

Country Report: Austria



2016
Update

asyl*koordination*
Österreich



Acknowledgements & Methodology

This report was written by Anny Knapp, Asylkoordination Österreich, and was edited by ECRE.

This report draws on information provided by the Ministry of Interior in 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, Volkshilfe among others.

The information in this report is up-to-date as of 31 December 2016, 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 on asylum practice in 20 countries. This includes 17 EU Member States (AT, BE, BG, CY, DE, ES, FR, GR, HR, HU, IE, IT, MT, NL, PL, SE, UK) and 3 non-EU countries (Serbia, Switzerland, Turkey) which is accessible to researchers, advocates, legal practitioners and the general public through the dedicated website www.asylumineurope.org. 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.



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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
AHZ	Pre-removal detention centre Anhaltezentrum
AMIF	Asylum, Migration and Integration Fund
AsylIG	Asylum Act Asylgesetz
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
HAP	Humanitarian Admission Programme
IBF	Interventionsstelle für Betroffene von Frauenhandel
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
TEU	Treaty on European Union
UVS	Independent Administrative Board
VfGH	Constitutional Court Verfassungsgerichtshof
VQ	Distribution centre Verteilungsquartier
VwGH	Administrative High Court Verwaltungsgerichtshof

Statistics

Overview of statistical practice

Asylum statistics are published on a monthly basis by the Federal 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: 2016

	Applicants in 2016	Pending applications in 2016	Refugee status	Subsidiary protection	Humanitarian protection	Rejection	Refugee rate	Subs. Prot. rate	Hum. Prot. rate	Rejection rate
Total	42,073	:	21,628	3,451	1,438	:	:	:	:	:

Breakdown by countries of origin of the total numbers

Afghanistan	11,742	:	1,636	1,581	42	:	:	:	:	:
Syria	8,845	:	15,166	552	7	:	:	:	:	:
Iraq	2,837	:	1,279	569	21	:	:	:	:	:
Pakistan	2,494	:	28	7	21	:	:	:	:	:
Iran	2,454	:	426	6	11	:	:	:	:	:
Nigeria	1,848	:	15	13	129	:	:	:	:	:
Russia	1,610	:	438	85	244	:	:	:	:	:
Somalia	1,534	:	477	369	2	:	:	:	:	:
Morocco	1,043	:	3	2	8	:	:	:	:	:
Algeria	1,016	:	3	0	11	:	:	:	:	:

Source: Ministry of Interior, Asylum Statistics December 2016: <http://bit.ly/2k2N2Ue>.

¹ Ministry of Interior, *Asylum Statistics*, available in German at: <http://bit.ly/1fugJL>.

² BFA, *Statistics*, available in German at: <http://bit.ly/1XKnn5y>. These have been published since 2014.

Gender/age breakdown of the total number of applicants: 2016

	Number	Percentage
Total number of applicants	42,073	-
Men	28,207	67%
Women	13,866	33%
Children	Not available	-
Unaccompanied children	4,551	10.8%

Source: Ministry of Interior, Asylum Statistics December 2016: <http://bit.ly/2k2N2Ue>.

Comparison between first instance and appeal decision rates: 2016

The Ministry of Interior does not disaggregate first-instance from second-instance decisions.

Overview of the legal framework

Main legislative acts relevant to asylum procedures, reception conditions and detention

Title (EN)	Original Title (DE)	Abbreviation	Web Link
Federal Act concerning the Granting of Asylum, as in force since 21 July 2015	Bundesgesetz über die Gewährung von Asyl 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, as in force since 21 July 2015	Bundesgesetz über die Ausübung der Fremdenpolizei, die Ausstellung von Dokumenten für Fremde und die Erteilung von Einreiseteil StF: BGBl. I Nr. 100/2005	Aliens Police Act (FPG)	http://bit.ly/1QkRGqx (DE)
General Administrative Procedures Act	Allgemeines Verwaltungsverfahrensgesetz 1991 StF: BGBl. Nr. 51/1991	AVG	http://bit.ly/1GQJ9Gp (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) 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 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 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	Vereinbarung zwischen dem Bund und den Ländern gemäß Art. 15a B-VG über gemeinsame Maßnahmen zur	Grundversorgungsvereinbarung	http://bit.ly/1PYPndi (DE)

of the Federal Constitution concerning joint action for the temporary basic provision of aliens in need of help and protection in Austria	vorübergehenden Grundversorgung für hilfs- und schutzbedürftige Fremde (Asylwerber, Asylberechtigte, Vertriebene und andere aus rechtlichen oder faktischen Gründen nicht abschiebbare Menschen) in Österreich StF: BGBl. I Nr. 80/2004		
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 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 <i>Amended by:</i> 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 StF: BGBl I 46/2013 <i>Geändert durch:</i> Vereinbarung zwischen dem Bund und den Ländern gemäß Artikel 15a B-VG über eine Erhöhung ausgewählter Kostenhöchstsätze des Art. 9 der Grundversorgungsvereinbarung StF: BGBl 48/2016		http://bit.ly/2jR2MXQ (DE) 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 StF: BGBl 435/1996		http://bit.ly/2kszyOO (DE)
Federal Act on Citizenship	Bundesgesetz über die österreichische Staatsbürgerschaft StF: BGBl. Nr. 311/1985	StbG	http://bit.ly/2j7KSTL (DE)

Main implementing decrees and administrative guidelines and regulations relevant to asylum procedures, reception conditions and detention

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 StF: BGBl. II Nr. 413/2005	Staatendokumentationsbeiratsverordnung	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 wrden 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) http://bit.ly/1FWUTGD (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 StF: BGBl. II Nr. 2/2005	Betreuungseinrichtungen-Betreuungsverordnung 2005 (BEBV)	http://bit.ly/1FombIG (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 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/1FOrP2P (DE) http://bit.ly/1ENcXOh (DE)

Overview of the main changes since the previous report update

The report was previously updated in **December 2015**.

Asylum reform

- Several changes to the asylum procedure and content of international protection were introduced through the Aliens Law Amendment Act 2016 (FrÄG 2016) entering into force on 1 June 2016.

Asylum procedure

- **Access to the procedure:** An amendment to the law created the possibility to introduce exceptional provisions. These essentially aim at preventing access to asylum procedures and send asylum seekers back to other countries and refuse them entry, once a fixed quota of asylum applications has been admitted for examination on the merits in Austria. A quota for 37,500 applications was introduced for 2016, and is planned to decrease in the following years.
- **Duration of the procedure:** The maximum duration of proceedings at the BFA was extended from 6 to 15 months, only subsequently request for devolution (*Säumnisbeschwerde*) is admissible.³ The provision entered into force on 1 June 2016 and is supposed to remain in force for two years. The explanatory notes to the amendment remark that procedures with regard to vulnerable groups, e.g. unaccompanied minors, are to be prioritised.
- **Appeal:** The time limit for the submission of an appeal had to be raised following a judgment of the Constitutional Court (VfGH).⁴ The appeal period for challenging return decisions is 2 weeks, up from the previous 1-week deadline. For decisions of the BFA which are not accompanied by a return decision, the appeal period is now 4 instead of the previous 2 weeks. The appeal period was not raised with regard to cases where an asylum application is rejected and a return decision was ordered.
- **Legal representation in appeals:** The duties of the legal advisors provided by the state for the appeal procedure were clarified by a decision of the Administrative High Court. As of 1 October 2016, they are under the obligation to participate in hearings before the Federal Administrative Court and to represent applicants during the proceedings, if the asylum seeker so wishes.⁵ The Constitutional Court decided that differentiating the scope of legal advice according to the type of procedure – asylum, basic care or return proceedings – is discriminatory and, therefore, unconstitutional.⁶

Reception conditions

- Asylum seekers receive free legal representation when their basic care is restricted or cancelled. The Minister of Interior published a catalogue of benefits for non-profit auxiliary activities of asylum seekers for the federal state, state or municipality. Meanwhile, the legislature was not able to agree on the amount of remuneration.

³ Article 22(1) AsylG, applicable as of 1 June 2016.

⁴ VfGH, Decisions G 589/2015-6, G 653/2015-4, G 9/2016-4, 23 February 2016, available in German at: <http://bit.ly/2jwOISx>.

⁵ Article 52(2) BFA-VG, applicable as of 1 October 2016.

⁶ VfGH, Decision G 447-449/2015-13, 9 March 2016, available in German at: <http://bit.ly/2jR9OMi>.

- **Accommodation:** After the arrival of less asylum seekers in 2016, many emergency centres were closed in the course of the year.
- **Financial allowance:** The reimbursement of expenses concerning accommodation and subsistence were adjusted: the maximum cost rate for accommodation, subsistence and care in an organised reception centre is €21 per day. Asylum seekers living in private accommodation receive €365 instead of €320 per month. The rate for unaccompanied minors requiring the highest care was raised from €77 to €95. Places for unaccompanied minors with less intensive care receive €63.50 instead of €60 and €40.50 instead of €37.⁷ Although the amendments entered into force on 1 July 2016, not all states have adjusted the amount of the daily rate equally.
- **Use of coercion:** A draft Aliens Law Amendment Act 2017 (FrÄG 2017)⁸ entails an amendment to the Federal Basic Care Act (*Grundversorgungsgesetz – Bund 2015*), specifying that personnel in accommodation facilities are entitled to exercise coercive power (*Befehls- und Zwangsgewalt*) in order to enforce house rules and security e.g. to expel a person who does not comply with the facility's house rules. According to the Ministry of Interior, Department III/5, the personnel entitled to such coercive power would be, for instance, the staff of private security companies that are contracted to manage accommodation facilities, such as ORS Service GmbH.

Detention of asylum seekers

- There were not many cases of detention pending deportation with regard to asylum seekers in 2016. Legal amendments concerned the duration of the return or push-back of foreigners who have illegally entered or reside in Austria: the duration was raised from 7 to 14 days. The maximum duration of an arrest to secure return was extended from 5 to 14 days.

Content of international protection

- **Residence permit:** Following the “temporary asylum” (*Asyl auf Zeit*) reform, the previously indefinite right of residence granted with asylum is now issued for the duration of 3 years since June 2016. The right to residence becomes indefinite *ex officio*, when no cessation proceedings have been commenced within these 3 years. The BFA issues yearly reports on the situation in important countries of origin. If these reports indicate that a substantial change has taken place in the countries, cessation proceedings have to be commenced.
- **Social assistance:** Refugees who apply for social support in the form of the needs-based minimum benefit system (*bedarfsorientierte Mindestsicherung*) are not on equal terms with nationals anymore in Upper Austria and Lower Austria. The benefits are guided by the substantially lower monthly basic care for asylum seekers (€365) whereas the poverty line in Austria is at approximately €1,000 per person. Nationals receive €914, while refugees receive €520, including a bonus of €155 granted when they take part in integration measures such as language courses. In Styria, benefits can be cut up to 25% already for small misdemeanours, e.g. missing an appointment. In Vorarlberg, benefits can be cut when refugees do not adhere to the integration agreement which they have to entered since January 2016, e.g. by refusing to attend a language course. Since April 2016 people granted subsidiary protection have been excluded from the needs-based minimum benefit system in Lower Austria, contrary to Article 29

⁷ Agreement between the federal state and states under Article 15a concerning the raise of selected maximum cost rates of Article 9 Basic Care Agreement, 21 June 2016, available in German at: <http://bit.ly/2jwNiHN>.

⁸ FrÄG 2017, explanatory notes and comments available at: <http://bit.ly/2k1m6jE>.

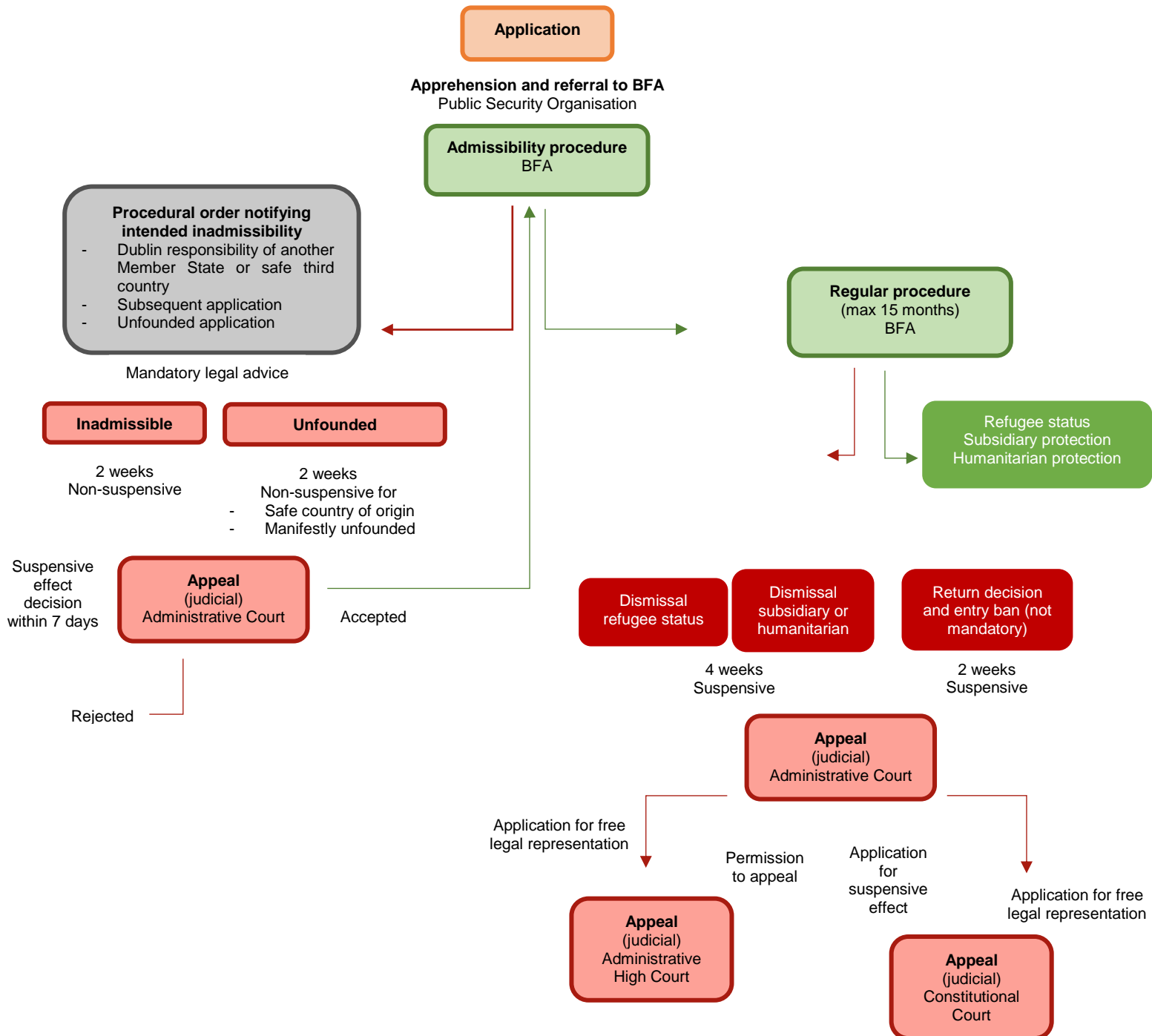
of the recast Qualification Directive. Even before the reform, this group was only entitled to basic care benefits in some federal provinces.

- **Withdrawal:** A draft Aliens Law Amendment Act 2017 (FrÄG 2017) entailing further modifications has been submitted to the Parliament in December 2016. The bill specifies that a procedure to withdraw refugee status is started as soon as a refugee is accused of a crime or caught in the act of committing a crime. This withdrawal procedure is planned to be a fast-track procedure, to be completed at the latest within one month from the final judgment in criminal proceedings.
- **Family reunification:** The draft amendment also specifies that an application for family reunification must be assessed by the relevant embassy, if the applicant is a relative of the refugee. According to the explanations to the draft, the embassy must do so using certificates and similar documents, or DNA analysis. The embassy has to provide the opportunity for DNA analysis, if the applicant asks and pays for it.

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: | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| ▪ Prioritised examination: ⁹ | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| ▪ Fast-track processing: ¹⁰ | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| ❖ Dublin procedure: | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| ❖ Admissibility procedure: | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| ❖ Border procedure: | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| ❖ Accelerated procedure: ¹¹ | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| ❖ Other: Family 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)
Second (onward) appeal	Administrative High Court Constitutional Court	Verwaltungsgerichtshof (VwGH) Verfassungsgerichtshof (VfGH)
Subsequent application	Federal Agency for Immigration and Asylum	Bundesamt für Fremdenwesen und Asyl (BFA)

4. Number of staff and nature of the first instance 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 first instance authority?
Federal Agency for Immigration and Asylum (BFA)	1,284	Ministry of Interior	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No

Source: BFA, *Jahresbilanz 2016*, 15 January 2017: <http://bit.ly/2k4P5r1>. The figure includes apprentices. The same source mentions plans to expand the BFA to 1,426 staff members.

⁹ For applications likely to be well-founded or made by vulnerable applicants. See Article 31(7) APD.

¹⁰ Accelerating the processing of specific caseloads as part of the regular procedure.

¹¹ Labelled as “accelerated procedure” in national law. See Article 31(8) APD.

5. Short overview of the asylum procedure

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

The Federal Agency for Immigration and Asylum (*Bundesamt für Fremdenwesen und Asyl*) (**BFA**) is responsible for deciding as the first instance authority in asylum procedures. As of 1 January 2014, a reform of administrative procedures rendered the Federal Agency for Immigration and Asylum responsible for asylum applications, residence permits on exceptional humanitarian grounds and certain Aliens' Police proceedings. The procedure before the Federal Administrative Court (*Bundewervaltungsgericht*) (**BVwG**) is also regulated by the Asylum Act, the BFA Procedures Act (**BFA-VG**), by the General Administrative Procedures Act and the Federal Administrative Court Act.¹²

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. With the latest legal amendment in 2016, "special provisions to maintain public order during border checks" were added to the Asylum Act. When the provision (discussed publicly as "emergency provision") enters into force through a decree of the federal government, asylum seekers no longer have access to the asylum procedure in Austria. Decisive for denying asylum applications is a maximum number, otherwise a 'quota', of asylum applications to be examined on the merits. For 2016 this number was set at 37,500 applications and was not reached.¹³ For 2017 the limit is set at 35,000 applications, yet the government recently proposed a clear reduction.

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. Only where an application for asylum is dismissed on the merits do the authorities have to grant subsidiary protection if the person qualifies for that status. A separate application for subsidiary protection is not possible. Following 20 July 2015, 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. If the BFA issues a return decision together with the rejection decision – and grants no subsidiary protection status or a humanitarian residence permit – the appeal has to be lodged within two weeks. An appeal against a decision rejecting an application as inadmissible does not have suspensive effect and has to be submitted within two weeks. 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.

¹² See the section on [Overview of the Legal Framework](#) above.

¹³ 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.

Article 18(1) BFA-VG provides a number of grounds for not allowing suspensive effect. These include, *inter alia*, the applicant's attempt to deceive the BFA concerning their true identity or nationality or the authenticity of their documents, the lack of reasons for persecution, if the allegations made by the asylum seeker concerning the danger they 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.

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 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.¹⁴ 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 appeal to the Administrative High Court (*Verwaltungsgerichtshof*) (**VwGH**) was reintroduced on 1 January 2014 after 6 years of almost no leading decisions from the High Courts. The (former) Asylum Court had not submitted any requests for leading decisions to the Administrative High Court from 2008 to 2013. The BVwG may decide that the rejection of the application can be appealed to the Administrative High Court. 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 does not allow the appeal, the asylum seeker may demand an extraordinary remedy.

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.

In every stage of the procedure, asylum seekers are informed about the possibility of support for voluntary return. The BFA can also order consultation with regard to return. When an asylum seeker leaves the country in the context of voluntary repatriation to his or her country of origin, the asylum proceeding is filed as redundant.

¹⁴ Article 20 BFA-VG.

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

Refusals of entry at the Austrian-Italian border

In 2015, Italy, Germany and Austria agreed to common police controls in trains from Italy to Germany between the train stations **Trentino** and **Brenner**. Refugees without valid travel documents had to leave the train in Bozen. The government of South-Tyrol installed a centre for refugees at the railway station at the Austrian-Italian border of Brenner.¹⁵ Italy started in June 2015 with border controls, the newspaper Der Spiegel reported. The Italian police reacted to a request from Germany.

Refusals of entry at the Austrian-Slovenian border

At the beginning of 2016, there were a lot of rejections at the Slovenian border. Out of 3,723 rejections, 3,225 concerned Slovenia where 2,246 persons were rejected in January 2016 and 775 in February 2016.¹⁶ It turned out that policemen at the border relied on interpreters with poor knowledge of the languages spoken by the people trying to enter.¹⁷

There have been two dozen complaints against rejections which were partly upheld by the State Administrative Court (*Landesverwaltungsgericht*) (LVwG) of Styria. The Court deemed it unlawful for refugees to be turned away despite their declaration of wanting to seek asylum in Germany or Austria, because these decisions were arbitrary.¹⁸ According to Article 14(2) of the Schengen Borders Code, a refusal of entry can only be done through a decision on well-founded grounds. Although refusal of entry documents were issued, the reasons for such rejections employed standard wording e.g. “no war area”, “no humanitarian reason”, or “just wants a better life.”

Special provisions to maintain public order during border checks

With the latest 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.¹⁹

The provision (discussed publicly as “emergency provision”), upon activation by a decree of the federal government, entails that asylum seekers no longer have access to the asylum procedure in Austria. Decisive for denying asylum applications is a maximum number, otherwise a ‘quota’, of asylum applications to be examined on the merits. For 2016 this number was set at 37,500 applications and was not reached.²⁰ For 2017 the limit is set at 35,000 applications, yet the government recently proposed a clear reduction.

¹⁵ ORF, ‘Kritik an österreichischen Grenzkontrollen’, 22 April 2015, available at: <http://bit.ly/1ILWXF1>.

¹⁶ Ministry of Interior, Reply to parliamentary question 10544/J (XXV.GP), 9 December 2016, available in German at: <http://bit.ly/2jez65e>.

¹⁷ Ö1, ‘Mängel bei Grenzmanagement in Spielfeld’, 10 March 2016, available in German at: <http://bit.ly/2jeETaS>.

¹⁸ LVwG Styria, Decision 20.3-918/2016-15, 9 September 2016, available in German at: <http://bit.ly/2jRiX7z>.

¹⁹ Articles 36-41 AsylG.

²⁰ 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.

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 during the initial interview (*Erstbefragung*).²¹

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.²²

An asylum seeker is not issued a decision ordering return, and cannot appeal against the refusal to have his or her claim examined. In such a case, the asylum seeker has no right to remain on the territory,²³ therefore an appeal to the State Administrative Court (LVwG) does not have suspensive effect.²⁴

The amendment has been criticised by UNHCR and civil society organisations,²⁵ 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.

2. Registration of the asylum application

Indicators: Registration

1. Are specific time-limits laid down in law for asylum seekers to lodge their application? Yes No
2. If so, what is the time-limit for lodging an application?

An application for international protection can be made before an agent of the public security service or a security authority. The application is lodged with the instruction of the branch office of the BFA to the police on the next steps. This could be the transfer of the applicant to the initial reception centre (EAST) by the security authorities. Asylum seekers may otherwise be transferred to a dispersal centre (VQ) or helped to go there. Within a period of 48 hours after apprehension by the security authority – that may be extended to 72 hours – after the request was made, the first interrogation (*Erstbefragung*) has to take place.²⁶ All documents, including the minutes of the first interrogation, are sent to the asylum authorities, which will have to continue the procedure with the interview. The application is registered as soon as the security authorities have submitted the minutes of the interrogation and all the documents of the asylum seekers to the BFA's branch office. In practice, after the summer of 2015 there were serious delays in the conduct of the first interrogation by the police. At the end of 2016, requests for international protection are forwarded without delay.

Persons with legal stay (residence permit) must submit their asylum application at the public security service too. The BFA orders to show up before the branch office within 14 calendar days. Otherwise, the application will be terminated as being no longer relevant. Parents apply for their children born in Austria at the branch office of the BFA.

²¹ Article 38 AsylG.

²² Article 41(1) AsylG.

²³ Article 39 AsylG.

²⁴ Article 41(2) AsylG.

²⁵ 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: <http://bit.ly/1MJVVM5>; 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>.

²⁶ Article 29(2) AsylG.

