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Strengthening Juvenile Justice Systems in the counter-terrorism
context: capacity-building and peer-learning among stakeholders

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List of abbreviations

BFA	Federal Office for Migration and Asylum (“Bundesamt für Fremdenwesen und Asyl”)
BIM	Ludwig Boltzmann Institute for Human Rights
BVT	Austrian Federal Office for the Protection of the Constitution and Counter-Terrorism („Bundesamt für Verfassungsschutz und Terrorismusbekämpfung“)
CS	Custodial Sentence
DERAD	Conversational Sessions for risk assessment and ideological disassociation
DyRiAS	Dynamic Risk Analysis
EU	European Union
FPG	Aliens Police Act („Fremdenpolizeigestz“)
ICPA	International Correction and Prisons Association
IPBm	Institute for Psychology and Threat Management Darmstadt
PStSG	Police State Protection Act
RAN	Radicalization Awareness Network
SoNeKo	Social Network Conferences
SPG	Security Police Act (“Sicherheitspolizeigesetz”)
StGB	Austrian Criminal Code („Strafgesetzbuch“)
StPO	Austrian Criminal Procedure Code (“Strafprozessordnung”)
UN	United Nations
VerbotsG	National Socialist Prohibition Law („Verbotsgesetz“)
VfGH	Constitutional Court („Verfassungsgerichtshof“)
VPN	Violence Prevention Network
YCA	Youth Court Act („Jugendgerichtsgesetz“)

Introduction

The project

The Ludwig Boltzmann Institute for Human Rights (BIM) is the Austrian partner in the EU-project: “Strengthening Juvenile Justice Systems in the counter-terrorism context: capacity - building and peer learning among stakeholders¹.” Resulting from the Austrian legal system, the research report covers children (between 14 and 18 years) but also young adults (between 18 and 21 years).²

In this research report, the BIM³ analyses the situation of children and young adults in the context of the juvenile justice system as well as the conditions of detention in light of different movements of violence-prone extremism, such as right and left wing as well as religiously motivated extremism⁴. An overview of the national legislation on terrorism and violence-prone extremism in Austrian criminal law will be provided. In this context, specific regulations for children and young adults will be thematised. Furthermore, political measures for de-radicalization and prevention will be introduced, especially those used in the penitentiary system and the time after imprisonment.

Methodology

The following report’s methodological approach includes quantitative and qualitative elements, which consist of an analysis of secondary sources, ten court and criminal records of children and young adults convicted of offences under §§ 278b et seq. of the Criminal Code (*Strafgesetzbuch*, StGB⁵) and five interviews with experts in the juvenile justice system. The secondary sources include legal commentaries, scientific studies, as well as reports and

¹ The EU project: “Strengthening Juvenile Justice Systems in the counter-terrorism context: capacity - building and peer learning among stakeholders” is headed by the Belgian Organisation “International Juvenile Justice Observatory” and carried out by 9 European countries from 2017 until 2019. Further information can be found at: <http://bim.lbg.ac.at/de/publikation/staerkung-jugendgerichtsbarkeit-anti-terrorismus-kontext-kapazitaetsaufbau-peer-learning-zwischen-beteiligten-akteurinnen> and <http://www.oiji.org/en/strengtheningjjs-introduction>.

² See Part B, 3.2.

³ The authors would like to thank Mathias Weidinger for his support in the drafting and particularly in the translation process. Our sincere thanks also to Nikole Metz and Hoang Anh Nguyen for their support in this project.

⁴ In this context the term “religiously motivated” has been chosen in view of the national discourse on Islamist extremism. Islamist extremism, like Salafism (on the different forms of Salafism see Part A, 1.2.3.) and Jihadism is an example of extremist tendencies prone to violence which pursues mainly political rather than religious goals. In this context, religion, however, is often instrumentalised for political purposes and forms therefore an integral part of their ideologies. In this respect, “Islamist extremism” differs from right- and left-wing extremism. Certainly, other forms of religiously motivated extremism exist, e.g. the Christian fundamentalism and radical Evangelicalism.

⁵ Bundesgesetz vom 23. Jänner 1974 über die mit gerichtlicher Strafe bedrohten Handlungen (StGB), BGBl 60/1974, available at: www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10002296.

statements of public institutions and civil societies. Special reference is made to three current studies⁶, as this is the first time that Austria has scholarly examined the phenomena of “radicalization” in different contexts, such as the penal system, public youth work in Vienna and in light of religious socialization. The results provide a valuable basis, which also serves as a reference point for this report. The analysis from the court and criminal files and the issue-orientated expert interviews were carried out based on an outlined thematic analysis according to Lueger⁷, in which the main problems and categories are outlined and interpreted.

In the framework of this project, we aim to describe the policies, strategies and measures in the field of counter-extremism and counter-terrorism. However, we cannot evaluate their practical implication in depth; first, a profound evaluation was not within the scope of the project. Second, there is often a lack of clear indicators how to measure if a project is a successful toll to prevent or counter extremism or terrorism. Therefore, the initiatives and projects are mainly described. If there is any reference to their effectiveness, it is based on information we gathered from other sources or the conducted interviews.

Recent Developments in Austria

Against the backdrop of the 9/11 terror attacks and the attacks over the past years in Europe public discourse conducted within Austrian politics and the media was particularly determined by violence-prone political Islamist extremism. Certain groups of children and young adults seen as “vulnerable to radicalisation” received particular attention in the political agenda, as shown in a 2016 study on youths in the open youth work⁸. Especially in 2014/2015 youths who travelled to Syria or Iraq to join the Islamic State (IS) or other Islamist groups, some of whom have since returned to Austria, have been the focus of public attention.

Up until now there were a number of different responses, such as amending criminal law, implementing measures in the penal system and developing initiatives and processes aimed at de-radicalization and prevention. Austria is pursuing an approach that includes the society and communities as a whole. All relevant actors in public offices such as the federal ministries (Justice, Education, Interior, Europe/Integration/Foreign Ministry), security services, provincial governments and civil organisations are to be held accountable in confronting radical and extremist movements on different levels. It is important to note that radicalisation of children and young people should never be seen as a preliminary step from terrorism, but as dealing with complex cases which run their individual courses.

This research report - as already explained - focuses on Islamist influenced extremism. In this regard, attempts were made to develop different typologies of children and young adults who

⁶ Hofinger, Veronika/Schmidinger, Thomas: Deradikalisierung im Gefängnis. Endbericht zur Begleitforschung. Institut für Rechts- und Kriminalsoziologie, Vienna 2017 / Aslan, Ednan: Islamistische Radikalisierung: Biographische Verläufe der religiösen Sozialisation und des radikalen Milieus, Vienna 2017 / Güngör, /Nik Nafs: Jugendliche in der offenen Jugendarbeit, Vienna 2016.

⁷ Lueger, Manfred: Interpretative Sozialforschung: Die Methoden. Vienna 2010, pp. 206 et seq.

⁸ Güngör, Kenan/Nik Nafs Caroline: Jugendliche in der offenen Jugendarbeit. Identitäten, Lebenslagen und abwertende Einstellungen, Vienna 2016, p. 135 et seq.

were convicted of terrorist activities. Additionally the report aims at grasping the development of extremist tendencies, such as right and left-wing extremism in the context of the juvenile justice system; criminal offences, current developments, reports and convictions will be shown. Considering the great political and media attention, which has followed Islamist extremism, it is often overlooked that the number of convicted children and young adults for right-winged extremism has been at a constant high for years. Since 2014/2015 in view of the increased movement of refugees and migrants one can see a rise of hostility against foreigners and asylum seekers.

It is important that all interventions and measures against extremism and terrorism are established around the full protection of human rights. In other words, all preventive measures and criminal investigations have to be proportionate and respect the fundamental rights of the individual. This also applies to those who are already sentenced or detained, as they should be given perspective for the future in order to move away from their terrorist and/or extremists past and into an inclusive society with opportunity for participation.

The BIM considers this study to be an assessment of the status quo as well as a reflection on current developments and challenges. Together with the national reports from the partner organisations, this report serves as a basis for a comparative analysis including recommendations for relevant actors and stakeholders. The overall objective is to improve the situation of children and young adults in the light of international and European children's and human rights standards.

Update 2018

In 2017 a new federal government was elected in Austria. It presented its working programme⁹ which refers explicitly to extremism and radicalization in two sections. As the program is yet vague, the raised points will be only outlined without going into depth.

1. Combating extremism and radicalisation, in particular, to prevent terrorist activities

The document states that the most significant threat to the public security derives from Islamist extremism. To counter risks, amongst others, a security package is foreseen in order to close the gaps in monitoring internet-based telecommunications. Additionally, security police cooperation and data exchange, as well as data processing, should be intensified. Further, area and travel restrictions and restrictions in the use of electronic means of communication for individuals assumed to endanger public safety by a terrorist offence (“*Gefährder*”) are intended to be installed. According to the working programme of the government, an amendment to the law on associations should be adopted to combat extremism and terrorism giving the legal possibilities to close down places of worship that can be linked to extremism. Besides new criminal regulations are foreseen to be put into force against political Islamism and committing

⁹ Federal Chancellery: Working programme of the federal government 2017-2022, https://www.bundeskanzleramt.gv.at/documents/131008/569203/Regierungsprogramm_2017-2022.pdf/b2fe3f65-5a04-47b6-913d-2fe512ff4ce6 (09 January 2018, German), esp. pp. 31, 32, 45.

a crime with religiously motivated extremist intentions should be an aggravating circumstance. Also, the interdisciplinary preventive and deradicalisation measures should be expanded.

2. *Reform of the penitentiary system*

The programme foresees to place individuals assumed to endanger public safety by a terrorist offence (*“Gefährder”*) in separate security departments.¹⁰ There are no further specifications so far neither whom this regulation exactly targets by *“Gefährder”* nor where and how these departments will operate. Further, necessary security checks for all external persons working in prisons (Imams, psychotherapists etc.) are supposed to be implemented.¹¹

While the programme refers to measures aiming to prevent and combat religiously motivated extremism, it remains mostly silent when it comes to other forms of extremism and radicalization. Before drawing conclusions, it remains to be seen how and to which extent the government will transpose these intended plans to practice.

¹⁰ Reads in German as follows: „Unterbringung von islamistischen Gefährdern in eigenen Sicherheitsabteilungen“.

¹¹ Reads in German as follows: “Verpflichtende Sicherheitsüberprüfung gem. § 55 SPG für alle im Strafvollzug dauerhaft tätigen Externen (islamische Seelsorger, Psychotherapeuten etc.)“.

Part A: Counter-terrorism approach and policies

1. Approaching the terminology

Before defining different terminologies and concepts, it is worth mentioning, that in the Austrian context, there is no term for “counter-terrorism”. All policy developments and initiatives in the last years aiming at countering terrorism refer either to “deradicalisation” and/or “disengagement” or to “prevention”. Additionally, the term “disengagement” differs from “deradicalisation”. The latter initiate a process towards abandoning radical and/or extremists beliefs and mindsets whereas the former is focusing on a non-violent behavioral change. Even though the term “disengagement” is rarely used in Austria, both approaches are applied simultaneously within most programmes.

Currently, there are no conventional definitions of what constitutes a phenomena like terrorism, extremism, Salafism, Jihadism, etc. on a national level. Therefore, the following marks the intention to depict and demarcate these notions as clearly as possible in the Austrian context. Their interpretation and ascription in the scientific and political discourse are reflected in the legislative and political decision-making processes and are, hence, the basis for the development of preventive measures and deradicalisation programs. Therefore, it seems reasonable to refer to definitions from the national authorities, civil society organizations, and scientific experts who work in the Austrian context.

1.1. Terrorism

Following the terror attacks on September 11, 2001 in the United States, the ministers of justice of the EU Member States agreed on a common definition of terrorist acts as part of a framework decision¹². On the basis thereof, the Austrian legislator amended the criminal law to include new offenses relating to terrorist activities in 2002. For more information see Part B.

According to the framework decision, terrorist offences are committed with the aim of¹³:

- *seriously intimidating a population, or*
- *unduly compelling a Government or international organisation to perform or abstain from performing any act, or*

¹² Framework decision of the Council 2002/475/JI from 13 June 2002 on combating terrorism, AB I L 164, 22/06/2002, p. 3. The framework decision was amended multiple times, most recently with the Directive (EU) of the European Parliament and of the Council of 15 March 2017 on combating terrorism and replacing Council Framework Decision 2002/475/JHA and amending Council Decision 2005/671/JHA.

¹³ Art. 1 (1) Framework decision of the Council 2002/475/JI from 13 June 2002 on combating terrorism, AB I L 164, 22/06/2002.

- *seriously destabilising or destroying the fundamental political, constitutional, economic or social structures of a country or an international organisation*

Under Austrian law, actions aiming at the establishment (or restoration) of democracy and the rule of law, as well as those resulting in the exercise and protection of human rights are explicitly excluded from this definition.¹⁴ In this way, it is clarified that political resistance against a contemptuous regime, as e.g. during the times of National Socialism, cannot be persecuted or penalized as a terrorist offense.

It can be inherently difficult to separate terrorism from other forms of political resistance. Terrorism generally entails violent action against the political order, with the aim to draw attention to certain political, moral, or religious causes.¹⁵ In pursuit of this, intimidation, coercion, and fear are utilized.¹⁶ Terror, thus, constitutes a tool to create instability and chaos within a state or an organization.

1.2. Extremism

The term extremism stems from the Latin term *extremus* (the outermost). It denotes the furthest deviation from a principle or a standpoint. What the respective significant other is, depends on the historical, political, and social context. Whether something is deemed extremist depends, conversely, on what is perceived as moderate by society. Peter Neumann employs the driving ban for women in Saudi Arabia as an example: In western countries such rules and norms are met with disbelief while in another context individuals who question it are considered extremists.¹⁷

Politically, the term extremism denotes political positions and convictions, which question or reject the very bedrock of political and societal coexistence.¹⁸ The term, thus, entails different ideologies, like right-wing extremism, left-wing extremism, or religiously motivated extremism. Although different in nature, these modes of extremism exhibit some considerable similarities:¹⁹

- claim to absoluteness

¹⁴ See § 278c Abs 3 StGB.

¹⁵ See Plöchl, Franz: § 278b StGB in Höpfl, Frank/Ratz, Eckart (eds): Wiener Kommentar zum Strafgesetzbuch, 2nd edition, Vienna (status as of 1.1.2014) Rz 1.

¹⁶ See Why war? http://www.whywar.at/terrorismus_definition; citing: Noam Chomsky: The Attack (translated by Michael Haupt) Hamburg 2002, p. 74.

¹⁷ Neumann, Peter: Der Terror ist unter uns (Terrorism is among us). Bundeszentrale politische Bildung (ed.), Bonn 2017, p. 29.

¹⁸ See definition by Beratungsstelle „Extremismus“, boja (bundesweite Netzwerk der offenen Jugendarbeit) commissioned by the Federal Ministry for Families and Youth, 2014, <https://www.beratungsstelleextremismus.at/> (13 September 2017).

¹⁹ Position paper: Offene Jugendarbeit in Österreich und Extremismus, boja (ed), 2015, p. 2. https://www.beratungsstelleextremismus.at/wp-content/uploads/2016/10/2015_Boja-POSITIONSPAPIER-Extremismus_16-11-2015.pdf (13 September 2017)

- a dichotomous view of the world
- friend and foe scheme
- conspiracy theories
- fanaticism

According to the definition by the Austrian Federal Office for the Protection of the Constitution and Counter-Terrorism (*Bundesamt für Verfassungsschutz und Terrorismusbekämpfung*, BVT)²⁰, extremist aspirations are directed against the basic democratic order. Frequently, violence is often advocated, propagated or even practiced as a means to achieve its goals - if so, they constitute violent extremism. It is not radical convictions but the use of violence that is relevant to criminal law.

1.2.1. Right-wing extremism

The working definition of right-wing extremism used by the Austrian Office for the Protection of the Constitution and Counter-Terrorism²¹ understands the notion as a collective concept involving political beliefs and endeavours. Those range from xenophobic/racist to those affiliated with National Socialism – which oppose the norms and rules of the modern constitutional state in favour of a social order characterised by inequality. Their opposition manifests itself in support for and use of violence. The term ‘right-wing extremism’ results from diverse societal contexts and the interpretations attached to them. Espousal of dictatorial rule, anti-Islamic, anti-Semitic, and xenophobic sentiments, chauvinism, social-Darwinism, racism, and belittlement and relativisation of National Socialism (i.e. revisionism) characterize the world view of right-wing extremist ideologies. These ideologies are prevalent in right-wing extremist groups, their networks, and milieus. The glorification of racial-nationalism accompanied by German-national and nationalistic-conservative concepts are also typical of right-wing radical behavioural and attitudinal patterns.²²

Peham refers to Holzer’s conceptualization of right-wing extremism, adding further features.²³

- The claim of a "natural inequality", which is argued biologically and the rejection towards social emancipation efforts, e.g. feminism
- Continuous protest and rebellion against the current order and democratic institutions

²⁰ The Austrian Federal Office for the Protection of the Constitution and Counter Terrorism (Bundesamt für Verfassungsschutz und Terrorismusbekämpfung, BVT), part of the Ministry of the Interior, is a security authority, which protects Austria’s constitutional institutions and their ability to act. Their core-responsibilities are, among others, fighting phenomena of terrorism and extremism, espionage, international arms trade, trade in radioactive substances, and the organized crime in these sectors. Furthermore, the BVT oversees the initiation, coordination, and – at provincial level – implementation of public security measures, object- and person protection generally, and the protection of foreign representatives, International Organizations, and other legal entities under International law, see: <http://www.bmi.gv.at/205/> (20 September 2017)

²¹ Report of the Federal Office for the Protection of the Constitution and Counter-terrorism (BVT), 2016, Vienna 2017, p. 11. In the following the German word “Verfassungsschutzbericht” will be used.

²² Ibidem, p. 11.

²³ See Peham, Andreas: *Rechtsextremismus als politische und pädagogische Herausforderung*, Dokumentationsarchiv des österreichischen Widerstandes, https://www.doew.at/cms/download/5gm50/peham_rechtsextremismus_paedagogik.pdf (13 September 2017) pp. 2 et seq.

- Societal dichotomization (in and out group dynamics, resulting in relations of alleged inferiority and superiority)
- A rigid concept of heteronormative gender hegemony and, consequentially, stark rejection towards any deviations from this norm (homophobia, etc.)
- Self-victimization and penchant for personalizing, wary, and conspiratorial ways of explaining the world, according to which the individual sees itself as the victim of outside forces (victim-perpetrator-inversion)

Right-wing extremism is an international phenomenon. However, due to Austria's active role in the crimes of 20th century German National Socialism, the issue is especially sensitive here. Despite the fact that Nazi activities have been banned under the National Socialist Prohibition Law²⁴ (*Verbotsgesetz, Verbotsg*) since 1945, Austria is still a potent breeding ground for National Socialist activities according to the Austrian Federal Office for the Protection of the Constitution and Counter-Terrorism.²⁵

1.2.2. Left-wing extremism:

Scientific literature on left-wing extremism in Austria, as well as in Germany, is scarcer than literature on right-wing extremism.²⁶ Alas, there is no consistent definition of the term either. The left-wing extremist scene in Austria entails multiple factions. They can generally be divided into a Marxist, Leninist, and Trotskyist compound and an autonomist, anarchist movement. Regarding their content-related orientation they, nevertheless, share some objectives. Above all, the purpose to put an end to the current bourgeois capitalist system. In this process, the intention is to replace democratic rule, either with new norms limiting individual freedoms, or - following the anarchic principle – with a government by none. The latter would eliminate authority relationships and rules all together.

- Marxist/Leninist groups strive for social change through revolution, the realization of which requires the recruitment of a significant part of the population. Operations are organized in a cadre party, and members adhere to orders from its governing body unconditionally.
- Trotskyist groups pursue what they call a 'permanent revolution' for the further development of socialism. Their goal is to infiltrate democratic institutions in order to gain influence over the policy process.
- The autonomous anarchic scene is organized in loose platforms only. Their names and composition may vary depending on their specific protest target. In some instances, the exponents, most of which are juveniles, seem to lack discernible political objectives all together²⁷.

²⁴ Verbotsgesetz 1947, StGBI 13/1945 idF 148/1992.

²⁵ Verfassungsschutzbericht, 2016, p. 11.

²⁶ See: Hoffmann, Karsten Dustin: Linksextremismus im Spiegel von Wissenschaft und Publizistik, Bundeszentrale politische Bildung in Deutschland, 2013, <http://www.bpb.de/politik/extremismus/linksextremismus/169852/linksextremismus-im-spiegel-von-wissenschaft-und-publizistik> (15 September 2017)

²⁷ Verfassungsschutzbericht 2016, p. 17 et seq.

Marxist/Leninist/Trotskyist organizations usually refrain from openly using violence. However, they do not oppose the use of violence per se. Autonomous anarchic groups view violent action as a legitimate and normal tool.²⁸

1.2.3. Religiously motivated extremism: Salafism, Jihadism

Like elsewhere, religiously motivated extremism has been a growing phenomenon in Austria during the last few years. This term refers to movements which adhere to a very specific and exclusive way of conceiving and interpreting religious contents. These belief systems do not tolerate any other next to them. Islamist extremism is a form of religious extremism. Islamist extremist movements invoke Islam for justification of their actions and strive for the installation of a social- and state order, exclusively legitimized through and accountable to religious norms.²⁹ Alas, Islamism and Salafism are often used interchangeably with Islam in the current discourse.

Salafism can be divided roughly into three forms, only one of which happens to be violent and militant. First, the apolitical ‘quietist-purist’ Salafism distances itself explicitly from any kind of violence. Religious and political Salafism demands the union of state and religion, but by parliamentary means. Lastly, jihadists pursue their goals through violence.³⁰ The ideology of jihadism is characterized by the disdain for others’ disregard of an allegedly pure form of Islam. Jihadists do not only fight non-Muslims, but also Muslims who do not share their specific conception of faith. They declare them infidels – ‘*takfir*’ (تكفير, fellow Muslims declared infidels) or ‘*kāfir*’ (الكافر; plural: ‘*kuffār*’, الكفار - infidels in general). The term ‘Islamism’ also includes all non-Salafist groups which strive to install a new Islamist order or forcefully put Islam at the foundation of the existing social order.³¹

2. General status of extremist criminality concerning juveniles

This chapter features a summarized account of extremist offences, current developments, criminal complaints and charges, and convictions in the areas of right-wing extremism, left-wing extremism, and Islamist extremism. The data presented here is mostly excerpted from the annual reports on the protection of the constitution (2014-2016), published by the Office for the Protection of the Constitution and Counter-Terrorism. Every yearly issue of these reports follows different logistical structures. Because of this incoherence, it is difficult to directly engage in a comparative analysis. Besides, some of the reports exhibit a significant lack of data, mainly of a differentiable presentation of data, especially regarding age and gender distribution.

²⁸ Ibidem, pp. 17 et seq.

²⁹ Fabris, Verena: Religiös begründeter Extremismus (religiously motivated extremism), see: [www.gewaltinfo.at: https://www.gewaltinfo.at/themen/2015_04/religioes-begrueandeter-extremismus.php](https://www.gewaltinfo.at/themen/2015_04/religioes-begrueandeter-extremismus.php) (13 September 2017).

³⁰ See.: Damir-Geilsdorf: Zur politischer Identitätsbildung als Radikalisierungsfaktor bei jungen Muslimen in Deutschland. Salafismus in Deutschland. Entstehung, Radikalisierung und Prävention, Frankfurt am Main 2014, p. 220. / Güngör/Nik Nafs: Jugendliche in der offenen Jugendarbeit. Vienna 2016, p. 135, cited in: Wagemaker, Joas: Salafistische Strömungen und ihre Sicht auf al-wala’ wa-l bar’ (Loyalität und Lossagung). In: Said/Fouad (eds.): Salafismus, 2014, p. 61 et seq.

³¹ Ibidem, citing Farschid, Olaf: Salafismus als politische Ideologie. In: Said/Fouad (ed.): Salafismus, 2014, p.164.

