aida
Asylum Information Database

# Country Report: Austria

2022 Update

asylkoordination Österreich

ecre European Council on Refugees and Exiles

# Acknowledgements & Methodology

This report was written by Lukas Gahleitner-Gertz, asylkoordination österreich, and was edited by ECRE.

This report draws on information provided by the Ministry of Interior and the Ministry of Justice in responses to information requests, publicly available reports and responses to parliamentary questions, jurisprudence of Austrian courts, news items, and observations from the practice of asylkoordination and other civil society organisations, including Diakonie, Caritas and Red Cross among others.

The information in this report is up-to-date as of 31 December 2022, unless otherwise stated.

# The Asylum Information Database (AIDA)

The Asylum Information Database (AIDA) is coordinated by the European Council on Refugees and Exiles (ECRE). It aims to provide up-to date information which is accessible to researchers, advocates, legal practitioners and the general public through the dedicated website www.asylumineurope.org It covers 23 countries, including 19 EU Member States (AT, BE, BG, CY, DE, ES, FR, GR, HR, HU, IE, IT, MT, NL, PL, PT, RO, SE, and SI) and 4 non-EU countries (Serbia, Switzerland, Türkiye, and the United Kingdom). The database also seeks to promote the implementation and transposition of EU asylum legislation reflecting the highest possible standards of protection in line with international refugee and human rights law and based on best practice.


This report is part of the Asylum Information Database (AIDA), funded by the European Programme for Integration and Migration (EPIM), a collaborative initiative by the Network of European Foundations and the European Union's Asylum, Migration and Integration Fund (AMIF). The contents of this report are the sole responsibility of ECRE and can in no way be taken to reflect the views of EPIM or the European Commission.


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# Glossary & List of Abbreviations

| | |
|---|---|
| **Basic Care** | Material reception conditions offered to asylum seekers |
| **Dismissal** | Negative decision on the merits of the application |
| **Rejection** | Negative decision on the admissibility of the application |
| | |
| **AGFAD** | Association for Forensic Age Diagnostics |
| **AHZ** | Pre-removal detention centre \| Anhaltezentrum |
| **AMIF** | Asylum, Migration and Integration Fund |
| **AMS** | Labour Market Service |
| **AsylG** | Asylum Act \| Asylgesetz |
| **BBU GmbH** | Federal Agency for Care and Support Services Limited \| Bundesagentur für Betreuungs- und Unterstützungsleistungen, BBU GmbH |
| **BBU-G** | Federal Law on the Establishment of the Federal Agency for Care and Support Services Limited Liability Company |
| **BFA** | Federal Office for Immigration and Asylum \| Bundesamt für Fremdenwesen und Asyl |
| **BFA-VG** | BFA Procedures Act |
| **BVwG** | Federal Administrative Court \| Bundesverwaltungsgericht |
| **COI** | Country of origin information |
| **EAST** | Initial reception centre \| Erstaufnahmestelle |
| **ERF** | European Refugee Fund |
| **FPG** | Aliens Police Act \| Fremdenpolizeigesetz |
| **FrÄG** | Aliens Law Amendment Act \| Fremdenrechtsänderungsgesetz |
| **GVG-B** | Basic Care Act \| Grundversorgungsgesetz-Bund |
| **GVS-BIS** | Basic Care Information System \| Grundversorgung-Betreuungsinformationssystem |
| **HAP** | Humanitarian Admission Programme |
| **GVV** | Basic Care Agreement \| Grundversorgungsvereinbarung |
| **HStV** | Regulation on countries of origin \| Herkunftsstaaten-Verordnung |
| **IBF** | Interventionsstelle für Betroffene von Frauenhandel |
| **ICMPD** | International Centre for Migration Policy Development |
| **KJH** | Child and Youth Service \| Kinder- und Jugendhilfe |
| **LVwG** | State Administrative Court \| Landesverwaltungsgericht |
| **MSF** | Doctors Without Borders |
| **ÖIF** | Austrian Integration Fund \| Österreichisches Integrationsfonds |
| **ÖVP** | Austrian People's Party \| Österreichische Volkspartei |
| **PAZ** | Police detention centre \| \| Polizeianhaltezentrum |

| | |
|---|---|
| **TCN** | Third country national |
| **TEU** | Treaty on European Union |
| **UVS** | Independent Administrative Board |
| **VfGH** | Constitutional Court \| Verfassungsgerichtshof |
| **VQ** | Distribution centre \| Verteilungsquartier |

# Statistics

**Overview of statistical practice**

Asylum statistics are published on a monthly basis by the Ministry of Interior, providing information on asylum applicants and main nationalities. As of 2016, these monthly reports also provide decisions at first and second instance.[1] The Federal Agency for Immigration and Asylum (BFA) also publishes short annual statistical overviews (*Jahresbilanzen*).[2]

**Applications and granting of protection status at first and second instance: 2022**

| | Applicants in 2022 | Pending at end of 2022 | Refugee status | Subsidiary protection | In merit Rejection on asylum | Refugee rate | Sub. Prot. rate | Rejection rate |
|---|---|---|---|---|---|---|---|---|
| **Total** | 112,272 | 53,107 | 13,779 | 5,675 | 21,612 | 33.6% | 13.8% | 52.6% |

Breakdown by countries of origin of the total numbers

| | | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| Afghanistan | 25,038 | 7,419 | 1,882 | 1,608 | 71 | 52.9% | 45.2% | 1.9% |
| India | 20,047 | 7,646 | 1 | 1 | 4,746 | 0.02% | 0.02% | 99.9% |
| Syria | 19,747 | 17,244 | 9,229 | 2,677 | 68 | 77.1% | 22.3% | 0.56% |
| Tunisia | 13,126 | 2,478 | 2 | 3 | 6,371 | 0.03% | 0.05% | 99.9% |
| Morocco | 8,699 | 3,966 | 13 | 1 | 3,627 | 0.35% | 0.03% | 99.6% |
| Pakistan | 7,984 | 2,023 | 57 | 2 | 3,961 | 1.4% | 0.05% | 98.5% |
| Türkiye | 5,291 | 2,864 | 105 | 4 | 254 | 28.9% | 1.1% | 70% |
| Somalia | 1,836 | 2,254 | 650 | 512 | 196 | 47.9% | 37.7% | 14.4% |
| Egypt | 1,579 | 379 | 15 | 1 | 484 | 3% | 0.2% | 96.8% |
| Bangladesh | 1,121 | 453 | 27 | 1 | 385 | 6.5% | 0.2% | 93.2% |

Source: Ministry of Interior.
* Rates are based on in merits decisions.

1 Ministry of Interior, *Asylum Statistics*, available in German at: http://bit.ly/2xmiKOT.
2 BFA, *Statistics*, available in German at: http://bit.ly/1XKnnsy. These have been published since 2014.

Rejection only refers to negative decisions concerning asylum. This does not lead to the conclusion that in all rejected cases a return decision was issued or that no other status was issued, as illustrated below.

| | Rejection on asylum | All rejections on asylum (incl. Dublin) | Return decisions |
|---|---|---|---|
| **Total** | 21,612 | 31,095 | 24,775 |
| Afghanistan | 71 | 4,815 | 70 |
| India | 4,746 | 4,746 | 4,415 |
| Syria | 68 | 1,296 | 35 |
| Tunisia | 6,371 | 6,151 | 6,410 |
| Morocco | 3,627 | 3,887 | 3,385 |
| Pakistan | 3,961 | 4,176 | 4,005 |
| Türkiye | 254 | 243 | 415 |
| Somalia | 196 | 319 | 45 |
| Egypt | 484 | 656 | 680 |
| Bangladesh | 385 | 501 | 455 |

Source: Ministry of Interior; for return decisions, Eurostat, 'Third country nationals ordered to leave - annual data (rounded)', updated 25 April 2023.
* Return decisions concern all third country nationals, not only rejected asylum seekers, and may concern rejected asylum seekers of previous years.

**Gender/age breakdown of the total number of applicants: 2022**

| | Number | Percentage |
|---|---|---|
| **Total number of applicants** | 112,272 | 100% |
| Men (incl. children) | 102,132 | 91.05% |
| Women (incl. children) | 10,140 | 8.95% |
| Children | 23,199 | 20.72% |
| Unaccompanied children | 13,276 | 12.09% |

Source: Ministry of Interior, Asylwesen 2022, Annual statistics, available at: https://bit.ly/3Lmfuep.

**Comparison between first instance and appeal decision rates: 2022**

| | First instance | | Appeal | |
|---|---|---|---|---|
| | **Number** | **Percentage** | **Number** | **Percentage** |
| **Total number of decisions** | 89,447 | 100% | - | - |
| Positive decisions | 16,480 | 18.43% | - | - |
| • *Refugee status* | *11,466* | *12.82%* | - | - |
| • *Subsidiary protection* | *4,829* | *5.4%* | - | - |
| - *Article 8 ECHR* | *185* | *0.2%* | - | - |
| Negative decisions | 30,261 | 33.84% | - | - |
| - *Formal reasons* | *8,649* | *9.67%* | - | - |
| - *On merits* | *21,612* | *24.17%* | - | - |
| Other (eg discontinued cases) | 42,696 | 47.73% | - | - |

Source: Ministry of Interior, Detailed Statistics of BFA 2022, available at: https://bit.ly/3KFUlvw/.

Data on appeals was not available at time of writing.

* Rejection only refers to negative decisions concerning asylum. This does not lead to the conclusion that in all rejected cases a return decision was issued or that no other status was issued.
* Negative decisions based on 'formal reasons' includes decisions in Dublin cases and cases in which there is no examination on merits because of protection granted by another EU Member State or because of adjudicated case (res judicata).

# Overview of the legal framework

**Main legislative acts relevant to asylum procedures, reception conditions, detention and content of protection**

| Title (EN) | Original Title (DE) | Abbreviation | Web Link |
|---|---|---|---|
| Federal Act concerning compulsory education and training for Youth up to 18 years | Bundesgesetz, mit dem die Verpflichtung zu Bildung oder Ausbildung für Jugendliche geregelt wird (Ausbildungspflichtgesetz – ApflG)<br>StF: BGBl. I Nr. 62/2016 | Compulsory Education and Training Act (ApflG) | https://bit.ly/2PDK47t (DE) |
| Federal Act concerning the Granting of Asylum | Bundesgesetz über die Gewährung von Asyl<br>StF: BGBl. I Nr. 100/2005 | Asylum Act (AsylG) | http://bit.ly/1jULWW6 (DE) |
| Federal Act on the Exercise of Aliens' Police, the issuing of Documents for Aliens and the Granting of Entry Permits | Bundesgesetz über die Ausübung der Fremdenpolizei, die Ausstellung von Dokumenten für Fremde und die Erteilung von Einreisetitel<br>StF: BGBl. I Nr. 100/2005 | Aliens Police Act (FPG) | http://bit.ly/1QkRGqx (DE) |
| General Administrative Procedures Act | Allgemeines Verwaltungsverfahrensgesetz 1991<br>StF: BGBl. Nr. 51/1991 | AVG | http://bit.ly/1GQJ9Gp (DE) |
| Federal Law on the Establishment of the Federal Agency for Care and Support Services Limited Liability Company | Bundesgesetz über die Errichtung der Bundesagentur für Betreuungs- und Unterstützungsleistungen Gesellschaft mit beschränkter Haftung<br>StF: BGBl. I Nr. 53/2019 | BBU-G | https://bit.ly/2RG8gY5 (DE) |
| Federal Act on the general rules for procedures at the federal office for immigration and asylum for the granting of international protection, the issuing of residence permits for extenuating circumstances reasons, deportation, tolerated stay and issuing of stay terminating measures, furthermore the issuing of documents for aliens. | Bundesgesetz, mit dem die allgemeinen Bestimmungen über das Verfahren vor dem Bundesamt für Fremdenwesen und Asyl zur Gewährung von internationalem Schutz, Erteilung von Aufenthaltstiteln aus berücksichtigungswürdigen Gründen, Abschiebung, Duldung und zur Erlassung von aufenthaltsbeendenden Maßnahmen sowie zur Ausstellung von österreichischen Dokumenten für Fremde geregelt werden (BFA-Verfahrensgesetz – BFA-VG)<br>StF: BGBl. I Nr. 87/2012 | BFA Procedures Act (BFA-VG) | http://bit.ly/1Jdmw0F (DE) |
| Federal Act on the implementation and organisation of the federal immigration and asylum office | Bundesgesetz über die Einrichtung und Organisation des Bundesamtes für Fremdenwesen und Asyl (BFA-Einrichtungsgesetz – BFA-G) idF BGBl. I Nr. 68/2013<br>StF: BGBl. I Nr. 87/2012 | BFA-Einrichtungsgesetz (BFA-G) | http://bit.ly/1Fom1KY (DE) |

| | | | |
|---|---|---|---|
| Federal Administrative Court Act Amendment of administrative litigation | Bundesverwaltungsgerichtsgesetz – Verwaltungsgerichtsbarkeits-Novelle 2012 | BVwGG | http://bit.ly/1FWUFj1 (DE) |
| Federal Act on Procedures at Administrative Courts | Bundesgesetz über das Verfahren der Verwaltungsgerichte<br>StF: BGBl. I Nr. 33/2013 | Verwaltungsgerichtsverfahrensgesetz (VwGVG) | http://bit.ly/1REw4mM (DE) |
| Agreement of 15 July 2004 between federal state and states under Article 15a of the Federal Constitution concerning joint action for the temporary basic provision of aliens in need of help and protection in Austria | Vereinbarung zwischen dem Bund und den Ländern gemäß Art. 15a B-VG über gemeinsame Maßnahmen zur vorübergehenden Grundversorgung für hilfs- und schutzbedürftige Fremde (Asylwerber, Asylberechtigte, Vertriebene und andere aus rechtlichen oder faktischen Gründen nicht abschiebbare Menschen) in Österreich<br>StF: BGBl. I Nr. 80/2004 | Grundversorgungsvereinbarung | http://bit.ly/1PYPndi (DE) |
| Federal Act to regulate the basic care of asylum seekers in the admission procedure and certain other foreigners | Bundesgesetz, mit dem die Grundversorgung von Asylwerbern im Zulassungsverfahren und bestimmten anderen Fremden geregelt wird<br>StF: BGBl. I Nr. 405/1991 | Basic Care Act (GVG-B) | http://bit.ly/1JdmHcw (DE) |
| Agreement between the federal state and states under Article 15a of the Basic Care Act concerning the raise of selected maximum cost rates of Article 9 Basic Care Agreement<br><br>*Amended by:* Agreement between the federal state and states under Article 15a concerning the raise of selected maximum cost rates of Article 9 Basic Care Agreement | Vereinbarung zwischen dem Bund und den Ländern gemäß Artikel 15a B-VG über die Erhöhung ausgewählter Kostenhöchstsätze des Artikel 9 der Grundversorgungsvereinbarung<br>StF: BGBl I 46/2013<br><br>*Geändert durch:* Vereinbarung zwischen dem Bund und den Ländern gemäß Artikel 15a B-VG über eine Erhöhung ausgewählter Kostenhöchstsätze des Art. 9 der Grundversorgungsvereinbarung<br>StF: BGBl 48/2016 | | http://bit.ly/2jR2MXQ (DE)<br><br>http://bit.ly/2jwNiHN (DE) |
| Federal Constitutional Act concerning the Accommodation and Allocation of aliens in need of help and protection | Bundesverfassungsgesetz Unterbringung und Aufteilung von hilfs- und schutzbedürftigen Fremden, BGBl 120/2015 | | http://bit.ly/2jwFaqz (DE) |
| Federal Act concerning the Implementation of Identity Checks at the instance of Border Crossings | Bundesgesetz über die Durchführung von Personenkontrollen aus Anlass des Grenzübertritts<br>StF: BGBl 435/1996 | | http://bit.ly/2kszyO0 (DE) |
| Federal Act on Austrian Citizenship | Bundesgesetz über die österreichische Staatsbürgerschaft<br>StF: BGBl. Nr. 311/1985 | StbG | http://bit.ly/2j7KSTL (DE) |

| | | | |
|---|---|---|---|
| Labour Integration Act | Bundesgesetz zur Arbeitsmarktintegration von arbeitsfähigen Asylberechtigten und subsidiär Schutzberechtigten sowie AsylwerberInnen, bei denen die Zuerkennung des internationalen Schutzes wahrscheinlich ist, im Rahmen eines Integrationsjahres (Integrationsjahrgesetz), BGBl. I No 75/2017, 19. Juni 2017, | IJG | http://bit.ly/2EXvtPU (DE) |

**Main implementing decrees and administrative guidelines and regulations relevant to asylum procedures, reception conditions, detention and content of protection**

| Title (EN) | Original Title (DE) | Abbreviation | Web Link |
|---|---|---|---|
| Ordinance by the federal minister of internal affairs concerning the advisory board on the operation of Country of Origin Information | Verordnung der Bundesministerin für Inneres über den Beirat für die Führung der Staatendokumentation<br>StF: BGBl. II Nr. 413/2005 | Staatendokumentationsbeirat-Verordnung | http://bit.ly/1BBLaAf (DE) |
| Ordinance by the federal government, concerning the determination of countries as safe countries of origin | Verordnung der Bundesregierung, mit der Staaten als sichere Herkunftsstaaten festgelegt werden<br>StF: BGBl. II Nr. 177/2009 | Safe Countries of Origin Ordinance (HStV) | http://bit.ly/1K3OqeM (DE) |
| Ordinance of the federal minister of internal affairs, for the application of the Asylum Law 2005 | Verordnung der Bundesministerin für Inneres zur Durchführung des Asylgesetzes 2005 | Asylgesetz-Durchführungsverordnung 2005 (AsylG-DV 2005) | http://bit.ly/1K3OqM2 (DE) |
| Ordinance of the federal minister of internal affairs, concerning the prohibition of unauthorised entry and stay in federal care facilities | Verordnung der Bundesministerin für Inneres, mit der das unbefugte Betreten und der unbefugte Aufenthalt in den Betreuungseinrichtungen des Bundes verboten wird 2005<br>StF: BGBl. II Nr. 2/2005 | Betreuungseinrichtungen-Betretungsverordnung 2005 (BEBV) | http://bit.ly/1FomblG (DE) |
| Ordinance of the federal minister of internal affairs, concerning the arrest of persons by the security authorities and elements of the public security service | Verordnung der Bundesministerin für Inneres über die Anhaltung von Menschen durch die Sicherheitsbehörden und Organe des öffentlichen Sicherheitsdienstes<br>StF: BGBl. II Nr. 128/1999 | Anhalteordnung (AnhO) | http://bit.ly/1AEPtA9 (DE) |
| Remuneration for legal advice in appeal procedures at the asylum court | Entgelte für die Rechtsberatung in Beschwerdeverfahren vor dem Asylgerichtshof | | http://bit.ly/1I0hAMx (DE) |
| Ordinance of the minister of internal affairs on the determination of remuneration for legal advice | Verordnung der Bundesministerin für Inneres über die Festlegung von Entschädigungen für die Rechtsberatung | | http://bit.ly/1ENcXOh (DE) |

# Overview of the main changes since the previous report update

The last version of this report was previously updated in **April 2022.**

- **Key asylum statistics**: A record number of 112,000 asylum applications were lodged in 2022 (2015: 88,000). At the same time, a record number of discontinued cases of 42,000 have been registered due to the onward travel of applicants to other countries. Afghanistan remained the top country of origin of applicants with 25,000 applications. In 2022, 17,000 cases of Afghan nationals were discontinued as they had left the country. Applications from nationals from India, Tunisia and Morocco have surged as a consequence of visa-free entry to Serbia and onward travel through Hungary to Austrian border. The rate of first instance decisions amended or annulled by the Court at second instance increased to 55% of all decisions challenged. The second instance court reduced the backlog of pending procedures from 8,300 to 6,400.

*Asylum procedure*

- **Registration**: Due to the rise in arrivals at the Eastern border in Burgenland the registration process was altered by internal decree. All asylum applicants were registered and fingerprinted. Non-vulnerable applicants without a EURODAC hit in other countries are sent to other regional police directorates for the first interview.

- **Pushbacks**: The appeals brought in by the police against the landmark rulings by the Regional Administrative Court of Styria from 2021 confirming the illegality of push backs by the Austrian police were dismissed. There were no reports of pushbacks by Austrian authorities on Austrian territory in 2022.

- **Dublin procedures**: A record number of 24,000 incoming Dublin requests were registered in 2022. However, at the same time only 1,575 applicants were actually transferred to Austria while 1,100 applicants were effectively transferred to other countries.

*Reception conditions*

- **Reception crisis**: In October 2022, a reception crisis hit Austria. Due to the lack of cooperation between the provinces, who are responsible for the accommodation of asylum seekers after positive conclusion of the admissibility procedure, and the federal system, asylum seekers had to be accommodated in tents due to shortage of capacity in the federal reception centres.

- **Lack of cooperation between the Federal State and provinces**: A lack of cooperation between the federal basic care system (admission phase) and the provinces created the reception crisis: Only around 17,000 applicants were transferred to the provinces throughout the whole year, leaving the federal reception centres overcrowded.

- **Waiting zones**: As the registration process for non-vulnerable applicants was altered, so called waiting zones were established close to police stations where the first interviews were conducted. The reception conditions in these waiting zones were very poor and inadequate, possibly contributing to the high number of applicants travelling on to other countries after applying for asylum in Austria.

*Detention of asylum seekers*

- **Lack of data**: There is still no data available on how many asylum seekers were held in detention or how many rejected asylum seekers left the country upon receiving an order to leave the country.

- **Detention under Dublin**: 1,183 persons were detained on the detention ground of a Dublin transfer as the condition of Art 28 (1) (2) of the Dublin Regulation were viewed as fulfilled.

*Content of international protection*

- **Withdrawal and cessation procedures**: there was a decrease in initiated withdrawal and cessation procedures in 2022 due to the high number of asylum applications.

- **Naturalisation**: Compared to the years before, 2022 saw a sharp increase of successful naturalisation processes (over 2,000) of beneficiaries of protection. This was mainly due to the expiry of the waiting time of Syrian nationals having received asylum status in 2015 and 2016.

**Temporary protection**

The information given hereafter constitute a short summary of the 2022 Report on Temporary Protection, for further information, see Annex on Temporary Protection.

- **Key temporary protection statistics**: In 2022, 462,000 Ukrainians entered and 382,000 Ukrainians left the country. 91,232 persons were registered as displaced persons from Ukraine, including 89,770 Ukrainian nationals. 68,124 Ukrainians were registered in the Central residency registration system, of which around 50,000 receive basic care services in Austria. Of those registered for temporary protection, around 2/3 were female.

*Temporary protection procedure*

- **Scope of temporary protection**: Based on the TPD, a regulation based on § 62 AsylG (*Vertriebenenverordnung*) was passed defining the target group of the temporary protection: only Ukrainian nationals or beneficiaries of international protection from Ukraine that lived in Ukraine before 24 February, as well as their family members, are eligible for temporary protection. This is a more restrictive scope compared to the Council Implementing Decision at the EU level.
  In March 2023, the VfGH annulled a decision by the BVwG rejecting the registration as Vertriebene because the person was not physically present in Ukraine on 24 February 2022. There is no consistent jurisdiction on the matter yet.

- **Access to basic care**: The big number of arrivals in March and April 2022 led to a crisis of the dysfunctional basic care system. The responsibility regarding accommodation and care for people displaced from Ukraine was that of the provinces who were not prepared for such a crisis. This led to a huge backlog in applications for basic care in the first half of 2022.

*Content of temporary protection*

- **Rights of TP beneficiaries**: Ukrainians registered as „Vertriebene“ are eligible to receive basic care like asylum seekers, not social care like beneficiaries of asylum. They receive an identity card and are allowed to work with a working permit. The working permit has to be applied for by the employer. There is no reason to deny the working permit. This process has been seen as unnecessary and will be changed by April 2023, after which Ukrainian refugees will be allowed to work without working permit.

- **Prolongation and transitioning out of TPD**: In December 2022, the Ministry of Interior announced that the status of Vertriebene based on the TPD was to be prolonged until March 2024. Furthermore, the Ministry of Interior announced that he believes half of the Ukrainians present will stay in Austria

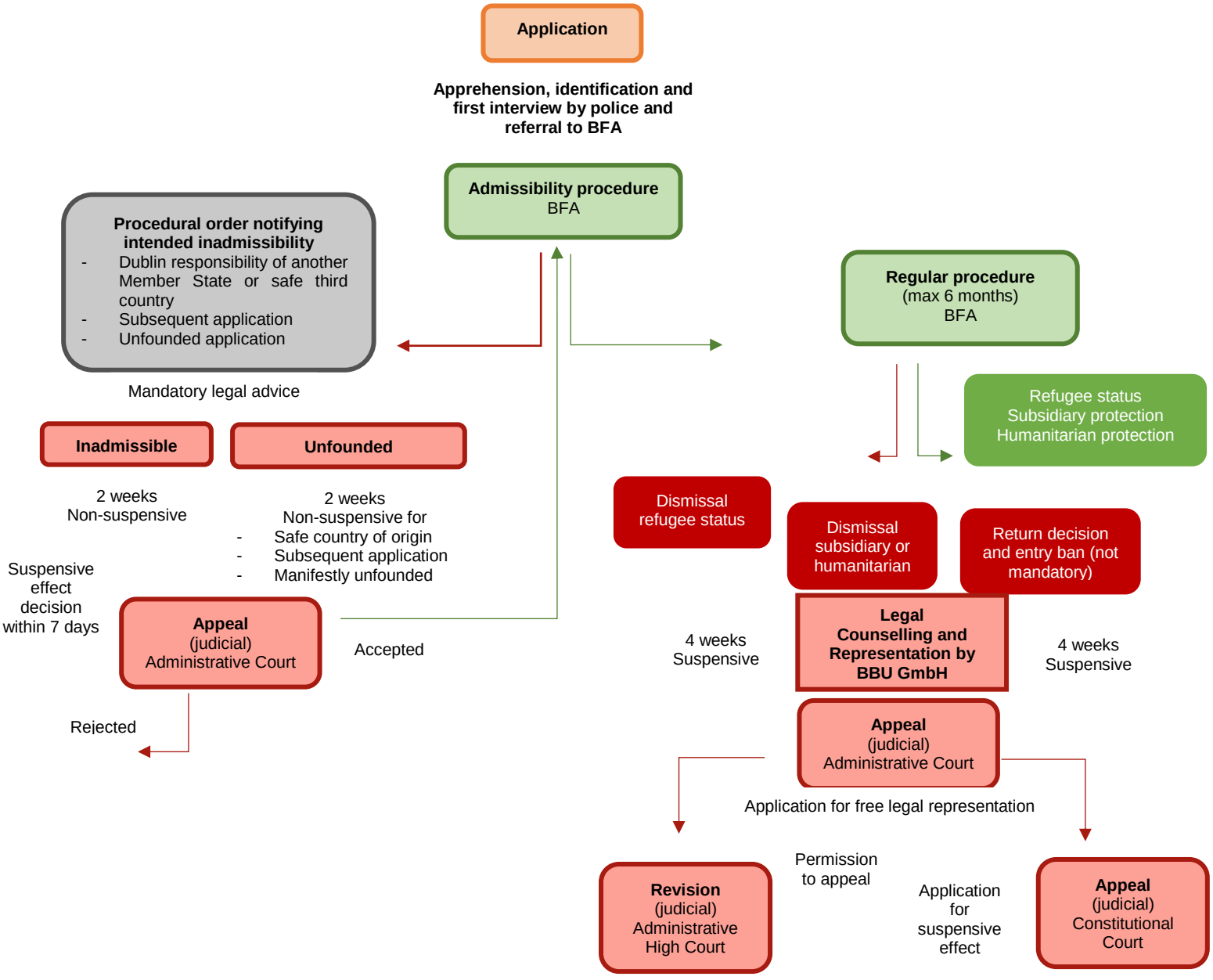
after the end of the war and that a plan for introducing a new title of stay for Ukrainians after TPD will be presented in the first half of 2023.

- **Accommodation of TP beneficiaries**: Before 2022, the Austrian basic care system was mainly based on organised housing. In July 2022, 45,000 out of 54,000 Ukrainians that were registered as Vertriebene were accommodated in private housing. The rate of Ukrainians housed by civil society decreased from 78% to 70% in January 2023 due to the high cost of living and small contribution of the Austrian basic care system for recipients housed privately.

# Asylum Procedure

## A. General

### 1. Flow chart



## 2. Types of procedures

**Indicators: Types of Procedures**

Which types of procedures exist in your country?

| | | |
|---|---|---|
| ❖ Regular procedure: | ☒ Yes | ☐ No |
| ▪ Prioritised examination:[3] | ☒ Yes | ☐ No |
| ▪ Fast-track processing:[4] | ☒ Yes | ☐ No |
| ❖ Dublin procedure: | ☒ Yes | ☐ No |
| ❖ Admissibility procedure: | ☒ Yes | ☐ No |
| ❖ Border procedure: | ☒ Yes | ☐ No |
| ❖ Accelerated procedure:[5] | ☒ Yes | ☐ No |
| ❖ Other: | Family reunification procedure | |

Are any of the procedures that are foreseen in the law, not being applied in practice? ☐ Yes ☒ No

## 3. List of authorities intervening in each stage of the procedure

| Stage of the procedure | Competent authority (EN) | Competent authority (DE) |
|---|---|---|
| Application at the border | Police | Polizei |
| Application on the territory | Police | Polizei |
| Dublin (responsibility assessment) | Federal Agency for Immigration and Asylum | Bundesamt für Fremdenwesen und Asyl (BFA) |
| Refugee status determination | Federal Agency for Immigration and Asylum | Bundesamt für Fremdenwesen und Asyl (BFA) |
| First appeal | Federal Administrative Court | Bundesverwaltungsgericht (BVwG) |
| Onward appeal | Administrative High Court<br>Constitutional Court | Verwaltungsgerichtshof (VwGH)<br>Verfassungsgerichtshof (VfGH) |
| Subsequent application | Federal Agency for Immigration and Asylum | Bundesamt für Fremdenwesen und Asyl (BFA) |

## 4. Number of staff and nature of the determining authority

| Name in English | Number of staff | Ministry responsible | Is there any political interference possible by the responsible Minister with the decision making in individual cases by the determining authority? |
|---|---|---|---|
| Federal Agency for Immigration and Asylum (BFA) | 1,031 | Ministry of Interior | ☒ Yes ☐ No |

Source: Ministry of Interior, Answer to parliamentary request 13740/AB, 20 April 2023, available in German at: https://bit.ly/3Nfata9.

The BFA is the determining authority responsible for examining applications for international protection and competent to take decisions at first instance as well as for residence permits on exceptional humanitarian grounds and certain Aliens' Police proceedings. It is an administrative body falling under the

[3] For applications likely to be well-founded or made by vulnerable applicants. See Article 31(7) recast Asylum Procedures Directive.
[4] Accelerating the processing of specific caseloads as part of the regular procedure.
[5] Labelled as "accelerated procedure" in national law. See Article 31(8) recast Asylum Procedures Directive.

responsibility of the Ministry of Interior. The BFA has its headquarters in Vienna and one regional directorate in each of the Provinces. Further organisational units of the BFA are the initial reception centres (EAST). Additional field offices of the regional directorates may be established in the Provinces.[6]

As of December 2022, the BFA had 1,031 staff members, compared to 1,039 at the end of 2021. However, all staff of the BFA are not caseworkers, i.e. the personnel of the determining authority responsible for examining and assessing an application for international protection. Out of the 1,031 officials of the BFA, 420 were caseworkers (compared to 440 in 2021). The majority of these caseworkers were permanent staff.[7]

The BFA has developed its own internal guidelines which are used by caseworkers on a daily basis to examine and decide on applications for international protection. However, these are not publicly available and civil society organisations do not have access to them. Nevertheless, country of origin information (COI) reports that are produced by the BFA are published on its website.[8]

As regards quality assurance and control, the BFA has established both quality assurance and quality control mechanisms, with quality assessors (*Qualitätssicherer*) specifically dedicated to that end. The quality assessors of the BFA are responsible for double-checking decisions, providing support and guidance to caseworkers and contributing to their development. They are present in all offices of the BFA and meet every three months in the form of a networking event. However, the results of quality assurance and control is not published nor accessible to external entities. The results are only shared with management staff and quality assessors, who subsequently discuss the results with caseworkers.

It should be noted that there is an ongoing cooperation with UNHCR to develop specific assessment methods for the evaluation of asylum procedures. UNHCR selects the focus point for the assessment of the decisions and provides samples of interviews and decisions to train quality assessors of the BFA accordingly. UNHCR can further be consulted in specific procedures, such as the airport procedure.

## 5. Short overview of the asylum procedure

Asylum and aliens law procedures are administrative procedures. For these procedures, the General Administrative Procedures Act (AVG) and the BFA Procedures Act (BFA-VG) apply. The Asylum Act (AsylG) and the Aliens Police Act (FPG) however, contain a number of special procedural rules which regulate asylum and aliens law proceedings.

The procedure before the Federal Administrative Court (*Bundesverwaltungsgericht*, BVwG) is regulated by the Asylum Act, the BFA Procedures Act (BFA-VG), by the General Administrative Procedures Act and the Federal Administrative Court Act (VwGVG) (see Overview of the Legal Framework).

The Asylum Act contains norms on the granting of international protection, expulsion procedures in connection with the rejection or dismissal of applications, provisions on the rejection of applications due to the existence of a “safe third country” or to the responsibility of another state according to the Dublin Regulation, norms on family reunification procedures and on airport procedures. In 2016, “special provisions to maintain public order during border checks” were added to the Asylum Act. It allows the Ministry of Interior to issue a decree that would enable the authorities to not examine asylum applications on the merits. This raised a big public debate about the potential introduction of a ‘quota’ of asylum claims per year which would trigger the issuance of a decree once it is reached. However, no consensus was

6 BFA, *Brochure*, available at: https://bit.ly/2kjwRUC.
7 Ministry of Interior, *Answer to parliamentary request 13740/AB XXVII. GP*, 21 April 2023, available in German at: https://bit.ly/3L3ExCW.
8 BFA, *Country of origin information*, available at: https://bit.ly/33XqYia.

found on the matter and the decree was thus never issued. Moreover, the law does not foresee a limit of asylum applications that would trigger such a decree.

**First instance procedure:** The Asylum Act provides for a single procedure for applications for international protection. If such an application is lodged, the authorities have to decide whether the application is to be rejected on account of safety in a third country or the responsibility of another state. In the first stage of the procedure – called **admissibility procedure** – the authorities have to decide on the admissibility of the application. If the application is declared admissible, the authorities decide whether the person is to be granted refugee status. In case of rejection of the asylum claim on the merits the authorities have to assess the need of subsidiary protection. A separate application for subsidiary protection is not foreseen by law. In case of rejection of the subsidiary protection claim the authorities have to assess whether a return decision is admissible. All three examinations are done in one procedure. There is also an **accelerated procedure** for certain claims.

**Appeal:** Appeals to the Federal Administrative Court are possible against a decision rejecting the asylum application as inadmissible and also against a decision dismissing the application on the merits. The BFA Procedures Act (BGA-VG) regulates the appeal and its effects. Appeals against the decision rejecting the asylum application on the merits have to be submitted within four weeks and have suspensive effect, unless the BFA does not allow for the appeal to have suspensive effect. An appeal against a decision rejecting an application as inadmissible does not have suspensive effect and has to be submitted within two weeks. The ruling from the Constitutional Court, which considered the shortening of the appeal period as justified as long as there are special organisational and procedural measures which also ensure a correspondingly rapid decision, has been annulled by the new law that came into force on 1 September 2018.[9] Suspensive effect may be granted by the Court to an appeal against an expulsion order issued together with a decision rejecting the asylum application as inadmissible.

Article 18(1) BFA-VG provides a number of grounds for depriving suspensive effect. These include, *inter alia,* the applicant's attempt to deceive the BFA concerning they true identity or nationality or the authenticity of they documents, the lack of reasons for persecution, if the allegations made by the asylum seeker concerning the danger he/she face are manifestly unfounded or if an enforceable deportation order and an enforceable entry ban was issued against the asylum seeker prior to the lodging of the application for international protection.

However, the Court may grant suspensive effect if there would otherwise be a risk of violation of the *non-refoulement* principle. The Court has to grant suspensive effect if an appeal is lodged against an expulsion order issued together with a decision rejecting the asylum application as inadmissible, if it can be assumed that the decision to refuse entry to the alien at the border and forcible return or deportation to the country to which the expulsion order applies would constitute a real risk of violation of the principle of *non-refoulement* according to Austria's international obligations, or would represent a serious threat to their life or person by reason of indiscriminate violence in situations of international or internal conflict. The reasons must be set out in the appeal decision.

Together with the decision to reject the application for international protection, an expulsion order must be issued, unless reasons related to the right to family and private life according to Article 8 ECHR prevail over public interest and order, or where residence is permitted for other humanitarian reasons.

The evidential requirements are the same for refugee and subsidiary protection status. In appeal procedures before the Court, new facts and evidence may only be submitted in the following cases: if the grounds on which the first instance negative decision was based have undergone any material change; if

[9] The reason for shortening the appeal period was justified by the necessity to effectively carry out and enforce certain measures, such as the order to leave the territory.

the first instance procedure was irregular (e.g. if the right to be heard about the findings of the BFA was not respected, or if outdated country of origin information was used or evidence is missing to substantiate the reasoning of the BFA); if such new facts and evidence were not accessible earlier or if the asylum seeker had been unable to submit such new facts and evidence.[10] Decisions of the Court are issued in the form of judgments and all other decisions, such as those allowing the appeal to have suspensive effect, the rejection of an appeal because it was lodged too late, or on the continuation of an asylum procedures that was discontinued (i.e. decisions on procedural issues), are issued in the form of resolutions.

**Onward appeal:** The BVwG may decide that the rejection of the application can be revised before the Administrative High Court (*Verwaltungsgerichtshof*, VwGH). This possibility is foreseen if a decision on the case depends on a leading decision, e.g. if the Administrative Court's decision is not based on a previous decision of the Administrative High Court. If the BVwG declares the ordinary revision inadmissible, the asylum seeker may bring in an extraordinary revision.[11] The BFA can also file a revision with the VwGH to challenge decisions issued by the BVwG.

Appeals to the Federal Constitutional Court (*Verfassungsgerichtshof*, VfGH) may be lodged in instances where the applicant claims a violation of a right guaranteed by constitutional law.

At every stage of the procedure, asylum seekers are informed about the possibility of support for voluntary return. The BFA can also order a mandatory consultation with regard to return. In these cases, the applicant has to get in contact with the return counselling department of the state owned BBU GmbH. When an asylum seeker leaves the country – no matter if in the context of voluntary repatriation to their country of origin or if the person is not reachable for the authorities – the asylum proceedings are filed as discontinued. Upon return to Austria, an application to reopen the procedure has to be brought in.

Any application for international protection which is deemed inadmissible or rejected on the merits is automatically connected to a decision assessing whether a return to the country of origin is possible or if the right to private and family life of the applicant prevail. [12] The return decision is issued together with the negative decision concerning the asylum application by the BFA in first instance. Similarly, a return decision is also issued in the case of a withdrawal of international protection.

10 Article 20 BFA-VG.

11 The BVwG can decide to declare the ordinary revision as admissible - which means that it considers that there is a fundamental legal question at stake - or as inadmissible – which means that the applicant and their lawyer must demonstrate themselves that there is fundamental legal question at stake so as to initiate an extraordinary revision. The main difference is that, in the case of an ordinary/regular revision, the applicant does not have to explain what fundamental legal question is at stake and that, in cases where the regular revision is declared as admissible, it is more probable that government sponsored legal aid will be granted granted (which is not a task of the BBU but of the bar association in case of appeals in front of the High Court).

12 § 10 AsylG.

## B. Access to the procedure and registration

### 1. Access to the territory and push backs

**Indicators: Access to the Territory**

1. Are there any reports (NGO reports, media, testimonies, etc.) of people refused entry at the border and returned without examination of their protection needs? ☒ Yes ☐ No
2. Is there a border monitoring system in place? ☐ Yes ☒ No
3. If so, who is responsible for border monitoring? ☐ National authorities ☐ NGOs ☐ Other
4. How often is border monitoring carried out? ☐ Frequently ☐ Rarely ☐ Never

In July 2021 the Regional Administrative Court of Styria issued a landmark decision concerning a case of a Moroccan national living in Bosnia. Despite having asked for asylum in September 2020 after crossing the green border from **Slovenia** to **Austria** along with a group of other asylum seekers, he was handed over to the Slovenian police based on a readmission agreement who also ignored his claim. He was subsequently returned to **Croatia** and pushed-back to **Bosnia**.[13] The Court concluded that the policemen "overheard" the asylum application, i.e. they did not carry out a proper interview; the body search resulted in inhuman treatment and the rejection to Slovenia was unlawful. In the statement of facts, the Court stated that pushbacks are "partly applied as a method in Austria."[14] The Ministry of Interior denied the fact that an application for international protection had been made and brought in a legal remedy to the High Administrative Court. In 2020, 514 persons from 48 different countries were handed over to Slovenian authorities based on this *ad hoc* agreement.[15] This agreement originally focused on the uncomplicated return of Slovenian citizens to Slovenia when crossing the border. No formal procedure is known: when a person identified to be returned on the basis of the agreement the police forces of the two countries interact and organise the transfer. There is no legal remedy foreseen in the process. Persons that have applied for asylum cannot be returned on the basis of this agreement.

In July 2021, a Somali minor was also unlawfully returned to Slovenia on the basis of that readmission agreement, despite the fact that he had articulated the words "asylum" various times when talking to police officers. In February 2022, the Regional Administrative Court of Styria decided that the police measures taken were unlawful and resulted in an illegal push back.[16] In Slovenia, the asylum request was meanwhile accepted, and an asylum status had already been granted.[17]

In both cases, the revision requested by the Regional Police Directorate Styria to the High Administrative Court were rejected in May 2022.[18] As a consequence, the Ministry of Interior by non-public internal Decree GZ: 2022-0.344.927, "Awareness with regard to rejections", 11 May 2022, regulated on how to proceed with foreigners that apply for asylum when apprehended by the police. The decree explicitly states that, just because the person does not mention the word "asylum", that does not mean they are not applying for international protection, as the application can be brought in by "conclusive action". The police officer should thus also come to the conclusion that the person is applying for international

13 Prozess Report, „Beschwerden nach Pushback", availablte in German at: https://bit.ly/3zaZzd9.
14 Asylkoordination Österreich, „Gericht bestätigt systematische Menschenrechtsverletzungen durch österreichische Polizei", 5 July 2021, available in German and English at https://bit.ly/3GJF9cy.
15 Ministry of Interior, *Answer to parliamentary request 4277/AB XXVII. GP*, 20 January 2021, available in German at: https://bit.ly/2ZpZCA4.
16 Kurier, „Gericht bestätigt illegalen Pushback von minderjährigem Somali", 19 February 2022, available in German at: https://bit.ly/3IHJLmv.
17 Standard, "Wieder dokumentierter Pushback von Österreich nach Slowenien", 7 September 2021, available in German at https://bit.ly/3GzS54M.
18 VwGH Ra 2021/21/0274-6, 5 May 2022; VwGH Ra 2022/21/0074-6, 19 May 2022 available in German at: https://bit.ly/3miz1nc.

protection through their behaviour, actions, etc and the police officer should in such case take appropriate action. A mandatory e-learning tool was developed and is available for all officers that are on duty close to border regions.

As a response to the allegations of illegal push backs and unlawful returns taking place at the Southern border to **Slovenia** and the fact that the number of persons affected by readmissions to Slovenia almost doubled from 81 to 174 in 2020,[19] the initiative "Push back alarm" was founded by activists. Similar to "Alarm phone", the initiative offers a phone number where persons that crossed the border can request a follow up with the police and ask whether their asylum application is being accepted.[20] From January to November 2021, the number of persons unlawfully returned to Slovenia based on the bilateral readmission agreement decreased to 59.[21] According to the AIDA report on Slovenia, persons who have been summarily returned back from Austria to Slovenia in 2020 were mostly expelled to Croatia by the Slovenian authorities. After the second judgement concerning pushbacks by Regional Administrative Court of Styria there are no more reports of push-backs on Austrian territory.

### 1.1. Refusals of entry

Following the **German** announcement of the prolongation of border controls in October 2019, the Austrian Minister of Interior had also prolonged the temporary border controls with Slovenia and Hungary until 14 May 2020.[22] The argumentation of the Austrian Government had slightly changed, however: while it initially argued that the situation was not sufficiently stable, the Minister of Interior argued that "border controls in the heart of Europe have led to a positive effect on migration movements".[23] These border controls were further prolonged on 11 May 2021, based on the "continuing migration pressure" and "the tense situation resulting from Covid-19".[24] Border controls with Hungary and Slovenia are currently prolonged until 11 May 2023.[25] Furthermore, in September 2022 border controls to Slovakia were introduced and ran until 6 February 2023.[26] The prolongations have caused uproar in Slovenia as the border controls to Slovenia were found unlawful following judgements by the ECJ in April 2022.[27] The prolongation of border controls were justified, among others, with the fear of proliferation of weapons from Ukraine.[28] More information on the German-Austrian border controls can be found in the AIDA report on Germany.[29]

**Slovenia** reaffirmed its opposition as regards Austrian border controls in recent years. The Slovenian Ministry of the Interior considers border controls unjustified and disproportionate and stressed that there

19 Slovenian police, *Illegalne migracije na obmocju Republike Slovenije*, December 2020, available in Slovenian: https://bit.ly/3szYyqe, 4.

20 Push back Alarm Austria, see: https://bit.ly/3asuo1z.

21 Slovenian police, Illegalne, migracije na obmocju Republike Sloenije, November 2021, available in Slovenian: https://bit.ly/34qPe1d.

22 Ministry of Interior, Answer to parliamentary request 40AB/XXVII, 12 December 2019, available in German at: https://bit.ly/3aDEhXq.

23 Der Standard, ‚Österreich kontrolliert weiterhin Grenze zu Slowenien und Ungarn', 8 October 2019, available in German: https://bit.ly/2uI59pu.

24 Kurier, 'Österreich verlängert Grenzkontrollen zu Slowenien und Ungarn erneut", 14 October 2020, available in German at: https://bit.ly/2Nr4xOd.

25 To see current reintroductions: European Commission, 'Temporary Reintroduction of Border Control', available at: http://bit.ly/40dSdRT.

26 Der Standard, „Grenzkontrollen zu Ungarn, Slowenien und der Slowakei werden verlängert", 11 November 2022, available in German at: https://bit.ly/3ZcUEUl; EMN, *Quarterly N.40*, available at: https://bit.ly/42gcY0Y, 27; Schengenvisa News, ‚Austria Ends Internal Border Controls with Slovakia', 07 February 2023, available at: https://bit.ly/3YR1a2r.

27 CJEU, Joined Cases C-368/20 and C-369/20, *NW v Landespolizeidirektion Steiermark and Bezirkshauptmannschaft Leibnitz*, 26 April 2022, available at: http://bit.ly/3mT1AYJ.

28 Kurier, ‚Österreich verlängert Grenzkontrollen zu Ungarn und Slowenien', 11 May 2022, available in German at: https://bit.ly/3J97Rbv.

29 AIDA, *Country Report on Germany – Update on the year 2022*, April 2023, available at: https://bit.ly/3AIvgLR, 23.

were no statistics demonstrating a risk of secondary migration nor a threat to Austria's internal security. In 2019 it added that the border controls are "unnecessary and cause great economic damage".[30] Until October 2022, 176 persons coming from Slovenia were denied entry.

**Germany** refused entry to 6,206 persons between January and October 2022 on the border with the province of Salzburg. 1,445 persons were Afghan nationals, 1,014 Syrian nationals. 483 of the persons rejected then applied for asylum in Austria.[31] In the same time, 646 persons were rejected on the border with the province of Vorarlberg, 57 of them applied for asylum in Austria then.[32] On the border with Upper Austria, 2,946 persons were rejected from entering Germany, mainly persons from Afghanistan and Syria, 1,070 persons applied for asylum after being rejected.[33] In total, 11,249 persons were rejected from Germany to Austria from January to October 2022, of whom 1,659 applied for asylum in Austria.

**Hungary** and Austria engage in a bilateral police cooperation on Hungarian territory in the so called "Operation Fox". Since September 2021 Austria deploys police officers to the Hungarian-Serbian and Hungarian-Serbian-Romanian border. In 2022, 45 Austrian police officers supported the Hungarian police. The Ministry of Interior has stated that the Austrian police is not applying force by themselves but only supporting the Hungarian police in their tasks. This cost more than EUR 5 million in 2022.[34] Until October 2022, 431 persons were denied entry by Austria at the border with Hungary.[35]

As there are no border controls from Austria at the borders to Czech Republic, Germany, Switzerland, Italy and Liechtenstein, no rejections were made in 2022 at these borders. 40 persons coming from Slovakia were denied entry until October 2022.[36]

### 1.2. Special provisions to maintain public order during border checks

With a legal amendment, which entered into force on 1 June 2016, "special provisions to maintain public order during border checks" were added to the Asylum Act.[37]

The provision (discussed publicly as "emergency provision"), which can be activated through a decree of the federal government, foresees that asylum seekers have no longer access to the asylum procedure in Austria when a maximum number, i.e. a 'quota', of asylum applications to be examined on the merits, is reached. For 2016 this number was set at 37,500 applications and was not reached.[38] For 2017 the limit was set at 35,000 applications and was not reached either. The limit for 2018 was set at 30,000 applications and was not exceeded. For the year 2019, the maximum has been set at 25,000 asylum applications. However, the decree of the federal government was never activated. There are no known plans to activate it in the near future and no further projections of quotas for the upcoming years. Even

30 Der Standard, ‚Österreich kontrolliert weiterhin Grenze zu Slowenien und Ungarn', 8 October 2019, available in German: https://bit.ly/2uI59pu.
31 Ministry of Interior, *Answer to parliamentary request 12755/AB XXVII. GP*, 17 January 2023, available in German at: https://bit.ly/3Zj8Hbk.
32 Ministry of Interior, *Answer to parliamentary request 12759/AB XXVII. GP*, 17 January 2023, available in German at: https://bit.ly/3Zj6NqU.
33 Ministry of Interior, *Answer to parliamentary request 12758/AB XXVII. GP*, 17 January 2023, available in German at: https://bit.ly/3kIWPQO.
34 Ministry of Interior, *Answer to parliamentary request 13071/AB XXVII. GP*, 15 February 2023, available in German at: https://bit.ly/41IKmxa.
35 Ministry of Interior, *Answer to parliamentary request 12758/AB XXVII. GP*, 17 January 2023, available in German at: https://bit.ly/3kIWPQO.
36 Ibid.
37 Articles 36-41 AsylG.
38 Out of a total, 42,073 asylum applications registered in 2016, only 27,254 were deemed to be under the responsibility of Austria: Ministry of Interior, *Asylum Statistics December 2016*, available in German at: http://bit.ly/2k2N2Ue, 3.

though Austria has seen more than 108,000 applications in 2022, no public discussion concerning triggering the 'emergency provision' arose.

The possibility of rejection at the border relies on the distinction between "making" and "lodging" an asylum application as per Article 6 of the recast Asylum Procedures Directive. After an application is made before a police officer at the border, or in a registration centre (*Registrierstelle*) if the person is found to be irregularly on the territory, the Aliens Police will be able to reject the person at the border or to issue a return decision before the initial interview (*Erstbefragung*).[39]

Refusal to register an application is not possible where return would be incompatible with the principle of *non-refoulement* under Articles 2 and 3 ECHR, or with Article 8 ECHR.[40]

An asylum seeker is not issued a decision ordering return and cannot appeal against the refusal to have their claim examined. In such a case, the asylum seeker has no right to remain on the territory,[41] therefore an appeal to the State Administrative Court (LVwG) does not have suspensive effect.[42]

Although it has not been activated yet, the amendment has been criticised by UNHCR and civil society organisations,[43] as it enables police authorities rather than the BFA to deny a person access to the asylum procedure, without procedural guarantees or legal assistance, while an appeal can only be made after the expulsion has been carried out. The activation of the emergency provision also suspends the application of the Dublin Regulation.

### 1.3. Legal access to the territory

From 2013 to 2017, a successful resettlement programme "Humanitarian Admission Programme" was implemented bringing around 1,700 persons to Austria. After the last persons were transferred to Austria, the resettlement programme was terminated and no other programme has been launched since. Austria then announced in 2017 that it would relocate some applicants to Austria, especially young applicants and juveniles. In reality, Austria never received any applicant through the relocation scheme. Furthermore, a humanitarian visa can only be granted if the authority is convinced that the applicant demonstrates a willingness to return to the home country.

Austria did not participate in refugee evacuation programmes from Afghanistan after the takeover of the Taliban regime in August 2021. The Ministry of Foreign Affairs supported Austrian nationals and persons with Austrian residency status to get out of Afghanistan (mainly to Pakistan). In one publicly known case, the Austrian embassy in Islamabad confirmed to an Afghan national that it would issue a visa for Austria, but the embassy then refused to issue it when the latter arrived in Pakistan. The woman was issued a visa by Germany instead.[44]

39 Article 38 AsylG.
40 Article 41(1) AsylG.
41 Article 39 AsylG.
42 Article 41(2) AsylG.
43 UNHCR Austria, Kurzanalyse zum Gesamtändernden Abänderungsantrag betreffend eine Änderung des Asylgesetzes durch Sonderbestimmungen zur Aufrechterhaltung der öffentlichen Ordnung und des Schutzes der inneren Sicherheit während der Durchführung von Grenzkontrollen, 21 April 2016, available in German at: https://bit.ly/3VEjtrH; Asylkoordination Österreich et al, *Stellungnahme zum Entwurf betreffend ein Bundesgesetz, mit dem das Asylgesetz 2005, das Fremdenpolizeigesetz 2005 und das BFA Verfahrensgesetz geändert werden*, 21 April 2016; available in German at: http://bit.ly/2jx6Z29.
44 Oberösterreichische Nachrichten, „Deutschland nahm afghanische Astronomin auf, Österreich nicht", 10 January 2022, available in German at: https://bit.ly/3j0a7E7.

Following the earthquake in Syria and Türkiye in February 2023, Austria announced that it will not make any visa liberalisation but will prioritise the handling applications for short term visas with a maximum duration of 6 months by persons affected by the earthquake that have relatives in Austria.[45]

## 2. Registration of the asylum application

**Indicators: Registration**

1. Are specific time limits laid down in law for making an application? ☐ Yes ☒ No
   - ❖ If so, what is the time limit for lodging an application?
2. Are specific time limits laid down in law for lodging an application? ☐ Yes ☒ No
   - ❖ If so, what is the time limit for lodging an application?
3. Are registration and lodging distinct stages in the law or in practice? ☒ Yes ☐ No
4. Is the authority with which the application is lodged also the authority responsible for its examination? ☒ Yes ☐ No
5. Can an application for international protection for international protection be lodged at embassies, consulates or other external representations? ☐ Yes ☒ No

An application for international protection can be made before an agent of the public security service or a security authority on Austrian territory.[46] The asylum application is registered as soon as asylum is requested. There has been no possibility to apply for asylum at Austrian embassies or consulates abroad since 2001. A first interview has to be conducted by the public security service.[47] All documents have to be sent to the BFA to obtain guidelines on the next steps to be taken. This includes sharing the minutes of the first interrogation as well as a report showing the time, place and circumstances of the application, information on identity and the travel route, in particular the place where the border was crossed, as well as the result of the identity screening.

Due to the high number of asylum applications at the Austro-Hungarian border, the police changed the registration system by internal decree in August 2022. Unaccompanied minors (UAM) continued to be handled in the regular scheme, while all other applicants were only registered and fingerprinted right at the border. In case of a EURODAC hit the applicants were also transferred to the first reception centres. All others were sent to other provinces. The Regional Police Directorates in other provinces were then responsible for conducting the first interviews. The applicants received a train ticket and address and had to travel to the police stations by themselves. This led to several problems as the police stations were not able to provide sleeping places.[48] Many applicants never arrived at the police stations and their cases were discontinued. Austria saw a record number of 42,000 discontinued cases in 2022.[49]

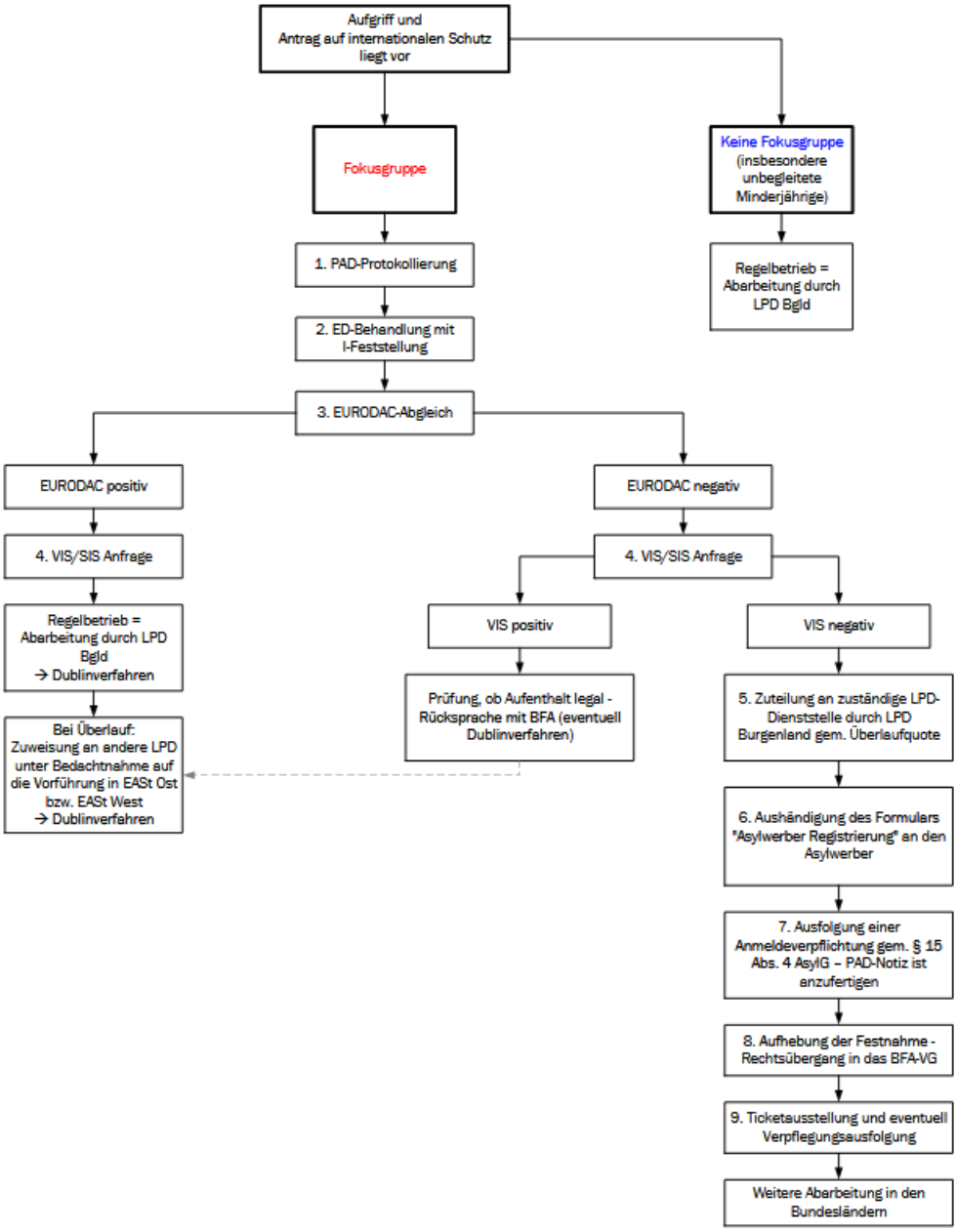
45 Der Standard, „Visa für Erdbebenopfer aus der Türkei und Syrien – wie geht das?“, 14 February 2023, available in German at: https://bit.ly/3Ygx9J0.

46 Article 17 (1) AsylG states that a request for asylum can be made in front of any public security agent *in Austria*.

47 Article 17 (2) AsylG

48 Der Standard, ‚Polizei schickt Asylsuchende quer durchs Land, viele stranden oder verschwinden‘, 14 September 2022, https://bit.ly/3Zlv8wA.

49 Ministry of Interior, Asylum statistics December 2022, available in German at: https://bit.ly/3SXruXn.




Source: Decree GZ: 2022-0.686.584, Police Cooperation in the Process of Registration of new arrivals (not public, on file with author)

Applications for international protection are to be forwarded to the BFA without delay.

Based on the information submitted by the police, the BFA orders the transfer of the applicant to an EAST or regional directorate of the BFA. The BFA can also order the applicant to go to the EAST or regional directorate on their own, and transfer costs will be covered. [50] Through this instruction on the next steps to be followed, the application is officially lodged.[51]

50 BFA, *The Asylum procedure*, available in German at: https://bit.ly/2Hn2GUl, 10.
51 Article 17 (2) AsylG in connection Article 43 (1) BFA-VG

Persons legally staying in Austria (i.e. through a residence permit) must submit their asylum application at the public security service too. The BFA orders applicants to appear before the branch office within 14 calendar days.[52] Otherwise, the application will be terminated as being no longer relevant.

Parents of children born in Austria are obliged to inform the BFA within two weeks of the birth of the child. Upon receipt of this information, the application is automatically registered and lodged for the child.[53]

In 2022, a total of 108,781 applications for international protection were lodged in Austria. This marks a sharp increase of 172 % compared to 2021, where 39,930 applications were lodged. In 2021, after three years of very low numbers in the context of the pandemic, the numbers of applications almost reached the level of 2016 (42,285). The even higher increase in 2022 has been accompanied by a record number of discontinued cases (42,549) most likely due to onward movement of the applicants to other countries.

Despite COVID-19, the BFA never suspended its activities completely during the pandemic. During the first months of the pandemic from March to May 2020, only a few interviews were conducted, and the offices were only open for applicants for international protection. Some measures were upheld throughout 2021 such as quarantine procedures when necessary, and there was some delay concerning the first interview. Several federal accommodation facilities were put under quarantine when new cases of COVID-19 were detected resulting in the deprivation of liberty of all inhabitants of the camps during this time. The Constitutional Court declared the regulation which prohibited the asylum seekers to leave the camp for several weeks as unlawful[54] and found it disproportionate.[55]

# C. Procedures

## 1. Regular procedure

### 1.1. General (scope, time limits)

**Indicators: Regular Procedure: General**

| | | |
|---|---|---|
| 1. | Time limit set in law for the determining authority to make a decision on the asylum application at first instance: | 6 months |
| 2. | Are detailed reasons for the rejection at first instance of an asylum application shared with the applicant in writing? | ☒ Yes ☐ No |
| 3. | Backlog of pending cases at first instance as of 31 December 2022: | 46,811 |
| 4. | Average length of the regular procedure at 31 December 2022: | 3.5 months |

As already mentioned, the BFA is a specific department of the Ministry of interior, dealing with asylum matters. In 2014, the tasks of the BAF were further extended to cover some immigration law procedures.