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: | 15 months |
| 2. Are detailed reasons for the rejection at first instance of an asylum application shared with the applicant in writing? | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No |
| 3. Backlog of pending cases at 30 November 2016: | cc. 50,000 |

The Federal Agency for Immigration and Asylum (BFA) is a specific department of the Ministry of interior, dealing with asylum matters. From 2014 onwards, the tasks of the Agency are 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 has been submitted. 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 Dublin, the existence of a safe third country or for being a subsequent asylum application, or to dismiss the application for other reasons. 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 of Article 22 AsylG, entering into force on 1 June 2016, allows for the extension of the duration of procedures at first instance up to 15 months.

Numbers for asylum applications not decided within 15 months by the Federal Administrative Court are not available. The average duration of the procedure during the first three quarters of 2016 was 8.2 months.²⁷ This represents an increase compared to 5.3 months in September 2015, and 3.3 months in December 2014.²⁸ Former Minister of Interior, Johanna Mikl-Leitner had stated in 2015 that Austria was “the asylum-express” compared to other EU Member States.²⁹ According to experience of NGOs, asylum seekers often wait more than 10 months for an appointment for the first interview.

Whereas the procedure for Syrians and Iraqis seems to be concluded within the 15-month time limit, other nationalities face delays of approximately 3 years for a decision.³⁰

In case of delay of the BFA, the asylum seeker may apply for devolution, upon which the file will be rendered to the Federal Administrative Court for a decision. However, in practice asylum seekers do not frequently apply for such devolution, as they miss a chance of receiving a positive decision at first instance (by the BFA). However, due to the amendments entering into force on 1 June 2016, which have restricted refugees’ right of residence to 3 years (see [Residence Permit](#)) and have imposed restrictions on family reunification (see [Family Reunification: Criteria and Conditions](#)), such complaints

²⁷ Ministry of Interior, Reply to parliamentary question 10831/J (XXV.GP), 11 January 2017, available in German at: <http://bit.ly/2j56wl6>.

²⁸ Ministry of Interior, Reply to parliamentary question 6748/J (XXV.GP), 7 December 2015, available in German at: <http://bit.ly/2jZMbDI>.

²⁹ OVP, ‘Mikl-Leitner zu Flüchtlingen: Asylexpress stoppen, Österreich entlasten’, 3 June 2015, available in German at: <http://bit.ly/1P0deHS>.

³⁰ FRA, *Monthly data collection on the migration situation in the EU*, January 2017, available at: <http://bit.ly/2jUsOcl>, 20, citing information from Caritas Vienna.

were often introduced in 2016. The Administrative High Court held that applications made in 2015 which had not been decided upon by the BFA did not amount to an infringement, given the impact the sharp increase in asylum applications had on the length of the asylum procedure.³¹

In the case of a delay of the Federal Administrative Court, an application to request a deadline may be addressed to the Administrative High Court.

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.³² The same maximum time limit applies to the “procedure for the initiation of a measure terminating residence” (see the section on [Accelerated Procedure](#)).

The practice of fast-track processing of cases from certain countries of origin which do *not* fall within the scope of the “safe countries of origin” list and the accelerated procedure was not observed in 2016. This is due to the fact that the list of safe countries of origin has been extended to countries such as **Algeria, Tunisia, Morocco, Georgia** and **Ghana** (see [Safe Country of Origin](#)). In the second half of 2016, the BFA concentrated on Dublin procedures to keep the option of sending asylum seekers to other EU Member States.

In relation to refugees from Syria that are resettled in Austria,³³ the Ministry of Interior announced that they will be granted asylum immediately upon arrival (asylum *ex officio*). In 2014 and 2015 most of the resettled refugees received positive decisions within a few days. However, in 2016 the procedures took much longer, and they often had to wait for several months for the interview on their case. Generally, Syrians have faced longer procedures in 2016 compared to previous years.³⁴

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?³⁵ Yes No
3. Are interviews conducted through video conferencing? Frequently Rarely Never

All asylum seekers must have one personal interview. Asylum seekers are subjected to an interrogation by the public security service shortly after making the application.³⁶ Such interrogation is conducted in particular with a view to ascertaining the identity of the asylum seeker and the travel route. Such interrogation shall not refer to the specific reasons for fleeing and lodging an asylum application. In practice, statements of the asylum seeker in this part of the admissibility procedure are accorded increased credibility, notwithstanding the fact that the interrogation is conducted by the police and not by the person responsible for the decision. The Constitutional Court ruled that the provision protects

³¹ VwGH, Decision Ro 2016/01/0001-0004, 24 May 2016, available in German at: <http://bit.ly/2ktbiM2>.

³² Article 22(6) AsylG.

³³ A total 174 refugees were resettled in 2016, compared to 758 in 2015: Ministry of Interior, *Asylum Statistics December 2016*, available in German at: <http://bit.ly/2k2N2Ue>, 3.

³⁴ FRA, *Monthly data collection on the migration situation in the EU*, January 2017, available at: <http://bit.ly/2jUsOcl>, 20, citing information from the Red Cross.

³⁵ However, the official conducting the interview is no longer responsible for the decision.

³⁶ Article 19 AsylG.

asylum seekers who may arrive exhausted and should therefore not be interrogated about their possibly traumatising reasons for flight by uniformed security officers.³⁷

Asylum seekers may be accompanied by a person they trust (person of confidence). Unaccompanied children must not be interviewed without the presence of their legal representative.

If the asylum seeker's fear of persecution is based on infringement of the right to sexual self-determination, they shall be interviewed by an official of the same sex unless they request otherwise. The authorities must prove that they have informed the asylum seeker of such possibility.³⁸ In practice, this is not consistently applied with regard to interpreters. 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.³⁹

Interpreters are provided by the BFA. Interpreters are available for most languages of the countries of origin, but interviews may also be conducted in a language the asylum seeker is deemed to understand sufficiently. With regard to countries with higher numbers of asylum seekers this practice is not satisfactory (e.g. Chechen refugees are often interviewed in Russian). Asylum seekers from African countries are often interviewed in English or French, languages 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.

Article 19(3) AsylG allows for tape recording of the interview, which is, however, rarely used in practice. Video conferencing is not foreseen in law.

The transcript is more or less verbatim. Its content may depend on the interpreter's summarising the answers, choosing expressions that fit for the transcript or translating each sentence of the asylum seeker. Immediately after the interview, the transcript is translated 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 the 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. Asylum seekers often realise that mistakes in the translation or the transcript were made when they receive a negative first instance decision and a legal adviser explains them the details of the transcript.

³⁷ VfGH, Decision U 98/12, 27 June 2012.

³⁸ Article 20 AsylG.

³⁹ VfGH, Decision U 1674/12, 12 March 2013 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.

1.4. Appeal

Indicators: Regular Procedure: Appeal

1. Does the law provide for an appeal against the first instance decision in the regular procedure?

❖ If yes, is it	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
❖ If yes, is it suspensive	<input checked="" type="checkbox"/> Judicial	<input type="checkbox"/> Administrative
	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No

2. Average processing time for the appeal body to make a decision: Not available

Appeals against a negative first instance decision have to be submitted within 4 weeks of the receipt of the decision and the whole file is forwarded by the BFA to the Federal Administrative Court (BVwG).⁴⁰

Previously, the time limit was 2 weeks. However, the Constitutional Court ruled on 23 February 2016 that deviation of Article 16(1) BFA-VG from the general 4-week time limit for submitting an appeal to the Federal Administrative Court⁴¹ is unjustified, as it is not necessary in the case of a rejection decision which is not connected with an expulsion order and the applicant is still entitled to remain on the territory.⁴² The BFA-VG was amended to reflect the ruling.

The BFA may make a pre-decision of the appeal within 2 months.⁴³ This pre-decision may change the decision in any direction (annul, reject or change the decision). The BFA, however, may refrain from deciding and forward the appeal to the Court.

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 (see the section on [Legal Assistance](#) below).

Article 18(1) BFA-VG provides that suspensive effect *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:⁴⁴

- (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.

⁴⁰ Article 16(1) BFA-VG, as applicable on 1 June 2016.

⁴¹ Article 7(4) BVwG-VG.

⁴² VfGH, Decisions G 589/2015-6, G 653/2015-4, G 9/2016-4, 23 February 2016, available in German at: <http://bit.ly/2jwOISx>.

⁴³ Article 14(1) Administrative Court Procedures Act (VwG-VG).

⁴⁴ Article 18(2) BFA-VG.

The BVwG must grant suspensive effect within 1 week from the lodging of the appeal, where it assumes that return would expose the person to a real risk of a violation of Articles 2, 3 and 8 ECHR or Protocols 6 or 13 ECHR, 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 Qualification Directive.⁴⁵ Appeals against the rejection of an application with suspensive effect have to be ruled by the Court within 8 weeks.⁴⁶ The asylum appeal has suspensive effect as long as the case is pending in court.

The BVwG is organised in chambers, each of which is responsible for certain groups of countries. Most of the judges of the BVwG previously worked at the Asylum Court, before it was replaced.

It has only limited competence of review, determined by the content of the appeal. In the view of the Federal Administrative Court and in relation to this link to the grounds and argumentation of the appeal that limits the subject of the appeal, it is necessary to accept an appeal with at least rudimentary grounds during the time-limit, in order to handle the appeal at all. An appeal lacking any argumentation or ground is not to be accepted for a process of improvement and has to be rejected immediately.⁴⁷

The BVwG can call for another hearing and additional examinations if necessary. The BFA-VG allows exceptions from the principle that a hearing shall take place on the appeal. Such hearing must indeed not be held if the facts seem to be established from the case file and appeal submission or if it is established that the submission of the applicant does not correspond with the facts.⁴⁸ This provision must be read in light of the restrictions on the submission of new facts in the appeal procedure.

The question whether a personal hearing before the Asylum Court (now replaced by 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) AsylG⁴⁹ is in line with Article 47(2) of the EU Charter if the applicant was heard in the administrative procedure.⁵⁰ 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.⁵¹ Two rulings to the same effect were delivered by the Constitutional Court in September 2014.⁵²

The Administrative High Court has specified that all relevant facts have to be assessed by the first instance authorities and have to be up to date at the time of the decision of the court.⁵³ According to this Court, it was not necessary to explicitly demand an oral hearing if the facts were not sufficiently clear or if the statements of the applicant in his or her appeal contradicted the statements taken by the first instance authority.⁵⁴

⁴⁵ Articles 17(1) and 18(5) BFA-VG.

⁴⁶ Article 17(2) BFA-VG.

⁴⁷ BVwG, Decision W208 2007345-1, 22 May 2014, available at: <http://bit.ly/1FOK1th>.

⁴⁸ Article 21(7) BFA-VG.

⁴⁹ Article 41(7) AsylG corresponds with Article 21(7) BFA-VG.

⁵⁰ VfGH, Decisions U 466/11-18 and U 1836/11-13, 14 March 2012, available at: <http://bit.ly/1eLj54J>.

⁵¹ VfGH, Decision U 152/13-12, 21 February 2014, available at: <http://bit.ly/1FXmqb6>.

⁵² 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>.

⁵³ VwGH, Ra 2014/20/0017, 28 May 2014.

⁵⁴ VwGH Ro 2014/21/0047, 22 May 2014.

The possible outcome of this procedure can be the granting of a status, the refusal of 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 (former) Asylum Court and BVwG are published on the legal information website of the Federal Chancellery.⁵⁵

Onward appeal

As of 2014, the decision of the BVwG may be appealed before the VwGH. The eligibility to appeal to the VwGH is ruled by the BVwG, but in case the Administrative Court does not allow the regular appeal, the asylum seeker may request for an “extraordinary” revision. For that purpose, the applicant may submit a request for free legal assistance as well as for suspensive effect of the complaint.

In case the asylum applicant seeks to challenge the decision of the BVwG and if he or she claims it is violating a right that is guaranteed by the constitution, he or she can appeal to the Constitutional Court 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; the information is translated in a language the asylum seeker understands. In that context, it has to be mentioned that the ECHR is a part of Austria’s constitutional law. Therefore the risk of violation of Articles 2, 3 or 8 ECHR could be claimed at the Constitutional Court, while the refusal of refugee status is not covered by the Court’s competence. The appeal does not have automatic suspensive effect. Only very few decisions of the Asylum Court (now BVwG) have been found unlawful by the Constitutional Court, and in those cases mainly because the decision was found extremely arbitrary to the extent that it amounted to being unlawful.

Asylum seekers encounter difficulties to access constitutional appeals due to a submission fee of about €240. Furthermore, asylum seekers are not heard in person before the Constitutional Court, which rather requests written statements from the BVwG.

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

Legal assistance at first instance

During the regular procedure at the BFA, asylum seekers are offered free legal advice at the branch offices of the BFA. Asylum seekers have to travel to the BFA, which may be difficult when their place of residence is far away from the office or in remote areas.

⁵⁵ Decisions of the Asylum 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. Decisions of the Federal Administrative Court (BVwG) are also available at: <http://www.ris.bka.gv.at/Bvwg/>.

This legal advice is funded by the Asylum, Migration and Integration Fund (AMIF) and co-funded by the Ministry of Interior. One association, Verein Menschenrechte Österreich, covers legal advice in 9 out of 10 BFA branch offices. Information on the number of consultation hours financed was not made available by the BFA or the Ministry of Interior, although the legal advisers should be present at the regional offices of the BFA every morning.

This offer of free legal advice does not meet the needs of asylum seekers, however. This organisation, which currently receives 89% of the funding for legal assistance in the first instance procedure,⁵⁶ is not regarded as very helpful or committed to the protection of the rights of asylum seekers due to its cooperation with the Ministry of Interior. For instance, the call for AMIF proposals mentions that legal advice provision should be organised in cooperation with the authorities. Furthermore, these legal advisers have to inform asylum seekers about voluntary return assistance and send asylum seekers to voluntary return projects (which are provided by the same organisation) during the asylum procedure. This funding framework and the activities of the contracted organisation affect the confidence of asylum seekers in the free legal advice offered. Asylum applicants may also opt to contact an NGO offering free legal advice to asylum applicants, but this resource is limited and may not be accessible for asylum seekers living in remote areas.

The tasks are prescribed in the call for AMIF proposals: providing information or assistance for administrative or legal formalities and providing information or advice on possible outcomes of the asylum procedure including voluntary return. One of the goals of legal advice must also be to avoid asylum applications without positive perspective. The requirement to provide advice on return as a condition for submitting a project for legal advice under AMIF funding, as was the case under the European Refugee Fund (ERF), has been criticised by NGOs.⁵⁷

Legal advisers are usually not present during interviews at first instance, except where they are authorised by the asylum seeker for legal representation. According to the information available to Asylkoordination, legal advisers of Verein Menschenrechte Österreich do not accept to act as legal representatives due to a strict interpretation of the contract with the government. Only other organisations or lawyers act as legal representatives for asylum seekers during interviews.

Legal assistance and representation at appeal stage

When a negative decision is issued, a decision providing for the assignment of a legal counselling organisation is also issued. Such organisation must advise the asylum applicant for free. Yet the asylum applicant may also opt to contact an NGO offering free legal advice to asylum applicants.

The system of free legal aid for the appeal was introduced by amendment of the Asylum Act in 2011 and entered into effect on 1 October 2011.⁵⁸ Two organisations, ARGE Rechtsberatung (Diakonie and Volkshilfe) and Verein Menschenrechte Österreich, are contracted by the Federal Chancellery to give legal advice with regard to the appeal procedure.

The task described by law entails the obligation to provide advice in case of dismissal of the application. Following an amendment of the BFA-VG, which came into effect on 20 July 2015, legal advisers shall be present at hearings before the Administrative Court if the asylum seeker wishes so.⁵⁹ Based on

⁵⁶ Ministry of Interior, *AMIF List of selected projects 2015/2016 (Asylum & Return)*, available in German at: <http://bit.ly/1OqSfsR>.

⁵⁷ See S Pfersching, *Unabhängige Beratung von AsylwerberInnen in Österreich?*, Diplomarbeit, Wien, August 2011, available at: <http://bit.ly/1IHAbnY>, S 98.

⁵⁸ Federal Law Gazette (BGBl) I Nr. 38/2011.

⁵⁹ Article 52(2) BFA-VG.

procedural guarantees in accordance with the rule of law and respective EU law, asylum seekers should be able to make effective use of their right to legal advice, according to a ruling of the Higher Administrative Court.⁶⁰

Although the role of the legal adviser in such a hearing was unclear following the 2015 amendment, the Constitutional Court clarified on 9 March 2016 that legal advisers who are summoned to the hearing at the Court have to represent the asylum seekers before the Court, if applicants wish so.⁶¹ Asylum seekers may be represented by NGOs,⁶² or pay themselves for a private lawyer.

Financial compensation for legal advice ordered by decree seems to be insufficient. The refunding rate per case is €221.55 (excl. VAT) including all other costs (overhead, travel expenses, interpretation). This flat rate is reduced by 25% when the organisation has provided legal advice in asylum and aliens law proceedings in more than 4,001 cases during the year and by 35% when legal advice was provided to more than 7,000 clients.⁶³ This reduction has been justified with reduced overhead expenses, but this argument is not suitable for the main expenses of legal advice, which are staff, interpreter, and travel expenses. Such reduction bears the risk of the organisation avoiding to get in contact with asylum seekers to keep the number of clients below the mark of 4,000 or 7,000. No extra or increased remuneration is granted for cases that are more time-consuming such as unaccompanied children, abused women or other heavily traumatised asylum seekers, negatively affecting the quality of legal counselling provided accordingly. NGOs have long criticised compensation as being too low for providing good standards of legal assistance.⁶⁴

The Council of Europe (CoE) Commissioner for Human Rights Nils Muižnieks found that:

“[W]hile commending that since the last reform of 2011, free legal aid is in principle available for asylum seekers, noted that quality appears to vary. In this regard the allocated fee appears to be a risk factor as it is rather low taking into account that all costs including transportation and translation services must also be covered and no increase is awarded for cases that are potentially more time consuming. Further efforts would be desirable to ensure that free, independent and confidential legal counselling and representation is ensured during the entire asylum procedure and thereafter, including the deportation procedure.”⁶⁵

Legal advisers do not need to be lawyers or experienced in refugee and asylum law. 3 years of practical experience in aliens law matters is a sufficient qualification for persons with a University degree other than law, while 5 years of practical experience in aliens law matters suffice for persons without a University degree.

The system of legal advice does not satisfactorily implement the recast Asylum Procedures Directive,⁶⁶ as it is up to the legal advisers to decide whether to help asylum seekers to write an individual appeal (which must be written in German) and assist them with regard to all procedural requests in the appeal procedure, or to provide information only. Asylum seekers have no choice as to which organisation will be responsible for providing legal assistance to them. Joachim Stern reports the findings of a short

⁶⁰ VfGH, Decision Ro 2016/18/0001, 3 May 2016.

⁶¹ VfGH, Decision G 447-449/2015-13, 9 March 2016, available in German at: <http://bit.ly/2jR9OMi>.

⁶² See e.g. the AMIF-funded project of Caritas Austria, ‘Representation at hearings before the Federal Administrative Court’, available in German at: <http://bit.ly/1OqSfsR>.

⁶³ BGBl. II Nr. 320/2011, available at: <http://bit.ly/1dL1VE4>.

⁶⁴ See e.g. Agenda Asyl, ‘Stellungnahme zur Änderung des... Asylgesetzes 2005 (*Comment on the changes to Asylum Law 2005*)’, 28 January 2011, available in German at: <http://bit.ly/1NkpgcC>; Der Standard, ‘Gute Rechtsberatung wäre doppelt so teuer’ (*Good legal assistance would be twice as expensive*), 9 November 2011, available in German at: <http://bit.ly/1Jp7y6h>.

⁶⁵ CoE Commissioner for Human Rights, *Report by Nils Muižnieks, Commissioner for Human Rights of the Council of Europe following his visit to Austria from 4 to 6 June 2012*, CommDH(2012)28, 15.

⁶⁶ Article 20 recast Asylum Procedures Directive.

evaluation of decisions of the BVwG in the case law database between 1 April 2014 and 1 April 2016. The evaluation found 139 procedures before the Court with legal representation of the asylum seekers by ARGE Rechtsberatung and 4 cases with legal representation by Verein Menschenrechte Österreich.⁶⁷ This evaluation shows that asylum seekers who are entitled to receive legal advice by Verein Menschenrechte Österreich are in most cases not represented by this organisation.

Even for the judges of the Federal Administrative Court, the nature of free legal advice seems unclear. In one 2014 case, the Court rejected an appeal as inadmissible. The asylum seeker had submitted the appeal without argumentation and announced that the legal adviser would submit an elaborated appeal as quickly as possible. The Court did not allow for an extension of the date to appeal because, in the judge's view, the asylum seeker had been assisted by a legal representative.⁶⁸

One project run by Caritas Austria, funded by AMIF, 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 for the next period 2017-2019 was not granted any longer but the project continues on a smaller scale with alternative funding. 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 Administrative Court and may act as legal representative. However, 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.

A merits test is not foreseen with regard to legal assistance at the appeal stage. With the amendment of the BFA-VG in July 2015, 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.

2. Dublin

2.1. General

Dublin statistics: 1 January – 31 October 2016

Outgoing procedure			Incoming procedure		
	Requests	Transfers		Requests	Transfers
Total	19,010	1,965	Total	3,815	:
Hungary	8,364	:	Germany	1,460	:
Italy	2,775	:	France	738	:
Croatia	2,460	:	Switzerland	501	:

Source: Ministry of Interior, Reply to parliamentary question 10654/J (XXV.GP), 2 January 2017: bit.ly/2ktwmBO.

Statistics on the application of the Dublin Regulation during the entire year 2016 are not available at the time of writing, although the BFA has referred to 2,582 outgoing transfers in its annual statistical report (*Jahresbilanz*),⁶⁹ and the BFA Director has referred to about 21,000 outgoing requests.⁷⁰ A reply to a

⁶⁷ J Stern, 'Verfahrenshilfe und Rechtsberatung – Neue Entwicklungen und alte Fragen' in C Filzweiser and I Taucher (eds), *Asyl- und Fremdenrecht Jahrbuch 2016* (NWV 2016), 151-168.

⁶⁸ BVwG, Decision W208 2007345-1, 22 May 2014, available at: <http://bit.ly/1FOK1th>.

⁶⁹ BFA, *Jahresbilanz 2016*, available in German at: <http://bit.ly/2k4P5r1>.

parliamentary question requesting Dublin statistics for 2016 also referred to 549 incoming transfers to Austria in 2016.⁷¹

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.⁷² Christian Filzwieser, judge at the Administrative Court, has doubted whether Austria's neighbouring countries will agree to take persons back under such conditions, whereas under the Dublin III Regulation they are obliged to take charge or take back. The suspension of the Dublin system does not seem an adequate reaction compared to the priority awarded by Austria to the processing of Dublin cases in 2015.

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.⁷³ Many requests for information have been sent to **Slovenia**. Often the Slovenian authorities have replied that the person was not registered there. Following this answer or at the same time, Austria addressed the request to **Croatia**, which usually did not answer within the 2-month time limit.

Documentation and entry criteria

The Dublin Regulation may be triggered if there is a Eurodac hit, if the asylum applicant has a passport with a visa for another Member State of the Dublin III Regulation, if he or she admits that he or she entered the European Union via another Member State or if there is any other suspicion or circumstantial evidence which indicates that he or she entered via another Member State (for instance if a person is caught by the police close to a border or in a certain train coming from another Member State). Although there are other grounds applicable for determining Member State responsibility under the Dublin III Regulation, these are the most common grounds applied in Austria.

The Administrative High Court (VwGH) has recently interpreted the criteria on documentation and irregular entry in the context of the Western Balkan route, during the period in 2015-2016 where transit through the countries of the route was facilitated by national governments. In relation to a Dublin transfer to Croatia, the VwGH held on 16 November 2016 that procedures concerning asylum seekers who entered Austria during the period of facilitated transfer should be temporarily suspended,⁷⁴ in anticipation of a preliminary ruling of the Court of Justice of the European Union (CJEU) following a Slovenian Supreme Court reference on whether the mode of entry of these persons can be considered as irregular entry under Article 13 of the Dublin III Regulation.⁷⁵

The VwGH submitted a preliminary reference to the CJEU on 14 December 2016 in Case C-646/16 *Jafari*, to clarify this question, as well as to inquire whether an authorisation to enter the territory of a country for the purpose of onward transit can be qualified as a "visa" in the terms of Article 12 of the

⁷⁰ See Kurier, 'Griechenland soll ab März wieder Flüchtlinge zurücknehmen', 20 January 2017, available in German at: <http://bit.ly/2kaZVLc>.