Therefore, we can only approximate the actual situation of youngsters, who are in conflict with the law relating to extremism. Nevertheless, the overview reflects the current developments and trends well and depicts the extent to which youngsters and young adults are involved in the phenomena surrounding extremism.

2.1. Right-wing extremism

Right-wing extremism continues to play a particularly significant role in Austria. It manifests itself through various manifestations, including right-wing revisionist groups, neo-Nazism, extremists organized in youth-comradships, hooligans, skinheads, and, more recently, the ‘new right’ movement. This new group was introduced in France, it organises as a movement, and is highly active particularly on the internet. It managed to establish itself in Austria successfully as a platform of protest for young people. Meanwhile, it avoids planting punishable actions and openly xenophobic, racist, anti-Semitic, or islamophobe rhetoric. By doing so it shifts the traditional lines of argumentation and social construction associated with the far-right. The term ‘race’ is replaced by ‘culture’. Rather than the long entrenched and straight forward requests like ‘*Ausländer raus!*’ (Foreigners out!), it has concepts like ‘*Überfremdung*’³² or ‘*Entwurzelung*’ (cultural uprooting) that have gained momentum in recent years. As more traditional strands of right-wing extremism have repeatedly failed to generate interest among the younger generations, the ‘new right’ tries to present its ideologies in a new guise to make them socially acceptable.³³ Their modern and, somewhat, pop culture-like image aims at the recruitment of mostly young individuals.

The refugee and migrant movement to Austria in 2014 and 2015, and the consequential increase in asylum applications, correlates with a sharp increase in crimes involving xenophobia, mostly targeting asylum seekers. Most of these criminal agitations against asylum centres, asylum seekers, and their supporters found its expression through denigration and anti-Islam propaganda on the internet. Despite a general decrease in the number of asylum applications in 2016 and 2017³⁴, this practice of menace and slander continues, both, on the web and occasionally during personal encounters in the streets.³⁵

Numbers

The official 2016 criminal statistics report a total of 537,792 reported cases of criminal offences. The number of total cases reported has remained relatively constant since 2010.³⁶ 1,313 of the

³² Compound noun: *über*=over, and *fremd*=alien or foreign – the term *Überfremdung* refers to the notion of “foreign infiltration” through (mass-)migration that is believed to threaten fundamental socio-cultural markers or ‘native’ identity.

³³ Verfassungsschutzbericht 2016, p. 11. and p. 43. / Verfassungsschutzbericht 2014, pp. 12 et seq. / Verfassungsschutzbericht 2013, p. 13.

³⁴ Asylum applications filed in Austria: 2014: 28.064 – 2015: 89.098 – 2016: 42.285 – until 31.8.2017: 17.095. see: <http://www.bmi.gv.at/301/Statistiken/>; since 19 February 2016 is the upper limit of 37.500 asylum applications approved by the Austrian government in force. In 2016 36.030 asylum applications were approved.

³⁵ Verfassungsschutzbericht 2016, p. 13.

³⁶ Burglary and theft declined, while violent offences (+6,9%), economic criminality (+10,9%) and in particular cyber-criminality (+30%) increased since 2015, see:

http://www.bmi.gv.at/cms/BK/publikationen/krim_statistik/Jahresstatistik_2016.aspx (20 September 2017).

2016 cases reported are associated with offences of right-wing extremism – involving e.g. xenophobia, racism, islamophobia, or anti-Semitism.³⁷ In the same year, the police reported against 963 persons, 129 of which (13.4%) were women. Children accounted for 89 (9.2%) of these files. The developments throughout the last three years are depicted in the following table:

Year	Total number of criminal offences³⁸	Total number of reported files³⁹	Thereof, female	Thereof, children
2016	1.313	963	129	89
2015	1.156	912	90	92
2014	750	559	45	68

File statistics from the annual reports of the Office for the Protection of the Constitution and Counter-Terrorism 2014, 2015, 2016 <http://www.bmi.gv.at/205/>. In these reports the age of children is considered until 18 years.

In comparison the total numbers of reported files in connection with the National Socialist Prohibition Law (VerbotsG) decreased slightly from 2015 (953) to 2016 (884).⁴⁰

To illustrate the range of offences, the following are but a few assorted examples⁴¹:

- Desecration of memorial monuments to the victims of the Nazi regime.
- Incitement and islamophobia expressed through alteration (i.e. pasting over) of street signs in the proximity of a Mosque.
- Daubing the wall of a Turkish nursery school with a swastika.
- Staging of an event for the far-right scene, involving representatives of far-right political parties and otherwise pertinent groups from various countries.
- Incitement of violence against a Roma campsite via Facebook.

As the table above construes, the number of offences with right-wing extremist background has increased steadily throughout the last three years. Significantly, the increase in share of female offenders rose by 100% between 2014 and 2015. This trend continued, although less pronounced, between 2015 and 2016 (+43%). According to the 2015 report on constitutional protection⁴², the role of women in these organizational structures has changed: Previously confined to be hanger-on sympathizers, they have recently shown augmented proactive engagement. Importantly, increased female activism may open new recruitment potential.

The share of juvenile offenders rose 35% between 2014 and 2015, but dropped by 3% in 2016. Unfortunately, the number of female juvenile offenders against whom complaints were filed could not be inferred from the data available. The overall share of juveniles among all

³⁷ A criminal action may involve more than one offence or separate complaint files, comp. Verfassungsschutzbericht 2016, pp. 12 et seq.

³⁸ Right-wing extremist, xenophobic, racist, islamophobe or anti-Semitic, as well as miscellaneous criminal acts involving the file of one or more pertinent offence. See.: Verfassungsschutzbericht 2016, p. 12.

³⁹ Reported by the police.

⁴⁰ Verfassungsschutzbericht 2016, p. 12.

⁴¹ Verfassungsschutzbericht 2014, p. 16.

⁴² Verfassungsschutzbericht 2015, Vienna 2016, p 14.

individuals accused of right-wing extremist crimes amounted to 9%.⁴³ Apart from that, the number of the files regarding the *VerbotsG* decreased slightly from 953 in 2015 to 884 in 2016.

Convictions of adults and children as well as young adults under the *Verbotsgesetz*

	2014	2015	2016
Adults	53	79	85
Youth and Young adults	19	16	15

Retrieved from the federal court proceedings automation system (Ministry of Justice, BMJ), query response via email, 20th of September and 10th of October 2017.

What is evident from the data, is a gradual decrease in conviction of juvenile offenders and an increase of adults over the last three years. In the year 2016 the proportion of youth and young adults among convictions is 15% (15 out of 100 in total). As of August 31, 2017, no youth or young adult finds him-or herself in pre-trial detention or in prison as part of a sentence for right-wing extremist offences. Only rarely do custodial sentences arise in this context. In Austria, alternative and more lenient measures find application in most cases (see Part B. 3.).

2.2. Left-wing extremism

As illustrated in Chapter 1.2.2 broadly speaking, there are three discernible movements of left-wing extremist groups active in Austria. They are Marxist/Leninist-, Trotskyist-, and autonomist/anarchist movements.

In the period from 2014 to 2016, the autonomous-anarchist was the most active scene area within the far-left scene. Through (violent) protest, they allegedly fight fascism and repression, while criticizing capitalism, economic and social policies. Lastly, they claim to promote their take on refugee- and asylum policies. Marxist/Leninist groups made no notable appearances during that time period. Programmatically, their interests somewhat coincide with the anarchists, e.g. regarding anti-fascism, capitalism- and social critique, or asylum policy. Nevertheless, the coordination between the two groups can hardly be called more than rudimentary.⁴⁴

The general central target of protests among all of these left-wing groups, and of the anarchist scene in particular, was the Vienna Academics' Ball.⁴⁵ The 2014 event saw violent escalations that resulted in twelve arrests and 206 filed complaints.⁴⁶ In 2016, the ball passed by peacefully.

⁴³ Retrieved from the federal court proceedings automation system (Ministry of Justice, BMJ), query response via email, 20 September 2017 and 10 October 2017.

⁴⁴ See Verfassungsschutzbericht 2014, Vienna 2015 pp. 26 et seq. / Verfassungsschutzbericht 2015, Vienna 2016 p. 17 et seq. Verfassungsschutzbericht 2016, Vienna 2017, pp. 17 et seq.

⁴⁵ The Vienna Academics' Ball has been organized annually by the Freedom Party of Austria (FPÖ), provincial group Vienna, since 2013. It is considered the successor to the Vienna Corporation Ball (WKR Ball), which had been hosted by 'colour-wearing' and mostly fencing fraternities between 1952 and 2012 on an annual basis. Since 2008 it has faced frequent violent protests on part of far-left groups.

⁴⁶ Verfassungsschutzbericht 2014, p. 29.

Moreover, protests occurred in response to right-wing rallies, especially those of the ‘new’ right in Vienna and Graz. Through the course of counterdemonstrations, violent left-wing extremists have frequently damaged property and inflicted bodily harm. In 2015, the increased presence of right-wing extremist, xenophobic, anti-Islam, and anti-immigration groups was met by an increasing frequency of (far) leftists’ counterdemonstrations.⁴⁷ A special occurrence in the year 2016 was the Austrian presidential elections.⁴⁸ Damages of election advertising materials (e.g. defilement of billboards) throughout the campaigning season occurred predominantly on the part of left-wing extremist groups. 178 offences – that is a stunning 46.5 % of the total far-left offences – were related to the election in one way or another.

Numbers

In 2016, 383 offences associated with left-wing extremism and involving alleged or proven violent components were reported to the authorities. Overall, in total there are 83 reported files, thereof 21 (25%) were women. Six individuals were children (7%)⁴⁹. The following table depicts the developments over the last three years:

Year	Total number of criminal offences⁵⁰	Total number of reported files⁵¹	Thereof, women	Thereof, children
2016	383	83	21	6
2015	186	129	53	4
2014	371	179	56	2

File statistics from the annual reports of the Office for the Protection of the Constitution and Counter-Terrorism 2014, 2015, 2016 <http://www.bmi.gv.at/205/> In these reports the age of children is considered until 18 years.

Moreover, the table shows that criminal activities of the left spectrum are not subject to any coherent trends. Rather, they ought to be understood as occasional adverse reactions to developments (e.g. Vienna Academics’ Ball, presidential elections), mostly directed against right-wing populist and extremist movements. Autonomist/anarchist groups, in particular, express their violent ‘anti-fascism’ through mass rallies.

Considering the above, it seems difficult to make qualified statements, differentiated by sex and age, about the developments of individual files throughout the last three years. Although, numerically, the number of female offenders has declined between 2014 and 2016, from 56 to 21, and the number of juvenile offenders has increased from 2 to 6, the data is too scarce to allow for further conclusions of any kind. That is partly due to the lack of information on the recruitment practices and specific roles for women, girls, and boys.

⁴⁷ Verfassungsschutzbericht 2015, p. 19.

⁴⁸ Norbert Hofer (FPÖ) and Alexander van der Bellen (independent, supported by the green party) competed in the eventual runoff stage of the 2016 presidential election. The runoff, which took place in May, was annulled by the constitutional court. A rerun was scheduled for October, but had to be postponed to December due to irregularities regarding the production of (faulty) envelopes for the postal ballots. Eventually, Alexander van der Bellen won the election with 53.8% of the votes casted.

⁴⁹ Verfassungsschutzbericht 2016, p. 20.

⁵⁰ A criminal action may involve more than one offence or separate complaint files.

⁵¹ The majority of the reported files refer to damage of property (§125 StGB, § 126 StGB). In addition, there were files of grievous bodily harm (§84 StGB).

Alas, in this study we could not evaluate the total number of convicted individuals in detention, who are affiliated with left-wing groups. The reason for this is that the criminal statistic does not list motives for offences like property damage, bodily harm infliction, or theft.

2.3. Salafism and Jihadism

Development in Austria

There are indications that the Salafist Islam in Austria emerged already in the 1990s because of migrant movements of Muslims as a result of two armed conflicts. These were the wars in former Yugoslavia – in particular the Bosnia Wars (1992-1995) – and the armed conflicts in Chechnya (1994, 1996, 1999, and 2009). According to estimates from the Ministry of the Interior, approximately 30,000 Chechens live in Austria today, most of them in Vienna⁵².

After 9/11, Austria saw the emergence of political Salafist groups with connection to the German scene, consisting of young men with predominantly Bosnian and Chechen backgrounds. This ‘new’ movement has, hence, developed long before the Syrian Civil War broke out in 2011. The Viennese Mohammed M., of Austrian and Egyptian descent, had already radicalised during the mid-2000s. 2008, in the age of 23 years, he was eventually convicted to four years of imprisonment for founding and promotion of a terrorist group. After his release, he moved to Germany, took part in the founding of the jihadi movement ‘Millatur Ibrahim’, and made sizeable contributions to the radicalization of the political Salafist scene. Two years thereafter, he decided to travel to the Middle East and pledge allegiance to the IS. He is said to have died in combat in 2015.⁵³

Another important actor within the Austrian Salafist-extremist scene is Mirsad Omerovic, *alias* Ebu Tejma, who is considered a leading ideologist. The centre of his actions were at the Altun-Alem Mosque in Vienna’s 2nd municipal district. In his speeches, he openly opposes the ‘western’ democratic model and demands a social order that functions according to Islamic law. 2016 Omerovic (34 years old) was sentenced to 20 years of prison for charges of participation in a terrorist group (§278b StGB), terrorist crimes (§278c StGB), as well as a general participation in organized crime (§278 StGB).⁵⁴ This continues to be the longest custodial sentence passed for terrorist activities under Austrian jurisdiction.

Simultaneously, a second jihadi movement formed within the Chechen diaspora in Austria. The 2007 schism of the Chechen resistance movement was of substantial influence to Chechens who live in Austria. It ended in dichotomous claims to authority from, both, the nationalist wing under the exile government and its leader Ahmed Sakajew, and the newly formed Caucasus

⁵² Aslan, Ednan: *Islamistische Radikalisierung, Biographische Verläufe der religiösen Sozialisation und des radikalen Milieus*, Vienna, 2017, pp. 74 et seq.

⁵³ *Ibidem*, p. 77 et seq; see Hofinger/ Schmidinger: *Deradikalisierung im Gefängnis.*, 2017, p. 4.

⁵⁴ Aslan, *Islamistische Radikalisierung*, p. 79. / The judgement has not yet been final by 14 July 2017.

Emirate. The infamous Tawhid Mosque in Graz used to be a popular meeting place for younger Chechens. The local Imam misused his authority and actively recruited youths to fight in Jihad. He was sentenced to six years in prison. In 2012, as Chechen brigades formed and became involved in the Syrian Civil War, Chechens who had lived in Austria were in their ranks.⁵⁵

According to the report of the Office for the Protection of the Constitution and Counter-Terrorism (BVT), the geopolitical proximity to the violent extremism of the West Balkans has played a vital role in the emergence of jihadism in Austria. The travel routes of various individuals, who decided to go to Syria to fight, led through the West Balkans, where these individuals also happened to have personal connections.⁵⁶

Foreign fighters

Apart from Chechens, children and young adults with manifold foreign lines of descents (migrants, asylum seekers, and refugees) as well as converted Austrians have participated in the IS but also, sometimes, in some of its competitors like ‘Jbath Al-Nusra’ or ‘Ahrar Al-Sham’ and other armed groups. Between 200 and 300 of these so-called ‘foreign fighters’ left Austria for Syria and Iraq in 2015 and 2016.

	Total number of ‘foreign fighters’	Prohibited from leaving	Returned	Killed
2016	296 (139 aged under 25 years) ⁵⁷	51	90	45
2015	259	41	79	43

Derived from: report on the protection of the constitution 2015, p. 25; report on the protection of the constitution 2016, p. 24.

Alas, once again, no age-specific differentiations, other than the information of 25 years or older for the year 2016, could be inferred from the available data. According the reports on constitutional protection (BVT), the number of Jihadis’ attempts to leave the country for Syria or Iraq stagnated soon. It has even been declining steadily since 2014. The recent military backlashes on part of the IS might be informative of why less and less individuals feel inclined to serve its cause. With the loss of territory, the organization also forfeits its attractiveness towards children and young adults in Austria. Furthermore, there are indications that reports from returned foreign fighters might have led to a certain disenchantment of Jihad among young sympathizers. Their stories too often just do not match the idealized and glorifying war-images or videos, which are disseminated on the internet or on social media.⁵⁸

⁵⁵ Hofinger/Schmidinger, *Deradikalisierung im Gefängnis*, 2017, p. 4 f; see Aslan, *Islamistische Radikalisierung*, 2017, p. 81.

⁵⁶ *Verfassungsschutzbericht 2016*, p. 25.

⁵⁷ *Die Presse: Terrorismus: 296 Jihadisten in Österreich unter Beobachtung*, APA Austrian Press, 10 August 2017.

⁵⁸ Interviews with representative of Neustart on 5 July 2017 and representative of detention centre of Gerasdorf on 9 August 2017.

Convictions of children and young adults in the context of terrorist crimes

Since 2002, Austrian criminal law has introduced new offences in reaction to the general increase in radicalization, extremism and terrorism.

- § 278b *Beteiligung einer terroristischen Vereinigung*
(Participation in a terrorist group)
- § 278c *Begehung terroristischer Straftaten*
(Commitment of a terrorist offence)
- § 278d *Terrorismusfinanzierung*
(Financing terrorism; not listed below as it is less relevant to juvenile justice)
- § 278e *Ausbildung für terroristische Zwecke*
(Training for terrorist purposes)
- § 278f *Anleitung zur Begehung einer terroristischen Straftat*
(Instruction to commit a terrorist offence)
- § 282a *Gutheißen von terroristischen Aktivitäten*
(Incitement or approval of terrorist activities)

More information about these offences can be found under Part B.

The following table lists all convictions delivered for adults (A) and children as well as young adults (Y) due to terrorist offences between 2014 and 2016.

Paragraph		278b	278c	278e	278f	282a	Total
		A / Y	A / Y	A / Y	A / Y	A / Y	A / Y
Jahr	2014	0 1	0 0	0 0	0 0	0 1	0 2
	2015	13 15	0 0	1 1	0 1	0 4	14 21
	2016	15 21	4 1	1 0	0 0	1 5	21 27
Total		28 37=65	4 1=5	2 1=3	0 1=1	1 10=11	35 50=85

Retrieved from the federal court proceedings automation system (Ministry of Justice, BMJ), query responses via email 20 September and 16 October 2017.

As this overview shows, most sentences – 65 out of 85 - were delivered based on paragraph 278b. Among them 37 (56%) concerning youth and young adults with a share of 28 male (76%) and 9 female (24%) young offenders. The ‘participation in a terrorist group’ is interpreted quite broadly in this context. As a result, the mere provision of propaganda information, the promotion of the organization, may under given circumstances suffice for this offence to be triggered. The proportion of children and young adults among the total number of terrorist offenders from 2014 to 2016 is striking high with 59% (50 out of 85). Among them there were 40 male (80%) and 10 female (20%) convicted young persons.

This clearly shows, that especially young people have been attracted by Islamist movements and ideas.

Detained children and young adults

In total, as of 1 July 2017, twelve male children and young adults are kept detained within the Austrian penitentiary system for terrorist crimes. No woman or girl has been currently held under custody in this context.⁵⁹

3. The most common profiles of youngsters convicted of terrorist offences

Given the information provided in the previous chapters, we attempt at this point to create a typology of juvenile terrorist offenders. This analysis is based on cases of children and young adults, who were convicted of terrorist offences. Some of these individuals are, or have been, serving custodial sentences in this context in Austria. To this end, the Ministry of Justice agreed to grant us insight into 10 court records and penitentiary files⁶⁰ of children and young adults convicted of terrorism. Additionally, our outcomes were informed by the Austrian study on ‘Islamist Radicalization’⁶¹ which shed light on 29 biographical narratives through interviews conducted in penitentiary bodies throughout Austria and in three youth facilities in Vienna. From this empirical material, we inferred the narrative biographies of 7 children and young adults, aged between 16 and 21 years, and use these to further enrich our analysis. The data was gathered between February 2016 and August 2017. Additionally, we decided to include the biography of an individual who, at the time of this research, had already left prison. His case had incurred particular media attention. In total, we analysed a group of 18 children and young adults, whose data we categorize regarding the reason of their conviction as well as their biographical trajectories. Our typology draws important methodological concepts from the work of the Norwegian police researcher Tore Bjorgo. Like him, we hold four dimensions to be of particular importance: the level of ideologisation, status within the group, socio-economic resources, and sensation seeking. Also borrowed from Bjorgo are the differential categories of ‘ideological activists’, ‘drifters and fellow travelers’, and ‘socially marginalized youth’.⁶²

In terms of analysis, it is important not to conceptualize the categories as isolated or mutually exclusive, but to acknowledge that they sometimes overlap and tend to be connected either by causality or correlation. In some cases, the categories may be understood as various stages of a single trajectory too. Moreover, there is no ‘standard’ pathway, as every single biography traverses a plethora of different processes, holding every juvenile offender dependent upon very

⁵⁹ Query response from the Ministry of Justice via email (3 July 2017):

Two detainees in Gerasdorf, one individual in pre-trial detention in Graz-Jakomini, one convict in Graz-Karlau, two convicts in Hirtenberg, one convict in Sonnberg, two individuals in pre-trial detention in St. Pölten, three individuals in pre-trial detention in Wien-Josefstadt.

⁶⁰ We kindly thank the federal ministry of justice for their grateful support.

⁶¹ Aslan, *Islamistische Radikalisierung*, 2017.

⁶² Bjorgo, Tore: *Dreams and disillusionment: engagement in and disengagement from militant extremist groups*. *Crime Law and Social Change* Vol. 55(4), pp. 277-285. In addition Hofinger/Schmidinger: *„Deradikalisierung im Gefängnis, approached to this typologies developed by Bjorgo, pp. 29 et seq.*

individual circumstances. Research suggests⁶³, however, that often it is traumatizing experiences (e.g. during childhood) or crises which incentivize youths to radicalise in extremist milieus and leave their (often painful) past behind. Such experiences may include elementary incidents like the death or the absence of parents, growing up in an orphanage, experiences of violence and discrimination in Austria, or the feeling of social exclusion – i.e. ‘not to form an integral part of society’. There is never a single, paramount reason for radicalisation. Always plenty of various reasons, developments, conditions, etc. trigger juveniles and young adults to reject democratically legitimized systems and approach towards a totalitarian and violent order. Out of the 18 individuals evaluated, seven are Russian nationals of Chechen descent. This is the biggest group, followed by Turkish, Austrian, and Syrian nationals, as well as one Egyptian youth.

The disproportionately high number of Chechen youth points to the fact that Austria hosts the biggest community of exile Chechens in Europe, consisting of some 30,000 individuals⁶⁴. Most of these persons have fled the violent conflict in Chechnya during the 1990s and have stayed ever since. The trauma of war lingers on, even in those second-generation individuals, already born and raised in Austria. *“They often face negative stereotypes like ‘Chechens are violent by nature’ and are frequently victims of discrimination and exclusion in schools and other public institutions. In some cases, this has led to a premature end of schooling and incentivized the youngsters to succumb to criminality”* says Maynat Kurbanova, a Chechen Journalist who lives and works in Austria.⁶⁵

3.1. Marginalised youths

This group of Chechen youngsters fits Bjorgo’s category of ‘marginalized youngsters’ exceptionally well. Most of them have completed compulsory schooling only and have – at best – started an apprenticeship, which they often abandon before completion.

This category is, of course, by no means applicable to Chechen youth only. Juveniles of other nationalities exhibit the very same, or similar biographical characteristics. Two of them attended special education and only one individual had received well-founded schooling. Another common characteristic of marginalized youths is that some of them have a criminal record (and convictions) involving, among others, multiple theft or drug abuse, or bodily harm before pursuing their extremist trajectory. In some cases, first contacts with radical ideology was established in penitentiaries. These ties were then strengthened in the radical milieu (e.g. in mosques) after release. A paramount element of attraction of terrorist groups is that they make marginalized youths feel taken seriously and part of a community.

⁶³ See Neumann, Peter: *Der Terror ist unter uns*, 2017, p. 43 et seq. / Borum, Randy/Fein, Robert: *The Psychology of Foreign Fighters*, *Studies in conflict and terrorism*, 2017, <http://dx.doi.org/10.1080/1057610X.2016.1188535> (15 September 2017) pp. 252 et seq.

