18 - Telephone calls § 19 - Visits § 21.

**„It was like
a prison.**



**It's a closed
prison.”**

Personal experiences in Vordernberg

4

The experiences of people detained in Vordernberg illustrate the problematic situation in migration detention on several levels: As described, the legal situation provides the authorities with considerable leeway in depriving people of one of their most fundamental rights, namely their freedom, and in shaping the framework conditions for the deprivation of liberty. Furthermore, the experience reports document that even these legal regulations are not always complied with in Vordernberg.

Interviews were conducted with ten people who were detained in Vordernberg. The survey can therefore make no claim to representativeness and is not structured according to demographic or other criteria. The interviewees were found using a snowball system – people with whom we had contact due to our support work put us in touch with other people. It should also be noted that some people refused to be interviewed because they did not want to talk about this traumatising experience. In principle, we also have no way of verifying the accuracy

of statements; however, consistent descriptions of core elements of the situation in Vordernberg suggest that the experiences are truthful and can be generalised. It should also be borne in mind that none of the interviewees would derive any benefit from a false or exaggerated description.

For reasons of anonymity and data protection, no demographic data was collected about the interviewees. Naturally, all other responses were also voluntary.

It was not possible to determine from the interviews how many people were detained at the same time as the interviewees, as the inmates do not have an overview of the situation in the entire building.

Six of the ten interviewees provided information on the duration of their stay in Vordernberg, which was one, eight, nine, ten and eleven months. At the same time, two of the detainees mentioned that most of the people in the Dublin procedure had been accommodated there for a significantly shorter period of time.

The way to Vordernberg

4.1

Nine of the ten interviewees made statements about how they had come to Vordernberg. They were all apprehended in Austria while or after crossing the border without a right of residence. None of them received comprehensive information from the police about their legal situation or legal options. While there is no legal obligation to provide information about legal options, information about the reasons for detention should be provided (see Chapter 3.2). Eight people stated that they had already been detained in other police detention centres (Polizeianhaltezentren, PAZ) before Vordernberg – three in Villach, one in Vienna (Hernalser Gürtel), one in Inns-

bruck, two in Graz, one near Linz and one in Salzburg.

In these PAZs, too, all but one of the interviewees were not informed of their rights; one person stated that they had been advised to apply for asylum. Two interviewees said that their asylum application was rejected within one to two days. One of them stated that both the interpreter and the BBU told him that he had no chance of staying and would be deported in any case. One person reported that they had not received any legal advice. According to the law, the BBU should provide advice on the legal framework and, in particular, the possibility of lodging a complaint (see Chapter 3.2).

The general situation in Vordernberg

4.2

The psychological situation of people in Vordernberg is very difficult, as they often do not know why they have ended up there and none of them know how long they will stay.

When the police took me, they told me I am going to an open camp and then we arrived at Vordernberg and I was shocked to see that it was not an open camp, it was a prison or a detention center. The first time I got there I saw a lot of police, a lot of security, a lot of barbed wires, a lot of CCTV cameras.

This situation is exacerbated by the general conditions in the detention centre, which was described as a prison by all of our interviewees.

It was like a prison. It was a prison. It's a closed prison. It's the same feeling that you get when you go to a closed prison.

The geographical situation poses an additional problem, as it makes visits difficult or impossible.

Building such a place in the middle of mountains actually explains what is inside. Like they put people there that they kidnap. It's a place that is far off, right, to hold people without any charges who are kidnapped, so to say, to hide it from society.

According to all interviewees, everyday life in Vordernberg is characterised by arbitrariness. The rules in the detention centre are not explained to the detainees; at the same time, alleged breaches of the rules are severely punished, often with solitary confinement (see below).

They didn't teach you about the rules. Okay. Like, they don't tell you what the rules are. They don't tell you, ah, this is not allowed, or this is allowed. They let you do, they let you break the rule, and then they take you to solitary confinement. And then you know that you broke a rule.

The detention regulations stipulate that detainees must be informed about the regulations in the detention centre (see section 3.4.1).

There is a shop in Vordernberg where groceries and everyday goods can be purchased. Two interviewees described the prices there as significantly inflated. One interviewee said that it is not permitted to use hygiene products or similar items that they have brought with them, meaning that everything has to be bought new. Two interviewees described how personal property purchased at the detention centre is locked away so that you have to ask someone from G4S every time you want to smoke a cigarette or

need toothpaste.

