The enforcement of deprivation of liberty in Austria

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Introduction

In the sixties and seventies there were times when Austria took the lead in European statistics with regard to the number of prison inmates per 100,000 heads of population. The Penal Code (StGB) of 1974 brought about a change because:

– as a result, fines became the rule and replaced short prison terms;
– it gave a new design to the enforcement of measures involving deprivation of liberty. (Instead of differentiating according to the value of the penal sanction, i.e. between prison sentences and incarceration at different levels of severity, the distinction now is according to different types of enforcement. In particular, the enforcement of preventive measures for mentally disordered offenders, for drug-addicted offenders and for dangerous re-offenders was introduced);
– it promoted the early return to liberty on probation, accompanied by monitoring measures (this was facilitated by introducing probation services for adults).

It was on account of these changes – referred to as the Major Penal Law Reform – that incarceration definitely became the last resort, and that the demands of society concerning the reasons to impose a prison term were clearly raised.

Up to the year 2000 the reform had the following impact that an increasingly smaller number of persons were sentenced to prison terms and measures involving deprivation of liberty, and that alternative sanctions gained ground. However, since, on average, the actually arrested persons had to expect longer periods of detention, the overall prison population did not decrease as markedly as the total number of offenders involved.

As a consequence of several additional penal reforms, the number of prison inmates declined to an average low of less than 6,000 persons in 1989 and eventually stabilized at a level around 7,000 between 1992 and the end of
Austria ranked in the middle of the list of European countries, with a rate of 76 prisoners per 100,000 heads of population (one third of which are pre-trial detainees). Since then, the trend has rather been contrary to the international trend. Since 2002 the number of prisoners has gone up by 30% to about 9,000 persons and the prison ration became 108. This increase is due to the rise in foreign prisoners. Their share amounts to about 45% at present. As the prison-staff numbers only went up slightly, the ratio between prison inmates and prison staff deteriorated from about 1:2 to about 1:2.5.

On 1 January 2008, a reform of several penal-law provisions went into force that aim at reducing the prison population by:

- expanding the requirements and improving the preparation for a discharge on probation;
- refraining temporarily from executing prison terms of third-country nationals in order to enforce a residence ban; and
- requiring community services instead of imprisonment in default of payment of fine.

During the first months of 2008, the prison occupancy rate has decreased slightly. The number of prisoners amounts to 8,400 (status: 31 April 2008). In view of this development, it is a remarkable achievement of the penitentiary system that it was possible to cope with the increase in the number of prison inmates and the changes in the prison population without major incidents.

The penitentiary system, where the concept of behavioral rehabilitation during execution of a sentence was more of a program than a reality, already before the over-occupancy of prisons, has changed clearly, though, in the direction of providing custody while sentences are served. Expenses for staff resources for the security of prisons grew, partly on account of higher occupancy rates, partly on account of higher standards and increased activities. The staff resources for care services went down, though, and – at the same time – had to be distributed evenly among a population that has grown by 30%.

The specific effects were and are that:

- prisoners are accommodated in institutions not from a perspective of meaningful plans for serving prison sentences, but primarily on the basis of considerations concerning detention-facility management;
- the number of unoccupied and/or partly occupied inmates has gone up;
– the provision of care during leisure time and for groups was clearly reduced;
– the detention facilities are overcrowded (in general, one speaks of full utilization of prison capacities when the occupancy rate is 90%; at present, the capacity of prisons is utilized at a rate of about 106%);
– social workers, psychologists and therapists provide fewer services to individual prison inmates; that preparations for discharge, in particular, have become less efficient;
– altogether the overcrowding of the detention facilities leads to a further restriction of the residual autonomy of prisoners, which is quite moderate anyhow during the execution of penal sanctions.

The major structural problems in the prison system are too much focus on security and insufficient opportunities to work. These problems existed already before the prisons became over-occupied. By international comparison, the prison system can be described as excessively security-minded, when considering the number of detention facilities with relaxed execution standards, but also the arrangements for open premises inside prison walls. About 10% of all prison inmates are accommodated in prison wards that have no security at all towards the outside world, or security measures that can be easily overcome.

The ‘locker’-system prevails: as a rule, persons kept in pre-trial detention and prisoners serving standard prison terms are locked up in their cells outside of working hours or the daily one hour of outdoor exercises. Actual practice is therefore in conflict with the legislation governing the penitentiary system, which stipulates that prisoners should be accommodated in single cells at night, and spend the day in groups or shared living quarters, circumstances permitting.

The average age of the prison population is 27 years. Two thirds of the inmates are between 21 and 40 years of age. Only 10% of all inmates are older than 50 years.
28% of the prison population serves measures involving deprivation of liberty of less than one year and 49% serve sentences between one and five years. 23% of the prison inmates have been sentenced to long prison terms (5 years and longer).
Property offences are the biggest group of crimes by far.
For the majority of the prison inmates the prison term is a period in their lives that is relatively short.
The recidivism rate is about 50%.
The following trends can be observed for the prison population:
- a rise in the number of drug-addicted inmates, especially also prisoners who are undergoing some drug-substitution treatment;
- a rise in the number of prisoners with previous in-patient psychiatric treatment;
- a rise in the number of prisoners in a poor general-health condition;
- a rise in the number of prisoners without any vocational qualifications and without any completed schooling (functional illiterates);
- a rise in the number of prison inmates who appear to be inconspicuous externally but may constitute special security risks (foreigners, organized criminals);
- a rise in the number of prison inmates who need a special medical, psychological, socio-therapeutic and/or socio-pedagogical treatment;
- a growing number of mentally disturbed offenders remanded in large-sized penitentiary facilities;
- a decline in the number of prisoner groups who have a stabilizing effect on the overall prison dynamics, from the perspective of enforcing custodial sentences (these are prison inmates who committed minor offences, serve short sentences and have strong sub-cultural roots); and
- a rise in the groups of prisoners who are difficult to understand and categorize, often purely on account of their language, but often also due to their (sub)-cultural specificities, their diseases and their socialization deficits;
- the prison system therefore faces the challenge that it is becoming ever more difficult to integrate an increasingly heterogeneous overall population in a specific prison facility into a community of prison inmates living in a fairly positive prison climate.