⁶⁴ From the interview with Maynat Kurbanova on 16 August 2017.

⁶⁵ *Ibidem*.

3.2. Leaving Austria – as fighter or civilian

Approximately a third of the children and young adults, whose stories we evaluated here, have travelled to Syria or Iraq to actively participate in fighting, to train for combats, or to pursue a civil profession (e.g. paramedic). Important motives for their departure, as some of these individuals have claimed, were the urge to aid their ‘brothers and sisters’ and the desire to live in a country, where they could freely pursue their religion and ideals. Moreover, the image of a somewhat heroic brotherhood of warriors, well-regarded by their peers and the entire society, was considered particularly attractive by some. While Islamist ideologies played an important role for some, this influence was far from ubiquitous. Some youths radicalised from within the Islamist-extremist milieu and got encouraged by friends and/or Imams in certain Mosques to leave the country. One young adult, however, who had repeatedly made himself guilty of transporting young men to Syria by car, considers financial incentives the main motive for his actions. The sentences for returned foreign fighters ranged from two and a half years to twelve years of prison. The young adult who obtained the twelve-year custodial sentence is accused of deliberate attempted killings and murder in various occasions.

3.3. Syrian expatriates

Two of the individuals under scrutiny do fit into this group. They are young Syrian males, who had joined terrorist organizations (IS and Harakat Ahrrar al Sham al Islamyya respectively) in their home country. One had fought as a combatant, while the other formed part of the so-called ‘Sharia-Police’. Due to their participation in terrorist activities in Syria, they were sentenced, in first instance, to four years of unconditional detention upon their arrival in Austria.

3.4. Persons stopped from leaving the country

This category includes approximately a third of the children and young adults in the sample, whose initial intention to go to Syria or Iraq were left unfulfilled, either because their journey was stopped at the border or they were arrested during the preparation of their trips. This starkly heterogeneous group consists of young men from different nationalities, some of whom were or still are highly ideologised, and whose specific individual reasons for leaving the country varied quite considerably. One of them wished to follow his brother into jihad, another claimed he wanted to deepen his understanding of Islam, while a third aimed at receiving military training. Reflecting these diversities, it comes as no surprise that sentences varied from acquittal, through conditional custodial sentence accompanied by highly frequent probationary service, to twenty months imprisonment.

3.5. Young men disseminating Islamic State propaganda materials

Prior to their announcement or actual planning of travels to Syria or Iraq, many young men in the sample were active on social media - typically they shared videos and photos, endorsing the IS and inciting the fight against 'infidels'. Sometimes, this type of online propaganda served as a major tool to facilitate the recruitment of youths for jihad.

3.6. Conclusion

Every constituent member of our sample exhibited an inherently different biographical background from everybody else. The histories collected can, hence, at best be used to approximate parallels and/or similarities. Any generalization derived runs danger of ignoring or diverting attention from, both, significant explanatory patterns and socialization-specific interpretations. Therefore, we hold the opinion that, in absence of a universal panacea, all measures of deradicalisation or prevention are in need of holistic and individually attuned concepts.

Part B: Criminal Law aspects in the national legislation

This chapter provides an overview about relevant legal standard as well as about specifics regarding children and young adults in the context of extremism and terrorism. As a starting point, it has to be stated that due to the intricacies and the multiplicity of the interests pursued, as well as the diversity of its manifestations, a universal definition of “terrorism” can hardly be found.⁶⁶ Despite numerous conventions and measures adopted to fight terrorism at the international, European, and national levels, there is no agreement as to what a valid definition of the term would entail.⁶⁷ Also the Austrian legal system lacks any legal definition of terrorism but also of violent extremism. Nevertheless, due to the lack of a coherent legal definition, the political dimension regarding terrorism-related offences is sizeable.⁶⁸ The notion induces immense significance - also in legal terms - along with considerable consequences. Besides wide-ranging opportunities for bi- and multilateral cooperation (extradition, information exchange, freezing of funds, etc.), counter-terrorism legislation at the national level also involves numerous competences and measures. They range from preventive policies, through administrative orders, to deciding repressive policies, especially framed in terms of criminal law.⁶⁹ Further investigative measures (e.g. *Sicherheitspaket*, see below) and some possible consequences in criminal and administrative law (e.g. the above-average long duration of pre-trial detention or issues involving the potential loss of residence or asylum status) may be additionally invoked. These are highly contentious issues, which must be scrutinized critically with a human rights perspective, in order to prevent any disproportionate interference with human rights or any other infringement of human dignity in relation to the authorities’ pursuit of public safety. Safety aspects are vital to the context and there are clear reasons for why a democracy must not ever tolerate any assaults on its existence. Those situations sometimes engender a decoupling of counter-terrorism legislation, safety concerns, and repressive policies on the one hand and human rights, democracy and the rule of law on the other.

The fundamental stipulations which define the rule of law and democracy at their core are of crucial importance in that they scope the margins of political and legal discretion. Accordingly, the state mitigates against organisations and groups, which intend to dispose these fundamental

⁶⁶ Plöchl: §278b StGB, Rz 1.

⁶⁷ OSCE/ODIHR, *Countering Terrorism, Protecting Human Rights*. A manual, Warsaw 2007, p. 22. comp. UN General Assembly, Report of the Ad Hoc Committee established by General Assembly Resolution 51/210 of 17 December 1996, Sixth session (28 January-1 February 2002), doc. A/57/37. Article 2 of the draft for the UN terrorism convention includes this controversial definition:

Any person commits an offence within the meaning of this Convention if that person, by any means, unlawfully and intentionally, causes: (a) death or serious bodily injury to any person; or (b) serious damage to public or private property, including a place of public use, a State or government facility, a public transportation system, an infrastructure facility or the environment; or (c) damage to property, places, facilities, or systems referred to in paragraph 1(b) of this article, resulting or likely to result in major economic loss, when the purpose of the conduct, by its nature or context, is to intimidate a population, or to compel a Government or an international organisation to do or abstain from doing any act.

⁶⁸ Wessely, Wolfgang: *Zu den neuen Straftatbeständen im StGB*, ÖJZ 2004/53, 2004, p. 827.

⁶⁹ OSCE, *Countering Terrorism, Protecting Human Rights*, 2007, p. 22.

principles by force and which are deemed extremist or terroristic. Financing or participating in such organizations - whether left-, right-, or Islamist extremist in nature – is therefore prohibited and punishable by law.⁷⁰ In the specific case of Austria, (re-)engagement of National Socialist activities (*Nationalsozialistische Wiederbetätigung*), National Socialist propaganda or the denial or trivialisation of crimes against humanity constitute as punishable crimes under the National Socialist Prohibition Law (*Verbotsgesetz*, VerbotsG). The state is supposed to act the moment a legal stipulation is being infringed.⁷¹

It is, however, necessary also in this process to find a balance between countering extremism and the continuous enforcement of human rights. Case-specific, administrative and repressive policies may be well suited as a first response to an isolated case of risk. They are, however, subject to certain legal and human rights related constrictions.⁷² Criminal law, for example, may prove to be a well-suited tool if, and only if, it constitutes the last and necessary measure. Moreover, the exercise of individual repressive measures must be limited to cases of concrete threats and the state must restrain from ‘prophylactically’ imprisoning persons whom the state assumes as potentially dangerous. The latter would be a substantial backlash for the rule of law and the human rights record.⁷³ Although it is frequently suggested, that the continuous public safety cannot be achieved without further repressive security measures (e.g. through more intense surveillance),⁷⁴ Neumann emphasises that counter-terrorism efforts only yield effective and sustainable results, if they engender two kinds of freedom: Additionally to freedom *from* (e.g. fear, terror), the state should strive to ensure deliberative freedom *to* (e.g. to live in an open, democratic society based on human rights)⁷⁵.

The following chapters will describe and analyse the Austrian legal framework of counter-terrorism, considering the obligations under both, the International and European human rights regimes. Part B will cover criminal law provisions, while Part D is dedicated to the pertinent administrative law.

1. Development of legislation

The emergence of laws in the context of terrorism and extremism and the related changes of the Criminal law happened as a reaction to relevant incidents and political discourse. The European Union (EU) has been among the major driving-forces of such developments in recent years. EU framework decisions have resulted in harmonisation of criminal law among Member states. In this process, the Austrian Criminal Code (*Strafgesetzbuch*, StGB), was amended in relation to the counter-terrorism context.

⁷⁰ Ibidem, p. 21; see Diaw Moussa al-Hassan: Religiös begründeter politischer Extremismus, der zu Terrorismus führen kann, unpublished paper, ACUNS, Vienna 2016, p.1 et seq.

⁷¹ Diaw, Religiös begründeter politischer Extremismus, der zu Terrorismus führen kann, 2016, pp.1 et seq.

⁷² OSCE, Countering Terrorism, Protecting Human Rights, 2007, p. 20.

⁷³ ACUNS, Unpublished interview with Norbert Gerstberger, judge, Vienna 2016, p. 8.

⁷⁴ Tschohl, Christof/Czadilek, Alexander: HEAT-Handbuch zur Evaluation der Anti-Terror-Gesetze in Österreich, Vienna 2017, p.12.

⁷⁵ Neumann, Peter opening key-note speech, OSCE-wide Counter-Terrorism Conference, Vienna, 23 May 2017.

1945

The so called *Verbotsgesetz*⁷⁶ (National Socialist Prohibition Law, VerbotG), which criminalizes National Socialist activities and the propagation of its ideologies in Austria, was legislated and published in the immediate aftermath of Austria's liberation after World War II. It has been in force since then and has constitutional status. This law led to the dismantlement of all National Socialist organisations and aims to prevent its possible resurgence. Furthermore, any contribution to the goals of the National Socialistic German Workers' Party (NSDAP) was criminalized.⁷⁷

2002

In reaction to the terror attacks on September 11th, 2001, in the United States, an amendment to the Austrian Criminal Code (StGB) provided for the criminalization of three new types of criminal offense: participation in a terrorist group (§ 278b StGB), participation in a terroristic crime (§ 278c StGB), and financing terrorist activities (§ 278d StGB). All mentioned amendments were carried out under adherence to the standards of both the United Nations (UN)⁷⁸ and the EU⁷⁹. Apart from the central intention to facilitate criminal persecution of terrorist activities, the amendment implemented international counter-terrorism regulations⁸⁰. The amendment was necessary in the light of the EU's framework decision on combating terrorism.⁸¹

2011

Approximately ten years later and, again, Austrian counter-terrorism laws were revised to better cope with new challenges of modern terrorism with strict adherence to international and European regulations.⁸² These entail the increasing significance of radicalisation through incitement of hate and violence as well as the emergence of '(virtual) terror-camps' for training purposes and the preparation of terror attacks. Special attention was paid to the containment of preparatory actions, and particularly the prevention of terrorist crimes, fighting of the propaganda of radical ideas and recruitment processes.⁸³ In 2011 training for terroristic ends (§ 278e StGB), instructions for terrorist crimes (§ 278f StGB), as well as approval of terrorist activities and the incitement of terrorist offences (§ 282a StGB) were subsequently penalised⁸⁴.

2017

In early 2017, the federal government presented, as a part of its annual governmental programme, a '*security packet*' of surveillance measures and new competences for the safety

⁷⁶ Constitutional Law on the Prohibition of the the National Socialist Worker's Party (NSDAP), from 8 May 1945 (VerbotG).

⁷⁷ Verfassungsschutzbericht 2016, p. 12.

⁷⁸ United Nations International Convention for the Suppression of the Financing of Terrorism from 9 December 1999, ratified by Austria in 2002. UN Security Council, Resolution 1373 (2001).

⁷⁹ Framework decision of the Council 2002/475/JI on combating terrorism, June 23, 2002, AB1 L 164, 22/06/2002, p. 3.

⁸⁰ Wessely, Zu den neuen Terrorismustatbeständen im StGB, 2004, p. 827.

⁸¹ Governemnt bill, EBRV 1166 BlgNR XXI GP, p. 16.

⁸² Council of Europe Convention on the Prevention of Terrorism, ETS Nr. 196; EU-framework decision 2008/919/JI amending the framework decision of 2002/475/JI on combating terrorism, AB1 L 330, 09/12/2008, p. 21.

⁸³ Report of the Judicial Committee, JAP 1422, Supplements to the stenographic protocols NR XXIV GP, p. 1.

⁸⁴ Federal law amending the criminal law for terrorism-prevention and the StGB and StPO improving the criminal law protection of the environment, BGBl 2011 I/103. Plöchl, Franz: § 278e StGB in Höpfl, Frank/Ratz, Eckart (ed): Wiener Kommentar zum Strafgesetzbuch, 2nd edition, Vienna (status as of 1.1.2014), Rz. 1.

authorities⁸⁵. Instead of adding yet more offenses to the catalogue, the proposal envisioned to broaden the measures available to criminal investigations. Specifically, these entailed tracing of location data, acoustic surveillance in vehicles, and surveillance of coded messages to prevent terror attacks and maintain public safety. Moreover, it sought to regulate automatic recording of vehicles' number plates and real-time streaming.⁸⁶ These draft amendments to the Criminal Procedure Code (*Strafprozessordnung*⁸⁷, StPO,) and the Security Police Act (*Sicherheitspolizeigesetz*⁸⁹, SPG)⁹⁰ proved highly contentious and incited controversy among the broader public⁹¹. Binney, National Security Agency's former technical director and, more recently, a whistle blower holds that mass-surveillance is an unfit measure to fight terrorism and that the processing and storing of compiled data does not result in a melioration of public safety.⁹² The implementation of the 'security packet' has been halted for the time being.

Apart from the issues entwining the 'security packet', a possible broadening of the legal definitions of 'preparatory criminality' (*Vorbereitungskriminalität*) has been discussed repeatedly. Such an extension might, however, engender reservations in terms of constitutional conformity. This would undoubtedly be the case, if the amendment would serve as a vehicle to create criminal responsibility for under defined offenses and abstract threats, as this would open the way for arbitrary criminal persecution.⁹³

11/2017

⁸⁵ Federal Chancellery: Working programme of the federal government 2017/2018, Chapter 4: Safety and Integration, www.bka.gv.at/4-sicherheit-und-integration (10 July 2017, in German).

⁸⁶ For further information comp.: Explanatory notes to the ministerial draft to the Criminal Procedure Code 325/ME XXV.GP; Explanatory notes to the ministerial draft to the Security Police Act 326/ME XXV.GP. critical e.g.. Epicenter.works, Stellungnahme zum Ministerialentwurf 326/ME, www.epicenter.works/sites/default/files/epicenter.works_-_spg_bstmg_stvo_und_tkg_326_me_xxv_gp.pdf (5 September 2017, in German).

⁸⁷ Strafprozeßordnung 1975, BGBl 631/1975.

⁸⁸ Ministerial draft 325/ME XXV.GP, www.parlament.gv.at/PAKT/VHG/XXV/ME/ME_00325/fname_646626.pdf (5 September 2017, in German).

⁸⁹ Bundesgesetz über die Organisation der Sicherheitsverwaltung und die Ausübung der Sicherheitspolizei, BGBl. Nr. 566/1991 idF BGBl. Nr. 662/1992.

⁹⁰ Ministerial draft 326/ME XXV.GP, https://parlament.gv.at/PAKT/VHG/XXV/ME/ME_00326/fname_646638.pdf (5 September 2017, in German).

⁹¹ Overview of the opinions expressed about the criminal law amendments 2017 (in German): www.parlament.gv.at/PAKT/VHG/XXV/ME/ME_00325/index.shtml#tab-Stellungnahmen; regarding the Security Police Act: https://parlament.gv.at/PAKT/VHG/XXV/ME/ME_00326/index.shtml#tab-Stellungnahmen.

⁹² Der Standard, Sicherheitspaket: Ex-NSA-Cheftechniker warnt vor Massenüberwachung, Online Article of 11 August 2017, www.derstandard.at/2000062560204/Ex-Cheftechniker-der-NSA-warnt-vor-Sicherheitspaket-der-Regierung (5 September 2017).

⁹³ See e.g. for the discourse on a proposal to use electronic shackles for potential attackers ("Gefährder"), which was withdrawn eventually: BIM position paper. 9/2017: Zum Arbeitsprogramm der Regierung betreffend Fußfesseln für „Gefährder_innen“ sowie „Rückkehrzentren“, www.bim.lbg.ac.at/sites/files/bim/anhang/publikationen/bim_position_nr_9_arbeitsprogramm_gefahrder_ruckkehrzentren_0.pdf 6 June 2017).

2. National legislation in the Terrorism & Extremism Context⁹⁴

Although Austrian law lacks a legal definition of the term ‘terrorism’, the word is used in a number of statutory provisions. The following analysis does not limit itself to those stipulations using the words “terrorism” or “terrorist”. Rather, and additionally, it will include a discussion of the long-standing *Verbotsgesetz*, to offer a comprehensive overview of the national laws concerning terrorism and extremism. While the *Verbotsgesetz* penalizes offences, generally associated with right-wing extremism, the Criminal Code (*Strafgesetzbuch*, StGB) entails – generally speaking – all other offences in the context of terrorism and (violent) extremism (e.g. also left-wing extremism or religiously motivated extremism). In the following every pertinent offence will be depicted in detail.

Within the project we received access to court files from different counties in order to analyse the legal framework.⁹⁵ Between August and October 2017 we accessed in total ten files of children and young adults convicted (partly the appeal was still pending) in the context of terrorist crimes according to the StGB. In no way can the conclusions from the analysis be seen as representative but should rather give an insight into the practical application of the national legislation.

2.1. National Socialist Prohibition Law (VerbotsG)

Not only did the VerbotsgG disband the NSDAP, its militias, its sub-organizations and conjunctures, as well as any other type of National Socialist organization or institution, but it simultaneously outlawed their reformation.⁹⁶ Furthermore, it penalises “and be it outside of any of those organizations, to act in any way on part of the NSDAP or in pursuit of its aims”.⁹⁷

New formation of and participation in a National Socialist organisation (§§ 3a, 3b Verbotsg)

Firstly, the stipulations of the VerbotsgG outlaw the re-institution of any of the disbanded national-socialist organizations or the formation of any new organization that pursue aims and ideology associated with National Socialism. Apart from the actual founding, this penalization also applies to any act of recruitment of members or the provision of significant financial or other resources (§3a VerbotsgG; rendering offenders liable to 10-20 years of custodial sentence and, possibly, life sentence in cases of particular danger posed by the person concerned⁹⁸).

⁹⁴ This part covers the relevant criminal offence provisions in the context of juvenile extremism and terrorism. Due to its insignificance in juvenile justice settings, the offence of terrorism funding will not be enlarged upon (§ 278d StGB). For more information thereon, see Plöchl, Franz: § 278d in Höpfl, Frank/Ratz, Eckart (ed.): Wiener Kommentar zum Strafgesetzbuch, 2nd edition, Vienna (status as of 1.1.2014).

⁹⁵ In this regard we would like to thank the Austrian Ministry of Justice.

⁹⁶ § 1 VerbotsgG.

⁹⁷ § 3 VerbotsgG.

⁹⁸ These comparatively serious punishments for crimes under the VerbotsgG reflect the serious impact of National Socialism in Austrian history, as a reaction to which this law came into existence. For a critical analysis on the serious punishments see: Platzgummer, Winfried: Die strafrechtliche Bekämpfung des Neonazismus in Österreich, ÖJZ 1994, p. 753.

Secondly, according to §3b VerbotsG, persons supporting such an organization or participating in it are subject to punishment in the form of custodial sentences of 5 to 20 years.⁹⁹ If a person, however, ends participation in a National Socialist organisation before authorities obtain knowledge of his or her participation, and if, in addition, this person reveals the organization's undertakings to the public, the person's criminal liability in the case is abolished. This clause is called *tätige Reue* – 'deliberate and active repentance'.¹⁰⁰

Public incitement of National Socialist reengagement (§ 3d VerbotsG)

This stipulation aims to inhibit the encouragement of offences under the VerbotsG. Hence, individuals who request, incite, or entice others to commit a crime under the VerbotsG, and whose such actions are public or witnessed by third parties, render themselves subject to punishment. The range of punishable utterances is held to include exalting or eulogizing speech with pertinent, national-socialist content, whenever the context in which it is received involves the speaker's intention to exert influence upon others. Thereby, the law aims to prevent even implicit, subliminal influencing. In addition to any public utterances, the dissemination of incitement in written, printed, or electronic form is equally penalized. The possible sentences range from custodial sentences of 5 to 10 years, but may extend up to 20 years due to severity.¹⁰¹

Violent crimes as National Socialist offences (§§3e, 3f VerbotsG)

In some cases, violent crimes as defined and penalized according to the general Criminal Code (StGB) may entail additional charges, if they are committed as expression of national-socialist intentions or actions. This may apply to crimes like murder, robbery, severe damage of property, as well as endangerment of the broader public. Punishments range from custodial sentences of 5 to 10 years, extendible up to 20 years based on the severity of the crime.¹⁰²

Reengagement (§3g VerbotsG)

This regulation leaves a broad margin of interpretation as to what it entails. This is intentional, as it allows the judiciary to effectively counter¹⁰³ all legally relevant tendencies of National Socialist restoration and revisionism attempts.¹⁰⁴

The elements of this crime can be fulfilled by various offences. It is solely decisive on whether an action involves the pursuit of typical National Socialist program items and, hence, perceivably serve interest in Nazism. Reengagement is, by default, an abstract offence. This means the aims intended by the offenders must not find realisation to trigger this article. Rather the very aspiration of National Socialist activities is deemed sufficiently a threat to find legal

⁹⁹ Lässig, Rudolf: §3a VerbotsG in Höpfl, Frank/Ratz, Eckart (ed.): Wiener Kommentar zum Strafgesetzbuch, 2nd edition, Vienna (status as of 1.8.2015), Platzgummer, Die strafrechtliche Bekämpfung des Neonazismus in Österreich, 1994, p. 753.

¹⁰⁰ § 3c VerbotsG.

¹⁰¹ Lässig, Rudolf: §3d VerbotsG in Höpfl, Frank/Ratz, Eckart (ed.): Wiener Kommentar zum Strafgesetzbuch, 2nd edition, Vienna (status as of 1.8.2015).

¹⁰² §§ 3e, 3f VerbotsG.

¹⁰³ Evidence sheet, EvBl 1987/40.

¹⁰⁴ Platzgummer, Die strafrechtliche Bekämpfung des Neonazismus in Österreich, pp.753 et seq.

relevancy.¹⁰⁵ As a result, any impertinent, lopsided, glorifying, or propagandistically favourable statement about NS-ideology or its significant figures with the intent of reengagement can trigger this article.¹⁰⁶ It is, moreover, not necessary that the action displays the plethora of NS ideology in depth. Belittling, countenancing, or denying parts of the content, associated with Nazism is enough.¹⁰⁷ The use of pertinent slogans, symbols, or gestures is to be met with punishment, if it is used to express a trivialization of the atrocities, the intentions, or ideology integral to this ideology. Noteworthy, the denial or belittling of the holocaust, too, yields a legal basis for punishment (1-10 years custodial sentence with the option of up to 20 years in severe cases) under this article, whenever it entails a reengagement by the offender.¹⁰⁸

Denial, trivialization or justification of the atrocities committed by the NS regime. (§ 3h VerbotsG)

The inclusion of this crime into the VerbotsG formed part of an amendment in 1992.¹⁰⁹ It penalises denial, trivialisation, and justification of the genocide and other crimes against humanity committed by the National Socialists. Forms of penalised discourse may involve spoken word, printed documents, and electronical propaganda materials, if disseminated publicly. In contrast to § 3h VerbotsG, the applicability of this article is not limited to cases, which involve aspired reengagement by the offender.¹¹⁰ Punishment varies from one to twenty years of detention.

