aida
Asylum Information Database

Country Report: Austria

2021 Update

asylkoordination Österreich

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European Council on Refugees and Exiles

Acknowledgements & Methodology

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

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

The information in this report is up-to-date as of 31 December 2021, 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 23 countries. This includes 19 EU Member States (AT, BE, BG, CY, DE, ES, FR, GR, HR, HU, IE, IT, MT, NL, PL, PT, RO, SE, SI) and 4 non-EU countries (Serbia, Switzerland, Turkey, United Kingdom) 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.

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

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Glossary & List of Abbreviations

Basic Care	Material reception conditions offered to asylum seekers
Dismissal	Negative decision on the merits of the application
Rejection	Negative decision on the admissibility of the application

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

Statistics

Overview of statistical practice

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

Applications and granting of protection status at first and second instance: 2021

By the end of march 2022, the annual statistics on the year 2021 had still not been published by the Ministry of Interior. The table below thus provides an overview of preliminary statistics as of December 2021 The Ministry provided incomplete data on rejections, as it only refers to negative in-merit decisions on asylum – not the rejection of subsidiary protection or humanitarian status. A calculation of recognition rates is therefore not possible and the below figures must be read with particular caution:

	Applicants in 2021	Pending at end 2021	Refugee status	Subsidiary protection	Rejection on asylum	Refugee rate	Sub. Prot. rate	Rejection rate
Total	38,638	27,953	11,672	4,069	13,222	-	-	-

Breakdown by countries of origin of the total numbers

Syria	15,796	10,573	6,639	996	445	-	-	-
Afghanistan	8,461	5,629	2,504	1,645	3,416	-	-	-
Morocco	1,865	523	3	0	1,363	-	-	-
Somalia	1,629	1,522	546	151	285	-	-	-
Pakistan	1,328	591	30	6	778	-	-	-
Bangladesh	1,010	252	34	8	511	-	-	-
Iraq	1,001	1,650	251	906	2,213	-	-	-
Egypt	949	388	4	1	558	-	-	-
India	928	N/A	1	6	442	-	-	-
Turkey	904	673	175	6	165	-	-	-

Source: Ministry of Interior. Note that the number of pending cases at the end of 2021 refer to all cases pending at first and second instance; and that the rejection only refers to negative decisions concerning asylum. This does not lead to the conclusion that in all rejected cases a return decision was issued or that no other status was issued.

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

Gender/age breakdown of the total number of applicants: 2021

	Number	Percentage
Total number of applicants	38,638	100%
Men (incl. children)	33,071	85.59%
Women (incl. children)	5,567	14.41%
Children	11,689	30.3%
Unaccompanied children	5,768	14.93%

Source: Ministry of Interior, Answer to parliamentary request 9531/AB, 11 April 2022

Comparison between first instance and appeal decision rates: 2021

	First instance		Appeal	
	Number	**Percentage**	**Number**	**Percentage**
Total number of decisions	29,357	100%	-	-
Positive decisions	11,824	40.28%	-	-
• *Refugee status*	*9,501*	*32.4%*	-	-
• *Subsidiary protection*	*2,153*	*7.3%*	-	-
- *Article 8 ECHR*	*188*	*0.6%*	-	-
Negative decisions	9,489	32.32%	-	-
- *Formal reasons*	*3,780*	*12.9%*	-	-
- *On merits*	*5,709*	*19.5%*	-	-
Other	8,044	27.4%	-	-

Source: Ministry of Interior, Answer to parliamentary request 9531/AB, 11 April 2022

Overview of the legal framework

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

Title (EN)	Original Title (DE)	Abbreviation	Web Link
Federal Act concerning compulsory education and training for Youth up to 18 years	Bundesgesetz, mit dem die Verpflichtung zu Bildung oder Ausbildung für Jugendliche geregelt wird (Ausbildungspflichtgesetz – ApflG) StF: BGBl. I Nr. 62/2016	Compulsory Education and Training Act (ApflG)	https://bit.ly/2PDK47t (DE)
Federal Act concerning the Granting of Asylum	Bundesgesetz über die Gewährung von Asyl StF: BGBl. I Nr. 100/2005	Asylum Act (AsylG)	http://bit.ly/1jULWW6 (DE)
Federal Act on the Exercise of Aliens' Police, the issuing of Documents for Aliens and the Granting of Entry Permits	Bundesgesetz über die Ausübung der Fremdenpolizei, die Ausstellung von Dokumenten für Fremde und die Erteilung von Einreisetitel 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 Law on the Establishment of the Federal Agency for Care and Support Services Limited Liability Company	Bundesgesetz über die Errichtung der Bundesagentur für Betreuungs- und Unterstützungsleistungen Gesellschaft mit beschränkter Haftung StF: BGBl. I Nr. 53/2019	BBU-G	https://bit.ly/2RG8gY5 (DE)
Federal Act on the general rules for procedures at the federal office for immigration and asylum for the granting of international protection, the issuing of residence permits for extenuating circumstances reasons, deportation, tolerated stay and issuing of stay terminating measures, furthermore the issuing of documents for aliens.	Bundesgesetz, mit dem die allgemeinen Bestimmungen über das Verfahren vor dem Bundesamt für Fremdenwesen und Asyl zur Gewährung von internationalem Schutz, Erteilung von Aufenthaltstiteln aus berücksichtigungswürdigen Gründen, Abschiebung, Duldung und zur Erlassung von aufenthaltsbeendenden Maßnahmen sowie zur Ausstellung von österreichischen Dokumenten für Fremde geregelt werden (BFA-Verfahrensgesetz – BFA-VG) 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 of the Federal Constitution concerning joint action for the temporary basic provision of aliens in need of help and protection in Austria	Vereinbarung zwischen dem Bund und den Ländern gemäß Art. 15a B-VG über gemeinsame Maßnahmen zur vorübergehenden Grundversorgung für hilfs- und schutzbedürftige Fremde (Asylwerber, Asylberechtigte, Vertriebene und andere aus rechtlichen oder faktischen Gründen nicht abschiebbare Menschen) in Österreich StF: BGBl. I Nr. 80/2004	Grundversorgungsvereinbarung	http://bit.ly/1PYPndi (DE)
Federal Act to regulate the basic care of asylum seekers in the admission procedure and certain other foreigners	Bundesgesetz, mit dem die Grundversorgung von Asylwerbern im Zulassungsverfahren und bestimmten anderen Fremden geregelt wird 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 *Amended by:* Agreement between the federal state and states under Article 15a concerning the raise of selected maximum cost rates of Article 9 Basic Care Agreement	Vereinbarung zwischen dem Bund und den Ländern gemäß Artikel 15a B-VG über die Erhöhung ausgewählter Kostenhöchstsätze des Artikel 9 der Grundversorgungsvereinbarung StF: BGBl I 46/2013 *Geändert durch:* 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/2kszyO0 (DE)
Federal Act on Austrian Citizenship	Bundesgesetz über die österreichische Staatsbürgerschaft StF: BGBl. Nr. 311/1985	StbG	http://bit.ly/2j7KSTL (DE)

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

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

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

Overview of the main changes since the previous report update

The last version of this report was previously updated in **April 2021.**

Asylum procedure

- **Access to the territory***:* Pushback allegations and summary returns at the southern border of Austria with Slovenia have increased in 2021. Several cases have been brought to Court leading to a landmark decision in July 2021 in which the Regional Administrative Court of Styria came to the conclusion that "'summary returns („push-backs") are partly applied as a method in Austria." The decision also confirmed that asylum applications are "overheard", i.e. applicants are not properly interviewed, and that certain police measures taken resulted in a degrading treatment of the applicants. However, the Federal Minister of the Interior firmly denied allegations of a 'partial methodical use of illegal pushbacks' at the Austrian southern border in November 2021. No misconduct on the part of police officers could be ascertained by an internal investigation, according to the Minister. The Regional Police Directorate of Styria appealed against the decision of the Regional Administrative Court of Styria. The appeal is currently pending.

- **Key asylum statistics:** After three years of record low numbers, Austria has seen an increase in applications for international applications by 160% in 2021 compared to 2020, reaching 38,638 at the end of the year. The low numbers in previous years were largely due to COVID-19, however. In 2021, almost 2/3 of all applications were lodged by Syrians (15,796 applicants) and Afghans (8,641 applicants). The total backlog of pending cases also increased from 20,739 in 2020 to 27,953 at the end of 2021. While the second instance Court managed to decrease the number of pending cases to 8,422 (compared to 14,886 in 2020), the number of pending cases at first instance significantly increased to 18,534 (compared to 5,853 in 2020). It should also be noted that the number of asylum seekers receiving basic care has remained at the same level as in previous years, thereby indicating that many asylum seekers move to other countries after lodging an application for international protection.

- **First instance procedure:** In 2021, there was a sharp increase in decisions taken in the fast track procedure (3,681 cases), focusing in particular on persons originating from countries listed as countries of safe origin. Moreover, almost 8,000 cases were discontinued, most probably because the applicants moved to other countries. This was particularly visible for Afghan nationals which left Austria after August 2021 *inter alia* due to the anti-Afghan-refugee rhetoric of the Minister of Interior even after the take over of the Taliban. Practice further suggests that subsequent applications lodged by Afghan nationals were not prioritised in 2021.

- **Second instance procedure:** The Federal Administrative Court (BVwG) managed to reduce the number of pending cases at second instance from 14,886 in 2020 to 8,351 at the end of 2021. A total of 17,100 cases could be concluded through the 26,650 single decisions taken. In 13,040 cases, the first instance decision was overturned or amended at second instance, while 10,300 first instance decisions were confirmed. This means that 62% of the cases examined by the Court at second instance modified the first instance decision, demonstrating the poor quality of the work of the determining authority.

- **Legal assistance:** Since January 2021, the state-run agency BBU GmbH took over the legal assistance system from NGOs in asylum procedures. The structure of the state-run agency remains disputed as the risk of influence by the Minister of Interior on the operational level of the agency is high. Nevertheless, despite a difficult start, the agency seems to have consolidated its legal counselling service and there is a regular exchange taking place with NGOs working in the field. The first experiences show that the quality of legal assistance has not deteriorated. There are no reports indicating that the Ministry of Interior has exercised any influence on the work of the counselling department of the agency so far.

- **Best interest of the child:** The removal of under aged children with their respective mothers to Georgia and Armenia in January 2021 caused a medial uproar and protests. Some of the children were born in Austria and do not speak their mother's language. Their application for a status on humanitarian grounds were rejected due to the fact that the parents had remained in the country despite having received return decisions and had lodged subsequent applications. One of the subsequent applications for a humanitarian status that was lodged in May 2020 has still not being processed by the authority thereby exceeding the deadline. After having been deported, the protests of the classmates of the children persisted and the Ministry of Justice decided to introduce a commission of experts to assess the respect of the best interest of the child in asylum and removal procedures. The commission presented a report in July 2021 with several recommendations such as the importance to carry out a mandatory hearing of under age children in asylum procedures or providing guardians to unaccompanied minors at an earlier stage of the procedure. Since then, one girl has returned without her family to Austria and has been granted a student's visa. It should further be noted that, in 2021, 4,489 minors have gone missing after applying for asylum in Austria. This represents 78% of all applications of minors in 2021.

- **Afghan applicants**: Afghan applicants remained the second main nationality of asylum seekers after Syrian nationals in 2021. In July 2021, a sexually assaulted girl was found dead in Vienna ("Causa Leonie"). Four Afghan nationals were identified as suspects, sparking a public debate on the high crime rate among Afghan asylum seekers in Austria and on the efficiency of the Austrian asylum system. The debate along with the decreasing recognition rates stopped shortly after the take over of the Taliban in August 2021. Due to the "Causa Leonie" case, the Ministry of Interior refused to suspend removals to Afghanistan up until 4 August 2021, when the Taliban had already reached major cities in Afghanistan. The last deportation planned on 4 August 2021 was stopped by an interim measure granted by the ECtHR. In September 2021, a decision by the Constitutional Court was issued stating that deportations that had taken place since 20 July 2021 violated Article 3 ECHR. As a result of the takeover of Afghanistan by the Taliban, recognition rates as well as the number of subsequent applications reached a record at the end of the year. Between October and December 2021, only 18 cases of Afghan nationals were rejected on the merits at first instance, but the BVwG overturned all these negative decisions. In a few cases seen as a test ballon, the Constitutional Court overturned the negative Court decisions in December 2021 stating that a deportation to Afghanistan would lead to a violation of Article 3 of the European Convention on Human Rights (ECHR).

- **Response to the situation in Ukraine as of 14 April 2022**: Following the decision of the EU to trigger the Temporary Protection Directive (TPD), the Austrian government decided to issue a regulation based on §62 AsylG. It implements the decision of the Justice and Home Affairs (JHA) Council into national law and defines the scope of the temporary protection as well as its duration. Additionally to the council decision, Ukrainian nationals who were reisiding legally in Austria before 24 February 2022 have the right to receive protection under the TPD. Ukrainians will receive basic care and have access to the labour market. Working permits have to be issued but will be granted without further examination. There is still no agreement as to whether Ukrainians will have access to other state subsidies such as family or childcare allowances and, if so, under which conditions. A major point of debate is whether Ukrainians will be allowed to earn € 110,00 in addition to basic care as is currently the case for other asylum seekers, or if this limit will be extended. Ukrainians generally have access to the asylum system and can apply for asylum. However, their application will not be examined as long as the regulation based on § 62 AsylG is in force.

  The public response to the situation in Ukraine has been welcoming. The government emphasises that Ukrainians are different from other refugees which causes unrest in the refugee community. Third country nationals that resided in Ukraine before 24 February 2022 are allowed to enter Austrian territory legally and can plan their onward travel or regularisation where the conditions of Settlement and Residency Act have to be met. Reports show however, that the authorities are confiscating documents from third country nationals as they do not fall under the scope of the TPD and regularisation under the ordinary migration scheme is almost impossible in practice due to the high conditions to be met when applying for it. As of April 2022, 56,000 Ukrainians have been registered in Austria. The Ministry of Interior estimates that up to 200,000 Ukrainians will come to Austria in 2022.

Reception conditions

❖ **Malfunctioning distribution system**: Since December 2020, the BBU GmbH is responsible for providing food and shelter for asylum seekers during the admissibility procedure. After the admissibility procedure is concluded, the law foresees that the responsibility shifts to the provences. However, due to the non-adjustement of reimbursement of costs for accommodation of asylum seekers by the federal state to the provinces, in 2021 the provinces did not take responsibility for applicants for international protection. As a result, reception centres were overcrowded and the BBU GmbH was forced to open all remaining facilities available. Due to the increase of applications and necessary COVID-19 measures, inadequate facilities such as garages and ware houses were also used to accommodate applicants. This created an image of a high influx of applicants in the public eye, even though the numbers of beneficiaries of basic care remained stable over the last 2 years as many applicants moved onward to other countries.

Detention of asylum seekers

❖ **Interim measure of ECHR concerning returns to Afghanistan:** The Vienna based NGO "Deserteurs- und Flüchtlingsberatung" supported an Afghan national whose removal was planned at the beginning of August 2021 and who had applied for an interim measure. The interim measure was granted by the ECHR which caused a medial uproar and put an end to all deportation efforts in Europe as this occurred at the time when the Taliban took over the power in Kabul in mid-August.

❖ **Upholding unlawful detention :** Despite the interim measure granted by the ECHR and a halt on removals, the Ministery of Interior did not immediately release all Afghan citizens and, on the contrary, publicly announced that it will continue to return Afghan citizens. The Afghan Ambassador in Vienna, who had asked the Austrian government for a moratorium on returns following the takeover of Kabul by the Taliban, was ordered to come to the Ministry of Foreign Affairs to clarify diplomatic discrepancies. Afghan nationals detained in removal centres were only released following rulings from the Constitutional Court which concluded on 17 August 2021 that deportations within the maximum time limits for deportations are not possible. In another ruling from 30 September 2021, the VfGH concluded that all removals carried out after 20 July 2021 would pose a risk of violation of Article 3 ECtHR for the returnees and return decisions are not permissible.

Content of international protection

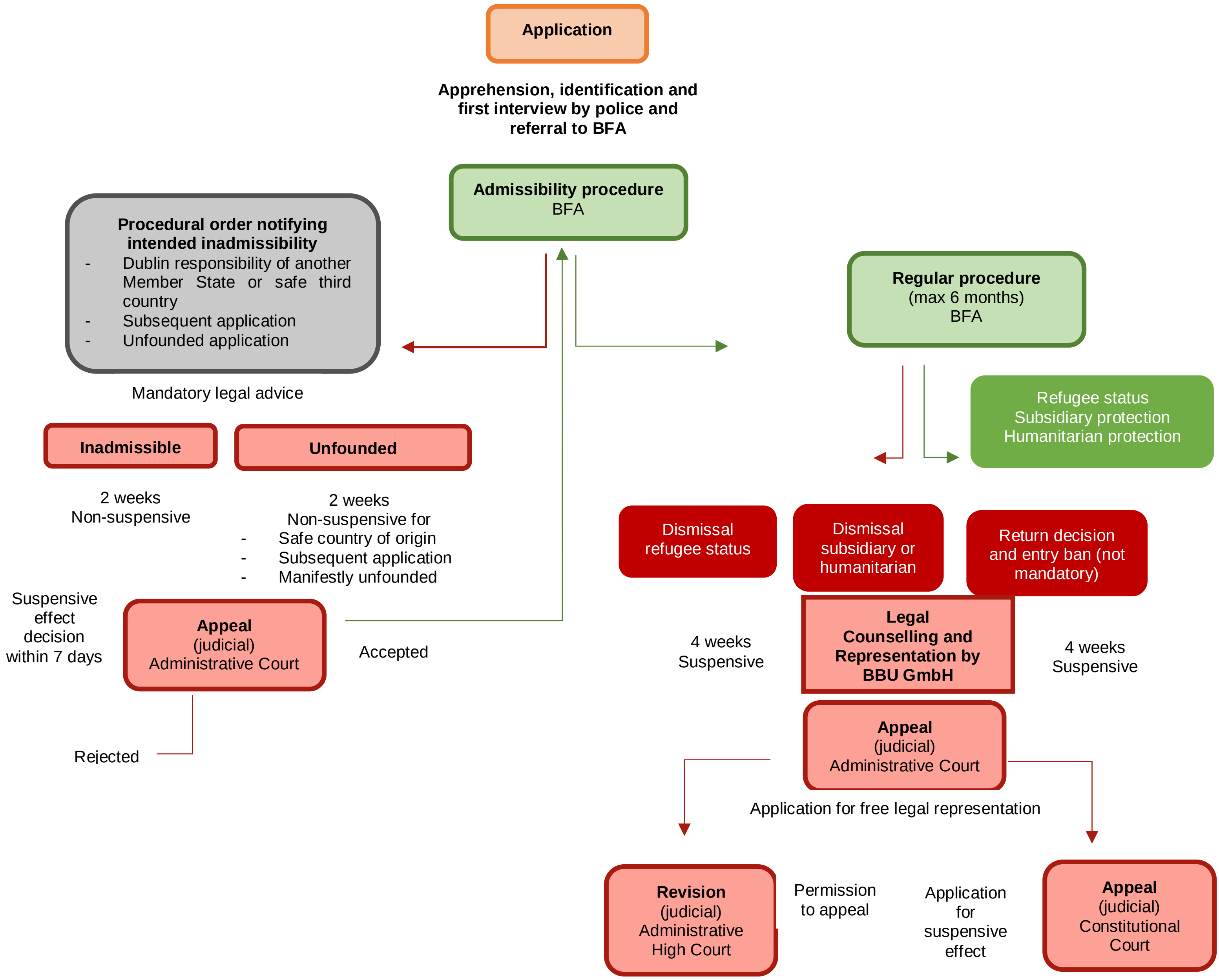
❖ **Access to labour market**: Since 2004, an internal decree of the Ministry of labor called "*Bartenstein-Erlass*" resulted in a practice whereby the authority would deny working permits to asylum seekers. The decree obliged the Ministry's members in the '*Regionalbeirat'*, a committee that decides on whether working permits should be granted to certain group of foreigners, to vote against the granting of working permits for asylum seekers in any case except for harvest and tourism jobs. In a groundbreaking decision, the Constitutional Court ruled in July 2021 that the internal decree was unlawful as it should have been issued as a regulation and published accordingly. Following this decision, the Ministry decided that it would not introduce the same rule as a regulation, but stated that it will only grant working permits to asylum seekers if no other European citizen would be able to take the job. Overall, the ruling has facilitated the access to employment for asylum seekers.

