

Criminal Detention in the EU Conditions and Monitoring

Update of FRA's Criminal Detention Database
(FRANET)

Austria
2021

Contractor: European Training and Research Centre for
Human Rights and Democracy

Author: Markus Möstl

DISCLAIMER: This document was commissioned under contract as background material for a comparative analysis by the European Union Agency for Fundamental Rights (FRA) for the project: [Criminal Detention Database](#). The information and views contained in the document do not necessarily reflect the views or the official position of the FRA. The document is made publicly available for transparency and information purposes only and does not constitute legal advice or legal opinion.

Table of Contents

Part I: National standards	3
1. Cells	3
a) Cell space	3
b) Cell equipment, furniture and facilities	4
c) Video-surveillance of cells	5
d) Hygienic conditions in cells	6
2. Sanitary conditions	10
3. Time out of cell	14
4. Solitary confinement	18
5. Access to healthcare	23
6. Special measures in place to protect young detainees	33
7. Special measures in place to protect detainees from violence	36
8. Women in detention	42
9. Nutrition	47
Part II: National jurisprudence	51

Part I: National standards

1. Cells

a) **Cell space:** What is the national standard for cell space available to detainees in m²? Are the calculation requirements spelled out by the CJEU in its *Dorobantu* ruling¹ observed?

There is no standard on cell space available to detainees in m² foreseen in law. However, there are internal administrative regulations on cell space included in the "Basic decree concerning minimum detention room sizes for detention rooms with one to four inmates and internal guidelines for determining the occupancy of prisons (*"Grundsatzterlass betreffend die Mindesthafttraumgrößen für Hafträume mit ein bis vier Insassinnen bzw. Insassen und interne Richtlinien zur Ermittlung der Belagsfähigkeit der Justizanstalten"*) of 23 September 2006 according to the Federal Minister of Constitutional Affairs, Reforms, Deregulation and Justice.² The minimum sizes are regulated under point II. of this decree (for detailed requirements see excerpt from the Decree given by the Federal Minister of Constitutional Affairs, Reforms, Deregulation and Justice below). The Federal Minister of Constitutional Affairs, Reforms, Deregulation and Justice reported that in view of the permanent overcrowding in some prisons, it is unfortunately not possible to fully comply with the provisions of this internal decree.³

Excerpt from the Decree given by the Federal Minister of Constitutional Affairs, Reforms, Deregulation and Justice⁴:

(Please note that in the following a differentiation is made between detainees with and without concessions. §24 (1) Penitentiary System Act stipulates that a detainee who shows that he/she will cooperate in achieving the purposes of the penal system shall be granted appropriate concessions upon his request.)

1 detainee without concessions according to § 24 Penitentiary System Act (Strafvollzugsgesetz)⁵

without separate wet area but with washbasin 7.5 m²

with separate wet area (including washbasin, toilet and a shower area together with the necessary ancillary areas) 9.4 m²

with separate wet area (including washbasin and toilet, no shower) 8.6 m²

1 detainee with concessions according to § 24 Penitentiary System Act

without separate wet area but with washbasin 10.4 m²

with separate wet area (including washbasin, toilet and a shower area together with the necessary ancillary areas) 12.3 m²

with separate wet area (including washbasin and toilet, no shower) 11.5 m²

¹ For the CEU's calculation requirements please see: CJEU, [C-128/18, Dorobantu](#) [GC], Judgment of 15 October 2019, oper. part.

² Austria, Federal Minister of Constitutional Affairs, Reforms, Deregulation and Justice, [Response to parliamentary inquiry 1491/J-NR/2018](#), 5 October 2018.

³ Austria, Federal Minister of Constitutional Affairs, Reforms, Deregulation and Justice, [Response to parliamentary inquiry 1491/J-NR/2018](#), 5 October 2018.

⁴ Austria, Federal Minister of Constitutional Affairs, Reforms, Deregulation and Justice, [Response to parliamentary inquiry 1491/J-NR/2018](#), 5 October 2018.

⁵ Austria, Penitentiary System Act ([Bundesgesetz vom 26. März 1969 über den Vollzug der Freiheitsstrafen und der mit Freiheitsentziehung verbundenen vorbeugenden Maßnahmen, Strafvollzugsgesetz - StVG](#)), Federal Law Gazette No. 144/1969.

2 detainees without concessions according to § 24 Penitentiary System Act⁶

without separate wet area but with washbasin 9.7 m²

with separate wet area (including washbasin, toilet and a shower area together with the necessary ancillary areas) 11.6 m²

with separate wet area (including washbasin and toilet, no shower) 10.8 m²

2 detainees with concessions according to § 24 Penitentiary System Act

without separate wet area but with washbasin 13.8 m²

with separate wet area (including washbasin, toilet and a shower area together with the necessary ancillary areas) 15.7 m²

with separate wet area (including washbasin and toilet, no shower) 14.9 m²

3 detainees without concessions according to § 24 Penitentiary System Act⁷

without separate wet area but with washbasin 14.0 m²

with separate wet area (including washbasin, toilet and a shower area together with the necessary ancillary areas) 16.0 m²

with separate wet area (including washbasin and toilet, no shower) 15.2 m²

3 detainees with concessions according to § 24 Penitentiary System Act

without separate wet area but with washbasin 19.9 m²

with separate wet area (including washbasin, toilet and a shower area together with the necessary ancillary areas) 21.9 m²

with separate wet area (including washbasin and toilet, no shower) 21.1 m²

4 detainees without concessions according to § 24 Penitentiary System Act⁸

without separate wet area but with washbasin 17.5 m²

with separate wet area (including washbasin, toilet and a shower area together with the necessary ancillary areas) 19.6 m²

with separate wet area (including washbasin and toilet, no shower) 18.8 m²

4 detainees with concessions according to § 24 Penitentiary System Act

without separate wet area but with washbasin 24.8 m²

with separate wet area (including washbasin, toilet and a shower area together with the necessary ancillary areas) 26.9 m²

with separate wet area (including washbasin and toilet, no shower) 26.1 m²

Contrary to the calculation requirements spelled out by the CJEU in its Dorobantu ruling, these calculations of the available space take account of the area occupied by sanitary facilities, while not including any space occupied by furniture.

- b) **Cell equipment, furniture and facilities:** Are there any national standards for cell equipment (heating, ventilation, cooling, etc.), furniture (bed, mattress, shelf, wardrobe, seating, table, etc.) and/or facilities (lighting, incl. windows, washbasin, toilet, shower etc.), including any measurements? If so, what do they require?

⁶ Austria, Penitentiary System Act ([Bundesgesetz vom 26. März 1969 über den Vollzug der Freiheitsstrafen und der mit Freiheitsentziehung verbundenen vorbeugenden Maßnahmen, Strafvollzugsgesetz - StVG](#)), Federal Law Gazette No. 144/1969.

⁷ Austria, Penitentiary System Act ([Bundesgesetz vom 26. März 1969 über den Vollzug der Freiheitsstrafen und der mit Freiheitsentziehung verbundenen vorbeugenden Maßnahmen, Strafvollzugsgesetz - StVG](#)), Federal Law Gazette No. 144/1969.

⁸ Austria, Penitentiary System Act ([Bundesgesetz vom 26. März 1969 über den Vollzug der Freiheitsstrafen und der mit Freiheitsentziehung verbundenen vorbeugenden Maßnahmen, Strafvollzugsgesetz - StVG](#)), Federal Law Gazette No. 144/1969.

§40 (1) Penitentiary System Act (*Strafvollzugsgesetz*)⁹ which applies to the criminal detention stipulates that detainees shall be accommodated in simply and appropriately furnished rooms with sufficient air and daylight. If possible, non-smokers shall not be accommodated together with smokers in the same prison room, unless they expressly agree to joint accommodation. The detention rooms shall be well ventilated and appropriately heated during the cold season. §40 (3) Penitentiary System Act further stipulates that when it is dark, the prison rooms shall be lit outside the hours of night rest in such a way that the detainees can read and work without endangering their eyesight. Detainees shall be entitled to use electric lamps that can be switched on and off in the cell, especially if they only illuminate the individual cell, even during the night, provided and as long as other detainees are not unreasonably disturbed and there is no fear of misuse. If the cells are not equipped with such lamps, the detainees may be granted the extended lighting of the cell in the evening as a concession (§ 24 Penitentiary System Act¹⁰).

§42 (4) Penitentiary System Act (*Strafvollzugsgesetz*)¹¹ stipulates that cells shall have separate toilet facilities. Cells, in which more than one detainee is to be accommodated, must have structurally separate toilet facilities. If only one prisoner is accommodated in a detention room, the type of separation is not specified any further. If several detainees are accommodated in a single cell, the toilet facilities must be structurally separated (*baulich getrennt*) from the rest of the cell in order to ensure humane conditions of detention.

§ 4 (1a) Detention Regulation (*Anhalteordnung*)¹², which is applicable for the detention of persons by the police (or other authorities of public security) stipulates that cells have to be situated and equipped in a way that detainees are kept in a humane way and that health endangerment is avoided. Sanitary facilities must be designed in such a way that detainees can also use them in a humane (*menschenwürdig*) manner when detained together with others.

c) **Video-surveillance of cells:** Are there any national standards for video-surveillance of cells? If so, what do they require?

§ 102b (3) Penitentiary System Act (*Strafvollzugsgesetz*)¹³ stipulates that, inter alia, that video surveillance shall not be permitted in ordinary detention rooms (*gewöhnliche Hafträume*), common sanitary rooms and rooms reserved exclusively for the stay of prison staff. There are thus no standards on general video-surveillance of cells foreseen in law. The legal commentary on this provision explains that the term "ordinary detention room", refers to those detention rooms which are usually "inhabited" by the detainees. Thus, rooms which are exclusively used for sleeping and living purposes, are

⁹ Austria, Penitentiary System Act ([Bundesgesetz vom 26. März 1969 über den Vollzug der Freiheitsstrafen und der mit Freiheitsentziehung verbundenen vorbeugenden Maßnahmen, Strafvollzugsgesetz - StVG](#)), Federal Law Gazette No. 144/1969.

¹⁰ Austria, Penitentiary System Act ([Bundesgesetz vom 26. März 1969 über den Vollzug der Freiheitsstrafen und der mit Freiheitsentziehung verbundenen vorbeugenden Maßnahmen, Strafvollzugsgesetz - StVG](#)), Federal Law Gazette No. 144/1969.

¹¹ Austria, Penitentiary System Act ([Bundesgesetz vom 26. März 1969 über den Vollzug der Freiheitsstrafen und der mit Freiheitsentziehung verbundenen vorbeugenden Maßnahmen, Strafvollzugsgesetz - StVG](#)), Federal Law Gazette No. 144/1969.

¹² Austria, Detention Regulation ([Verordnung der Bundesministerin für Inneres über die Anhaltung durch die Sicherheitsbehörden und Organe des öffentlichen Sicherheitsdienstes - Anhalteordnung, AnhO](#)), Federal Law Gazette II No. 128/1999.

¹³ Austria, Penitentiary System Act ([Bundesgesetz vom 26. März 1969 über den Vollzug der Freiheitsstrafen und der mit Freiheitsentziehung verbundenen vorbeugenden Maßnahmen, Strafvollzugsgesetz - StVG](#)), Federal Law Gazette No. 144/1969.

excluded from video surveillance. The prohibition applies without exception, so that general surveillance of ordinary detention rooms is inadmissible even to prevent possible suicides; in this case, the detainee would have to be transferred to a special detention room for suicidal persons that can be monitored accordingly.¹⁴

d) **Hygienic conditions in cells:** Are there any national standards with regard to cleaning and/or cleanliness of cells? If so, what do they require?

§ 42 (1) Penitentiary System Act (*Strafvollzugsgesetz*)¹⁵ stipulates that the facility shall be kept clean. §42 (4) Penitentiary System Act stipulates that the sanitary facilities shall be arranged hygienically and shall enable detainees to meet their needs all the time in a clean and decent manner. The legal commentary on this provision explains that neither toilets in multi-person detention rooms that are separated from the rest of the detention room by curtains, nor toilets that are not permanently accessible, nor the so-called bucket system meet the hygienic standards and the requirement to respect human dignity.¹⁶

§ 39 Penitentiary System Act stipulates that detainees shall be entitled to wear their own underwear as well as simple and appropriate outer clothing, provided that regular cleaning of the underwear is possible in the prison or can be arranged for outside the prison and there is no danger to security and order. Otherwise, prisoners shall wear prison clothing in the cases specified in the Penitentiary System Act. Bedding, towels and handkerchiefs shall also be provided by the prison.

§ 35 Penitentiary System Act stipulates that detainees shall keep the cells and prison facilities clean.

§ 2 (2) Detention Regulation (*Anhalteordnung*)¹⁷ stipulates that detainees shall keep the rooms and facilities used by them clean. § 12 (4) Detention Regulation stipulates that the cells shall be cleaned and aired daily by the inmates; they shall clean the floors once a week and the sanitary facilities daily. They shall be provided with sufficient cleaning materials for this purpose. § 12 (5) Detention Regulation stipulates that the other rooms of the prison and the adjoining yards shall be kept clean in accordance with the requirements of hygiene. For this purpose, the authorities shall draw up a cleaning schedule which shall determine the time schedule of the cleaning work.

e) Please indicate whether there are different standards applicable to different detention regimes (pre-trial and post-trial detention and for example, if applicable in your jurisdiction: open, semi-open, closed etc.).

There are two main detention regimes in Austria. The Detention Regulation (*Anhalteordnung*)¹⁸ is applicable for arrest of persons by the police (or other authorities

¹⁴ Drexler, K. and Wenger, T. (2018), *Strafvollzugsgesetz*, 4th edition, §102b (rdb.at).

¹⁵ Austria, Penitentiary System Act ([Bundesgesetz vom 26. März 1969 über den Vollzug der Freiheitsstrafen und der mit Freiheitsentziehung verbundenen vorbeugenden Maßnahmen, Strafvollzugsgesetz - StVG](#)), Federal Law Gazette No. 144/1969.

¹⁶ Drexler, K. and Wenger, T. (2018), *Strafvollzugsgesetz*, 4th edition, §42 (rdb.at).

¹⁷ Austria, Detention Regulation ([Verordnung der Bundesministerin für Inneres über die Anhaltung durch die Sicherheitsbehörden und Organe des öffentlichen Sicherheitsdienstes - Anhalteordnung, AnhO](#)), Federal Law Gazette II No. 128/1999.

¹⁸ Austria, Detention Regulation ([Verordnung der Bundesministerin für Inneres über die Anhaltung durch die Sicherheitsbehörden und Organe des öffentlichen Sicherheitsdienstes - Anhalteordnung, AnhO](#)), Federal Law Gazette II No. 128/1999.

of public security). The rules of the Penitentiary System Act (*Strafvollzugsgesetz*)¹⁹ apply to criminal imprisonment. Where applicable, the standards are described for each regime in more detail in this report.

§ 182 (4) Criminal Procedure Code 1975²⁰ stipulates that unless the Criminal Procedure Code 1975 provides otherwise - the provisions of the Penitentiary System Act (*Strafvollzugsgesetz*)²¹ concerning the execution of custodial sentences not exceeding 18 months shall apply also to the execution of pre-trial detention. Where applicable, the standards are described for each regime in more detail in this report.

f) Please indicate any remedies available to detainees in case of a breach or violation of the standards addressed under 1. a) – e), including their respective legal basis.

In respect to the detention regime under the Penitentiary System Act (*Strafvollzugsgesetz*)²² detainees may file a complaint about any decision or order affecting their rights and about any conduct of prison staff affecting their rights according to § 120 Penitentiary System Act (*Strafvollzugsgesetz*). Complaints shall be submitted in writing or orally to the prison officer in charge at the time of day to be determined by the prison head.

§ 121 Penitentiary System Act (*Strafvollzugsgesetz*) stipulates further that the prison head shall decide on complaints against prison staff or their orders. If a complaint is directed against a decision, order or conduct of the prison head or against the violation of the prison head's duty to decide, and, if the prison head does not remedy the complaint himself/herself, the prison court shall decide on it.

In respect to the detention regime under the Detention Regulation (*Anhalteordnung*)²³ detainees have the right to complain to the commanding officer (*Kommandant*) in writing or orally, alleging a continuing violation of any of their rights under the Detention Regulation according to § 23 Detention Regulation. For this purpose, they shall be brought before the commanding officer at their request without unnecessary delay. Should allegations of ill-treatment be raised in the course of a complaint, a medical report shall be obtained in any case without delay. If the commanding officer holds the opinion that the complaint is justified, s/he shall restore the lawful state of affairs, otherwise s/he shall submit the facts of the case to the authority. The authority shall examine the facts without delay. If the authority finds that the complaint is justified and the complainant is still detained, it shall instruct the commanding officer to immediately establish the lawful state of affairs.

g) Please, provide a link to the National Preventive Mechanism's reports **from the reference period** (1 May 2018 to 15 April 2021; if no report is available for this

¹⁹ Austria, Penitentiary System Act ([Bundesgesetz vom 26. März 1969 über den Vollzug der Freiheitsstrafen und der mit Freiheitsentziehung verbundenen vorbeugenden Maßnahmen, Strafvollzugsgesetz - StVG](#)), Federal Law Gazette No. 144/1969.

²⁰ Austria, Criminal Procedure Code 1975 ([Strafprozeßordnung 1975, StPO](#)), Federal Law Gazette No. 631/1975.

²¹ Austria, Penitentiary System Act ([Bundesgesetz vom 26. März 1969 über den Vollzug der Freiheitsstrafen und der mit Freiheitsentziehung verbundenen vorbeugenden Maßnahmen, Strafvollzugsgesetz - StVG](#)), Federal Law Gazette No. 144/1969.

²² Austria, Penitentiary System Act ([Bundesgesetz vom 26. März 1969 über den Vollzug der Freiheitsstrafen und der mit Freiheitsentziehung verbundenen vorbeugenden Maßnahmen, Strafvollzugsgesetz - StVG](#)), Federal Law Gazette No. 144/1969.

²³ Austria, Detention Regulation ([Verordnung der Bundesministerin für Inneres über die Anhaltung durch die Sicherheitsbehörden und Organe des öffentlichen Sicherheitsdienstes - Anhalteordnung, AnhO](#)), Federal Law Gazette II No. 128/1999.

period, please provide links to the most recent one and the relevant CPT reports from the reference period) and whether there are any recommendations regarding these aspects (please provide the exact quotation in both, the national as well as in English language). These reports can be found on the webpage of the National Preventive Mechanism. For ease of reference, a list of links can be found via the [OPCAT Database](#).

2017:

Correctional institutions:

*Hafträume müssen so gelegen und eingerichtet sein, dass darin Häftlinge menschenwürdig untergebracht und gesundheitliche Gefährdungen vermieden werden. Es ist daher Vorsorge zu treffen, dass den Inhaftierten in ihren Hafträumen ausreichend persönlicher Lebensraum zur Verfügung steht.*²⁴

Inmate cells must be situated and furnished in such a way that prisoners are housed humanely and health hazards are avoided. Therefore, it must be ensured that inmates have adequate individual living space in their cells.²⁵

*Um beengten Haftbedingungen vorzubeugen, ist die maximale Belagsfähigkeit der JA von Zeit zu Zeit zu überprüfen und gegebenenfalls zu reduzieren.*²⁶

To prevent crowded conditions of detention, the maximum occupancy limit at correctional institutions must be reviewed from time to time and reduced, if necessary.²⁷

Police detention centres:

*Besonders gesicherte Zellen sollen über einen natürlichen Lichteinfall verfügen und in allen Einzelhafträumen muss eine natürliche oder mechanische Belüftungsmöglichkeit gegeben sein. In allen Einzelhafträumen muss eine beim Haftraum zu quittierende Alarmtaste vorhanden sein.*²⁸

Specially secured cells should allow the entrance of natural light, and all single cells must have natural and mechanical ventilation. All single cells must have an alarm button, which can be activated at the inmate cell.²⁹

2018:

Correctional institutions:

*In Mehrpersonenhafträumen sollen maximal vier Personen untergebracht werden. Die vom CPT geforderten Größen von Hafträumen für zwei bis vier Personen sollen nicht unterschritten werden.*³⁰

A maximum of four persons should be accommodated in cells for multiple inmates. The size of cells required by the CPT for two to four persons should not be undercut.³¹

²⁴ Austria, [Bericht der Volksanwaltschaft an den Nationalrat und an den Bundesrat 2017 Präventive Menschenrechtskontrolle](#), Vienna, March 2018, p. 143.