2.2. Offences under the criminal code (StGB)

Participation in a terrorist group (§ 278b StGB)

This stipulation aims at pre-empting terrorist activities and penalising them before any aggression has taken place. Merely belonging to a terrorist group constitutes a crime. This way pre-emption of terrorist menace is intended to be pursued actively.¹¹¹

¹⁰⁵ Vgl. Lässig, Rudolf: §3g VerbotsG in Höpfl, Frank/Ratz, Eckart (eds): Wiener Kommentar zum Strafgesetzbuch, 2nd edition, Vienna (status as of 1.8.2015), Rz. 8.

¹⁰⁶ Lässig: § 3g VerbotsG.

¹⁰⁷ Platzgummer, Die strafrechtliche Bekämpfung des Neonazismus in Österreich.

¹⁰⁸ Lässig § 3g VerbotsG; The Austrian Delegation to the OSCE-Conference on Anti-Semitism: Überblick über die österreichische Gesetzeslage im Bereich "Nationalsozialistische Wiederbetätigung und Rassismus", PC.DEL/301/04, 2004(German).

¹⁰⁹ BGBl 1992/148.

¹¹⁰ Lässig, Rudolf: §3h VerbotsG in in Höpfl, Frank/Ratz, Eckart (ed.): Wiener Kommentar zum Strafgesetzbuch, 2nd edition, Vienna (status as of 1.8.2015) The Austrian Delegation to the OSCE-Conference on Anti-Semitism: "Nationalsozialistische Wiederbetätigung und Rassismus" 2004.

¹¹¹ Plöchl, Franz: §278b StGB, Rz 2. On the issues of delimitation and attribution of a terrorist organization, see: Wessely: Zu den neuen Terrorismustatbeständen im StGB, 2004, pp. 827 et seq.

A terrorist group is defined as a long-term compound of more than two persons, who aim to facilitate the execution of one or more terrorist crimes by one or more of its members or who fund such activities.¹¹² The requirements for the degree of organisation are to be set low.¹¹³

The law does not require any specification in the planning of the offence. The intention to commit a terrorist crime suffices to render the perpetrators liable, no matter which level of concrete details has been decided yet.¹¹⁴ Further the criminal offence is fulfilled, if a person is part of a terrorist group and conducts actions in coordination or cooperation with the group.¹¹⁵ Acts that emerge without consultation or collaboration with other group members do, by themselves, not constitute this offence, even when they coincide with the group's general interest.¹¹⁶

The crime is committed if a person leads a terrorist group (**punishable** by five to fifteen years of imprisonment) or actively take part as a member (**punishable** by one to ten years of imprisonment). Taking part entails committing a terrorist offense or supporting a terrorist group or its punishable offense(s), e.g. by providing information or financial means to its disposal or fulfilling some official role within the organisation's structure (either from Austria or abroad) or in any other way; also the psychological support to strengthen the moral of the group or individuals in the willingness to carry out offences that correlate with the group interest.¹¹⁷ Furthermore, readiness to engage in a possible future "operation" whenever it may be intended by the organisation ("sleepers") fulfils the criterion of partaking.¹¹⁸ If a threat of terrorist aggression is expressed without intention of carrying out such menaced action eventually, this, too, constitutes as a punishable crime (amounting to imprisonment of one up to ten years).¹¹⁹ Notably, exemptions from punishment for this offence are not possible, even if the person chooses to abandon the organisation before the authorities become aware of his or her contribution.¹²⁰ It will come as no surprise that most convictions in the terrorism-context concern this offence¹²¹, as the margin of consideration with regards to its content is kept rather broad. However, even under these conditions, the criminal investigation of the pertinent facts continues to be a great challenge.

¹¹² § 278b par.3 StGB.

¹¹³ Wessely, Zu den neuen Terrorismustatbeständen im StGB, 2004, pp. 827 et seq. This is different from an 'organization' in the context of § 278a, which is defined more narrowly. That being said, according to the national jurisprudence the so-called 'Islamic State' meets the requirements of 'organizational structures' of § 278a StGB.

¹¹⁴ Plöchl: §278b, Rz 7.

¹¹⁵ Explanatory notes to the ministerial draft, EBRV 1166 BlgMT 21. GP 35.

¹¹⁶ Wessely, Zu den neuen Terrorismustatbeständen im StGB, 2004, pp. 827 et seq.

¹¹⁷ Plöchl, Franz: §278 StGB in Höpfl, Frank/Ratz, Eckart (ed.): Wiener Kommentar zum Strafgesetzbuch, 2nd edition, Vienna (status as of 1.1.2014), Rz 39.

¹¹⁸ Plöchl:§278b StGB, Rz.11.

¹¹⁹ Ibidem, Rz. 8.

¹²⁰ To be considered in the mitigation of punishment. Plöchl: §278b StGB, Rz. 27.

¹²¹ Ibidem.

Terrorist offences (§278c StGB)

Terrorist offences are certain criminal offences which are regulated by other, more general stipulations, but fall under precedence of this article¹²² whenever the following three conditions are met jointly.

Crimes which fall under consideration to be **terrorist offences** are listed in the first paragraph. They include amongst others murder, grievous bodily harm, grave coercion, dangerous threatening, severe damage of property, damage of data, and other general hazard offences.¹²³ In any case, one of these offences must have been put into effect, to render §278c StGB applicable. In counteraction to violent radicalization, it has been decided that countenancing terrorist offences (§282a StGB) also constitutes a ground for triggering §278c StGB.¹²⁴

The action must exhibit what is called ‘**terrorist suitability**’. This means that it must be suitable of causing severe and long-lasting damage to, public safety and/or the economy. The criminal action must prove suitable of creating panic, chaos, and strife due to its nature (e.g. the use of a dirty bomb), its strategy, or the respective context (e.g. more than one act simultaneously).¹²⁵

Furthermore, it must have been committed with a “**terrorist intent**”, which describes the malice to cause grave intimidation within the population, to try to force a state or an international organization to act (or refrain from action), or to destroy or seriously dismantle the political, constitutional, or socio-economic foundations of a state or an international organization. The aim is always the (partial) removal of the present foundations of state and society using illegitimate force.¹²⁶ Actions aimed to reinstate democracy, the rule of law or the abidance to human rights are explicitly exempted from this regulation according paragraph 3.¹²⁷

One major challenge is to evaluate whether or not there is terrorist intent. Furthermore, certain questions may arise about the moment from which onwards relevant preparatory actions are suspected to have taken place.

In one case, the court decided that the youth had not yet entered the preparatory stage for an attack, which is why the defendant was convicted of the study of instructions to commit a terrorist crime (i.e. §278f StGB) rather than for the attempt of committing a terrorist offence according to §278c StGB.¹²⁸

The maximum sentence depends on the nature of the basic criminal offence fulfilled. As terrorist offence, this maximum allowance is subsequently augmented by fifty percent. In no case, though, may the sentence exceed a time span of twenty years.¹²⁹

¹²² Wessely, Zu den neuen Terrorismustatbeständen im StGB, 2004, pp. 827 et seq.

¹²³ Plöchl, Franz: § 278c StGB in Höpfl, Frank/Ratz, Eckart (ed.): Wiener Kommentar zum Strafgesetzbuch, 2nd edition, Vienna (status as of 1.1.2014).

¹²⁴ Government bill, 674 BlgNR XXIV. GP, Bundesgesetz mit dem das Strafgesetzbuch zur Verhinderung von Terrorismus (Terrorismuspräventionsgesetz 2010) geändert wird, p.5. Plöchl: § 278c, Rz 5.

¹²⁵ Plöchl § 278c, Rz. 8 et seq.

¹²⁶ Ibidem, Rz. 18.

¹²⁷ See Wessely, Zu den neuen Terrorismustatbeständen im StGB, 2004, pp. 827 et seq.

¹²⁸ Hofinger/Schmidinger: Deradikalisierung im Gefängnis, 2017, pp. 28, 29.

¹²⁹ Plöchl: §278c Rz. 25.

Training for terrorist purposes (§278e StGB)

The penalisation of terrorist training substantiates the necessity of addressing and outlawing those steps, which precede more serious terrorist crimes.¹³⁰ This offence concerns training in a conventional sense.¹³¹ That entails any manual, technical (e.g. hacking, pilot's license) or otherwise combat-related training as well as imparting skills regarding the making and use of explosives.¹³² Penalisation concerns, both, educators (punishable by one to ten years of imprisonment) and trainees (punishable by six months to five years of imprisonment). Notably, the scope of this law entails training via SMS, email, or the internet in a so-called 'virtual training camp'.¹³³ The translocation to a physical training ground in some foreign country meets the criteria of this offence too.¹³⁴ If, for any external reason (e.g. the coincidence of the planned training period with the fasting month of Ramadan), the intended training is temporarily or permanently suspended, this nevertheless substantiates a case of intended training for terroristic purposes. Not punishable under this article are attempted but stopped departures from Austria with the intention to participate in a training, as in such a case the training is not yet imminent.¹³⁵

Instruction to commit a terrorist crime (§278f StGB)

This provision, too, addresses pre-terrorist attack processes. Unlike §278e StGB, it targets the provision of information resources on the internet or of a certain data medium (e.g. books, posters, magazines, USB-sticks, DVDs, CDs, etc.), the self-study of which intends to convey pertinent knowledge on how to commit terrorist attacks. In this sense, the provision of such materials can be considered concrete instruction, and both the instructor and the instructed render themselves subject to a custodial sentence of up to two years.¹³⁶

Incitement to or approval of terrorist offences (§282a StGB)

Individuals who incite others to commit a terrorist crime are to be punished with up to two years of imprisonment. The incitement is taken to have happened in a public manner, as e.g. via print media, radio, in the course of a bigger, public or semi-public event, or – in particular – on the internet.¹³⁷ Although not explicitly stipulated, it can be assumed that inciting crimes to be carried out in another country can also be penalised. As the paramount aim of this article is to contain international terrorism, it also penalizes 'preachers of hatred' for encouraging others to leave the country in pursuit of terrorist crimes somewhere else.¹³⁸

Approval of terrorist offences also constitutes a punishable offence (maximum of two years imprisonment). A euphemistic statement itself does not necessarily constitute a crime under

¹³⁰ Plöchl, Franz: §278e StGB in Höpfl, Frank/Ratz, Eckart (ed.): Wiener Kommentar zum Strafgesetzbuch, 2nd edition, Vienna (status as of 1.1.2014), Rz. 1.

¹³¹ Ibidem.

¹³² Ibidem, Rz 9.

¹³³ ibidem, Rz 13.

¹³⁴ Ibidem, Rz16.

¹³⁵ Ibidem.

¹³⁶ Plöchl, Franz: §278f StGB in Höpfl, Frank/Ratz, Eckart (ed.): Wiener Kommentar zum Strafgesetzbuch, 2nd edition, Vienna (status as of 1.1.2014), Rz 1 ff.

¹³⁷ Plöchl, Franz: § 282a StGB in Höpfl, Wiener Kommentar zum Strafgesetzbuch, Rz. 4.

¹³⁸ Plöchl: § 282a StGB, Rz. 5.

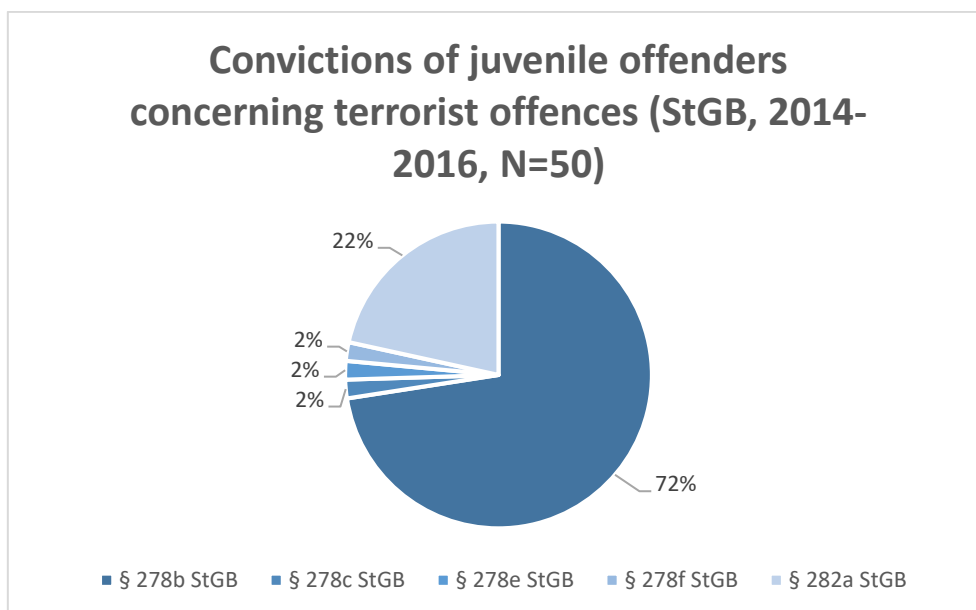
this article. In order for a presentation of a crime as laudable or exemplary to be penalized, the statement must have occurred in a context and under circumstances, which perceivably could inspire and lead the way to new attacks.¹³⁹

"It should be noted that the mere manifestation of a radical-extremist attitude of its own, without developing an extent of propagandistic activity beyond the demonstration of ideological affiliation, is in itself incapable of fulfilling the facts, unless that because of the particular identity of the perpetrator's person in it is a particular suitability for the indoctrination of others."¹⁴⁰

In most cases that led to a conviction, videos, photos and postings with pursuant contents were disseminated on social media. It is irrelevant, whether the crime endorsed has occurred in or outside of Austria.¹⁴¹

2.3. Particularities regarding juvenile justice cases

In Austrian law there are no criminal offences specifically defined for juvenile offenders in the context of terrorism or violent extremism. Hence, the general provisions of StGB and VerbotG find analogous application.



Between 2014 and 2016 there have been 50 convictions of children and young adults under the VerbotG. Between 2014-2016, 50 children and young adults were convicted of one or more of the terrorist offences under §§ 278b, c, e, f, and 282a StGB. Almost two thirds thereof were convicted for having participated in a terrorist organization (§278b StGB), roughly 20 percent

¹³⁹ Plöchl: § 282a StGB, Rz. 8f.

¹⁴⁰ Finding from file inspection carried out between August and October 2017 in the context of the project.

¹⁴¹ Plöchl: § 282a Rz. 8 et seq., Data obtained by examination of files, courtesy of the Ministry of Justice.

rendered themselves guilty of approval of terrorist offences (§282a). Convictions under the remaining articles have occurred only sporadically.¹⁴² The offences recorded during this time period range from social media postings and dissemination of pertinent contents on the internet, to (successful or inhibited) attempts of departure, and even participation in combat in Syria.¹⁴³ As to July 2017, no indictments concerning an attempted or implemented terrorist attack has been filed.

3. Specifics of national law regarding youth and young adults

No separate or special criminal offences are defined for young offenders in relation to terrorism and violent extremism. Instead, the Youth Court Act (*Jugendgerichtsgesetz, JGG*)¹⁴⁴ is applicable with the usual (adult) offense stipulations of the Criminal Code. Differences in the handling of children and young adults result amongst others from the provisions regarding margins of sentencing, judicial competences, and occasionally the concrete court proceedings.¹⁴⁵ The Youth Court Act takes precedence over more general criminal justice legislation, including the Criminal Code (*Strafgesetzbuch 1974*), the Criminal Procedure Code (*Strafprozessordnung 1975*) and the Prison Act (*Strafvollzugsgesetz 1969*).

Following the relevant provisions in the Convention on the Rights of the Child (particularly article 40¹⁴⁶), the state must focus on “promoting the child's reintegration and the child's assuming a constructive role in society”. The legislator stood abreast of this notion by establishing ways to avoid the imposition of pre-trial detention and custodial sanctions upon youth and young adults wherever possible; when performing jurisdiction in juvenile justice cases, courts have at their disposal a greater margin of discretion and more available measures. Most notably, these entail easier diversion, an entitlement to a “guilt judgement without punishment” or suspended custodial sentence only, measures like the so-called social network conference (*Sozialnetzkonferenz, SoNeKo*), and a reduced penalty range to facilitate the avoidance of any kind of detention of juvenile offenders. After all, it is essential that a minor or young adult should only be deprived of his or her liberty and put in detention as a measure of last resort.¹⁴⁷

¹⁴² Own calculation based on the data retrieved from the federal court proceedings automation system (Ministry of Justice, BMJ), query response via email, 20th of September and 10th of October 2017.

¹⁴³ Glaeser, Bernd: Radikalisierungsprävention durch die Bewährungshilfe, unpublished paper, ACUNS, Vienna 2016, p.1.

¹⁴⁴ Bundesgesetz vom 20. Oktober 1988 über die Rechtspflege bei Straftaten Jugendlicher und junger Erwachsener (Jugendgerichtsgesetz 1988 – JGG) BGBl Nr. 599/1988 idF vom BGBl I Nr. 154/2015, available under: <https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10002825>. The JGG takes precedence over StGB and other laws because of its greater specificity.

¹⁴⁵ Schroll, Hans Valentin: § 1 JGG in Höpfl, Frank/Ratz, Eckart (ed.): Wiener Kommentar zum Strafgesetzbuch, 2nd edition, Vienna (status as of 1.10.2016), Rz.14.

¹⁴⁶ Convention on the Rights of the Child, General Assembly resolution 44/25 of 20 November 1989.

¹⁴⁷ Maleczky, Oskar: Österreichische Jugendstrafrecht, Vienna 2016, Rz 1.1.

3.1. Minimum age of criminal responsibility

According to the Youth Court Act, individuals cannot be held responsible before the completion of 14 years of age.¹⁴⁸ Only after their fourteenth birthday can individuals be persecuted by criminal law. Before that threshold, a person is considered ‘incapable’ of committing a crime in a legal sense. This is an absolute threshold and is valid regardless of the person’s biological or psychological stage of development or the gravity of the respective crime.¹⁴⁹ Therefore, those under fourteen years of age must not be legally prosecuted under any circumstances.¹⁵⁰

3.2. Children and young adults

The Austrian Youth Court Act¹⁵¹ defines **children** as persons, who have completed their 14th year of age, but have not yet reached the age of 18. A **juvenile offense** (i.e. a criminal offense committed by a youth offender) cannot be penalised as an adult crime regardless of its severity. This refers to the age at the time the crime happens.¹⁵² A **youth criminal case** is, thus, a criminal case brought against a youth. Such cases are subject to the provisions of the Youth Court Act, the application of which cannot be suspended.¹⁵³ The Youth Court Act further differentiates between children and **young adults**, the latter of which are persons who have completed the eighteenth, but not the twenty-first year of age.¹⁵⁴ As with children, young adults cannot be tried in an adult criminal case. Although no formal equalization of children and young adults has taken place, there has been considerable convergence, so that certain provisions of the Youth Court Act refer also to young adults.¹⁵⁵

3.3. Police custody and interrogation

Besides the international¹⁵⁶ and European framework¹⁵⁷ on a national level especially the Criminal Procedure Code and the Youth Court Act regulate the treatment of youth and young adults while in police custody. While there are some specificities for children and young adults in the investigation phase and police custody, the national law does not foresee different procedures related to terrorist offences. Thus, the same safeguards apply to children and young adults who are suspected of having committed a violent extremist offence.

¹⁴⁸ In special cases, when the offender is attested insufficient maturity to reflect upon the offense committed, the person may prove not to be punishable even after the 14th birthday (§4 para.2 Z.1 JGG); Especially if 14 to 15-year-olds are concerned, charges will only be sentenced in severe cases (exclusion of punishment, *Strafausschließungsgrund*, § 4 para.2 Z.2 JGG).

¹⁴⁹ Schroll, Hans Valentin: § 4 JGG in Höpfl, Frank/Ratz, Eckart (eds): Wiener Kommentar zum Strafgesetzbuch, 2nd edition, Vienna (status as of 1.10.2016), Rz. 2.

¹⁵⁰ However, there may be family-law implications to the case, comp. Schroll: §4 JGG, Rz. 9.

¹⁵¹ Schroll, § 5 JGG in Höpfl, Rz. 1.

¹⁵² Maleczky, Jugendstrafrecht, 2016, p. 128et seq.

¹⁵³ Schroll, § 1 JGG, Rz.16 et seq.

¹⁵⁴ The information in this report refers to youths and young adults likewise unless stated otherwise.

¹⁵⁵ § 46a JGG; The stipulations and their differences will be discussed in further detail in the following chapters.

¹⁵⁶ Convention on the Rights of the Child, General Assembly Resolution 44/25 of 20 November 1989, esp. Articles 37 et seq.

¹⁵⁷ Directive (EU) 2016/800 of the European Parliament and of the Council of 11 May 2016 on procedural safeguards for children who are suspects or accused persons in criminal proceedings, OJ L 132/1 (2016).

In general, the arrest and any deprivation of liberty of children and young adults are subject to stricter scrutiny as regarding adults.¹⁵⁸ If nevertheless, a deprivation of liberty is deemed necessary, the suspected person has to be brought without delay before the competent court, at the latest 48 hours after arrest.¹⁵⁹ Further, the procedural safeguards in place for adults are equally applicable, however, differ partly for children, especially when it comes to the notification of parents or legal guardians or welfare agencies involved. The specific regulations concerning the notification of representatives do not apply to young adults.¹⁶⁰

Thus, every juvenile or young adult has equally the right to be informed immediately of the reasons for their apprehension or arrest and his or her rights.¹⁶¹ Similarly, the suspect has the right to have the free assistance of an interpreter if he or she cannot understand or speak the language used.¹⁶² On the request – and only then - of children or young adults suspected of having committed a crime should a representative (e.g. parent, guardian, probation officer, etc.) participate in all police interrogations if not already represented by a lawyer.¹⁶³ In the case of suspects who are unaccompanied minors, the youth welfare services has guardianship.¹⁶⁴ The representative has the right to be present at the interrogation and thereby support the suspect but in general not the right to question, advice or intervene.¹⁶⁵

While there is no mandatory legal representation during police interrogations, the youth or young adult has a right to legal assistance. Further, if the cases are in the competencies of the provincial courts (see below 3.4) legal aid has to also be provided for the pre-trial phase which includes police interrogations if the general conditions are fulfilled.¹⁶⁶ Additionally, a present legal assistant of a youth or young adult cannot be suspended during a police interrogation even if their presence may hinder the investigation.¹⁶⁷

3.4. Competencies in juvenile justice cases

Offences concerning terrorism or violent extremism are dealt with by the ordinary courts, according to general criminal law.¹⁶⁸

¹⁵⁸ Schroll, Hans Valentin: § 35 JGG in Höpfl, Frank/Ratz, Eckart (eds): Wiener Kommentar zum Strafgesetzbuch, 2nd edition, Vienna (status as of 1.10.2016), Rz 1 et seq.

¹⁵⁹ § 172 (1) StPO.

¹⁶⁰ §§ 35, 37 JGG, but see § 46a JGG for young adults.

¹⁶¹ § 50 StPO.

¹⁶² § 56 StPO.

¹⁶³ Schroll, Hans Valentin: § 37 JGG in Höpfl, Frank/Ratz, Eckart (eds): Wiener Kommentar zum Strafgesetzbuch, 2nd edition, Vienna (status as of 1.10.2016), Rz 3/1.

¹⁶⁴ Schroll, Hans Valentin: § 38 JGG in Höpfl, Frank/Ratz, Eckart (eds): Wiener Kommentar zum Strafgesetzbuch, 2nd edition, Vienna (status as of 1.10.2016), Rz 2.

¹⁶⁵ Schroll, §37 JGG in Höpfl, Rz 10.

¹⁶⁶ Schroll, Hans Valentin: § 39 JGG in Höpfl, Frank/Ratz, Eckart (eds): Wiener Kommentar zum Strafgesetzbuch, 2nd edition, Vienna (status as of 1.10.2016), Rz 6 et seq.

¹⁶⁷ Schroll, §37 JGG in Höpfl, Rz 3/2.

¹⁶⁸ Some states have established specialised anti-terror courts, which also have jurisdiction in juvenile justice cases. Yet other countries may put such cases under military courts competence. See: Penal Reform International: Children and violent extremism: International standards and responses from criminal justice systems, 2017, p. 9.