By tradition, it has been a strong point of the prison system to find pragmatics solutions for specific cases that will at least avoid any escalation (management by muddling through), and to develop this skill as a technical concept, as well as to implement it with determination and sustainability. On the one hand, this guarantees relatively minor difficulties in adjusting to major changes; on the other hand, though, there is the risk that groups of persons, who are seemingly inconspicuous, will not receive adequate care in situations where they would need special attention.

In spite of this development, it was possible to implement several reforms and improvements in recent years. A few of these reforms and improvements are:
– a central documentation and coordination center for sexual offenders has
been established, which results in quantitative and qualitative improve-
ments in the treatment of sexual offenders;
– the facilities for a therapeutic after-treatment were expanded;
– the number of prison inmates (from 400 to 600 persons) went up who are
on day-release, can work and receive training outside the penitentiaries
without surveillance;
– an IT-assisted procedure for planning the enforcement of punitive san-
tions of the individual prisoner has been elaborated;
– EU projects for improving the preparation for release were set up: Telfi
(tele-learning for prison inmates) and Schritt für Schritt (step by step);
– first steps were taken to implement visits without surveillance in special
rooms that also facilitate sexual contacts; and
– pilot testing of electronic surveillance took place: prison inmates serving
short prison terms and/or in the final stages before release live and work
outside the prison under electronic surveillance and receive assistance
from social workers.

Authorities and institutions of the prison system

Apart from the prison director, who is the first-instance authority for the en-
forcement of punitive sanctions, the following authorities and/or institutions
play a role in the prison system.

Enforcement Agency

This agency has the responsibility to perform the operations required for the
enforcement of custodial sanctions and special measures, including the con-
struction, management, refurbishing of prisons, staff management, control-
ling of operations. It also has the responsibility to enter into agreements with
the individual prisons on their objectives and performance and to monitor
the entire penitentiary system.

Federal Ministry of Justice

The primary responsibility of this ministry is to take strategic decisions and
to set strategic targets. Furthermore the ministry has various specific compe-
tences such as approval of forced treatments and entering into agreements
with post-treatment institutions. Personnel management is a general respon-
sibility of the ministry.
Enforcement Commission

In every federal province an Enforcement Commission has been set up which is responsible for collecting material on the full compliance with requirements, especially concerning the treatment of prison inmates. A commission consists of seven persons appointed by the Federal Ministry of Justice, partly on the basis of proposals (by the federal provinces or by the federal ministries). The commissions must visit prisons without advance notice and report and make proposals to the Federal Ministry of Justice.

Enforcement Panels

Enforcement Panels have been set up with the higher regional courts (tribunals, as defined in art. 6 ECHR) to handle complaints concerning legal issues. Appeals against their decisions can be filed with the Administrative Court.

Enforcement Courts

The first-instance court for penal matters is the Enforcement Court for measures involving deprivation of liberty or for specific measures. An Enforcement Court has in particular the competences to:
– forfeit money and objects;
– suspend measures involving deprivation of liberty;
– uphold security measures;
– decide on detention in solitary confinement for more than four weeks;
– subsequent postpone the enforcement of a punitive sanction; and
– release on probation.

Types of custodial measures

There are three different types of custodial measures: pre-trial detention, penal confinement and enforcement of special measures.

<table>
<thead>
<tr>
<th>Overall distribution</th>
<th>Number</th>
<th>Percent</th>
</tr>
</thead>
<tbody>
<tr>
<td>Pre-trial detention</td>
<td>1,876</td>
<td>22,6</td>
</tr>
<tr>
<td>Penal confinement</td>
<td>5,677</td>
<td>68,3</td>
</tr>
<tr>
<td>Special measures</td>
<td>759</td>
<td>9,1</td>
</tr>
<tr>
<td>Total (Status 30-04-08)</td>
<td>8,312</td>
<td>100,0</td>
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</tbody>
</table>

There were 457 female inmates and 164 juvenile (age: 14-18).
The enforcement of pre-trial detention, penal confinement and preventive custodial measures differ dogmatically considerably with regard to the objectives pursued and their justification. In practice, relatively little attention is paid to these differences. There are no specific laws on the enforcement of the different types of punishments; most institutions are used for several of these functions, and prison wardens are not specifically trained in professional terms for the operation of facilities where therapeutic measures are implemented.

The situation of the prison system for young persons is similar. Although the law on juvenile courts contains several specific provisions on the enforcement of punitive sanctions imposed on young offenders, in many respects, though, the prison system for young person does not differ from that for adults to the extent that would be desirable from a pedagogical perspective.

Pre-trial detention

The Code of Criminal Procedure governs pre-trial detention, which is meant to pre-empt the reasons for arrest (danger of absconding, danger of collusion, danger of re-offending and/or danger of perpetration). On account of the statutory presumption of innocence, only those restrictions may be imposed on pre-trial detainees that serve to achieve the purpose of the detention or to maintain security and order. Life in pre-trial detention is to be as close as possible to the living conditions outside prison. In preliminary investigations, the public prosecutor decides on the exchanges with the outside world; during the trial it is the court. The prison director is responsible for all other arrangements concerning detention. Pre-trial detainees are not obliged to work, and the law grants them a better status, compared to prison inmates, in several respects (for example: the right to wear one’s own clothes, to receive a minimum of two thirty-minute visits per week). Apart from the foregoing, the Enforcement of Punitive Sanctions Act (EPS Act – the provisions on the enforcement of prison sentences of less than 18 months) applies basically also to the execution of pre-trial detention.

Penal confinement

The EPS Act governs the enforcement of penal confinement. The law dates back to the year 1969 and despite the various reforms is regarded as being outdated. At present there is no concrete perspective of a thorough revision.
Section 20 EPS Act defines the following purposes of the penitentiary system:

– the enforcement of custodial measures is meant to help the convicted person to adopt an attitude towards life that is honest and adapted to the needs of life in a community, as well as to prevent him from following his destructive inclinations; and

– the execution of a sentence is also intended to demonstrate the worthlessness of the behavior underlying the conviction.