²⁵ Austria, [Annual Report on the activities of the Austrian National Preventive Mechanism \(NPM\) 2017](#), Vienna, June 2018, p. 137.

²⁶ Austria, [Bericht der Volksanwaltschaft an den Nationalrat und an den Bundesrat 2017 Präventive Menschenrechtskontrolle](#), Vienna, March 2018, p. 144.

²⁷ Austria, [Annual Report on the activities of the Austrian National Preventive Mechanism \(NPM\) 2017](#), Vienna, June 2018, p. 138.

²⁸ Austria, [Bericht der Volksanwaltschaft an den Nationalrat und an den Bundesrat 2017 Präventive Menschenrechtskontrolle](#), Vienna, March 2018, p. 154.

²⁹ Austria, [Annual Report on the activities of the Austrian National Preventive Mechanism \(NPM\) 2017](#), Vienna, June 2018, p. 148.

³⁰ Austria, [Bericht der Volksanwaltschaft an den Nationalrat und an den Bundesrat 2018 Präventive Menschenrechtskontrolle](#), March 2019, p. 129.

³¹ Austria, [Annual Report on the activities of the Austrian National Preventive Mechanism \(NPM\) 2018](#), Vienna, June 2019, p. 124.

Police detention centres:

*Besonders gesicherte Zellen sollen über einen natürlichen Lichteinfall verfügen und in allen Einzelhafträumen muss eine natürliche oder mechanische Belüftungsmöglichkeit gegeben sein. In allen Einzelzellen muss eine bei der Zelle zu quittierende Alarmtaste vorhanden sein.*³²

Specially secured cells should have natural daylight, and there must be natural or mechanical ventilation in all single cells. All single cells must have an alarm button, the activation of which has to be acknowledged at the cell.³³

*Zustand und Ausstattung von Hafträumen im Sinne der AnhO müssen stets eine menschenwürdige Anhaltung von Personen ermöglichen. Mit dem NPM vereinbarte, nur durch bauliche Maßnahmen realisierbare Standards für den Anhaltevollzug sollen unverzüglich umgesetzt werden.*³⁴

The condition and fittings of cells pursuant to Detention Regulation must always allow the humane detention of persons. Standards for the detention of persons that are agreed with the NPM and which can only be realised through structural measures should be implemented without delay.³⁵

2019:**Police detention centres:**

*Zustand und Ausstattung von Hafträumen im Sinne der AnhO müssen stets die menschenwürdige Anhaltung von Personen ermöglichen. Mit dem NPM vereinbarte, nur durch bauliche Maßnahmen realisierbare Standards für den Anhaltevollzug sollen unverzüglich umgesetzt werden.*³⁶

The condition and fittings of cells in the sense of the Detention Regulation must always enable the humane detention of persons. Detention enforcement standards agreed with the NPM, which can only be realised through structural measures, should be implemented without delay.³⁷

*In PAZ Angehaltenen ist die Verwendung selbst mitgebrachter Lampen etc. zu gestatten, solange andere Personen dadurch nicht gestört werden. Die in PAZ Angehaltenen sollen die Möglichkeit haben, (mobile) LED-Lampen im PAZ bzw. im AHZ zu erwerben.*³⁸

Detainees in police detention centres must be allowed to use their own brought in lamps etc., provided that these do not bother other persons. Detainees in police detention centres should have the opportunity to purchase (mobile) LED lamps in the police detention centre or the detention centre.³⁹

³² Austria, [Bericht der Volksanwaltschaft an den Nationalrat und an den Bundesrat 2018 Präventive Menschenrechtskontrolle](#), March 2019, p. 150.

³³ Austria, [Annual Report on the activities of the Austrian National Preventive Mechanism \(NPM\) 2018](#), Vienna, June 2019, p. 144.

³⁴ Austria, [Bericht der Volksanwaltschaft an den Nationalrat und an den Bundesrat 2018 Präventive Menschenrechtskontrolle](#), March 2019, p. 156.

³⁵ Austria, [Annual Report on the activities of the Austrian National Preventive Mechanism \(NPM\) 2018](#), Vienna, June 2019, p. 150.

³⁶ Austria, [Bericht der Volksanwaltschaft an den Nationalrat und an den Bundesrat 2019 Präventive Menschenrechtskontrolle](#), March 2020, p. 169.

³⁷ Austria, [Annual Report on the activities of the Austrian National Preventive Mechanism \(NPM\) 2019](#), Vienna, June 2020, p. 164.

³⁸ Austria, [Bericht der Volksanwaltschaft an den Nationalrat und an den Bundesrat 2019 Präventive Menschenrechtskontrolle](#), March 2020, p. 161.

³⁹ Austria, [Annual Report on the activities of the Austrian National Preventive Mechanism \(NPM\) 2019](#), Vienna, June 2020, p. 160.

2. Sanitary conditions

- a) What is the national standard with regard to access to toilets? Are these located in cells? If not, do detainees have access to these facilities without undue delay, even during the night? Do these facilities have to offer privacy to detainees who use them and, if so, in how far?

§42 (4) Penitentiary System Act (*Strafvollzugsgesetz*)⁴⁰ stipulates that the sanitary facilities shall be arranged hygienically and shall enable detainees to meet their needs all the time in a clean and decent manner. According to the legal commentary on this provision neither toilets in multi-person detention rooms that are separated from the rest of the detention room by curtains, nor toilets that are not permanently accessible, nor the so-called bucket system meet the hygienic standards and the requirement to respect human dignity.⁴¹ Cells shall have separate toilet facilities. Cells in which more than one detainee is to be accommodated shall have structurally separate toilet facilities. If only one prisoner is accommodated in a detention room, the type of separation is not specified. If several detainees are accommodated in a single cell, the toilet facilities must be structurally separated (*baulich getrennt*) from the rest of the cell in order to ensure humane conditions of detention.

§ 4 (1a) Detention Regulation (*Anhalteordnung*)⁴² stipulates that sanitary facilities have to be designed in such a way, that also detainees in common rooms have to be able to use them in a humane (*menschenwürdig*) way.

- b) What is the national standard with regard to access to regularly cleaned shower/bathing facilities? How often is this access provided? Do these facilities have to offer privacy to detainees who use them and, if so, in how far?

§ 42 (3) Penitentiary System Act (*Strafvollzugsgesetz*)⁴³ stipulates that detainees shall be given enough hot water daily to enable them to clean themselves thoroughly. In addition, they shall be given the opportunity to take a warm shower or full bath as often as necessary, but at least twice a week. According to § 34 (1) Penitentiary System Act detainees shall be entitled to purchase food and luxury foodstuffs as well as personal hygiene products and other simple articles of daily use once a week at their own expense through the institution. They receive institutional clothing and/or underwear (*ex officio*) either if they do not have any of their own or if they wish to do so, regardless of whether they have sufficient clothing or not. The same applies to items for simple personal hygiene (toothpaste, soap, toothbrush, towels, toilet paper).⁴⁴

⁴⁰ Austria, Penitentiary System Act ([Bundesgesetz vom 26. März 1969 über den Vollzug der Freiheitsstrafen und der mit Freiheitsentziehung verbundenen vorbeugenden Maßnahmen, Strafvollzugsgesetz - StVG](#)), Federal Law Gazette No. 144/1969.

⁴¹ Drexler, K. and Wenger, T. (2018), *Strafvollzugsgesetz*, 4th edition, §42 (rdb.at).

⁴² Austria, Detention Regulation ([Verordnung der Bundesministerin für Inneres über die Anhaltung durch die Sicherheitsbehörden und Organe des öffentlichen Sicherheitsdienstes - Anhalteordnung, AnhO](#)), Federal Law Gazette II No. 128/1999.

⁴³ Austria, Penitentiary System Act ([Bundesgesetz vom 26. März 1969 über den Vollzug der Freiheitsstrafen und der mit Freiheitsentziehung verbundenen vorbeugenden Maßnahmen, Strafvollzugsgesetz - StVG](#)), Federal Law Gazette No. 144/1969.

⁴⁴ Drexler, K. and Wenger, T. (2018), *Strafvollzugsgesetz*, 4th edition, §132 (rdb.at).

§12 (2) Detention Regulation (*Anhalteordnung*)⁴⁵ stipulates that detainees shall clean their bodies, take a warm shower once a week and tolerate disinfection measures, if necessary. To this end, each detainee shall be provided with enough hot water to clean his or her body as often as necessary, at least once a day. In addition, detainees shall be given the opportunity to take a hot shower at least once more a week, if they so wish. Means for body cleansing shall be made available to destitute detainees.

§ 4 (1a) Detention Regulation (*Anhalteordnung*)⁴⁶ stipulates that sanitary facilities must be designed in such a way that detainees can also use them in a humane manner when detained together with others.

In the course of the Covid-19 pandemic, the Federal Ministry of Justice issued many internal orders/instructions (*Dienstanweisungen*) affecting the execution of sentences. In respect to sanitary conditions the summary of the measures relating to COVID-19 in the execution of sentences⁴⁷ explains that detainees have to comply with special hygiene measures. This includes compliance with the distance requirement of two metres, regular hand and surface disinfection and the obligation for detainees to wear a tight-fitting mechanical protective device covering the mouth and nose area (mask)(or, in the ordered areas/situations, an FFP-2 respirator mask without an exhalation valve) whenever they leave the detention room. Special awareness raising measures to be taken include information on increased hand hygiene, awareness of coughing and sneezing behaviour, surface disinfection of all areas, departments, door handles as well as other equivalent objects, transfer vehicles, etc. Moreover, the summary of the measures relating to COVID-19 in the execution of sentences⁴⁸ explains that special attention should also be paid to hygiene and distance in all situations, in which the gathering of several people cannot be avoided. Permanently mounted, preferably touch-free disinfectant dispensers are to be installed in highly frequented locations (e.g. next to elevator systems or telephone equipment for detainees). The summary⁴⁹ further mentions the requirement of an increased provision of simple hygiene articles to detainees (primarily soap).

c) What are the national standards with regard to cleaning and cleanliness of sanitary facilities?

§42 (4) Penitentiary System Act (*Strafvollzugsgesetz*)⁵⁰ stipulates that the sanitary facilities shall be arranged hygienically and shall enable detainees to meet their needs all the time in a clean and decent manner. According to the legal commentary on this provision, neither toilets in multi-person detention rooms that are separated from the rest of the detention room by curtains, nor toilets that are not permanently accessible,

⁴⁵ Austria, Detention Regulation ([Verordnung der Bundesministerin für Inneres über die Anhaltung durch die Sicherheitsbehörden und Organe des öffentlichen Sicherheitsdienstes - Anhalteordnung, AnhO](#)), Federal Law Gazette II No. 128/1999.

⁴⁶ Austria, Detention Regulation ([Verordnung der Bundesministerin für Inneres über die Anhaltung durch die Sicherheitsbehörden und Organe des öffentlichen Sicherheitsdienstes - Anhalteordnung, AnhO](#)), Federal Law Gazette II No. 128/1999.

⁴⁷ Austria, Federal Ministry of Justice, Measures relating to COVID-19 in the execution of sentences - condensed version ([Maßnahmen zu COVID-19 im Straf- und Maßnahmenvollzug, komprimierte Fassung](#)), 5 May 2021.

⁴⁸ Austria, Federal Ministry of Justice, Measures relating to COVID-19 in the execution of sentences - condensed version ([Maßnahmen zu COVID-19 im Straf- und Maßnahmenvollzug, komprimierte Fassung](#)), 5 May 2021.

⁴⁹ Austria, Federal Ministry of Justice, Measures relating to COVID-19 in the execution of sentences - condensed version ([Maßnahmen zu COVID-19 im Straf- und Maßnahmenvollzug, komprimierte Fassung](#)), 5 May 2021.

⁵⁰ Austria, Penitentiary System Act ([Bundesgesetz vom 26. März 1969 über den Vollzug der Freiheitsstrafen und der mit Freiheitsentziehung verbundenen vorbeugenden Maßnahmen, Strafvollzugsgesetz - StVG](#)), Federal Law Gazette No. 144/1969.

nor the so-called bucket system meet the hygienic standards and the requirement to respect human dignity.⁵¹

§ 12 (4) Detention Regulation (*Anhalteordnung*)⁵² stipulates that the detainees shall clean the sanitary facilities daily. Sufficient cleaning material must be made available to them for this purpose.

d) Please indicate whether there are different standards applicable to different detention regimes (pre-trial and post-trial detention and for example, if applicable in your jurisdiction: open, semi-open, closed etc.).

As explained above in section 1.e , a distinction is to be made between the Penitentiary System Act (*Strafvollzugsgesetz*)⁵³ and the Detention Regulation (*Anhalteordnung*)⁵⁴. The applicable standards of these legal regimes are reported above in more detail.

e) Please indicate any remedies available to detainees in case of a breach or violation of the standards addressed under 2. a) – d), including their respective legal basis.

See above under section 1.f.

f) Please, provide a link to the National Preventive Mechanism's reports **from the reference period** (1 May 2018 to 15 April 2021; if no report is available for this period, please provide links to the most recent one and the relevant CPT reports from the reference period) and whether there are any recommendations regarding these aspects (please provide the exact quotation in both, the national as well as in English language). These reports can be found on the webpage of the National Preventive Mechanism. For ease of reference, a list of links can be found via the [OPCAT Database](#).

2017:

Correctional institutions:

*Hafträume (auch Einzelhafträume) haben über eine vom restlichen Haftraum getrennte WC-Anlage zu verfügen. Hafträume, in denen mehr als eine Person untergebracht wird, müssen über eine baulich abgetrennte WC-Anlage verfügen. Sanitäre Anlagen müssen hygienisch eingerichtet und so beschaffen sein, dass die Strafgefangenen jederzeit in menschenwürdiger Weise ihren natürlichen Bedürfnissen nachkommen können.*⁵⁵

Inmate cells (including single cells) must have toilet facilities that are separated from the rest of the inmate cell. Inmate cells that house more than one person must have structurally partitioned toilet facilities. Sanitary facilities must be hygienic and designed

⁵¹ Drexler, K. and Wenger, T. (2018), *Strafvollzugsgesetz*, 4th edition, §42 (rdb.at).

⁵² Austria, Detention Regulation ([Verordnung der Bundesministerin für Inneres über die Anhaltung durch die Sicherheitsbehörden und Organe des öffentlichen Sicherheitsdienstes - Anhalteordnung, AnhO](#)), Federal Law Gazette II No. 128/1999.

⁵³ Austria, Penitentiary System Act ([Bundesgesetz vom 26. März 1969 über den Vollzug der Freiheitsstrafen und der mit Freiheitsentziehung verbundenen vorbeugenden Maßnahmen, Strafvollzugsgesetz - StVG](#)), Federal Law Gazette No. 144/1969.

⁵⁴ Austria, Detention Regulation ([Verordnung der Bundesministerin für Inneres über die Anhaltung durch die Sicherheitsbehörden und Organe des öffentlichen Sicherheitsdienstes - Anhalteordnung, AnhO](#)), Federal Law Gazette II No. 128/1999.

⁵⁵ Austria, [Bericht der Volksanwaltschaft an den Nationalrat und an den Bundesrat 2017 Präventive Menschenrechtskontrolle](#), Vienna, March 2018, p. 146.

so that prison inmates can take care of their bodily needs at any time with a modicum of decency.⁵⁶

Police detention centres:

Einzelzellen gemäß § 5 AnhO sind mit einem Waschbecken, einer Warm- und Kaltwasser-Versorgung, einer Sitztoilette, einem Bett und einem Tisch mit Sitzmöglichkeit auszustatten. Geflieste Sicherheitszellen haben über eine (Hock-)Toilette mit Innenspülung, eine beheizbare Liegefläche oder Matratze sowie über fix montiertes Mobiliar (Bett, Tisch, Sitzgelegenheit) zu verfügen.⁵⁷

Single cells under Section 5 of the Detention Regulation must be equipped with a sink, a supply of hot and cold water, a sit-down toilet, a bed, and a table with seating. Tiled security cells must have a (squat) toilet with flushing function, a heatable reclining surface or mattress and firmly mounted furniture (bed, table, seating).⁵⁸

Der Zugang von Angehaltenen zu hygienischen sanitären Einrichtungen ist zu gewährleisten. Der Schutz der Intimsphäre ist durch bauliche bzw. organisatorische Maßnahmen sicherzustellen. Toiletten in Mehrpersonenzellen sind vom übrigen Haftraum vollständig abgetrennt zu gestalten. Die an Angehaltene ausgegebenen Matratzen und Textilien haben sauber zu sein. Angehaltene sollen zumindest zweimal wöchentlich, unter besonderen Umständen täglich duschen können. Über die Duschmöglichkeit sind die Angehaltenen zu informieren. Allen Angehaltenen ist der Zugang zu Hygieneartikel zu ermöglichen. Frauen sind während der Menstruation benötigte Hygieneartikel zur Verfügung zu stellen.⁵⁹

It must be ensured that detainees have access to hygienic sanitary facilities. Privacy must be ensured through structural or organisational measures. Toilets in cells for multiple inmates must be designed so that they are completely separate from the rest of the inmate cell. The mattresses and textiles issued to detainees must be clean. Detainees should be able to shower at least twice per week – and to shower daily under special circumstances. Detainees must be informed of their opportunity to shower. All detainees must be given access to hygiene articles. Women must be provided with the necessary hygiene articles during menstruation.⁶⁰

2018:

Police detention centres:

Geflieste Sicherheitszellen haben über eine (Hock-)Toilette zu verfügen.⁶¹

Tiled security cells must have a (squat) toilet.⁶²

Der Zugang von Angehaltenen zu hygienischen sanitären Einrichtungen sowie der Schutz ihrer Intimsphäre sind durch bauliche bzw. organisatorische Maßnahmen zu

⁵⁶ Austria, [Annual Report on the activities of the Austrian National Preventive Mechanism \(NPM\) 2017](#), Vienna, June 2018, p. 140.

⁵⁷ Austria, [Bericht der Volksanwaltschaft an den Nationalrat und an den Bundesrat 2017 Präventive Menschenrechtskontrolle](#), Vienna, March 2018, p. 154.

⁵⁸ Austria, [Annual Report on the activities of the Austrian National Preventive Mechanism \(NPM\) 2017](#), Vienna, June 2018, p. 148.

⁵⁹ Austria, [Bericht der Volksanwaltschaft an den Nationalrat und an den Bundesrat 2017 Präventive Menschenrechtskontrolle](#), Vienna, March 2018, p. 155.

⁶⁰ Austria, [Annual Report on the activities of the Austrian National Preventive Mechanism \(NPM\) 2017](#), Vienna, June 2018, p. 149.

⁶¹ Austria, [Bericht der Volksanwaltschaft an den Nationalrat und an den Bundesrat 2018 Präventive Menschenrechtskontrolle](#), March 2019, p. 150.