Seven people stated that the food in Vordernberg was poor and unhealthy, consisting mainly of carbohydrates and containing hardly any fruit or vegetables. One person added that they did not get enough to eat. One person described receiving only half a portion of food as part of the punishment in solitary confinement. One person stated that no consideration was given to food allergies. Two people stated that halal food was served, one of them mentioned that in Ramadan after sunset only the food of the day was served, which was not even reheated.

Two people suspect that tranquillisers or sleeping pills were mixed into the food, as the inmates became tired immediately after eating.

Seven of the interviewees spoke about the possibility of making telephone calls. If the inmates have money, they can add it to a phone card. If they have no money, they are allowed to make a phone call to their family for €10 from time to time – one person said that this was possible every fortnight, another said that it was only authorised once a month. In the case of the people concerned, the credit was enough

for a two-minute call. During the pandemic, visits were banned for a long period of time; nevertheless, phone calls remained severely restricted. This is a particularly serious violation of Article 8 ECHR (right to private and family life).

So, I called my family, and they told me that my father was sick, and then the phone got disrupted. So, I went to the police to tell them that I need to talk to my family because my dad is sick, and I need to know what is happening. I was very anxious, and I thought I was going crazy. (...) After 4-5 days I was very worried. There was a Moroccan guy who had 30-40 seconds of phone call worth. So, he called my family, and they told him that my father died. And then I went to the police again begging them to talk to my family because I just received the news that my father has died. The police officer said, no, you're not allowed to do that. Then I took two COVID tests through the doctor there and I was negative on both. But due to the quarantine that they placed on me, I was not allowed to leave and to talk to my family. Also, I asked the commander; the person in charge, and he said no too.

Staff interaction with inmates

4.3

In Vordernberg, the detainees have to deal with both the police and the private security service G4S in their everyday lives. It is not always clear in the field reports which of these groups of people they are referring to. The term "staff" is therefore used here in general terms when a clear classification is not possible.

All interviewees reported problematic encounters and, in some cases, instances of brutality with the staff, in clear breach of the legal requirement of dignified treatment (see Chapter 3.4).

They think we don't have dignity. We are not human. A lot of them, a lot of them, they think we are animals.

They behave in a very brutal way there as if we are not humans. They torture you mentally, psychologically and physically in there.

And sometimes they speak to each other the policeman and they say: Schau, dieser Affe da draußen.

One interviewee stated that they were provoked by G4S and that the police were then called when an altercation occurred. Another person stated that they were constantly provoked by the police.

In one interview, it was said that some of the police of-

ficers had right-wing extremist tattoos and that swastikas were repeatedly daubed on the wall of the interviewee's cell, which were not removed despite numerous complaints during the entire stay. It was also reported that the words "kill all Muslims" were written on the walls of the cell. According to the detention regulations, the police are obliged to protect detainees from unauthorised interference with their rights and to treat them with respect for their human dignity (see section 3.4.2).

According to one interview, the employees of the general contractor G4S commissioned by the municipality have no social work or similar training that would enable them to deal appropriately with the detainees.

Two interviewees said that it was not possible to complain about staff at a higher level. Two of the interviewees stated that the commanding officer responded in a friendly manner when confronted with a problem; in another interview it was mentioned that he did not respond to a complaint.

Some interviewees stated that individual employees treated them in a particularly brutal or contemptuous manner. Several interviewees reported physical violence in everyday life.

There are beatings, and they also throw stuff at us, like a stick or something. Often you witness three or four police officers beating up one person. I saw one person with a broken arm after being beaten up with a metal stick. And normally, if they beat you up, they bring you directly to solitary confinement.

In addition, two interviewees said that there were constant language problems, as the staff only speak German and possibly English and there are usually no interpreters available.

Three interviewees mentioned that some of the employees there were friendly; in particular, two female employees of G4S were mentioned.

Punishment through solitary confinement

4.4

All interviewees stated that punishments are a regular part of life and that the most common punishment is solitary confinement. Solitary confinement is permitted as a means of discipline and for security reasons according to the detention regulations and the conditions for this are, as shown, broadly formulated. However, solitary confinement must be preceded by an investigation by the commanding officer (see section 3.4.3.1).