**Special measures**

When the Penal Code went into force on 1 January 1975, custodial sanctions were supplemented by preventive measures involving deprivation of liberty. According to legal dogma, a punitive sanction is a reaction to an earlier culpable behavior on the part of the convicted person (when determining the punitive sanction, a specific amount of guilt is redeemed by the corresponding punishment). Preventive measures involving deprivation of liberty, though, are directed against the dangerous character of the offender. The inconveniences suffered on account of the measure involving deprivation of liberty is the inevitable side effect, but not the purpose of the measure. Measures involving deprivation of liberty are of undefined duration. As a rule, release from the special regime requires that the person no longer has the dangerous character which required the execution of the special measure. One of these measures, namely committal to a facility for dangerous re-offenders has become largely obsolete because an amendment of the pertinent law contains a stricter definition of the committal requirements (non-violent property crimes were excluded).

Committal to a institution for offenders requiring a cure from an addiction (sect. 22 Penal Code) is limited to two years. A discharge is also possible whenever a continuation of the treatment appears to be futile.

Committal to a institution for mentally disturbed offenders with criminal responsibility (sect. 21(2) Penal Code) can be for life when the review on the dangerousness, required once a year as a minimum, does not justify a discharge. These measures take preference over the imposed penal confinement. As a result, they are enforced before the penal confinement. The time spent in an institution for mentally disturbed offenders is taken into account when the prison term is served. Upon discharge from the special measure, the remaining prison term must be served, unless there is a release on probation.

A person will be committed to a institution for mentally disturbed offenders whenever the convicted person is classified as being incapable of criminal responsibility but of persisting danger (sect. 21(1) Penal Code). The pre-trial
detention prior to committal is usually enforced in the form of a preliminary detention (sect. 429(4) Code of Criminal Procedure).
A separate institution is available for the special measures defined in section 21(1). For reasons of capacity, such persons may also be detained in public psychiatric hospitals.
Special institutions are available to enforce special measures imposed on committed persons with criminal responsibility, but special sections in other institutions are also used. In the latter case, everyday life will differ only very little from the regime applied to persons in penal confinement. The EPS Act contains several specific provisions for enforcing the different types of preventive custodial measures; otherwise, the general provisions of the EPS Act will apply.
Committal to a facility for dangerous recidivists is in praxis of no relevance. Most of dangerous recidivists are assessed as mentally disturbed.

Types of prisons

The prison system comprises 29 prisons (Justizanstalten). They can accommodate between 848 (maximum occupancy around 1,200) and 63 prisoners.
The majority of the prisons accommodate about 300 to 400 prisoners and can be divided into the following types:
– seven prisons for adult men – there prison terms of a maximum of one years are served (pre-trial detention not included);
– one prison for young men;
– one prison for women;
– three facilities to enforce special measures;
– sixteen prisons for enforcing pre-trial detention and short prison terms (sentences of less than one year).

There is no formal distinction of security levels. Three prisons are used to enforce longer prison terms, and they also have special high-security sections.
There are no special prison sections for terrorists or persons suspected of terrorism.
The general philosophy for the enforcement of punitive sanctions is not to further heighten the artificial character of the prison environment by strictly separating the different groups of inmates – except if there are statutory requirements to this effect.
In addition, there are twelve prison annexes (primarily agricultural undertakings) which are operated by the prisons. A major part of the prison annexes are operated as facilities with relaxed enforcement standards (only lit-
tle external security, if any at all; only limited surveillance). In some prisons there are sections where relaxed enforcement standards are applied. However, there is not one particular prison that is specifically designated for this type of enforcement. In recent years, a number of houses for prison inmates on day-release were set up in the vicinity of several prisons. There, prison inmates on day-release, who work at companies outside the prison, are accommodated without any surveillance.

**Categorization**

In the case of shorter prison terms, the ordinance on penitentiary districts determines in which specific institution the prison term or the preventive measure must be enforced. For prison terms of a period exceeding 18 months, the Enforcement Agency will take a decision in the specific case. For this purpose, the court files and the enforcement documents will be reviewed, a social anamnesis, a psychological and sometimes also psychiatric expert opinions are commissioned, and the inmate concerned will be asked about his considerations. Prisoners can file a complaint against the decision determining the place where they are to serve their sentence. They can also apply for a change of penitentiary. At a later stage, changes in the specific location are possible on the basis of a decision by the Enforcement Agency. The categorization is also the binding basis for the enforcement plans which the prison director must prepare.

These are written detailed schedules for the intended design in connection with the enforcement of the sanctions. They are implemented by an interdisciplinary team comprising prison wardens, social workers and psychologists, and they are supported by a software module (JVV = integrated administration of the prison system) which supports the administration of the prison inmates and documents the course of the enforcement. These schedules contain, in particular, the date when the preparation for the release begins, the start, type and scope of the scheduled relaxations and benefits, the type of enforcement, the assignment of work, the attendance of basic and further training measures, the special care and treatment measures.

**Types of accommodation**

The EPS Act stipulates that, during the day, the prison inmates shall be accommodated together with other prisoners as long as possible, whereas they are to be accommodated individually, to the extent possible, during nighttime. Whenever the type of enforcement so permits, the prisoners shall be ac-
commodated in shared living quarters, or in cells and rooms that shall not be locked during the day.
These statutory requirements are only implemented to a very limited extent. About 75% of the prison inmates are not accommodated in single cells. Apart from special execution forms, staying in shared living quarters and/or open cells during the day is the exception rather than the rule. For example, in one of the three prisons in which longer prison terms are served, the cell doors are kept open for two hours every day in almost all sections. However, this is not the case in the comparable other prisons.
As a matter of principle, the doors to the cells of pre-trial detainees are locked, although there is the requirement to adapt pre-trial detention to the living conditions in liberty.