According to the General Administrative Procedures Act (AVG), decisions have to be taken within 6 months after the application for international protection has been lodged.[56] Within 20 calendar days, the BFA has to decide whether it intends to reject the application as inadmissible due to the responsibility of another Member State under the Dublin Regulation, the application of the safe third country concept or in

52 Article 43 (1)(1) BFA-VG
53 Article 17a (2) AsylG.
54 VfGH, Decision E 3811/2020-17, E 3845/2020-17, 6 October 2021
55 Standard, „Ausgangssperre in Flüchtlingslager Traiskirchen war rechtswidrig“, 19 October 2021, available in German at: https://bit.ly/34N2hJQ.
56 Article 73 (1) AVG.

case of subsequent asylum applications, or to dismiss the application for other reasons. Since 2018, the admissibility procedure may be prolonged by lifting the 20 days deadline in manifestly unfounded cases. However, if no information about the intention to reject the application is issued within 20 calendar days, the application is automatically admitted into the regular procedure. Thus, the asylum-seeker should receive the preliminary residence permit as asylum seeker and be allocated to the reception system of a federal province. On the contrary, if the asylum application is deemed inadmissible the asylum-seeker receives legal assistance and has to be heard in presence of they lawyer. There is no legal remedy against this procedural order.

If no procedural order is notified to the asylum seeker within 20 days, the asylum application is admitted to the regular procedure – except in Dublin cases if requests to other Member States to take charge or take back the asylum seeker are made within this time frame. An amendment to Article 22 AsylG, which entered into force on 1 June 2016, allowed for the extension of the duration of procedures at first instance up to 15 months. This exceptional prolongation is no longer applicable since 1 June 2018, however.

In case of delay from the BFA, the asylum seeker may request that the case be referred to the Federal Administrative Court for a decision (*Säumnisbeschwerde*). However, in practice asylum seekers do not frequently make such requests, as they miss a chance of receiving a positive decision at first instance (by the BFA).

In case of delay from the Federal Administrative Court, a request for the establishment of a deadline may be addressed to the Administrative High Court.

In 2022 the average duration of the asylum procedure at first instance amounted to 3.5 months,[57] compared to 3.2 months in 2021,[58] 3.9 months in 2020[59], 2.3 months in 2019,[60] 6.6 months at the beginning of 2018 and 14 months at the beginning of 2017. [61] While the average time in 2019 and 2020 refers to all asylum procedures at first instance, the Ministry of Interior stated that the average duration was 6 months for regular procedures and 27 days for fast-track procedures (which concerned 750 cases) in 2018.[62] In 2020, 807 applications were fast tracked,[63] out of which 405 were rejected within 72 hours by the BFA. In 27 cases the decision was appealed but the rejection was then upheld by the BVwG.[64] The average length of the fast-track procedure was 22,7 days in 2020.

In 2022, the number of decisions taken in the fast-track procedure increased significantly. Until October 14,606 decisions were taken in the fast-track procedures (compared to 2,581 in 2021). The average length of the fast-track procedure was 24.7 days (2021: 28.2 days).[65] In 2021, the accelerated procedure which mostly applies to persons from countries listed as safe countries of origin and manifestly ill-founded applications (Morocco: 1,014; Pakistan: 621; Egypt: 567), a decision is usually taken within 72 hours. Until

57 BFA, *Detail-Statistik – Kennzahlen BFA 2022 – 1.-4. Quartal*, January 2023, available in German at: https://bit.ly/3mmaxt4.

58 Ministry of Interior, *Answer to parliamentary request 9531/AB XXVII. GP*, 11 April 2022, available in German at: https://bit.ly/3LmbufH.

59 BFA, *BFA Jahresbilanz 2020*, available in German at: https://bit.ly/2OfQ1JV.

60 Ministry of Interior, Answer to parliamentary request 232/AB, 20 January 2020, available in German at: https://bit.ly/3zofyEQ.

61 Information provided by the Ministry of Interior, 26 January 2018. See also Der Standard, 'Asyl: Freiwillige Rückkehr ging um ein Drittel zurück', 11 July 2017, available in German at: http://bit.ly/2D3nDiK.

62 Orf.at, „Trendumkehr" Kickl präsentiert Bilanz zu Asylzahlen', 24 January 2019, available in German at: https://bit.ly/2NVl4pY.

63 Ministry of Interior, *Answer to parliamentary request 4887/AB, XXVII. GP*, 12 March 2021, available in German at: https://bit.ly/3s0YBLx.

64 Kurier.at, "Nehammer: Neue Asyl-Schnellverfahren 'verlaufen erfolgreich', 23 February 2021, available in German at: https://bit.ly/2OK2Tse.

65 Ministry of Interior, *Answer to parliamentary request 11630/AB XXVII. GP*, 21 September 2022, available in German at: https://bit.ly/3Fn1OOj.

July 2022, in 69% of the cases the decisions were taken within this time frame as well (2021: 68%). Only one decision of the accelerated procedure cases was ruled against by the BVwG.[66]

| Year | Fast-track procedure | Accelerated procedure | Total |
|---|---|---|---|
| 2019 | 545 | N/A | **545** |
| 2020 | 524 | 283 | **807** |
| 2021 | 2,581 | 1,100 | **3,681** |
| 2022 | 22,109 | 1,188 | **23,297** |

Source: Ministry of Interior, Answer to parliamentary request 13740/AB XXVII. GP, 20 April 2023, https://bit.ly/41P9e67.

The increase of the average length of the procedure in 2020 and 2021 is due *inter alia* to the impact of COVID-19. As mentioned above, the BFA did not completely suspend its activities in 2020 but only conducted interviews in cases where a convicted person was involved or when the application was manifestly ill founded. The BFA issued asylum decisions but the interim legal measures taken foresaw that, when a negative decision was issued and delivered between 21 March and 1 May 2020, the appeal period did not start running before 1 May 2020. This means that during this period, personal interviews were only conducted at a very small scale and fewer decisions were issued.

In 2022, the BFA focused on fast track procedures of mainly Tunisian, Indian, Pakistani and Moroccan nationals: 29,525 procedures were started, but only 14,606 were concluded.[67]

In recent years, the Austrian Ombudsman has received numerous complaints on the length of asylum procedures at first instance. It received 1,500 complaints in 2016; 2,000 complaints in 2017 and 320 complaints in 2018. Out of the 320 complaints received in 2018, a violation of the duty to take a decision within the set limit was confirmed in 248 cases. Moreover, in 2018, 220 complaints were filed concerning length of procedures at second instance, and in 176 cases a violation was identified.[68] In 2020, the Austrian Ombudsman concluded in 197 cases that the BVwG violated its obligation to make a decision and did not take any steps in the asylum complaint procedure, reiterating that organisational deficiencies and increasing asylum applications are not a legally relevant justification. The Ombudsman suggested that the procedure should be concluded quickly in the cases brought forward. Numerous complaints were filed concerning deficiencies in the first instance proceedings.[69] In 2021, the Austrian Ombudsman Board received 14 complaints concerning the length of first-instance asylum procedures and 151 complaints mainly about the length of second-instance asylum procedures from 1 January to 17 September 2021.[70]

At the end of 2022, a total of 53,107 cases were pending, out of which 46,811 at first instance and 6,296 at second instance.[71] The second instance court managed to reduce the backlog of the years before since at the end of 2021, a total of 8,351 cases were pending before the BVwG. The number of pending cases at first instance increased compared to 2021 (19,529)[72]. Given that the number of recipients of Basic Care

66 Ministry of Interior, *Answer to parliamentary request 9531/AB XXVII. GP*, 11 April 2022, available in German at: https://bit.ly/3LmbufH.

67 Ministry of Interior, *Answer to parliamentary request 12601/AB XXVII. GP*, 29 December 2022, available in German at: https://bit.ly/3JhW9di.

68 Report of the Ombudsman Board to the National Council and the Federal Council 2018, available in German at: https://bit.ly/31OvJdd, 108.

69 Volksanwaltschaft, *Findings of grievances and actions taken by the Ombudsman 2020 Federal Administration*, available in German at: https://bit.ly/3cJPQyP.

70 Fundamental Rights Agency, *Migration: Key Fundamental Rights Concerns, Quarterly Bulletin*, 30 September 2021, available at: https://bit.ly/3xoyxPQ.

71 Ministry of Interior, Annual statistics 2022, available in German at: https://bit.ly/3Zsdx5e.

72 Ministry of Interior, *Preliminary asylum statistics December 2022*, available in German at: https://bit.ly/3mb2hfs.

increased only by 4,500 over the year (January 17,000 in January to 21,500 in December) and the high number of discontinued cases (42,000), it is to be expected that the number of applicants actually still residing in Austria is much lower than the number of pending cases. The BFA files a case as discontinued three months after not being able to reach the applicant. As of March 2023, the backlog at first instance stood at 31,268 compared to 46,811 just three months before end of December 2022.

| Backlog of pending cases at first and second instance: 2022 | | | | |
|---|---|---|---|---|
| | BFA | Appeal period | BVwG | **Total** |
| Syria | 14,210 | 384 | 2,650 | **17,244** |
| India | 6,954 | 503 | 189 | **7,646** |
| Afghanistan | 6,553 | 188 | 678 | **7,419** |
| Morocco | 3,398 | 553 | 15 | **3,996** |
| Türkiye | 2,592 | 19 | 253 | **2,864** |
| Tunisia | 2,299 | 166 | 13 | **2,478** |
| Somalia | 1,610 | 50 | 594 | **2,254** |
| Pakistan | 1,656 | 280 | 87 | **2,023** |
| Iraq | 666 | 35 | 394 | **1,095** |
| Russian Federation | 572 | 8 | 261 | **841** |
| unknown | 391 | 13 | 135 | **539** |
| Bangladesch | 350 | 38 | 65 | **453** |
| Egypt | 317 | 23 | 39 | **379** |
| Georgia | 213 | 9 | 68 | **290** |
| Other | 1,997 | 120 | 663 | **2,780** |
| **Total** | **44,384** | **2,427** | **6,296** | **53,107** |

Source: Ministry of Interior, Annual statistics 2022, available in German at: https://bit.ly/3Zsdx5e.

### 1.2. Prioritised examination and fast-track processing

The time limit for decisions for the BFA and the Federal Administrative Court are reduced to 3 months in case the asylum seeker is detained pending deportation.[73] The same maximum time limit applies to the "procedure for the initiation of a measure terminating residence" (see Accelerated Procedure).

In 2022, the practice of fast-track processing focused on applicants coming from countries listed as "safe countries of origin" and on applicants who have already been sentenced by a criminal court. The great majority of fast-track processing deals with cases from applicants originating from so called safe countries of origin (see Safe Country of Origin). This was also due to the sharp increase of applicants coming from India, Tunisia, Pakistan and Morocco.

[73] Article 22(6) AsylG.

### 1.3. Personal interview

**Indicators: Regular Procedure: Personal Interview**

1. Is a personal interview of the asylum seeker in most cases conducted in practice in the regular procedure? ☒ Yes ☐ No
   - ❖ If so, are interpreters available in practice, for interviews? ☒ Yes ☐ No
2. In the regular procedure, is the interview conducted by the authority responsible for taking the decision?[74] ☒ Yes ☐ No
3. Are interviews conducted through video conferencing? ☐ Frequently ☐ Rarely ☒ Never
4. Can the asylum seeker request the interviewer and the interpreter to be of a specific gender? ☐ Yes ☒ No[75]
   - ❖ If so, is this applied in practice, for interviews? ☐ Yes ☐ No

All asylum seekers must undergo a personal interview, provided that they have legal capacity to do so. At the start of each interview, asylum seekers are asked whether they feel physically and psychologically fit for the interview. If not, the interview will be postponed. In practice, however, interviews are rarely postponed, as asylum seekers fear that it would have negative consequences on their case, and because interviewers' have little knowledge on the potential consequences of health issues on the interview.

During the first months of COVID-19 in 2020, applications for international protection had to be lodged in person and the interview on travel routes was also conducted in person. All further steps were suspended in most cases as more that 50% of the personnel of the BFA was working remotely from home on decisions where interviews had already been conducted or cases of prolongation of subsidiary protection (when a personal interview was not necessary). All other submissions had to be brought in by electronic communication by the asylum seekers during the first months and overall the BFA prioritised electronical communication as COVID-19 measures. Applications for humanitarian status (Article 57 AsylG) could be submitted in in written form. Interviews were conducted in cases where persons had committed a criminal offense at all times since the start of the pandemic. In 2021, most routines concerning interviews from pre-Covid-19 were re-established.

Asylum seekers are further subject to an interrogation by security services shortly after lodging the application for the purposes of the Dublin and Admissibility Procedure.[76] These interrogations are carried out with a view to establish the identity and the travel route of the asylum seeker. They should not, however, refer to the merits of the application such as specific reasons for fleeing and lodging an asylum application. Despite the fact that the interrogation is conducted by the police and not by caseworkers of the BFA, the statements made by the asylum seeker at this stage of the admissibility procedure have an important impact on the asylum procedure as they are accorded particular importance by the BFA. The Constitutional Court confirmed in a judgement of 2012 that reasons for applying for international protection shall not be in the focus of the first interview conducted by police services.[77]

Asylum seekers may be accompanied by a person they trust (i.e. person of confidence) and unaccompanied children cannot be interviewed without the presence of their legal representative.[78]

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74 However, the official conducting the interview is no longer responsible for the decision.

75 Article 20 (1) AsylG foresees that an asylum seeker whose fear of persecution is founded on violations of sexual self-determination is to be questioned by an officer of the same sex unless the asylum seekers requests the opposite. In general, requests can be made but there is no legal right to get an interviewer and interpreter of a specific gender. The requests in other cases than Article 20 (1) are usually not respected by the BFA.

76 Article 19 AsylG.

77 VfGH, Decision U 98/12, 27 June 2012, available in German at: https://bit.ly/3llHTIr.

78 Article 19 (5) AsylG.

The law further provides for a choice of interviewer according to gender considerations in cases where the asylum seeker's fear of persecution is related to sexual self-determination.[79] The authorities must demonstrate that they have informed the asylum applicant of the possibility to be interviewed by an official of the same sex.[80] In practice, however, this is not consistently applied with regard to interpreters.[81] In the appeal procedure, infringements of the right to sexual self-determination have to be expressed in the written appeal in order to have the hearing at the Court held by a judge of the same sex. The Constitutional Court ruled that UNHCR guidelines have to be applied to male asylum seekers accordingly.[82]

**Interpretation**

Interpreters are provided by the BFA and cover most of the languages, but interviews may also be conducted in a language the asylum seeker is deemed to understand sufficiently. The provision of interpreters has been reported as not satisfactory with regard to certain languages, even in cases where a significant number of asylum seekers may be concerned (e.g. Chechen refugees are often interviewed in Russian). Asylum seekers from African countries are often interviewed in English or French, languages that they are "supposed" to understand. Asylum seekers are asked at the beginning of the interview if they understand the interpreter. There are no standards for the qualification of interpreters in asylum procedures. Interpretation is often not done by accredited interpreters; usually persons with the requested language knowledge are contracted on a case-by-case basis. UNHCR has published a training manual for interpreters in asylum procedures.[83]

The Federal Law on the Establishment of the Federal Agency for Care and Support Services Limited Liability Company (BBU-G) passed in June 2019 foresees that a federal agency annexed to the Ministry of Interior should be responsible for the provision of interpreters for the purpose of asylum procedures as of 1 January 2021. This includes the provision of interpreters both at first and second instance, but also in case of oral hearings in front of the BVwG as well as in procedures concerning basic support. The law lists a wide range of areas in which interpreters should be provided by the federal agency, *inter alia* for interviews related to the making of an application for international protection; for measures relating to the termination of the right to stay as well as for the granting or limitation of basic services. As of January 2021, nine interpreters (five full time equivalent) were employed by the BBU GmbH.[84] In practice, the service provided by internal interpreters were not of great relevance but is to be seen as a test phase for a possible expansion of the department in future. The state-run agency took over the existing system established by the NGOs. In most cases, external interpreters were hired throughout 2022.

**Videoconferencing, recording and transcript**

Article 19(3) AsylG allows for tape recording of the interview, which is, however, rarely used in practice. Video conferencing was introduced in 2018. The BFA in **Burgenland** held interviews to assist the BFA in **Vienna** and in **Vorarlberg** in this context.[85] This new practice is based on Art. 51a of the General Administrative Act, which allows the use of technical facilities for word and image transmission - unless a personal interview is necessary for economical or personal reasons.

79 Article 20 AsylG.
80 Article 20 Austrian Asylum Act.
81 OHCHR, *Report on the mission to Austria focusing on the human rights of migrants, particularly in the context of return*, October 2018, available at: https://bit.ly/2u4JoQE.
82 VfGH, Decision U 1674/12, 12 March 2013, available in German at: https://bit.ly/3mSPpez mentions Conclusions Nr. 64 (XLI) and Nr. 73 (XLIV) of the Executive Committee of UNHCR. The Asylum Court decided by a male and female judge and its decision was thus unlawful.
83 UNHCR, "Training manual for translators in asylum procedures", 2015, available in German at: https://bit.ly/2XYPzQC.
84 Ministry of Interior, *Answer to a parliamentary request 4145/AB*, 14 January 2021, available in German at: https://bit.ly/37hzoE3.
85 Information provided by the RD Burgenland.

There are concerns about the practice of conducting interviews through video conferencing as there is no standard procedure to handle these new tools and they raise issues of confidentiality and procedural rights. Lawyers have reported that there has been an increase of videoconferencing by the BFA and BVwGH during 2020. In most cases, it is up to the applicant and the legal representative to arrange the necessary technical equipment. Issues reported in certain cases include: a judge turning off the video during a court session; the impossibility to see the translator on video; the fact that in certain cases the judges did not allow the legal representative to sit in the room as the applicant; or the fact that in certain cases a protocol was sent without encryption. For 2022, the Ministry of Interior reported that there are no statistics as to in how many interviews videconferencing tools were applied but stated that more technical hardware tools for videoconferencing had been purchased.[86]

It should be noted that, as part of its BRIDGE project, UNHCR Austria has produced a checklist "Self-check for interviews and negotiations using technical equipment for word and image transmission in the asylum procedure" for videoconferences in asylum procedures.[87]

The transcript is more or less verbatim. Its content may depend on the caseworkers' and interpreter's summarising the answers, choosing expressions that fit the transcript or translating each sentence of the asylum seeker. Immediately after the interview, the transcript is translated by the same interpreter in a language the asylum seeker understands and the asylum seeker has the possibility to ask for corrections and completion immediately after the interview. By signing the transcript, they agree with its content. If asylum seekers find something incorrect in the transcript after having signed it at the end of the interview, they should send a written statement to the BFA as soon as possible. In practice, asylum seekers do not frequently ask immediately after the interview for correction of the report. Some asylum seekers explain that they were too tired to be able to follow the translation of the transcript. The OHCHR stated in its report on the mission to Austria from October 2018 that many caseworkers of the BFA are not adequately trained in using techniques that fit the needs of asylum applicants. In a number of cases monitored by the OHCHR, negative decisions of the BFA were based on personal views and involved biased questioning during interviews as well as stereotypes on gender and race.[88]

## 1.4. Appeal

**Indicators: Regular Procedure: Appeal**

1. Does the law provide for an appeal against the first instance decision in the regular procedure? ☒ Yes ☐ No
   - ❖ If yes, is it ☒ Judicial ☐ Administrative
   - ❖ If yes, is it suspensive ☒ Yes ☐ Some grounds ☐ No
2. Average processing time for the appeal body to make a decision: Not available

### 1.4.1. Appeal before the BVwG

Appeals against a negative first instance decision generally have to be submitted within 4 weeks of the receipt of the decision and the whole asylum file is forwarded by the BFA to the Federal Administrative Court (BVwG).[89] However, following an amendment that came into effect on 1 September 2018, the time

86 Ministry of Interior, *Answer to a parliamentary request 11630/AB*, 21 September 2022, available in German at: https://bit.ly/41HPxxa.

87 UNHCR Austria, *Self-check for interviews and negotiations using technical equipment for word and image transmission in the asylum procedure*, May 2020, available in German at: https://bit.ly/3s2YUoI.

88 OHCHR, Report on the mission to Austria focusing on the human rights of migrants, particularly in the context of return, October 2018, https://bit.ly/2u4JoQE.

89 Article 16(1) BFA-VG.

limit has been set at 2 weeks for appeals in inadmissibility procedures and in cases of status withdrawals that were initiated along with a return decision.[90]

Within 2 months following the lodging of an appeal, the BFA may decide to modify the decision that is being challenged.[91] This means that it can decide either to annul, reject or change its initial decision. However, where the BFA refrains from modifying its decision, it forwards the appeal to the Court. In practice, there are not many cases known where the BFA decides to modify its own decision.

In case refugee status or subsidiary protection status is not granted by the BFA, the asylum applicant will be assigned a free legal adviser provided by the state at the time of notification of the first instance decision. Since January 2021, legal assistance is provided by a new federal agency, however (see Legal Assistance).

Article 18(1) BFA-VG provides that the suspensive effect of the appeal *may* be withdrawn by the BFA where the application is manifestly unfounded, i.e. where:

(1) The applicant comes from a safe country of origin;
(2) Has already been resident in Austria for at least 3 months prior to the lodging of the application;
(3) The applicant has attempted to deceive the BFA concerning their true identity or nationality or the authenticity of their documents;
(4) The asylum seeker has not adduced any reasons for persecution;
(5) The allegations made by the asylum seeker concerning the danger they face clearly do not correspond with reality;
(6) An enforceable deportation order or an enforceable entry ban was issued against the asylum seeker prior to the lodging of the application for international protection; or
(7) The asylum seeker refuses to give fingerprints.

Moreover, the BFA *must* withdraw the suspensive effect of an appeal where:[92]

(1) The immediate departure of the third-country national is required for reasons of public policy or public security;
(2) The third-country national has violated an entry ban and has returned to Austrian territory; or
(3) There is a risk of absconding.

The BVwG must grant automatic suspensive effect within 1 week from the lodging of the appeal, where it assumes that return would expose the concerned person to a real risk of a violation of Articles 2, 3, 8 and 13 ECHR or Protocols 6; or to a serious threat to life or person by reason of indiscriminate violence in situations of conflict in line with Article 15(c) of the recast Qualification Directive.[93] The reasons must be set out in the main complaint.

Appeals against the rejection of an application with suspensive effect have to be ruled by the Court within 8 weeks.[94] The asylum appeal has suspensive effect as long as the case is pending in court.

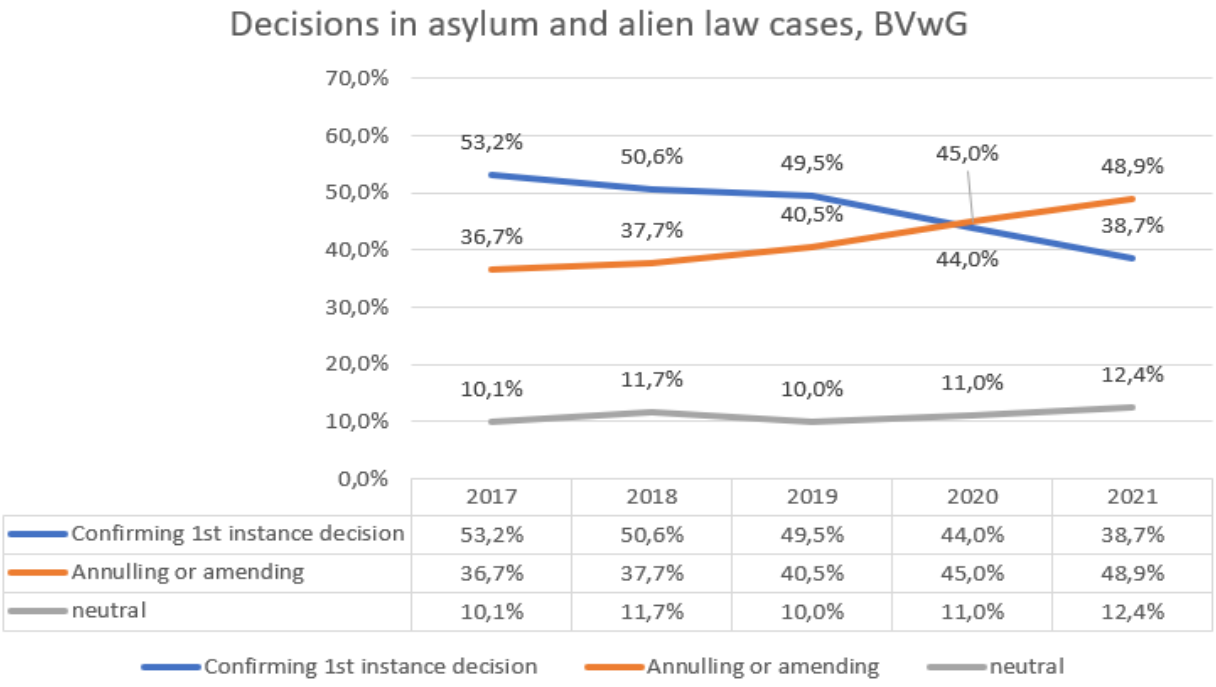
90 Article 16 (1) BFA-VG.
91 Article 14(1) Administrative Court Procedures Act (VwG-VG).
92 Article 18(2) BFA-VG.
93 Articles 17(1) and 18(5) BFA-VG.
94 Article 17(2) BFA-VG.

The BVwG is organised in chambers, each of which is responsible for certain groups of countries. In recent years, the Court processed appeals on asylum cases as follows:

| Processed Appeals at the BVwG: 2016-2022 | | | | | | | |
|---|---|---|---|---|---|---|---|
| | 2016 | 2017 | 2018 | 2019 | 2020 | 2021 | 2022 |
| Number of processed cases | 18,760 | 20,000 | 24,000 | 20,000 | 17,900 | 17,100 | Not available |
| Number of pending cases | 12,497 | 24,063 | 30,168 | 22,842 | 15,147 | 8,351 | 6,433 |

Source: Ministry of Justice, answer to parliamentary request 9532/AB XXVII GP, 11 April 2022, available in German at: https://bit.ly/3O7TwfH;

Following the increase of appeals and backlog of cases at second instance, judges from different fields of law have gradually been assigned to decide upon asylum procedures since 2017; despite their lack of expertise on asylum-related matters. In 2021, the BVwG concluded 17,100 procedures in which 26,650 decisions were taken. 13,040 decisions of the BFA were cancelled/annulled or amended by the BVwG, while 10,300 decisions of the BFA were confirmed.[95] In 2022, de facto all 220 judges of the BVwG were assigned to decide asylum cases. 2,951 court hearings were conducted in the first half of 2022, 4,381 first instance decisions were cancelled/annulled or amended. In 3,107 cases the decisions of the first instance were confirmed.[96]




This numbers confirm the trend of decreased numbers of confirming decisions by the BVwG. By 2022, 55 % of all decisions challenged were dismissed or amended by the BVwG. This is only partly explained by the change of situation in Afghanistan.

95 Ministry of Justice, *Answer to parliamentary request 9532/AB, XXVII. GP*, 11 April 2022, available in German at: https://bit.ly/3EPd4lW.

96 Ministry of Justice, *Answer to parliamentary request 11621/AB, XXVII. GP*, 21 September 2022, available in German at: https://bit.ly/3KRlPzL.

The BVwG can request another hearing and additional examinations if necessary. Conversely, the BFA-VG also allows for exceptions to a personal hearing on an appeal; i.e. an appeal must not be held if the facts seem to be established from the case file or if it is established that the submission of the applicant does not correspond to the facts.[97] This provision must be read in light of the restrictions on the submission of new facts in the appeal procedure.

It should be further noted that video conferencing tools are available at a small scale at the Courts, but they are rarely used.

The question whether a personal hearing before the BVwG has to take place or not has been brought before the Constitutional Court (VfGH). The Court ruled that not holding a personal hearing in the appeal procedure does not violate Article 47(2) of the EU Charter of Fundamental Rights. Charter rights may be pleaded before the Constitutional Court. The Court stated that Article 41(7) AsylG,[98] is in line with Article 47(2) of the EU Charter if the applicant was heard in the administrative procedure.[99] However, subsequent rulings of the Administrative High Court and the Constitutional Court have conversely specified the obligation of the Administrative Court to conduct a personal hearing. In the case of an Afghan asylum seeker, the Administrative Court had confirmed the first instance decision which found the asylum seeker's application to be lacking credibility due to discrepancies in statements about his age. The Constitutional Court ruled that, by deciding without a personal hearing, the Administrative Court had violated the right laid down in Article 47(2) of the EU Charter.[100] Two rulings to the same effect were delivered by the Constitutional Court in September 2014.[101]

The Administrative High Court has specified that all relevant facts have to be assessed by the determining authority and have to be up to date at the time of the decision of the court.[102] It further stated that it was not necessary to explicitly request an oral hearing if the facts were not sufficiently clear or if the statements of the applicant in their appeal contradicted the statements taken by the first instance authority.[103]

The possible outcome of an appeal can be the granting of a status, the refusal of a status, or a referral by the BVwG back to the BFA for further investigations and a re-examination of the case. Hearings at the Court are public, but the public may be excluded on certain grounds. Decisions of the BVwG are published on the legal information website of the Federal Chancellery.[104]

As regards the average processing time for the appeal body to make a decision, the Ministry of Justice indicated that 22.4% of appeals challenging decisions of the BFA in asylum procedures were concluded within 6 months in 2020, while 17.4% took longer than 3 years.[105] 409 Dublin cases were decided in 2020, of which 353 were decided within 6 months (86%).[106] Disaggregated data on the average processing time

97 Article 21(7) BFA-VG.
98 Article 41(7) AsylG corresponds with Article 21(7) BFA-VG.
99 VfGH, Decisions U 466/11-18 and U 1836/11-13, 14 March 2012, available in German at: https://bit.ly/3JlPMG0.
100 VfGH, Decision U 152/13-12, 21 February 2014, available at: http://bit.ly/1FXmqb6.
101 VfGH, Decision U 610/2013, 19 September 2014, available at: http://bit.ly/1RIQrPN; U 2529/2013, 22 September 2014, available at: http://bit.ly/1G4KDfF. See also K Kessler, 'The right to an oral hearing in Austrian asylum appeal procedures in the light of Article 47(2) of the Charter of Fundamental Rights of the European Union', EDAL, 14 January 2015, available at: http://bit.ly/1CGfjzK.
102 VwGH, Ra 2014/20/0017, 28 May 2014, available in German at: https://bit.ly/3le6VJx.
103 VwGH Ro 2014/21/0047, 22 May 2014, available in German at: https://bit.ly/42iAuuq.
104 Decisions of the Federal Administrative Court are available at: http://www.ris.bka.gv.at/Bvwg/. However, according to the General Administrative Procedures Act, decisions may not be made public if it is necessary for reasons of public order or national security, morality, the protection of children or the private life of the asylum seeker or for the protection of a witness.
105 Ministry of Justice, *Answer to parliamentary request 4933/AB, XXVII. GP*, 12 March 2021, available in German at: https://bit.ly/3s2qRgF.
106 Ibid.

at second instance were shared in 2020 as follows. Data from July 2022 show the processing time of pending cases during the first half of the year:

| Average processing time at second instance:2020-2022 | | | |
|---|---|---|---|
| Waiting time | Appeals | | |
| | **2020** | **2021** | **July 2022** |
| Up to 6 months | 3,550 | 3,575 | 2,280 |
| Between 6 months and 1 year | 1,354 | 954 | 688 |
| Between 1 and 2 year | 3,382 | 1,566 | 750 |
| Between 2 and 3 years | 4,803 | 3,597 | 634 |
| More than 3 years | 2,763 | 5,712 | 1,958 |

Source: Ministry of Justice, Answer to parliamentary request 9532/AB, XXVII. GP, 11 April 2022 and 11621/AB, XXVII. GP, 21 September 2022

### 1.4.2. Onward appeal before the VwGH

Decisions of the BVwG may be appealed before the VwGH. The eligibility to appeal to the VwGH is determined by the BVwG, but in case the Administrative Court declares a regular revision as inadmissible, the asylum seeker may lodge an "extraordinary" revision. For that purpose, the applicant may submit a request for free legal assistance as well as for the suspensive effect of the complaint.

Out of 2,130 (2020: 1,633) revisions conducted in 2021, 18 (2020: 35) were regular revisions and 2,112 (2020: 1,598) were extraordinary revisions. In 2020, out of the 35 regular revisions, 11 were requested by the determining authority and 24 by applicants. Out of the 1,598 extraordinary revisions, 172 were requested the determining authority and 1,426 by applicants.[107] Corresponding data for 2021 is not available. In 2021, 268 revisions were granted and the decision of the BVwG was cancelled.

In case the asylum applicant seeks to challenge the decision in front of the BVwG and if they claim it is violating a constitutional right, they can lodge an within 6 weeks, after the ruling of the Federal Administrative Court has become final. Asylum seekers are informed of the possibility to address a complaint to the Constitutional Court in writing and this information is translated in a language the asylum seeker understands. In that context, it has to be mentioned that the ECHR is part of Austria's constitutional law. Therefore the risk of violation of Articles 2, 3 or 8 ECHR can be challenged in front of the Constitutional Court, while the rejection of an application for international protection does not fall under the Court's competence. The appeal does not have automatic suspensive effect, however. Around 97 decisions of the BVwG, in which the decision was considered arbitrary, have been ruled unlawful by the Constitutional Court in 2019.[108] In 2020, 107 decisions were considered arbitrary and ruled unlawful by the Constitutional Court.[109] No data was available in 2021 or 2022 at the time of writing.

Asylum seekers face difficulties to access constitutional appeals as the payment of a fee of €240 is required to that end. Furthermore, asylum seekers are not heard in person before the Constitutional Court, which rather requests written statements from the BVwG.

107 Ibid.
108 The cases are available in German at: https://bit.ly/377YZfZ.
109 The cases are available in German at: https://bit.ly/3aoymrK.

## 1.5. Legal assistance

**Indicators: Regular Procedure: Legal Assistance**

1. Do asylum seekers have access to free legal assistance at first instance in practice?
   ☐ Yes ☒ With difficulty ☐ No
   - ❖ Does free legal assistance cover: ☐ Representation in interview
     ☒ Legal advice

2. Do asylum seekers have access to free legal assistance on appeal against a negative decision in practice? ☒ Yes ☐ With difficulty ☐ No
   - ❖ Does free legal assistance cover ☒ Representation in courts
     ☒ Legal advice

### 1.5.1. Legal assistance at first instance

In June 2019, the Austrian Parliament adopted a law establishing a Federal Agency for Care and Support Services (*Bundesagentur für Betreuungs- und Unterstützungsleistungen, BBU GmbH*) which is in charge *inter alia* of providing legal assistance to asylum seekers at first and second instance since 1 January 2021. The new law has been criticised by several organisations, as it raises concerns over the risk of arbitrary access to free legal assistance. In its Legal note on the Austrian law, ECRE demonstrated that while access to legal assistance at first instance was the general rule under the previous Article 49(1) BFA-VG, it becomes the exception under the new law. With the exception of unaccompanied minors, legal assistance at first instance shall now only be provided according to the "available possibilities", and does not constitute a right, except in specific cases listed in the Asylum Act. In other words, access to free legal assistance at first instance is only granted when existing resources are available (e.g. staff and funding), and is not a right for all.[110]

Moreover, the reform introduces a new threshold which grants the asylum applicant the right to free legal assistance by the Agency only if an appointment - during which the applicant exercises their right to be heard - is scheduled within 72 hours (3 days) after having been notified by the BFA of the intention to reject the asylum application. This means that, if the BFA grants the asylum applicant the right to be heard at a later stage (e.g. in 4 or 5 days), free legal assistance by the Agency will only be available if resources so allow. Consequently, there is a risk of arbitrary access to free legal assistance at first instance which will largely depend on the BFA's goodwill allowing the asylum applicant to be heard in due time.

The BBU GmbH has some AMIF funded capacities in first instance and provides open counselling in first instance as long as "possibilities are available". The counselling services are provided at the buildings of the regional directorates of the BFA. There is no funding for transportation costs for persons willing to receive counselling at this stage. At first instance, the BBU GmbH has the legal obligation to provide legal counselling in all procedures where the first interview by the BFA is conducted within 72 hours. In these procedures, the counsellors of the BBU also have to take part in the interviews carried out with the BFA. At the time of writing, this concerned mainly subsequent applications, fast-track procedures and procedures at the airport. The BBU GmbH is not being appointed in Dublin cases by the BFA and therefore is not involved in interviews in these procedures in general in first instance.

It should be noted, however, that the previous legal aid-system in place until the end of 2020 did not meet the needs of asylum seekers either. VMÖ, which received most of the funding for legal assistance in the

[110] ECRE, *Reforming legal assistance in Austria: an end to independent provision*?, June 2019, available at: https://bit.ly/3FrmxAx, 3.

first instance procedure,[111] was criticised for not being very helpful nor committed to the protection of the rights of asylum seekers due to its cooperation with the Ministry of Interior.[112]

While the BBU GmbH is a federal agency owned by the Ministry of Interior, the head of legal counselling (and the counsellors themselves) are not bound by directives of the CEO of the BBU GmbH. The head of legal counselling is appointed by the Ministry of Justice and has the technical supervision, while administrative/disciplinary supervision lies under the responsibility of the CEO of BBU GmbH. This fairly complex construction should prevent pressure and interference from the Ministry of Interior (which is also the head of the BFA) on the legal counselling unit.

In December 2022, the Constitutional Court announced that it will start proceedings and an examination of the constitutionality of the BBU-G and whether the mechanisms provided are sufficient to guarantee the independence of the legal counselling body in the sense of Art 47 FRC.[113]

### 1.5.2. Legal assistance in appeals

**Legal aid provided by the new BBU GmbH since 2021**

The BBU GmbH counselling unit is now composed of former employees of Diakonie Flüchtlingsdienst and VMÖ. The BBU GmbH was obliged to offer jobs to all employees of the latter organisations. As of January 2021, a total of 120 counsellors were working in 12 different offices throughout the country. While in the past legal advisers did not have to meet specific qualifications or training standards, all future advisors must hold a degree in law from an Austrian University and have completed a compulsory internship at a court. These requirements do not apply, however, to all previous staff already employed at VMÖ and ARGE organisations.

As opposed to the previous legal aid system where the contract between the service providers and the government did not foresee quality standards for the provision legal aid; the new contract between the BBU GmBH and the government has improved this aspect. A particular concern was the fact that the quality of legal aid provided by VMÖ largely depended on the individual counsellor. It is questionable whether this will improve in practice given that the same staff has been employed by the new BBU GmBH. Nevertheless, the head of the counselling unit of the BBU GmbH, Stephan Klammer, announced that future training activities will be standardised and that every advisor will undergo basic trainings on asylum and procedural law. Every counsellor must also take exams with the aim to ensure common quality standards.

The tasks of the BBU GmbH include counselling, representation and explanation of judgements. The law requires counselling to be ‘objective’. The advisors will have to explain the perspective the applicants have. If the applicants request representation, the advisors have to act in favour of partisan interests. The main tasks will consist in writing appeals as legal representatives and representation in court sessions. The mandate prescribed by law ends upon receipt of the final decision of the Court, although the BBU GmbH must then still explain the content of the judgement and explain the perspectives. As the provision of legal aid must also meet the conditions of Article 47 of the EU Charter, it must ensure an effective access to the High Courts. Upon request by the applicants in cases where the judgement has chances to be overruled by the High Courts, the BBU GmbH must support the applicants in obtaining free legal aid from the normal legal aid system.

111 Answer to parliamentary request 14100/J (XXV.GP), 8 November 2017, available in German at: http://bit.ly/2EiMLDx.

112 Asylkoordination Österreich, ‘Kritik am VMÖ reißt nicht ab. Was steckt eigentlich dahinter und warum ändert sich nichts?’, 22 May 2017, available in German at: http://bit.ly/2Ej7kzI.

113 Constitutional Court (VfGH), Decision on Initiating Examination on certain rules of BBU-ErrichtungsG and BFA-VerfahrensG, E 3608/2021, 13 December 2022, available in German at: https://bit.ly/42ehtYX.

The start of the activities of the BBU GmbH in January 2021 was described as chaotic and not very well organised due to a lack of interest by the Ministry of Interior which does not seem eager to invest in a working legal representation system. Nevertheless, within three weeks, the BBU GmbH had already taken over representation in almost 3,000 cases and over 180 court sessions.

One project run by Caritas Austria offers assistance during the hearing before the Federal Administrative Court, but this resource is limited and therefore only a certain number of cases can be assisted. AMIF funding is no longer guaranteed but the project continues on a smaller scale with alternative funding. It also worked on a very small scale during 2022.[114]

Besides this free legal advice funded by the state, NGOs help asylum seekers lodging appeals and submitting written statements, accompany them to personal hearings at the Federal Administrative Court and may act as legal representatives. NGOs cannot represent asylum seekers before the Constitutional Court or the Administrative High Court, as this can only be done by an attorney-at-law.

Legal assistance free of charge is provided in case of the rejection of a subsequent asylum application on *res judicata* grounds too. The Constitutional Court and the Administrative High Court apply a merits test and tend to refuse free legal aid, if the case has little chance of succeeding. The BBU-G introduces a worrying change in this regard. The law only includes an obligation to inform applicants of the prospects of success of their appeal without stipulating any consequences. However, the approach suggested by the impact assessment of the law, if applied in practice by the Federal Agency, is extremely problematic. Whereas the recast APD does not specify which other authorities could be considered competent to apply a merits test, entrusting the Federal Agency with that task will create an obvious conflict of interest. Moreover, where another authority than a court or tribunal carries out a merits test, the applicant must have the right to an effective remedy before a court or tribunal against that decision, according to Article 20(3) recast Asylum Procedures Directive. If in practice the Federal Agency were to refuse free legal assistance and representation on that basis without the applicant having an effective opportunity to challenge that decision before a court or tribunal, there would be a clear breach of the recast Asylum Procedures Directive.

Overall, the Austrian law of June 2019 introduced drastic changes with regard to the provision of legal assistance at second instance. As explained by several commentators, the establishment of the Federal Agency raises concerns with regard to the right to an effective remedy because one of its key components - namely the access to free legal assistance – could be affected by the potential conflict between the appointed legal advisers' and asylum seekers' interests.[115] Similarly, the significant influence granted to the Ministry of Interior over the functioning and the role of the *BBU GmbH* (e.g. appointing the CEO of the *BBU GmbH* or designing the work plan and guidelines of the *BBU GmbH* etc.) raises serious concerns over lack of independence, subsequently raising a risk of violation of the right to an effective remedy.[116] Moreover, there are no provisions in the law which allow or indicate the contribution of non-governmental actors, external service providers or welfare organisations which could supplement, monitor or intervene in the role and the powers of the Agency. The Austrian Government has therefore created what has been described by both UNHCR and Diakonie Austria as a "black box", which is steered mainly by the Ministry

114 Caritas, BVwG-Projekt, available in German at: https://bit.ly/3EQAyr9.

115 ECRE, *Reforming legal assistance in Austria : an end to independent provision?*, June 2019, 5, available at: https://bit.ly/3FrmxAx ; UNCHR, *Analysis of the law establishing a Federal Agency for Supervision and Support Services*, April 2019, available in German at: https://bit.ly/2W8c1Fx, 1; Diakonie Austria, *Position statement on the Federal law amending the BFA Procedures Act (BFA-VG), the Asylum Act and the Basic care act*, April 2019, available in German at: https://bit.ly/2W4cAAb, 3.

116 ECRE, *Reforming legal assistance in Austria: an end to independent provision?,* June 2019, 5, available at : https://bit.ly/328r99v.

of Interior.[117] All external actors are prevented from intervening to potentially correct mistakes or erroneous decisions, subsequently creating an Agency that is fully self-sufficient and non-transparent.[118]

Even though some improvements were achieved in comparison to the previous dysfunctional legal aid system (e.g. trainings of legal advisors, legal aid in front of the High Courts, setting up quality standards), the centralised legal aid system under the BBU GmbH is very fragile from a fundamental rights perspective. The Ministry of Interior still has the right to nominate half of the members of the supervisory board, even if it only appointed two external experts in 2020. An expert board was founded to establish counselling standards.

Moreover, the centralisation of legal aid and founding of the BBU GmbH significantly restricts the potential role for and funding of civil society organisations. At the beginning of 2021, only 10% of the staff of Diakonie Flüchtlingsdienst were still employed as a result of the contract cancellation in 2020. Funding remains a difficult topic for non-governmental counselling organisations. As of 2022, there are still several NGOs such as Diakonie Flüchtlingsdienst, Caritas (active in Lower Austria, Vienna, Vorarlberg), Integrationshaus Wien, Deserteurs- und Flüchtlingsberatung, Queer Base, ZEBRA (Graz), Fluchtpunkt Tirol offering legal counselling to asylum seekers.

In 2019, a well-known lawyer specialised in the field of asylum and aliens' police law, Ronald Frühwirth, decided to stop working as a lawyer due to grave deficits and inconsistencies in the judicial system. This caused public uproar as he argued publicly that the jurisdiction of the High Administrative Court is inconsistent and hinders him from offering adequate counselling and representation of his clients in Court. "The jurisdiction does not follow the rule of law anymore but can only understood as "doing politics", he stated. Frühwirth's resignation resulted in a significant gap as he was recognised as one of the best experts in the field and represented many asylum seekers, especially in Styria.[119]

The first year of operation of the BBU GmbH was turbulent. The start of the legal counselling department in January 2021 was just one month after the take-over of the whole area of federal basic care. Two out of the three heads of the departments (i.e. the return department and basic care) have been replaced. The independent head of the counselling department remained and focused on providing the legal counsellors in the first year. The director's contract was renewed in May 2021. Surprisingly he announced his resignation in October 2021, but then withdrew his resignation in December 2021. The official reasons for this turmoil have not been made public but there seems to be a connection timewise regarding issues in the distribution system of asylum seekers from federal to province basic care, and a lack of capacity in the federal facilities in fall of 2021.

There is no evaluation yet on how many appeals have been lodged with the support of the BBU GmbH but the data of the BVwG show that over 60% of the first instance decisions were overturned or amended in 2021. This is one of the reasons why the BBU GmbH has not experienced a backlash compared to its predecessors which used to be responsible for state-provided legal assistance.

In practice, there is a constant exchange on general topics between the BBU GmbH with NGOs working in the field. However, this positive development does not change the criticism relating to the structure of the legal counselling implemented by the state led BBU Gmbh. Even the so-called 'Qualitätsbeirat', a group responsible for evaluating, observing and providing recommendations to the legal counselling

117 UNCHR, *Analysis of the law establishing a Federal Agency for Supervision and Support Services*, April 2019, available in German at: https://bit.ly/2W8c1Fx, 1; Diakonie Austria, *Position statement on the Federal law amending the BFA Procedures Act (BFA-VG), the Asylum Act and the Basic care act*, April 2019, available in German at: https://bit.ly/2W4cAAb, 3.

118 UNCHR, *Analysis of the law establishing a Federal Agency for Supervision and Support Services,* April 2019, available in German at: https://bit.ly/2W8c1Fx, 1-2.

119 Anwalt aktuell, ‚Klare Worte', 4 October 2019, available in German at: https://bit.ly/2TRsXkM; ORF.at, ‚Grazer Anwalt hört auf, 9 August 2019', available in German at: https://bit.ly/2QjXgP1.

department, stated in its report for 2021 that the current positive development is strongly related to the personalities of the director of the institution and the head of legal counselling, who values and fosters independence in the provision of legal counselling. Nevertheless, the Qualitätsbeirat recommends to take further legislative measures to strengthen the independence of the legal counselling department.[120] In 2022, the Qualitätsbeirat focused on the assessment and improvement of the quality of the counselling provided by the BBU GmbH and on the translation services. It underlined the good quality of the services provided and the good cooperation of the BBU GmbH with the Qualitätsbeirat. Nevertheless it stressed again that legislative changes are necessary to strengthen the independence of the legal counselling department of the BBU GmbH from the Ministry of Interior.[121]

## 2. Dublin

### 2.1. General

During the Covid-19 pandemic in 2020 and 2021, the BFA never suspended Dublin procedures and continued to receive and issue incoming and outgoing requests.[122] However, between March and April 2020 no Dublin transfers were completed (both incoming and outgoing transfers).[123] After the general easing of measures, in particular regarding travel restrictions, Dublin member states were informed on 16 June 2020 that Dublin transfers to Austria via **Vienna-Schwechat Airport** were possible again.

As regards incoming transfers during the COVID-19 pandemic, Austria adopted the following measures: the time for notification of transfer was extended so that appropriate national arrangements could be adopted to place Dublin returnees; information on the current state of health of the person to be transferred had to be shared in the transfer form including, where possible, whether they has been infected with COVID-19; and a negative PCR test was required in the interests of reciprocity.[124]

**Dublin statistics: 2022**

As of December 2022, Austria carried out 1,100 outgoing Dublin transfers and received 1,575 incoming transfers.[125] In 2021, the main countries receiving outgoing transfers from Austria were Germany and Italy.[126]
In December 2022 Italy announced a temporary stop of Dublin transfers to Italy. There is no official information as to when Dublin transfers to Italy will resume.[127] Overall, the significance of Dublin procedures decreased in 2021: even though around 4,000 take-back-requests were sent to Bulgaria and Romania, only around 150 transfers to these countries were implemented in practice. In 2022, the Dublin transfers increased slightly.

120 Qualitätsbeirat BBU GmbH, Jahresbericht 2021, available in German at: https://bit.ly/38FyDbr.
121 Qualitätsbeirat BBU GmbH, Jahresbericht 2022, available in German at: https://bit.ly/40FoMrC.
122 Ministry of Interior, Answer to parliamentary request, 4330/AB, 26 January 2021, available in German at: https://bit.ly/37fkcHM.
123 Ministry of Interior, Answer to parliamentary request, 3983/AB, 13 January 2021, available in German at: https://bit.ly/3kE01IZ.
124 Ministry of Interior, Answer to parliamentary request, 4330/AB, 26 January 2021, available in German at: https://bit.ly/37fkcHM.
125 BFA, *BFA-Detailstatistik 2022*, available in German at: https://bit.ly/40RXfDP.
126 Ministry of Interior, *Answer to a parliamentary request 9529AB/XXVII. GP*, 11 April 2022, available in German at: https://bit.ly/3KDTYAk.
127 Ministerio dell' Interno, Circular letter to all Dublin units, 5 December 2022.

**Dublin statistics: 1 January – 31 December 2022**

| Outgoing Dublin requests 2021-2022 | | | Incoming Dublin requests 2021-2022 | | |
|---|---|---|---|---|---|
| | 2021 | 2022 | | 2021 | 2022 |
| **Total** | **6,810** | **14,994** | **Total** | **24,453** | **8,051** |
| **Take charge** | **727** | **1,554** | **Take charge** | **198** | **361** |
| Italy | 217 | 527 | Germany | 43 | 146 |
| Romania | 115 | 242 | France | 39 | 77 |
| Germany | 85 | 98 | Netherlands | 18 | 35 |
| Spain | 44 | 88 | Belgium | N/A | 19 |
| France | N/A | 61 | Switzerland | N/A | 17 |
| Other | 194 | N/A | Other | N/A | N/A |
| **Take back** | **13,440** | **6,083** | **Take back** | **7,853** | **24,092** |
| Bulgaria | 9,196 | 2,322 | France | 3,598 | 9,065 |
| Romania | 1,354 | 1,711 | Germany | 2,107 | 8,147 |
| Germany | 798 | 740 | Belgium | 754 | 2,514 |
| Italy | 494 | 404 | Italy | 476 | 2,045 |
| France | 248 | 188 | Switzerland | 426 | 1,133 |
| Other | N/A | 718 | Other | 492 | N/A |

Source: Ministry of Interior, Answer to parliamentary request 9529/AB, 11 April 2022 and 13976/AB, 28 April 2023, available in German at: https://bit.ly/3ndzU1k.

| Outgoing Dublin requests by criterion: 2022 | | |
|---|---|---|
| Dublin III Regulation criterion | Requests sent | Requests received |
| Article 8 (minors) | 13 | 48 |
| Article 9 (family members granted protection) | 33 | 11 |
| Article 10 (family members pending determination) | 31 | 17 |
| Article 11 (family procedure) | 9 | 24 |
| Article 12 (visas and residence permits) | 717 | 195 |
| Article 13 (entry and/or remain) | 732 | 45 |
| Article 14 (visa free entry) | 1 | 3 |
| "Take charge": Article 16 | - | 3 |
| "Take charge" humanitarian clause: Article 17(2) | 18 | 15 |
| Article 18 (1) (a) | - | 111 |
| Article 18 (1) (b) | 12,854 | 23,718 |
| Article 18 (1) (c) | 14 | 11 |

| | | |
|---|---|---|
| Article 18 (1) (d) | 505 | 227 |
| Article 20 (3) | 7 | 7 |
| Article 20(5) | - | 9 |
| Article 25(2) | - | 8 |
| Article 23(3) | - | - |
| Article 29(2) | - | - |
| Other regulations | 20 | - |

Source: Ministry of Interior, Answer to parliamentary request 13976/AB, 28 April 2023, available in German at: https://bit.ly/3ndzU1k.

| Outgoing Dublin transfers 2021-2022 | | | Incoming Dublin transfers 2021-2022 | | |
|---|---|---|---|---|---|
| | 2021 | 2022 | | 2021 | 2022 |
| **Total** | **828** | **1,100** | **Total** | **691** | **1,575** |
| Germany | 268 | 330 | Germany | 334 | 791 |
| Italy | 156 | 266 | France | 128 | 298 |
| Romania | 144 | 94 | Switzerland | 90 | 179 |
| France | 40 | 84 | Belgium | 12 | 118 |
| Netherlands | 29 | 28 | Netherlands | 28 | 46 |
| Spain | 27 | 39 | Czech Republic | 7 | 35 |
| Switzerland | 24 | 35 | Sweden | 15 | 29 |
| Slovakia | 22 | 17 | Norway | 7 | 17 |
| Slovenia | 20 | 30 | Greece | 48 | 14 |
| Sweden | 17 | 19 | Denmark | 4 | 8 |
| Belgium | 15 | 16 | Italy | 1 | 7 |
| Poland | 12 | 23 | Luxembourg | 1 | 7 |
| Bulgaria | 12 | 34 | Finland | 1 | 6 |
| Lithuania | 8 | 2 | Poland | - | 4 |
| Czech Republic | 7 | 10 | Hungary | 3 | 4 |
| Croatia | 7 | 37 | Liechtenstein | 4 | 3 |
| Luxembourg | 5 | 2 | Bulgaria | 2 | 2 |
| Finland | 4 | 4 | Slovakia | 2 | 2 |
| Denmark | 4 | 4 | Slovenia | - | 2 |
| Portugal | 2 | 3 | Romania | 1 | 1 |
| Norway | 2 | 1 | Cyprus | 2 | 1 |
| Malta | 2 | 1 | Portugal | - | 1 |
| Latvia | 1 | 2 | Malta | - | 1 |
| Greece | - | 1 | Spain | - | - |

| | | | | | |
|---|---|---|---|---|---|
| Liechtenstein | - | - | Lithuania | - | - |
| Hungary | - | 10 | Croatia | - | - |
| Cyprus | - | 5 | Latvia | - | - |

Source: Ministry of Interior, Answer to parliamentary request 13976/AB, 28 April 2023, available in German at: https://bit.ly/3ndzU1k.

### 2.1.1. Application of the Dublin criteria

If the special regulation due to threats to public security and order comes into effect (see Access to the Territory), third-country nationals will be returned to neighbouring countries. Since it will not be possible to lodge an asylum application, this will completely contravene the Dublin system.[128]

Austria applies the Dublin procedure systematically and, where it proves impossible to transfer an asylum seeker to one country, examines the criteria of the Regulation to determine whether the person can be sent to another country.[129]

**Documentation and entry**

The Dublin Regulation may be triggered if there is a so-called "Eurodac hit", i.e. if the asylum applicant has obtained a visa from another Member State, if the asylum applicant admits that they entered the EU via another Member State or if there is a suspicion or circumstantial evidence indicating the asylum applicant entered via another Member State. Although there are other grounds applicable for determining a Member State's responsibility under the Dublin III Regulation, these are the most common grounds applied in Austria.

After the CJEU ruling in *Jafari*,[130] which found that the state-organised transit through the Western Balkan route in 2015-2016 qualified as "illegal entry" under Article 13 of the Regulation, the VwGH dismissed the appeal against a transfer to Croatia on those grounds. The Court did not indicate that Austria applied the discretionary clauses in these cases.[131]

In a case concerning a person who transited through Bulgaria and following a short stay travelled to Serbia and then entered Hungary, without applying for asylum in any of these countries, the Administrative High Court ruled that the provisions of Article 13(1) in conjunction with Article 19(2) of the Dublin III Regulation and in the light of the *A.S.* ruling of the CJEU, can only be understood as meaning that the criterion of illegal entry, as defined in Article 13(1) of the Dublin III Regulation, is applicable if the asylum seeker did not apply for international protection in that Member State, but if that application was made in another Member State after a short-term voluntary exit to a third country. Bulgaria was therefore deemed responsible for the asylum application.[132]

**Family unity**

The BFA has put forward surprising arguments in the context of family reunification under the Dublin Regulation. In a case of an unaccompanied minor to whom a protection was granted in Austria, the Greek

128 Christian Filzwieser 'Asyl und Fremdenrecht 2015 und erste Jahreshälfte 2016 – eine Einführung' in Christian Filzwieser and Isabella Taucher (eds), *Asyl und Fremdenrecht Jahrbuch 2016*, (NWV 2016), 13.
129 Ministry of Interior, *Reply to parliamentary question 10654/J (XXV.GP)*, 2 January 2017.
130 CJEU, Cases C-490/16, *A.S. v Republic of Slovenia*, 26 July 2017, available at: http://bit.ly/3lbiyBd and C-646/16, *Khadija Jafari and Zainab Jafari*, Judgment of 26 July 2017, available at: http://bit.ly/3Jn0zQl.
131 VwGH, Decision Ra 2016/19/0303, 20 September 2017, summary available in German at: https://bit.ly/3YRo6ye.
132 VwGH, Decision Ra 2017/19 / 0169-9, 5 April 2018, available in German at: https://bit.ly/2usyIbl.

Asylum Service submitted a "take charge" request for the parents to be transferred from Greece to Austria. The BFA refused responsibility on the ground that the parents had deliberately accepted the separation from their minor child. The rejection of such requests is not considered a formal decision which may be legally challenged before the BVwG. Requests from Greece are also handled very slowly and take often more than a year, which is why Austria ends up being responsible for the asylum application by default. In 2022 Austria received 39 take back and take charge requests from the Greek Dublin Unit, out of which 14 were accepted. Moreover, a total of 14 transfers were carried out (including transfers pending from the year before).[133]
In 2017, the VwGH examined the question of whether an unaccompanied child could stay in Austria, whilst Italy had been determined as responsible for his family members. Whereas the BVwG had referred to the sovereignty clause of Article 17 of the Dublin Regulation in order to prevent a violation of the right to private and family life, the VwGH stated that Article 11 of the Dublin Regulation prevailed in order to ensure the unity of the family and the best interests of the child.[134]

In 2018, the BvWG had to rule on a case of family reunification concerning parents that had applied for asylum in Austria, while their minor child and the grandmother had applied for asylum in Greece. In accordance with the Dublin III Regulation, Greece requested Austria to be responsible for the applications. However, the BFA had doubts on whether family reunification would be in the best interests of the child and refused to take responsibility. The BwWG confirmed the rejection of the BFA. In the case of refusal of family reunification, the only available option for the requesting Member State is to request a re-examination. As regards the asylum applicant, they cannot act directly against the negative decision nor bring it to appeal, as this is a purely intergovernmental procedure. Therefore, in this case, it was the responsibility of Greece as the requesting Member State to challenge Austria's refusal to grant family reunification. The BvWG allowed for a regular revision, as there is currently no specific case-law on the issue. [135]

As a consequence of two cases that asylkoordination österreich had put forward to the Ombudsman, the Minister of Interior and the Ombudsman agreed that the BFA should involve the Child and Youth Welfare Agency when it examines family reunification requests under the Dublin III Regulation to UMF living in Austria.[136] No changes have been noted in practice, however. In January 2021, a deportation of a family to **Georgia** in the middle of the night was debated publicly. One girl was born in Austria and resided in the country over ten years. The case shed light on the fact that children's rights are often not taken into account in asylum procedures and decisions. The Ministry of Justice introduced a Child Welfare Commission headed by former presidential candidate Irmgrad Griss to evaluate the implementation of children's rights in asylum procedures.[137] The Commission presented an elaborated report in July 2021 with many recommendations on how the best interest of the child could be guaranteed better in the asylum process, including reception conditions and Dublin III assessment. Recommendations for improvements were presented.[138] In July 2022, the former member of the Commission made a press conference in which they announced that an evaluation done by Asylkoordination, and the Vienna Refugee Law Clinic shows that improvement in practice is still very poor, recommendations are neglected by the authorities. They also demanded the introduction of a permanent monitoring board concerning children's rights in Austria.[139]

To demonstrate family ties, every asylum applicant must have mentioned the existence of other family members during asylum procedure, in Austria as well as in the other Member States where they have

133 Greek Asylum Service, *Dublin Statistics*, January 2020, available at: https://bit.ly/413bxlf.
134 VwGH, Decision Ra 2016/20/0384, 22 June 2017, summary available in German at: https://bit.ly/406vWVV.
135 BvWG, W175 2206076-1, 1 October 2018, available in German at: https://bit.ly/3yDXrKC.
136 Letter from the Ombudsman to Asylkoordination Österreich, Fr. Dr. Glawischnig, 12 June 2018.
137 Standard, 'Viele Unklarheiten um Asyl-Kommission von Irmgard Griss", 5 February 2021, available in German: https://bit.ly/3ai25Tu.
138 Federal Ministry of Justice, *Bericht der Kindeswohlkommission*, 21 July 2021, available in German at: https://bit.ly/3EZEdmz.
139 Bündnis Gemeinsam für Kinderrechte (GfK), https://bit.ly/3ZLTXS7.

applied for asylum. Marriage certificates or birth certificates are required on a regular basis. Depending on the country of origin, these documents are surveyed by the Federal Bureau of Criminal Investigation to prove authenticity. Austria requires the original documents, where available, to be sent for verification and does not leave such verification to the other Member States.