⁶² Austria, [Annual Report on the activities of the Austrian National Preventive Mechanism \(NPM\) 2018](#), Vienna, June 2019, p. 144.

gewährleisten. Toiletten in Mehrpersonenzellen sind vom übrigen Haftraum vollständig abgetrennt zu gestalten. Die an Angehaltene ausgegebenen Matratzen und Textilien haben sauber zu sein. Angehaltene sollen über die Duschkmöglichkeiten informiert werden und sie sollen zumindest zweimal wöchentlich, unter besonderen Umständen täglich duschen können. Allen Angehaltenen ist der Zugang zu Hygieneartikeln zu ermöglichen. Frauen sind während der Menstruation benötigte Hygieneartikel zur Verfügung zu stellen.⁶³

Detainees' access to hygienic sanitary facilities as well as the protection of their personal space must be guaranteed through structural and/or organisational measures. Toilets in cells for multiple inmates must be located separately from the rest of the cell. The mattresses and textiles handed out to detainees must be clean. Detainees should be informed about the possibility to take showers and they should be able to shower at least twice a week; in certain conditions daily. All detainees must be given access to toiletries. Women must be provided with the necessary toiletries during menstruation.⁶⁴

2019:

Correctional institutions:

*Um hygienischen Standards zu entsprechen und die Menschenwürde der Inhaftierten zu wahren, sind Toiletten in Mehrpersonenzellen vollständig baulich zu trennen.*⁶⁵

Toilets shall be completely separated from the remainder of the cell in cells for multiple inmates in order to comply with hygiene standards and safeguard human dignity.⁶⁶

*Der Zugang von Angehaltenen in PAZ zu hygienischen sanitären Einrichtungen sowie der jederzeitige Schutz ihrer Intimsphäre sind durch bauliche bzw. organisatorische Maßnahmen zu gewährleisten. Toiletten von in PAZ befindlichen Mehrpersonenzellen sind vom übrigen Haftraum vollständig abgetrennt zu gestalten. Die an Angehaltene ausgegebenen Matratzen und Textilien haben sauber zu sein.*⁶⁷

Access to hygienic sanitary facilities for the detainees in police detention centres as well as the protection of their personal space must at all times be guaranteed through structural and/or organisational measures. Toilets in cells for multiple inmates in police detention centres must be completely separated from the rest of the cell. The mattresses and textiles handed out to detainees must be clean.⁶⁸

3. Time out of cell

- a) What is the national standard set for time per day/week spent by detainees outside of their cells:
- a. Outdoors (within the boundary of the prison)?

⁶³ Austria, [Bericht der Volksanwaltschaft an den Nationalrat und an den Bundesrat 2018 Präventive Menschenrechtskontrolle](#), March 2019, p. 151.

⁶⁴ Austria, [Annual Report on the activities of the Austrian National Preventive Mechanism \(NPM\) 2018](#), Vienna, June 2019, p. 145.

⁶⁵ Austria, [Bericht der Volksanwaltschaft an den Nationalrat und an den Bundesrat 2019 Präventive Menschenrechtskontrolle](#), March 2020, p. 145.

⁶⁶ Austria, [Annual Report on the activities of the Austrian National Preventive Mechanism \(NPM\) 2019](#), Vienna, June 2020, p. 140.

⁶⁷ Austria, [Bericht der Volksanwaltschaft an den Nationalrat und an den Bundesrat 2019 Präventive Menschenrechtskontrolle](#), March 2020, p. 162.

⁶⁸ Austria, [Annual Report on the activities of the Austrian National Preventive Mechanism \(NPM\) 2019](#), Vienna, June 2020, p. 157.

b. Indoors in the common area?

Outdoors (within the boundary of the prison)

§ 43 Penitentiary System Act (*Strafvollzugsgesetz*)⁶⁹ stipulates that - if the weather does not prevent it - detainees who do not work outdoors shall have the right to spend one hour outdoors every day, and other detainees shall have the right to spend one hour outdoors on non-working days, considering their state of health. The time spent outdoors shall be extended if this is possible without interfering with other duties and the order in the prison.

Indoors in the common area

§ 124 (1) Penitentiary System Act (*Strafvollzugsgesetz*)⁷⁰ stipulates that during the day, detainees shall be accommodated in community with other detainees as long as possible. During the night rest period, they shall be accommodated as individually as possible. If appropriate, the accommodation shall be in living groups or otherwise without closing the detention or recreation rooms during the day.

In the course of the Covid-19 pandemic, the Federal Ministry of Justice issued many internal orders/instructions (*Dienstanweisungen*) affecting the execution of sentences. In respect to time out of cell a summary of the measures relating to COVID-19 in the execution of sentences⁷¹ explains that if possible (depending on the space available in relation to other new arrivals), new arrivals are to be held exclusively in the respective access department for a period of at least 10 days after arrival before being transferred. Work and participation in everyday life in prison shall take place at the earliest after expiry of this 10-day period. Detainees must wear a tight-fitting mechanical protective device covering the mouth and nose area whenever they leave their detention room. In the visitor zone, when in contact with visitors, lawyers, representatives of the authorities, etc., detainees must wear an FFP-2 respirator without an exhalation valve.

b) Do sports or other recreational and/or educational facilities have to be available to detainees? If so, what types?

§ 59 Penitentiary System Act stipulates that every prison shall have a library from which detainees may borrow books and periodicals. The standard of public libraries shall be taken into account when equipping the libraries.

§ 65 Penitentiary System Act stipulates that an educational, artistic, or entertaining event shall be held at least once every three months in the penal institutions.

c) Is there a national standard for time spent in cells? If so, what does it require?

⁶⁹ Austria, Penitentiary System Act ([Bundesgesetz vom 26. März 1969 über den Vollzug der Freiheitsstrafen und der mit Freiheitsentziehung verbundenen vorbeugenden Maßnahmen, Strafvollzugsgesetz - StVG](#)), Federal Law Gazette No. 144/1969.

⁷⁰ Austria, Penitentiary System Act ([Bundesgesetz vom 26. März 1969 über den Vollzug der Freiheitsstrafen und der mit Freiheitsentziehung verbundenen vorbeugenden Maßnahmen, Strafvollzugsgesetz - StVG](#)), Federal Law Gazette No. 144/1969.

⁷¹ Austria, Federal Ministry of Justice, Measures relating to COVID-19 in the execution of sentences - condensed version ([Maßnahmen zu COVID-19 im Straf- und Maßnahmenvollzug, komprimierte Fassung](#)), 5 May 2021.

There are no such standards provided for in the Penitentiary System Act (*Strafvollzugsgesetz*)⁷², nor the Detention Regulation (*Anhalteordnung*)⁷³.

d) Are there any national standards with regard to activities and/or programmes that should be available to detainees when they are outside their cells? If so, what do they require?

§ 43 Penitentiary System Act (*Strafvollzugsgesetz*)⁷⁴ stipulates that during the time spent outdoors, sporting activity shall be permitted insofar as this is possible according to the facilities available and appears appropriate according to the age and state of health of the detainees.

§ 58 (1) Penitentiary System Act (*Strafvollzugsgesetz*) stipulates that detainees shall be encouraged to make meaningful use of their free time and, if necessary, instructed to do so. To this end, they shall in particular be given the opportunity to read, to participate in the reception of radio broadcasts (radio and television), to engage in sporting activities or to play parlour games. § 58 (2) Penitentiary System Act (*Strafvollzugsgesetz*) stipulates that insofar as it is possible, taking into account the conditions of the prison, without impairing the routine (*Dienst*) and the security and order, the detainees shall be entitled to obtain their own books and magazines (§ 60 Penitentiary System Act), to work in their free time (§ 61 Penitentiary System Act), to keep written records (§ 62 Penitentiary System Act), to draw and paint (§ 63 Penitentiary System Act) and to participate in events (§ 65 Penitentiary System Act).

In the course of the Covid-19 pandemic, the Federal Ministry of Justice issued many internal orders/instructions (*Dienstanweisungen*) affecting the execution of sentences. As balancing/compensating measures to balance such Covid-19 restrictions, the summary of the measures relating to COVID-19 in the execution of sentences⁷⁵ enumerates the increased provision of board games, cards, mandalas, but also increased stay outdoors and/or recreational and sports activities under compliance with the applicable protection and hygiene measures.

e) Please indicate whether there are different standards applicable to different detention regimes (pre-trial and post-trial detention and for example, if applicable in your jurisdiction: open, semi-open, closed etc.).

As explained above in section 1.e , a distinction is to be made between the Penitentiary System Act (*Strafvollzugsgesetz*)⁷⁶ and the Detention Regulation (*Anhalteordnung*)⁷⁷. The applicable standards of these legal regimes are reported above in more detail.

⁷² Austria, Penitentiary System Act ([Bundesgesetz vom 26. März 1969 über den Vollzug der Freiheitsstrafen und der mit Freiheitsentziehung verbundenen vorbeugenden Maßnahmen, Strafvollzugsgesetz - StVG](#)), Federal Law Gazette No. 144/1969.

⁷³ Austria, Detention Regulation ([Verordnung der Bundesministerin für Inneres über die Anhaltung durch die Sicherheitsbehörden und Organe des öffentlichen Sicherheitsdienstes - Anhalteordnung, AnhO](#)), Federal Law Gazette II No. 128/1999.

⁷⁴ Austria, Penitentiary System Act ([Bundesgesetz vom 26. März 1969 über den Vollzug der Freiheitsstrafen und der mit Freiheitsentziehung verbundenen vorbeugenden Maßnahmen, Strafvollzugsgesetz - StVG](#)), Federal Law Gazette No. 144/1969.

⁷⁵ Austria, Federal Ministry of Justice, Measures relating to COVID-19 in the execution of sentences - condensed version ([Maßnahmen zu COVID-19 im Straf- und Maßnahmenvollzug, komprimierte Fassung](#)), 5 May 2021.

⁷⁶ Austria, Penitentiary System Act ([Bundesgesetz vom 26. März 1969 über den Vollzug der Freiheitsstrafen und der mit Freiheitsentziehung verbundenen vorbeugenden Maßnahmen, Strafvollzugsgesetz - StVG](#)), Federal Law Gazette No. 144/1969.

⁷⁷ Austria, Detention Regulation ([Verordnung der Bundesministerin für Inneres über die Anhaltung durch die Sicherheitsbehörden und Organe des öffentlichen Sicherheitsdienstes - Anhalteordnung, AnhO](#)), Federal Law Gazette II No. 128/1999.

f) Please indicate any remedies available to detainees in case of a breach or violation of the standards addressed under 3. a) – e), including their respective legal basis.

See above under section 1.f.

g) Please, provide a link to the National Preventive Mechanism's reports **from the reference period** (1 May 2018 to 15 April 2021; if no report is available for this period, please provide links to the most recent one and the relevant CPT reports from the reference period) and whether there are any recommendations regarding these aspects (please provide the exact quotation in both, the national as well as in English language). These reports can be found on the webpage of the National Preventive Mechanism. For ease of reference, a list of links can be found via the [OPCAT Database](#).

2017:

Correctional Institutions

Die Mindestzeit des täglichen Aufenthalts im Freien (Hofgang) ist einzuhalten. Diese Zeit muss den Inhaftierten netto zur Verfügung stehen. Die Zeit des Vor- und Abführens ist nicht in den Aufenthalt im Freien einzurechnen. Wenn der tägliche Aufenthalt im Freien wegen Schlechtwetter entfällt, sind alternative Bewegungsmöglichkeiten (z.B. in einem Sportsaal) anzubieten.⁷⁸

The required minimum daily period of outdoor exercise must be provided. This must be a net period available to inmates. The time spent leading inmates to and from the outdoor area may not be included in calculating the time spent outdoors. If daily time spent outdoors is cancelled due to bad weather, alternative opportunities for exercise should be offered (e.g. in a gymnasium).⁷⁹

Police detention centres:

Das Angebot der täglichen, mindestens einstündigen Bewegung der Angehaltenen im Freien ist sicherzustellen. Für eine zweckmäßige Ausstattung des PAZ-Innen- und Außenbereichs ist zu sorgen. Es sollten nicht nur funktionstüchtige (Sport-)Geräte in erforderlicher Anzahl sowie Gesellschaftsspiele bereitgestellt werden, auch die Nutzung extern angebotener Freizeitmöglichkeiten ist zuzulassen.⁸⁰

It should be ensured that detainees are offered at least one hour of daily outdoor exercise. The interior and exterior areas of the police detention centre should be equipped for this purpose. An adequate supply of functioning (sports) equipment and board games should be provided, and detainees should be allowed to use leisure-time opportunities offered externally.⁸¹

2018:

Correctional institutions:

Betriebe und Werkstätten in den JA sollen durchgehend geöffnet sein. Die Anstellung von externen Fachkräften in den Betrieben ist weiter auszubauen. Es bedarf zusätzlicher

⁷⁸ Austria, [Bericht der Volksanwaltschaft an den Nationalrat und an den Bundesrat 2017 Präventive Menschenrechtskontrolle](#), Vienna, March 2018, p. 142.

⁷⁹ Austria, [Annual Report on the activities of the Austrian National Preventive Mechanism \(NPM\) 2017](#), Vienna, June 2018, p. 136.

⁸⁰ Austria, [Bericht der Volksanwaltschaft an den Nationalrat und an den Bundesrat 2017 Präventive Menschenrechtskontrolle](#), Vienna, March 2018, p. 155.

⁸¹ Austria, [Annual Report on the activities of the Austrian National Preventive Mechanism \(NPM\) 2017](#), Vienna, June 2018, p. 149.

*Personalressourcen, um den gesetzlichen und in den Mindeststandards festgelegten Anforderungen entsprechen zu können. Zusätzliches Personal ist insbesondere erforderlich, um die Einschlusszeiten verringern und die Beschäftigungsquote erhöhen zu können.*⁸²

Additional personnel resources are required to comply with the legal requirements and those set forth in the minimum standards. Additional personnel are necessary, in particular, in order to reduce lock-up times and increase the employment rate. Operations of companies providing occupational opportunities and workshops in the correctional institutions should be continuously open. The employment of external skilled workers must be expanded in the companies.⁸³

Police detention centres:

*Allen Angehaltenen sollen Beschäftigungs- und Freizeitmöglichkeiten in dem mit dem NPM vereinbarten Umfang zur Verfügung stehen.*⁸⁴

Occupational and leisure opportunities in the scope agreed with the NPM should be available to all detainees.⁸⁵

2019:

Police detention centres:

*Allen in PAZ Angehaltenen sollen Beschäftigungs- und Freizeitmöglichkeiten in dem mit dem NPM vereinbarten Umfang zur Verfügung stehen.*⁸⁶

Occupational and leisure opportunities in the scope agreed with the NPM should be available to all detainees in police detention centres.⁸⁷

4. Solitary confinement

a) What are the national standards regarding solitary confinement?

§ 103 Penitentiary System Act (*Strafvollzugsgesetz*)⁸⁸ stipulates that solitary confinement is one of the security measures for detainees with flight risk, risk of violence or self-harm or other relevant danger for security and order. § 103 (2) (1a) Penitentiary System Act stipulates that a detainee who either works during the day or is kept in his/her spare time in common areas for two hours may be taken into solitary confinement for the rest of the day. § 103 (2) (4) Penitentiary System Act (*Strafvollzugsgesetz*) provides for the placement of the detainee in a specially secured cell, from which all objects are removed with which the detainee can cause harm or

⁸² Austria, [Bericht der Volksanwaltschaft an den Nationalrat und an den Bundesrat 2018 Präventive Menschenrechtskontrolle](#), March 2019, p. 127.

⁸³ Austria, [Annual Report on the activities of the Austrian National Preventive Mechanism \(NPM\) 2018](#), Vienna, June 2019, p. 122.

⁸⁴ Austria, [Bericht der Volksanwaltschaft an den Nationalrat und an den Bundesrat 2018 Präventive Menschenrechtskontrolle](#), March 2019, p. 151.

⁸⁵ Austria, [Annual Report on the activities of the Austrian National Preventive Mechanism \(NPM\) 2018](#), Vienna, June 2019, p. 145.

⁸⁶ Austria, [Bericht der Volksanwaltschaft an den Nationalrat und an den Bundesrat 2019 Präventive Menschenrechtskontrolle](#), March 2020, p. 162.

⁸⁷ Austria, [Annual Report on the activities of the Austrian National Preventive Mechanism \(NPM\) 2019](#), Vienna, June 2020, p. 157.

⁸⁸ Austria, Penitentiary System Act (*Bundesgesetz vom 26. März 1969 über den Vollzug der Freiheitsstrafen und der mit Freiheitsentziehung verbundenen vorbeugenden Maßnahmen, Strafvollzugsgesetz - StVG*), Federal Law Gazette No. 144/1969.

harm himself/herself. § 103 (3a) Penitentiary System Act (*Strafvollzugsgesetz*) stipulates that only detainees, whose dangerousness to themselves, other persons or property does not permit placement in another detention room, may be accommodated in a specially secured cell. The specially secured cell must have sufficient air supply and sufficient daylight. If there are no objections, a mattress, and a spoon for taking meals shall be made available to a person accommodated in the specially secured cell. § 103 (5) Penitentiary System Act (*Strafvollzugsgesetz*) stipulates that the special security measures shall be maintained insofar as and as long as this is absolutely necessary due to the extent and continuance of the danger. § 103 (6) Penitentiary System Act (*Strafvollzugsgesetz*) stipulates that the ordering of special security measures shall be at the discretion of the supervising prison officer. The latter shall report any such order to the prison head without delay. The prison head shall decide without delay on the maintenance of the special security measure. The maintenance of a measure may only be ordered by a court, which shall decide thereon upon request of the prison head. If the court orders the maintenance of the measure, it shall at the same time determine its maximum permissible duration; if the reasons that led to the ordering of such a measure cease to exist before the expiry of this period, the prison head shall immediately cancel the measure.

§ 125 (2) Penitentiary System Act (*Strafvollzugsgesetz*) stipulates that, for a period exceeding four weeks, a detainee may only be kept in solitary confinement against his/her will by order of a court, which shall decide thereon upon request of the prison head. If the court orders the continuation of solitary confinement, it shall at the same time determine the duration of such continuation. A detainee may only be kept in solitary confinement for more than six months at his/her request and only with the consent of the prison doctor.

§5 (1) Detention Regulation (*Anhalteordnung*)⁸⁹ stipulates that detainees are to be held in solitary confinement in case the detainee turned violent against another detainee, if the courts ask for it, or if the detainee holds risks of infection. §5 (3) Detention Regulation stipulates that a detainee may be held in solitary confinement at the request of the detainee; during the period of night rest, if this appears necessary to maintain security or order; as a disciplinary measure; if it is necessary at short notice for organisational reasons; and, if facts justify the assumption that the detainee is endangering his/her life or health through violence.

§ 5b (2) (4) Detention Regulation (*Anhalteordnung*)⁹⁰ stipulates that special security measures also include the placement of the detainee in a specially secured cell, from which all objects are removed with which the detainee can cause harm or harm himself/herself. According to § 5b (5) Detention Regulation (*Anhalteordnung*) such special security measures shall be maintained only to the extent and for such time as the extent and continuance of the danger, which gave rise to their order, absolutely require. The placement of a detainee in a specially secured cell shall only be permissible if his/her dangerousness to himself/herself, other persons or property does not permit placement in another detention room. If the reasons for ordering such a measure cease

⁸⁹ Austria, Detention Regulation ([Verordnung der Bundesministerin für Inneres über die Anhaltung durch die Sicherheitsbehörden und Organe des öffentlichen Sicherheitsdienstes - Anhalteordnung, AnhO](#)), Federal Law Gazette II No. 128/1999.

⁹⁰ Austria, Detention Regulation ([Verordnung der Bundesministerin für Inneres über die Anhaltung durch die Sicherheitsbehörden und Organe des öffentlichen Sicherheitsdienstes - Anhalteordnung, AnhO](#)), Federal Law Gazette II No. 128/1999.

to exist, the measure shall be revoked immediately. According to § 5b (6) Detention Regulation (*Anhalteordnung*) the ordering of special security measures shall be the responsibility of the supervisory officer in charge. The supervisory officer shall report any such order to the commanding officer (*dienstführendes Aufsichtsorgan; Kommandant*) as soon as possible, but no later than the next working day. The commanding officer shall decide without delay on the maintenance of the special safety measure.

In the course of the Covid-19 pandemic, the Federal Ministry of Justice issued many internal orders/instructions (*Dienstanweisungen*) affecting the execution of sentences. In respect to cells the summary of the measures relating to COVID-19 in the execution of sentences⁹¹ explains that an isolated access area is to be established mandatorily in all prisons. If possible, access areas should not be set up as transit areas and should be set up as close as possible to the reception area. If possible (depending on the space available in relation to other new arrivals), new arrivals are to be held exclusively in the respective access department for a period of at least 10 days after arrival before being transferred.

b) Are there any national standards with regard to checking and/or monitoring the wellbeing of detainees in solitary confinement? If so, what do they require?

§ 125 (1) Penitentiary System Act (*Strafvollzugsgesetz*)⁹² stipulates that if a detainee is held in solitary confinement by day and by night, he/she must be visited at least once a day by a suitable prison officer unless he/she receives visits.