Daily and weekly schedule

06.00 h  Morning call, getting up and personal hygiene.
06.30 h  Breakfast.
07.30 h  Working time for prison inmates with jobs. Working time may be interrupted by visits, transfers to court or for appraisals, transfers for an appointment with the lawyer, with various physicians or care services, by outdoor exercise, by transfers on medical grounds or for business with authorities and/or other courts. Inmates without a job spend the time in their cell.
11.30 h  Lunch: like breakfast it is distributed to the cells or served in the cafeterias of the workshops where inmates are working.
12.30 h  Working time: return to the workplaces; inmates without jobs spend the time in their cell.
14.30 h  Outdoor exercise for the working inmates (inmates without jobs usually get their outdoor exercise a little earlier).
15.30 h  All inmates are locked up. End of the wardens’ day shift. Start of the night shift. Except for individual care and leisure-time activities for small groups of inmates (as group counseling or other discussion groups, handicraft work or sports) in the early evening hours (usually until 19.00 hours at the latest), there are no more transfers. Otherwise, the cells are only opened in case of special incidents.

This is the typical daily routine for pre-trial detainees and prisoners from Monday to Thursday. On Fridays the night shift starts already at 13.00 hours. At the same time, all cells are locked. Sundays and holidays are handled in the night-shift mode throughout the day. As a matter of principle, the in-
mates in most prisons remain locked up all the time, with exception of one hour of outdoor exercise.
This is only a rough overview; there may be deviations in the various prisons. When there are special types of enforcements, such as the enforcement of the punitive sanctions for young offenders, or the enforcement of special measures, when applying relaxed standards, in connection with first-time offenders or preparation for release, the periods when inmates are locked up are shortened and they have more possibilities to receive care services as a group, and they may be allowed to move around in the prison sections (shared living quarters) to a limited extent and at specific times.

The obligations of prisoners

The prisoners have the following main obligations:
- to comply with all instructions of the prison staff;
- to maintain decency and not to jeopardize safety and order;
- to participate in their own re-socialization;
- to remain in/at the rooms/places to which they are assigned;
- to refrain from self-destruction and tattooing;
- to refrain from conducting business and engaging in gambling;
- to report diseases and serious dangers to the physical safety of persons and/or the prison property on a large scale;
- to apply personal hygiene; and
- an obligation to work.

The rights of prisoners

Objects and cell inventory

Prisoners have the following standard rights:
- to keep tokens of remembrance, photographs of close friends, the wedding band, a wrist watch or pocket watch;
- to wear their own underwear;
- to listen to the radio;
- to obtain their own books, newspapers and journals;
- to obtain food items;
- to paint, to draw, to engage in creative activities during leisure time;
- to decorate the cell.
Additional benefits may be granted upon his request, whenever a prisoner indicates that he is participating in reaching the objective of his term. The prison director may grant prisoners the following benefits:
- to wear their own upper garments;
- to use their own sports gear and clothes;
- to use their own television or radio set, as well as other technical devices (computer, play station, et cetera);
- to play music on their own instruments;
- to have longer periods of light in the cell (beyond 22.00 hours).
The prison director may grant other benefits only if the Federal Ministry of Justice has generally granted them in advance. This hardly ever happens in practice.

Visits

In every institution, the possibility of visits is offered on a minimum of four days per week, usually in the morning. However, every institution must offer at least one period for visits in the evening or on the weekend.

Prisoners are entitled to one visit of thirty minutes per week. The period must be extended to one hour, as a minimum once every six weeks. If visitors need longer trips to arrive at the prison, the visiting time must be lengthened accordingly.

The most common form of the standard visits is the glass screen visit. The room is partitioned by a glass screen that extends up to the ceiling. It has small bores for communication. This arrangement is meant to avoid that objects are handed over, which is inadmissible. However, it also creates a strained atmosphere for conversations. Depending on the type of prison, visits at tables are offered on a markedly lower level. Here, the visitors and the inmates can sit at a table and speak to each other without being disturbed. Here, too, no objects may be handed over. In special cases, one may even refrain from surveillance. Visits by public bodies, legal counsels and care providers may also take place outside the defined visiting hours, during office hours and without any time limit and surveillance.

A novelty adopted in 1993 is the possibility to have visits to arrange important personal matters or preserve family and other private relations in appropriate rooms without any surveillance. This provision also facilitates intimate contacts in the course of family visits. For quite some time, this provision was not put into practice. It was only in 2005 after the Administrative Court had issued a decision to this effect that three prisons began to arrange visits without surveillance in special rooms.
**Telephone calls**

Telephone calls to relatives, custodians, social institutions, public authorities, legal counsels and counseling services must be facilitated for reasons merits ing special consideration. If there are no reservations, there need not be any surveillance.

**Letters and parcels**

Prison inmates have the right to correspondence. The responsible public prosecutor will supervise the correspondence of pre-trial detainees. The prison director or one of the prison staff members, appointed by him, will screen the content of letters exchanged by prison inmates, by merely taking random samples or selecting letters for special reasons (particularly security reasons). The volume of correspondence may only be limited if it were no longer possible to screen the correspondence. Letters must be written in legible form; they must be intelligible and written in German. Using a foreign language is only admissible if a prison inmate is not sufficiently fluent in the German language. The content of correspondence addressed to public authorities, legal counsels and care providers must not be checked (sect. 90 b EPS Act).

Every three months prison inmates may receive a parcel with food items (no alcohol) with a maximum weight of three kg. If there is reason to suspect that such parcels are abused to smuggle drugs, et cetera, individual or also all inmates of a penitentiary may be excluded from receiving parcels. The option to receive parcels is then replaced by the option to be transferred the corresponding amount of money (Euro 93,-). In practice, penitentiaries often resort to this provision.

**Food items, clothing, personal hygiene**

The kitchens of the penitentiaries supply the meals. Prison inmates work in these kitchens. In addition to the standard meals, special diets for medical or religious reasons are also possible. In facilities (for drug addicts) the inmates are given money in order to purchase their own food, as required for the groups sharing the individual living quarters.

Once per week, prison inmates have the possibility to purchase items (food items, beverages, coffee, cigarettes) in the prison shop from their prison money of their own money.

Prison clothing must be worn in the prisons, except for the underwear. However, one of the benefits may be to wear own clothing. In practice, inmates
will usually wear the prison work clothes when performing their work and own jogging suits or similarly comfortable clothing at other times. The prisons have their own laundries where clothing is washed. The institution provides plain personal-hygiene items. Prison inmates can obtain additional items at their weekly shopping.