⁷¹ Ministry of Interior, Reply to parliamentary question to the Ministry of Interior 11305/J (XXV. GP), 115 February 2017, available in German at: <http://bit.ly/2lfTlwC>.

⁷² 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.

⁷³ Ministry of Interior, Reply to parliamentary question 10654/J (XXV.GP), 2 January 2017.

⁷⁴ VwGH, Decision Ra 2016/18/0172, 16 November 2016.

⁷⁵ CJEU, Case C-490/16 A.S., Reference of 14 September 2016. See EDAL summary at: <https://goo.gl/Wyi7x4>.

Regulation.⁷⁶ Despite the preliminary references, however, some decisions of the BVwG have continued to uphold ordered Dublin transfers.⁷⁷

Family and unaccompanied children criteria

To prove family status – in case family members did not arrive simultaneously in Austria – every asylum applicant must have mentioned the existence of other family members in their respective asylum procedure, i.e. in Austria as well as in the other Member States where they have 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. DNA tests may be required to provide proof of family links. DNA tests have to be paid by the asylum seeker. If a DNA test has been suggested⁷⁸ 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 is being discussed in the context of upcoming legislative reforms affecting [Family Reunification](#).⁷⁹

Based on the judgment of the CJEU in *MA* in relation to Article 8(4) of the Dublin III Regulation,⁸⁰ for asylum applications lodged by **unaccompanied children**, the BFA/EAST has ordered age assessments even in cases where there are no reasons for doubts in regard to the age of the asylum seeker. In 2015 2,826 age assessments have been requested.

From January until July 2016, 3,050 age assessments were ordered while in the same period 3,213 unaccompanied children had applied for asylum.⁸¹ The Ministry published a lower number of medical examinations by the end of October 2016, announcing there had been 2,672 orders.⁸² Regardless which figures are accurate, the number of ordered age assessments is according to care organisations for unaccompanied minors too high and leads to delays in assessing the application in the merits.

The dependent persons and discretionary clauses

Dependent persons: Article 16 Dublin III Regulation

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 made several strong protests due to the fact that Italy had already issued a Schengen visa. The asylum seeker in question was over 60 years old and, because of his Chechen origin, considered to be very old. In addition, the asylum seeker 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

⁷⁶ CJEU, Case C-646/16 *Jafari*, Reference of 14 December 2016. See EDAL summary at: <http://bit.ly/2hchdaO>.

⁷⁷ See e.g. BVwG, Decision W105 2137663-1, 16 November 2016; W175 2138306-1, 10 January 2017.

⁷⁸ 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.

⁷⁹ Entwurf Bundesgesetz, mit dem das Niederlassungs- und Aufenthaltsgesetz, das Fremdenpolizeigesetz 2005, das Asylgesetz 2005, das BFA-Verfahrensgesetz, das Grundversorgungsgesetz – Bund 2005 und das Grenzkontrollgesetz geändert werden (Fremdenrechtsänderungsgesetz 2017 – FrÄG 2017), available at: <http://bit.ly/2k49Z9b>.

⁸⁰ CJEU, Case C-648/11, *MA and Others v Secretary of State for the Home Department*, 6 June 2013.

⁸¹ Ministry of Interior, Reply to parliamentary question 9631/AB, 13 October 2016, available in German at: <http://bit.ly/2l56HR8>.

⁸² Ministry of Interior, Reply to parliamentary question 10254/AB, 05 January 2017, available in German at: <http://bit.ly/2k4Mdas>.

case because, due to Chechen culture, the support of the son for his old parents is more likely to be accepted than foreign support.⁸³

This argumentation can be found in another decision of the Court in the case of a single Afghan mother who sought 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.⁸⁴

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.⁸⁵

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.⁸⁶

Humanitarian clause: Article 17(2) Dublin III Regulation

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: Article 17(1) Dublin III Regulation

The asylum applicant has the legal right to request the asylum authorities to implement the sovereignty clause. 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.⁸⁷ This means that, in case of a risk of a violation of human rights, 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 risks of human rights violation warranting for use of sovereignty clause need be conducted in a manner that does not unreasonably delay the examination of the 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 Federal Agency for Immigration and Asylum (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*,⁸⁸ held that the long duration of the admissibility procedure has to be taken into consideration when determining the Member State responsible for

⁸³ BVwG, Decision W149 2009627-1, 21 July 2014, available at: <http://bit.ly/1cwU37K>.

⁸⁴ BVwG, Decision W 149 2009673-1, 20 June 2014, available at: <http://bit.ly/1cwU37K>.

⁸⁵ BVwG, Decision W149 2001851-1, 3 July 2014, available at: <http://bit.ly/1KLZNcA>.

⁸⁶ BVwG, Decision W185 2005878-1, 2 July 2014, available: <http://bit.ly/1M3QKRz>.

⁸⁷ VfGH, Decision 237/03, 15 October 2004, VfSlg. 16.122/2001.

⁸⁸ 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, para 98.

examining the asylum application and that applying a return procedure in such cases might be more effective.⁸⁹

The sovereignty clause has to be applied in the case of very 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 and his state of worry and uncertainty regarding his wife and three small children led to an exceptional psychological state with the consequence of several stays in hospital.⁹⁰

In September 2015, in the case of an Afghan mother with 6 minor children had applied for asylum in Hungary in September 2014 and shortly after in Austria too, the Administrative High Court ruled, that due to the change of the situation in Hungary, the presumption of safety is rebutted. The BVwG should have answered the question, whether systemic deficiencies exist in Hungary, and the sovereignty clause should be applied to prevent a violation of Article 3 ECHR / Article 4 of the EU Charter.⁹¹

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 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.⁹²

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.

2.2. Procedure

Indicators: Dublin: Procedure

1. 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.⁹³ 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.⁹⁴

There are 3 initial reception centres (EAST) which are responsible for the admissibility procedure: one located in **Traiskirchen** near Vienna, one in **Thalham** in Upper Austria and one at the **Airport Vienna Schwechat**. These 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 to take charge of an asylum seeker by another Member State) and, in response to a request of

⁸⁹ BVwG, Decision W125.1257809-8, 20 January 2014, available at: <http://bit.ly/1Jp8HLh>.

⁹⁰ BVwG, Decision W205 1438717-1, 29 April 2014, available at: <http://bit.ly/1EUlw8X>.

⁹¹ VwGH, Decision Ra 2015/18/0113 bis 0120, 8 September 2015.

⁹² BVwG, Decision W165 2140213-1, 26 January 2017, available at: <http://bit.ly/2meMkAF>.

⁹³ Article 2(1)(8) BFA-VG.

⁹⁴ Article 5(2) AsylG.

the Aliens Police department, all consultations with Member States concerning foreigners who have not applied for asylum.

Once an application for asylum is made, 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 his or her home country. The asylum applicant is fingerprinted and photographed. Fingerprints are taken from all asylum seekers older than 14 years of age. The asylum seeker gets a green “procedure card” after the public security officer has consulted the BFA about the further steps in the asylum procedure: admittance to the regular procedure or admissibility procedure. Asylum seekers are transferred or asked to go to the initial reception centre when a Dublin procedure is initiated. The green card permits the asylum seeker to stay in the district of the initial reception centre. Due to a lack of reception places asylum seekers are cared for in facilities of the federal states too and the green card may be issued to asylum seekers without a local restriction.

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. According to the experience of NGOs, consultations with other Member States do not take place if there is no concrete evidence for the responsibility of another Member States.

Every asylum seeker receives written information 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 EAST.

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 about the intention to issue an inadmissibility decision on the ground that another state is considered responsible for the examination of the asylum claim.

Individualised guarantees

Individualised guarantees are not requested systematically.

In April 2015, in the case of a Syrian father with his underage daughter, the BVwG allowed the appeal and stated that the father is a vulnerable person due to his hearing defect. A guarantee from Italy should have been requested. In this case his already adult son has received asylum status in Austria. Therefore, further investigation of the question is necessary if the transfer would violate of Article 8 ECHR.⁹⁵ However, the BFA has deemed that the obligation to obtain guarantees from Italy on the basis of the *Tarakhel v Switzerland* judgment of the ECtHR has been fulfilled following the Italian Ministry of Interior’s Circular letters of 8 June 2015 and 10 February 2016 to all Dublin Units, stating the projects where Dublin returnees would be accommodated.⁹⁶ 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.⁹⁷

The Constitutional Court has also clarified in the context of transfers to Hungary that, given the particular risks faced by vulnerable persons in countries where serious doubts arise as to the provision

⁹⁵ BVwG, Decision W161 2104959-1/3E, 14 April 2015, available at: <http://bit.ly/113cINi>.

⁹⁶ ECRE, *Navigating the Maze: Structural barriers to accessing protection in Austria*, December 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: <http://bit.ly/1QxxRqJ>.

⁹⁷ VfGH, Decision E 449-450/2016 and E 703-704/2016-14, 30 June 2016, available at: <http://bit.ly/2k1BfVL>.

of reception conditions, it is necessary for Austria to establish more precisely how the asylum seeker would be accommodated and whether his or her special needs would be met.⁹⁸

During the last months of 2016, the BFA requested guarantees from Croatia in limited cases prior to transferring vulnerable groups, including families with young children and persons with severe illness in need of specialised health care, following a number of successful Rule 39 requests to the ECtHR for interim measures against transfers.⁹⁹ However, the ECtHR deemed the obligation to obtain individual guarantees as fulfilled after Austria received a letter from the Croatian Dublin Unit with a general statement of the applicable legal framework and arrangements made by the authorities for health care in reception centres.¹⁰⁰

Transfers

Transfers are normally carried out without the asylum applicant concerned being informed of the time and the location he or she are transferred to before the departure from Austria, giving him or her no possibility to return to the responsible Member State voluntarily. In 2016, there have been 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.¹⁰¹ It could be argued that this practice is questionable under 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 his own means.”

In case of an enforced transfer to another EU Member State, the police first apprehends the asylum applicant and transfers him or her to a detention centre.¹⁰² Since 2011, 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. In a less coercive measure, instead of detention asylum seekers may be ordered to stay at a certain place (such as a flat or a reception centre).¹⁰³ 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.

The BFA reported 2,582 Dublin transfers carried out in 2016. This represents an increase compared to 2015, where the number of transfers was reported at 1,274 on Eurostat,¹⁰⁴ 1,299 in a recent reply to a parliamentary question,¹⁰⁵ and 1,378 in the BFA annual statistical overview.¹⁰⁶ Austria issued 16,965 outgoing requests in 2015.¹⁰⁷

⁹⁸ VfGH, Decision E 1622-1626/2015-10 and E 1673/2015-10, 10 December 2015, available at: <http://bit.ly/2k51drR>.

⁹⁹ See e.g. *Bayat v. Austria*, Application No 60014/16 of 19 October 2016; *H and A v. Austria*, Application No 61204/16 of 25 October 2016; *Qaumi v. Austria*, Application No 61164/16 of 28 October 2016; *Nadiri v. Austria*, Application No 63109/16 of 4 November 2016.

¹⁰⁰ For a copy of the letter and more information, see ECRE, *Balkan Route Reversed: The return of asylum seekers to Croatia under the Dublin system*, December 2016, available at: <http://bit.ly/2kueKpB>, 32-34 and Annex IV.

¹⁰¹ ECRE, *Balkan Route Reversed: The return of asylum seekers to Croatia under the Dublin system*, December 2016, 33.

¹⁰² In some cases, asylum seekers have reportedly been apprehended by the police during the night: *Ibid.*

¹⁰³ Article 77(5) FPG.

¹⁰⁴ Eurostat, *Outgoing 'Dublin' transfers*, migr_dubto.

¹⁰⁵ Ministry of Interior, Reply to parliamentary question 10654/J (XXV.GP), 2 January 2017.

¹⁰⁶ BFA, *Jahresbilanz 2015*, available in German at: <http://bit.ly/2jyCGbb>.

¹⁰⁷ Ministry of Interior, Reply to parliamentary question 10654/J (XXV.GP), 2 January 2017.

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 evaded the procedure in the initial reception centre.¹⁰⁸ 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.¹⁰⁹ 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, contrary to Article 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.

In Dublin procedures, the rules and practice are the same as in the [Regular Procedure: Personal Interview](#).

Usually only parts of the record of the Dublin consultation between Austria and the requested state(s) are made available to the asylum seeker and the legal adviser. Therefore it is not guaranteed that legal advice is given on the basis of all relevant information and it may happen that asylum seekers will be confronted with facts during the hearing concluding the admissibility procedure in the initial reception centre that were not disclosed before. Furthermore, it is not possible for the asylum seeker and his or her legal representative to check whether the requested state has 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 would rely on the care of his son.¹¹⁰ The judge noted that the dependency clause should have been applied in this case.

¹⁰⁸ Article 24(3) AsylG.

¹⁰⁹ 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, cf. the negative decision of the Asylum Court in the case of an unaccompanied minor: S2 429505-1/2012, 04 October 2012.

¹¹⁰ BVwG, Decision W149 209627-1, 21 July .2014

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?
- | | | |
|----------------------------|--|---|
| ❖ If yes, is it | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| ❖ If yes, is it suspensive | <input checked="" type="checkbox"/> Judicial | <input type="checkbox"/> Administrative |
| | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> 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 only 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 time limit for granting suspensive effect expires. The BVwG has to decide *ex officio* if the appeal must be given suspensive effect. In many Dublin cases, asylum applicants never received a final decision from the Asylum Court (which was competent for appeal decisions until 31 December 2013) because they were transferred back to the responsible Member State before the Court's decision on Dublin was issued. This practice remains unchanged at the Federal Administrative Court.

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.

Asylum seekers whose appeals were given a suspensive effect or were accepted by the Court have the right to re-enter Austria by showing the decision of the court at the frontier. This is related to the fact that, if the court does not decide within 7 days on suspensive effect, the asylum seeker may be deported. 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.

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?
- | | | | |
|-------------------------------------|--|---|-----------------------------|
| | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> With difficulty | <input type="checkbox"/> No |
| ❖ Does free legal assistance cover: | <input type="checkbox"/> Representation in interview | | |
| | <input checked="" type="checkbox"/> Legal advice | | |
2. Do asylum seekers have access to free legal assistance on appeal against a Dublin decision in practice?
- | | | | |
|------------------------------------|--|---|-----------------------------|
| | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> With difficulty | <input type="checkbox"/> No |
| ❖ Does free legal assistance cover | <input checked="" type="checkbox"/> Representation in courts | | |
| | <input checked="" type="checkbox"/> 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 EAST. If asylum seekers leave the district of the EAST to consult an attorney-at-law or NGOs – which normally have their offices in the bigger cities – they can be given a fine ranging from €100 to €1,000. In case of repeated violation of the restricted residence (*Gebietsbeschränkung*), the fine may amount to €5,000 and even detention may 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-expulsion custody. This punishment is not applied very often in practice. 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 by legal aid counsels is problematic because they lack time and because asylum seekers do not trust them, as they are considered being too closely linked to the BFA. They have their offices within the building of the BFA 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.

In case of unaccompanied asylum seeking children, the appointed legal adviser is at the same time their legal representative during the admissibility procedure. Without consent of their legal adviser they are not able to act, for example to choose a legal representative by themselves or to submit an appeal in case the legal adviser fails to do so. Here too, the quality of the assistance provided is considered to be problematic at times. One example is the case of an unaccompanied asylum seeking child from Afghanistan who submitted a hand-written appeal against the rejection of his application and his expulsion to Italy. The Asylum Court rejected the appeal as inadmissible, because his legal representative from Verein Menschenrechte Österreich did not sign the complaint.¹¹¹ NGOs report that this is not the only case where the legal representative has refrained from lodging an appeal in disregard of the best interests of the child.

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 Member State under the Dublin Regulation, legal advisers are often informed only shortly before the interview, therefore lacking time to study the file and prepare for the hearing. Asylum seekers in detention do not normally receive legal advice until immediately before the hearing in the detention centre.

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 regards 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? Hungary, Croatia

Under the Dublin III Regulation, all EU Member States are considered safe where the asylum applicant may find protection from persecution. There is an exception in case it is obvious that there will be a lack of protection, especially if it is well-known to the authorities, or if the asylum applicant brings evidence

¹¹¹ Asylum Court, Decision S7 424252-1/2012, 9 February 2012.

that there is a risk that he or she 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 danger has to be related to the individual situation of the asylum applicant.

All EU Member States and Associated Schengen States except **Hungary** are regarded as safe countries that provide protection and fulfil the obligations of the EU asylum *acquis*. Although for most asylum seekers, Greece would be the first country of irregular entry, Dublin procedures with Greece are suspended. Transfers to Greece are not taken into consideration due to deficiencies in the asylum system and the assessment of the responsible state is continued according Article 3(2) of the Regulation, where Croatia is regarded as country of first entry. Due to pending requests for a CJEU preliminary ruling from the Slovenian Supreme Court and the Austrian Administrative High Court, transfers to **Croatia** are suspended as of the end of October 2016, but there are also a few exceptional rulings of the court dismissing the appeal.

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. Recently, letters of UNHCR claiming protection gaps and difficulties to access the asylum procedure have gained more relevance.

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

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 2017,¹¹² in line with the European Commission's recommendation of December 2016.

Hungary: In 2015, in almost all Dublin appeals against transfers to Hungary, suspensive effect was allowed by the Administrative Court. The court ruled in some vulnerable cases, that additional medical examinations would be necessary. One decision of the Administrative High Court in September 2015 required the BFA and the Administrative Court have to examine the situation in Hungary more accurate and have to examine if Austria may send back asylum seekers to Hungary.¹¹³ This was echoed by the Constitutional Court in December 2015.¹¹⁴

The BVwG ruled in October 2015, that the allegations of a Syrian applicant in relation to conditions in Hungary and the knowledge of Austrian authorities about the situation and recent developments in Hungary were sufficient to rebut the notion of security of Article 5(3) AsylG for Hungary.¹¹⁵

¹¹² See Kurier, 'Griechenland soll ab März wieder Flüchtlinge zurücknehmen', 20 January 2017, available in German at: <http://bit.ly/2kaZVLc>.

¹¹³ VfGH, Ra 2015/18/0113, 8 September 2015.

¹¹⁴ VfGH, Decision E 1622-1626/2015-10 and E 1673/2015-10, 10 December 2015, available at: <http://bit.ly/2k51drR>.

¹¹⁵ BVwG, Decision W205 2010327, 22 October 2015, available at: <http://bit.ly/1Qgoql2>.

At the same time, the BFA has continued to issue Dublin requests to Hungary in 2016, more than to any other Dublin state, and send back even vulnerable asylum seekers. Usually Hungary does not accept cases where Greece would be the responsible state. The practice of the Federal Administrative Court has not been consistent. The Court has ruled against transfers in some cases,¹¹⁶ while upholding others.¹¹⁷

Italy: In relation to Italy, the BFA deems that the obligation to obtain guarantees from Italy on the basis of the *Tarakhel v 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.¹¹⁸ 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.¹¹⁹

Nevertheless, the BVwG has largely allowed the BFA to carry out Dublin transfers to Italy throughout 2016.¹²⁰ The BFA issued 2,775 requests to Italy as of October 2016.

Bulgaria: Transfers to Bulgaria are carried out by the BFA and generally upheld by the BVwG.¹²¹

Croatia: Following the successive restrictions imposed by Hungary from September 2015 onwards, an increasing number of asylum seekers have arrived to Austria from Croatia and then **Slovenia**. This led to a sharp rise in Dublin procedures conducted towards Croatia, which became the third largest recipient of requests from Austria in 2016. The BFA has largely transferred vulnerable persons to Croatia, including separated families, families with young children, persons with serious illness etc.¹²²

The implementation of Dublin transfers has been denounced particularly from Austrian policymakers and civil society organisations,¹²³ while a petition to the Minister of Interior to stop Dublin transfers to Croatia was issued in October 2016.¹²⁴

While the BVwG has overwhelmingly found the conditions in Croatia to be suitable for transfers,¹²⁵ the ruling of the VwGH on 16 November 2016 ordered the temporary suspension of transfers until the CJEU

¹¹⁶ See e.g. BVwG, Decision W144 2101705-1, 14 March 2016, available at: <http://bit.ly/2kuzbXC>; W125 2136124-1, 16 November 2016, available at: <http://bit.ly/2j68zjf>.

¹¹⁷ See e.g. BVwG, Decision W192 2131322-1, 8 August 2016, available at: <http://bit.ly/2jgfSw4>; W233 2133699-1, 1 September 2016, available at: <http://bit.ly/2j6bWT6>; W192 2132752-1, 1 December 2016, available at: <http://bit.ly/2jT2VKu>.

¹¹⁸ 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: <http://bit.ly/1QxxRqJ>.

¹¹⁹ VfGH, Decision E 449-450/2016 and E 703-704/2016-14, 30 June 2016, available at: <http://bit.ly/2k1BfVL>.

¹²⁰ See e.g. BVwG, Decision W192 2118949-1, 5 January 2016, available at: <http://bit.ly/2j6dwoe>; W153 2120231-1, 23 March 2016, available at: <http://bit.ly/2k4Q5v0>; W144 2135356-1, 11 October 2016, available at: <http://bit.ly/2jyFntn>; W241 2140937-1, 12 December 2016, available at: <http://bit.ly/2k1U2Af>.

¹²¹ See e.g. BVwG, W192 2117783-1, 19 January 2016, available at: <http://bit.ly/2kuzzW1>; W192 2123918-1, 5 April 2016, available at: <http://bit.ly/2j6m26P>; W125 2138459-1, 25 November 2016, available at: <http://bit.ly/2k14QXZ>; W242 2138727-1, 13 December 2016, available at: <http://bit.ly/2jgtQOB>.

¹²² ECRE, *Balkan Route Reversed: The return of asylum seekers to Croatia under the Dublin system*, December 2016, 32.

¹²³ See e.g. OTS, 'Korun: Anfrage an Innenminister zu Krätze und mangelhaften Bedingungen in Kroatiens Asylagern', 18 November 2016, available in German at: <https://goo.gl/a7no7u>; Der Standard, 'Protest gegen Rückführung von Migranten nach Kroatien', 20 October 2016, available in German at: <https://goo.gl/y34iRm>; Centre for Peace Studies, 'Refugees sold out yet again: The return of people with unusual desire to live dignified life', 20 July 2016, available at: <https://goo.gl/bfDf4d>; Diakonie Österreich, 'Dublin Abschiebungen Kroatien - Menschenrechtsgerichtshof setzt Abschiebung aus', 24 October 2016, available in German at: <https://goo.gl/p4qRTR>.

¹²⁴ Petition STOPP von Dublin III-Abschiebungen nach Kroatien, available in German at: <http://bit.ly/2jT1lrP>.

preliminary reference has clarified the applicability of the Regulation in the relevant context (see section on [Dublin: General](#)).¹²⁶ Nevertheless, the Ministry of Interior has announced its intention to continue carrying out transfers and referred to as many as 2,000 pending Dublin procedures for return to Croatia.¹²⁷ In many cases, suspensive effect was awarded and time limits for transfer have elapsed.

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.

3. Admissibility procedure

3.1. General (scope, criteria, time limits)

With the amendment of the Asylum Act and the BFA-VG coming into effect on 20 July 2015, the admissibility procedure has changed. The admissibility procedure starts with the first interrogation of the asylum seeker by the public security officer, who has to submit the findings thereof to the branch office of the BFA. The BFA officer in charge instructs the police about the next steps in the admissibility procedure: the application may be assessed as admitted to the regular procedure or the asylum-seeker ordered to travel to the EAST or transferred by the police to the EAST.¹²⁸ There are three EAST which are responsible for the admissibility procedure: one located in **Traiskirchen** near Vienna, one in **Thalham** in Upper Austria and one at the **Airport Vienna Schwechat**.

All asylum seekers have to undergo the admissibility procedure except children born in Austria whose parents have received protection status in Austria or whose application is admitted to the regular procedure. Their applications are admitted immediately to the regular procedure.¹²⁹

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

- (1) The person comes from a safe third country;¹³⁰
- (2) The person enjoys asylum in an EEA country or Switzerland;¹³¹
- (3) Another country is responsible for the application under the Dublin Regulation;¹³²
- (4) The person files a subsequent application and “no change significant to the decision has occurred in the material facts”.¹³³

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.

¹²⁵ See e.g. BVwG, W175 2129406-1, 16 August 2016, available at: <http://bit.ly/2jqVITe>; W144 2135976-1, 10 October 2016, available at: <http://bit.ly/2jT7JiO>; W105 2134119-1, 7 November 2016, available at: <http://bit.ly/2kuCbmM>; W243 2139484-1, 24 November 2016, available at: <http://bit.ly/2kunmwq>.