- **Cessation/withdrawal procedures**: Austria continues to initiate a large number of cessation and withdrawal procedures against beneficiaries of international protection. In 2021, a total of 5,924 cessation/withdrawal procedures were initiated. However, only a total of 1,304 asylum statuses were eventually ceased/withdrawn by the determining authority mainly for nationals from Russia (1,015) Syria (53) and Kosovo (44); and a total of 342 subsidiary protection were ceased/withdrawn, mainly for nationals from Afghanistan (101), Iraq (69) and Russia (55). A detailed statistical breakdown on nationality and on the grounds for cessation/withdrawal is provided under the relevant section.

Asylum Procedure

A. General

1. Flow chart



2. Types of procedures

Indicators: Types of Procedures

Which types of procedures exist in your country?

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

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

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

Stage of the procedure	Competent authority (EN)	Competent authority (DE)
Application at the border	Police	Polizei
Application on the territory	Police	Polizei
Dublin (responsibility assessment)	Federal Agency for Immigration and Asylum	Bundesamt für Fremdenwesen und Asyl (BFA)
Refugee status determination	Federal Agency for Immigration and Asylum	Bundesamt für Fremdenwesen und Asyl (BFA)
First appeal	Federal Administrative Court	Bundesverwaltungsgericht (BVwG)
Onward appeal	Administrative High Court 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 determining authority

Name in English	Number of staff	Ministry responsible	Is there any political interference possible by the responsible Minister with the decision making in individual cases by the determining authority?
Federal Agency for Immigration and Asylum (BFA)	1,039	Ministry of Interior	☒ Yes ☐ No

Source: Ministry of Interior, Answer to parliamentary request 9531/AB, 11 April 2022.

The BFA is the determining authority responsible for examining applications for international protection and competent to take decisions at first instance as well as for residence permits on exceptional

3 For applications likely to be well-founded or made by vulnerable applicants. See Article 31(7) recast Asylum Procedures Directive.

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

5 Labelled as “accelerated procedure” in national law. See Article 31(8) recast Asylum Procedures Directive.

humanitarian grounds and certain Aliens' Police proceedings. It is an administrative body falling under the responsibility of the Ministry of Interior. The BFA has its headquarters in Vienna and one regional directorate in each of the Provinces. Further organisational units of the BFA are the initial reception centres (EAST). Additional field offices of the regional directorates may be established in the Provinces.[6]

As of December 2021, the BFA had 1,039 staff members, compared to 1,079 at the end of 2020. However, all staff of the BFA are not caseworkers, i.e. the personnel of the determining authority responsible for examining and assessing an application for international protection. Out of the 1,039 officials of the BFA at the end of 2021, 440 were caseworkers (compared to 465 in 2020). The majority of these caseworkers were permanent staff. 57.5% of them were male caseworkers and 41.5% female caseworkers.[7]

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

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

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

5. Short overview of the asylum procedure

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

The procedure before the Federal Administrative Court (*Bundesverwaltungsgericht*, BVwG) is regulated by the Asylum Act, the BFA Procedures Act (BFA-VG), by the General Administrative Procedures Act and the Federal Administrative Court Act (VwGVG).[9]

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

6 BFA, *Brochure*, available at: https://bit.ly/2kjwRUC.
7 Ministry of Interior, Answer to parliamentary request 9531/AB XXVII. GP, 11 April 2022.
8 BFA, *Country of origin information*, available at: https://bit.ly/33XqYia.
9 See the section on Overview of the Legal Framework.

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

First instance procedure: The Asylum Act provides for a single procedure for applications for international protection. If such an application is lodged, the authorities have to decide whether the application is to be rejected on account of safety in a third country or the responsibility of another state. In the first stage of the procedure – called **admissibility procedure** – the authorities have to decide on the admissibility of the application. If the application is declared admissible, the authorities decide whether the person is to be granted refugee status. 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. There is also an **accelerated procedure** for certain claims.

Appeal: Appeals to the Federal Administrative Court are possible against a decision rejecting the asylum application as inadmissible and also against a decision dismissing the application on the merits. The BFA Procedures Act (BGA-VG) regulates the appeal and its effects. Appeals against the decision rejecting the asylum application on the merits have to be submitted within four weeks and have suspensive effect, unless the BFA does not allow for the appeal to have suspensive effect. An appeal against a decision rejecting an application as inadmissible does not have suspensive effect and has to be submitted within two weeks. The ruling from the Constitutional Court, which considered the shortening of the appeal period as justified as long as there are special organisational and procedural measures which also ensure a correspondingly rapid decision, has been annulled by the new law that came into force on 1 September 2018.[10] Suspensive effect may be granted by the Court to an appeal against an expulsion order issued together with a decision rejecting the asylum application as inadmissible.

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

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

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

The evidential requirements are the same for refugee and subsidiary protection status. In appeal procedures before the Court, new facts and evidence may only be submitted in the following cases: if the grounds on which the first instance negative decision was based have undergone any material change; if the first instance procedure was irregular (e.g. if the right to be heard about the findings of the BFA was

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

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.[11] Decisions of the Court are issued in the form of judgments and all other decisions, such as those allowing the appeal to have suspensive effect, the rejection of an appeal because it was lodged too late, or on the continuation of an asylum procedures that was discontinued (i.e. decisions on procedural issues), are issued in the form of resolutions.

Onward appeal: The BVwG may decide that the rejection of the application can be revised before the Administrative High Court (*Verwaltungsgerichtshof*, VwGH). This possibility is foreseen if a decision on the case depends on a leading decision, e.g. if the Administrative Court's decision is not based on a previous decision of the Administrative High Court. If the BVwG does not allow the appeal, the asylum seeker may demand an extraordinary revision.[12] The BFA can also file a revision with the VwGH to challenge decisions issued by the BVwG.

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

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 terminated.

Any application for international protection which is deemed inadmissible or rejected on the merits is automatically connected to a decision assessing whether a return to the country of origin is possible or if the right to private and family life of the applicant prevail.[13] The return decision is issued together with the negative decision concerning the asylum application by the BFA in first instance. Similarly, a return decision is also issued in the case of a withdrawal of international protection.

11 Article 20 BFA-VG.

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

13 § 10 AsylG

B. Access to the procedure and registration

1. Access to the territory and push backs

Indicators: Access to the Territory

1. Are there any reports (NGO reports, media, testimonies, etc.) of people refused entry at the border and returned without examination of their protection needs? ☒ Yes ☐ No

2. Is there a border monitoring system in place? ☐ Yes ☒ No
   - ❖ If so, who is responsible for border monitoring? ☐National authorities ☐ NGOs ☐ Other
   - ❖ How often is border monitoring carried out? ☐Frequently ☐Rarely ☐ Never

In March 2020, the Ministry of Social Affairs, Health, Care and Consumer Protection issued a controversial decree concerning restrictions on the access to the territory in the context of COVID-19.[14] It regulated that entry is only permitted with a valid health certificate. It was disputed whether persons seeking international protection would also have to fulfil this condition.[15] After a criminal complaint was lodged against the Ministry of Interior it was clarified that it was not an internal decree but a "non-binding legal opinion".[16] The decree restricting access to the territory was finally amended on 30 April 2020 and clarified that persons will be allowed entry when Austria is bound by international law obligations.[17] In practice, however, none of the Ministries were able to confirm or deny whether the decree led to a denial of entry for asylum-seekers.

In July 2021 the Administrative Court of Styria issued a landmark decision concerning a case of a Moroccan national living in Bosnia. Despite having asked for asylum in September 2020 after crossing the green border from **Slovenia** to **Austria** along with a group of other asylum seekers, he was handed over to the Slovenian police based on a readmission agreement who also ignored his claim. He was subsequently returned to **Croatia** and pushed-back to **Bosnia**.[18] The Court concluded that the policemen "overheard" the asylum application, i.e. they did not carry out a proper interview; the body search resulted in inhuman treatment and the rejection to Slovenia was unlawful. In the statement of facts, the Court stated that push-backs are "partly applied as a method in Austria."[19] The Ministry of Interior denied the fact that an application for international protection had been made and brought in a legal remedy to the High Administrative Court. In 2020, 514 persons from 48 different countries were handed over to Slovenian authorities based on this *ad hoc* agreement. [20] This agreement originally focused on the uncomplicated return of Slovenian citizens to Slovenia when crossing the border. No formal procedure is known: when a person identified to be returned on the basis of the agreement the police forces of the two countries interact and organise the transfer. There is no legal remedy foreseen in the process. Persons that have applied for asylum cannot be returned on the basis of this agreement.

In July 2021, a Somali minor was also unlawfully returned to Slovenia on the basis of that readmission agreement, despite the fact that he had articulated the words "asylum" various times when talking to police

14 Ministry of Health, *Decree on Measures concerning Entry of Territory from Italy, Switzerland, Liechtenstein, Germany, Hungary and Slovenia, BGBl. II Nr. 87/2020, amended by BGBl. II Nr. 195/2020, 30 April 2020*, available in German at: https://bit.ly/3uHVkCi.

15 Ministry of Interior, *Answer to parliamentary request 1503/AB XXVII. GP*, 9 April 2020, available in German at: https://bit.ly/3dljInl.

16 Standard, 'Absage an das Asylrecht durch Ministeriumserlass', 22 April 2020, available in German at: https://bit.ly/3s2BdwQ.

17 Article 1 (2) COVID-19-Einreiseverordnung

18 Oe24.at, ‚Pushbacks in der EU – völkerrechtswidrig, aber gängige Praxis', 24 November 2020, available in German at: https://bit.ly/2ODjIEI.

19 Asylkoordination österreich, „Gericht bestätigt systematische Menschenrechtsverletzungen durch österreichische Polizei", 5 July 2021, available in German and English at https://bit.ly/3GJF9cy.

20 Ministry of Interior, *Answer to parliamentary request 4277/AB XXVII. GP*, 20 Janduary 2021, available in German at: https://bit.ly/2ZpZCA4.

officers. He brought in a complaint and the procedure is still pending. In Slovenia, the asylum request was accepted and an asylum status has already been granted.[21]

As a response to the allegations of illegal push backs and unlawful returns taking place at the Southern border to **Slovenia** and the fact that the number of persons affected by readmissions to Slovenia has almost doubled from 81 to 174 in 2020,[22] the initiative "Push back alarm" was founded by activists. Similar to "Alarm phone", the initiative offers a phone number where persons that crossed the border can request a follow up with the police and ask whether their asylum application is being accepted.[23] From January to November 2021, the number of persons unlawfully returned to Slovenia based on bilateral readmission agreement has decreased to 59.[24] According to the AIDA report on Slovenia, persons who have been summarily returned back from Austria to Slovenia in 2020 were mostly expelled to Croatia by the Slovenian authorities.

Hungarian police reports further mention that **Austria** sent 5 persons to **Hungary** on 23 December 2020,[25] and 3 persons on January 2021.[26] These individuals were subsequently pushed back to **Serbia**. There is no verified information about whether the Syrian and Afghan nationals have requested asylum in **Austria**.

1.1. Refusals of entry at the Slovenian and Hungarian borders

Following the **German** announcement of the prolongation of border controls in October 2019, the Austrian Minister of Interior had also prolonged the temporary border controls with Slovenia and Hungary until 14 May 2020.[27] The argumentation of the Austrian Government had slightly changed, however: while it initially argued that the situation was not sufficiently stable, the Minister of Interior argued that "border controls in the heart of Europe have led to a positive effect on migration movements".[28] These border controls have been further prolonged on 11 May 2021, based on the "continuing migration pressure" and "the tense situation resulting from Covid-19".[29] More information on the German-Austrian border controls can be found in the AIDA report on Germany.[30]

Slovenia reaffirmed its opposition as regards Austrian border controls in recent years. The Slovenian Ministry of the Interior considers border controls unjustified and disproportionate and stressed that there were no statistics demonstrating a risk of secondary migration nor a threat to Austria's internal security. In 2019 it added that the border controls are "unnecessary and cause great economic damage".[31]

21 Standard, "Wieder dokumentierter Pushback von Österreich nach Slowenien", 7 September 2021, available in German at https://bit.ly/3GzS54M.
22 Slovenian police, *Illegalne migracije na obmocju Republike Slovenije*, December 2020, available in Slovenian: https://bit.ly/3szYyqe, 4.
23 Push back Alarm Austria, see: https://bit.ly/3asuo1z.
24 Slovenian police, Illegalne, migracije na obmocju Republike Sloenije, November 2021, available in Slovenian: https://bit.ly/34qPe1d.
25 Hungarian police, 23 December 2020, available in Hungarian at: https://bit.ly/37ntq4K.
26 Hungarian police, 21 January 2021, available in Hungarian at: https://bit.ly/3s1wxHw.
27 Ministry of Interior, Answer to parliamentary request 40AB/XXVII, 12 December 2019, available in German at: https://bit.ly/3aDEhXq.
28 Der Standard, ‚Österreich kontrolliert weiterhin Grenze zu Slowenien und Ungarn', 8 October 2019, available in German: https://bit.ly/2uI59pu.
29 Kurier, 'Österreich verlängert Grenzkontrollen zu Slowenien und Ungarn erneut", 14 October 2020, available in German at: https://bit.ly/2Nr4xOd.
30 AIDA, *Country Report on Germany – Update on the year 2021*, April 2022, available at: https://bit.ly/3OchWVE, p. 42.
31 Der Standard, ‚Österreich kontrolliert weiterhin Grenze zu Slowenien und Ungarn', 8 October 2019, available in German: https://bit.ly/2uI59pu.

1.2. Special provisions to maintain public order during border checks

With a legal amendment, which entered into force on 1 June 2016, "special provisions to maintain public order during border checks" were added to the Asylum Act.[32]

The provision (discussed publicly as "emergency provision"), which can be activated through a decree of the federal government, foresees that asylum seekers have no longer access to the asylum procedure in Austria when a maximum number, i.e. a 'quota', of asylum applications to be examined on the merits, is reached. For 2016 this number was set at 37,500 applications and was not reached.[33] For 2017 the limit was set at 35,000 applications and was not reached either. The limit for 2018 was set at 30,000 applications and was not exceeded. For the year 2019, the maximum has been set at 25,000 asylum applications. However, the decree of the federal government was never activated. There are no known plans to activate it in the near future and no further projections of quotas for the upcoming years.

The possibility of rejection at the border relies on the distinction between "making" and "lodging" an asylum application as per Article 6 of the recast Asylum Procedures Directive. After an application is made before a police officer at the border, or in a registration centre (*Registrierstelle*) if the person is found to be irregularly on the territory, the Aliens Police will be able to reject the person at the border or to issue a return decision before the initial interview (*Erstbefragung*).[34]

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.[35]

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,[36] therefore an appeal to the State Administrative Court (LVwG) does not have suspensive effect.[37]

Although it has not been activated yet, the amendment has been criticised by UNHCR and civil society organisations,[38] as it enables police authorities rather than the BFA to deny a person access to the asylum procedure, without procedural guarantees or legal assistance, while an appeal can only be made after the expulsion has been carried out. The activation of the emergency provision also suspends the application of the Dublin Regulation.

1.3. Legal access to the territory

From 2013 to 2017, a successful resettlement programme "Humanitarian Admission Programme" was implemented bringing around 1,700 persons to Austria. After the last persons were transferred to Austria, the resettlement programme terminated and no other programme has been launched since. Austria then announced in 2017 that it would relocate some applicants to Austria, especially young applicants and

32 Articles 36-41 AsylG.
33 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.
34 Article 38 AsylG.
35 Article 41(1) AsylG.
36 Article 39 AsylG.
37 Article 41(2) AsylG.
38 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.

juveniles. In reality, Austria never received any applicant through the relocation scheme. Furthermore, there is no legal ground to grant a humanitarian visa from abroad.

Austria did not participate in refugee evacuation programmes from Afghanistan after the takeover of the Taliban regime in August 2021. The Ministry of Foreign Affairs supported Austrian nationals and persons with Austrian residency status to get out of Afghanistan (mainly to Pakistan). In one publicly known case, the Austrian embassy in Islamabad confirmed to an Afghan national that it would issue a visa for Austria, but the embassy then refused to issue it when the latter arrived in Pakistan. The woman was issued a visa by Germany instead.[39]

2. Registration of the asylum application

Indicators: Registration

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

An application for international protection can be made before an agent of the public security service or a security authority on Austrian territory.[40] The asylum application is registered as soon as asylum is requested. There is no possibility to apply for asylum at Austrian embassies or consulates abroad since 2001. A first interview has to be conducted by the public security service.[41] All documents have to be sent to the BFA to obtain guidelines on the next steps to be taken. This includes sharing the minutes of the first interrogation as well as a report showing the time, place and circumstances of the application, information on identity and the travel route, in particular the place where the border was crossed, as well as the result of the identity screening.

Applications for international protection are forwarded to the BFA without delay. In some cases, public security offices do not provide correct information and send asylum seekers to the initial reception centre (EAST) of **Traiskirchen** to make an asylum application. During a short period in 2019, the "initial reception centres" had been re-named into "departure centres". However, following criticism from civil society organisations and given the lack of legal basis for that change, these are still called "initial reception centres" in accordance with national law.

Based on the information submitted by the police, the BFA orders the transfer of the applicant to an EAST or regional directorate of the BFA. The BFA can also order the applicant to go to the EAST or regional directorate on his/her own, and transfer costs will be covered.[42] Through this instruction on the next steps to be followed, the application is officially lodged.[43]

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[39] Oberösterreichische Nachrichten, „Deutschland nahm afghanische Astronomin auf, Österreich nicht", 10 January 2022, available in German at: https://bit.ly/3j0a7E7.

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

[41] Article 17 (2) AsylG

[42] BFA, *The Asylum procedure*, available in German at: https://bit.ly/2Hn2GUl, 10.

[43] Article 17 (2) AsylG in connection Article 43 (1) BFA-VG

Persons legally staying in Austria (i.e. through a residence permit) must submit their asylum application at the public security service too. The BFA orders to appear before the branch office within 14 calendar days.[44] Otherwise, the application will be terminated as being no longer relevant. Parents of children born in Austria are obliged to inform the BFA within two weeks about the birth of the child. Upon receipt of this information, the application is registered and lodged.[45]

In 2021, a total of 38,638 applications for international protection were lodged in Austria. This marks a sharp increase of 161,51 % compared to 2020, where only 14,192 applications were lodged partly due to COVID-19. After three years of very low numbers in the context of the pandemic, the numbers of applications almost reached the level of 2016 (42,285). However, 2021 has also seen a record number of discontinued cases (7,932) most likely due to onward movement of the applicants to other countries.

Despite the COVID-19, the BFA never suspended its activities during the pandemic. Rather, it reduced its activities. During the first months of the pandemic from March to May 2020, only a few interviews were conducted and the offices were not open to public, except for applicants for international protection. Some measures were upheld throughout 2021 such as quarantine procedures when necessary, and there was some delay concerning the first interview. The main EAST in **Traiskirchen** was put under quarantine from 24 March to 13 April 2020, meaning that people entering the EAST were not allowed to leave until the end of the quarantine. It took some time to establish a system for newly arrived asylum seekers, but no particular issues were reported in 2021. In the meantime, many federal accommodation facilities were put under quarantine when new cases of COVID-19 were detected resulting in the deprivation of liberty of all inhabitants of the camps during this time. The Constitutional Court declared the regulation which prohibited the asylum seekers to leave the camp for several weeks as unlawful.[46] Following a complaint of two inhabitants the Constitutional Court lifted up a decision of an Administrative Court which had rejected their complaint against a general prohibition for everyone inside the camp (regardless of whether the persons were infected or not) and found that it was disproportionate.[47]

44 Article 43 (1)(1) BFA-VG
45 Article 17a (2) AsylG.
46 VfGH, Decision E 3811/2020-17, E 3845/2020-17, 6 October 2021
47 Standard, „Ausgangssperre in Flüchtlingslager Traiskirchen war rechtswidrig“, 19 October 2021, available in German at: https://bit.ly/34N2hJQ.