In practice, there are no restrictions concerning hair styles. Prison inmates, having the necessary training, will give the other prison inmates a hair cut. Prison inmates are required to observe personal hygiene. The cells are equipped with wash basins. They must have the opportunity to take a shower at least twice a week.

Work in prison

When they are capable of working, prison inmates and persons committed for special measures are obliged to work. When remanded persons are assigned to jobs, psychiatric, psychological, psycho-therapeutic and pedagogical aspects must be taken into account. Prison inmates and remanded persons have to perform the work to which they are assigned. They must not be assigned to jobs that may cause a danger to their life or the danger of severe health damage. Young prisoners must only be assigned to work that is also of educational benefit. In particular, they shall be assigned to work that is performed outdoors. Young prisoners may only be assigned to jobs outside of penitentiaries when, in performing their work, they are not exposed to the public in a manner that may affect their sense of honor. Daily working hours of young prisoners must be interrupted by a minimum of two longer recreational breaks. They must also be trained to the extent possible and appropriate.

Pre-trial detainees, who are capable of working, may perform work under the conditions applicable to prisoners, if they are willing to do so and it is possible to work in the penitentiary, and if no negative impact on the investigating procedure in court needs to be feared. In this connection, a statement by the responsible public prosecutor and/or judge must be obtained.

The practical problem is not to recruit prisoners for various jobs, but to find work for the prison inmates. To some extent, the institutions cannot provide sufficient work opportunities. Depending on the type and options available to the individual prisons, the number of prison inmates without work is between 10 and 40%. Among the pre-trial detainees the number of persons without work is in excess of 50%, although most pre-trial detainees are interested in working, in order to shorten the time that needs to be spent in cells, as well as to reduce the dullness of everyday life.
The day-time working hours vary. In most cases, the average is not more than five to six hours per day. Depending on the daily schedule of the individual prison, working time will be interrupted by such activities as visits, appointments with physicians, social services, psychological services, buying additional provisions, food and other items, et cetera.

The jobs performed serve mainly to run the prison system, such as working in the kitchen, gardening, fruit and vegetable gardening, in-house bricklaying and plastering, painting, fitting and other activities. Approximately 75% of the days worked by prison inmates are activities for the respective prison, another 11% are jobs for other prisons or public authorities, 4% of the work is for the prison staff, and only 10% is for private companies (in 1980 the share was still about 30%). As the vocational qualifications of prison inmates are very low, companies usually offer unskilled work. It ranges from enveloping and sorting to simple manufacturing routines. Several well-equipped work places and undertakings can no longer be provided with qualified workers in many cases, on account of the changes in the prison population.

If one were to put into a nutshell, one could say that the work provided by the prisoners is a combination of self-sufficiency, as in monasteries, and mercantilist activities.

There is no age limit for the inmates’ obligation to work. It is only for medical reasons that prisoners and persons committed to special measures will be released from their obligation to work. There is no entitlement to a paid holiday. The bodies administering the prison system cover all medical expenses and possible pensions from work accidents directly.

Relaxed enforcement standards offer qualified inmates the possibility to leave the penitentiary on day release without any surveillance, for the purpose of working at an undertaking that does not belong to the prison. At present, some 600 inmates are on day-release every day.

The 1993 Amendment of the EPS Act stipulated the following new rules for work compensation: the wages of metal workers without any specific qualifications are used as a basis. Depending on the category of the work performed by the inmates, the compensation amounts to between 60 and 90% of the gross wages of metal workers. A contribution to enforcement costs (75% of the gross wages) and the employee contribution to unemployment insurance (approximately 15% after deducting the contribution to enforcement costs) are deducted from this amount. As a result, the work compensation, which is classified in five levels (light-duty auxiliary work, heavy-duty auxiliary work, manual craft-like jobs, skilled jobs, foreman-type work), amounts
to a minimum of EUR 0.89, net, to a maximum of EUR 1.33, net. The gross amounts range from EUR 4.18 to EUR 6.27 for one hour of work.

Persons without jobs (which is not their fault) are credited EUR 0.22 per working hour (30 hours per week).

For special work provided, inmates will receive extraordinary work compensation (per year, as a maximum, twice the amount of the net monthly work compensation on the highest level).

Within that range, inmates may also accept bonus payments from private employers. In the case of a special personal input, pecuniary remunerations are also possible (maximum: twice the net monthly work compensation on the highest level).

After having served the prison term, prison inmates are eligible to receive unemployment compensation, provided that they worked for a minimum of nine months or – for no fault on their part – were not assigned to any jobs. This was one of the important achievements obtained by the amendment. Before the reform, only 21% of persons discharged after serving prison terms of more than one year were entitled to unemployment benefits (on the basis of employment relations before their arrest). After the reform, the figure rose to 84%.

In one of the prisons for adults there is also a vocational school. In the prison for women and in several other prison facilities there is a short training course for skilled workers, as well as the possibility to learn other occupations. Altogether, for prison inmates are offered apprenticeship training and vocational training for a total of 26 apprenticeship occupations in 94 undertakings.

Talented adult inmates interested in further training can take part in distance-learning courses, if they can prove the necessary basic education and indicate that they are seriously interested in these studies. If so required, the respective courses are also offered in the penitentiaries. Prison inmates avail themselves of these options on an ongoing basis, attending courses and distance-learning courses. The courses deal with technical, craft-related and commercial subjects, amongst others, as well as languages.

In one EU project (tele-learning), the inmates of six prisons had the possibility to obtain qualifications in various areas by way of e-learning, which was supported by tutors. This project is partly continued.

Whenever appropriate, prison inmates may also complete their school or craft education on a day-release basis. About 100 inmates per year complete such further-training measures successfully.
Money

Inmates are not allowed to have cash money. An account is opened for every prisoner. There are three types of money: one half each of the work compensation is credited as prison money and as savings. The prisoners can dispose freely of their prison money. They use it mainly to buy additional provisions and food items (coffee, tobacco). The savings are only paid out upon discharge. However, it is also at prisoners’ disposal for purposes serving their advancement after release, for support payments and as compensation for damage. The private money of the prison inmates that they bring with them on arrival or that is transferred to them is called own money. Own money may only be used for specific purchases (e.g. approved items such as a television set or a personal computer). Prison inmates may spend amounts up to EUR 27.90 per week on additional provisions and food items; pre-trial detainees may spend up to EUR 111.