¹²⁶ VwGH, Decision Ra 2016/18/0172, 16 November 2016.

¹²⁷ Die Presse, ‘Innenministerium will Abschiebungen nach Kroatien fortsetzen’, 30 November 2016, available in German at: <https://goo.gl/HdBZgN>.

¹²⁸ Article 29(1) AsylG.

¹²⁹ Article 17(3) AsylG.

¹³⁰ Article 4(1) AsylG.

¹³¹ Article 4a(1) AsylG.

¹³² Article 5(1) AsylG.

¹³³ Article 12a(2)(2) AsylG.

Within 20 calendar days after the application is made, the BFA has to either admit the asylum applicant to the in-merit procedure or notify him or her 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 the BFA intends to revoke the suspensive effect of a subsequent application. This time limit does not apply if consultations with another state on the application of the Dublin Regulation take place.¹³⁴

The 20-day time-limit shall not apply if the asylum seeker does not cooperate in the procedure, the procedure is deemed no longer relevant or the asylum seeker evades the procedure.¹³⁵ The duty of the asylum seeker to cooperate includes, among others, providing the BFA with information and evidence about their identity and reasons for applying for asylum, to come to hearings in time and to notify the authorities of their address. If, for reasons relating to his or her person (e.g. illness, postponing the interview due to duty to comply with summons etc.), the asylum seeker is unable to cooperate in the procedure, the computation of the 20-day time-limit shall be suspended.¹³⁶

If the BFA has ordered an age assessment, the 20-day time limit does not apply. This practice is based on lack of cooperation on the part of the asylum seeker in the procedure. As a result, unaccompanied minor asylum seekers often wait for several months before they are found underage as a result of the age assessment and their application is admitted.

In practice the time limit is respected. If the BFA does not notify the applicant the intention to issue an inadmissibility decision within 20 days, the application is admitted to the regular procedure.

Within the admissibility procedure, the application may also 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 ruling.¹³⁷

An admissible application shall nevertheless be rejected if facts justifying such a rejection decision become known after the application was admitted.¹³⁸ In practice, this provision is applied in Dublin cases without the precondition that the facts justifying admissibility were not known before.¹³⁹

3.2. Personal interview

Indicators: Admissibility Procedure: Personal Interview

Same as regular procedure

1. 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
2. Are interviews conducted through video conferencing? Frequently Rarely Never

A personal interview is required by law. The asylum seeker is interrogated by agents of the public security service upon the lodging of the application or during the admissibility procedure at the EAST.

¹³⁴ Article 28(2) AsylG.

¹³⁵ Article 28(2) AsylG.

¹³⁶ Article 28(2) AsylG.

¹³⁷ Article 28(2) AsylG.

¹³⁸ Article 28(1) AsylG.

¹³⁹ VwGH, 2006/20/0624, 25 November 2008.

The police may not ask detailed questions on 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 identity, personal data and the travel route of the applicant, and the civil servants of the BFA for assessing the facts on which the application is based, is not always respected in practice, however. The reasons for fleeing the country of origin may be found not credible at the interview before the civil servant of the BFA if the asylum seeker has based the application on other reasons immediately upon arrival. Article 19(4) AsylG states explicitly, that in the admission procedure, the asylum seeker shall also be informed that his or her own statements will be accorded increased credibility.

The law permits an exception from the personal interview in the case the asylum seeker has evaded the procedure in the EAST. If the facts relevant to a decision are established, the fact that they have 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. An exception may apply in a subsequent asylum application that was submitted within two days before the execution of an expulsion order.¹⁴⁰ An interview during the admission procedure may be dispensed with if the procedure is admitted.

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?

- | | | |
|----------------------------|--|---|
| ❖ If yes, is it | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| ❖ If yes, is it suspensive | <input checked="" type="checkbox"/> Judicial | <input type="checkbox"/> Administrative |
| | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |

For the admissibility procedure, the appeal stages are the same as in the regular procedure, but the time limits within which an appeal against the BFA's inadmissibility decision must be lodged is 2 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 1 week after receiving the appeal whether the appeal will have suspensive effect during the continuing appeal procedure. If the BVwG neither issues suspensive effect nor accepts the appeal after seven days, the asylum applicant can be deported to the responsible Member State, safe third country or his or her 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. In this case, the time limit for the appeal is the same as for dismissed applications in the regular procedure (within 2 weeks), and a legal adviser is appointed.

Appeals against a decision rejecting the asylum application as inadmissible do *not* have suspensive effect unless this is granted by the BVwG.¹⁴¹ 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](#).

One week to lodge an appeal against the decision rejecting the asylum application as inadmissible is the minimum time according to a 1998 ruling of the Constitutional Court.¹⁴² This short time limit is in practice very problematic, considering that the applicant may be in detention for instance and that arranging a meeting with the legal adviser could already take a few days. One week does not seem to

¹⁴⁰ Article 19(1) AsylG.

¹⁴¹ Article 16(2) BFA-VG.

¹⁴² VfGH, G31/98 UA, 24 June 1998.

be sufficient in practice also for submitting an appeal explaining the procedural and/or legal incorrectness of the decision. The appointed legal adviser is not obliged to assist the asylum seeker with writing the complaint that has to be written in German language 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?

<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> With difficulty	<input type="checkbox"/> No
------------------------------	---	-----------------------------

 - ❖ Does free legal assistance cover:

<input type="checkbox"/> Representation in interview	<input checked="" type="checkbox"/> Legal advice	
--	--	--

2. Do asylum seekers have access to free legal assistance on appeal against an inadmissibility decision in practice?

<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> With difficulty	<input type="checkbox"/> No
------------------------------	---	-----------------------------

 - ❖ Does free legal assistance cover

<input checked="" type="checkbox"/> Representation in courts	<input checked="" type="checkbox"/> Legal advice	
--	--	--

A legal adviser is appointed by the BFA in case it intends to reject the application in the framework of the admissibility procedure. The BFA has to notify the asylum seeker by procedural order of its intention to reject the application in the admissibility procedure and inform them about the mandatory consultation of a legal adviser. 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.

Free legal advice is foreseen for subsequent asylum applications as well,¹⁴³ including in appeals. Most of the cases that are regarded as inadmissible are Dublin cases (see the section on [Dublin: Legal Assistance](#) above).

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?

	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
--	---	-----------------------------

2. Can an application made at the border be examined in substance during a border procedure?

	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
--	---	-----------------------------

3. Is there a maximum time-limit for border procedures laid down in the law?

	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
--	---	-----------------------------

 - ❖ If yes, what is the maximum time-limit?

	6 weeks	
▪ Subsequent applications	4 weeks	

Austria has no land border with third countries. All neighbouring states are Schengen Associated States and Member States, party to the Dublin Regulation.

Asylum seekers who apply for international protection at the airport are transferred after the interview by the police to the building of the police station with the EAST and the rejection zone. On the basis of the first interview, the BFA decides whether the procedure shall be processed under the special regulations

¹⁴³ Article 52(1) BFA-VG.

of the airport procedure, or if the case should be considered under the regular procedure and the asylum seeker should be summoned by the BFA.¹⁴⁴

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.¹⁴⁵ In the context of Dublin procedures at the airport, UNHCR is not involved.

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

- (a) Inadmissible by reason of existing protection in a safe third country; or
- (b) Dismissed 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 about their identity, citizenship or authenticity of their documents and they were 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.

For procedures in the initial reception centre of the airport, one interview is regarded as sufficient. Furthermore, the rejection decision has to be approved by UNHCR, otherwise the application is admitted to the regular procedure and the asylum seeker is allowed entry.¹⁴⁶

Detention measures – more precisely the measures which require the asylum seeker to stay in the EAST at the airport, limiting their freedom of movement – which are ordered to implement rejection at the border can only be maintained for a maximum duration of six weeks. During the asylum procedure at the airport, the assumption that the asylum seeker is not entitled to enter applies and a rejection of the asylum seeker at the border is conducted automatically. Therefore, at this stage, a decision rejecting the asylum application on the merits or as inadmissible is issued without expulsion order. Rejection at the border may be enforced only after a final decision on the asylum application.

Most cases processed at the airport were Dublin procedures. Most decisions as manifestly unfounded claims at the airport are appealed. The BVwG rejected 11 appeals of asylum seekers,¹⁴⁷ most of them from India and China.

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](#)).

¹⁴⁴ Article 31(1) AsylG.

¹⁴⁵ Article 32(2) AsylG.

¹⁴⁶ Article 33(2) AsylG.

¹⁴⁷ Information obtained through the legal information system (RIS), Decisions of the BVwG.

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
 - ❖ 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 is conducted.¹⁴⁸ There are no other differences compared to the system for personal interviews under the regular procedure.

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 No

The time-limit for lodging appeals against a decision by the BFA in procedures at the airport is 2 weeks.¹⁴⁹ The BVwG must render its decision within 2 weeks from the submission of the complaint.¹⁵⁰ A hearing in the appeal proceedings must be conducted at the EAST at the airport,¹⁵¹ yet this rarely happens in practice.

In all other cases the same system for appeals applies as described in the section on [Regular Procedure: Appeal](#). In practice, the short time limit for lodging an appeal creates the same obstacles for asylum seekers as in the [Admissibility Procedure: Legal Assistance](#).

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 same system for legal assistance applies as described under the regular procedure. One NGO, Caritas, was present at the airport and assisted asylum seekers until recently. The contract of Caritas

¹⁴⁸ Article 33(2) AsylG.

¹⁴⁹ Article 33(3) AsylG.

¹⁵⁰ Article 33(4) AsylG.

¹⁵¹ Article 33(4) AsylG.

was ended after 13 years by the end of 2016. The Swiss company ORS, which is contracted by the Ministry of Interior for provision of basic care in the reception centres of the Ministry, will be responsible for caring for asylum seekers in the airport special transit centre.¹⁵² This will have an impact on the extent of care and advice, namely legal advice during the first instance procedure that has been provided by Caritas until now.

5. Accelerated procedure

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

Before 20 July 2015, the law already provided 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 purposes of this report these are referred to as accelerated procedures.

Under Article 27 AsylG, such a 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;¹⁵³
- (b) The appeal procedure is to be discontinued where the asylum seeker has evaded the procedure and a return decision was issued by the BFA;¹⁵⁴
- (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.¹⁵⁵ Public interest exists in particular, albeit not exhaustively, where an applicant:¹⁵⁶
 - i. Has committed a criminal offence;
 - ii. Has been charged with a criminal offence by the Department of Public Prosecution;
 - iii. Has been subject to pre-trial detention; or
 - iv. 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 shall be taken as quickly as possible and no later than 3 months on the asylum application.¹⁵⁷

The amendment of the Asylum Act coming into effect on 20 July 2015 introduced in Article 27a 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 appeal suspensive effect 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 give fingerprints.¹⁵⁸

¹⁵² Der Standard, ‘Aus für Caritas-Flüchtlingsbetreuung am Flughafen’, 13 January 2017, available in German at: <http://bit.ly/2kmxmsn>.

¹⁵³ Article 27(1)(1) AsylG, citing Article 29(3)(4)-(5) AsylG.

¹⁵⁴ Article 27(1)(2) AsylG, citing Article 24(2) AsylG.

¹⁵⁵ Article 27(2) AsylG.

¹⁵⁶ Article 27(3) AsylG.

¹⁵⁷ Article 27(8) AsylG.

¹⁵⁸ Article 18 BFA-VG.

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

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 have one personal interview. The law permits an exception in case the asylum seeker has evaded the procedure.¹⁵⁹ 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.

In last-minute subsequent applications to prevent the execution of an expulsion order and subsequent applications without *de facto* protection against deportation (which have no suspensive effect and the expulsion order issued after the rejection of the first asylum application can be executed), the BFA may omit the personal interview.¹⁶⁰

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 No

Time limits for appeals depend on the nature of the decision appealed in the accelerated procedure. For decisions rejecting an application as inadmissible, the appeal must be submitted within 2 weeks (see section on [Admissibility Procedure: Appeal](#) above). The BVwG has to decide on the appeal within 3 months in such cases with suspensive effect.¹⁶¹

The Federal Administrative Court (BVwG) has to decide on the appeal against decisions to reject the application including an expulsion order within 8 weeks.¹⁶²

In subsequent applications without protection against deportation, the court has to decide within 8 weeks if suspensive effect was not awarded. This provision has not much effect for the asylum seeker, however, as they may have been expelled or transferred before. Nevertheless, the appeal that must be lodged within 2 weeks after the notification of the decision may have suspensive effect.¹⁶³

¹⁵⁹ Article 24(3) AsylG.

¹⁶⁰ Article 19(1) AsylG.

¹⁶¹ Article 27(8) AsylG.

¹⁶² Article 17(2) BFA-VG.

¹⁶³ Article 18(2)(5) BFA-VG. See e.g. AsylGH (Asylum Court), A8 260.187-2/2011, 2 August 2011.

Difficulties in lodging an appeal against negative decisions in the accelerated procedure are the same as those described under the [Dublin Procedure: Appeal](#) and result mainly from the short time limit of 2 weeks to lodge the appeal, as well as insufficient free legal assistance. Organisations contracted to provide legal assistance have to organise interpreters if necessary.

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. Since the amendment of 20 July 2015, free legal assistance is available for subsequent asylum applications too.¹⁶⁴

In so called fast track accelerated procedures, mandatory free legal advice for the admissibility procedure is circumvented by forwarding the procedure to the BFA branch office without prior admission to the regular procedure. This practice takes place from time to time in Traiskirchen, where admissibility procedures are conducted in one building (EAST) and in another building in which a branch office of the BFA conducts regular procedures. At the time asylum seekers get the invitation for their interview, they are still subject to restrictions on freedom of movement. Therefore they are not able to consult NGOs or lawyers outside the restricted area.

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

Screening of vulnerability

There is no effective system in place to identify asylum seekers in need of special procedural guarantees. During the admissibility procedure in the initial reception centre (EAST), asylum seekers are instructed in the written leaflets to state psychological problems to the doctor and the legal adviser.

¹⁶⁴ Article 49(2) BVA-VG in connection with Article 29(3) BFA-VG.

At the beginning of the interview, they are asked whether they have any health or mental problems that could influence their ability to cooperate in the procedure. Doctors qualified in psychology in the EAST are requested by the BFA to assess if the asylum seeker is suffering from a medically significant stress-related mental disorder as a result of torture or another event which prevents them from defending their interests in the procedure or entails for them a risk of permanent harm or long term effects.¹⁶⁵

In August 2015, the organisation Doctors Without Borders (MSF) criticised the **EAST Traiskirchen** in its report, stating that communication between asylum seekers and doctors was insufficient even in cases of severe illness, and found that the responsible person of the Ministry, of the security service and the staff lacked empathy for the situation of the asylum seekers.¹⁶⁶ The number of asylum seekers in the EAST Traiskirchen decreased considerably in 2016. For the health screening in reception centres under the responsibility of the Ministry of Interior, the Red Cross is contracted.

Victims of trafficking

In the Austrian system, there is no centralised formal identification of victims of trafficking as such, defined as a decision by a competent authority which is binding for other authorities. However, an Austrian authority's assessment of an individual as a (potential) trafficked person has concrete consequences in the process of protection and prosecution. A type of formal classification of an individual as a "victim" is foreseen in the criminal procedure. There, the procedural role of trafficked persons as victims is provided for by the Austrian Code of Criminal Procedure.

In practice, if an Austrian official, such as a caseworker of the BFA, perceives that an individual may be a trafficked person, the official is requested to contact the criminal police office of the respective federal province. If the specialised unit of the police confirms that the suspicion or detection is justified, criminal investigations will be initiated, the individual concerned as well as a specialised NGO will be contacted and informed, a reflection period may be granted, and certain victims' rights in criminal proceedings are provided.

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

According to information received, most effected persons in the asylum procedure are women from Nigeria.¹⁶⁷

Age assessment of unaccompanied children

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 2009 amendment of 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

¹⁶⁵ Article 30 AsylG.

¹⁶⁶ Ärzte ohne Grenzen Österreich, *Bericht zur medizinisch-humanitären Lage im Erstaufnahmezentrum Traiskirchen*, August 2015, 10.

¹⁶⁷ European Migration Network and International Organisation for Migration, *Trafficked persons as asylum seekers: The process of identification and access to residence rights in Austria*, February 2014, available at: <http://bit.ly/2l5ARnd>.

verified first. If doubts remain after investigations and age assessment, the principle of *in dubio pro minore* (the benefit of the doubt) should apply.¹⁶⁸

In practice these principles are not strictly applied, however. Children have to undergo the age assessment without the asylum authorities' acknowledging submitted documents or giving enough time to obtain documents. If the child is deemed to be at least 18 years old according to an age assessment examination, they are declared to be adults. The Human Rights Board (*Menschenrechtsbeirat*), NGOs and the Medical Association criticise the age assessment methods used, in regard of their reliability and ethnic acceptance.¹⁶⁹ The age assessment examination states a minimum age and consists of three medical examinations: a general medical 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 (i.e. it shows a high level of ossification), a further X-ray (CT) examination of the clavicle may be ordered.

The question of whether or not it is possible to appeal the decision to declare an unaccompanied child an adult has been referred to the Constitutional Court (VfGH). In a ruling of 3 March 2014,¹⁷⁰ the Court found that the declaration of the BFA that a person is of age and the consequent discharge of the legal representative may not be appealed during the first instance procedure. As a consequence, unaccompanied children who were erroneously declared to be adults have to continue the procedure without legal representation. An article by Daniela & Rainer Lukits presents the ruling of the Constitutional Court as disappointing.¹⁷¹ The authors criticise the Court for setting out criteria that are not in line with effective legal safeguards and for misunderstanding the gap in legal protection which presents itself upon such a declaration that an applicant is adult.

Most of the age assessments are ordered by the EAST during the admissibility procedure, because special safeguards in the Dublin III Regulation apply for unaccompanied children. Age assessments take place even after the application is admitted to the regular procedure. Due to the high number of ordered age assessments, it takes months to get the expert statements. The Dublin Unit starts consultations with other EU Member States with a notice that there is an ongoing age assessment. In the meantime, these child asylum seekers were admitted to the regular asylum procedure too. For the time being, there are no severe delays to get the results of the medical examinations and new medical institutions are involved in age assessments, e.g. the University of Vienna.

It seems that age assessments are ordered systematically. In 2016, 4,551 unaccompanied children applied for asylum, and 2,672 had been submitted to age assessment as of October 2016.¹⁷² In 2015, 9,331 declared unaccompanied children applied for asylum and in 2,826 cases an age assessment was ordered. In 2015, about 10% (951) were determined to be of age.¹⁷³

The legal character of the informal notice that legal representation has ended due to the age assessment is still not finally solved. An appeal was not forwarded to the BVwG, because the notice was not regarded as administrative decision.¹⁷⁴ The appeal against the rejection of the asylum

¹⁶⁸ Article 13(3) BFA-VG.

¹⁶⁹ Menschenrechtsbeirat (*Human Rights Board*): Bericht des Menschenrechtsbeirates zu Kindern und Jugendlichen im fremdenrechtlichen Verfahren (*Report of the Human Rights Board on children and adolescents in cross-border procedures*), 2011; Stellungnahme der Ärztekammer (*Comment by the Medical Council*), FPG 2010, 21 July 2009.

¹⁷⁰ VfGH, U 2416/2013-8, 3 March 2014.

¹⁷¹ D Lukits & R Lukits, 'Neues zur Volljährigerklärung im österreichischen Asylverfahren (News on the declaration of maturity in the Austrian asylum procedure, FabI, January 2014.

¹⁷² Ministry of Interior, Reply to parliamentary question 10254/AB, 5 January 2017, available in German at: <http://bit.ly/2k4Mdas>.

¹⁷³ Ministry of Interior, *Asylum Statistics December 2015*, available at: <http://bit.ly/2cjabNY>, 9.

¹⁷⁴ See Asylum Court, Decision B13 430.608-1/2012/3E, 11 September 2016; A6 437.753-1/2013/3E, 26 September 2016.

application was rejected by the BVwG, but the appeal to the Administrative High Court allowed.¹⁷⁵ In the BVwG's decision the contested age assessment was not picked up. The VfGH ruled that the BVwG has not yet issued a decision on the age assessment. Nevertheless – a rejection of a Dublin decision would be unlawful in case the applicant would be underage.

A department of the BFA Lower Austria in **Wiener Neustadt** is known for its tendency towards negative decisions and for low quality of decisions. A lot of cases of unaccompanied minors are decided at that department.

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

If vulnerabilities are deemed to be highly probable, the application shall not be dismissed in the admissibility procedure. Article 30 AsylG also states that, in the further course of the procedure, consideration should be given to the asylum seekers' specific needs. However, this does not seem to be applied in first instance procedures in practice. Usually the 6-month time limit for deciding on the application is long enough to gather evidence and could be extended without any consequences.

If an asylum seeker bases the fear of persecution on infringements of the right to sexual self-determination, they should be interviewed by an official of the same sex, unless they request otherwise.¹⁷⁶ 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.¹⁷⁷ 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 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.

It is not likely that applications of vulnerable asylum seekers like victims of torture or violence or unaccompanied minors are processed in the airport procedure (the only border procedure), although accelerated procedures for public security reasons may be conducted.

¹⁷⁵ VfGH, Decision Ra 2016/19/0007, 25 February 2016, available in German at: <http://bit.ly/2l6AhVC>.

¹⁷⁶ Article 20(1) AsylG.

¹⁷⁷ VfGH, U 688-690/12-19, 27 September 2012.

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

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.

The BFA requests medical reports from psychiatrists, which are partly criticised by NGOs and psychotherapists.¹⁷⁸ Some of these psychiatrists or medical experts are accredited by the courts, but have no special training on torture survivors, 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 need 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 by the authorities. 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 every federal state, an NGO provides psychotherapy for asylum seekers with treatment free of charge, funded by the AMIF, but capacities are not sufficient, clients often have to wait several months to start the treatment

In an appeal against a decision of the BFA, new facts and evidence may be submitted only if the asylum seeker had been unable to submit such facts and evidence 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 demanded from the Court or submitted by the applicant may play a crucial role in the appeal procedure in practice.

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.”¹⁷⁹

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 bring evidence of how far those issues would influence the asylum seeker's

¹⁷⁸ K Ottomeyer: Genereller Simulationsverdacht (*General suspicion of simulation*) (Zebratl, May 2006) available at: <http://bit.ly/1RjDwGt>; Weltverband für Psychiatrie, *Sektion psychologische Folgen von Folter & Verfolgung: Expert opinion on two psychiatric opinions*, 29 November 2002.

¹⁷⁹ VwGH, 007/19/0830, 19 November 2010.

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.¹⁸⁰ In the same ruling, the Court repeats 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.

Medical reports are not based on the methodology laid down in the Istanbul Protocol.¹⁸¹

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 is appointed as soon as an unaccompanied child applies for asylum. Contrary to adult refugees, unaccompanied minors have to apply for asylum in the initial reception centre (EAST). Unaccompanied children have no legal capacity to act by themselves in the procedure; nevertheless, they are under the same obligation to cooperate in the procedure as adults. Legal representatives have to be present at interviews organised by the Federal Agency for Immigration and Asylum (and hearings at the Federal Administrative Court). 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 are either from Verein Menschenrechte Österreich or from ARGE Rechtsberatung. According to *Menschenrechtsbeirat*,¹⁸² it is problematic that these legal advisers are only responsible for the asylum procedure and do not have whole custody of the child. Furthermore, legal advisers are not required to have special expertise on children.

After admission to the regular procedure and transfer to one of the federal provinces, the Child and Youth Service (*Kinder- und Jugendhilfe*) takes over the legal representation according to the Asylum Act or by court decision. During his visit, the Commissioner for Human Rights of the Council of Europe learned however that gaps persist for children at the admissibility stage and for those whose cases have been declared inadmissible or who are subject to being returned to another EU Member State under the Dublin Regulation.¹⁸³

In 2016, return advice was rendered mandatory and unaccompanied minors are also advised to return in their country of origin. Legal representatives were not informed about this, as a file note is only available when the application for voluntary return has already been signed. 25 minors, including from Afghanistan and Iraq, have applied for voluntary return in 2016.

Since January 2014, all children shall have a legal representative in Aliens Police Act procedures. This legal provision has been adopted in the *Fremdenbehördenneustrukturierungsgesetz* (FNG), a 2012 amendment.¹⁸⁴ Before, children of 16 years of age were not legally represented in procedures according

¹⁸⁰ VwGH, 2006/01/0355, 15 March 2010.

¹⁸¹ 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.