However, the interviewees' statements on their experiences with solitary confinement do not reveal any purposeful investigation procedure. For example, one interviewee reported that he was placed in solitary confinement because he accidentally broke the card used to manage credit for shopping and telephone calls. Another interviewee observed that a person was placed in solitary confinement after complaining that they had not received a clothing parcel. Another person reported that they were threatened with solitary confinement by the police because they spoke too much to the G4S employee who was distributing the food. According to two interviewees, two people were placed in solitary confinement because they talked loudly between their cells²⁶. One interviewee was taken to Vordernberg together with others in the isolated section of a police car. In this situation, one person complained that they were not getting enough air and, according to the interview, this person was attacked by the police with tasers on arrival in Vordernberg and placed in solitary confinement. One person stated that they were placed in solitary confinement because they wanted to take a pill themselves rather than have it dissolved in water by medical staff, another because they refused an X-ray.

According to two interviewees, hunger strikes also led to solitary confinement. One person reported that they were placed in solitary confinement after a suicide attempt by hanging; this was confirmed by a second interviewee. According to the person concerned, he was presented to the prison doctor before being placed in solitary confinement, but did

not receive any medical care during their week of isolation. In these cases, it can be assumed that solitary confinement was imposed as a security measure. This raises the question of the extent to which a measure that is understood as an aggravation of the situation and punishment is an appropriate response to self-harm, as stipulated in the detention regulation. Furthermore, according to the detention regulation, a daily medical examination must be carried out in these cases (see chapter 3.4.3.2).

According to the interviewees, the isolation lasted from a few days to three months. It was not clear to them which measure was used for which purpose, whether for security reasons or for disciplinary purposes.

According to the interviewees, there are several cells that are used for isolation. In addition, a type of rubber cell for one person is also described. It is green and windowless. The hygiene conditions are described as catastrophic: According to one person, they spent five days in isolation without the opportunity to shower and without a change of clothes; another stated that they were left without fresh clothes for a month and were only allowed to shower once during their month in solitary confinement.

According to two people, they were denied medical care in solitary confinement. One person developed breathing difficulties, but did not receive medical treatment. According to one person, they were seriously injured after an escape attempt and were held in solitary confinement for 18 days without medical care.

Other forms of punishment mentioned were room searches, where everything is thrown on the floor, as well as body searches. One interviewee explained that these were collective punishments if a person was allegedly guilty of something. According to the detention regulation, searches of rooms and persons are permitted for security reasons, but are not intended as disciplinary measures; the use of collective punishment is not specified in the detention regulation.

²⁶ It is not possible to determine whether this was the same incident or two separate incidents.

Legal advice

4.5

Legal counselling in Vordernberg is provided by the BBU. All interviewees described the legal counselling as inadequate and stated that they did not trust the BBU. Five interviewees said that the BBU only informed them about the possibility of voluntary return and the threat of deportation, three explicitly stated that they were not informed about their rights and possible legal remedies. Four interviewees said that they had sought contact with the BBU in vain. According to the law, the BBU is required to provide counselling on appeal options (see Chapter 3.2).

One interviewee also stated that it was not possible for inmates to contact a lawyer, even if they had the financial means to do so. This is only possible if organized by someone on the outside. Two of the interviewees stated that other inmates helped them get in touch with the *Deserteurs- und Flüchtlingsberatung* who supported them in asserting their rights. One person was very positive about the legal and psychological support provided by a member of *Push-Back Alarm Austria*.

Healthcare

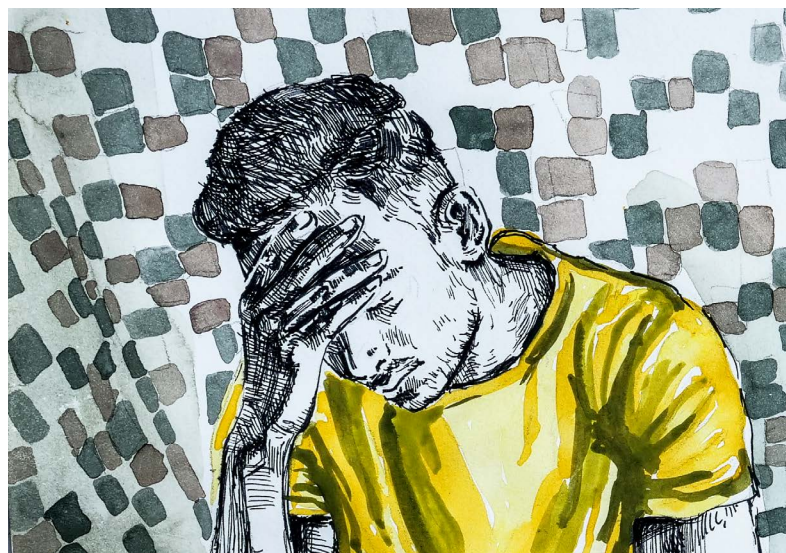
4.6

All interviewees described healthcare in Vordernberg as inadequate and problematic. A doctor is present in Vordernberg in the mornings, but according to one interviewee there is no emergency medical service and there were no trips to hospital despite serious health problems.