C. Procedures

1. Regular procedure

1.1. General (scope, time limits)

Indicators: Regular Procedure: General

1. Time limit set in law for the determining authority to make a decision on the asylum application at first instance: 6 months

2. Are detailed reasons for the rejection at first instance of an asylum application shared with the applicant in writing? ☒ Yes ☐ No

3. Average length of the regular procedure at 31 December 2021: 3.2 months

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

According to the General Administrative Procedures Act (AVG), decisions have to be taken within 6 months after the application for international protection has been lodged.[48] Within 20 calendar days, the BFA has to decide whether it intends to reject the application as inadmissible due to the responsibility of another Member State under the Dublin Regulation, the application of the safe third country concept or in case of subsequent asylum applications, or to dismiss the application for other reasons. Since 2018, the admissibility procedure may be prolonged by lifting the 20 days deadline in manifestly unfounded cases. However, if no information about the intention to reject the application is issued within 20 calendar days, the application is automatically admitted into the regular procedure. Thus, the asylum-seeker should receive the preliminary residence permit as asylum seeker and be allocated to the reception system of a federal province. On the contrary, if the asylum application is deemed inadmissible the asylum-seeker receives legal assistance and has to be heard in presence of his/her lawyer. There is no legal remedy against this procedural order.

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

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

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

In 2021, the average duration of the asylum procedure at first instance amounted to 3.2 months,[49] compared to 3.9 months in 2020 [50] and to 2.3 months in 2019,[51] 6.6 months at the beginning of 2018 and

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48 Article 73 (1) AVG.
49 Ministry of Interior, Answer to parliamentary request 9531/AB XXVII. GP, 11 April 2022.
50 BFA, *BFA Jahresbilanz 2020*, available in German at: https://bit.ly/2OfQ1JV.
51 Ministry of Interior, Answer to parliamentary request 232/AB, 20 January 2020, availabe in German at: https://bit.ly/37Vzhf6In.

14 months at the beginning of 2017. [52] While the average time in 2019 and 2020 refers to all asylum procedures at first instance, the Ministry of Interior stated that the average duration was 6 months for regular procedures and 27 days for fast track procedures (which concerned 750 cases) in 2018.[53] In 2020, 807 applications were fast tracked,[54] out of which 405 were rejected within 72 hours by the BFA. In 27 cases the decision was appealed but the rejection was then upheld by the BVwG.[55] The average length of the fast track procedure was 22,7 days in 2020.

In 2021, the number of decisions taken in the fast track procedure increased significantly. 2,581 decisions were taken in the fast track procedures (compared to 524 in 2020) and an additional 1,100 cases were channeled into the so called accelerated procedure (compared to 293 in 2020). The average length of the fast track procedure was 28.2 days. In the accelerated procedure which mostly applies to persons from countries listed as safe countries of origin and manifestly ill-founded applications (Morocco: 1,014; Pakistan: 621; Egypt: 567), a decision is usually taken within 72 hours. In 68% of the cases the decisions were taken within this time frame as well. Only one decision of the accelerated procedure cases was lifted up by the BVwG.[56]

Year	Fast-track procedure	Accelerated procedure	Total
2015	N/A	N/A	**N/A**
2016	1,506	N/A	**1,506**
2017	1,433	N/A	**1,433**
2018	743	N/A	**743**
2019	545	N/A	**545**
2020	524	283	**807**
2021	2,581	1,100	**3,681**

Source: Ministry of Interior, Answer to parliamentary request 9531/AB XXVII. GP, 11 April 2022

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

In recent years, the Austrian Ombudsman received numerous complaints on the length of asylum procedures at first instance. It received 1,500 complaints in 2016; 2,000 complaints in 2017 and 320 complaints in 2018. Out of the 320 complaints received in 2018, a violation of the duty to take a decision within the set limit was confirmed in 248 cases. Moreover, in 2018, 220 complaints were filed concerning length of procedures at second instance, and in 176 cases a violation was identified.[57] In 2020, the Austrian Ombudsman concluded in 197 cases that the BVwG violated its obligation to make a decision

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

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

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

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

56 Ministry of Interior, Answer to parliamentary request 9531/AB XXVII. GP, 11 April 2022

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

and did not take any steps in the asylum complaint procedure, reiterating that organisational deficiencies and increasing asylum applications are not a legally relevant justification. The Ombudsman suggested that the procedure should be concluded quickly in the cases brought forward. Numerous complaints were filed concerning deficiencies in the first instance proceedings.[58] In 2021, the Austrian Ombudsman Board received 14 complaints concerning the length of first-instance asylum procedures and 151 complaints mainly about the length of second-instance asylum procedures from 1 January to 17 September 2021.[59] At the end of 2021, a total of 27,880 cases were pending, out of which 19,529 at first instance and 8,351 at second instance. This shows that the second instance managed to reduce the backlog of the years before: At the end of 2020, a total of 21,217 cases were pending, out of which 5,700 at first instance and 15,147 cases at second instance. The number of pending cases at second instance decreased compared to 2019 (23,142), but increased at first instance (4,014 in 2019).[60] In comparison, there were 7,535 cases pending at first instance in 2018; 32,241 cases in 2017 and 63,912 in 2016.[61]

Backlog of pending cases at first and second instance: 2021			
	BFA	BVwG	Total
Syria	9,368	1,190	**10,558**
Afghanistan	3,813	1,787	**5,600**
Iraq	469	1,168	**1,637**
Somalia	1,153	365	**1,518**
Iran	233	934	**1,167**
Russian Federation	283	419	**702**
Turkey	442	229	**671**
India	415	180	**595**
Pakistan	361	230	**591**
Unknown	389	157	**546**
Morocco	499	24	**523**
Egypt	303	84	**387**
Nigeria	97	237	**334**
Bangladesh	168	82	**250**
Tunesia	226	17	**243**
Other	1,310	1,248	**2,558**
Total	**19,529**	**8,351**	**27,880**

Source: Ministry of Interior, Annual statistics 2021, available in German at: https://bit.ly/3reCMJW.

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.[62] The same maximum time limit applies to the "procedure for the initiation of a measure terminating residence" (see Accelerated Procedure).

In 2021, he practice of fast-track processing focused on applicants coming from countries listed as "safe countries of origin" and on applicants who have already been sentenced by a criminal court. The great

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

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

60 Ministry of Interior, *Preliminary asylum statistics December 2020*, available in German at: https://bit.ly/3lrbcoN.

61 Ministry of Interior, Reply to parliamentary question 11560/J (XXV.GP), 31 March 2017, available in German at: http://bit.ly/2o1os5Z. According to the Ministry, the average processing times for asylum applications made after 1 July 2016 was 6.6 months: Information provided by the Ministry of Interior, 26 January 2018.

62 Article 22(6) AsylG.

majority of fast track processing deals with cases from applicants originating from so called safe countries of origin. 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).

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?[63] ☒ Yes ☐ No
3. Are interviews conducted through video conferencing? ☐ Frequently ☐ Rarely ☒ Never
4. Can the asylum seeker request the interviewer and the interpreter to be of a specific gender? ☐ Yes ☒ No[64]
   - ❖ If so, is this applied in practice, for interviews? ☐ Yes ☐ No

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

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

Asylum seekers are further subject to an interrogation by security services shortly after lodging the application for the purposes of the Dublin and Admissibility Procedure.[65] These interrogations are carried out with a view to establish the identity and the travel route of the asylum seeker. They should not, however, refer to the merits of the application such as specific reasons for fleeing and lodging an asylum application. Despite the fact that the interrogation is conducted by the police and not by caseworkers of the BFA, the statements made by the asylum seeker at this stage of the admissibility procedure have an important impact on the asylum procedure as they are accorded particular importance by the BFA. The Constitutional Court confirmed in a judgement of 2012 that reasons for applying for international protection shall not be in the focus of the first interview conducted by police services.[66]

63 However, the official conducting the interview is no longer responsible for the decision.
64 Article 20 (1) AsylG foresees that an asylum seeker whose fear of persecution is founded on violations of sexual self-determination is to be questioned by an officer of the same sex unless the asylum seekers requests the opposite. In general, requests can be made but there is no legal right to get an interviewer and interpreter of a specific gender. The requests in other cases than Article 20 (1) are usually not respected by the BFA.
65 Article 19 AsylG.
66 VfGH, Decision U 98/12, 27 June 2012.

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

The law further provides for a choice of interviewer according to gender considerations in cases where the asylum seeker's fear of persecution is related to sexual self-determination.[67] The authorities must demonstrate that they have informed the asylum applicant of the possibility to be interviewed by an official of the same sex.[68] In practice, however, this is not consistently applied with regard to interpreters.[69] 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.[70]

Interpretation

Interpreters are provided by the BFA and cover most of the languages, but interviews may also be conducted in a language the asylum seeker is deemed to understand sufficiently. The provision of interpreters has been reported as not satisfactory with regard to certain languages, even in cases where a significant number of asylum seekers may be concerned (e.g. Chechen refugees are often interviewed in Russian). Asylum seekers from African countries are often interviewed in English or French, languages that they are "supposed" to understand. Asylum seekers are asked at the beginning of the interview if they understand the interpreter. There are no standards for the qualification of interpreters in asylum procedures. Interpretation is often not done by accredited interpreters; usually persons with the requested language knowledge are contracted on a case-by-case basis. UNHCR has published a training manual for interpreters in asylum procedures.[71]

The Federal Law on the Establishment of the Federal Agency for Care and Support Services Limited Liability Company (BBU-G) passed in June 2019 foresees that a federal agency annexed to the Ministry of Interior should be responsible for the provision of interpreters for the purpose of asylum procedures as of 1 January 2021. This includes the provision of interpreters both at first and second instance, but also in case of oral hearings in front of the BVwG as well as in procedures concerning basic support. The law lists a wide range of areas in which interpreters should be provided by the federal agency, *inter alia* for interviews related to the making of an application for international protection; for measures relating to the termination of the right to stay as well as for the granting or limitation of basic services. As of January 2021, nine interpreters (five full time equivalent) were employed by the BBU GmbH.[72] In practice, the service provided by internal interpreters were not of great relevance but is to be seen as a test phase for a possible expansion of the department in future. The state-run agency took over the existing system established by the NGOs. In most cases, external interpreters were hired throughout 2021.

Videoconferencing, recording and transcript

Article 19(3) AsylG allows for tape recording of the interview, which is, however, rarely used in practice. Video conferencing was introduced in 2018. The BFA in **Burgenland** held interviews to assist the BFA in **Vienna** and in **Vorarlberg** in this context.[73] This new practice is based on Art. 51a of the General

67 Article 20 AsylG.
68 Article 20 Austrian Asylum Act.
69 OHCHR, Report on the mission to Austria focusing on the human rights of migrants, particularly in the context of return, October 2018, available at: https://bit.ly/2u4JoQE.
70 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.
71 UNHCR,'Training manual for translators in asylum procedures", 2015, available in German at: https://bit.ly/2XYPzQC.
72 Ministry of Interior, *Answer to a parliamentary request 4145/AB*, 14 January 2021, available in German at: https://bit.ly/37hzoE3.
73 Information provided by the RD Burgenland.

Administrative Act, which allows the use of technical facilities for word and image transmission - unless a personal interview is necessary for economical or personal reasons.

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

It should be noted that, as part of its BRIDGE project, UNHCR has produced a checklist "Self-check for interviews and negotiations using technical equipment for word and image transmission in the asylum procedure" for videoconferences in asylum procedures.[74]

The transcript is more or less verbatim. Its content may depend on the caseworkers' and interpreter's summarising the answers, choosing expressions that fit the transcript or translating each sentence of the asylum seeker. Immediately after the interview, the transcript is translated by the same interpreter in a language the asylum seeker understands and the asylum seeker has the possibility to ask for corrections and completion immediately after the interview. By signing the transcript, they agree with its content. If asylum seekers find something incorrect in the transcript after having signed it at the end of the interview, they should send a written statement to the BFA as soon as possible. In practice, asylum seekers do not frequently ask immediately after the interview for correction of the report. Some asylum seekers explain that they were too tired to be able to follow the translation of the transcript. The OHCHR stated in its report on the mission to Austria from October 2018 that many caseworkers of the BFA are not adequately trained in using techniques that fit the needs of asylum applicants. In a number of cases monitored by the OHCHR, negative decisions of the BFA were based on personal views and involved biased questioning during interviews as well as stereotypes on gender and race.[75] NGOs providing legal advice continued to report to asylkoordination, including in 2021, that 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.

1.4. Appeal

Indicators: Regular Procedure: Appeal

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

1.4.1. Appeal before the BVwG

Appeals against a negative first instance decision have to be submitted within 4 weeks of the receipt of the decision and the whole asylum file is forwarded by the BFA to the Federal Administrative Court (BVwG).[76] However, following an amendment that came into effect on 1 September 2018, the time limit

[74] UNHCR Austria, *Self-check for interviews and negotiations using technical equipment for word and image transmission in the asylum procedure*, available in German at: https://bit.ly/3s2YUoI.
[75] OHCHR, Report on the mission to Austria focusing on the human rights of migrants, particulary in the context of return, October 2018, https://bit.ly/2u4JoQE.
[76] Article 16(1) BFA-VG.

has been set at 2 weeks for appeals in inadmissibility procedures and in cases of status withdrawals that were initiated along with a return decision.[77]

Within 2 months following the lodging of an appeal, the BFA may decide to modify the decision that is being challenged.[78] This means that it can decide either to annul, reject or change its initial decision. However, where the BFA refrains from modifying its decision, it forwards the appeal to the Court.

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

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

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

Moreover, the BFA *must* withdraw the suspensive effect of an appeal where:[79]

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

The BVwG must grant automatic suspensive effect within 1 week from the lodging of the appeal, where it assumes that return would expose the concerned person to a real risk of a violation of Articles 2, 3, 8 and 13 ECHR or Protocols 6; or to a serious threat to life or person by reason of indiscriminate violence in situations of conflict in line with Article 15(c) of the recast Qualification Directive.[80] The reasons must be set out in the main complaint.

Appeals against the rejection of an application with suspensive effect have to be ruled by the Court within 8 weeks.[81] 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. In recent years, the Court processed appeals on asylum cases as follows:

Processed Appeals at the BVwG: 2016-2021						
	2016	2017	2018	2019	2020	2021
Number of processed cases	18,760	20,000	24,000	20,000	17,900	17,100
Number of pending cases	12,497	24,063	30,168	22,842	15,147	8,351

77 Article 16 (1) BFA-VG.
78 Article 14(1) Administrative Court Procedures Act (VwG-VG).
79 Article 18(2) BFA-VG.
80 Articles 17(1) and 18(5) BFA-VG.
81 Article 17(2) BFA-VG.

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

Following the increase of appeals and backlog of cases at second instance, judges from different fields of law have gradually been assigned to decide upon asylum procedures since 2017; despite their lack of expertise on asylum-related matters. In 2020, the BVwG concluded 17,900 procedures in which 21,500 decisions were taken. 9,730 decisions of the BFA were dismissed or amended by the BVwG, while 9,400 decisions of the BFA were confirmed.[82] For the year 2022, 120 out of 218 judges of the BVwG will be assigned to take decision in asylum and alien's law cases.[83]

The BVwG can request another hearing and additional examinations if necessary. Reversely, the BFA-VG also allows for exceptions to a personal hearing on an appeal; i.e. an appeal must not be held if the facts seem to be established from the case file or if it is established that the submission of the applicant does not correspond to the facts.[84] This provision must be read in light of the restrictions on the submission of new facts in the appeal procedure.

During the first months of the COVID-19 (until Mid-April 2020), all court hearings were suspended. Court hearings started to resume in the second half of April in some cases and continuously increased in the following months. Due to the fact COVID-19 measures were considered as an interference with the independence of judges, there were no mandatory COVID-19 rules inside the Court rooms. Some judges asked persons present in the room to wear a mask and opened windows, whereas in other cases there were hardly any measures applied. In cases involving vulnerable persons, the legal representation tried to postpone the Court hearing, which often was respected in practice. In many cases, the access of the general public to court hearings was restricted in light of COVID-19. These restrictions were applied by some judges until March 2021. It should be further noted that video conferencing tools are available at a small scale at the Courts, but they are used very rarely.

The question whether a personal hearing before the BVwG has to take place or not has been brought before the Constitutional Court (VfGH). The Court ruled that not holding a personal hearing in the appeal procedure does not violate Article 47(2) of the EU Charter of Fundamental Rights. Charter rights may be pleaded before the Constitutional Court. The Court stated that Article 41(7) AsylG,[85] is in line with Article 47(2) of the EU Charter if the applicant was heard in the administrative procedure.[86] 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.[87] Two rulings to the same effect were delivered by the Constitutional Court in September 2014.[88]

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82 Ministry of Justice, *Answer to parliamentary request 4922/AB, XXVII. GP*, 12 March 2021, available in German at: https://bit.ly/30RMwMC.

83 Federal Administrative Court, *Geschäftsverteilung 2022,* available in German at: https://bit.ly/3GSs2Gk.

84 Article 21(7) BFA-VG.

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

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

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

88 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.

The Administrative High Court has specified that all relevant facts have to be assessed by the determining authority and have to be up to date at the time of the decision of the court.[89] It further stated that it was not necessary to explicitly request an oral hearing if the facts were not sufficiently clear or if the statements of the applicant in his or her appeal contradicted the statements taken by the first instance authority.[90]

The possible outcome of an appeal can be the granting of a status, the refusal of a status, or a referral by the BVwG back to the BFA for further investigations and a re-examination of the case. Hearings at the Court are public, but the public may be excluded on certain grounds. Decisions of the BVwG are published on the legal information website of the Federal Chancellery.[91]

As regards the average processing time for the appeal body to make a decision, the Ministry of Justice indicated that 22.4% of appeals challenging decisions of the BFA in asylum procedures were concluded within 6 months in 2020, while 17.4% took longer than 3 years.[92] 409 Dublin cases were decided in 2020, of which 353 were decided within 6 months (86%).[93] Disaggregated data on the average processing time at second instance were shared in 2020 as follows:

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

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

1.4.2. Onward appeal before the VwGH

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

Out of 2,130 (2020: 1,633) revisions conducted in 2021, 18 (2020: 35) were regular revisions and 2,112 (2020: 1,598) were extraordinary revisions. In 2020, out of the 35 regular revisions, 11 were requested by the determining authority and 24 by applicants. Out of the 1,598 extraordinary revisions, 172 were requested the determining authority and 1,426 by applicants.[94] Corresponding data for 2021 is not available. In 2021, 268 revisions were granted and the decision of the BVwG has been lifted up.

In case the asylum applicant seeks to challenge the decision in front of the BVwG and if he or she claims it is violating a constitutional right, he or she can lodge an within 6 weeks, after the ruling of the Federal

89 VwGH, Ra 2014/20/0017, 28 May 2014.
90 VwGH Ro 2014/21/0047, 22 May 2014.
91 Decisions of the Federal Administrative Court are available at: http://www.ris.bka.gv.at/Bvwg/. However, according to the General Administrative Procedures Act, decisions may not be made public if it is necessary for reasons of public order or national security, morality, the protection of children or the private life of the asylum seeker or for the protection of a witness.
92 Ministry of Justice, *Answer to parliamentary request 4933/AB, XXVII. GP*, 12 March 2021, available in German at: https://bit.ly/3s2qRgF.
93 Ibid.
94 Ibid.

Administrative Court has become final. Asylum seekers are informed of the possibility to address a complaint to the Constitutional Court in writing and this information is translated in a language the asylum seeker understands. In that context, it has to be mentioned that the ECHR is part of Austria's constitutional law. Therefore the risk of violation of Articles 2, 3 or 8 ECHR can be challenged in front of the Constitutional Court, while the rejection of an application for international protection does not fall under the Court's competence. The appeal does not have automatic suspensive effect, however. Around 97 decisions of the BVwG, in which the decision was considered arbitrary, have been ruled unlawful by the Constitutional Court in 2019.[95] In 2020, 107 decisions have been considered arbitrary and ruled unlawful by the Constitutional Court.[96] No data was available in 2021 at the time of writing.

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

1.5. Legal assistance

Indicators: Regular Procedure: Legal Assistance

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

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

1.5.1. Legal assistance at first instance

In June 2019, the Austrian Parliament adopted a law establishing a Federal Agency for Care and Support Services (*Bundesagentur für Betreuungs- und Unterstützungsleistungen, BBU GmbH*) which is in charge *inter alia* of providing legal assistance to asylum seekers at first and second instance since 1 January 2021. The new law has been criticised by several organisations, as it raises concerns over the risk of arbitrary access to free legal assistance. In its Legal note on the Austrian law, ECRE demonstrated that while access to legal assistance at first instance was the general rule under the previous Article 49(1) BFA-VG, it becomes the exception under the new law. With the exception of unaccompanied minors, legal assistance at first instance shall now only be provided according to the "available possibilities", and does not constitute a right, except in specific cases listed in the Asylum Act. In other words, access to free legal assistance at first instance is only granted when existing resources are available (e.g. staff and funding), and is not a right for all.[97]

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

95 The cases are available in German at: https://bit.ly/377YZfZ.
96 The cases are available in German at: https://bit.ly/3aoymrK.
97 ECRE, *Reforming legal assistance in Austria: an end to independent provision*?, June 2019, available at: https://bit.ly/2NHkaB0, 3.