Detainees placed in a specially secured cell, pursuant to § 103 (2) 4 Penitentiary System Act, shall be visited by a doctor as soon as possible, at the latest within 24 hours, without prejudice to special supervision by prison staff. Subsequently, such detainees shall be visited by the prison doctor on a daily basis; if the prison doctor is not on duty in the prison on a daily basis, they shall be visited by a prison staff member experienced in medical service on days when the doctor is not present. A psychiatrist, psychotherapist or psychologist shall be consulted as far as this appears feasible.

§ 5b (3) Detention Regulation (*Anhalteordnung*)⁹³ stipulates that, if the detainee is placed in a specially secured cell, he/she shall be examined by a doctor without delay and, thereafter, at regular intervals for the duration of the measure in addition to regular supervision.

c) Please indicate whether there are different standards applicable to different detention regimes (pre-trial and post-trial detention and for example, if applicable in your jurisdiction: open, semi-open, closed etc.).

⁹¹ Austria, Federal Ministry of Justice, Measures relating to COVID-19 in the execution of sentences - condensed version ([Maßnahmen zu COVID-19 im Straf- und Maßnahmenvollzug, komprimierte Fassung](#)), 5 May 2021.

⁹² Austria, Penitentiary System Act ([Bundesgesetz vom 26. März 1969 über den Vollzug der Freiheitsstrafen und der mit Freiheitsentziehung verbundenen vorbeugenden Maßnahmen, Strafvollzugsgesetz - StVG](#)), Federal Law Gazette No. 144/1969.

⁹³ Austria, Detention Regulation ([Verordnung der Bundesministerin für Inneres über die Anhaltung durch die Sicherheitsbehörden und Organe des öffentlichen Sicherheitsdienstes - Anhalteordnung, AnhO](#)), Federal Law Gazette II No. 128/1999.

As explained above in section 1.e , a distinction is to be made between the Penitentiary System Act (*Strafvollzugsgesetz*)⁹⁴ and the Detention Regulation (*Anhalteordnung*)⁹⁵. The applicable standards of these legal regimes are reported above in more detail.

d) Please indicate any remedies available to detainees in case of a breach or violation of the standards addressed under 4. a) - c), including their respective legal basis.

See above under section 1.f.

e) Please, provide a link to the National Preventive Mechanism's reports **from the reference period** (1 May 2018 to 15 April 2021; if no report is available for this period, please provide links to the most recent one and the relevant CPT reports from the reference period) and whether there are any recommendations regarding this aspect (please provide the exact quotation in both, the national as well as in English language). These reports can be found on the webpage of the National Preventive Mechanism. For ease of reference, a list of links can be found via the [OPCAT Database](#).

2017:

Police Detention Centres:

*Die technische Überwachung besonders gesicherter Hafträume soll durch lichtquellenunabhängige Videoüberwachung und unter Wahrung der Intimsphäre der Häftlinge erfolgen. Gepolsterte bzw. gummierte Hafträume sind ständig, geflieste Sicherheitszellen mindestens viertelstündlich und sonstige Einzelhafträume zumindest stündlich persönlich zu überwachen. Grund, Beginn, Verlauf und Ende einer Einzelhaftunterbringung sowie die Beiziehung einer Ärztin bzw. eines Arztes bei Unterbringung in einer besonders gesicherten Zelle sind zu dokumentieren.*⁹⁶

The technical surveillance of specially secured inmate cells should be carried out using video surveillance that is independent of any light source and protects the prisoner's privacy. Padded or rubberised inmate cells should be subject to constant personal surveillance, tiled security cells should be subject to surveillance at least every 15 minutes, and other single cells should be subject to at least hourly surveillance. The reason, commencement and end of detention in a single cell and the attendance of a doctor during detention in a specially secured cell must be documented.⁹⁷

2018:

Correctional institutions:

*Wird eine Person bei akuter Selbst- oder Fremdgefährdung in einem besonders gesicherten Haftraum untergebracht, ist die Gefahrensituation genau zu beschreiben und die Uhrzeit der ersten ärztlichen Kontrolle zu vermerken.*⁹⁸

⁹⁴ Austria, Penitentiary System Act (*Bundesgesetz vom 26. März 1969 über den Vollzug der Freiheitsstrafen und der mit Freiheitsentziehung verbundenen vorbeugenden Maßnahmen, Strafvollzugsgesetz - StVG*), Federal Law Gazette No. 144/1969.

⁹⁵ Austria, Detention Regulation (*Verordnung der Bundesministerin für Inneres über die Anhaltung durch die Sicherheitsbehörden und Organe des öffentlichen Sicherheitsdienstes - Anhalteordnung, AnhO*), Federal Law Gazette II No. 128/1999.

⁹⁶ Austria, [Bericht der Volksanwaltschaft an den Nationalrat und an den Bundesrat 2017 Präventive Menschenrechtskontrolle](#), Vienna, March 2018, p. 154.

⁹⁷ Austria, [Annual Report on the activities of the Austrian National Preventive Mechanism \(NPM\) 2017](#), Vienna, June 2018, p. 148.

⁹⁸ Austria, [Bericht der Volksanwaltschaft an den Nationalrat und an den Bundesrat 2018 Präventive Menschenrechtskontrolle](#), March 2019, p. 124.

If a person is placed in a specially secured cell in the event of acute danger to themselves or to others, the dangerous situation must be described exactly and the time of the first medical check be noted.⁹⁹

Police detention centres:

Die erste amtsärztliche Untersuchung von Angehaltenen in besonders gesicherten Zellen soll sofort bzw. so schnell wie möglich und jede weitere Untersuchung jedenfalls innerhalb von zwölf Stunden stattfinden. Gepolsterte bzw. gummierte Zellen sind ständig, geflieste Sicherheitszellen mindestens viertelstündlich und sonstige Einzelzellen zumindest stündlich persönlich zu überwachen. Die technische Überwachung aller Sicherungszwecken dienenden Zellen soll durch lichtquellenunabhängige Videoüberwachung und unter Wahrung der Intimsphäre der Häftlinge erfolgen.¹⁰⁰

The first medical examination by the public medical officer of detainees in specially secured cells should take place immediately or as quickly as possible, and every other examination within twelve hours in any case. Padded or rubberised inmate cells must be subject to constant personal surveillance, tiled security cells must be subject to surveillance at least every 15 minutes, and other single cells should be subject to at least hourly surveillance. The technical surveillance of all cells used for securing purposes should be carried out using low light video surveillance and observing the personal space of the detainees.¹⁰¹

Grund, Beginn, Verlauf und Ende einer Einzelhaftunterbringung sowie die Beziehung einer Ärztin bzw. eines Arztes bei Unterbringung in einer besonders gesicherten Zelle sind zu dokumentieren.¹⁰²

The reason, commencement, course and end of solitary confinement as well as the consultation of a doctor when placing a person in a specially secured cell must be documented.¹⁰³

2019:

Police detention centres:

Die technische Überwachung aller Sicherungszwecken dienenden Zellen in PAZ soll durch lichtquellenunabhängige Videoüberwachung und unter Wahrung der Intimsphäre der Häftlinge erfolgen.¹⁰⁴

The technical surveillance of all cells used for securing purposes should be carried out using video surveillance that is independent of any light source and observing the personal space of the detainees.¹⁰⁵

In sämtlichen PAZ muss eine ausreichende Anzahl an Hafträumen vorhanden sein, die für den Vollzug der Einzelhaft gemäß § 5 bzw. § 5b Abs. 2 Z 4 AnhO geeignet sind.

⁹⁹ Austria, [Annual Report on the activities of the Austrian National Preventive Mechanism \(NPM\) 2018](#), Vienna, June 2019, p. 118.

¹⁰⁰ Austria, [Bericht der Volksanwaltschaft an den Nationalrat und an den Bundesrat 2018 Präventive Menschenrechtskontrolle](#), March 2019, p. 150.

¹⁰¹ Austria, [Annual Report on the activities of the Austrian National Preventive Mechanism \(NPM\) 2018](#), Vienna, June 2019, p. 144.

¹⁰² Austria, [Bericht der Volksanwaltschaft an den Nationalrat und an den Bundesrat 2018 Präventive Menschenrechtskontrolle](#), March 2019, p. 150.

¹⁰³ Austria, [Annual Report on the activities of the Austrian National Preventive Mechanism \(NPM\) 2018](#), Vienna, June 2019, p. 145.

¹⁰⁴ Austria, [Bericht der Volksanwaltschaft an den Nationalrat und an den Bundesrat 2019 Präventive Menschenrechtskontrolle](#), March 2020, p. 161.

¹⁰⁵ Austria, [Annual Report on the activities of the Austrian National Preventive Mechanism \(NPM\) 2019](#), Vienna, June 2020, p. 157.

Besonders gesicherte Zellen in PAZ sollen über einen natürlichen Lichteinfall verfügen und in allen Einzelhafträumen muss eine natürliche oder mechanische Belüftungsmöglichkeit gegeben sein. In allen Einzelzellen muss eine bei der Zelle zu quittierende Alarmtaste vorhanden sein. Einzelzellen gemäß § 5 AnhO sind mit einem Waschbecken, einer Warm- und Kaltwasser-Versorgung, einer Sitztoilette, einem Bett und einem Tisch mit Sitzmöglichkeit auszustatten. Geflieste Sicherheitszellen haben über eine (Hock-)Toilette zu verfügen.¹⁰⁶

There must be a sufficient number of cells available in all police detention centres, which are suitable for solitary confinement pursuant to Section 5 and/or Section 5b (2) (4) of the Detention Regulation (Anhalteordnung). Specially secured cells should have natural daylight, and there must be natural or mechanical ventilation in all single cells. All single cells must have an alarm button, the activation of which has to be acknowledged at the cell. Single cells pursuant to Section 5 of the Detention Regulation must be fitted with a sink, supply of cold and hot water, a sit-down toilet, a bed and a table with seating. Tiled security cells shall have a (squat) toilet.¹⁰⁷

5. Access to healthcare

- a) What is the national standard with regard to access to medical services in prisons, including emergency care? (E.g.: Do detainees have prompt access to medical services within prisons and/or externally? Do detainees have access to dentists, opticians, etc.?) If so, what does it require?

The fifth sub-section of the Penitentiary System Act (*Strafvollzugsgesetz*)¹⁰⁸ deals with medical care for detainees. § 66 Penitentiary System Act stipulates that the health status of detainees and their weight are to be monitored. § 68 (1) Penitentiary System Act stipulates that in case of illness, accident, suicide attempt or other self-harm the prison doctor has to be informed. In such cases, the prison doctor shall examine the detainee and has to make sure that he/she receives the necessary medical and, if necessary, specialist treatment and care. The prison doctor shall also determine whether the detainee is ill, whether he/she is bedridden, where he/she is to be accommodated, and whether and to what extent he/she is able to work according to § 68 (2) Penitentiary System Act.

If the prison doctor cannot be reached, another doctor shall be called in urgent cases according to § 70 Penitentiary System Act. Another doctor shall also be called in, if the prison doctor deems this appropriate in view of the nature and seriousness of the case, or, if the detainee requests it in the event of a suspected serious illness and pays the costs.

According to § 73 Penitentiary System Act, the detainee shall be granted the necessary dental treatment. The conservative dental treatment shall be carried out in a simple

¹⁰⁶ Austria, [Bericht der Volksanwaltschaft an den Nationalrat und an den Bundesrat 2019 Präventive Menschenrechtskontrolle](#), March 2020, p. 161.

¹⁰⁷ Austria, [Annual Report on the activities of the Austrian National Preventive Mechanism \(NPM\) 2019](#), Vienna, June 2020, p. 157.

¹⁰⁸ Austria, Penitentiary System Act (*Bundesgesetz vom 26. März 1969 über den Vollzug der Freiheitsstrafen und der mit Freiheitsentziehung verbundenen vorbeugenden Maßnahmen, Strafvollzugsgesetz - StVG*), Federal Law Gazette No. 144/1969.

form unless the detainee requests special treatment at his/her own expense. Dentures are only provided on the own costs of the detainee.

§ 10 (1) Detention Regulation (*Anhalteordnung*)¹⁰⁹ stipulates that the necessary medical care of the detainees shall be ensured by public health officers (*Amtsärzte*) or by other means of precaution (*Vorsorge*), so that, if necessary, a doctor can intervene without unnecessary delay. The care of detainees by paramedics may be taken into consideration for less serious cases.

b) Are there any national standards concerning the availability of qualified medical and nursing personnel? If so, what do they require?

None apart from those reported above in section 5.a)

c) Are there any national standards for an initial medical examination upon deprivation of liberty or transfer of detainees? If so, what do they require?

Detainees shall be medically examined upon admission or immediately thereafter, § 132 (5) Penitentiary System Act (*Strafvollzugsgesetz*).¹¹⁰ The check for fitness for detention comprises the detainee's physical and mental health. If, according to the results of the examination, it is to be assumed that the execution of the sentence is to be postponed, the competent court shall be informed thereof. § 154 (1) Penitentiary System Act stipulates that detainees convicted to a sentence that does not exceed two weeks of imprisonment shall not be required to undergo a medical examination upon admission or immediately thereafter.

§7 (3) Detention Regulation (*Anhalteordnung*)¹¹¹ stipulates that all detainees shall be examined by a doctor without unnecessary delay, but at the latest within 24 hours after admission, to determine their fitness for detention. They shall tolerate the medical examinations necessary for the assessment of their fitness for detention and cooperate in the preparation of the findings. If detainees refuse to cooperate in the medical examination, it shall be assumed that they are fit for detention as long as they do not show any relevant symptoms of illness or injuries and there is no other reason to doubt their fitness for detention.

In the course of the Covid-19 pandemic, the Federal Ministry of Justice issued many internal orders/instructions (*Dienstanweisungen*) affecting the execution of sentences. In respect of healthcare, the summary of the measures relating to COVID-19 in the execution of sentences¹¹² explains that a standardised risk history is to be taken for each new admission and the body temperature must be measured without contact. Any suspicious cases are not to be treated in the surgery rooms (*Ordinationsräumlichkeiten*) or other rooms otherwise dedicated to nursing care, but in special access departments adapted for isolation purposes or other suitable separated areas. Contact with third

¹⁰⁹ Austria, Detention Regulation ([Verordnung der Bundesministerin für Inneres über die Anhaltung durch die Sicherheitsbehörden und Organe des öffentlichen Sicherheitsdienstes - Anhalteordnung, AnhO](#)), Federal Law Gazette II No. 128/1999.

¹¹⁰ Austria, Penitentiary System Act ([Bundesgesetz vom 26. März 1969 über den Vollzug der Freiheitsstrafen und der mit Freiheitsentziehung verbundenen vorbeugenden Maßnahmen, Strafvollzugsgesetz - StVG](#)), Federal Law Gazette No. 144/1969.

¹¹¹ Austria, Detention Regulation ([Verordnung der Bundesministerin für Inneres über die Anhaltung durch die Sicherheitsbehörden und Organe des öffentlichen Sicherheitsdienstes - Anhalteordnung, AnhO](#)), Federal Law Gazette II No. 128/1999.

¹¹² Austria, Federal Ministry of Justice, Measures relating to COVID-19 in the execution of sentences - condensed version ([Maßnahmen zu COVID-19 im Straf- und Maßnahmenvollzug, komprimierte Fassung](#)), 5 May 2021.

parties should be avoided as far as possible until clarification of whether there is a justified suspicion of a Covid-19 infection.

The summary of the measures relating to COVID-19 in the execution of sentences¹¹³ explains further that if a detainee shows flu-like symptoms or symptoms typical of Covid-19 but has not had contact with a person who has been tested positive for Covid-19 or is a suspected case, he/she must wear an FFP-2 respirator without an exhalation valve at all times until he/she is symptom-free or becomes a real Covid-19 suspected case due to increased symptoms, so that isolation and rapid testing must take place. In the meantime, the detainee must be isolated as much as possible for the necessary time. The affected detainee and his/her fellow detainees in the same detention room are to be isolated from each other until the situation has been clarified.

d) Are there any national standards relating to the provision of specialist care? (E.g. for long-term diseases, for sick and elderly detainees, the mentally ill, drug addicted detainees, etc.) If so, what do they require?

§71 (1) Penitentiary System Act (*Strafvollzugsgesetz*)¹¹⁴ stipulates that, if a sick or injured detainee cannot be treated properly in the prison or if he/she poses an unavoidable threat to the health of others, he/she shall be transferred to the nearest prison with facilities that guarantee the necessary treatment or segregation. §71 (2) Penitentiary System Act further stipulates that, if the detainee cannot be treated properly in another prison or if his/her life would be endangered if he/she were transferred there, he/she shall be transferred to a suitable public hospital and, if necessary, guarded there. The public hospitals shall be obliged to admit the detainee and to allow him/her to be guarded. §71 (3) Penitentiary System Act deals with the transfer of detainees to a public psychiatric hospital or a psychiatric ward of a public general hospital.

§ 68a (1) Penitentiary System Act (*Strafvollzugsgesetz*)¹¹⁵ stipulates that a detainee shall be subjected to a withdrawal treatment, if, according to the statement of the prison doctor, the detainee is addicted to the abuse of an intoxicating agent or addictive substance and the treatment is appropriate in view of the duration of the sentence. The initiation or continuation of such a treatment shall be dispensed, if the attempt appears unsuccessful from the outset or if its continuation would not promise success, § 68a (2) Penitentiary System Act.

§ 66 (2) Penitentiary System Act stipulates that detainees affected by infectious diseases or infested with vermin shall be segregated. Objects that have been used by them shall be disinfected or disinfested; if this is not possible or not feasible, these objects shall be destroyed regardless of who they belong to. Rooms, in which such detainees have stayed or which are infested with vermin, shall be decontaminated or disinfected.

¹¹³ Austria, Federal Ministry of Justice, Measures relating to COVID-19 in the execution of sentences - condensed version ([Maßnahmen zu COVID-19 im Straf- und Maßnahmenvollzug, komprimierte Fassung](#)), 5 May 2021.

¹¹⁴ Austria, Penitentiary System Act ([Bundesgesetz vom 26. März 1969 über den Vollzug der Freiheitsstrafen und der mit Freiheitsentziehung verbundenen vorbeugenden Maßnahmen, Strafvollzugsgesetz - StVG](#)), Federal Law Gazette No. 144/1969.

¹¹⁵ Austria, Penitentiary System Act ([Bundesgesetz vom 26. März 1969 über den Vollzug der Freiheitsstrafen und der mit Freiheitsentziehung verbundenen vorbeugenden Maßnahmen, Strafvollzugsgesetz - StVG](#)), Federal Law Gazette No. 144/1969.

§ 129 (2) Penitentiary System Act stipulates that detainees who are unfit for the general criminal detention system because of their mental characteristics shall be kept separately from other detainees and cared for in accordance with their condition.

§10 (3) Detention Regulation (*Anhalteordnung*)¹¹⁶ stipulates that if a detainee poses a risk of infection, the doctor shall take the measures provided for by law and medically necessary and ensure their further implementation. This also includes his/her obligation to demand, if necessary, placement in solitary confinement or release.

In the course of the Covid-19 pandemic, the Federal Ministry of Justice issued many internal orders/instructions (*Dienstanweisungen*) affecting the execution of sentences. In respect of healthcare, the summary of the measures relating to COVID-19 in the execution of sentences¹¹⁷ explains that dental treatments must be carried out in accordance with the recommendations of the Austrian Dental Association with appropriate protective equipment. Interruptions of detention under § 166 Penitentiary System Act (*Strafvollzugsgesetz*)¹¹⁸ are still permissible for therapeutic reasons. After their return, the detainees are to be treated like new arrivals (meaning 10 days of isolation or 5 days of isolation including testing or continuous segregated accommodation). The summary of the measures relating to COVID-19 in the execution of sentences¹¹⁹ also mentions that there should be a possibility of conducting therapies via video.

e) Are there any national standards with regard to a medical treatment of the detainee's own choosing? If so, what do they require?

§70 Penitentiary System Act (*Strafvollzugsgesetz*)¹²⁰ stipulates that another doctor shall also be called, if the detainee requests it, in the event of a suspected serious illness and pays the costs.

