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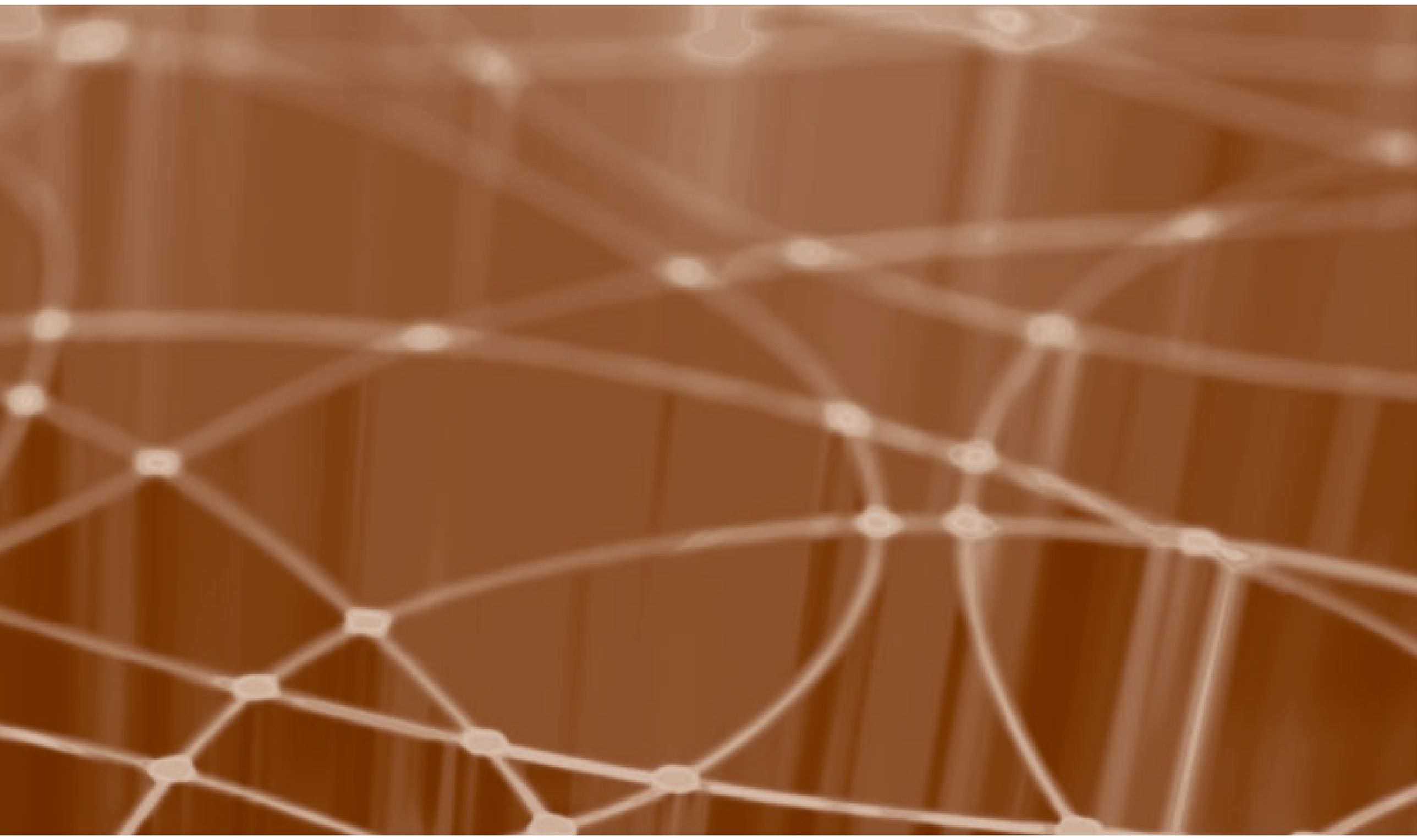
THE USE OF DETENTION AND ALTERNATIVES TO DETENTION IN THE CONTEXT OF IMMIGRATION POLICIES IN AUSTRIA



Study of the National Contact Point Austria in the European Migration Network

Co-funded by the European Union

BM.I REPUBLIC OF AUSTRIA FEDERAL MINISTRY OF THE INTERIOR

The European Migration Network (EMN) is co-ordinated by the European Commission with National Contact Points (EMN NCPs) established in each EU Member State plus Norway. The National Contact Point Austria in the EMN is financially supported by the European Commission and the Austrian Federal Ministry of the Interior.

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EUROPEAN MIGRATION NETWORK

The European Migration Network (EMN) was launched in 2003 by the European Commission (EC) by order of the European Council in order to satisfy the need of a regular exchange of reliable information in the field of migration and asylum at the European level. Since 2008, Council Decision 2008/381/EC has constituted the legal basis of the EMN and National Contact Points (NCPs) have been established in the EU Member States (with the exception of Denmark, which has observer status) plus Norway.

The EMN's role is to meet the information needs of European Union (EU) institutions and of Member States' authorities and institutions by providing up-to-date, objective, reliable and comparable information on migration and asylum, with a view to supporting policymaking in the EU in these areas. The EMN also has a role in providing such information to the wider public.

The NCP for Austria is located in the Research and Migration Law Department of the Country Office Austria of the International Organization for Migration (IOM) in Vienna, which was established in 1952 when Austria became one of the first members of the organization. The main responsibility of the IOM Country Office is to analyse national migration issues and emerging trends and to develop and implement respective national projects and programmes.

The main task of the NCPs is to implement the annual work programme of the EMN, including the drafting of the annual policy report, main and topic-specific studies, answering Ad-Hoc Queries, carrying out visibility activities, and networking in several forums. Furthermore, the NCPs set up national networks consisting of organizations, institutions and individuals working in the field of migration and asylum.

In general, the NCPs do not conduct primary research but collect and analyse existing data. Exceptions might occur when existing data and information is not sufficient. EMN studies are developed in accordance with uniform specifications valid for all EU Member States (plus Norway) in order to achieve comparable EU-wide results. Since the comparability of the results is frequently challenging, the EMN has produced a Glossary, which assures the application of similar definitions and terminology in all national reports.

Upon completion of national reports, the EC (with the support of a service provider) drafts a synthesis report, which summarizes the most significant results of the individual national reports. In addition, topic-based policy briefs, so-called EMN Informs, are produced in order to present and compare selected topics in a concise manner. All national studies, synthesis reports, EMN Informs and the Glossary are available on the website of the EC DG Home Affairs.

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INTRODUCTION AND METHODOLOGY

This study is the Austrian contribution to a European Migration Network (EMN) Focussed Study based on a common template. It was conducted by the National Contact Point (NCP) Austria within the EMN, in the framework of the EMN's Annual Work Program 2014.

The aim of the study is to identify rules and practices with regard to the use of detention (*Schubhaft*) and alternatives to detention (*gelinderes Mittel*) in the context of Austria's immigration policy. More specifically the study aims to:

- Provide information on the scale of detention and alternatives to detention in Austria by collecting available statistics on the number of third-country nationals (by category) that are subject to these measures;
- Depict the grounds for placing third-country nationals in detention and/or providing alternatives to detention as outlined in national legal frameworks, as well as the assessment procedures and criteria used to reach decisions in individual cases;
- Identify and describe the different types of detention facilities and alternatives to detention available and used in Austria;
- Provide any evidence of the way detention and alternatives to detention contribute to the effectiveness of return policies and international protection procedures.

The study is primarily based on desk research using the most up-to-date information available, including: academic literature, legislation and case law, statistics, newspaper articles and press releases, political and policy documents, as well as internet resources. With regard to the practice in Austria, the text is based on information relating to the situation prior to the introduction of the Federal Office for Immigration and Asylum in January 2014. An overview of the sources of information used is provided in the bibliography.

In order to complement the information gained through desk research, qualitative semi-structured interviews were carried out with the experts listed below:

- Gerald Dreveny (Federal Ministry of the Interior, Deputy Head of Department III/5)
- Albert Grasel (Federal Ministry of the Interior, Department II/10, Chief Inspector)
- Lukas Rehberger (Verein menschen.leben, Head of Gelinderes Mittel Wien Zinnergasse,)
- Gernot Resinger (Federal Ministry of the Interior, Head of Unit II/3/c)
- Christoph Steinwendtner (Diakonie Refugee Service, Area Manager East)

This study was drafted by Adel-Naim Reyhani with the appreciated support of the team of the IOM Country Office for Austria, in particular the Department for Research and Migration Law. Special thanks go to Judith Tutzer and Andrea Bednarik for the transcription of interviews and their support in drafting the study, to Saskia Koppenberg for her comments and support with statistics, and to Julia Rutz for her comments and supervision.

1. INTERNATIONAL, EUROPEAN AND EU LEGAL FRAMEWORK

The international, European and EU legal framework on detention and alternatives to detention is of particular relevance to Austrian legislation and practice, particularly as it provides minimum thresholds and standards in regards to the individual right to protection of personal liberty.

1.1 International and European legal framework

In the context of detention for the purpose of removal in Austria, the Convention relating to the Status of Refugees (Refugee Convention), the European Convention on Human Rights (ECHR), and, with regards to the placement of children in detention, the Convention on the Rights of the Child (CRC) are the most relevant international and European legal documents. They provide human rights standards on detention that are directly applicable in Austria.

The Refugee Convention puts restrictions on the prospects of detaining asylum-seekers and refugees (Article 31 of the Convention). It provides that States "shall not impose penalties, on account of their illegal entry or presence, on refugees who, coming directly from a territory where their life or freedom was threatened […], enter or are present in their territory without authorization, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence." Furthermore, States "shall not apply to the movements of such refugees restrictions other than those which are necessary and such restrictions shall only be applied until their status in the country is regularized or they obtain admission into another country."

The European human rights safeguard that constitutes the threshold for detention for removal purposes, including respective legislation, case law and practice, is enshrined in Article 5 of the ECHR[1], which establishes the right to liberty and security (Article 6 of the EU Charter of Fundamental Rights). Detention, according to the ECHR, is the exception to the right to liberty. Article 5 (1) f ECHR stipulates that "no one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law: […] the lawful arrest or detention of a person to prevent his effecting an unauthorized entry into the country or of a person against whom action is being taken with a view to deportation or extradition". With regards to situations that may amount to a restriction on movement as opposed to a deprivation of liberty, such as in the case

[1] In the Austrian legal framework, the European Convention on Human Rights is part of the constitution.

of some alternatives to detention, Article 2 of Protocol No. 4 to the ECHR is applicable.

In the case law of the European Court of Human Rights, Article 5 (1) f ECHR was repeatedly subject to interpretation. The Court clarifies that any deprivation of liberty for removal purposes can only be justified as long as "deportation proceedings are in progress". "If such proceedings are not prosecuted with due diligence, the detention will cease to be permissible," the Court stipulates.[2]

With regards to the examination of alternatives to detention, the Court has stipulated (in Mikolenko v. Estonia) that alternatives must be preferred, stating that "the authorities in fact had at their disposal measures other than the applicant's protracted detention in the deportation centre in the absence of any immediate prospect of his expulsion."[3]

Furthermore, human rights standards for children, as enshrined in the CRC, should be mentioned. Article 37 CRC states: "no child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time". Furthermore, with regards to the treatment of children in detention, the Convention states: "every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults (not parents) unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances". The Convention also touches upon access to legal assistance: "every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action."

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[2] European Court of Human Rights, A. and Others v. the Unied Kingdom, 19 February 2009, Application no. 3455/05, 164.

[3] European Court of Human Rights, Mikolenko v. Estonia, 8 January 2010, Application no. 10664/05.

1.2 EU legal framework

At EU level, the Return Directive (2008/115/EC)[4], the (recast) Reception Conditions Directive (2013/33/EU)[5], and the Dublin Regulation (No. 604/2013)[6] all contain concrete provisions pertaining to the detention of third-country nationals. While the Return Directive has already been transposed in Austrian legislation, the deadline for transposing the (recast) Reception Conditions Directive is in July 2015, according to Article 31 of the Directive. The Dublin Regulation is directly applicable in Austria.

The Return Directive stipulates in Article 15 (1): "unless other sufficient but less coercive measures can be applied effectively in a specific case, Member States may only keep in detention a third-country national who is the subject of return procedures in order to prepare the return and/or carry out the removal process". In particular, this is the case if, "(a) there is a risk of absconding or (b) the third-country national concerned avoids or hampers the preparation of return or the removal process." According to recital 16, "the use of detention for the purpose of removal should be limited and subject to the principle of proportionality with regard to the means used and objectives pursued." Article 17 of the Directive addresses the detention of minors and families. There, it is stated that, "unaccompanied minors and families with minors shall only be detained as a measure of last resort and for the shortest appropriate period of time" (para 1). Furthermore, the Directive postulates that families shall be provided with separate accommodation, minors shall be able to engage in leisure activities and access education, and unaccompanied minors shall be provided adequate personnel and facilities (para 2-4). In general, the best interests of the child shall be a primary consideration of Member States (para 5).

