

Policy Report: Detention and Alternatives to Detention in Austria

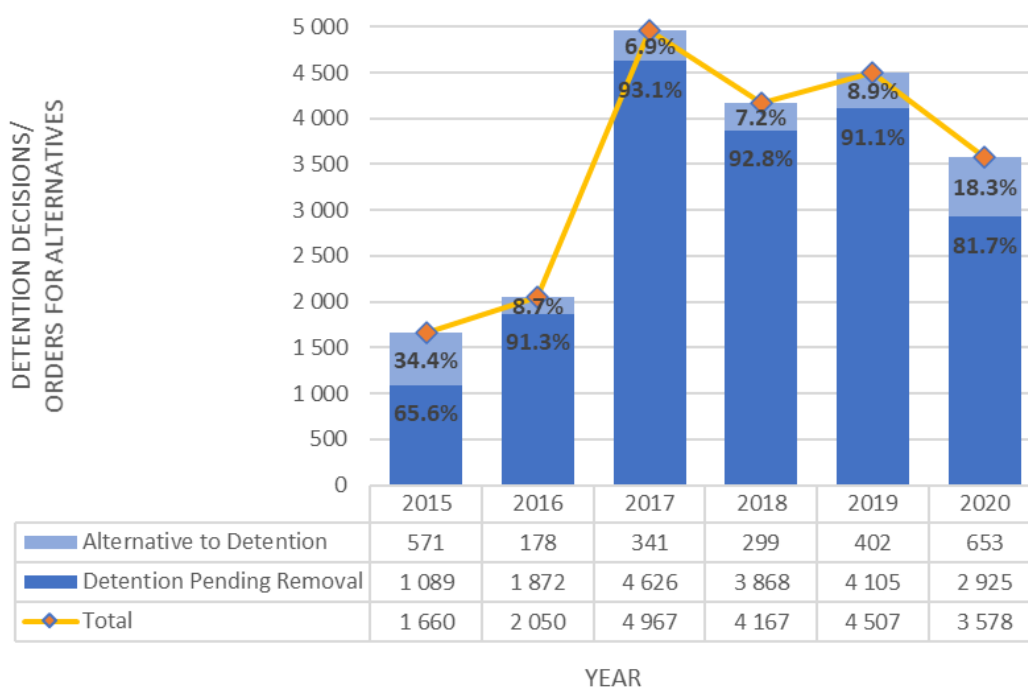
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SUMMARY

Detention pending removal as well as the alternatives to detention specified under Austrian law play a key role in Austria's migration policy. Especially regarding detention pending removal, there have been far-reaching changes in the law since 2015. The factors determining whether detention is ordered include the risk of absconding and proportionality of the measure. In Austria, detention pending removal can only be imposed on individuals where the purpose of detention (i.e. securing the procedure for issuing a measure to terminate a residence permit) cannot be achieved by means of an alternative (ultima-ratio-principle). In the law, three possible – not exhaustively listed – alternatives are mentioned, specifically (1) the obligation to take up residence at designated quarters, (2) the obligation to report to authorities and (3) the obligation to provide a surety.

The number of decisions on detention pending removal and orders for alternative measures peaked sharply from 2016 to 2017 (by a factor of 2.4, from 2 050 to 4 967 decisions/orders) – also as a result of the migration events in 2015. The number of decisions/orders later levelled off, reaching 3 578 in 2020. Viewing the number of detention cases relative to alternative cases, detention is seen to have been imposed far more frequently during the period examined. Detention was imposed in about 92 per cent of cases in 2016 to 2019. Only in 2020 (81.7 %) did the share decrease. According to the Austrian authorities, this development is due to the fact that the option of alternative measures is increasingly used due to the legal and individual case-related circumstances. Data indicating the relative frequency of specific alternatives to detention are not recorded.

Number of detention decisions and orders for alternatives to detention issued for third-country nationals in Austria (2015–2020)*



Notes:

*Data on detention 2015–2016 refer to persons in detention pending removal, not to detention decisions issued. Alternatives to detention: third-country nationals are not differentiated from EU citizens in 2015–2016, so that the figures include both categories.

Source:

See report.

This study identifies several advantages associated with applying alternatives to detention, but also specific challenges. Obvious advantages for the affected include the fact that personal freedom of movement is maintained. The State on the other hand benefits from the lower costs compared to detention pending removal. Challenges for the affected arise when individuals are compelled to take up residence in remote places as access to advice and support from non-governmental organizations (NGOs) may be difficult due to local conditions. The obligation to report to authorities can represent a frequent challenge particularly in rural areas, if police stations are not staffed at all times.

Depending on the actual possibilities, legal assistance can be granted free of charge to foreigners in procedures pending with the Federal Office for Immigration and Asylum. Legal counsellors are provided mandatorily and free of charge at the moment a decision is taken (also when detention pending removal/alternative measures are ordered). Among other things, legal counsellors support foreigners in filing a complaint and in appeal proceedings before the Federal Administrative Court.

State-provided social and psychological support for individuals in pending procedures, in detention or in an alternative to detention depends on the person's residence status and whether access to material reception conditions is part of this status. There are also differences regarding health care. Foreigners in detention are generally entitled to medical services, in the case of foreigners in an alternative to detention, emergency medical care is guaranteed in any case.

Minors under the age of 14 are legally exempt from detention pending removal in Austria. No detention pending removal may be ordered against them. However, adults who are soon to be removed and who are in detention pending removal may be allowed to be accompanied by minors entrusted to their care, provided that this is not against the best interests of the child. Special rules have been set out for other vulnerable groups such as minors over the age of 14 and ill persons. Based on the principle of proportionality and against the background of the European Convention on Human Rights (ECHR), any vulnerabilities identified in the course of the investigation of the relevant facts must be taken into account. However, the Office of the United Nations High Commissioner for Human Rights (OHCHR) has in the past criticized the fact that the identification of vulnerable persons in asylum and return procedures, including detention pending removal, tend to be random and unsystematic.