§10 (5) Detention Regulation (*Anhalteordnung*)¹²¹ stipulates that detainees shall be free to consult a doctor of their choice at their own expense for their medical care; this care shall take place in the prison room.

f) Please indicate whether there are different standards applicable to different detention regimes (pre-trial and post-trial detention and for example, if applicable in your jurisdiction: open, semi-open, closed etc.).

¹¹⁶ Austria, Detention Regulation ([Verordnung der Bundesministerin für Inneres über die Anhaltung durch die Sicherheitsbehörden und Organe des öffentlichen Sicherheitsdienstes - Anhalteordnung, AnhO](#)), Federal Law Gazette II No. 128/1999.

¹¹⁷ Austria, Federal Ministry of Justice, Measures relating to COVID-19 in the execution of sentences - condensed version ([Maßnahmen zu COVID-19 im Straf- und Maßnahmenvollzug, komprimierte Fassung](#)), 5 May 2021.

¹¹⁸ Austria, Penitentiary System Act ([Bundesgesetz vom 26. März 1969 über den Vollzug der Freiheitsstrafen und der mit Freiheitsentziehung verbundenen vorbeugenden Maßnahmen, Strafvollzugsgesetz - StVG](#)), Federal Law Gazette No. 144/1969.

¹¹⁹ Austria, Federal Ministry of Justice, Measures relating to COVID-19 in the execution of sentences - condensed version ([Maßnahmen zu COVID-19 im Straf- und Maßnahmenvollzug, komprimierte Fassung](#)), 5 May 2021.

¹²⁰ Austria, Penitentiary System Act ([Bundesgesetz vom 26. März 1969 über den Vollzug der Freiheitsstrafen und der mit Freiheitsentziehung verbundenen vorbeugenden Maßnahmen, Strafvollzugsgesetz - StVG](#)), Federal Law Gazette No. 144/1969.

¹²¹ Austria, Detention Regulation ([Verordnung der Bundesministerin für Inneres über die Anhaltung durch die Sicherheitsbehörden und Organe des öffentlichen Sicherheitsdienstes - Anhalteordnung, AnhO](#)), Federal Law Gazette II No. 128/1999.

As explained above in section 1.e , a distinction is to be made between the Penitentiary System Act (*Strafvollzugsgesetz*)¹²² and the Detention Regulation (*Anhalteordnung*)¹²³. The applicable standards of these legal regimes are reported above in more detail.

g) Please indicate any remedies available to detainees in case of a breach or violation of the standards addressed under 5. a) – f), including their respective legal basis.

See above under section 1.f.

h) Please, provide a link to the National Preventive Mechanism's reports from the reference period (1 May 2018 to 15 April 2021; if no report is available for this period, please provide links to the most recent one and the relevant CPT reports from the reference period) and whether there are any recommendations regarding these aspects (please provide the exact quotation in both, the national as well as in English language). These reports can be found on the webpage of the National Preventive Mechanism. For ease of reference a list of links can be found via the [OPCAT Database](#).

2017:

Correctional institutions:

*Strafgefangene, die eine geistig-seelische Besonderheit und eine fehlende Eignung für den allgemeinen Strafvollzug aufweisen, haben eine adäquate fachspezifische Betreuung und Therapie zu erhalten. Strafgefangene, die eine psychische Besonderheit aufweisen und für den allgemeinen Strafvollzug nicht geeignet sind, sind von den übrigen Strafgefangenen zu trennen. Es sind Standards für die Versorgung bzw. Betreuung dieser Strafgefangenen sowie Kriterien als Orientierungshilfe für die Klassifizierung zu etablieren.*¹²⁴

Prison inmates with mental idiosyncrasies who are unsuited for housing with the general prison population must receive adequate specialised care and therapy. Prison inmates with psychological idiosyncrasies who are unsuited for housing with the general prison population must be separated from other prison inmates. Standards for care and treatment of these prison inmates must be established along with criteria providing guidance for their classification.¹²⁵

*Inhaftierte mit einer Substanzgebrauchsstörung haben einen Anspruch darauf, dass ihren speziellen Behandlungs-, Betreuungs- und Beratungsbedürfnissen Rechnung getragen wird. Suchtkranke dürfen aufgrund ihrer Erkrankung keine Diskriminierung beim Zugang zur Arbeit und zu Ausbildungsangeboten erfahren.*¹²⁶

Inmates with a substance use disorder have a right to have their special treatment, care and counselling needs taken into account. There may be no discrimination against

¹²² Austria, Penitentiary System Act (*Bundesgesetz vom 26. März 1969 über den Vollzug der Freiheitsstrafen und der mit Freiheitsentziehung verbundenen vorbeugenden Maßnahmen, Strafvollzugsgesetz - StVG*), Federal Law Gazette No. 144/1969.

¹²³ Austria, Detention Regulation (*Verordnung der Bundesministerin für Inneres über die Anhaltung durch die Sicherheitsbehörden und Organe des öffentlichen Sicherheitsdienstes - Anhalteordnung, AnhO*), Federal Law Gazette II No. 128/1999.

¹²⁴ Austria, [Bericht der Volksanwaltschaft an den Nationalrat und an den Bundesrat 2017 Präventive Menschenrechtskontrolle](#), Vienna, March 2018, p. 121.

¹²⁵ Austria, [Annual Report on the activities of the Austrian National Preventive Mechanism \(NPM\) 2017](#), Vienna, June 2018, p. 116.

¹²⁶ Austria, [Bericht der Volksanwaltschaft an den Nationalrat und an den Bundesrat 2017 Präventive Menschenrechtskontrolle](#), Vienna, March 2018, p. 127.

addicted persons with respect to their access to work and educational offerings due to their illness.¹²⁷

*Um eine medizinische und pflegerische Behandlung unter vergleichbaren Bedingungen zur Verfügung zu stellen, wie sie Patientinnen bzw. Patienten in Freiheit genießen, muss medizinisches und pflegerisches Personal in ausreichendem Maße vorhanden sein. Die seit Jahren ausstehenden Kennzahlen im medizinischen Bereich sollen ehestens festgelegt werden. Der Bedarf an Pflegepersonal ist regelmäßig zu evaluieren und anzupassen.*¹²⁸

There must be an adequate number of medical and nursing staff to provide medical and nursing treatment under conditions that are comparable to those of patients who are at liberty. The key figures in the medical area, which have been lacking for years, must be determined as soon as possible. The need for nursing staff must be regularly assessed and adjusted.¹²⁹

*Eine Zugangsuntersuchung hat aus einer Ganzkörperuntersuchung inklusive Entblößung zu bestehen. Bei der Zugangsuntersuchung sollen die Inhaftierten ausdrücklich auf die Möglichkeit einer Blutuntersuchung hingewiesen werden. Eine Ablehnung einer Blutuntersuchung seitens der Häftlinge ist im IVV-MED-Modul zu dokumentieren. Auch im Fall einer Überstellung (z.B. aufgrund einer Vollzugsortsänderung oder einer Klassifizierung) ist eine ärztliche Untersuchung innerhalb von 24 Stunden vorzunehmen. Die automatische Aufnahme von neu eintreffenden Inhaftierten in die Terminliste der Ärztin oder des Arztes im IVV-MED-Modul soll auch einen Hinweis auf die Durchführung der ärztlichen Untersuchung innerhalb von 24 Stunden enthalten.*¹³⁰

A health examination upon arrival must consist of a full-body examination, including disrobement. At the health examination upon arrival, inmates should be expressly informed of the option of a blood test. The refusal by an inmate to undergo a blood test should be documented in the Electronic Patient Record Module. In the case of a transfer (e.g. due to a transfer to a different prison or a classification), a medical examination must also be performed within 24 hours. The automatic inclusion of newly admitted inmates on the doctor's appointment list in the Electronic Patient Record Module should also contain a note that the medical examination should be performed within 24 hours.¹³¹

Police detention centres:

*Bei Unterbringungen in besonders gesicherten Zellen hat ehestmöglich eine erste ärztliche Untersuchung des Häftlings stattzufinden.*¹³²

The initial medical examination of prisoners held in specially secured cells must be conducted as soon as possible.¹³³

¹²⁷ Austria, [Annual Report on the activities of the Austrian National Preventive Mechanism \(NPM\) 2017](#), Vienna, June 2018, p. 122.

¹²⁸ Austria, [Bericht der Volksanwaltschaft an den Nationalrat und an den Bundesrat 2017 Präventive Menschenrechtskontrolle](#), Vienna, March 2018, p. 129.

¹²⁹ Austria, [Annual Report on the activities of the Austrian National Preventive Mechanism \(NPM\) 2017](#), Vienna, June 2018, p. 124.

¹³⁰ Austria, [Bericht der Volksanwaltschaft an den Nationalrat und an den Bundesrat 2017 Präventive Menschenrechtskontrolle](#), Vienna, March 2018, p. 131.

¹³¹ Austria, [Annual Report on the activities of the Austrian National Preventive Mechanism \(NPM\) 2017](#), Vienna, June 2018, p. 126.

¹³² Austria, [Bericht der Volksanwaltschaft an den Nationalrat und an den Bundesrat 2017 Präventive Menschenrechtskontrolle](#), Vienna, March 2018, p. 153.

¹³³ Austria, [Annual Report on the activities of the Austrian National Preventive Mechanism \(NPM\) 2017](#), Vienna, June 2018, p. 148.

2018:

Correctional institutions:

Jede JA hat ein multiprofessionelles Behandlungsteam für die Behandlung von Substanzgebrauchsstörungen zu etablieren. Zusätzlich zum suchtmmedizinischen Angebot sind den Inhaftierten mit einer Substanzgebrauchsstörung auch Gruppentherapien oder klinisch-psychologische Behandlungen anzubieten. Bei entsprechender Indikation ist eine Opioidsubstitutionstherapie durchzuführen. Diese liegt nicht nur dann vor, wenn die Patientin bzw. der Patient bereits extramural substituiert in der JA eintrifft, vielmehr ist das Vorliegen einer diagnostizierten Opioidabhängigkeit Grundlage dafür. Bei Abbruch einer Opioidsubstitutionstherapie hat nachweislich eine Aufklärung zu erfolgen, dass sich das Mortalitätsrisiko dadurch erhöht. Die Zulässigkeit und der Anspruch auf eine Substitutionstherapie soll auch gesetzlich klargestellt werden.¹³⁴

Every correctional institution must establish a multi-professional treatment team for treating substance use disorders. In addition to the addiction-based medical programme, the detainees with a substance use disorder should also be offered group therapies or clinical-psychological treatments. With the relevant indication, an opioid substitution therapy must be carried out. This must not only be the case when the patient is already undergoing extramural substitution therapy at the time of admission to the correctional institution, rather a diagnosed opioid addiction should be the basis for the same. Patients who discontinue an opioid substitution therapy must be verifiably informed that the risk of mortality increases considerably as a consequence. The reliability and the entitlement to a substitution therapy should be clarified in the law.¹³⁵

Im Regelfall sind alle Personen mit einer Substanzgebrauchsstörung im Wohngruppenvollzug unterzubringen.¹³⁶

As a rule, all persons with a substance use disorder must be housed in shared accommodation.¹³⁷

Die Untersuchung, ob eine Substanzgebrauchsstörung vorliegt, hat durch das ärztliche Personal bei Einlieferung, spätestens jedoch innerhalb von 24 Stunden zu erfolgen; dies gilt auch an Wochenenden und Feiertagen. Steht kein ärztliches Personal zur Verfügung, ist bei Verdacht auf eine Substanzgebrauchsstörung der Ärzte(not-)dienst zu verständigen oder eine Ausführung in ein Krankenhaus durchzuführen. Die Entscheidung darüber darf nur dann von Exekutivbediensteten vorgenommen werden, wenn sie eine entsprechende Zusatzausbildung haben. Die Verabreichung einer „Pauschalmedikation“ bei Entzugsbeschwerden bedarf stets einer ärztlichen Verschreibung.¹³⁸

The examination determining whether a substance use disorder exists must be performed by the medical staff during admission, at the latest, however, within 24 hours; this also applies on weekends and public holidays. If there is no medical staff

¹³⁴ Austria, [Bericht der Volksanwaltschaft an den Nationalrat und an den Bundesrat 2018 Präventive Menschenrechtskontrolle](#), March 2019, p. 115 et seq.

¹³⁵ Austria, [Annual Report on the activities of the Austrian National Preventive Mechanism \(NPM\) 2018](#), Vienna, June 2019, p. 110.

¹³⁶ Austria, [Bericht der Volksanwaltschaft an den Nationalrat und an den Bundesrat 2018 Präventive Menschenrechtskontrolle](#), March 2019, p. 116.

¹³⁷ Austria, [Annual Report on the activities of the Austrian National Preventive Mechanism \(NPM\) 2018](#), Vienna, June 2019, p. 110.

¹³⁸ Austria, [Bericht der Volksanwaltschaft an den Nationalrat und an den Bundesrat 2018 Präventive Menschenrechtskontrolle](#), March 2019, p. 118.

available, the on-call (emergency) doctor must be consulted or the detainee transferred to a hospital if there is a suspected substance use disorder. The relevant decision may only be taken by law enforcement officers if they have appropriate additional qualifications. The administering of "one-size-fits-all medication" for withdrawal conditions always requires a doctor's prescription.¹³⁹

*Personen in Haft haben Anspruch auf eine gleichwertige medizinische Versorgung wie Personen in Freiheit (Äquivalenzprinzip). Inhaftierte dürfen daher nicht aufgrund von mangelnder Compliance von einer Therapie oder Medikation ausgeschlossen werden. Das Ansuchen um eine bestimmte Therapie, deren Bewilligung bzw. Versagung sowie der Behandlungsverlauf sind im IVV-MED-Modul und in der Krankenakte zu dokumentieren. Erforderlich sind österreichweit einheitliche Regeln für das Erstgespräch mit dem Psychologischen Dienst und die psychiatrische Erstuntersuchung.*¹⁴⁰

Persons in detention have the right to the same medical care as persons in freedom (equivalence principle). Detainees may thus not be excluded from therapy or medication due to lack of compliance. The request for a specific therapy, the approval of the same and/or care as well as the course of the treatment must be documented in the Electronic Patient Record Module and in the patient file. Nationwide harmonised rules for the initial interview with the psychological service and the initial psychiatric examination are required.¹⁴¹

*Vordringlich ist das Problem des Personalmangels im medizinischen Bereich zu lösen. Es bedarf insbesondere eines monetären Anreizes, um Medizinerinnen und Mediziner für eine Tätigkeit im Vollzug zu gewinnen.*¹⁴²

The problem of staff shortages in the medical area must be solved urgently. A monetary incentive is required, in particular, in order to win over doctors for a position working in prisons.¹⁴³

*Einmal monatlich ist eine anstaltsärztliche Visite auf allen Abteilungen und in den Hafträumen der jeweiligen JA durchzuführen und in der IVV zu dokumentieren.*¹⁴⁴

A visit must be carried out by a medical officer to the sections and inmate cells of the respective correctional institution once a month and documented in the Integrated Prison Administration.¹⁴⁵

*Diagnosen sind jedenfalls in das Notfallblatt aufzunehmen.*¹⁴⁶

Diagnoses must be entered in the emergency sheet.¹⁴⁷

¹³⁹ Austria, [Annual Report on the activities of the Austrian National Preventive Mechanism \(NPM\) 2018](#), Vienna, June 2019, p. 112.

¹⁴⁰ Austria, [Bericht der Volksanwaltschaft an den Nationalrat und an den Bundesrat 2018 Präventive Menschenrechtskontrolle](#), March 2019, p. 120.

¹⁴¹ Austria, [Annual Report on the activities of the Austrian National Preventive Mechanism \(NPM\) 2018](#), Vienna, June 2019, p. 114.

¹⁴² Austria, [Bericht der Volksanwaltschaft an den Nationalrat und an den Bundesrat 2018 Präventive Menschenrechtskontrolle](#), March 2019, p. 121.

¹⁴³ Austria, [Annual Report on the activities of the Austrian National Preventive Mechanism \(NPM\) 2018](#), Vienna, June 2019, p. 115.

¹⁴⁴ Austria, [Bericht der Volksanwaltschaft an den Nationalrat und an den Bundesrat 2018 Präventive Menschenrechtskontrolle](#), March 2019, p. 122.

¹⁴⁵ Austria, [Annual Report on the activities of the Austrian National Preventive Mechanism \(NPM\) 2018](#), Vienna, June 2019, p. 116.

¹⁴⁶ Austria, [Bericht der Volksanwaltschaft an den Nationalrat und an den Bundesrat 2018 Präventive Menschenrechtskontrolle](#), March 2019, p. 122.

¹⁴⁷ Austria, [Annual Report on the activities of the Austrian National Preventive Mechanism \(NPM\) 2018](#), Vienna, June 2019, p. 117.

Eine Beziehung von Strafvollzugsbediensteten der Justizwache während medizinischer Untersuchungen bzw. Gespräche darf nur ausnahmsweise aufgrund einer Gefährlichkeitsprognose über Verlangen der Ärztin bzw. des Arztes erfolgen. Der Arbeitsplatz der exekutiven Justizwachebediensteten der Krankenabteilung ist räumlich vom Behandlungsraum zu trennen.¹⁴⁸

Calling upon prison officers during medical examinations or consultations is only permissible in exceptional cases based on a dangerousness assessment when requested by the doctor. The workplace of the prison officers must be physically separated from the treatment room.¹⁴⁹

2019:

Correctional institutions:

Die stationäre akutpsychiatrische Versorgung von Untersuchungshäftlingen und Strafgefangenen ist dringend auszubauen.¹⁵⁰

The in-patient acute psychiatric care of detainees awaiting trial and convicts must be expanded urgently.¹⁵¹

Es bedarf insbesondere eines monetären Anreizes, um Medizinerinnen und Mediziner für eine Tätigkeit im Vollzug zu gewinnen. Die vakanten Stellen im medizinischen Bereich sind ehestmöglich zu besetzen.¹⁵²

A financial incentive is required in particular to attract medical experts to work in prisons. The vacant positions in the medical area shall be filled as soon as possible.¹⁵³

Das IVV-MED-Modul ist zeitnahe zu erneuern. Nach einer Blutuntersuchung ist zwingend ein automatischer Folgetermin mit der Patientin bzw. dem Patienten zur Befundbesprechung vorzusehen. In allen JA sind Computerprogramme zur Interaktionsprüfung von Medikamenten einzuführen.¹⁵⁴

The Electronic Patient Record Module shall be replaced quickly. A mandatory automatic follow-up appointment with the patient to discuss the results shall be scheduled after a blood test. Computer programmes for examining the interaction of medications shall be installed in all correctional institutions.¹⁵⁵

Die chefärztliche Bewilligung der [HCV]Therapie hat zeitnahe zu erfolgen. Das Ansuchen um eine bestimmte Therapie, deren Bewilligung bzw. Versagung sowie der Behandlungsverlauf sind im IVV-MED-Modul und in der Krankenakte zu dokumentieren.¹⁵⁶

¹⁴⁸ Austria, [Bericht der Volksanwaltschaft an den Nationalrat und an den Bundesrat 2018 Präventive Menschenrechtskontrolle](#), March 2019, p. 123.

¹⁴⁹ Austria, [Annual Report on the activities of the Austrian National Preventive Mechanism \(NPM\) 2018](#), Vienna, June 2019, p. 117.

¹⁵⁰ Austria, [Bericht der Volksanwaltschaft an den Nationalrat und an den Bundesrat 2019 Präventive Menschenrechtskontrolle](#), March 2020, p. 118.

¹⁵¹ Austria, [Annual Report on the activities of the Austrian National Preventive Mechanism \(NPM\) 2019](#), Vienna, June 2020, p. 113.

¹⁵² Austria, [Bericht der Volksanwaltschaft an den Nationalrat und an den Bundesrat 2019 Präventive Menschenrechtskontrolle](#), March 2020, p. 120.

¹⁵³ Austria, [Annual Report on the activities of the Austrian National Preventive Mechanism \(NPM\) 2019](#), Vienna, June 2020, p. 115.

¹⁵⁴ Austria, [Bericht der Volksanwaltschaft an den Nationalrat und an den Bundesrat 2019 Präventive Menschenrechtskontrolle](#), March 2020, p. 120.