DNA tests may be required to provide proof of family ties, but this is rare in practice. DNA tests have to be paid by the asylum seeker. If a DNA test has been suggested[140] by the BFA or the Administrative Court and family links have been verified, asylum seekers may demand a refund of the costs from the BFA. The issue of DNA tests was discussed in the context of a legislative reform affecting Family Reunification but was ultimately not included in the reform.[141]

**Unaccompanied children**

Following the judgment of the CJEU in *M.A.* which concerned Article 8(4) of the Dublin III Regulation,[142] for asylum applications lodged by unaccompanied children, the BFA has ordered age assessments even in cases where there are no reasons for doubts in regard to the age of the asylum seeker.

In one case concerning a transfer to Hungary, the BFA considered that the deadline for replying to a request should be suspended until an age assessment is conducted. The VwGH disagreed, however, and ruled that the deadline had expired.[143] In 2018, another case related to the deadline for replying to a transfer request. In accordance with Article 21 (1) of the Dublin III Regulation, a request for transfer had been send to Croatia. Although the request was incomplete as it was missing the results of the medical age assessment of the child, the BFA considered that the available information was sufficient to conclude that the asylum seeker was an adult. However, the six-month transfer period was not triggered until the age report was received and Austria was therefore deemed responsible for the application.[144]

The VwGH further had to rule on a Dublin transfer to Bulgaria. The case concerned two brothers, one of whom was still a minor. Given that Bulgaria was already responsible for the asylum application of the older brother, the BFA concluded that Bulgaria should also be responsible for the asylum application of the minor, in compliance with the principle of family unity as defined in Article 20(3) of the Dublin III Regulation. The BFA had further assumed the minority of the younger brother without conducting any age assessment. The BVwG overturned the decision and stated that Art. 8(4) applied to the accompanied minor and that, subsequently, the adult was allowed to stay on the Austrian territory in accordance with Art. 17(1) of the Dublin III Regulation. However, the VwGH followed the BFA and the adult's asylum application was rejected in first instance, on the grounds that Bulgaria remained responsible for that application.[145]

### 2.1.2. The dependent persons and discretionary clauses

**Dependent persons**

During a Dublin procedure with Italy, the Federal Administrative Court emphasised that Articles 16 (Dependent persons) and 17 (Discretionary clauses) of the Dublin III Regulation determine separate requirements and cannot be reduced to the meaning of Article 8 ECHR. Italy agreed to the Austrian request to take charge of the asylum application only after Austria expressed strong objections due to the

140 It is not possible for the BFA to impose a DNA test. The authorities have to enable such testing, according to Article 13(4) BFA-VG.
141 Fremdenrechtsänderungsgesetz 2017 – FrÄG 2017, 18 October 2017, available at: http://bit.ly/2Cel0Ku.
142 CJEU, Case C-648/11, *M.A. v. Secretary of State for the Home Department*, Judgment of 6 June 2013, available at: http://bit.ly/42fxej7.
143 VwGH, Decision Ra 2017/19/0081, 22 November 2017, available in German at: https://bit.ly/3ZNuEPQ.
144 VwGH, Decision Ra 2016/18/0366, 06 November 2018, available in German at: https://bit.ly/2SUc21D.
145 VwGH, Decision Ra 2017/18/0433, 20 May 2018, available in German at: https://bit.ly/3FttmkP.

fact that Italy had already issued a Schengen visa. The concerned asylum seeker in question was from Chechen origin and aged over 60 years old. He also suffered from a serious illness and a disability which suggested that he relied on support from his son who is legally residing in Austria. The Administrative Court found the decision unlawful and reverted the case back to the first instance authority because Article 16(1) of the Regulation had not been sufficiently considered by that authority. The Court noted, in addition, that Article 17(2) could also be relevant in this case because, due to the Chechen culture, the support of the son for his old parents is more likely to be accepted than foreign support.[146]

This argumentation can be found in another decision of the Court in the case of a single Afghan mother who applied for asylum with a small child and a new-born baby. She had been raped and was suicidal. The judgment held that the authorities should examine which female relatives, living in Austria as recognised refugees, could support her by taking care of the children. Furthermore, the help of females of a family among themselves could be preferred to foreign support based on the applicant's cultural background.[147] The same argumentation led to the withdrawal of a Dublin decision regarding an Egyptian asylum seeker whose sister required support for her five under-age children after the death of her husband.[148]

A further Dublin decision was regarded as unlawful because a Chechen asylum seeker attempted suicide for the second time after enactment of the notice of transfer to Poland. Therefore, her demand for care and the willingness of her sister, who is living in Austria with refugee status, to take care of her should be examined. Due to the recommendation by a specialist to refrain from a transfer to Poland, it would also be a possibility to make use of the sovereignty clause.[149]

In another case, the BVwG referred to the wording of Art.16(1) of the Dublin III regulation on dependent persons to conclude that this provision also applied to cases in which the asylum applicant provides support to a family member (in the present case, an older brother providing support to his minor sister with special needs). In addition, the Court noted that no investigation on the special needs of the minor was undertaken by the BFA and considered that the responsibility of Italy would breach the ECHR given the particular circumstances of the case.[150]

The High Administrative Court ruled in December 2022 concerning the responsibility of a state for family members: Article 9 of the Dublin III Regulation contains special jurisdiction for family members of beneficiaries of international protection. If the applicant has a family member – regardless of whether the family already existed in the country of origin – who is a beneficiary of international protection and has the right to reside in a Member State, that Member State is responsible for examining the application for international protection, provided that the persons concerned express this wish in writing. This regulation not only allows the persons concerned (the applicant and the beneficiaries of international protection) to have a say, but gives them the power to decide whether they want to be reunited. These rules out the possibility that people are brought together against their will. The applicant must be informed of the requirement for such declarations within the framework of their right to information (cf. Art. 4 Para. 1 lit. b and c Dublin III Regulation) and, in the event of such a request by the applicant, it must be verified that the beneficiaries of the international protection agree to a reunification.[151]

146 BVwG, Decision W149 2009627-1, 21 July 2014, available in German at: https://bit.ly/3Toxfxd.
147 BVwG, Decision W149 2009673-1, 20 June 2014, available in German at: https://bit.ly/40eDHcz.
148 BVwG, Decision W149 2001851-1, 3 July 2014, available in German at: https://bit.ly/3ZTBwv3.
149 BVwG, Decision W185 2005878-1, 2 July 2014, available in German at: https://bit.ly/3mWXS0c.
150 BVwG Decision W233 2177425-2, 23 January 2018, available in German at: https://bit.ly/2SKvZrn.
151 VwGH Decision, 15.12.2022, Ra 2022/18/0182, available in German at: https://bit.ly/3mYCkQZ.

**Humanitarian clause**

Austrian authorities make reference to this clause mostly in cases where the asylum applicant is still in another country and applies for reunification with relatives in Austria.

**Sovereignty clause**

In 2022, article 17 Dublin-VO III was applied in 14 cases.[152]

In principle, an asylum seeker has the legal right to request the asylum authorities to implement the sovereignty clause, although this is not specifically laid down in law. The Constitutional Court has ruled, on the basis of case law from the European Court of Human Rights (ECtHR), that even in case of responsibility of another Member State under the Dublin Regulation, the Austrian authorities are nevertheless bound by the ECHR.[153] This means that, in case of a risk of a human rights violation, Austria has a duty to use the sovereignty clause. This decision is applicable according to Articles 2 and 3 ECHR as well as Article 8 ECHR following an interpretation consistent with the constitution.

However, the assessment of a risk of a human rights violation allowing the use of the sovereignty clause needs be conducted in a manner that does not unreasonably delay the examination of the asylum application. The principle that admissibility procedures should not last too long was reflected in a decision of the Administrative Court. A Chechen family had applied for asylum in Poland, Austria and Switzerland by submitting consecutive applications since 2005. One family member was severely traumatised. Switzerland decided on the merits of the case and issued a deportation order before they re-entered Austria. The Court reverted the procedure back to the BFA. The Court found that it would have been necessary to ask for the details of the procedure in Switzerland to prevent indirect violations of Article 3 ECHR through chain deportation. For one family member, the risk of suicide was obvious according to expert statements. The Court, referring to the judgment of the CJEU in the case of *NS & ME*,[154] held that the long duration of the admissibility procedure has to be taken into consideration when determining the Member State responsible for examining the asylum application and that applying a return procedure in such cases might be more effective.[155]

The sovereignty clause has to be applied in the case of vulnerable asylum seekers to prevent violations of Article 3 ECHR (Article 4 EU Charter). In the case of a refugee from Syria who arrived in Italy in 2013, where he was fingerprinted, but immediately continued to Austria, the Administrative Court agreed that the situation in his country of origin as well as his personal state of stress and uncertainty regarding the situation of his wife and three small children led to an exceptional psychological state with the consequence of several stays in hospital.[156]

In a ruling of January 2017 concerning the transfer of a family including two children to Croatia, the BVwG found that it was irrelevant that the adult brother was not legally responsible for the custody of his minor siblings. As the separation of the adult brother from his minor siblings would constitute an unacceptable interference with the right to family life and the children's well-being, the application of the sovereignty clause was ordered.[157]

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152 Source: Ministry of Interior, Answer to parliamentary request 13976/AB, 28 April 2023, available in German at: https://bit.ly/3ndzU1k.

153 VfGH, Decision 237/03, 15 October 2004, VfSlg. 16.122/2001, available in German at: https://bit.ly/3JIE3m5.

154 CJEU, Joined Cases C-411/10 *NS v Secretary of State for the Home Department* and C-493/10 *ME v Minister for Justice, Equality and Law Reform*, Judgment of 21 December 2011, available at: http://bit.ly/3mMSRak, para 98.

155 BVwG, Decision W125.1257809-8, 20 January 2014, available at: http://bit.ly/1Jp8HLh.

156 BVwG, Decision W205 1438717-1, 29 April 2014, available at: http://bit.ly/1EUIw8X.

157 BVwG, Decision W165 2140213-1, 26 January 2017, available at: http://bit.ly/2meMkAF.

In December 2017, the BFA successfully appealed a decision of the BVwG concerning an unaccompanied child who had been allowed to remain in Austria under the sovereignty clause, while his younger brother was in Bulgaria. The VwGH ruled that the use of the sovereignty clause to prevent a violation of Article 8 ECHR presupposes a correct determination of Austria's responsibility. The Court found that, if the close relationship between the two brothers would result in Austria not being responsible for the application of the elder brother, then the reference to the sovereignty clause by the BVwG to prevent an Article 8 ECHR violation lacked legal basis.[158]

In another case, the BFA appealed to the VwGH against a decision to transfer a Chechen family to Poland, where the father had already applied and passed the admissibility procedure in Austria. The VwGH found that the applications of the spouse and children should be admitted and the sovereignty clause used in order to preserve family unity.[159]

In several cases, the BVwG has argued that the sovereignty clause may only be applied where a third-country national has lodged an asylum application.

In 2018, Austria made use of the sovereignty clause and accepted to be responsible for the asylum application of a Georgian national, for whom the Czech Republic was initially responsible as she had obtained a visa there. Given that she was the legal guardian of her husband who has special needs and who has obtained the subsidiary protection in Austria, the Court concluded that the asylum seeker should not be separated from her husband and referred to Article 16 of the Dublin regulation on dependent persons as well as to Article 8 ECHR on the right to a private and family life.[160]

Another case in which Austria made use of the sovereignty clause in 2018 concerned a Russian asylum seeker and her two children, who were traveling from Moscow to Vienna. Given that she suffered from different serious illnesses (sclerosis and PTSD), that one of her underage children was mentally ill and that she had relatives in Austria, the BvWG considered that she should stay in Austria and benefit from their support, instead of going to Italy where no one could provide her adequate assistance.[161] In its reasoning, the Court paid particular attention to the child's best interest (e.g. having adequate support in Austria and the presence of family members).

Moreover, the Constitutional Court held in 2018 that single parents with minor children are considered by Article 21 of the recast Reception Conditions Directive as vulnerable persons.[162] The case concerned an Afghan national and the refusal of the Federal Administrative Court to make use of the sovereignty clause. The latter had refused to recognise the existence of a marriage between the Afghan asylum seeker and her Afghan husband who had obtained the subsidiary protection in Austria, as they were married only under the shariah law in Pakistan. Although their child was born in Austria, the BvWG did not address the vulnerability of the single mother nor the one of the new-born child, despite the situation in Bulgaria as assessed in the AIDA report on Bulgaria (to which the BwWG had made reference).

In September 2022, the Constitutional Court ruled against a decision by BVwG in which the second instance found a planned transfer of a Syrian national to Malta to be admissible. The Syrian national claimed that he would be put in detention upon return to Malta and the conditions in detention in Malta would violate his rights guaranteed by Art 2, 3 ECHR. The BVwG did not assess the situation in detention in Malta and ignored the deterioration following the Covid-19 situation in Malta.[163]

158 VwGH, Decision Ra 2017/01/0068, 5 December 2017, available at: https://bit.ly/3mQduCt.
159 VwGH, Decision Ra 2015/18/0192 to 0195, 15 December 2015, available at: https://bit.ly/3ZSe6WO.
160 VwGH, Decision W239 2152802-1, 30 July 2018; available in German at: https://bit.ly/2WYwcqj.
161 BVwG, Decision W185 2188585-1,13 November 2018, available in German at: https://bit.ly/42glME0.
162 VfGH, Decision E2418/2017, 11 June 2018, available in German at: https://bit.ly/3JlV5VZ.
163 VfGH, Decision E622/2022, 20 September 2022, available in German at: https://bit.ly/3mUGSrm.

### 2.2. Procedure

**Indicators: Dublin: Procedure**

1. Is the Dublin procedure applied by the authority responsible for examining asylum applications? ☒ Yes ☐ No
2. On average, how long does a transfer take after the responsible Member State has accepted responsibility? Not available

Austria has not passed any national legislation to incorporate the Dublin III Regulation, as it is directly applicable, but refers to it in Article 5 AsylG. This provision, together with Article 2(1)(8) BFA-VG, states that the authorities issue an inadmissibility decision when Austria is not responsible for conducting the asylum procedure based on the Dublin III Regulation.[164] In the same decision, the authorities have to declare which Member State is responsible for the examination of the asylum application on its merits.

The law also states that there should also be an inadmissibility decision in case another Member State is responsible for identifying which Member State is responsible for the examination of the asylum application on its merits, that is in cases where the applicant is no longer on Austrian territory.[165]

There are three initial reception centres (EAST) which are responsible for the admissibility procedure: one is located in **Traiskirchen** near Vienna, one is in **Thalham** in Upper Austria and one is at the **Airport Vienna Schwechat**. These centres are specialised in conducting outgoing Dublin procedures.

A central Dublin department in Vienna is responsible for supervising the work of the initial reception centres. Moreover, it conducts all Dublin procedures with regard to incoming Dublin requests (requests to Austria to take back or take charge an asylum seeker by another Member State) and, in response to a request of the Aliens Police department, all consultations with Member States concerning foreigners who have not applied for asylum.

Once an application for asylum is lodged, a preliminary interview by the police (*Erstbefragung*) takes place on the circumstances of entering Austria and the first country of entry in the EU, the personal data and – in a very brief manner – also on the reasons why an applicant left their home country. The applicant receives a copy of the report and is further fingerprinted and photographed. Fingerprints are taken from all asylum seekers older than 14 years of age. No problems have been reported with regard to the taking of fingerprints. In case an applicant refuses to be fingerprinted, the appeal against a negative decision may not benefit from suspensive effect,[166] but this is not relevant to the Dublin procedure. Due to the increase in applications in summer 2022, non-vulnerable applicants without EURODAC hits were not questioned right at the border but sent to another police directorate in different parts of Austria. The aim was to distribute the work of the police in the province close to Hungary, Burgenland, to other provinces.

Since September 2018, the Aliens Police Department and the BFA are authorised to examine the data storage of persons applying for international protection. However, this interference with the right to privacy is only permitted if the identity or travel route cannot be established on the basis of available evidence. Until the end of 2019, phones and/or other devices containing data of applicants could not be examined by Austrian authorities due to the lack of necessary data protection measures and missing technical equipment.[167] In December 2020 the Ministry of Interior announced that data storage has not been examined due to missing technical equipment but a purchasing process started in December 2021.[168] As

164 Article 2(1)(8) BFA-VG.
165 Article 5(2) AsylG.
166 Article 18 BFA-VG.
167 Ministry of Interior, *Answer to parliamentary request 3614AB/XXVI. GP*, 23 July 2019, available in German at: https://bit.ly/38PLAK7.
168 Ministry of Interior, *Answer to Parliamentary Request 9531/AB XXVII. GP*, 11 April 2022, , available in German at: https://bit.ly/3LmbufH.

of August 2022, no data examination was conducted as further purchase of computers and mouse accessories was still to be done.[169]

The asylum seeker receives a green "procedure card" after the public security officer has consulted the BFA about the further steps to be taken in the asylum procedure: admittance to the regular procedure or admissibility procedure. Asylum seekers are transferred or asked to go to the initial reception centres when a Dublin procedure is initiated. The green card permits the asylum seeker to stay in the district of the initial reception centre. Cards for asylum seekers – as well as those granted to beneficiaries of protection - should be designed in such a way that they are counterfeit-proof and have a contactless readable data option.

In every procedure, the BFA has to consider within the admissibility procedure whether an asylum seeker could find protection in a safe third country or another EU Member State or Schengen Associated State.

The VwGH has determined that the deadline for an outgoing request starts running from the registration of the application, i.e. the moment the BFA receives the report of the *Erstbefragung*, in line with the CJEU ruling in *Mengesteab*.[170] The case before the VwGH concerned delays in the *Erstbefragung*, as the asylum seeker had applied for asylum in November 2015 but the preliminary interview only took place in January 2016 and the request was issued in March 2016.

Every asylum seeker receives written information, usually through the form of leaflets, about the first steps in the asylum procedure, basic care, medical care and the Eurodac and Dublin III Regulation at the beginning of the procedure in the initial reception centres. No particular issue in the provision of information have been reported, although it is recommended that providing information orally on top of written information would help asylum seekers to understand the asylum system.

Within 20 calendar days after the application, the BFA has to either admit the asylum applicant to the in merit procedure or inform the applicant formally – through procedural order – about the intention to issue an inadmissibility decision on the ground that another state is considered responsible for the examination of the asylum claim.[171] The same applies to so called fast-track in-merits procedures. After the requested Member State accepts responsibility, the asylum seeker is given the possibility to be heard. Before that interview, they have an appointment with a legal adviser who must be present at the interview and who can also access documents in the case file. These tasks will be carried out by legal advisors of the BBU as of 2021.

**Individualised guarantees**

Individualised guarantees were still not requested systematically as of the end of 2020. Their content depends on the individual circumstances of each case according to the BFA. Already in 2017 it was demonstrated that individual guarantees are not requested for vulnerable persons, even where these are requested by legal advisers during the Dublin interview or the appeal before the BVwG. The authorities seem to deem it sufficient to request information from ACCORD or the State Documentation database, in specific cases e.g. access to medical treatment for cancer patients in Italy, and to base their decision thereon.

169 Ministry of Interior, *Answer to parliamentary request 11630/AB*, 21 September 2022, available in German at: https://bit.ly/3SKNdS7.

170 VwGH, Decision Ra 2016/01/0274, 17 October 2017, available in German at: https://bit.ly/40eEUR9, citing CJEU, Case C-670/16 *Mengesteab*, Judgment of 26 July 2017, available at: http://bit.ly/3Tk9tSZ.

171 Article 28 Asylum law has been amended. Since September 2018 the time limit for in-merits procedures may be lifted to enable more decisions during the admissibility procedure.

The sharing of information amongst Member State on the vulnerability and individual guarantees of asylum seekers is still not ensured. In the case of an Iraqi woman in a wheelchair, the BFA obtained a medical report confirming the availability of the necessary medical treatment in Italy. However, Italy had not been informed of the vulnerability in the first round of proceedings, which is why the BVwG granted the appeal and referred the case back to the BFA. The BVwG also rejected the rejection of the BFA in the second stage and stated that Austria was responsible for providing care to avoid a violation of Article 8 of the ECHR under the discretionary clause of Article 17 (1) of the Dublin III Regulation.[172]

**Transfers**

Transfers are normally carried out without the asylum applicant concerned being informed of the time and the location they are transferred to before the departure from Austria, giving them no possibility to return to the responsible Member State voluntarily. There continue to be reports of the BFA informing receiving countries of a Dublin transfer on very short notice, in some cases no more than a week, even for asylum seekers requiring special care.[173] This raises questions with regard to Recital 24 and Article 26(2) Dublin III Regulation according to which a transfer decision must contain the details of the time carrying out the transfer and "if necessary, contain information on the place and date at which the applicant should appear, if he is travelling to the Member State responsible by their own means."

In case of an enforced transfer to another EU Member State, the police first apprehend the asylum applicant and transfers them to a detention centre (see Detention of Asylum Seekers).[174] There is also a special detention centre for families in **Vienna**. The asylum applicant has to stay there until the deportation takes place, usually after one or two days. Under the Dublin procedure, asylum seekers can be held for up to 48 hours without detention being specifically ordered. As a less coercive measure, asylum seekers may be ordered to stay at a certain place (such as a flat or a reception centre).[175] Depending on the responsible state and the number of persons being transferred, the transfer takes place by plane, by bus or by police car under escort.

Regarding detention, the Administrative High Court has stated that the time limit for transfer, which is of 6 weeks, does not start running before the suspensive effect ceases. Furthermore, the period begins running only after the one-week period of the BVwG to award the suspensive effect of the complaint has expired.[176]

No figures on the average duration of the procedure are available. However, the minimum period for a decision to be issued, an appeal to be filed and suspensive effect to be decided upon would be six weeks.

In 2022, 1,100 Dublin-out transfers were conducted.[177] 1,575 Dublin-in transfers were completed in the same time period. As more than 42,000 cases were discontinued due to absconding to other countries, the share of Dublin transfers completed only represents a small part of the applicants. Around 17,000 discontinued cases referred to Afghan nationals.

172 BVwG, Decision W241 2157798-2, 31 January 2018, available in German at: https://bit.ly/3Fu4gm2.
173 ECRE, *Balkan Route Reversed: The return of asylum seekers to Croatia under the Dublin system*, December 2016, available at: https://bit.ly/3mWZAyE, 33.
174 In some cases, asylum seekers have reportedly been apprehended by the police during the night: *Ibid*.
175 Article 77(5) FPG.
176 VwGH, Decision Ro 2017/21/0010, 26 April 2018, available in German at: https://bit.ly/3yELynY.
177 Source: Ministry of Interior, Answer to parliamentary request 13976/AB, 28 April 2023, available in German at: https://bit.ly/3ndzU1k.

### 2.3. Personal interview

**Indicators: Dublin: Personal Interview**
☒ Same as regular procedure

1. Is a personal interview of the asylum seeker in most cases conducted in practice in the Dublin procedure? ☒ Yes ☐ No
   - ❖ If so, are interpreters available in practice, for interviews? ☒ Yes ☐ No
2. Are interviews conducted through video conferencing? ☐ Frequently ☐ Rarely ☒ Never

A personal interview is required by law. The law permits an exception in case the asylum seeker has absconded from the procedure in the initial reception centre (EAST).[178] If the facts are established, and a decision can be taken, the fact that the asylum seeker has not been interviewed yet by BFA or by the BVwG shall not preclude the taking of a decision. In practice this exception is not applied very often.[179] Such relevant facts for a decision in Dublin cases could be a Eurodac hit and the acceptance of the requested Member State to take back the asylum seeker.

An appointed legal adviser must be present at the interview organised to provide the asylum seeker an opportunity to be heard. In practice, legal advisers are present at the hearing. Legal advisers are often informed only shortly before the interview, which means that they lack time to study the file. Legal advice to asylum seekers in detention takes place immediately before the hearing in the detention centre. The provision of § 29 (4) AsylG according to which the asylum seeker must have at least 24 hours to prepare for the hearing with the assistance of the legal adviser is not applied very strictly in practice. However, the reform of June 2019 establishing the BBU introduces a new threshold which grants the asylum applicant the right to free legal assistance by the Agency only if an appointment - during which the applicant exercises their right to be heard - is scheduled within 72 hours (3 days) after having been notified by the BFA of the intention to reject the asylum application. This means that, if the BFA grants the asylum applicant the right to be heard at a later stage (e.g. in 4 or 5 days), free legal assistance by the Agency will only be available if resources so allow.[180] In practice, the BBU GmbH is notified in some cases and asked to provide legal counselling. There is no official statistics on how many interviews are conducted within 72 hours but in most cases applicants do not have access to legal counselling in Dublin procedures.

In Dublin procedures, the rules and practice are the same as in the Regular Procedure: Personal Interview.

The record of the Dublin consultation between Austria and the requested state(s) are made available to the asylum seeker and the legal adviser only after the procedural order of the intention to reject is given and Austria has received the answer from the requested Member State. Sometimes, the requested State has not received all relevant information. One of the judges of the Federal Administrative Court mentioned in a decision regarding a Chechen father whose son was legally residing in Austria that Italy, which had issued a visa for the couple from Chechnya, finally agreed to take charge but was not informed about the severe illness and the disability of the asylum seeker who relied on the care of his son.[181] The Court noted

178 Article 24(3) AsylG.

179 See Asylum Court, S6 430.113-1/2012, 5 November 2012: the Court found that the procedure was unlawful in the case of an unaccompanied minor asylum seeker from Afghanistan, who was interrogated by the police without the presence of his legal representative or a person of trust and disappeared shortly after. The Federal Agency for Aliens' Affairs and Asylum did not submit the minutes of the first interrogation or give the legal representative the opportunity to be heard before rendering the rejection of the application. However, ct. the negative decision of the Asylum Court in the case of an unaccompanied minor: S2 429505-1/2012, 04 October 2012.

180 ECRE, *Reforming legal assistance in Austria: an end to independent provision*?, July 2019, available at: https://bit.ly/3FrmxAx, 3.

181 BVwG, Decision W149 2009627-1, 21 July 2014, available in German at: https://bit.ly/3JGmTof.

that the dependency clause should have been applied in this case. In another case which involved Bulgaria, Austria did not inform the authorities that the asylum-seeker had been in Serbia for more than 3 months, although there was enough evidence.[182]

### 2.4. Appeal

**Indicators: Dublin: Appeal**

☐ Same as regular procedure

1. Does the law provide for an appeal against the decision in the Dublin procedure? ☐ Yes ☐ No
   - ❖ If yes, is it ☒ Judicial ☐ Administrative
   - ❖ If yes, is it suspensive ☐ Yes ☒ No

As Dublin cases are rejected as inadmissible, the relevant rules detailed in the section on Admissibility Procedure: Appeal apply.

The time limit within which the appeal against the BFA's inadmissibility decisions (including Dublin decisions) must be lodged is 2 weeks. The appeal has no suspensive effect, unless the Federal Administrative Court (BVwG) grants suspensive effect within 7 calendar days after the appeal reaches the court. The expulsion order may not be executed before the BVwG has decided if the appeal must be given suspensive effect. In Dublin cases, suspensive effect is hardly granted. Sometimes asylum applicants never receive a final decision because they are transferred back to the responsible Member State before the Court's decision.

The VwGH dealt with the expiry of the transfer period in the context of an appeal that had a suspensive effect. In that case, the decision that gave the complaint a suspensive effect was taken by written procedure and was notified only after the expiry of the six-month transfer period, as laid down in Article 29 (1) of the Dublin III Regulation. The Court considered that granting a suspensive effect after the expiration of the transfer period is not possible and, as a result, the transfer period cannot be extended. Austria was therefore deemed responsible for the asylum application.[183]

The BVwG can either refuse the appeal or decide to refer it back to the BFA with the instruction to conduct either an in-merit procedure or investigate the case in more detail (for instance if the Court finds that the BFA has not properly taken into account family ties or that the assessment of the situation in the responsible Member State was based on outdated material or was insufficient with regard to a possible violation of Article 3 ECHR). Usually, the Court decides on the basis of the written appeal and the asylum file without a personal hearing of the asylum seeker. In 2018, the Austrian legal information system (RIS) provided a list of 1,284 Dublin cases before the BVwG. 975 of these cases are unsuccessful appeals and confirmed the order to return of the persons concerned. In only 54 cases, the Court finds that the transfer period has already expired and that the procedure should therefore be admitted. In 6,8% of the cases the decision of the BFA was referred back by the court. In 2019, 445 Dublin decisions were appealed. In 62 cases (13,9%), the first instance decisions were referred back to the BFA.[184] In 2021, 770 (2020: 394) Dublin decisions were appealed.[185] Data for 2022 was not available at the time of writing.

Asylum seekers whose appeals were accepted by the Court have the right to re-enter Austria by showing the decision of the court at the border. If no suspensive effect was granted but the court finds that the decision of the BFA was unlawful, the asylum seeker is also allowed to re-enter.

182 BVwG, Decision W239 2106763-3, 12 October 2018, available in German at: https://bit.ly/3Ft58Y4.
183 VwGH, Decision Ra 2018/14/0133, 24 October 2018, available in German at: https://bit.ly/3ThQFUA.
184 The cases are available in German at: http://bit.ly/3LKhO0P.
185 Ministry of Justice, *Answer to parliamentary request 9532/AB, XXVII. GP*, 11 April 2022, available in German at: https://bit.ly/3xwMWK6.

### 2.5. Legal assistance

**Indicators: Dublin: Legal Assistance**
☐ Same as regular procedure

1. Do asylum seekers have access to free legal assistance at first instance in practice?
   ☒ Yes ☐ With difficulty ☐ No
   ❖ Does free legal assistance cover: ☐ Representation in interview
   ☒ Legal advice

2. Do asylum seekers have access to free legal assistance on appeal against a Dublin decision in practice?
   ☒ Yes ☐ With difficulty ☐ No
   ❖ Does free legal assistance cover ☒ Representation in courts
   ☒ Legal advice

Free legal assistance during the admissibility procedure was implemented to compensate for the restricted movement of asylum seekers during this type of procedure, as they are obliged to stay within the district of the initial reception centre (EAST). If asylum seekers leave the district of the EAST to consult an attorney-at-law or NGOs – which normally have their offices in bigger cities – they can be subject to a fine ranging from €100 to € 1,000. In case of repeated violation of the restricted residence (*Gebietsbeschränkung*), the fine may reach € 5,000 and detention may even be ordered in case the asylum seeker is unable to pay the fine. A violation of the restriction of movement could furthermore be a reason for pre-removal detention. In 2022, in 68 cases a punishment of violation of restricted residence was applied by the authorities.[186] The second reason why free legal assistance is provided at this stage of the procedure is the lack of suspensive effect of an appeal in admissibility procedures, which justifies the incorporation of additional safeguards in the first instance procedure.

As discussed in the section on Regular Procedure: Legal Assistance, the quality of the advice provided raises concerns due to a lack of time of legal advisers and a lack of trust of asylum seekers, as the advisers are considered being too closely linked to the BFA. They have their offices within the building of the BFA, they provide assistance for voluntary return and their task is only to provide objective information about the procedure to the asylum seekers; not to assist them in the procedure and defend their interests. The new system of legal counselling established by the state-owned *BBU-GmbH* in 2021 further strengthens this conflict of interests, as the Federal Agency responsible for providing legal assistance falls under the responsibility of the Ministry of Interior, which is also supervising the determining authority (BFA).

In case of unaccompanied asylum-seeking children, the appointed legal adviser becomes their legal representative during the admissibility procedure. They are not able to act without the consent of their legal adviser, for example to choose a legal representative by themselves or to submit an appeal in case the legal adviser fails to do so. The quality of the assistance provided has been considered to be problematic in practice here as well. NGOs report that in some cases the legal representative has refrained from lodging an appeal, thereby disregarding the best interests of the child. NGOs further reported to asylkoordination that, in cases where subsidiary protection was granted, the legal guardians appointed by the authorities refrained to consent to lodging an appeal against the negative asylum decision. In the admission procedure, unaccompanied minors do have legal assistance in their asylum procedure but no legal guardian as the legal situation is disputed whether the Child and Youth Welfare Authority is legally obliged to take over the guardianship.

Although Article 29(4) AsylG provides that free legal assistance shall be provided to all asylum seekers at least 24 hours before the hearing on the results of the evidentiary findings determining the responsible

186 Source: Ministry of Interior, Answer to parliamentary request 13976/AB, 28 April 2023, available in German at: https://bit.ly/3ndzU1k.

Member State under the Dublin Regulation, legal advisers receive the file only shortly before the interview, therefore lacking time to study the file and prepare for the hearing. Moreover, the reform of the new legal aid system through the BBU-G introduces a new threshold which grants the asylum applicant the right to free legal assistance by the Agency only if an appointment - during which the applicant exercises their right to be heard - is scheduled within 72 hours (3 days) after having been notified by the BFA of the intention to reject the asylum application. This means that, if the BFA grants the asylum applicant the right to be heard at a later stage (e.g. in 4 or 5 days), free legal assistance by the Agency will only be available if resources so allow. The discretion of the BFA as regards the timing of the appointment thus has an influence on whether legal assistance will be provided at first instance because the Federal Agency is legally obliged to do so, or whether it will be provided if the Agency's available resources allow so. In addition, the provision specifies that, if the asylum seeker did not make use of the right to be heard, this does not affect the outcome of the decision on their application for international protection.[187] NGOs are thus extremely concerned about the arbitrary nature of the provision of legal assistance in such cases. The BBU GmbH reports that if an interview is conducted within 72 hours, they are notified to provide legal counselling. The agency however does not have an overview or information, to what share of Dublin procedures they are involved. The Ministry of Interior also does not provide statistics on the matter. Anecdotal evidence shows that only a small part of the Dublin interviews are conducted within 72 hours and consequently only few applicants confronted with a Dublin procedure have access to free legal counselling.

The legal adviser must be present at the interview held to give the asylum seeker an opportunity to be heard. At the interview in relation to Dublin with the BFA, the asylum seeker together with the legal adviser may submit written statements with regard to the situation in the Member State deemed responsible or make requests for additional investigations, but they are not allowed to ask questions; this is usually respected by the legal advisers.

### 2.6. Suspension of transfers

**Indicators: Dublin: Suspension of Transfers**

1. Are Dublin transfers systematically suspended as a matter of policy or jurisprudence to one or more countries? ☒ Yes ☐ No
   - ❖ If yes, to which country or countries? Greece

Under the Dublin III Regulation, all EU Member States are considered safe where the asylum applicant may find protection from persecution. An exception applies to cases in which there is an obvious risk of lack of protection, e.g. if it is well-known to the authorities, or if the asylum applicant brings evidence that there is a risk that they will not be protected properly. This real risk cannot be based on mere speculations, but has to be based on individual facts and evidence. This statement of risk has to be related to the individual situation of the asylum applicant.

Country reports from various sources such as AIDA, UNHCR, the US Department of State, Amnesty International, Eurostat, as well as information from ACCORD and Austrian liaison officers are taken into consideration, but the threshold for declaring that a country is not in line with its obligations under the *acquis* is usually the establishment of an infringement procedure launched by the Commission against that country.

According to the jurisprudence, notorious severe human rights violations in regard of Article 3 ECHR have to be taken into consideration *ex officio*. If the asylum application is already rejected by the Member State responsible for the examination of the application, a divergent interpretation of the Refugee Convention in a Member State or manifestly unlawful procedures could be relevant in an individual case. Generally

187 ECRE, *Reforming legal assistance in Austria: an end to independent provision*?, July 2019, available at: https://bit.ly/2PQ1H3N.

low recognition rates in a certain Member State are not regarded as a characteristic of a dysfunctional asylum system.

Overall, the number of completed Dublin transfers (outgoing) 2020 have decreased as only 678 transfers have been completed.

Current practice with regard to selected Dublin countries is illustrated below:

**Greece:** After the ruling of the ECtHR in *M.S.S. v Belgium and Greece*, Austria suspended transfers to Greece. The director of the BFA announced Dublin procedures with Greece will start again in March 2017,[188] in line with the European Commission's recommendation of December 2016. So far Dublin procedures to Greece have not started. In single cases where protection status was granted by Greek authorities, the Courts rejected applications lodged in Austria. This changed in 2021 as the Constitutional Court ruled that, due to inadequate reception conditions in Greece a thorough assessment has to be carried out before transferring beneficiaries of international protection back to Greece.[189] Transfers of persons with status in Greece are not suspended in general, however, there are no cases known of completed Dublin transfers to Greece in 2022.[190] However, in at least one case a person who had received subsidiary protection in Greece and whose application was rejected in Austria, was deported to Greece in 2022.[191]

In a project by asylkoordination called TETRAA, Diakonie Flüchtlingsdienst and a lawyer practising in Vienna, Christian Schmaus, supported cases of strategic litigation concerning persons that had received status of protection in Greece but found themselves homeless and without basic care there.[192] The Constitutional Court and High Administrative Court both ruled that the situation of beneficiaries of international protection in Greece has to be assessed closely, especially the access to social services.[193]

**Hungary:** In 2019 and 2020, one transfer has reportedly been carried out respectively in individual cases. While it is clear that individual guarantees must have been secured for the purpose of this transfer, no further information is available on this case. There are reports of Syrian and Afghan nationals being forcibly returned from Austria to Hungary in December 2020 and January 2021. It could not be verified whether these persons applied for asylum or not.[194] In general, the BFA did not carry out any transfer to Hungary since the entry into force of the law on crisis situations on 28 March 2017 until 2022.[195] In 2022, 34 take charge and 11 take back requests were sent to Hungary. 10 transfers were completed.[196]

**Italy:** In 2020, 616 out of 3,196 requests concerned Italy, and 192 transfers were completed to Italy.[197] In relation to Italy, the BFA considers that the obligation to obtain guarantees on the basis of the *Tarakhel v*

188 See Kurier, 'Griechenland soll ab März wieder Flüchtlinge zurücknehmen', 20 January 2017, available in German at: http://bit.ly/2kaZVLc.

189 Austrian Constitutional Court, Decision E599/2021, 25 June 2021, available in German at: https://bit.ly/42jlSuq.

190 Ministry of Interior, *Answer to parliamentary request 9529/AB XXVII. GP*, 11 April 2022, available in German at: https://bit.ly/3Oin9v6.

191 Decision BFA, IFA 1312763810, 9 November 2022.

192 Asylkoordination österreich, TETRAA – Strategische Prozessführung, available in German at: https://bit.ly/3K8IWUz.

193 VfGH Decision E599/2021, 24 September 2021, available in German at: https://bit.ly/42jlSuq; VwGH Ra 2021/18/0085, 25 January 2022, available in German at: https://bit.ly/3ZQDnRp.

194 Hungarian police, 23 December 2020 and 21 January 2021, available in Hungarian: https://bit.ly/2NoI0lg and https://bit.ly/3rOwZZu.

195 Ministry of Interior, *Answer to parliamentary request 9529/AB XXVII. GP*, 11 April 2022, available in German at: https://bit.ly/3Oin9v6.

196 Source: Ministry of Interior, Answer to parliamentary request 13976/AB, 28 April 2023, available in German at: https://bit.ly/3ndzU1k.

197 Ministry of Interior, *Answer to parliamentary request 4893/AB, XXVII. GP*, 12 March 2021, available in German at: https://bit.ly/3qVh62J.

*Switzerland* judgment of the ECtHR has been fulfilled following the Italian Ministry of Interior's letters of 8 June 2015 and 10 February 2016 to all Dublin Units, stating the projects where Dublin returnees would be accommodated.[198] The Constitutional Court pointed out in a ruling of 30 June 2016, in relation to the Circular letter and other procedural steps, that an individual assurance for a vulnerable asylum seeker would have been necessary before implementing a transfer.[199] Nevertheless, the BVwG largely allowed the BFA to carry out Dublin transfers to Italy throughout 2018 and 2019.[200]

From 2015 onwards, the Italian Ministry of Interior had been issuing a number of letters guaranteeing that all families with minors transferred to Italy under the Dublin III Regulation would remain together and be accommodated in a facility adapted to their needs. Previous case law has also allowed for the transfer of families to Italy, including of a single mother and her baby;[201] and of a family with four children (out of which two were minors) and their grandparents.[202] The Constitutional Court also found that the situation of asylum seekers in Italy has improved and that special safeguards are no longer necessary.[203]

In December 2022, Italy announced that it will temporarily suspend all Dublin incoming transfers. It did not mention when it resume accepting Dublin transfers at the time of writing. As of April 2023, time of writing, no transfers had since taken place from Austria to Italy and there is no official date of resumption of transfers.

**Bulgaria:** Transfers to Bulgaria are carried out by the BFA and generally upheld by the BVwG.[204] No objections are raised for single asylum seekers or families. However, higher courts have taken a different line. In one case, the Constitutional Court deemed a transfer unlawful on the basis of the vulnerability of an Iraqi family with young children and the deterioration of reception conditions in Bulgaria.[205] The VwGH has also found that the BFA must make a thorough assessment of the conditions in Bulgaria before transferring families.[206] In March 2023, the Constitutional Court annulled two decisions of the BVwG in which the latter found a decision of the first instance determining a transfer to Bulgaria to be lawful. In one case the decision was found to have been taken in an arbitrary manner because the BVwG did not examine whether the person concerned would have an effective access to the asylum system without having to fear of a chain pushback to Türkiye.[207] In a case of a single mother with her minor daughter the decision was annulled because the BVwG did not take into account that the persons concerned were

198 Information provided by the BFA to ECRE, November 2015. See Italian Ministry of Interior, *Circular Letter to all Dublin Units Re: Dublin Regulation Nr. 604/2013 – Guarantees for vulnerable cases: family groups with minors*, 10 February 2016, available at: https://bit.ly/3AMt8mf.

199 VfGH, Decision E 449-450/2016 and E 703-704/2016-14, 30 June 2016, available at: https://bit.ly/42hTQ2z.

200 See e.g.; BVwG, Decision W192 2212056-1, 7 January 2019, available in German at: https://bit.ly/3YMUZMx; W175 2212052-1, 8 February 2019, available in German at: https://bit.ly/3LwwBMe; W240 2204175-2, 25 March 2019, available in German at: https://bit.ly/3ZUTEoo; W175 2217936-1, 26 April 2019, available in German at: https://bit.ly/3Tkho2G; W165 2206407-1, 19 June 2019, available in German at: https://bit.ly/3lq7uA1; W165 2218873-1, 29 August 2019, available in German at: https://bit.ly/3mYF14Y; W165 2214983-1, 18 September 2019, available in German at: https://bit.ly/3mYU0LY; W144 2224022-1, 7 October 2019, available in German at: https://bit.ly/3Jo7icr; W243 2140308-1, 27 January 2017, available in German at: https://bit.ly/3yKmoUM; W144 2152033-1, 18 April 2017, available in German at: https://bit.ly/3FuSnw1; W205 2144676-1, 6 June 2017, available in German at: https://bit.ly/3JpUwKC; W192 2162712-1, 13 July 2017; W153 2166538-1, 22 September 2017, available in German at: https://bit.ly/40gcRAN.

201 VWGH, Decision Ra 2016/20/0051, 23 June 2016.

202 VwGH Decisions Ra 2017/20/0061 to 0067, 23 March 2017, available in German at: https://bit.ly/3n0Bbbh.

203 VfGH, Decision E2646/2016, 7 March 2017, available in German at: https://bit.ly/3lgRqR8.

204 See e.g. BVwG, Decision W239 2217177-1, 26 April 2019, available in German at: https://bit.ly/3FqNHHq; W165 2174429-1, available in German at: https://bit.ly/3mNKhbk, 23 November 2017; W241 2178020-1, 7 December 2017, available in German at: https://bit.ly/3JIMmOL.

205 VfGH, Decision E 484/2017, 9 June 2017, available in German at: https://bit.ly/3YSr8m5. See also VfGH, Decision E 86/2017, 24 November 2017, available in German at: https://bit.ly/3TnEO7C.

206 VwGH, Decision Ra 2017/18/0039, 30 August 2017; Ra 2017/19/0100, 13 December 2017, available in German at: https://bit.ly/3yJsBAu.

207 VfGH, Decision E 2944/2022, 15 March 2023.

member of a vulnerable group.[208] In 2022, around 70% of all Austrian take back requests were sent to Bulgaria (9,196). 6,619 were accepted by Bulgaria, 34 transfers were effectively completed.[209]

**Croatia:** Following the CJEU ruling in *A.S. / Jafari*, the BVwG rejected previously suspended cases and the persons concerned have been returned to Croatia. In some cases the applications were admitted in Austria due to the expiry of the time limit for the transfer. In 2019, transfers to Croatia were completed without Austria asking for individual guarantees. In 2022, 37 transfers were completed to Croatia.[210] In 2023, NGOs reported about many negative Dublin decisions and transfers to Croatia. In all cases, Croatia became responsible by not responding to the requests. Some persons transferred claimed that they have never been to Croatia before.

### 2.7. The situation of Dublin returnees

Asylum seekers returning to Austria under the Dublin Regulation, and whose claim is pending a final decision, do not face obstacles if their transfer takes place within two years after leaving Austria. In this case, the discontinued asylum procedure will be reopened as soon as they request for it at the BFA or the BVwG. If a final decision has already been taken on the asylum application upon return to Austria, the new asylum application will be processed as a subsequent asylum application. Dublin returnees also do not face any particular issues in accessing the reception system.

So far the BFA has not been requested to provide guarantees to other Member States prior to transfers.

## 3. Admissibility procedure

### 3.1. General (scope, criteria, time limits)

The admissibility procedure starts upon registration of the application with the first interrogation (*Erstbefragung*) of the asylum seeker by the public security officer, who has to submit a report to the branch office of the BFA. The caseworker of the BFA in charge of the case informs the police about the next steps of the admissibility procedure. If the applicant is admitted to the regular procedure they are ordered to travel to the initial reception centre (EAST) or transferred there by the police.[211] There are three EAST which are responsible for the admissibility procedure: one is located in **Traiskirchen** near Vienna, one in **Thalham** in Upper Austria and one at the **Airport Vienna Schwechat**. If the asylum applicant is not admitted to the regular procedure, they stay in the Federal reception system and is not being allocated to one of the provinces. The person has thus only the right to stay in the district where the Federal reception centre is located.

All asylum seekers have to undergo the admissibility procedure, except children born in Austria whose parents have received protection status in the country or whose application is admitted to the regular procedure. Their applications are admitted immediately to the regular procedure.[212]

An application may be rejected as inadmissible for the following reasons:

(1) The person comes from a safe third country;[213]
(2) The person enjoys asylum in an EEA country or Switzerland;[214]

208 VfGH, Decision E 1044/2022, 9 March 2023.
209 Ministry of Interior, Answer to parliamentary request 13976/AB, 28 April 2023, available in German at: https://bit.ly/3ndzU1k.
210 Ministry of Interior, Answer to parliamentary request 13976/AB, 28 April 2023, available in German at: https://bit.ly/3ndzU1k.
211 Article 29(1) AsylG.
212 Article 17(3) AsylG.
213 Article 4(1) AsylG.
214 Article 4a(1) AsylG.

(3) Another country is responsible for the application under the Dublin III Regulation;[215]
(4) The person files a subsequent application and "no change significant to the decision has occurred in the material facts".[216]

Asylum seekers receive a green "procedure card" within 3 days, which is an indication that their stay in Austria is tolerated. This card is replaced by a "white card" as soon as the application is admitted to the regular procedure.

Within 20 days after the application for international protection has been lodged, the BFA must admit the asylum applicant to the in-merit procedure or notify them formally by procedural order about the intention to issue an inadmissibility decision on the ground that another state is considered responsible for the examination of the asylum claim; or that it intends to revoke the suspensive effect of a subsequent application. If the BFA does not notify the asylum applicant of its intention to issue an inadmissibility decision within 20 days, the application is thus admitted to the regular procedure. This time limit does not apply if consultations with another state on the application of the Dublin III Regulation take place.[217]

The 20-day time limit shall not apply if the BFA intends to reject the application for international protection and the applicant does not cooperate during the asylum procedure. The procedure is deemed no longer relevant, especially if the asylum seeker absconded from the procedure.[218] The duty of asylum seekers to cooperate includes the duty to provide the BFA with information and evidence about their identity and reasons for applying for international protection, to be present at hearings and personal interviews as well as to inform the authorities about their address. If the asylum seeker is unable to cooperate during the procedure for reasons relating to their person (e.g. illness, postponing the interview due to duty to comply with summons etc.), the 20-day time limit shall be suspended.[219]

If the BFA has ordered an age assessment, the 20-day time limit also does not apply. This practice is based on a lack of cooperation on the part of the asylum seeker in the procedure. As a result, unaccompanied minors who applied for asylum often wait for several months before they are found underaged as a result of the age assessment and until their application is finally admitted. In practice the time limit is respected, however.

As a result of the admissibility procedure, the application may either be dismissed on the merits, or asylum or subsidiary protection status may be granted. The granting of a status or the dismissal of the application in the admissibility procedure replaces the admissibility decision.[220] An admissible application shall nevertheless be rejected if facts justifying such a rejection decision become known after the application was admitted.[221] In practice, this provision is applied in Dublin cases without the precondition that the facts justifying admissibility were not known before.[222]

The information provided by the Ministry of Interior did not include the number of inadmissibility decisions issued in 2019.[223] However, the admissibility procedure lasted for approximatively five days in 2018. This did not significantly change in 2019. It should be noted that, especially in the context of family proceedings, the admission often already takes place on the day of the application, which importantly reduces the calculation of the average duration.[224] It should be further noted that, during the admission procedure,

215 Article 5(1) AsylG.
216 Article 12a(2)(2) AsylG.
217 Article 28(2) AsylG.
218 Article 28(2) AsylG.
219 Article 28(2) AsylG.
220 Article 28(2) AsylG.
221 Article 28(1) AsylG.
222 VwGH, Decision Ra 2006/20/0624, 25 November 2008.
223 Information provided by the Ministry of Interior, 18 February 2020.
224 *Answer to parliamentarian request, No 3235/AB-BR/2018*, 31 July 2018.

asylum seekers are given basic care in federal care facilities. In 2020, asylum seekers were accommodated in federal facilities and received federal basic care for around 26 days on average.[225] In 2021, the average time of a person (separate data for asylum seekers not available) accommodated in federal basic care is 80 days, compared to 1,033 days in province basic care.[226] Data for 2022 is not available at the time of writing.

### 3.2. Personal interview

**Indicators: Admissibility Procedure: Personal Interview**
☒ Same as regular procedure

2. Is a personal interview of the asylum seeker in most cases conducted in practice in the admissibility procedure? ☒ Yes ☐ No
   - ❖ If so, are questions limited to identity, nationality, travel route? ☐ Yes ☒ No
   - ❖ If so, are interpreters available in practice, for interviews? ☒ Yes ☐ No

3. Are interviews conducted through video conferencing? ☐ Frequently ☐ Rarely ☒ Never

A personal interview is required by law. The asylum seeker is interrogated by law enforcement officials at the registration stage of the application for international protection and by officials of the BFA during the admissibility procedure at the initial reception centre. The police is not allowed to ask detailed questions on the merits of the application such as the specific reasons for fleeing the country of origin or residence. The clear division of tasks between the police - which has the duty to assess the identity, personal data and the travel route of the applicant - and the officials of the BFA for assessing the facts on which the application is based is not always respected in practice, however. The last question in the questionnaire of the police always concerns the reason why the person had to flee. In most cases, the applicants are told to give a short answer only and more details in a later interview. As a result, the reasons for fleeing the country of origin may be found not credible at the interview stage before the officials of the BFA if the asylum seeker has based the application for international protection on other reasons than those stated immediately upon arrival. In this regard, Article 19(4) AsylG explicitly foresees that, in the admission procedure, the asylum seeker shall also be informed that their own statements will be accorded particular attention, meaning that they should be aware of the consequences of false testimonies.

The law allows for an exception from the personal interview in case the asylum seeker has absconded from the procedure while being accommodated in the initial reception centre. If the facts relevant to a decision on an asylum claim are established, the fact that the asylum seeker has not been interviewed yet by the BFA or by the BVwG shall not preclude the rendering of a decision. In practice this exception is not applied very often, however. The BFA files most of these cases as “discontinued”, which means that upon request by the asylum seekers the procedure will be reopened. An exception may apply in a subsequent asylum application that was submitted within two days before the execution of an expulsion order.[227] An interview during the admission procedure may be dispensed with if the procedure is admitted.

225 Ministry of Interior, *Answer to parliamentary request 4244/AB, XXVII. GP*, 18 January 2021, available in German at: https://bit.ly/2OPthRn.
226 Ministry of Interior, *Answer to parliamentary request 9123/AB, XXVII. GP*, 14 March 2022.
227 Article 19(1) AsylG.

### 3.3. Appeal

**Indicators: Admissibility Procedure: Appeal**
☐ Same as regular procedure

1. Does the law provide for an appeal against the decision in the admissibility procedure? ☒ Yes ☐ No
   - ❖ If yes, is it ☒ Judicial ☐ Administrative
   - ❖ If yes, is it suspensive ☐ Yes ☐ Some grounds ☒ No

For the admissibility procedure, the appeal stages are the same as in the regular procedure. The time limits within which an appeal against the BFA's inadmissibility decision must be lodged is two weeks and the appeal has in general no suspensive effect, except when decided otherwise by the BVwG.

As a first step, the BVwG decides within one week after receiving the appeal whether the appeal will have suspensive effect during the continuing appeal procedure. If the BVwG does not grant a suspensive effect to the appeal or does not admit the appeal after seven days, the asylum applicant can be transferred to the responsible Member State, the safe third country or their country of origin in case of a subsequent application.

If the application is rejected on the merits in the admissibility procedure, such application shall be deemed to be admitted if, or as soon as, a complaint against that decision has suspensive effect.

Appeals against a decision rejecting the asylum application as inadmissible do *not* have suspensive effect unless this is granted by the BVwG.[228] The reasons for not granting suspensive effect to the appeal in inadmissible cases correspond to grounds for declaring claims manifestly unfounded, as mentioned in Regular Procedure: Appeal.

The appointed legal adviser is not obliged to help the asylum seeker to draft the complaint, despite the fact that it must be written in German, and the requested qualification for legal advisers is also not sufficient.

### 3.4. Legal assistance

**Indicators: Admissibility Procedure: Legal Assistance**
☐ Same as regular procedure

1. Do asylum seekers have access to free legal assistance at first instance in practice? ☐ Yes ☒ With difficulty ☐ No
   - ❖ Does free legal assistance cover: ☐ Representation in interview ☒ Legal advice

1. Do asylum seekers have access to free legal assistance on appeal against an inadmissibility decision in practice? ☒ Yes ☐ With difficulty ☐ No
   - ❖ Does free legal assistance cover ☒ Representation in courts ☒ Legal advice

A legal adviser is automatically appointed by the BFA in case it intends to reject the application in the framework of the admissibility procedure and if an interview is to be conducted within 72 hours of handing over a procedural order of its intention to reject the application in the admissibility procedure. Legal advice has to be provided at least 24 hours before the next interview, during which the asylum seeker is given the opportunity to be heard. Presence of legal advisers during the interview is mandatory unless the applicant dismisses the advisor explicitly

[228] Article 16(2) BFA-VG.

Free legal advice is foreseen for subsequent asylum applications under the same conditions (interview within 72 hours) as well, including at appeal stage.[229] Most of the cases that are regarded as inadmissible are Dublin cases (see Dublin: Legal Assistance) and Safe Third Country cases.

Since January 2021, legal assistance has been provided by the new Federal Agency, the BBU GmbH (see Regular procedure:

[229] Article 52(1) BFA-VG.

Legal assistance).

## 4. Border procedure (border and transit zones)

### 4.1. General (scope, time limits)

**Indicators: Border Procedure: General**

1. Do border authorities receive written instructions on the referral of asylum seekers to the competent authorities? ☒ Yes ☐ No
2. Where is the border procedure mostly carried out? ☒ Air border ☐ Land border ☐ Sea border
3. Can an application made at the border be examined in substance during a border procedure? ☒ Yes ☐ No
4. Is there a maximum time limit for a first instance decision laid down in the law? ☒ Yes ☐ No
   - ❖ If yes, what is the maximum time limit?[230] 1 week
5. Is the asylum seeker considered to have entered the national territory during the border procedure? ☐ Yes ☒ No

Austria has no land border with third countries. All neighbouring states are Schengen Associated States and Member States, party to the Dublin Regulation. A border procedure is foreseen at national level but is strictly limited to airports. In reality, all airport procedures are realised at **Vienna** airport as it is the only one where a reception centre is established.[231] Moreover, the Austrian airport procedure foresees the possibility to carry out both an admissibility assessment of the asylum claim as well as a full in-merit examination of the asylum claim, in accordance with Article 43 recast Asylum Procedures Directive. There is no available data on the number of applicants for international protection subject to the airport procedure. Overall the border procedure can be described as a black box and there is a serious lack of transparency on the functioning of procedure. UNHCR shares little information on the functioning of the airport procedure.

Under Article 33(1) and (2) AsylG, an asylum application lodged at the airport can only be rejected as inadmissible or dismissed on the merits on two grounds:

(1) Dismissal on the merits if there is no substantial evidence that the asylum seeker should be granted protection status *and*:
   i. the applicant tried to mislead the authorities abouttheir identity, citizenship or authenticity of their documents and was previously informed about the negative consequences of doing so;
   ii. the applicant's claims relating to the alleged persecution are obviously unfounded;
   iii. the applicant did not claim any persecution at all; or
   iv. the applicant comes from a Safe Country of Origin; or

(2) Inadmissibility because of existing protection in a Safe Third Country.

In practice, however, Article 33(2) is never applied.

Asylum seekers who apply for international protection at the airport are transferred after the interview with the police to the building of the police station with the initial reception centre and the rejection zone. The questions asked by the police are the same as in the regular procedure and focus on the travel route as well as one question concerning the reason for the application for international protection. The applicant has the same rights as in the regular procedure such as right to look into the file and receive a copy of the interview report. On the basis of the first interview, the BFA decides within a maximum time limit of

230 Time limit to send the file to UNHCR rather than to take a first instance decision.
231 Article 31- 33 AsylG.

one week whether the procedure shall be processed under the special regulations of the airport procedure, or if the case should be considered under the regular procedure.[232]

For airport procedures, the Asylum Act foresees a 'four-eyes principle' whereby a rejection of an application on the merits or because of existing protection in a safe third country requires the explicit consent of UNHCR. However, that involvement does not substitute any due process guarantees but is a further safeguard in addition to e.g. the rights to be heard, to legal counseling and to appeal. If the BFA intends to reject the application in the airport procedure, UNHCR has to be informed within one week, a time limit which is generally respected.[233] If the time limit is not met, the application is admitted to the regular procedure and the asylum seeker is allowed entry.[234] Moreover, UNHCR is entitled to contribute to the procedure (e.g. examine the application and talk to the applicant).In practice, UNHCR decides most cases based on the case files including interview records by the BFA since in case of doubts it does not agree with a rejection in the airport procedure.[235] On the basis of an agreement between Austria and UNHCR, the latter is obliged to respond and provide an opinion within 48 hours, maximum 96 hours, after a case has been submitted.[236] In case the UNHCR does not give its consent it has to bring in a written reasoning. However, UNHCR's involvement during the airport procedure remains limited in practice. Data on the number of cases concerned are not available. In the context of Dublin procedures at the airport, UNHCR is not involved.

The law foresees that the persons are not allowed to enter the territory but can leave for another country at any time.[237] Persons held in border facilities are *de facto* detained as they are forced to stay in the initial reception centre at the airport. Official detention is not regulated in law. Individuals remain in detention pending the implementation of the negative decision at the border and can only be maintained for a maximum duration of six weeks.[238] Therefore, at this stage, a decision rejecting the asylum application on the merits or as inadmissible is issued without an expulsion order. Rejection at the border may be enforced only after a final decision on the asylum application. While detailed statistics are missing, practice suggests that airport procedure are carried out in less than 6 weeks. Nevertheless, the fact that the 6 weeks deadline as foreseen at national level goes beyond the four weeks deadline foreseen in Article 43 APD has not been litigated so far.

Most cases processed at the airport were Dublin procedures and most decisions that were considered as manifestly unfounded at the airport were appealed. In 2018, only 1 appeal was successful while the other 11 appeals were rejected.[239] In 2019, the BVwG rejected all 22 appeals of asylum seekers originating from India, Iran, Philippines, Egypt, Sri Lanka, Lebanon, Russia and Cuba.

In 2016, a reform entered into force to allow for special measures at the border for the maintenance of public order during border checks, which will effectively enable police authorities to deprive asylum seekers of access to the asylum procedure (see Access to the Territory). As of 2022, the measure had still not been implemented in practice.

### 4.2. Personal interview

**Indicators: Border Procedure: Personal Interview**
☒ Same as regular procedure

1. Is a personal interview of the asylum seeker in most cases conducted in practice in the border procedure? ☒ Yes ☐ No

232 Article 31(1) AsylG.
233 Article 32(2) AsylG.
234 Article 33(2) AsylG.
235 Article 33 (2) AsylG
236 Abkommen Mitwirkung UNHCR im Asylverfahren, Art III (2), available in German at: https://bit.ly/3jX4OVm.
237 Article 32 (1) AsylG
238 Article 32 (4) AsylG
239 Information obtained through the legal information system (RIS), Decisions of the BVwG.

- ❖ If so, are questions limited to nationality, identity, travel route? ☐ Yes ☒ No
- ❖ If so, are interpreters available in practice, for interviews? ☒ Yes ☐ No

2. Are interviews conducted through video conferencing? ☐ Frequently ☐ Rarely ☒ Never

In procedures at the airport, only one personal interview by the BFA is conducted.[240] There are no other differences with interviews under the regular procedure. However, as already mentioned, UNHCR plays an active role in the processing of asylum applications in the airport procedure as it can issue binding opinions. Asylum applications can thus be rejected only upon approval of UNHCR, otherwise they must be processed in the regular procedure. There are no available statistics due to a lack of transparency on the procedure. The involvement of UNHCR is ambivalent: on the one hand it serves as a safeguard in an accelerated procedure, and on the other hand UNHCR is directly involved throughout a truncated procedure which can possibly create dependencies that might cause conflict with UNHCRs role as a UN organisation.