The Government officially cancelled on 28 February 2020 the extension of the contracts with the NGOs previously providing legal assistance.[98] As of 2021, these organisations will thus no longer receive funding for the purpose of legal assistance, which has been heavily criticised by civil society organisations.

The BBU GmbH started providing legal counselling and representation on 1 January 2021. **Caritas** (Styria) and **VMÖ** offered counselling services at first instance until the end of 2020 which was funded by the Asylum, Migration and Integratoin Fund (AMIF). The BBU GmbH also has some AMIF funded capacities in first instance and provides open counselling in first instance as long as “possibilities are available”. The counselling services are provided at the buildings of the regional directorates of the BFA. There is no funding for transportation costs for persons willing to receive counselling at this stage. At first instance, the BBU GmbH has the legal obligation to provide legal counselling in all procedures where the first interview by the BFA is conducted within 72 hours. In these procedures, the counsellors of the BBU also have to take part in the interviews carried out with the BFA. At the time of writing, this concerned mainly subsequent applications, fast track procedures and procedures at the airport. The BBU GmbH is not being appointed in Dublin cases by the BFA and therefore is not involved in interviews in these procedures in general in first instance.

It should be noted, however, that the previous legal aid-system in place until the end of 2020 did also not meet the needs of asylum seekers. VMÖ, which received most of the funding for legal assistance in the first instance procedure,[99] was criticised for not being very helpful nor committed to the protection of the rights of asylum seekers due to its cooperation with the Ministry of Interior.[100]

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

The BBU GmbH provides legal counselling in the framework of a AMIF funded counselling project. The legal counselling takes place in the facilities of the first instance authority which creates a lack of trust. The counselling can be accessed during working hours without appointment. There is no representation offered by the BBU GmbH and the service offered is not oriented on the actual needs but on the limits of the AMIF funding.

1.5.2. Legal assistance in appeals

Legal aid provided by external service providers up until 2020

From 1 October 2011 up until the end of 2020, the mandatory access to free legal aid at appeal stage was provided by external service providers, i.e. ARGE Rechtsberatung (Diakonie Flüchtlingsdienst and Volkshilfe OÖ).[101] In this system, when an application for international protection was rejected, a legal adviser was automatically assigned to the asylum applicant by the determining authority. Asylum

[98] Orf.at, ‘Asyl: Beratungsverträge mit NGOs gekündigt’, 28 February 2020, available in German at: https://bit.ly/3dlwQq4.

[99] Ministry of Interior, *AMIF List of selected projects 2015/2016 (Asylum & Return)*, available in German at: http://bit.ly/1OqSfsR; Reply to parliamentary request 14100/J (XXV.GP), 8 November 2017, available in German at: http://bit.ly/2EiMLDx.

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

[101] BGBl I Nr. 38/2011.

applicants could also decide to contact an NGO offering free legal advice to asylum applicants, however. There was no cooperation among NGOs with VMÖ as the latter seemed to be very close to the authorities and demonstrated a poor quality of legal counselling services. There was however a cooperation with ARGE Rechtsberatung and other organisations working in the field.

The tasks of these organisations were laid down in law and entailed the obligation to provide advice in case of dismissal of the application. Legal advisers were to be present at hearings before the Administrative Court if the asylum seeker so requested.[102] Asylum seekers should be able to make effective use of their right to legal advice, in accordance with procedural guarantees, EU law and in line with the jurisprudence of the Higher Administrative Court.[103]

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 so requests.[104] Since 1 October 2016, the wording of Article 52 BFA-VG is as follows: “at their request, they shall also represent the foreigners or asylum seekers concerned in the proceedings, including at a hearing.”

Financial compensation for legal assistance ordered by decree was insufficient. The NGO Diakonie Flüchtlingsdienst as part of ARGE Rechtsberatung (one of two legal counselling providers contracted by the Ministry of Interior) reported in April 2019 that - due to the low refunding rates – it had to add in around €860.000 from its own budget.[105] This problem continued: Diakonie hat to contribute around €600.000 from its own donations to finance adequate counselling services.

Legal aid provided by the new BBU GmbH since 2021

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

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

The future tasks of the BBU GmbH include counselling, representation and explanation of judgement. The law requires counselling to be ‘objective’. The advisors will have to explain the perspective the applicants have. If the applicants request representation, the advisors have to act in favour of partisan interests. The main tasks will consist in writing appeals as legal representatives and representation in

[102] Article 52(2) BFA-VG.
[103] VwGH, Decision Ro 2016/18/0001, 3 May 2016.
[104] VfGH, Decision G 447-449/2015-13, 9 March 2016, available in German at: http://bit.ly/2jR9OMi.
[105] Diakonie Austria, Position statement on the Federal law amending the BFA Procedures Act (BFA-VG), the Asylum Act and the Basic care act, 5, available in German at: https://bit.ly/2W4cAAb.

court sessions. The mandate prescribed by law ends upon receipt of the final decision of the Court, although the BBU GmbH must then still explain the content of the judgement and explain the perspectives. As the provision of legal aid must also meet the conditions of Article 47 of the EU Charter, it must ensure an effective access to the High Courts. Upon request by the applicants in cases where the judgement has chances to be lifted up by the High Courts, the BBU GmbH must support the applicants in obtaining free legal aid from the normal legal aid system.

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

One project run by Caritas Austria offers assistance during the hearing before the Federal Administrative Court, but this resource is limited and therefore only a certain number of cases can be assisted. AMIF funding is no longer guaranteed but the project continues on a smaller scale with alternative funding. It will work at a very small scale also during 2021.[106]

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

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

Overall, the Austrian law of June 2019 introduced drastic changes with regard to the provision of legal assistance at second instance. As explained by several commentators, the establishment of the Federal Agency raises concerns with regard to the right to an effective remedy because one of its key components - namely the access to free legal assistance – could be affected by the potential conflict between the appointed legal advisers' and asylum seekers' interests.[107] Similarly, the significant influence granted to the Ministry of Interior over the functioning and the role of the *BBU GmbH* (e.g. appointing the CEO of the *BBU GmbH* or designing the work plan and guidelines of the *BBU GmbH* etc.) raises serious concerns over lack of independence, subsequently raising a risk of violation of the right to an effective remedy.[108]

[106] Caritas, BVwG-Projekt, available in German at: https://bit.ly/2Ia6tF.

[107] ECRE, *Reforming legal assistance in Austria : an end to independent provision* ?, June 2019, 5, available at: https://bit.ly/2NHkaB0 ; UNCHR, *Analysis of the law establishing a Federal Agency for Supervision and Support Services*, April 2019, 1, available in German at: https://bit.ly/2W8c1Fx; Diakonie Austria, *Position statement on the Federal law amending the BFA Procedures Act (BFA-VG), the Asylum Act and the Basic care act*, April 2019, 3, available in German at: https://bit.ly/2W4cAAb.

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

Moreover, there are no provisions in the law which allow or indicate the contribution of non-governmental actors, external service providers or welfare organisations which could supplement, monitor or intervene in the role and the powers of the Agency. The Austrian Government has therefore created what has been described by both UNHCR and Diakonie Austria as a "black box", which is steered mainly by the Ministry of Interior.[109] All external actors are prevented from intervening to potentially correct mistakes or erroneous decisions, subsequently creating an Agency that is fully self-sufficient and non-transparent.[110]

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

Moreover, the centralisation of legal aid and founding of the BBU GmbH significantly restricts the potential role for and funding of civil society organisations. At the beginning of 2021, only 10% of the staff of Diakonie Flüchtlingsdienst were still employed as a result of the contract cancellation in 2020. The lack of funding will thus inevitably affect the activities of the relevant NGOs and raises serious concerns as regards the quality of legal assistance that will be provided to asylum seekers as of 2021.

In 2019, a well-known lawyer specialised in the field of asylum and aliens' police law, Ronald Frühwirth, decided to stop working as a lawyer due to grave deficits and inconsistencies in the judicial system. This caused public uproar as he argued publicly that the jurisdiction of the High Administrative Court is inconsistent and hinders him from offering adequate counselling and representation of his clients in Court. "The jurisdiction does not follow the rule of law anymore but can only understood as "doing politics", he stated. Frühwirth's resignation resulted in a significant gap as he was recognised as one of the best experts in the field and represented many asylum seekers, especially in Styria.[111]

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

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

In practice, there is a constant exchange on general topics between the BBU GmbH with NGOs working in the field. However, this positive development does not change the criticism relating to the structure of

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

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

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

the legal counselling implemented by the state led BBU Gmbh. Even the so-called ‘Qualitätsbeirat’, a group responsible for evaluating, observing and providing recommendations to the legal counselling department, stated in its report 2021 that the current positive development is strongly related to the personalities of the director of the institution and the head of legal counselling, who values and forsters independence in the provision of legal counselling. Nevertheless, the Qualitätsbeirat recommends to take further legislative measures to strengthen the independence of the legal counselling department.[112]

2. Dublin

2.1. General

During the Covid-19 pandemic in 2020 and 2021, the BFA never suspended Dublin procedures and continued to receive and issue incoming and outgoing requests.[113] However, between March and April 2020 no Dublin transfers were completed (both incoming and outgoing transfers).[114] After the general easing of measures, in particular regarding travel restrictions, Dublin member states were informed on 16 June 2020 that Dublin transfers to Austria via **Vienna-Schwechat Airport** were possible again.

As regards incoming transfers during the COVID-19 pandemic, Austria adopted the following measures: the time for notification of transfer was extended so that appropriate national arrangements could be adopted to place Dublin returnees; information on the current state of health of the person to be transferred had to be shared in the transfer form including, where possible, whether he or she has been infected with COVID-19; and a negative PCR test was required in the interests of reciprocity.[115]

Dublin statistics: 2021

As of December 2021, Austria carried out 828 outgoing Dublin transfers and received 691 incoming transfers. The main countries receiving outgoing transfers from Austria were Germany and Italy.[116] Overall, the significance of Dublin procedures decreased in 2021: even though around 4,000 take-back-requests were sent to Bulgaria and Romania, only around 150 transfers to these countries were implemented in practice.

Dublin statistics: 1 January – 31 December 2021

Dublin requests: 2021			
Outgoing requests		Incoming requests	
Total	**6,810**	**Total**	**8,051**
Take charge	**727**	**Take charge**	**198**
Italy	217	Greece	62
Romania	115	Germany	43
Germany	85	France	39
Croatia	72	Netherlands	18

112 Qualitätsbeirat BBU GmbH, Jahresbericht 2021, available in German at: https://bit.ly/38FyDbr
113 Ministry of Interior, Answer to parliamentary request, 4330/AB, 26 January 2021, available in German at: https://bit.ly/37fkcHM
114 Ministry of Interior, Answer to parliamentary request, 3983/AB, 13 January 2021, available in German at: https://bit.ly/3kE01IZ
115 Ministry of Interior, Answer to parliamentary request, 4330/AB, 26 January 2021, available in German at: https://bit.ly/37fkcHM.
116 Ministry of Interior, Answer to a parliamentary request 9529AB/XXVII. GP, 11 April 2022, available in German at: https://bit.ly/3KDTYAk.

Spain	44	Ireland	8
Other	194	Other	28
Take back	**6,083**	**Take back**	**7,853**
Bulgaria	2,322	France	3,598
Romania	1,711	Germany	2,107
Germany	740	Belgium	754
Italy	404	Italy	476
France	188	Switzerland	426
Other	718	Other	492

Source: Ministry of Interior, Answer to parliamentary request 9529/AB, 11 April 2022

Outgoing Dublin requests by criterion: 2020		
Dublin III Regulation criterion	Requests sent	Requests received
"Take charge": Articles 8-15:	**727**	**198**
Article 8 (minors)	32	35
Article 9 (family members granted protection)	19	33
Article 10 (family members pending determination)	26	11
Article 11 (family procedure)	5	39
Article 12 (visas and residence permits)	215	23
Article 13 (entry and/or remain)	411	32
Article 14 (visa free entry)	1	-
"Take charge": Article 16	-	-
"Take charge" humanitarian clause: Article 17(2)	18	25
"Take back": Article 18	**6,083**	**7,853**
Article 18 (1) (a)	-	24
Article 18 (1) (b)	5,522	7,348
Article 18 (1) (c)	7	4
Article 18 (1) (d)	535	446
Article 20 (3)	-	2
Article 20(5)	5	29
Article 25(2)	2	-
Article 23(3)	1	-
Article 29(2)	1	-
Other regulations	10	-

Source: Ministry of Interior, Answer to parliamentary request 9529/AB, 11 April 2022

Dublin transfers in 2021		
	Outgoing transfers	Incomnig transfers
Germany	268	334

Italy	156	1
Romania	144	1
France	40	128
Netherlands	29	28
Spain	27	-
Switzerland	24	90
Slovakia	22	2
Slovenia	20	-
Sweden	17	15
Belgium	15	12
Poland	12	-
Bulgaria	12	2
Lithuania	8	-
Czech Republic	7	7
Croatia	7	-
Luxembourg	5	1
Finland	4	1
Denmark	4	4
Portugal	2	1
Norway	2	7
Malta	2	-
Latvia	1	-
Greece	-	48
Liechtenstein	-	4
Hungary	-	3
Cyprus	-	2
Total	**828**	**691**

Source: Ministry of Interior, Answer to parliamentary request 9529/AB, 11 April 2022

2.1.1. Application of the Dublin criteria

If the special regulation due to threats to public security and order comes into effect (see Access to the Territory), third-country nationals will be returned to neighbouring countries. Since it will not be possible to lodge an asylum application, this will completely contravene the Dublin system.[117] 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.

117 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.

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.[118]

Documentation and entry

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

After the CJEU ruling in *Jafari*,[119] which found that the state-organised transit through the Western Balkan route in 2015-2016 qualified as "illegal entry" under Article 13 of the Regulation, the VwGH dismissed the appeal against a transfer to Croatia on those grounds. The Court did not indicate that Austria applied the discretionary clauses in these cases.[120]

In a case concerning a person who transited through Bulgaria and following a short stay travelled to Serbia and then entered Hungary, without applying for asylum in any of these countries, the Administrative High Court ruled that the provisions of Article 13(1) in conjunction with Article 19(2) of the Dublin III Regulation and in the light of the *A.S.* ruling of the CJEU, can only be understood as meaning that the criterion of illegal entry, as defined in Article 13(1) of the Dublin III Regulation, is applicable if the asylum seeker did not apply for international protection in that Member State, but if that application was made in another Member State after a short-term voluntary exit to a third country. Bulgaria was therefore deemed responsible for the asylum application.[121]

Family unity

The BFA has put forward surprising arguments in the context of family reunification under the Dublin Regulation. In a case of an unaccompanied minor to whom a protection was granted in Austria, the Greek Asylum Service submitted a "take charge" request for the parents to be transferred from Greece to Austria. The BFA refused responsibility on the ground that the parents had deliberately accepted the separation from their minor child. The rejection of such requests is not considered a formal decision which may be legally challenged before the BVwG. Requests from Greece are also handled very slowly and take often more than a year, which is why Austria ends up being responsible for the asylum application by default. In 2020, Austria received 142 requests from the Greek Dublin Unit, out of which 69 were accepted. Moreover, a total of 45 transfers were carried out (including transfers pending from the year before).[122]
In 2017, the VwGH examined the question of whether an unaccompanied child could stay in Austria, whilst Italy had been determined as responsible for his family members. Whereas the BVwG had referred to the sovereignty clause of Article 17 of the Dublin Regulation in order to prevent a violation of the right to private and family life, the VwGH stated that Article 11 of the Dublin Regulation prevailed in order to ensure the unity of the family and the best interests of the child.[123]

In 2018, the BvWG had to rule on a case of family reunification concerning parents that had applied for asylum in Austria, while their minor child and the grandmother had applied for asylum in Greece. In

[118] Ministry of Interior, Reply to parliamentary question 10654/J (XXV.GP), 2 January 2017.
[119] CJEU, Cases C-490/16 *A.S.* and C-646/16 *Jafari*, Judgment of 26 July 2017.
[120] VwGH, Decision Ra 2016/19/0303, 20 September 2017.
[121] VwGH, Decision Ra 2017/19 / 0169-9, 5 April 2018, available in German at: https://bit.ly/2usyIbl.
[122] Greek Asylum Service, *Dublin Statistics*, January 2020, available at: https://bit.ly/3d2fJJG.
[123] VwGH, Decision Ra 2016/20/0384, 22 June 2017.

accordance with the Dublin III Regulation, Greece requested Austria to be responsible for the applications. However, the BFA had doubts on whether family reunification would be in the best interests of the child and refused to take responsibility. The BwWG confirmed the rejection of the BFA. In the case of refusal of family reunification, the only available option for the requesting Member State is to request a re-examination. As regards the asylum applicant, he or she cannot act directly against the negative decision nor bring it to appeal, as this is a purely intergovernmental procedure. Therefore, in this case, it was the responsibility of Greece as the requesting Member State to challenge Austria's refusal to grant family reunification. The BvWG allowed for a regular revision, as there is currently no specific case-law on the issue. [124]

As a consequence of two cases that Asylkoordination had put forward to the Ombudsman, the Minister of Interior and the Ombudsman agreed that the BFA should involve the Child and Youth Welfare Agency when it examines family reunification requests under the Dublin III Regulation to UMF living in Austria.[125] No changes have been noted in practice, however. In January 2021, a deportation of a family to **Georgia** in the middle of the night was debated publicly. One girl was born in Austria and resided in the country over ten years. The case shed into light that children's rights are often not taken into account in asylum procedures and decisions. The Ministry of Justice introduced a Child Welfare Commission headed by former presidential candidate Irmgrad Griss to evaluate the implementation of children's rights in asylum procedures. At the time of writing of this report, it was unclear whether the situation of unaccompanied minors will also be in the focus of the commission.[126]

To demonstrate family ties, every asylum applicant must have mentioned the existence of other family members during 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. Austria requires the original documents, where available, to be sent for verification and does not leave such verification to the other Member States.

DNA tests may be required to provide proof of family ties but this is rare in practice. DNA tests have to be paid by the asylum seeker. If a DNA test has been suggested[127] by the BFA or the Administrative Court and family links have been verified, asylum seekers may demand a refund of the costs from the BFA. The issue of DNA tests was discussed in the context of a legislative reform affecting Family Reunification but was ultimately not included in the reform.[128]

Unaccompanied children

Following the judgment of the CJEU in *M.A.* which concerned Article 8(4) of the Dublin III Regulation,[129] for asylum applications lodged by unaccompanied children, the BFA has ordered age assessments even in cases where there are no reasons for doubts in regard to the age of the asylum seeker.