One interviewee with a heart condition known to the prison stated that he was given the wrong medication. In one interview, it was mentioned that an inmate was denied the correct medication for several days, although he told the doctor. Another interviewee also stated that he was given the wrong medication. He also stated that he had a toothache; he was told by the doctor that his wisdom tooth had to be removed, but that this would not be carried out during his stay in Vordernberg. He was given painkillers every day for ten months, which he had to get individually from his doctor. Shortly before his discharge, he was then taken to a dentist, where the tooth was extracted without anaesthetic. He was handcuffed during the entire procedure and treatment. One interviewee described how health care following suicide attempts was inadequate and that in at least one case, the person concerned was placed in solitary confinement after an examination and did not receive any further medical care. According to him, only people who attempted to cut their wrists were taken to hospital. Another person reported that they were taken to hospital when the police suspected that they had swallowed a razor blade.

Another interviewee described how he went on a hunger strike for 12 days and was not medically monitored during this time. Another reported that a hunger striker remained without medical supervision or care for 15 days.

Five interviewees said that tranquillisers were very frequently administered; Lyrica and Rivotril were specifically mentioned; both drugs can lead to dependency. One interviewee mentioned that there is no psychological or psychiatric care. One interviewee reported that an inmate who was obviously mentally ill was placed in solitary confinement.



Resistance

4.7

The interviewees spoke of three types of resistance – suicide attempts, hunger strikes and a breakout attempt.

Suicide attempts

4.7.1

One of the interviewees attempted suicide by hanging himself. Another interviewee stated that seven people he had met personally had tried to kill themselves and that he had heard of others. In two of the cases he reported, people drank shampoo, one broke a razor blade into several pieces and swallowed them, two tried to hang themselves and

two cut their wrists. These suicide attempts were partly confirmed by another interviewee. A third person reported that inmates collect tranquilisers in order to kill themselves with an overdose. Another interviewee reported a suicide attempt in which the person concerned swallowed a lighter.

Hunger strikes

4.7.2

And for me, I have put two options in my head, you know, if I get free or if I die here, you know, it's not a problem for me.

One interviewee played a leading role in a hunger strike of around 30 people. As he speaks German, he explained the reasons for the hunger strike to the prison staff.

Wir werden hier behandelt wie Hunde, aber wir sind keine Tiere. Wir sind Menschen und wir haben Rechte und Sie müssen uns respektieren und nicht wie Hunde behandeln.

According to the report, the hunger strikers were threatened in various ways, so that many ended the strike. The interviewee was told that he would be sent to Stein prison²⁷ if he continued the hunger strike.

Another interviewee reported that he went on a hunger strike for five days because he was not given the opportunity to speak to his family on the phone. He was in solitary confinement at the beginning of the hunger strike. Another interviewee began a hunger strike together with another person in his cell and, according to his statement, was placed in solitary confinement due to the hunger strike and refused to eat for a total of 21 days. He was not medically monitored for the first twelve days, after which he underwent daily health checks.

One interviewee reported about six people on hunger strike who were brought from Vordernberg to Vienna together with him: one of them said that he had been on hunger strike for 21 days at the time of his transfer to Vienna, two others said that they had been refusing food for 18 days at that time.

²⁷ Stein prison is an Austrian penal institution where primarily long-term prison sentences are served.

Three of the interviewees were involved in an escape attempt. Two of them reported that four people were planning the escape and that 15-20 people attempted to climb over the two fences during the courtyard walk. All but one person was stopped at the first fence. One of the interviewees managed to climb the second fence.

According to the reports we received, there were initially around six police officers in the yard, then around twenty to thirty. According to the interviewees, the people at the first fence were stopped with stun guns and pepper sprays, beaten by the police and taken to the isolation cells. The injuries from the police treatment were not treated and the people remained in isolation for a month, were only allowed to shower once during this time and had no opportunity to change their clothes. There was also no legal counselling during this time. One interviewee stated that he was taken to Vienna after this month and was told that he would be placed in solitary confinement again if he did not return to his country of origin.