¹⁵⁵ Austria, [Annual Report on the activities of the Austrian National Preventive Mechanism \(NPM\) 2019](#), Vienna, June 2020, p. 115.

¹⁵⁶ Austria, [Bericht der Volksanwaltschaft an den Nationalrat und an den Bundesrat 2019 Präventive Menschenrechtskontrolle](#), March 2020, p. 122.

Approval of therapy by the medical superintendent shall be timely. The request for a specific therapy, approval or rejection as well as the treatment procedure shall be documented in the Electronic Patient Record Module and the medical record.¹⁵⁷

*Vor der Umstellung eines Substitutionsmedikaments soll stets eine umfassende Risikoabwägung erfolgen, welches Medikament im individuellen Fall am besten geeignet ist.*¹⁵⁸

A comprehensive risk assessment as to which medication is the most suited in the individual case should always be carried out before substitution medication is changed.¹⁵⁹

*Jede JA hat ein multiprofessionelles Behandlungsteam für die Behandlung von Substanzgebrauchsstörungen zu etablieren. Die Untersuchung, ob eine Substanzgebrauchsstörung vorliegt, hat durch das ärztliche Personal bei Einlieferung, spätestens jedoch innerhalb von 24 Stunden zu erfolgen; dies gilt auch an Wochenenden und Feiertagen.*¹⁶⁰

Every correctional institution shall establish a multi-professional treatment team for the treatment of substance use disorders. The examination to determine whether there is a substance use disorder shall be performed by the medical staff upon arrival, but within 24 hours at the latest; this also applies at weekends and on public holidays.¹⁶¹

*Zusätzlich zum suchtmedizinischen Angebot (z.B. Opioidsubstitutionstherapie) sind den Inhaftierten mit einer Substanzgebrauchsstörung effektive Therapiemöglichkeiten anzubieten.*¹⁶²

In addition to the medical addiction programmes (e.g. opioid substitution therapy), effective therapy options shall be offered to the detainees with a substance use disorder.¹⁶³

*Für Personen mit einer Substanzgebrauchsstörung sind bereits während der Untersuchungshaft ein Vollzugsplan und ein individueller Behandlungsplan zu erstellen.*¹⁶⁴

An enforcement plan and an individual treatment plan shall be created during pre-trial detention for persons with a substance use disorder.¹⁶⁵

¹⁵⁷ Austria, [Annual Report on the activities of the Austrian National Preventive Mechanism \(NPM\) 2019](#), Vienna, June 2020, p. 117.

¹⁵⁸ Austria, [Bericht der Volksanwaltschaft an den Nationalrat und an den Bundesrat 2019 Präventive Menschenrechtskontrolle](#), March 2020, p. 123.

¹⁵⁹ Austria, [Annual Report on the activities of the Austrian National Preventive Mechanism \(NPM\) 2019](#), Vienna, June 2020, p. 118.

¹⁶⁰ Austria, [Bericht der Volksanwaltschaft an den Nationalrat und an den Bundesrat 2019 Präventive Menschenrechtskontrolle](#), March 2020, p. 123.

¹⁶¹ Austria, [Annual Report on the activities of the Austrian National Preventive Mechanism \(NPM\) 2019](#), Vienna, June 2020, p. 120.

¹⁶² Austria, [Bericht der Volksanwaltschaft an den Nationalrat und an den Bundesrat 2019 Präventive Menschenrechtskontrolle](#), March 2020, p. 126.

¹⁶³ Austria, [Annual Report on the activities of the Austrian National Preventive Mechanism \(NPM\) 2019](#), Vienna, June 2020, p. 121.

¹⁶⁴ Austria, [Bericht der Volksanwaltschaft an den Nationalrat und an den Bundesrat 2019 Präventive Menschenrechtskontrolle](#), March 2020, p. 126.

¹⁶⁵ Austria, [Annual Report on the activities of the Austrian National Preventive Mechanism \(NPM\) 2019](#), Vienna, June 2020, p. 121.

*Um eine adäquate Behandlung und Betreuung zu ermöglichen, sind den Fachdiensten entsprechende Zugriffsrechte auf die Dokumentation einzuräumen. Hierzu sind die technischen Voraussetzungen unter Beachtung der Datensicherheit zu schaffen.*¹⁶⁶

The specialist services shall be granted access rights to the documentation in order to facilitate adequate treatment and care. To this end, the technical conditions shall be created while maintaining data security.¹⁶⁷

*Psychotherapeutinnen und Psychotherapeuten, die im Vollzug eingesetzt werden, sollen über eine spezielle Qualifikation verfügen. Die Kriterien, nach denen sie ausgewählt werden, sollen bundesweit definiert sein.*¹⁶⁸

Psychotherapists who are deployed in prisons should have special qualifications. The definition of the criteria, according to which they are selected, should apply nationwide.¹⁶⁹

*Kann Inhaftierten keine Therapie in einer ihnen verständlichen Sprache angeboten werden, müssen sie – ohne Wartefrist – einen Deutschkurs belegen können.*¹⁷⁰

If it is not possible to offer a therapy in a language that the detainee can understand, they must – without a waiting period – be able to join a German course.¹⁷¹

6. Special measures in place to protect young detainees

a) Are there any national standards with regard to the separation of young detainees from adults? If so, what do they require? (e.g. a separate juvenile ward, or part of the building, canteen, common area etc.?)

Pre-trial detention: § 36 (1) Juvenile Court Act (*Jugendgerichtsgesetz*)¹⁷² stipulates that juveniles shall be detained in a special section of the prison, if possible. §36 (3) Juvenile Court Act stipulates that juveniles - as a general rule - shall be separated from adult detainees from whom a harmful influence is to be feared. Detention in solitary confinement shall be dispensed for juveniles if this would be detrimental to the detainee and if he/she can be detained together with other detainees without danger to these other detainees.

Post-trial detention: §55 (1) Juvenile Court Act (*Jugendgerichtsgesetz*)¹⁷³ stipulates that prison sentences imposed on juveniles shall be executed in special institutions designated for this purpose, or, if possible, in special departments of other prisons. §55 (2) Juvenile Court Act stipulates that juvenile detainees shall be separated from adult detainees. However, such separation may be dispensed with if, under the circumstances,

¹⁶⁶ Austria, [Bericht der Volksanwaltschaft an den Nationalrat und an den Bundesrat 2019 Präventive Menschenrechtskontrolle](#), March 2020, p. 127.

¹⁶⁷ Austria, [Annual Report on the activities of the Austrian National Preventive Mechanism \(NPM\) 2019](#), Vienna, June 2020, p. 122.

¹⁶⁸ Austria, [Bericht der Volksanwaltschaft an den Nationalrat und an den Bundesrat 2019 Präventive Menschenrechtskontrolle](#), March 2020, p. 128.

¹⁶⁹ Austria, [Annual Report on the activities of the Austrian National Preventive Mechanism \(NPM\) 2019](#), Vienna, June 2020, p. 123.

¹⁷⁰ Austria, [Bericht der Volksanwaltschaft an den Nationalrat und an den Bundesrat 2019 Präventive Menschenrechtskontrolle](#), March 2020, p. 129.

¹⁷¹ Austria, [Annual Report on the activities of the Austrian National Preventive Mechanism \(NPM\) 2019](#), Vienna, June 2020, p. 124.

¹⁷² Austria, Juvenile Court Act 1988 (*Bundesgesetz vom 20. Oktober 1988 über die Rechtspflege bei Straftaten Jugendlicher und junger Erwachsener, Jugendgerichtsgesetz 1988 – JGG*), Federal Law Gazette Nr. 599/1988.

¹⁷³ Austria, Juvenile Court Act 1988 (*Bundesgesetz vom 20. Oktober 1988 über die Rechtspflege bei Straftaten Jugendlicher und junger Erwachsener, Jugendgerichtsgesetz 1988 – JGG*), Federal Law Gazette Nr. 599/1988.

there is no reason to fear that juvenile detainees will be adversely affected or otherwise disadvantaged.

According to § 4 (3) Detention Regulation (*Anhalteordnung*)¹⁷⁴ minors are to be accommodated separately from adults.

b) Please indicate the age categories of young persons falling under your country's (juvenile) detention regime.

§ 1 (2) Juvenile Court Act defines juveniles ("*Jugendlicher*") as persons who have reached the age of 14, but are below the age of 18. Minors ("*Unmündige*"), defined as anyone who has not yet reached the age of 14 yet, are not liable to prosecution.

Youth until 18 and young adults until the age of 21 according to § 1 Juvenile Court Act (*Jugendgerichtsgesetz*).¹⁷⁵

§55 (3) 1 Juvenile Court Act (*Jugendgerichtsgesetz*)¹⁷⁶ stipulates that adult detainees under the age of twenty-two may be placed under the juvenile detention regime provided that there is no reason to fear that the juvenile detainees will be adversely affected or otherwise disadvantaged.

§55 (3) 2 Juvenile Court Act stipulates that detainees who are to be held in the juvenile detention regime shall remain subject to this regime until they reach the age of twenty-four, provided that there is no reason to fear that the juvenile detainees will be adversely affected or otherwise disadvantaged. If, at the time of reaching the age of twenty-four, only a sentence of not more than one year is expected to be served, or if the transfer to a prison for adults would be associated with particular disadvantages for the detainee, the detainee may remain subject to the juvenile detention regime even for the execution of the remainder of the sentence. In no case may a detainee who has reached the age of twenty-seven remain subject to the juvenile detention regime.

§55 (6) Juvenile Court Act stipulates that all provisions applicable to juvenile detainees shall apply to older detainees subject to juvenile detention. However, upon their request, they shall be exempted from schooling by the head of the prison.

c) Please indicate whether there are different standards applicable to different detention regimes (pre-trial and post-trial detention and for example, if applicable in your jurisdiction: open, semi-open, closed etc.).

§ 51 Juvenile Court Act (*Jugendgerichtsgesetz*)¹⁷⁷ and § 2 Penitentiary System Act (*Strafvollzugsgesetz*)¹⁷⁸ lay down the general rule that if not provided for otherwise in the Juvenile Court Act, the general provisions for the execution of sentences of imprisonment shall apply to juveniles. §§ 172 (2) and 173 (5) Criminal Procedure Code 1975¹⁷⁹ and § 35a (2) Juvenile Court Act lay down the detailed provisions on measures

¹⁷⁴ Austria, Detention Regulation (*Verordnung der Bundesministerin für Inneres über die Anhaltung durch die Sicherheitsbehörden und Organe des öffentlichen Sicherheitsdienstes - Anhalteordnung, AnhO*), Federal Law Gazette II No. 128/1999.

¹⁷⁵ Austria, Juvenile Court Act 1988 (*Bundesgesetz vom 20. Oktober 1988 über die Rechtspflege bei Straftaten Jugendlicher und junger Erwachsener, Jugendgerichtsgesetz 1988 - JGG*), Federal Law Gazette Nr. 599/1988.

¹⁷⁶ Austria, Juvenile Court Act 1988 (*Bundesgesetz vom 20. Oktober 1988 über die Rechtspflege bei Straftaten Jugendlicher und junger Erwachsener, Jugendgerichtsgesetz 1988 - JGG*), Federal Law Gazette Nr. 599/1988.

¹⁷⁷ Austria, Juvenile Court Act 1988 (*Bundesgesetz vom 20. Oktober 1988 über die Rechtspflege bei Straftaten Jugendlicher und junger Erwachsener, Jugendgerichtsgesetz 1988 - JGG*), Federal Law Gazette Nr. 599/1988.

¹⁷⁸ Austria, Penitentiary System Act (*Bundesgesetz vom 26. März 1969 über den Vollzug der Freiheitsstrafen und der mit Freiheitsentziehung verbundenen vorbeugenden Maßnahmen, Strafvollzugsgesetz - StVG*), Federal Law Gazette No. 144/1969.

¹⁷⁹ Austria, Criminal Procedure Code 1975 (*Strafprozeßordnung 1975, StPO*), Federal Law Gazette No. 631/1975.

alternative to detention. Juveniles are not to be arrested, or pre-trial detention is not to be imposed or maintained on them, if their purpose can be achieved or has already been achieved by other means, possibly in combination with a family law order within the meaning of § 172 (2) and § 173 (5) Criminal Procedure Code 1975. This includes, for example, placement in a home, accommodation in an assisted living facility or a change of guardianship, if necessary, together with temporary probation assistance.

d) Please indicate any remedies available to young detainees in case of a breach or violation of the standards addressed under 6. a) – c), including their respective legal basis.

See above under section 1.f.

e) Please, provide a link to the National Preventive Mechanism's reports **from the reference period** (1 May 2018 to 15 April 2021; if no report is available for this period, please provide links to the most recent one and the relevant CPT reports from the reference period) and whether there are any recommendations regarding this aspect (please provide the exact quotation in both, the national as well as in English language). These reports can be found on the webpage of the National Preventive Mechanism. For ease of reference a list of links can be found via the [OPCAT Database](#).

2019:

Correctional institutions:

*Jugendliche sind so unterzubringen, dass sie keinem schädlichen Einfluss oder einer sonstigen Benachteiligung ausgesetzt sind. Jugendliche sind insbesondere getrennt von erwachsenen Inhaftierten anzuhalten.*¹⁸⁰

Adolescents shall be detained in a way that they are not exposed to harmful influences or other disadvantage. In particular, adolescents shall be detained separately from adult detainees.¹⁸¹

*Weibliche und männliche Jugendliche sollen grundsätzlich im Wohngruppenvollzug angehalten werden. Die Mindeststandards für den Jugendvollzug sind dahingehend zu adaptieren. Der Tagesablauf sowie die Betreuung sind im Rahmen eines Jugendkonzepts festzulegen; hierbei ist darauf zu achten, dass auch für weibliche Jugendliche Ausbildungs- und Beschäftigungsmöglichkeiten sowie (sozialpädagogische) Betreuungspläne festgelegt werden.*¹⁸²

Female and male adolescents should be detained in shared accommodation as a matter of principle. The minimum standards for juvenile detention shall be adapted accordingly. The daily routine as well as care shall be specified in a youth concept; in so doing, consideration shall be given to defining educational and occupational opportunities as well as (socio-pedagogical) care plans for female adolescents.¹⁸³

¹⁸⁰ Austria, [Bericht der Volksanwaltschaft an den Nationalrat und an den Bundesrat 2019 Präventive Menschenrechtskontrolle](#), March 2020, p. 135.

¹⁸¹ Austria, [Annual Report on the activities of the Austrian National Preventive Mechanism \(NPM\) 2019](#), Vienna, June 2020, p. 129.

¹⁸² Austria, [Bericht der Volksanwaltschaft an den Nationalrat und an den Bundesrat 2019 Präventive Menschenrechtskontrolle](#), March 2020, p. 136.

¹⁸³ Austria, [Annual Report on the activities of the Austrian National Preventive Mechanism \(NPM\) 2019](#), Vienna, June 2020, p. 131.

7. Special measures in place to protect detainees from violence

- a) Are any special measures in place to protect detainees against violence from guards/prison staff, including sexual violence? (E.g.: Are there emergency call buttons? Do guards receive special training? Do detainees have access to a complaints mechanism?)

As a rule, violence against detainees is prohibited under Austrian law, except in circumstances in which the use of force is expressly permitted by law. Special measures in place to protect detainees against violence from prison staff contain the following:

Standards regulating the lawful use of force:

§ 104 Penitentiary System Act lays down the rules for the use of force by prison staff. According to § 104 (1) Penitentiary System Act prison staff may only use direct force in case of self-defence, to overcome a resistance to state authority or an assault on an official, to prevent the escape of a detainee or to recapture him; towards a person who enters or attempts to enter the institution or to free a detainee; to overcome any other failure to comply with an order which endangers the security and order of the penal system. § 104 (2) Penitentiary System Act stipulates that the use of force shall be limited to the necessary amount. It may only be used after prior announcement (*Androhung*), unless this would jeopardise the purpose of the use of force.

§ 105 Penitentiary System Act regulates the lawful use of weapons by prison staff. § 105 (1) Penitentiary System Act stipulates that prison officers who accompany or transfer detainees or who are responsible for ensuring lockdown and order in the prison shall, insofar as this appears necessary to maintain security and order in the prison, carry a service weapon when performing their duties. § 105 (2) Penitentiary System Act stipulates that the service weapons generally are truncheons and handguns. For guard duty in institutions where this appears necessary in view of the large number or the particular danger of detainees held there, also long firearms are service weapons. § 105 (3) Penitentiary System Act stipulates that prison staff may only use their weapons in the cases of § 104 (1) Z 1 to 4 Penitentiary System Act. Service weapons other than truncheons, handguns or long firearms may only be used by order of the prison head. If the decision of the prison head cannot be made in time and if there is imminent danger, the highest-ranking prison officer is authorised to make the decision. § 105 (4) Penitentiary System Act stipulates, inter alia, that the use of weapons shall only be permissible if non-dangerous or less dangerous measures, such as in particular the order to establish the lawful state, the threat of the use of weapons, the pursuit of a fugitive, the use of physical force or available more lenient means, such as in particular handcuffs or technical barriers, appear unsuitable or have proven ineffective. If various weapons are available, only the least dangerous weapon that still seems suitable in the respective situation may be used. § 105 (5) Penitentiary System Act stipulates that the purpose of the use of weapons against persons may only be to render them incapable of attacking, resisting, or escaping. In the cases of § 104 (1) Z 1 to 4 Penitentiary System Act, the damage to be expected from the use of the weapon must not be obviously disproportionate to the intended result. Every weapon shall be used with the greatest possible protection of persons and property. Weapons may only be used against people if the purpose of their use cannot be achieved by weapon action against property. § 105 (6) Penitentiary System Act stipulates that the use of a weapon against people, which endangers life, is only permissible: 1. in the case of self-defence in defence of a person;

2. for the suppression of a riot or insurrection; 3. to prevent the escape or to recapture a prisoner who has been convicted of a crime that identifies him or her as a person dangerous to the security of the state, person or property in general. § 105 (7) Penitentiary System Act stipulates that except in the case of self-defence, the life-threatening use of weapons against persons shall be announced expressly, immediately preceding in time and clearly perceptible; it is only permissible if bystanders are not likely to be endangered thereby.

Special measures foreseen by law to protect detainees against violence from prison staff:

§ 102 (1) Penitentiary System Act (*Strafvollzugsgesetz*)¹⁸⁴ stipulates that it has to be ensured that detainees behave in the manner prescribed by the Penitentiary System Act. In particular, appropriate precautions shall be taken to prevent both, the commission of criminal offences by detainees as well as the commission of criminal offences against detainees.

§102 (2) Penitentiary System Act stipulates that searches shall be carried out as gently as possible, and personal searches shall be carried out by staff of the same sex as the detainee. Physical searches involving exposure shall be carried out in the presence of two staff members of the sex of the detainee and in the absence of fellow detainees and persons of the opposite sex.

§ 102b (1) Penitentiary System Act stipulates that in order to secure the isolation of detainees from the outside world and to secure order in the prison, in particular to prevent the commission of criminal offences by detainees and the commission of criminal offences against detainees, and in the event of a serious and substantial threat to the life or health of a detainee, the prison head is authorised to use technical means for the real-time transmission of images in the prison and at its boundaries (real-time monitoring).

§ 102b (2) Penitentiary System Act stipulates that the acquisition of personal data of detainees present with technical means for image recording shall only be permissible for the reasons stated in § 102b (1) and, moreover, only in the entrance area, in the visitor and interrogation zones, in the corridors, in the places serving the employment and stay of detainees outside the prison rooms and in comparable areas as well as at the boundaries of the prison. The data obtained in this way may also be used for the prosecution of a judicially punishable act or an administrative offence.

§ 102b (3) Penitentiary System Act stipulates that video surveillance shall not be permissible for purposes other than those mentioned in the preceding paragraphs, in particular for monitoring the performance of prison staff. Video surveillance shall not be permitted in ordinary detention rooms, common sanitary rooms and rooms reserved exclusively for the stay of prison staff.