In one case concerning a transfer to Hungary, the BFA considered that the deadline for replying to a request should be suspended until an age assessment is conducted. The VwGH disagreed, however, and ruled that the deadline had expired.[130] In 2018, another case related to the deadline for replying to a transfer request. In accordance with Article 21 (1) of the Dublin III Regulation, a request for transfer had

124 BvWG, W175 2206076-1, 1 October 2018.
125 Letter from the Ombudsman to Asylkoordination Österreich, Fr. Dr. Glawischnig, 12 June 2018.
126 Standard, 'Viele Unklarheiten um Asyl-Kommission von Irmgard Griss", 5 February 2021, available in German: https://bit.ly/3ai25Tu.
127 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.
128 Fremdenrechtsänderungsgesetz 2017 – FrÄG 2017, 18 October 2017, available at: http://bit.ly/2Cel0Ku.
129 CJEU, Case C-648/11, *M.A. v. Secretary of State for the Home Department*, Judgment of 6 June 2013.
130 VwGH, Decision Ra 2017/19/0081, 22 November 2017.

been send to Croatia. Although the request was incomplete as it was missing the results of the medical age assessment of the child, the BFA considered that the available information was sufficient to conclude that the asylum seeker was an adult. However, the six-month transfer period was not triggered until the age report was received and Austria was therefore deemed responsible for the application.[131]

The VwGH further had to rule on a Dublin transfer to Bulgaria. The case concerned two brothers, one of whom was still a minor. Given that Bulgaria was already responsible for the asylum application of the older brother, the BFA concluded that Bulgaria should also be responsible for the asylum application of the minor, in compliance with the principle of family unity as defined in Article 20(3) of the Dublin III Regulation. The BFA had further assumed the minority of the younger brother without conducting any age assessment. The BVwG overturned the decision and stated that Art. 8(4) applied to the accompanied minor and that, subsequently, the adult was allowed to stay on the Austrian territory in accordance with Art. 17(1) of the Dublin III Regulation. However, the VwGH followed the BFA and the adult's asylum application was rejected in first instance, on the grounds that Bulgaria remained responsible for that application.[132]

2.1.2. The dependent persons and discretionary clauses

Dependent persons

During a Dublin procedure with Italy, the Federal Administrative Court emphasised that Articles 16 (Dependent persons) and 17 (Discretionary clauses) of the Dublin III Regulation determine separate requirements and cannot be reduced to the meaning of Article 8 ECHR. Italy agreed to the Austrian request to take charge of the asylum application only after Austria expressed strong objections due to the fact that Italy had already issued a Schengen visa. The concerned asylum seeker in question was from Chechen origin and aged over 60 years old. He also suffered from a serious illness and a disability which suggested that he relied on support from his son who is legally residing in Austria. The Administrative Court found the decision unlawful and reverted the case back to the first instance authority because Article 16(1) of the Regulation had not been sufficiently considered by that authority. The Court noted, in addition, that Article 17(2) could also be relevant in this case because, due to the Chechen culture, the support of the son for his old parents is more likely to be accepted than foreign support. [133]

This argumentation can be found in another decision of the Court in the case of a single Afghan mother who applied for asylum with a small child and a new-born baby. She had been raped and was suicidal. The judgment held that the authorities should examine which female relatives, living in Austria as recognised refugees, could support her by taking care of the children. Furthermore, the help of females of a family among themselves could be preferred to foreign support based on the applicant's cultural background.[134] 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.[135]

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.[136]

131 VwGH, Decision Ra 2016/18/0366, 06 November 2018, available in German at: https://bit.ly/2SUc21D.
132 VwGH, Decision Ra 2017/18/0433, 20 May 2018.
133 BVwG, Decision W149 2009627-1, 21 July 2014.
134 BVwG, Decision W 149 2009673-1, 20 June 2014.
135 BVwG, Decision W149 2001851-1, 3 July 2014.
136 BVwG, Decision W185 2005878-1, 2 July 2014.

In another case, the BVwG referred to the wording of Art.16(1) of the Dublin III regulation on dependent persons to conclude that this provision also applied to cases in which the asylum applicant provides support to a family member (in the present case, an older brother providing support to his minor sister with special needs). In addition, the Court noted that no investigation on the special needs of the minor was undertaken by the BFA and considered that the responsibility of Italy would breach the ECHR given the particular circumstances of the case.[137]

Humanitarian clause

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

Sovereignty clause

In principle, an asylum seeker has the legal right to request the asylum authorities to implement the sovereignty clause, although this is not specifically laid down in law. The Constitutional Court has ruled, on the basis of case law from the European Court of Human Rights (ECtHR), that even in case of responsibility of another Member State under the Dublin Regulation, the Austrian authorities are nevertheless bound by the ECHR.[138] This means that, in case of a risk of a human rights violation, Austria has a duty to use the sovereignty clause. This decision is applicable according to Articles 2 and 3 ECHR as well as Article 8 ECHR following an interpretation consistent with the constitution.

However, the assessment of a risk of a human rights violation allowing the use of the sovereignty clause needs be conducted in a manner that does not unreasonably delay the examination of the asylum application. The principle that admissibility procedures should not last too long was reflected in a decision of the Administrative Court. A Chechen family had applied for asylum in Poland, Austria and Switzerland by submitting consecutive applications since 2005. One family member was severely traumatised. Switzerland decided on the merits of the case and issued a deportation order before they re-entered Austria. The Court reverted the procedure back to the BFA. The Court found that it would have been necessary to ask for the details of the procedure in Switzerland to prevent indirect violations of Article 3 ECHR through chain deportation. For one family member, the risk of suicide was obvious according to expert statements. The Court, referring to the judgment of the CJEU in the case of *NS & ME*,[139] held that the long duration of the admissibility procedure has to be taken into consideration when determining the Member State responsible for examining the asylum application and that applying a return procedure in such cases might be more effective.[140]

The sovereignty clause has to be applied in the case of vulnerable asylum seekers to prevent violations of Article 3 ECHR (Article 4 EU Charter). In the case of a refugee from Syria who arrived in Italy in 2013, where he was fingerprinted, but immediately continued to Austria, the Administrative Court agreed that the situation in his country of origin as well as his personal state of stress and uncertainty regarding the situation of his wife and three small children led to an exceptional psychological state with the consequence of several stays in hospital.[141]

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

137 BVwG Decision W233 2177425-2, 23 January 2018, available in German at: https://bit.ly/2SKvZrn.
138 VfGH, Decision 237/03, 15 October 2004, VfSlg. 16.122/2001.
139 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.
140 BVwG, Decision W125.1257809-8, 20 January 2014, available at: http://bit.ly/1Jp8HLh.
141 BVwG, Decision W205 1438717-1, 29 April 2014, available at: http://bit.ly/1EUIw8X.

siblings. As the separation of the adult brother from his minor siblings would constitute an unacceptable interference with the right to family life and the children's well-being, the application of the sovereignty clause was ordered.[142]

In December 2017, the BFA successfully appealed a decision of the BVwG concerning an unaccompanied child who had been allowed to remain in Austria under the sovereignty clause, while his younger brother was in Bulgaria. The VwGH ruled that the use of the sovereignty clause to prevent a violation of Article 8 ECHR presupposes a correct determination of Austria's responsibility. The Court found that, if the close relationship between the two brothers would result in Austria not being responsible for the application of the elder brother, then the reference to the sovereignty clause by the BVwG to prevent an Article 8 ECHR violation lacked legal basis.[143]

In another case, the BFA appealed to the VwGH against a decision to transfer a Chechen family to Poland, where the father had already applied and passed the admissibility procedure in Austria. The VwGH found that the applications of the spouse and children should be admitted and the sovereignty clause used in order to preserve family unity.[144]

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

In 2018, Austria made use of the sovereignty clause and accepted to be responsible for the asylum application of a Georgian national, for whom the Czech Republic was initially responsible as she had obtained a visa there. Given that she was the legal guardian of her husband who has special needs and who has obtained the subsidiary protection in Austria, the Court concluded that the asylum seeker should not be separated from her husband and referred to Article 16 of the Dublin regulation on dependent persons as well as to Article 8 ECHR on the right to a private and family life.[145]

Another case in which Austria made use of the sovereignty clause in 2018 concerned a Russian asylum seeker and her two children, who were traveling from Moscow to Vienna. Given that she suffered from different serious illnesses (sclerosis and PTSD), that one of her underage children was mentally ill and that she had relatives in Austria, the BvWG considered that she should stay in Austria and benefit from their support, instead of going to Italy where no one could provide her adequate assistance.[146] In its reasoning, the Court paid particular attention to the child's best interest (e.g. having adequate support in Austria and the presence of family members).

Moreover, the Constitutional Court held in 2018 that single parents with minor children are considered by Article 21 of the recast Reception Conditions Directive as vulnerable persons.[147] The case concerned an Afghan national and the refusal of the Federal Administrative Court to make use of the sovereignty clause. The latter had refused to recognise the existence of a marriage between the Afghan asylum seeker and her Afghan husband who had obtained the subsidiary protection in Austria, as they were married only under the shariah law in Pakistan. Although their child was born in Austria, the BvWG did not address the vulnerability of the single mother nor the one of the new-born child, despite the situation in Bulgaria as assessed in the AIDA report on Bulgaria (to which the BwWG had made reference).

[142] BVwG, Decision W165 2140213-1, 26 January 2017, available at: http://bit.ly/2meMkAF.
[143] VwGH, Decision Ra 2017/01/0068, 5 December 2017.
[144] VwGH, Decision Ra 2015/18/0192 to 0195, 15 December 2017.
[145] VwGH, Decision W239 2152802-1, 30 July 2018; available in German at: https://bit.ly/2WYwcqj.
[146] BVwG, Decision W185 2188585-1,13 November 2018.
[147] VfGH, Decision E2418/2017, 11 June 2018.

2.2. Procedure

Indicators: Dublin: Procedure

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

Austria has not passed any national legislation to incorporate the Dublin III Regulation, as it is directly applicable, but refers to it in Article 5 AsylG. This provision, together with Article 2(1)(8) BFA-VG, states that the authorities issue an inadmissibility decision when Austria is not responsible for conducting the asylum procedure based on the Dublin III Regulation.[148] 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.[149]

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

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

Once an application for asylum is lodged, a preliminary interview by the police (*Erstbefragung*) takes place on the circumstances of entering Austria and the first country of entry in the EU, the personal data and – in a very brief manner – also on the reasons why an applicant left his or her home country. The applicant receives a copy of the report and is further fingerprinted and photographed. Fingerprints are taken from all asylum seekers older than 14 years of age. No problems have been reported with regard to the taking of fingerprints. In case an applicant refuses to be fingerprinted, the appeal against a negative decision may not benefit from suspensive effect,[150] but this is not relevant to the Dublin procedure.

Since September 2018, the Aliens Police Department and the BFA are authorised to examine the data storage of persons applying for international protection. However, this interference with the right to privacy is only permitted if the identity or travel route cannot be established on the basis of available evidence. Until the end of 2019, phones and/or other devices containing data of applicants could not be examined by Austrian authorities due to the lack of necessary data protection measures and missing technical equipment.[151] In December 2020 the Ministry of Interior announced that data storage has not been examined due to missing technical equipment but a purchasing process started in December 2021.[152]

The asylum seeker receives a green "procedure card" after the public security officer has consulted the BFA about the further steps to be taken in the asylum procedure: admittance to the regular procedure or admissibility procedure. Asylum seekers are transferred or asked to go to the initial reception centres

148 Article 2(1)(8) BFA-VG.
149 Article 5(2) AsylG.
150 Article 18 BFA-VG.
151 Ministry of Interior, Answer to parliamentary request 3614AB/XXVI. GP, 23 July 2019, available in German at: https://bit.ly/38PLAK7.
152 Ministry of Interior, Answer to Parliamentary Request 9531/AB XXVII. GP, 11 April 2022

when a Dublin procedure is initiated. The green card permits the asylum seeker to stay in the district of the initial reception centre. Cards for asylum seekers – as well as those granted to beneficiaries of protection - should be designed in such a way that they are counterfeit-proof and have a contactless readable data option.

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

The VwGH has determined that the deadline for an outgoing request starts running from the registration of the application, i.e. the moment the BFA receives the report of the *Erstbefragung*, in line with the CJEU ruling in *Mengesteab*.[153] The case before the VwGH concerned delays in the *Erstbefragung*, as the asylum seeker had applied for asylum in November 2015 but the preliminary interview only took place in January 2016 and the request was issued in March 2016.

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

Within 20 calendar days after the application, the BFA has to either admit the asylum applicant to the in merit procedure or inform the applicant formally – through procedural order – about the intention to issue an inadmissibility decision on the ground that another state is considered responsible for the examination of the asylum claim.[154] The same applies to so called fast-track in-merits procedures. After the requested Member State accepts responsibility, the asylum seeker is given the possibility to be heard. Before that interview, he or she has an appointment with a legal adviser who must be present at the interview and who can also access documents in the case file. These tasks will be carried out by legal advisors of the BBU as of 2021.

Individualised guarantees

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

The sharing of information amongst Member State on the vulnerability and individual guarantees of asylum seekers is still not ensured. In the case of an Iraqi woman in a wheelchair, the BFA obtained a medical report confirming the availability of the necessary medical treatment in Italy. However, Italy had not been informed of the vulnerability in the first round of proceedings, which is why the BVwG granted the appeal and referred the case back to the BFA. The BVwG also rejected the rejection of the BFA in the second stage and stated that Austria was responsible for providing care to avoid a violation of Article 8 of the ECHR under the discretionary clause of Article 17 (1) of the Dublin III Regulation.[155]

[153] VwGH, Decision Ra 2016/01/0274, 17 October 2017, citing CJEU, Case C-670/16 *Mengesteab*, Judgment of 26 July 2017.

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

[155] BVwG, Decision W241 2157798-2, 31 January 2018.

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. There continue to be reports of the BFA informing receiving countries of a Dublin transfer on very short notice, in some cases no more than a week, even for asylum seekers requiring special care.[156] This raises questions with regard to Recital 24 and Article 26(2) Dublin III Regulation according to which a transfer decision must contain the details of the time carrying out the transfer and "if necessary, contain information on the place and date at which the applicant should appear, if he is travelling to the Member State responsible by 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 (see Detention of Asylum Seekers).[157] There is also a special detention centre for families in **Vienna**. The asylum applicant has to stay there until the deportation takes place, usually after one or two days. Under the Dublin procedure, asylum seekers can be held for up to 48 hours without detention being specifically ordered. As a less coercive measure, asylum seekers may be ordered to stay at a certain place (such as a flat or a reception centre).[158] Depending on the responsible state and the number of persons being transferred, the transfer takes place by plane, by bus or by police car under escort.

Regarding detention, the Administrative High Court has stated that the time limit for transfer, which is of 6 weeks, does not start running before the suspensive effect ceases. Furthermore, the period begins running only after the one-week period of the BVwG to award the suspensive effect of the complaint has expired.[159]

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

In 2020, only 678 Dublin transfers were conducted indicating a transfer rate of approximately 21%, mainly due to COVID-19.[160] Nearly two-thirds of all transfers were carried out to **Germany** and **Italy**.[161] The number of transfers has consistently decreased in recent years from 3,760 in 2017 to 2,285 in 2018, and 1,346 in 2019.[162]

156 ECRE, *Balkan Route Reversed: The return of asylum seekers to Croatia under the Dublin system*, December 2016, 33.
157 In some cases, asylum seekers have reportedly been apprehended by the police during the night: *Ibid*.
158 Article 77(5) FPG.
159 VwGH, Decision Ro 2017/21/0010, 26 April 2018.
160 Ministry of Interior, *Answer to parliamentary request 4893/AB, XXVII. GP,* 12 March 2021, available in German at: https://bit.ly/3qVh62J.
161 Ministry of Interior, Answer to parliamentary request 4330/AB, 26 January 2021, available in German at: https://bit.ly/2ZeswTE.
162 BFA: "2018-Das Jahr der Neuausrichtung 2.0", 6 January 2019, available in German at: https://bit.ly/2RXC3s6, Ministry of Interior, Answer to Parliamentary request, 729/AB XXVII. GP, 2 April 2020, available in German at: https://bit.ly/3qeSO3g.

2.3. Personal interview

Indicators: Dublin: Personal Interview

☒ Same as regular procedure

1. Is a personal interview of the asylum seeker in most cases conducted in practice in the Dublin procedure? ☒ Yes ☐ No
   - ❖ If so, are interpreters available in practice, for interviews? ☒ Yes ☐ No

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

A personal interview is required by law. The law permits an exception in case the asylum seeker has absconded from the procedure in the initial reception centre (EAST).[163] 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.[164] Such relevant facts for a decision in Dublin cases could be a Eurodac hit and the acceptance of the requested Member State to take back the asylum seeker.

An appointed legal adviser must be present at the interview organised to provide the asylum seeker an opportunity to be heard. In practice, legal advisers are present at the hearing. Legal advisers are often informed only shortly before the interview, which means that they lack time to study the file. Legal advice to asylum seekers in detention takes place immediately before the hearing in the detention centre. The provision of § 29 (4) AsylG according to which the asylum seeker must have at least 24 hours to prepare for the hearing with the assistance of the legal adviser is not applied very strictly in practice. However, the reform of June 2019 establishing the BBU introduces a new threshold which grants the asylum applicant the right to free legal assistance by the Agency only if an appointment - during which the applicant exercises his or her right to be heard - is scheduled within 72 hours (3 days) after having been notified by the BFA of the intention to reject the asylum application. This means that, if the BFA grants the asylum applicant the right to be heard at a later stage (e.g. in 4 or 5 days), free legal assistance by the Agency will only be available if resources so allow.[165] In practice, the BBU GmbH is notified in some cases and asked to provide legal counselling. There is no official statistics on how many interviews are conducted within 72 hours but in most cases applicants do not have access to legal counselling in Dublin procedures.

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

The record of the Dublin consultation between Austria and the requested state(s) are made available to the asylum seeker and the legal adviser only after the procedural order of the intention to reject is given and Austria has received the answer from the requested Member State. Sometimes, the requested State has not received all relevant information. One of the judges of the Federal Administrative Court mentioned in a decision regarding a Chechen father whose son was legally residing in Austria that Italy, which had issued a visa for the couple from Chechnya, finally agreed to take charge but was not informed about the severe illness and the disability of the asylum seeker who relied on the care of his son.[166] The Court noted

163 Article 24(3) AsylG.

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

165 ECRE, *Reforming legal assistance in Austria: an end to independent provision*? July 2019, 3, available at: https://bit.ly/2NHkaB0.

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

that the dependency clause should have been applied in this case. In another case which involved Bulgaria, Austria did not inform that the asylum-seeker had been in Serbia for more than 3 months, although there was enough evidence.[167]

2.4. Appeal

Indicators: Dublin: Appeal
☐ Same as regular procedure

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

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

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

The VwGH dealt with the expiry of the transfer period in the context of an appeal that had a suspensive effect. In that case, the decision that gave the complaint a suspensive effect was taken by written procedure and was notified only after the expiry of the six-month transfer period, as laid down in Article 29 (1) of the Dublin III Regulation. The Court considered that granting a suspensive effect after the expiration of the transfer period is not possible and, as a result, the transfer period cannot be extended. Austria was therefore deemed responsible for the asylum application.[168]

The BVwG can either refuse the appeal or decide to refer it back to the BFA with the instruction to conduct either an in-merit procedure or investigate the case in more detail (for instance if the Court finds that the BFA has not properly taken into account family ties or that the assessment of the situation in the responsible Member State was based on outdated material or was insufficient with regard to a possible violation of Article 3 ECHR). Usually, the Court decides on the basis of the written appeal and the asylum file without a personal hearing of the asylum seeker. In 2018, the Austrian legal information system (RIS) provided a list of 1,284 Dublin cases before the BVwG. 975 of these cases are unsuccessful appeals and confirmed the order to return of the persons concerned. In only 54 cases, the Court finds that the transfer period has already expired and that the procedure should therefore be admitted. In 6,8% of the cases the decision of the BFA was referred back by the court. In 2019, 445 Dublin decisions were appealed. In 62 cases (13,9%), the first instance decisions were referred back to the BFA.[169] In 2021, 770 (2020: 394) Dublin decisions were appealed, but information on their outcome was not available at the time of writing.[170]

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167 BVwG, Decision W239 2106763-3, 12 October 2018.
168 VwGH, Decision Ra 2018/14/0133, 24 October 2018.
169 The cases are available in German at: https://www.ris.bka.gv.at/Vwgh/.
170 Ministry of Justice, *Answer to parliamentary request 9532/AB, XXVII. GP*, 11 April 2022, available in German at:. https://bit.ly/3xwMWK6.

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

2.5. Legal assistance

Indicators: Dublin: Legal Assistance

☐ Same as regular procedure

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

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

Free legal assistance during the admissibility procedure was implemented to compensate for the restricted movement of asylum seekers during this type of procedure, as they are obliged to stay within the district of the initial reception centre (EAST). If asylum seekers leave the district of the EAST to consult an attorney-at-law or NGOs – which normally have their offices in bigger cities – they can be subject to a fine ranging from €100 to €1,000. In case of repeated violation of the restricted residence (*Gebietsbeschränkung*), the fine may reach €5,000 and detention may even be ordered in case the asylum seeker is unable to pay the fine. A violation of the restriction of movement could furthermore be a reason for pre-removal detention. 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 raises concerns due to a lack of time of legal advisers and a lack of trust of asylum seekers, as the advisers are considered being too closely linked to the BFA. They have their offices within the building of the BFA, they provide assistance for voluntary return and their task is only to provide objective information about the procedure to the asylum seekers; not to assist them in the procedure and defend their interests. The new system of legal counselling established by the state-owned *BBU-GmbH* in 2021 further strengthens this conflict of interests, as the Federal Agency responsible for providing legal assistance falls under the responsibility of the Ministry of Interior, which is also supervising the determining authority (BFA).