The (recast) Reception Conditions Directive defines detention as "[the] confinement of an applicant by a Member State within a particular place, where the applicant is deprived of his or her freedom of movement" (Article 2 h). The Directive states that Member States shall not hold a person in detention for the "sole reason that he or she is an applicant" for international protection (Article 8 (1)). Rather, an applicant may be detained "when it proves necessary and on the basis of an individual assessment of each case […] if other less coercive alternative measures cannot be applied effectively" (Article 8 (2)). The Directive then goes on

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[4] Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals.

[5] Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection (recast); Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum-seekers does not contain any such provisions.

[6] Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (recast).

to (exhaustively) list possible detention grounds for asylum-seekers[7] in paragraph 3, which must be incorporated in national legislation. With regards to the rules for alternatives to detention, the Directive also stipulates, "Member States shall ensure that" these rules "are laid down in national law" (Article 8 (4)). Article 10 para 2 of the Directive contains provisions on minors. Therein, similar provisions as contained in the Returns Directive are outlined. Detention of minors is stipulated as a last resort, and only if alternatives cannot be applied effectively.

Among these three EU legal documents, the Dublin Regulation (604/2013) provides the most restrictive requirements for determining the risk of absconding. Among others it namely states that, "[only] when there is a *significant risk of absconding*, Member States may detain the person concerned". This, in order "to secure transfer procedures in accordance with this Regulation, on the basis of an individual assessment and only in so far as detention is proportional and other less coercive alternative measures cannot be applied effectively" (Article 28 (2)).

It can thus be seen that EU legislation provides rules and specifications on detention for the different stages of the process, from the Dublin procedure, to the ordinary asylum procedure, to the return procedure. In all cases, EU legislation provides for, and encourages the use of, alternatives to detention, entailing that detention should be used as a 'last resort'.

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[7] These are "(a) in order to determine or verify his or her identity or nationality; (b) in order to determine those elements on which the application for international protection is based which could not be obtained in the absence of detention, in particular when there is a risk of absconding of the applicant; (c) in order to decide, in the context of a procedure, on the applicant's right to enter the territory; (d) when he or she is detained subject to a return procedure under Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals, in order to prepare the return and/or carry out the removal process, and the Member State concerned can substantiate on the basis of objective criteria, including that he or she already had the opportunity to access the asylum procedure, that there are reasonable grounds to believe that he or she is making the application for international protection merely in order to delay or frustrate the enforcement of the return decision; (e) when protection of national security or public order so requires; (f) in accordance with Article 28 of Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person."

2. NATIONAL PROVISIONS AND GROUNDS FOR DETENTION AND ALTERNATIVES TO DETENTION

In this chapter, the Austrian legal framework that pertains to grounds for the imposition of detention and alternatives to detention for the purpose of removal is outlined. This is mainly achieved by elaborating on the key legal provisions and relevant case law. Furthermore, this chapter provides available data related to the imposition of detention and alternatives to detention.

The concrete Austrian rules on detention and alternatives to detention (*gelinderes Mittel*) are based on Chapter 8, Section 8 of the Aliens Police Act (APA, Articles 76 to 81). These provisions *inter alia* regulate the grounds for detention and alternatives to detention, types of alternatives provided, and time limits. Furthermore, specific provisions for minors are detailed. Together with the Federal Office for Immigration and Asylum Procedures Act, the Aliens Police Act governs access to remedies against detention and alternatives to detention.

In Austrian legislation, there is a direct relation between the application of detention and alternatives to detention. According to Art. 77 para 1 APA, individuals shall be provided an alternative to detention if detention grounds (Art. 76) are present but the purpose of detention can be achieved by the alternative. Thus, detention must, in general, be regarded as a last resort.[8]

2.1 Grounds for detention

Art. 76 APA contains three separate provisions that list grounds for detention. Those contained in paragraph 1 can be considered as the ***general grounds for detention*** that does not, however, apply to asylum-seekers (who are the focus of paragraphs 2 and 2a).

According to Art. 76 para 1 APA, non-Austrian citizens may be arrested and detained; "provided that such action is necessary as procedural guarantee in connection with the issuance of a return decision, an order to remove, an expulsion, or a residence ban until commencement of enforceability thereof, or to guarantee removal. Detention pending removal may be imposed on individuals lawfully resident in the federal territory if, on the basis of certain facts, it may be assumed that they are likely to abscond."

Thus, within the framework of paragraph 1, two broad categories of detention can be identified: 1) detention to secure a procedure terminating residence (a return decision, an order to remove, an expulsion, or a residence ban); and 2) detention to guarantee removal. Both categories can be applied simultaneously. This provision does not apply to asylum-seekers (Art. 1 para 2

[8] Please see the remarks on Art. 76 para 2a in footnote 10 as regards the scope of discretion.

APA). Furthermore, para 1 allows detention in respect of individuals who are lawfully residing in Austria.

The ***provisions that apply to asylum-seekers*** can be divided in those that leave discretion to the authority (Art. 76 para 2), and those that are binding, according to the word of the law (Art. 76 para 2a).

Art. 76 para 2 provides that individuals *may* be detained as a procedural guarantee in connection with the issuance of a return decision, an order to remove, or to guarantee removal if:

- Prior to applying for international protection, an enforceable return decision, order to remove, expulsion, or residence ban has been imposed (if, for example, an individual who applies for international protection has already received a return decision);
- It can be assumed – on the basis of the results of the interview, the search, and the identification procedures – that the individual's application for international protection will be rejected, as Austria lacks responsibility for its assessment (Dublin cases where another Member State is deemed responsible, for example in case of a Dublin hit);
- Proceedings for the issuance of a measure terminating residence according to Art. 27 Asylum Act (AA) have been initiated (the asylum-seeker was informed that it is intended to reject the application);
- An enforceable – though not final – return decision has been issued (for example, an application for international protection was rejected).

With regards to the provisions of Art. 76 para 2 APA (discretionary provisions for (former) asylum-seekers), the Administrative High Court maintains that the different grounds are "coordinated", in that they pertain to different phases of the asylum procedure. The first two grounds address situations in which no return procedure has yet been initiated. Situations with a pending return procedure are addressed by the third ground. The fourth ground eventually pertains to cases in which the asylum procedure has led to an enforceable return decision.[9]

According to Art. 76 para 2a APA, individuals *shall*[10] be detained "if necessary to secure the procedure for the issuance of a measure terminating residence or the removal, unless barred by reasons lying in the person of the asylum-seeker", and:

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[9] Administrative High Court, 20 February 2014, 2013/21/0170.

[10] By using, in Art. 76 para 2a AA, the term "shall", the legislator does not foresee that the authority applies discretion, which was criticized by some authors (Khakzadeh-Leiler 2010, 220). The Administrative High Court (25 March 2010, 2009/21/0276) has clarified that, if the grounds listed are present and if detention is necessary and proportionate, the authority cannot opt to apply alternatives instead of detention.

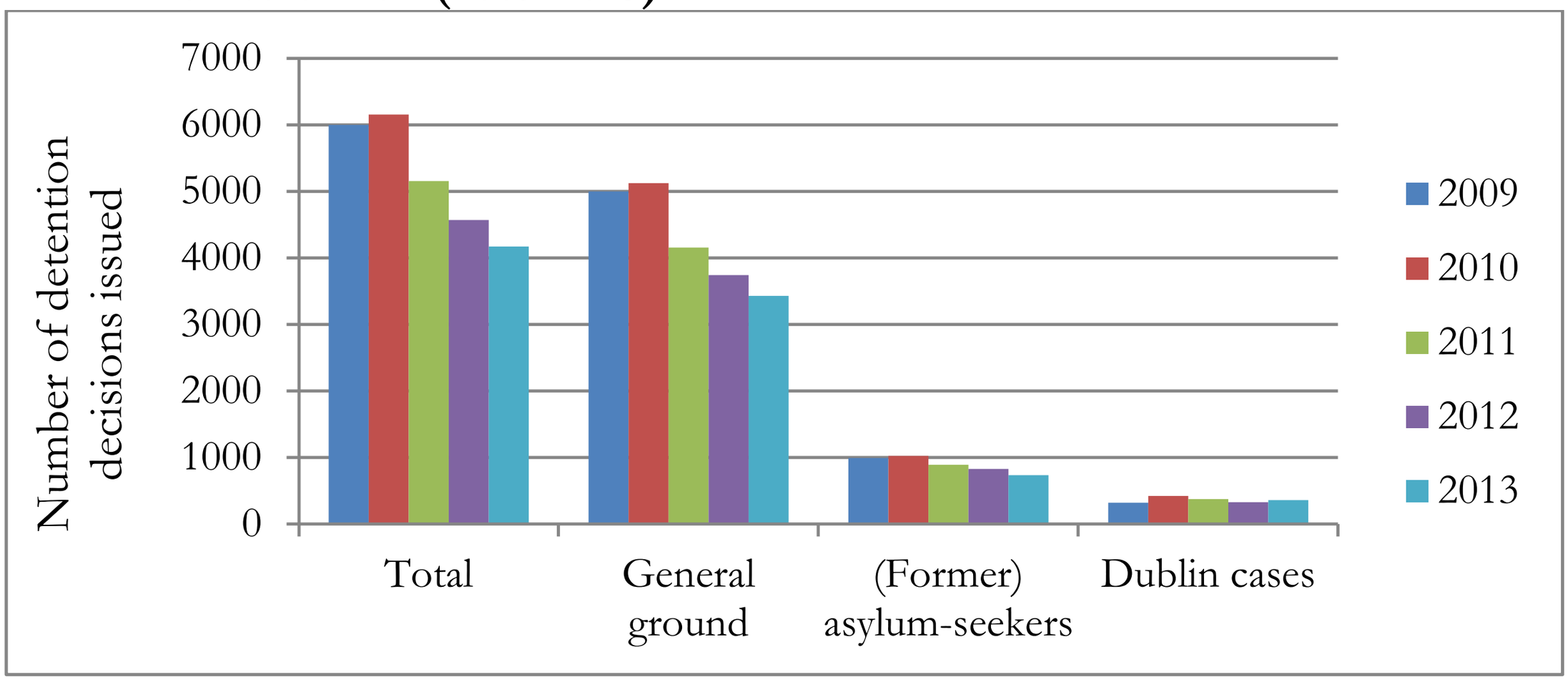
- The asylum-seeker has violated their duty to report according to Art. 15a AA (in certain cases, for example, if the asylum-seeker has been informed that their application is likely to be rejected, they must report to the police periodically) more than once;
- The asylum-seeker, against whom a procedure for the issuance of a measure terminating residence was initiated, has violated the duty to cooperate according to Art. 13 para 2 of the Federal Office for Immigration and Asylum Procedures Act (reporting obligation for homeless asylum-seekers);
- The asylum-seeker has filed a subsequent application (Art. 2 para 1(23) AA) and the protection against removal was lifted according to Art. 12a para 2 AA;
- The asylum-seeker has left the initial reception centre without permission according to Art. 24 para 4 AA, and one of the conditions of para 2 (1-4) (listed above.) are present;
- A notification according to Art. 29 para 3(4-6) AA (for example, if the authority intends to reject the application; or intends to lift the protection of removal) was made and the asylum-seeker has violated the territorial restrictions according to Art. 12 para 2 AA (limited to area of regional administrative body);
- A rejecting decision according to Art. 4a or 5 AA (Dublin cases) was issued or the protection against removal is not provided according to Art. 12a para 1 AA.

According to Khakzadeh-Leiler (2010, 229) the grounds mentioned can be divided into three groups: 1) rejecting decisions in Dublin procedures, 2) breach of duties, and 3) subsequent applications.

In relation to ***access to legal protection,*** detention has to be imposed in the form of a (written) decision, according to Art. 76 para 3 APA. The detention decision, the arrest leading to detention, and detention itself can be challenged before the Federal Administrative Court, according to Art. 22a of the Federal Office for Immigration and Asylum Procedures Act[11]. If the individual concerned is still held in detention when the appeal is lodged, the Court has to decide within one week (Art. 22a para 3 Federal Office for Immigration and Asylum Procedures Act).

[11] Please note that the Constitutional Court has recently decided to assess the compatibility of Art. 22a para 1 and 3 of the Federal Office for Immigration and Asylum Procedures Act with the Austrian constitution (Constitutional Court, 26 June 2014, E 4/2014). The Court has indicated that a final decision in this matter can have an impact on the applicable period for appeals and its suspensive effect, amongst others.

Figure 1: Number of decisions to detain an individual by grounds for detention (2009-2013)



Source: Federal Ministry of the Interior, Aliens Statistics 2009, 2010; Aliens Police and Visa Statistics 2011, 2012, 2013.[12]

As can be seen from the data outlined in figure 1, the general ground for detention (Art. 76 para 1 APA) – that only applies to non-asylum-seekers for the purpose of securing a procedure terminating residence or removal – was the prevalent reason from 2009 to 2013. From 2009 to 2013, the number of decisions issued in cases of (former) asylum-seekers, including Dublin cases, has also decreased. Among grounds that are applied to (former) asylum-seekers (Art. 76 para 2 and 2a APA), detention decisions in the framework of the Dublin procedure constituted a large proportion. The total numbers on detention decisions show that there has been a steady decrease since 2010. According to the experts interviewed, in comparison to 2013 numbers in 2014 have, again, significantly decreased.[13]

The reason for this decrease, according to interviews, may be a general trend towards less detention decisions in Austria[14] due to a more humane approach towards detention. Other factors, such as the limited availability of places in detention, the high costs of providing places, the case law of the

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[12] The numbers of 2011 are obtained from answers to two parliamentary requests, available at www.parlament.gv.at/PAKT/VHG/XXV/AB/AB_00185/fnameorig_339332.html and www.parlament.gv.at/PAKT/VHG/XXIV/AB/AB_11121/fnameorig_254529.html (accessed on 15 May 2014).