### 4.3. Appeal

**Indicators: Border Procedure: Appeal**
☒ Same as regular procedure

1. Does the law provide for an appeal against the decision in the border procedure?
   ☒ Yes ☐ No
   - ❖ If yes, is it ☒ Judicial ☐ Administrative
   - ❖ If yes, is it suspensive ☒ Yes ☐ Some grounds ☐ No

The time limit for lodging appeals against a decision by the BFA in procedures at the airport is 1 week.[241] The BVwG must issue its decision within 2 weeks from the submission of the complaint.[242] A hearing in the appeal proceedings must be conducted at the initial reception centre at the airport,[243] but this rarely happens in practice. The appeal has automatic suspensive effect.[244]

240 Article 33(2) AsylG.
241 Article 33(3) AsylG.
242 Article 33(4) AsylG.
243 Article 33(4) AsylG.
244 Article 33 (5) AsylG

### 4.4. Legal assistance

**Indicators: Border Procedure: Legal Assistance**
☒ Same as regular procedure

1. Do asylum seekers have access to free legal assistance at first instance in practice?
   ☒ Yes ☐ With difficulty ☐ No
   - ❖ Does free legal assistance cover: ☐ Representation in interview
     ☒ Legal advice

2. Do asylum seekers have access to free legal assistance on appeal against a negative decision in practice?
   ☒ Yes ☐ With difficulty ☐ No
   - ❖ Does free legal assistance cover ☒ Representation in courts
     ☒ Legal advice

The federal agency BBU GmbH which is responsible for the provision of basic care in the reception centres of the Ministry of Interior, is also responsible for the provision of legal assistance to asylum seekers in the airport special transit centre. The legal counsellors have to provide legal counselling at first instance and are informed and appointed automatically by the BFA in cases where the BFA announces that it will conduct an interview within 72 hours after the application was lodged. As of February 2021, all interviews were held within 72 hours at the airport. Legal counsellors must be present during the interview. The legal counselling unit is not permanently present at the airport but is stationed in the nearby EAST in **Traiskirchen** and serves the airport procedures from there. There is not much information available yet on how this has worked so far in practice. NGOs do not have access to this area unless they have a power of attorney.

The BBU GmbH also provides basic care at the EAST at the airport. As of September 2022, there was a capacity of 28 beds at the transit zone at the airport.[245]

## 5. Accelerated procedure

### 5.1. General (scope, grounds for accelerated procedures, time limits)

The law provides for "procedures for the imposition of measures to terminate residence" subject to reduced time limits for appeal and decisions on appeal, with the effect that certain cases are dealt with in an accelerated manner. For the purpose of this report, these are referred to as accelerated procedures.

Under Article 27 AsylG, an accelerated procedure is applied where:

(a) During the admissibility procedure, the BFA has notified the applicant of its intention to reject the application as inadmissible (see section on Admissibility Procedure) or dismiss the application on the merits;[246]

(b) The appeal procedure is to be discontinued where the asylum seeker has absconded the procedure and a return decision was issued by the BFA;[247]

(c) The BFA determines that the application should be rejected as inadmissible or dismissed on the merits *and* there is a public interest in accelerating the procedure.[248] Public interest exists in particular, albeit not exhaustively, where an applicant:[249]

   ii. Has committed a criminal offence;

   iii. Has been charged with a criminal offence by the Department of Public Prosecution;

245 Ministry of Interior, *Answer to parliamentary request 11630/AB XXVII. GP*, 21September 2022, available in German at: https://bit.ly/40SDLyv.
246 Article 27(1)(1) AsylG, citing Article 29(3)(4)-(5) AsylG.
247 Article 27(1)(2) AsylG, citing Article 24(2) AsylG.
248 Article 27(2) AsylG.
249 Article 27(3) AsylG.

iv. Has been subject to pre-trial detention; or
v. Has been caught in the act of committing a criminal offence.

In case a "procedure for the imposition of measures to terminate residence" has been initiated, a decision on the asylum application shall be taken as quickly as possible and no later than 3 months.[250]

In addition, Article 27a AsylG provides an accelerated procedure as such and states that certain cases may be decided within 5 months, with a possible extension if necessary for the adequate assessment of the case. Such accelerated procedures are foreseen when grounds for denying the suspensive effect of appeals apply, as stated in Article 18 BFA-VG. These reasons are:

(a) The asylum seeker comes from a safe country of origin;
(b) There are indications that the asylum seeker endangers public security and order;
(c) The asylum seeker has provided false statements on their identity, nationality and authenticity of documents;
(d) No reasons for persecution have been asserted;
(e) Statements adduced are obviously false or contradictory;
(f) An executable return decision has been issued before applying for international protection; and
(g) The asylum seeker refuses to provide fingerprints.[251]

Procedures are also subject to stricter time limits in case the asylum application is examined at the airport (see section Border Procedure).

In 2020, 524 applications were subject to an accelerated procedure with an average duration of less than 72 hours. Another 283 procedures were conducted as classic fast track procedures with an average duration of 22.7 days.[252] In accelerated procedures, the authorities focus on applicants from countries with a low recognition rate. In 2020, the top three nationalities to be confronted with accelerated procedures were **Morocco** (55%), **Algeria** (18%) and **India** (5.8%).[253] In 2021, 1,100 cases were channeled into the accelerated procedure. In 2022, 23,297 decisions were taken in a fast track procedure, among which 1,188 were taken in an accelerated procedure. The top three nationalities concerned were India (30%), Tunisia (29%) and Morocco (17%). These procedures are not necessarily conducted at the border.[254]

250 Article 27(8) AsylG.
251 Article 18 BFA-VG.
252 Ministry of Interior, *Answer to parliamentary request 4887/AB, XXVII. GP*, 12 March 2021, available in German at: https://bit.ly/2P47uVW.
253 Ministery of Interior, „*Nehammer: Schnellverfahren trennt erfolgreich zwischen Asyl und Migration*", 25 February 2021, available in German at: https://bit.ly/2P4CBRd.
254 Ministry of Interior, *Answer to parliamentary request 13740/AB, XXVII. GP*, 20 April 2023, available in German at: https://bit.ly/3NoQQfV.

### 5.2. Personal interview

**Indicators: Accelerated Procedure: Personal Interview**
☒ Same as regular procedure

1. Is a personal interview of the asylum seeker in most cases conducted in practice in the accelerated procedure? ☒ Yes ☐ No
   - ❖ If so, are questions limited to nationality, identity, travel route? ☐ Yes ☒ No
   - ❖ If so, are interpreters available in practice, for interviews? ☒ Yes ☐ No
2. Are interviews conducted through video conferencing? ☐ Frequently ☐ Rarely ☒ Never

All asylum seekers must conduct a personal interview. The law permits an exception in case the asylum seeker has absconded from the procedure.[255] If the facts are established, failure by the BFA or by the Federal Administrative Court to conduct an interview should not preclude the rendering of a decision. No differences are observed from the Regular Procedure: Personal Interview.

The BFA may omit the personal interviews in cases of subsequent applications which aim to prevent the execution of an expulsion order and/or subsequent applications without *de facto* protection against deportation. Subsequent applications within 18 days of the deportation date have no suspensive effect, the expulsion order issued after the rejection of the first asylum application can be executed.[256]

### 5.3. Appeal

**Indicators: Accelerated Procedure: Appeal**
☐ Same as regular procedure

1. Does the law provide for an appeal against the decision in the accelerated procedure? ☒ Yes ☐ No
   - ❖ If yes, is it ☒ Judicial ☐ Administrative
   - ❖ If yes, is it suspensive ☐ Yes ☐ Some grounds ☒ No

Time limits for appeals are the same as in the Regular Procedure: Appeal. The BVwG has to decide on the appeal within 3 months in cases granted suspensive effect.[257] The BVwG has to decide on the appeal against negative decisions – which include expulsion orders - within 8 weeks.[258]

In subsequent applications without protection against deportation, the court has to decide within 8 weeks if suspensive effect was not granted. This provision has not much effect in practice, however, as asylum seekers may have been expelled or transferred before. Nevertheless, the appeal may have suspensive effect.[259]

Difficulties in lodging an appeal against negative decisions in the accelerated procedure are similar to those described in the section on the Dublin Procedure: Appeal; especially regarding the lack of free legal assistance. Organisations contracted to provide legal assistance also have to organise interpreters if necessary.

255 Article 24(3) AsylG.
256 Article 19(1) AsylG.
257 Article 27(8) AsylG.
258 Article 17(2) BFA-VG.
259 Article 18(2)(5) BFA-VG. See e.g. AsylGH (Asylum Court), A8 260.187-2/2011, 2 August 2011.

### 5.4. Legal assistance

**Indicators: Accelerated Procedure: Legal Assistance**
☐ Same as regular procedure

1. Do asylum seekers have access to free legal assistance at first instance in practice?
   ☒ Yes ☐ With difficulty ☐ No
   - ❖ Does free legal assistance cover: ☐ Representation in interview
     ☒ Legal advice

2. Do asylum seekers have access to free legal assistance on appeal against a decision in practice?
   ☒ Yes ☐ With difficulty ☐ No
   - ❖ Does free legal assistance cover ☒ Representation in courts
     ☒ Legal advice

Access to free legal assistance at first instance is difficult for asylum seekers detained during the accelerated procedure, although they may contact NGOs for advice. Free legal assistance is available for subsequent asylum applications too.[260] Since January 2021, the Federal Agency (BBU-GmbH) is responsible for providing legal assistance also in these cases.

A right to legal advice - as required by the recast Asylum Procedures Directive - is only mandatory at second instance, i.e. before the BVwG. This means that, at first instance, legal assistance will only be provided depending on existing resources of the Federal Agency.[261] As a result, it is not guaranteed that asylum applicants in the accelerated procedure will have effective access to legal assistance. Moreover, while they are in principle allowed to access other NGOs, the restriction on their freedom of movement in the context of the admissibility procedure significantly limits their access to NGOs which are not present in certain initial reception centres.

In so-called accelerated procedures under Article 27a AsylG in conjunction with Article 18 BFA-VG, mandatory free legal aid for the admissibility procedure is circumvented by the possibility to forward the procedure to the BFA branch office without prior admission to the regular procedure. This practice took place from time to time in 2018 but has not been reported recently. When asylum seekers get an invitation to their interview, they are still subject to restrictions on their freedom of movement. Therefore they are not able to consult NGOs or lawyers outside the restricted area. The BBU GmbH had access to accelerated procedure applicants. However, they were not allowed to share information on the concrete circumstances due to their legal obligations set out in the BBU-G.

## D. Guarantees for vulnerable groups

### 1. Identification

**Indicators: Identification**

1. Is there a specific identification mechanism in place to systematically identify vulnerable asylum seekers? ☐ Yes ☒ For certain categories ☐ No
   - ❖ If for certain categories, specify which: Unaccompanied minors

2. Does the law provide for an identification mechanism for unaccompanied children?
   ☒ Yes ☐ No

The Asylum Law has no definition of vulnerable groups. However, it provides special provisions for victims of harassments, of sexual self-determination (Article 20 Asylum Act) of violence (Article 30 AsylG), as well

260 Article 49(2) BVA-VG in conjunction with Article 29(3) BFA-VG.
261 For additional information on the BBU-G, § 51 BFA-VG, see in German: https://bit.ly/378koFH.

as for unaccompanied minors (e.g. family tracing Article 18, legal representation Article19 Asylum Law). Only a few federal states such as **Burgenland**, **Vorarlberg** or **Upper Austria** have included definitions of vulnerable asylum seekers in their basic care laws.

### 1.1. Screening of vulnerability

There is no effective system in place to identify asylum seekers in need of special procedural guarantees and the law does not foresee any mechanism to that end. During the admissibility procedure in the initial reception centre, asylum seekers are informed through written leaflets about the necessity to report psychological problems to the doctor and the legal adviser. At the beginning of the interview, they are asked whether they have any health or mental problems that could influence their ability to cooperate during the asylum procedure. Psychologists in initial reception centre are requested by the BFA to assess if the asylum seeker is suffering from mental disorders as a result of torture or another event which may prevent them from defending their interests during the procedure or entails for them a risk of permanent harm or long-term effects.[262]

The report published by the OHCHR in October 2018 following a mission in Austria indicates that interviews conducted by the police and the BFA take place in an atmosphere of mistrust, whereby the authorities focus on the identification of Dublin cases rather than on the identification of vulnerability. The report also stated that there was generally little cooperation among different actors, including governmental entities and a broad range of civil society organizations working with migrants in vulnerable situations.[263] In 2021, the exchange between the first instance authority and NGOs remained difficult. There is however an exchange between NGOs, second instance Court and the BBU GmbH on a regular basis.

**Victims of trafficking**

In the Austrian system, there is no systematic identification of victims of trafficking. However, an Austrian authority's assessment of an individual as a (potential) trafficked person has concrete consequences in status determination procedures and criminal prosecution; meaning that a person can be identified as a victim of trafficking in accordance with the criminal procedures act. A type of formal classification of an individual as a "victim" and the procedural consequences this entails is only regulated in the Austrian Code of Criminal Procedure.

The OHCHR further encouraged the Austrian authorities to provide for a reflection and recovery period in the law in order to strengthen identification practices, but this was not implemented. During its visit in 2018, the OHCHR was informed that potential victims of trafficking, particularly women were being returned back to the countries they had fled. This mainly concerned Dublin cases and "safe third country" cases.[264] In practice, there are still no systematic identification of victims of trafficking in place. In November 2021, the Ministry of Foreign Affairs presented the 6th national action plan to combat trafficking in human beings for 2021 to 2023, consisting of 109 measures ranging from prevention and awareness raising to improving law enforcement measures.[265]

In practice, if an Austrian official, such as a caseworker of the BFA, identifies a potential trafficked person, the official is requested to contact the criminal police office of the respective federal province. If the latter confirms the suspicions of the official, criminal investigations are initiated. The individual concerned as

262 Article 30 AsylG.
263 OHCHR, *Report on the mission to Austria focusing on the human rights of migrants, particularly in the context of return*, October 2018, available at: https://bit.ly/2u4JoQE, 7.
264 Ibid.
265 Ministry of Foreign Affairs, *Report to the Parliament: Bekämpfung des Menschenhandels, Arbeitsausbeutung, Kinderhandel, Prostitution*, November 2021, available in German at: https://bit.ly/36pRC9n.

well as a specialised NGO will be contacted and informed, a reflection period may be granted, and certain victims' rights relevant to criminal proceedings are provided. There are no current statistics, however, on the number of victims of human trafficking in Austria.

Access to specialised care and support through NGOs is not necessarily dependent on informal identification by the police or the presence of criminal or civil proceedings. In the identification process, a central role is given to the Federal Criminal Intelligence Service. Together with its offices in the federal provinces, it is responsible for investigating cases of trafficking in Austria. This authority mainly cooperates with the organisation "LEFÖ-IBF", which is formally contracted by the Austrian Ministry of Interior and the Women's Department of the Federal Chancellery to provide support and protection to victims of trafficking across Austria.

### 1.2. Age assessment of unaccompanied children

Most age assessments are ordered by the EAST during the admissibility procedure, as special safeguards apply to unaccompanied children in accordance with the Dublin III Regulation. When the Dublin Unit starts consultations with other EU Member States it thus informs the latter that there is an ongoing age assessment procedure. In the meantime, the concerned unaccompanied children are admitted to the regular asylum procedure.

In practice, it seems that age assessments are ordered systematically. While the BFA had ordered 1,355 carpal x-rays in 2017 and 2,552 age assessments in 2016; resulting in the recognition of minority of 61% and 59% respectively.[266] In 2022, 461 (2021: 428) multifactorial age assessments and 951 (2021: 1,170) wrist X-rays were conducted by the BFA. As a result of age assessments, in 233 cases (2021: 200) the applicant was considered to be of age while in 228 (2021: 228) cases the applicant's minority was confirmed.[267]

**Methods for assessing age**

In the case of doubt with regard to the age of an unaccompanied asylum-seeking child, authorities may order a medical examination. Several methods might be used. According to the Asylum Act and decrees of the Minister of Interior (which are not public), age assessments through medical examination should be a measure of *ultima ratio*. Other evidence to prove age should be verified first. If doubts remain after investigations and age assessment, the principle of *in dubio pro minore* (the benefit of the doubt) should apply.[268] As part of a multifactorial examination methodology, three individual examinations are carried out (i.e. physical, dental and x-ray examinations). According to the Ministry of Interior, these examinations are conducted in compliance with the guidelines of the Association for Forensic Age Diagnostics (AGFAD).[269]

However, these principles are not strictly applied in practice. Children undertake age assessment tests but the asylum authorities do not acknowledge the documents that are submitted to them nor do they allocate sufficient time to obtain such documents. The Human Rights Board (*Menschenrechtsbeirat*), NGOs and the Medical Association have criticised the age assessment methods.[270] The age assessment examination states a minimum age and consists of three medical examinations: a general medical

266 Ministry of Interior, Reply to parliamentary request, No 1240/AB, 4 September 2018, available in German at: http://bit.ly/2nU4rz4.

267 Source: *BFA-Detailstatistik 1.-4. Quartal 2022*, available in German at: https://bit.ly/3SMUZLj.

268 Article 13(3) BFA-VG.

269 Reply to the parliamentary request No 1240/AB, 4 September 2018, , available in German at: http://bit.ly/2nU4rz4.

270 Human Rights Board, Bericht des Menschenrechtsbeirates zu Kindern und Jugendlichen im fremdenrechtlichen Verfahren, 2011; Stellungnahme der Ärztekammer, FPG 2010, 21 July 2009.

examination; an X-ray examination of the wrist and a dental examination by a dentist. If the X-ray examination of the wrist is not conclusive, a further X-ray (CT) examination of the clavicle may be ordered.

An example in which the VwGH applied the benefit of the doubt and ruled that the applicant should be considered to be a minor concerned a Gambian asylum seeker. His birth certificate, delivered by the Gambian authorities, indicated that he was a minor but the authorities in Norway and Italy had determined that he was an adult. The BFA had considered that the concerned Gambian applicant was between 17.04 and 18.44 years.[271]

Even though strategic litigation against the application of age assessment has almost ceased in the last years, concerns are being articulated by NGOs especially in reference to the indiscriminate application of age assessments The BFA regularly orders age assessment procedures, even in cases in which the applicants offered to present documents within days or weeks. The costs of an age assessment range between € 489.20 and € 1,246.80.[272] The statistical data of the Ministry of Interior is incomplete and does not allow conclusions to be drawn on the proportionality and scientific value of the application of age assessment.

**Challenging age assessments**

Age assessments are not an administrative decision but an expert opinion which is communicated to the applicant. As a result, there is no possibility to appeal the opinion. The question whether it is possible to challenge the decision declaring the majority of an asylum applicant has been referred to the Constitutional Court (VfGH). In a ruling of 3 March 2014, the Court ruled that the declaration of majority of an asylum applicant by the BFA, and the subsequent discharge of the legal representative, may not be appealed during the first instance procedure.[273] As a consequence, unaccompanied children who are erroneously declared to be adults have to continue the procedure without legal representation. Authors have raised concerns resulting from this ruling, in particular the fact that the Court established criteria that are not in line with the applicable legal safeguards and disregarded the significant procedural consequences a declaration of majority entails. [274]

The VwGH has confirmed the VfGH's position, stating that age assessments should be seen as part of the examination of the asylum application. Since the age assessment is a mere procedural matter according to the VfGH, the asylum seeker does not lose any rights in the procedure that they would otherwise enjoy as an unaccompanied child.[275]

However, as explained by experts, the deprivation of the right to legal representation under Article 10(3) BFA-VG denies unaccompanied children of the right to a representative in violation of Article 25(1) of the recast Asylum Procedures Directive and Article 6(2) of the Dublin III Regulation, as well as of Article 24(1) of the recast Reception Conditions Directive.[276]

271 VwGH, Decision Ra 2017/18/0118, 27 June 2017, available in German at: https://bit.ly/3JlEMIG.

272 Ministry of Interior, *Answer to parliamentary request 4983/AB, XXVII. GP*, 11 March 2021, available in German at: https://bit.ly/30VT4dd.

273 VfGH, Decision U 2416/2013-8, 3 March 2014.

274 See in particular D Lukits and R Lukits, 'Neues zur Volljährigerklärung im österreichischen Asylverfahren, Fabl, January 2014.

275 VfGH, Decision U 2416/2013-8, 3 March 2014.

276 Amnesty International, *Studie zur Situation besonders vulnerabler Schutzsuchender im österreichischen Asyl- und Grundversorgungsrecht*, August 2016

## 2. Special procedural guarantees

**Indicators: Special Procedural Guarantees**

1. Are there special procedural arrangements/guarantees for vulnerable people?
   ☐ Yes ☒ For certain categories ☐ No
   - ❖ If for certain categories, specify which: Unaccompanied minors, victims of torture or sexual violence

### 2.1. Adequate support during the interview

In cooperation with UNHCR Austria, IOM and LEFÖ BFA, officials of the BFA are offered training sessions providing targeted information on vulnerable groups.[277] These trainings further aim to strengthen their understanding of first-instance procedures and adequate measures to be adopted to ensure a high-quality of interpretation.[278] In addition to the trainings that have been organised on a regular basis since 2016, officials of the BFA are also supported in their day-to-day work through the development of certain tools. UNHCR further develops specific assessment methods for the evaluation of asylum procedures. It selects the focus point for the assessment of the decisions and provides samples of interviews and decisions to train quality assessors of the BFA accordingly. In 2018, two cases involving homosexual asylum applicants aroused public criticism. Social media reported that their asylum application had been rejected as untrustworthy, which led to an investigation and the responsible official of the BFA lost his license to decide upon asylum applications. The BFA acknowledged that the decision did not meet the necessary qualitative standards as regards language and wording used.[279]

In that context, the Austrian Queer base counselling centre criticised the fact that BFA employees were not adequately trained in that regard. The Ministry of Interior responded that there are ongoing training courses offered to BFA staff and highlighted that specific trainings on LGBTI rights had been planned even before the aforementioned scandal.[280] However, no additional training seemed to have been provided at the time of writing In 2021, BFA and BVwG have offered additional training involving the specialised NGO Queer Base. The trainings are not mandatory for the BFA employees.

The OHCHR report of 2018 also confirmed that, in a number of cases obtained, negative decisions made by the BFA were based on personal views and involved biased questioning in interviews as well as stereotypes on gender and race. Gender-specific considerations are not systematically adopted in practice, e.g. by ensuring that women are interviewed without the presence of male family members. Even when the information about sexual orientation of individuals was not disputed, there have been cases where gay people were returned in fast-track-procedure to countries considered as “safe”, yet criminalising homosexuality.[281]

Another similar case concerned an asylum seeker who claimed that he had been threatened in Gambia because of his homosexuality. This claim was considered not credible by the BFA. After having analysed the reasoning of the decision and because the particular circumstances of the case were not taken into consideration, the VfGH concluded that the necessary administrative standards were not met.[282] In 2021, another case in which the NGO Queer Base represented the applicant was made public: The BFA had

277 *Answer to parliamentarian request, No 1571/AB*, 2 November 2018, available in German at: https://bit.ly/2tt2bS5.
278 UNHCR, Projekt Bidge, availalel in German at: https://bit.ly/2N5zfZ0.
279 Wiener Zeitung, “Sie sind nicht homosexuell", 15 August 2018, available in German at: https://bit.ly/2I9PtBD.
280 Wiener Zeitung, ‚Heikle Fragen, Die Verfolgung wegen der sexuellen Orientierung ist ein Fluchtgrund. Für die Behörden ist diese schwer zu ermitteln‘, 17 September 2018, available in German at: https://bit.ly/2BxMZYc.
281 OHCHR, *Report on the mission to Austria focusing on the human rights of migrants, particularly in the context of return*, October 2018, available at: https://bit.ly/2u4JoQE, 8.
282 VfGH, Decision No E2786 / 2018-16, 26 November 2018, available in German at: https://bit.ly/3YSu4z7.

used inappropriate and inadequate questions concerning the sexual life of the applicant and had made the applicant undress according to her.[283]

Article 30 AsylG also states that particular attention should be paid to the asylum seekers' specific needs throughout the asylum procedure, although the concept of "adequate support" is not defined or described in the law. Although the 6-month time limit to decide on an asylum application for international protection is sufficient to identify such specific needs, this is not applied in practice. In cases concerning unaccompanied children, the BFA often failed to issue a decision within due time.

If an asylum seeker bases the fear of persecution on infringements of their right to sexual self-determination, they should be interviewed by an official of the same sex, unless requested otherwise.[284] In the procedure before the BVwG, this rule should apply only if asylum seekers have already claimed an infringement of their right to sexual self-determination before the BFA or in the written appeal. The Constitutional Court (VfGH) has ruled that a judge of the same sex has to decide on the appeal regardless of whether a public hearing is organised or the decision is exclusively based on the file.[285] A similar provision for interpreters is lacking, however.

Each member of a family has to submit a separate application for international protection. During the interview they are asked whether they have individual reasons to apply for protection or whether they want to rely on the reasons of one of their family members. Accompanied children are represented in the procedure by their parents, who are requested to submit the reasons on behalf of their children.

### 2.2. Exemption from special procedures

If it is deemed highly probable that the applicant has suffered from torture or other serious forms of physical, psychological or sexual violence, the application shall not be dismissed in the admissibility procedure.[286]

Moreover, asylum claims lodged by vulnerable asylum seekers (e.g. victims or torture or violence and unaccompanied children) should in principle not be processed in airport procedures. However, in practice, in the absence of effective vulnerability identification mechanism, vulnerable applicants continue to be subject to airport procedures. Moreover, vulnerable applicants may also be subject to accelerated procedures for national security reasons.

## 3. Use of medical reports

**Indicators: Use of Medical Reports**

1. Does the law provide for the possibility of a medical report in support of the applicant's statements regarding past persecution or serious harm? ☒ Yes ☐ In some cases ☐ No

2. Are medical reports taken into account when assessing the credibility of the applicant's statements? ☒ Yes ☐ No

Asylum seekers undergo a mandatory medical examination in the initial reception centres (EAST).[287] In many cases, however, persons of trust are not allowed to be present during psychological consultations.

283 Tiroler Tageszeitung, Anhaltende Schikanen für LGBTIQ-Personen in Asylverfahren, 22 April 2021, available in German at: https://bit.ly/381jXTD.
284 Article 20(1) AsylG.
285 VfGH, U 688-690/12-19, 27 September 2012, available in German at: https://bit.ly/42fVkdL.
286 Article 30 AsylG.
287 Article 28(4) AsylG.

Medical reports are mainly requested in the admissibility procedure to assess whether an expulsion would cause a violation of Article 3 ECHR. Therefore, a standard form is used with space for a narrative. Medical reports are not based on the methodology laid down in the Istanbul Protocol.[288]

Some of the psychiatrists or medical experts are accredited by the courts, but have no special training on survivors of torture, do not apply the Istanbul Protocol, do not allow a person of confidence to be present during the examination or are biased. Therefore asylum seekers also submit opinions of experts of their own choice, which they normally pay themselves, although sometimes these opinions are covered by their health insurance.

The Administrative Procedures Act (AVG) requires the assessment of all relevant facts and imposes an obligation on the authorities to undertake all necessary investigations. Statements of the applicants have to be credible, persecution needs not be proved and preponderant plausibility is sufficient. If the authorities have doubts on whether the applicant has been subjected to torture or other serious acts of violence, a medical examination may be ordered. These examinations are paid by the state. Often asylum seekers submit expert opinions e.g. a report of the psychiatric department of a hospital where they have been treated or an opinion of a psychotherapist. In each federal state, a network of NGOs provides free psychotherapy sessions to asylum seekers, as these are funded by the Asylum, Migration and Integration Fund (AMIF). [289] However, in practice, capacities are insufficient and clients often have to wait several months to start the treatment.

In appeal procedures against a decision of the BFA, new facts and evidence may be submitted only if the asylum seeker had been unable to submit those before the BFA. Negative first instance decisions are often based on the lack of credibility of the facts presented. To convince the Federal Administrative Court (BVwG) of the applicant's credibility, expert opinions requested by the Court or submitted by the applicant may thus play a crucial role in the appeal procedure.

The Administrative High Court (VwGH) delivered a crucial decision in 2010 with regard to the consideration of medical evidence, in which it criticised the first instance authority for:

> "[N]eglecting to take into account medical reports as proof of psychological conditions, which consequently deprived the applicants of an objective examination of contentious facts… The responsible authority has thereby judged the applicants' mental state without going into the substance of the individual circumstances."[290]

A psychiatric opinion was taken into consideration, which concerned the need to treat the psychiatric illness. Post-traumatic stress disorder (PTSD), illusions and concentration difficulties were diagnosed, but the opinion did not demonstrate to what extent those issues would influence the asylum seeker's statements. Therefore, the authority believed that the asylum seeker should remember the exact date of the events reported.

The established jurisprudence of the VwGH requires exhaustive reasoning to deny the causality between alleged torture and visible scars, including through an expert opinion indicating the likelihood of alleged torture causing the visible effects.[291] In the same ruling, the Court repeated earlier jurisprudence to the effect that psychiatric illness has to be taken into account in regard to discrepancies that have been identified in the statements of an asylum seeker.

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288 United Nations Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 2004 (Istanbul Protocol), Professional Training Series No. 8/Rev.1.

289 Network for Intercultural Psychotherapy and Extreme Trauma (NIPE), see official website available in German at: https://bit.ly/2HDlkaH.

290 VwGH, Decision Ra 2007/19/0830, 19 November 2010.

291 VwGH, Decision Ra 2006/01/0355, 15 March 2010.

### 4. Legal representation of unaccompanied children

**Indicators: Unaccompanied Children**

1. Does the law provide for the appointment of a representative to all unaccompanied children?
   ☒ Yes ☐ No

A legal representative for the asylum procedure is appointed by the BFA as soon as an unaccompanied child applies for asylum. As opposed to adult asylum seekers, unaccompanied minors have to lodge the asylum application at the police station of **Traiskirchen**, near the initial reception centre. Unaccompanied children that are between 14 and 17 years old can further lodge their application at a designated police office in **Schwechat**. Unaccompanied children have no legal capacity to act by themselves in the procedure; nevertheless, they have the duty to cooperate during the procedure just as adults. Legal representatives have to be present both at interviews organised by the BFA and hearings at the BVwG.

During the admissibility procedure, the legal advisers (who are contracted by the Ministry of Interior) act as legal representatives of the unaccompanied asylum-seeking child. Legal advisers were either from Verein Menschenrechte Österreich or from ARGE Rechtsberatung up until 2020. The BBU GmbH has taken over the responsibility of legal representation of unaccompanied children in January 2021. According to the Human Rights Board (*Menschenrechtsbeirat*),[292] the fact that these legal advisers are only responsible for the asylum procedure and do not have full custody of the child is problematic. Furthermore, legal advisers are not required to have special expertise on children. The problem is still lacking a solution and has become a part of public debate throughout 2020. An answer to a parliamentary request showed that more than 50% of unaccompanied minors disappear after lodging an asylum application. The Federal Youth Association (*Bundesjugendvertretung*) criticised the fact that no one has full custody over the children during the admissibility procedure and called for a solution that would foresee that full custody is assigned to a legal representative from the first day of the asylum procedure.[293]

With the takeover of the BBU GmbH in charge of providing legal counselling since January 2021 (see

[292] Menschenrechtsbeirat, *Bericht des Menschenrechtsbeirates zu Kindern und Jugendlichen im fremdenrechtlichen Verfahren* , 2011.

[293] Bundesjugendvertretung,'Bundesjugendvertretung fordert Aufklärung bezüglich abgängiger UMFs in Österreich', 20 January 2020, available in German at: https://bit.ly/33epMHf.

Legal **assistance**), no major changes concerning guardianship of unaccompanied minors have occurred. There is still no general appointed guardian in the admissibility procedure. The BBU GmbH is only responsible for legal representation in asylum procedures, all other areas of best interest of the child are not covered. The improvement of the protection and legal status of refugee children is set as an objective in the 2020-2024 coalition programme. Measures securing a swift access to childcare for unaccompanied minor refugees is foreseen and the child's welfare is meant to be taken into consideration during the asylum procedure.[294] NGOs, and UNHCR, IOM and UNICEF have urged the government to take measures without delay to implement a better protection.[295] In 2022, the government has not yet presented a draft for a possible new guardianship law even though the pressure has increased following the report of the *Kindeswohlkommission,* an independent commission appointed by the Ministry of Justice following deportations of children in January. The opposition parties have brought forward a parliamentary motion urging the federal government to further improve the protection and legal status of child refugees and to pay special attention to the best interests of the child.[296] The situation of unaccompanied minors got worse during the reception crisis in fall 2022: As the provinces failed to take over asylum seekers from the federal reception centres the centres' capacity reached its limits. This resulted in up to 1,000 UAM having to stay in inadequate reception centres for months.

In 2022, 13,151 UAM applied for asylum but 11,629 absconded from the procedure.[297] This represents 88,4% of all applications in 2022.[298]
In one case in 2017 concerning an asylum seeker who had repeatedly missed age assessment appointments and for whom custody had been transferred by the court to the Child and Youth Service (*Kinder- und Jugendhilfe*), the BFA had conducted a Dublin interview without the child's legal representative being present and rejected his asylum application, mentioning that he had seriously breached his obligation to cooperate. The BVwG had demanded an original power of attorney and stated that the submitted copy of power of attorney was insufficient. The VwGH found that it was not necessary for the Child and Youth Service to bring forward the original power of attorney, since the formal requirements had been satisfied.[299]

In the case of siblings, the BFA and BVwG have assumed that an adult sibling has the power to represent their underage sibling in the admissibility procedure. The VwGH and VfGH have clarified, however, that legal representation during this procedure is a task for a legal adviser and cannot be performed by a sibling. The transfer of custody requires a court decision and cannot be based on the sole decision of the Child and Youth Service.[300]

After admission to the regular procedure and transfer to one of the federal provinces, the Child and Youth Service (KJH *Kinder- und Jugendhilfe*) takes over the legal representation according to the Asylum Act or by court decision.

Legal presentation services are provided by the KJH in three federal states (**Vienna, Lower Austria, Tyrol**). NGOs provide legal services in other federal states, (**Carinthia, Styria, Vorarlberg**) and the legal representation is divided between different NGOs in the three remaining states (**Upper Austria,**

294 Austrian coalition programme 2020-2024, available in German at: https://bit.ly/376xseX, 197.
295 UNHCR, 'Obsorge ab Tag 1: UNHCR, IOM und UNICEF rufen Österreich auf, Maßnahmen für unbegleitete Kinder und Jugendliche zu verstärken', 25 February 2020, available in German at: https://bit.ly/38kRUcs.
296 Parlamentskorrespondenz, Flucht, Migration und Kinderrechte dominieren Innenausschuss, 20 October 2021, available in German at: https://bit.ly/3JV6DOb.
297 BFA, *BFA-Detailstatistik 1.-4. Quartal 2022*, available in German at: https://bit.ly/41NE1jY.
298 Asylkoordination österreich, "Kind ist Kind? 550 Schulklassen voll Flüchtlingen verschwunden", available in German at: https://bit.ly/3ZMRV3W.
299 VwGH, Decision Ra 2017/19/0068, 20 September 2017, available in German at: https://bit.ly/3TmxDfN.
300 VfGH, Decision E2923/2016, 9 June 2017, available in German at: https://bit.ly/3ZJbhYd; VwGH, Decision Ra 2016/18/0324, 30 August 2017, available in German at: https://bit.ly/3lmvtjF.

**Salzburg, Burgenland**). UNHCR conducted a survey and concluded that there was no difference in the quality of the legal representation services provided by the different NGO's.[301]

Providing advice in return cases is mandatory since 2016 and unaccompanied children are also advised on return to their country of origin. Legal representatives are not informed about this, as a file note is only available when the application for voluntary return has already been signed. In 2017, 21 children, originating from Afghanistan, Iran and Iraq, have returned voluntarily. In 2018, IOM, provided support to 10 unaccompanied minors for their voluntary return.[302] In 2019, 61 unaccompanied minors left the country voluntarily, including in the context of Dublin procedures, and two unaccompanied children were deported to Nigeria and Serbia respectively.[303] In 2020, there was no deportation of unaccompanied minors.[304] At the same time, IOM provided support to three unaccompanied minors for their voluntary return to Afghanistan, Pakistan and Russian federation.

Unaccompanied children also have the duty to cooperate with family tracing in the country of origin or third countries, regardless of the organisation or person who is undertaking the tracing. Children searching for family members can contact the Red Cross.

The number of unaccompanied children seeking asylum in Austria steadily decreased from 8,277 in 2015 to 4,551 in 2016, 1,751 in 2017 and 488 in 2018. In 2019, however, an increase in the number of applications for international protection by unaccompanied children was noted, reaching 859 applications in 2019.[305] In 2020, 1,467 unaccompanied minors applied for asylum, mainly from Afghanistan (825), Syria (389) and Morocco (34). 2021 was marked by another significant increase of 5,605 unaccompanied children, mainly from Afghanistan (3,363) and Syria (1,435). In 2022, a record number of 13,276 UAM applied for asylum in Austria. At the end of 2022, however, an alarming number of 11,613 persons absconded from the procedure.[306]

| Unaccompanied asylum-seeking children in 2022 | | |
|---|---|---|
| Country of origin | 2021 | 2022 |
| Afghanistan | 3,363 | 9,371 |
| Syria | 1,435 | 1,864 |
| Pakistan | 52 | 506 |
| Egypt | 186 | 368 |
| Tunisia | 195 | 293 |
| India | 75 | 271 |
| **Total** | **5,605** | **13,276** |

Source: Ministry of Interior, Annual statistics 2022, available in German at: https://bit.ly/3Zsdx5e.

301 UNHCR, Rechtsvertretung von unbegleiteten Kindern und Jugendlichen im Asylverfahren. April 2018, available in German at: https://bit.ly/2ByL1GR.
302 IOM, Press release: Freiwillige Rückkehr aus Österreich bleibt 2018 hoch: IOM unterstützt mehr als 3.400 Menschen, 1 January 2019.
303 Ministry of Interior, *Answer to parliamentary request 42/J (XXVII. GP)*, 19 December 2019, available in German at: https://bit.ly/427wBHA.
304 Ministry of Interior, *Answer to parliamentary request 3051/AB, XXVII. GP*, 6 October 2020, available in German at: https://bit.ly/30eFWzz.
305 Ministry of Interior, *Answer to parliamentary request 42/J (XXVII. GP)*, 19 December 2019, available in German at: https://bit.ly/427wBHA.
306 BFA, *BFA-Detailstatistik 2022*, available in German at: https://bit.ly/40RXfDP.

A reply to a parliamentary request from December 2019 indicated that only 170 cases of unaccompanied minors were admitted to the asylum procedure as minors. In 471 cases, the procedure was declared discontinued. Procedures are being declared discontinued when the applicants leave the country voluntarily or have absconding from the procedure. Asylkoordination Österreich publicly criticised the authorities for losing track of these children and for not taking effective measures to protect underaged asylum applicants. This stands in direct connection with the refusal of the responsible KJH in the district of the initial reception centre of **Baden** to take over custody of unaccompanied minors during the admission procedure.[307] The Ministry of Interior argued that Child and Youth Service is responsible for the guardianship of unaccompanied minors while the Provence of Lower Austria (which is the supreme authority of the Child and Youth Service of Baden) stated that they can only take over responsibility for guardianship in emergency cases.[308]

In 2021, a total of 3,778 final decisions involving accompanied minor asylum seekers were issued, out of which 3,104 granted asylum (i.e. the large majority of 3,097 at first instance) and 266 granted subsidiary protection (all of them at first instance). In 2021, six residence permits were issued.[309] In 2021, around 4,500 unaccompanied minors disappeared after applying for international protection in Austria.[310] In 2022, 13,276 UAM applied for international protection of which 11,613 absconded, mostly within the first week after the application was lodged, NGOs reported to asylkoordination.

## E. Subsequent applications

**Indicators: Subsequent Applications**

1. Does the law provide for a specific procedure for subsequent applications? ☒ Yes ☐ No

2. Is a removal order suspended during the examination of a first subsequent application?
   - ❖ At first instance ☒ Yes ☐ No
   - ❖ At the appeal stage ☐ Yes ☒ No

3. Is a removal order suspended during the examination of a second, third, subsequent application?
   - ❖ At first instance ☒ Yes ☐ No
   - ❖ At the appeal stage ☐ Yes ☒ No

The AsylG defines subsequent applications as further applications after a final decision was taken on a previous asylum application.[311] If a further application is submitted while an appeal is still pending, the new application is considered as an addition to the appeal. Different legal safeguards apply depending on the previous procedure (in-merit or Dublin procedure) and the time of submitting the application. Usually, a subsequent application is not admitted to the regular procedure and is rejected as inadmissible.[312]

The Federal Administrative Court (BVwG) can either refuse the appeal or decide to revert it back to the BFA with the binding instruction to examine the subsequent asylum application either in a regular procedure or by conducting more detailed investigations.

307 Asylkoordiantion Österreich, “asylkoordination fordert Maßnahmen und hofft auf Ankündigung im Regierungsprogramm”,available in German at: https://bit.ly/2Spmyvo.
308 Der Standard, ‘Die Hälfte der unbegleiteten Flüchtlingskinder in Österreich verschwindet‘, 6 December 2020, available in German at: https://bit.ly/2HCyQLZ.
309 Ministry of Interior, *answer to a parliamentary request 9406/AB, XXVII. GP*, 28 March 2022, available in German at: https://bit.ly/3xCwszN.
310 Asylkoordination österreich, Press relesase, *Kampagne KIND ist KIND fordert Obsorge ab Tag eins*, April 2022, available in German at: https://bit.ly/3ryMYwU.
311 Article 2(1)(23) AsylG.
312 Article 68 AVG.

An interview has to take place within the admissibility procedure, except in the case where the previous asylum application was rejected due to the responsibility of another Member State. Such interviews are shorter than in the first application and focus on changed circumstances or new grounds for the application. The law does not define new elements, but there are several judgments of the Administrative High Court that are used as guidance for assessing new elements.[313]

Reduced legal safeguards apply in case an inadmissibility decision was taken within the previous 18 months (i.e. if the rejection is connected to an expulsion order and a re-entry ban of 18 months). In this case, there is generally no suspensive effect for the appeal nor for the application itself. In many cases the asylum applicant does not even undergo a personal interview except for the preliminary interrogation conducted by the police.[314]

Suspensive effect may be granted for an application following a rejection of the application on the merits or a safe third country decision, if the execution of the expulsion order of the previous asylum procedure could violate the non-*refoulement* principle. If suspensive effect is not granted, the file has to be forwarded to the BVwG for review and the Court has to decide within 8 weeks on the lawfulness of the decision.[315] The expulsion may be effective 3 days after the Court has received the file.

It might sometimes be necessary for the person concerned to lodge a subsequent asylum application, due to the inactivity of the authorities or the lack of another possibility to get a legal residence. Family and civil status may have changed since the final decision on the first asylum application (e.g. marriage or birth of a child) and - due to the expulsion order issued as a result of that negative decision - it is not possible for the person concerned to apply for a residence permit as family member of a legally residing person or of a person with protection status in Austria. A subsequent application for international protection would then include the question of a possible violation of Art. 8 ECHR.

Moreover, in Dublin cases, if the asylum seeker has not been transferred to the responsible Member State after the rejection of their first application, they will have to submit a new asylum application in Austria, which will be considered as a subsequent asylum application. Where it becomes clear that the situation has changed or the requested Member State does not accept the request for transfer, a regular procedure is initiated to assess the case on the merits.

Asylum seekers sent back to Austria by other Member States two years after their file has been closed due to their absence have to submit a subsequent application as well. The same applies to cases in which the decision has become final while the asylum seeker was staying in another Member State.

There is no limit on the number of subsequent applications that can be submitted. Different rules apply to subsequent applications with regard to suspensive effect of the application, which depends on whether the expulsion order will be executed within the following 18 days or whether the date is not yet fixed. In cases of rejection of subsequent asylum application, the same rules regarding free legal assistance during the regular procedure apply: the BFA assigns the responsibility to one of the organisations (either VMÖ or ARGE) to appeal the negative decision.

Asylum seekers who submit a subsequent application within 6 months after the previous application has been rejected are not entitled to Basic Care provisions; nevertheless they may receive Basic Care during the admissibility procedure of the subsequent application (see section on Reception Conditions: Criteria

313 See AsylGH 09.04.2013, C6 408.412-2/2013; VwGH v. 20.03.2003, Zl. 99/20/0480, AsylGH 10.04.2013, B10 305.993-2/2013.
314 Article 12a(1) AsylG.
315 Article 22(1) BFA-VG.

and Restrictions to Access Reception Conditions).[316] If Basic Care is not granted, detention or a less coercive measure such as a designated place of living and reporting duties is ordered.[317]

In 2022, 2.2% of all applications came from subsequent applicants.

| Subsequent applicants: 2021-2022 | | |
|---|---|---|
| Country | 2021 | 2022 |
| Afghanistan | 633 | 592 |
| Russian Federation | 121 | 195 |
| Nigeria | 83 | 80 |
| Somalia | 117 | 122 |
| Iraq | 84 | 139 |
| Iran | 90 | 150 |
| India | N/A | 190 |
| Syria | N/A | 163 |
| Other | 760 | 839 |
| **Total** | **1,265** | **2,470** |

Source: : Ministry of Interior, Annual statistics 2022, available in German at: https://bit.ly/3Zsdx5e.

## F. The safe country concepts

**Indicators: Safe Country Concepts**

1. Does national legislation allow for the use of "safe country of origin" concept? ☒ Yes ☐ No
   - ❖ Is there a national list of safe countries of origin? ☒ Yes ☐ No
   - ❖ Is the safe country of origin concept used in practice? ☒ Yes ☐ No
2. Does national legislation allow for the use of "safe third country" concept? ☒ Yes ☐ No
   - ❖ Is the safe third country concept used in practice? ☒ Yes ☐ No
3. Does national legislation allow for the use of "first country of asylum" concept? ☒ Yes ☐ No

### 1. Safe country of origin

Article 19 BFA-VG provides a list of safe countries of origin. The Governmental order listing safe countries of origin must take into account primarily the existence or absence of state persecution, protection from persecution by non-state actors and legal protection against human rights violations. The COI department of the BFA has to take various state and non-state sources into account, e.g. reports from human rights bodies, media articles, governmental reports etc. The COI department's methodology in this regard is accessible online.[318]

In asylum cases relating to applicants originating from a safe country of origin, the Federal Government may issue a decree ordering that the suspensive effect of an appeal against a negative decision must not be withdrawn; which is binding both for the BFA and the Courts. The examination of the list of safe countries of origin by the Ministry of Interior is also based on previous COI reports produced the (former) Federal Asylum Agency.

316 Article 3(1)(3) Basic Care Act (GVG-B).
317 Articles 76(3)(4) and 77 FPG.
318 BFA, *Methodology of the COI Department*, available in German at: https://bit.ly/2Sype9Q, 52.

This list includes all EU Member States,[319] although there is a mechanism that allows to take Member States off the list in case Article 7 of the Treaty on European Union (TEU) is applicable; i.e. Article 7 TEU provides for suspension of certain rights deriving from the application of the Treaties in case of serious breach of the values on which the EU is based, as laid down in Article 2 TEU. As a consequence, suspensive effect must be granted for appeals in asylum procedures of nationals of these EU Member States. Other safe countries of origin mentioned in the Asylum Act are: **Switzerland**, **Liechtenstein**, **Norway**, **Iceland**, **Australia** and **Canada**. In 2022, 26 EU-nationals originating from 14 Member States applied for asylum in Austria.[320]

319 Defined as states party to the EU Treaties: Article 2(1)(18) AsylG.

320 Ministry of Interior, *Answer to parliamentary request 9531/AB*, 11 April 2022, available in German at: https://bit.ly/3LmbufH.

Further states are defined as safe countries of origin by Governmental order (*Herkunftsstaaten-Verordnung, HStV*). As of December 2022, the list was last amended on 1 July 2019, and included the following states:[321]

- Albania;
- Bosnia-Herzegovina;
- The Republic of North Macedonia;
- Serbia;
- Montenegro;
- Kosovo;
- Benin;
- Mongolia;
- Morocco;
- Algeria;
- Tunisia;
- Georgia;
- Armenia;
- Ghana;
- Senegal;
- Namibia;
- South Korea;
- Uruguay

The 2019 amendment took Sri Lanka – which had been added in June 2018 –[322] off the list.[323] In March 2022, Ukraine was taken off the list.[324]

The Accelerated Procedure is applied in cases where the safe country of origin concept is applicable, and the Federal Administrative Court (BVwG) has to decide within 7 calendar days on the suspensive effect of appeals against negative decisions. In such procedures, asylum seekers have access to free legal assistance where applications are rejected. Legal advisers have to organise interpreters. As of 2021, the Federal Agency (BBU-GmbH) will be in charge of providing legal assistance in these cases, as already mentioned above. The procedure may be accelerated, but there are no exceptional time limits for deciding such applications.

In 2022, 22,520 (2021: 3,495) applications were submitted by applicants originating from 16 different "safe countries of origins", which represents 21% (compared to 9% in 2020) of the total numbers of applications for international protection. The largest numbers of applications were lodged by the following nationalities: **Tunisia** (12,667), **Morocco** (8,471) and **Algeria** (627).[325]

### 2. Safe third country

Article 4 AsylG sets out the safe third country concept. If the concept is applied the application is processed and rejected as inadmissible (see Admissibility Procedure).

Article 12(2) BFA-VG also provides that, in case of rejection of the application as inadmissible according to the safe third country concept, the BFA has to add a translation of the relevant articles and a confirmation in the language of the third country that the application was not assessed in the merits and that an appeal has no suspensive effect.

If the person cannot be deported within 3 months for reasons unrelated to their conduct, the inadmissibility decision ceases to be valid.[326]

There is no list of safe third countries and the concept is rarely applied.

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321 Verordnung der Bundesregierung, mit der Staaten als sichere Herkunftsstaaten festgelegt werden (Herkunftsstaaten-Verordnung – HStV), as amended on 14 February 2018, available at: http://bit.ly/2ji71tR.

322 BGBl. II Nr. 130/2018, available in German at: https://bit.ly/2GI2XJ2.

323 Modification of the regulation on countries of origin, 5 June 2019, available in German at: https://bit.ly/2H5wZz4.

324 Modification of the regulation on countries of origin, 30 March 2022, available in German at: https://bit.ly/3vxezQf.

325 Ministry of Interior, *Preliminary Statistics December 2022*, available in German at: https://bit.ly/3T1oOba.

326 Article 4(5) AsylG.

### 2.1. Safety criteria

Protection in a safe third country is deemed to exist if a procedure for the granting of refugee status in accordance with the Refugee Convention is available to the person in a country where they are not exposed to persecution or serious harm, and the person is entitled to reside in that country during such procedure and has protection there against deportation to the country of origin, provided that the person is exposed to such risk in the country of origin.[327] There is a presumption that these requirements are met by countries that have ratified the Refugee Convention and established by law an asylum procedure incorporating the principles of that Convention, the ECHR and its Protocols Nos 6, 11 and 13.[328]

The conditions for the application of the safe third country concept have been clarified by the Constitutional Court and VwGH. The presumption of compliance with safety criteria through ratification of legal instruments was affirmed in 1998 by the Administrative High Court, which has ruled that asylum authorities must first and foremost assess the legal conditions in a third country.[329] However, the Constitutional Court has ruled that the formal criteria of ratification of the Refugee Convention, the declaration according Article 25 ECHR and the existence of an asylum law are not sufficient to establish safety in a third country, but the granting of protection in practice has to be taken into consideration. Asylum authorities have to be prepared to have up-to-date information of relevant organisations to be able to assess the factual situation.[330]

### 2.2. Connection criteria

According to the aforementioned Constitutional Court and VwGH rulings, asylum applications cannot simply be rejected based on the mere fact that the applicant transited through or stayed in a so-called safe third country. When assessing the security of third countries, it does not only depend on formal criteria such as whether the country has ratified the Geneva Refugee Convention, the submission of a declaration under Art 52 ECHR and the existence of an asylum legislation, but also of whether the protection is actually granted.[331]

## 3. First country of asylum

The concept of “first country of asylum” is established in Article 4a AsylG. An application will be rejected as inadmissible, if the applicant has found protection in an EEA country state or Switzerland and asylum or subsidiary protection status was granted.

A law amendment that entered into force on 1 September 2018 deleted the 3 months deadline if the person cannot be deported. As a consequence, the inadmissibility decision does no longer cease to be valid and deportation can still be undertaken at a later date.

Rejections for existing protection in another EU state are also issued regularly by the BFA concerning countries such as **Greece** or **Hungary** where Dublin responsibilities are denied, even though the appeal is regularly granted suspensive effect. In a case of a Syrian national who has received subsidiary protection status in Hungary in 2015 and applied for asylum in Austria in 2020, the BVwG rejected the applicant’s appeal.[332] Even though the applicant brought forward that he had no access to support from the state, had to live on the street and was assaulted the Court came to the conclusion that there exist

327 Article 4(2) AsylG.
328 Article 4(3) AsylG.
329 VwGH, Decision 98/01/0284, 11 November 1998, available in German at: https://bit.ly/3ZTLVH7.
330 VfGH, Decision U 5/08, 8 October 2008, available in German at: http://bit.ly/2jilW73.
331 VwGH, Decision 98/01/0284, 11 November 1998, available in German at: https://bit.ly/3ZTLVH7; VfGH, Decision U 5/08, 8 October 2008, available in German at: https://bit.ly/42i5URj.
332 BVwGH, Decision W235 2238204-1/10E, 26 April 2021, available in German at: https://bit.ly/3sBERzt.

support possibilities from the government and from NGOS and that there is no real-risk of a Art 3 ECHR violation.

Applications by beneficiaries of international protection in **Greece** have risen since 2020. While the first instance authority initially admitted vulnerable cases to the asylum procedure, a change of strategy was observed throughout 2021. In June 2021, the Constitutional Court suspended the decision of the Federal administrative court which had rejected an appeal from an Afghan woman who received asylum status in Greece in 2019 and applied for asylum in Austria in 2020. Looking at the recently updated AIDA country report on Greece, the Constitutional Court considered that the applicant may face a risk of violation of Art 3 ECHR violation and ordered further examinations on the access to food, shelter and sanitary facilities.[333] The decision set out a benchmark as it was done in plenary of the Constitutional Court. Following this decision, the BVwG reconsidered several first instance decisions based on insufficient information on the situation in Greece.[334] A project called "Tetraa" was initiated by asylkoordination together with Diakonie Flüchtlingsdienst and lawyer Christian Schmaus. In this project, strategic litigation is being conducted focusing on asylum procedures of beneficiaries of International protection in Greece coming to Austria applying for asylum because of dire living conditions in Greece.[335]

There is also some case-law regarding beneficiaries of international protection in Bulgaria who come to Austria to lodge a new application. In 2016, a Syrian mother with 3 children gave birth after she arrived in Bulgaria where she suffered from prenatal depression. She was granted subsidiary protection in Bulgaria shortly after moving to Austria. The Bulgarian authorities denied responsibility under the Dublin system, but were ready to take over as a result of the readmission agreement. The BVwG considered the deportation to Bulgaria as not permissible because of the PTSD from which the children were suffering and which was triggered, among other things, by experiences during the imprisonment in Bulgaria at the end of September 2015, as well as the intensive family relationship with relatives living in Austria.[336]

The BVwG has also accepted an appeal of an Afghan family in 2017 who had received subsidiary protection in Hungary, due to the need to clarify whether the current situation of beneficiaries of protection in Hungary raises a risk of violation of Article 3 ECHR.[337] In the case of a single Syrian who obtained subsidiary protection in Bulgaria, however, the BVwG found no real risk on the ground that he did not belong to a vulnerable group.[338]

In a case ruled by the Federal Administrative Court in 2015, the rejection of the application as inadmissible of a Chechen refugee who was registered in Azerbaijan as "person of concern" to UNHCR was considered as insufficient. The court did not adequately assess whether the status is similar to the status of a recognised refugee nor whether the protection from *refoulement* was ensured.[339]

As mentioned in Safe Third Country, inadmissibility may be ordered when a person has obtained status in another EU Member State.

333 VfGH, Decision E 599/2021, 25 June 2021, available in German at: https://bit.ly/3HLVKxZ.
334 BVwG, Decisions W235 2244837-1/8E, 21 September 2021, available in German at: https://bit.ly/409ialm and W144 2244839-1/8E, 14 September 2021, available in German at: https://bit.ly/3ZQc7SR.
335 Asylkoordination österreich, TETRAA, available in German at: https://bit.ly/41SC2dQ.
336 BVwG, Decision W192 2131676, 8 September 2016.
337 BVwG, Decision W205 2180181-1, 21 December 2017, available in German at: https://bit.ly/3lcwISB.
338 BVwG, Decision W233 2166376-1, 18 September 2017, available in German at: https://bit.ly/3Jgb7R4.
339 BVwG, Decision L518 2109232-1, 6 August 2015, available at: http://bit.ly/2jUv9oc.

## G. Information for asylum seekers and access to NGOs and UNHCR

### 1. Provision of information on the procedure

**Indicators: Information on the Procedure**

1. Is sufficient information provided to asylum seekers on the procedures, their rights and obligations in practice? ☐ Yes ☒ With difficulty ☐ No

   ❖ Is tailored information provided to unaccompanied children? ☐ Yes ☒ No

Asylum seekers must receive written information leaflets in a language they understand after lodging the application and prior to the first interview. These information sheets are also available on the website of the BFA in 12 different languages.[340] At the beginning of the interview, the applicant must be informed about their rights and obligations throughout the procedure.

The BFA has published a brochure about the asylum procedure on its website. This brochure is in German and English only and is aimed at the general public:[341]

The following information is available in 11 languages on the website of the BFA:

(1) The "first information sheet" explains the first steps and possible outcomes in the admissibility procedure including mandatory or voluntary advice on return including information;
(2) Information sheet on the duties and rights of asylum seekers;
(3) Information for asylum seekers according the Eurodac Regulation;
(4) A short written information regarding the Dublin III Regulation.

Several NGOs also provide information on the procedure on their respective websites, such as Diakonie, Caritas or asylkoordination. In December 2018, UNHCR published a brochure "to inform unaccompanied refugee children about their situation and their rights in the asylum system.[342] This brochure is available in German, English, Arabi, Dari, Pashtu, Somali.

Detailed written information in languages other than German and English about the different steps of the procedure and rules and obligations does not exist. As asylum legislation changes very often, it does not seem to be affordable for NGOs to have brochures or other written information in the various languages required.

Useful explanations of terminology for asylum seekers from the Russian Federation were developed by an NGO from the federal state of **Styria** in cooperation with the University of Graz.[343] UNHCR has also produced a brochure about the asylum procedure for unaccompanied child refugees. It is available in four languages (German, English, Pashtu, Dari).[344] The Refugee Law Clinic of Vienna, an association formed by students at the Law Department of the University Vienna, also provides answers to "frequently asked questions", which are available online in German, English, Somali. Pashtu, Arabic and Farsi.[345]

Asylum seekers against whom an enforceable - but not yet final - expulsion order is issued shall be informed in an appropriate manner (i.e. through a leaflet in a language understandable to them, if

340 These are available at *Erstinformation über das Asylverfahren*: https://bit.ly/300maHR.
341 BFA, *Asylverfahren*, available in German and English at: https://bit.ly/2ZXVo2Z.
342 UNHCR, *Your asylum procedure in Austria*, December 2018, available at: https://bit.ly/2Tx5RkS.
343 'Asylterminologieführer Deutsch/Russisch', Deutsch/Englisch, Deutsch/Arabisch available at: http://bit.ly/2l1wsFj.
344 UNHCR, *Your Asylum Procedure in Austria*, available at: http://bit.ly/1IjRCDT.
345 Refugee Law Clinic Vienna, 'The Austrian asylum system easily explained', available in German at: http://www.asyl-faq.at/.

available) that, for the notification of decisions in the asylum procedure, they can access legal assistance and that they are obliged to inform the authority of their place of residence and address, including outside Austria.[346]

The system of free legal advice should, at least, provide information and counselling during the mandatory consultation with the appointed legal adviser in case the BFA intends to reject the asylum application as inadmissible or dismiss it on the merits in the admissibility procedure. The BFA has to include information in its decision about the right to appeal in a language understandable to the applicant. Besides the mother tongue, this could be the *lingua franca* of a country. In the decision of the Federal Administrative Court (BVwG), reference shall also be made, in a language understandable to the asylum seeker, to the possibility of filing a complaint in front of the Administrative High Court (VwGH) and the Constitutional Court (VfGH).[347]

At every stage of the procedure, asylum seekers are informed about the possibility of support for voluntary return. In the waiting rooms of the initial reception centres, videos providing information on voluntary return are streamed.

The BFA can also order consultation with regard to return. This is systematically done when a return decision is issued. When an asylum seeker leaves the country in the context of voluntary repatriation to their country of origin, the asylum proceeding is filed as redundant.

### 2. Access to NGOs and UNHCR

**Indicators: Access to NGOs and UNHCR**

1. Do asylum seekers located at the border have effective access to NGOs and UNHCR if they wish so in practice? ☒ Yes ☐ With difficulty ☐ No

2. Do asylum seekers in detention centres have effective access to NGOs and UNHCR if they wish so in practice? ☐ Yes ☒ With difficulty ☐ No

3. Do asylum seekers accommodated in remote locations on the territory (excluding borders) have effective access to NGOs and UNHCR if they wish so in practice? ☐ Yes ☒ With difficulty ☐ No

According to the law, UNHCR has access to all facilities and is allowed to get in contact with asylum seekers.[348] NGOs have contracts in 7 out of 9 federal provinces for providing social counselling and visit reception centres of the federal provinces regularly. In two federal provinces, **Carinthia** and **Tyrol**, the social advice is provided by the federal administration. NGOs that do not fall under such contracts must file an application at the responsible office of the federal province in order to be granted access and visit asylum seekers. Access to detention facilities, including airport facilities, is difficult for NGOs in so far as they can only access if they already have some basic identification information on detained applicants, such as a name and date of birth. The state agency BBU that provides legal counselling is bound by secrecy and is for this reason hindered from passing on information about clients to NGOs.

In 2019, restriction of freedom of movement was not considered as a major problem by NGOs to get in contact and provide assistance to asylum seekers, as long as they also received care by the federal province. However, NGOs noticed that fines had been imposed and those having received a final rejection of their asylum application were ordered to live in the return centre **Fieberbrunn**, which is located in a very remote area. Moreover, access of NGOs to the centre in **Schwechat Airport** was not allowed and did not provide a suitable room for private consultations.