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

Although Article 29(4) AsylG provides that free legal assistance shall be provided to all asylum seekers at least 24 hours before the hearing on the results of the evidentiary findings determining the responsible Member State under the Dublin Regulation, legal advisers receive the file only shortly before the interview, therefore lacking time to study the file and prepare for the hearing. Moreover, the reform of the new legal aid system through the BBU-G introduces a new threshold which grants the asylum applicant the right to free legal assistance by the Agency only if an appointment - during which the applicant exercises his or her right to be heard - is scheduled within 72 hours (3 days) after having been notified by the BFA of the intention to reject the asylum application. This means that, if the BFA grants the asylum applicant the right to be heard at a later stage (e.g. in 4 or 5 days), free legal assistance by the Agency will only be available if resources so allow. The discretion of the BFA as regards the timing of the appointment thus has an influence on whether legal assistance will be provided at first instance because the Federal Agency is legally obliged to do so, or whether it will be provided if the Agency's available resources allow so. In addition, the provision specifies that, if the asylum seeker did not make use of the right to be heard, this does not affect the outcome of the decision on his or her application for international protection.[171] NGOs are thus extremely concerned about the arbitrary nature of the provision of legal assistance in such cases. The BBU GmbH reports that if an interview is conducted within 72 hours, they are notified to provide legal counselling. The agency however does not have an overview or information, to what share of Dublin procedures they are involved. The Ministry of Interior also does not provide statistics on the matter. Anecdotal evidence shows that only a small part of the Dublin interviews are conducted within 72 hours and consequently only few applicants confronted with a Dublin procedure have access to free legal counselling.

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

2.6. Suspension of transfers

Indicators: Dublin: Suspension of Transfers

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

Under the Dublin III Regulation, all EU Member States are considered safe where the asylum applicant may find protection from persecution. An exception applies to cases in which there is an obvious risk of lack of protection, e.g. if it is well-known to the authorities, or if the asylum applicant brings evidence that there is a risk that 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 risk has to be related to the individual situation of the asylum applicant.

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

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

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.

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

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

Greece: After the ruling of the ECtHR in *M.S.S. v Belgium and Greece*, Austria suspended transfers to Greece. The director of the BFA announced Dublin procedures with Greece will start again in March 2017,[172] in line with the European Commission's recommendation of December 2016. So far Dublin procedures to Greece have not started. In single cases where protection status were granted by Greek authorities, the Courts rejected applications lodged in Austria. This changed in 2021 as the Constitutional Court ruled that, due to inadequate reception conditions in Greece a thorough assessment has to carried out before transferring beneficiaries of international protection back to Greece.[173] Transfers of persons with status in Greece are not suspended in general, however, there are no cases known of completed transfers to Greece in 2021. [174]

Hungary: In 2019 and 2020, one transfer has reportedly been carried out respectively in individual cases. While it is clear that individual guarantees must have been secured for the purpose of this transfer, no further information is available on this case. There are reports of Syrian and Afghan nationals being forcibly returned from Austria to Hungary in December 2020 and January 2021. It could not be verified whether these persons applied for asylum or not.[175] In general, the BFA does not carry any transfer to Hungary since the entry into force of the law on crisis situations on 28 March 2017.[176]

Italy: In 2020, 616 out of 3,196 requests concerned Italy, and 192 transfers were completed to Italy.[177] In relation to Italy, the BFA considers that the obligation to obtain guarantees 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.[178] 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.[179] Nevertheless, the BVwG has largely allowed the BFA to carry out Dublin transfers to Italy throughout 2018 and 2019.[180]

172 See Kurier, 'Griechenland soll ab März wieder Flüchtlinge zurücknehmen', 20 January 2017, available in German at: http://bit.ly/2kaZVLc.
173 Austrian Constitutional Court, Decision E599/2021, 25 June 2021.
174 Ministry of Interior, Answer to parliamentary request 9529/AB XXVII. GP, 11 April 2022, available in German at: https://bit.ly/3Oin9v6.
175 Hungarian police, 23 December 2020 and 21 January 2021, available in Hungarian: https://bit.ly/2NoI0lg and https://bit.ly/3rOwZZu.
176 Ministry of Interior, Answer to parliamentary request 9529/AB XXVII. GP, 11 April 2022, available in German at: https://bit.ly/3Oin9v6.
177 Ministry of Interior, *Answer to parliamentary request 4893/AB, XXVII. GP*, 12 March 2021, available in German at: https://bit.ly/3qVh62J.
178 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.
179 VfGH, Decision E 449-450/2016 and E 703-704/2016-14, 30 June 2016.
180 See e.g.; BVwG, Decision W192 2212056-1, 7 January 2019; W175 2212052-1, 8 February 2019; W240 2204175-2, 25 March 2019; W175 2217936-1, 26 April 2019; W165 2206407-1, 19 June 2019; W165 2218873-1, 29 August 2019; W165 2214983-1, 18 September 2019; W144 2224022-1, 7 Oct 2019; Decision

In a case concerning a Syrian couple and their three minor children - one of which was born in Austria - the BVwG considered that the transfer to Italy was admissible as the conditions in Italy have improved and adequate accommodation for families are now provided. The Court also underlined that the Federal Office is informed well in advance of the transfer of families and can therefore ensure the availability of adequate accommodation places.[181] In this case, the BFA had informed the Italian authorities about the Dublin transfer at least 15 days before the scheduled transfer date via DubliNet. If SPRAR accommodation places would not have been available, the Italian authorities would have informed the Federal Office of Aliens and Asylum prior to the transfer. In addition, the Italian Ministry of Interior has issued a number of letters guaranteeing that all families with minors transferred to Italy under the Dublin III Regulation will remain together and will be accommodated in a facility adapted to their needs. Previous case law have also allowed for the transfer of families to Italy, including of a single mother and her baby;[182] and of a family with four children (out of which two were minors) and their grandparents.[183] The Constitutional Court also found that the situation of asylum seekers in Italy has improved and that special safeguards are no longer necessary.[184]

Bulgaria: Transfers to Bulgaria are carried out by the BFA and generally upheld by the BVwG.[185] No objections are raised for single asylum seekers or families. However, higher courts have taken a different line. In one case, the Constitutional Court deemed a transfer unlawful on the basis of the vulnerability of an Iraqi family with young children and the deterioration of reception conditions in Bulgaria.[186] The VwGH has also found that the BFA must make a thorough assessment of the conditions in Bulgaria before transferring families.[187] No transfers were carried out to Bulgaria in 2020.[188]

Croatia: Following the CJEU ruling in *A.S. / Jafari*, the BVwG has rejected the cases previously suspended and the persons concerned have been returned to Croatia. In some cases the applications were admitted in Austria due to the expiry of the time limit for the transfer. In 2019, transfers to Croatia have been completed without Austria asking for individual guarantees. There is no information on whether Dublin transfers have been carried out to Croatia in 2020.[189]

Cyprus: No transfers have been implemented in 2021 as Cyprus refuses transfers since the start of the Covid-19 pandemic.[190]

2.7. The situation of Dublin returnees

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

W243 2140308-1, 27 January 2017; W144 2152033-1, 18 April 2017; W205 2144676-1, 6 June 2017; W192 2162712-1, 13 July 2017; W153 2166538-1, 22 September 2017.

181 BVwG Decision W153 2169452-2, 8 January 2018.
182 VWGH, Decision Ra 2016/20/0051, 23 June 2016.
183 VwGH Ra 2017/20/0061 to 0067, 23 March 2017.
184 VfGH, Decision E 2646/2016, 7 March 2017.
185 See e.g. BVwG, Decision W239 2217177-1, 26 April 2019; W165 2174429-1, 23 November 2017; W241 2178020-1, 7 December 2017.
186 VfGH, Decision E 484/2017, 9 June 2017. See also VfGH, Decision E 86/2017, 24 November 2017.
187 VwGH, Decision Ra 2017/18/0039, 30 August 2017; Ra 2017/19/0100, 13 December 2017.
188 AIDA, *Country Report Bulgaria – 2020 Update*, February 2021, available at: https://bit.ly/3kUAScW, 28.
189 Ministry of Interior, Answer to parliamentary request 4330/AB XXVII. GP, 4 February 2021, available in German at: https://bit.ly/3b9XNg2.
190 Ministry of Interior, Answer to parliamentary request 9529/AB XXVII. GP, 11 April 2022

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

3. Admissibility procedure

3.1. General (scope, criteria, time limits)

The admissibility procedure starts upon registration of the application with the first interrogation (*Erstbefragung*) of the asylum seeker by the public security officer, who has to submit a report to the branch office of the BFA. The caseworker of the BFA in charge of the case informs the police about the next steps of the admissibility procedure. If the applicant is admitted to the regular procedure he or she is ordered to travel to the initial reception centre (EAST) or transferred there by the police.[191] There are three EAST which are responsible for the admissibility procedure: one is located in **Traiskirchen** near Vienna, one in **Thalham** in Upper Austria and one at the **Airport Vienna Schwechat**. If the asylum applicant is not admitted to the regular procedure, he or she stays in the Federal reception system and is not being allocated to one of the provinces. The person has thus only the right to stay in the district where the Federal reception centre is located.

All asylum seekers have to undergo the admissibility procedure, except children born in Austria whose parents have received protection status in the country or whose application is admitted to the regular procedure. Their applications are admitted immediately to the regular procedure.[192]

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

(1) The person comes from a safe third country;[193]
(2) The person enjoys asylum in an EEA country or Switzerland;[194]
(3) Another country is responsible for the application under the Dublin III Regulation;[195]
(4) The person files a subsequent application and "no change significant to the decision has occurred in the material facts".[196]

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

Within 20 days after the application for international protection has been lodged, the BFA must admit the asylum applicant to the in-merit procedure or notify 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 it intends to revoke the suspensive effect of a subsequent application. If the BFA does not notify the asylum applicant of its intention to issue an inadmissibility decision within 20 days, the application is thus admitted to the regular procedure. This time limit does not apply if consultations with another state on the application of the Dublin III Regulation take place.[197]

The 20 day time limit shall not apply if the BFA intends to reject the application for international protection and the applicant does not cooperate during the asylum procedure. The procedure is deemed no longer relevant, especially if the asylum seeker absconded from the procedure.[198] The duty of asylum seekers to cooperate includes the duty to provide the BFA with information and evidence about their identity and

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191 Article 29(1) AsylG.
192 Article 17(3) AsylG.
193 Article 4(1) AsylG.
194 Article 4a(1) AsylG.
195 Article 5(1) AsylG.
196 Article 12a(2)(2) AsylG.
197 Article 28(2) AsylG.
198 Article 28(2) AsylG.

reasons for applying for international protection, to be present at hearings and personal interviews as well as to inform the authorities about their address. If the asylum seeker is unable to cooperate during the procedure for reasons relating to his or her person (e.g. illness, postponing the interview due to duty to comply with summons etc.), the 20-day time limit shall be suspended.[199]

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

As a result of the admissibility procedure, the application may either be dismissed on the merits, or asylum or subsidiary protection status may be granted. The granting of a status or the dismissal of the application in the admissibility procedure replaces the admissibility decision.[200] An admissible application shall nevertheless be rejected if facts justifying such a rejection decision become known after the application was admitted.[201] In practice, this provision is applied in Dublin cases without the precondition that the facts justifying admissibility were not known before.[202]

The information provided by the Ministry of Interior did not include the number of inadmissibility decisions issued in 2019.[203] However, the admissibility procedure lasted for approximatively five days in 2018. This did not significantly change in 2019. It should be noted that, especially in the context of family proceedings, the admission often already takes place on the day of the application, which importantly reduces the calculation of the average duration.[204] It should be further noted that, during the admission procedure, asylum seekers are given basic care in federal care facilities. In 2020, asylum seekers were accommodated in federal facilities and received federal basic care for around 26 days on average.[205] In 2021, the average time of a person (separate data for asylum seekers not available) accommodated in federal basic care is 80 days, compared to 1,033 days in province basic care.[206]

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 law enforcement officials at the registration stage of the application for international protection and by officials of the BFA during the admissibility procedure at the initial reception centre. The police is not allowed to ask detailed questions on the merits of the application such as the specific reasons for fleeing the country of origin or residence.

199 Article 28(2) AsylG.
200 Article 28(2) AsylG.
201 Article 28(1) AsylG.
202 VwGH, Decision Ra 2006/20/0624, 25 November 2008.
203 Information provided by the Ministry of Interior, 18 February 2020.
204 Answer to parliamentarian request, No 3235/AB-BR/2018, 31 July 2018.
205 Ministry of Interior, *Answer to parliamentary request 4244/AB, XXVII. GP*, 18 January 2021, available in German at: https://bit.ly/2OPthRn.
206 Ministry of Interior, *Answer to parliamentary request 9123/AB, XXVII. GP*, 14 March 2022.

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

The law allows for an exception from the personal interview in case the asylum seeker has absconded from the procedure while being accommodated in the initial reception centre. If the facts relevant to a decision on an asylum claim are established, the fact that the asylum seeker has not been interviewed yet by the BFA or by the BVwG shall not preclude the rendering of a decision. In practice this exception is not applied very often, however. The BFA files most of these cases as "discontinued", which means that upon request by the asylum seekers the procedure will be reopened. An exception may apply in a subsequent asylum application that was submitted within two days before the execution of an expulsion order.[207] 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?
   ☒ Yes ☐ No
   - If yes, is it ☒ Judicial ☐ Administrative
   - If yes, is it suspensive ☐ Yes ☐ Some grounds ☒ No

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

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

Appeals against a decision rejecting the asylum application as inadmissible do *not* have suspensive effect unless this is granted by the BVwG.[208] 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.

[207] Article 19(1) AsylG.
[208] Article 16(2) BFA-VG.

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

3.4. Legal assistance

Indicators: Admissibility Procedure: Legal Assistance

☐ Same as regular procedure

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

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

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

Free legal advice is foreseen for subsequent asylum applications under the same conditions (interview within 72 hours) as well, including at appeal stage.[209] Most of the cases that are regarded as inadmissible are Dublin cases (see Dublin: Legal Assistance) and Safe Third Country cases.

Since January 2021, legal assistance is provided by the new Federal Agency, the BBU GmbH (see Regular procedure: Legal assistance).

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

4. Border procedure (border and transit zones)

4.1. General (scope, time limits)

Indicators: Border Procedure: General

1. Do border authorities receive written instructions on the referral of asylum seekers to the competent authorities? ☒ Yes ☐ No
2. Where is the border procedure mostly carried out? ☒ Air border ☐ Land border ☐ Sea border
3. Can an application made at the border be examined in substance during a border procedure? ☒ Yes ☐ No
4. Is there a maximum time limit for a first instance decision laid down in the law? ☒ Yes ☐ No
   - ❖ If yes, what is the maximum time limit?[210] 1 week
5. Is the asylum seeker considered to have entered the national territory during the border procedure? ☐ Yes ☒ No

Austria has no land border with third countries. All neighbouring states are Schengen Associated States and Member States, party to the Dublin Regulation. A border procedure is foreseen at national level but is strictly limited to airports. In reality, all airport procedures are realised at **Vienna** airport as it is the only one where a reception centre is established.[211] Moreover, the Austrian airport procedure foresees the possibility to carry out both an admissibility assessment of the asylum claim as well as a full in-merit examination of the asylum claim, in accordance with Article 43 recast Asylum Procedures Directive. There is no available data on the number of applicants for international protection subject to the airport procedure. Overall the border procedure can be described as a black box and there is a serious lack of transparency on the functioning of procedure. The access to NGOs to the airport facility is also restricted in practice.

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

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

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

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

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

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

one week whether the procedure shall be processed under the special regulations of the airport procedure, or if the case should be considered under the regular procedure.[212]

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.[213] If the time limit is not met, the application is admitted to the regular procedure and the asylum seeker is allowed entry.[214] Moreover, UNHCR is entitled to contribute to the procedure (e.g. examine the application and talk to the applicant). A rejection of an application on the merits or because of existing protection in a safe third country requires the explicit consent of UNHCR.[215] On the basis of an agreement between Austria and UNHCR, the latter is obliged to respond and provide an opinion within 48 hours, maximum 96 hours, after a case has been submitted.[216] In case the UNHCR does not give its consent it has to bring in a written reasoning. However, UNHCR's involvement during the airport procedure remains limited in practice due to financial constraints and data on the number of cases concerned are not available. In practice, the role of UNHCR as independent monitoring body seems limited, however, as the latter is bound by Government funding and shares little information on the functioning of the procedure. In the context of Dublin procedures at the airport, UNHCR is not involved.

The law foresees that the persons are not allowed to enter the territory but can leave for another country at any time.[217] Persons held in border facilities are *de facto* detained as they are forced to stay in the initial reception centre at the airport. Official detention is not regulated in law. Individuals remain in detention pending the implementation of the negative decision at the border and can only be maintained for a maximum duration of six weeks.[218] Therefore, at this stage, a decision rejecting the asylum application on the merits or as inadmissible is issued without an expulsion order. Rejection at the border may be enforced only after a final decision on the asylum application. While detailed statistics are missing, practice suggests that airport procedure are carried out in less than 6 weeks. Nevertheless, the fact that the 6 weeks deadline as foreseen at national level goes beyond the four weeks deadline foreseen in Article 43 APD has not been litigated so far.

Most cases processed at the airport were Dublin procedures and most decisions that were considered as manifestly unfounded at the airport were appealed. In 2018, only 1 appeal was successful while the other 11 appeals were rejected.[219] In 2019, the BVwG rejected all 22 appeals of asylum seekers originating from India, Iran, Philippines, Egypt, Sri Lanka, Lebanon, Russia and Cuba.

In 2016, a reform entered into force to allow for special measures at the border for the maintenance of public order during border checks, which will effectively enable police authorities to deprive asylum seekers of access to the asylum procedure (see Access to the Territory). As of January 2021, the measure was still not implemented in practice.

212 Article 31(1) AsylG.
213 Article 32(2) AsylG.
214 Article 33(2) AsylG.
215 Article 33 (2) AsylG
216 Abkommen Mitwirkung UNHCR im Asylverfahren, Art III (2), available in German at: https://bit.ly/3jX4OVm
217 Article 32 (1) AsylG
218 Article 32 (4) AsylG
219 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 by the BFA is conducted.[220] There are no other differences with interviews under the regular procedure. However, as already mentioned, UNHCR plays an active role in the processing of asylum applications in the airport procedure as it can issue binding opinions. Asylum applications can thus be rejected only upon approval of UNHCR, otherwise they must be processed in the regular procedure. There are no available statistics due to a lack of transparency on the procedure. The involvement of UNHCR is ambivalent: on the one hand it serves as a safeguard in an accelerated procedure, and on the other hand UNHCR is directly involved throughout a truncated procedure which can possibly create dependencies that might cause conflict with UNHCRs role as a UN organisation.

4.3. Appeal

Indicators: Border Procedure: Appeal

☒ Same as regular procedure

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

The time limit for lodging appeals against a decision by the BFA in procedures at the airport is 1 week.[221] The BVwG must issue its decision within 2 weeks from the submission of the complaint.[222] A hearing in the appeal proceedings must be conducted at the initial reception centre at the airport,[223] but this rarely happens in practice. The appeal has automatic suspensive effect.[224]

[220] Article 33(2) AsylG.
[221] Article 33(3) AsylG.
[222] Article 33(4) AsylG.
[223] Article 33(4) AsylG.
[224] Article 33 (5) AsylG

4.4. Legal assistance

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

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

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

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

The BBU GmbH also provides basic care at the EAST at the airport. By 31 December 2019, there was a capacity of ten rooms for 38 beds at the transit zone at the airport.[225]

5. Accelerated procedure

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

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

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

(a) During the admissibility procedure, the BFA has notified the applicant of its intention to reject the application as inadmissible (see section on Admissibility Procedure) or dismiss the application on the merits;[226]

(b) The appeal procedure is to be discontinued where the asylum seeker has absconded the procedure and a return decision was issued by the BFA;[227]

(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.[228] Public interest exists in particular, albeit not exhaustively, where an applicant:[229]

   i. Has committed a criminal offence;

225 Ministry of Interior, Answer to parliamentary request 873/AB XXVII GP, 10 April 2020, available in German at: https://bit.ly/3jZDSEC.
226 Article 27(1)(1) AsylG, citing Article 29(3)(4)-(5) AsylG.
227 Article 27(1)(2) AsylG, citing Article 24(2) AsylG.
228 Article 27(2) AsylG.
229 Article 27(3) AsylG.