¹⁸² Menschenrechtsbeirat: (*Human Rights Board*): Bericht des Menschenrechtsbeirates zu Kindern und Jugendlichen im fremdenrechtlichen Verfahren (*Report of the Human Rights Board on children and adolescents in cross-border procedures*), 2011.

¹⁸³ CoE Commissioner for Human Rights, *Report by Nils Muižnieks, Commissioner for Human Rights of the Council of Europe following his visit to Austria from 4 to 6 June 2012*, CommDH(2012)28, 7.

¹⁸⁴ BGBl. I Nr. 87/2012, 16 August 2012.

to the Aliens Police Act, e.g. an expulsion order or detention. Furthermore, legal safeguards for unaccompanied children have been improved. The time limit for submitting the appeal has been extended to 4 weeks (instead of 2 weeks in the regular procedure when the dismissal includes a return decision).¹⁸⁵

As of 1 January 2014, 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.¹⁸⁶ For the time being it seems that tracing in countries of origin or third countries is not applied. The same amendment of the law implements the extended definition of family members and legal representatives of children introduced by the recast Qualification Directive and the Dublin III Regulation.¹⁸⁷

The number of unaccompanied children seeking asylum in Austria, mainly from Afghanistan, has significantly increased in the last two years:

Asylum applications by unaccompanied children: 2011-2016							
	2010	2011	2012	2013	2014	2015	2016
Afghanistan	297	755	1,035	437	1,201	5,609	2,746
Total	934	1,346	1,781	1,187	1,976	8,277	4,551

Source: Ministry of Interior, Asylum Statistics 2010-2016: <http://bit.ly/1lfugJL>.

Problems reported in previous years relating to inaction and delays in the procedural treatment of unaccompanied children by the BFA have been solved in 2016, as many special reception places for unaccompanied asylum seeking children have been opened, thus distributing the file to a branch office of the BFA. The delay in processing applications of unaccompanied minors is still not solved.

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

Subsequent applications are defined by the AsylG as further applications after a final decision was taken on a previous asylum application.¹⁸⁸ If a further application is submitted while an appeal is still pending, the new application is considered as addition to the appeal. Different legal safeguards apply depending on the previous procedure (in-merit or Dublin procedure) and the time of submitting the

¹⁸⁵ Article 16(1) AsylG.

¹⁸⁶ Article 13(6) FNG Adoption Law. BGBl. I Nr. 68/2013, 17 April 2013.

¹⁸⁷ Article 2(j) recast Qualification Directive; Article 2(g) Dublin III Regulation.

¹⁸⁸ Article 2(1)(23) AsylG.

application. Usually, a subsequent application is not admitted to the regular procedure and is rejected as inadmissible.¹⁸⁹

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.

Within the admissibility procedure, an interview has to take place, 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. New elements are not defined by the law, but there are several judgments of the Administrative High Court that are used as guidance for assessing new elements.¹⁹⁰

Reduced legal safeguards apply in case an inadmissibility decision was taken within the previous 18 months (rejection is connected to an expulsion order and a re-entry ban of 18 months). In this case, there is generally no suspensive effect either for the appeal or 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.¹⁹¹

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 not granting suspensive effect.¹⁹² The expulsion may be effected 3 days after the Court has received the file.

In certain cases, it might 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 Article 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 although another Member State was considered responsible, the asylum seeker 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 2 years after their file has been closed due to their absence have to submit a subsequent application too. The same applies if the decision has become final while the asylum seeker was staying in another Member State.

¹⁸⁹ Article 68 AVG.

¹⁹⁰ See AsylGH 09.04.2013, C6 408.412-2/2013; VwGH v. 20.03.2003, ZI. 99/20/0480, AsylGH 10.04.2013, B10 305.993-2/2013.

¹⁹¹ Article 12a(1) AsylG.

¹⁹² Article 22(1) BFA-VG.

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. Free legal assistance is available to appeal the rejection of the subsequent asylum application.

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 and Restrictions to Access Reception Conditions](#)).¹⁹³ If Basic Care is not granted, detention or a less coercive measure such as a designated place of living and reporting duties is ordered.¹⁹⁴

Subsequent asylum applications lodged in 2016		
	Number	Percentage of total applications
Russia	375	23.3%
Afghanistan	236	2%
Nigeria	189	10.2%
Algeria	149	14.7%
Syria	122	1.4%
Total	2,121	5%

Source: Ministry of Interior, Asylum Statistics December 2016: <http://bit.ly/2k2N2Ue>.

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 of 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 consideration. The Federal Government can by ministerial order decide that, in such cases, suspensive effect may no longer be refused and that the BFA and the Court are bound by such decision. The examination by the Ministry of Interior took reports of the COI of the (former) Federal Asylum Agency into consideration and drafted

¹⁹³ Article 3(1)(3) Basic Care Act (GVG-B).

¹⁹⁴ Articles 76(3)(4) and 77 FPG.

the list following the extension of a safe country of origin list of Switzerland. The list was drafted by the Ministry of Interior,¹⁹⁵ while NGOs had the possibility to submit comments on it.

This list includes all EU Member States,¹⁹⁶ although there is a mechanism to take Member States off the list in case Article 7 of the Treaty on European Union (TEU) would be applied.¹⁹⁷ As a consequence, suspensive effect must be granted for appeals in asylum procedures of nationals of such EU Member State. Other safe countries of origin mentioned in the Asylum Act are: **Switzerland, Liechtenstein, Norway, Iceland, Australia and Canada.**

Further states are defined as safe countries of origin by Governmental order (**HStV**). Following an amendment of the HStV on 16 February 2016, these are:¹⁹⁸

- Albania;
- Bosnia-Herzegovina;
- FYROM;
- Serbia;
- Montenegro;
- Kosovo;
- Albania;
- Mongolia;
- Morocco;
- Algeria;
- Tunisia;
- Georgia.

The 2016 amendment added Mongolia, Morocco, Algeria, Tunisia and Georgia to the list.¹⁹⁹

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 suspensive effect. In such procedures, asylum seekers have access to free legal assistance where applications are rejected. Legal advisers have to organise interpreters. The procedure may be accelerated, but there are no exceptional time limits for deciding such applications.

In 2016, Austria received 1,043 applications from Moroccan nationals (2.5% of the total number of applications), 1,016 from Algerian nationals (2.4%) and 348 from Georgian nationals (0.8%).²⁰⁰

2. Safe third country

Articles 4 AsylG set 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

¹⁹⁵ According to information from the Ministry of Interior, human rights standards have been assessed by the Ministry of Interior based on the country of origin information of the Federal Asylum Agency. See Ministry of Interior, *Fremdenwesen (Alien Affairs)*, June 2009, available at: <http://bit.ly/1SXBISC>, 72.

¹⁹⁶ Defined as states party to the EU Treaties: Article 2(1)(18) AsylG.

¹⁹⁷ 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.

¹⁹⁸ Verordnung der Bundesregierung, mit der Staaten als sichere Herkunftsstaaten festgelegt werden (Herkunftsstaaten-Verordnung – HStV), as amended on 16 February 2016, available at: <http://bit.ly/2ji71tR>.

¹⁹⁹ BGBl 2016 II/47, available at: <http://bit.ly/2jUrxCp>.

²⁰⁰ Ministry of Interior, *Asylum Statistics December 2016*, available at: <http://bit.ly/2k2N2Ue>.

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 his or her conduct, the inadmissibility decision ceases to be valid.²⁰¹

Criteria on safety and connection

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 he or she is 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.²⁰² 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 13.²⁰³

There is no list of safe third countries and the concept is applied rarely. It is applied for persons with protection status applying for asylum in Austria too. A Syrian mother with 3 children gave birth after she arrived in Bulgaria, and suffered from prenatal depression. She was granted subsidiary protection in Bulgaria shortly after her journey 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.²⁰⁴

The conditions for the application of the safe third country concept have been clarified by the Constitutional and Administrative High Court. 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.²⁰⁵ 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-t-date information of relevant organisations to be able to assess the factual situation.²⁰⁶

According to both rulings, mere transit or stay in a third country is not sufficient to apply the safe third country concept.²⁰⁷

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.

²⁰¹ Article 4(5) AsylG.

²⁰² Article 4(2) AsylG.

²⁰³ Article 4(3) AsylG.

²⁰⁴ BVwG, Decision W192 2131676, 8 September 2016.

²⁰⁵ VfGH, Decision 98/01/0284, 11 November 1998.

²⁰⁶ VfGH, Decision U 5/08, 8 October 2008, available at: <http://bit.ly/2jilW73>.

²⁰⁷ VfGH, Decision 98/01/0284, 11 November 1998; VfGH, Decision U 5/08, 8 October 2008.

In a case ruled by the Federal Administrative Court, the rejection of the application as inadmissible of a Chechen refugee who was registered in Azerbaijan as “person of concern” to UNHCR was seen as not sufficient. The court missed the opportunity to assess the question whether the status is similar to the status of a recognised refugee or the protection from *refoulement* is sufficient.²⁰⁸

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

G. Relocation

Indicators: Relocation

1. Number of persons effectively relocated since the start of the scheme 0

Austria is required to relocate 1,953 persons from Italy and Greece under the Relocation Decisions. However, no pledge for relocation has been made to date.

H. 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 sheets in a language understandable to them during the first interrogation.²⁰⁹ At the beginning of the interview, the applicant must be informed about his or her duties in the procedure.

The BFA published a brochure about the asylum procedure on the website. This brochure is in German and is aimed at Austrians.²¹⁰

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.

An overview on the asylum procedure is available on the webpage of the Federal Office for Immigration and Asylum (BFA).²¹¹ Several NGOs provide information on the procedure on their respective websites, such as Diakonie, Caritas or Asylkoordination.

²⁰⁸ BVwG, Decision L518 2109232-1, 6 August 2015, available at: <http://bit.ly/2jUv9oc>.

²⁰⁹ These are available at: <http://www.bfa.gv.at/publikationen/formulare/>.

²¹⁰ BFA, *Asylverfahren*, available in German at: <http://bit.ly/2l52OeW>.

²¹¹ See: http://www.bfa.gv.at/bmi_docs/1753.pdf.

Detailed written information about the different steps of the procedure and rules and obligations does not exist so far. 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. “Plattform Rechtsberatung”, an NGO in Tyrol, produced short videos that were available on the internet and give information about the asylum procedure in some languages.²¹² At the time of writing they offer some audio-files in English, Arabic, French, while launch is planned for Somali and Russian in February 2017.

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.²¹³ UNHCR has also produced a brochure about the asylum procedure for unaccompanied child refugees. It is available in four languages (German, English, Pashtu, Dari).²¹⁴

Asylum seekers against whom an enforceable but not yet final expulsion order is issued shall be informed in an appropriate manner (if available, a leaflet is provided in a language understandable to them) that, for the notification of decisions in the asylum procedure, they may avail themselves of the services of a legal representative and that they are obliged to inform the authority of their place of residence and address, including outside Austria.²¹⁵

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 with the Administrative High Court (VwGH) and the Constitutional Court (VfGH).²¹⁶

For Dublin cases, a project entitled “Go Dublin” – previously under ERF and now continuing under the AMIF – assists the authorities to enable quick transfers.²¹⁷ The project is run by Verein Menschenrechte Österreich, an association that has a close working relationship with the authorities and that does not cooperate at all with NGOs. This organisation also provides information and advice on voluntary return. This is why it is unknown whether and how comprehensive information is provided in Dublin cases. The aim of the project is to inform asylum seekers about the Dublin system, modalities and time limits of transfer, but in several known cases asylum seekers agreed to voluntary return (an activity carried out by the same organisation) but were nevertheless sent back to the Member State responsible for the asylum procedure.

In every stage of the procedure, asylum seekers are informed about the possibility of support for voluntary return. The BFA can also order consultation with regard to return. When an asylum seeker leaves the country in the context of voluntary repatriation to his or her country of origin, the asylum proceeding is filed as redundant.

²¹² Plattform Rechtsberatung, Welcome to Europe, available at: <http://bit.ly/1Z7o41m>.

²¹³ ‘Asylterminologieführer Deutsch/Russisch’, Deutsch/Englisch, Deutsch/Arabisch available at: <http://bit.ly/211wsFj>.

²¹⁴ UNHCR, ‘Your Asylum Procedure in Austria’, available at: <http://bit.ly/1ljRCdT>.

²¹⁵ Articles 15(1)(4) and 14(4) AsylG explaining the duty to register even for delivering letters abroad.

²¹⁶ Article 133(4) B-VG; Article 30 VwG-VG.

²¹⁷ Ministry of Interior, *List of AMIF funded projects 2015-2016 (Asylum and Return)*, available at: <http://bit.ly/1OqSfsR>; Verein Menschenrechte Österreich, *Information on Dublin Procedures*, available at: <http://bit.ly/1NrSLac>.

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.²¹⁸ 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 without such a contract may have to apply at the responsible office of the federal province for a permit to visit an asylum seeker. Access to asylum seekers in detention is difficult for NGOs, insofar as they are not the authorised legal representative of the asylum seeker. The two contracted organisations providing legal advice, ARGE Rechtsberatung and Verein Menschenrechte Österreich, are bound by secrecy and are for this reason hindered from passing on information about clients to NGOs.

I. 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: Syria
2. Are applications from specific nationalities considered manifestly unfounded?²¹⁹ Yes No
❖ If yes, specify which: Bosnia-Herzegovina, FYROM, Serbia, Montenegro, Kosovo, Albania, Mongolia, Morocco, Algeria, Tunisia, Georgia, Ghana

The list of safe countries of origin, based on which the accelerated procedure may be applied, was expanded in 2016 to cover six new countries.

The so-called “fast-track procedure”, applied to swiftly examine and deliver negative decisions on asylum applications, usually from a certain country of origin beyond the safe countries of origin list (see [Fast-Track Processing](#)) was not seen in any cases in 2016 known to the author, due to the expansion of the list.

²¹⁸ Article 63(1) AsylG.

²¹⁹ Whether under the “safe country of origin” concept or otherwise.

Reception Conditions

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 | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> Reduced material conditions | <input type="checkbox"/> No |
| ❖ Dublin procedure | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> Reduced material conditions | <input type="checkbox"/> No |
| ❖ Admissibility procedure | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> Reduced material conditions | <input type="checkbox"/> No |
| ❖ Border procedure | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> Reduced material conditions | <input type="checkbox"/> No |
| ❖ Accelerated procedure | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> Reduced material conditions | <input type="checkbox"/> No |
| ❖ First appeal | <input type="checkbox"/> Yes | <input type="checkbox"/> Reduced material conditions | <input checked="" type="checkbox"/> No |
| ❖ Onward appeal | <input type="checkbox"/> Yes | <input type="checkbox"/> Reduced material conditions | <input checked="" type="checkbox"/> No |
| ❖ Subsequent application | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> Reduced material conditions | <input checked="" type="checkbox"/> 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 advice and return assistance, by prescribing the amount for each.

Asylum seekers are entitled to Basic Care immediately after submitting the asylum application until the final decision on their asylum application in all types of procedures. Since the last legal amendment in July 2015, however, the provision of Basic Care may violate Article 17(1) of the recast Reception Conditions Directive. Contrary to the Directive, Basic Care is foreseen as soon as the person requesting international protection is regarded as asylum seeker. An asylum seeker is an alien whose request is formally submitted, which is the case after the BFA gives an instruction about the next steps to the public security officer.

Since the amendment of the Asylum Act in July 2015, the registration of the application and the provision of Basic care has changed. Asylum seekers do not submit the application in the EAST, but request for asylum at a police station. As long as the application is not regarded as submitted, 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* for asylum, the Basic Care Act of the Federal State defines the responsibility of the Federal State for asylum seekers after having *submitted* the application during the admissibility procedure in a reception facility of the Federal State.²²⁰ However, Basic Care conditions do not apply in detention or where alternatives to detention are applied.²²¹ 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). Some NGOs have contracts to care for asylum seekers and other aliens.²²²

²²⁰ Articles 1(1) and 2(1) GVG-B.

²²¹ Article 2(2) Basic Care Agreement; Article 2(3) GVG-B. Note that this not in conformity with Article 3 recast Reception Conditions Directive.

²²² E.g. Verein Menschen.Leben, available at: <http://bit.ly/1QuetAe>.

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 Reception Conditions Directive, which should remain applicable in all Dublin procedures.²²³

If the suspensive effect of an appeal was denied, basic care is terminated after the first instance decision. 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.²²⁴

A precondition for Basic Care is the need for support. 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.²²⁵ 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.²²⁶ This exclusion clause is applied very strictly, even when the sponsor is unable to care for the asylum seeker. Exception 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,²²⁷ 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**, the regulation for Basic Care in force from 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 € 150.²²⁸

Furthermore, EU and EEA (European Economic Area) citizens are excluded from Basic Care.

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 *Grundversorgungssystem*. National and local authorities, as well as contracted NGOs, have access to the files. Asylum seekers returned to Austria from other Member States may face obstacles to getting full Basic Care after arrival. Sometimes free places in the Federal province they are assigned to are not available. Therefore it happens that they stay in the transit zone of the airport (*Sondertransit*) voluntarily and wait for the renewal of their entitlement to Basic Care, although they stay in a closed centre in the meantime.

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 cease support. Depending on available places, rejected asylum seekers may stay in the reception centre on the basis of a private agreement with the landlord or NGO.

²²³ Recital 11 Dublin III Regulation. See also CJEU, Case C-179/11 *Cimade & GISTI v Ministre de l'Intérieur*, 27 September 2012, para 46.

²²⁴ Article 2(7) GVG-B.

²²⁵ Article 2(1) Basic Care Agreement (GVV)-Art 15a.

²²⁶ Article 5(1)(c) Schengen Borders Code.

²²⁷ Articles 6, 7 and 9 Grundversorgungsvereinbarung (GVV); Art. 15a B-VG.

²²⁸ Salzburg Basic Care Regulation LBGl. 57/2016, available in German at: <http://bit.ly/2kGpqma>.

By the end of November 2016, 63,740 asylum seekers received Basic Care, out of whom 86% with applications pending in first instance, 9.5% waiting for the outcome of the Dublin procedure.

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 2016 (in original currency and in €):	
❖ Accommodated, incl. food	€40
❖ Accommodated without food	€110-200
❖ Private accommodation	€365

Basic Care may be provided in three different forms:²²⁹

- (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 €21 maximum compensation for the costs per day, depending on the standards of the facility. All federal provinces agreed by June 2016 to raise the daily rates for care providers, nevertheless this is not implemented in all federal provinces. **Carinthia** for example has decided to provide €21 from 2019 on, in the meanwhile the daily rate is €20.
- (2) Basic Care can be provided in reception centres where asylum seekers cook by themselves. In that case, asylum seekers receive between €150 and 180 per month mainly in cash. Alternatively, as is practice in Tyrol, they receive € 215 for subsistence (which equals the amount given for subsistence to those living in private flats). In some federal provinces the amount for children is reduced, e.g. in Tyrol children receive €100. The amounts in **Carinthia** in the next two years will be lower, €205 for adults and €95 for children.²³⁰
- (3) Basic Care can be provided for asylum seekers in private rented accommodation. In this case asylum seekers receive €320 in cash.

All asylum seekers receive additionally €150 a year for clothes in vouchers and pupils get €200 a year for school material, mainly as vouchers.²³¹

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 €850 per month (€630 for subsistence and €220 for accommodation). 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 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.

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 €40.50 to €95, depending on the intensity of psychosocial care. In some federal provinces like **Styria** the maximum amount is not given to care providers, although 750 unaccompanied minors are cared for by the end of November 2016 and it is evident that only a smaller group are not in need of much guidance

²²⁹ 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.

²³⁰ Carinthia Basic Care Act, LBGl. 71/2016, available in German at: <http://bit.ly/2kRJJzb>.

²³¹ Article 9(10) and (14) GVV-Art 15a.

and care. In another federal province, **Upper Austria**, the government provides for €85 which should cover legal assistance as well.

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

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.²³² 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; 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. Reduction could also consist 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.

Material reception conditions may be withdrawn where the asylum seeker:²³³

- (a) Repeatedly violates the house rules and/or his or her 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 him or her 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) Since 20 July 2015, in the case the application is rejected or dismissed and suspensive effect was excluded according to Article 18(1) BFA-VG, benefits are terminated. If the applicant cooperates to return voluntarily, he or she is eligible to material reception conditions until his departure.²³⁴ The new regulation makes a reference to Article 20(5) of the recast Reception Conditions Directive according to this article a dignified living standard and access to medical treatment have to be provided.

In some federal provinces and the state, 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.²³⁵

Procedure

Withdrawal or reduction of Basic Care provisions should be decided by the BFA as long as asylum seekers are in the admissibility procedure and by the governmental office of the federal province if the asylum seeker is admitted to the procedure 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

²³² Article 2(1) B-VG Art 15a.

²³³ Article 2(4)-(5) GVG-B.

²³⁴ Article 2(7) GVG-B.

²³⁵ Article 3(1) GVG-B.

out. This is partly because NGOs manage to arrange a solution for their clients, partly because the competent offices are unwilling to make a written decision. Decisions are taken on an individual basis but written reasoned decisions are rare.

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. 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.

A legal remedy in the Basic Care Law 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 since 20 July 2015 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.

If Basic Care is withdrawn because the asylum seeker is no longer considered to be in need of benefits, for example because they earn some money, 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.

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

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 the EAST or to a distribution centre.²³⁶ 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 (EAST) of the Ministry of Interior may also be transferred to reception centres of the federal provinces.²³⁷ Violations of this restriction of movement may be punished with fines between € 100 and €1,000 or with detention of up to 2 weeks if

²³⁶ Article 43(1) BFA-VG.

²³⁷ Article 2(1)(2) GVG-B.

payment of the fine cannot be enforced. These restrictions of movement impede asylum seekers' access to family members or friends and consultations with legal advisers of trust or 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.

Distribution across provinces

Every federal province has to offer reception places according to its population. Asylum seekers are dispersed 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 taken into consideration and usually asylum seekers can be transferred to the federal province where the family lives. 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.

In the summer of 2015, Austria signed an agreement with the Slovak Republic to provide reception places for 500 asylum seekers in **Gabcikovo**. Transfer to this centre outside of Austria should be on a voluntary basis and asylum seekers have the possibility to travel to Austria if this is necessary for the asylum procedure. Their stay in Slovakia is tolerated.²³⁸ In 2016 only a few asylum seekers were placed in Gabcikovo, and by the end of the year 18 asylum seekers with cases pending at first instance lived there. The contract with the Slovak government from summer 2015 was concluded for 2 years. The former university building was only used for the basic care of Syrian refugees.²³⁹

In all federal provinces, places for unaccompanied children exist and in some there are places for single women. Some facilities are better equipped to host families, others for single persons. Not every province has places for asylum seekers in need of special treatment, however. The province of **Vienna** offers many more reception places than those foreseen by the quota system (see [Types of Accommodation](#)), while other provinces such as **Salzburg** 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. In 2015 the lack of reception places caused homelessness and overcrowded initial reception centres, leading to inhuman living conditions. All federal states opened a lot of new facilities and the Ministry of Interior made use of its power to run reception centres in regions that host less refugees than 1.5% of their population. In 2016, many reception places are no longer needed and closed gradually.

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 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.

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)

²³⁸ ORF, 'Flüchtlinge „gegen ihren Willen“ nach Gabcikovo gebracht' (refugees transferred to Gabcikovo against their will), 27 September 2015, available in German at: <http://bit.ly/1JhBH5d>; ORF, 'Slowakei soll 500 Asylwerber versorgen' (Slovakia shall care for 500 asylum-seekers), 9 July 2015, available at: <http://bit.ly/1Rua9Bj>. See also AIDA, 'Austria: Plans to relocate 500 asylum seekers to Slovakia rejected by local population', 3 August 2015, available at: <http://bit.ly/1OyWmZs>.

²³⁹ Profil, 'Die Platzhalter', 19 October 2016, available in German at: <http://bit.ly/2k1BJwd>.

without permission for more than 3 days, Basic Care will be withdrawn (see the section on [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.

There are no special reception centres to accommodate asylum seekers for public interest or public order reasons. One such centre in **Carinthia**, which was heavily criticised,²⁴⁰ was closed in October 2012. In practice asylum seekers who violate the house rules may be placed in less favourable reception centres in remote areas, but such sanctions are not foreseen by law.

If grounds arise demanding an asylum seeker's detention, 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.