[13] Gerald Dreveny, Federal Ministry of the Interior, 8 April 2014, Christoph Steinwendtner, Diakonie Refugee Service, 9 May 2014.

[14] Albert Grasel, Federal Ministry of the Interior, 8 April 2014.

Administrative High Court[15], and institutional changes in 2014, may also play a role in the steady decrease.[16]

2.1.1 Detention in Dublin procedures

Detention in the context of the Dublin procedure has a certain particularity: Both the Dublin Regulation itself and Austrian legislation contains provisions on criteria for the placement of individuals subject to the Dublin procedure in detention.

In Austrian legislation, Art. 76 para 2 and para 2a APA both contain provisions that address detention for individuals subject to Dublin procedures. According to these provisions, in general, individuals may or shall be detained, if the authority intends to reject the application or has already done so because Austria is not responsible for processing the asylum application, according to the Dublin Regulation.

In addition to the Austrian provisions, the respective dispositions of the Dublin Regulation itself are to be directly applied in Austria.[17]

As mentioned in section 1.2, Article 28 of the Dublin Regulation stipulates that a person shall not be held in detention for the sole reason that he or she is subject to the procedure established by this Regulation (1). When there is a *significant risk of absconding*[18], Member States may detain the person concerned in order to secure transfer procedures in accordance with this Regulation, on the basis of an individual assessment and only insofar as detention is proportional and other less coercive alternative measures cannot be applied effectively (2). Detention shall be for as short a period as possible and shall be for no longer than the time reasonably necessary to fulfil the required administrative procedures with due diligence until the transfer under this Regulation is carried out (3).[19]

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[15] Gernot Resinger, Federal Ministry of the Interior, 2 June 2014.

[16] Christoph Steinwendtner, Diakonie Refugee Service, 9 May 2014; as of January 2014, the Federal Office for Immigration and Asylum was introduced as an overarching authority in the asylum and return system; it is responsible for the asylum procedure, major parts of the return procedure and several humanitarian residence titles.

[17] Federal Administrative Court, 13 March 2014, W112 2003274-1/19E.

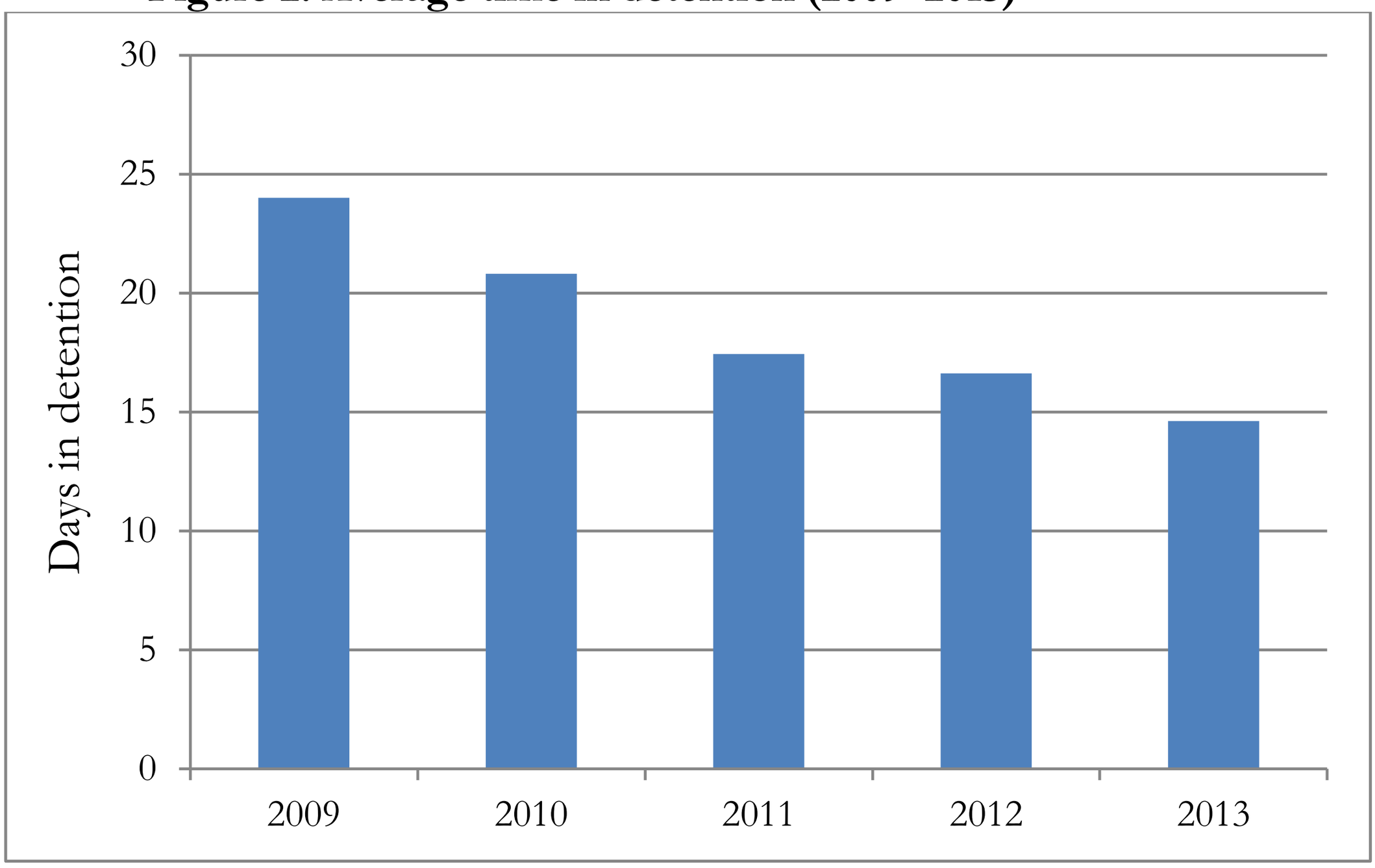
[18] The term "significant risk of absconding" is not defined in EU or Austrian legislation. It is to be awaited whether the case law of the Austrian courts dealing with detention will interpret this provision as stipulating a higher threshold than provided by national Austrian legislation.

[19] Furthermore, the Regulation stipulates, in recital 20, that as "regards the general guarantees governing detention, as well as detention conditions, where appropriate, Member States should apply the provisions of Directive 2013/33/EU also to persons detained on the basis of this Regulation." According to Article 28(4) of the Regulation, "in order to secure the transfer procedures to the Member State responsible, Articles 9, 10 and 11 of Directive 2013/33/EU shall apply."

2.1.2 Time limits

In general, detention shall be upheld for as short a period as possible and only as long as the ground for its imposition is present and its aim can be achieved (Art. 80 para 1 APA). The general maximum time period for an adult is four months (Art. 80 para 2(2) APA). According to Art. 80 para 4 APA, extended time periods of between six and eighteen months can be invoked in exceptional cases; for example if the identity of the individual concerned cannot be established (six months) or the individual concerned is responsible that removal cannot be carried out apply (ten months). In case of detention relating to asylum-seekers, detention shall generally not be upheld for a period exceeding four weeks after the final negative decision on the application for international protection (Art. 80 para 5 APA). Detention against minors older than 14 years shall not exceed two months (Art. 80 para 2(1) APA). The Federal Office for Immigration and Asylum has to review the proportionality of detention every four weeks if an appeal is not pending (Art. 76 para 6 APA).

Figure 2: Average time in detention (2009–2013)



Source: Federal Ministry of the Interior.[20]

The data illustrated in figure 3 shows that the average time of detention has steadily decreased from 24 days in 2009 to a little less than 15 days in 2013.

According to Gernot Resinger from the Federal Ministry of the Interior, this trend is due to the authority's stronger focus on more humane

[20] Data provided by Gerhard Reischer, Federal Ministry of the Interior, via E-mail on 1 April 2014.

detention, which is only used if removal is foreseen; and due to a better implementation of the legal framework.[21]

2.2 Grounds for alternatives to detention

Art. 77 para 1 APA stipulates that individuals shall be provided with an alternative to detention if detention grounds (Art. 76) are present and the purpose of detention can also be achieved by their provision. The following forms of alternatives to detention are provided in Art. 77 para 3 APA:

1. Residing at a particular address determined by the authority;
2. Reporting periodically to the police station;
3. Lodging a financial deposit at the authority.[22]

According to Gernot Resinger from the Federal Ministry of the Interior, the authority mainly enforces the requirements to "reside at a particular address" and "report periodically" as alternatives to detention. These two alternatives can also be applied in combination. Lodging a financial deposit is a rather new detention alternative, which is applied in fewer cases.[23]

Alternatives to detention are provided by (written) decision. An individual can challenge the decision before the Federal Administrative Court within two weeks (Art. 16 para 1 and Art. 7 para 1 Federal Office for Immigration and Asylum Procedures Act). After two weeks, if the alternative is still upheld, there is no further opportunity provided to appeal against the imposition of the alternative.

According to Art. 77 para 4 APA, an individual who does not comply with the requirements of the alternative to detention, or with the summons of the Federal Office for Immigration and Asylum, in which the consequence of noncompliance was made clear, detention shall be ordered. In this regard, Gerald Dreveny from the Federal Ministry of the Interior explains that such an outcome is subject to the individual assessment conducted by the authority.[24]

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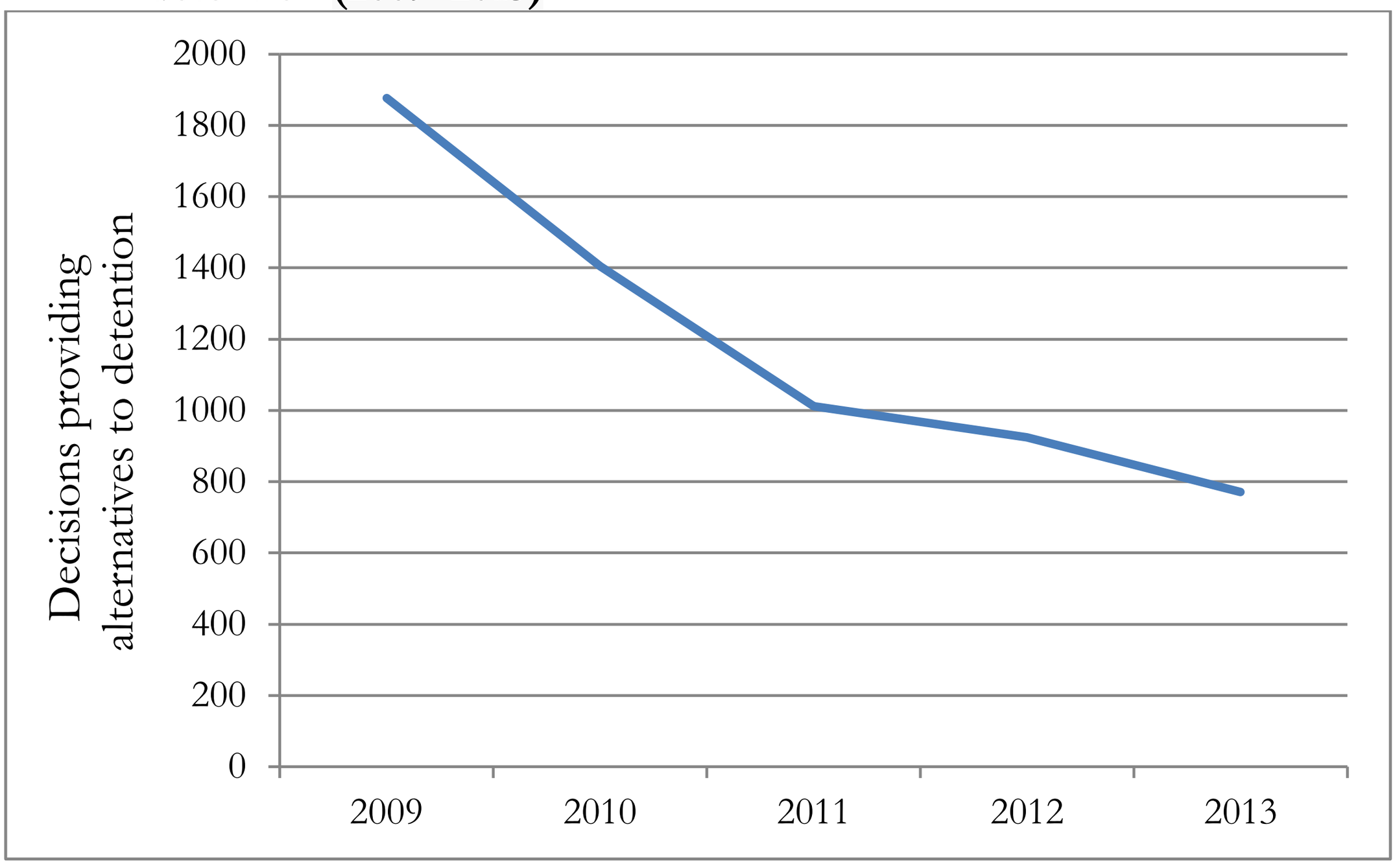
[21] Gernot Resinger, Federal Ministry of the Interior, 2 June 2014.
[22] According to Art. 13 of the Aliens Police Act Implementing Decree, the amount of financial deposit shall be determined in the individual case; it shall be adequate and proportionate, and not exceed 1715.46 Euros (amount for 2014).
[23] Gernot Resinger, Federal Ministry of the Interior, 2 June 2014.
[24] Gerald Dreveny, Federal Ministry of the Interior, 8 April 2014.