Complaint mechanism:

§ 120 Penitentiary System Act foresees a complaint mechanism for detainees regarding decisions and orders taken against them as well as conduct of prison officers. Those

¹⁸⁴ Austria, Penitentiary System Act ([Bundesgesetz vom 26. März 1969 über den Vollzug der Freiheitsstrafen und der mit Freiheitsentziehung verbundenen vorbeugenden Maßnahmen, Strafvollzugsgesetz - StVG](#)), Federal Law Gazette No. 144/1969.

complaints have to be addressed to the prison head in writing or orally. The prison court shall decide on the complaint against a decision, order or conduct of the prison head (§ 16 (3) Penitentiary System Act).

§ 3 (1) Detention Regulation (*Anhalteordnung*)¹⁸⁵ stipulates, *inter alia*, that the supervisory staff (*Aufsichtsorgane*) shall protect detainees from inadmissible interference with their rights and treat them with the greatest possible protection of their person (*Schonung ihrer Person*). § 3 (2) Detention Regulation provides that the supervisory bodies shall protect and safeguard detainees from damage to their health and injuries insofar as they are unable to care for their own health and physical safety due to the particular circumstances of their detention. According to § 3 (3) Detention Regulation it shall be ensured that as a matter of principle the supervising officers are of the same sex as the detainees. Unless there is imminent danger, supervisory bodies may only enter cells of detainees of the opposite sex, if a second person is present.

§ 26 (1) Detention Regulation (*Anhalteordnung*) stipulates, *inter alia*, that the supervisory bodies shall be empowered to enforce their orders by direct coercive force, insofar as this is necessary for the physical safety of persons as well as for the safety and order in detention rooms.

According to §26 (2) Detention Regulation (*Anhalteordnung*) it is permissible to handcuff a detained person, if, on the basis of certain facts, there is a danger that the person concerned will endanger himself/herself or others; damage property of others that is not only of minor value; escape; attempt to frustrate an official act in which he or she is required to cooperate. According to §26 (4) Detention Regulation (*Anhalteordnung*) the use of restraints other than handcuffs or additional restraints shall only be permissible in strict compliance with the principle of proportionality and only if it can be assumed on the basis of certain facts that the detainee will endanger his/her life or health, other persons or property due to mental illness or violence and that handcuffing alone will not be sufficient for the security purpose.

b) Are any special measures in place to protect detainees against violence from other detainees, including sexual violence? (E.g.: Are detainees supervised by prison staff? Are there emergency call buttons? Do guards receive training in de-escalation? Do detainees have access to a complaints mechanism?)

Standards regulating the general conduct:

§ 102 (1) Penitentiary System Act (*Strafvollzugsgesetz*)¹⁸⁶ stipulates that it has to be ensured that detainees behave in the manner prescribed by Penitentiary System Act. In particular, appropriate precautions shall be taken to prevent both, the commission of criminal offences by detainees as well as the commission of criminal offences against detainees.

§ 102b (1) Penitentiary System Act stipulates that in order to secure the isolation of detainees from the outside world and to secure order in the prison, in particular to prevent the commission of criminal offences by detainees and the commission of

¹⁸⁵ Austria, Detention Regulation ([Verordnung der Bundesministerin für Inneres über die Anhaltung durch die Sicherheitsbehörden und Organe des öffentlichen Sicherheitsdienstes - Anhalteordnung, AnhO](#)), Federal Law Gazette II No. 128/1999.

¹⁸⁶ Austria, Penitentiary System Act ([Bundesgesetz vom 26. März 1969 über den Vollzug der Freiheitsstrafen und der mit Freiheitsentziehung verbundenen vorbeugenden Maßnahmen, Strafvollzugsgesetz - StVG](#)), Federal Law Gazette No. 144/1969.

criminal offences against detainees, and in the event of a serious and substantial threat to the life or health of a detainee, the prison head is authorised to use technical means for the real-time transmission of images in the prison and at its boundaries (real-time monitoring).

Special measures foreseen by law to protect detainees against violence from other prisoners:

§ 102b (2) Penitentiary System Act stipulates that the acquisition of personal data of detainees present with technical means for image recording shall only be permissible for the reasons stated in § 102b (1) and, moreover, only in the entrance area, in the visitor and interrogation zones, in the corridors, in the places serving the employment and stay of detainees outside the prison rooms and in comparable areas as well as at the boundaries of the prison. The data obtained in this way may also be used for the prosecution of a judicially punishable act or an administrative offence.

§ 102b (3) Penitentiary System Act stipulates that video surveillance shall not be permissible for purposes other than those mentioned in the preceding paragraphs, in particular for monitoring the performance of prison staff. Video surveillance shall not be permitted in ordinary detention rooms, common sanitary rooms and rooms reserved exclusively for the stay of prison staff.

§ 102 (4) Penitentiary System Act stipulates that working tools, materials and other objects that may endanger security shall be kept safe and may only be left to detainees under supervision and for no longer than necessary.

§ 103 Penitentiary System Act lays down the rules for special security measures to be ordered against detainees who pose a risk of escape, a risk of violence against persons or property or a risk of suicide or self-harm or who otherwise pose a considerable threat to security or order. According to § 103 (2) Penitentiary System Act the following special security measures may be imposed: more frequent search of the detainee, his/her belongings and his/her room in custody; the placement in solitary confinement; the lighting of the detention room at night; the deprivation of furnishings or articles of daily use or clothing, the misuse of which is to be feared; the placement in a specially secured cell from which all objects, with which the detainee could cause harm are removed; the application of shackles or a straitjacket.

Complaint mechanism:

§ 120 Penitentiary System Act foresees a complaint mechanism for detainees regarding decisions and orders taken against them as well as conduct of prison officers. Those complaints have to be addressed to the prison head in writing or orally. The prison court shall decide on the complaint against a decision, order or conduct of the prison head (§ 16 (3) Penitentiary System Act).

The Ministry of Constitutional Affairs, Reforms, Deregulation and Justice furthermore states that the security concept of prisons is based on security by care and employment, as well as constructional (single cells), technical (e.g., camera monitoring, intercoms) and organisational (e.g., irregular checks, also during the nighttime) security concepts and measures. These concepts and measures are under ongoing evaluation. Moreover, anti-aggression training, a program on "psychological treatment for violent offenders" (*Psychologische Behandlungsprogramm für Gewaltstraftäter*), special workshops on

relevant topics are implemented, and ongoing contact is held with the inmates. Prison guards are trained regarding communication and conflict resolution already in their basic training. De-escalation is trained, as well as weapon-less defense. Further on the job training is provided in these regards, e.g. on professional de-escalation management.¹⁸⁷

§ 3 (1) Detention Regulation (*Anhalteordnung*)¹⁸⁸ stipulates, *inter alia*, that the supervisory staff (*Aufsichtsorgane*) shall protect detainees from inadmissible interference with their rights and treat them with the greatest possible protection of their person (*Schonung ihrer Person*). § 3 (2) Detention Regulation provides that the supervisory bodies shall protect and safeguard detainees from damage to their health and injuries insofar as they are unable to care for their own health and physical safety due to the particular circumstances of their detention.

§ 5 (1) 1 Detention Regulation (*Anhalteordnung*)¹⁸⁹ stipulates that detainees may be held in solitary confinement, if it is to be assumed, that hat he/she will inflict violence on other inmates.

§ 5b Detention Regulation (*Anhalteordnung*) foresees special security measures for persons who pose a risk of violence for other persons or items. Such measure, apart from solitary confinement, are: more frequent search of the detainee, his/her belongings and his/her cell; the lighting of the specially secured cell at night beyond a night light; the seizure of furnishings or articles of daily use or clothing that are feared to be misused; placement in a specially secured cell, from which all objects are removed, with which the detainee can cause harm or harm himself/herself.

§ 26 (1) Detention Regulation (*Anhalteordnung*) stipulates, *inter alia*, that the supervisory bodies shall be empowered to enforce their orders by direct coercive force, insofar as this is necessary for the physical safety of persons as well as for the safety and order in detention rooms.

According to §26 (2) Detention Regulation (*Anhalteordnung*) it is permissible to handcuff a detained person if, on the basis of certain facts, there is a danger that the person concerned will endanger himself/herself or others; damage property of others that is not only of minor value; escape; attempt to frustrate an official act, in which he or she is required to cooperate. According to According to §26 (4) Detention Regulation (*Anhalteordnung*) the use of restraints other than handcuffs or additional restraints shall only be permissible in strict compliance with the principle of proportionality and only if it can be assumed on the basis of certain facts that the detainee will endanger his/her life or health, other persons or property due to mental illness or violence and that handcuffing alone will not be sufficient for the security purpose.

c) Are there any special measures in place to protect LGBTI detainees, who are particularly vulnerable to violence/sexual violence?

¹⁸⁷ Information received from the Federal Ministry Constitutional Affairs, Reforms, Deregulation and Justice on 21 June 2018.

¹⁸⁸ Austria, Detention Regulation ([Verordnung der Bundesministerin für Inneres über die Anhaltung durch die Sicherheitsbehörden und Organe des öffentlichen Sicherheitsdienstes - Anhalteordnung, AnhO](#)), Federal Law Gazette II No. 128/1999.

¹⁸⁹ Austria, Detention Regulation ([Verordnung der Bundesministerin für Inneres über die Anhaltung durch die Sicherheitsbehörden und Organe des öffentlichen Sicherheitsdienstes - Anhalteordnung, AnhO](#)), Federal Law Gazette II No. 128/1999.

No such standards are foreseen in the Penitentiary System Act (*Strafvollzugsgesetz*)¹⁹⁰ or the Detention Regulation (*Anhalteordnung*).¹⁹¹

The Federal Ministry Constitutional Affairs, Reforms, Deregulation and Justice reports that, if needed, multiprofessional teams develop solutions for the person in question and his/her needs.¹⁹²

d) Please indicate whether there are different standards applicable to different detention regimes (pre-trial and post-trial detention and for example, if applicable in your jurisdiction: open, semi-open, closed etc.).

As explained above in section 1.e , a distinction is to be made between the Penitentiary System Act (*Strafvollzugsgesetz*)¹⁹³ and the Detention Regulation (*Anhalteordnung*)¹⁹⁴. The applicable standards of these legal regimes are reported above in more detail.

e) Please indicate any remedies available to detainees in case of a breach or violation of the standards addressed under 7. a) – d), including their respective legal basis.

See above under section 1.f.

f) Please, provide a link to the National Preventive Mechanism's reports from the reference period (1 May 2018 to 15 April 2021; if no report is available for this period, please provide links to the most recent one and the relevant CPT reports from the reference period) and whether there are any recommendations regarding this aspect (please provide the exact quotation in both, the national as well as in English language) These reports can be found on the webpage of the National Preventive Mechanism. For ease of reference a list of links can be found via the [OPCAT Database](#).

2018:

Correctional institutions:

*Wird eine Person bei akuter Selbst- oder Fremdgefährdung in einem besonders gesicherten Haftraum untergebracht, ist die Gefahrensituation genau zu beschreiben und die Uhrzeit der ersten ärztlichen Kontrolle zu vermerken.*¹⁹⁵

¹⁹⁰ Austria, Penitentiary System Act ([Bundesgesetz vom 26. März 1969 über den Vollzug der Freiheitsstrafen und der mit Freiheitsentziehung verbundenen vorbeugenden Maßnahmen, Strafvollzugsgesetz - StVG](#)), Federal Law Gazette No. 144/1969.

¹⁹¹ Austria, Detention Regulation ([Verordnung der Bundesministerin für Inneres über die Anhaltung durch die Sicherheitsbehörden und Organe des öffentlichen Sicherheitsdienstes - Anhalteordnung, AnhO](#)), Federal Law Gazette II No. 128/1999.

¹⁹² Information received from the Federal Ministry Constitutional Affairs, Reforms, Deregulation and Justice on 21 June 2018.

¹⁹³ Austria, Penitentiary System Act ([Bundesgesetz vom 26. März 1969 über den Vollzug der Freiheitsstrafen und der mit Freiheitsentziehung verbundenen vorbeugenden Maßnahmen, Strafvollzugsgesetz - StVG](#)), Federal Law Gazette No. 144/1969.

¹⁹⁴ Austria, Detention Regulation ([Verordnung der Bundesministerin für Inneres über die Anhaltung durch die Sicherheitsbehörden und Organe des öffentlichen Sicherheitsdienstes - Anhalteordnung, AnhO](#)), Federal Law Gazette II No. 128/1999.

¹⁹⁵ Austria, [Bericht der Volksanwaltschaft an den Nationalrat und an den Bundesrat 2018 Präventive Menschenrechtskontrolle](#), March 2019, p. 124.

If a person is placed in a specially secured cell in the event of acute danger to themselves or to others, the dangerous situation must be described exactly and the time of the first medical check be noted.¹⁹⁶

8. Women in detention

a) Are there any national standards for conditions of detention of women in general? If so, what do they require?

The Penitentiary System Act (*Strafvollzugsgesetz*)¹⁹⁷ and the Detention Regulation (*Anhalteordnung*)¹⁹⁸ also apply to the detention of women. As described in more detail below, the Penitentiary System Act and the Detention Regulation include standards specifically for the detention of women.

The Austrian National Preventive Mechanism reports that in 2016, the Federal Ministry of Justice issued an unpublished decree on "Minimum standards for women in Austrian correctional institutions" (*Mindeststandards für den Frauenvollzug in österreichischen Justizanstalten*), which must be implemented in the prisons since then. The decree states, *inter alia*, that female prisons should generally be run in such a way that inmates are housed in shared accommodations (*Wohngruppenvollzug*). This means that inmate cells are open.¹⁹⁹

There are no additional, general national standards on detention conditions for women.

b) Are there any national standards for holding and accommodating male and female detainees separate from each other? If so, what do they require?

§ 8 (4) Penitentiary System Act (*Strafvollzugsgesetz*)²⁰⁰ stipulates that prisons shall be run as male or female institutions or in such a way that the male and female detainees held in the same institution are separated from each other. § 4 (3) Detention Regulation (*Anhalteordnung*)²⁰¹ stipulates, *inter alia*, that women are to be detained separately from men.

c) Are there any national standards for special hygiene conditions and/or hygiene products for female detainees? If so, what do they require?

¹⁹⁶ Austria, [Annual Report on the activities of the Austrian National Preventive Mechanism \(NPM\) 2018](#), Vienna, June 2019, p. 118.

¹⁹⁷ Austria, Penitentiary System Act (*Bundesgesetz vom 26. März 1969 über den Vollzug der Freiheitsstrafen und der mit Freiheitsentziehung verbundenen vorbeugenden Maßnahmen, Strafvollzugsgesetz - StVG*), Federal Law Gazette No. 144/1969.

¹⁹⁸ Austria, Detention Regulation (*Verordnung der Bundesministerin für Inneres über die Anhaltung durch die Sicherheitsbehörden und Organe des öffentlichen Sicherheitsdienstes - Anhalteordnung, AnhO*), Federal Law Gazette II No. 128/1999.

¹⁹⁹ Austria, [Annual Report on the activities of the Austrian National Preventive Mechanism \(NPM\) 2016](#), Vienna, March 2017, p. 121.

²⁰⁰ Austria, Penitentiary System Act (*Bundesgesetz vom 26. März 1969 über den Vollzug der Freiheitsstrafen und der mit Freiheitsentziehung verbundenen vorbeugenden Maßnahmen, Strafvollzugsgesetz - StVG*), Federal Law Gazette No. 144/1969.

²⁰¹ Austria, Detention Regulation (*Verordnung der Bundesministerin für Inneres über die Anhaltung durch die Sicherheitsbehörden und Organe des öffentlichen Sicherheitsdienstes - Anhalteordnung, AnhO*), Federal Law Gazette II No. 128/1999.

No such standards are included in the Penitentiary System Act (*Strafvollzugsgesetz*)²⁰², nor in the Detention Regulation (*Anhalteordnung*).²⁰³

d) Are there any national standards for special healthcare for female detainees that respond to their specific needs, including i.e. pregnancy and post-natal treatment, and treatment/support of mother and child? If so, what do they require?

§ 5 (2) Penitentiary System Act (*Strafvollzugsgesetz*)²⁰⁴ stipulates that, if the sentenced person is pregnant or has given birth within the last year, the commencement of the execution of the sentence shall be postponed until the end of the sixth week after the birth and beyond that as long as the child is in the care of the sentenced person, but at most until the end of one year after the birth. However, the execution of the sentence shall be commenced as soon as the sentenced person herself requests it, no danger to her health or the child is to be expected from the execution of the sentence and an execution of the sentence that is in accordance with the nature of the custodial sentence is feasible.

§ 74 § (1) Penitentiary System Act (*Strafvollzugsgesetz*) stipulates that the provisions relating to the care of sick or injured detainees shall apply mutatis mutandis to the care of pregnant detainees or detainees who have recently given birth. Pregnant women shall be taken to a public hospital for delivery. § 74 § (2) Penitentiary System Act stipulates that female detainees who have the right to care for and bring up their children may keep them with them until they reach the age of two, unless this would be detrimental to the child. The legal commentary on this provision clarifies that the prison head has to assess whether the detention in prison is likely to be detrimental to the child's well-being. In principle, it is to be assumed that it is disadvantageous for the child to grow up in the milieu of a correctional institution - especially if professional criminals as well as members of the most serious criminality are held there. As soon as the child becomes aware of this, but at the latest when it reaches the age of three, it should no longer be left with its mother. A detrimental effect for the child can also be assumed if no suitable facilities are available for his or her placement in the prison. The relevant wording in § 74 § (2) Penitentiary System Act can only be understood as a mandate to the prison administration to provide suitable facilities. This means appropriately adapted detention rooms (cot, toys, child-friendly furnishings), in which mother and child are kept alone, with sufficient opportunities for exercise and to spend time outdoors. Child-friendly nutrition is to be provided.²⁰⁵ Subject to the same restrictions, the prison head may, if the necessary facilities are available, also permit detainees to keep these children with them until they reach the age of three at the latest, if, at the time of reaching the age of two, only a further sentence of not more than one year remains to be served.

²⁰² Austria, Penitentiary System Act (*Bundesgesetz vom 26. März 1969 über den Vollzug der Freiheitsstrafen und der mit Freiheitsentziehung verbundenen vorbeugenden Maßnahmen, Strafvollzugsgesetz - StVG*), Federal Law Gazette No. 144/1969.

²⁰³ Austria, Detention Regulation (*Verordnung der Bundesministerin für Inneres über die Anhaltung durch die Sicherheitsbehörden und Organe des öffentlichen Sicherheitsdienstes - Anhalteordnung, AnhO*), Federal Law Gazette II No. 128/1999.

²⁰⁴ Austria, Penitentiary System Act (*Bundesgesetz vom 26. März 1969 über den Vollzug der Freiheitsstrafen und der mit Freiheitsentziehung verbundenen vorbeugenden Maßnahmen, Strafvollzugsgesetz - StVG*), Federal Law Gazette No. 144/1969.

²⁰⁵ Drexler, K. and Wenger, T. (2018), *Strafvollzugsgesetz*, 4th edition, §74 (rdb.at).

§ 74 § (3) Penitentiary System Act stipulates that, as long as a detainee keeps her child with her, the prison shall also provide for the maintenance of the child. The costs for this shall be borne by the state.

There are no such standards included in the Detention Regulation (*Anhalteordnung*).²⁰⁶

e) Are there any national standards on pregnant detainees in terms of special prison cells for pregnant detainees and/or special facilities for female detainees with babies or young children? If so, what do they require?

No such standards are included in the Penitentiary System Act (*Strafvollzugsgesetz*)²⁰⁷, nor in the Detention Regulation (*Anhalteordnung*).²⁰⁸

f) Please indicate whether there are different standards applicable to different detention regimes (pre-trial and post-trial detention and for example, if applicable in your jurisdiction: open, semi-open, closed etc.).

As explained above in section 1.e , a distinction is to be made between the Penitentiary System Act (*Strafvollzugsgesetz*)²⁰⁹ and the Detention Regulation (*Anhalteordnung*)²¹⁰. The applicable standards of these legal regimes are reported above in more detail.

g) Please indicate any remedies available to female detainees in case of a breach or violation of the standards addressed under 8. a) – f), including their respective legal basis.