Notwithstanding the generally acknowledged importance and necessity to address juvenile justice separately, there are no specialized youth-courts in Austria (anymore¹⁶⁹). Cases against children and young adults are held before regular courts. Whether responsibility lies with a district court or a provincial court and as to whether the case shall be decided upon by a single judge, a jury, or a group of lay assessors¹⁷⁰ all depend on the possible threat of penalty (before the reduction due to the Youth Court Act, see 2.3.3.). For some offences, competence of the provincial court, in a jury or lay court constellation, is provided for specifically by the law (i.e. special competence or *Eigenzuständigkeit*): infringement of the *VerbotsG* is a valid example for obligatory jury-jurisdiction¹⁷¹, while participation in a terrorist group falls under lay-jurisdiction¹⁷².

Cases to be held before a jury due to threat of a high penalty, must only involve offenders of 16 years or older. Such cases, involving offenders younger than 16 years (i.e. 14 or 15 years) are, accordingly, excluded and brought before a lay-committee instead. However, even cases involving this age group fall under jury competence, where special competence (*Eigenzuständigkeit*), applies (e.g. *VerbotsG*).¹⁷³

Competence ¹⁷⁴	Special Competence ¹⁷⁵	Threat of penalty
district court and single judge		one year or less of custodial detention
Provincial Court		
single judge		Custodial detention exceeding one year ¹⁷⁶
lay-jurisdiction	Participation in a terrorist organization (§278b StGB)	custodial detention of more than five years ¹⁷⁷
jury-jurisdiction	Infringement of National Socialist Prohibition Law	Life sentence or custodial sentence with minimum threat of penalty of not less than five years and a maximum of not more than

¹⁶⁹ See Schroll, §§ 20-24 JGG in Höpfl, Rz. 1. / Maleczky, Jugendstrafrecht, 2016, Rz. 1.3.

¹⁷⁰ According to the Austrian Constitution, “the people have to right to contribute in the judicial process”. This is implemented via jury- and lay jurisdiction practice. A jury (*Geschworenengericht*) consists of three judges and 8 jurors. The jurors judge by themselves (i.e. without the judges) whether or not a person is guilty. The punishment is decided upon by both the judges and the jurors cooperatively. A Lay-court (*Schöffengericht*) consists of one or two judges (depending on the crime committed) and two lay assessors. Lay assessors and judges decide together, whether the accused is to be found guilty and which punishment is appropriate.

¹⁷¹ § 3j *VerbotsG*; political crimes also fall under jury-jurisdiction. Cases of §§ 278b et seq. StGB do not trigger jury-jurisdiction. See Wessely, Zu den neuen Terrorismustatbeständen im StGB, 2004, pp. 827 et seq.

¹⁷² § 32 para. 1a Z.9 JGG.

¹⁷³ Schroll, § 27 JGG in Höpfl, Rz. 2.

¹⁷⁴ §§ 29et seq. StPO.

¹⁷⁵ This list is limited to the offenses relevant to the report.

¹⁷⁶ E.g.: training for terrorist ends (charged against the trainee, §278e para.2 StGB); Instruction for a terrorist crime (§278f StGB). Request of or voicing support for a terrorist crime (§ 282a StGB).

¹⁷⁷ E.g.: training for terrorist ends (charged against the trainee §278e para.1 StGB).

		ten years (excluding 14 and 15-year-olds)
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There are specialised judges and public prosecutors who are assigned juvenile justice cases according to the allocation of responsibilities. They must have had special training and prove a certain understanding of pedagogy.¹⁷⁸ Moreover, judges and prosecutors entrusted with juvenile justice cases are expected to have acquired certain knowledge in the fields of psychology and social work.¹⁷⁹ While a violation of the allocation of responsibilities can be reason for nullity (i.e. voidness) of a sentence, missing qualifications of either the judge or the prosecutor cannot constitute such a ground.¹⁸⁰ Furthermore, within the public prosecution, a special competency for extremist crimes is provided for, whenever cases involve offences under the VerbotsG, §§ 278b et seq. or § 282a StGB. It stipulates that the responsibility for such cases must be given to specialised prosecutors, as processing the case-documents will most likely require specific expertise in the field.¹⁸¹

Additionally, law has it that, in cases of jury- or lay jurisdiction, at least half of the members (four out of eight jurors or one out of two lay-assessors) must have completed a degree, an apprenticeship, or other qualifications relevant to youth-care or must have recent or past working experience therein. Deviation from this court-composition rule can be asserted, potentially leading to nullification of any sentence proclaimed during the process.¹⁸²

3.5. Sentencing

Under the Youth Court Act (JGG), the range of penalties for juvenile offenders (children and young adults) is lowered¹⁸³:

Usual range of penalties	Age < 16	Age < 18	Age < 21
Custodial sentence (CS)			
Life sentence, or CS of 10-20 years, or including life sentence.	1-10 years	1-15 years	
CS of 10-20 year	6 months – 10 years		6 months – 15 years
other CSs	No lower limit to sentence, maximum threat of penalty is halved		No lower limit to sentence

¹⁷⁸ E.g., working experience or training in the youth care context. Schroll, § 30 JGG in Höpfl, Rz. 1.

¹⁷⁹ Schroll, § 30 JGG, Rz. 1 et seq..

¹⁸⁰ Schroll, § 28 JGG in Höpfl, Rz. 3/1 und 8.

¹⁸¹ Ministry of Justice, Decree of 12 December 2016 über die Änderung der Verordnung zur Durchführung des Staatsanwaltschaftsgesetzes, BMJ-S.604.001/0003-IV 3/2016, eJABL Nr.27/2016.

¹⁸² Schroll, § 28 JGG, Rz. 14.

¹⁸³ §§ 5 Z.1-4 and 19, para.1 JGG.

Sentences under adult criminal law convey both a special-preventive and a general-preventive purpose: The prior prevents the specific offender from reengaging in criminal activity. The latter describes the notion that a sentence may prevent others from following the offender's model. The Youth Court Act is differently designed in this regard: With children and young adults the special-preventive aspect dominates, i.e. the priority is to prevent the specific individual sentenced upon from committing another crime.¹⁸⁴ The analysis of the files shows that to decide on special preventive aspects courts not only assess the risk of committing another crime but also the continuing ideological conviction.

This is not to say that general-preventive considerations are entirely abstracted from juvenile justice sentences. Rather the scope is limited to those few special cases, the circumstances of which make general-preventive considerations seem indispensable.¹⁸⁵ The Austrian Supreme Court considers general-preventive elements as not entirely irrelevant, e.g. in cases of “*politically motivated criminality, which aims to find social resonance*”¹⁸⁶. It particularly refers to “*massive National Socialist reengagement according § 3 VerbotsG*”.¹⁸⁷ On the ground that numerous youth and young adults have participated in the activities of the terrorist groups in Syria and Iraq, also in these cases exceptionally general preventive considerations are applied; thus further potential offenders should be deterred of committing similar offences.¹⁸⁸

3.6. Pre-trial detention

Detention on remand may only be imposed if it is necessary and there are no other less intrusive measures available. While universally valid, these standards should be adhered to with particular thoroughness concerning children and young adults. Hence, pre-trial detention must not be imposed if the purpose of detention can also be fulfilled by some measure of family- or child welfare, possibly in connection with other appropriate measures. Moreover, personal development and pursuit must not be infringed upon to an extent, unproportioned to the crime committed.¹⁸⁹ Thus, pre-trial detention of children or young adults should be the exception and, where necessary should be limited to the absolute minimum possible.¹⁹⁰

¹⁸⁴ §§ 5 Z.1 und 19 iVm 5 Z. 1 JGG. Schroll, § 5 JGG, Rz. 9 et seq.

¹⁸⁵ Schroll, § 5 JGG, Rz. 9.

¹⁸⁶ Translated internally, the original text reads: “auf soziale Resonanz abzielenden, politisch motivierte Delinquenz”.

¹⁸⁷ Supreme Court decision (OGH) 12 Os 127/88, 19 January 1989. Translated internally, the original text reads „massiver nationalsozialistischer Wiederbetätigung nach §3 VerbotsG“. See also: Schroll, § 5 JGG, Rz. 9.

¹⁸⁸ Findings from file inspection carried out in the context of the project. Comp. Schroll, § 5 JGG, Rz. 9 and § 14 JGG Rz. 6.

¹⁸⁹ § 35 JGG. Information on the social network, personal living conditions, and applicable alternatives to remand is gathered to facilitate the courts' decision by the juvenile court assistance (*Jugendgerichtshilfe*, §§ 47 et seq. JGG).

¹⁹⁰ Gouvernement Bill, RV 852, XXV.GP, Bundesgesetz, mit dem das Jugendgerichtsgesetz 1988, das Strafgesetzbuch und das Bewährungshilfegesetz geändert werden, und mit dem ein Bundesgesetz zur Tilgung von Verurteilungen nach §§ 129 I, 129 I lit. b, 500 oder 500a Strafgesetz 1945 sowie §§ 209 oder 210 Strafgesetzbuch erlassen wird (JGG-ÄndG 2015) p. 7. Ministry of Justice: Untersuchungshaft für Jugendliche – Vermeidung, Verkürzung, Vollziehung, Abschlussbericht des Runden Tisches, Vienna 2013, pp. 42 et seq. If remand must be imposed, it has to take place in the appropriate penitentiary institution or a specialized department of another institution, separate from adult detainees. This applies regardless of the type of crime. (§ 36 par.1 und 2 JGG.).

For children and young adults suspected of having committed an extremist crime, the imposition of pre-trial detention is subject to the same scrutiny and is only to be executed if absolutely necessary. Remand is not legally obligatory for extremist crimes. Rather, the decision on whether or not to impose it is made on a case to case basis. All other conditions aside, scrutiny involves the question on whether lenient measures¹⁹¹ could be adopted instead of remand. Depending on the specific case, these may include:

Social Network Conference (SoNeKo) and highly frequent probation support

In cases of juveniles on remand it is common practice to consider - through the provision of a SoNeKo¹⁹² – whether a release is feasible “under lenient measures and imposition of highly frequent probation support”.¹⁹³ Probationary services are often considered an adequate substitute for juvenile remand¹⁹⁴, in particular where it may help to prevent further radicalization, as can occur in detention.¹⁹⁵ The eventual decision lies with the responsible court.¹⁹⁶

House arrest

At the request of either the prosecutor or the accused, the remand may be transformed into domiciliary arrest, when there are no other lenient measures at disposal and it is deemed sufficient to assure the purpose of detention. It is necessary, in this regard, that the person involved agrees to wear electronic ankle cuffs. The introduction of such instruments of surveillance is being considered for those cases, in which the imposition of remand would be disproportionate. Decision-making power lies with the courts.¹⁹⁷ This measure could be enforced in cases of strong suspicion that an individual forms part of a terrorist organisation (§278b StGB), especially then, if it can perceivably pre-empt further radicalization and does not involve a threat to public safety. If a threat of a terrorist offence (§278c StGB) is assumed, this lenient measure is usually not considered suitable.¹⁹⁸

If a case seems fitting for the application of house arrest, the prosecutor is encouraged to consult the Federal or provincial Office for the Protection of the Constitution and Counter-Terrorism (BVT or LVT) for a specific risk assessment. Subsequently, it is indicated to consider, whether house arrest is suitable for the specific situation (e.g. if there are sufficiently stable life circumstances). In cases involving juvenile suspects, the question of suitability of house arrest

¹⁹¹ § 173 para 5 StPO.

¹⁹² See Part C, 4.1.

¹⁹³ Interview conducted with a representative of Neustart on 5 July 2017.

¹⁹⁴ Glaeser, *Deradikalisierung durch Bewährungshilfe*, 2016, p. 3.

¹⁹⁵ See Schmid, Alex: *Radicalisation, De-Radicalisation, Counter-Radicalisation: A Conceptual Discussion and Literature Review* ICCT Research Paper, International Centre for Counter-Terrorism, The Hague 2013 p.33. / UNODC, *Handbook on the Management of Violent Extremist Prisoners and the Prevention of Radicalization to Violence in Prisons*, Vienna 2017, pp. 107 et seq.

¹⁹⁶ § 35a (2) JGG, § 173 (5) StPO. The support during pre-trial detention is responsibility of DERAD and the social support service.

¹⁹⁷ Ministry of Justice (MoJ), *Strafvollzug in Österreich*, Vienna 2013, p.24.

¹⁹⁸ Decree Ministry of Justice, 2017, BMJ-S440.006/0002-IV/2017.

can also be deliberated upon with the suspect's social network through a SoNeKo¹⁹⁹. Prior to the decree on electronically monitored house arrest in cases of § 278b et seq. StGB, this measure has found hardly any application.²⁰⁰ It remains to be seen if it will find wider application in future cases.

Importantly, it seems that although the necessity of remand is rebuttable even in cases of extremist crimes, it is common to assume it is – as can be deduced from the case-files of those who were convicted later.²⁰¹ The duration of remand for individuals detained in connection to §278b et seq. is in general disproportionately high, relative to the total detainee population, without differentiating between adults, minors and young adults. The reasons for this are twofold: first, the longer time between arrest and the delivery of the first distance sentence and, second, the overall process duration until a final sentence is reached. Against most first instance sentences an appeal is filed.²⁰² Also in juvenile justice cases of this nature, the duration ranks between two weeks and almost a year.²⁰³ In a single case an adult was kept in pre-trial detention for a serious terrorist crime committed as a young adult for 16 months.²⁰⁴ It is, conversely, important that an individual (penitentiary) plan is elaborated for every detainee right from the beginning of pre-trial detention.²⁰⁵ Moreover, the support from DERAD and other organisations must be available already during pre-trial detention²⁰⁶. If this support only started with custodial sentence, there would often remain little time due to the deduction of remand time served from the sentence.²⁰⁷

3.7. Diversion

Under certain circumstances, the prosecution may initiate a diversion process prior to indictment, in order to avert a trial. After a formal accusation, the court must consider, whether diversion is provided for by law. In criminal cases of juveniles or young adults the possibility of diversion exists notwithstanding and independently from judicial competence, the maximum penalty, or the severity of the crime committed. This means that every juvenile criminal case

¹⁹⁹ Ibidem. § 35a JGG, § 173a StPO.

²⁰⁰ Decree MoJ, BMJ-S440.006/0002-IV/2017, p.1.

²⁰¹ File inspection conducted between August-October 2017.

²⁰² Hofinger/Schmidinger: Deradikalisierung im Gefängnis, 2017, p.27 et seq. Interview with a representative of the penitentiary sector within the Ministry of Justice on 8 May 2017.

²⁰³ File inspection conducted between August-October 2017.

²⁰⁴ Findings from file inspection carried out in the context of the project. The maximum duration of pre-trial detention until the beginning of the trial is - depending on the reason for detention and the complexity of the case, two years if the person is suspected of an offence that is punishable at least by five years of imprisonment (§ 178 StPO). For juvenils and young adults the maximum is a year if it is necessary due the complexity and scope of the case (§ 35 para.3 JGG).

²⁰⁵ See Chapter Part C, 2.2.

²⁰⁶ Initially, the public prosecution accentuated its concerns that ‘investigations should be able to terminate without external influence or disturbance’. In this regard, it made use of its right to regulate the contact to external persons for some detainees, including juvenile suspects in pre-trial detention. This attitude has, however, been discarded and the contact with DERAD is standard nowadays. Hofinger/Schmidinger, Deradikalisierung im Gefängnis, 2017, p. 137, cf. S. 32, 45, 89, 93, 105, 123.

²⁰⁷ Interview with a representative of the penitentiary sector within the Ministry of Justice, conducted on 8 May 2017.

is, abstractly, eligible for diversion²⁰⁸. For a diversion to take place, the following requirements must be met: First, there should not be serious guilt. According to settled case law, guilt is to be defined through the penalty range, which already includes considerations of liability and injustice.²⁰⁹ For crimes committed by an offender of less than 21 years of age, a custodial sentence of at least five years is considered to involve serious guilt²¹⁰. In cases like that diversion is only possible due to exceptional circumstances. Second, the decision must take into account considerations of specific deterrence and prevention. If an additional action by the justice authorities is not deemed necessary to deter the person from committing another crime, diversion must be granted. In contrast to older legal positions, the current law does not provide for a denial of diversion only due to general deterrence.²¹¹ Third, a diversion is not possible if the committed crime results in death.²¹²

It could not be established, how many cases of violent extremist or terrorist crimes were solved through diversion. In one case, which later ended in a conviction, a diversion was reportedly considered. Specific preventive aspects inhibited the diversion. Accordingly,

*“the injustice of action and attitude had reached a negative extent, which had to be judged, both, striking and exceptional. Therefore, necessity was given for a conviction, to foster understanding about the severity of [his/her] unjust action”.*²¹³

3.8. Penalties

Deprivation of liberty, although indicated and justifiable under certain circumstances, should only be imposed as a matter of last resort to which no equally effective alternative exists. The increasing demand for more public safety and stricter control can starkly impair the development and application of alternatives to detention. This can be in specific cases counter-productive, because detainees are particularly often prone to further radicalisation.²¹⁴ Moreover, if at all sentenced to custody, juvenile offenders do not stay in prison forever. Therefore, it is in the interest of the broader public to promote penalties that prepare and facilitate the resocialisation into society.²¹⁵ In practice, the sentenced penalties for terrorism and violent extremism vary considerably, from entirely conditional custodial sentence or partly conditional

²⁰⁸ Schroll, § 7 JGG in Höpfl, Rz. 6.

²⁰⁹ Supreme Court, record numbers of cases: RS0122090, RS0116021.

²¹⁰ Supreme Court decisions (OGH) 12 Os 113/12b, 10 October 2012; 12 Os 113/10z, 25 January 2011.

²¹¹ Schroll, § 7 JGG, Rz.17.

²¹² Ibidem, Rz. 18.

²¹³ File inspection conducted between August-October 2017.

²¹⁴ See Schmid, Alex: Radicalisation, De-Radicalisation, Counter-Radicalisation: A Conceptual Discussion and Literature Review' ICCT Research Paper, International Centre for Counter-Terrorism, The Hague 2013 p.33. / UNODC, Handbook on the Management of Violent Extremist Prisoners and the Prevention of Radicalization to Violence in Prisons, Vienna 2017, pp. 107 et seq

²¹⁵ Kury, Helmut: (De)Radikalisierung in Haft: Die Bedeutung der Entlassungsvorbereitung und Nachbetreuung, unpublished paper, ACUNS, Vienna 2016, p.1; / UNODC, Handbook, 2017, pp.107 et seq. / OSCE/ODIHR, Countering Terrorism, Protecting Human Rights, 2007, pp.146 et seq.

sentences with low unconditional parts up to long unconditional custodial sentences of three to 12 years.²¹⁶ The following presents the specific penal possibilities in more detail:

(Partly) conditional sentence

Instead of unconditional detention, a custodial sentence may be suspended, partly or entirely, on probation. This is commonly practiced, especially with very young offenders. The legislator has instituted this special treatment by setting more lenient conditions of suspension for juvenile convicts. According to the law, a juvenile sentence can be partly suspended on probation, regardless of the punitive sentence (i.e. years). This can even apply to the maximum sentence of 15 years.²¹⁷ Relevant are the nature of the offence committed, the convict's guilt, and any exceptional circumstances which may render indications either for or against probation.²¹⁸ In case of a partly-conditional sentence, the unconditional part must not exceed a third of the total punitive sentence.²¹⁹

A (partly) conditional sentence can help to avert or, at least, shorten detention, mostly with the obligation to attend probationary sessions and fulfil certain instructions. (Partly) conditional sentence is considered in particular regard of the significant adverse effects of detention on juveniles, and especially, for first-time offences. That is, if the severity of the committed crime and the level of radicalization do not seemingly necessitate an unconditional sentence to inhibit instant recidivism.²²⁰ In some cases, the (partly) conditional sentence could not be put into action due to considerable general-preventive concerns in conjunction with a lack of exceptional, mitigating circumstances. In concrete cases, it was denied because,

“according to special-preventive aspects of the case, no positive prognosis can be expected to presage that – in case of a partly or entirely suspended sentence – no further recidivism would occur.”²²¹

or

“highly criminal energies conflict with the special-preventive aspects, which would necessitate high probability of future impunity, limited only by exceptional instances of conflict or crisis.”²²²

The probation service following (partly-) suspended custodial sentence aims to counteract radicalisation and proneness to violence in a way that helps to contain recidivism without detention. The paramount objective is reintegration into society.²²³ The support, specifically, focuses on disengagement and deradicalisation. The success of the prior during probation is

²¹⁶Hofinger / Schmidinger: Deradikalisierung im Gefängnis, 2017, p. 27; File inspection conducted between August-October 2017.

²¹⁷ Schroll, § 5 JGG, Rz. 48.

²¹⁸ Ibidem

²¹⁹ Ibidem, Rz. 51f.

²²⁰ File inspection conducted between August-October 2017.

²²¹ Ibidem.

²²² Ibidem.

²²³ Mullins, Samuel J. :Rehabilitation of Islamist terrorists: lessons from criminology. Dynamics of Asymmetric Conflict, 3(3), 162-193, 2010, pp.176 et seq.

decisive as to whether or not the sentence will have to be executed in the future²²⁴. *Neustart* follows a rehabilitative strategy, which fosters an” *independent, positive, non-violent self- and future image*” in the clients. This significantly contributes to their ability to live in impunity after the probation has ended.²²⁵

Custodial sentence

Even with regards to similar cases, inter-case comparisons of the sentences imposed does not seem advisable as each sentence is based on the individual and unique merits of every specific case, and, hence is not intended to serve as comparatives²²⁶. Therefore, no such comparison will be conducted. This section will, however, depict some more general and cogent observations: As mentioned above, the sentences for terrorist or violent extremist offences among youth or young adult offenders vary widely, ranging from a few months to several years. The duration of unconditional sentences is, however, consistently high.²²⁷

Following the inspection of files, which is not representative, it can be inferred that unconditional custodial sentences were delivered especially, if the convict had fought or trained in Syria. Moreover, particularly high sentences were delivered, where multiple offences occurred or relevant criminal records already exist and an advanced as well as permanent state of radicalization could be considered as granted.²²⁸

3.9. Penitentiary

When no lenient measures apply and detention is, hence, necessary, in detention, too, certain rules apply. The dignity and rights of the convicts, who are deprived of liberty, must always be held high.²²⁹ Moreover, it should be noted that the punishment in itself is not suited to achieve any change in attitude or behaviour. Rather, the success or failure of such an endeavour depends on the structuring of the time served in prison (compare the particular measures in use: Part C, 2).²³⁰

Children must be accommodated in the juvenile penitentiary and should, as far as possible, be placed separate from adult offenders. By contrast, young adults under 21 may be put under the responsibility of a juvenile penitentiary upon their or the responsible institution’s director’s request as well as through the court’s executive order. The executive warden of the respective penitentiary must be consulted.²³¹

²²⁴ §§ 15, 16 JGG.

²²⁵ Glaeser: Deradikalisierung durch Bewährungshilfe, 2016. / Interview with a representative of Neustart, on 5 July 2017.

²²⁶ Supreme Court decision (OGH) 13 Os 161/82, 17 February 1983.

²²⁷ File inspection conducted between August-October 2017.

²²⁸ Ibidem.

²²⁹ OSCE/ODIHR, Countering Terrorism, Protecting Human Rights, 2007, pp.146 et seq.

²³⁰ See Kury: (De)Radikalisierung in Haft, 2016, p.8.

²³¹ §§ 55 par. 2 and 4 JGG.