346 Articles 15(1)(4) and 14(4) AsylG explaining the duty to register even for delivering letters abroad.
347 Article 133(4) B-VG; Article 30 VwG-VG.
348 Article 63(1) AsylG.

The situation in the return centres of **Fieberbrunn** (Tyrol) and **Schwechat** (Lower Austria) attracted public interest in 2019 as several rejected asylum seekers in Fieberbrunn initiated a hunger strike. A commission, composed of external experts and UNHCR, evaluated the situation in return centres in cooperation with the Ministry of Interior, especially in **Fieberbrunn**. An investigation was conducted and recommendations were published. The Ministry of Interior thus announced that it would follow the recommendations accordingly and monitor more closely the best interest of the child – meaning that, in the future, children should not be accommodated in **Fieberbrunn** and **Schwechat** but in another return centre which opened in **Bad Kreuzen**, Upper Austria, where they will be able to attend school. The Ministry also implemented more regular shuttle services per day from the Fieberbrunn centre to the village (as of 2019, there was only one shuttle per day).[349]

Officials of the BFA told representatives from the NGO asylkoordination that these recommendations do not have a binding character. Nevertheless, at the time of writing of this report, there were no children accommodated in **Fieberbrunn** and the shuttle service between the remote camp and the village has improved. This being said, reports to NGOs show that the access to medical treatment is still difficult. Following the establishment of the BBU GmbH which started providing legal assistance as of 2021, there were rumours that access for NGOs to return centres would be restricted in future. The BBU GmbH clarified however that Diakonie Flüchtlingsdienst will have access to the centre and will be provided with a room for counselling services. In 2022, due to the high number of applications and the failing cooperation of the provinces, the facilities in Fieberbrunn were not only used to accommodate persons whose Dublin procedures were pending but also other applicants due to the high number of new arrivals in 2022.[350]

During the first lockdown in spring 2020, many non-governmental counselling organisations started working part time. Due to the fact that appeal deadlines were suspended until the start of May, face-to-face counselling was also suspended in many cases. Counselling in deportation centres continued, but the access to the EAST was very restricted. NGOs shifted to counselling via telephone or video-conference, but this did not work well for persons detained in deportation centres due to the lack of access to technical equipment. As a general point of view, the NGOs reported that providing counselling through remote technical means can work in practice but cannot replace or meet the same standards as face-to-face counselling in all circumstances.

## H. Differential treatment of specific nationalities in the procedure

**Indicators: Treatment of Specific Nationalities**

1. Are applications from specific nationalities considered manifestly well-founded? ☐ Yes ☒ No
   - ❖ If yes, specify which:

2. Are applications from specific nationalities considered manifestly unfounded?[351] ☒ Yes ☐ No
   - ❖ If yes, specify which: Bosnia-Herzegovina, North Macedonia, Serbia, Montenegro, Kosovo, Albania, Mongolia, Morocco, Algeria, Tunisia, Georgia, Ghana, Benin, Armenia, Ukraine, Senegal, South Korea, Namibia, Uruguay

The list of safe countries of origin, based on which the accelerated procedure may be applied, was expanded in 2019 to cover three new countries, namely **Namibia**, **Uruguay** and **South Korea**. On the contrary, **Sri Lanka** was deleted from the list. The so-called "fast-track procedure" (see Fast-Track

349 Ministry of Interior, 'Recommendations for human rights screening of return counselling services', available in German at: https://bit.ly/2V7umVx.

350 Ministry of Interior, *Answer to parliamentary request, 3339/AB XXVII. GP*, 11 November 2020, available in German at: https://bit.ly/3kLDV7b.

351 Whether under the "safe country of origin" concept or otherwise.

Processing), was initiated in 32,875 cases in 2022, leading to 23,297 decisions of which 1,188 were decided in an accelerated procedure. In 67% of the fast track procedures, which mostly applies to persons from countries listed as safe countries of origin and manifestly ill-founded applications (in 2022 India: 6,893; Tunisia: 6,779; Morocco: 4,056), a decision was taken within 72 hours in 2022.[352]

The situation of Afghan asylum seekers changed considerably in 2021: Austria hosts one of the largest Afghan diaspora communities in Europe. At the start of the year, recognition rates concerning subsidiary protection were decreasing compared to previous years. In June 2021, the death of a 13-year-old girl that had been raped several times (the Causa Leonie case) initiated a public debate as the alleged perpetrators were Afghan nationals who were asylum seekers or who had previously applied for asylum. This led the public to urge authorities to carry out an increased and faster number of removals of rejected asylum seekers with a criminal record, thereby contributing to the anti-Afghan-narrative.

After the fall of Kabul and the takeover by the Taliban in summer 2021, the situation changed. Even though Austria was one of the last countries to stop deportations to Afghanistan, the Ministry of Interior continued to state in public that Austria would resume deportations to Afghanistan as soon as possible. Starting from August 2021, the number of discontinued cases of Afghan nationals thus started to rise as they moved on to other countries. This is also closely linked to the Anti-Afghan-propaganda of the Ministry of Interior in the context of the Causa Leonie case.

2021 was further marked by a rise of subsequent applications lodged by Afghans from 266 in 2020 to 633 in 2021, but these were not prioritised by the BFA. After an important ruling by the Constitutional court in September 2021, the general decision making at first instance changed and now mostly includes granting subsidiary protection to Afghans.[353] Return decisions were issued by a small group of BVwG judges between September and December 2021, but they were halted by another landmark ruling by the Constitutional Court stating that this would breach Art 3 ECHR.[354] Since then, all decisions involving Afghan nationals have been granting protection. In 2022, return decisions were issued in single cases but no deportations to Afghanistan took place or were planned. In September 2022, the Supreme Administrative Court referred a case concerning an Afghan woman to the CJEU for guidance on two questions relating to Art 9 of the Qualification Directive: Firstly, whether a combination of measures adopted, encouraged or tolerated by a state which limit a women's freedom could amount to persecution within the meaning of Article 9(1)(b) of the Qualification Directive (recast) and secondly, whether a woman who is affected by such measures taken by the state should be granted refugee status solely on the basis of her sex or if it would be necessary to examine the individual circumstances of the applicant to determine how the measures impact a woman's individual situation.[355]

352 Ministry of Interior, *Answer to parliamentary request, 13740/AB, XXVII. GP*, 20 April 2023 , available in German at: https://bit.ly/3AEzMuF.

353 VfGH, E3445/2021, 30 September 2021, available in German at: https://bit.ly/3rBSgYu.

354 VfGH, E4227/2021, 16 December 2021, summary in English available at: https://bit.ly/3KYEOWx.

355 VwGH, Ra 2021/20/0425 and Ra 2022/20/0028, 14 September 2022 (C-608/22, C-609/22), available in German at: https://bit.ly/3VjJUT8; to follow the evolution of this case, see procedure before the CJEU, registered as case C-608/22.

# Reception Conditions

**Short overview of the reception system**

An asylum seeker that has no other financial means has the right to receive Basic Care services after lodging an asylum claim. In practice, basic care services are provided following the first interview on travel routes. The responsibility to provide Basic Care services is split between the Federal system and the states and is regulated in an agreement between the two since 2004.

During the admission procedure the federal state is in charge of providing Basic Care through its state agency the BBU GmbH. The agency is in charge of the three reception centres (EAST) where the first procedural steps such as medical checks and registration are conducted. Besides the EAST there are currently nine federal centres where asylum seekers are being accommodated. After admission to the procedure the responsibility to provide Basic Care shifts to the states. Asylum seekers should be taken over by the states from federal care facilities to a state quarter as soon as possible. State facilities are generally smaller units (former pensions etc). The conclusion of the corresponding contracts with the facilities falls under the responsibility of the respective states. Applicants for international protection are accommodated as long as they fall under the Basic Welfare Service Agreement.

In practice, the transfers of asylum seekers from federal facilities to the facilities in the states have not functioned smoothly and the actors blame each other for these delays. As a result, asylum seekers stay in large and inadequate federal centres for longer time than needed. Nevertheless, following the start of the BBU GmbH as Basic Care provider during the admission period, the transfers to the state systems seems to have increased and the cooperation has improved.

Following the increase of applicants in 2021, the initial reception centres of the Federal Government have been overcrowded. Many facilities in the provinces have been closed throughout Austria in recent years, and it is therefore not possible to allocate asylum seekers quickly and adequately to the provincial facilities due to a lack of capacity. In 2021, this resulted in the re-opening of previously closed federal facilities and the opening of new facilities (e.g. Carinthia). The Covid 19 pandemic led to clusters in some federal facilities, and it was not possible to test sufficiently well for Covid 19 in all initial reception centres, which in turn led to delays in the allocation of asylum seekers to state care and to other federal care facilities. Provinces such as **Tyrol**, **Lower Austria, Carinthia** or **Styria** reported a lack of communication in the allocation of federal to provincial care (i.e. little to no preparation time for new residents to move in, transports in the middle of the night, little information for people with special needs, etc.) In addition, there were problems with regard to the payment of clothing allowances, as in many cases the BBU in the initial reception centres had already exhausted the entitlement to clothing allowances per person per year.[356]

When there is a high number of applications for international protection, applicants are transferred to so called federal distribution centres after the admission phase is concluded – from which they will be transferred to provincial facilities, which are smaller facilities where they stay until the end of the procedure.

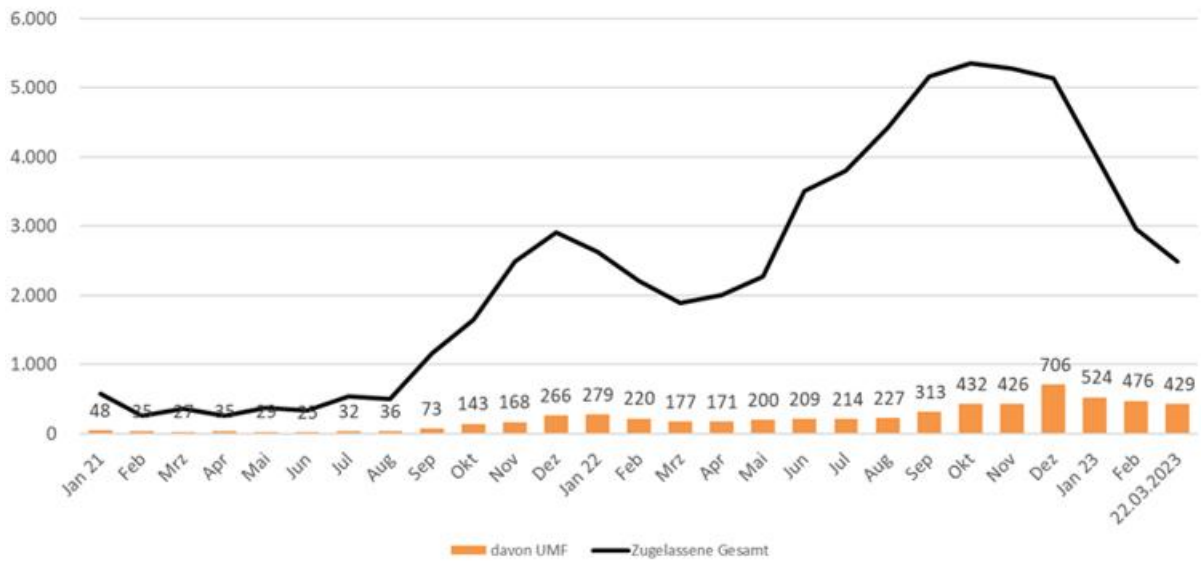
If a person receives a refugee status, they can stay up to four months in the reception centre before being forced to leave the accommodation, while there is no time limit applicable to persons holding a subsidiary protection. In some states such as **Styria**, rejected asylum seekers are told to leave the next day after receiving the negative decision. In other provinces such as **Vienna** the practice is different. The reason for these different practices is that some states consider that rejected asylum seekers who do not leave voluntarily no longer fall under the basic care regulation.

356 asylkoordination österreich, Nationwide NGO survey on basic services, Dec 21/Jan 22, unpublished.

If persons do not opt for voluntary return, the BFA can order them to accept an accommodation place in so called return centres. These centres are located in the mountains of **Tyrol**, close to the Vienna Airport and in a remote village in **Upper Austria**. There, the rejected asylum seekers receive basic care services. If they refuse to be accommodated in these places, they are not entitled to basic care in other provinces and the risk of being apprehended in deportation centre is likely to increase.

In 2022, a reception crisis hit Austria. Due to a high number of applications and non-cooperation of the provinces who are supposed to take over asylum seekers upon completion of the admissibility procedure, the capacities in the federal reception centres reached their limits in the fall of 2022. The number of asylum seekers in basic care only increased moderately from 17,000 in January 2022 to 21,500 in December 2022 even though Austria registered more than 100,000 asylum applications in the same time. Many applicants travelled on to other countries after registration. Even though the number of applicants absconding from the procedure was very high, the BBU GmbH had to build up tents in order to prevent homelessness.[357]

The reception crisis was foreseeable as the backlog of persons admitted to the procedure but not being transferred to the basic care offered by the provinces has been increasing steadily since summer 2021:




Source: Presentation by BBU GmbH at Asylforum 2023, available in German at: https://bit.ly/41OV8RL.

The black line represents the number of persons admitted to the procedure with accommodation in the federal reception centres (where they shouldn't be). The orange spots represent the number of unaccompanied minors in the reception centres.

The reception crisis of fall 2022 is only partly due to the high number of asylum applications: the provinces have decreased their housing capacities massively in the last years due to smaller number of applications and lack of finances. A crisis plan was never elaborated.

The situation in the federal reception centres was very tense: As many applicants travelled on there was a high fluctuation rate which was a big challenge for the BBU GmbH that operates the federal centres.

357 Wiener Zeitung, „Bund beginnt mit Aufbau von Zelten nahe Innsbruck", 19 October 2022, available in German at: http://bit.ly/3mW8mNo.

When the weather reached lows and snow fell a public outcry resulted in closing down the tents and moving persons to buildings in November.[358]

NGOs presented a plan with seven measures to be taken to resolve the reception crisis in fall 2022.[359]

## A. Access and forms of reception conditions

### 1. Criteria and restrictions to access reception conditions

**Indicators: Criteria and Restrictions to Reception Conditions**

1. Does the law make material reception conditions to asylum seekers in the following stages of the asylum procedure?

| | | | |
|---|---|---|---|
| ❖ Regular procedure | ☒ Yes | ☐ Reduced material conditions | ☐ No |
| ❖ Dublin procedure | ☒ Yes | ☐ Reduced material conditions | ☐ No |
| ❖ Admissibility procedure | ☒ Yes | ☐ Reduced material conditions | ☐ No |
| ❖ Border procedure | ☒ Yes | ☐ Reduced material conditions | ☐ No |
| ❖ Accelerated procedure | ☒ Yes | ☐ Reduced material conditions | ☐ No |
| ❖ First appeal | ☒ Yes | ☐ Reduced material conditions | ☐ No |
| ❖ Onward appeal | ☒ Yes | ☐ Reduced material conditions | ☐ No |
| ❖ Subsequent application | ☒ Yes | ☐ Reduced material conditions | ☐ No |

2. Is there a requirement in the law that only asylum seekers who lack resources are entitled to material reception conditions? ☒ Yes ☐ No

Asylum seekers and other persons who cannot be expelled are not entitled to the same social benefits as citizens. In 2004, the Basic Care Agreement between the State and the federal provinces entered into force and has been implemented at national and provincial level. The agreement sets out the duties of the Federal State and the states and describes material reception conditions such as accommodation, food, health care, pocket money, clothes and school material, leisure activities, social and return assistance, by prescribing the amount for each.

The Austrian system of basic care is anything but uniform. Regulations on the scope and target group for basic care, and the existence of a need for assistance, are applied equally, but there are nevertheless different arrangements as to how basic care is implemented in practice in the provinces. This is visible in the field of financing, reasons for the dismissal/sanctioning of benefits from basic care, or access to and conditions of private accommodations. Differentiations also apply regarding the standards in basic care, for example the determination of the minimum amount of square meters per person based on the available living space, the care key/care ratio (i.e. the number of persons taken care of by each social worker), but also the different amounts to be granted for the payment of food and rent allowance for private housing as well as different procedures or methods to provide pocket money, leisure money, and interpretation costs.

A persisting issue in this area is the insufficient funding for care, counseling and housing in the context of basic services. The daily rates for funding basic care facilities as well as for food or private housing have been raised in 2022 for the first time since 2016: the rates for organised housing in the federal provinces have been raised from € 21 to € 25 per person/day (accommodation and eating included). The rates for private accommodation has been raised to € 260 (from € 215) for and € 165 (from € 150) for rent. Pocket money in organised housing (€ 40,-/year), clothing allowance (€ 150,-/year), education allowance (€ 200,-) have not been increased since 2004.

358 ORF.at, „Asylzelte in Villach wurden geräumt“, 23 November 2022, available in German at: http://bit.ly/3Tjj8sY.

359 Asylkoordination, „Offener Brief zur Unterbringungskrise“, 19 October 2022, available in German at: https://bit.ly/3ZpCBuh.

In the federal provinces, NGOs function as accommodation providers for organised housing. Due to high costs of living, several NGOs threatened to close down facilities as the money provided by the state was not sufficient. With the raise by € 4, a crisis could be avoided but there is still not enough financial resources provided to cover all costs.

**Target group basic care** in federal provinces (if the asylum procedure has been admitted in Austria and an allocation to a province has been made: [360]

- Asylum seekers until the legal conclusion of the procedure.
- persons entitled to subsidiary protection (§8 AsylG);
- persons entitled to asylum (§3 AsylG) during the first four months after being granted asylum;
- Persons with a legally binding negative outcome of the asylum procedure and persons without a right of residence if they cannot be deported for legal or factual reasons
- Persons with a specific residence title for reasons worthy of consideration

The law passed in June 2019 foresees that the new Federal Agency (BBU GmbH) is responsible for providing reception conditions (basic care) as of July 2020. The Ministry of Interior postponed the start of the activities of the Federal Agency by decree until December 2020. Thus, the BBU GmbH has been in charge of providing Basic Care to asylum seekers during the admission procedure since 1 December 2020.

Asylum seekers are entitled to Basic Care immediately after lodging the asylum application until the final decision on their asylum application in all types of procedures. The provision of Basic Care as currently regulated may violate Article 17(1) of the recast Reception Conditions Directive. In Austria, Basic Care is provided as soon as the person requesting international protection is considered as an asylum seeker. An asylum seeker is an alien whose request is formally lodged, which is the case after the BFA gives an instruction about the next steps to the public security officer. However, asylum seekers do not make their application in the initial reception centres but at a police station, which means that as long as the application is not regarded as lodged, the person is not an asylum seeker in the sense of Article 2(14) AsylG.

Different entitlements are foreseen in the Basic Care Agreement and the Basic Care Act (GVG-B). While the Agreement declares in Article 2(1) as target group asylum seekers who have *requested* asylum, the Basic Care Act of the Federal State defines the responsibility of the Federal State for asylum seekers after having *lodged* the application during the admissibility procedure in a reception facility of the Federal State.[361] However, Basic Care conditions do not apply in detention or where alternatives to detention are applied.[362] While an alternative to detention is being applied, the asylum seeker is entitled to reception conditions that are more or less similar to Basic Care (accommodation, meals and emergency health care).

Asylum seekers subject to Dublin procedures are entitled to basic care provisions until their transfer to the Member State responsible for the examination of the asylum application is executed. This general rule is not applicable if the asylum seeker is detained or ordered less coercive measures, however. In both cases they are not covered by health insurance but have access to necessary urgent medical treatment. In contrast to asylum seekers subject to the Dublin procedure but accommodated in one of the reception facilities in Austria, those undergoing Dublin procedures whilst in detention or less coercive measures do not receive monthly pocket money (€40). This distinction in the reception conditions available to applicants detained or subject to alternatives to detention does not respect the recast

360 Grundversorgung, *Fonds Soziales Wien and Land Niederösterreich*, available in German at: https://bit.ly/3GGGq4l.

361 Articles 1(1) and 2(1) GVG-B.

362 Article 2(2) Basic Care Agreement; Article 2(3) GVG-B. Note that this not in conformity with Article 3 recast Reception Conditions Directive.

Reception Conditions Directive, which should remain applicable in all Dublin procedures.[363] As regards Dublin returnees, they are brought to EAST **Traiskirchen** where an interview is conducted. Dublin returnees are then accommodated in **Traiskirchen** or detained in deportation centres.

If the suspensive effect of an appeal has been denied, Basic Care is terminated after the first instance decision becomes enforceable. Asylum seekers receive Basic Care in the case the court has awarded suspensive effect or if they wish to leave Austria voluntarily until their departure.[364]

Special documents for the entitlement to Basic Care are not foreseen. All asylum seekers and other persons who cannot be deported are registered in a special database, the *Grundversorgung Betreuungsinformationssystem (GVS BIS)*. National and local authorities, as well as contracted NGOs, have access to the files. In **Tyrol**, a subsidiary - Tiroler Soziale Dienste (TSD) of the province of Tyrol is responsible for the care and accommodation of protection seekers and has access to the GVS BIS, they have extended administrative rights as they can activate and deactivate benefits in basic care. In **Vienna**, counselling centers in particular have access to the GVS BIS within the framework of basic services, but only read rights, no administration rights. Asylum seekers returned to Austria from other Member States may face obstacles in getting full Basic Care upon arrival.

After a final negative decision on the asylum application, the law provides for Basic Care until departure from Austria, if the rejected applicant cannot leave e.g. due to inability to obtain a travel document. Usually, rejected asylum seekers remain in the same reception facility. While in **Vienna**, Basic Care after a negative decision is usually prolonged, other federal provinces such as **Salzburg** and **Lower Austria** cease support almost immediately after the rejection of the asylum claim (after 10 days). In **Lower Austria** and **Salzburg**, people with legally negative asylum decisions are released after 10 days, with the exception of people who cannot be deported for legal or factual reasons, in which case the BFA is responsible for examining them. In Lower Austria, people with a legally negative asylum decision from Afghanistan in particular can remain in basic care due to the current situation in the country. In Salzburg, the BFA also checks, among other things, the obligation to cooperate for the return; if the obligation to cooperate is not met, people are also released from basic care[365].In **Vienna**, the access to basic care services is prolonged even after the asylum application was rejected, mainly because the city cannot afford having many persons without insurance and housing. However, people coming to Vienna from other provinces after their asylum application was rejected normally do not get access to the basic care services in Vienna.

During COVID-19 in 2021 asylum applicants were transported to EAST after registering their asylum applications in front of public security agents. Asylum applications had to brought in person at all times. There are no reports that access to basic care was denied.

**The assessment of resources**

A precondition for Basic Care is the need for support which is assessed by the BBU GmBH. This is defined by law as applicable where a person is unable to cover subsistence by their own resources or with support from third parties.[366] Asylum seekers arriving in Austria with a visa are thus not entitled to Basic Care due to the precondition of having “sufficient means of subsistence” for the purpose of obtaining a Schengen visa.[367] This exclusion clause is applied very strictly, even when the sponsor is unable to care for the

363 Recital 11 Dublin III Regulation. See also CJEU, Case C-179/11 *Cimade & GISTI v Ministre de l’Intérieur*, 27 September 2012, available at: http://bit.ly/3mZ9tvv, para 46.
364 Article 2(7) GVG-B.
365 asylkoordination österreich, Nationwide NGO survey on basic services, Dec 21/Jan 22, unpublished.
366 Article 2(1) Basic Care Agreement (GVV)-Art 15a.
367 Article 5(1)(c) Schengen Borders Code.

asylum seeker. Exceptions may be made if the asylum seeker has no health insurance and gets seriously ill and needs medical treatment.

Although the amount of material reception conditions is specified in the Basic Care Agreement,[368] the level of income or values relevant to assessing the lack of need for Basic Care is not specified by law. Legislation does not lay down the amount of means of subsistence below which a person is entitled to Basic Care, even though the amounts for subsistence and accommodation are prescribed by law. In practice, an income beyond 1.5 times the amount of Basic Care benefits (€ 547) are deemed to be without need of Basic Care. In **Salzburg** and all federal provinces (except Tyrol, a single person can keep € 240),[369] the regulation for Basic Care in force since 1 July 2016 sets out that income up to € 110 is not taken into account; for any family member in a household, a further € 80 of income should not lead to a reduction of basic care support; for an apprentice the respective amount is €150.[370]

Asylum seekers have to declare whether they hold resources or any source of income during the first interrogation with the police upon registration of the application. Since September 2018, asylum seekers are obliged to contribute to the basic care of the federal state they reside in. As a result, up to € 840 per person can be withheld by the police when a person asks for asylum and is found to carry such an amount of money. However, out of these € 840, asylum seekers always keep € 120.[371] Upon termination of the provision of basic care, any difference between the actual costs incurred and the cash seized is reimbursed. In 2022, € 405,605 (compared to € 244,331 in 2021, and €127,880 in 2020) were seized from 7,502 (2021: 3,591;2020: 2,237) applicants.[372] Furthermore, EU and EEA (European Economic Area) citizens are excluded from the basic care.

As of 31 December 2022, 92,984 persons received basic care (compared to 30,363 in 2021). The total number of beneficiaries of basic care more than tripled in 2022 compared to 2021. The main reason for the increase is the political decision to put TPD beneficiaries from Ukraine into the basic care system, where they represent 55,262 persons. The rest refers to 21,661 (2020: 18,273) applicants for international protection and 11,655 (2020: 9,484) beneficiaries of international protection. In 2022, 17,286 asylum applicants were transferred from the first reception centres to the basic care facilities in the provinces after admission procedure was completed. Given the high number of applications in 2022 (112,272) this shows that many applicants left Austria immediately after applying for asylum.[373]

| Beneficiaries of basic care as of 31 December 2021 and 2022 | | |
|---|---|---|
| | 31 December 2021 | 31 December 2022 |
| **Asylum applicants** | **18,273** | **21,661** |
| **Beneficiaries of protection and others** | **12,090** | **71,323** |
| *Refugees* | 1,982 | 2,596 |
| *Beneficiaries of subsidiary protection* | 7,502 | 9,059 |

368 Articles 6, 7 and 9 Grundversorgungsvereinbarung (GVV); Art. 15a B-VG.
369 asylkoordination österreich, Nationwide NGO survey on basic services Dec 21/Jan 22, unpublished.
370 Salzburg Basic Care Regulation LBGl. 57/2016, available in German at: http://bit.ly/2kGpqma.
371 Article 2 Abs 1 basic care law.
372 Ministry of Interior, *Answer to parliamentary request 4887/AB, XXVII. GP*, 12 March 2021, available in German at: https://bit.ly/38GNAY9; Ministry of Interior, *Answer to parliamentary request 9531/AB, XXVII. GP*, 11 April 2022, available in German at: https://bit.ly/3KPxwnY; Ministry of Interior, *Answer to parliamentary request, 13740/AB, XXVII. GP*, 20 April 2023 , available in German at: https://bit.ly/3AezMuF.
373 OÖ Landesregierung, Beantwortung einer Anfrage an LR Hattmansdorfer, Beilage 13124/2023, XXIX. GP, 5. April 2023, available in German at: https://bit.ly/3LJOF5h.

| | | |
|---|---|---|
| *Dublin procedure pending* | 738 | 768 |
| *TPD (Ukraine)* | N/A | 55,262 |
| *Rejected asylum applicants* | 1,868 | 1,607 |
| **Total** | **30,363** | **92,984** |

Source: Ministry of Interior, Basic care system, 31 December 2022 (not public).

## 2. Forms and levels of material reception conditions

**Indicators: Forms and Levels of Material Reception Conditions**

1. Amount of the monthly financial allowance/vouchers granted to asylum seekers as of 31 December 2022 (in original currency and in €):
   - ❖ Accommodated, incl. food — € 40
   - ❖ Accommodated without food — max € 260
   - ❖ Private accommodation (incl rent money) — max € 425 (single person)

Basic Care may be provided in four different forms:[374]

(1) Asylum seekers can be accommodated in reception centres where catering is provided. Asylum seekers in such reception centres receive €40 pocket money per month, while the care provider (NGOs, private companies contracted by the Government) receives € 25 maximum compensation for the costs per day, depending on the standards of the facility. The maximum compensation rate was increased in 2022 for the first time since 2016 but has not been implemented yet by all provinces.

(2) Basic Care can be provided in reception centres where asylum seekers cook for themselves. In that case, asylum seekers receive between €165 and 186 per month mainly in cash (depending on the days per month and if € 6 or € 7 is paid per day). In **Vienna**, there is basically the possibility of transfers to a bank account for private residents and for those who live in reception centres.

(3) Basic Care can be provided for asylum seekers in private accommodation. In 2022, the monthly allowance was increased for the first time since 2016 from € 215 to € 260 (food) and for rent from € 150 to € 165 (single person). Asylum seekers e.g. in **Vienna**, can receive € 425 (food allowance & rent money) in cash. The payments for rent allowance are different and not uniformly regulated in all federal states, as demonstrated in the table below:

| Federal province | Food allowance | Rent money Single/ family | Minors living private | Prerequisites for private housing |
|---|---|---|---|---|
| **Vienna** | € 260,- | € 165,-/ € 330,- | € 145,- | No rental cap, but high bureaucratic effort because many documents have to be presented when applying |
| **Lower Austria** | € 260,- | € 165,-/ € 330,- | € 145,- | **Rental cap**:<br>• Family up to max. 4 pers. € 530,- /monthly<br>• Family from 5 pers. € 50,- / per additional person monthly<br>• Single person € 265,00 / monthly |

374 Article 9(1)-(3) GVV-Art 15a and the respective Basic Care Acts of the federal provinces. See also Article 17(1) recast Reception Conditions Directive.

| | | | | |
|---|---|---|---|---|
| | | | | • Exclusion of rejected asylum seekers |
| **Upper Austria** | € 260,- | € 165,-/<br>€ 330,- | € 145,- | **Rental cap:**<br>• Per person +20% overpayment from food allowance (max. €258 per person) possible<br>• German A2 level requirement |
| **Burgenland**<br>(allowances not increased in 2022) | € 213,- | € 128,-/<br>€ 256,- | € 96,- | **Application for private housing possible**:<br>• Closure of reception centres<br>• Within the 4-month period upon approval<br>• No negative asylum decision |
| **Styria** | € 260,- | € 165,-/<br>€ 330,- | € 145,- | **Application for private housing possible**:<br>• Affordability is checked |
| **Carinthia** | € 260,- | € 165,-/<br>€ 330,- | € 145,- | **Application for private housing possible**:<br>• Only allowed for people with protection status (§3 & §8) |
| **Salzburg** | € 260,- | € 165,-/<br>€ 330,- | € 145,- | **Application for private housing possible:**<br>• German A1 level requirement<br>• Affordability is checked |
| **Tyrol** | € 260,- | € 165,-/<br>€ 330,- | € 145,- | **Application for private housing possible**:<br>• Affordability is checked<br>• German A1 level would be good because people should be able to live independently and alone |
| **Vorarlberg** | € 260,- | € 165,-/<br>€ 330,- | € 145,- | **Application for private housing possible**:<br>• Affordability is checked<br>• Rather people with protection status |

Source: asylkoordination österreich, Kompetenz Netzwerk Asyl, available in German at: http://bit.ly/3liEBG8

(4) NGOs like Caritas, Diakonie, Volkshilfe, Tralalobe, Integrationshaus rotes Kreuz Samarierbund and others rent private appartments where asylum seekers are housed. These are larger or smaller apartments with permanent or temporary leases, in so-called mobile assisted living (MoBeWo or MoWo). NGOs receive the same daily rate as for a regular organised facility with the difference that refugees are accommodated in apartments and not in reception centres. This is a suitable form of accommodation especially for vulnerable groups (LGBTIQ, single parents and so on) but also for families This form of accommodation exists in all federal states, except **Salzburg**.[375]

| Federal province | Funding for organised facilities | Form of accommodation | Pocket money | Food allowance per day (month) |
|---|---|---|---|---|
| **Vienna** | € 25,- | 2-4 | Yes | € 6.50 |
| **Burgenland**<br>(not increased in 2022) | € 20.50 | 1-4 | Only with full supply | € 6,- to € 7,- adults<br>€ 3.50 - € 7,- children |

375 asylkoordination österreich, Nationwide NGO survey on basic services Dec 21/Jan 22, unpublished.

| | | | | |
|---|---|---|---|---|
| **Lower Austria** | € 23,- | 1-4 | Only with full suppy | € 7,- |
| **Upper Austria** | € 25,- | 2-4 | Only with full supply | Adults € 7,-, children € 5,- |
| **Styria** | € 25,- (or € 16,-) | 1-4 | Only with full supply | € 6,- |
| **Carinthia** | € 25,- (or € 12,-) | 1-3 | yes | € 180,- (adults per month)<br>€ 80,- (children per month) |
| **Tyrol** | € 25,- | 2-4 | Yes | € 245,-/month/adult<br>€ 145,-/month/child under 18 |
| **Salzburg**<br>(not increased in 2022) | € 21,- | 1-3 | Yes | € 6.50 |
| **Vorarlberg** | Nearly real cost accounting | 2-4 | Yes | € 260,-/month/adult<br>€ 155,-/month/child |

Source: asylkoordination österreich, Kompetenz Netzwerk Asyl, available in German at: https://bit.ly/3Lrcwaa.

Additional information on the Federal provinces relevant to the table above include the following:

- In **Lower Austria** the basic daily rate is € 23,- for accommodation. NGOs and all other accommodation providers have the possibility to upgrade to € 25,- daily rate if additional services are chosen. If the Accommodation Provider is prepared to provide individual additional services, it shall be entitled to an additional daily rate surcharge of EUR 1 gross for each three points; however, these daily rate surcharges shall be limited to EUR 2. The Accommodation Provider may therefore charge a maximum of EUR 2,-- for six or more points in addition to the respective daily rate.[376] Additional services may include:
  (a) Transports to authorities and doctors (2 points)
  (b) Learning courses (computer, sewing etc) (1 point)
  (c) Recreation: organised sports (1 point)
  (d) Learning assistance for school children (1 point)
  (e) Separate prayer room (1 point)
  (f) Structural suitability and equipment for the disabled (2 points)
  (g) 1 transferable downtown monthly bus pass and/or Rail per maximum of 20 residents (2 points)
  (h) 1 transferable monthly bus and/or rail pass to the next city per maximum 20 residents (2 points)
  (i) Arrangement of rides to summonses (1 point).
  (j) Neighbourhood provider will provide personal hygiene items (2 points)
  (k) 1 caregiver available for residents (1 point)
  (l) Full service quarters as per point 3.3.2 (3 points)[377]

- In **Styria**, Caritas facilities are 'Partial self-supply facilities', where individuals get partial food allowance and additionally food/breakfast/lunch in the facility. Individuals receive € 110,- per month and pocket money.

376 Land Niederösterreich, Contract form for private accommodation providers, available in German at: https://bit.ly/43NKo7W.

377 Land Niederösterreich, Contract form for private accommodation providers, available in German at: https://bit.ly/43NKo7W. .

- In **Carinthia**, all basic care facilities with full sufficiency receive € 25,- per day, all basic care facilities where asylum seekers can cook for themselves receive € 12,- per day. People receive € 6,- food allowance per day.

Asylum seekers living in private rented flats receive 43% of the needs-based minimum allowance (*bedarfsorientierte Mindestsicherung*) for citizens in need of social welfare support, which is about € 863 per month (€ 648 for subsistence and € 215 for accommodation for a single person in **Vienna**). The level of the needs-based minimum allowance varies across the federal provinces, as political agreement to prolong an Austrian-wide regulation after its expiry by December 2016 was not reached. The sum given to a care provider, € 630 per month (€ 21 per day) for accommodation and subsistence of asylum seekers, is below the level of welfare support for citizens, although staff and administrative costs have to be covered by the care provider.

For children, the daily rate in reception centres is the same as for adults. If families receive financial support for their daily subsistence, some federal provinces like Upper Austria provide a lower amount for children. As of December 2022, 7,500 persons received Basic Care in federal reception centres,[378] compared to 4,500 at the end of 2021 and 1,534 at the end of 2020.

Unaccompanied asylum-seeking children must be accommodated according to their need of guidance and care. The daily fee for NGOs hosting unaccompanied asylum-seeking children ranges from € 40.00 to € 95.00 depending on the intensity of psychosocial care. In some federal provinces like **Styria** the maximum amount is not given to care providers, although it is evident that only a smaller group are not in need of much guidance and care. Styria has set up a daily special support of €18 for children with special needs, in addition to the maximum amount of € 77. In **Upper Austria**, the government provides for € 88 which should cover legal assistance as well.

Due to the high number of Ukrainians coming to Austria at the start of 2022, the basic care system has shown its dysfunctionalities in many ways: while many housing places had to be closed in the last years due to smaller number of asylum applications and lack of money, there was no system established in case of crisis. Thus, many applications for basic care were not decided upon for months, and thus many people stayed without basic care for months. Civil society organisations jumped in and provided housing: more than 70% of all Ukrainians were accommodated in private housing.

The totally underfinanced system received an increase. However, especially the monthly rates for accommodated unaccompanied minors still have not been raised leading to high numbers of unaccompanied minors being housed in inadequate federal camps. The housing operators, mostly civil society organisations, could not afford to open up new housing places in provinces which led to a backlog of over 600 UAM still accommodated in federal camps at the end of 2022.

[378] Basic Care Registration System, 31 December 2022, unpublished.

## 3. Reduction or withdrawal of reception conditions

**Indicators: Reduction or Withdrawal of Reception Conditions**

1. Does the law provide for the possibility to reduce material reception conditions? ☒ Yes ☐ No
2. Does the legislation provide for the possibility to withdraw material reception conditions? ☒ Yes ☐ No

### 3.1. Grounds for reduction or withdrawal

Material reception conditions are reduced if the asylum seeker has an income, items of value or receives support from a third party.[379] For the first phase of the asylum procedure (the admission stage), this rule is not applicable. If an asylum seeker earns money or receives support from other sources, they are allowed to keep € 110 (and € 80,- for each family member); or € 240 in **Tyrol**, there is no common practice across all federal provinces. All additional income will be requested as a financial contribution for the asylum seeker's Basic Care. This is requested without a formal procedure. Reduction of reception conditions can also result in not granting the monthly pocket money for subsistence or the support for the child if the child is entitled to child benefits, which mainly applies to those who have received refugee status or subsidiary protection if the mother/father is working.

Material reception conditions may be withdrawn where the asylum seeker:[380]

(a) Repeatedly violates the house rules and/or their behaviour endangers the security of other inhabitants;
(b) Leaves the designated place for more than 3 days, as it is assumed that they are no longer in need of Basic Care;
(c) Has submitted a subsequent application;
(d) Has been convicted by court for a crime on a ground which may exclude them from refugee status according to Article 1F of the Refugee Convention. This ground for withdrawal is not in line with Article 20 of the recast Reception Conditions Directive but does not seem to be applied or relevant in practice.
(e) Has had their application rejected or dismissed and suspensive effect was excluded according to Article 18(1) BFA-VG. If the applicant cooperates to return voluntarily, they are eligible to material reception conditions until their departure. This rule makes a reference to Article 20(5) of the recast Reception Conditions Directive according to which a dignified living standard and access to medical treatment have to be provided.

In some federal provinces, the laws also permit the exclusion of asylum seekers who fail to cooperate with establishing their identity and need of basic care, although this is not applied in practice.[381]

In all federal provinces, individuals in basic care facilities or those who apply for private living, go through a move-in process. This includes counselling and clearing concerning information about house rules, data protection form, presence of staff, dates for disbursements or expenses such as hygiene items, etc., but also information about rights and duties in basic care as well as contents and services of basic care. Information about services of basic care always refer to basic care law of the respective federal state and 15a agreement, where these services are defined.

The information about rights and duties is the so called 'Declaration of need for assistance' (*Hilfsbedürftigkeitserklärung*). In **Vienna** all people receiving (as well as private housing) basic care have to sign this declaration. The table below provides an illustration of the content of this declaration which is

379 Article 2(1) B-VG Art 15a.
380 Article 2(4)-(5) GVG-B.
381 Article 3(1) GVG-B.

used in Vienna by Caritas Asylzentrum counselling center and NGOs who run facilities for basic care. [382] The form is not publicly available, but its content was shared by a relevant stakeholder:[383]

**Declaration of need for assistance'**

**In need of help are people who:**
In need of assistance is anyone who cannot or cannot sufficiently provide for the livelihood of themselves and their dependent relatives living in the same household from their own efforts and resources, or who does not (sufficiently) receive their livelihood from other persons or institutions[384].

**Obligations:**
I undertake to keep my advisor or guardian informed of the following on an ongoing basis:
- any change concerning residence status, marital status, residential address, stay abroad
- any assets such as cash, motor vehicle (car/moped), real estate, valuables, etc.
- any income
- from self-employment (e.g. trade)
- from dependent gainful employment
- any receipt of minimum income support or social assistance, unemployment benefit/emergency assistance (AMS receipt), sickness benefit, maternity allowance,
family allowance (current receipt and subsequent payments), childcare allowance (incl. subsidy), scholarships, pension payments and other existing legal entitlements
- Maintenance payments from parents, spouse or registered/registered partner
- Maintenance claims against parents, spouse or registered/registered partner, even if no maintenance is paid maintenance is paid
- existing declaration(s) of obligation or liabilitySollte eine Mitversicherung bei einem Familienmitglied möglich sein, verpflichte ich mich, diese in Anspruch zu nehmen.

Co-insurance is usually possible if a family member is compulsorily insured, e.g. if he/she is in (full-time) employment or receives unemployment/emergency assistance (AMS) or childcare benefits.
(full-time) employment relationship or if I receive unemployment benefits/emergency assistance (AMS-Bezug) or childcare allowance.
I
f I fail to meet these obligations, this may result in the discontinuation of basic benefits. I must repay any basic benefits that I have wrongly received. I must pay back. In addition, there may be consequences under criminal law.

**Other reasons for discontinuation of basic care:**
- Failure to keep important appointments, e.g. summonses, appointments at the service centre of Grundversorgung Wien
(Caritas Asylum Centre), appointments at the Basic Care Counselling Centre.
- Leaving the residential facility of the Vienna Refugee Assistance: In case of unjustified absence of more than more than 72 hours, I will be discharged immediately.
- Moving to another province without an agreement with the Basic Care Counselling Centre
- Stay abroad

**With my signature I confirm:**
- I am in need of assistance. I have no sufficient income and no realizable assets.
- I have read and understood the information on basic care.
- I agree to disclose all required information.
- I acknowledge the consequences of not fulfilling the obligations.

The declaration of need further serves as basis for the discontinuation, sanctions and benefit restrictions of basic care benefits. The declaration of need and the house rules are two important fundaments in the accommodation area. The NGOs in the provinces have different procedures for providing information on basic care. Some NGOs in the federal provinces have incorporated the information on rights and obligations into their house rules which are signed by asylum seekers. In most cases there are translations

382 Caritas Vienna, Information on counselling services https://bit.ly/3HRqU6V.
383 asylkoordination österreich, Nationwide NGO survey on basic services Dec 21/Jan 22, unpublished.
384 Article 1(1)GVG-Wien.

into relevant first languages available. However, occurs occur for illiterate asylum seekers, for which information about basic care and house rules must be explained orally with an interpreter. The documents must be signed in writing, including by illiterate asylum seekers. Overall, in practice, asylum seekers receive adequate information from NGOs and the BBU agency about basic care and their rights and duties.

There are no special reception centres to accommodate asylum seekers for public interest or public order reasons. In **Lower Austria**, a refugee centre was opened at the border with the Czech Republic for unaccompanied minor refugees who had become maladjusted. This reception centre in **Drasenhofen** had to be closed due to public protests and a report by the child and juvenile Ombudsstelle.[385] Following a complaint lodged by one asylum seeker placed in **Drasenhofen** the Administrative Court of Lower Austria came to the conclusion that the conditions in Drasenhofen violated the law. It even led to a criminal procedure against the right wing Landesrat Waldhäusl (Freedom Party) because of the suspicion that it had abused the power of office. He was acquitted in first instance procedure, the appeal by the Prosecutor's office is pending.[386]

Until the end of 2020, asylum seekers who violated house rules were sometimes placed in less favourable reception centres in remote areas, although these sanctions are not foreseen by law. This practice has not been officially confirmed by the authorities but was reported by the persons concerned. There are no reports yet whether this practice has continued following the take over of BBU GmbH in December 2020. Although the freedom of movement is considered as not being limited in this case, presence at night is compulsory. In 2020, Basic care services on the federal level was reduced in 82 cases and withdrawn in 42 cases. There is no information on the reasons for this reduction and withdrawal.[387]

### 3.2. Procedure for reduction or withdrawal

Withdrawal or reduction of Basic Care provisions should be decided by the BFA as long as asylum seekers are in the admissibility and/or in merits and Basic Care is provided by one of the federal provinces. In practice, only few procedures of reduction or withdrawal of Basic Care have been carried out. This is partly due to the fact that NGOs manage to find a solution for their clients and because the competent offices are unwilling to make a written decision. Decisions are taken on an individual basis but written reasoned decisions are rare. Since December 2020, the Federal Agency (BBU-GmbH) has been responsible for the reduction or withdrawal of reception conditions while the persons are accommodated in federal reception centres.

Procedural safeguards in case of withdrawal or reduction do not fully meet the requirements set out in Article 20 of the recast Reception Conditions Directive. In some federal provinces, reduction or withdrawal of reception conditions may be ordered without prior hearing of the asylum seeker and without written notification of the decision, if the hearing imposes a disproportionate burden. In some federal provinces, the latter is only rendered upon request of the asylum seeker. It has also happened that the reception conditions of all asylum seekers involved in a violent conflict in a reception facility were withdrawn without examination of the specific role of all individuals concerned in the conflict.

There are no official decisions/notifications by the implementing authorities on the granting, restriction of benefits, sanctions or dismissal from basic benefits. Instead of that NGOs concerned and/or person concerned receive an information letter which explains and declares restrictions of basic care, from the

385 Kurier, Skandal-Asylquartier Drasenhofen wird geschlossen, 30 November 2019, available in German at: https://bit.ly/2SGQN3d.

386 Der Standard, „Nach Waldhäusl-Freispruch: WKStA legt Beschwerde ein", available in German at: https://bit.ly/3ZoyiiT.

387 Ministry of Interior, *Answer to parliamentary request, 5038/AB, XXVII. GP*, 17 March 2021, available in German at: https://bit.ly/42urJgX.

implementing authority either by mail and/or by post. Restrictions on benefits are enforced differently in the provinces, and the amount of the allowances for income also vary. In **Upper Austria**, persons with an income due to employment receive an invitation from the authority for a personal meeting in which income, overpayment of basic benefits, and repayment is recorded. This agreement must be signed by the asylum seeker and is binding. Individual basic care benefits are not withheld immediately, but repayment instalments are ordered. In cases where the person does not fulfil their obligation to pay in instalments, financial benefits such as pocket money or food allowance will be withheld. In **Vienna**, people in basic care usually receive the information letter with repayment agreements via the supervising NGO. Previously, pay slips had to be sent to the authority (FSW), who was in charge of calculating the repayment. In some cases, the calculations were incorrect and the care team had to intervene with the authority.[388]

A legal remedy in the Basic Care Act of the Federal State is foreseen in case material reception conditions are withdrawn. Such decisions to withdraw or reduce Basic Care provision can be appealed at the Administrative Court (the Federal Administrative Court in case of a BFA decision, the Administrative Court of the federal provinces in case of decisions of the provincial government). Free legal assistance for appeal is provided in the law and is now implemented in all federal provinces.

Asylum seekers whose Basic Care has been terminated or reduced may re-apply for the provision of basic care in the federal province they have been allocated to. In practice, it is difficult to receive Basic Care again after it has been terminated, or at least it takes some time to receive it again. Asylum seekers who endanger the security of other inhabitants are sometimes placed in other reception centres with lower standards. Asylum seekers who have left their designated place of living may get a place in another reception centre in the same federal province after applying for Basic Care. In **Upper Austria**, one of the sanctions foreseen for several disciplinary incidents in residential facilities is that the person involved has to move to private accommodation. In addition, there is mandatory anti-violence training which must be carried out, otherwise the place of residence may be lost.[389]

Basic benefits are provided as a substitute, while any income must be reported and will be calculated in the basic care benefits. With regard to spouses who also earn an income, as well as income that may have been gained in the context of detention (if the asylum seeker worked in the centre where he/she was held), other restrictions may arise. If a person marries, the spouse is actually responsible for maintenance, and the marriage certificate and income of the spouse must be presented to the authorities. Depending on the financial situation of the spouse, basic care benefits are granted, reduced or discontinued. In the case of longer periods of detention and a working activity while in detention, released asylum seekers receive a so-called release allowance, which is paid to the applicant and counted as an income. The amount of the release allowance varies depending on the duration of the imprisonment and the work performed. In any case, it is counted towards the basic care benefits, as basic pension benefits are only granted as a substitute. Depending on the amount of the release allowance, basic care is granted immediately or benefits like pocket money may not be paid, which is decided and examined by the authority.[390]

If Basic Care is withdrawn because the asylum seeker is no longer considered to be in in need of benefits, for example because they have an income, they may receive Basic Care if it is proven that they are again in need of it. However, asylum seekers may end up homeless or in emergency shelters of NGOs mainly because they do not succeed in obtaining Basic Care after withdrawal or they have left the federal province for various reasons such as presence of community, friends or family in other federal provinces, unofficial job offers and so forth. Homelessness or accommodation in emergency shelters following the

388 asylkoordination österreich, Nationwide NGO survey on basic services Dec 21/Jan 22, unpublished.
389 asylkoordination österreich, Nationwide NGO survey on basic services Dec 21/Jan 22, unpublished.
390 asylkoordination österreich, Nationwide NGO survey on basic services Dec 21/Jan 22, unpublished.

withdrawal of basic care was an issue that persisted in 2022. National figures on the number of asylum seekers concerned by this issue are not available. Official statistics do not exist.

In federal provinces such as **Lower Austria** people with negative return decision have to leave residential facilities within 10 days. However, if deportations are de facto not possible basic care benefits are further granted by the BFA. Individuals holding a residence permit called AB+ (Aufenthaltsberechtigung plus) receive basic care benefits until 12 days after receiving the title of stay. In **Salzburg** a reason for loss of basic care after a negative decision is, when people do not cooperate during the return procedure. In **Vienna** people with negative return decision can stay in the facilities or in their private apartments but have to participate in a of voluntary return interview. It happens that these people are picked up directly from the facilities by the police and taken into removal centres. In **Upper Austria**, persons who receive residence permit called RWR/RWR+ ("*RotWeißRot*") receive basic care benefits as long as 10 days after the status is being granted. [391]

In 2018, the VwGH stated that the non-provision of benefits in kind can nevertheless allow for the authorities the possibility to grant cash benefits. This money substitute can also be claimed at a later stage through a formal request. The case concerned an asylum applicant whose application had been admitted by the Land Upper Austria which did not grant him cash benefits. The VwVG considered that, if no accommodation is available, other arrangements should be found to grant the applicant the material benefits he is entitled to.[392] The reason behind this decision was the lack of care that asylum seekers faced back in autumn of 2015, as they did not receive any benefits under the basic federal care and were supported by private initiatives instead. Therefore, it only applies where there is a massive influx of displaced persons, in accordance with Art. 5 Directive 2001/55/EC (see Annex on temporary protection).

## 4. Freedom of movement

**Indicators: Freedom of Movement**

1. Is there a mechanism for the dispersal of applicants across the territory of the country? ☒ Yes ☐ No
2. Does the law provide for restrictions on freedom of movement? ☒ Yes ☐ No

The freedom of movement of asylum seekers may be restricted for reasons of public order, public interest, or for the swift processing of the asylum application. Applicants coming from a Safe Country of Origin or those who received a return decision before making are an application may be affected. The necessity of assigned residence must be demonstrated on a case-by-case basis.[393] However, this restriction on freedom of movement is not a formal decision that can be appealed *per se*; it can only be challenged together with the asylum decision.

In 2020, freedom of movement was restricted in 1,154 cases and a procedural order following Art 15b AslyG was issued. There is no available information on the reasons for the restriction.[394] There is no data available for 2022 at the time of writing.

### 4.1. Restricted movement during the admissibility procedure

After requesting asylum at the police, asylum seekers are apprehended for up to 48 hours, until the BFA branch office decides whether the asylum seeker should be transferred or advised to go to an initial

391 asylkoordination österreich, Nationwide NGO survey on basic services Dec 21/Jan 22, unpublished.
392 VwGH, Decision Ra 2018/21/0154-8, 20 December 2018, available in German at: https://bit.ly/3lj5t8N.
393 Article 15b AsylG, in force since 1 November 2017.
394 Ministry of Interior, *Answer to parliamentary request 5038/AB, XXVII. GP*, 17 March 2021, , available in German at: https://bit.ly/42urJgX.

reception centre or to a distribution centre.[395] During the admissibility procedure, they receive a green card also known as procedure card, which indicates the tolerated stay in the district of the reception centre of the state. Asylum seekers are allowed to leave the district for necessary medical treatment or to appear in court. Dublin cases that are usually cared for in the initial reception centres of the Ministry of Interior may also be transferred to reception centres of the federal provinces.[396] Violations of this restriction of movement may be punished with fines varying between €100 and €1,000 or with detention of up to 2 weeks if payment of the fine cannot be enforced. These restrictions of movement limit the access of asylum seekers to family members, friends and lawyers.

Asylum seekers whose application is admitted to the regular procedure receive the white card, which is valid until the final decision on the application and allows free movement in the entire territory of Austria.

In the airport procedure, asylum seekers are not allowed to leave the designated area in the airport facilities onto Austrian territory. However, they remain free to leave by plane to another country.

### 4.2. Dispersal across federal provinces

Every federal province has to offer reception places according to its population. Asylum seekers are spread throughout the country to free reception places and according to their needs, for instance in places for unaccompanied minor asylum seekers, single women or handicapped persons. Governments of federal provinces have claimed that information about necessary medical treatment or handicap are not always communicated, with the result that asylum seekers are transferred to inadequate places. However, asylum seekers have no possibility to choose the place where they will be accommodated according to the dispersal mechanism, although family ties are usually taken into consideration. Moreover, it is not possible to appeal the dispersal decision because it is an informal decision taken between the Ministry of Interior and the respective federal province. Upon taking office, there have been some positive signals from the CEO of the BBU GmbH to improve the clearing phase at the start of the reception process with the aim to detect vulnerabilities and to better communicate with the authorities providing basic care in the provinces. These ongoing talks have not led to any results in practice yet, however.

The distribution of Basic Care recipients – including some beneficiaries of protection – across the provinces as of 31 December 2022 was as follows:

| Dispersal of recipients of Basic Care: 31 December 2022 | | | |
|---|---|---|---|
| Federal province | Quota | Total number of recipients | Actual share |
| Vienna | 21.45% | 36,388 | 39.13% |
| Upper Austria | 16.76% | 9,852 | 10.60% |
| Lower Austria | 18.49% | 12,108 | 13.02% |
| Styria | 13.97% | 9,506 | 10.22% |
| Tyrol | 8.51% | 5,234 | 5.63% |
| Carinthia | 6.3% | 2,740 | 2.95% |
| Salzburg | 6.27% | 3,602 | 3.87% |
| Vorarlberg | 4.47% | 3,070 | 3.30% |
| Burgenland | 3.31% | 2,908 | 3.13% |

395 Article 43(1) BFA-VG.
396 Article 2(1)(2) GVG-B.

| Total Provinces | 100% | 85,408 | 100% |
|---|---|---|---|
| Total federal reception facilities (EAST) | - | 7,576 | - |
| **Total** | **-** | **92,984** | **-** |

Source: Basic care information system, unpublished. Figures on quota and actual share refer to the total number of recipients of basic care.

While in 2017, 32 reception centres were in operation, the Ministry of Interior announced in 2019 that 7 out of the 20 remaining federal centres would be closed by the end of 2019.[397] In July 2019, only 11 federal centres were in use, with a total capacity of 2,203. Only 868 persons were accommodated in these centres as of July 2019.[398] At the start of the COVID-19 pandemic only 10 centres were operating. Reluctantly, the Ministry of Interior had to open two facilities in **Villach** and **Vienna**. Due to the reluctance of the provinces to take over persons already admitted to the procedure to the province basic care system, the BBU GmbH had to reopen all possible accommodations to meet the needs and the legal obligations concerning the Covid-19-pandemic. Thus, at the end of 2021, there were 24 federal facilities (2020: 13) accommodating a total of 4,239 (2020: 1,750) persons, while the maximum capacity reached 6,898.[399] At the end of 2022, 27 federal facilities with a maximum capacity of 8,000 were in use. During the reception crisis from October until December 2022, the BBU GmbH built up tents in 4 locations to house asylum seekers.[400] The crisis was a result of a lack of cooperation of the provinces that failed to take over asylum seekers after their admissibility procedure was completed. This led to a backlog of over 8,500 asylum seekers in federal accommodation facilities. The inadequate reception conditions in the tents caused a public uproar.[401]

The province of **Vienna** offers many more reception places than those foreseen by the quota system (see Types of Accommodation), while all other provinces have failed to provide enough places for several years. This discrepancy leads to negotiations between the responsible departments of the federal provinces, while the malfunctioning of the dispersal system overall raises public reactions. During the first months of operation of the BBU GmbH as federal basic care provider, the communication between the actors has improved. However, following increasing numbers of applicants, this positive trend stopped and resulted in overcrowded federal reception centres. In October 2021, the CEO of BBU GmbH resigned "at his own will" even though his 5-year contract had been renewed in May 2021.[402] He withdrew his resignation in December 2021. Following unconfirmed reports, the resignation had its reason in the interference of the Minister of Interior in the area of Basic Care, which hindered adequate management.[403]

Following the rising number of asylum applications in 2021, the BBU agency faced difficulties in dealing with Covid 19 related challenges (such as the need for more room due to distancing rules) the lack of capacity in reception centres. The state-run agency had to reopen facilities which were shut down in

397 Der Standard, Jede dritte Asyl-Erstbetreuungsstelle soll geschlossen werden, 1 October 2018, available in German at: https://bit.ly/2S1ZrEI.

398 Ministry of Interior, *Answer to parliamentary request, 3837/AB, XXVI. GP*, 16 August 2019, available in German at: https://bit.ly/2PH2WCd.

399 Ministry of Interior, *Answer to parliamentary request, 9123/AB, XXVII. GP*, 14 March 2022, available in German at: https://bit.ly/3vqktTz.

400 Ministry of Interior, *Answer to parliamentary request, 12699/AB, XXVII. GP*, 13 January 2023, available in German at: https://bit.ly/3YsYUOl.

401 Kurier „Asyl: Zelte in Kärnten wegen Schneefalls geräumt", 23 November 2022, available in German at: https://bit.ly/41NNXd7.

402 Minstry of Interior, "Geschäftsführer Achrainer zieht sich aus der Bundesagentur für Betreuungs- und Unterstützungsleistungen GmbH (BBU) zurück", 11 October 2021, available in German at: https://bit.ly/3KClOg0.

403 Ministry of Interior, "BBU: Geschäftsführer Andreas Achrainer bleibt weiterhin an Bord", 22 December 2021, available in German at: https://bit.ly/3CBcKVH.

2017/18 and additionally opened new facilities, including due to the significant increase in the number of unaccompanied minors who were mostly accommodated in the reception centre of Traiskirchen[404]

NGOs in the federal provinces reported several communication problems with the Basic Care Department of BBU GmbH. This concerned issues relating to the transition of people from reception centres to basic care facilities in the provinces, as there was a general lack of information about people with special needs and/or mental health issues. There was thus no transfer to specialised and dedicated facilities and, instead, vulnerable groups were transferred to regular facilities which overburdened the relevant staff increased logistical difficulties due to a lack of adequate equipment and infrastructure, incl. inadequate transport means (often occurring in the middle of the night and thus with no available staff upon arrival). In some cases, individuals were allocated to federal states without proper identification (i.e. the white card granted to asylum seekers upon registration). As regards the clothing allowance (€ 150,-/per person and year); most of it was spent quickly by the BBU agency, which hindered asylum seekers from receiving additional support from NGOs and led to frustration as they did not understand the functioning of the system. NGOs tried to secure clothes by way of donations but the resources remain limited and the agency is not officially allowed to accept donations. The specific issue of clothing was flagged to the agency which is trying to find a solution.

Asylum seekers who are allocated to a province after admission to the asylum procedure are usually not transferred to other federal provinces, even if they wish to do so. Within the same province, asylum seekers may be placed in other reception centres for different reasons, for instance if another reception centre is better equipped to address the needs of the asylum seeker.

Many people who have lost their basic care benefits move on to Vienna with the hope to access basic care in the capital. A major point of contact for them is the Caritas asylum center, which encourages readmissions in federal states and tries to ensure at least access to health insurance. In practice, only two reasons are accepted for a change of federal state: either because there are family members in another federal state or due to medical reasons. In addition, LGBTIQ persons are usually allowed to be transferred to Vienna, where the NGO Queer Base in Vienna povides support.
People who move on their own to another federal province without asking for permission are likely to lose their basic care benefits in their former federal province. In some federal states like Lower Austria and Salzburg people get 'Quartier unstet' Status in the GVS BIS System, which means that they are still health insured but have no access to accommodation or other benefits. As a result, it is hard to receive basic care again and applicants have to prove that they still need assistance. This also applies to LGBTIQ cases or people with relevant health or mental issues.[405]

Often asylum seekers do not have enough money for travelling, as the monthly allowance for those living in reception centres is only € 40. If they stay away from their designated place (reception facility) without permission for more than three days, Basic Care will be withdrawn (see Reduction or Withdrawal of Material Reception Conditions). As discussed above, it is almost impossible to receive Basic Care in a province other than the designated province.

If grounds for detention of asylum seekers arise, an alternative to detention should be prioritised if there is no risk of absconding. Due to reporting duties – often imposed every day – and exclusion from pocket money allowance, however, asylum seekers subjected to alternatives to detention are in practice not able to make use of their freedom of movement.

404 Die Presse, "Wieder mehr Flüchtlinge in Europa", 26 February 2020, available in German at: https://bit.ly/34FpAFV; Wiener Zeitung, "Der fast unbemerkte Crash im Asylwesen", 18 October 2021, available in German at: https://bit.ly/3HJWFie.