See above under section 1.f.

h) Please, provide a link to the National Preventive Mechanism's reports from the reference period (1 May 2018 to 15 April 2021, if no report is available for this period, please provide links to the most recent one and the relevant CPT reports from the reference period) and whether there are any recommendations regarding this aspect (please provide the exact quotation in both, the national as well as in English language) These reports can be found on the webpage of the National Preventive Mechanism. For ease of reference a list of links can be found via the [OPCAT Database](#).

2017:

Correctional institutions:

Im Februar 2016 wurden vom Bundesministerium die „Mindeststandards für den Frauenvollzug in österreichischen Justizanstalten“ erlassen. Darin wurden Standards zur Unterbringung und Betreuung von weiblichen Untersuchungs- und Strafgefangenen festgelegt. Die einzelnen JA waren in der Folge aufgerufen, entsprechende Vorschläge

²⁰⁶ Austria, Detention Regulation ([Verordnung der Bundesministerin für Inneres über die Anhaltung durch die Sicherheitsbehörden und Organe des öffentlichen Sicherheitsdienstes - Anhalteordnung, AnhO](#)), Federal Law Gazette II No. 128/1999.

²⁰⁷ Austria, Penitentiary System Act ([Bundesgesetz vom 26. März 1969 über den Vollzug der Freiheitsstrafen und der mit Freiheitsentziehung verbundenen vorbeugenden Maßnahmen, Strafvollzugsgesetz - StVG](#)), Federal Law Gazette No. 144/1969.

²⁰⁸ Austria, Detention Regulation ([Verordnung der Bundesministerin für Inneres über die Anhaltung durch die Sicherheitsbehörden und Organe des öffentlichen Sicherheitsdienstes - Anhalteordnung, AnhO](#)), Federal Law Gazette II No. 128/1999.

²⁰⁹ Austria, Penitentiary System Act ([Bundesgesetz vom 26. März 1969 über den Vollzug der Freiheitsstrafen und der mit Freiheitsentziehung verbundenen vorbeugenden Maßnahmen, Strafvollzugsgesetz - StVG](#)), Federal Law Gazette No. 144/1969.

²¹⁰ Austria, Detention Regulation ([Verordnung der Bundesministerin für Inneres über die Anhaltung durch die Sicherheitsbehörden und Organe des öffentlichen Sicherheitsdienstes - Anhalteordnung, AnhO](#)), Federal Law Gazette II No. 128/1999.

auszuarbeiten, wie diese Mindeststandards vor Ort umgesetzt werden sollen (PB 2016, Band „Präventive Menschenrechtskontrolle“, S. 127 ff.). Diese Umsetzung sollte bis längstens 30. Dezember 2016 erfolgen. Auch wenn Schritte zur Umsetzung unternommen wurden, musste der NPM feststellen, dass beispielsweise in der JA Wien-Josefstadt bis Ende 2017 die Mindeststandards noch nicht vollständig umgesetzt wurden. Der Frauenvollzug ist laut den Mindeststandards grundsätzlich als Wohngruppenvollzug zu führen. In der JA Wien-Josefstadt wurde im vergangenen Jahr von den insgesamt drei Abteilungen des Frauendepartments lediglich eine Abteilung (und auch diese nur teilweise) als Wohngruppenvollzug geführt. Eine Verbesserung der Situation soll durch die bauliche Abtrennung von Bereichen für den offenen Wohngruppenvollzug auf den Abteilungen für Straf- und Untersuchungshaft eintreten. Allerdings werden selbst nach Fertigstellung dieser Abtrennungen aufgrund der beschränkten Kapazitäten verhältnismäßig wenige Frauen vom Wohngruppenvollzug profitieren.²¹¹

In February 2016, the Federal Ministry issued the “Minimum standards for women in Austrian correctional institutions” (“Mindeststandards für den Frauenvollzug in österreichischen Justizanstalten”) which established standards for the placement and care of female detainees awaiting trial and female inmates. The individual correctional institutions were then called upon to develop appropriate proposals on how to implement these minimum standards locally (see NPM Report 2016, pp. 120 et seq.). The minimum standard was to be implemented by 30 December 2016 at the latest. Even though steps towards implementation were taken, the NPM found, for example, that the minimum standards had not yet been fully implemented in Vienna-Josefstadt correctional institution by the end of 2017. According to the minimum standards, female detainees are generally to be housed in residential groups. Of the three wards in the women’s department at Vienna-Josefstadt correctional institution, only one ward was run as a residential group during the past year (and that one only partially). The situation should improve when there will be a structural separation of the areas for open residential groups on the wards for detainees and persons awaiting trial. However, even after these partitions are completed, comparatively few women will profit from being housed in residential groups due to limited capacity.²¹²

Die Mindeststandards für den Frauenvollzug in österreichischen JA sind ehestens umzusetzen. Neben adäquaten Unterbringungsmöglichkeiten ist auch für eine ausreichende Betreuung für weibliche Inhaftierte zu sorgen.²¹³

The minimum standards for women in Austrian correctional institutions must be implemented as soon as possible. In addition to adequate accommodation, female inmates must also be assured adequate care.²¹⁴

Im Sinne des Nichtraucher-schutzes ist dafür zu sorgen, dass Nichtraucherinnen und Nichtraucher bestmöglich vor den gesundheitsgefährdenden Einwirkungen von Tabakrauch geschützt werden. Rauchende und nichtrauchende Inhaftierte sind getrennt

²¹¹ Austria, [Bericht der Volksanwaltschaft an den Nationalrat und an den Bundesrat 2017 Präventive Menschenrechtskontrolle](#), Vienna, March 2018, p. 121.

²¹² Austria, [Annual Report on the activities of the Austrian National Preventive Mechanism \(NPM\) 2017](#), Vienna, June 2018, p. 117.

²¹³ Austria, [Bericht der Volksanwaltschaft an den Nationalrat und an den Bundesrat 2017 Präventive Menschenrechtskontrolle](#), Vienna, March 2018, p. 122.

²¹⁴ Austria, [Annual Report on the activities of the Austrian National Preventive Mechanism \(NPM\) 2017](#), Vienna, June 2018, p. 117.

voneinander unterzubringen. Kleinkinder dürfen unter keinen Umständen Rauch ausgesetzt werden.²¹⁵

In line with non-smokers protection, it must be ensured that they are protected against the health-endangering effects of tobacco smoke as far as possible. Smoking and non-smoking inmates must be housed separately from each other. Under no circumstances may small children be exposed to smoke.²¹⁶

Police detention centres:

All detainees must be given access to hygiene articles. Women must be provided with the necessary hygiene articles during menstruation.²¹⁷

*Allen Angehaltenen ist der Zugang zu Hygieneartikel zu ermöglichen. Frauen sind während der Menstruation benötigte Hygieneartikel zur Verfügung zu stellen.*²¹⁸

2018:

Correctional institutions:

*Alle Frauenabteilungen sind entsprechend den Mindeststandards für den Frauenvollzug im Regelfall als Wohngruppenvollzug zu führen. Lediglich in begründeten Ausnahmefällen soll die Anhaltung von weiblichen Inhaftierten im Normalvollzug erfolgen. Die Hafträume auf den Frauenabteilungen sind an Wochentagen, Wochenenden und Feiertagen ganztägig offen zu halten.*²¹⁹

All women's sections must be normally operated as shared accommodation in accordance with the minimum standards for the detention of women. Only in justified exceptions should female detainees be in regular detention. The cells in women's sections must be kept open on weekdays, weekends and public holidays.²²⁰

*Die Frauenabteilungen benötigen zusätzliche Personalressourcen, um den Mindeststandards für den Frauenvollzug entsprechen zu können.*²²¹

The women's sections require additional personnel resources in order to be able to comply with the minimum standards for women in detention.²²²

Police detention centres:

*Allen Angehaltenen ist der Zugang zu Hygieneartikeln zu ermöglichen. Frauen sind während der Menstruation benötigte Hygieneartikel zur Verfügung zu stellen.*²²³

²¹⁵ Austria, [Bericht der Volksanwaltschaft an den Nationalrat und an den Bundesrat 2017 Präventive Menschenrechtskontrolle](#), Vienna, March 2018, p. 124.

²¹⁶ Austria, [Annual Report on the activities of the Austrian National Preventive Mechanism \(NPM\) 2017](#), Vienna, June 2018, p. 120.

²¹⁷ Austria, [Annual Report on the activities of the Austrian National Preventive Mechanism \(NPM\) 2017](#), Vienna, June 2018, p. 149.

²¹⁸ Austria, [Bericht der Volksanwaltschaft an den Nationalrat und an den Bundesrat 2017 Präventive Menschenrechtskontrolle](#), Vienna, March 2018, p. 155.

²¹⁹ Austria, [Bericht der Volksanwaltschaft an den Nationalrat und an den Bundesrat 2018 Präventive Menschenrechtskontrolle](#), March 2019, p. 135 et seq.

²²⁰ Austria, [Annual Report on the activities of the Austrian National Preventive Mechanism \(NPM\) 2018](#), Vienna, June 2019, p. 130.

²²¹ Austria, [Bericht der Volksanwaltschaft an den Nationalrat und an den Bundesrat 2018 Präventive Menschenrechtskontrolle](#), March 2019, p. 137.

²²² Austria, [Annual Report on the activities of the Austrian National Preventive Mechanism \(NPM\) 2018](#), Vienna, June 2019, p. 131.

²²³ Austria, [Bericht der Volksanwaltschaft an den Nationalrat und an den Bundesrat 2018 Präventive Menschenrechtskontrolle](#), March 2019, p. 151.

All detainees must be given access to toiletries. Women must be provided with the necessary toiletries during menstruation.²²⁴

2019:

Correctional institutions:

*Alle Frauenabteilungen sind entsprechend den Mindeststandards für den Frauenvollzug im Regelfall als Wohngruppenvollzug zu führen. Lediglich in begründeten Ausnahmefällen soll die Anhaltung von weiblichen Inhaftierten im Normalvollzug erfolgen. Die Hafträume auf den Frauenabteilungen sind an Wochentagen, Wochenenden und Feiertagen ganztägig offen zu halten. Die Konzepte der Frauenabteilungen sind einer jährlichen Überprüfung zu unterziehen.*²²⁵

All women's sections shall usually be operated as shared accommodation in accordance with the minimum standards for women in prison. Female detainees shall only be kept in regular detention in justified exceptions. The cells in the women's sections shall be open all day on weekdays, weekends and public holidays. The concepts for women's sections shall undergo an annual evaluation.²²⁶

*Geburtsvorbereitung und Nachsorge sollen in gleichem Ausmaß stattfinden wie in Freiheit. Von den JA ist zu gewährleisten, dass schwangere Insassinnen von einer Hebamme bei der Geburtsvorbereitung unterstützt werden.*²²⁷

Birth preparation and post-natal care should be available to inmates to the same extent that it is to women living in freedom. The correctional institutions shall ensure that pregnant inmates receive birth preparation support from a midwife.²²⁸

*Wer auf einer Mutter-Kind-Abteilung Dienst versieht, sollte über die Rechte des Kindes informiert sein.*²²⁹

Staff deployed to mother and child departments should be informed about the rights of the child.²³⁰

9. Nutrition

a) Are there any national standards with regard to nutrition in detention in general? If so, what do they require?

²²⁴ Austria, [Annual Report on the activities of the Austrian National Preventive Mechanism \(NPM\) 2018](#), Vienna, June 2019, p. 145.

²²⁵ Austria, [Bericht der Volksanwaltschaft an den Nationalrat und an den Bundesrat 2019 Präventive Menschenrechtskontrolle](#), March 2020, p. 131.

²²⁶ Austria, [Annual Report on the activities of the Austrian National Preventive Mechanism \(NPM\) 2019](#), Vienna, June 2020, p. 126.

²²⁷ Austria, [Bericht der Volksanwaltschaft an den Nationalrat und an den Bundesrat 2019 Präventive Menschenrechtskontrolle](#), March 2020, p. 133.

²²⁸ Austria, [Annual Report on the activities of the Austrian National Preventive Mechanism \(NPM\) 2019](#), Vienna, June 2020, p. 128.

²²⁹ Austria, [Bericht der Volksanwaltschaft an den Nationalrat und an den Bundesrat 2019 Präventive Menschenrechtskontrolle](#), March 2020, p. 133.

²³⁰ Austria, [Annual Report on the activities of the Austrian National Preventive Mechanism \(NPM\) 2019](#), Vienna, June 2020, p. 128.

§38 (1) Penitentiary System Act (*Strafvollzugsgesetz*)²³¹ stipulates that detainees shall be adequately provided with simple prison food. The food shall be in accordance with nutritional science and tasty; it shall be served at the usual times of the day for meals. The basic decree concerning the catering and kitchen system in prisons²³² provides that it shall be ensured that detainees are to be provided with sufficient drinking water at all times (also during working hours). According to § 34 (1) Penitentiary System Act detainees shall be entitled to purchase food and luxury foodstuffs as well as personal hygiene products and other simple articles of daily use once a week at their own expense through the institution.

§13 (2) Detention Regulation (*Anhalteordnung*)²³³ stipulates that the detainees shall be entitled to sufficient food and, once a day, to hot food as well as to a sufficient supply of drinking water.

In the course of the Covid-19 pandemic, the Federal Ministry of Justice issued many internal orders/instructions (*Dienstanweisungen*) affecting the execution of sentences. In respect of nutrition, the summary of the measures relating to COVID-19 in the execution of sentences²³⁴ calls for the adherence to the strictest hygiene regulations as far as inmates are concerned when processing, preparation or serving food.

b) Are there any national standards with regard to frequency and regularity of provision of meals (warm and cold)? If so, what do they require?

§38 (1) Penitentiary System Act (*Strafvollzugsgesetz*)²³⁵ stipulates that the food shall be served at the usual times of the day for meals. According to the legal commentary on this provision the "usual times of day" are always to be based on the concrete circumstances of the detainee in question. In general, it is to be assumed that breakfast can be taken between 5.00 and 7.00 a.m., lunch between 11.00 and 2.00 p.m. and dinner between 5.00 and 7.00 p.m. However, if activities are carried out for which other times are usual (e.g. baker), this must be taken into account. The observance of customary times of the day, which correspond to the employment-related daily routine, is in any case a subjective-public right of the detainee. According to the aim of the provision, this only applies to warm or freshly prepared meals. Cold food that can be stored at room temperature (e.g. bread, canned food) or that can be refrigerated can also be served outside of these times.²³⁶ §13 (3) Detention Regulation (*Anhalteordnung*)²³⁷ stipulates that mealtimes shall be determined by the authorities, taking into account the usual times of day for meals. The detainees may also eat their own food outside these times, provided this does not impair supervision and order.

²³¹ Austria, Penitentiary System Act (*Bundesgesetz vom 26. März 1969 über den Vollzug der Freiheitsstrafen und der mit Freiheitsentziehung verbundenen vorbeugenden Maßnahmen, Strafvollzugsgesetz - StVG*), Federal Law Gazette No. 144/1969.

²³² Austria, Basic decree concerning the catering and kitchen system in prisons (*Grundsatzterlass betreffend das Verpflegs- und Küchenwesen der Justizanstalten*), entry into force: 1 April 2016.

²³³ Austria, Detention Regulation (*Verordnung der Bundesministerin für Inneres über die Anhaltung durch die Sicherheitsbehörden und Organe des öffentlichen Sicherheitsdienstes - Anhalteordnung, AnhO*), Federal Law Gazette II No. 128/1999.

²³⁴ Austria, Federal Ministry of Justice, Measures relating to COVID-19 in the execution of sentences - condensed version (*Maßnahmen zu COVID-19 im Straf- und Maßnahmenvollzug, komprimierte Fassung*), 5 May 2021.

²³⁵ Austria, Penitentiary System Act (*Bundesgesetz vom 26. März 1969 über den Vollzug der Freiheitsstrafen und der mit Freiheitsentziehung verbundenen vorbeugenden Maßnahmen, Strafvollzugsgesetz - StVG*), Federal Law Gazette No. 144/1969.

²³⁶ Drexler, K. and Wenger, T. (2018), *Strafvollzugsgesetz*, 4th edition, §38 (rdb.at).

²³⁷ Austria, Detention Regulation (*Verordnung der Bundesministerin für Inneres über die Anhaltung durch die Sicherheitsbehörden und Organe des öffentlichen Sicherheitsdienstes - Anhalteordnung, AnhO*), Federal Law Gazette II No. 128/1999.

c) Are there any national standards with regard to healthy food, special diets or dietary restrictions? If so, what needs to be provided to detainees?
<p>§38 (2) Penitentiary System Act (<i>Strafvollzugsgesetz</i>)²³⁸ stipulates that consideration shall be given to a more plentiful diet for detainees performing work, to deviations from the general diet prescribed by the prison physician for individual detainees on account of their state of health, and to the dietary requirements corresponding to the religious beliefs of the detainees. If it is not possible to take these dietary requirements into account because of the prison's facilities, the detainees shall be permitted to have food provided by third parties that complies with these requirements, taking into account the type and size of the prison food. The legal commentary to this provision explains that if dietary requirements only concern the question of not using certain food, this is usually easy to implement in the institutions. Yet, it is almost impossible to have food prepared and touched only by members of the religious belief in question. In such cases, the detainee can be provided with cooking utensils, a refrigerator as well as daily ingredients and be allowed to prepare the food himself/ herself. Otherwise, they have the subjective public right to have catering provided by third parties and at their own expense. In doing so, however, the nature and extent of the institutional food must be taken into account. The food provided must also meet simple requirements and may only be used where the institutional food or parts thereof do not comply with the ritual regulations.²³⁹</p> <p>§13 (2) Detention Regulation (<i>Anhalteordnung</i>)²⁴⁰ stipulates that medical orders (special and dietary food) or religious requirements shall be taken into account. Supplementary food is permissible. The consumption of alcoholic beverages is prohibited.</p>
d) Please indicate whether there are different standards applicable to different detention regimes (pre-trial and post-trial detention and for example, if applicable in your jurisdiction: open, semi-open, closed etc.).
As explained above in section 1.e , a distinction is to be made between the Penitentiary System Act (<i>Strafvollzugsgesetz</i>) ²⁴¹ and the Detention Regulation (<i>Anhalteordnung</i>) ²⁴² . The applicable standards of these legal regimes are reported above in more detail.
e) Please indicate any remedies available to detainees in case of a breach or violation of the standards addressed under 9. a) – d), including their respective legal basis.
See above under section 1.f.
f) Please, provide a link to the National Preventive Mechanism's reports from the reference period (1 May 2018 to 15 April 2021, if no report is available for this period, please provide links to the most recent one and the relevant CPT reports from the reference period) and whether there are any recommendations regarding these aspect (please provide the exact quotation in both, the national

²³⁸ Austria, Penitentiary System Act ([Bundesgesetz vom 26. März 1969 über den Vollzug der Freiheitsstrafen und der mit Freiheitsentziehung verbundenen vorbeugenden Maßnahmen, Strafvollzugsgesetz - StVG](#)), Federal Law Gazette No. 144/1969.

²³⁹ Drexler, K. and Wenger, T. (2018), *Strafvollzugsgesetz*, 4th edition, §38 (rdb.at).

²⁴⁰ Austria, Detention Regulation ([Verordnung der Bundesministerin für Inneres über die Anhaltung durch die Sicherheitsbehörden und Organe des öffentlichen Sicherheitsdienstes - Anhalteordnung, AnhO](#)), Federal Law Gazette II No. 128/1999.

²⁴¹ Austria, Penitentiary System Act ([Bundesgesetz vom 26. März 1969 über den Vollzug der Freiheitsstrafen und der mit Freiheitsentziehung verbundenen vorbeugenden Maßnahmen, Strafvollzugsgesetz - StVG](#)), Federal Law Gazette No. 144/1969.

²⁴² Austria, Detention Regulation ([Verordnung der Bundesministerin für Inneres über die Anhaltung durch die Sicherheitsbehörden und Organe des öffentlichen Sicherheitsdienstes - Anhalteordnung, AnhO](#)), Federal Law Gazette II No. 128/1999.

as well as in English language) These reports can be found on the webpage of the National Preventive Mechanism. For ease of reference a list of links can be found via the [OPCAT Database](#).

No recommendations regarding this aspect are available in the NPM reports from the reference period.

Part II: National jurisprudence

No relevant case law could be identified.