Figure 3: Total number of decisions providing alternatives to detention (2009–2013)



Source: Federal Ministry of the Interior, Aliens Statistics 2009, 2010; Aliens Police and Visa Statistics 2011, 2012, 2013.[25]

The data depicted in the above chart show that the numbers of decisions providing alternatives to detention steadily – and overall significantly – decreased between 2009 and 2013. When comparing 2013 with 2009, it can be seen that the numbers of decisions providing alternatives have more than halved. According to the experts interviewed, numbers have also significantly decreased in 2014 as compared to 2013.[26]

2.3 Minors and other vulnerable groups

In Austrian detention legislation, minors are addressed as a specific group. The Aliens Police Act (Art. 76 para 1a APA) stipulates that under-age minors (below 14 years) shall not be detained. Minors below 16 years shall be kept in alternatives to detention if certain facts do not justify that the purpose of detention cannot be achieved (Art. 77 para 1 APA). Furthermore, they may only be detained if age-appropriate accommodation and care is provided (Art. 79 para 2 APA). In the case of minors older than 14 years, detention shall not exceed two months (Art. 80 para 2(1) APA).

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[25] The data on 2011 was provided by Gernot Resinger, Federal Ministry of the Interior, 2 June 2014.

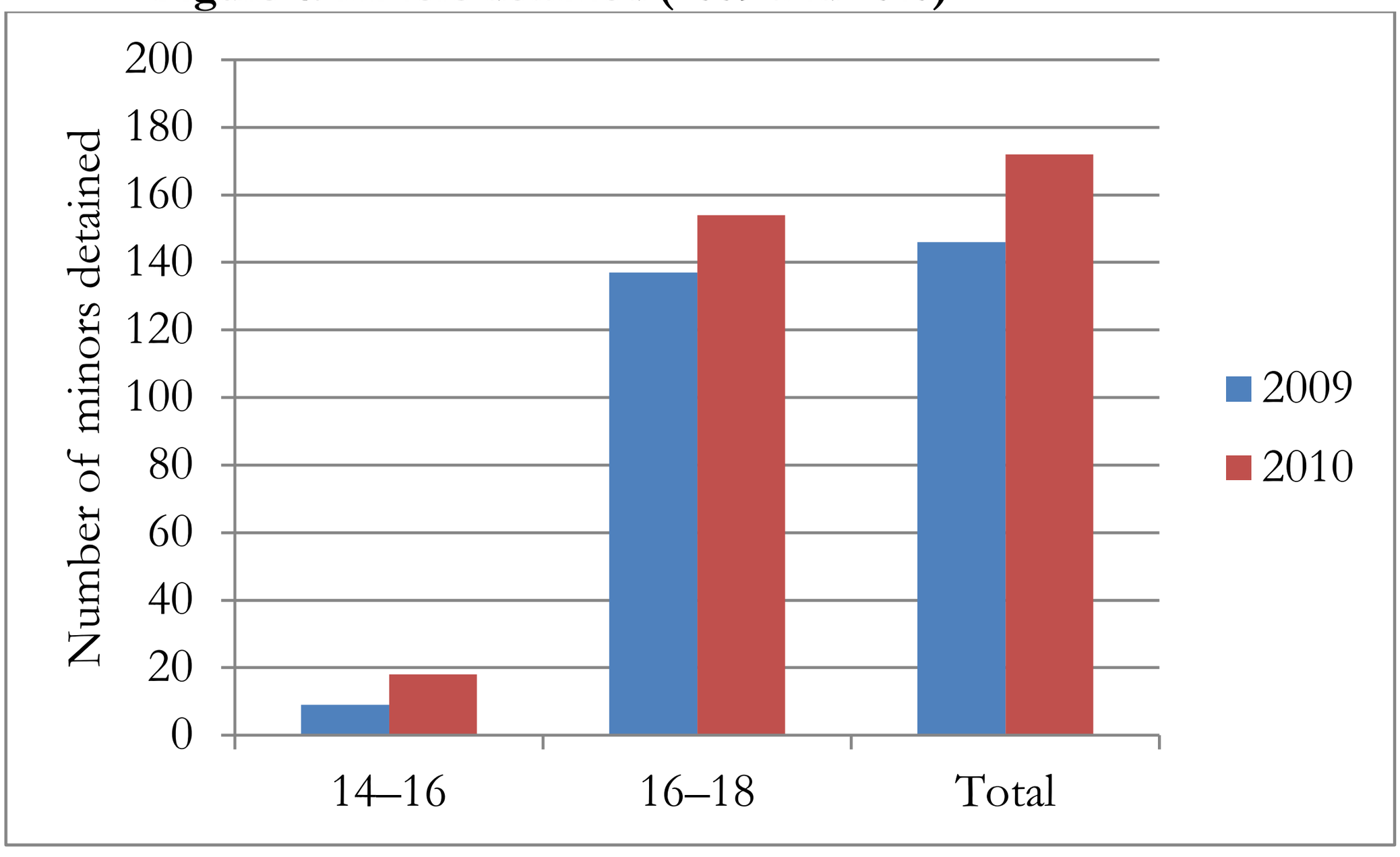
[26] Lukas Rehberger, Verein menschen.leben, 3 April 2014; Gerald Dreveny, Federal Ministry of the Interior, 8 April 2014.

Decisions on the detention of minors (14-18 years) are reported by the authority to the Federal Ministry of the Interior, which provides them with the opportunity to correct decisions, if necessary.[27]

Other vulnerable groups are not directly addressed by the legislation of the Aliens Police Act on grounds for detention or time limits. However, as Gernot Resinger and Gerald Dreveny from the Federal Ministry of the Interior highlighted, in the case of individuals who have physical weaknesses, a physician is consulted who decides whether the individual concerned is fit enough to be kept in detention, according to the Detention Order (Art. 7 and 10).[28]

The ***data on minors*** depicted below covers the years 2009 and 2010. More recent data, providing an adequate picture of the current situation with regards to the numbers of minors in detention and alternatives of detention, was not available for this study.

Figure 4: Minors detained (2009 and 2010)



Source: Human Rights Advisory Board, 2011.

The figure shows that the great majority of minors detained in 2009 and 2010 were between 16 and 18 years old. The numbers for both age groups slightly increased from 2009 to 2010.

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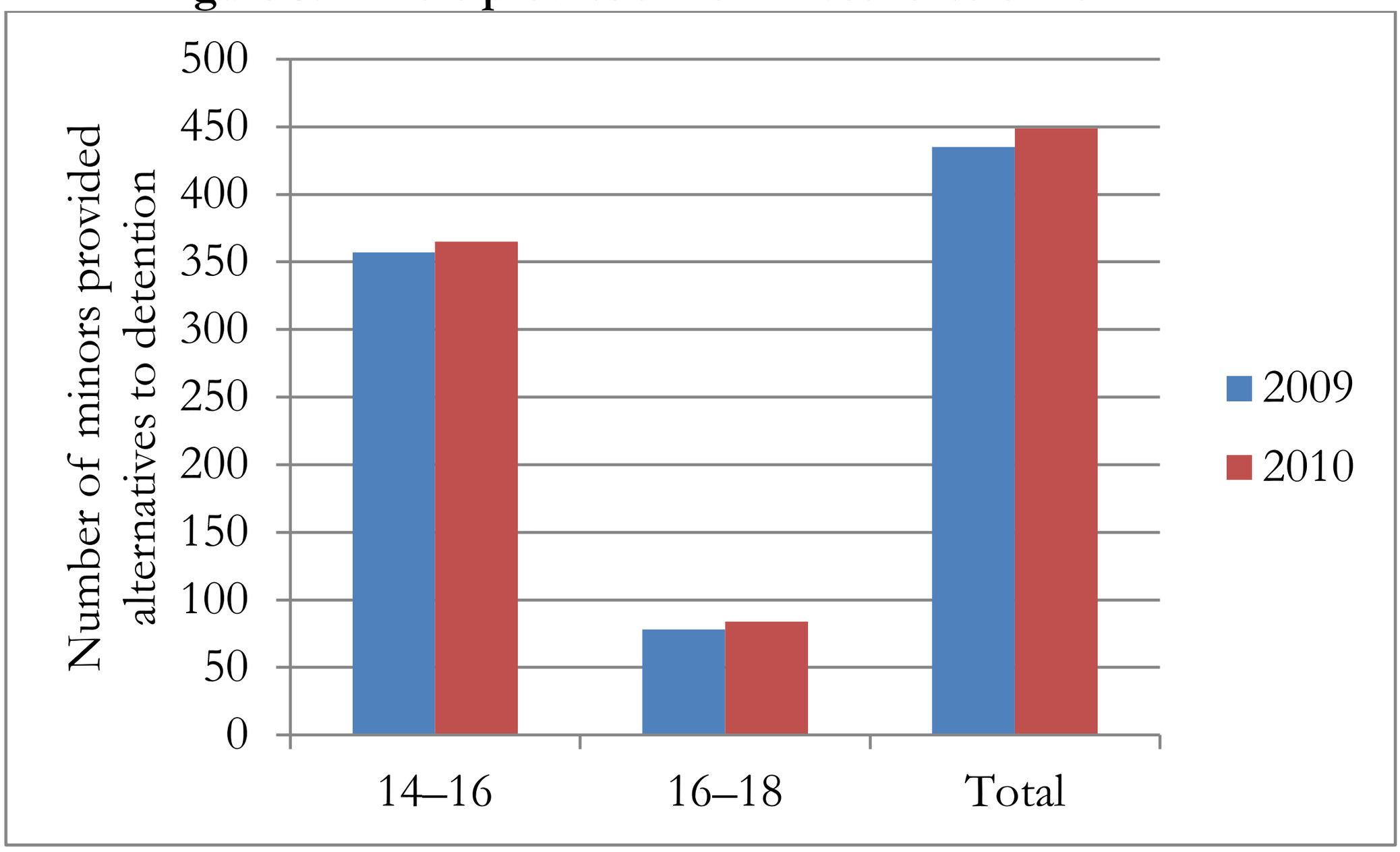
[27] Gernot Resinger, Federal Ministry of the Interior, 2 June 2014; please note that this information relates to the reporting of the aliens police authority to the Department II/3 within the Federal Ministry of the Interior.

[28] Gerald Dreveny, Federal Ministry of the Interior, 8 April 2014; Gernot Resinger, Federal Ministry of the Interior, 2 June 2014.

Numbers on minors provided alternatives to detention are also only available for 2009 and 2010.

Figure 5: Minors provided alternatives to detention



Source: Human Rights Advisory Board, 2011.

Contrary to the placement in detention, minors between 14 and 16 years are more frequently provided alternatives than those aged between 16 and 18 years. In total, the numbers have stayed at a generally consistent level over the examined time period, with only a slight increase in 2010.

When comparing the numbers of detention with alternatives to detention, one can see that, in total, alternatives were provided in approximately twice as many cases. With regards to the different age groups, the vast majority of minors aged 14–16 are provided with alternatives to detention, whilst for 16 to 18 year olds detention was ordered in more than twice as many cases.

The Human Rights Advisory Board[29] (2011: 40) has commented on this ratio in its report on children and youth in the aliens procedure. The Board remarked that these numbers indicate that the "application potential" of

[29] The Human Rights Advisory Board, which was established upon recommendation of the Committee for the Prevention of Torture, monitors the conditions in detention for removal purposes. The Board was introduced within the Federal Ministry of the Interior as an advisory and monitoring body. Its range of responsibilities included monitoring all facilities where individuals are deprived of liberty. In 2012, these tasks were assumed by the Austrian Ombudsman Board. For further information see Federal Ministry of the Interior, www.bmi.gv.at/cms/BMI_MRB/mrb/aufgaben (accessed on 3 June 2014) and Austrian Ombudsman Board, volksanwaltschaft.gv.at/menschenrechte/menschenrechtsbeirat (accessed on 3 June 2014).

alternatives to detention for minors between 16–18 years is not yet exhausted. The Board has argued that a preference for alternatives to detention should be applied for all minors until the age of 18.[30] In this regard, the Federal Ministry of the Interior stated that all minors are hence preferably provided alternatives to detention, with permission to leave under reporting obligations (Human Rights Advisory Board 2012b, 39-40).