B. Housing

1. Types of accommodation

Indicators: Types of Accommodation	
1. Number of reception centres: ²⁴¹	Not available
❖ Federal Ministry of Interior	34
❖ Carinthia	165
❖ Upper Austria	519
❖ Salzburg	188
❖ Lower Austria	800
2. Total number of persons in Basic Care:	88,009
3. Total number of places in private accommodation:	Not available
4. Type of accommodation most frequently used in a regular procedure:	
<input checked="" type="checkbox"/> Reception centre	<input checked="" type="checkbox"/> Hotel or hostel
<input type="checkbox"/> Emergency shelter	<input checked="" type="checkbox"/> Private housing
<input type="checkbox"/> Other	
5. Type of accommodation most frequently used in an accelerated procedure:	
<input checked="" type="checkbox"/> Reception centre	<input type="checkbox"/> Hotel or hostel
<input type="checkbox"/> Emergency shelter	<input type="checkbox"/> Private housing
<input type="checkbox"/> Other	

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.²⁴²

Each of the 9 federal provinces has a department responsible for administering Basic Care. This department searches suitable accommodation places, and concludes 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 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.

²⁴⁰ Ombudsman, Misstände in Kärntner Flüchtlingsunterkünften, 27 March 2013, available in German at: <http://bit.ly/1Ruaq7i>.

²⁴¹ Both permanent and first arrivals. Information only available for federal level (September 2016:) and specific provinces such as Salzburg (June 2016), Carinthia (November 2016), Upper Austria (October 2016), Lower Austria: <https://grundversorgungsinfo.net/>.

²⁴² Article 1(4) GVV-Art.15a.

1.1. Sufficient accommodation

The severe lack of accommodation in 2015 has been solved through the opening of emergency shelters and new forms of reception facilities such as containers.

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. According to recent information from the Ministry of Interior, the entire Austrian reception system had a capacity of 88,009 places and hosted 79,176 persons at the end of 2016. The respective quotas of the federal provinces were filled as follows:

Provision of Basic Care by federal province: 30 December 2016			
Federal province	Maximum capacity	Quota	Actual occupancy
Vienna	20,873	16,558	20,509
Voralberg	3,759	3,493	3,559
Upper Austria	14,715	13,258	13,200
Burgenland	2,773	2,662	2,466
Styria	12,100	11,273	10,488
Lower Austria	15,804	15,111	13,952
Tyrol	6,997	6,719	6,180
Carinthia	6,047	5,147	4,745
Salzburg	4,941	4,968	4,077
Total	88,009	79,189	79,176

Source: Ministry of Interior, Reply to parliamentary question 11072/J (XXV.GP), 6 February 2017: <http://bit.ly/2kqv5OR>.

While **Vienna** continues to exceed its relative reception share, other federal provinces have had several empty places. Consequently, several centres have free capacity and are planned to close as they are not able to cover the general costs of rent, heating, staff etc. Volkshilfe has announced the closure of several centres in **Upper Austria**, similar to **Voralberg**, where Caritas has started closing the big halls.

Only a few asylum seekers are cared for in distribution centres (VQ). The number of asylum seekers in initial reception centre (EAST) of **Traiskirchen** has also sharply decreased, from 5,000 asylum seekers under inhuman living conditions in August 2015,²⁴³ to 700 in June 2016. The government recruited a consultant with experience in camp management in Jordan to work in Traiskirchen. Living conditions have constantly improved since.²⁴⁴

Federal reception capacity

As of 20 July 2015, the EAST 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 minor asylum seekers as long as they are not transferred to reception facilities of the federal provinces. Instead of streaming all asylum seekers to the EAST, they should have their first accommodation in the so called distribution centres (VQ), which should be set up in 7 federal provinces. Some of the VQ are located in remote areas. The

²⁴³ Bernhard Odehnal, Tages-Anzeiger, 'Endstation Traiskirchen (last station Traiskirchen)', 30 June 2015, available at: <http://bit.ly/1Zdotj3>.

²⁴⁴ Kurier, 'Traiskirchen: Lage hat sich wieder "normalisiert"', 25 August 2016, available in German at: <http://bit.ly/2kqoRyt>.

government of Tyrol closed the reception centre in **Fieberbrunn**, but it was reopened by the Ministry of Interior as distribution centre. It has a capacity of 292 places, and at the end of November 2016 only 38 asylum seekers lived there. Newly arriving asylum seekers stay only 4 to 5 days in the distribution centres according to information from the Centre in **Ossiach**.

By the end of 2014, the Ministry of Interior was responsible for 12 reception centres.²⁴⁵ This number increased to 34 in 2016.²⁴⁶ A legal amendment enables the Ministry of Interior since 1 October 2015 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 dedicated as refugee home, where special safeguards apply like fire protection or building regulations.²⁴⁷ Immediately after the law entered into effect, the Ministry started to prepare three bigger centres and started negotiations with 15 municipalities.²⁴⁸

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 practice it can take much longer to transfer an asylum seeker to one of the federal provinces.

At the **Vienna airport**, the EAST 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 now provides care to asylum seekers at the airport.²⁴⁹

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. 86% of asylum seekers in **Styria**), private accommodation is more often used in others such as **Vienna**, where 62% of applicants lived in private accommodation as of August 2016.

By the end of 2016, the Austrian system counted 79,176 persons cared for under the Basic Care System.²⁵⁰ According to earlier figures referring to 1 November 2016, 80.5% of persons receiving Basic Care were asylum seekers.²⁵¹

1.2. Transit centres (*Transitquartiere*)

In parallel to the reception system, several transit centres have been opened in various locations in Austria for refugees transiting the country *en route* to Germany in 2015. Even though these are only intended for short stays of hours or days, as many as 7,100 asylum seekers have been staying in those centres due to the lack of accommodation as of the end of November 2015.²⁵²

²⁴⁵ See Ministry of Interior, Grundversorgung/Bundesbetreuung, available at: <http://bit.ly/11qIDgA>.

²⁴⁶ Ministry of Interior, Reply to parliamentary question 10293/J (XXV.GP), 17 November 2016, available in German at: <http://bit.ly/2kRNOif>.

²⁴⁷ Bundesverfassungsgesetz: Unterbringung und Aufteilung von hilfs- und schutzbedürftigen Fremden. BGBl 120, 28 September 2015, available at: <http://bit.ly/1JdszhK>.

²⁴⁸ Orf, ‚Durchgriffsrecht in ersten Gemeinden (right to take drastic measures in first municipalities)‘, 2 October 2015, available at: <http://bit.ly/1m9mKws>.

²⁴⁹ Der Standard, ‚Aus für Caritas-Flüchtlingsbetreuung am Flughafen‘, 13 January 2017, available in German at: <http://bit.ly/2kmxmsn>.

²⁵⁰ Ministry of Interior, Reply to parliamentary question 11072/J (XXV.GP), 6 February 2017, available in German at: <http://bit.ly/2kqv5OR>.

²⁵¹ Ministry of Interior, Reply to parliamentary question 10821/J (XXV.GP), 17 January 2017, available in German at: <http://bit.ly/2kLfKIh>. The Ministry figures refer to a total 80,916 persons, out of whom 65,113 asylum seekers.

²⁵² OE1ORF.at ‚Notquartiere immer öfter fixe Asylquartiere‘ 20 November 2015, available at <http://oe1.orf.at/artikel/425867>.

After the closure of the so-called Balkan route in February 2016, these transit centres have been subsequently closed. Bigger halls with 450 beds in Carinthia like **Baumaxhalle** had 137 occupied beds by the end of 2016, while in **Siriushalle** 112 people are living as asylum seekers.²⁵³ Container and tents at the borders remained as a part of border management, although they are not used at the moment.

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? Not available
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, subcontracts their day-to-day management to companies, while remaining the responsible authority. Until 2012, European Homecare, which is mainly active in Germany, was providing federal care to asylum seekers. Since 2012, ORS, a company running accommodation centres for asylum seekers in Switzerland, provides basic care in the reception centres under the responsibility of the Ministry.

Conditions in the reception centres of the federal provinces vary. According to the standards of the facility, NGOs or the landlord receive up to €21 per person a day for providing housing, food and other services like linen or washing powder. There are still some reception centres that get only €19 per person refunded due to low standards, e.g. because there is no living room or more people have to share the bathroom and toilet. A survey by journalists in summer 2014 showed big differences in the reception centres of three federal provinces.²⁵⁴ One of the centres was overcrowded, while others had severe sanitary problems and asylum seekers complained about the poor and unhealthy meals. Racist behaviour and bad conditions led to the closure of a reception centre in **Lower Austria** in September 2016 after years of complaints.²⁵⁵ The federal provinces agreed on minimum standards in September 2014.²⁵⁶ However, systematic research on conditions has not been undertaken in the last year.

Depending on the former use of the buildings, asylum seekers may live in an apartment and have their own kitchen and sanitary facilities, which is sometimes the case in former guest houses. Usually single persons share the room with other people. In most reception centres, asylum seekers have to keep their room clean, but they could also be responsible for keeping the floor, living rooms, toilets and showers clean. This work in the centre may also be remunerated from €3 to €5 per hour.

There is a trend of allowing asylum seekers to cook for themselves because it is evident that this contributes to the well-being of the asylum seeker and reduces tensions. In the reception centres of the state, cooking is not possible and even taking food into the living room or bedroom is not allowed. If meals are served, dietary or religious requirements have to be respected, but there are complaints about quality and some failures to take religious requirements into account.²⁵⁷ In **Burgenland** and

²⁵³ Kaernten.orf.at, 'Bundesquartiere nur zu 25 Prozent ausgelastet', 13 January 2017, available in German at: <http://bit.ly/2klcrVX>.

²⁵⁴ Dossier, 'Asyl – Ein Jahr Danach', 3 November 2014, available here: <http://bit.ly/1cyZZNB>, contains reports on each of about 100 facilities visited.

²⁵⁵ Profil, 'Flüchtlingsheim in Annaberg: Ein Haus mit schiefem Segen', 26 September 2016, available in German at: <http://bit.ly/2kRZA0o>.

²⁵⁶ 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>.

²⁵⁷ Dossier, 'Asyl – Ein Jahr Danach', 3 November 2014, available at: <http://bit.ly/1cyZZNB>.

Styria, meals are often served by the centre, while in **Tyrol** asylum seekers can cook in the reception centres.

The amount given to asylum-seekers if meals are not provided differ in the federal provinces. **Burgenland, Carinthia, Upper Austria, Tyrol** und **Vorarlberg** give a lower amount for the nutrition of children (€80-100), while other federal provinces make no difference between minors and adults. In **Styria** asylum seekers in reception centres get €150 for subsistence but are no longer entitled to €40 pocket money, which means that in fact the monthly amount for food is €110. In **Tyrol** adult asylum seekers are given € 200 to organise meals by themselves.

A monthly amount of €10 is foreseen in the Basic Care agreement for leisure activities in reception centres. This is partly used for German language classes. Because administration of this benefit is very bureaucratic, it is not often used.

Hotels and inns usually do not have staff besides personnel for the kitchen, administration and maintenance of the buildings. These reception centres are visited by social workers, most of them staff of NGOs, on a regular basis (every week or every second week). Reception centres of NGOs have offices in the centres. The capacities foreseen by law – 1 social worker for 140 clients - are not sufficient, especially when social workers have to travel to facilities in remote areas or need the assistance of an interpreter. NGOs work with trained staff. Some of the landlords host asylum seekers since many years and may have learned by doing, but have not received specific training.

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 in the mountains of **Tyrol**, a former military camp, cannot be reached by public transport, a shuttle bus brings the asylum seekers two times a week to the next village, two and a half hour walking distance. Internet is accessible in the meanwhile.²⁵⁸

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?
❖ If yes, when do asylum seekers have access the labour market? | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
3 months |
| 2. Does the law allow access to employment only following a labour market test? | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No |
| 3. Does the law only allow asylum seekers to work in specific sectors?
❖ If yes, specify which sectors: Tourism, agriculture, forestry | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No |
| 4. Does the law limit asylum seekers' employment to a maximum working time?
❖ If yes, specify the number of days per year | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No |
| 5. Are there restrictions to accessing employment in practice? | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No |

The Aliens Employment Act (AuslBG) states that an employer can obtain an employment permit for an asylum seeker 3 months after the submission date of the asylum application, provided that no final decision in the asylum procedure has been taken prior to that date.²⁵⁹

²⁵⁸ Profil, 'Nächtlicher Angriff auf Asylwerber in tiroler Bergen (Attack on asylum seeker in the mountains of Tyrol in the night)' 30 October 2014, available at: <http://bit.ly/1G8a8MZ>.

²⁵⁹ Article 4(1) AuslBG.

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.).²⁶⁰

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.²⁶¹ The decision has to be made within 6 weeks; in case of appeal proceedings, the same time-limit must be applied.

In addition, a 2004 ordinance includes further restrictions for the access to the labour market for asylum seekers, by limiting employment to seasonal work either in tourism, agriculture or forestry.²⁶² 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 left to asylum seekers in most of the federal provinces, while the rest of the money earned contributes to the cost of reception.²⁶³ 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. This request of contribution causes many problems, as in reality the asylum seekers have spent the money earned and do not have sufficient means to survive the following months.²⁶⁴

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. It thus very much depends on the initiative of the asylum seeker to find a job offer, as they are not registered as persons searching for work at the Public Employment Service. Asylum seekers often lack money for job-seeking motivated travel for the purpose of job interviews.

Asylum seekers can carry out non-profit activities and receive an acknowledgment of their contributions. The amount of this remuneration was debated, however. While previous provisions provided for a sum of €3 to €5 and the Social Referees of the federal provinces regarded €5 as more appropriate, Minister of Interior Sobotka proposed a sum of €2.50 per hour. Meanwhile, the Austrian People's Party (ÖVP) representatives also demand to pay only €1 or not to pay any recognition fees. Minister Sobotka published a list of such non-profit jobs, e.g. administrative messenger or office assistance, translation services, support for parks and sports facilities, playgrounds, care for the elderly, assistance in nursery

²⁶⁰ *Ibid.*

²⁶¹ Article 20(1) and (3) AuslBG.

²⁶² Ordinance GZ 435.006/6-II/7/2004, 11 May 2004.

²⁶³ In **Tyrol**, asylum seekers may earn €240 per month tax-free.

²⁶⁴ Asylkoordination Österreich, *Leben im Flüchtlingsquartier* ("Living in an accommodation centre"), December 2010, 37f.

schools, school attendance services, assistance in animal shelters, or support for minor resettlements in the municipality.²⁶⁵

On 25 January 2017, the Ministry of Social Affairs submitted a decree to the Labour Market Service (AMS). The Decree clarifies that:²⁶⁶

- 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 volunteer work for companies. An asylum seeker may take 3 months in a one-year period with several companies.

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 EAST, school attendance in public schools is not provided, however. Preparatory classes usually are set up where many children without knowledge of the German language attend class, otherwise they are assisted by a second teacher. 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. Some pupils manage to continue their education in high schools. Children who did not attend the mandatory school years in Austria have difficulties in continuing their education, however. 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 could 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.²⁶⁷ 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 25.²⁶⁸

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, under a law entering into force on 1 August 2016. This law, however, is not applied to asylum seekers, despite criticism from NGOs and the

²⁶⁵ Ministry of Interior, 'Sobotka: Leistungskatalog für Hilfstätigkeiten von Asylwerbern erstellt', 28 October 2016, available in German at: <http://bit.ly/2kS0dHB>.

²⁶⁶ Oberösterreichische Nachrichten, 'Asylwerber dürfen nun in Firmen schnuppern', 1 February 2017, available in German at: <http://bit.ly/2k2eEtz>.

²⁶⁷ Asylkoordination, *Expansion of employment opportunities for asylum seekers*, 14 June 2012, available in German at: <http://bit.ly/1k7cAuY>.

²⁶⁸ Austrian Employment Office, *Beschäftigungsmöglichkeiten für Asylwerberinnen und Asylwerber*, November 2015, available in German at: <http://bit.ly/1msi8SL>.

Chamber of Employment for failing to address a problematic aspect of integration and education policy.²⁶⁹

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 is usually conducted within 24 hours. A general examination is made through a physical examination including vital signs, skin lesion, injuries, including TBC-X-ray and questions on their state of health by means of a standardised medical history. If, within the scope of the investigation, circumstances become known which require further investigations, asylum seekers are transferred to specialist doctors or a hospital.²⁷⁰

Every asylum seeker who receives Basic Care has health insurance. Treatment or cures that are 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.²⁷¹

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 2 days, they will not receive medical assistance, because it is assumed that they have the opportunity 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.

The delay in registration as asylum seeker results in delayed registration in the health insurance. **Vienna** has restructured the registration process and issues "Vienna Refugee Aid service cards" to asylum seekers through which it organises the registration in the health insurance system.

After the asylum seeker has submitted the asylum application, a general health examination is carried out and asylum seekers are obliged to undergo this examination, including a TBC (Tuberculosis) examination. The Ministry of the Interior has commissioned the Red Cross to carry out the medical examination, which is part of the admission procedure. It is no longer to be organised by the basic care provider company ORS.

In each federal province, one NGO 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

²⁶⁹ Employment Office of Upper Austria, 'Ausbildungspflicht bis 18: AK fordert Nachbesserungen', 19 August 2016, available in German at: <http://bit.ly/2kNmJSc>.

²⁷⁰ Ministry of Interior, Reply to parliamentary question 8774/J (XXV.GP), 17 May 2016, available in German at: <http://bit.ly/2lq2GHj>.

²⁷¹ Article 2(4) GVG-B.

insurance. However, the capacity of these services is not sufficient. Clients often have to wait several months for psychotherapy.

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 laws relating to the reception of asylum seekers include no mechanism for identifying vulnerable persons with special needs. Article 2(1) GVG-B states that regard should be given to special needs when the asylum seeker is registered in the Basic Care System. Basic Care conditions shall safeguard human dignity at least. After the asylum seeker has submitted the asylum application, a general health examination is carried out and asylum seekers are obliged to undergo this examination, including a TBC (Tuberculosis) examination. All asylum seekers have health insurance. For necessary medical treatment they may be transferred to a hospital.

The Basic Care laws of **Lower Austria, Salzburg, Tyrol and Vorarlberg, Burgenland, Carinthia, Upper Austria** mention special needs of vulnerable persons. The elderly, handicapped, pregnant women, single parents, children, victims of torture, rape or other forms of severe psychological, physical or sexual violence are considered as vulnerable persons, victims of trafficking. 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 up to the asylum seeker, social adviser, social pedagogue or the landlord to ask for adequate reception conditions.

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.

Approximately 235 adequate care centres were available by the end of 2015 for people with special needs.²⁷²

1. Reception of handicapped and seriously ill persons

Finally, traumatised or ill asylum seekers may be cared for in facilities of NGOs with places for persons with higher need of care ("*Sonderbetreuungsbedarf*"). In the last years, the number of places for asylum seekers with disabilities or other special needs of care increased. There are two special care centres at the federal level:

- ❖ **Sonderbetreuungszentrum Graz Andritz** with a maximum capacity of 100 persons;
- ❖ **Gallspach** with a capacity of 110 persons.

In addition, special care centres for 25 persons are provided in **Traiskirchen** in the Reception Centre East.

The specific allocation of a person in need of special care to the particular special care centre is clarified in each individual case on the basis of the specific health situation. On the basis of a specific care concept, the medical cases are placed in the appropriate care facility.

²⁷² Ministry of Labour, Social Affairs and Consumer Protection, *Nationaler Aktionsplan Behinderung - Zwischenbilanz 2012-2015*, available in German at: <http://bit.ly/2lbWTXQ>, 198.

The special care centre **Graz Andritz** offers the best possible medical care for patients with regular or special care and treatment needs e.g. cancer patients, persons with cardiovascular diseases, epileptics, diabetics, patients in the drug replacement program etc., 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.

The special care centre in **Upper Austria Gallsbach** is completely handicapped-accessible and has the necessary equipment for the accommodation of physically impaired asylum seekers. The centre is mainly for the accommodation of asylum seekers with physical afflictions, as well as with psychiatric disorders or psychosomatic diagnoses due to the proximity to the clinic in Wels-Grieskirchen, specialised in the treatment of psychosomatic diseases. Of the 12 social care providers of ORS, four have a relevant education in the health and care sector, one is a trained clinical psychologist. In addition, medical staff will be involved in the care.

In the Reception Centre East-East in **Traiskirchen**, asylum seekers with disabilities are accommodated in a barrier-free building (house 1).

The needs of ill, handicapped asylum seekers and asylum seekers with nursing care are not sufficiently met. 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. The maximum daily fee for special care of severely ill asylum seekers is €42.

2. Reception of women and families

Single women/mothers are accommodated in a separate building of the EAST Traiskirchen. There are also some special facilities throughout federal provinces for this particularly vulnerable group.

For single women, there are some specialised reception facilities, one in the EAST and a few others run by NGOs. In bigger facilities of NGOs, separated rooms or floors are dedicated for single women. There may also be floors for families. The protection of family life for core family members is laid down in the law of the federal provinces.²⁷³ For family members who arrived in the framework of **Family Reunification** and receive Basic Care as asylum seekers, there is no satisfactory solution if the person with 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. According information from Caritas Styria, the person with asylum status is no longer in basic care, but usually receives minimum benefits (*Mindestsicherung*). This income is taken into consideration when calculating the benefits to be allocated to the family members coming to Austria within the framework of family reunification. As a result, the arriving family members are not entitled to basic care.²⁷⁴

If the asylum application is declared inadmissible under the Dublin III Regulation, detention may be ordered. While in the past families had often been separated when pre-expulsion detention was ordered to one or more adult family members and less coercive measures were applied to children family members, this practice ceased with the establishment of a special closed facility for families.

²⁷³ 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.

²⁷⁴ FRA, *Monthly data collection: September 2016*, available at: <http://bit.ly/2k2wcko>, para 1.5.3.

There are only a few reception facilities with more than 80 or 100 places, almost all run by NGOs in **Vienna**. Hostels and inns have between 20 and 40 places. Therefore separation of single women from single men is not the rule but separate toilets and bathrooms are foreseen.

As of November 2016, one third of about 80,900 persons in the Basic Care system were minors, while 32% are female.²⁷⁵

3. Reception of unaccompanied children

Unaccompanied asylum-seeking children are placed in special facilities mostly run by NGOs. In the EAST Traiskirchen and other reception facilities under the responsibility of the Ministry of Interior, ORS, a private enterprise, is responsible for the care of unaccompanied children. Since 2014 several new facilities for unaccompanied asylum-seeking children opened, some of them run by private companies or the Children and Youth Assistance. Those under 14 years are cared for in socio-pedagogic institutions of the federal provinces.²⁷⁶

At the end of 2016, 450 unaccompanied minors were accommodated and cared for in the centres under the responsibility of the Ministry of Interior, while the total number of unaccompanied children in Basic Care was over 5,600.²⁷⁷ The Ombudsman stressed in a 2016 report that unaccompanied children, in particular, needed appropriate accommodation after their arrival. She found that the Ministry of Interior, starting from November 2015, placed about 300 unaccompanied minors and about 100 family members in a former market hall in **Leoben**. The Ombudsman criticised the large number of housed male unaccompanied children of different ethnicity. Lack of professional support for the partially traumatised adolescents led to regular nightly police operations because of conflicts. The Ombudsman therefore repeated the recommendation of several small initial reception centres. This would allow better care for vulnerable groups and avoid ethnic conflicts.²⁷⁸

Basic Care provisions 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-seeking children ranges from €40.50 to €95 depending on the intensity of psychosocial care. Unaccompanied asylum-seeking children with higher need of care are accommodated in groups with one social pedagogue responsible for the care of 10 children; those who are not able to care for themselves must be accommodated in dorms, where one social pedagogue takes care of 15 children. A third group, which is that of those who are instructed and able to care for themselves live in supervised flats. For this group, one social pedagogue is responsible for 20 children.

A report on the legal situation of unaccompanied children in Austria was published in October 2016 by SOS Children's Villages. The report points out that the relevant Austrian laws do not differentiate between Austrian and non-Austrian nationals,²⁷⁹ and therefore asylum-seeking children are entitled to child and youth welfare to the same extent as Austrian children. It also states that the regulations on basic care (*Grundversorgung*) are not specific to child and youth welfare regulations, and therefore must be applied cumulatively; child and youth welfare must provide the required educational and psychological help in addition to the basic care regime, which aims to address basic living needs. The

²⁷⁵ Ministry of Interior, Reply to parliamentary question 10821/J (XXV.GP), 17 January 2017, available in German at: <http://bit.ly/2kS7F5z>.

²⁷⁶ Der Standard, *Frequently Asked Questions on Unaccompanied children*, 3 August 2015, available in German at: <http://bit.ly/1gGuyE3>.