A second interviewee involved in the breakout said that he spent two and a half hours on the second fence, which is around six to seven metres high, and refused to come down. During this time, police officers stood inside and outside the fence. Outside the fence they pointed their firearms at the person on the fence at a distance of 10 to 20 metres. Inside the fence, there were six police officers with stun guns and pepper sprays. The police officers shouted for the person to come down and threatened to shoot. The police did not call an interpreter. One of the inmates interpreted by shouting out of a window.

After two hours, the fire brigade arrived, the interviewee first threatened to cut himself on the barbed wire and later carried out his threat. He had wounds about ten centimetres long and was bleeding. In the end, he decided to climb down the ladder. The police beat him and used stun guns and pepper sprays several times when he was already lying on the ground, unable to move.

Eight to twelve police came and started to beat me up. One of them had his foot on my neck another had his foot on my head and someone on my back. I was pepper sprayed in the face after being hand cuffed on my back. They used the electric teaser five times one on me, also on my two bleeding arms, on my back, and on my two legs. And they did it separately, one officer after the other used the electric teaser on me. Not one person, but like five of them and not at the same time. Five. Five people. At this point, I did not resist, they were all on my back. They also dislocated my shoulder when they moved me, it was very painful and took a long time to heal. I think I couldn't move my shoulder for more than a month. They made fun about me and were laughing, but I didn't understand what they told me in German. Or if I reacted to the electric shock, my body I mean, they would also laugh.

The person was then taken to the padded cell. According to them, there is no mattress in this cell and the toilet consists of a hole in the floor. The person's clothes were taken away and he was given a white corona suit instead. He spent 18 days there. Despite his serious injuries and considerable pain, he did not receive any medical treatment during this time. When he screamed for help, he was beaten again by two police officers.

He was taken to hospital once during this time because it was suspected that he had swallowed a razor blade. However, only an X-ray was taken there on the basis of this suspicion; the wounds remained untreated.

After these 18 days, he was transferred to another isolation cell, where he remained for a further three months. He was then taken to Vienna, where he was told that he was facing ten years in prison in Austria for attempting to escape and inciting others to escape. He then returned to his country of origin.



This is very unfair and it was extremely unjust. It's very painful to think about the fact that I had to spend one year in prison without doing anything to deserve it.

Conclusions

5

I always kept hearing that Austria is a country where the state of law, the rule of law exists, where they provide people with healthcare, they provide refugees with refuge and asylum. And this is not how I experienced Austria at all. I experienced it through the prison cell.

Vordernberg is mainly home to people who have been detained for a longer period of time. The interviews show that they experience the detention centre as a lawless space in which the police and G4S take their whims out on the inmates without sanctions and where racist and physical assaults are commonplace. The interviewees unanimously reported significant human rights violations that they had experienced during their time in Vordernberg, which had driven individual interviewees and their fellow detainees to self-harming behaviour or suicide attempts.

In summary, it can therefore be said that the witness reports about Vordernberg, ten years after its opening, are diametrically opposed to the plans of the Federal Ministry of the Interior at the time – to put in place a detention centre that complies with human rights. The slogan propagated at the time by the architectural firm Franz&Sue “rooms instead of cells” turned out to be a mockery for all those who were detained in Vordernberg for a certain period of their lives. Or as one of the interviewees put it:

I spent nearly a year in prison and I felt like they had stolen a year of my life. This is very unfair and it was extremely unjust. It's very painful to think about the fact that I had to spend one year in prison without doing anything to deserve it.

The inhumane conditions in Vordernberg make it imperative to close this facility and require immediate and independent monitoring by human rights organisations until then. These organisations must be granted unrestricted and unsupervised access to the building and to detainees. Furthermore, authorities and other public institutions are also called upon to continuously evaluate the situation in this detention centre and to draw consequences from abuses.

Furthermore, against this background, the legal provisions for dealing with persons without regular residence status and the implementation of these provisions must be critically reviewed. Vordernberg is only the tip of the iceberg here, as the legal discussion in this study shows. The deprivation of liberty in migration detention is characterised by legal uncertainty for those affected, considerable legal leeway for the authorities and inadequate legal advice and violence and is therefore highly problematic from the perspective of the rule of law.