On the one hand, the Austrian penitentiary system follows a strategy of normalisation. This means that no group should be treated different than any other, to prevent the emergence of hierarchy systems and, conversely, differences in treatments and experiences.²³² Ultimately, detention also aims to facilitate reintegration.²³³ On the other hand, there are some very high security precautions in place, especially during the initial phase of detention. New inmates are usually exposed to more intensive surveillance and stricter limitations. The regulations pertinent to excursions are especially strict. These conditions tend to collide with the overall objectives and practices inside the penitentiary and are, simply, impracticable (e.g. that all convicts under §§278b et seq. must be accommodated separately from Muslim inmates).²³⁴ Often, these strict conditions are lowered already with the first instance judgement, to successfully manage a transition into normalization.²³⁵ Further easing, however, finds itself inhibited largely due to increasing safety concerns.²³⁶

Austria does not have specific penitentiaries, or dedicated tracts for the separate accommodation of extremists. The initial tendency to separate individuals, convicted under §§278b et seq. StGB, from one another has also been discarded. Rather, treatment and accommodation are organized according to risk assessment and the extremist prisoner's position within the organization he or she participated in.²³⁷ Thus, the person will be accommodated in company, unless isolation or dispersal accommodation is deemed necessary; for example, if the person is assessed to be extremely dangerous or the common accommodation of two individuals is not considered reasonable (e.g. due to complicity, etc.).²³⁸

Solitary confinement can, under any circumstances, only constitute the measure of last resort.²³⁹

*In one concrete case, a young inmate of approximately 20 years of age, had been described as a 'true fanatic' by a supervisor. He missionized to such an extent that the only solution was to use solitary confinement.*²⁴⁰

This and similar cases are exceptions and especially so with respect to children and young adults. In the great majority of cases, accommodation with other detainees proves unproblematic.²⁴¹

²³² Interview with a representative of the penitentiary sector within the Ministry of Justice, conducted on 8 May 2017.

²³³ Ibidem.

²³⁴ Hofinger/Schmidinger: Deradikalisierung im Gefängnis, 2017, pp. 86 et seq.

²³⁵ Ibidem, p.87.

²³⁶ Ibidem, p. 94. / UNODC, Handbook, 2017, pp.46 et seq.

²³⁷ Hofinger/Schmidinger: Deradikalisierung im Gefängnis, 2017, p. 94; UNODC, Handbook, 2017, p. 53

²³⁸ Hofinger/Schmidinger: Deradikalisierung im Gefängnis, 2017, p. 94. UNODC, Handbook, 2017, pp.46 et seq.

²³⁹ UN General Assembly, Torture and other cruel, inhuman or degrading treatment or punishment: note by the Secretary-General, July 28, 2008, A/63/175, retrieved from: <http://www.refworld.org/docid/48db99e82.html> (8 November 2017): *"In the opinion of the Special Rapporteur, the use of solitary confinement should be kept to a minimum, used in very exceptional cases, for as short a time as possible, and only as a last resort."*

²⁴⁰ ACUNS, unpublished interview with Kuhn, Christian (catholic pastor working in the detention centre in Josefstadt, Vienna) Vienna 2016, p. 2.

²⁴¹ Interview with the executive director of the detention centre in Gerasdorf on 9 August 2017.

Conditional release

A conditional release from a custodial sentence is possible after the first half of the sentence has past and probation has been ordered and approved. If it is reasonable to expect no further criminal action in absence of further detention, a person can be released conditionally under guidance of probation support.²⁴² With severe crimes, it may take two thirds of the sentence to be served before a conditional release can be offered.²⁴³ Moreover, the conditional release after 50 % of the sentenced time has for example not be granted to recidivists.²⁴⁴ In practice, all children and young adults, convicted under §§ 278b et seq. StGB, have been conditionally released into probation at some point.²⁴⁵ While, generally, they are not released until two thirds of their sentence has been served, a 50% solution would be possible, where the receiving social circumstances allow for it.

Latest six months before the release, the probation support service provider (*Neustart*) must be informed by the penitentiary administration. “In all cases *Neustart* supports an early, conditional release;” only in this way can transition be made smooth.²⁴⁶ Remarkably, a fully served sentence would mean that the detainees would be freed without any probationary requirements from one day to the next. The lack of supervision and support for the resocialization are obvious disadvantages of such a scenario. Therefore, much work flows into the development and endorsement of timely perspectives for the time after the release. Usually, this pursuit involves a release- SoNeKo, during which the clients together with their social network and support staff compound a future plan, the content of which will then form an integral part of the individual’s probation and release requirements as ordered by the court.²⁴⁷

This particular strategy has been made obligatory for convicts of §§ 278b et seq. StGB by ministerial decree as of 3 February 2016. Generally, according to the JGG, the conduct of a SoNeKo is merely optional. The legal obligation shows the legislator’s apparent increased commitment to rehabilitative strategies within the penitentiary system, mainly if it comes to these specific offences. In a sense, this indicates a renunciation from the rather repressive penitentiary politics which were dominant until recently.

²⁴² § 46 par.1 StGB.

²⁴³ § 46 par.2 StGB.

²⁴⁴ File inspection conducted between August-October 2017.

²⁴⁵ Interview with a representative of the penitentiary sector within the Ministry of Justice on 8 May 2017.

²⁴⁶ Ibidem.

²⁴⁷ §46 StGB, §§17, 17a JGG.

Part C: Main Actors and Policies in the field of extremism & terrorism

After having provided relevant laws, legal aspects of the procedure and specifics regarding children and young adults, this chapter reflects the policy responses to extremist developments in view of legal standards and the main actors working in this field. In recent years, Austria has put in place various measures and initiatives, and starting processes to counter terrorist and extremist developments. Political interventions have largely focused on two specific areas: de-radicalization and preventive action. They are fundamentally different in purpose. The prior concerns disengagement of radicalised youths, which aims at achieving behavioural change and consequential renunciation from practicing and endorsing violence. This policy predominantly targets children and young adults, who have been in conflict with the law already. Examples are children and young adults who were hindered from leaving Austria for Syria to participate in combat, as well as those who returned to Austria after having fought in Syria or Iraq and those who, having approached the extremist milieu via friends or imams, have been radicalised and promote jihad. The latter frequently disseminate propaganda material to radicalise others through the internet or otherwise.

Beyond that, much attention and political action is directed towards preventive approaches. Countless actors - from the public safety sector, the justice- and education systems, and civil society groups – come together under the umbrella of preventive action to pursue a macro-social solution based on democracy and the rule of law. Emancipatory efforts are paramount in most preventive activities, in that they try to sustain and foster children's and young adults' self-confidence and competences. This is thought to make children and young adults less susceptible to radical or extremist influences.

In the context of this report we shall focus on extremism-preventive and deradicalisation measures available to the penitentiary system. Before engaging in a deeper analysis thereof, it seems indicated to briefly explain well-established instruments of juvenile justice practice, as e.g. social network conferences (SoNeKo). There are two kinds of SoNeKos, one regarding pre-trial detention²⁴⁸ and one regarding release²⁴⁹. The application of the latter is obligatory for cases involving children or young adults, sentenced according §§278b et seq. StGB, but not for adult offenders. More detailed information on SoNeKo, which we identify as one of Austria's good practice examples in this paper, can be found in Part C, 4.

Between 2014 and 2016, the number of convictions concerning terrorist activities significantly rose. Simultaneously, the total number of children and young adults incarcerated for infringements of §§278b et seq. StGB rose from two to approximately 20 to 30 individuals. Due

²⁴⁸ §35 Youth Court Act (Jugendgerichtsgesetz, JGG).

²⁴⁹ §17a JGG.

to these developments, new strategies had to be found to specifically target this group of detainees. Moreover, international studies²⁵⁰ at the time already suggested that prisons might become a fertile ground for radicalization, induced by fighters who had returned from Syria and Iraq. One proponent of this theory is Peter Neumann.²⁵¹ Consequentially, a range of measures, accommodating specific juvenile justice stipulations, was introduced in 2014. We shall depict them briefly.

1. Central actors in the areas of deradicalisation and prevention

1.1. DERAD

The association DERAD, with the independent network ‘EUISA’, holds membership with the European Commission’s ‘Radicalisation Awareness Network’. In accordance with its cooperation agreement with the federal Ministry of Justice, it is responsible for the area of ‘extremism prevention’ in Austria’s penitentiaries. Its goal is to inhibit or minimize political and violence-prone extremism with a special focus on religiously funded extremism. Apart from support in penitentiaries – having worked with 71 individuals, between 14 and 50 years, in 16 penitentiaries throughout Austria in 2016 –, DERAD conducts prevention workshops for youths and frequently trainings for e.g. teachers, police officers, and judicial employees.²⁵²

1.2. NEUSTART – Probation services

The ‘Neustart’ association²⁵³, Austria’s sole provider of probationary support, has worked in the areas of deradicalisation and disengagement as well as prevention since 2015. Forty specialists have undergone a specifically developed training program thereto, comprising three modules. The first model focuses on “Islamism and religious backgrounds” and is conducted in close cooperation with DERAD. The second module covers, in collaboration with the Darmstadt Institute for Psychology and Risk Management, topics like “early detection, risk management, and attackers’ psychodynamics”. The third and last module is intended to give an understanding of the geo-political background and developments. All juvenile detainees under §§278b et seq. StGB enjoy the vigorous support of these professionals on probation or if they are granted parole.

A first objective of social work, and especially so with probation-related services, is the client’s disengagement from violent or – more generally – criminal activities. Relatedly, it is of vital importance to the long-term efficacy of disengagement that a client also dissociates from his or her predominant extremist ideologies, at least to an extent that allows for reflection and adoption of non-violent alternatives to past behavioural patterns (i.e. deradicalisation). In this regard, the collaboration with DERAD on issues of Islamic theology is a crucial resource. Their

²⁵⁰ See Schmid, *Radicalisation, De-Radicalisation, Counter-Radicalisation*, 2013, p. 33.

²⁵¹ Neumann: *Der Terror ist unter uns*, 2017, p. 229.

²⁵² See www.derad.at (5 September 2017).

²⁵³ See www.neustart.at (5 September 2017).

knowledge about radical ideologies enables them to foster critical and reflective thought processes through familiarising their clients with counter-narratives based on Islam.²⁵⁴ This strategy is especially promising, when working with children and young adults, who command little consolidated knowledge about religion.

NEUSTART's work is always individually centered and reflects individual needs and biographical backgrounds of their clients. Social networks play a vital role in this. In addition to more 'traditional', rehabilitation strategies of probation support, like inclusion, crisis intervention, and ensuring a decent livelihood, the following aspects have proven rather important in the work with this specific group of young offenders:

- Frequent and continuous monitoring: Behavioural analysis, risk evaluation and threat management
- Promoting reflection towards personal awareness of injustice regarding the offence committed
- Integration of the client's positive personal environment, and assistance by relatives and/ or friends
- Intervention talks with Islam experts
- Illustration and revision of intercultural cleavages

Probation usually runs for three years, during each of which a minimum of 25 interactions with the probation specialists are scheduled.²⁵⁵ The spectrum of children and young adults to receive probation support in the context of terrorism is rather broad. To exemplify, cases may include girls, who fall in love on the internet and decide to go to Syria to be with their crush, boys who pose as heroes in videos, wearing uniform and holding automatic rifles, and actual foreign fighter who have partaken in the Syrian civil war. What all of these probation cases share, despite their enormous differences, is the objective to reintegrate these individuals into society as peaceful and harmless citizens.²⁵⁶ Among all the 10,870 beneficiaries of Neustart's probation counseling in July 2017, 50 individuals were convicts of §§278b-f StGB (numbers including adult offenders).²⁵⁷ A majority of this subgroup of clients is aged between 17 and 30 with women accounting for roughly 20-25%. This is a remarkable male-female ratio, compared to the total of all clients in probation service, a mere 13% of which are women.²⁵⁸ Apart from that, it is striking that the number of clients convicted under the VerbotG was even higher (56 including adults).²⁵⁹ However, as is common legal practice in Austria, none of the latter individuals had to serve unconditional detention. In order to maintain its operations at level with the most recent advancements in the field of deradicalisation and preventive action, Neustart is a regular attendant to meetings of the European Commission's Radicalization Awareness Network.²⁶⁰

²⁵⁴ Glaeser, Radikalisierungsprävention durch die Bewährungshilfe, 2016, p. 4.

²⁵⁵ Ibidem.

²⁵⁶ Interview with a representative of Neustart 5 July 2017.

²⁵⁷ Query response from Neustart via email, 11 July 2017.

²⁵⁸ Interview with a representative of Neustart on 5 July 2017.

²⁵⁹ Query response from Neustart via email, 11 July 2017.

²⁶⁰ See ec.europa.eu (12 September 2017).

1.3. Counselling Centre ‘Extremism’

Initiated in 2014 by the Federal Ministry for Family and Youth, the Advisory Centre ‘Extremism’²⁶¹ forms part of the nationwide network for open youth care (BOJA). Its services are intended for parents, friends, teachers, youth counselors, and all others, in cases of suspected radicalization of youths towards politically or religiously motivated extremism (including all forms of left-, right-, or Islamist extremism). The services provided include the operation of a telephone hotline²⁶² which is free of charge, as well as personal advisory sessions and trainings for different occupational groups. The centre has received a total of approximately 1800 calls between 2014 and the end of 2016, roughly a thousand of which were first-time calls. 92 substantial advisory sessions took place and 240 workshops reaching a total of roughly 5000 participants.²⁶³ In the time since its initiation, the nature of the calls received by the centre has changed: Calls concerning suspected right-wing extremism have doubled in number, shifting from two to an almost equally marginal four percent. The number of cases regarding youths drifting into Islamist extremism has declined slightly. According to the centre’s director, Verena Fabris²⁶⁴, there are “hardly any youngsters aspiring to join the Islamic State anymore”. Nevertheless, this category continues to account for the biggest share of calls received, amounting to 42% of the total. The second biggest share concerns acts of violence (8%), racism and misanthropy (4%), and ‘other’ forms of extremism (4%). The remaining percent of callers sought further information or network-connections.²⁶⁵

2. Measures of deradicalisation and prevention in the penitentiary system

In 2015 the interdisciplinary and inter-ministerial task force ‘deradicalisation in the penitentiary system’ was formed by the Ministry of Justice and has been meeting continuously since then to exchange experiences and develop new strategies. As a result, it presented a “packet” of measures for deradicalisation in the penitentiary system²⁶⁶ which focusses on tackling safety-, support-, education-, and training issues through policies specifically tailored to the needs of children and young adults. We shall now introduce the corner stones of these policies.

²⁶¹ See www.beratungsstelleextremismus.at .

²⁶² Helpline: +43 (0) 800 2020 44.

²⁶³ OTS press release, 3 December 2016,

https://www.ots.at/presseaussendung/OTS_20161203_OTS0009/karmasin-extremismus-jeder-art-wirksam-bekaempfen-betroffenen-helfen-bild (15 September 2017.)

²⁶⁴ Verena, Fabris, cited in Kurier, 3 December 2016, <https://kurier.at/chronik/wien/rechtsextremismus-ist-bei-jungen-auf-dem-vormarsch/233.875.168> (15 September 2017).

²⁶⁵ Matzenberger, Michael: Extremismusprävention für Jugendliche: 1.800 Anrufe in zwei Jahren. Article in Der Standard, online edition, 2 December 2016, <http://derstandard.at/2000048669879/Extremismuspraevention-fuer-Jugendliche-1-800-Anrufe-in-zwei-Jahren> (15 September 2017).

²⁶⁶ See Federal Ministry of Justice, Maßnahmen zur Deradikalisierung im Strafvollzug, 2016, https://www.justiz.gv.at/web2013/home/presse/pressemitteilungen/pressemitteilungen_2016/justizministerium_kooperiert_bei_der_deradikalisierung_im_strafvollzug_ab_sofort_mit_dem_verein_derad~2c94848a511b962e01532ca53ed464a8.de.html (15 September 2017).

2.1. Safety

Accommodation and implementation

Most of the (male) children, and young adults handled in juvenile penitentiary²⁶⁷, are transferred to the only Austrian detention centre reserved for juvenile convicts only, located in Gerasdorf. Specific stipulations on the treatment of individuals convicted under §§ 278b et seq. StGB are applicable. Firstly, these may concern issues of accommodation (occasionally, offenders are kept in solitary confinement) as well as the special security-implications during transports to e.g., the court or hospital. According to the warden of Gerasdorf detention centre, the great majority of children and young adults dwell in rooms of two or three.²⁶⁸ A representative of the ministry of justice notes that, in Austria, the principle of “normalization” is paramount. This means, the system aims at equalizing the circumstances of all detainees, notwithstanding differences in offenses. Differentiation, should be triggered in connection to the detainees’ individual needs and different conditions only.²⁶⁹

Liaison service between penitentiaries and the Office for the Protection of the Constitution and Counter-Terrorism

A permanent liaison service between the penitentiaries and the responsible provincial departments of the Office for the Protection of the Constitution and Counter-Terrorism ensures effective communication and risk assessments. In every prison there are two guards, who are specifically trained in respect to radicalization. They serve as interface-partners to the provincial offices’ terrorism experts.

2.2. Support

From pre-trial detention onwards, an inter-disciplinary team compounds individual penitentiary implementation plans for all children and young adults concerned. The pertinent guidelines hereto foresee, among other measures:

Intensive Support by an expert team

The commanding officers of the respective prison section, a psychologist, a social worker, and a social pedagogue form part of the expert team. It meets once a month where juveniles and young adults are concerned and once every quarter where adults are concerned. The meeting’s aim is to evaluate the progress made on the implementation of the penitentiary plans and to adapt or amend practices that are deemed beneficial. The panel may also be joined by other relevant professionals, such as psychiatrists or *Neustart* probation officers (in case the individual is already receiving probation support) whenever opportune.

²⁶⁷ This may be requested by young adults and bestowed upon them by the responsible court.

²⁶⁸ Austria has only one penitentiary centre, reserved for young offenders. It is located in Gerasdorf. All male youths (up to 18 years) and – where stipulated by courts – some young adults (up to 21 years) convicted and sentenced to serve a custodial sentence are being accommodated here. Interview with the executive director of a penitentiary institution, conducted on 9 August 2017.

²⁶⁹ Interview with a representative of the penitentiary sector within the Ministry of Justice on 8 May 2017.

Intervention sessions for risk assessment and ideological disassociation – by DERAD

In terms of support for individuals convicted under §§ 278b et seq. StGB, it is essential that officials from DERAD²⁷⁰ conduct not only the obligatory clarification and screening talk, but that they are available for follow-up attention whenever a children or young adult needs it. The first talk always serves to determine the extent of manifest radicalization. In the long term, intervention sessions serve to introduce alternative- and specifically counter-narratives for the detainees. Optimally, this should trigger a critical reflection process of the violent beliefs pertinent to their ideology. The alternative narratives used are associated with positive examples to replace the narratives of exclusion and animosity dominant in radical thought. Counter-narratives are confrontational and destructive towards the ideology, which they help to unmask.²⁷¹ Furthermore, there are conversation classes in political education based on democratic values for, both, radicalised individuals and potential sympathizers.

The support progress in pre-trial and ordinary custody forms the content of the monthly or quarterly expert team meetings. The developments are recorded in the penitentiary plan and, where necessary, the plan can be amended to accommodate appropriate additional measures.

2.3. Other measures

Screenings: risk assessment in the penitentiary

The “*packet of measures*” also provides for screenings, or risk assessments, using the DyRiAS instrument (Dynamic Risk Analysis) with individuals²⁷², surmised to have been radicalised while in prison. Due to the rise to importance of violent Islamist extremism, the long- and well-established tool in the violence context, DyRiAS had been adapted and extended to entail a tool to screen violent Islamist tendencies too.²⁷³ It is now available to penitentiaries, public Authorities, educational institutions, and others. In cooperation with the Institute for Psychology and Threat Management Darmstadt (IPBm, Germany), social workers from the Austrian Ministry of Justice underwent a training, which enables them to conduct these screenings as required. According to a representative of the penitentiary system’s directorate general²⁷⁴, close attention is paid to behavioural patterns of young detainees, which might portend a shift towards radicalization. Conversely, evaluating the risk emanating from every convict under §§ 278b et seq. StGB by default at the start of their detention has not been considered. Rather, the specialists focus on facilitating a proactive counteraction to any radicalization tendencies that may arise in the course of custodial arrest.

²⁷⁰ Netzwerk sozialer Zusammenhalt, Extremismus-Prävention, Dialog und Demokratie [Network for social cohesion, extremism-prevention, dialogue and democracy].

²⁷¹ Diaw, Moussa Al-Hassan: Religiös begründeter politischer Extremismus, der zu Terror führen kann, DERAD, unpublished, ACUNS, Vienna 2017.

²⁷² Applies to all detainees (adults, young adults, and youths).

²⁷³ See www.dyrias.com/de/2-uncategorised/37-islamismus-screener.html (on 16 September 2017).

²⁷⁴ Interview with a representative of the penitentiary sector within the Ministry of Justice on 8 May 2017.

Austria, Belgium, Sweden, the Netherlands and Germany form part of the European Union financed project “DARE”, with the aim to evaluate the screening instrument “VERA 2”. In the context of this project one or two psychologists will take part in trainings which enable them to test it in Austria.

Political education and anti-violence trainings in penitentiaries

In collaboration with the Berlin Violence Prevention Network (VPN), 15 social workers and psychologists from the Austrian penitentiary system (2016/2017) took part in courses, especially designed to convey knowledge on how to conduct anti-violence trainings with radicalised jihadi detainees.²⁷⁵ Following their upskilling, they now use their newly acquired expertise in group and one-by-one settings. This forms the first phase of application, the evaluation of which will be compiled by the end of 2017. Currently, the penitentiary centre in St. Pölten hosts a training group of children and young adults who meet weekly. At Hirtenberg penitentiary, inmates are regularly encouraged to engage in discussions about value orientation in Austria, ideologisation, etc.²⁷⁶ As a second step, insights from these pilot projects will be disseminated among professionals in the penitentiary system.

Transition management and follow-up support

As soon as the release process starts to be prepared (i.e. at least six months prior to the end of sentence), *Neustart* – the Austrian probation support organization – is called in. This timely procedure is in place to ensure a swift and seamless preparation of release as well as successfully managing the transition into life outside of prison. These measures are only obligatory for children and young adults, convicted in relation to §§ 278b et seq. StGB. Otherwise, as in adult criminal cases related to §§ 278b et seq. StGB, it is the responsible court’s discretion in whether or not to mandate a release conference in case of conditional release. Plans for a crime-free life after prison are drafted with and for the children or young adult in cooperation with the penitentiary sector’s experts.

2.4. Training and Recruitment of staff in the penitentiary system

Training

Since 2015, the Office for the Protection of the Constitution and Counter-Terrorism, its provincial bureaus, and DERAD’s Islam-experts have held trainings to raise awareness and presentations on the topic “Radicalisation and Terrorism” under the umbrella of training and further education events. An especially designed module on “handling radicalised and extremist

²⁷⁵ This notion of deradicalisation is particularly innovative in that it combines political education, anti-violence training, with critical reflection of, both, the offense committed and the justification-patterns used to construct the motive. The creation of communication-, relation-, and problem-solving resources is indispensable for any successful (re-)integration into society and lies at the beginning of any self-responsible and positive plans towards a non-violent future. In Germany, the Violence Prevention Network is the sole provider of in-penitentiary deradicalisation trainings for ideologically motivated violent offenders. More on the programme can be found here: <http://www.violence-prevention-network.de> (15 September 2017).

²⁷⁶ From the Interview with a representative of the penitentiary sector within the Ministry of Justice on 8 May 2017.

detainees with a propensity to violence” was integrated into the basic training program for penitentiary officials.

Recruiting Personnel

The Ministry of Justice guidelines suggest, furthermore, that an increased attention to language skills and awareness for cultural and religious diversity is envisioned during the recruitment process. The idea is to ensure diversity among the officials employed in the penitentiary system by drawing from a broader pool of ethno-cultural backgrounds reflecting the increasingly diverse ethno-cultural backgrounds of detainees.²⁷⁷ The managing director and warden of Gerasdorf detention centre emphasizes this point and calls for more employees (i.e. guards, psychologists, social workers, etc.) with migratory backgrounds and intercultural competences in penitentiaries.²⁷⁸

2.5. Networking and Cooperation

National: The Ministry of Justice convenes a conference of prison directors twice a year, where the topics of radicalization and extremism can be discussed. There are continuously contact persons of the Ministry of Justice available who can be approached by the penitentiaries on those topics, e.g. concerning security or support. In addition, regular meetings of the nationwide network on de-radicalization and prevention of extremism take place on the initiative of the Ministry of the Interior and the Federal Office for the Protection of the Constitution and Counter-Terrorism. A representative of the Ministry of Justice- but no prison directors- take part in them. The network consists of ministerial representatives, authorities of the federal states and associations and institutions that are active in this field. Furthermore, enhanced exchange of experiences with radicalized and extremist detainees among penitentiary directors is planned for by the Ministry of Justice within the framework of regional, i.e. statewide, networking meetings. Those do already take place in some federal states, e.g. in Vorarlberg, Vienna and Lower Austria. Several representatives of penitentiaries in those federal states will also be integrated. Additionally, a strengthened institutionalized cooperation of these authorities with DERAD, the Ministry of the Interior (Office for the Protection of the Constitution and Counter-Terrorism), and the Ministry for Family and Youth has emerged from the work done in the inter-ministerial support group to the “counselling centre against extremism”.