Religious practices

Inmates are entitled to take part in the religious services and religious events of their religious denomination. They may not only see and speak to the spiritual-care providers of their own religious denomination but also contact those of other denominations, if there is a serious interest. Full-time and part-time Catholic and Protestant prison clerics work at prisons throughout the country and are paid for their services by the judicial administrative authorities. The work of the Catholic and Protestant clerics takes place on a positive ecumenical basis (close cooperation). Spiritual-care providers of other religious denominations are given the opportunity to contact prison inmates and to organize religious events. At present, there are considerations as to whether Imams should also be paid by way of a contractual relationship (the Islam is one of the religious denominations recognized by the State), in order to have better influence on the selection and activities of the Imams. In practice, spiritual-care providers cover a wide range of needs, from purely religious requirements to addressing all feasible needs of the inmates. The boundaries to social work are fluent; many spiritual-care providers also work in the post-treatment field (in Vienna the spiritual-care services run more than 40 transitional living facilities for persons released from prison). The work focuses on confidential one-to-one conversations. The inmate directs his request to this effect to the spiritual-care provider or staff members, or other prisoners alert the cleric to an urgent case. Whenever possible, the
newly committed prisoners are visited. Religious services take place regularly. As a rule, they are attended by more persons than in free society. Frequently, group discussions, bible groups, music groups, et cetera are offered. The special food requirements of the different religious denominations must be taken into consideration.

Other prisoners’ rights

Apart from the rights already dealt with, prisoners have also rights:
– to be addressed in the polite form as Mister/Mrs. by the prison staff (however, this is not applied consistently);
– to obtain own books, newspapers and journals (in addition to using the prison library);
– to have one hour of outdoor exercise per day;
– to obtain food and other items once per week;
– to care for and educate their children (applicable to female prisoners in mother/child sections up the age of three);
– to get married (in prison);
– to be granted supervised leave from the prison in order to take care of important personal business.

Medical services

The judicial administrative authorities must guarantee the provision of medical services. Prison inmates are not covered by social health insurance. Depending on its size, every institution has one or several general physicians who work for different time periods. Specialized physicians are called in whenever needed. The bigger prisons have sick wards for diseased inmates. In smaller prisons, single cells are used to accommodate sick inmates. Increasingly, qualified nurses are employed for the sick wards. There is a separate sanatorium for inmates suffering from tuberculosis. Whenever prisoners need some hospital treatment, they will be transferred to so-called closed wards (consisting of one large patient room and an ante-room for the wardens) situated in several of the hospitals open to the public. In addition, public hospitals are required to admit prisoners and to facilitate their surveillance. The hospital operators will not charge the treatment fees they demand from the health-insurance institutes, but the fees paid by private patients. This fact accounts for considerable medical expenses.

Medical experiments are inadmissible, even though a prisoner may consent to their performance.
If a prisoner refuses an urgently required medical examination or a curative treatment, although he is duly informed about it, then it is carried out by applying force, unless this entails a danger to the prisoner’s life or is unreasonable. Interventions that would have to be classified as serious physical injuries, on account of their external signs, are unreasonable. Unless there is an imminent danger, the consent of the Federal Ministry of Justice must be obtained before the physician carries out a forced examination/treatment. In practice, such forced measures are only of significance in connection with psychiatric medications.

If an inmate consistently refuses the intake of food, he must be observed by a physician. As soon as it becomes necessary, he shall receive forced feeding upon the instruction and under the surveillance of a doctor. This statutory requirement was applied well up to the seventies. In the meantime, hunger strikes have lost in importance (most likely as a result of better detention conditions), on the one hand, and because they are managed in such a way, on the other hand, that they can be ended without forced feeding. Prison physicians are agreed on the issue that, if required, forced feeding should not be carried out in the penitentiary but in a public hospital.

As a rule, suicides are not a reaction to certain detention conditions but to the arrest as such, or they have reasons that are not immediately caused by the prison regime. The suicide rate has not developed positively; on the contrary, the development has been negative during the past 40 years. While it is only subject to minor fluctuations in the general population (about 20 per 100,000 heads of population) and is actually slightly on the decrease, it went up for prisoners by a factor of 3 (from about 60 to about 180 in relation to 100,000 heads of population).

The altogether positive development of Austria’s penitentiary system is also corroborated by the fact that the number of self-inflicted injuries has gone down drastically in comparison to 30 years ago.

In addition to comprehensive training measures for the prison staff, the listener model was implemented in one of the institutions. Voluntary or specially trained prison inmates act as crisis assistants immediately after the committal of a new prisoner. The model was taken over by several other prisons. For several months now, all new prison entrants receive an EDP-assisted screening, which was developed in the course of a sophisticated study, in order to identify persons exposed to risks and to take preventive measures.
When persons are committed to serve their prison term, they undergo a mandatory admission check-up. On that occasion, every inmate receives a so-called take care kit which comprises information material on how to prevent transmission, several hygiene items, as well as three condoms and lubricants. Condoms and disinfectants (bleach, Beta-Isodona) are also available for anonymous take-out during incarceration. In the course of the admission check-up, an indication for a substitution treatment is prepared. It is offered either in the form of methadone or other retarding morphines. At present, 770 prisoners receive a substitution therapy.

In addition to maintaining health and/or offering a substitution treatment, abstinence-oriented therapies in the form of individual or group therapies are also offered. Apart from one specialized facility, there are special sections in some of the prisons. The therapies are carried out on a voluntary basis. Moreover, out-patient therapeutic measures can be offered by external drug services.

One specialty of the Drug Act is to substitute an unconditional prison term (maximum: three years) by a referral to an external drug service (therapy instead of punishment, sect. 39 Drugs Act).

All therapeutic measures in prisons are checked by urine testing at regular intervals.

Compliance with drug abstinence is checked and controlled by regular urine tests. In case of recidivism, the prison inmate is transferred immediately to another prison section.