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 on the asylum application shall be taken as quickly as possible and no later than 3 months.[230]

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

(a) The asylum seeker comes from a safe country of origin;
(b) There are indications that the asylum seeker endangers public security and order;
(c) The asylum seeker has provided false statements on his or her identity, nationality and authenticity of documents;
(d) No reasons for persecution have been asserted;
(e) Statements adduced are obviously false or contradictory;
(f) An executable return decision has been issued before applying for international protection; and
(g) The asylum seeker refuses to provide fingerprints.[231]

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

In 2020, 524 applications were subject to an accelerated procedures with an average duration of less than 72 hours. Another 283 procedures were conducted as classic fast track procedures with an average duration of 22.7 days.[232] In accelerated procedures, the authorities focus on applicants from countries with a low recognition rate. In 2020, the top three nationalities to be confronted with accelerated procedures were **Morocco** (55%), **Algeria** (18%) and **India** (5.8%).[233] In 2021, 1,100 cases were channeled into the accelerated procedure, but a detailed breakdown by nationality is not available.

5.2. Personal interview

Indicators: Accelerated Procedure: Personal Interview

☒ Same as regular procedure

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

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

All asylum seekers must conduct a personal interview. The law permits an exception in case the asylum seeker has absconded from the procedure.[234] If the facts are established, failure by the BFA or by the

230 Article 27(8) AsylG.
231 Article 18 BFA-VG.
232 Ministry of Interior, *Answer to parliamentary request 4887/AB, XXVII GP*, 12 March 2021, available in German at: https://bit.ly/2P47uVW.
233 Ministery of Interior, „*Nehammer: Schnellverfahren trennt erfolgreich zwischen Asyl und Migration*“, 25 February 2021, available in German at: https://bit.ly/2P4CBRd.
234 Article 24(3) AsylG.

Federal Administrative Court to conduct an interview should not preclude the rendering of a decision. No differences are observed from the Regular Procedure: Personal Interview.

The BFA may omit the personal interviews in cases of subsequent applications which aim to prevent the execution of an expulsion order and/or subsequent applications without *de facto* protection against deportation. Subsequent applications within 18 days of the deportation date have no suspensive effect, the expulsion order issued after the rejection of the first asylum application can be executed.[235]

5.3. Appeal

Indicators: Accelerated Procedure: Appeal

☐ Same as regular procedure

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

Time limits for appeals are the same as in the Regular Procedure: Appeal. The BVwG has to decide on the appeal within 3 months in cases granted suspensive effect.[236] The BVwG has to decide on the appeal against negative decisions – which include expulsion orders - within 8 weeks.[237]

In subsequent applications without protection against deportation, the court has to decide within 8 weeks if suspensive effect was not granted. This provision has not much effect in practice, however, as asylum seekers may have been expelled or transferred before. Nevertheless, the appeal may have suspensive effect.[238]

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

5.4. Legal assistance

Indicators: Accelerated Procedure: Legal Assistance

☐ Same as regular procedure

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

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

Access to free legal assistance at first instance is difficult for asylum seekers detained during the accelerated procedure, although they may contact NGOs for advice. Free legal assistance is available for

[235] Article 19(1) AsylG.
[236] Article 27(8) AsylG.
[237] Article 17(2) BFA-VG.
[238] Article 18(2)(5) BFA-VG. See e.g. AsylGH (Asylum Court), A8 260.187-2/2011, 2 August 2011.

subsequent asylum applications too.[239] Since January 2021, the Federal Agency (BBU-GmbH) is responsible for providing legal assistance also in these cases.

A right to legal advice - as required by the recast Asylum Procedures Directive - is only mandatory at second instance, i.e. before the BVwG. This means that, at first instance, legal assistance will only be provided depending on existing resources of the Federal Agency.[240] As a result, it is not guaranteed that asylum applicants in the accelerated procedure will have effective access to legal assistance. Moreover, while they are in principle allowed to access other NGOs, the restriction on their freedom of movement in the context of the admissibility procedure significantly limits their access to NGOs which are not present in certain initial reception centres.

In so-called accelerated procedures under Article 27a AsylG in conjunction with Article 18 BFA-VG, mandatory free legal aid for the admissibility procedure is circumvented by the possibility to forward the procedure to the BFA branch office without prior admission to the regular procedure. This practice took place from time to time in 2018 but has not been reported recently. When asylum seekers get an invitation to their interview, they are still subject to restrictions on their freedom of movement. Therefore they are not able to consult NGOs or lawyers outside the restricted area. There are only few cases reported in 2020. However, with the establishment of the Federal Agency (BBU-GmbH) in 2021, which will be responsible for accommodation and legal assistance, this practice is likely to increase and it is expected that cases will not be reported to the public as NGOs will not have general access. The BBU GmbH had access to accelerated procedures' applicants. However, they were not allowed to share information on the concrete circumstances due to their legal obligations set out in the BBU-G.

D. Guarantees for vulnerable groups

1. Identification

Indicators: Identification

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

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

The Asylum Law has no definition of vulnerable groups. However, it provides special provisions for victims of harassments, of sexual self-determination (Article 20 Asylum Act) of violence (Article 30 AsylG), as well as for unaccompanied minors (e.g. family tracing Article 18, legal representation Article19 Asylum Law). Only a few federal states such as **Burgenland**, **Vorarlberg** or **Upper Austria** have included definitions of vulnerable asylum seekers in their basic care laws.

1.1. Screening of vulnerability

There is no effective system in place to identify asylum seekers in need of special procedural guarantees and the law does not foresee any mechanism to that end. During the admissibility procedure in the initial reception centre, asylum seekers are informed through written leaflets about the necessity to report psychological problems to the doctor and the legal adviser. At the beginning of the interview, they are asked whether they have any health or mental problems that could influence their ability to cooperate

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

during the asylum procedure. Psychologists in initial reception centre are requested by the BFA to assess if the asylum seeker is suffering from mental disorders as a result of torture or another event which may prevent them from defending their interests during the procedure or entails for them a risk of permanent harm or long-term effects.[241]

The report published by the OHCHR in October 2018 following a mission in Austria indicates that interviews conducted by the police and the BFA take place in an atmosphere of mistrust, whereby the authorities focus on the identification of Dublin cases rather than on the identification of vulnerability. The report also stated that there was generally little cooperation among different actors, including governmental entities and a broad range of civil society organizations working with migrants in vulnerable situations.[242] In 2021, the exchange between the first instance authority and NGOs have remained difficult. There is however an exchange between NGOs, second instance Court and the BBU GmbH on a regular basis.

Victims of trafficking

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

The OHCHR further encouraged the Austrian authorities to provide for a reflection and recovery period in the law in order to strengthen identification practices, but this was not implemented. During its visit in 2018, the OHCHR was informed that potential victims of trafficking, particularly women were being returned back to the countries they had fled. This mainly concerned Dublin cases and "safe third country" cases.[243] In practice, there are still no systematic identification of victims of trafficking in place. In November 2021, the Ministry of Foreign Affairs has presented the 6th national action plan to combat trafficking in human beings for 2021 to 2023, consisting of 109 measures ranging from prevention and awareness raising to improving law enforcement measures.[244]

In practice, if an Austrian official, such as a caseworker of the BFA, identifies a potential trafficked person, the official is requested to contact the criminal police office of the respective federal province. If the latter confirms the suspicions of the official, criminal investigations are initiated. The individual concerned as well as a specialised NGO will be contacted and informed, a reflection period may be granted, and certain victims' rights relevant to criminal proceedings are provided. There are no current statistics, however, on the number of victims of human trafficking in Austria.

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

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

1.2. Age assessment of unaccompanied children

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

In practice, it seems that age assessments are ordered systematically, although their number has steadily decreased in recent years. Between January and October 2019, 183 age assessments and 477 wrist X-rays were ordered by the BFA. In 213 cases (32%) the age of majority was concluded while in 447 cases (68%) the applicant's minority was confirmed.[245] In comparison, the BFA had ordered 1,355 carpal x-rays in 2017 and 2,552 age assessments in 2016; resulting in the recognition of minority of 61% and 59% respectively.[246] In 2021, 428 (2020: 131) age assessments and 1,170 (2020: 360) wrist X-rays were conducted by the BFA. As a result of age assessments, in 200 (2020: 54) cases the age of majority was concluded while in 228 (2020: 77) cases the applicant's minority was confirmed. The wrist X-rays led to a confirmation of majority in 694 (2020: 211) cases.[247]

Methods for assessing age

In the case of doubt with regard to the age of an unaccompanied asylum-seeking child, authorities may order a medical examination. Several methods might be used. According to the Asylum Act and decrees of the Minister of Interior (which are not public), age assessments through medical examination should be a measure of *ultima ratio*. Other evidence to prove age should be verified first. If doubts remain after investigations and age assessment, the principle of *in dubio pro minore* (the benefit of the doubt) should apply.[248] As part of a multifactorial examination methodology, three individual examinations are carried out (i.e. physical, dental and x-ray examinations). According to the Ministry of Interior, these examinations are conducted in compliance with the guidelines of the Association for Forensic Age Diagnostics (AGFAD).[249]

However, these principles are not strictly applied in practice. Children undertake age assessment tests but the asylum authorities do not acknowledge the documents that are submitted to them nor do they allocate sufficient time to obtain such documents. The Human Rights Board (*Menschenrechtsbeirat*), NGOs and the Medical Association have criticised the age assessment methods.[250] 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, a further X-ray (CT) examination of the clavicle may be ordered..

An example in which the VwGH applied the benefit of the doubt and ruled that the applicant should be considered to be a minor concerned a Gambian asylum seeker. His birth certificate, delivered by the Gambian authorities, indicated that he was a minor but the authorities in Norway and Italy had determined

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245 Ministry of Interior, Reply to parliamentary request, No 38/AB, 19 December 2019, available in German at: https://bit.ly/2wlVaXy.

246 Ministry of Interior, Reply to parliamentary request, No 1240/AB, 4 September 2018; Reply to parliamentary request 11558/J, 21 March 2017, available in German at: http://bit.ly/2nU4rz4.

247 Ministry of Interior, *Answer to parliamentary request 9531/AB, XXVII GP*., 11 April 2022, available in German at: https://bit.ly/3vqiG0A

248 Article 13(3) BFA-VG.

249 Reply to the parliamentary request No 1240/AB, 4 September 2018.

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

that he was an adult. The BFA had considered that the concerned Gambian applicant was between 17,04 and 18,44 years.[251]

Even though strategic litigation against the application of age assessment has almost ceased in the last years, concerns are being articulated by NGOs especially in reference to the indiscriminate application of age assessments The BFA regularly orders age assessment procedures, even in cases in which the applicants offered to present documents within days or weeks. The costs of an age assessment range between € 489.20 and € 1,246.80.[252] The statistical data of the Ministry of Interior is incomplete and does not allow to draw conclusions on the proportionality and scientific value of the application of age assessment.

Challenging age assessments

Age assessments are not an administrative decision but an expert opinion which is communicated to the applicant. As a result, there is no possibility to appeal the opinion. The question whether it is possible to challenge the decision declaring the majority of an asylum applicant has been referred to the Constitutional Court (VfGH). In a ruling of 3 March 2014, the Court ruled that the declaration of majority of an asylum applicant by the BFA, and the subsequent discharge of the legal representative, may not be appealed during the first instance procedure.[253] As a consequence, unaccompanied children who are erroneously declared to be adults have to continue the procedure without legal representation. Authors have raised concerns resulting from this ruling, in particular the fact that the Court established criteria that are not in line with the applicable legal safeguards and disregarded the significant procedural consequences a declaration of majority entails. [254]

The VwGH has confirmed the VfGH's position, stating that age assessments should be seen as part of the examination of the asylum application. Since the age assessment is a mere procedural matter according to the VfGH, the asylum seeker does not lose any rights in the procedure that he or she would otherwise enjoy as an unaccompanied child.[255]

However, as explained by experts, the deprivation of the right to legal representation under Article 10(3) BFA-VG denies unaccompanied children of the right to a representative in violation of Article 25(1) of the recast Asylum Procedures Directive and Article 6(2) of the Dublin III Regulation, as well as of Article 24(1) of the recast Reception Conditions Directive.[256]

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251 VwGH, Decision Ra 2017/18/0118, 27 June 2017.
252 Ministry of Interior, *Answer to parliamentary request 4983/AB, XXVII. GP*, 11 March 2021, available in German at: https://bit.ly/30VT4dd.
253 VfGH, Decision U 2416/2013-8, 3 March 2014.
254 See in particular D Lukits and R Lukits, 'Neues zur Volljährigerklärung im österreichischen Asylverfahren, Fabl, January 2014.
255 VfGH, Decision U 2416/2013-8, 3 March 2014.
256 Amnesty International, *Studie zur Situation besonders vulnerabler Schutzsuchender im österreichischen Asyl- und Grundversorgungsrecht*, August 2016, available in German at: http://bit.ly/2EmtoNQ.

2. Special procedural guarantees

Indicators: Special Procedural Guarantees

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

2.1. Adequate support during the interview

In cooperation with UNHCR Austria, IOM and LEFÖ BFA, officials of the BFA are offered training sessions providing targeted information on vulnerable groups.[257] These trainings further aim to strengthen their understanding of first-instance procedures and adequate measures to be adopted to ensure a high-quality of interpretation.[258] In addition to the trainings that have been organised on a regular basis since 2016, officials of the BFA are also supported in their day-to-day work through the development of certain tools. UNHCR further develops specific assessment methods for the evaluation of asylum procedures. It selects the focus point for the assessment of the decisions and provides samples of interviews and decisions to train quality assessors of the BFA accordingly. In 2018, two cases involving homosexual asylum applicants aroused public criticism. Social media reported that their asylum application had been rejected as untrustworthy, which led to an investigation and the responsible official of the BFA lost his license to decide upon asylum applications. The BFA acknowledged that the decision did not meet the necessary qualitative standards as regards language and wording used.[259]

In that context, the Austrian Queer base counseling center criticised the fact that BFA employees were not adequately trained in that regard. The Ministry of Interior responded that there are ongoing training courses offered to BFA staff and highlighted that specific trainings on LGBTI rights had been planned even before the aforementioned scandal.[260] However, no additional training seemed to have been provided at the time of writing In 2021, BFA and BVwG have offered additional training involving the specialised NGO Queer Base. The trainings are not mandatory for the BFA employees.

The OHCHR report of 2018 also confirmed that, in a number of cases obtained, negative decisions made by the BFA were based on personal views and involved biased questioning in interviews as well as stereotypes on gender and race. Gender-specific considerations are not systematically adopted in practice, e.g. by ensuring that women are interviewed without the presence of male family members. Even when the information about sexual orientation of individuals was not disputed, there have been cases where gay people were returned in fast-track-procedure to countries considered as “safe”, yet criminalising homosexuality.[261]

Another similar case concerned an asylum seeker who claimed that he had been threatened in Gambia because of his homosexuality. This claim was considered not credible by the BFA. After having analysed the reasoning of the decision and because the particular circumstances of the case were not taken into consideration, the VfGH concluded that the necessary administrative standards were not met.[262] In 2021, another case in which the NGO Queer Base represented the applicant was made public: The BFA has

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

used inappropriate and inadequate questions concerning the sexual life of the applicant and has made the applicant undress according to her.[263]

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

If an asylum seeker bases the fear of persecution on infringements of his or her right to sexual self-determination, he or she should be interviewed by an official of the same sex, unless requested otherwise.[264] 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.[265] A similar provision for interpreters is lacking, however.

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

2.2. Exemption from special procedures

If it is deemed highly probable that the applicant has suffered from torture or other serious forms of physical, psychological or sexual violence, the application shall not be dismissed in the admissibility procedure.[266]

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

263 Tiroler Tageszeitung, Anhaltende Schikanen für LGBTIQ-Personen in Asylverfahren, 22 April 2021, available in German at: https://bit.ly/381jXTD.
264 Article 20(1) AsylG.
265 VfGH, U 688-690/12-19, 27 September 2012.
266 Article 30 AsylG.

3. Use of medical reports

Indicators: Use of Medical Reports

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

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

Asylum seekers undergo a mandatory medical examination in the initial reception centres (EAST).[267] In many cases, however, persons of trust are not allowed to be present during psychological consultations.

Medical reports are mainly requested in the admissibility procedure to assess whether an expulsion would cause a violation of Article 3 ECHR. Therefore, a standard form is used with space for a narrative. Medical reports are not based on the methodology laid down in the Istanbul Protocol.[268]

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

The Administrative Procedures Act (AVG) requires the assessment of all relevant facts and imposes an obligation on the authorities to undertake all necessary investigations. Statements of the applicants have to be credible, persecution needs not be proved and preponderant plausibility is sufficient. If the authorities have doubts on whether the applicant has been subjected to torture or other serious acts of violence, a medical examination may be ordered. These examinations are paid by the state. Often asylum seekers submit expert opinions e.g. a report of the psychiatric department of a hospital where they have been treated or an opinion of a psychotherapist. In each federal state, a network of NGOs provides free psychotherapy sessions to asylum seekers, as these are funded by the Asylum, Migration and Integration Fund (AMIF). [269] However, in practice, capacities are insufficient and clients often have to wait several months to start the treatment.

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

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

> "[N]eglecting to take into account medical reports as proof of psychological conditions, which consequently deprived the applicants of an objective examination of contentious facts… The responsible authority has thereby judged the applicants' mental state without going into the substance of the individual circumstances."[270]

[267] Article 28(4) AsylG.
[268] 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.
[269] Network for Intercultural Psychotherapy and Extreme Trauma (NIPE), see official website available in German at: https://bit.ly/2HDlkaH.
[270] VwGH, Decision Ra 2007/19/0830, 19 November 2010.

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

The established jurisprudence of the VwGH requires exhaustive reasoning to deny the causality between alleged torture and visible scars, including through an expert opinion indicating the likelihood of alleged torture causing the visible effects.[271] In the same ruling, the Court repeated earlier jurisprudence to the effect that psychiatric illness has to be taken into account in regard to discrepancies that have been identified in the statements of an asylum seeker.