²⁷⁷ Ministry of Interior, Reply to parliamentary question 10821/J (XXV.GP), 17 January 2017, available in German at: <http://bit.ly/2kS7F5z>.

²⁷⁸ Ombudsman, *Kontrolle der öffentlichen Verwaltung 2015*, March 2016, available in German at: <http://bit.ly/2kSpv8n>.

²⁷⁹ Austrian Civil Code (ABGB) and Federal Child and Youth Welfare Act (B-KJHG).

legal opinion concludes that the daily rates (*Tagsätze*) for unaccompanied children, which are lower than child and youth welfare provisions for Austrian children, are a problem, since unaccompanied children are entitled to the same services as Austrian children. This does not necessarily mean, however, that the daily rates need to be equivalent.²⁸⁰ Similar concerns have previously been raised by the Ombudsman expressed in a report on **Burgenland** published in June 2015.²⁸¹

In most cases the transfer of an unaccompanied asylum-seeking child from the initial reception centre to Basic Care facilities of the federal provinces takes place without knowledge of the specific needs of the child. In **Vienna**, with several accommodation facilities for unaccompanied asylum-seeking children, NGOs may arrange a type of accommodation suitable for their client easier than in federal provinces without different facilities. It is to be doubted that, for example, minors in **Styria** do not have a high need for care. There is no establishment in Styria with the highest care rate of €95, although several hundred unaccompanied minors are living there. In Styria the care key is 1:15. This is sufficient for asylum seekers from an age of 14, who have a higher degree of independence, and to a large extent, the affected adolescents are older than 16 years, as mentioned by the responsible provincial counsellor. Children under 14 years of age generally fall under the responsibility of the child and youth welfare service and are currently cared for by families.²⁸²

Since 2016, unaccompanied minors may also live with families. Several federal provinces offer such possibilities. The responsibility remains at the Youth Welfare Agency.

The Youth Welfare Agency is responsible for providing adequate guidance and care. It is unclear who is responsible for the legal representation of those children; the legal adviser who has to fulfil their tasks in the EAST, or the Children and Youth Assistance, which becomes responsible after the child is allocated to a federal province.

Social educational and psychological care for unaccompanied asylum-seeking children shall stabilize their psychic constitution and create a basis of trust according to the description of the Basic Care provisions for unaccompanied asylum seeking children in some of the federal provinces' Basic Care Laws. Furthermore daily organised activities (e.g. education, sport, group activities, and homework) and psychosocial support are foreseen, taking into account age, identity, origin and residence of family members, perspective for the future and integration measures.

The Ministry of the Interior has set up special care centres for unaccompanied child refugees. In the **SBS Schwarzenberg** in Salzburg, 81 unaccompanied asylum-seekers children above the age of fifteen were accommodated, including 65 Afghans, as of 15 September 2016.

The average length of stay in the **Schwarzenberg** centre is 141 days. During this time, the company ORS offers language courses, information of basic values, rights and duties, sports and assistance in remunerative activities. There are 20 employees partly trained educators and partly in on-the-job training. A psychologist is present on three days a week. So far, there have been two suicide attempts with accommodation in children's and youth psychiatry; as well as subsequent transfer to another care centre.

²⁸⁰ SOS Kinderdorf, *Gutachten zu Rechtsproblemen von SOS-Kinderdorf – Österreich mit unbegleiteten minderjährigen Flüchtlingen*, Innsbruck, 27 October 2016, available in German at: <http://bit.ly/2kr5LIB>.

²⁸¹ Ombudsman, *Bericht der Volksanwaltschaft an den burgenländischen Landtag, Bericht 2013-2014*, June 2015, available at: <http://bit.ly/1PbKxG7>.

²⁸² Parliament of Styria, Reply to question 496/1 on "Quality of reception of child refugees", 24 February 2016, available in German at: <http://bit.ly/2l0kXv3>.

The Schwarzenberg centre has a specially equipped doctor's office, which is run three times a week by physicians. In addition, a nurse and an ordination assistant are on site five days a week.²⁸³ This care centre is going to be closed by the end of February 2017.

The Ministry of Interior and the competent department of the federal provinces have agreed on a quota system for unaccompanied children.²⁸⁴ The concept of foster families for unaccompanied minor asylum-seekers is not foreseen in Austrian law. Nevertheless, the Children and Youth Assistance may place children with foster families or smaller children in facilities of the Children and Youth Assistance. A few places are available for those children who have reached the age 18, responding to their higher need of care compared with older adults. This possibility corresponds to youth welfare regulations, stating that under special circumstances the youth welfare agency will care for young adults up to the age of 21.

Information gathered by Asylkoordination in the fall of 2016,²⁸⁵ from 40 NGOs caring for unaccompanied minors, showed that 10.6% of accommodated children need medication ordered by a psychiatrist: some suffer from depression ranging up to danger of suicide, others from borderline and adjustment disorder. A further 9% are thought to be suffering from a mental illness, but there is no diagnosis yet because the young people refuse an investigation for fear of stigma, or due to delays an assessment has not yet taken place. About 5% are in therapy and do not take medication. According to the opinion of the caregivers, about 15% were in urgent need of therapy. 8% were moved to another facility due to their striking behavior (threats, violence against staff or other residents), but in one third of cases the behavioural problems were not improved.

F. Information for asylum seekers and access to reception centres

1. Provision of information on reception

The information leaflets in the initial reception centres provide brief information about obligations and entitlements with regard to reception conditions e.g. the possibility and obligation to visit a doctor, the possibility to contact UNHCR, the restricted movement and the meaning of the different documents such as green card (for more information, see section on [Freedom of Movement](#)). Information leaflets are available in most of the languages spoken by asylum seekers.

In the reception centres, asylum seekers are informed about the house rules, including information about their duties and sanctions. Information is either posted in the most common languages (like English, Russian, French, Arabic, Farsi, Urdu, Serbian) or a paper containing brief written instructions has to be signed by the asylum seeker. The federal province of **Carinthia** has published the latter on its website.²⁸⁶ In the states of **Lower Austria**,²⁸⁷ **Salzburg**,²⁸⁸ 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.²⁸⁹ 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

²⁸³ Ministry of Interior, Reply to parliamentary question 10067/J (XXV.GP), 13 October 2016, available in German at: <http://bit.ly/2I56HR8>.

²⁸⁴ 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>.

²⁸⁵ Unpublished survey. These 40 reception centres cared for 924 unaccompanied child asylum seekers.

²⁸⁶ Province of Carinthia, *Erstinformation für Asylwerber. Grundversorgung Kärnten*, available at: <http://bit.ly/1lfpb7h>.

²⁸⁷ City of Vienna, *Grundversorgung Wien*, available at: <http://bit.ly/1YqTAVV>. The Basic Care brochure for Lower Austria is available in 16 languages.

²⁸⁸ Province of Salzburg, *Grundversorgung*; available at <http://bit.ly/1UKUkol>.

²⁸⁹ Fonds Soziales Wien, *Wiener Grundversorgung. Die Beratungsstellen*, available at: <http://bit.ly/1cz0cQP>.

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 system of information is not satisfactory, because one social worker is responsible for 170 asylum seekers. This entails that the standards for social work are not met in practice. Some federal provinces provide for more effective social advice than others; for instance, 50 clients per social worker in **Vorarlberg** or 70 in **Vienna**. It has to be taken into consideration that reception centres in remote areas cannot be visited very often by the social workers because of insufficient funding.

Since summer 2015 a lot of volunteers and communities help asylum seekers. They share information via social networks.²⁹⁰ In 2016, a lot of volunteers are still active and assist asylum seekers in various challenges such as German language lessons and conversation, explaining duties and rights, helping with the family reunification procedure or to get an affordable flat or a job after the asylum procedure is terminated. Some initiatives organise petitions and press reports against Dublin transfers to Croatia or Bulgaria.

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 EAST, 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 ("*Betreuunseinrichtung-Betretungsverordnung*") intending to secure order and preventing assaults to life, health or freedom and protecting the facility.²⁹¹ The restriction of access to the facilities does not apply to lawyers or legal representatives in order to meet their clients. Family members may meet their relatives in the visitor 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 apply for permission, sometimes on a case-by-case basis. Asylum seekers living in reception centres in remote areas usually have difficulties to contact NGOs, because they have to pay the tickets for public transport from their pocket money (which amounts to €40 per month). Travel costs for meetings with the appointed legal adviser should be paid by the organisations that provide legal advice, Verein Menschenrechte Österreich and ARGE Rechtsberatung. In the majority of cases, asylum seekers are only reimbursed by the organisations for one journey to meet their appointed legal adviser.

G. Differential treatment of specific nationalities in reception

Basic Care is provided until the final decision is made, and then until departure or deportation. For asylum seekers whose 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 affected by this restriction.

Syrian refugees were able to go voluntarily to the **Gabcikovo** camp in Slovakia, assuring them that they will soon be given asylum. Since several months, only few Syrians are cared for in Slovakia.

²⁹⁰ E.g. information about accommodation: <http://asylwohnung.at/faq/>.

²⁹¹ BGBl. II Nr. 2005/2 and 2008/146.

Detention of Asylum Seekers

A. General

Indicators: General Information on Detention

1. Total number of persons detained in 2016: ²⁹²	Not available
2. Number of persons in detention at the end of 2016: ²⁹³	130
3. Number of detention centres:	5
4. Total capacity of detention centres:	1,057

There are 5 detention centres currently operating in Austria. In January 2014, a new detention centre with 200 detention places was opened in **Vordernberg**, Styria and, as a result, most of the detention centres previously run under the administration of the police have been closed. Besides Vordernberg, there are approximately 400 places available in 2 detention centres in Vienna, as well as a centre for families in Vienna. Police Apprehension Centres (PAZ) that have been used before as detention centres are now used for arrest for no longer than 7 days.

Since competence on detention was transferred from the Aliens Police to the BFA, concrete information on detention in 2014, 2015 and 2016 is not available. NGOs report that according to their experience detention was only ordered very rarely, partly because the new authorities did not have enough capacity.

Available information refers to the number of persons detained in the first half of 2016, not limited to asylum seekers:

Persons detained per detention centre: 1 January – 30 June 2016	
PAZ Salzburg	6,160
AHZ Vordernberg	1,959
PAZ Vienna Hernalser Gürtel	2,996
PAZ Vienna Rossauer Lände	2,355
Familienunterbringung Vienna Zinnergasse	1,191
Total	14,661

Source: Ministry of Interior, Reply to parliamentary question 10256/J, (XXV.GP), 15 November 2016: <http://bit.ly/2lequjJ>.

Asylum seekers are subject to detention mainly after Dublin procedures in practice. Persons who submit an asylum application while detained may remain detained during the admissibility procedure. Uncertainty surrounding detention regulations has been resolved following a ruling of the Constitutional Court regarding detention under the Dublin Regulation (see [Grounds for Detention](#)).

Caritas reports that in the region of **Styria**, about 40 persons were in detention pending deportation (*Schubhaft*) in September 2016, most of them under Dublin procedure. Numbers increased to about 80 persons in November, and to 130 persons in December 2016 in the **Vordernberg** detention centre.

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

²⁹² Including *both* applicants detained in the course of the asylum procedure and persons lodging an application from detention.

²⁹³ FRA, *Monthly data collection*, January 2017, 16, referring only to **Vordernberg**.

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, in practice this rarely happens. If the asylum application is processed as an inadmissible application a legal advisor has to visit the asylum seeker before the interview and has to be present at the interview.

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 register at the police are detained for up to 48 hours, without a detention order. This kind of detention is regarded as apprehension.

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 20 July 2015. Detention may be ordered by the BFA to secure a return procedure, if a return procedure or deportation have to be secured in regard of an application for international protection and a “risk of absconding” exists and detention is proportional. Furthermore, the FPG allows detention according to the Dublin III Regulation.

The amended Article 76 FPG now defines the “risk of absconding” on the basis of a number of wide-ranging criteria, namely whether:²⁹⁴

- (a) The person has avoided or hampered a deportation order;
- (b) The person has violated a travel ban;
- (c) An expulsion order is made or the asylum application has been withdrawn;
- (d) The person is in pre-deportation detention at the time he or she lodges the application;
- (e) It is likely that another country is responsible under the Dublin Regulation, namely as the person has lodged multiple applications or based on past behaviour intends to travel on to another country;
- (f) The person does not comply with alternatives to detention;
- (g) The person does not comply with cooperation or reporting duties; and
- (h) There is a sufficient link with Austria such as family relations, sufficient resources or secured residence.

The FPG does not refer to a “serious” risk of absconding in line with Article 28(2) of the Dublin III Regulation. However, beyond the wide-ranging scope of the criteria listed above, the factors in Article 76(3) FPG are non-exhaustive, thereby leaving undue discretion to the authorities with regard to identifying a “risk of absconding” and applying detention.

The Constitutional Court (VfGH) ruled on this issue in June 2016.²⁹⁵ The VfGH did not share the constitutional concerns raised by the BVwG as to whether the “risk of absconding” defined in the Dublin

²⁹⁴ Article 76(3) FPG.

III Regulation was adequately implemented in Austria. The provision of Article 76(2) FPG must be interpreted as complying with the Constitution in such a way that it allows the imposition of the detention order only if it is “necessary” to secure the proceedings, in particular because the person is suspected of escaping the proceedings. In view of the existence of a legal basis for the contested regulations, it is irrelevant to the legality of the regulation whether the Federal Minister of the Interior intended also to use the provisions of Article 2(n) of the Dublin III Regulation.

So far, it is difficult to assess the practice of the authorities with regard to the use of detention grounds, as detention was not ordered very often in 2016. In the detention centre in **Vordernberg**, only few persons have been detained although there is capacity for 220 persons, although there has been an increase in detentions at the end of 2016.

Detention is almost systematic during the 24 hours preceding the transfer of an asylum applicant to the responsible Member State under the Dublin Regulation.

2. Alternatives to detention

Indicators: Alternatives to Detention

1. Which alternatives to detention have been laid down in the law?
 Reporting duties
 Surrendering documents
 Financial guarantee
 Residence restrictions
 Other
2. Are alternatives to detention used in practice?
 Yes No

According to Article 76 FPG, the principle of necessity is to be taken into account. Detention has to be necessary to reach one of the stated aims. The principle of proportionality is not explicitly mentioned in the FPG. It is however mentioned that the BFA has to review the proportionality of detention every 4 weeks.²⁹⁶ Proportionality is also a constitutional principle applicable to all administrative procedures and therefore also to asylum and return proceedings. This is confirmed by the jurisprudence of the VwGH²⁹⁷ and the Constitutional Court (VfGH).²⁹⁸ Proportionality means to weigh or balance the interests between the public interest of securing the procedure (mainly expulsion procedure) and the right to liberty of the individual.

Alternative measures must be applied in all cases, not only if a particular ground for detention exists, if the authorities have good reasons to believe that the object and purpose of detention (i.e. deportation) could be reached by the application of such measures. An individualised examination is provided for in the FPG, but in practice less coercive measures are often regarded as not sufficient to secure the return procedure or expulsion.

Article 77(3) FPG enumerates 3 alternatives to detention: (a) reporting obligations; (b) the obligation to take up residence in a certain place of accommodation 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

²⁹⁵ VfGH, Decision V 152-153/2015-19, 13 June 2016, available at: <http://bit.ly/2ljWKTo>.

²⁹⁶ Article 80(6) FPG.

²⁹⁷ VwGH, 2013/21/0008, 2 August 2013.

²⁹⁸ See e.g. VfGH, B1447/10, 20 September 2011.

and must be proportionate.²⁹⁹ 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.³⁰⁰

Alternatives to detention are applied in open centres. Such measures are executed in regular reception facilities, facilities rented by the police or property of NGOs, or the private accommodation of the person to be deported. If an alternative to detention is ordered, asylum seekers have reporting duties. They have to present themselves at 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 is detained.³⁰¹

The duration of alternative measures is limited. 2 days in the alternative measure count as 1 day of detention. Asylum seekers benefiting from an alternative to detention are not entitled to Basic Care. Necessary medical treatment must in any case be guaranteed. These costs may be paid by the BFA. Asylum seekers may also receive free emergency medical treatment in hospitals.

In **Vienna Zinnergasse**, more lenient measures are executed for vulnerable persons. Verein Menschen.leben is contracted to give care and advice to the persons who are usually restricted in their freedom of movement. In 2015, 154 persons had to stay in Zinnergasse, 10% out of whom were minors. The association runs a facility for more lenient measures in **Lower Austria** as well, where 41 persons received care and counselling in 2015.

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 only for 24 hours prior to 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 14.³⁰²

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.³⁰³

In the case of a minor who was stopped by 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, without a multifactor medical age assessment. The minor was transferred

²⁹⁹ Article 13 FPG-DV.

³⁰⁰ 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.

³⁰¹ Article 77(4) FPG.

³⁰² Article 77(1) FPG.

³⁰³ BVwG, Decision W191 2011159-1, 27 August 2014, available at: <http://bit.ly/1ALJF7Q>.

to the detention centre, applied for asylum and authorised Diakonie for his legal representation. However, the complaint against detention was dismissed in August 2016, arguing that he could not give power of attorney as a minor.³⁰⁴ Since the relevant interrogation of the police, in which deportation (*Schubhaft*) was ordered before his application for asylum was submitted, his legal representative for all further proceedings before the BFA and the Federal Administrative Court were the youth welfare agencies in whose district the minor is staying is competent. 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): | 10 months |
| 2. In practice, how long in average are asylum seekers detained? | 20 days |

Detention is only permissible for as short a period as possible,³⁰⁵ and cannot exceed 4 months for adults³⁰⁶ and 2 months for minors over the age of 14,³⁰⁷ subject to exceptional extensions of 6-18 months.³⁰⁸ More particularly in relation to asylum seekers, detention should generally not last longer than 4 weeks following the final decision on the application.³⁰⁹

Figures on the duration of detention of asylum seekers are not available. The average duration of detention in the detention centre of **Vordernberg** was 11.1 days in 2015.³¹⁰ As asylum seekers whose applications are processed under the Dublin procedure are often detained immediately after submitting their applications, they may be kept in detention until they are transferred to the Member State determined to be responsible for the examination of their asylum applications. In Dublin cases, detention may last for some weeks, as suspensive effect of the appeal is hardly ever granted and the transfer can be effected while their appeal is still pending.

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)? | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| 2. If so, are asylum seekers ever detained in practice in prisons for the purpose of the asylum procedure? | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |

The detention centres currently operating are:

Detention centre	Capacity
Vordernberg Immigration Detention Centre	193
Vienna Roßauer Lände	379
Vienna Hernalser Gürtel	292

³⁰⁴ BVwG, Decision W117 2131589-1, 10 August 2016, available at: <http://bit.ly/2lnqwlZ>.

³⁰⁵ Article 80(1) FPG.

³⁰⁶ Article 80(2)(2) FPG.

³⁰⁷ Article 80(2)(1) FPG.

³⁰⁸ Article 80(4) FPG.

³⁰⁹ Article 80(5) FPG.

³¹⁰ Court of Auditors, *Vollzug der Schubhaft mit Schwerpunkt Anhaltezentrum Vordernberg*, 2016/22, available in German at: <http://bit.ly/2kNGiKi>.

Zinnergasse	50
Salzburg	143
Total	1,057

Court of Auditors, *Vollzug der Schubhaft mit Schwerpunkt Anhaltezentrum Vordernberg*: <http://bit.ly/2kNGiKi>

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.

The detention centre in **Vordernberg**, established in January 2014, allows detainees to stay outside the cell during the day. The facility is run by a private security company, G4S. This has raised concern about the division of tasks and accountability between the public security service and this private company.³¹¹ The Minister of Interior explained in response to a parliamentary request that G4S is to assist the police.³¹² A series of trainings have been organised for the staff of the centre; according to a report in *Der Standard*, 36 hours were dedicated to human rights issues.³¹³

The original goal of the Federal Government to set up a “competence centre” for detention with 250 detention places and thus to ensure efficiency improvements in aliens police measures has not been achieved, according to a 2016 report of the Court of Auditors. The decision for the location of **Vordernberg** was not based on “traceable strategic and economic planning”, the auditors said. Around 80% of deportations were carried out via border crossing points in close proximity to the police stations in **Vienna**. This alone led to clear disadvantages of the location for the profitability and practicality of the centre located in **Styria**. The average occupancy rate of the police detention centres fell by 86%, between 357 and 52 people per day, between 2010 and 2015. Compared to other detention centres, such as **Vienna** where the daily cost of detention is €207, the costs per day of imprisonment in **Vordernberg** are significantly higher, reaching €834. The Court recommended a new approach to the detention system.³¹⁴

Women or unaccompanied children are detained in separated cells. One of the detention centres in Vienna, **Roßauer Lände**, has cells with a playground within the building for mothers with small children. The detention centre in Vienna **Zinnergasse** is equipped for families with children and unaccompanied children. In twelve family apartments, families are detained after their deportation date has already been established. They spend as much as 48 hours there.

One floor of the same building is used for less coercive measures and has 17 housing units, one of which is equipped for disabled persons. They are allowed to leave the centre during the day.³¹⁵

³¹¹ *Der Standard*, *Securitys auf Rundgang in der neuen Schubhaft*, 2 April 2014, available at: <http://bit.ly/1dgpJ1Y>.

³¹² 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.”)

³¹³ *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>.

³¹⁴ Court of Auditors, *Vollzug der Schubhaft mit Schwerpunkt Anhaltezentrum Vordernberg*, 2016/22, available at: <http://bit.ly/2kNGiKi>.

³¹⁵ Sonja Jell, ‘Alternative zur Schubhaft’, *Öffentliche Sicherheit* 5-6/12, available at: <http://bit.ly/2kLKVq>.

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

As of January 2014, as several detention facilities are no longer used since the Vordernberg detention centre opened, conditions in the detention facilities are satisfactory. Problems such as lack of space or clothes have not been reported. Detention in cells during the day instead of open floors is still a reality for most of the detained persons, however. Following a recommendation for the improvement of detention conditions in April 2014,³¹⁶ the Ombudsman (*Volksanwaltschaft*) referred to improved conditions in a June 2016 report,³¹⁷ covering the year 2015. Interpretation is available through video conference for medical appointments in Vordernberg, and has also been established in Vienna and Tyrol as of February 2016. Television, radio and limited internet access has been provided, as per recommendation.

Social counselling is not foreseen. Nevertheless, the information leaflet provided to detainees calls the activities taking place in the centre “social counselling”.³¹⁸ NGOs receive funding under the AMIF to provide advice on voluntary return in detention centres.³¹⁹ Verein Menschenrechte Österreich provides such advice in the detention centres in **Vienna** and **Salzburg**, while Caritas Styria is active in **Vordernberg**. These NGOs are present in detention centres on a regular basis. Furthermore, asylum seekers are visited by the appointed legal adviser in the admissibility procedure, to assist with the appeal against the rejection of the asylum application or complaints against the detention order. UNHCR is not regularly present in detention centres.

Detainees have the right to call a lawyer and inform their relatives about their apprehension and arrest. Telephones on the floors may be used with prepaid cards; the cell phones of the organisations providing return counselling may be used too. Private belongings are stored. Detainees may keep a small amount of money (€40 per week) for buying food, cigarettes or telephone cards in the canteen.

Medical treatment is provided in all detention centres by the public medical officer. Special treatment may be organised by transferring detainees in 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.³²⁰ In case there is a high probability of a health risk due to hunger strike, asylum seekers are usually released from detention.³²¹ However, the Ombudsman has criticised the fact that medical treatment is not immediately provided in cases of mental illness or suicide risk.³²²

There is no mechanism to identify vulnerable people while in detention.

³¹⁶ Volksanwaltschaft, *Mängelbehebungen in Polizeianhaltezentren* (Ombudsman, *Remedy deficiencies in police detention centres*) 2 April 2014, available at: <http://bit.ly/1FVutnw>.

³¹⁷ Volksanwaltschaft, *Bericht über den 39. Bericht der Volksanwaltschaft (1. Jänner bis 31. Dezember 2015) (III-235 der Beilagen)*, 8 June 2016, available at: <http://bit.ly/2kNRSo4>.

³¹⁸ Ministry of Interior, *Zusatzinformation für Schubhäftlinge im Polizeianhaltezentrum Roßauer Lände*, April 2014, available at: <http://bit.ly/1FvJbPB>.

³¹⁹ Datum, ‘Mission Impossible’, 1 February 2013, available at: <http://bit.ly/1H36Rzv>.

³²⁰ Nowak Manfred, *Rechtsgutachten zur Frage der Zwangsernährung von Schubhäftlingen in Österreich*, 3 February 2006, available at: <http://bit.ly/1FwraQt>.