So-called drug-free zones have been set up in several prisons, where a maximum of 600 persons can be accommodated. No special therapies are offered at these zones. There is only a controlled agreement between the prison and the individual inmate to actively abstain from any drug consumption. Compliance with this the agreement is supported and promoted within the prison section by a motivating group process. Inmates without any previous drug experience, who do not wish to serve their prison term together with drug addicts, are also accommodated in the drug-free zones.

These zones enjoy a large measure of self-government, which means that the prisoners organize their everyday life in the prison sections and the workshops largely autonomously, and they receive benefits from the prison management beyond the normal level such as, for example, more visits, relaxed enforcement standards, sports activities, leisure-time activities, et cetera.
Treatnet of sexual offenders

In 2002 an appraisal center for sexual offenders (BEST) was set up in order to ensure a sound diagnoses, prognosis and treatment of sexual offenders. After a pre-screening by special staff, the most conspicuous and dangerous offenders are systematically transferred to the appraisal center, where they are examined thoroughly.

Additional tasks of BEST are a scientific evaluation and processing of the data, as well as training prison staff on how to manage sexual offenders. The stated objective, to be reached within a few years, is to ensure a standardized, harmonized approach, which is adapted to the relevant current international state of knowledge, to the management of sexual offenders serving prison terms. The competences of BEST are currently expanded to include pathological violent criminals.

On account of the new rules on conditional release, effective since 1 January 2008, BEST is also responsible for giving an opinion on relaxed enforcement standards, as well as for the conditional release of sexual offenders.

Disciplinary sanctions and security measures

Disciplinary sanctions

There is a list of acts of non-compliance such as absconding, unauthorized communication with persons, self-injuries and (obtaining) tattooing, inducement to, or approval of acts punishable by court or disciplinary measures, or severe violations of decency, unauthorized possession of objects, violation of reporting duties, refusal to work, in spite of being admonished, failure to report back for detention after an interruption or leave, improper behavior, non-compliance with the general obligations of prisoners, damage to prison property, and committing certain minor offences.

In case of an act of non-compliance, the prisoner must be admonished in any event by the prison staff on duty. In minor cases, admonition may be the only sanction.

The act of non-compliance must be reported to the prison director, if the staff member on duty is of the opinion that a sanction should be imposed. If this is required for the sake of maintaining security and order in the prison, the staff member on duty shall assign the prisoner to a single cell (isolation). The time spent in isolation may be included in the calculation of the administrative sanction.
The administrative sanction shall be imposed by the prison director as the first-instance enforcement authority in the form of a punitive decision (decree). However, if the act of non-compliance is directed against the prison director, the Enforcement Panel shall take the decision.

One or several of the following measures – it is possible to impose several cumulative measures – are available:
- reprimand: a formally expressed strong rebuke;
- restriction or withdrawal of benefits;
- restriction or withdrawal of the rights to dispose of one’s prison money, to receive television programs, to send and receive correspondence, to receive visitors or telephone calls (only admissible if this right is abused);
- fines: maximum EUR 45, to be deducted from the prison money in installments; and
- house arrest: may only be imposed if aggravating circumstances prevail.

Of course, it is not in the discretion of the prison director to conduct proceedings for an act of non-compliance and to impose administrative sanctions; rather, he is obliged to do this (principle of legality) and has to do this ex officio (principle of official action).
Proceedings concerning acts of non-compliance are formal administrative proceedings. The prisoners must be heard as a party in all proceedings.
A complaint may be lodged against the punitive decision. The Enforcement Panel rules on complaints. It is possible to appeal the ruling to the Administrative Court.
Every year a total of about 2,000 proceedings of this type are adjudicated with final and enforceable effect. In 650 cases house arrest is the punitive sanction. Punitive sanctions are imposed upon a total number of approximately 1,600 inmates.

Security measures

Any type of forced measure may only be imposed and maintained as last resort and in accordance with the principle of proportionality, as well as with respect for human dignity (art. 3 ECHR). Whenever there is a choice of several measures, the appropriate and most lenient one, which will contribute to achieving the objective, shall be imposed.
Special security measures must be ordered in the following situations: danger of absconding, danger of violent acts against persons or objects, danger of suicide or danger of self-injury, considerable danger to security and order in the penitentiary.
Only the following measures may be imposed – largely on a cumulative ba-
sis, though – in order to counter these dangers:
- more frequent searches (inmates, objects, cell);
- confinement to an isolation cell;
- lighting the cell during night time;
- withdrawal of furniture and articles of daily use, as well as garments;
- accommodation in a particularly secured cell; and
- immobilization of someone’s arms or legs by applying a straight jacket or
  confinement to a cot. Tying a person down in bed with belts has been re-
voked.

The staff member on duty decides as to whether special security measures
must be applied. However, they must immediately be reported to the prison
director, who must decide on the need to uphold the measure immediately.
It is only the Enforcement Court that can decide on a confinement in excess
of one week to a particularly secured cell. The same holds true for the immo-
bilization of arms or legs or confinement to a ring-fenced bed for a period of
more than 48 hours.

In contrast to special security measures, direct physical force may not only be
applied against prisoners but also against other persons (e.g. visitors), in case
of self-defense, to overcome resistance to public authority or a physical attack
on an official, to prevent an escape or to recapture a prisoner, against a per-
son forcing his entry into the prison or attempting to do so and to free a pris-
oner, to overcome other acts of non-compliance with an order which jeopard-
ize prison order.
It is admissible to use weapons in cases where immediate force is applied,
except to overcome acts of non-compliance with orders which jeopardize
prison order.
If the use of weapons against persons entails a danger to life, it is admissible
only in three situations: in cases of self-defense when defending a person, to
suppress a riot or revolt, to prevent an escape or to recapture a dangerous
prisoner.
In the history of the Second Republic (since 1945) there has not been any
prison revolt. It was possible to manage minor incidents of unrest in individ-
ual prisons by de-escalation strategies.
There has not been any recourse to firearms within prisons in the last 35
years. Firearms are carried inside of prisons only during night shifts and at
outdoor duty stations. The use of firearms outside of prisons, i.e. during su-
ervised leaves, is very infrequent. To date, it has not resulted in the death of
any inmate.
Prisoners’ complaints procedure

Prison inmates may file complaints concerning any decision affecting their rights in connection with applications or punitive sanctions, concerning orders relating to them or with regard to any behavior of prison staff affecting their rights.

