

Prisons in Austria during COVID-19 crisis – special focus on foreign nationals

In times of living with COVID-19 lots of measures, modifications and changings were taken. Not only in our daily life, but also in an area that is usually not in the consciousness of most people: prisons. Aside from daily challenges, you may face when working in a prison system, this year has probably been a particularly challenging one for all of us. Moreover, the number of COVID-19 infections in Austria are on the rise again and a second lock-down started on 3rd of November.

In order to get an idea of challenges that the Austrian Prison Service had (and still has) to face, this article is intended to provide an overview on COVID-19 measures taken by the Austrian Prison Service, with a special view on FNPs, as a group of people with special needs. In Austria there are an average of 9,000 prisoners, although there are now less prisoners due to COVID-19 and also less FN prisoners.

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Overview on Foreign Nationals in Austrian Prison

- No FN-only prisons in Austria
- 28 prisons
- Prison population (rec.date: 01.11.2020):

Total prisoners: 8,544
FNPs comprise: 51 %

Top 3 nationalities in Austrian prisons: 1. SERBIAN, 2. ROMANIAN and 3. TURKISH

- Video remote interpreting in every prison
- Various food provided: e.g.: kosher, muslim, vegetarian food
- Wide range of pastoral work (legally recognised religious communities)
- implementing new media (video-calls) simplifying the contact to families for FNPs

All 28 prisons in Austria were kept open with normal staffing (officers, doctors, nurses, psychologists, social workers, pastoral service, etc.) in flexible working times coupled with alternating office teams as it is reasonably needed to keep the system running smoothly.

Since the COVID-19 situation, it is the highest premise to be a counterpoise, providing mutual support just as (and in particular) to reassure and calm prisoners. All employees are expected to follow the standards and guidelines such as wearing a MNS-mask covering the mouth and nose area and maintain a minimum distance of one meter while with face-to-face contact - no hand-shaking and the washing of hands after leaving the department/office. Almost all meetings, seminars, conferences and business travel are cancelled again.

Prisoners also have to wear masks when leaving their detention room and follow similar standards and guidelines. Quarantine departments have been established and incoming prisoners must stay in quarantine for 10 days before they are allowed into rest of the prison.

At the beginning of COVID, visits were cancelled completely only later has it been possible to introduce 1 adult per visit per prisoner again. Now visits are still limited to once a week though it is possible for there to be 2 adults per prisoner per week on 'screened' (i.e. behind-glass) visits.

Leaving the prison for one day (day-release) is permitted in individual cases only. For example, to deal with urgent as well as non-substitutable personal matters and to prepare for release and if the risk of infection can be minimized through appropriate preventive and hygienic measures.

Since the COVID-19 situation, prisoners have the possibility of carrying out video conferences instead of, statements on detention negotiations, main negotiations, extension of custody, etc. in their own presence. Church services and religious festivities in compliance with the protective and hygiene measures of the Austrian Bishops' Conference can take place - analogous and appropriate to the denomination.

FNPs and COVID-19

Overall, it has been observed that the number of FNPs in Austrian prisons decreased from 54 % to nearly 51% as well as a reduction in the number of property crimes during the COVID-19 period. It had not been this low for many years.

The use of video conferencing/calling for foreign families to talk with foreign nationals in prison, is provided in Austria especially for FNPs since the COVID-19 situation. Also, more video interpreting is provided, and video calls are now available in all prisons, which is a significant improvement. Additionally, guidance in different languages and with descriptive icons, has been made available to inform FNPs on how to make video calls. Until today, video calls are free to use as they improve the atmosphere and reduce tensions in prisons.

Information sheets on hygiene measures concerning COVID-19 were also made available in various languages.

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Voluntary return in accordance with § 133a StVG (Penal Code)

Preliminary remission for FNPs from serving a prison term because an entry ban or exclusion order has been issued. Once a FNP has served at least 3 months in prison, half of the prison term can be remitted (depending on the gravity only after two thirds of the prison term). Such decision is made by the Competent Court of Execution. The prisoner is handed over to the immigration police to be taken to the border overland or by air (in cooperation with The International Organization for Migration - IOM).

Conditions:

- Prison term needs to be longer than 3 months
- Valid entry ban or exclusion order in place
- Valid travel document or repatriation certificate
- Payment of travel costs to return to the country of origin (release assistance may be used)

If the FNPs do not comply with their obligation to depart or they illegally enter Austria before the expiry of the exclusion order or entry ban, the remission of the residual prison term shall be revoked without exception. They will be arrested immediately!

The Council Framework Decision 909/EU-Member States (excl. Bulgaria)

Application of the principle of mutual recognition to judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the **European Union**

- Transfer the sentenced person from the issuing State to the executing State
- Persons may be transferred to serve the remainder of their sentence only to their State of nationality with their consent and that of the States involved
- People transferred in 2019: 171
- Average length of procedure: 200 days (depending on the Member State)

Council of Europe Treaty Series (No.112, No.167)

Application of the principle of mutual recognition to judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in Europe (non-EU Member States)

Article 76 of the law on extradition and mutual assistance (ARHG)

For all countries that are not in line with the provisions of the Framework Decision or the Council of Europe Treaty Series.

FNPs leaving prison on early release or in sense of voluntary return with entry ban turned out to be a special challenge during COVID. It has been undertaken in collaboration with organisations that could support them in their return to the home country, so they did not have to go to the deportation centres beforehand as this is an issue of intergration of released FNPs without community links.

What makes things more difficult for FNPs being released in times like these are new travel restrictions, additional PCR-tests and quarantine regulations (overland or by air) due to COVID-19 regulations. Even if the system pays for one PCR-test in cases mentioned above, if a second test is needed (because it is required in the country of origin) the prisoner has to pay for it himself.

As for the implementation of prison transfers under FD 909, this was not working that well before COVID-19 and it is used even less since then. As most international flights were cancelled and because PCR-testing before entering most of the countries must be provided, it was (and is) nearly impossible to implement this EU Framework Decision during COVID restrictions at the present time.

Therefore, it remains particularly challenging during the COVID pandemic to work with prisoners who have no residence permit and/or are stateless in the country of Austria. Experience shows that an implementation can only work through close cooperation between the Austrian penal system and various organizations such as the International Organization for Migration, federal asylum authorities, the aliens police, Caritas and other national NGOs.