Due to limited data available, the current situation relating to minors in detention cannot be presented in this study.

[30] The Board has further issued several recommendations in the past: e.g. the implementation of a highly professional and deepened assessment procedure on the best interest of the child before taking any important decision, the provision of a review of detention within seven days, the detention of minors in case their parents/legal guardians were taken in detention only as *ultima ratio* and only for a few hours or days before the (family's) deportation (Austrian Human Rights Advisory Board 2012a, 16-17).

3. ASSESSMENT PROCEDURES AND CRITERIA FOR DETENTION

This section examines the assessment procedures and criteria/benchmarks that are used in Austria in order to decide whether detention is justified in individual cases. Particularly, it focuses on the Austrian approach to individual assessment procedures. Challenges associated with the assessment procedure are also addressed.

3.1 Practice, legal basis and institutional responsibility

In Austrian practice, ***individual assessment procedures*** are to be conducted in all cases and for all categories of third-country nationals.[31]

The ***legal basis*** for individual assessment procedures is Article 5 (1) f ECHR, Article 2 (1) f and Article 1 (3) of the Constitutional Act on the Protection of Personal Freedom, and Art. 76 et. seq. APA. The content of Article 5 (1) ECHR was addressed in section 1.1, and the concrete detention grounds of Art. 76 et. seq. APA outlined in section 2.1. In addition to these, the provisions contained in the Constitutional Act on the Protection of Personal Freedom stipulate that the deprivation of personal freedom can only be enforced by law if it is necessary for the purpose of the measure, and that deprivation of personal freedom must be proportionate to the purpose (Article 1 (3)). Furthermore, Article 2 (1) f of the Constitutional Act provides that deprivation of personal freedom can be prescribed by law for the purpose of expulsion and extradition. The Administrative High Court and the Constitutional Court interpret these provisions as stipulating an obligation of individual assessment in every case.[32]

According to the settled case law of the Administrative High Court, ***vulnerabilities*** shall be considered according to the principle of proportionality. If certain circumstances, such as health issues, suggest that the individual concerned will not abscond, alternatives should be preferred.[33]

To ensure compliance with the requirements of individual assessment procedures, and particularly the case law of the Administrative High Court and the Constitutional Court, the relevant authorities regularly undergo specific training.[34]

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[31] Gernot Resinger, Federal Ministry of the Interior, 2 June 2014; Gerald Dreveny, Federal Ministry of the Interior, 8 April 2014.

[32] Constitutional Court, 20 September 2011, B 1447/10; 24 June 2006, B 362/06; 15 June 2007, B 1330/06 and B 1331/06; Administrative High Court, 17 October 2010, 2013/21/0041; 16 May 2012, 2010/21/0304; 26 August 2010, 2010/21/0234.

[33] Administrative High Court, 17 October 2013, 2013/21/0041.

[34] Gernot Resinger, Federal Ministry of the Interior, 2 June 2014.

The ***task of conducting assessment procedures*** falls to the Federal Office for Immigration and Asylum, a subordinate authority of the Federal Ministry of the Interior.[35] A ***judicial authority*** is involved if the decision of the authority is challenged before the Federal Administrative Court (Art. 16 para 1 and Art. 7 para 1 Federal Office for Immigration and Asylum Procedures Act).

3.2 Criteria and benchmarks for detention

In Austria, the criteria and benchmarks to decide on the detention of individuals are predominantly stipulated by case law of the Constitutional Court and the Administrative High Court. Both courts determine the required features and criteria of an assessment procedure.

Both the Constitutional Court and the Administrative High Court hold that detention must be necessary for the purpose of the termination of residence, and proportionate, weighing the public interest to secure the termination of return and the individual interest to personal freedom. Thus, detention cannot be imposed as a standard measure.[36] When assessing the necessity and proportionality of detention, a series of factors (mainly related to the degree of integration, previous behaviour, and the condition of the individual concerned) are to be considered in relation to the specific grounds for detention or stage of proceedings. These criteria for the placement of individuals in detention have been established for specific provisions on detention grounds in the Aliens Police Act and may also be overlapping.

In the case law of the Administrative High Court on the general detention ground of Art. 76 para 1, a number of aspects that pertain to the ***personal situation of the individual concerned*** are mentioned that particularly indicate the necessity to secure removal (indicate a risk of absconding) is not to be assumed. Among these are family, social or professional bonds, as well as illness, and a fixed residence.[37]

With regards to ***detention grounds for asylum-seekers***, the Court has introduced a nuanced case law in respect of integration aspects. It holds that, in the specific situation of asylum-seekers who have just arrived in Austria without any bonds yet established, integration efforts shall not be measured by the same standard applied to others.[38] Further, an individual's lack of financial resources is not a sufficient ground for detention.[39]

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[35] This is provided by Art. 5 para 1a(2) APA, Art. 3 para 2 Federal Office for Immigration and Asylum Procedures Act, as well as Art. 76 et seq. APA.

[36] Constitutional Court, 20 September 2011, B 1447/10; 24 June 2006, B 362/06; 15 June 2007, B 1330/06 and B 1331/06; Administrative High Court, 17 October 2010, 2013/21/0041; 16 May 2012, 2010/21/0304; 26 August 2010, 2010/21/0234.

[37] Administrative High Court, 17 October 2010, 2013/21/0041; Administrative High Court, 21 December 2010, 2007/21/0498; Administrative High Court, 23 September 2010, 2009/21/0280.

[38] Administrative High Court, 22 October 2009, 2007/21/0068; Administrative High Court, 8 July 2009, 2007/21/0093; Administrative High Court, 8 July 2009, 2007/21/0085.

[39] Administrative High Court, 29 April 2008, 2007/21/0079.

The ***previous behaviour of the individual*** is to be taken into account to assess the risk of absconding – for example, if previously he or she has followed the instructions of the authority.[40] False statements of the individual concerned in relation to their case, however, may not be the only justification for detention.[41] Also, an irregular border crossing with the help of smugglers and missing identity documents may not justify detention on its own.[42]

The repeated ***refusal to cooperate*** with the removal process may indicate that the individual concerned is not immediately available for removal and that he or she cannot be contacted by the authority.[43] However, according to established case law, the lack of a willingness to leave Austria does not alone justify detention.[44]

According to settled case law, persons who ***cannot be removed*** shall not be kept in detention under Art. 76 para 1 APA for the purpose of securing removal.[45] The Court holds that detention to secure removal can only be legal if removal itself is possible. If removal is not possible, for example, if travel documents are not available and cannot be obtained, detention is illegal. However, detention that is imposed to secure a procedure, and not removal itself, can be upheld if the individual concerned can, effectively, not be removed.[46]

Considerations of national security or public order shall not determine the placement of an individual in immigration detention. However, in the framework of the assessment of proportionality, the criminal convictions of an individual can increase the public interest of effective removal.[47]

The Constitutional Court has held that, as regards ***Dublin cases***, the fact that an individual has applied for international protection in another Member State does not, alone, justify the assumption that he or she will unrightfully move further to another Member State and abscond.[48] In Dublin cases, the Administrative High Court has repeatedly ruled that detention cannot be imposed as a standard measure against asylum-seekers. The authority is

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[40] Administrative High Court, 17 October 2010, 2013/21/0041; Administrative High Court, 21 December 2010, 2007/21/0498; Administrative High Court, 23 September 2010, 2009/21/0280.
[41] Administrative High Court, 29 April 2008, 2006/21/0127.
[42] Administrative High Court, 28 February 2008, 2007/21/0391.
[43] Administrative High Court, 11 June 2013, 2012/21/0114; 25 March 2010, 2009/21/0121.
[44] Administrative High Court, 21 December 2010, 2007/21/0498; 23 September 2010, 2009/21/0280.
[45] Constitutional Court, 5 December 1994, B1075/94 and B1274/94; Administrative High Court, 2005/21/0019, 17 November 2005; 19 April 2012, 2009/21/0047; 27 January 2011, 2008/21/0595.
[46] Administrative High Court, 17 October 2013, 2013/21/0087.
[47] Administrative High Court, 17 March 2009, 2007/21/0542; 7 February 2008, 2007/21/0446; 28 March 2006, 2004/21/0039.
[48] Constitutional Court, 28 September 2004, B 292/04.

required to show that the circumstances of the individual case deviate from other typical Dublin cases so as to justify the necessity of detention.[49]

As mentioned above, individuals shall be provided an ***alternative to detention*** if detention grounds are present but the purpose of detention can be achieved by the alternative. However, if the necessity of detention to secure a procedure or measure terminating residence is not present, no alternatives to detention shall be imposed either.[50] If specific forms of alternatives to detention are explicitly tabled, the authority is particularly requested to assess the possibility of providing such alternative.[51]

3.3 Challenges with the implementation of assessment procedures

In practice, the assessment procedures outlined in sections 3.1 and 3.2 pose a number of challenges in the Austrian context. According to the interviewees, among other obstacles, it is often difficult to arrange appropriate language interpretation. Furthermore, it may be emotionally challenging for individual caseworkers to implement coercive measures.[52] Plus, the sheer volume of legislation and case law relating to detention might also pose a challenge to caseworkers.[53]

In practice, the implementation of individual assessments was also recognized as a further challenge. Some stakeholders have remarked, while referring to the case law of the Administrative High Court, that individuals are automatically detained in certain scenarios – for example, if Austria is not responsible for the asylum claim of an individual under the Dublin Regulation (Agenda Asyl 2010). In this regard, Gernot Resinger emphasises that, in Dublin cases dealt with under Art. 76 para 2a APA, the text of the law does not leave discretion to the authority. Rather, the scope of the (individual) assessment procedure is limited to whether or not the requirements of the concrete provision are met.[54]

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[49] Administrative High Court, 28 August 2012, 2010/21/0291; 22 October 2009, 2007/21/0068; 28 May 2008, 2007/21/0233.
[50] Administrative High Court, 11 June 2013, 2012/21/0114.
[51] Administrative High Court, 17 October 2013, 2013/21/0041.
[52] Gernot Resinger, Federal Ministry of the Interior, 2 June 2014.
[53] Gerald Dreveny, Federal Ministry of the Interior, 8 April 2014.
[54] Gernot Resinger, Federal Ministry of the Interior, 2 June 2014.

4. TYPES OF DETENTION FACILITIES AND CONDITIONS OF DETENTION

4.1 Types of detention facilities

Detention for the purpose of removal is, in general, provided for in the detention facilities of the Police Administrations of the Federal Provinces (*Landespolizeidirektionen*, Art. 78 para 1 APA). Subsequent to a prison term, and if detention in the facilities of the police administrations is not possible, third-country nationals may also be detained for immigration purposes in prisons (Art. 78 para 1 and 3 APA). Currently, this option is not used in Austria. If persons were to be detained in prisons for the purpose of removal; they would be accommodated in a separate wing of the institution.[55]

In Austria, there are currently 15 facilities that may be used to detain migrants for the purpose of removal. Detention facilities are categorized according to the intended duration of detention.[56] There are, however, only a few facilities (two in Vienna, one in Vordernberg, and one in Salzburg) suitable for detention that exceeds seven days, as shown in the table below. In total, these facilities have (immediate) capacity for almost 1,000 detainees. In general, the Police Administrations of the Federal Provinces are responsible for the day-to-day running of the detention facilities (Art. 78 para 1 APA).

Table 1: Facilities with capacity for detention for the purpose of removal

Name	Capacity	Intended duration of detention
Police Detention Centre Vienna, Hernalser Gürtel	253	> 7 days
Detention Centre Vordernberg	200	> 7 days
Police Detention Centre Salzburg	118	> 7 days
Police Detention Centre Vienna, Rossauer Lände	108	> 7 days
Police Detention Centre Klagenfurt	56	1 to 7 days
Police Detention Centre Graz	40	1 to 7 days

[55] Albert Grasel, Federal Ministry of the Interior, 8 April 2014.
[56] Ibid.

Police Detention Centre Innsbruck	38	1 to 7 days
Police Detention Centre Bludenz	37	1 to 7 days
Police Detention Centre Wels	22	1 to 7 days
Police Detention Centre St. Pölten	19	1 to 7 days
Police Detention Centre Villach	18	1 to 7 days
Police Detention Centre Eisenstadt	12	1 to 7 days
Police Detention Centre Linz	6	1 to 7 days
Police Detention Centre Steyr	6	1 to 7 days
Detention Facility Vienna, Zinnergasse 29a	50 (12 families)	1 to 7 days

Source: Federal Ministry of the Interior.[57]

When asked about the availability of mechanisms to cope with increasing numbers of detainees, Albert Grasel from the Federal Ministry of the Interior has stated that the number of third-country nationals to be placed in detention will most likely not exceed the number of places available in the detention facilities, as there are enough places available. In April 2014, around 45 individuals in total were kept in detention in Austria, whereas 1,100 places can potentially be made accessible, depending on available personnel, population of detainees, special use of facilities, and non-allocable cells.[58]

4.2 Conditions of detention

In Austria, the Detention Order governs the implementation of detention and provides standards on detention conditions. Among others, it contains provisions on the form of detention, security measures, medical care, access to communication, and visits. However, there are different categories of detention facilities in Austria. Thus, generalizing statements on the arrangements and factual conditions in detention facilities have limited relevance.