405 Nationwide NGO survey on basic services Dec 21/Jan 22 asylkoordination österreich, unpublished.

## B. Housing

### 1. Types of accommodation

**Indicators: Types of Accommodation**

| | | |
|---|---|---|
| 1. | Number of reception centres (federal): | 27 |
| 2. | Total number of places in initial reception centres (EAST): | 2,090 |
| 3. | Total number of places in federal accommodation centres: | 7,392 |
| 4. | Total number of persons in Basic Care (Federal and Provinces): | 92,984 |
| 5. | Total number of places in private accommodation: | Not available |

6. Type of accommodation most frequently used in a regular procedure:
☒ Reception centre ☒ Hotel or hostel ☒ Emergency shelter ☒ Private housing ☐ Other

7. Type of accommodation most frequently used in an accelerated procedure:
☒ Reception centre ☐ Hotel or hostel ☐ Emergency shelter ☐ Private housing ☐ Other

With exception of the total number of places in private accommodation, all figures above refer strictly to the federal centres (if not explicitly stated otherwise), as it is not possible to provide figures on the number of apartments and houses used at provincial level to accommodate asylum seekers. Asylum seekers are accommodated in facilities of different size and capacity. A quota system requires the federal provinces to provide places according to their population.[406]

Each of the 9 federal provinces has a department in the regional government responsible for administering Basic Care. These departments search suitable accommodation places, and conclude contracts with NGOs or landlords, owners of hotels or inns, to provide a certain number of places and Basic Care provisions. Regular meetings of the heads of the provincial departments and the Ministry of Interior take place to evaluate the functioning of the Basic Care system and the level of financial compensation for the federal provinces. According to the Basic Care agreement between the State and the federal provinces, the latter have to cover 40% of the expenditures, while the Federal Ministry has to pay 60% of the costs. This share of the Ministry of Interior could rise to 100% if an asylum application is not processed within due time. After 6 months 100% of the accommodation costs of the provinces are covered by the Ministry.

During the first year of activity of the BBU GmbH in 2021, the main challenge was to provide shelter as the agency was confronted to the sharp increase of applications and had to integrate staff from different companies and NGOs at operational level. Moreover, given that the reimbursement of the costs for accommodation in the provinces has not been adjusted for years and following the decrease of applications in 2019 and 2020, many NGO-led accommodation centres in the provinces had closed. As a result, many applicants already admitted to the asylum procedure had to be accommodated in federal reception centres pending a transfer. In 2021, the BBU GmbH reopened all available centres across the territory and reached its capacity limits at the end of the year. This is supposedly also one of the reasons why the Director of the BBU GmbH ("*Geschäftsführer*"), whose contract was prolonged in May 2021, resigned in October 2021. He withdrew his resignation in December 2021, but the reasons were not officially communicated.[407]

As of February 2022, the capacity of BBU GmbH for providing accommodation to applicants during the admissibility procedure is still at the limit due to massive problems in transfers. Interestingly, the number of individuals receiving basic care has not increased significantly since 2019 while the number of applications rose significantly in 2021. This means that a great share of the persons applying for asylum

406 Article 1(4) GVV-Art.15a.
407 Standard, „Andreas Achrainer widerruft Kündigung als Leiter der Asylagentur", 22 December 2021, available in German at: https://bit.ly/3rOo11k.

moved onward to other countries with the result of their asylum procedures being discontinued in Austria. Reports communicated to asylkoordination österreich indicate that applicants moved to other countries because Austria was not their final destination but also because of the difficult accommodation situation in overcrowded reception centres. After admission phase of the asylum procedure is finished the responsibility to house asylum seekers during their asylum procedure shifts to the provinces. Throughout 2022, 17,286 asylum seekers were transferred from the EAST to the provinces.[408]

### 1.1. Federal reception capacity

The initial reception centre serves as centre for asylum seekers with an admissibility procedure likely to be rejected. The 2 initial reception centres in **Traiskirchen** and in **Thalham** are therefore reserved for asylum seekers in the admissibility procedure and for unaccompanied asylum-seeking children as long as they are not transferred to reception facilities of the federal provinces. Instead of streaming all asylum seekers to the initial reception centre, they should have their first accommodation in the so-called distribution centres (VQ), which should be set up in 7 federal provinces. **Traiskirchen** serves as a VQ too. The federal centre in **Fieberbrunn** is used for rejected asylum seekers, and another former federal centre at the **Vienna airport** serves as a departure centre. NGOs reported that the federal centre in Graz-Andritzhosts rejected asylum-seekers too. The Ministry of Interior announced in October 2018 the closure of 7 of the remaining 20 reception facilities, including the special care centre in **Upper Austria** and the distribution center in **Styria-Graz Puntigam**. Due to the low number of asylum seekers two more federal centres have been closed in 2019. As of July 2019, there were thus 11 federal reception centres with a total capacity of 2,203 places, out of which only 868 were in use in July 2019. The average cost per person accommodated in a federal centre is €183 per day.[409] As of December 2021, the maximum capacity in federal facilities was 6,898. [410]

Newly arrived asylum seekers stay only 4 to 5 days in the distribution centres according to information from the Centre in **Ossiach**. From January to May 2018, asylum seekers spent an average of 19 days in the course of the basic admission procedure in federal care facilities.[411] The number of asylum seekers in the initial reception centre of **Traiskirchen,** which reportedly has inhuman living conditions,[412] has also sharply decreased, from 5,000 asylum seekers to about 500 at the end of 2018.[413] At the end of 2020, around 1,200 persons, among which around 1,000 were asylum seekers, were accommodated in **Traiskirchen**.[414]

As already mentioned, as of December 2020, there were 13 federal centres hosting a total of 1,750 persons.[415] The law allows the Ministry of Interior to open reception facilities in federal provinces that do not fulfil the reception quota. Such centres may be opened even when the facility is not adapted to host asylum seekers, provided that certain special safeguards are ensured such as fire protection and related building regulations.[416] Since 2018, however, such centres were not needed. During the first lockdown, the provinces protested against the opening of federal Centres in Leoben (**Styria**). Due to the protests,

408 OÖ Landesregierung, Beantwortung einer Anfrage an LR Hattmansdorfer, Beilage 13124/2023, XXIX. GP, 5. April 2023, available in German at: https://bit.ly/3LJOF5h.
409 Ministry of Interior, Answer to parliamentary request, 3837/AB, XXVI. GP, 16 August 2019, available in German at: https://bit.ly/2PH2WCd.
410 Ministry of Interior, *Answer to parliamentary request, 9123/AB, XXVII. GP*, 14 March 2022, available in German at: https://bit.ly/3vqktTz.
411 Ibid.
412 Tages-Anzeiger, 'Endstation Traiskirchen', 30 June 2015, available in German at: http://bit.ly/1Zdotj3.
413 NÖN.at, Flüchtlingsbewegung als Herkulesaufgabe, 20 November 2018; available in German at: https://bit.ly/2GvcayP.
414 Ministry of Interior, Care information system, unpublished.
415 Ministry of Interior, *Answer to parliamentary request 5038/AB, XXVII. GP*, 17 March 2021, , available in German at: https://bit.ly/42urJgX.
416 Bundesverfassungsgesetz: Unterbringung und Aufteilung von hilfs- und schutzbedürftigen Fremden. BGBl 120, 28 September 2015, available at: http://bit.ly/1JdszhK.

the Ministry of Interior did not open any new centres in provinces during the first lockdown but reported challenges in accommodating asylum applicants, since COVID-19 prevention measures require lower occupancy and separate accommodation. The COVID-19 measures upheld in 2021 resulted in lower capacity due to distancing rules established in the centres. All newly arriving persons were tested twice and isolated until the test result was made available. As of 25 September, 118 asylum applicants tested positive for COVID-19. A positive test result implies that many parts of the entire facility cannot be used for the duration of the quarantine. The Ministry of Interior opened new reception facilities in Villach (**Carinthia**) in May 2020, as well as in **Vienna**.[417]

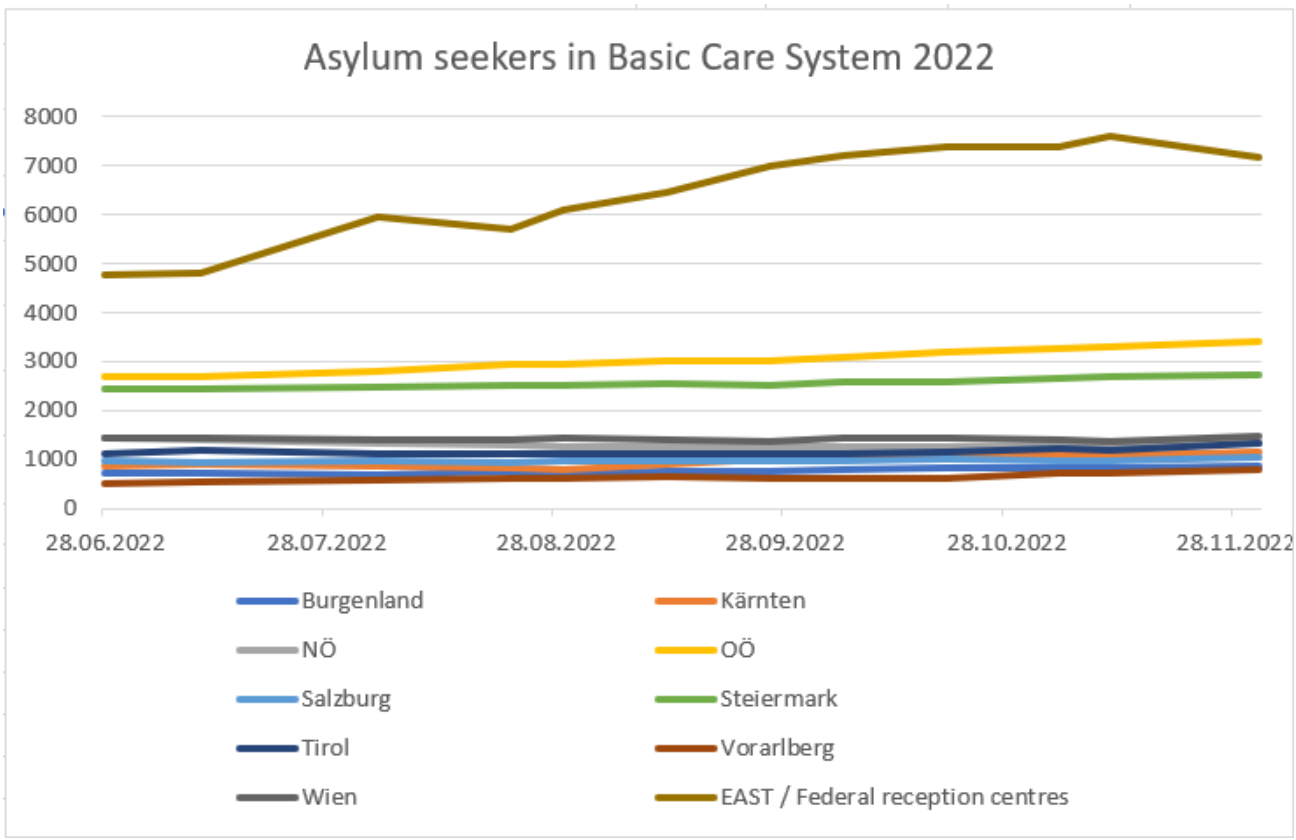
In case of larger numbers of arrivals and difficulties in transferring asylum seekers to reception facilities in the federal provinces, the Federal State may host asylum seekers even after their asylum application is admitted to the regular asylum procedure for a maximum period of 14 days.

In 2022, federal reception capacity reached its limit. Due to the lack of cooperation of the provinces to take over asylum seekers after admission phase, a huge backlog of persons already admitted to the procedure had to stay in the federal reception centres.

In June 2022, the Ministry of Interior and BBU GmbH asked the provinces to live up to their obligations to take over asylum seekers as agreed in the Basic Care agreement and warned of a possible collapse of the federal reception centres in case of non-cooperation. This lack of accommodation in the provinces has many reasons. First, the basic care system is chronically underfinanced which consequently leads to the fact that costs can barely be covered for the accommodation providers. Second, while financial resources were raised for the provinces in June 2022, implementation in some provinces took almost another half year. During this time, the high cost of living due to high inflation rates already raised the real costs more than the raise of the financial resources would cover. Third, after the start of the Russian aggression around 50,000 Ukrainians had to be accommodated in the basic care system. However, most of the Ukrainians are accommodated in private housing. Moreover, in three provinces there were elections which led to a lack of cooperation in the takeover of asylum seekers due to public debate.

Data on asylum seekers accommodated in the basic care systems of the provinces show that there was almost no reaction in the sense of taking over more asylum seekers after June 2022:

417 Fundamental Rights Agency, *Migration: Key fundamental rights concerns - Quarterly bulletin* 4, 2020, https://bit.ly/3cMWnZH.




Source: asylkoordination österreich, unpublished (data by Ministry of Interior, Basic Care System, unpublished)

The brown line represents accommodation of asylum seekers in the federal reception centres (June: 4,800 to November 7,800). The other lines represent the development of the accommodation figures of asylum seekers accommodated in the provinces.

Between July and December 2022, there were 80,000 asylum applications in Austria. In the same time, the provinces increased their accommodation places in the basic care system by a couple hundred places maximum per province and in the case of the largest province, Niederösterreich, even decreased the accommodation places for asylum seekers from 1,450 (June) to 1,330 (December 2022). This led to the collapse of the federal reception centres in October, when the CEO of the BBU GmbH announced that asylum seekers will have to be accommodated in tents on the grounds of the federal reception centres.[418]

### 1.2. Reception capacity at provincial level

In practice, most federal provinces do not provide the number of places required under their quota, which is partly due to the fact that provinces such as **Vienna** exceed their quota (almost double of the quota agreed). At the end of 2022, the entire Austrian reception system hosted a total of 92,984 (2021: 30,075) persons[419] (including beneficiaries of international protection and rejected asylum applicants), out of which 21,661 (2021: 17,138) were asylum applicants. The distribution across the federal provinces is detailed in Freedom of Movement. While **Vienna** continues to exceed its relative reception share, other federal provinces only reached 50-60% of the quota agreed. Due to the high number of Ukrainians entering Austria after 24 February 2022, the basic care system in the provinces had to accommodate a large

418 ORF.at, „Asyl: Bund stellt Zelte in Thalham auf“, 14 October 2022, available in German at: https://bit.ly/3Lq6FjG.

419 Ministry of Interior, answer to parliamentary request 5038/AB, XXVII. GP, 17 March 2021, available in German at: https://bit.ly/42urJgX.

number of refugees in a dysfunctional basic care system. Around 78% of the Ukrainian refugees were accommodated privately at the start. This share has gone down to 70% at the start of 2023. Refugees from Ukraine are the responsibility of the basic care systems of the provinces due to the fact that there is no admission phase (for which the basic care system in the federal centres would be responsible). For further information, please see the annex on temporary protection.

NGOs or owners of hostels and inns, who run reception centres under the responsibility of the federal provinces, have contracts with the governmental department of the respective federal provinces. While in some federal provinces almost all asylum seekers are placed in reception centres (e.g. 90% of asylum seekers in **Styria** and 70% in **Burgenland**), private accommodation is more often used in others states such as **Vienna**, where 70% of applicants lived in private accommodation.[420]

| Federal state | Private accommodation | Basic care facility |
|---|---|---|
| Vienna | 70% | 30% |
| Burgenland | 30% | 70% |
| Lower Austria | 50% | 50% |
| Upper Austria | 30% | 70% |
| Styria | 10% | 90% |
| Carinthia | 1% | 99% |
| Tyrol | 12% | 88% |
| Salzburg | 15% | 85% |
| Vorarlberg | 5% | 95% |

Own illustration based on nationwide NGO survey on basic services Dec 21/Jan 22 by asylkoordination österreich

## 2. Conditions in reception facilities

**Indicators: Conditions in Reception Facilities**

1. Are there instances of asylum seekers not having access to reception accommodation because of a shortage of places? ☒ Yes ☐ No
2. What is the average length of stay of asylum seekers in the reception centres? 80 days[421]
3. Are unaccompanied children ever accommodated with adults in practice? ☒ Yes ☐ No

The Ministry of Interior, which is responsible for Basic Care during the admissibility procedure, outsourced their day-to-day management to a state-owned agency, BBU GmbH, while remaining the responsible authority. The BBU GmbH took over in December 2020 from a private company that used to be subcontracted by the Ministry.

Conditions in the reception centres of the federal provinces vary, but they have constantly improved along with the decrease of persons staying in the centres. When the BBU GmbH was funded to take over in December 2020, a decrease of reception capacity at federal state level was expected During the Covid-19 pandemic, the Ministry of Interior hesitated to re-open facilities that used to function as reception centres during 2015-2016 due to local protests. This led to high numbers of persons accommodated in the EAST Ost in **Traiskirchen** which increased the infection risk inside the facility. Due to poor COVID-

420 Information provided by the federal provinces.

421 80 days is the average duration a person stays in federal basic care. There is no separate data provided for asylum seekers only. Ministry of Interior, answer to parliamentary request 9123/AB XXVII. GP, 14 March 2022, available in German at: https://bit.ly/3vwJHiW:.

19 management, the whole centre was put under quarantine in May 2020 with important restrictions for residents.[422] This led to the fact that over 600 inhabitants of the camp were not allowed to leave the centre for more than one month. In two cases,[423] the decree restricting the freedom of movement of asylum seekers was challenged and is currently under review in front of the Constitutional Court.[424] The federal reception capacity reached its limits in October 2022, mainly because of the lack of cooperation of the provinces and the high number of arrivals from Ukrainian refugees.

There was public uproar when the BBU GmbH only provided tents for some asylum seekers due to the lack of facilities and the lack of cooperation of the provinces in fall 2022. Due to the high number of arrivals in the province of Burgenland the police was not able to start off the asylum procedures for all the applicants entering the country (see access to the territory and Procedures). After taking fingerprints the persons were sent to other provinces for their asylum interviews. Before having the first interview, the applicants did not have access to federal reception centres. They were accommodated in provisional so-called waiting zones administered by the regional police directorates. The conditions were poor and inadequate. Furthermore, due to the high number of applications in October and November many applicants were not even allowed to enter these waiting zones.[425] As a consequence, applicants were homeless and many travelled onwards to other countries.

In December 2022, the NGO Diakonie Flüchtlingsdienst represented an asylum seeker from Belarus who was denied entry at a so-called waiting zone and thus grew homeless. An application for an interim measure was brought in at the ECtHR. The authorities reacted immediately and offered accommodation and modified the process of the waiting zones. As a consequence and due to the decrease in arrivals, at the start of 2023 there were no more reports of cases of homeless applicants.

Systematic research on the standards in the basic care system of the federal provinces has not been carried out in recent years. At the end of 2021, however, asylkoordination österreich carried out a nationwide survey where the concerned NGOs working in basic care, were interviewed. The findings of this research have been incorporated throughout this Chapter. As regards the minimum standard, the Regional Ministers on Integration agreed on a common recommendation on a minimum standard of 8m$^2$ for each person and 4m$^2$ for each additional person in September 2014.[426] According to the findings of the survey, the minimum standard is met in all states. In **Lower Austria**, a better standard is being applied (9m²+5m²+6m²). However, due to the increase in asylum applications in 2021, the authority reduced the standard within the framework of the 'Emergency Ordinance' to 8m²+4m²+4m², which in reality means that more people can be accommodated in one room. The minimum standards also define a maximum occupancy of 5 persons per room. This is complied with in most places, and some NGOs try to advocate for a 2-bed occupancy where possible. In **Burgenland**, **Styria** and **Tyrol**, single adults are also partly placed in 6-8 bedrooms. During regular inspections by the authorities in Burgenland, other structural deficiencies have been reported.[427]

Depending on the infrastructure, asylum seekers may live in an apartment and have their own kitchen and sanitary facilities, which is sometimes the case in former guesthouses. Usually, single persons share the room with other people. Housing in flats offers more privacy and the possibility of retreat and enables

422 Der Standard, „*Zweiter Corona-Lockdown im Asylzentrum Traiskirchen*“, 25 May 2020, available in German at: https://bit.ly/38YQgjR.

423 Der Standard, ‚*Geflüchtete wehren sich gegen Ausgangsverbot in Traiskirchen*“, 30 April 2020, available in German at: https://bit.ly/2QoiPAT.

424 Österreichischer Verfassungsgerichtshof, ‚*Prüfbeschluss zu E3811/2020-10*‘, available in German at: https://bit.ly/3vJMYdU.

425 Kleine Zeitung, „Asylsuchenden droht in Kärnten Obdachlosigkeit“, 8 November 2022, available in German at: https://bit.ly/3oTf5Zj.

426 Mindeststandards betreffend die Unterbringung in der Grundversorgung in Österreich (Minimum standards for hosting in Basic Care in Austria, 2014, available at: http://bit.ly/1ZdoiUP.

427 Nationwide NGO survey on basic services Dec 21/Jan 22 asylkoordination österreich, unpublished

more independent living. This form of housing is also particularly suitable for vulnerable groups such as victims of violence or LGBTIQ people.

Basic care facilities in Austria vary widely in terms of size, equipment and infrastructure. There are facilities with up to 260 places (**Tyrol**, **Vienna**) but also facilities with 20, 50, 80, 90, 120-150 places. In addition, asylum seekers are also accommodated in private flats rented by NGOs, coordinated on a mobile basis via care teams. This form of housing is also 'called mobile assisted living'. In the provinces as well as in **Vienna**, some asylum seekers are also accommodated in flats. The city of Vienna has announced that it would like to move away from large-scale reception models and invest in smaller accommodation units or flats. In the federal states, there are mainly smaller facilities with capacity ranging from 5 to 40 places. Larger facilities are rather rare and usually located in the cities or near a city (e.g. in Linz in Upper Austria, Eisenstadt in Burgenland, Innsbruck in Tyrol). In Vienna, most facilities are supervised 24h due to a higher amount of care capacity and accommodation of person with increased need of care.

Organisations providing care for asylum seekers receive a fixed sum per person and per day, which is aimed to cover all relevant costs. The last increase in the daily rates took place in 2016. This means that although staffing costs, rent and operating and material costs increase annually, refugee aid organisations always have to cope with the same budget. There are no other compensation from the state that could compensate for these costs. Yet, raising the daily rates and an annual valorisation are essential to ensure quality care and services for asylum seekers. NGOs argue that the amount of the daily rates must be oriented towards the needs of asylum seekers, so that care can take place "with respect for human dignity", as stated in the minimum standards of basic care.[428]

In July 2021, asylkoordination and several NGOs working in the field of refugee care jointly sent a letter to the Ministry of the Interior pointing to the insufficient funding and the fact that this financial burden lies entirely with the NGOs, which is no longer sustainable. The letter was not published but urged the authorities to increase daily rates and an annual valorisation. The increasing number of asylum applications in 2021 led to bottlenecks in the distribution of asylum seekers among the provinces, as there is not enough reception capacity. In this context, the issue of the lack of a valorisation of the daily rates for the care and counselling of refugees was raised again. The federal provinces demanded an increase in the daily rates before new places are created, as well as better planning, financing and the appropriate creation of precautionary capacities. In particular, the standards and daily rates for the care of unaccompanied children should be increased. At peak times, around 800 unaccompanied minors were in the care centres of the federal government. On 2 December 2021, a first meeting took place between the federal government and the federal states (without the participation of NGOs) to discuss the increase in daily rates, standards in care, and the distribution of asylum seekers. The outcome of these discussions remain to be seen in practice.[429] See also annex on temporary protection.

In most reception centres, asylum seekers are responsible for keeping their rooms and the common areas clean, and in some cases this can be remunerated (from €2,5 to €5 per hour – this refers to the so-called "remuneration for auxiliary and cleaning activities in accommodation facilities"; i.e. "Remu-work" in short). Regarding the allowed free amount for income, the same guidelines apply in almost all federal states. Remu-work has a monthly allowance of € 110,- in all federal states except Vienna, Burgenland and Tyrol. In Vienna and Burgenland there is € 200,- per person for Remu-work and in Tyrol € 240,-. In Tyrol and Burgenland there is an additional allowance of € 80,- for each family member, in Vienna this does not apply for Remu-work , but only for regular work[430].

428 Asylkoordination, "Menschenwürdiges Wohnen", asyl aktuell 2/2021, available in German at: https://bit.ly/3HRpDNb.

429 Standard, "Kostenhöchstsätze für Unterbringung von Asylwerbern werden valorisiert, 2 December 2021, available in German at: https://bit.ly/3LwPbS5

430 asylkoordination österreich, Nationwide NGO survey on basic services, Dec 21/Jan 22, unpublished

There is a tendency of allowing asylum seekers to cook themselves as it contributes to their well-being and reduces tensions. In the reception centres of the state, cooking or taking food into the living room or bedroom is not allowed.

In **Vienna**, **Tyrol** and **Upper Austria**, there are only facilities that allow self-sufficiency. All other provinces have facilities both with self-sufficiency and full-sufficiency. In **Styria,** as explained above, all facilities run by Caritas Styria have partial self-sufficiency, which means that part of the food is provided and part is paid out. People receive € 110 per month and pocket money. All other facilities in Styria are self-catering facilities where people receive €6 food allowance per day and pocket money In **Tyrol** adult asylum seekers are given € 200,- per month to organise meals by themselves. In **Vienna**, the amount of the food allowance varies between € 5.50 and € 6 at the different NGOs, which is due to different organisational structures. Some organisations are tax-exempt, for example Caritas, and others are not. Depending on this, the daily rate provided can be used gross for net or 10% VAT must be deducted.[431]

| Federal province | Self sufficiency | Full sufficiency | Partial self sufficiency | Pocket money | Food allowance per day (month) | Food allowance per day (month) |
|---|---|---|---|---|---|---|
| **Vienna** | x | - | - | yes | € 6.50 | € 5.50 - € 6.00 |
| **Burgenland** | x | x | - | Only with full supply | € 6,- to € 7,- adults<br>€ 3.50 - € 7,- children | € 6.- |
| **Lower Austria** | x | x | - | Only with full suppy | € 7,- | € 6.- |
| **Upper Austria** | x | - | - | Only with full supply | Adults € 7,-, children € 5,- | € 6.-<br>(children € 132, per month) |
| **Styria**** | x | x | x | yes | € 6,- | € 6.- |
| **Carinthia** | x | x | | only with full supply | € 180,- (adults per month)<br>€ 80,- (children per month) | € 6.- |
| **Tyrol** | x | - | - | yes | € 245,- /month/adult<br>€ 145,- /month/child under 18 | € 200.- /month/adult<br>€ 100.-/month/ child under 18 |
| **Salzburg** | x | x | - | yes | € 6.50 | € 6.50 |
| **Vorarlberg** | x | x | - | yes | € 260,- /month/adult<br>€ 155,- /month/child | € 215.-/month |

Source: Own illustration based on nationwide NGO survey on basic services Dec 21/Jan 22/December 22 by asylkoordination österreich

A monthly amount of € 10 is foreseen in the Basic Care agreement for leisure activities, events, celebrations and community activities. **Vienna** is the only province that pays € 10 leisure moneys directly

[431] asylkoordination österreich, Nationwide NGO survey on basic services, Dec 21/Jan 22, unpublished

to residents. The requirement for the payment of leisure money is the presentation of a movie ticket, theatre, museum and also a part of the monthly ticket for public transport can be paid through the leisure money. In **Tyrol** there is a co-financing with the province of Tyrol for German courses where the budget of the leisure money is used with additional financing from the province for German courses. In all other provinces, German courses, material costs for volunteers who hold German courses or community activities such as summer program for children (e.g. Salzburg) are also financed through the leisure money. However, this is not often used in practice mainly due to administrative obstacles The processing of the leisure money runs either directly through the accommodation providers or through the organisation that offers counselling in the facilities in the federal states. Participating NGOs report that, especially since Covid 19, the possibility of requesting leisure allowances has been made more difficult as the changing measures led to an increase of demands and of the bureaucracy.[432]

Hotels and inns usually do not have staff trained to adequately welcome asylum seekers. These reception centres are, however, visited by social workers (e.g. NGO staff) on a regular basis (every week or every second week). Reception centres of NGOs have offices in the centres. The law foresees that there should be 1 social worker for 140 clients, which is not sufficient, especially when social workers have to travel to facilities located in remote areas or need the assistance of an interpreter. NGOs work with trained staff. Some landlords have been hosting asylum seekers for many years, but as opposed to NGO staff they have not received any specific training. In **Vienna,** the system is different: in nearly all basic care facilities is care staff available 24/7 who are responsible for counselling, information and basic care. In these care facilities the care ratio is 1:55, this is mostly the same in all federal states in basic care facilities, except Tyrol where it is 1:70. In fact, most NGOs try to have a better care key than 1:55, E.g. in **Vienna** and **Upper Austria** it differs between 1:38 to 1:55. Care staff is responsible for providing food allowance, pocket money, hygiene material, social counselling and crisis support. In **Vienna**, additional counselling services may be provided by specialised NGOs (e.g. specific counselling for women, men, work, education, health, youth and young adults, housing, LGBTIQ) for people in basic care.[433]

The system of dispersal of asylum seekers to all federal provinces and within the federal provinces to all districts results in reception centres being located in remote areas. One of these centres is located in the mountains of **Tyrol**, as part of a former military camp. It cannot be reached by public transport and a shuttle bus brings the asylum seekers to the next village only twice a week. The walking distance to the next village is about two and a half hour. Access to internet is provided in the centre.[434] The centre was closed by the Tyrolian government but was reopened by the Ministry of Interior to operate as a reception centre for rejected asylum seekers.[435]

In June 2019, several persons accommodated in this federal centre in Tyrol entered in a hunger strike which caused public uproar. The Ministry of Interior subsequently conducted a human rights assessment in cooperation with UNHCR concerning the reception conditions of the centres in **Tyrol** and **Schwechat**, which mainly host rejected asylum seekers who cannot be deported. In these centres, the persons receive regular counselling concerning voluntary return.

Following the assessment, the Ministry of Interior published recommendations and several objectives. This includes no longer accommodating children in these two centres and introducing more frequent shuttle services to the village.[436] The system of isolating rejected asylum seekers in this centre was criticised heavily and had proven to be inefficient as only 18 persons have left the country out of the total

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432 Nationwide NGO survey on basic services Dec 21/Jan 22 asylkoordination österreich, unpublished

433 Fonds Soziales Wien, Information on Counselling organisations for asylum seekers, available in German at: https://bit.ly/3sD4CQ6.

434 Profil, 'Nächtlicher Angriff auf Asylwerber in tiroler Bergen' 30 October 2014, available at: http://bit.ly/1G8a8MZ.

435 Bezirksblätter, 'Heim am Bürglkopf wird zur Rückkehreinrichtung', 24 August 2017, available in German at: http://bit.ly/2H8o5j2.

436 Ministry of Interior, Human rights recommendations, available in German at: https://bit.ly/3cILFCO.

of 65 persons accommodated in the first half of 2019.[437] Moreover, it has been reported that the recommendations were not strictly applied in practice by the Ministry of Interior, as some children were reportedly still being accommodated in Schwechat. According to officials of the BFA, these recommendations are considered as non-binding.

An important issue that still receives too little attention in the field of accommodation in basic care is the participation of asylum seekers and refugees in reception, for example spokespersons who could represent the others. Diakonie is the first organisation that is currently setting up an internal ombudsman service for residents of the facilities.[438]

## C. Employment and education

### 1. Access to the labour market

**Indicators: Access to the Labour Market**

| | | |
|---|---|---|
| 1. | Does the law allow for access to the labour market for asylum seekers? | ☒ Yes ☐ No |
| | ❖ If yes, when do asylum seekers have access the labour market? | 3 months |
| 2. | Does the law allow access to employment only following a labour market test? | ☒ Yes ☐ No |
| 3. | Does the law only allow asylum seekers to work in specific sectors? | ☒ Yes ☐ No |
| | ❖ If yes, specify which sectors: | Tourism, agriculture, forestry |
| 4. | Does the law limit asylum seekers' employment to a maximum working time? | ☒ Yes ☐ No |
| | ❖ If yes, specify the number of days per year | 180 days |
| 5. | Are there restrictions to accessing employment in practice? | ☒ Yes ☐ No |

The Aliens Employment Act (AuslBG) states that an employer can obtain an employment permit for an asylum seeker 3 months after the asylum application is admitted to the regular procedure, provided that no final decision in the asylum procedure has been taken prior to that date.[439]

The possibility of obtaining access to the labour market is restricted by a labour market test (*Ersatzkraftverfahren*), which requires proof that the respective vacancy cannot be filled by an Austrian citizen, a citizen of the EU or a legally residing third-country national with access to the labour market (long-time resident status holder, family member etc.).[440]

Applications for an employment permit must be submitted by the employer to the regional Labour Market Service (AMS) office in the area of the district where the envisaged place of employment is located. Decisions are taken by the competent regional AMS office. In the procedure, representatives of the social partners have to be involved in a regional advisory board. The regional advisory board has to recommend such an employment permit unanimously. Appeals have to be made to the Federal State AMS office that must decide on appeals against decisions of the regional AMS office. There is no further right of appeal.[441] The decision has to be made within 6 weeks; in case of appeal proceedings, the same time limit must be applied.

437 Ministry of Interior, Answer to a parliamentary request, 3837/AB XXVI GP, 16 August 2019, available in German at: https://bit.ly/38gMr6r.
438 Nationwide NGO survey on basic services Dec 21/Jan 22 asylkoordination österreich, unpublished
439 Article 4(1) AuslBG.
440 *Ibid*.
441 Article 20(1) and (3) AuslBG.

In addition, a 2004 ordinance introduced further restrictions to the access to the labour market by limiting employment to seasonal work either in tourism, agriculture or forestry.[442] These seasonal jobs are limited by a yearly quota for each federal province and can only be issued for a maximum period of 6 months.

A further problem for asylum seekers working as seasonal workers is the regulation in the Basic Care Acts of the state and the federal provinces that requires a contribution to Basic Care, if asylum seekers have an income. In practice, there is only an allowance of € 110 plus € 80,- for each family member, left to asylum seekers in most of the federal provinces, while the rest of the money earned contributes to the cost of reception.[443] If they have been receiving an income for more than 3 months, Basic Care support is no longer provided. If the asylum seeker asks for readmission into Basic Care after they have finished the employment, cash contributions to the provision of Basic Care are demanded. In fact, it is assumed by the authorities that only about € 550 (1.5 times the basic provision amount) per month have been spent by the asylum seeker on subsistence and accommodation during the period of employment. Income exceeding this amount is deducted from the allowance received under Basic Care from that time onwards until repaid. As mentioned above, **Tyrol** has an allowance of € 240,- per person, all other federal states € 110,- per person.

Moreover, asylum seekers are not registered at the Public Employment Service as unemployed persons. Therefore they are not entitled to vocational trainings provided or financed by the Public Employment Service. As they are not registered as persons searching for work at the Public Employment Service, access to the labour market largely depends on their own initiative and pro-activity in job hunting. Their lack of resources can also be an additional obstacle in securing in job; e.g. when it comes to travel costs for job interviews.

Until October 2018, asylum seekers below the age of 25 had the right to get a work permit for an apprenticeship in shortage occupations. However, the ministerial decrees of 2012 and 2013 were revoked, and asylum seekers below the age of 25 are not offered this possibility anymore. Those who are still apprentices are allowed to continue working as long as they stay in Austria. In **Upper Austria**, where a particularly large number of young asylum-seekers are apprentices, a broad protest has been formed against this "disintegration policy".

The Federal Administrative Court found that restricting access to the labor market is contrary to Article 15(2) of the recast Reception Conditions Directive and concluded that asylum seekers should have effective access to the labor market. [444] They may also be self-employed under the general conditions as soon as they are registered as asylum seekers.

Since 1 April 2018, asylum seekers admitted to the regular procedure for 3 months or more can also be employed through service vouchers in private households (e.g. for gardening, cleaning or child care etc.). Vouchers can be bought at the post office or online.[445] However, in practice, the necessary registration is complicated and this possibility is not very known nor used. The Ministry of Social Affairs decided in 2018 that asylum seekers have no longer access to vocational training. Since then, the possibility of working through vouchers is one of the only possibilities to work for asylum seekers.

Asylum seekers can carry out non-profit activities and receive an acknowledgment of their contributions. The amount of this remuneration was debated throughout 2018 and 2019. The Ministry of Interior lowered the maximum remuneration to €1,50 by way of decree. This decree was revoked by the interim government in May 2019, thus re-instating the former regulation which foresees that asylum seekers are

442 Ordinance GZ 435.006/6-II/7/2004,11 May 2004.
443 In Tyrol, asylum seekers may earn €240 per month without contribution to the cost of basic care.
444 BVwG, Decision, No W209 2184750-1, 25 June 2018.
445 Dienstleistungsscheckgesetz, 12 February 2018, available at: http://bit.ly/2nSSz0m.

allowed to earn up to €110 per month.[446] These non-profit jobs include administrative and/or office assistance, translation services, support for parks and sports facilities, playgrounds, elderly care, assistance in nursery schools, school attendance services, assistance in animal shelters, or support for minor resettlements in the municipality.[447] Since April 2018, the Minister of Interior has the power to regulate which NGOs will be able to enlist asylum seekers on a voluntary basis for charitable activities and to set the maximum amount for such work.[448] The minimum fee is regulated for each sector e.g. €11.75 an hour for gardening. The monthly income for this kind of employment is limited to €600. In **Vienna** allowance is € 200,- per person and in **Tyrol** € 240,- per person.

On 25 January 2017, the Ministry of Social Affairs submitted a decree to the Labour Market Service (AMS). The Decree clarifies that:[449]

a. Asylum seekers are allowed to complete practical experience and internships within the framework of their training in vocational schools or secondary schools;
b. Adult asylum seekers are also allowed to do unpaid voluntary work for certain companies. An asylum seeker may take 3 months in a one-year period with several companies.

Companies have to register asylum seekers for internships at the AMS no later than 14 days before the start of the internship. Interns are also entitled to reasonable remuneration.[450]

By the end of 2018, 1,249 asylum seekers had a valid work permit, out of which 1,070 were apprentices and, during that same year, 1,615 additional work permit have been issued to asylum seekers, out of which 757 concerned apprentices.[451] 2019 was marked by a drastic decrease in the number of apprentices given that the Ministerial decrees foreseeing the access to vocational training for asylum applicants aged below 25 years old were revoked in 2018. As a result, only 943 work permits have been issued during the year, out of which only 12 were issued to apprentices. In these special cases, the asylum applicants had challenged the decisions in front of the Labour Market Service Agency, arguing that denying access to labour market infringes their rights guaranteed under the Recast Reception Directive. The Constitutional Court announced on 1 March 2021 that it will examine whether the ministerial decrees are infringing the constitutional rights of the asylum seekers.[452] By the end of 2019, only 996 asylum applicants had valid working permits, out of which 741 were apprentices and 110 concerned seasonal work. For most applicants who could still start an apprenticeship the formation ends in 2021. By the end of 2020, 576 applicants had valid working permits, out of which 397 were apprentices. In 2021, the Constitutional Court ruled that the internal decrees denying the access to the labour market for asylum seekers (Barteinstein-Erlass) and access to apprenticeship for asylum seekers (Hartinger-Klein-Erlass) violated the fundamental rights of asylum seekers. As a result, asylum seekers can start an apprenticeship if certain conditions are met.

As of December 2022, 42 asylum seekers were working as an apprentice. 1,109 asylum seekers had a valid working permit. Beneficiaries of TPD have easier access to the labour market: They need a working permit which is not bound to any other conditions other than their status as displaced person. As of December 2022, 11,776 beneficiaries of temporary protection from Ukraine had a valid working permit. For further information, see annex on temporary protection.

446 Wiener Zeitung, ‚Innenminister Ratz macht Kickls Entscheidung rückgängig', 23 May 2019, available in German at: https://bit.ly/2wlXfmw.
447 Ministry of Interior, ‚Sobotka: Leistungskatalog für Hilfstätigkeiten von Asylwerbern erstellt', 28 October 2016, available in German at: http://bit.ly/2kS0dHB.
448 Article 7(3a) GVG-B.
449 Oberösterreichische Nachrichten, 'Asylwerber dürfen nun in Firmen schnuppern', 1 February 2017, available in German at: http://bit.ly/2k2eEtz.
450 Ministry of Labour, *Anzeigebestätigungen gem. § 3 Abs. 5 AuslBG für Ferial- und Berufspraktika und Volontariate von AsylwerberInnen*, 25 January 2017, available in German at: http://bit.ly/2oTXTjU.
451 Information provided by the Labour Market Service (AMS) in February 2019.
452 Constitutional Court, *Prüfbeschluss E2420/2020-11*, 1 March 2021, available in German at: https://bit.ly/38Xopkh.

## 2. Access to education

| Indicators: Access to Education | | |
|---|---|---|
| 1. | Does the law provide for access to education for asylum-seeking children? | ☒ Yes ☐ No |
| 2. | Are children able to access education in practice? | ☒ Yes ☐ No |

School attendance is mandatory for all children living permanently in Austria until they have finished 9 classes, which are usually completed at the age of 15. Asylum seeking children attend primary and secondary school after their asylum application has been admitted to the regular procedure. As long as they reside in the initial reception centre of the state, school attendance in public schools is not provided, however. Preparatory classes are usually set up where many children have a poor knowledge of the German language. Schools often register pupils without sufficient knowledge of the German language as extraordinary pupils for a maximum period of 12 months.

Access to education for asylum seekers older than 15 may become difficult, however, as schooling is not compulsory after the age of 15 for asylum seekers. Moreover, children who did not attend the mandatory school years in Austria have difficulties in continuing their education. For those unaccompanied children, who have not successfully finished the last mandatory school year, special courses are available free of charge. For children accompanied by their family, this possibility is often not available for free.

The Aliens Employment Act restricts access to vocational training, because the necessary work permits can only be issued for seasonal work. In July 2012, however, exceptions were introduced for asylum seeking children up to the age of 18. A decree of the Ministry of Social Affairs allowed for children to obtain a work permit as apprentices in professions where there is a shortage of workers.[453] Yet this measure proved to be insufficient in ensuring vocational training, as only 18 children have received such a permit since July 2012. A further decree of the Ministry of Social Affairs of March 2013 increased the maximum age for benefitting from the exceptions to vocational training restrictions from 18 to 25.[454] However, in 2018, the possibility for asylum seekers to complete an apprenticeship in a profession with a shortage of apprentices has been deleted.[455]

According to a law that entered into force on 1 August 2017, young people under the age of 18 who have completed the 9-year schooling and who are permanent residents in Austria are obliged to pursue education or training.[456] However, this law is not applied to asylum seekers, despite criticism from NGOs and the Chamber of Employment for failing to address a problematic aspect of integration and education policy.[457] In October 2019, the Federal Youth Association (*Bundesjugendvertretung*) called for the inclusion of underaged asylum seekers as target group of the law.[458] Nevertheless, they can benefit from a wide range of language and literacy courses. In **Vienna**, the educational hub arranges course places for literacy courses, German courses, and basic education. There are also special courses available for women and mothers. At a few high schools transitional courses are organised in order to prepare for regular classes. Free language courses are further offered in refugee homes and also by NGOs. However, these courses are not always sufficient in terms of time and quality. Language courses are only accessible to asylum seekers when the government has sufficient financial resources.

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453 Asylkoordination, *Expansion of employment opportunities for asylum seekers*, 14 June 2012, available in German at: http://bit.ly/1k7cAuY.

454 AMS, *Beschäftigungsmöglichkeiten für Asylwerberinnen und Asylwerber*, November 2015, available in German at: http://bit.ly/1msi8SL.

455 Salzburger Nachrichten, Ende der Lehre für Asylbewerber fix - Betroffene dürfen begonnene Lehre abschließen, 27 August 2018; available in German at: https://bit.ly/2TOA3Ev.

456 Article 3, Ausbildungspflichtgesetz (ApflG), BGBl. I Nr 120/2016, available at: http://bit.ly/2lkgXsh.

457 Employment Office of Upper Austria, 'Ausbildungspflicht bis 18: AK fordert Nachbesserungen', 19 August 2016, available in German at: http://bit.ly/2kNmJSc.

458 APA-OTS, 'Bundesjugendvertretung: Ausbildungspflicht für alle öffnen!',28 October 2019, available in German at: https://bit.ly/2vOy2RB.

Due to the Covid-19 pandemic, schools were closed for long time periods in 2020. Home schooling was generally organised in a rather chaotic way (especially during the first months) and NGOs reported that children asylum seekers had problems having access to home-schooling due to the lack of technical equipment. No considerable effort of the Ministry of Integration was conducted to address these issues. NGOs tried to provided laptops, tablets and technical staff which is needed for home-schooling, as there was no support from the government

## D. Health care

**Indicators: Health Care**

1. Is access to emergency healthcare for asylum seekers guaranteed in national legislation?
   ☒ Yes ☐ No
2. Do asylum seekers have adequate access to health care in practice?
   ☐ Yes ☒ Limited ☐ No
3. Is specialised treatment for victims of torture or traumatised asylum seekers available in practice? ☐ Yes ☒ Limited ☐ No
4. If material conditions are reduced or withdrawn, are asylum seekers still given access to health care? ☐ Yes ☒ Limited ☐ No

The initial medical examination of asylum seekers after their initial admission to a reception centre (EAST or VQ) is usually conducted within 24 hours. A general examination is conducted through a physical examination including vital signs, skin lesion, injuries, including Tuberculosis (TBC) X-ray and questions on their state of health by means of a standardised medical history. If, within the scope of the medical examination, circumstances indicate that further investigations are required, asylum seekers are transferred to specialist doctors or a hospital.[459]

Every asylum seeker who receives Basic Care has health insurance. Treatment that is not covered by health insurance may be paid, upon request, by the federal provinces' departments for Basic Care or the Ministry of Interior. If Basic Care is withdrawn, asylum seekers are still entitled to emergency care and essential treatment.[460]

In practice, this provision is not always easy to apply, however. If an asylum seeker has lost basic care due to violent behaviour or absence from the EAST for more than three days, he or he will not receive medical assistance, because it is assumed that they have had the opportunity to visit the medical station in the EAST. However, as those asylum seekers are no longer registered in the EAST, they will not be allowed to enter and receive medical treatment there. Without health insurance or access to the medical station of the EAST, asylum seekers may face severe difficulties in receiving necessary medical treatment. Some of them come to the NGO-run health project AMBER MED with doctors providing treatment on a voluntary basis.[461]

In some federal provinces such as **Vienna**, asylum seekers receive an insurance card in the same way as other insured persons and can thus access health care with their insurance contracts without complications. In all other provinces, asylum seekers do not receive an ecard, instead of the ecard they receive a replacement document (c-card *Ersatzbeleg*), except **Tyrol** where people in basic care have their insurance number written on the back side of their white ID card, which is working well when going to a doctor's office. Caritas Salzburg reports that it is also working without replacement document, and

459 Ministry of Interior, Reply to parliamentary question 8774/J (XXV.GP), 17 May 2016, available in German at: http://bit.ly/2lq2GHj.
460 Article 2(4) GVG-B.
461 See the official website AmberMed available in German at: http://www.amber-med.at/.

doctor's appointments could also be made this way because of the plug-in card system, it is only necessary to tell the insurance number.[462].

After the asylum seeker has submitted the asylum application, they must undergo a mandatory medical examination, including a tuberculosis examination. The Ministry of the Interior has commissioned the BBU GmbH to carry out the medical examination, which is part of the admission procedure. The company has contracts with general practitioners and nurses to provide health care in the federal reception centres.

Asylum seekers are obliged to submit medical findings and expert opinions, if those help to assess the presence of a mental disorder or other special needs (§ 2 Abs. 1 GVG-B).[463]

Since September 2018, hospitals have the obligation to inform the BFA of the upcoming release of a foreigner against whom a deportation procedure is pending. This is not mandatory but happens upon requests of the BFA. However, once such a request has been issued, hospitals are obliged to keep the BFA updated of relevant developments (e.g. if there a change in the release date for example). The police may further also be informed on the matter by the BFA upon explicit request. [464]

The Austrian Integration Fonds (*Integrationsfonds*) took some time before providing information on the Covid-19-pandemic to refugees and asylum seekers. In April 2020, the Integrationsfonds sent short messages via mobile phones to inform refugees and asylum seekers about the Corona pandemic and the legal situation. Critics were raised as the information was at times incorrect and incomplete; e.g. he Integrationsfonds did not inform the concerned persons about their right to go for a walk during the lockdown.[465] It took the Integrationsfonds up until January 2021 to establish Online Counselling for persons with low German skills. Through this counselling service, the Integrationsfonds aims to inform interested persons about the possibility to get tested and/or vaccinated.[466] In the Austrian vaccination strategy, asylum seekers accommodated in larger facilities are categorised as Priority group number 3 together with person over 70 years old.

**Specialised treatment**

In each federal province, one NGO part of the Network for Intercultural Psychotherapy and Extreme Trauma provides treatment to victims of torture and traumatised asylum seekers. This is partly covered by AMIF funding, partly by the Ministry of Interior and regional medical insurance. However, the capacity of these services is not sufficient. Victims often have to wait for more than 6 months in **Vienna**, **Styria** and **Tyrol** for psychotherapy, while in other federal states they wait approximately 3 months.

The Basic Care system - and thus the health care provided - varies from one federal province to another and is regulated in many different laws on state level. In some federal provinces, asylum seekers will be provided care in regular special care facilities (see Special Reception Needs). “Increased care” for special needs must however be requested by the asylum seeker. A prerequisite for receiving additional care is the submission of up-to-date specialist medical findings and assessments demonstrating a need for care, as well as social reports not older than 3 months. These requirements contribute to the asylum seeker’s obligation to cooperate throughout the procedure. Reports from NGOs are also taken into account when examining the additional need for care.

462 asylkoordination österreich, Nationwide NGO survey on basic services, Dec 21/Jan 22, unpublished
463 Article 15 (1)3 Asylum Law.
464 § 46 (7) Aliens police Law 2005.
465 Der Standard, „Integrationsfonds informierte Migranten unvollständig über Corona-Maßnahmen“, 16 April 2020, available in German at: https://bit.ly/3f3TPJg.
466 Integrationsfonds, “Informationen zu Impfungen und Testungen: mehrmals täglich COVID-19-Onlineberatungen für Migrant/innen und Flüchtlinge”, 14 January 2021, available in German at: https://bit.ly/3ttXRii.

## E. Special reception needs of vulnerable groups

**Indicators: Special Reception Needs**

1. Is there an assessment of special reception needs of vulnerable persons in practice?
   ☒ Yes ☐ No

The legislation relating to the reception of asylum seekers does not foresee a mechanism for identifying vulnerable persons with special needs. Article 2(1) GVG-B states that attention should be paid to special needs when the asylum seeker is registered in the Basic Care System. As already mentioned, asylum seekers have to undergo a mandatory health examination after having submitted the asylum application. In principle, all asylum seekers should have health insurance and they may be transferred to a hospital for necessary medical treatments.

The Basic Care laws of **Lower Austria**, **Salzburg**, **Tyrol** and **Vorarlberg, Burgenland, Carinthia, Upper Austria** mention special needs of vulnerable persons. Elderly persons, handicapped persons, pregnant women, single parents, children, victims of torture, trafficking, rape or other forms of severe psychological, physical or sexual violence are considered as vulnerable persons. In the laws of the federal province of **Vienna**, vulnerable asylum seekers are not mentioned. Nevertheless, the federal provinces have to respect national and international law, including the recast Reception Conditions Directive. A special monitoring mechanism is not in place. It is the responsibility of the asylum seeker, social adviser, social pedagogue or the landlord to ask for adequate reception conditions from the relevant authority and service provider. Strategic litigation on the matter is very difficult due to the complexity of the legal situation.

The monthly amount of €2,480 for nursing care in specialised facilities is included in the Basic Care Agreement between the State and the federal provinces, which describes the material reception conditions.

Not all federal provinces have special care centres for vulnerable groups besides unaccompanied children. Special care needs are often determined only after an asylum seeker has been placed into a reception centre in one of the provinces. In this regard, the Burgenland Court of Auditors stated that the allocation to a specific centre was the responsibility of the social department and should be based on a departmental list of criteria, which include *inter alia* marital status, gender, nationality, religion and age.[467]

### 1. Reception of unaccompanied children

There are several facilities for unaccompanied asylum-seeking children. While on federal level, BBU GmbH had planned to open three more facilities for UAM in 2021, which did not happen, in the province some of them are run by private companies and others by the Children and Youth Assistance. Children aged less than 14 years are provided care in socio-pedagogic institutions of the federal provinces.[468]

In 2022, 13,276 UAM applied for asylum in Austria. In 11,659 cases the authority discontinued the case as the UAM absconded and had left Austria. Nevertheless, the number of UAM in federal reception centres grew up to 1,200 as the provinces were reluctant to take over UAM in their basic care systems. As of December 2022, 1,169 UAM were accommodated in inadequate federal reception centres for an average time of 133 days. The BBU GmbH opened up new facilities: At the end of 2022, there were 5 facilities operating on a federal level accommodating UAM.[469]

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467 BVZ, ‚Landesrechnungshof nahm Grundversorgung unter die Lupe‘, 19 April 2018, available in German at: https://bit.ly/2TE7aMq.

468 Der Standard, *Frequently Asked Questions on Unaccompanied children*, 3 August 2015, available in German at: http://bit.ly/1gGuyE3.

469 Presentation by BBU GmbH at Asylforum 2023, available in German at: https://bit.ly/41OV8RL.

### 1.1. Federal centres

There are 5 reception centres for unaccompanied children managed by the Federal Agency BBU GmbH, out of which one is a separate facility for unaccompanied children in the Federal Reception Centre EAST in **Traiskirchen**.[470]

As of 31 December 2018, there were 40 unaccompanied children accommodated in special federal reception centres, while another 1,479 were accommodated in specialised facilities in the different federal provinces.[471] As of 7 November 2019, there were 69 unaccompanied children accommodated in special federal reception centres.[472] After the outbreak of the COVID-19 pandemic, the transfer to reception facilities in the provinces was massively delayed in 2020, partly due to insufficient COVID-19 test-management. This resulted in very high numbers of unaccompanied minors accommodated in large and inadequate federal facilities. In November 2020, around 240 children were accommodated in those facilities whereas in 2017 – when the number of applicants was much higher – only 91 were housed in federal centres.[473] As of 21 January 2021, there were still 200 unaccompanied children accommodated in the federal reception centres.[474] The situation deteriorated in 2021 resulting in 700 unaccompanied minors being placed in inadequate housing in federal reception facilities due to the reluctance of provinces to take over these children into basic care. This was largely motivated by the fact that the Ministry refused to increase funding for housing in the provinces. The situation continued in 2022 with 1,200 UAM being accommodated in inadequate federal reception centres due to the reluctance of the provinces to take over the minors, as their accommodation cost are even higher than other asylum seekers. Unaccompanied minors is the only group for which the Ministry has not raised the financial resources for basic care at the time of writing.

An important concern is that from January to September 2020, only 126 children out of 888 minor applicants were transferred from the federal system to the states. Given that only around 200 children were being accommodated in federal facilities as of January 2021, it is still unclear what happened to the other children and where they are being accommodated. The NGO asylkoordination has counted around 350 missing children between January and September 2020,[475] whereas 228 missing children with non-EU-citizenship were registered in the SIS II, of whom 61 were under 14 years old.[476] The situation has deteriorated in 2021: 4,489 minors have gone missing after applying for asylum in Austria. This represents 78 % of all applications of minors in 2021. The Ministry of Interior stated that these minors went on to other European countries but has not presented further proof.[477] In 2022, this worsened: around 88,5% of the UAM who applied for asylum absconded.

### 1.2. Reception of unaccompanied children at federal province level

Basic Care provision for unaccompanied asylum-seeking children reflect the need of care with regard to accommodation and psychosocial care. Unaccompanied asylum-seeking children must be hosted according to their need for guidance and care. The daily fee for NGOs hosting unaccompanied asylum-

470 Information provided by the Ministry of Interior, 26 January 2018.
471 Information of the Basic care system, unpublished.
472 Ministry of Interior, Answer to a parliamentary request, 38/AB XXVII. GP, 19 December 2019, available in German at: https://bit.ly/2w2RTg5. Information about accommodation in different provinces is not available however.
473 Asylkoordination österreich, ‚asylkoordination fordert Einhaltung der Kinderrechte', 20 November 2020, available in German at: https://bit.ly/2LYQ3oG.
474 Ministry of Interior, Answer to parliamentary request 3337/AB XXVII. GP, 11.November 2020, available in German at: https://bit.ly/2NAkD8E.
475 Asylkoordination österreich, ‚asylkoordination fordert Einhaltung der Kinderrechte', 20 November 2020, available in German at: https://bit.ly/2LYQ3oG.
476 FRA, *Migration Bulletin 4*, 6 November 2020,available at : https://bit.ly/3qswRhX, 28
477 Ministry of Interior, Answer to parliamentary request 9406/AB XXVII. GP, 28 March 2021, available in German at: https://bit.ly/3v4E2AE.

seeking children ranges from €40 to €95 depending on the services provided. Additional support may be provided by the Child and Youth Agency of the federal province. Unaccompanied asylum-seeking children are placed in three different groups depending on their needs. Accordingly, a social worker will be in charge of groups varying from maximum 10, 15 or 20 children depending on their needs (the higher the needs, the smaller the group).

The Ministry of Interior and the competent department of the federal provinces have agreed on a quota system for unaccompanied children.[478]

The number of unaccompanied children, including asylum seekers, rejected asylum seekers and persons with a protection status, receiving Basic Care on 31 December 2022 was as follows:

| Unaccompanied children receiving Basic Care: 31 December 2022 | | |
|---|---|---|
| Federal province | Total Basic Care recipients | Unaccompanied children |
| Vienna | 36,388 | 362 |
| Upper Austria | 9,852 | 194 |
| Lower Austria | 12,108 | 134 |
| Styria | 9,506 | 187 |
| Tyrol | 5,234 | 88 |
| Carinthia | 2,740 | 66 |
| Salzburg | 3,602 | 48 |
| Vorarlberg | 3,070 | 14 |
| Burgenland | 2,908 | 56 |
| Initial reception centres (EAST) | 7,576 | 1,169 |
| **Total** | **92,984** | **2,318** |

Source: Ministry of Interior, GVS Statistics (unpublished)

In some cases the transfer of an unaccompanied asylum-seeking child from the initial reception centre to Basic Care facilities of the federal provinces takes place randomly, without knowing what the specific needs of the child are.

Numerous facilities set up after 2015 have been phased out after the number of unaccompanied children arriving in Austria dropped. This decrease was also noted in 2019 and facilities have been closed accordingly. In 2020, facilities of the NGO Volkshilfe in **Upper Austria** have closed leaving few specialised accommodations. The type of facilities available in the different provinces varies from one province to another:

**Carinthia**, **Tyrol** and **Burgenland** only offer accommodation in residential groups.

**Lower Austria** and **Upper Austria** generally offer accommodation in residential groups, subject to a few exceptions. The daily rate of €95 for unaccompanied minors residential groups applies in Upper Austria

478 Die Presse, 'Länder beschließen Quote für unbegleitete Minderjährige' (Federal provinces agree on quota for unaccompanied minors), 6 May 2015, available in German at: http://bit.ly/1ZgsjrH.

only for groups of up to 20 people.[479] Larger facilities receive a daily rate of €88. This amount should also cover the legal representation of the minors.

**Salzburg:** Children over the age of 14 are first housed in residential groups but may be assigned to other types of accommodation if deemed necessary by the care provider.

**Vienna:** Since 2015 only residential groups have been opened. There are still a few places for unaccompanied children with a lower level of care, however.

**Styria:** Styria has no residential groups for unaccompanied children. All children over the age of 14 are accommodated in dormitories or in assisted living. The situation in Styria is criticised by the Ombudsman, who recommends the establishment of residential groups in the future.

Since 2016, unaccompanied children may also live with families. Several federal provinces offer such possibilities. About 95 children lived with families in December 2018.

The Child and Youth Agency is responsible for providing adequate guidance and care to these children. BBU GmbH is responsible in providing legal counselling and representation of the minors in their asylum procedure. However, it is unclear who is responsible for their guardianship during the admissibility procedure or during their stay in the reception centre, or for any other legal issue that may rise. It can be either a legal adviser acting as legal representative in the initial reception centre, or the Child and Youth Agency, which becomes responsible after the child is allocated to a federal province. An answer to a parliamentary request in December 2019 showed that half of the unaccompanied children disappeared after lodging an asylum application during the admissibility procedure.[480] Media reports raised important attention to the fact that no authority is appointed as legal guardian for unaccompanied minors during the admissibility procedure.[481] The government programme issued in January 2020 includes a plan to better ensure the protection of unaccompanied minors in the admissibility procedure,[482] but this was still not implemented as of March 2023 and is not likely to happen before the next general elections in 2024.

Some of the Basic care laws of certain federal provinces provide that social educational and psychological care for unaccompanied asylum-seeking children should stabilise their psychic condition and create trust.[483] Furthermore daily-organised activities (e.g. education, sport, group activities, and homework) and psychosocial support are foreseen, taking into account the age, identity, origin and residence of family members, perspective for the future and integration measures.

A report on the situation of accompanied children in Austria published in 2019 by asylkoordination and UNICEF showed that accompanied children face – to a large extent – the same problems as those faced by unaccompanied minors. Moreover, some specific problematic issues have been identified; such as inadequate housing situations (due to often small accommodation places for large families) or role that children play as translators for their parents in certain situations etc.[484]

The report further criticises the lack of staff in many institutions and the lack of qualified staff, especially regarding pedagogical care that is needed to deal with an emerging risk of radicalisation and to deal with persons with psychic issues. Also, the Ombudsman described a shared apartment that it had visited as

479 Oberösterreichischer Landesrechnungshof, June 2017, available in German at: https://bit.ly/2SyZLzZ.
480 Ministry of Interior, Answer to a parliamentary request, 38/AB XXVII. GP, 19 December 2019, available in German at: https://bit.ly/2w2RTg5 . Information about accomodation in provinces is not available.
481 Der Standard, ‚Die Hälfte der unbegleiteten Flüchtlingskinder in Österreich verschwindet', 6 February 2020, available in German at: https://bit.ly/3bdzoEL.
482 Government program 2020-2024, available in German at: https://bit.ly/2wDq0eL, 197.
483 Art. 7 Tyrolean Basic Care Act (*Tiroler Grundversorgungsgesetz*).
484 Asylkoordination/UNICEF, *Dreimal in der Woche weinen, viermal in der Woche glücklich sein*, 2019, available in German at: https://bit.ly/33cWHvs.

being incompatible with pedagogical standards and qualified it as a humiliating treatment. The shared flat was closed shortly after the Commission's visit and the young persons living there were transferred. In that regard, other basic care facilities were visited by the commissions and considered as impersonal, empty and/or cramped. Dorm rooms were sometimes so small that no retreat or visit opportunities existed and the environment was not adequate for learning. Minors were therefore sometimes found in a neglected state. As follow-up visits demonstrated, many issues were corrected after the NPM's intervention. It was noted that a new system called "New authority' - "*Neue Autorität*" – was being implemented: "*Neue Autorität*" is a systemic approach that strengthens managers, educators and parents. It enhances a respectful culture of relationships and encourages development processes. This also led to a better integration of the children into local communities.[485]

Regarding the access to education, the report indicates that - apart from the minors that are enrolled in schools and attend lessons - young persons do not receive adequate training or further education everywhere. German courses are offered in some regions only once or twice a week and language remains an important barrier. This situation persisted throughout 2020 and was aggravated by the Covid-19-pandemic. An expert council on Integration of the Federal chancellery stated in August 2020, that the Covid-19-crisis deepens integration problems of migrants. According to the expert Council, children with a migrant background faced important obstacles and difficulties to cope with the new learning process resulting from home schooling.[486]

**Aged-out children**

A few places are available for children who have reached the age of 18 and who need higher care compared to adults. This possibility corresponds to youth welfare regulations, stating that under special circumstances the Child and Youth Agency will take responsibility for young adults up to the age of 21.