The EPS Act offers two types of complaints: complaints concerning a legal issue and complaints on supervision issues.
A complaint concerning a legal issue will be filed whenever a prison inmate is affected by a decision/order, whenever he at least alleges to have suffered a violation of his personal rights and requires a decision on the matter in his complaint. The decisive point is whether the statutory provisions are only mandatory and/or binding upon the enforcing authority or also grant the prisoner a right to their compliance. This must be determined by way of interpreting every individual provision. In case of doubt it must be assumed that the rules of objective law also grant a personal right.
The independent Enforcement Panels, set up with the higher regional courts, decide on complaints on legal issues. The panels are collegiate judge-like bodies, which meet the criteria of tribunals (as defined in art. 6 ECHR). Enforcement Panels consist of three persons (judges and prison officers). A judge must chair the panel.
Complaints on supervision issues serve to challenge the right of supervision of the penitentiary authorities. They do not trigger a formal procedure, and there is no formal claim to a decision.
It is common enforcement practice to inform the inmate briefly in writing about the outcome of his complaint.
Complaints about the type of medical treatment are only possible in the form of complaints on supervision issues, but not as complaints on legal issues. Complaints do not have a suspensive effect. However, in theory they may be attributed such an effect. In practice, though, this is not the case.
It is inadmissible for several inmates to file collective complaints.

An appeal to the Administrative Court is possible against the decisions of the Enforcement Panels.
The Constitutional Court may also be seized with cases of alleged violations of rights that are guaranteed by the constitution.
Inmates may apply to the European Court of Human Rights in Strasbourg if they think that their rights under the Convention for the Protection of Human Rights and Fundamental Freedoms have been violated, after they have exhausted domestic remedies.
Prison leaves and aftercare

Leaves and interruptions

There are fairly complicated rules on prison leaves. The Enforcement Court may grant an interruption (maximum: eight days), if the remaining prison term that will probably still have to be served does not exceed three years and if there is a special reason such as an important family matter. When committed to special measures for mentally disordered offenders, interruptions of the committal to these facilities may also be granted for reasons of treatment and to prepare the prisoner for his release. They may last up to one month. The prison director decides on interruptions of a maximum duration of fourteen days, and the Enforcement Court decides on longer interruptions.

Twice in the course of three months, the prison director may grant day-time leaves for a maximum period of twelve hours; in case of longer travel distances for a maximum of 48 hours, if the likely remainder of the prison term does not exceed three years. Under relaxed enforcement conditions such leaves are possible up to two times per month. When preparing inmates for discharge from prison, several leaves of three to a maximum of five days, if longer travel time is required, may be granted.

The requirement for all leaves and interruptions is that one may anticipate that the inmate will not abuse the relaxed enforcement standards. Except for leaves granted in preparation of release, leaves and interruptions may only be granted to those inmates who are not considered to constitute a danger to the security of the State, nor of any person or property.

Since 1 January 2008 it has been possible to use electronic tagging when applying relaxed enforcement standards, provided such means are available, if this appears to be necessary to prevent any abuse. At present, the implementation of this provision is not considered. Altogether, a total of about 25,000 leaves or interruptions are granted per year.

Release on probation

By international comparison, the number of releases on probation is relatively small (about 20% of all releases from prison). Release on probation after having served only half of the term has not been applied to date. With regard to a release on probation after having served two thirds of the sentence, the practice varies considerably according to region.
Since 1 January 2008, new rules apply to release on probation. It stipulates that inmates may be released on probation after having served one half of the prison term if a minimum of three months has been served and if it can be assumed that, when taking account of the instructions and/or the appointment of a probation worker, the convicted person will not be prevented less from committing punishable offences by being released on probation than by continuing to serve the sentence.

There will not be any release on probation before two thirds of a prison term has been served, if in exceptional cases the further serving of the sentence is required, on account of the severity of the offence, in order to counteract the tendency that other persons will commit the punishable offence.

In case of prison terms for offences committed by persons below the age of 21, a minimum period of one month of the sentence must have been served. A release on probation from a life sentence is possible only after a period of fifteen years has been served and if it can be assumed that the convicted person will not commit any further punishable offences.

The probation period is between one and five years; in case of a release of probation for a life sentence it is ten years.

To the extent necessary and appropriate, instructions must be given or a probation service must be ordered. Orders are positive or negative instructions (e.g. to take up domicile in a specific location, to live in a certain home, to avoid certain places, not to drink any alcohol, to work). Orders to undergo some medical or psychotherapeutic treatment require the consent of the offender. They are financed by the judicial administrative authorities on a subsidiary basis. Special forensic out-patient centers exist. Orders to undergo specific surgery are inadmissible in any event.

A probation service must be ordered, as a matter of principle, if the convicted person is released on probation:
- prior to serving two thirds of the sentence;
- from a prison term for an offence committed before reaching the age of 21;
- from a prison term of more than five years; or
- from a life sentence.

**Aftercare**

Probation services are offered by the association Neustart on the basis of a contract with the Federal Ministry of Justice. They cannot only be obtained on the basis of a court order but also on a voluntary basis. Neustart has a total of about 600 full-time and 860 voluntary staff members and also provides
services in supporting persons released, in connection with the out-of-court settlement of offences, assistance to victims, as well as prevention. Neustart looked after a total of 5,736 persons discharged from prison in 2004. Several social organizations offer a smaller range of special services to persons released from prison.

As a matter of principle, released persons can avail themselves of the public psycho-social services and social services offered in the framework of general provisions and conditions.

Many persons are exposed to a combination of psychic problems, social disintegration, poor education, lack of funds or over-indebtedness and a general absence of any perspective when being released from prison. Ex-prisoners are one of several marginalized groups in society, and they are particularly stigmatized among these groups.

In spite of many and diverse efforts, the currently available options must be regarded as being insufficient, when considering the existing economic and social framework conditions.