As outlined in section 4.1, the standard detention facilities for the purpose of removal are the Police Detention Centres (*Polizeianhaltezentren*) of the Police Administrations of the Federal Provinces in different Austrian cities. Furthermore, there is a special detention facility with provision for families in Vienna (Zinnergasse 29a). In addition to these, a new facility was built in Vordernberg in 2014 (see 4.3).

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[57] Data provided by Albert Grasel, Federal Ministry of the Interior, via E-mail on 9 May 2014.
[58] Albert Grasel, Federal Ministry of the Interior, 8 April 2014.

In Austria, the Human Rights Advisory Board regularly monitored detention conditions. It was established upon recommendation of the Committee for the Prevention of Torture introduced within the Federal Ministry of the Interior as an advisory and monitoring body. In 2012, the Austrian Ombudsman Board assumed these tasks. In 2011 and 2012, the Board's reports detailed its opinion on the detention system's weaknesses and issued recommendations. More recent evaluations are not available.

Different groups of individuals are ***detained separately***. In general, children are accommodated together with their families in a separate, family-specific facility.[59] A special detention facility for families is provided in Vienna (Zinnergasse 29a). Also, the facility in Vordernberg was intended to accommodate families. It is, however, also possible that children can stay separately from their parents: If parents do not want to take their children with them, childcare facilities are contacted in order to take care of the children. If accommodation appropriate for families and children is provided, individuals who are kept in detention for a short period before removal may be accompanied by minors (who are not detained themselves) under their care (Art. 79 para 5 APA). Single women and single men are accommodated separately and unaccompanied minors are separated from adults.[60]

With regards to ***access to outdoor space***, at least one hour per day is provided (see also Art. 17 Detention Order[61]). In one facility (Vordernberg), detainees can spend several hours outside. In detention centers in Vienna, at least two hours of physical outdoor activity are provided. [62]

When it comes to the regulations pertaining to ***visit allowance***, at least one visit a week for a period of half an hour is permitted (Art. 21 para 2 Detention Order[63]). The authorities might allow more visits per week and for longer durations from family members, friends and others.[64] Other than lawyers or embassy representatives, these private visitors do not necessarily have the opportunity to sit down with the detainee at a table. Representatives of the

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[59] Albert Grasel, Federal Ministry of the Interior, 8 April 2014; it is contested, whether minors can be detained together with their parents as part of the family association (Christoph Steinwendtner, Diakonie Refugee Service, 9 May 2014, see also Human Rights Advisory Board 2011, 54).

[60] Albert Grasel, Federal Ministry of the Interior, 8 April 2014.

[61] According to this provision, individuals who are detained for a period exceeding 24 hours must have access to free movement in outdoor space per day.

[62] Albert Grasel, Federal Ministry of the Interior, 8 April 2014.

[63] According to this provision, every detainee has the right to be visited once a week for half an hour at a time determined by the authority; minors below 14 can only visit accompanied by adults; the visit shall, if possible, take place outside of the cells in adequate rooms.

[64] Albert Grasel, Federal Ministry of the Interior, 8 April 2014.

Austrian Ombudsman Board can talk to detainees in private if they wish to (see also Art. 21 para 3 Detention Order[65]).[66]

Detainees are allowed ***contact with the outside world*** via telephone. Every detention center is equipped with a telephone that detainees can use and telephone calls are not recorded (see also Human Rights Advisory Board 2012a, 17-18). Private mobile phones may be used – so long as they do not have a video function, or provide Internet access.[67] In general, detainees should not have access to the Internet (see also Art. 19 Detention Order[68]).[69]

Detainees also have ***access to leisure activities***. In general, board games, table football, etc. are usually provided in all facilities. In the detention facility in Vordernberg, a wider range of activities can be accessed, such as sports facilities, a library, a shop, a visitors' room, and a religious meeting place.[70]

In general, the detainees' ***movements are restricted*** to the "open stations". Persons in detention can get access to "open stations" after a certain time (approx. 7 days), if they are healthy and present no risk of infection (tuberculosis screening) to others (see also Art. 5a para 2 Detention Order[71]).[72] The access to "open stations" was addressed by the Human Rights Advisory Board, who commented on the limited opening times (Human Rights Advisory Board 2012a, 62-63). In this regard, the facility in Vordernberg, where the detainees are allowed to ***move freely within the facility,*** can be upheld as a good example.[73] Day-release is provided and constraint in cells enforced only at

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[65] According to this provision, legal representatives, representatives of Austrian authorities, of diplomatic or consular representations of the detainee's country of origin and organs established by binding international human rights instruments can visit at any time for the necessary duration.

[66] Albert Grasel Federal Ministry of the Interior, 8 April 2014.

[67] Ibid.

[68] According to this provision, detainees shall be allowed telephone calls on their own costs (if they have financial resources) under supervision in justified cases.

[69] Albert Grasel, Federal Ministry of the Interior, 8 April 2014.

[70] Federal Ministry of the Interior, *Response to a Parliamentary Request,* BMI-LR2220/0027-II/1/b/2013, 18 March 2014, p. 2, available at www.parlament.gv.at/PAKT/VHG/XXV/AB/AB_00396/imfname_342805.pdf (accessed on 27 May 2014).

[71] According to this provision, detention in open stations shall be made available as soon as possible or after a period of observation, if medical or grounds lying in the person of the detainee do not oppose.

[72] Albert Grasel Federal Ministry of the Interior, 8 April 2014.

[73] Federal Ministry of the Interior, *Response to a Parliamentary Request,* BMI-LR2220/0027-II/1/b/2013, 18 March 2014 p. 2, available at www.parlament.gv.at/PAKT/VHG/XXV/AB/AB_00396/imfname_342805.pdf (accessed on 27 May 2014).

night.[74] The intention is to preserve the detainees' individuality (relating to family, language, culture and religion) as much as possible.[75]

In the Austrian regime, ***legal advice*** is provided when an individual is arrested for the purpose of detention pending removal or an alternative to detention, and when a detention decision is issued. According to Art. 51 para 1 Federal Office for Immigration and Asylum Procedures Act, an individual who is arrested for the purpose of detention or an alternative to detention shall be provided a legal advisor free of charge.[76] Individuals who receive a detention decision shall be informed that they will be provided a legal advisor free of charge (Art. 52 para 1 Federal Office for Immigration and Asylum Procedures Act). The same article specifies that the legal advisor (or organization providing legal advice) shall immediately be informed thereof. Besides legal advice, the ***information provided to detainees*** is a relevant issue, which was also addressed by the Human Rights Advisory Board (2012a, 40, 58-59). In Austria, information is available in the form of information sheets in different languages.[77] In addition, information is given by police officials in the detention facilities.[78]

Language support is given through interpretation services. If it is necessary for the legal procedure or for special requests or complaints, interpreters are contacted. If the persons in detention and the officer are unable to communicate with each other, other detainees are usually asked to provide assistance. According to Albert Grasel, in case of important requests or complaints, the support organization present in detention may take over and organize interpretation (see also Art. 7 para 5a and Art. 10 para 4 Detention Order). The Human Rights Advisory Board voiced the need for better language support, noting, for example, that interpreters should be involved when recording anamnestic data (2012a, 47, 57, and 67).

Inside the detention facilities, ***medical care*** is available. There is a resident police doctor at each facility, providing medical assistance and issuing medical opinions 24 hours a day. There are also fee-based physicians who visit the facilities and examine detainees (see also Art. 10 Detention Order). In the context of hunger strikes, a blood laboratory test within three days of the

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[74] Albert Grasel, Federal Ministry of the Interior, 8 April 2014.

[75] Federal Ministry of the Interior, *Response to a Parliamentary Request,* BMI-LR2220/0303-II/1/2014, 10 April 2014, p. 3, available at www.parlament.gv.at/PAKT/VHG/XXV/AB/AB_00633/imfname_346107.pdf (accessed on 27 May 2014).

[76] Christoph Steinwendtner from the Diakonie Refugee Service noted in this regard that, according to his experience, it is unclear whether this provision is implemented in practice (Christoph Steinwendtner, Diakonie Refugee Service, 9 May 2014).

[77] Information sheets are available in more than 25 languages, a copy in German and English can be found on http://www.bmi.gv.at/cms/BMI_Fremdenpolizei/schubhaft/start.aspx (accessed on 3 June 2014).

[78] Albert Grasel, Federal Ministry of the Interior, 8 April 2014.

strike's beginning was recommended (Human Rights Advisory Board 2012a, 13-14). In this regard, hunger strike care guidelines are provided, including procedures for the medical examination of detainees in hunger strike (Human Rights Advisory Board 2012a, 35).

With regards to arrangements for persons belonging to ***vulnerable groups,*** Albert Grasel explains that these individuals are usually not detained due to a lack of fitness for detention. Minors shall preferably be provided alternatives to detention or be detained in open wards, where possible.[79] This issue was also raised by the Human Rights Advisory Board (Human Rights Advisory Board 2012a, 16-17), which highlighted that persons suffering from mental illness are another group with particular need of protection within detention (Human Rights Advisory Board 2012b, 48).

Persons considered to be ***security risks*** to others and/or themselves are accommodated in a solitary cell.[80] If there is still the danger that he or she might hurt himself or herself, there are special tiled cells, with fixed windows. The last resort would be a padded cell, Albert Grasel explains. Detainees can only be kept in padded cells for a short period of time. In these cases, psychiatrists may be contacted and detainees might be transferred to psychiatric hospitals (see also Art. 5 para 1[81] and Art. 5b para 2 Detention Order[82]). Another special arrangement regarding this group of vulnerable individuals is that persons who represent a security risk shall not be held in Vordernberg.[83]

4.3 Detention center Vordernberg

The facility in Vordernberg, Styria, is regarded as the "model" detention facility in Austria because of its modern and humane character. Thus, in addition to the above-mentioned conditions in detention, other particularities of the center in Vordernberg and related debates in Austria are discussed here.

The detention center Vordernberg was built following recommendations of the Committee for the Prevention of Torture and the Austrian Human Rights Advisory Board in order to implement specialized immigration detention facilities.[84] The facility, opened in January 2014, was

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79 Ibid.

80 Ibid.

81 According to this provision, individuals must be detained in solitary confinement if they may become aggressive, if the court requests so in cases of open criminal procedures, and if the individual concerned has a contagious disease or if he or she is a burden for other detainees.

82 According to this provision, the following measures may be applied in particular cases: more frequent examinations (of the individual, belongings and cell), lighting at night, withdrawal of items, and confinement in a particularly secured cell.

83 Albert Grasel, Federal Ministry of the Interior, 8 April 2014.

84 Federal Ministry of the Interior, *Response to a Parliamentary Request,* BMI-LR2220/0303-II/1/2014, 10 April 2014, p. 2-3, available at www.parlament.gv.at/PAKT/VHG/XXV/AB/AB_00633/imfname_346107.pdf (accessed on 27 May 2014).

built for up to 250 persons.[85] The first detainees took up residence in March 2014.[86]

The implementation of the detention center in Vordernberg has led to debates in Austria. An issue that, among others, stirred discussion was the outsourcing of certain tasks to a private security company, G4S.[87] The media reported the controversial debate in the context of the task allocation between the authority and the employees of the private security company[88], particularly surrounding the question of the use of force. Some stakeholders, including the Austrian Ombudsman Board[89], expressed their concerns[90] and warned against the "privatization of detention".[91] The Federal Ministry of the Interior explained that the task allocation was established by contract, and that the private security guards are in charge of non-public tasks, such as: care management, health care, parts of facility management, administrative work, operation of the kiosk and the library and laundry services. All tasks related to the use of force remain in the area of competence[92] and responsibility[93] of the

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[85] Federal Ministry of the Interior, *Die 10 wichtigsten Fragen & Antworten zum Thema Schubhaftzentrum*, p. 4, available at www.bmi.gv.at/cms/cs03documentsbmi/748.pdf (accessed on 27 May 2014).

[86] Wiener Zeitung, *Leere in Vordernberg*, 22 April 2014, p. 7.

[87] Der Standard, *Im Wartezimmer Vater Staats*, 11 January 2014, p. A4.

[88] Falter, *"Hart am Zynismus",* 8 January 2014, p. 44, 45.

[89] Austrian Ombudsman Board, *Prüfungsverfahren zum Schubhaftzentrum Vordernberg eingeleitet,* News, 12 November 2013, available at volksanwaltschaft.gv.at/aktuelles/news/pruefungsverfahren-zum-schubhaftzentrum-vordernberg-eingeleitet (accessed on 16 May 2014); Austrian Ombudsman Board, *Prüfungsverfahren zum Schubhaftzentrum Vordernberg,* News, 9 January 2014, available at volksanwaltschaft.gv.at/aktuelles/news/pruefungsverfahren-zum-schubhaftzentrum-vordernberg (accessed on 16 May 2014); Austrian Ombudsman Board, *Zwischenergebnis zur Vordernberg-Prüfung,* News, 12 March 2014, available at volksanwaltschaft.gv.at/aktuelles/news/zwischenergebnis-zur-vordernberg-pruefung (accessed on 16 May 2014).