³²¹ M Sterkl. ‘Starvation for the doctor’s visit’ (2011) *Der Standard* 25 May 2011.

³²² Volksanwaltschaft, *Bericht über den 39. Bericht der Volksanwaltschaft (1. Jänner bis 31. Dezember 2015) (III-235 der Beilagen)*, 8 June 2016.

3. Access of third parties to detention facilities

Indicators: Access to Detention Facilities

1. Is access to detention centres allowed to
- | | | | |
|-------------------|---|---|-----------------------------|
| ❖ Lawyers: | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> Limited | <input type="checkbox"/> No |
| ❖ NGOs: | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> Limited | <input type="checkbox"/> No |
| ❖ UNHCR: | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> Limited | <input type="checkbox"/> No |
| ❖ Family members: | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> Limited | <input type="checkbox"/> 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 to the detainee, which most NGOs known by the police may get without delay. In other cases, NGOs or relatives or friends of detainees must get the same authorisation during regular visiting hours on the weekend to have access to detainees during office hours.

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 should be possible, as all rooms and floors are video monitored. Family members may stay overnight in a visitor cell with their relative. 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?³²³ after 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.³²⁴ 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, subject to no time-limit. The BVwG has to decide on the lawfulness of the detention order according to the appeal of the asylum seeker and whether at the time of its decision reasons for continuation of detention exist.

³²³ This refers to judicial review of detention conducted by the BVwG. The BFA reviews detention every 4 weeks.

³²⁴ Article 76(3) FPG.

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).³²⁵ If the BVwG does not decide within 7 days in cases where the asylum seeker is still detained, an appeal may be lodged to the Administrative High Court (VwGH) to challenge the fact that no decision was taken within the maximum time-limit. In that case, the VwGH sets a time-limit for the BVwG within which a decision must be taken. In a recent case, the VwGH ordered the Independent Administrative Board (UVS) to decide within 3 calendar days.³²⁶

Time limits were usually respected by the former competent UVS of the provinces. The same can be said for practice at the newly installed Federal Administrative Court. One case was found eligible for review by the VwGH, because the law does not explicitly state where the complaint against the detention order has to be submitted: at the BFA which ordered detention or at the Administrative Court. The Constitutional Court decided in March 2015 that the unclear procedural character of the apprehension and detention order that should be appealed with a single appeal violates constitutional rights and Article 5(4) ECHR.³²⁷ Appeals against the detention order have to be submitted at the Administrative Court within 6 weeks.

Decisions on cases where the asylum seeker is no longer detained were often made by the Independent Administrative Board shortly before the expiration of the 6 month time-limit. Asylum seekers who had been transferred in the meantime to another Member State in application of the Dublin Regulation or deported were thus hampered from requesting compensation for unlawful custody.

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 correct and 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.³²⁸ The Constitutional Court (VfGH) is set to assess whether the relevant provision, Article 22a(1)(3) BFA-VG, which sets this limitation is in line with the constitution or not.

With the implementation of the Returns Directive, legal safeguards for persons in detention have improved. Nevertheless, judicial review *ex officio* after 4 months does not seem to be sufficiently periodic. NGOs also consider that one of the organisations contracted by the Ministry of Interior for providing free legal assistance, Verein Menschenrechte Österreich, is not qualified for challenging the legality of detention regularly. The organisation has contracts with the Ministry of Interior for advice on voluntary return and for Dublin returns as well, which seems to be in conflict with the task of legal advisers. Concrete information on whether this organisation lodges appeals against detention orders if the asylum seeker wishes to do so is not available, but it is assumed that this rarely happens. On the other hand, lawyers have successfully challenged detention orders.

³²⁵ Article 22a(3) BFA-VG.

³²⁶ VwGH, Decision 2011/21/0126, 24 January 2013.

³²⁷ VfGH, Decision G151/2014, 12 March 2015; Petra Sussner, ‚Ausgestaltung der Schubhaftbeschwerde verfassungswidrig‘ Migralex 03/2015, 88-89.

³²⁸ VfGH, Decision E4/2014-11, 26 June 2014.

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 state, either from the organisation ARGE Rechtsberatung or Verein Menschenrechte Österreich, which closely co-operate with the Ministry of Interior. While aliens law previously contained an obligation to act as legal representative for detained asylum seekers if they wish so, the amendment of the FPG in 2014 deleted this obligation and now contains only the obligation for the legal adviser to take part in hearings if the asylum seekers wishes his presence.³²⁹

Legal advice shall be appointed according to Articles 51-52 BFA-VG in return procedures, detention and apprehension orders.³³⁰ However, the right to receive legal advice for people benefiting from alternative measures to detention was cancelled as of 1 January 2014.

The funding per case for those services does not seem to be sufficient (€200.55 per case), and the two legal aid organisations have a different understanding of what their role is with regard to providing legal advice to those detained. The organisation Verein Menschenrechte Österreich closely cooperates with the Ministry of Interior and thus avoids conflicts with the authorities.³³¹ As discussed above, this organisation also receives funding from the Ministry of Interior for providing assistance to authorities to transfer asylum seekers to the Member State responsible for the examination of the asylum application according to the Dublin Regulation, as well as funding for counselling on voluntary return assistance.

This has resulted in situations undermining asylum seekers' right to appeal as is illustrated by the following example. Verein Menschenrechte Österreich staff responsible for "preparation for return in detention" advised asylum seekers, who were legally represented by legal advisers of Diakonie, to withdraw their right to appeal against a Dublin decision without the consent or involvement of the legal representative from Diakonie. The question whether the appeal was submitted or not was ruled by the Constitutional Court.³³² NGOs in Austria suspect that detainees were not fully informed about the possibility of legal representation by Verein Menschenrechte Österreich and that this organisation hardly accepts to represent the detained person (whereas the legal adviser should write an appeal against the detention order if the detention order appears to be unlawful). Since 2014, this suspicion has reduced relevance, as the obligation to legally represent the detained person upon their request was cancelled by the FPG. ARGE Rechtsberatung, on the other hand, is committed to the safeguard of the human rights of detainees and has successfully appealed detention orders.

³²⁹ Article 52(2) BVA-VG.

³³⁰ VfGH, Decision E4/2014-11, 26 June 2014.

³³¹ Edith Meinhart: Mr. Gongo. Profil 40, October 2007.

³³² VwGH U1286/2013, 12 March 2014. The asylum seeker from Afghanistan had already experienced 18 months detention in Hungary. When he received the decision to send him back to Hungary he signed a form in which he declared that he will not submit an appeal against the Dublin decision. The following day he gave power of attorney to his legal adviser from Diakonie refugee service and wanted to have the decision appealed. The Asylum Court ruled that the appeal is inadmissible. The Constitutional Court declared that legal counselling has to include all aspects of the administrative procedure and the procedure at the Asylum Court including the submitting of an appeal. The asylum seeker has to be informed about the withdrawal of the right to appeal by the appointed legal adviser. The employee of Verein Menschenrechte Österreich who prepares detainees for the return had no legitimacy to give legal advice. See also VfGH, Decision U489/2013, 26 February 2014.

Legal advisers can meet their clients in the visitor 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 in the admissibility procedure. Member states requested to take back or take charge of the applicant have to respond to the request within 1 month, according to the recast Dublin Regulation. In this way, the responsibility for processing the asylum application is decided much faster, but asylum seekers may have more difficulties to organise effective legal assistance and/or may fail to appeal against the rejection of their asylum application as inadmissible within 2 weeks. Detained asylum seekers may have more difficulties to appeal a rejection of their application as inadmissible because they may find out that the appointed legal adviser will not assist them to write an appeal. Within the short time limit of 2 weeks for the appeal, it could be difficult to organise effective legal assistance.

E. Differential treatment of specific nationalities in detention

No differential treatment on the basis of nationality has been reported.

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

From 1 June 2016 onwards, persons who are recognised as **refugees** in Austria obtain a residence permit for three years.³³³ If the situation in the country of origin is more or less the same and the status still needed, it is prolonged to an unlimited residence permit *ex officio*. If the country of origin information (COI) indicate that the refugee may return safely, the **Cessation** procedure starts.³³⁴

Persons with **subsidiary protection** status get a residence permit for one year.³³⁵ Renewal has to be applied for at the BFA, if protection needs continue to exist, the residence permit is prolonged for two years.³³⁶

Asylum grants that were ruled before 1 June 2016 led to a permanent residence permit. For those asylum seekers who applied for asylum after 15 November 2015 and whose application was not decided before 1 June 2016, the new restriction of residence permit applied retroactively.³³⁷

The renewal of residence permits can take time as the asylum system remains under stress, but the right to remain exists until the BFA decides on an application for renewal. Usually the subsidiary protection status is prolonged. However, the lack of valid documentation pending renewal could have a negative impact on access to jobs or accommodation. The renewal has to be applied before the right to remain expires, but should not be applied more than 3 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. Long-term residence

Indicators: Long-Term Residence

1. Number of long-term residence permits issued to beneficiaries in 2016: 1,057

Long-term resident status for third country citizens is called "*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. Half of the period between the application for international protection and the awarding of the refugee status or subsidiary protection is counted for the five year period. When the duration of the asylum procedure, was longer than 18 months, the whole period is counted.³³⁸

³³³ Article 3(4) AsylG.

³³⁴ *Ibid.*

³³⁵ Article 8(4) AsylG.

³³⁶ *Ibid.*

³³⁷ Article 78(24) AsylG.

³³⁸ Article 45(12) Residence Act.

- ❖ 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 of €1.173,8 for a single person in 2017;
 - Sufficient health insurance;
 - Suitable accommodation; and
 - The person must not present a security risk.

There is no difference between refugee status and subsidiary protection status.

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. The costs for the procedure amount to about €170.

1.057 beneficiaries of international protection obtained long-term resident status in 2016.³³⁹

3. Naturalisation

Indicators: Naturalisation	
1. What is the waiting period for obtaining citizenship?	
❖ Refugees	6 years
❖ Subsidiary protection beneficiaries	15 years
2. Number of citizenship grants to beneficiaries in 2016:	Not available

Refugees are entitled to naturalisation after 6 years of lawful and uninterrupted residence in Austria.³⁴⁰ 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 in the last 3 years;
- Proof of knowledge (B1) of the German language;
- Successful completion of integration course (*Werteskurs*);
- Absence of a criminal record (*Unbescholtenheit*).

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. 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.

556 refugees were granted citizenship in Austria in 2015.³⁴¹ Data for 2016 is not available.

³³⁹ Ministry of Interior, *Residence permit statistics: December 2016*, available at: <http://bit.ly/2krHTkE>.

³⁴⁰ Article 11a(4)(1) and (3) Citizenship Act (StbG).

³⁴¹ Die Presse, ‘Asylberechtigte werden nach sechs Jahren eingebürgert’, 10 April 2016, available in German at: <http://bit.ly/2kwj9MQ>.

4. 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 subsidiary protection beneficiaries.

Refugee status can be ceased if the conditions in Article 1C of the Refugee Convention are met, or if the refugee is established in another country.³⁴² **Subsidiary protection** can be ceased where the conditions on which status was granted no longer exist, where the person is established in another country, or obtains the nationality of another country and return thereto would not violate the principle of *non-refoulement*.³⁴³

Cessation procedure

As of 1 June 2016, where the BFA deems that the conditions in the country of origin have undergone a change relevant to a beneficiary's fear of persecution, 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.³⁴⁴

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 2015, 294 *Duldungskarten* were issued, although it is not clear how many of those were issued following cessation of international protection.³⁴⁵

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.

As of August 2016, the Ministry of Interior had conducted approximately 400 cessation / termination procedures.³⁴⁶

³⁴² Article 7(2)-(3) AsylG.

³⁴³ Article 9(1) AsylG.

³⁴⁴ Article 7(2a) AsylG, as applicable on 1 June 2016.

³⁴⁵ Ministry of Interior, Reply to parliamentary question 8373/J (XXV.GP), 18 April 2016, available in German at: <http://bit.ly/2kmW2Ri>.

³⁴⁶ News.at, 'Warum Sobotkas Asylpläne wenig ändern', 23 August 2016, available in German at: <http://bit.ly/2k46D6i>.

5. 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,³⁴⁷ or is convicted of a criminal offence.³⁴⁸ 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.³⁴⁹ A withdrawal procedure shall be initiated by the BFA where a subsidiary protection beneficiary is under prosecution for such a crime, and the application of the withdrawal provisions is likely.³⁵⁰ To that end, the BFA as well as the BVwG receive information on the prosecution from the Prosecutor's Office and the Court.

A draft law on alien law reform (FrÄG 2017) currently being discussed in the Parliament, proposes an amendment to Article 7(2) AsylG with a view to initiating withdrawal proceedings where the beneficiary is suspected of having committed a criminal offence.³⁵¹

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 his or her continued residence for public order and security. The same procedural guarantees are applied as for the [Regular Procedure](#) for granting protection.

In response to a parliamentary question on 25 January 2016, the former Minister of Interior stated that figures for the different grounds for withdrawal are not available.³⁵²

³⁴⁷ Article 7(1)(1) AsylG.

³⁴⁸ Article 7(2) AsylG.

³⁴⁹ Article 9(2) AsylG.

³⁵⁰ Article 9(3) AsylG.

³⁵¹ For a critique, see Diakonie, *Stellungnahme der Diakonie Österreich zum Entwurf betreffend ein Fremdenrechtsänderungsgesetz 2017*, 18 January 2017, available in German at: <http://bit.ly/2kwEDoK>.

³⁵² Ministry of Interior, Reply to parliamentary question 7241/J (XXV.GP), 25 January 2016, available in German at: <http://bit.ly/2k3VvL4>.

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 No3 years
2. Does the law set a maximum time limit for submitting a family reunification application?
 - ❖ If yes, what is the time limit? Yes No
3. Does the law set a minimum income requirement?
 - ❖ Refugee status Yes No
 - ❖ Subsidiary protection Yes No

Family criteria

Family members eligible for family reunification include:³⁵³

- Parents of a minor child;
- Spouses and registered partners, where the marriage / partnership existed in 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;

Following on from reforms to restrict the right to family reunification in 2016, discussed below, a draft law on alien law reform (FrÄG 2017) currently being discussed in the Parliament contains measures to require family members to cover the costs of proving family links, for instance through DNA tests, in order to be reunited with beneficiaries of international protection.³⁵⁴ The bill has been criticised for imposing more onerous hurdles on family members and for creating risks of rendering family reunification ineffective in practice.³⁵⁵

Conditions

Family members of **refugees** can apply for an entry visa immediately after the status recognition of the sponsor. However, a number of restrictions have been put in place as of 1 June 2016. If the application is submitted to an Austrian representation within 3 months, no further requirements are imposed.³⁵⁶ 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.³⁵⁷ No specific income requirement has been set, which takes into account possible integration obstacles in line with requirements for other third-country nationals. No language knowledge is required for family reunification.

³⁵³ Article 35(5) AsylG.

³⁵⁴ Entwurf Bundesgesetz, mit dem das Niederlassungs- und Aufenthaltsgesetz, das Fremdenpolizeigesetz 2005, das Asylgesetz 2005, das BFA-Verfahrensgesetz, das Grundversorgungsgesetz – Bund 2005 und das Grenzkontrollgesetz geändert werden (Fremdenrechtsänderungsgesetz 2017 – FrÄG 2017), available at: <http://bit.ly/2k49Z9b>.

³⁵⁵ See e.g. Diakonie, *Stellungnahme der Diakonie Österreich zum Entwurf betreffend ein Fremdenrechtsänderungsgesetz 2017*, 18 January 2017, available in German at: <http://bit.ly/2kwEDoK>.

³⁵⁶ Article 35(1) AsylG.

³⁵⁷ *Ibid*, citing Article 60 AsylG.

Subsidiary protection beneficiaries' family members can only submit an application after at least 3 years of the sponsor's recognition.³⁵⁸ The aforementioned requirements – sufficient income, health insurance and accommodation – in force since 1 June 2016 are always applicable to subsidiary protection beneficiaries,³⁵⁹ with the exception of unaccompanied children holders of subsidiary protection.³⁶⁰

NGOs have expressed concern in relation to the time limit for submitting an application for family reunification, given that applications must be submitted personally to an Austrian embassy. However, waiting times for submitting an application at the moment are well over 3 months. In practice, applications submitted in writing are considered to be timely.

This is despite the fact that the reform 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.³⁶¹

The BFA has processed 7,275 family reunification applications in 2016.³⁶² In 2015, 6,680 applications were submitted and for 5,995 of those the BFA issued a positive opinion, thus allowing the respective Austrian representation to issue a visa. The majority, nearly ¾, of applications came from Syria (4,971), followed by stateless persons (625), Afghanistan (542) and Iraq (2016).³⁶³

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.

C. Movement and mobility

1. Freedom of movement

Persons with international protection status are free to move and settle throughout the Austrian territory. However, freedom of movement is practically restricted where beneficiaries are dependent on services.

Refugees are entitled to basic care 4 months following recognition. **Subsidiary protection** beneficiaries' access to benefits vary compared to refugees in most of the federal states.

Refugees who apply for social support in the form of the needs-based minimum benefit system (*bedarfsorientierte Mindestsicherung*) are not on equal terms with nationals anymore in **Upper Austria** and **Lower Austria**. The benefits are guided by the substantially lower monthly basic care for asylum seekers (€365) whereas the poverty line in Austria is at approximately €1,000 per person. Nationals receive €914, while refugees receive €520, including a bonus of €155 granted when they take part in integration measures such as language courses.

³⁵⁸ Article 35(2) AsylG.

³⁵⁹ Article 35(2) AsylG.

³⁶⁰ Article 35(2a) AsylG.

³⁶¹ VwGH, Decision Ra 2013/22/0224, 11 November 2013.

³⁶² BFA, *Jahresbilanz 2016*, available in German at: <http://bit.ly/2k4P5r1>.

³⁶³ Medienserviceestelle, *Familiennachzug rechtliche Entwicklung-und-aktuelle-Trends*, 12 May 2016, available at: <http://bit.ly/27fKNgO>.

Persons with **subsidiary protection** are not entitled to minimum allowance in **Burgenland, Salzburg** and **Styria**. Since April 2016 people granted subsidiary protection have been excluded from the needs-based minimum benefit system in **Lower Austria**. Even before the reform, this group was only entitled to basic care benefits.

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 minimum benefit system, the allowance can be reduced by up to 50% if the person refuses to attend. Conversely, 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.

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.³⁶⁴

The Minister of Labour and Social Affairs has also considered the possibility of residence restrictions after recognition of status, to respond to a trend of beneficiaries going to **Vienna** after receiving a decision.³⁶⁵

2. Travel documents

Since 2015, travel documents for beneficiaries of international protection are issued for a period of up to 5 years.³⁶⁶ Before that, travel documents for recognised **refugees** had a validity of 2 years and documents for **subsidiary protection** beneficiaries had a validity ranging from a few months for specific travel to 6 months.

Refugees obtain a Convention travel document without further conditions, whereas subsidiary protection beneficiaries must establish that they are unable to obtain a travel document from their country of origin.³⁶⁷ A geographical limitation to travel covering the country of origin applies to documents for both protection statuses.

Article 94(2) FPG allows persons recognised as refugees in another country to apply for a Convention travel document in Austria.

D. Housing

Indicators: Housing

1. For how long are beneficiaries entitled to receive basic care?	
❖ Refugee status	4 months
❖ Subsidiary protection	No time limit
2. Number of beneficiaries receiving basic care as of 30 November 2016	10,607

Refugees are entitled to basic care in the first 4 months after the recognition of their status. Beneficiaries of **subsidiary protection** have no temporal limit on receiving basic care. The only precondition is need.

³⁶⁴ LVwG Tyrol, Decision 2016/41/0301-1, 24 February 2016.

³⁶⁵ Der Standard, 'Bessere Absicherung zieht Asylberechtigte verstärkt nach Wien', 11 August 2016, available in German at: <http://bit.ly/2k7aPT0>.

³⁶⁶ Article 90(1) FPG.

³⁶⁷ Article 88(2a) FPG.

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 him or herself. The prevailing form of basic care is organised accommodation, except for **Vienna** where private accommodation prevails (see [Reception Conditions: Forms and Levels](#)).

Support after the end of basic care is insufficient. Although there are some consultation services which give advice on searching for a flat and concluding a rental contract, there are no financial resources to actively help for a solution to the virulent accommodation problem. The rents in the private accommodation market have significantly risen. Recipients of basic care, which includes **beneficiaries of subsidiary protection** in a few provinces, cannot find adequate accommodation with a subsidy of €150 per month for renting a flat. Families in basic care receive €300. Financial support for refugees and beneficiaries of subsidiary protection who receive needs-oriented minimum basic income are slightly better off; 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.

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 only sometimes available. Recently introduced preconditions like residence of 2 years in the city of **Vienna** make it more difficult to get a cheaper community flat. In many regions of Austria, there are not even any social housing schemes available. Refugees are 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 capital.

Experience shows that persons with 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](#) has also been criticised by NGOs and experts as it makes it more difficult to rent a flat without perspective to stay.

At the end of November 2016, a total 5,092 refugees and 5,515 subsidiary protection beneficiaries received basic care.

E. Employment and education

1. Access to the labour market

Starting with the recognition of their protection status, refugees and beneficiaries of subsidiary protection have free access to the labour market. To be successfully integrated in the labour market, however, many obstacles have to be overcome. Frequently cited obstacles are inadequate language proficiency, lack of qualifications or lack of proof thereof. The budget for language courses was increased significantly and in most federal provinces language courses are already offered during the asylum procedures, albeit in limited amounts. The organisation SOS Mitmensch found these differences in its latest survey, between October 2016 and January 2017.³⁶⁸

There have been some improvements through targeted assessment of qualifications and facilitated recognition of work experience. The Austrian Parliament passed a decision on 15 June 2016 to accelerate the procedure for the recognition of education and professional qualifications obtained outside Austria.³⁶⁹ This decision aims at facilitating access to the labour market for refugees. Refugees

³⁶⁸ SOS Mitmensch, *Deutschkurse für Asylsuchende – Ein Bundesländervergleich*, January 2017, available in German at: <http://bit.ly/2kHqM0a>.

³⁶⁹ Anerkennungs- und Bewertungsgesetz (AuBG), BGBl. I Nr 55/2016, available at: <http://bit.ly/2lkdc5S>.

or asylum seekers could also apply for recognition of their academic and professional qualifications, even if they cannot provide the documents as proof.

Beneficiaries have to consult the Austrian Integration Fund (ÖIF) after they received the protection status. The ÖIF places these persons to language and Austrian value courses. 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 the persons with protection status can be integrated into the labour market within the first year.

The job centres expected that an additional 33,800 recognised refugees will be looking for a job or apprenticeship in 2016. To achieve better integration, their budget included 22,400 places in German courses, 13,500 places for the “qualifications check”, 18,100 consultations, 5,700 trainings and 2,100 specific occupation schemes. These Austria-wide measures cost €68.4m in 2016.³⁷⁰ The qualification checks are concluded with a certificate about the attested knowledge. The Austrian Federal Chamber of Commerce has also initiated projects to help refugees to obtain a training relevant for the Austrian labour market.³⁷¹

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 and reasoning for the amendment to the asylum law, the tense situation of the Austrian labour market with increasing unemployment rate is one area which militates for the closing of borders.

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 1 January 2017, 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*).³⁷²

Although there is more awareness of the difficulties that refugee children experience, and more resources are made available, these are not sufficient to support the children in regular schools until they obtain sufficient language proficiency.

F. Health care

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 the 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, the mandatory health insurance takes effect. When refugees are considered to be without resources and receive needs-oriented minimum basic income, they also have health insurance.

³⁷⁰ Salzburger Nachrichten, ‘AMS: Flüchtlinge können am Arbeitsmarkt integriert werden’, 12 January 2016, available in German at: <http://bit.ly/2k2PLsQ>.

³⁷¹ Chamber of Commerce of Salzburg, ‘Für zügige Integration in Arbeitsmarkt und Wirtschaft’, 15 December 2016, available in German at: <http://bit.ly/2kSsRbK>.

³⁷² Ausbildungspflichtgesetz (ApfIG), BGBl. I Nr 120/2016, available at: <http://bit.ly/2lkgXsh>.

Access to psychological therapy of traumatised refugees and torture survivors is only possible as a transitional measure within AMIF projects when the therapy was already begun during the asylum procedure. Although such projects exist in every federal province, their capacities barely cover the demand and the cost of psychological therapy are only partly covered by health insurances.

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