The Ombudsman observed that the situation of children aged more than 18 years old can be particularly precarious if they have to leave the unaccompanied minors' homes although they are not sufficiently prepared to an independent life.[487]

Some NGOs in **Vienna** (Samariterbund Wien, Don Bosco Sozialwerk, SOS Kinderdorf, Caritas) and **Lower Austria** (e.g. NGO tralalobe) offer so-called 'after-care places' for children asylum seekers who have come of age during their stay in facilities, in so-called mobile supervised flats where social workers come 1-3 times a week to provide counselling and support. However, aftercare for young adults in basic care is funded at the same daily rate as for adults, even if young adults require more care in most cases. In **Upper Austria**, the NGO Volkshilfe has tried several times to point out the needs of young adults and has also presented concepts, but they have always been rejected by the authorities.

For 2022, there is a temporary increased daily rate foreseen **in Vienna** for young adults who have only been in Austria for a few months, as young men, all 17 ½ years old, came to a large institution in Vienna in December 2021. Many of them will reach their majority in 2022 and will be transferred from the minor-facility to an adult facility. The City of Vienna has recognised that this group in particular requires more care and has therefore offered a temporary increased daily rate for NGOs responsible for providing support to these young men.[488]

**Children with special needs**

485 Ibid.
486 Federal Chancellory, „Expertenrat für Integration: Corona-Krise verschärft Integrationsprobleme", 13 August 2020, available in German at : https://bit.ly/3qXOXaZ.
487 Ombudsman board, *Special report on childrens' rights*, 2017, available in German at: https://bit.ly/3cQhEkx.
488 asylkoordination österreich, Nationwide NGO survey on basic services Dec 21/Jan 22, unpublished.

Information gathered by Asylkoordination in the fall of 2016, demonstrated that 10.6% of accommodated children needed medication ordered by a psychiatrist. It indicated that some suffered from depression, suicidal thoughts and mental disorders. A further 9% were suspected to be suffering from a mental illness, although there was no diagnostic yet as most of them refused to undergo an investigation - out of fear of being stigmatised or due to delays in the assessments. Another 5% were in therapy and were not taking medication. According to the caregivers, about 15% were in urgent need of therapy. 8% were further moved to another facility due to their behaviour (threats, violence against staff or other residents), but in one third of the cases the behavioural problems did not improve.[489]

The Ombudsman has criticised **Lower Austria** for not providing additional funding for children with mental illness. The federal province responded that the higher daily rate of €95 paid for Basic Care since July 2016 should cover any additional costs. Following criticism from the Ombudsman, the province of **Styria** has introduced a supplementary package of €18 from July 2018 onwards for unaccompanied children with special care needs. This brings the daily rate in Styria to €95.[490] NGOs from Styria reported that families with severely ill children were not placed in reception facilities for persons with special needs, on the grounds that their parents should have enough resources to take care for them.

## 2. Reception of women and families

Special facilities exist in some of the federal provinces to welcome single women and mothers. In the initial reception centre of Traiskirchen, for example, single women are accommodated in a separate building.

Some specialised reception facilities for single women are run by NGOs.[491] In bigger facilities, separated rooms or floors are reserved for single women or families. The protection of family life for core family members is laid down in the law of the federal provinces.[492] As regards family members who arrived through a Family Reunification scheme and receive Basic Care as asylum seekers, there is no satisfactory solution in practice in case with the holder of the refugee status does not have a suitable private flat. The family may be separated until the status is granted, because recognised refugees can no longer live in the Basic Care centre. It is also problematic that provinces such as **Styria** refrain from granting any basic care to asylum seekers in the family reunification process.

There are only a few reception facilities with more than 80 or 100 places, while most of the other larger facilities are run by NGOs in **Vienna**. In Tyrol there are two facilities with up to 300-400 places. Hostels and inns have between 20 and 40 places. As a consequence, single women are not always separated from single men, although there are separate toilets and showers. **Vienna** also has centres for victims of trafficking and LGBTIQ persons. Similarly, **Tyrol**, **Lower Austria** and **Salzburg** also has a reception centre for single women and single parents, and one for LGBTIQ persons.

## 3. Reception of handicapped and seriously ill persons

### 3.1. Federal centres

Some places in facilities of the state or run by NGOs are reserved for traumatised or ill asylum seekers ("*Sonderbetreuungsbedarf*"). In the last years, the number of places for asylum seekers with disabilities

489 Unpublished survey. These 40 reception centres took care of 924 unaccompanied asylum-seeking children.
490 Verordnung der Steiermärkischen Landesregierung vom 27 October 2016, mit der das Steiermärkische Grundversorgungsgesetz durchgeführt wird (StGVG-DVO), available in German at: http://bit.ly/2EKGW22.
491 Such as Caritas Styria, available in German at: https://bit.ly/3aQs4yG.
492 See e.g. Article 2 of the Basic Care Act Salzburg, Official Gazette Salzburg Nr 35/2007, 30 May 2007 or Official Gazette Upper Austria Nr. 15/2007, 15 February 2007.

or other special needs of care increased. There is one special care centres for people in need of special medical care at the federal level:

- ❖ The special care centre is located in **Graz Andritz** and has a maximum capacity of 120 persons;
- ❖ the centre in **Gallspach** with a capacity of 110 persons has been closed beginning of 2019

In addition, where necessary, persons with special needs are accommodated in separate rooms or houses in the Federal Reception Centre in **Traiskirchen** during the admissibility procedure.[493] Special care centres for 25 persons in a barrier-free building (house 1) are provided in Traiskirchen.

The placement of a person in need of special care in one of the special care centres is determined on a case-by-case basis depending on the individual's health situation.

The special care centre of **Graz Andritz**, for example, offers quality medical care for patients in need of both regular or special care, e.g. persons with cancer, cardiovascular diseases, epileptics, diabetics, patients in rehab etc. This is due to the optimal accessibility of the Graz Country Hospital. It has a specially equipped doctor's station. In addition to medical staff, the care provider ORS is responsible for the care of the asylum seekers who are housed there, and also offers an operational manager, 22 social assistants as well as a trained clinical psychologist.

### 3.2. Centres at provincial level

The criteria taken into consideration by all federal states to provide special care *(Erhöhter Betreuungsbedarf – EBB)* include:[494]

- severe psychiatric illness;
- at least moderate physical infirmities (e.g. paralysis);
- sensory impairments (e.g. blindness, deaf-blindness);
- intellectual disabilities (below average cognitive abilities);
- chronic diseases (e.g., cancer, TB, dialysis);
- incurable epidemiological diseases (e. g. HIV, hepatitis C);
- short-term dangerous diseases (e.g. multi-resistant TB, epidemics), as long as there is no danger for the residents and the care staff;
- pathological dependence on psychoactive substances (except alcohol and nicotine) - substitution program.

Persons suffering from addiction can only be assigned to an increased need for care place if the secondary illness justifies said assignment. Even a diagnosis of post-traumatic stress disorder alone is not accepted by the Federal Ministry of the Interior as a prerequisite for increased need for care[495].

When applying for special care, NGOs/landlords must submit following documents:

- Specialist medical report (not older than 3 months) ;
- Nursing or situation report in case of insufficient findings ;
- (In Vienna, a declaration of consent of person concerned must be signed)

In all federal states, the authority decides on the granting of an increased need of care, usually this is granted for one year and then it must be applied for it again before expiration.

Moreover, the following documents must be submitted to renew applications (especially in Vienna):

- a specialised medical report (not older than 3 months) ;
- 2 social reports in total, submitted 6 months apart ;

493 Information provided by the Ministry of Interior, 26 January 2018.
494 These criteria are based on the so-called KOORAT resolution 74-2008, which is not publicly available.
495 asylkoordination österreich, Nationwide NGO survey on basic services Dec 21/Jan 22, unpublished.

- A confirmation of treatment from doctors

| Federal province | Financial funding | Care ratio[496] | Capacity |
|---|---|---|---|
| **Vienna** | € 44.- special care<br>€ 100.- special care stabilisation | 1,25:10<br>1:1-3<br>Psychologists, nurses | Around 200 + 25 extra places for stabilisation |
| **Lower Austria** | € 40.50 - € 44.- | care key and specifications unclear | Around 40-80 places |
| **Upper Austria** | € 21.- plus surcharge by three sub categories:<br>A + € 8.-, B + € 13.-<br>C + € 19.09/21 | category A: 1-3h care hours<br>category B: 3h care hours<br>category C: 6h or more hours | Around 120 places |
| **Burgenland** | € 20.50 surcharge possible, between +€ 10.- to € 20.-, max. € 40.- | No defined care ratio | Around 5 -10 places |
| **Styria** | € 44.- | care ratio and specifications not defined | Around 60 places |
| **Carinthia** | € 44.- | care ratio and specifications not defined | Around 5-10 places |
| **Salzburg** | € 44.- | care ratio and specifications not defined | single places unclear how many |
| **Tyrol** | € 44.- | Care ratio not defined<br>Psychologists, nurses, | Capacity for 120 places, 20 of them for specialised nursing, 50-60 places billed |
| **Vorarlberg** | Real cost accounting | Care ratio and specifications not available | No information available on how many single places |

Source: Own illustration based on nationwide NGO survey on basic services Dec 21/Jan 22 by asylkoordination österreich

The daily rate of increased care varies in the federal provinces. Organisations providing reception receive a maximum € 44 according to the number of hours of care provided per week. In **Vienna**, there are also so-called 'stabilisation places' within the framework of accommodation for increased care needs. These places are dedicated to individuals who already have an increased need for care and are in an acute severe crisis such as a suicidal state; and for people who obviously have severe psychiatric problems, but so far cannot show any findings because they do not perceive themselves as mentally ill or sick. The latter are often those who are repeatedly discharged from facilities because they exceed the care resources and are not compatible for multi-bed occupancy. Currently, three NGOs have stabilisation places available. The daily rate is € 100.- whereby the difference from € 44 to € 100 is only paid by the City of Vienna. Diakonie also has a small residential group for people with increased care needs with 1:1 care.

496 Care ratio: ratio social workers per clients (asylum seekers accommodated)

In some federal states (e.g. **Vienna**, **Tyrol**) , there are cooperative agreements with pharmacies that provide important medication for persons with increased care needs. The prescriptions issued by the doctors or psychiatrists are sent in advance to the pharmacy. In the facilities themselves, this makes the dispensing of medication much easier, also for the people concerned.[497]

The needs of ill, handicapped asylum seekers, as well as asylum seekers with nursing care, are not sufficiently met in practice. There is no allowance to cover extra costs as long as nursing care is provided by relatives or friends. NGOs have to employ professionals if they offer places for asylum seekers with special – mainly medical – needs.

In all federal states except **Vienna** and **Lower Austria**, people with special care are accommodated in regular basic care facilities due to the lack of specialised accommodation facilities. As a result, the level of care, financial costs and type of care differs significantly across the federal states. In **Vienna** five NGOs (Caritas Vienna, Diakonie, Integrationshaus, Samariterbund Vienna and Volkshilfe Vienna) are specialised in increased care accommodation and offer places in their basic care facilities. All involved NGOs try to provide single rooms for persons with increased special care and also for stabilisation places. The care teams include psychologists, social workers, health and medical nurses. In addition, a psychiatric consultation service and interpreting costs are covered.

The facilities also try to create smaller projects (often funded by donations or smaller subsidies from various governmental funds) that can contribute to a tailored and more supportive daily structure for the people concerned. Daily structure is an important element of social care, not only for those with an increased need for care, but for all people in ongoing asylum procedures. Due to the long duration of the asylum procedure and the prolonged state of limbo, mental illnesses, traumas and stress may increase for asylum seekers.

In **Lower Austria** the NGO tralalobe has set up a facility for women and female unaccompanied minors only, where the daily rate for increased care needs for adults is paid (for care and accommodation for minors there is another daily rate). There is also another facility by another private basic care provider (the SLC Eder in the city of Baden) for people with increased care needs, but according to reports from NGOs in Lower Austria, the facility is not well run – but there is limited information available. In Lower Austria, the findings must be sent on a 10-month interval, and reasons must be given as to why people in the family cannot take responsibility for providing care. Additionally, there are 6-8 places for several traumatised unaccompanied children by NGO tralalobe.[498]

**Tyrol:** The Basic Care system does not offer special care places. The concerned persons are looked after by a Case & Care team in various accommodation facilities. The most common criteria for support from the Case & Care team are psychiatric, mental and physical conditions or disabilities.

In **Styria**, the care ratio and specialisation of care staff is not defined. Depending on the number of persons with increased care, services can be purchased in addition. Caritas Styria provides support to people with increased care in psycho-psychiatric area and no longer its own special care accommodation facilities. Another private basic care provider who runs a former hostel (Wisniewski) is more specialised in physical diseases and high maintenance care.

In **Upper Austria,** people who do not need special accommodation but have an increased need for care (e.g. dialysis patients) are accommodated exclusively in basic care facilities of nonprofit organisations like

497 asylkoordination österreich, Nationwide NGO survey on basic services Dec 21/Jan 22, unpublished.
498 Projekt Tralalobe, available in German at: https://bit.ly/33inkUk.

Caritas and Volkshilfe. Although there is no specification of the professional groups, psychologists and nurses work at both NGOs.

In **Burgenland** Caritas has around 5 places for people with increased special care, but here again there is no staff specialised in working with individuals in need of special care. The authority allows monthly compensation contribution of max. € 700.- for the purchase of external care services which have to be applied by concerned NGOs. NGOs reported that they were not made aware for several years of the possibility to accommodated individuals with special needs in Burgenland.

In **Salzburg** people with increased special care are accommodated in regular basic care facilities, but here as well there is no specialized staff.

**Vorarlberg:** there is no information available on increased care.

In **Carinthia,** the availability of places with need of increased care is not clearly communicated and there are no guidelines for care personnel. Diakonie de la Tour is the only institution that provides care for people with increased care on a case-by-case basis. Applications for increased care places are submitted in writing, where increased need must be justified. In practice, it is difficult to be granted an increased care (even for children or for suicidal individuals), and authorities have reportedly stated that trauma-related illness, "everyone has it anyway". [499]

Diakonie has set up a telephone hotline called **AMIKE** for people under stress, which is available in several languages such as Dari/Farsi, Arabic, English, Turkish, Kurdish, etc.[500]

In **Vienna**, there are mobile teams of psychologists (Caritas MIT Team[501], Fem Süd, NEDA[502]) who offer counselling for people in basic care facilities. Both are valuable services that offer support, especially in light of the limitations in terms of resources and funding in this area.

- Caritas MIT Team offers clinical-psychological counselling with a focus on relief, psychoeducation, resource activation, clarification and, if necessary, professional referral to other counselling centers.
- FEM Süd NEDA offers gender and culturally sensitive services for people in primary care with mental health problems. In the NEDA project, clinical-psychological or psychotherapeutic counselling, as well as psychoeducation workshops for women and men with refugee experience in primary care are offered in the respective first languages. These services are provided at the three locations of the health centres FEM, FEM South and MEN,[503] as well as on an outreach basis in facilities in the asylum sector. The aim is to provide initial psychological care, stabilisation and relief for people seeking asylum.

However, all federal states suffer from a lack of capacity in psychiatric hospitals, which means that people who actually need an inpatient admission are sent back to their respective facility after a few hours. Additional barriers include the lack of interpreters, which makes it particularly difficult for doctors to communicate with persons in acute crisis. This has been reported as a serious problem and no solution has been found so far. Asylum seekers in crises (i.e. with a suicidal danger) or people with acute paranoid schizophrenic episodes often do not receive the adequate care.[504]

499 asylkoordination österreich, Nationwide NGO survey on basic services Dec 21/Jan 22, unpublished.
500 Diakonie Flüchtlingsdienst, AMIKE Telephone counselling service, available in German at: https://bit.ly/3GJV2Qh.
501 Caritas Vienna, Information on psycho-social counselling services, availabe in German at: https://bit.ly/3oOpHpv.
502 FEM, Projekt NEDA, available in German at: https://bit.ly/3uNurzn/
503 FEM (Womens‘ Health Center Frauen Eltern Mädchen), MEN (Mens‘ Health Center)
504 asylkoordination österreich; Nationwide NGO survey on basic services Dec 21/Jan 22, unpublished.

## F. Information for asylum seekers and access to reception centres

### 1. Provision of information on reception

The information leaflets in the initial reception centre provide brief information on rights and obligations with regard to reception conditions, e.g. the possibility and obligation to visit a doctor, the possibility to contact UNHCR, the obligation to declare resources or sources of income, the restricted movement and the meaning of the different documents (such as the green card). Information leaflets are available in most of the languages spoken by asylum seekers.

The residence restriction applicable since 1 November 2017 is notified in writing in all federal provinces. Asylum seekers are required to sign the notice (see Freedom of Movement). NGOs and private operators have produced information sheets in a wide range of languages. There have been a number of cases where asylum seekers have been sanctioned for violating their residence restrictions, including in cases where the concerned person was visiting friends in Vienna and did not change their residence. Apart from Vienna and Lower Austria, the residence restriction is of little relevance.

In the reception centres, asylum seekers are provided information about the house rules, as well as on their duties and the possible subsequent sanctions.[505] The house rules in the reception centres of **Styria**, for example, are available at the digital federal legal information system RIS (*Rechtsinformationssystem*).[506] Information is either posted in the most common languages (e.g. English, Russian, French, Arabic, Farsi, Urdu, Serbian) or a paper containing brief written instructions has to be signed by the asylum seeker. In the states of **Lower Austria**,[507] and **Salzburg**,[508] a brochure, which is also available on the internet, describes the Basic Care system, although information is not up to date. In other provinces like **Vienna**, the information brochure contains the issues of the Basic Care system and contact details of NGOs providing information and advice.[509] Advice from social workers is included in the reception provisions laid down by law. Social advisers visit reception centres on a regular basis, but have to fulfil at the same time administrative tasks such as handing over the monthly pocket money or the vouchers for clothes and school material. Organisations providing social advice usually also have departments for legal advice to asylum seekers.

Asylum seekers living in rented flats have to go to the offices of the social advice organisations. The current system of provision of information is not satisfactory, as there is only one social worker responsible for 170 asylum seekers. This means that the quality of the services provided by social workers is low in practice. Furthermore, there are considerable differences from one federal province to another: one social worker is responsible for 50 asylum seekers in Vorarlberg and for 70 asylum seekers in Vienna. Moreover, reception centres located in remote areas cannot be visited very often by social workers due to insufficient funding.

As a consequence, many volunteers and communities help asylum seekers, for example by sharing information via social networks.[510] Although their number has reduced in recent years, volunteers are still active in 2022 and assist asylum seekers in various aspects. This includes providing German language lessons and conversation, explaining asylum seekers' obligations and rights, helping with the family reunification procedure or helping to access housing or employment upon termination of the asylum

505 Stmk. Grundversorgungsgesetz-Durchführungsverordnung, available in German at: https://bit.ly/2CfJ2rs.
506 House rules of the reception centre of Sytria, available in German at: https://bit.ly/3cvM23j.
507 City of Vienna, *Grundversorgung Wien,* available at: http://bit.ly/1YqTAVV. The Basic Care brochure for Lower Austria is available in 16 languages.
508 Province of Salzburg, *Grundversorgung*; available at http://bit.ly/1UKUkoI.
509 Fonds Soziales Wien, *Wiener Grundversorgung. Die Beratungsstellen*, available at: http://bit.ly/1cz0cQP.
510 E.g. information about accommodation: http://asylwohnung.at/faq/.

procedure. Some initiatives organise petitions and press reports against deportations to Afghanistan and other countries.[511]

### 2. Access to reception centres by third parties

**Indicators: Access to Reception Centres**

1. Do family members, legal advisers, UNHCR and/or NGOs have access to reception centres?
☐ Yes ☒ With limitations ☐ No

UNHCR has unrestricted access to all reception centres. In the initial reception centres, access of legal advisers and NGOs to the reception buildings is not allowed, based on the argument that it would disrupt the private life of other asylum seekers. This restriction is laid down in a regulation introduced by the Minister of Interior ("*Betreuungseinrichtung-Betretungsverordnung*") intending to secure order and preventing assaults to life, health or freedom and protecting the facility.[512] UNHCR has the right to be present in any interview and oral hearings and is allowed to get in contact with the applicants at any time. UNHCR has also access to airport facilities in the border procedures where the authorities have to ask for UNHCR's consent for rejecting decisions.[513]

The restriction of access to the facilities does not apply to lawyers or legal representatives. Family members may meet their relatives in the visitors' room, and legal advisers and NGOs in the premises of the BFA. In the federal provinces, NGOs with a contract for providing advice in social matters have access to the reception centres, while other NGOs have to ask for permission, sometimes on a case-by-case basis.

Asylum seekers living in reception centres located in remote areas usually have difficulties to contact NGOs, as they have to pay for public transportation on their own (their pocket money amounts to € 40 per month). Travel costs for meetings with the appointed legal adviser are only paid by BBU GmbH if it is necessary i.e. in preparation for a court session.

## G. Differential treatment of specific nationalities in reception

Basic Care is provided until the final decision is made, and if the decision is negative until the departure or deportation. Authorities in **Lower Austria** requested asylum seekers who had received a final negative decision but had not left the country and lived in private accommodation, to move to a state organised asylum accommodation, without the possibility to legally challenge this request. If they refused to do so, their social benefits would be cut. The official press release of the responsible provincial member of parliament of the Freedom Party in April 2018 stated that the aim of this measure was to ensure a "noticeable break in living conditions" as a consequence of non-participation in the return.[514] This is still being applied in practice as of March 2023.

Asylum seekers who have not complied voluntarily within the 14-day deadline will receive an order from the BFA to go to a return center. Currently, there is a center at the airport in **Vienna / Schwechat** as well as in **Tyrol / Fieberbrunn** and both centers are run by the Ministry of the Interior. Increased return counseling are carried out in these centers. The establishment of the BBU will further increase return counseling.

511 See for example: NGO fairness asyl,available at: http://www.fairness-asyl.at/; Plattform #sichersein, available at: https://www.sichersein.at/.
512 BGBl. II Nr. 2005/2 and 2008/146.
513 Article 31 AsylG; Article 63 AsylG
514 Freiheitlicher Klub im Landtag, „Illegalen-Lüge in NÖ – Landesrat Waldhäusl zieht die Konsequenzen", 27 April 2018, available in German at: https://bit.ly/3343CY5.

For asylum seekers whose application has been rejected and for whom the appeal has no suspensive effect, the right to basic care was removed during the appeal proceedings (see Criteria and Restrictions to Access Reception Conditions). Asylum seekers from safe countries of origin are particularly affected by this restriction. If an asylum seeker participates to the voluntary return, the entitlement to the Basic Care will be granted until the departure.

NGOs report that there is an imbalance between Syrians and other refugees, as Syrians have access to a German course through the Austrian Integration Fund (ÖIF) during the asylum procedure, while others do not. This has created frustration but also confusion, including among the support teams.[515]

515 asylkoordination österreich, Nationwide NGO survey on basic services Dec 21/Jan 22, unpublished.

# Detention of Asylum Seekers

## A. General

| Indicators: General Information on Detention | | |
|---|---|---|
| 1. | Total number of persons detained in 2022: | 3,700 |
| 2. | Number of persons in detention as of 31 Dec 2022: | 304 |
| 3. | Number of detention centres: | 15 |
| 4. | Total capacity of detention centres: | 1,303 |

A total of 3,700 (2021: 4,023 2020: 3,971) persons were detained throughout 2022 but there is no public data available on how many of them are asylum seekers or how many persons applied for asylum during detention.[516] During 2022, 7 unaccompanied minors were held in detention while in 2021 no minors were registered as being held in detention.[517] The average time of detention of minors were 11.6 days. However, in most cases, rejected asylum seekers are being arrested 48 hours prior to deportation. This is not counted as formal detention prior to deportation. Data on arrests prior to detention without detention order is not available.

There are 4 main detention centres currently operating in Austria: Vordernberg, Styria; Police Apprehension Centres (PAZ) Vienna Hernalser Gürtel, PAZ Vienna Rossauer Lände and Familienunterbringung Vienna Zinnergasse.

There are 11 smaller Detention Centres (PAZ) under the responsibility of the police – **Bludenz, Eisenstadt, Graz, Innsbruck, Klagenfurt, Linz, Salzburg, St Pölten, Villach, Wels** and **Wiener Neustadt** – that are used for short term arrests. In most cases, detainees are transferred to the main centres after an average of 7 days.

The answer to a parliamentary request demonstrated that it is not possible to assess the total capacity of detention centres, as most of them are used for different measures (e.g. administrative and penal detention). Only the detention centre (*Anhaltezentrum* – AHZ) **Vordernberg** in **Styria** and PAZ **Hernalser Gürtel** and PAZ **Roßauer Lände** are designated for the sole purpose of pre-removal detention. The maximum total capacity of these three centres amounts to 609.[518]

In practice, asylum seekers are subject to detention mainly under Dublin procedures as well as *de facto* detention in the airport procedure. Persons who submit a subsequent asylum application are often detained as well. If a person applies for asylum while in detention, they may be detained during the admissibility procedure.

When asylum seekers are detained, the personal interview examining their application is held in the detention centre. Interpreters are present and legal representatives have to be summoned to the interview. The BFA may also order to bring the asylum seeker to the BFA for the interview. A person of confidence has the right to be present at the interview of an asylum seeker. If the asylum application is processed as an inadmissible application a legal advisor has to counsel the asylum seeker before the interview and has to be present at the interview.

516 Ministry of Interior, *answer to parliamentary request 13976/AB XXVII. GP*, 28 April 2023, available in German at https://bit.ly/425y8xW.

517 Ministry of Interior, *answer to parliamentary request 13098/AB XXVII. GP*, 9 March 2023, available in German at https://bit.ly/3ABQ7Aq.

518 Ministry of Interior, *answer to parliamentary request 13976/AB XXVII. GP*, 28 April 2023, available in German at: https://bit.ly/425y8xW.

## B. Legal framework of detention

### 1. Grounds for detention

**Indicators: Grounds for Detention**

1. In practice, are most asylum seekers detained
   - ❖ on the territory: ☒ Yes ☐ No
   - ❖ at the border: ☐ Yes ☒ No
2. Are asylum seekers detained in practice during the Dublin procedure?
   ☒ Frequently ☐ Rarely ☐ Never
3. Are asylum seekers detained during a regular procedure in practice?
   ☐ Frequently ☒ Rarely ☐ Never

Asylum seekers who apply for international protection at the police may be detained for up to 48 hours, without a detention order for safeguarding the first steps of the procedure and a security check. This detention period is reaches up to 1 week in the context of the border procedure, as asylum seekers are de facto detained in the airport facility.

With the exception of the border procedure which is not formally recognised as detention in law, the detention of asylum seekers is regulated by the Aliens Police Act (FPG), which has been amended several times to specify the grounds for detention. The last amendment entered into force on 1 September 2018. Detention may be ordered by the BFA to secure a return procedure, for example if a "risk of absconding" exists and detention is proportionate. Furthermore, the FPG allows detention according to the Dublin III Regulation.

Since September 2018 asylum seekers can further be detained if they are considered as a threat to the public order or security. The recast Article 76 (2) FPG states: "Detention may only be ordered to enable the issuing of a measure terminating residence, provided that detention is appropriate and that the foreigner's stay endangers public order or security in accordance with Article 67, and that there is a risk of absconding."

Article 76 FPG defines the "risk of absconding" on the basis of a number of wide-ranging criteria, namely whether:[519]

1. The person has avoided or hampered a deportation order;
1a. The person has not complied with the obligation to obtain a travel document for their removal;[520]
2. The person has violated a travel ban;
3. An enforceable expulsion order exists and the person has absconded during the asylum procedure or during the removal procedure;
4. The person makes a subsequent application without right to remain;
5. The person is in pre-deportation detention at the time they lodges the application;
6. It is likely that another country is responsible under the Dublin Regulation, namely as the person has lodged multiple applications, tried to travel to another member state, or it can be assumed that, based on past behaviour they intends to travel on to another member state;
7. The person does not comply with alternatives to detention;
8. The person does not comply with residence restrictions, reporting duties and designated accommodation or similar instructions;[521]
9. There is a sufficient link with Austria such as family relations, sufficient resources or secured residence.

519 Article 76(3) FPG.
520 Article 76(3)(1a) FPG, in force as of 1 November 2017, citing Article 46(2)-(2a) FPG.
521 Article 76(3)(8) FPG, in force as of 1 November 2017.

The FPG does not refer to a "serious" risk of absconding in line with Article 28(2) of the Dublin III Regulation. However, the long list of criteria in Article 76(3) is non-exhaustive, thereby unduly granting the authorities the discretion to identify a "risk of absconding" and to proceed to detention.

The law foresees three different grounds for detention: While § 76 Abs 1 and 2 FPG are applied in cases where detention is deemed necessary to secure the asylum and return decision proceedings in cases of threats to public security (Abs 1) or to secure return decision proceedings or deportation (Abs 2), § 76 Abs 3 foresees detention in Dublin cases when the conditions of Art 28 (1) and (2) of the Dublin directive are met.

| § 76 (1) and (2) | | § 76 (3) | |
|---|---|---|---|
| Country | Persons detained | Country | Persons detained |
| Serbia | 228 | Algeria | 128 |
| Romania | 222 | Afghanistan | 115 |
| India | 159 | Morocco | 105 |
| Slovakia | 124 | India | 91 |
| Nigeria | 122 | Nigeria | 78 |
| Algeria | 118 | Pakistan | 72 |
| Albania | 115 | Syria | 65 |
| Türkiye | 103 | Tunisia | 62 |
| Georgia | 99 | Russian Federation | 47 |
| Morocco | 96 | Somalia | 42 |
| Other | 810 | Other | 378 |
| Total | 2,256 | Total | 1,183 |

Source: Ministry of Interior, *answer to parliamentary request 13976/AB XXVII. GP*, 28 April 2023, available in German at https://bit.ly/425y8xW.

Arrest (i.e. detention without official order) is almost systematic during the 72 hours preceding the transfer of an asylum applicant to the responsible Member State under the Dublin Regulation.

In the detention centres of **Vordernberg** and **Vienna**, the numbers of detentions doubled in 2017 and further increased in 2018.[522] Observations from NGOs in 2019 show that the number of EU citizens from Eastern Europe (e.g. Slovakia, Hungary) held in detention centres have grown significantly over the past years. Even during the pandemic in 2020, more than 20% (810) of all 3,910 detainees were from EU countries and another 879 persons from the Balkans (mainly Serbia with 450 nationals).[523] In 2022, most deportation detainees came from EU and Balkan countries.

522 Ministry of Interior, Answer to a parliamentary request, 15 November 2018, available in German at: https://bit.ly/2tPKUm6.

523 Ministry of Interior, Answer to a parliamentary request, 4901/AB XXVII. GP, 12 March 2021, available in German at: https://bit.ly/2P4ioeu.

## 2. Alternatives to detention

| Indicators: Alternatives to Detention | |
|---|---|
| 1. Which alternatives to detention have been laid down in the law? | ☒ Reporting duties<br>☐ Surrendering documents<br>☒ Financial guarantee<br>☒ Residence restrictions<br>☐ Other |
| 2. Are alternatives to detention used in practice? | ☒ Yes ☐ No |

According to Article 76 FPG, the principle of necessity has to be taken into account by the BFA when issuing detention orders. Detention has to be necessary to reach one of the stated objectives.[524] When examining the proportionality of detention, criminal offences committed by the applicant are taken into account to assess whether the public interest is affected by the seriousness of the offences. Similarly, the authorities must assess whether the public interest in speedy deportation overrides the personal liberty of the individual.[525] Proportionality means to weight or balance the interests between the public interest of securing the procedure (i.e. mainly in the context of deportations) and the right to liberty of the individual.

The BFA must review the proportionality of detention every 4 weeks.[526] Proportionality is also a constitutional principle applicable to all administrative procedures and therefore also to asylum and return proceedings. This has been confirmed by the jurisprudence of the VwGH[527] and the Constitutional Court (VfGH).[528]

In airport procedures, entry to the territory is denied and applicants are ordered to stay in a specific area of the airport designated as EAST. The entry to the territory has to be allowed as soon as a rejection of the application does not seem probable anymore. If a rejection seems probable the authorities can secure the rejection of the application by not letting the applicant access the territory for a maximum of six weeks.[529] The applicant can leave from to Austria to another country at any time, however, in which case the asylum procedure is suspended.

Alternative measures to detention must be applied as much as possible. An individualised examination is foreseen by the FPG, but in practice less coercive measures are often regarded by the authorities as not sufficient to secure the return procedure or expulsion.

Article 77(3) FPG enumerates three alternatives to detention: (a) reporting obligations; (b) the obligation to take up residence in a certain place and (c) the deposit of a financial guarantee. Details about the deposit and amount of the financial guarantee are regulated by the Ordinance Implementing the Aliens Police Act (FPG-DV). This amount must be determined in each individual case and must be proportionate.[530] The law specifies a maximum of €1,717.46 for financial guarantees (2 x €858,73). The measure is not usually applied in practice, however.[531] Recent observations confirmed that this was still the case in 2020 due to a lack of financial resources.

Alternatives to detention are applied in open centres, in regular reception facilities, in facilities rented by the police or property of NGOs, as well as in private accommodations of the person to be deported. They

524 Article 76(2) FPG.
525 Article 76(2a) FPG, in force as of 1 November 2017, citing Articles 2 and 28 Dublin III Regulation.
526 Article 80(6) FPG.
527 VwGH, Decision Ra 2013/21/0008, 2 August 2013.
528 See e.g. VfGH, Decision B1447/10, 20 September 2011.
529 Article 32 AsylG.
530 Article 13 FPG-DV.
531 EMN, *The use of detention and alternatives to detention in the context of immigration policies in Austria*, July 2014, available at: http://bit.ly/1Mo6zDs, 17.

are not applied in other facilities such as *de facto* detention facilities at the border in the context of the airport procedure. If an alternative to detention is ordered, asylum seekers have reporting duties. This includes presenting themselves to the police offices of the Federal Police Directorates every day or every second day. If reporting obligations or the obligation to take up residence in a certain accommodation facility are violated, the person can be detained.[532]

The duration of alternative measures is limited. Asylum seekers benefiting from an alternative to detention are not entitled to Basic Care, although necessary medical treatment(s) must always be guaranteed. These costs may be paid by the BFA, however, there is no general access to medical care insurance while in detention. Asylum seekers may receive free emergency medical treatment in hospitals.

However, in practice, alternatives to detention are very rarely used. Alternatives to detention were applied only in approximately 270 cases per year between 2016 and 2018.[533] In 2020, the use of alternatives to detention largely increased as it was applied in 677 cases a result of the Covid-19 pandemic and the fact that deportations were not conducted for several months, i.e. a deprivation of liberty would therefore be disproportional. In 2021, the application of alternatives to detentions further increased to 804 cases.[534] There is no data on how many the different alternatives were applied.[535] In 2022, in 634 cases alternatives to detention were applied, in 19 cases the persons concerned were minors.[536]

In **Vienna Zinnergasse**, alternatives to detention are provided for vulnerable persons, especially for families. However, families are detained 72 hours prior to their removal and other vulnerable persons (e.g. people with mental illnesses) are detained in regular detention facilities, unless a psychiatrist certifies that this is not appropriate.

### 3. Detention of vulnerable applicants

**Indicators: Detention of Vulnerable Applicants**

1. Are unaccompanied asylum-seeking children detained in practice?
   ☐ Frequently ☒ Rarely ☐ Never
   - ❖ If frequently or rarely, are they only detained in border/transit zones? ☐ Yes ☒ No
2. Are asylum seeking children in families detained in practice?
   ☐ Frequently ☒ Rarely ☐ Never

Children under the age of 14 cannot be detained. Therefore, families with young children are confined for 72 hours prior to their forced return. In general, children over the age of 14 should not be detained and alternatives to detention should apply for minors over the age of 14.[537] In 2022, seven unaccompanied minors were detained for an average time of 11.6 days.[538] In 2021, only one minor (accompanied) was detained for four days and was released after applying for asylum.[539] In 2020, 13 minors were kept in

532 Article 77(4) FPG.
533 Ministry of Interior, Parliamentary request, 9 September 2018, available in German at: https://bit.ly/2SGqZQr.
534 Ministry of Interior, Answer to a parliamentary request, 9405/AB XXVII. GP, 28 March 2022, available in German at: https://bit.ly/3KbaS9k.
535 Ministry of Interior, *Answer to a parliamentary request, 4901/AB XXVII. GP*, 12 March 2021, available in German at: https://bit.ly/2P4ioeu
536 Ministry of Interior, *answer to parliamentary request 13976/AB XXVII. GP*, 28 April 2023, available in German at https://bit.ly/425y8xW.
537 Article 77(1) FPG.
538 Ministry of Interior, *answer to parliamentary request 13098/AB XXVII. GP*, 9 March 2023, available in German at https://bit.ly/3ABQ7Aq.
539 Ministry of Interior, Answer to parliamentary request, 9405/AB XXVII. GP, 28 March 2022, available in German at: https://bit.ly/3KbaS9k.

deportation centre (between 3 and 17 days, on average 9.4 days),[540] 11 of them were unaccompanied minors.[541]

In 2014, the Federal Administrative Court found the detention order for an asylum seeker from Afghanistan who claimed to be 16 years old to be unlawful. The decision of the BFA was based on the improper opinion of the medical officer according to which he was between 18 and 22 years of age and therefore not treated as a child.[542]

In the case of a child who was arrested by the police and taken to the **Zinnergasse** centre, the age examinations carried out by the public medical officer resulted in setting an age of 18 years with a fluctuation range of 2 years. The minor was transferred to the detention centre, applied for asylum and authorised Diakonie to act as his legal representative. However, the complaint against detention was dismissed in August 2016, arguing that he could not give power of attorney as a minor.[543] Given that deportation (*Schubhaft*) was ordered before his application for asylum had been submitted, his legal representative for all further proceedings before the BFA and the Federal Administrative Court were the youth welfare agencies. However, the latter did not wish to join the complaint lodged by Diakonie.

### 4. Duration of detention

| Indicators: Duration of Detention | |
|---|---|
| 1. What is the maximum detention period set in the law (incl. extensions): | 18 months |
| 2. In practice, how long in average are asylum seekers detained? | Not available |

Detention should be as short as possible,[544] and cannot exceed 6 months for adults,[545] and 3 months for children over the age of 14.[546] Prior to November 2017, these maximum time limits were 4 months and 2 months respectively. There is also a possibility to exceptionally extend these periods for up to 18 months, e.g. when the identity or citizenship cannot be verified or when the foreigner resisted against police force in the context of deportation.[547] As regards asylum seekers, detention should generally not last longer than 4 weeks following the final decision on the application.[548]

Figures on the average duration of detention of asylum seekers in general are not available. In 2019, however, the average time of a person kept in detention centre was 28.9 days.[549] This average time increased significantly in 2020, when asylum seekers who were detained on the ground of Article 76 (2) (1) FPG (i.e. the person has violated a travel ban) were detained for 83.3 days.[550] In 2022, the average time overall was 32.8 days, while specific data on the average detention time of asylum seekers is not available.[551] During the first lockdown, a number of detainees were released as they could not be deported as a result of travel restrictions. However, in certain cases such as persons who have committed a criminal offenses, detention continued to be applied despite the fact that deportation could not be carried out. In

540 Ministry of Interior, *Answer to parliamentary request, 3051/AB*, 6 October 2020, available in German at: https://bit.ly/3qmI5ny.
541 Ministry of Interior, *Answer to a parliamentary request, 4901/AB XXVII. GP,* 12 March 2021, available in German at: https://bit.ly/2P4ioeu.
542 BVwG, Decision W191 2011159-1, 27 August 2014, available at: http://bit.ly/1ALJF7Q.
543 BVwG, Decision W117 2131589-1, 10 August 2016, available at: http://bit.ly/2lnqwlZ.
544 Article 80(1) FPG.
545 Article 80(2)(2) FPG.
546 Article 80(2)(1) FPG.
547 Article 80(4) FPG.
548 Article 80(5) FPG.
549 Ministry of Interior, Answer to a parliamentary request 4023/AB XXVI GP, 16 August 2019, available in German at: https://bit.ly/39jKNlW.
550 Ministry of Interior, Answer to a parliamentary request, 4901/AB XXVII. GP, 12 March 2021, available in German at: https://bit.ly/2P4ioeu
551 Ministry of Interior, *answer to parliamentary request 13976/AB XXVII. GP*, 28 April 2023, available in German at https://bit.ly/425y8xW.

many cases, the maximum detention time limit of 18 months was applied on the basis that a deportation within the maximum time limit might still be possible. By way of illustration, in periodic court reviews foreseen by law, the BFA repeatedly argued from May 2020 onwards that deportations to **Afghanistan** would be feasible "in the following month"; while in reality not a single deportation to Afghanistan took place until December 2020. The last deportation flight to Afghanistan took place in June 2021. Following a BVwG judgement from August 2021, the BFA itself noted that there is no realistic forecast for next possible deportations flights.[552] In 2022, no deportations to Afghanistan took place and there is no perspective that it will resume in the near future.

As regards, asylum seekers falling under the Dublin procedure, they are often detained immediately after lodging their application and may be kept in detention until they are transferred to the responsible Member State. In Dublin cases, detention may last for some weeks, as suspensive effect of the appeal is hardly ever granted and the transfer can be affected while their appeal is still pending. At the de facto detention facility at the **airport Vienna Schwechat**, 97 persons were accommodated in 2020. As regards the average length of *de facto* detention at the airport, there is no available information and the procedure continues to lack transparency.

## C. Detention conditions

### 1. Place of detention

**Indicators: Place of Detention**

1. Does the law allow for asylum seekers to be detained in prisons for the purpose of the asylum procedure (i.e. not as a result of criminal charges)? ☐ Yes ☒ No
2. If so, are asylum seekers ever detained in practice in prisons for the purpose of the asylum procedure? ☐ Yes ☒ No

The detention centres operating in 2021 and 2022 were as follows:

| Total number of detainees in the main detention centres: 2021-2022 | | |
|---|---|---|
| Centre | 2021 | 2022 |
| Vordernberg Immigration Detention Centre | 1,195 | N/A |
| Vienna Roßauer Lände | 835 | 639 |
| Vienna Hernalser Gürtel | 2,721 | 2496 |
| Zinnergasse | 7 | 5 |

Source: Ministry of Interior, *Answer to a parliamentary request, 4901/AB XXVII. GP*, 12 March 2021, available in German at: https://bit.ly/2P4ioeu; Ministry of Interior, Answer to a parliamentary request, 9405/AB, XXVII. GP, 28 March 2021, available in German at: https://bit.ly/3KbaS9k; Ministry of Interior, *answer to parliamentary request 13976/AB XXVII. GP*, 28 April 2023, available in German at https://bit.ly/425y8x.

Furthermore, other police facilities (PAZ) that have previously been used as detention places are now used for arrest for a period not exceeding 7 days. Following table provides an overview of their activities, although the numbers are often overestimated as the same person might have been detained in different PAZ facilities.

552 BVwG, GZ W282 2242837, 19 August 2021, available in German at: https://bit.ly/3jq4IX0.

The detention centre in **Vordernberg**, established in January 2014, allows detainees to stay outside their cell during the day. The facility is run by a private security company called G4S. Concerns about the division of tasks and accountability between the public security service and this private company have been raised.[553] The Minister of Interior explained in response to a parliamentary request that G4S's task is to assist the police.[554] According to a report of "Der Standard"', a series of trainings, including 36 hours dedicated to human rights, have been organised for the staff of the centre.[555]

Women or unaccompanied children aged more than 14 years old are detained in separate cells in practice. Moreover, some detention centres are particularly adapted to vulnerable persons. This is the case of the detention centres in Vienna, **Roßauer Lände**, which has a playground within the building. Similarly, the detention centre in Vienna **Zinnergasse** is equipped for families with children and unaccompanied children. There are further twelve family apartments in which families are detained for a maximum of 48 hours after having been informed of their deportation date. Moreover, one floor of the same building is used for less coercive measures and has 17 housing units, one of which is adapted to disabled persons. Detainees are allowed to leave the centre during the day.[556]

**Airport (*de facto*) detention facility**

At the **Vienna Schwechat Airport**, the initial reception centre is under the responsibility of the border police. Caritas Vienna had a contract to provide care for asylum seekers waiting for transfer to **Traiskirchen** or for the final decision on their application. The contract was not prolonged in 2017 and ORS, the company contracted by the Ministry of Interior to provide care to asylum seekers, provided care at the airport up until December 2020.[557] Since December 2020, the Federal Agency BBU GmbH is in charge of providing basic care at the airport. The capacity of the airport facility is 28 persons. During the first months of the pandemic in 2020, no persons were held at the facility as a result of the decrease of arrivals. However, the number of persons held slightly increased in and reached an average occupation of 25 persons as of November 2020.[558] In total, 97 persons were *de facto* detained in the facility in 2020.[559] In 2021, a total of 256 persons were *de facto* detained at the airport facility in 2021.[560] Data for 2022 is not available.

553 Der Standard, *Securitys auf Rundgang in der neuen Schubhaft*, 2 April 2014, available at: http://bit.ly/1dgpJ1Y.

554 In her answer to the parliamentary request 11/AB XXV. GP from 30 December 2013, Minister Mikl-Leitner described the tasks of G4S as follows: "Verwaltungshelfer, die keine hoheitlichen Handlungsbefugnisse haben, sondern nur unterstützend für die Behörde tätig werden. Es liegt zwar eine Aufgaben-, jedoch keine Verantwortungsteilung vor. Die Bediensteten haben daher die im Rahmen der Schubhaft erforderlichen technisch-humanitären Hilfsdienste in Unterordnung und nach Weisung der Behörde und der dieser beigegebenen Organe des öffentlichen Sicherheitsdienstes zu erledigen." ("Administration assistants do not have powers of a public authority but have a supporting role for the authority. Tasks are shared, but not responsibility. Therefore the employees have to supply in the context of detention the necessary technical-humanitarian help in subordination to the authority and under the instruction of the public security authorities.")

555 Der Standard, *Securitys auf Rundgang in der neuen Schubhaft* (*Security on tour in the new detention centre*), 2 April 2014, available at: http://bit.ly/1dgpJ1Y.

556 Sonja Jell, 'Alternative zur Schubhaft', Öffentliche Sicherheit 5-6/12, available at: http://bit.ly/2klLKVq.

557 Der Standard, 'Aus für Caritas-Flüchtlingsbetreuung am Flughafen', 13 January 2017, available in German at: http://bit.ly/2kmxmsn.

558 Ministry of Interior, *Answer to parliamentary request, 4244/AB, XXVII. GP*., 18 January 2021, available in German at: https://bit.ly/3uO5npL.

559 Ministry of Interior, *Answer to a parliamentary request, 4901/AB XXVII. GP*, 12 March 2021, available in German at: https://bit.ly/2P4ioeu

560 Ministry of Interior, *Answer to a parliamentary request, 9405/AB XXVII. GP*, 28 March 2022, available in German at: https://bit.ly/3uBDAed.

## 2. Conditions in detention facilities

| Indicators: Conditions in Detention Facilities | | |
|---|---|---|
| 1. Do detainees have access to health care in practice? | ☒ Yes | ☐ No |
| ❖ If yes, is it limited to emergency health care? | ☐ Yes | ☒ No |

There were still important differences between the different detention facilities in 2021. While no major dysfunction or maladministration was reported in **Vordernberg**, there have been only few positive developments in the two major **Viennese** detention facilities. Of particular concern is the fact that people are still being detained in cells during the day, instead of open areas.

Although social counselling is not foreseen in practice, the information leaflet provided to detainees mentions that activities take place in the centre such as "social counselling". BBU GmbH does offers legal counselling for detainees who also have to undergo return counselling by another department of the BBU GmbH. NGOs receive no funding and are not regularly present in detention centres. UNHCR is not regularly present in detention centres.

The Austrian Ombudsman Board (AOB) has been responsible for protecting and promoting human rights in the Republic of Austria since 1 July 2012 and is the institution designed to promote the Austrian National Preventive Mechanism (NPM). The commission of the AOB can visit detention centres at any time. During the first months of COVID-19 in 2020, however, they had to suspend their visits to detention centres. After the lockdown, they resumed their visits to police detention centres and identified challenges regarding visiting modalities, staffing level, solitary confinement and access to the yard.[561]

Medical treatment is provided in all detention centres by medical staff. Special treatment may be organised by transferring detainees to hospitals. In the detention centres in **Vienna**, psychiatric treatment is provided. In Vienna, detainees on hunger strike may be transferred to the medical station of the prison, but forced feeding is not allowed. In case there is a high probability of a health risk due to hunger strike, asylum seekers are usually released from detention. Detainees on hunger strike should only be placed in isolation if the necessary medical treatment cannot be provided at the open detention center. In **Vordernberg**, there are two types of doctors: doctors who work alongside police authorities and help determining whether detention can be continued or not, and regular doctors who only provide care to the detainees. The system of having different doctors should be extended to other detention facilities, but is not applied in practice yet. The AOB (NPM) has further criticised the fact that medical treatment is not provided immediately in cases of mental illness or suicide risk.

As of the end of 2020, there was still no mechanism to identify vulnerable people in detention centres, which is a serious issue that was also highlighted by the mission report of the OHCHR in October 2018.[562] The conditions in the detention centres in **Vienna Hernalser Gürtel** and **Vienna Rossauer Lände** are particularly inappropriate, due to structural dysfunctions and cases of maladministration. In June 2019, a Hungarian detainee died in the detention centre Vienna **Rossauer Lände** centre. He was 58 years old and in a critical health situation. Criminal proceedings against the officials and doctors employed in the detention centre have been initiated and further aim to determine whether the circumstances of detention were lawful or not.[563] As the Court consulted a Court certified expert, the decision has not been issued yet and is expected to become available in 2023.

In its 2017 Annual Report that was published in 2018, the AOB formulated a list of recommendations necessary for the improvement of the detention facilities, which include *inter alia* the necessity of

561 Fundamental Rights Agency, *Migration Bulletin 4*, November 2020, https://bit.ly/3qmLzXa.
562 OHCHR, Report of mission to Austria focusing on the human rights situation of migrants, particularly in the context of return, October 2018, https://bit.ly/2TfscSi.
563 Der Standard, ‚Todesfall in Schubhaftzentrum: Diakonie will Aufklärung', 13 June 2019, available in German at: https://bit.ly/2vCoPvR.

establishing single cells, providing adequate access to medical care, ensuring adequate detention conditions (e.g. natural light, ventilation, hygienic measures, visits etc.) [564] These recommendations had not been implemented as of 2022. There are no signs that any reform in the area of detention of foreigners is planned in the new future.

### 3. Access to detention facilities

**Indicators: Access to Detention Facilities**

1. Is access to detention centres allowed to
   - ❖ Lawyers: ☒ Yes ☐ Limited ☐ No
   - ❖ NGOs: ☐ Yes ☒ Limited ☐ No
   - ❖ UNHCR: ☒ Yes ☐ Limited ☐ No
   - ❖ Family members: ☐ Yes ☒ Limited ☐ No

UNHCR has access to asylum seekers without restrictions, while lawyers can visit their clients during working hours in a special visitor room. NGOs have access if they have obtained authorisation to act as legal representative of the detainee, which is obtained without delay in practice.

Other visitors such as relatives or friends have restricted possibilities to visit. Visits have to be allowed by the police for at least 30 minutes per week. In addition, restrictions may be imposed to detainees who are separated from other detainees and are put in security cells due to their behaviour, such as suicide attempts, hunger strike or violence. Visiting hours are limited to the weekend and early evening hours, and direct contact is not possible as the visit takes place in a room where the asylum seeker is separated from the visitor by a glass window. In the centre of **Vordernberg**, direct contact is made possible because of the presence of video cameras. Visits of media or politicians are usually not permitted. This centre has been presented to the public as an example of improvement of Austria's return policy.

Representatives of the churches have agreements with the police to visit detainees on a regular basis.

## D. Procedural safeguards

### 1. Judicial review of the detention order

**Indicators: Judicial Review of Detention**

1. Is there an automatic review of the lawfulness of detention? ☒ Yes ☐ No
2. If yes, at what interval is the detention order reviewed?[565] 4 months, then 4 weeks

When a person is placed in detention, they must receive a written decision relating to their individual situation and circumstances and the grounds for detention.[566] The main parts of such a decision, which are the decision of detention and the information on the right to appeal, have to be in a language the asylum applicant is able to understand. In each case, the detained asylum applicant is appointed a legal adviser provided by the state.

Detention is ordered by the BFA. The BFA has to review the lawfulness of detention every 4 weeks. After 4 months, the Federal Administrative Court (BVwG) must review the lawfulness of detention *ex officio*.

There is a possibility to submit an appeal to the BVwG against a detention order, which is not subject to any time limits. The BVwG has to decide on the lawfulness of the detention order on the basis of the appeal of the asylum seeker and must determine whether reasons for continuation of detention existed

564 AOB, Annual Report 2017, available at: https://bit.ly/2SLaenu.
565 This refers to judicial review of detention conducted by the BVwG. The BFA reviews detention every 4 weeks.
566 Article 76(3) FPG.

at the time of the decision. An appeal against detention in the context of the border procedure is not possible as asylum seekers are de facto detained and therefore do not obtain a detention order that can be appealed.

The Court must decide within 7 calendar days in cases where a person is still detained, and within 6 months in cases where the person is no longer detained (which is the general time limit for decisions in administrative procedures).[567]

If the detention or its duration are recognised as unlawful, the asylum applicant is entitled to a financial compensation of €100 for each unlawful day in detention. In case the appeal is rejected, there is a possibility to submit an appeal to the VwGH and to the VfGH. However, if the Federal Administrative Court (BVwG) rules on an appeal and finds that the detention order was lawful and that, at the time of the decision of the court, there is still the need to continue detention, the detained person lacks any possibility to contest this decision as unlawful.[568] In 2022, the Republic of Austria acknowledged 79 (2021: 75) compensation claims and paid a total compensation of € 185,819 (2021: € 132,287) for unlawful detention.[569]

Since the implementation of the Return Directive, legal safeguards for persons in detention have improved. Nevertheless, judicial review *ex officio* after 4 months does not seem to be systematic in practice. The state led agency BBU GmbH has taken over counselling in detention centres. The contracts between the Ministry of Interior and NGOs have not been prolonged, leading to a blackbox-situation with no civil society oversight in detention centres. There has been an exchange between NGOs offering free legal counselling and BBU GmbH in 2021 on general matters. There are no reports that the counselling service by BBU GmbH has deteriorated yet. In 2022, several NGOs reported that there is an obvious need for social counselling in the deportation centres as the BBU GmbH has a very limited scope of counselling by law.

### 2. Legal assistance for review of detention

**Indicators: Legal Assistance for Review of Detention**

1. Does the law provide for access to free legal assistance for the review of detention?
   ☒ Yes ☐ No
2. Do asylum seekers have effective access to free legal assistance in practice?
   ☒ Yes ☐ No

The detained asylum applicant is appointed a legal adviser provided by the BBU GmbH (see

567 Article 22a(3) BFA-VG.
568 VfGH, Decision E4/2014-11, 26 June 2014.
569 Ministry of Interior, *answer to parliamentary request 13976/AB XXVII. GP*, 28 April 2023, available in German at https://bit.ly/425y8xW.

Legal **assistance**). The law contains only the obligation for the legal adviser to take part in hearings and to represent the asylum applicant, if the person so requests.[570] This was also underlined in a ruling of the Supreme Administrative Court, which concluded that the legal provision according to which lawyers have to attend the oral proceedings at the request of the foreigner "can only be understood as meaning that the lawyer's participation in the hearing must be" on behalf of the applicant ", and thus has to act as a representative.[571]

A legal adviser shall be appointed according to Articles 51-52 BFA-VG in return procedures, detention and apprehension orders.[572] However, the right to receive legal advice for people benefiting from alternatives to imprisonment was abolished on 1 January 2014.

Legal advisers can meet their clients in the visitors' room during office hours. Appointed legal advisers have to arrange for an interpreter. As their service is included in the lump sum for legal advice, it can be assumed that interpreters are not always present.

Moreover, asylum seekers are usually detained during the admissibility procedure. Member states requested to take back or take charge an application have to respond to the request within one month, in accordance with the Dublin Regulation. As a result, asylum seekers may face difficulties to obtain effective legal assistance and/or may fail to appeal the inadmissibility decision within two weeks. Detained asylum seekers may face more difficulties to appeal a rejection of their application if they know that the appointed legal adviser will not assist them to write an appeal. Within the short time limit of two weeks for the appeal, it is thus difficult to obtain effective legal assistance.

The High Administrative Court ruled in 2023 that in ex officio detention review court sessions the detainee has a right to be represented by BBU GmbH and therefore the legal representation has to be summoned by court.[573]

## E. Differential treatment of specific nationalities in detention

No differential treatment on the basis of nationality has been reported.

570 Article 52(2) BVA-VG.
571 VwGH, Decision No Ra 2016/21/0152, 23 February 2017.
572 VfGH, Decision E4/2014-11, 26 June 2014.
573 VwGH 02 March 2023, Ro 2021/21/0007, VwGH 02.03.2023, Ra 2021/21/0137.

# Content of International Protection

## A. Status and residence

### 1. Residence permit

**Indicators: Residence Permit**

1. What is the duration of residence permits granted to beneficiaries of protection?
   - ❖ Refugee status: 3 years
   - ❖ Subsidiary protection: 1 year, renewable by 2 years
   - ❖ Humanitarian protection: 1 year

Persons who are recognised as **refugees** in Austria obtain a residence permit valid for three years.[574] If the situation in the country of origin has not changed and the protection status remains thus necessary, it is prolonged to an unlimited residence permit *ex officio*. If the country-of-origin information (COI) indicates that the refugee may return safely, the Cessation procedure may start.[575]

Persons with **subsidiary protection** status get a residence permit valid for one year.[576] Renewal of the residence permit has to be applied for before the BFA. If protection needs continue to exist, the residence permit is prolonged for two additional years.[577]

A residence permit extension request must be made prior to the expiration of the current residence permit (at most three months before). Until the decision on the extension application is made, the stay in Austria remains legal, even if the previous residence permit has already expired.
If the request for an extension is made after the current residence permit has expired, it is regarded as a new request and may need to be submitted to the relevant Austrian representative authority in the country of origin. Only in exceptional circumstances, when it can be proven at the same time as the application that an unexpected or unavoidable event prevented the timely submission of the extension request, is an application for an extension submitted after the validity of the residence permit has expired, considered to be such.

The renewal of residence permits can take time, but the right to remain exists until the BFA decides on an application for renewal. Subsidiary protection status used to be prolonged without conducting in an interview, but this practise changed in 2018. As the BFA is now paying particular attention to withdrawal procedures, renewal proceedings are lengthy and often result in a negative decision. The lack of valid documentation pending renewal further has a negative impact on access to housing and the labour market. The renewal has to be applied before for the right to remain expires but should not be applied for more than three months before that date. If the application is not submitted in time, the stay becomes illegal. This may result in a longer waiting period for the long-term residence permit.

### 2. Civil registration

Registration of childbirth takes place at the district administrative or municipal authority. This is done directly by state hospitals as soon as a child is born. If the parents of the new-born are not married, or if the husband is not the father, an affidavit is required from the biological father to recognise paternity. Both parents are given joint custody of the child if they are married; if not, custody is granted to the mother unless the parents decide on joint custody.

574 Article 3(4) AsylG.
575 *Ibid.*
576 Article 8(4) AsylG.
577 *Ibid.*

As regards marriage registration, the Register must determine the capacity of the future spouses to enter into marriage during a hearing, on the basis of the documents submitted. These include: an official identification document with a photograph; a document equivalent to a copy of the birth certificate; and proof of citizenship. An affidavit may be given if the person cannot provide these documents. Practice varies between local Registers, with some demanding all the aforementioned documents while others are more flexible.

Civil registration in Austria is necessary for people to have access to health insurance, child and family allowances and other social rights. In addition, the family allowance is granted only after asylum has been granted to the baby. This procedure may take several months.

## 3. Long-term residence

**Indicators: Long-Term Residence**

1. Number of long-term residence permits issued to beneficiaries in 2021 (for the first time – "Erstbewilligungen"): 1,360

Long-term resident status for third-country nationals is called "*Daueraufenthalt EU*". The right to permanent residence in Austria and unrestricted access to the job market is granted by the residence title "Daueraufenthalt EU".

To obtain it, a beneficiary of international protection must fulfil the following conditions:

- Lawful residence in Austria for the last 5 years preceding the application for long term residency. Half of the period between the application for international protection and the awarding of refugee status or subsidiary protection is counted towards the five-year period. When the duration of the asylum procedure was longer than 18 months, the whole period is counted.[578]
- Successful completion of "Module 2" of the so-called agreement on integration ("*Integrationsvereinbarung*"), entailing knowledge of German at B1 level.
- General requirements for obtaining a residence permit, namely:
  - A regular income per month of €1,110.26 or more if the cost of rent is higher than € 327.91 for a single person as of 1 January 2023
  - Sufficient health insurance;
  - Suitable accommodation; and
  - The person must not present a security risk.

The filing of additional papers may be required in some circumstances.
There is no difference between refugee status holders and subsidiary protection status holders.