[90] Korun, Alev, *Parliamentary Request, 16/J,* 31 October 2013, available at www.parlament.gv.at/PAKT/VHG/XXV/J/J_00016/fname_329991.pdf (accessed on 19 May 2014), p. 1; Austrian Ombudsman Board, *Prüfungsverfahren zum Schubhaftzentrum Vordernberg eingeleitet,* News, 12 November 2013, available at volksanwaltschaft.gv.at/aktuelles/news/pruefungsverfahren-zum-schubhaftzentrum-vordernberg-eingeleitet (accessed on 16 May 2014).

[91] Kleine Zeitung, *Schubhaft-Security verunsichert*, 19 October 2013, p. 18; SOS Mitmensch, *Der Versuchsballon*, 6 March 2014, available at www.sosmitmensch.at/site/momagazin/alleausgaben/34/article/759.html (accessed on 19 May 2014).

[92] Federal Ministry of the Interior, *Innenministerium macht Vertrag mit Gemeinde Vordernberg öffentlich,* Press Release, 8 November 2013, available at www.bmi.gv.at/cms/BMI/_news/BMI.aspx?id=75535A4442796755432B673D&page=45&view=1 (accessed on 16 May 2014).

[93] Federal Ministry of the Interior, *Anhaltezentrum Vordernberg eröffnet,* Press Release, 15 January 2014, available at www.bmi.gv.at/cms/BMI/_news/BMI.aspx?id=576D6E6649496B6E4E36673D&page=29&view=1 (accessed on 16 May 2014).

police. Furthermore, detainees' access to legal protection in case of misconduct by the private security guards was mentioned as a matter of concern.[94] The subordination of the private guards to the authorities was made clear,[95] as well as the ability to immediately dismiss a G4S staff member in a case of misconduct.[96] The debate positively highlighted the friendly atmosphere in the buildings and the architecture's resemblance to a hostel rather than a prison.[97]

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[94] Austrian Ombudsman Board, *Zwischenergebnis zur Vordernberg-Prüfung*, Press Release, 12 March 2014, available at volksanwaltschaft.gv.at/aktuelles/news/zwischenergebnis-zur-vordernberg-pruefung (accessed on 16 May 2014); Österreich, *„Privat-Wächter teils unzulässig"*, 13 March 2014, p. 20; Falter, *Vordernberg: Haft ohne Haftung?*, 19 March 2014, p. 51; Der Standard, *Securitys auf Rundgang in der neuen Schubhaft*, 2 April 2014, p. 7.

[95] Federal Ministry of the Interior, *Response to a Parliamentary Request, BMI-LR2220/0027-II/1/b/*, 30 December 2013, p. 3, available at www.parlament.gv.at/PAKT/VHG/XXV/AB/AB_00011/fname_335157.pdf (accessed on 19 May 2014), p. 3.

[96] Albert Grasel, Federal Ministry of the Interior, 8 April 2014.

[97] Der Standard, *Im Wartezimmer Vater Staats*, 11 January 2014, p. A4.

5. AVAILABILITY AND PRACTICAL ORGANIZATION OF ALTERNATIVES TO DETENTION

5.1 Types of alternatives to detention available

As mentioned in section 2.2, Austrian legislation outlines three different ***forms of alternatives to detention***: 1) residing at a particular address determined by the Federal Office for Immigration and Asylum; 2) reporting periodically to the police office; and 3) lodging a financial deposit at the Federal Office for Immigration and Asylum. Other forms of alternatives, such as electronic monitoring (e.g. tagging), guarantor requirements, release to a care worker or under a care plan, community management programme, etc., are not provided in Austria.[98] The ***legal basis*** of the alternatives available is Art. 77 Aliens Police Act. Alternatives to detention are not exclusively assigned to ***specific groups of third-country nationals***. Thus, in principle all individuals who can be detained, asylum-seekers in ordinary and Dublin procedures, as well as non-asylum-seekers, can also be provided the different alternatives to detention.

5.2 Practical organization of alternatives to detention

The Federal Office for Immigration and Asylum is the ***authority that is responsible*** for implementation of the alternatives to detention in cooperation with the Police Administrations of the Federal Provinces (see e.g Art. 77 para 6 Aliens Police Act). In the case of the facility in Zinnergasse (see 5.2.1), the police co-operates with an NGO as regards the provision of accommodation.

As regards the ***implementation of the legal basis***, generally the requirements to "reside at a particular address" and/or "report periodically" are applied by the authority as alternatives to detention. These two alternatives can also be applied in combination. Lodging a financial deposit is a newer option that has been applied in fewer cases.[99]

As mentioned under 2.2, individuals provided alternatives to detention may be detained as a ***consequence of not following the conditions*** of the alternative to detention.

5.3 The facility in Zinnergasse

Among alternatives to detention, the facility in Zinnergasse, which is located in the outskirts of Vienna, is of particular significance. It is established for the particular purpose of an alternative to detention and regarded as an ***example of good practice***.[100] Looking at the organizational aspects relating to the

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[98] Gernot Resinger, Federal Ministry of the Interior, 2 June 2014; Gerald Dreveny, Federal Ministry of the Interior, 8 April 2014.

[99] Gernot Resinger, Federal Ministry of the Interior, 2 June 2014.

[100] Lukas Rehberger, Verein menschen.leben, 3 April 2014.

implementation of alternatives to detention the Zinnergasse facility can provide an insight into the ideal practical organization of alternatives to detention in Austria. Specifics related to the detention of families at Zinnergasse 29a are not mentioned here (see sections 4.1 and 4.2). In 2013, 154 persons in total were accommodated there, of which 75 were accommodated together with their families.[101]

Certain organizational tasks related to the provision of care and the day-to-day function of the facility are the responsibility of an NGO (Verein menschen.leben).[102] The tasks for which the NGO is responsible include: the admission to the facility, daily care, food distribution, crisis intervention, interpretation, and conflict prevention. Individuals who are provided an alternative to detention in Zinnergasse have to report regularly to the police, who are present at the facility. The police are thus responsible for checking compliance with the requirements set by the Federal Office for Immigration and Asylum.[103]

In a typical case, the Federal Office for Immigration and Asylum, as the authority issuing the decision on an alternative to detention, foresees that an individual shall take accommodation at Zinnergasse and regularly report to the police stationed there. The allocation of an individual to Zinnergasse can be performed from all parts of Austria. In most cases, the Federal Office for Immigration and Asylum organises tickets to Vienna for the individuals concerned. In other cases, e.g. if families are concerned, travel is facilitated directly by the Federal Office for Immigration and Asylum. A direct communication between the Federal Office for Immigration and Asylum and the NGO regarding the allocation of individuals is not envisaged.[104]

According to the Federal Ministry of the Interior, the accommodation in Zinnergasse can be regarded as good practice for the organization of alternatives to detention. The presence of police at the facility, it is explained, ensures that individuals accommodated there are provided protection from outside interference, such as from smugglers. Furthermore, the cooperation between NGO and police is perceived as a good model.[105] As Lukas Rehberger from the NGO menschen.leben notes, the cooperation between the NGO and the Federal Office for Immigration and Asylum in individual cases of persons provided alternatives to detention can also be highlighted as a form of good practice.[106]

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[101] Data provided by Lukas Rehberger, Verein menschen.leben, via E-mail on 28 April 2014.
[102] Lukas Rehberger, Verein menschen.leben, 3 April 2014.
[103] Ibid; see also Website of menschen.leben, available at www.menschen-leben.at/einrichtungen/gelinderes-mittel-wien-zinnergasse (accessed on 13 June 2014).
[104] Lukas Rehberger, Verein menschen.leben, 3 April 2014.
[105] Albert Grasel and Gerald Dreveny, Federal Ministry of the Interior, 8 April 2014; Lukas Rehberger, Verein menschen.leben, 3 April 2014.
[106] Lukas Rehberger, Verein menschen.leben, 3 April 2014.

6. IMPACT OF DETENTION AND ALTERNATIVES TO DETENTION

This section primarily aims to explore the impact of detention and alternatives to detention on the effectiveness of Austrian return and international protection procedures. Three specific aspects of effectiveness are considered: 1) reaching prompt and fair decisions on the immigration status of the individuals in question; 2) respect for fundamental rights (including the physical and mental well-being of individuals); and 3) reducing the risk of absconding.

6.1 Effectiveness in reaching prompt and fair decisions

According to Federal Ministry of the Interior and NGO representatives interviewed for this study, detention contributes to quicker processing of asylum claims, as the authority has access to the person concerned; [107] applicants may not follow the summons of the authority when not in detention.[108]

As regards fair decisions, stakeholders argue that, from the perspective of the detainee, there are serious restrictions to properly participating in the international protection procedure, as, for example, obtaining and submitting evidence is only possible with the help of others not in detention.[109]

There is no data available that could verify or add to these expert assessments. The impact of alternatives to detention on reaching prompt and fair decisions is similarly unknown.

6.2 Respect for fundamental rights

The impact of detention and alternatives to detention on the fundamental rights of individuals may be measured by different means: the number of complaints of violations of fundamental rights lodged with non-judicial and judicial bodies, or studies that address the individual well-being of migrants who are or were detained.

As regards the ***number of court cases*** in which there have been challenges to the decision to detain based on violations of fundamental rights and the respective decisions, the availability of data in Austria is limited. The case law or respective statistics of the Independent Administrative Senates, which decided on complaints against detention until 2013, is not comprehensively available and can thus not be consulted for this purpose.

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[107] Christoph Steinwendtner, Diakonie Refugee Service, 9 May 2014; Gernot Resinger, Federal Ministry of the Interior, 2 June 2014.
[108] Gernot Resinger, Federal Ministry of the Interior, 2 June 2014.
[109] Christoph Steinwendtner, Diakonie Refugee Service, 9 May 2014.

When it comes to ***complaints of violations of fundamental rights lodged with non-judicial bodies***, some data are available. In Austria, individuals who are affected by Austrian administration can complain to the Austrian Ombudsman Board. Between 2009 and 2013, 33 individuals who were kept in detention chose to make such a case. In four of these cases, the Board found misconduct of the administration.[110] As this data is limited to cases in which individuals have contacted the Board, it cannot provide an adequate picture of the impact of detention on the fundamental rights of detainees in Austria.

With regards to the ***well-being of detainees***, Austrian studies have touched upon health issues related to detention.

The 2010 Austrian report in the framework of the study "Becoming Vulnerable in Detention"[111] investigated the effect of detention on the health of detainees. "Detainees typically reported a heavy degradation in physical health during their time in detention", the report states. While for some, this was related to the condition in the facilities, others named the psychological effects of being in detention (Jesuit Refugee Service 2010, 119). Furthermore, the report states, "detainees reported an even stronger deterioration in their mental health. In addition to the above-mentioned reasons, detainees also said that the uncertainty about their future was affecting their mental health" (Jesuit Refugee Service 2010, 120). Furthermore and in connection with these insights, the study suggests that detention itself is the leading cause of vulnerability in detention centres. The data collected in the course of the study, the report states, "clearly show that detention exacts a very heavy toll on detainees" (Jesuit Refugee Service 2010, 123). Similar conclusions were drawn by the UNHCR in a report of 2008.[112] The UNHCR suggests that "the insecure and seemingly desperate situation" of detainees has serious implications for their mental health. Some detainees, UNHCR states, "believe that hunger strike is the only option to be released". The report continues that the introduction of "open stations" has had a very positive impact in this regard (UNHCR Office in Austria 2008, 21).

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[110] Data provided by Martina Cerny from the Austrian Ombudsman Board, via E-mail on 14 May 2014; see also reports of 2009-13, available at volksanwaltschaft.gv.at/berichte/berichte-bund (accessed on 13 June 2014).

[111] Jesuit Refugee Service, *Becoming Vulnerable in Detention*, available at detention-in-europe.org/images/stories/DEVAS/jrs-europe_becoming%20vulnerable%20in%20detention_june%202010_public_updated%20on%2012july10.pdf (accessed on 25 April 2014).

[112] UNHRC Office in Austria, *„Monitoring" der Schubhaftsituation von Asylsuchenden*, available at www.unhcr.at/fileadmin/rechtsinfos/fluechtlingsrecht/4_oesterreich/4_2_asyl_positionen/4_2_3_positionen_2006-2010/FR_AUS_Positionen_2010-Haft_022009.pdf (accessed on 29 April 2014).

These studies relate to the situation in Austria in 2010 and 2008, respectively. The effect of detention on the wellbeing of detainees today, with regards, for example, to detention in the new facility in Vordernberg, is not known.

7. KEY RESULTS

In Austria, detention and alternatives to detention for removal purposes are governed by a complex legal framework, including international, European, EU, and national legislation and case law. In national legislation, the Aliens Police Act provides interlinked grounds for detention (Art. 76) and alternatives to detention (Art. 77).

The provisions on detention for removal purposes address non-asylum-seekers and (former) asylum-seekers, including those subject to Dublin procedures, and provide different scopes of discretion for the authority. The total numbers on detention decisions show that there has been a steady decrease since 2010. Also, the average time of detention has steadily decreased, from 24 days in 2009 to a little less than 15 days in 2013.