European/International: Moreover, Austria counts on the expansion of European and International cooperation. The collaboration with the European Commission’s Radicalization Awareness Network (RAN) is notable, part of which is formed by the regional working group “RAN Austria”, established in 2015. This Austrian network is being advised by scholars from Vienna University. The initiative’s objectives can be summarized as follows: networking and integration of a variety of civic-societal actors regarding deradicalisation and prevention.²⁷⁹

²⁷⁷ Federal Ministry of Justice: Leitfaden für den Betreuungsverlauf des Vollzugsplans nach §§ 278b ff StGB, 2016, BMJ-GD41721/0023-II 3/2016.

²⁷⁸ Interview with the executive director of a penitentiary institution on 9 August 2017.

²⁷⁹ Verfassungsschutzbericht 2016, p. 74.

Austria is, furthermore, a member of the experts group ‘Radicalization’ of Promoting Professional Prison Practice (EuroPris)²⁸⁰ and cooperates with the International Correction and Prisons Association (ICPA)²⁸¹ in its sub-committee on counter radicalization.

3. Initiatives in the area of deradicalisation and prevention

3.1. Vienna network for deradicalisation and prevention

The Vienna network for deradicalisation and prevention came into being in 2014, when the city administration decided to register the new network with the office of the ombudsman for children and young people.²⁸² To provide this new collaboration of various practitioners and actors, as well as the city administration itself with information and expertise, a forum of distinguished experts has been institutionalised. The network’s objective is to protect children, and young adults from extremist tendencies, but also from stigmatization and general suspicions thereof (e.g. in the case of migrant populations).²⁸³ This is pursued on five distinct levels:

- School (Guidelines of deradicalisation, strengthening the role of educational psychology, anti-violence trainings)
- Integration (trainings and workshops for all actors involved, networking platforms for the Afghan and Chechen communities)
- Other educational institutions (workshops and trainings for practitioners of open youth care as well as nursery school teachers)
- International institutions (Funding of scientific research and civil-societal engagement campaigns)
- Working with returned foreign fighters (continuing education for officials from the justice department, police, family and juvenile court assistance, Psychiatry, etc.)

Awareness raising and continuing training are the programme’s cornerstones. The workshops and trainings on various subjects, including topics like religion, Salafism, jihadism, identities, migratory society, bullying, violence prevention of right-wing extremism, gender equality, etc. were able to reach more than 6000 participants from diverse backgrounds, who work with children and youths.

²⁸⁰ See <http://www.europpris.org/> (5 September 2017).

²⁸¹ See <https://icpa.ca/> (5 September 2017).

²⁸² Parts of the Vienna network: five delegates to the Viennese provincial legislative and municipal assemblies, Vienna’s children’s and youth advocacy board, the city school inspector general and municipal administrative units 10, 11, 13 and 17, the police forces, work market services (Vienna youth department), the Vienna employees support fund (WAFF), the advisory office ‘extremism’, Family court assistance, and DERAD. The network is registered with the youth advocacy board.

²⁸³ Municipality Vienna: Zwei Jahre Netzwerk für Deradikalisierung & Prävention und Empfehlungen des „Expert_Forum“. Vienna 2016, p. 4.

3.2. The Nationwide Network for Counter-Terrorism – Exit Program

The new nationwide network for extremism prevention and deradicalisation was first presented at the prevention summit, hosted by the federal Ministry of the Interior in October 2017.²⁸⁴ As recent years have shown, prevention policies and initiatives targeting the entire society are most likely to yield positive results, where all important societal actors – governmental and non-governmental – relate to each other through an integrated network. Therefore, and upon suggestion from the BVT, this nationwide network was established to facilitate the exchange and dissemination of information on recent developments and to enhance the coordination of measures between the local, provincial, and national levels.

One of its paramount initiatives is the exit-program for violent extremists, which has only recently been launched as a pilot project for one year. For the time being, the program targets religiously motivated extremists and jihadist, who have either returned from fighting in Syria or Iraq, or who have been stopped from leaving the country for the same destinations with similar intentions. Moreover, it covers all individuals who were found guilty of disseminating propaganda materials within Austria, who invoked others to participate in jihad, or recruited new fighters or other members for terrorist organizations. The one-year test phase will therefore entail a special focus towards young offenders in the context of Islamist motivated crimes.²⁸⁵ It is however planned that, upon successful completion of the first year, the program be expanded to include all forms of extremist ideologies, such as right- or left-wing extremism, sectarianism, radicalised and potentially violent fan-groups (hooligans), and so forth.

How does the exit-program work?

The concept is based on individualized single-case strategy. Hence, radicalised individuals can choose voluntarily to participate in the program to benefit from comprehensive interventions and support on various levels:

- Social: establishing a pro-social setting with family and friends.
- Personal: psychological counselling and other therapeutic support upon request and necessity
- Delinquency: Revision and reflection of crimes committed
- Ideology: deconstruction of violence-prone religious ideologies and provision of alternatives
- Health: e.g. drug therapy
- Perspectives: Support with education and vocational training, with finding work or accommodation, and legal support regarding residence permit and status

Because the exit-program is part of a nationwide network, a multitude of resources can be accessed by the member-organizations and put to use for the beneficiary in an unbureaucratic

²⁸⁴ The network will consist of seven federal ministries and several NGOs, see <http://orf.at/stories/2401710/> (2 August 2017).

²⁸⁵ In particular with regard to §§ 278b et seq. StGB.

manner, be it regarding cheap accommodation, finding a job, or a profound assessment of Islamic theology.

The daily operations of the program are the responsibility of three civil-societal actors, which have already been introduced more thoroughly above:

- DERAD
- NEUSTART
- Counselling Centre ‘Extremism’

These three organizations command extensive expertise, collected over many years, and are well-connected with the authorities through frequent and close cooperation. For the pilot phase, the three lead organizations have collectively selected approximately ten individuals to enter the exit-program. At the time being, the program is only available in Vienna. Following the evaluation of the pilot project, the program is expected to expand to accommodate more participants in all nine Austrian provinces. As of now, the project is being coordinated by the Ministry of the Interior and funded by various actors on the federal and provincial levels, which is meant to facilitate inter-governmental and inter-provincial collaboration, desirably strong enough to continue beyond the first year.

3.3. Initiatives on Education for Prevention

In reaction to the radicalization tendencies in recent years, the federal Ministry of Education has made funding available for a total of 1600 workshops in schools in Austria since 2015. These workshops are carried out by roughly 40 different organizations throughout Austria, coordinated by *Zentrum Polis – Politik lernen in der Schule*.²⁸⁶ The workshops’ themes are “Against radicalization and exclusion” and “Strengthening democratic culture and digital courage”. Their objective is to foster respect, conflict resilience, and debate culture in the class. Moreover, they breach the issues of extremism and fanaticism, and help to counter ideologies of inequality and exclusion. Phenomena like hate speech on the internet are thematised and met with the design of countervailing measures.²⁸⁷

3.4. Mothers’ schools against extremism

Through her organization ‘Mothers without Borders’ the Austrian social scientist Edith Schlaffer has successfully established “Mothers’ schools against extremism”²⁸⁸ in Pakistan, India, Nigeria, Tajikistan, and Indonesia since 2012. Since 2015, there are also mothers’ school

²⁸⁶ ‘Polis’ centre for political education in schools. An institution for political education provision to schools, part of the Ludwig Boltzmann Institute of Human Rights, funded by the Ministry of Education, www.politik-lernen.at (22 December 2016).

²⁸⁷ A portfolio and list of member organizations can be accessed here: <http://www.politik-lernen.at/site/praxis/workshopreihe2017/wsangebote> (accessed on 22 December 2017).

²⁸⁸ See <http://www.frauen-ohne-grenzen.org/projekte/laufende/42/> (5 September 2017)

programs taking place in Austria, the first 15 (Chechen) absolvents were awarded their degrees in December 2016. Throughout these special courses, mothers are trained to recognize the first signs of radicalization of their children, and do so early enough to counteract the developments. In a safe and confiding environment, women from different communities²⁸⁹ learn to talk about themselves and their family problems, involving their growing children. This is a crucial first step because publicly outing such details is still considered a stark taboo by many of the women. Therefore, many of them find it difficult to openly talk about their children's radicalization. The spectrum of topics covered throughout the ten meetings range from recognizing early warning signals, to 'how to react', to different support possibilities at the mothers' disposal. What is also highly valued by most of the participants is the exchange and socialising in a group of like-minded women. This is especially important for those mothers who live rather isolated and lack significant points of contact outside their own family ties.

According to Maynat Kurbanova, a Chechen journalist and trainer in Austria's first mothers' school, it is mostly young men who run the risk of radicalization by acquainting themselves with the criminal milieu. However, as she added during our interview, "there are also women for whom radicalization provides a possibility to emancipate themselves from their strict families. (...) they commit themselves to god, to whom their parents too have to submit."²⁹⁰ The Austrian Ministry of Justice has expressed an interest to collaborate with these mothers' schools in an interview.²⁹¹ First exploratory conversations in this regard have already taken place. A closer contact and cooperation with mothers, and the families in general, might yield great improvements in connection with release conferences (SoNeKo), as an intact social surrounding may substantially facilitate the reintegration into society.

Due to the high numbers of youth who went from Europa to Syria and Iraq, especially in 2014-2016, as well as subsequent returns, the model of mothers' schools has received a lot of positive response throughout Europe. This is why similar mothers' schools projects are now envisioned in Great Britain, Sweden, and Germany. The evaluation of Mothers' schools' discourses has shown that, generally, a greater involvement of fathers would be desirable and there are now plans towards the initiation of similar projects for fathers – Fathers' schools. This way, so the proponents, the pertinent problems could be tackled more holistically in and by the family.

3.5. Open Youth work - the example of 'Back Bone 20'

'Back Bone 20' is an association which engages in open youth care work²⁹², the activities of which extend all over Vienna's 20th municipal district and aim at supporting youths and young

²⁸⁹ Currently, there is one group for Turkish and one for Chechen women. A group for Afghan and Arab women is planned. From the Interview with Maynat Kurbanova, conducted on 16 August 2017.

²⁹⁰ Interview with Maynat Kurbanova on 16 August 2017.

²⁹¹ From the Interview with a representative of the penitentiary sector within the Ministry of Justice on 8 May 2017.

²⁹² The area of open youth care in Austria is quite diverse and many actors aim to support youth and young adults. A brief numeric summary: 623 institutions, thereof 87% day-care centres und meeting spots, as well as 13% mobile street-working initiatives. The sector currently employs 2.049 experts. On average, 15% of all

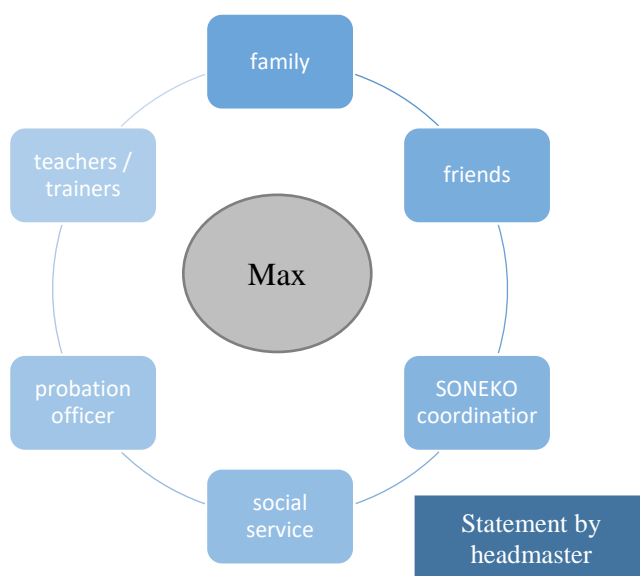
adults between 12 and 23 years. The street workers of Back Bone 20 offer support to their beneficiaries throughout the public and semi-public spaces of the district (i.e. parks, court yards, shopping malls, etc.). Whenever a youth is arrested, he or she may request the support of the street workers to continue. Over the years, Back Bone’s team has built a solid competence and, today, even provides workshops on Deradicalisation.

The IRKS report²⁹³ mentions that a young male convict and another adult inmate have received rather intensive support by Back Bone while in prison: “They discuss with the youngsters, ask openly critical questions and, thereby, confront them with their own value-systems”. Additionally, Back Bone’s social workers often continue to be important persons of trust for the children and young adults, even after they have been released from detention.

4. Promising practice examples

4.1. Social Network Conferences (SoNeKos)

Since the 1st of January 2016, the latest amendment of the Juvenile Court Act has been in force, which renders the legal basis for the conduction of social network conferences – an instrument which has been used frequently by *Neustart* in juvenile justice probation cases since 2014. The SoNeKOs are carried out in two different settings: in the context of pre-trial detention and conditional release.²⁹⁴



SoNeKos follow a structured trajectory: they are attended by the juvenile convict, the responsible probation officer, and persons from the convict’s immediate surroundings, like family-members, friends, and support staff. The convict is subject to strict conditions, like e.g. attendance at school or apprenticeship, participation at necessary therapies, or anger management trainings. These conditions are written down and all parties agree to commit to the resulting plans. A sizeable advantage

Figure 1: Example of a social network at the Soneko

young people aged between 10 and 26 benefit from this provision, for more information see http://www.boja.at/fileadmin/download/Wissen/A4_quer_Boja_Broschu_re_Web_es.pdf (15 September 2017)

²⁹³ Hofinger/Schmidinger: Deradikalisierung im Gefängnis. 2017, p. 135.

²⁹⁴ Glaeser: Deradikalisierung durch Bewährungshilfe, 2016. / Interview with a representative of Neustart, on 5 July 2017.

of SoNeKos is that the affected individual is given a central role in the decision-making process. Under this bottom-up approach the child or young adult can be certain of his/her social network's support. Moreover, this practice may help to convey a reinstated feeling of social trust in the individual, which by itself eases the alienation, criminal offenders (or suspects) often experience.

After the imposition of pre-trial detention, the responsible court may opt to suspend the unconditional **pre-trial detention**, provided compliance to the plans, agreed upon in the SoNeKo, and in connection with highly frequent probation support sessions. This way, the juveniles can be spared the experience of pre-trial detention and loss of working or education time. It is not only a less severe measure but also involves preventive elements, in the sense that it mitigates frustration and, likewise, because it prevents a possible radicalisation in prison. According to a representative of *Neustart*, "every youth on remand is one to many". In his opinion, there is a great need to find alternatives to detention of juveniles, and the SoNeKo is a promising possibility.

Approaching a **conditional release**, at least six months in advance, SoNeKos frequently conduct planning for specific future perspectives, based on a positive self-image. Such a release conference is obligatory in juvenile cases involving convictions under §§ 278b et seq. StGB. Better integration in family and friendship structures, frequent meaningful occupation, and renunciation of the violent and radical connections they had had in the past are all quintessential considerations. A statistical account based on the case-records from 2013 to 2015 shows a positive trend: 85 percent of the offenders granted parole following a SoNeKo did not reengage in delinquency.²⁹⁵

4.2. "Caucasus Group" in youth detention center in Gerasdorf

At this point we want to introduce yet another good-practice example: The so-called 'Caucasus Group',²⁹⁶ which is an initiative for Chechen youths at the penitentiary centre Gerasdorf. This project results from concerns that Chechen youngsters, who make up the largest subgroup among the inmates, seem to be disproportionately more susceptible to aggression and radicalization.²⁹⁷ In Gerasdorf there had been constant tensions between Chechen youths and members of other ethnic groups, Afghan youths in particular. Under these circumstances, the penitentiary director sought dialogue with the Chechen exile journalist Maynat Kurbanova. In collaboration with her and an exile politician (and significant authority figure in the Chechen community) Hussein Ishkanov, a two-stage project found its beginning. Its main intention is to trigger critical reflection processes and convey a well-fundeed understanding of Chechen culture, history, religion, and the life in Austria to the Chechen youth. Strengthening identity and a positive self-image, detached from socially constructed stereotypes, are paramount objectives.

²⁹⁵ Priechenfried, Klaus: Alternativen zur Untersuchungshaft für Jugendliche. In: Jugendliche in Haft: Entwicklungen im österreichischen Jugendstrafvollzug von 2013 bis heute, ACUNS (ed.), Vienna 2015, pp.11-114.

²⁹⁶ This description is based on the interview with Maynat Kurbanova on 16 August 2017, who is the founder of this program.

²⁹⁷ According to a interview with the head of the juvenile detention center, 9th of August 2017.

Secondly, the project involves an exercise routine, during which the youths can push their physical and mental limits in a healthy way and raise their general level of physical activity. For the inmates, many of which have experience with martial arts, the fitness training offered is something new and, as we were assured, exciting. In total, the participants go through ten modules, which alternate between three hours of discussion group sessions and a sports unit. The discussion groups receive guidance from Maynat Kurbanova, Hussein Ishkanov, and a social worker.

According to Kurbanova, most of the participants were born in Austria or were brought here as toddlers. Therefore, most of them have little or no knowledge of Chechnya. Often, they fuel myths found e.g. on social media to offset their lack of experiences and then these myths replace historical facts. Some of these acquired narratives involve stereotypical notions, the origins of which can be traced back to the way others may falsely perceive the Chechen community. An example: “*Chechens are cool, aggressive and hit hard*”. Many youths lack the necessary knowledge to assess and expose these statements actually try to meet these imposed expectations; often marking the beginning of a vicious cycle.

Kurbanova underlined the still noticeable influence of the war experiences of their families. “*In fact, it is fair to say that the collective memory of wartimes is the glue within the Chechen community and it is surely what causes great part of the social cohesion among the youths we support. There is not even one participant in our program, whose family has not, in one form or another, had dramatic experiences during the wars. Fathers have been killed, uncles tortured, and houses burnt to ashes. My priority is to provide them with the necessary awareness to lead a fulfilled and responsible life following their release. For this, the collaboration with the families is key. Sometimes it flourishes, sometimes, alas, it is difficult. Deep down they are but children who look for acceptance and appreciation, who want to go to school and aspire to work a dignified job*”.²⁹⁸

Since the Caucasus Group was founded in 2015, four modules, funded by the Ministry of Justice, have taken place. Maynat Kurbanova, moreover, accompanies four recently released youths, who have completed an apprenticeship during their detention and, now, have found their successful integration into the labour market. Repeatedly, other penitentiaries – in Simmering and Josefstadt – have expressed their interest in the project.

²⁹⁸ Ibidem, Interview with Maynat Kurbanova on 16 August 2017.

Part D: Administrative Measures

In the aftermath of the terrorist attacks in 2001 in the United States of America, the Federal Office for the Protection of the Constitution and Counter-Terrorism (BVT) was established in 2002. Besides, an organisational unit responsible for the protection of the constitution was created in each federal state at the Police Directorate (LVTs).²⁹⁹ Previously, enhanced threat investigation (such as surveillance, covert investigations, etc.) had been legally consolidated as an extended police competence before transferred to the BVT and LVTs.³⁰⁰

After the terrorist attacks in Europe and the steadily increasing number of people leaving for Syria or Iraq to take part in combat ("Foreign Fighters"), the legislator has reacted to the growing phenomenon of violent extremism in addition to criminal law provisions also in the administrative field. In 2014, a packet of measures ("Anti-Terror Packet") was agreed on to fight violent extremism. In view of the challenge in Austria with "foreign fighters", the packet was intended to enable preventive action and to prevent persons from Austria, including children and young adults, from taking part in fights abroad.³⁰¹

For this purpose, e.g. the confiscation of passports but also the possible loss of citizenship was decided. Accordingly, persons who have voluntarily joined combat operations abroad can be deprived of their citizenship if they do not become stateless.³⁰² In the course of the "2014 Anti-Terror Packet", the executive authority also obtained the competence to check at the border whether or not minors leave with the consent of their parents, in case of suspicion that the juvenile aims to get involved in armed combat abroad. Until the case has been resolved, the security authorities can refuse the departure and withhold the travel documents.³⁰³

Given the (presumed) emerging threat and possibilities of modern means of communication in the context of international terrorism, the legislator also aimed to provide the basis for measures to preempt a threat. Therefore, the authorities were enabled beside the measures for mere reaction with additional competencies in the prevention of threats (Police State Protection Act;

²⁹⁹ Verfassungsschutzbericht 2002, p. 11.

³⁰⁰ SPG idF BGBl I 2000/85. § 6 Abs.1 PStSG.

³⁰¹ Parlamentskorrespondenz Nr. 1196 from 10 December 2014. There were also changes in the Chemicals Act. Due to regulation of acquisition of certain chemicals explosive attacks should be prevented. With the anti-terror packet also the Symbols Act was amended (Federal Law prohibiting the use of symbols of the Islamic State and other groups [Symbole-Gesetz] Federal Law Gazette I No. 103/2014). Accordingly, the use, distribution or display of the symbols of the Islamic State, al-Qaeda or other extremist groups is prohibited. A breach constitutes an administrative offense and is punishable by a fine of up to € 10,000, - or imprisonment of up to six weeks. Also prohibited are badges or uniforms of other banned organizations, in particular according to the Verbotsg (Federal Law banning certain badges (Abzeichengesetz; BGBl. No. 84/1960.)

³⁰² 104. Bundesgesetz, mit dem das Grenzkontrollgesetz und das Staatsbürgerschaftsgesetz 1985 geändert werden.

³⁰³ Parlamentskorrespondenz Nr. 1196 vom 10.12.2014. § 12a para 1a Grenzkontrollgesetz (Border Control Act, GrekoG).

Polizeilicher Staatsschutzgesetz,³⁰⁴ *PStSG*).³⁰⁵ In the following, the relevant administrative measures will be highlighted in detail.

1. Description of the different types of restrictive measures³⁰⁶

1.1. Police state protection

The Police State Protection Act (PStSG) came into force on 1 July 2016.³⁰⁷ The central term for the present report is "an offence threatening the constitutional order" ("verfassungsgefährdender Angriff") – in the sense of e.g., § 278c StGB or the National Socialist Prohibition Law.³⁰⁸ As the provision does not require criminal liability, its measures also apply to persons under 14 years.³⁰⁹

First, in order to prevent such offences the PStSG foresees additional competencies in observing groups under certain conditions, i.e. if the group is assumed to carry out criminal activities (e.g. right- or left-wing extremism, Islamist extremism, etc.) that represent a serious danger to public safety.³¹⁰ Second, the "preventive protection against offences targeting the constitutional order by a person, if reasonable suspicion of threat exists for such an offence (§ 22 Abs.2 SPG)" is another central provision targeting individuals.³¹¹ According to the wording, the provision intends to prevent a future threat. While by committing a specific punishable offense, thus, no longer the PStSG but the Criminal Code (*StGB*) apply, the definition of when the scope of a possible future threat begins is more difficult. Abstractly, preventive protection is necessary if the commitment of a concrete offence is likely in the foreseeable future.³¹²

Third, the PStSG regulates the protection by enhanced investigative means against threats to the constitutional order based on information about persons.³¹³ This information must come from certain, specifically named, national or foreign entities. The purpose of this provision is not to prevent future threats, but to deal with situations in which persons are suspected of having committed a crime abroad, in particular "returnees", that corresponds "an offence threatening the constitutional order".³¹⁴

³⁰⁴ Bundesgesetz über die Organisation, Aufgaben und Befugnisse des polizeilichen Staatsschutzes (Polizeiliches Staatsschutzgesetz – PStSG; BGBl. I Nr. 5/2016).

³⁰⁵ Explanatory notes to the ministerial draft, 110/ME XXV. GP, p.1.

³⁰⁶ Restricted measures are the measures decided upon and ordered by the executive (or with its close involvement), and subject to limited judicial review. Source: ICCT.