In practice the responsible authority is usually the district council (*Bezirkshauptmannschaft*). There are exceptions for some cities such as **Vienna** where the responsible authority is MA 35, whereas in **Graz** it is the Styrian Land government. Once all costs have been paid, the applicant may be eligible to acquire the residence permit. The costs for the procedure amount to about € 210 for persons over 6 years old, and €195 for persons under 6 years old.

1,360 beneficiaries of international and subsidiary protection obtained a long-term resident status in 2022, compared to 1,193 in 2021 and 1,097 in 2020.[579] The sharp increase since 2018 (498) is likely to be the result of the focus of the BFA on withdrawal procedures of protection statuses. In cases where the international protection has been granted more than five years ago, a withdrawal procedure can only be started after a long-term residence status is granted by the responsible settlement authorities.

578 Article 45(12) Residence Act.
579 Ministry of Interior, *Fremdenwesen*, 2022, available in German at: https://bit.ly/3KZkOUI.

## 4. Naturalisation

| Indicators: Naturalisation | |
|---|---|
| 1. What is the waiting period for obtaining citizenship? | |
| ❖ Refugees | 10 years[580] |
| ❖ Subsidiary protection beneficiaries | 15 years |
| 2. Number of citizenship grants in 2021: | 2,359 |

**Refugees** are entitled to naturalisation after 10 years of lawful and uninterrupted residence in Austria, which includes the period of stay during the asylum procedure.[581] The length of the legal stay, and thus the waiting period for obtaining citizenship, was extended from 6 to 10 years in September 2018.[582] UNHCR and NGOs criticised this prolongation, because the prospect of rapid naturalisation promotes a successful integration process and is desirable for strengthening the cohesion of society as a whole.[583] Citizenship must be granted to a person entitled to asylum after 10 years of residence if the BFA, upon request, notifies that no cessation procedure under the Asylum Act 2005 has been initiated and the conditions for initiating such a procedure do not currently exist. For beneficiaries of subsidiary protection, the waiting period is 15 years.

In order to be naturalised, a beneficiary of protection must also demonstrate:

- ❖ Sufficient income during the last 3 years;
- ❖ Proof of knowledge (B1) of the German language;
- ❖ Successful completion of integration course (*Werteskurs*);
- ❖ Absence of a criminal record (*Unbescholtenheit*).

Refugees and beneficiaries of subsidiary protection may have faster access to naturalisation in less than 15 years of residence under certain conditions. They may shorten their waiting period if: (a) they have acquired B2-level knowledge of German; or (b) have acquired B1-level knowledge and can prove efforts of personal integration. The at least three-year voluntary work or activity in the social field must serve the common well-being and represent an integration-relevant added value in Austria. If they fulfil these criteria and the general conditions, the waiting period for obtaining citizenship may be reduced to 6 years. In any other case, it is easier for beneficiaries of subsidiary protection to obtain naturalisation by obtaining long-term resident status after 5 years (see Long-Term Residence); then, they may be naturalised after 10 years.

| Year | Number of persons with asylum status receiving citizenship |
|---|---|
| 2016 | 1,224 |
| 2017 | 1,252 |
| 2018 | 1,086 |
| 2019 | 1,276 |
| 2020 | 1,022 |
| 2021 | 1,660 |
| 2022 | 2,359 |

Source: Ministry of Interior, *Answer to parliamentary request, 9407/AB, XXVII. GP*, 28 March 2022, available in German at: https://bit.ly/3rf5kDk; Statistik Austria, Einbürgerungen, available at: https://bit.ly/3VkpMjC.

580 Under certain circumstances the waiting period can be shortened to 6 years, see Art 11a (6) StBG.
581 Article 11a(4)(1) and (3) Citizenship Act (StbG).
582 Article 11(7) Naturalization Act.
583 Tiroler Tageszeitung, ‚UNHCR kritisiert österreichische Flüchtlingsnovelle', 9 May 2018, available in German at: https://bit.ly/2UYyHad.

## 5. Cessation and review of protection status

**Indicators: Cessation**

1. Is a personal interview of the asylum seeker in most cases conducted in practice in the cessation procedure? ☒ Yes ☐ No
2. Does the law provide for an appeal against the first instance decision in the cessation procedure? ☒ Yes ☐ No
3. Do beneficiaries have access to free legal assistance at first instance in practice? ☐ Yes ☒ With difficulty ☐ No

The Asylum Act contains the provisions on cessation and withdrawal of international protection in a single provision: Article 7 for refugees and Article 9 for beneficiaries of the subsidiary protection.

**Refugee status** can be ceased if the conditions in Article 1C of the Refugee Convention are met, or if refugee status has been granted in another country.[584] **Subsidiary protection** can be ceased where the conditions upon which status was granted no longer exist, where the person obtains subsidiary protection status in another country or obtains the nationality of another country and return thereto would not violate the principle of *non-refoulement*.[585]

**Procedure**

Every asylum seeker that comes to Austria is entitled to the free legal aid, when needed. In Austria, free legal counselling within the cessation and review of protection status procedures is provided by a state-based organisation BBU (*Bundesagentur für Betreuungs- und Unterstützungsleistungen*). BBU has been offering legal counsel and representation before the Federal Office for Immigration and Asylum (BFA) in accordance with Section 49 BFA-VG Federal Law Gazette I No. 87/2012 and before the Federal Administrative Court (BVwG) in accordance with Section 52 BFA-VG Federal Law Gazette I No. 87/2012 as amended since January 1, 2021.

BBU offers free legal counsel to those facing criminal charges, both at the initial hearing and during an appeal. However, the counselling provided by the organisation during the first-instance procedure is not needs based, but rather available only within specific hours established by the organisation.

Where the BFA considers that the conditions in the country of origin have changed, thus questioning whether the beneficiary's fear of persecution is still valid, it shall inform the person *ex officio* of the initiation of a cessation procedure – irrespective of whether the person has a permanent or temporary residence permit.[586]

The authorities must assess whether return would be contrary to Articles 2, 3 or 8 ECHR and, in such a case, issue a residence permit. Where return would amount to *refoulement*, or in case of practical obstacles, the BFA is responsible for issuing a tolerated status card (*Duldungskarte*). In 2022, 325 tolerated status cards were issued,[587] compared to 265 in 2021 and 194 in 2020.

If a person has held refugee status for 5 years, **refugee status** may be terminated only after the person has received a residence permit under a different immigration status.

584 Article 7(2)-(3) AsylG.
585 Article 9(1) AsylG.
586 Article 7(2a) AsylG.
587 Ministry of Interior, *Answer to parliamentary request, 13740/AB, XXVII. GP*, 20 April 2023 , available in German at: https://bit.ly/3AEzMuF; Ministry of Interior, *Answer to parliamentary request 9531/AB, XXVII. GP*, 11 April 2022, available in German at: https://bit.ly/3KPxwnY.

Cessation procedures for beneficiaries of the **subsidiary protection** are often initiated by the BFA when they apply for a prolongation of their residence permit. Persons originating from **Russia**, **Syria** and **Afghanistan** are particularly concerned by these procedures. The Administrative Court has stated that a subsidiary protection status that was granted because of the minority of a person can be withdrawn once the minor becomes an adult and commits a crime.[588]

A cessation procedure is further initiated when entering the country of origin or applying for a passport from the country of origin. The entry of persons entitled to protection in Austria with a Convention or Foreigner passport is reported by the border police to the BFA. As of today, it is not clear yet if every case of entry from third countries is reported.

**Statistics on the number of *initiated* cessation/withdrawal procedures**

Statistics made available by the Ministry of Interior do not distinguish between cessation and withdrawal procedures. The number of initiated cessation or withdrawal procedures of the asylum status has consistently remained between 5,500 and 6,000 cases since 2018. In 2018, 5,991 cessation/withdrawal procedures were initiated,[589] resulting in the withdrawal/cessation of refugee status in 450 cases and of subsidiary protection in 475 cases.[590] In 2019, out of the total of 5,547 initiated withdrawal procedures, asylum status was ceased or withdrawn in 856 cases, while subsidiary protection was ceased or withdrawn in 917 cases.[591]

In 2022, 2,161 cessation and withdrawal procedures of the **asylum status** were initiated on the following grounds:

| Initiated cessation/withdrawal procedures of the asylum status: 2022 | | | | | | | |
|---|---|---|---|---|---|---|---|
| Country of Origin | Delinquency[592] | Danger to public security[593] | Travel movement (COI)[594] | Altered circumstances[595] | Withdrawal/Cessation of status of the reference person | Other reasons | Total |
| Syria | 490 | 2 | 97 | 6 | 3 | 58 | **656** |
| Russia | 106 | 2 | 94 | 192 | 133 | 33 | **560** |
| Afghanistan | 270 | 1 | 95 | 1 | 0 | 15 | **382** |
| Iran | 72 | 0 | 73 | 11 | 0 | 8 | **164** |
| Iraq | 44 | 0 | 32 | 4 | 1 | 11 | **92** |
| Somalia | 20 | 0 | 30 | 0 | 0 | 9 | **99** |
| stateless | 61 | 0 | 8 | 3 | 0 | 7 | **79** |
| Serbia | 1 | 0 | 4 | 16 | 1 | 1 | **23** |
| Türkiye | 8 | 0 | 2 | 4 | 2 | 4 | **20** |
| Kosovo | 0 | 0 | 3 | 12 | 3 | 0 | **18** |
| Other | 40 | 0 | 23 | 22 | 8 | 15 | **108** |
| **Total** | **1,112** | **5** | **461** | **271** | **151** | **161** | **2,161** |

588 VwGH, Decision Ra 2018/18/0343, 21 June 2018, available in German at: https://bit.ly/3lgT5pZ.
589 Ministry of Interior, *Answer to parliamentary request, 4105/AB XXVI GP*, 30 October 2019, available in German at: http://bit.ly/40aA4UL.
590 Information provided by the Ministry of Interior on 1 February 2019.
591 Ministry of Interior, *Answer to a parliamentary request 4024/AB XXVI. GP*, 16 September 2019, available in German at: https://bit.ly/2PEhsuJ.
592 Article 7 (2) AsylG, in connection with Article 27 (3) (1-4) AsylG.
593 Article 7 (1) (1), in connection with Article 6 (1) (3) AsylG.
594 Article 7 (2) last sentence AsylG.
595 Article 7 (2a) AsylG.

Source: Ministry of Interior, *answer to parliamentary request 13976/AB XXVII. GP*, 28 April 2023, available in German at https://bit.ly/425y8xW.

As regards **subsidiary protection**, the BFA imitated a total of 611 (2021: 1,179) cessation/withdrawal procedures in 2022:

| Initiated cessation/withdrawal procedures of the subsidiary protection: 2022 | | | | | | | |
|---|---|---|---|---|---|---|---|
| Country of Origin | Delinquency[596] | Danger to Public Security[597] | Travel Movement (COI)[598] | Altered circumstances[599] | Examination in the course of prolongation | Other reasons | Total |
| Afghanistan | 182 | 1 | 29 | 0 | 5 | 22 | **239** |
| Iraq | 47 | 0 | 26 | 0 | 22 | 37 | **132** |
| Russian Federation | 16 | 0 | 2 | 0 | 26 | 18 | **62** |
| Syria | 29 | 1 | 7 | 0 | 5 | 7 | **49** |
| Somalia | 27 | 0 | 4 | 0 | 4 | 4 | **39** |
| Nigeria | 3 | 0 | 1 | 0 | 4 | 2 | **10** |
| stateless | 4 | 0 | 0 | 0 | 0 | 6 | **10** |
| Armenia | 1 | 0 | 2 | 0 | 7 | 0 | **10** |
| Mongolia | 0 | 0 | 0 | 0 | 4 | 4 | **8** |
| Georgia | 0 | 0 | 1 | 0 | 4 | 1 | **6** |
| Other | 13 | 0 | 6 | 0 | 13 | 14 | **46** |
| **Total** | **322** | **2** | **78** | **0** | **94** | **115** | **611** |

Source: Ministry of Interior, *answer to parliamentary request 13976/AB XXVII. GP*, 28 April 2023, available in German at https://bit.ly/425y8xW.

**Statistics on the number of protection status ceased/withdrawn by the BFA at first instance**

Not all of the initiated procedures represented above resulted in a withdrawal or cessation of protection. In 2022, the BFA ceased and withdrew **asylum status** in 951 cases as follows (2021: 1,304; 2020: 1,341):

| Ceased/withdrawn asylum status by BFA: 2022 | | | | | | | |
|---|---|---|---|---|---|---|---|
| Country of Origin | Delinquency | Danger to public security | Travel movement (COI) | Altered circumstances | Withdrawal / cessation status of reference person | Other reasons | Total |
| Russian Federation | 61 | 2 | 144 | 340 | 193 | 32 | 772 |
| Syria | 4 | 0 | 7 | 4 | 0 | 23 | 38 |
| Iran | 4 | 0 | 15 | 7 | 3 | 3 | 32 |
| Iraq | 4 | 0 | 4 | 7 | 0 | 13 | 28 |
| Afghanistan | 0 | 0 | 1 | 0 | 0 | 4 | 5 |
| Kosovo | 2 | 0 | 1 | 5 | 2 | 1 | 11 |
| Nigeria | 1 | 0 | 4 | 0 | 5 | 0 | 10 |
| Serbia | 0 | 0 | 0 | 7 | 0 | 0 | 7 |

596 Article 9 (3) AsylG.
597 Article 9 (2) (2) AsylG.
598 Article 9 (1) (1-2) AsylG.
599 Article 9 (1) (1)AsylG.

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| Somalia | 0 | 0 | 1 | 1 | 3 | 1 | 6 |
| Armenia | 2 | 0 | 1 | 2 | 0 | 0 | 5 |
| Other | 5 | 0 | 5 | 12 | 7 | 8 | 37 |
| **Total** | **83** | **2** | **183** | **385** | **213** | **85** | **951** |

Source : Ministry of Interior, *answer to parliamentary request 13976/AB XXVII. GP*, 28 April 2023, available in German at https://bit.ly/425y8xW.

In 4 cases cessation of asylum status was followed by the granting of subsidiary protection, and in 55 cases a status on humanitarian grounds was granted.

With regard to first instance decisions, asylum status was withdrawn in 949 cases, subsidiary protection was withdrawn in 135 cases. As regards **subsidiary protection**, in 135 cases the status was withdrawn or ceased by the first instance authority (2021: 342):

| **Withdrawal of protection status by BFA: 2022** | | |
|---|---|---|
| ***Country of origin*** | Asylum | Subsidary protection |
| *Russian Federation* | 772 | 15 |
| *Iraq* | 28 | 53 |
| *Syria* | 38 | 7 |
| *Afghanistan* | 5 | 11 |
| *Somalia* | 6 | 6 |
| *Nigeria* | 10 | 1 |
| *Stateless* | 3 | 7 |
| *Armenia* | 5 | 5 |
| *Serbia* | 9 | 1 |
| *Kosovo* | 9 | 1 |
| *Other* | 66 | 28 |
| ***Total*** | **951** | **135** |

Source: *BFA-Detailstatistik 1.-4. Quartal 2022*, available in German at: https://bit.ly/3SMUZLj

It should be noted that the above figures only represent the number of protection status ceased/withdrawn by the BFA at first instance. In 2021, the BVwG decided on 409 appeals concerning withdrawal of asylum status and on 720 appeals concerning withdrawal of subsidiary protection.[600] Data for 2022 is not available at the time of writing. Concerning the high number of withdrawal and cessation decisions regarding nationals of the Russian federation it has to be noted that the persons received a residence permit. The authority focused on cases that have been beneficiaries since the start of the 2000s, in those cases a status can only be withdrawn if a residence permit is granted.

600 Source: Ministry of Justice, *Answer to parliamentary request 9532/AB, XXVII. GP*, 11 April 2022, https://bit.ly/3rxqhJw.

## 6. Withdrawal of protection status

**Indicators: Withdrawal**

1. Is a personal interview of the asylum seeker in most cases conducted in practice in the withdrawal procedure? ☒ Yes ☐ No
2. Does the law provide for an appeal against the withdrawal decision? ☒ Yes ☐ No
3. Do beneficiaries have access to free legal assistance at first instance in practice? ☐ Yes ☒ With difficulty ☐ No

**Refugee status** is withdrawn where the refugee should have been excluded under the exclusion clauses,[601] or is convicted of a criminal offence.[602] **Subsidiary protection** is withdrawn if the exclusion clauses in Article 1F apply, or the beneficiary poses a threat to public order or national security, or has been convicted of a serious crime.[603] A withdrawal procedure shall be initiated by the BFA where a beneficiary of the subsidiary protection is under prosecution for a serious crime, and the provisions on withdrawals are likely to be applied.[604] To that end, the BFA as well as the BVwG receive information on the prosecution from the Prosecutor's Office and the Court.

An appeal challenging a withdrawal decision has suspensive effect. Nevertheless, it is a truncated procedure with a lot of difficulties as the concerned applicants do not have documentation of their status.

Article 7(2) AsylG, as amended by the alien law reform (FrÄG 2017), further allows that withdrawal proceedings are initiated where the beneficiary is suspected of having committed a criminal offence.[605]

As mentioned in Cessation, there is no systematic distinction between the two procedures. When initiating a withdrawal procedure following a conviction, the BFA must weigh the individual situation of the beneficiary upon return against the implications of their continued residence for public order and security. The same procedural guarantees are applied as for the Regular Procedure for granting protection. Since 1 September 2018, young offenders are no longer protected from losing their protection status.

The VwGH referred a preliminary ruling to the CJEU regarding the interpretation of Article 19(1) of Directive 2011/95 on the possibility of revocation of subsidiary protection status without a change in the relevant factual circumstances, but rather only where the knowledge of the authority has changed, and the person concerned cannot be accused of having misled the Member State. The CJEU found that where the Member State has new information which establishes that, contrary to its initial assessment based on incorrect information, that person never faced a risk of serious harm, within the meaning of Article 15 of that Directive, that Member State must conclude that the circumstances underlying the granting of subsidiary protection status have changed in such a way that retention of that status is no longer justified. That this error was not attributable to the applicant does not alter the fact that the applicant is not eligible for subsidiary protection.[606]

601 Article 7(1)(1) AsylG.
602 Article 7(2) AsylG.
603 Article 9(2) AsylG.
604 Article 9(3) AsylG.
605 For a critique, see Diakonie, *Stellungnahme der Diakonie Österreich zum Entwurf betreffend ein Fremdenrechtsänderungsgesetz 2017*, 18 January 2017, available in German at: https://bit.ly/3yKXMLC.
606 CJEU, *Bilali*, Case C-720/17, 23 May 2019, available at: http://bit.ly/3Fu83zB.

## B. Family reunification

### 1. Criteria and conditions

**Indicators: Family Reunification**

1. Is there a waiting period before a beneficiary can apply for family reunification?
   - ❖ Refugee status ☐ Yes ☒ No
   - ❖ Subsidiary protection ☒ Yes ☐ No
   - 3 years

2. Does the law set a maximum time limit for submitting a family reunification application? For refugees be exempt from material conditions ☒ Yes ☐ No
   - ❖ If yes, what is the time limit? 3 months

3. Does the law set a minimum income requirement?
   - ❖ Refugee status ☐ Yes ☒ No
   - ❖ Subsidiary protection ☒ Yes ☐ No

#### 1.1. Eligible family members

Family members eligible for family reunification include:[607]

- ❖ Parents of a minor child for family reunification of unaccompanied minors;
- ❖ Spouses and registered partners, where the marriage / partnership existed before fleeing the country of origin. In case concluded in another country, the marriage / partnership must be legally valid in the country of origin;
- ❖ Children who are minors at the time of the application;

According to the VwGH, siblings in themselves are not considered a family member eligible for reunification.[608] However, underaged siblings will be allowed to reunite as well when an unaccompanied minor beneficiary of international protection reunites with their parents.

Essentially, the same rules apply for same sex spouses in theory. As the precondition requires an equivalent to the formally registered partnership in Austria which does not exist in many countries of origin same sex couples are barred from family reunification in practice.

Beneficiaries of international protection who get married after having arrived in Austria cannot reunite with their spouses under the AsylG. They will have to go through the regular family reunification procedure as opposed to the one specific to the asylum law. In such a case, in addition to the material conditions set out below, spouses must also pass a German exam before entering Austria. They are also subject to the annual quota on family reunification.

Regarding family on the territory during the asylum procedure, all underage, unmarried child of an asylum seeker who resides in federal territory is considered to have received protection when an application for international protection was lodged by the asylum seeker now beneficiary of international protection. Indeed, if one family member qualifies for international protection, the other members must also enjoy the same level of protection.

Three years after receiving subsidiary protection, family members of those individuals may apply for entry permits during family reunion. They must also show proof of suitable housing, health insurance, and sufficient income. In the same period, 133 families, consisting of a total of 604 family members, were

607 Article 35(5) AsylG.

608 VwGH, Decision Ra 2015/21/0230 to 0231, 28 January 2016, available at: https://bit.ly/42cBeBf; Ra 2016/20/0231, 26 January 2017, available at: https://bit.ly/3JHM2jk.

successfully reunited. In total, families from 31 countries were supported, mainly 87% of the families come from Syria, 5% from Afghanistan, 3% from Somalia and 1% each from Iran and Iraq.

On 12 April 2018, the CJEU ruled in case *A. and S*. on the right to family reunification of unaccompanied children who reach the age of majority after lodging an asylum application. The CJEU concluded that an asylum applicant who is below the age of 18 at the time of their entry into the territory of a Member State and of the introduction of their asylum application in that State, but who, in the course of the asylum procedure, attains the age of majority and is thereafter granted refugee status, must still be regarded as a "minor" for the purposes of that provision.[609] This judgement of the CJEU was taken into consideration by the VwGH in its decision of 3 May 2018.[610] However, the VwGH saw no basis for changing its previous decision-making practice. If an unaccompanied minor attains the age of majority during the asylum procedure, the family status of the parents and thus the conditions for joining an asylum-entitled child who is an adult at the time of the decision, cease to apply.

In order to clarify open questions arising from the ECJ's judgment C-550/16, the Vienna Administrative Court itself submitted a reference for a preliminary ruling, numbered C-560/20: is it necessary that the parents of the third-country national comply with the period for submitting an application for family reunification referred to in the judgment of the CJEU of 12 April 2018, C-550/16, *A and S*, paragraph 61, namely 'in principle within a period of three months of the date on which the "minor" concerned was declared to have refugee status'?

The refusal to grant an entry title in the context of family reunification refers to proceedings that are regulated under the Settlement and Residence Act (*Niederlassungs- und Aufenthaltsgesetz* – NAG). The NAG further regulates the legal route for third-country nationals seeking to obtain a residence permit in Austria. This legal way via NAG is often the only way for family reunification in cases where the application for legal entry was not lodged within three months of the date when the asylum status was granted to the anchor family member in Austria. Family members that do not fall under the restrictive definition of "family member" in the asylum law also have to apply for family reunification via NAG. Family members of persons entitled to asylum may be granted, under certain conditions, a residence permit called "Red-White-Red-Card-Plus" in accordance with Article 46 NAG. This card grants access to the labour market, is valid for one year and can be prolonged to 3 years.
In the case of family members of holders of a residence title "Red-White-Red – Card", the period of validity of the title shall be determined by the period of validity of the residence title of the sponsor. The residence title "Red-White-Red – Card plus" issued to family members of holders of a residence title "Red-White-Red – Card plus" shall be issued for a period of two years.

Costs of DNA tests for the purpose of proving family links are reimbursed where these are ordered by the BFA. These tests are ordered systemically by the authority.

The Administrative High Court has emphasised that an application for family reunification cannot be dismissed on the ground that there are doubts on the family ties, without having informed the concerned persons about the possibility to undertake a DNA test.[611] Also, there have been cases pending before the Administrative Court on the question of whether an application for family reunification can also be filed within the EU.

### 1.2. Waiting periods and material conditions

Family members of **refugees** can apply for an entry visa immediately after status recognition of the sponsor. However, a number of restrictions have been put in place as of 1 June 2016. If the application

609 CJEU, Case C-550/16 *A. and S.*, Opinion of AG Bot of 26 October 2017, available at: http://bit.ly/3YUeH9t.
610 VwGH, Decision No Ra 2017/19/0609, 3 May 2018, available in German at: https://bit.ly/3TmAwgr.
611 VwGH, Decision Ra 2017/18/0131, 22 February 2018, available in German at: https://bit.ly/3yIMjMJ.

is submitted to an Austrian representation within 3 months, no further requirements are imposed.[612] If it is submitted after the 3-month time limit has lapsed, a number of conditions are imposed: (a) sufficient income; (b) health insurance; and (c) stable accommodation.[613] These are material requirements set in line with requirements for other third-country nationals. However, contrary to other third country nationals, no language knowledge is required for asylum law family reunification, nor is there a quota.

**Subsidiary protection** beneficiaries' family members can only submit an application after at least 3 years from the sponsor's recognition.[614] The aforementioned requirements – sufficient income, health insurance and accommodation – in force since 1 June 2016 are always applicable to beneficiaries of the subsidiary protection,[615] with the exception of family members of unaccompanied children.[616]

The fact that a beneficiary of subsidiary protection must wait three years before initiating a family reunification procedure has been ruled as non-discriminatory by the Constitutional Court.[617] The case concerned a 13-years-old unaccompanied minor from Syria who had received subsidiary protection in July 2016 and who had therefore to wait for 3 years to benefit from family reunification instead of 1 year (the previous waiting time imposed). In its ruling, the Constitutional Court considered that differentiating between persons entitled to asylum and persons entitled to subsidiary protection did not pose a risk of unequal treatment, as they are evident differences between these two groups (e.g. with regards to the temporary right of residence). Following the judgement by the ECtHR in the case *M.A. against Denmark* which found the 3-year waiting period to be in conflict with art 8 ECHR, beneficiaries of subsidiary protection applied for family reunification before the 3-year-limit had passed. In one case, the Constitutional Court dismissed the appeal and did not put the regulation in question.[618]

### 1.3. Procedure and statistics

NGOs have expressed concerns in relation to the time limit for applying for family reunification, given that applications must be submitted personally to an Austrian embassy. Indeed, waiting times for submitting an application currently exceed 3 months. In practice, applications submitted in writing are thus very lengthy. This situation deteriorated in 2021 due to the takeover of the Taliban in Afghanistan: the responsible embassy in Islamabad, Pakistan, scheduled appointments with several months of waiting time. The situation has worsened in 2022: due to the high number of applications and lack of resources at the Austrian Embassy in Syria, which is located in Beirut, the waiting time for the registration appointment at the Embassy is more than 12 months, increasing the length of procedure to at least 2 to 3 years according to reports from the Austrian Red Cross.
Regarding specific difficulties, the Austrian Red Cross (ÖRK) established that the Taliban takeover in Afghanistan made it increasingly difficult for Afghan families to obtain the necessary documents (especially passports) for family reunification. Moreover, the large number of cases has dramatically extended the waiting periods and the duration of procedures at Austrian embassies.

This is despite the fact that the law makes explicit reference to Article 8 ECHR in Article 35(4) AsylG, and the explanatory notes cite a ruling of the Administrative High Court that an application for a visa for family reunion with a person entitled to protection should be granted if this is necessary to maintain private and family life.[619]

612 Article 35(1) AsylG.
613 *Ibid*, citing Article 60 AsylG.
614 Article 35(2) AsylG.
615 Article 35(2) AsylG.
616 Article 35(2a) AsylG.
617 VfGH, Decision E 4248-4251/2017-20,10 October 2018, available in German at: https://bit.ly/3mS9cup.
618 VfGH, Decision E 933/2022-16, 13 December 2022, available in German at: https://bit.ly/41QswbI.
619 VwGH, Decision Ra 2013/22/0224, 11 November 2013.

In order to benefit from family reunification, family members of persons entitled to asylum or subsidiary protection make an application at the Austrian embassy. In that regard, the BFA conducts a probability diagnostic for the grant of family reunification, during which the family ties are particularly examined. In 2018, the BFA conducted a total of 3,068 of these probability evaluations.
The BFA processed 9,495 family reunification applications in 2016, 7,612 in 2017 and 2,247 in 2018.[620] In 2021, 2,459 (2020: 1,189) applications for family reunification were lodged and concerned the following nationalities: Syria (1,335), Afghanistan (589), Somalia (216).[621] In 2022, 5,830 applications for an entry visa via family reunification were lodged of which 4,871 came from Syrian nationals, 490 from Afghan nationals and 254 from Somalian nationals. In 3,335 cases of Syrian nationals the forecast decision taken by the BFA was positive, in 169 cases were negative.[622]

In 2019, the Austrian Red Cross provided support to 573 family reunification procedures, which concerned 1,442 family members willing to be reunited with a person granted international protection in Austria. In total, the Austrian Red Cross assisted 5,143 persons in 1,862 open cases. Throughout 2019, 1,264 counselling units with clients were thus carried out, while another 2,942 persons obtained assistance from the open counselling service. 388 written submissions were brought in by the Austrian Red Cross in 2019.[623] In 2020, there were no updated statistics on the activities of the Red Cross made available. It was reported that due to Covid-19 related travel restrictions and limited working hours at the Austrian embassies abroad, there was a significant delay in processing family reunification cases.

In 2021, 4,073 applications for visas related to family reunifications were registered, of which 2,659 were from Syrian and 767 from Afghan nationals. There are no statistics available concerning the decisions of the authorities. As of 31 December 2021, 1,309 applications were still pending.[624]

In 2022, the Austrian Red Cross assisted 3,019 new families representing 13,103 family members in reunification processes. 87% of all cases concerned Syrian nationals, 5% Afghan and 3% Somalian nationals. At the end of January 2023, 6,785 cases are pending. In 2022, 133 families representing 604 family members could be reunited successfully.

## 2. Status and rights of family members

Family members are entitled to at least the same status as the sponsor. However, upon arrival in Austria, they submit an application to the police to obtain such protection, and an assessment is carried out to inquire whether they may have their own reasons for seeking international protection.

In a ruling of November 2017, the VwGH stated that the principles of the Family Reunification Directive need not be complied with in the family procedure set out in Article 35 AsylG and that the BFA was not obliged to grant the family members international protection in the particular case, since Article 35 AsylG offers more favourable standards to the Directive.[625]

620 BFA, '2017: Das Jahr der Aufarbeitung', 11 January 2018, available in German at: http://bit.ly/2FnCV4G. For the year 2018, the information was provided by the Ministry of Interior.
621 Ministry of Interior, *Answer to parliamentary request 9531/AB, XXVII. GP*, 11 April 2022, available in German at: https://bit.ly/3KPxwnY.
622 BFA, *Detail-Statistik 1.-4. Quartal 2022*, available in German at: https://bit.ly/3EXJCdI.
623 Information by Austrian Red Cross, Beratungsstelle Familienzusammenführung, 13 March 2019.
624 Ministry of Interior, *Answer to parliamentary request, 9407/AB, XXVII. GP*, 28 March 2022, available in German at: https://bit.ly/3rf5kDk.
625 VwGH, Decision Ra 2017/19/0218, 22 November 2017, available in German at: https://bit.ly/3Tp6ysu.

## C. Movement and mobility

### 1. Freedom of movement

Persons who are granted international protection are free to move and settle throughout the Austrian territory. However, in practice, freedom of movement might be restricted for certain beneficiaries when they depend on specific services (see **Error! Reference source not found.**). The restriction of residence that used to apply to beneficiaries of subsidiary protection who were awaiting an appeal was deleted by the recent amendment to Article 15b AsylG.[626] The draft is mainly aimed at implementing actions under aliens law that were outlined by the federal government in the Government Program 2017-2022, which was enacted in 2017 ("Together. Government Program 2017-2022 for Austria ").

### 2. Travel documents

Since 2015, travel documents for beneficiaries of international protection are issued for a period of up to 5 years,[627] unless other conditions apply. Refugees obtain a Convention travel document ('*Konventionsreisepass*') without further conditions, unless there are compelling reasons in terms of national security and public order against the issuance of a document,[628] whereas beneficiaries of subsidiary protection must establish that they are unable to obtain a travel document from their country of origin.[629] Aliens whose presence on federal territory is tolerated are to be issued a permit for tolerated persons. As a general rule, it is valid for one year and can be extended for another year provided certain conditions are met. A geographical limitation further applies to beneficiaries of protection, who are not allowed to travel to their country of origin with these documents.

Article 94(2) FPG allows persons recognised as refugees in another country to apply for a Convention travel document in Austria.

Aliens who applied for international protection on or after November 15, 2015 and were awarded asylum status on or after June 1, 2016 are eligible to apply for the card for those entitled to asylum. In 2021, 44,516 Convention travel documents were issued to refugees and 5,016 *Fremdenpässe* (travel documents for foreigners) were issued. However, there is no data how many of those were issued to beneficiaries of subsidiary protection.[630]

626 Fremdenrechtsänderungsgesetz 2018, available in German at: https://bit.ly/2Vyj5h5.
627 Article 90(1) FPG.
628 VwGH, Decision 2013/21/0003, 16 May 2013, available in German at: https://bit.ly/3JGGEgp. One example of such reasons was found in the case of a person convicted of international drug dealing: VwGH, Decision 2009/21/0340, 29 April 2010, available in German at: https://bit.ly/3n1eV0X.
629 Article 88(2a) FPG.
630 Ministry of Interior, *Answer to parliamentary request, 9407/AB, XXVII. GP*, 28 March 2022, available in German at: https://bit.ly/3rf5kDk.

## D. Housing

| Indicators: Housing | |
|---|---|
| 1. For how long are beneficiaries entitled to receive basic care? | |
| ❖ Refugee status | 4 months |
| ❖ Subsidiary protection (in case of unemployment) | No time limit |
| **2.** Number of beneficiaries receiving basic care as of December 2022 | 11,655 |

**Refugees** are entitled to Basic Care during the first 4 months after recognition of their status.[631] After this period, they have access to the general welfare system and can obtain basic care and social assistance similarly to any other Austrian citizen. Beneficiaries of **subsidiary protection** have no temporal limit on receiving Basic Care but are excluded from the general welfare system. No preconditions for receiving Basic Care are applied.

Basic Care is organised accommodation in inns, boarding houses, reception centres of NGOs or of the respective federal province, or a rent subsidy when an asylum seeker rents a flat themselves. The prevailing form of Basic Care is organised accommodation, except for **Vienna** where private accommodation prevails (see Reception Conditions: Forms and Levels).

As of the end of December 2022, 21,661 asylum seekers were receiving basic benefits (in addition to Ukrainians, 9,055 subsidiary protection beneficiaries, and 2,540 asylum beneficiaries):

| Beneficiaries of international protection in Basic Care: 31 December 2022 | | | |
|---|---|---|---|
| Province / Federal centre | Refugee status | Subsidiary protection | Total |
| Burgenland | 21 | 57 | 78 |
| Carinthia | 70 | 132 | 202 |
| Lower Austria | 132 | 234 | 356 |
| Upper Austria | 123 | 387 | 510 |
| Salzburg | 109 | 121 | 230 |
| Styria | 89 | 343 | 332 |
| Tyrol | 169 | 189 | 358 |
| Vorarlberg | 127 | 312 | 439 |
| Vienna | 1,700 | 7,280 | 8,980 |
| **Total** | **2,540** | **9,055** | **,11595** |

Source: Ministry of Interior, Basic Care statistics, unpublished.

Support after the end of Basic Care is insufficient. Although there are some consultation services which provide advice on finding a flat and concluding a rental contract, there are no financial resources available to actively help beneficiaries to find accommodation. This is particularly concerning given that prices on the real estate market have significantly risen. Recipients of Basic Care, which includes beneficiaries of subsidiary protection in several provinces, cannot find adequate accommodation with a subsidy of € 165 per month for renting a flat. Families in Basic Care receive € 330. Financial support for refugees and beneficiaries of subsidiary protection is a slightly higher amount as in this regime the size of a family is taken into account and it is possible to either completely subsidise the rent (as is the case in **Tyrol**) or receive subsidies for the rent.

631 Article 2 (1) (6) Grundversorgungsvereinbarung.

In **Lower Austria**, the authorities regularly send letters to beneficiaries of subsidiary protection asking them to move out of basic care. In reality, this means a lot of pressure for people with subsidiary protection. The care teams intervene and send social reports to the authorities explaining why the beneficiaries of protection should not lose basic care benefits, especially families with school-age children or families with sick people who benefit from staying in a basic care facility. On the other hand, there is a trend of people with subsidiary protection moving to Vienna because the community is bigger there, there are greater chances of finding a job and there is entitlement to social benefits.[632]

A total of 15,055 people under the jurisdiction of the federal government and the province were housed in **Lower Austria** as of the investigation's cutoff date (November 21, 2022).

| Age Group | Number of people |
|---|---|
| > 7 y.o. | 1,470 |
| From 7 to 14 y.o. | 2,192 |
| From 14 to 18 y.o. | 1,928 |
| From 18 to 24 y.o. | 1,378 |
| From 24 to 60 y.o. | 6,431 |
| < 60 y.o. | 1,656 |
| **TOTAL:** | **15,055** |

In **Vorarlberg**, refugees who receive a minimum income do not receive a housing compensation but are transferred to landlords directly through the social department. Single refugees receive the minimum income only if they live in shared flats. If a person entitled to asylum decides to live in their own apartment, the compensation will amount only to the costs of a shared room. Single persons receive up to € 503 for their rent. This is significantly higher compared to other federal states, where only € 210 are granted.[633] In **Tyrol**, housing costs are capped and are awarded as a contribution in kind. The benefits are based on the real estate price table. In **Vorarlberg,** there have been cuts in the allowances of people residing in shared apartments: they now receive € 473 instead of the previous € 633.

Moreover, refusing a flat assigned by the country's social department may result in the loss of housing benefits. This measure should also help the city of **Innsbruck**, which is often preferred by refugees as a place of residence after **Vienna**.

**Refugees** can also apply for social housing when they are at risk of becoming homeless. Nevertheless, the waiting lists are long and an emergency flat is rarely available. Certain conditions (e.g. proof of residence of 2 years at the same address) applicable to the city of **Vienna** make it more difficult to get a cheaper community flat. In many regions of Austria, there are no social housing schemes available. Refugees are usually excluded from the second possibility of cheap accommodations, co-operative flats, because they have to contribute to the construction cost and they lack the necessary resources.

In **Upper Austria**, the Landesrat responsible for integration has announced that subsidised housing will also be available to recognised refugees as long as they show sufficient efforts to cope with the social emergency, such as registering to the Labour Market Service.[634]

632 asylkoordination österreich, nationwide NGO survey on basic services Dec 2021/Jan 2022.

633 Der Standard, ‚Vorarlberg und Tirol beschließen Westlösung für Mindestsicherung', 17 January 2017, available in German at: https://bit.ly/2tkJb83.

634 OÖ Nachrichten, ‚Leere Wohnungen für Asylberechtigte', 27 October 2018, available in German at: https://bit.ly/2SUhaT6; Land Oberösterreich, ‚Hilfe zur Unterstützung des Lebensunterhalts und des Wohnbedarfs', available in German at: https://bit.ly/3aX9ULK.

In **Styria**, Caritas has developed a project to finance housing costs of asylum seekers.[635] A major hurdle is the deposit that refugees cannot afford when they have to move out of the basic care 4 months after their protection has been granted. Caritas Styria offers persons benefitting from a protection status or holding a humanitarian residence permit interest-free loan guarantees. This is granted, however, only after verification of the financial situation and must be repaid in individually agreed rates.

Experience shows that persons benefitting from a protection status often change their flat in the first year(s) after recognition and the costs for rent are much higher than those prescribed by law. The introduction of a time limited Residence Permit of 3 years for refugees has also been criticised by NGOs and experts as it makes it more difficult to rent a flat without perspective to stay.

As a result of the Basic Social Welfare Act, this allowance will be increased to around EUR 6,322 in 2023 and is available to every beneficiary. Additionally, only after a continuous three-year benefit period can residential assets be safeguarded in the land register.

A study conducted by the Technical University of Vienna found that, due to several obstacles, refugees are extensively excluded from the benefit of municipal accommodations in practice and beneficiaries of the subsidiary protection do not have access to municipal housing at all. Cases of exploitation and discrimination in the private sector have also been reported. A worrying informal sub-market has emerged, offering housing at inflated prices, such as sleeping places – that are not even real rooms – that cost about € 200 to € 350 per month.[636] Facilities for homeless persons are also sometimes visited by refugees.

When demonstrating the eligibility criteria, refugees from Ukraine might get Municipal Housing (*Gemeindewohnung*) or Cooperative Flats (*Genossenschaftswohnung*). Different laws apply in different parts of Austria as to the qualifying requirements for cooperative apartments, subsidised housing, and municipal housing.

In order to submit housing benefits, a refugee has to submit an application to receive it.

## E. Employment and education

### 1. Access to the labour market

Between collecting minimum income support and finding a job, there is no freedom of choice. Social support or minimum security for those who are able to work is dependent on their desire to use their own labour force. Benefits obtained by an employee who refuses appropriate labour may be diminished or, in rare circumstances, even completely revoked. The same holds true for refusing to take part in activities like German classes or other course requirements, as well as for breaking integration agreements.

Starting with the recognition of their protection status, refugees and beneficiaries of subsidiary protection have free access to the labour market. However, several difficulties such as language barriers, lack of qualifications and/or lack of proof have to be overcome before successfully integrating into the labour market. The public budget for language courses has been increased significantly and, in most federal provinces, language courses are already offered during the asylum procedures, albeit in limited amounts.[637]

635 Caritas Steiermark Flüchtlingsbetreuung, available in German at: https://bit.ly/38co7T9.
636 Anita Aigner, *Housing entry pathways of refugees in Vienna, a city of social housing*, Housing Studies, 2018, available at: https://bit.ly/2N7A57J.
637 SOS Mitmensch, *Deutschkurse für Asylsuchende – Ein Bundesländervergleich*, January 2017, available in German at: http://bit.ly/2kHqM0a.

The integration sector in 2022 was marked by a sharp increase in the number of asylum seekers and beneficiaries of subsidiary protection, as well as a large number of Ukrainian displaced persons seeking protection in Austria: the Austrian Integration Fund (ÖIF) responded to the changed framework conditions with appropriate offers. In 2022, the ÖIF's integration centres reported over 250,000 counselling contacts throughout Austria, with around 11,200 individuals taking part in the values and orientation courses. Furthermore, in 2022, more than 66,000 German course spots were available throughout Austria.

According to current evaluations of the Austrian Integrationsfonds, the level of education of those having been granted protection in 2022 has fallen significantly compared to the years before: 7 out of 10 persons entitled to asylum and subsidiary protection who received asylum in the last 12 months and a German course according to the Integration Act visit have a need for literacy. In the last three years, this value has increased by half (2019: 48%), and by as much as 80% for men (41% vs. 73%).

However, there has been some public debate on the definition of literacy. Experts believe that 7 out of 10 is an exaggerated number and the challenge is being unintentionally "inflated". Second language learners are not illiterate as they come to Austria. They are only supposed to learn a new and different writing system, which is not their native one.

There have been some improvements through targeted assessment of qualifications and facilitated recognition of work experience. The Act on Recognition and Evaluation entered into force on 12 July 2016 and accelerates the procedure for the recognition of education and professional qualifications obtained outside Austria.[638] This decision aims at facilitating access to the labour market for refugees. Refugees or asylum seekers could also apply for recognition of their academic and professional qualifications, even if they cannot provide the documents as proof.

A study conducted in 2016-2017 involving 1,200 beneficiaries of international protection found group-specific differences in the integration to the labour market. Despite the shortage of skilled workers in Austria, former technicians seem to have had very little chances of finding work. The mismatch between qualifications and employment is high: more than 75% of respondents worked in a field which did not or only partially fit their academic background. 25% of respondents had participated in a competence check by the AMS, but participation in the check and value courses had no direct impact on the integration of their previous work experience; the potential effects of these recent measures are only expected to be made visible in the medium term.[639]

Austria has set up a number of counselling and contact points, as well as an information portal (AST). In **Vienna**, however, all beneficiaries now undergo a competency evaluation. Where recognised beforehand, highly qualified persons in regulated profession e.g. doctors are sent to “Check In Plus” immediately to receive assistance in the recognition process.

Beneficiaries have to consult the Austrian Integration Fund (ÖIF) after they have received protection status. The ÖIF places these persons to language courses and courses on Austrian values. They have to register with the job centre and can then take part in job-related assistance measures, if their language proficiency is sufficient, or in language-related assistance measures. Surveys of the job centres found that 10% of persons with protection status can be integrated into the labour market within the first year.

On the other hand, since September 2017, beneficiaries of international protection who are able to work but cannot secure employment are required to complete a one-year standardised integration programme

638 Anerkennungs- und Bewertungsgesetz (AuBG), BGBl. I Nr 55/2016, available at: http://bit.ly/2lkdc5S.

639 ICMPD, *Integrationsmassnahmen und Arbeitsmarkterfolg von Flüchtlingen und subsidiär Schutzberechtigen in Österreich*, November 2017, available in German at: https://bit.ly/3LrQP9Q.

focusing on language acquisition, career orientation and vocational qualification (see Social Welfare).

Concerning labour forces, the imbalanced distribution of supply and demand within Austria also presents a challenge to integration into the labour market. Many persons with protection status relocate into urban centres, especially **Vienna**, where the unemployment rate is also higher than in the western federal provinces. There is a great demand for workers in the tourism regions of the West. In the public debate, the tense situation of the Austrian labour market is one area which is used to argue in favour of the closing of borders.

In July 2019, the director of the Labour Market Service stated that 40% of all recognised refugees in 2016 had found employment, and that 35% of recognised refugees from 2017 had also found employment. In total, around 9% of all persons registered as unemployed were asylum status holders,[640] and 20% of all unemployed beneficiaries of international protection under 25 years were residing in Vienna.[641] In July 2021, the Head of the Labour Market Service announced that out of the 9,500 persons that were granted asylum in 2015 and subsequently registered at the Labour Market Service, more than 50% had found employment. Nevertheless, refugees and beneficiaries of subsidiary protection were heavily affected by the consequences of the Covid-19 pandemic on the labour market. Women, in particular, lost work, and their integration into the labour market has deteriorated in this aspect according to the Head of the Labour Market Service.[642]

A total of 327,308 persons were listed as unemployed or in training by the end of April 2022, which is 106,135 fewer than at the same time in 2021 or 24.5% fewer people. Compared to April 2021, the decrease in absolute numbers is greatest in Vienna (-32,540), Lower Austria (-15,842) and Tyrol (-12,180), in relative terms in Tyrol (-40.7%), Salzburg (-39.2 %) and Lower Austria (-29.4%). According to a nationwide assessment, the unemployment rate is 6.1%, which is 2.5% lower than it was in 2021.

## 2. Access to education

Access to education is the same for beneficiaries as for asylum seekers (see Reception Conditions: Education). However, there is no restriction with regard to apprenticeships for beneficiaries. **Refugees** can receive a public grant, including support for public transport, in order to study, which is not available for asylum seekers. As of January 2023, all minors, including refugees and beneficiaries of subsidiary protection, are under the duty to attend either a higher school, to do an apprenticeship or to prepare for an apprenticeship through other courses (*Ausbildungspflicht*).[643] The violation of mandatory training is punishable since 18 January, 2023 by a fine ranging from 100 to 1,000 euros in repeated cases.

Although awareness on the difficulties that refugee children experience has increased and more resources are made available, these are not sufficient to support the children in regular schools until they obtain sufficient language proficiency.

640 Kurier, ‚44 Prozent der Flüchtlinge aus 2015 haben bereits einen Job', 28 July 2019, available in German at: https://bit.ly/2IOmEbF.

641 Wiener Zeitung, ‚Jeder fünfte Asylberechtigte unter 25 ohne Job kommt aus Wien,' 24 January 2020, available in German at: https://bit.ly/33jf4z6.

642 Kleine Zeitung, „2015 bekamen sie Asyl – 50 Prozent der Geflüchteten haben heute einen Job", 2 July 2021, available in German at: https://bit.ly/3H2Vnib.

643 Ausbildungspflichtgesetz (ApflG), BGBl. I Nr 120/2016, available at: http://bit.ly/2lkgXsh.

# F. Social welfare

## 1. Forms and levels of social benefits

### 1.1. Needs-based minimum benefit

Access to social benefits is not the same for refugees and subsidiary protection beneficiaries. Holders of **subsidiary protection** have the right to Basic Care, which is significantly lower than the needs-based minimum benefit (*bedarfsorientierte Mindestsicherung*, BMS) to which **refugees** are entitled. Eligibility for the needs-based minimum benefit is derived directly from Article 29 of the recast Qualification Directive for subsidiary protection beneficiaries who do not receive Basic Care but reside in a rented flat. Currently, however, some federal provinces (**Burgenland**, **Lower Austria**, **Salzburg** and **Styria**) do not provide needs-based minimum benefits to beneficiaries of subsidiary protection at all, but only provide so-called "core benefits" under their Basic Care legislation.

Beneficiaries of subsidiary protection represent the largest group of the Basic Care beneficiaries, except in Tyrol. As a rule, they can remain in the Basic Care system after being granted protection status. However, as long as they live in an organised accommodation, they will only receive the basic care provided for these types of accommodation (food, pocket money, clothing, school fees).

The Constitutional Court has dismissed a complaint from a beneficiary of subsidiary protection against this differentiation in **Lower Austria**, on the ground that subsidiary protection is more provisional a status than refugee status, thereby justifying differential treatment in social benefits.[644]

In addition, **refugees** who apply for the needs-based minimum benefit are no longer on equal terms with nationals in some federal provinces. In 2020, nationals received € 885 (€ 664 for subsistence and € 221 for rent).

Existing assets must be used before claiming social assistance or basic security. However, certain assets (such as motor vehicles or valuable household goods) must be excluded from realisation if doing so could cause an emergency, exacerbate it, or jeopardise its resolution. Asset allowances are included in the minimum security provisions of state legislation (around €5,268 in 2023).

**Lower Austria:** Since 2016, refugees receive lower amounts of needs-based benefits than nationals. Nationals receive € 889.84, while refugees receive € 522.50, including a bonus of € 155 granted when they take part in integration measures such as language courses. The Administrative Court (LVwG) of Lower Austria has challenged the maximum amounts introduced by the reform before the Constitutional Court. The regulation was annulled by the Constitutional Court as it constituted an infringement of the principle of equality.[645]

The fact that **Burgenland** decided to cap minimum benefits per household, by limiting it at € 1,500 per household regardless of its size and the number of persons concerned has been considered as unconstitutional by the Constitutional court. The Court considered that, even if the cost of living per person may decrease depending on the size of the household, additional expenses are still required for each additional person.[646]

In Burgenland, just as in Lower Austria, a waiting period for obtaining social benefits had been envisaged: those who had not been in Austria for at least five years within the last six years received less social

644 VfGH, Decision E 3297/2016, 7 July 2017, available in German at: http://bit.ly/2EOPlFB.
645 VfGH, Decision G136/2017, 7 March 2019, available in German at: https://bit.ly/2pbTuc3.
646 VfGH, Decision E1277/2018, 12.12.2018, available in German at: https://bit.ly/2UO2EtQ.

benefits. The Constitutional Court ruled that this waiting period constitutes a different treatment of Austrian citizens and aliens. Regarding persons entitled to asylum, the scheme was considered particularly unjustified as they had to leave their country of origin and cannot return there. They must therefore not be assimilated to other strangers (EU citizens and third-country nationals) who are free to return to their country of origin. The length of stay in Austria should not lead to a differentiation in the amount of benefits granted and does not allow for assumptions as to the willingness to work of a person. [647]

**Upper Austria:** The general level of needs-based benefits is € 921,30 per month, including for refugees with a permanent Residence Permit. Refugees with a temporary residence permit granted from 1 July 2016 onwards and subsidiary protection holders only receive core benefits of € 405 per month, as well as an additional amount of € 155 (integration bonus) per month subject to compliance with integration measures. The total amount of benefits granted per month is € 560. The regulation was annulled by the Constitutional Court as it constituted an infringement of the principle of equality.[648]

The Administrative Court (LVwG) of Upper Austria made a preliminary reference to the CJEU to ask whether Article 29 of the recast Qualification Directive is directly applicable; and whether it is possible to differentiate the level of benefits granted on the basis of the duration of the right of residence.[649] On 21 November 2018, the CJEU concluded that EU law precludes national legislation which provides that refugees with a temporary right of residence in a Member State are to be granted social security benefits which are less than those received by nationals of that Member State and refugees who have a permanent right of residence in that Member State.[650]

For all minimum income beneficiaries, there is a maximum amount of € 1,512 granted per household, a regulation that was not contested by the Constitutional Court. For larger families, the minimum standards of all persons of a household community will be reduced evenly in percentage terms. In addition, in assessing whether a sufficient amount is available to avoid social distress, minor dependent persons may also take into account the basic amount of the family allowance and the child deduction amount. These services serve to secure livelihoods, the Constitutional Court decided.[651]

**Vorarlberg:** Restrictions have been introduced as of 1 January 2017 for refugees and subsidiary beneficiaries. Cash benefits may be replaced by benefits in kind if this better suits the purpose of the guaranteed minimum income. Different minimum personal security rates are introduced depending on the type of accommodation, single or in shared flats, because in shared apartments “regular cost savings, especially in the area of household effects, heating and electricity” are assumed. The maximum flat rate for housing needs for six people is € 772 per month. The changes were contested by the Ombudsman of Vorarlberg as unconstitutional before the Constitutional Court, as these maximum rates for rent are too low in view of the situation on the Vorarlberg housing market. The Constitutional Court upheld most restrictions and only found the retroactive application of the measure to be unconstitutional.[652]

In November 2018, the Ministry of Social Affairs presented a draft law on social benefits.[653] The proposal sets a maximum amount of benefits that federal provinces are obliged to grant and drastically reduces subsidies for households with several children. It also promotes compensation in kind rather than in cash. The draft law further sets certain conditions to receive the full amount of social benefits, which includes knowledge of German (level B1) or alternatively of English (C1). Refusing to integrate the labour market

647 VfGH, Decision G308/2018-8, 1 December 2018, available in German at: https://bit.ly/3yJA6HO.
648 VfGH, Decision G164/2019, 12 December 2019, available in German at: https://bit.ly/3nntkVZ.
649 LVwG, Upper Austria, ‘Bedarfsorientierte Mindestsicherung für befristet Asylberechtigte: Landesverwaltungsgericht Oberösterreich legt EuGH Fragen zur Vorabentscheidung vor’, 19 December 2017, available in German at: https://bit.ly/3ZQEKzn.
650 CJEU, *Ayubi*, Case C-713/17, 21 November 2018, available at: http://bit.ly/3Lo3Otk.
651 VfGH, Decision G 156/2018, 11 December 2018, available in German at: https://bit.ly/3YNcSLr.
652 VfGH, Decision V 101/2017-11, 12 December 2017, available in German at: http://bit.ly/2EMeAnP.
653 Entwurf Sozialhilfe-Grundsatzgesetz, Sozialhilfe-Statistikgesetz (104/ME), available at: https://bit.ly/2GshdzV.

will also lead to cuts of about € 300 for single persons. While Austrian citizens will hardly be concerned by these new measures, refugees will be strongly affected. As regards beneficiaries of subsidiary protection, they will be excluded from the new social benefits law, which is contrary to Article 29 (2) of the recast Qualification Directive and the obligation to treat aliens equally with nationals.

The law was passed under heavy criticism by NGOs in May 2019 and immediately brought to the Constitutional Court by the opposition party SPÖ.[654] In December 2019, the Court declared several parts of the law unconstitutional. This includes the provision which foresaw that language skills are a precondition for receiving the full amount of social benefits; as well as the provision foreseeing a reduction of social benefits depending on the number of children (i.e. 25% for the first child; 15% for the second child and 5% for every remaining child).[655] The law as a whole was not abandoned, however, and the ruled out provisions were not replaced.

### 1.2. Other social benefits

Beneficiaries of subsidiary protection are also treated differentially with regard to family and childcare allowances, to which they are only entitled if they do not receive Basic Care. An additional condition for the childcare allowance for these persons is to earn an income.

A particular difficulty emerges when delays occur in the extension of the right of residence of beneficiaries of subsidiary protection. In fact, the family allowance for children will no longer be granted if the right to residence is not extended in due time, i.e. before its expiry. This practice of the tax offices was unsuccessfully criticised by the Ombudsman Board,[656] and the relevant case law has not been complied with yet.

## 2. Conditions for social benefits

The main condition for the needs-based minimum benefit is the need for assistance, which also applies to nationals.

Additional requirements have further been introduced in some federal provinces in the last years. These include an integration contract and participation to integration measures. Since September 2017, beneficiaries of international protection who are able to work and have not secured employment must complete a standardised integration programme of one year. This obligation applies to refugees and subsidiary protection holders who were granted status after 31 December 2014. As of April 2018, asylum seekers that have a high recognition rate should also be able to participate to the integration programme.[657] According to information provided by the Austrian Integration Fund (ÖIF), this applies particularly to Syrians.

In **Styria**, benefits can be cut up to 25% already for small misdemeanours, e.g. missing an appointment. In **Lower Austria**, where German language courses are mandatory for persons in the needs-based minimum benefit system, the allowance can be reduced by up to 50% if the person refuses to attend. In **Vorarlberg**, where beneficiaries are obliged to sign an integration agreement since January 2016, benefits can be reduced or withdrawn when refugees do not adhere to the integration agreement which they have to enter, e.g. by refusing to attend a language course.

654 Statements to the draft law, available in German at: https://bit.ly/38hQW0w.
655 VfGH, Decision G 164/2019-25, G 171/2019-24, 12 December 2019, available in German at: https://bit.ly/39iNmop.
656 Volksanwaltschaft 2021, available in German at: https://bit.ly/3p0z5tj.
657 Labour Integration Act, BGBl. I No 75/2017, 19 June 2017, available in German at: http://bit.ly/2EXvtPU.

Social assistance is distributed by the Social Department of the federal province. The Tax Office is responsible for the family allowance, while health insurance is responsible for the child-care allowance. The needs-based minimum benefit is granted in the respective federal province where the beneficiary resides. Beneficiaries may transfer their residence to another federal province, however. In one case, **Upper Austria** reduced benefits by 15% due to the beneficiary's relocation to **Tyrol**. The Administrative Court of Tyrol found the reduction unlawful, as it was necessary for the person to move to Tyrol in order to find employment.[658]

**Lower Austria** also introduced a 5-year residence requirement, which was appealed by the LVwG before the Constitutional Court. This precondition was violating constitutional rights (see decision above).

## G. Health care

Asylum seekers and persons entitled to subsidiary protection who are in Vienna's basic health care system are automatically insured with the Austrian Health Insurance Fund (ÖGK) if free co-insurance with relatives is not possible. Persons entitled to asylum are insured through the needs-based minimum income scheme (BMS) or through their employer.

As **beneficiaries of subsidiary protection** have no maximum time limit on basic care, they always enjoy health insurance similar to asylum seekers (see Reception Conditions: Health Care). Meanwhile, **refugees** enjoy basic care for 4 months after recognition of their status. When participating in courses of the job centres, they are also covered by health insurance. As soon as they start to work more than a few hours, the mandatory health insurance takes effect. When refugees are considered to be without resources and receive needs-oriented minimum basic benefits, they also have health insurance.

Access to psychological therapy for traumatised refugees and torture survivors is possible as a transitional measure within AMIF projects when the therapy had already begun during the asylum procedure. Although such projects exist in every federal province, their capacities barely cover the demand. Starting in 2021, a new project called RESET funded by the Ministry of Social Affairs was introduced. It provides extra funding for organisations offering psychotherapy to refugees.[659] Other costs of psychological therapy are only partly covered by health insurances.

Asylum seekers are not eligible for childcare subsidies. The care allowance is reduced from the minimal income for persons who qualify for asylum. Only those who have previously been employed are eligible for childcare assistance under subsidiary protection.
Childcare allowance must be applied for at the Insurance Fund (ÖGK). It is important that the application is submitted in good time - if necessary before the family allowance notice is received. Because the childcare allowance is only paid out retrospectively for 6 months and a full compliance with all mandatory mother-child passport examinations is required. The confirmation of this must be submitted to the health insurance company by the 15th month of the child's life. Otherwise the childcare allowance will be reduced.

658 LVwG Tyrol, Decision 2016/41/0301-1, 24 February 2016, available in German at: https://bit.ly/40aIueP.
659 Asylkoordination österreich, RESET heißt Neustart, available in German at: https://bit.ly/3O0cF3d.

# ANNEX I – Transposition of the CEAS in national legislation

**Directives and other CEAS measures transposed into national legislation**

| Directive | Deadline for transposition | Date of transposition | Official title of corresponding act | Web Link |
|---|---|---|---|---|
| **Directive 2011/95/EU** Recast Qualification Directive | 21 December 2013 | 1 January 2014 | Federal Act concerning the Granting of Asylum (AsylG) Aliens Law Restructuring Law - Adjustment Law | http://bit.ly/1QjH2M7 http://bit.ly/2lyUjvp |
| **Directive 2013/32/EU** Recast Asylum Procedures Directive | 20 July 2015 Article 31(3)-(5) to be transposed by 20 July 2018 | 20 July 2015 | Aliens Law Amendment Act (FrÄG 2015) BGBl 70/2015 of 18 June 2015 | http://bit.ly/1SzV6Du |
| **Directive 2013/33/EU** Recast Reception Conditions Directive | 20 July 2015 | 20 July 2015 | Aliens Law Amendment Act (FrÄG 2015) BGBl 70/2015 of 18 June 2015 | http://bit.ly/1SzV6Du |
| **Regulation (EU) No 604/2013** Dublin III Regulation | Directly applicable 20 July 2013 | 20 July 2015 | Aliens Law Amendment Act (FrÄG 2015) BGBl 70/2015 of 18 June 2015 | http://bit.ly/1SzV6Du |

The following section contains an overview of incompatibilities in transposition of the CEAS in national legislation:

| Directive | Provision | Domestic law provision | Non-transposition or incorrect transposition |
|---|---|---|---|
| **Directive 2013/33/EU** Recast Reception Conditions Directive | Art 15(1) | Implementing Decree of the Ministry of Economy and Labour concerning the EU-Enlargement-Amendment-Act (BGBl I 28/2004) of 11 May 2004, GZ 435.006/6---II/7/04. | The decree foresees that asylum seekers can only receive temporary employment permits as part of the seasonal quotas; thus there is no effective access to the labour market. |
| | Art 20(4)(5) | § 3 Basic Care Act (GVG-B) | The national law foresees that applicants can be excluded from basic care in case of certain violations. |