Austrian legislation stipulates that alternatives to detention shall be applied if grounds for detention are present, but the purpose of the measure, e.g. securing removal, can also be achieved by alternative measures. In Austria, alternatives to detention are provided in three forms: residing at a particular address determined by the authority, reporting periodically to the police office, and lodging a financial deposit at the authority. In practice, mainly the first two alternatives are applied. The total numbers of decisions providing alternatives to detention steadily and overall significantly decreased from 2009 to 2013.

In Austrian detention legislation, minors are addressed as a specific group. This legislation *inter alia* prevents those below 14 years from being detained. Other vulnerable groups are not directly addressed by the legislation of the Aliens Police Act on grounds for detention or time limits; they are, however, covered by medical checks that shall determine fitness for detention, according to the Detention Order.

Individual assessment procedures are to be conducted in all cases and for all categories of third-country nationals in Austria, based on relevant legislation and case law. The task of conducting assessment procedures lies with the Federal Office for Immigration and Asylum, a subordinate authority of the Federal Ministry of the Interior. A judicial authority, the Federal Administrative Court, is involved if the decision of the authority is challenged.

Criteria and benchmarks that shall guide the individual assessment procedure are constituted by the Constitutional Court and the Administrative High Court, which stipulates: "It must […] be comprehensible from the reasoning of the detention decision that, after establishing a relation between the extent of the necessity to secure (removal) and the opposing private interests, detention is necessary and proportionate". A series of aspects that mostly relate to the degree of integration, previous behaviour, and the general situation of the individual concerned, can indicate whether he or she will abscond and that detention is necessary and proportionate.

Among these aspects are family, social or professional bonds, as well as illness, and a fixed residence. However, they need to be set in relation to the specific ground for detention or the stage of proceedings. For example, the level of integration requested in the case of asylum-seekers who have entered Austria only very recently, and thus had not had time to establish bonds in Austria, is lower than what applies to those who have resided in Austria for longer periods.

A number of challenges associated with assessment procedures were identified by interviewees. Amongst others, these include: difficulty to arrange appropriate language interpretation, emotional challenges for individual case workers to implement coercive measures, and the extensive legislation and case law on detention that can also pose a challenge in itself. Furthermore, stakeholders have observed challenges regarding the actual implementation of individual assessments in all cases, particularly in the context of the Dublin procedure.

In Austria, there are currently 15 facilities with the capacity to detain approximately 1,000 migrants for the purpose of removal. The standard detention locations are the Police Detention Centres (*Polizeianhaltezentren*) run by the police administrations of the Federal Provinces in various Austrian cities, whereas special facilities, e.g. for families, also exist. The Detention Order sets legal standards applying to all facilities. These stipulate that access to outdoor space must be granted for at least one hour a day, that detainees can be visited under certain conditions, and that medical care shall be provided, among other things.

In 2014, Austria introduced a facility of a new type, the detention centre Vordernberg, which provides higher standards than those of Police Detention Centres. This facility is especially important in the context of current developments of detention facilities in Austria, as it is intended to provide particularly humane accommodation. Furthermore, tasks related to the day-to-day running of the facility are outsourced to a private company. This has led to debates in Austria about the compatibility of this set-up with fundamental rights.

With regards to alternatives to detention, currently the accommodation facility in Vienna, Zinnergasse, which is run by an NGO in cooperation with the police, is particularly relevant. This arrangement is regarded as a good practice, as individuals accommodated there can be protected by police from outside interference, such as from smugglers.

Anecdotal evidence on the impact of detention on the effectiveness in reaching prompt and fair decisions suggests that it contributes to quicker processing of asylum claims. If the applicant is detained, the authority has easier access to him or her, interviewees explain. As regards fair decisions, it is argued that there are serious restrictions for detained asylum-seekers to properly participate in the procedure, as obtaining and submitting evidence is only possible with the help of others who are not detained.

The number of court cases and complaints with non-judicial bodies cannot provide sound evidence on the impact of detention on the respect for the fundamental rights of individuals. However, studies from 2008 and 2010 have touched upon health issues related to detention. These studies suggested that detention in Austria brings negative consequences and creates vulnerabilities, based on information collected in interviews with detainees. For some detainees, the conditions in the facilities were crucial, but others named the psychological effects of being in detention as the reason for bad health. While it was reported that detention is very tough on detainees at the time, the effect of detention on the well-being of detainees today, such as in the new facility in Vordernberg, is not yet known.

ANNEXES

A.1 Statistics

Table 1: Number of decisions to detain an individual by grounds for detention (2009–2013)[113]

	2009	2010	2011	2012	2013
Total number of detention decisions	5,996	6,153	5,155	4,566	4,171
General detention ground for non-asylum-seekers	4,998	5,126	4,266	3,739	3,430
(Former) applicants for international protection	998	1,027	889	827	740
(Former) applicants for international protection, excluding Dublin procedures	678	599	513	497	376
Enforceable return decision (or equivalent) within asylum procedure (Asylum Act)	355	247	N/A	198	133
Initiation of a return procedure	212	194	N/A	151	142
Enforceable return decision (or equivalent) prior to asylum procedure (Aliens Police Act)	111	84	N/A	121	78
Dublin procedures	320	428	376	330	364
Subsequent application (including Dublin decisions)	N/A	75	N/A	22	27
Asylum-seeker has left the initial reception centre without permission	N/A	N/A	N/A	7	0
Asylum-seeker has violated the territorial restrictions	N/A	40	N/A	11	14
Asylum-seeker has violated the duty to cooperate	N/A	8	N/A	1	1
Asylum-seeker has violated the duty to report	N/A	3	N/A	1	1

Source: Federal Ministry of the Interior: Aliens Statistics 2009 and 2010; Response to parliamentary requests from 30 May 2012 and 5 February 2014[114]; Aliens Police and Visa Statistics 2012 and 2013.

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[113] These numbers do not refer to persons in detention but to first instance decisions imposing detention. Please also note that these numbers refer to grounds particularly addressing specific categories. It cannot be ruled out that persons were detained based on other provisions that are not specifically envisaged for their category.

[114] These are available at www.parlament.gv.at/PAKT/VHG/XXIV/AB/AB_11121/fnameorig_254529.html and

Table 2: Average time in detention (2009–2013)

	2009	2010	2011	2012	2013
Days in detention	24	20.82	17.44	16.63	14.62

Source: Federal Ministry of the Interior.[115]

Table 3: Number of decisions on alternatives to detention (2010–2013)

	2009	2010	2011	2012	2013
Total number of third-country nationals provided alternatives to detention	1,877	1,404	1,012	925	771

Source: Federal Ministry of the Interior: Aliens Statistics 2009, 2010; Reply to parliamentary requests from 30 May 2012 and 5 February 2014; Aliens Police and Visa Statistics 2012 and 2013.

Table 4: Minors detained (2009 and 2010)

	2009	2010
14 to 16 years	9	18
16 to 18 years	137	154
Total	146	172

Source: Human Rights Advisory Board, 2011.

Table 5: Minors provided alternatives to detention (2009 and 2010)

	2009	2010
14 to 16 years	357	365
16 to 18 years	78	84
Total	435	449

Source: Human Rights Advisory Board, 2011.

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www.parlament.gv.at/PAKT/VHG/XXV/AB/AB_00185/fnameorig_339332.html (accessed on 1 August 2014).

[115] Data provided by Gerhard Reischer, Federal Ministry of the Interior, via E-mail on 1 April 2014.

Table 6: Number of complaints with non-judicial bodies regarding violations of fundamental rights of detainees (2009–2013)

	2009	2010	2011	2012	2013
Number of complaints of violations of fundamental rights lodged with the Austrian Ombudsman Board	8	12	7	4	2
Number of complaints of violations of fundamental rights upheld by the Austrian Ombudsman Board	0	0	2	1	1

Source: Austrian Ombudsman Board.[116]

[116] Data provided by Martina Cerny, Austrian Ombudsman Board, via E-mail on 14 May 2014.

A.2 List of translations and abbreviations

English term	English abb.	German term	German abb.
Administrative High Court	-	Verwaltungsgerichtshof	VwGH
Aliens Police Act	APA	Fremdenpolizeigesetz	FPG
Aliens Police Act Implementing Decree	-	Fremdenpolizeigesetz-Durchführungsverordnung	FPG-DV
Alternative to detention	-	Gelinderes Mittel	-
Asylum Act	AA	Asylgesetz	AsylG
Austrian Ombudsman Board	-	Volksanwaltschaft	VA
Charter of Fundamental Rights of the European Union	FRC	Charta der Grundrechte der Europäischen Union	GRC
Constitutional Act on the Protection of Personal Freedom	-	Bundesverfassungsgesetz über den Schutz der persönlichen Freiheit	-
Constitutional Court	-	Verfassungsgerichtshof	VfGH
Convention on the Rights of the Child	CRC	Konvention über die Rechte des Kindes	KRK
Convention relating to the Status of Refugees	CRSR	Abkommen über die Rechtsstellung der Flüchtlinge	GFK
Council of Europe	CoE	Europarat	-
Detention Center Vordernberg	-	Anhaltezentrum Vordernberg	-
Detention Order	-	Anhalteordnung	AnhO
Diakonie Refugee Service	-	Diakonie Flüchtlingsdienst	-
Dublin Regulation	-	Dublin-Verordnung	-
European Commission	EC	Europäische Kommission	EK
European Commission Directorate General Home Affairs	EC DG Home Affairs	Europäische Kommission Generaldirektion Inneres	EK GD Inneres
European Committee for the	CPT	Europäisches Komitee zur Verhütung von Folter	-

Prevention of Torture			
European Convention on Human Rights	ECHR	Europäische Menschenrechtskonvention	EMRK
European Council	-	Europäischer Rat	-
European Court of Human Rights	ECtHR	Europäischer Gerichtshof für Menschenrechte	EGMR
European Migration Network	EMN	Europäisches Migrationsnetzwerk	EMN
European Parliament	EP	Europäisches Parlament	EP
European Union	EU	Europäische Union	EU
Federal Administrative Court	-	Bundesverwaltungsgericht	BVwG
Federal Constitutional Act	-	Bundesverfassungsgesetz	B-VG
Federal Law Gazette	FLG	Bundesgesetzblatt	BGBl.
Federal Ministry of the Interior	-	Bundesministerium für Inneres	BMI
Federal Office for Immigration and Asylum	-	Bundesamt für Fremdenwesen und Asyl	BFA
Federal Office for Immigration and Asylum Procedure Act	-	Bundesamt für Fremdenwesen und Asyl Verfahrensgesetz	BFA-VG
Human Rights Advisory Board	-	Menschenrechtsbeirat	MRB
Independent Administrative Senates	-	Unabhängige Verwaltungssenate	UVS
Initial Reception Centre	-	Erstaufnahmestelle	EAST
International Organization for Migration	IOM	Internationale Organisation für Migration	IOM
National Contact Point	NCP	Nationaler Kontaktpunkt	NKP
Non-Governmental Organization	NGO	Nichtregierungsorganisation	NRO

Official Journal of the European Union	OJ	Amtsblatt der Europäischen Union	ABl. EU
Police Administrations of the Federal Provinces	-	Landespolizeidirektionen	LPD
Police Detention Centre	-	Polizeianhaltezentrum	PAZ
Protocol Relating to the Status of Refugees	-	Protokoll über die Rechtsstellung der Flüchtlinge	-
Province	-	Bundesland	-
(recast) Reception Conditions Directive	-	Richtlinie über Aufnahmebedingungen (Neufassung)	-
Return Directive	-	Rückführungsrichtlinie	-
Settlement and Residence Act	SRA	Niederlassungs- und Aufenthaltsgesetz	NAG
United Nations	UN	Vereinte Nationen	VN
United Nations High Commissioner for Refugees	UNHCR	Hoher Flüchtlingskommissar der Vereinten Nationen	-

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2011 *Bericht der Volksanwaltschaft an den Nationalrat und an den Bundesrat 2010*, available at volksanwaltschaft.gv.at/downloads/4oj3c/Parlamentsbericht%202010.pdf (accessed on 8 July 2014).

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Federal Ministry of the Interior

2014 *Die 10 wichtigsten Fragen & Antworten zum Thema Schubhaftzentrum*, available at www.bmi.gv.at/cms/cs03documentsbmi/748.pdf (accessed on 27 May 2014).

Human Rights Advisory Board

2011 *Bericht des Menschenrechtsbeirates zu Kindern und Jugendlichen im fremdenrechtlichen Verfahren*, available at www.bmi.gv.at/cms/BMI_MRB/mrb/berichte/files/2011_Bericht_Minderjaehrige_Endversion15_09_2011.pdf (accessed on 27 May 2014).

2012a *Bericht des Menschenrechtsbeirates über seine Tätigkeit im Jahr 2011*, available at

www.bmi.gv.at/cms/BMI_MRB/mrb/jahresberichte/files/Jahresbericht_2011_Kern_26_03_2012.pdf (accessed on 27 May 2014).

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