³⁰⁷ In addition, changes were made to the Security Police Act (Sicherheitspolizeigesetz, SPG).

³⁰⁸ § 6 para 2 Z 2-3 PStSG

³⁰⁹ Comp. § 6 para 2 Z 1-5 PStSG

³¹⁰ § 6 para 1 Z.1 PStSG.

³¹¹ § 6 para 1 Z.2 PStSG.

³¹² Heißl, Georg: *Polizeiliches Staatsschutzgesetz. Überblick und Besprechung ausgewählter Aspekte*, ÖJZ 2016/100, (719) p. 720.

³¹³ § 6 Abs. 1 Z.3 PStSG.

³¹⁴ Heißl, *Polizeiliches Staatsschutzgesetz*, p. 720. AB 988 BlgNR 25.GP p.8.

Exemplary the following competencies are provided only for the tasks of the observation of a group or the preemption of a threat by an individual³¹⁵:

Covert investigation

Accordingly, confidants should obtain information on behalf of the security authority without having to disclose their order. The security authority has to guide and regularly monitor the covert investigator.³¹⁶ The prerequisite for this technic is that advanced investigations to prevent threats to the constitutional order are pursued or the constitutional order is preventively protected.³¹⁷

The covert investigation is considered by the Constitutional Court (VfGH) to be "particularly invasive".³¹⁸ Accordingly, limits and control are particularly important. This measure should only be applied if the investigation otherwise would be endangered, considerably more difficult or not possible by other means.³¹⁹ In addition, the authorization of the Legal Protection Senate (see below) must approve such an investigation.³²⁰ Either a reward can be promised, but also pressure can be exerted to get a person to cooperate. Thus, the assurance of impunity can be offered.³²¹ Questions remain as to how far a confession obtained by a covert investigation can be used in a later criminal case.³²² Likewise, it is not standardised which means may be used to obtain information.³²³

Covert investigations are intrusive investigative measures that require judicial control.³²⁴ As correctly stated by *Heißl* thereof the person concerned must be informed about the investigative measure. However, this usually only happens when a criminal case has been initiated and the investigative measures have been disclosed. If there is no criminal procedure, the person is not informed, which is why the existing legal protection options appear partially inadequate.³²⁵

Information from passenger transport companies and operators of public telecommunication service providers

Security authorities are authorised, under certain conditions, to obtain information from passenger transport companies (such as contact details, payment information, travel status, number and name of passengers, etc.), as well as information from public telecommunication service providers.³²⁶ While traffic data, access data and location data can be collected, the content of communication cannot be obtained by applying the PStSG; this requires judicial

³¹⁵ § 11 PStSG.

³¹⁶ § 54 para 3a SPG. Ministry of Interior (BMI), decree, BMI-KP1000/0008/BK/5.3/2001. Explanatory Notes to the ministerial draft, ErlätRV 763 BlgNR 25.GP 14.

³¹⁷ § 11 para 1 PStSG.

³¹⁸ Supreme Court decision, VfSlg 19.796/2013. Heißl, Polizeiliches Staatsschutzgesetz, p. 722.

³¹⁹ § 54 para 3 Satz 1 SPG; § 11 para 1 Z 2 PStSG.

³²⁰ § 14 para 3 PStSG.

³²¹ Heißl, Polizeiliches Staatsschutzgesetz, p.722.

³²² See § 5 StPO. Heißl: Polizeiliches Staatsschutzgesetz, p. 722.

³²³ Ibidem.

³²⁴ Supreme Court decision, VfSlg 19.796/2013.

³²⁵ Heißl, Polizeiliches Staatsschutzgesetz, p.723.

³²⁶ Heißl, Polizeiliches Staatsschutzgesetz, p. 724.

authorisation. But even the collection of e.g., the location data represents a significant interference with the private life of the person concerned. Although the investigation measures are subject to restrictions, legal protection seems inadequate here as well.³²⁷

Legal protection

About legal protection, the PStSG, like the SPG, relies on the legal protection officer and does not provide for any judicial review before carrying out the investigative measures. In addition to the legal protection officer, there is the legal protection senate consisting of the legal protection officer and two deputies. The legal protection officer is responsible for the special legal protection in connection with the tasks of the security authorities according to the PStSG and SPG. Not included in this control are cases in which information about a suspected person is transmitted by national or foreign institutions (§ 6 para 1 Z 3 PStSG). The person concerned does not even need to be informed that such information is available about him/her. In the other cases, the person concerned has to be informed by the legal protection officer if there has been an infringement of his/her rights in retrospect, or, as stated above, by the competent security authorities about the reason, nature, duration and legal basis of the measures taken. The information of the person concerned can be omitted if there are important interests (for example, prevention of crime, protection of the constitutional order).³²⁸

1.2. Measures under the Security Police Act

The Security Police Act provides for the possibility to request a person to appear before the authorities as well as a reporting obligation, if "on the basis of certain facts, in particular because of previous administrative violations according to (...) the Badges Act or Symbols Act it can be assumed that [s/he] will commit an offence jeopardizing the constitutional order (...) ". Thus, the person can be required to appear in person at the police station at a particular time in order to be informed about lawful behavior. "In particular, the instruction shall address the potential risks of radicalisation as well as its legal consequences and indicate deradicalisation programs."³²⁹ In addition, the person can be required to visit a police station once or at regular intervals within a specified period of not more than six months.³³⁰

1.3. Asylum and residence

Persons who legally reside in Austria, as asylum seekers, recognised refugees or third-country nationals, can under certain circumstances, be subject to foreign-law measures if they make themselves liable under the criminal code.³³¹

Asylum seekers and refugees

On the one hand, asylum may be excluded if it is suspected that the person has committed a crime against humanity following international standards or has been convicted of serious

³²⁷ Ibidem, pp. 724 et seq.

³²⁸ § 16 paras 1 and 2 PStSG.

³²⁹ § 49d SPG.

³³⁰ § 49e SPG.

³³¹ §7 AsylG, §§52, 53 FPG.

crimes and constitutes a threat to public order. On the other hand, the Federal Office for Foreigners and Asylum (BFA) can also deprive the asylum status on the basis of these exclusion or termination grounds. The BFA can initiate a corresponding procedure even if there has not yet been a final conviction. For example, committing specific offences (e.g. if they fall within the competency of the provincial court), the imposition of pre-trial detention, or bringing charges for specific offences is sufficient to initiate a procedure on the deprivation of the asylum status.³³² In any case, the relationship between this provision and the principle of the presumption of innocence seems problematic.

In the case of the deprivation of the asylum status, it needs to be decided in an additional step whether the stay can be terminated. This may not be the case if, for factual reasons or due to the non-refoulement principle (risk of elemental human rights violations, such as the real risk of death, torture, etc.), no termination of the residential status can be imposed on the person.³³³ In such cases, the deprivation of the asylum status means extensive exclusion from the labour market and social benefits. This means that the person concerned will probably be tolerated for a long time in Austria, but without any long-term perspectives. The attempts to reintegrate into the Austrian society are thus particularly challenging, or rather impossible.³³⁴

Third-country nationals

Against third-country nationals who are legal residents in Austria, a return decision can be filed if the conditions for residence no longer exist. A ground for refusal is when a foreigner has a "*close relationship with an extremist or terrorist group and, in view of its existing structures or developments in its surroundings, extremist or terrorist activities cannot be ruled out.*"³³⁵ The provision is quite vague, which may lead to problems with legal certainty.³³⁶ In addition, an entry ban can be imposed for a maximum of ten years, if a final conviction by a court for unconditional imprisonment of more than three months or (partly) conditional sentence for more than 6 months exists.³³⁷

It is also possible to issue an indefinite entry ban if there is a final conviction from a court to imprisonment of more than five years. Additionally where certain facts justify the assumption that the third-country national has been a member of a criminal organisation or a terrorist group, has committed terrorist offences, financed terrorism, or has or was trained for terrorist purposes an indefinite ban can be filed.³³⁸ In these cases, the assumption must be justified only, a conviction by a court is not required. An indefinite entry ban can also be imposed if a crime against peace, a war crime, a crime against humanity or terrorist act is publicly endorsed or promoted.³³⁹

³³² §§ 7 para.2 iVm 27 para 3 Z 1 - 4 AsylG.

³³³ Peyrl, Johannes/Neugschwendtner, Thomas/Schmaus, Christian: Fremdenrecht, Vienna 2015, pp. 240 et seq.

³³⁴ Hofinger/Schmidinger: Deradikalisierung im Gefängnis, 2017, p. 94; / UNODC, Handbook, 2017, p. 82.

³³⁵ § 11 para 2 Z 1 iVm para 4 Z. 2 Niederlassungs- und Aufenthaltsgesetz (NAG). § 52

Fremdenpolizeigesetz (FPG)

³³⁶ See Peyrl/Neugschwendtner/Schmaus: Fremdenrecht, 2015, p. 61.

³³⁷ § 53 para 3 Z. 1 and 2 FPG.

³³⁸ § 53 para 3 Z. 5, 6, 8 and 9 FPG.

³³⁹ See Peyrl/Neugschwendtner/Schmaus: Fremdenrecht, 2015, p. 364 et seq.

Summary and Conclusion

The research objective of this report is to give insights in the situation of children and young adults in the juvenile justice system related to violent extremist movements in Austria. In this context the juvenile justice system is broadly defined by including the criminal offence to criminal conviction and from detention to (re-)integration into society. On account of the terrorist attacks across Europe over the past years terms such as extremism and terrorism have been mainly associated with “Islamist extremism”. Therefore it is essential to stress that the presented report deals with different dimensions of the extremist phenomena. Besides religiously motivated extremism, such as Salafism, i.e. Jihadism, aspects of right and left wing extremism are also addressed.

Data and Statistics

Right-wing extremism particularly has always played a considerable role in Austria and manifests itself in many forms, such as the current “New Right” with a modern and pop-cultural image used to recruit young people offering a platform to protest. Criminal reports attributed to the right-wing extremist movement (2016: 89 children)³⁴⁰ have increased over the past years, although no one was sentenced to imprisonment. At the same time, the number of children and young adults convicted under the National Socialist Prohibition Law has slightly decreased (2016: 13)³⁴¹. Since the refugee and migrant movements (2014/2015), however, there has been noticeable rise in incitement of hatred and anti-asylum propaganda from right-wing extremist groupings on the internet.

Within the sphere of left-wing extremists, those associated with autonomist-anarchism are the most active. Their protest is directed in particular against fascism and agitations of the “New Right”. Furthermore they are critical of economic and social conditions and advocate for the cause of refugees and asylum seekers. Most left-wing extremist groups are loosely organised and their appearances are often only reactionary, i.e. (counter-)protests on occasion of particular events (Federal Presidential Election 2016, annual Viennese Akademikerball³⁴²). In 2016 six children were reported by police on the grounds of left-wing extremist crimes - mostly for damage of property. This number of 6 children is significantly lower compared to the right-wing extremist counterparts (89 children).³⁴³

In regard to the development of Islamist extremism in Austria, such tendencies were presumed to have already surfaced in the 90s during the wars in Bosnia & Herzegovina and Chechnia and the accompanying refugee and migration movements to Austria. A new form of “youth groups” composed of young men of Bosnian and Chechen origin had already developed before

³⁴⁰ Statistics of Verfassungsschutzberichte 2014-2016.

³⁴¹ Evaluation of procedural automation of the judiciary (BMJ), response per e-mail on 20.9.2017

³⁴² An event co-organized by the Freedom Party of Austria. (FPÖ)

³⁴³ Statistics of Verfassungsschutzberichte 2014-16.

the start of the Syrian Civil War. The first conviction emerged in mid-2000, when Mohammed Mahmoud was convicted for the formation and backing of a terrorist organisation and sentenced to four years in prison. Between 2015 and 2016 and after the proclamation of the “Caliphate” of the “Islamic State” the highest conviction rates of children and young adults (2015: 21 and 2016: 27) for terrorist activities was documented. In July 2017 of those convicted a total of 12 male children and young adults were in detention.³⁴⁴

Biographies

Upon closer look at the grounds for convictions a very heterogeneous picture of different motives and causes can be discerned. The cases of 18 children and young adults³⁴⁵ analysed in the framework of this report show how their lives take different biographical courses: “*marginalized youths*”, “*those leaving Austria as fighters and civilians*”, “*Syrian refugees*” “*those stopped from leaving*”, “*those distributing IS propaganda*”. Nearly all children and young adults had a noticeably low level of education, i.e. only having completed compulsory education or only having completed an apprenticeship or even dropped out before completion. Moreover, many youths share a common experience of being discriminated and alienated in the course of socialisation, many of whom endured a childhood of conflicts and difficulties. While religion and Islamist ideology played a role for some, others remained uninfluenced. More often than not it was “*friends*” in radical social environments or imams in mosques, who offered them support and perspectives, which in turn gave them, sometimes for the first time, a feeling of being recognised and taken seriously. At this point, it is important to stress that all biographies run very different courses and only to a certain extent should parallels be drawn and common features generalized.

Criminal Offences

Austrian criminal law does not provide separate offences for children and young adults, thus they are also non-existent in the context of extremism. The same offences are applicable for all, irrespective the age. Differences emerge in the criminal procedure and the sentencing between children/young adults and adults.

The criminal offences in Austrian law commonly have a responsive character: the National Socialist Prohibition Law after the Second World War; the amendments to the Austrian Criminal Code after the 2001 terror attacks in the USA and following attacks in European cities. Both criminalize specific extremist actions, which range from participation in extremist organisation to propaganda and offenses such as murder or coercion with extremist motives. Most of the convictions in connection to religiously motivated extremism are under the offence of “*participation in a terrorist organisation*” (§278b StGB). This is not surprising as the norm can and has been interpreted widely covering a variety of actions.

³⁴⁴ Evaluation of procedural automation, (BMJ), 20.9.2017.

³⁴⁵ Ten court and criminal records of different Austrian counties with reference to ten biographic interviews retrieved from the report by Aslan, Islamistische Radikalisierung, 2017.

Deprivation of Liberty

Deprivation of liberty should always be a mean of last resort and more lenient alternatives should be applied if adequate, be it for pre-trial detention or custodial sentence. Also in the context of extremism, a case-by-case assessment has to be made if pre-trial detention is necessary as there is no obligation based on the nature of the offence to order pre-trial detention. Although the necessity is rebuttable, in numerous cases it is ordered.

Depending on the individual case, there are many forms of penalties in the context of extremism which range from probation to severely long prison sentences. Even if imprisonment is unavoidable in many cases, there needs to be special emphasis on resocialization and preparation for post-detention time. A sentence in itself – at least in the majority of the cases does not lead to a change in behaviour. Concrete measures are of greater importance along with the support that should be provided accordingly, whether it is through assistance during probation or in penitentiary facilities. It is essential to offer an alternative narrative to and perspective outside of radical ideas.

Relevant actors

Over the past years three organisations have been established in the field of “Deradicalisation and Prevention of Extremism”, which work closely with public institutions, from whom they partially receive financial support. Besides its work in prison centres the association DERAD carries out preventive workshops for youths and trainings for professionals such as teachers, police officers and public employees of the judiciary. Furthermore, the association Neustart, which focuses on probation service, has trained 40 specialists in the field of “Deradicalisation and Prevention”, who intensively work with children and young adults convicted of terrorist activities. Starting in 2014, the “Counselling Centre of Extremism” was established by the Ministry for Family and Youth specifically for families, teachers and youth social workers as a point of contact upon suspicion of possible radicalisation of youths. The service includes a helpline free of charge, personal consulting sessions as well as further training for different occupational groups.

Measures

In response to the significant increase in the number of children, young adults as well as adults in detention on grounds of terrorist activities since 2014 the Directorate General for Prison Services (at the BMJ) established a set of measures for the prevention of extremism and deradicalisation in the penal system. This includes initiatives in the area of security, prison care, education and training of prison staff. Children and young adults are intensively supervised and looked after by an expert team composed of division commander, social workers, social pedagogues, psychologists and other professionals. The expert team meets and discusses every month (where juveniles or young adults are concerned) or every quarter (where adults are concerned) to make adaptations to the penitentiary plan if needed. The association DERAD³⁴⁶, which specifically focuses on “deradicalisation” related to Islamist ideologies meets obligatory

³⁴⁶ Further information at: www.derad.at (5.10.2017)

with children and young people regarding matters that need clarification and if necessary also stage regular intervention sessions.

What should especially be noted is the Social Network Conference that is seen as an alternative to pre-trial detention and ordered as a mandatory conference before prison release (min. 6 months before release). The conferences are held with children and young adults and their families, social workers and members of the probation service to map commonly out future perspectives.

A very promising initiative for deradicalisation and prevention in youth detention centres is the “Caucasus group” in Gerasdorf. A former Chechen journalist and a politician in exile are working together with Chechen youths to prevent them from being radicalised in prison and to develop a future perspective after detention.

Furthermore, numerous initiatives for deradicalisation have been developed over the past years, some of which will be mentioned in the following. A National Network against Extremism has recently presented an “Exit Program”, which is carried out by the three above mentioned organisations (DERAD, Neustart and Counselling Centre of Extremism). It is aimed at individuals who have already been in conflict with law according to terrorist offences. They will get an intensive supervision on an individualised case-by-case approach. In a year-long pilot phase around 10 people in Vienna convicted or detained on the grounds of terrorist activities, will receive support on various levels. Provided the program has been positively evaluated, an expansion of the project and its availability throughout Austria is planned for all forms of violence prone extremism, including right and left wing extremism.

Lastly “Schools for Mothers against Extremism” will be mentioned, as it offers an innovative approach, which considers mothers as an important resource for the cause of deradicalisation and prevention. Mothers are taught on how to notice the first signs of radicalization and how to respond, e.g. how to contact relevant institution for support.

Conclusion

The topic of “Islamist radicalisation of children and young adults” and the focus on male Muslim youth that goes along with it has experienced a peak in the Austrian media. Thus youths from other backgrounds and those who have been radicalised by right and left-wing movements have to a great extent been neglected by political as well as scholarly discourse. Nevertheless the current set of data indicates that right-wing extremist criminal offences are particularly on the rise and constantly high. In 2016, altogether 963 police files were reported on the ground of right-wing offences in comparison to left-wing offences amounting to only 83. The proportion of children and young adults in the field of right and left-wing offences is between 7% and 9%. In 2016, 100 persons have been convicted under the “VerbotsG” with a share of 15% amongst children and young adults. At the same time, 27 children and young adults out of a total number

of 48 persons have been convicted due to terrorist activities³⁴⁷. This is a ratio of 56%, which is significantly higher compared with 15% convicted under the Verbotsg (National Socialist Prohibition Law). These figures could imply that youth and young adults are disproportionately at risk for Islamist radicalisation and related crimes in comparison to other forms of extremist offences.

In order to find effective approaches to encounter radicalisation of children and young adults in view of Salafism and Jihadism, it is important to cleanse public discourse of ideological concepts and instead to discuss matters objectively. Although certain dynamics in the process of extremist radicalisation (right-wing, left wing or Islamist oriented) are in principle comparable, the personal history behind them never is. Experiences of alienation and discrimination, the lack of stable social connections, dramatic and painful childhood experiences and the feeling of “not belonging” are essential elements that generally lead children and young people to join different forms of extremist groups.

In regard to deradicalisation as well as disengagement of children and young people, including preventive approaches during detention, it is critical to note that these are very complex processes which cannot be analysed without taking properly into account also context-related factors, such as personality structure, socialisation, socio-economic conditions etc.

The measures taken in Austria for deradicalisation and prevention for children and young adults in detention include various approaches. Prison care and support are aimed at normalisation, meaning children and young people convicted of terrorist activities generally receive no specific separate treatment, i.e. in form of solitary confinement or longer periods of “prison time”. For “particularly dangerous” youths special security precautions may be imposed by the Office of the Protection for the Constitution. It has to be taken into consideration that the balance between “security” and “normalization” need to be respected, especially in the light of human rights standard, such as the UN Rules for the Protection of Juveniles Deprived of their Liberty (Havana Rules). These include the chance to meet with fellow detainees, to take part in sport and leisure activities (to be granted fresh air) or to be in contact with the outside world.³⁴⁸ Positive examples in that context are the already above-mentioned “Caucasus group”. From the example of the “Caucasus group” it can be shown that the so-called “role-models” from one’s own community are most suitable to work with children and young people, as they possess the language and cultural proximity to these individuals.

Further, in their framework of the Social Network Conference, the opinions and needs of children and young adults are taken seriously and together with care workers and external experts, future plans are crafted and perspectives after their time in prison developed. This participatory approach corresponds to the right “to be heard”³⁴⁹ enshrined in the UN Convention

³⁴⁷ Referring to §§ 278b, c, e, f and 282a StGB. In principle the Criminal Code refers in §§ 278b et seq. for all forms of terrorism apart right-wing extremism that is regulated in the Verbotsg. However, the cases filed in the context of left-wing extremism were not under these regulations but rather for property damage or bodily harm.

³⁴⁸ Right to Sport and Leisure Time Activities (Rule 32), Right to Contact with the Wider Community (Rule 59-62), United Nations Rules for the Protection of Juveniles Deprived of their Liberty (Havana Rules), Resolution of UN General Assembly from 14th December 1990.

³⁴⁹ Art. 12.: Convention of the Rights of the Child, UN General Assembly, Resolution 44/25, 20th December 1989. Art. 12.

on the Rights of the Child and offers the individual involved a substantial chance to actively work on his/her situation.

With all interventions with children and young people in detention and post-detention it is fundamental to build up a trustful relationship, which is characterised by openness and transparency. A positive change in attitude and behaviour can especially be achieved with children and young adults, who have not yet been strongly radicalised and are still looking for alternative life concepts.

In cases involving juvenile refugees, asylum seekers or migrants with residential permits, their opportunity to (re-)integrate into society tends to be especially difficult, as their residential status under certain circumstances can be taken from them if involved in violent extremism. Without a residential status, they may have to return to their country of origin after their release. In cases where a return to the country of origin would involve serious threat to life and bodily integrity, and where repatriation is consequentially prohibited under international law, their continuous presence in Austria is none but formally 'condoned'; a status under which they lose all entitlements to social benefits they may have held prior to their conviction. In these cases, reintegration and rehabilitation prove to be difficult if not impossible. At the same time, limited perspectives hinder the disengagement and deradicalisation process.

Human Rights Perspectives

To conclude it must be asserted that deradicalisation and prevention of extremism is a challenge for society as a whole. This challenge can only be met through synergy of various actors and cooperation on European and international level. In a democratic and pluralistic society individual rights to freedom and equality are of central importance. This stresses the universal and normative aspiration to ensure coexistence based on respect and human dignity and the peaceful settlement of conflicts of interest. Dealing with diversity and migration challenges societies and the tensions between the rights of individuals and those of groups are inevitable, especially in consideration of different cultural and religious concepts of identification.

Specifically when it comes to safeguarding the rights of children and youths a comprehensive approach which takes into consideration different levels and spheres of life (family, school, education, leisure) is questioned. Here it is important to guarantee social rights, including, e.g. measures, which prevent families from drifting into poverty. Furthermore, the schooling and education system as well as the labour market are challenged with questions on access and equality of opportunity, which should not only be discussed but also met with solutions. School should be a place of self-assured and respectful contact between students and teachers, where diversity and inclusion, conflict management and prevention of violence take place.

The need for action is indisputable. Along with quick and short-term intervention by the police and criminal justice system to counter real threats of terrorism and extremism there is a need to develop parallel long-term measures to avoid rootlessness and lack of perspective on the basis of human rights. To this end clear analysis and political setting of priorities is of utmost importance. This should be led with a comprehensive understanding of human rights and in consideration of the best interest of children and young adults.

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Queries and Interviews Conducted

Interview with Maynat Kurbanova on 16 August 2017.

Interview with a representative of the penitentiary sector within the Ministry of Justice on 8 May 2017.

Interview with the executive director of a penitentiary institution on 9 August 2017.

Interview with representative of Neustart on 5 July 2017.

Query response from the Ministry of Justice via email, 20 September 2017 and 10 October 2017.

Query response from Neustart via email, 11 July 2017.

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