4. Legal representation of unaccompanied children

Indicators: Unaccompanied Children

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

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

During the admissibility procedure, the legal advisers (who are contracted by the Ministry of Interior) act as legal representatives of the unaccompanied asylum-seeking child. Legal advisers were either from Verein Menschenrechte Österreich or from ARGE Rechtsberatung up until 2020. The BBU GmbH has taken over the responsibility of legal representation of unaccompanied children in January 2021. According to the Human Rights Board (*Menschenrechtsbeirat*),[272] the fact that these legal advisers are only responsible for the asylum procedure and do not have full custody of the child is problematic. Furthermore, legal advisers are not required to have special expertise on children. The problem is still lacking a solution and has become a part of public debate throughout 2020. An answer to a parliamentary request showed that more than 50% of unaccompanied minors disappear after lodging an asylum application. The Federal Youth Association (*Bundesjugendvertretung*) criticised the fact that no one has full custody over the children during the admissibility procedure and called for a solution that would foresee that full custody is assigned to a legal representative from the first day of the asylum procedure.[273]

With the take over of the BBU GmbH in charge of providing legal counselling since January 2021 (see Legal assistance), no major changes concerning guardianship of unaccompanied minors have occurred. There is still no general appointed guardian in the admissibility procedure. The BBU GmbH is only responsible for legal representation in asylum procedures, all other areas of best interest of the child are not covered. The improvement of the protection and legal status of refugee children is set as an objective in the 2020-2024 coalition programme. Measures securing a swift access to childcare for unaccompanied minor refugees is foreseen and the child's welfare is meant to be taken into consideration during the asylum procedure.[274] NGOs, and UNHCR, IOM and UNICEF have urged the government to take

271 VwGH, Decision Ra 2006/01/0355, 15 March 2010.
272 Menschenrechtsbeirat, *Bericht des Menschenrechtsbeirates zu Kindern und Jugendlichen im fremdenrechtlichen Verfahren* , 2011.
273 Bundesjugendvertretung,'Bundesjugendvertretung fordert Aufklärung bezüglich abgängiger UMFs in Österreich', 20 January 2020, available in German at: https://bit.ly/33epMHf.
274 Austrian coalition programme 2020-2024, available in German at: https://bit.ly/376xseX, 197.

measures without delay to implement a better protection.[275] In 2021, the government has not yet presented a draft for a possible new guardianship law even though the pressure has increased following the report of the *Kindeswohlkommission,* an independent commission appointed by the Ministry of Justice following deportations of children in January. The opposition parties have brought forward a parliamentary motion urging the federal government to further improve the protection and legal status of child refugees and to pay special attention to the best interests of the child.[276]

In one case in 2017 concerning an asylum seeker who had repeatedly missed age assessment appointments and for whom custody had been transferred by the court to the Child and Youth Service (*Kinder- und Jugendhilfe*), the BFA had conducted a Dublin interview without the child's legal representative being present and rejected his asylum application, mentioning that he had seriously breached his obligation to cooperate. The BVwG had demanded an original power of attorney and stated that the submitted copy of power of attorney was insufficient. The VwGH found that it was not necessary for the Child and Youth Service to bring forward the original power of attorney, since the formal requirements had been satisfied.[277]

In the case of siblings, the BFA and BVwG have assumed that an adult sibling has the power to represent his or her underage sibling in the admissibility procedure. The VwGH and VfGH have clarified, however, that legal representation during this procedure is a task for a legal adviser and cannot be performed by a sibling. The transfer of custody requires a court decision and cannot be based on the sole decision of the Child and Youth Service.[278]

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

Legal presentation services are provided by the KJH in three federal states (**Vienna, Lower Austria, Tyrol**). NGOs provide legal services in other federal states, (**Carinthia, Styria, Vorarlberg**) and the legal representation is divided between different NGOs in the three remaining states (**Upper Austria, Salzburg, Burgenland**). UNHCR conducted a survey and concluded that there was no difference in the quality of the legal representation services provided by the different NGO's.[279]

Providing advice in return cases is mandatory since 2016 and unaccompanied children are also advised on return to their country of origin. Legal representatives are not informed about this, as a file note is only available when the application for voluntary return has already been signed. In 2017, 21 children, originating from Afghanistan, Iran and Iraq, have returned voluntarily. In 2018, IOM, provided support to 10 unaccompanied minors for their voluntary return.[280] In 2019, 61 unaccompanied minors left the country voluntarily, including in the context of Dublin procedures, and two unaccompanied children were deported to Nigeria and Serbia respectively.[281] In 2020, there was no deportation of unaccompanied minors.[282] At

275 UNHCR, 'Obsorge ab Tag 1: UNHCR, IOM und UNICEF rufen Österreich auf, Maßnahmen für unbegleitete Kinder und Jugendliche zu verstärken', 25 February 2020, available in German at: https://bit.ly/38kRUcs.

276 Parlamentskorrespondenz, Flucht, Migration und Kinderrechte dominieren Innenausschuss, 20 October 2021, available in German at: https://bit.ly/3JV6DOb.

277 VwGH, Decision Ra 2017/19/0068, 20 September 2017.

278 VfGH, Decision E 2923/2016, 9 June 2017; VwGH, Decision Ra 2016/18/0324, 30 August 2017.

279 UNHCR, Rechtsvertretung von unbegleiteten Kindern und Jugendlichen im Asylverfahren. April 2018, available in German at: https://bit.ly/2ByL1GR.

280 IOM, Press release: Freiwillige Rückkehr aus Österreich bleibt 2018 hoch: IOM unterstützt mehr als 3.400 Menschen, 1 January 2019, available in German at: https://bit.ly/2yEQ1G3.

281 Ministry of Interior, Answer to parliamentary request 42/J (XXVII. GP), 19 December 2019, available in German at: https://bit.ly/32QglgK.

282 Ministry of Interior, *Answer to parliamentary request 3051/AB, XXVII. GP*, 6 October 2020, available in German at: https://bit.ly/30eFWzz.

the same time, IOM provided support to three unaccompanied minors for their voluntary return to Afghanistan, Pakistan and Russian federation.

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

The number of unaccompanied children seeking asylum in Austria has steadily decreased from 8,277 in 2015 to 4,551 in 2016, 1,751 in 2017 and 488 in 2018. In 2019, however, an increase in the number of applications for international protection by unaccompanied children was noted, reaching 859 applications in 2019.[283] In 2020, 1,467 unaccompanied minors applied for asylum, mainly from Afghanistan (825), Syria (389) and Morocco (34). 2021 was marked by another significant increase of 5,605 unaccompanied children, mainly from Afghanistan (3,363) and Syria (1,435).

Unaccompanied asylum-seeking children in 2021		
Country of origin	2020	2021
Afghanistan	825	3,363
Syria	389	1,435
Morocco	34	52
Bangladesh	33	186
Somalia	31	195
Egypt	27	75
Total	**1,467**	**5,605**

Source: Ministry of Interior, Annual statistics 2021, available in German at: https://bit.ly/3JTELtL

A reply to a parliamentary request from December 2019 indicated that only 170 cases of unaccompanied minors were admitted to the asylum procedure as minors. In 471 cases, the procedure was declared discontinued. Procedures are being declared discontinued when the applicants leave the country voluntarily or have absconding from the procedure. Asylkoordination Österreich publicly criticised the authorities for losing track of these children and for not taking effective measures to protect underaged asylum applicants. This stands in direct connection with the refusal of the responsible KJH in the district of the initial reception centre of **Baden** to take over custody of unaccompanied minors during the admission procedure.[284] The Ministry of Interior argued that Child and Youth Service is responsible for the guardianship of unaccompanied minors while the Provence of Lower Austria (which is the supreme authority of the Child and Youth Service of Baden) stated that they can only take over responsibility for guardianship in emergency cases.[285]

In 2021, a total of 3,778 final decisions involving accompanied minor asylum seekers were issued, out of which 3,104 granted asylum (i.e. the large majority of 3,097 at first instance) and 266 granted subsidiary protection (all of them at first instance). In 2021, six residence permits were issued.[286] In 2021, around 4,500 unaccompanied minors disappeared after applying for international protection in Austria.[287]

283 Reply to parliamentary request No 38/AB, 19 December 2019, available in German at: https://bit.ly/3877IQB.
284 Asylkoordiantion Österreich, “asylkoordination fordert Maßnahmen und hofft auf Ankündigung im Regierungsprogramm”,available in German at: https://bit.ly/2Spmyvo.
285 Der Standard, ‘Die Hälfte der unbegleiteten Flüchtlingskinder in Österreich verschwindet‘, 6 December 2020, available in German at: https://bit.ly/2HCyQLZ.
286 Ministry of Interior, answer to a parliamentary request 9406/AB, XXVII. GP, 28 March 2022, available in German at: https://bit.ly/3xCwszN.
287 Asylkoordination österreich, Press relesase, Kampagne KIND ist KIND fordert Obsorge ab Tag eins, April 2022, available in German at: https://bit.ly/3ryMYwU.

E. Subsequent applications

Indicators: Subsequent Applications

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

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

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

The AsylG defines subsequent applications as further applications after a final decision was taken on a previous asylum application.[288] If a further application is submitted while an appeal is still pending, the new application is considered as an addition to the appeal. Different legal safeguards apply depending on the previous procedure (in-merit or Dublin procedure) and the time of submitting the application. Usually, a subsequent application is not admitted to the regular procedure and is rejected as inadmissible.[289]

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.

An interview has to take place within the admissibility procedure, except in the case where the previous asylum application was rejected due to the responsibility of another Member State. Such interviews are shorter than in the first application and focus on changed circumstances or new grounds for the application. The law does not define new elements, but there are several judgments of the Administrative High Court that are used as guidance for assessing new elements.[290]

Reduced legal safeguards apply in case an inadmissibility decision was taken within the previous 18 months (i.e. if the rejection is connected to an expulsion order and a re-entry ban of 18 months). In this case, there is generally no suspensive effect for the appeal nor for the application itself. In many cases the asylum applicant does not even undergo a personal interview except for the preliminary interrogation conducted by the police.[291]

Suspensive effect may be granted for an application following a rejection of the application on the merits or a safe third country decision, if the execution of the expulsion order of the previous asylum procedure could violate the non-*refoulement* principle. If suspensive effect is not granted, the file has to be forwarded to the BVwG for review and the Court has to decide within 8 weeks on the lawfulness of the decision.[292] The expulsion may be effective 3 days after the Court has received the file.

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

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288 Article 2(1)(23) AsylG.
289 Article 68 AVG.
290 See AsylGH 09.04.2013, C6 408.412-2/2013; VwGH v. 20.03.2003, Zl. 99/20/0480, AsylGH 10.04.2013, B10 305.993-2/2013.
291 Article 12a(1) AsylG.
292 Article 22(1) BFA-VG.

person or of a person with protection status in Austria. A subsequent application for international protection would then include the question of a possible violation of Art. 8 ECHR.

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

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

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

Asylum seekers who submit a subsequent application within 6 months after the previous application has been rejected are not entitled to Basic Care provisions; nevertheless they may receive Basic Care during the admissibility procedure of the subsequent application (see section on Reception Conditions: Criteria and Restrictions to Access Reception Conditions).[293] If Basic Care is not granted, detention or a less coercive measure such as a designated place of living and reporting duties is ordered.[294]

Subsequent applicants: 2020-2021		
Country	2020	2021
Afghanistan	266	633
Russian Federation	113	121
Nigeria	88	83
Somalia	86	117
Iraq	85	84
Iran	65	90
Other	562	760
Total	**1,265**	**1,888**

Source: Ministry of Interior, *Preliminary Statistics December 2020*, available in German at: https://bit.ly/3dWU60k; Ministry of Interior, Preliminary Statistics December 2021, available in German at: https://bit.ly/3xy1wkz.

293 Article 3(1)(3) Basic Care Act (GVG-B).
294 Articles 76(3)(4) and 77 FPG.

F. The safe country concepts

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

1. Safe country of origin

Article 19 BFA-VG provides a list of safe countries of origin. The Governmental order listing safe countries of origin must take into account primarily the existence or absence of state persecution, protection from persecution by non-state actors and legal protection against human rights violations. The COI department of the BFA has to take various state and non-state sources into account, e.g. reports from human rights bodies, media articles, governmental reports etc. The COI department's methodology in this regard is accessible online.[295]

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

This list includes all EU Member States,[296] although there is a mechanism that allows to take Member States off the list in case Article 7 of the Treaty on European Union (TEU) is applicable; i.e. Article 7 TEU provides for suspension of certain rights deriving from the application of the Treaties in case of serious breach of the values on which the EU is based, as laid down in Article 2 TEU. As a consequence, suspensive effect must be granted for appeals in asylum procedures of nationals of these EU Member States. Other safe countries of origin mentioned in the Asylum Act are: **Switzerland**, **Liechtenstein**, **Norway**, **Iceland**, **Australia** and **Canada**. In 2021, 24 EU-nationals originating from 10 Member States have applied for asylum in Austria.[297]

Further states are defined as safe countries of origin by Governmental order (*Herkunftsstaaten-Verordnung, HStV*). As of February 2022, the list was last amended on 1 July 2019 and included following states:[298]

- Albania;
- Bosnia-Herzegovina;
- The Republic of North Macedonia;
- Serbia;
- Montenegro;
- Kosovo;
- Benin;
- Mongolia;

295 BFA, Methodology of the COI Department, available in German at: https://bit.ly/2Sype9Q, 52.
296 Defined as states party to the EU Treaties: Article 2(1)(18) AsylG.
297 Ministry of Interior, Answer to parliamentary request 9531/AB, 11 April 2022.
298 Verordnung der Bundesregierung, mit der Staaten als sichere Herkunftsstaaten festgelegt werden (Herkunftsstaaten-Verordnung – HStV), as amended on 14 February 2018, available at: http://bit.ly/2ji71tR.

- Morocco;
- Algeria;
- Tunisia;
- Georgia;
- Armenia;
- Ghana;
- Senegal;
- Namibia;
- South Korea;
- Uruguay

The 2019 amendment took Sri Lanka - which had been added in June 2018-[299] off the list.[300] In March 2022, Ukraine was taken off the list.[301]

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

In 2021, 3,495 (2020: 1,668) applications have been submitted by applicants originating from 15 different “safe countries of origins”, which represents 9% (compared to 11,8% in 2020) of the total numbers of applications for international protection. The largest numbers of applications were lodged by the following nationalities: **Morocco** (1,920), **Algeria** (499) and **Tunisia** (527).

2. Safe third country

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

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

If the person cannot be deported within 3 months for reasons unrelated to his or her conduct, the inadmissibility decision ceases to be valid.[302]

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

2.1. Safety criteria

Protection in a safe third country is deemed to exist if a procedure for the granting of refugee status in accordance with the Refugee Convention is available to the person in a country where he or she is not

299 BGBl. II Nr. 130/2018, available in German at: https://bit.ly/2Gl2XJ2.
300 Modification of the regulation on countries of origin, 5 June 2019, available in German at: https://bit.ly/2H5wZz4.
301 Modification of the regulation on countries of origin, 30 March 2022, available in German at: https://bit.ly/3vxezQf.
302 Article 4(5) AsylG.

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.[303] 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.[304]

The conditions for the application of the safe third country concept have been clarified by the Constitutional Court and VwGH. The presumption of compliance with safety criteria through ratification of legal instruments was affirmed in 1998 by the Administrative High Court, which has ruled that asylum authorities must first and foremost assess the legal conditions in a third country.[305] However, the Constitutional Court has ruled that the formal criteria of ratification of the Refugee Convention, the declaration according Article 25 ECHR and the existence of an asylum law are not sufficient to establish safety in a third country, but the granting of protection in practice has to be taken into consideration. Asylum authorities have to be prepared to have up-to-date information of relevant organisations to be able to assess the factual situation.[306]

2.2. Connection criteria

According to the aforementioned Constitutional Court and VwGH rulings, asylum applications cannot simply be rejected based on the mere fact that the applicant transited through or stayed in a so-called safe third country. When assessing the security of third countries, it does not only depend on formal criteria such as whether the country has ratified the Geneva Refugee Convention, the submission of a declaration under Art 52 ECHR and the existence of an asylum legislation, but also of whether the protection is actually granted.[307]

3. First country of asylum

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

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

Rejections for existing protection in another EU state are also issued regularly by the BFA concerning countries such as **Greece** or **Hungary** where Dublin responsibilities are denied, even though the appeal is regularly granted suspensive effect. In a case of a Syrian national who has received subsidiary protection status in Hungary in 2015 and applied for asylum in Austria in 2020, the BVwG rejected the applicant's appeal.[308] Even though the applicant brought forward that he had no access to support from the state, had to live on the street and was assaulted the Court came to the conclusion that there exist support possibilities from the government and from NGOS and that there is no real-risk of a Art 3 ECHR violation.

Applications by beneficiaries of international protection in **Greece** have risen since 2020. While the first instance authority initially admitted vulnerable cases to the asylum procedure, a change of strategy was

303 Article 4(2) AsylG.
304 Article 4(3) AsylG.
305 VwGH, Decision 98/01/0284, 11 November 1998.
306 VfGH, Decision U 5/08, 8 October 2008, available at: http://bit.ly/2jilW73.
307 VwGH, Decision 98/01/0284, 11 November 1998; VfGH, Decision U 5/08, 8 October 2008.
308 BVwGH, Decision W235 2238204-1/10E, 26 April 2021, available in German at: https://bit.ly/3sBERzt.

observed throughout 2021. In June 2021, the Constitutional Court suspended the decision of the Federal administrative court which had rejected an appeal from an Afghan woman who received asylum status in Greece in 2019 and applied for asylum in Austria in 2020. Looking at the recently updated AIDA country report on Greece, the Constitutional Court considered that the applicant may face a risk of violation of Art 3 ECHR violation and ordered further examinations on the access to food, shelter and sanitary facilities.[309] The decision set out a benchmark as it was done in plenary of the Constitutional Court. Following this decision, the BVwG reconsidered several first instance decisions based on insufficient information on the situation in Greece.[310]

There is also some case-law regarding beneficiaries of international protection in Bulgaria who come to Austria to lodge a new application. In 2016, a Syrian mother with 3 children gave birth after she arrived in Bulgaria where she suffered from prenatal depression. She was granted subsidiary protection in Bulgaria shortly after moving to Austria. The Bulgarian authorities denied responsibility under the Dublin system, but were ready to take over as a result of the readmission agreement. The BVwG considered the deportation to Bulgaria as not permissible because of the PTSD from which the children were suffering and which was triggered, among other things, by experiences during the imprisonment in Bulgaria at the end of September 2015, as well as the intensive family relationship with relatives living in Austria.[311]

The BVwG has also accepted an appeal of an Afghan family in 2017 who had received subsidiary protection in Hungary, due to the need to clarify whether the current situation of beneficiaries of protection in Hungary raises a risk of violation of Article 3 ECHR.[312] In the case of a single Syrian who obtained subsidiary protection in Bulgaria, however, the BVwG found no real risk on the ground that he did not belong to a vulnerable group.[313]

In a case ruled by the Federal Administrative Court in 2015, the rejection of the application as inadmissible of a Chechen refugee who was registered in Azerbaijan as "person of concern" to UNHCR was considered as insufficient. The court did not adequately assess whether the status is similar to the status of a recognised refugee nor whether the protection from *refoulement* was ensured.[314]

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

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

1. Provision of information on the procedure

Indicators: Information on the Procedure

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

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

Asylum seekers must receive written information leaflets in a language they understand after lodging the application and prior to the first interview. These information sheets are also available on the website of

309 VfGH, Decision E 599/2021, 25 June 2021, available in German at: https://bit.ly/3HLVKxZ
310 BVwG, Decisions W235 2244837-1/8E, 21 September 2021 and W144 2244839-1/8E, 14 September 2021
311 BVwG, Decision W192 2131676, 8 September 2016.
312 BVwG, Decision W205 2180181-1, 21 December 2017.
313 BVwG, Decision "233 2166376-1, 18 September 2017.
314 BVwG, Decision L518 2109232-1, 6 August 2015, available at: http://bit.ly/2jUv9oc.

the BFA in 12 different languages.[315] At the beginning of the interview, the applicant must be informed about his or her rights and obligations throughout the procedure.

The BFA has published a brochure about the asylum procedure on its website. This brochure is in German and English only and is aimed at the general public:[316]

The following information is available in 11 languages on the website of the BFA:
(1) The "first information sheet" explains the first steps and possible outcomes in the admissibility procedure including mandatory or voluntary advice on return including information;
(2) Information sheet on the duties and rights of asylum seekers;
(3) Information for asylum seekers according the Eurodac Regulation;
(4) A short written information regarding the Dublin III Regulation.

Several NGOs also provide information on the procedure on their respective websites, such as Diakonie, Caritas or asylkoordination. In December 2018, UNHCR published a brochure "to inform unaccompanied refugee children about their situation and their rights in the asylum system.[317] This brochure is available in German, English, Arabi, Dari, Pashtu, Somali.

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

Useful explanations of terminology for asylum seekers from the Russian Federation were developed by an NGO from the federal state of **Styria** in cooperation with the University of Graz.[318] UNHCR has also produced a brochure about the asylum procedure for unaccompanied child refugees. It is available in four languages (German, English, Pashtu, Dari).[319] The Refugee Law Clinic of Vienna, an association formed by students at the Law Department of the University Vienna, also provides answers to "frequently asked questions", which are available online in German, English, Somali. Pashtu, Arabic and Farsi.[320]

Asylum seekers against whom an enforceable - but not yet final - expulsion order is issued shall be informed in an appropriate manner (i.e. through a leaflet in a language understandable to them, if available) that, for the notification of decisions in the asylum procedure, they can access legal assistance and that they are obliged to inform the authority of their place of residence and address, including outside Austria.[321]

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

315 These are available at *Erstinformation über das Asylverfahren*: https://bit.ly/300maHR.
316 BFA, *Asylverfahren*, available in German and English at: https://bit.ly/2ZXVo2Z.
317 UNHCR: Your asylum procedure in Austria, December 2018, available at: https://bit.ly/2Tx5RkS.
318 'Asylterminologieführer Deutsch/Russisch', Deutsch/Englisch, Deutsch/Arabisch available at: http://bit.ly/2l1wsFj.
319 UNHCR, 'Your Asylum Procedure in Austria', available at: http://bit.ly/1IjRCDT.
320 Refugee Law Clinic Vienna, 'The Austrian asylum system easily explained', available in German at: http://www.asyl-faq.at/.
321 Articles 15(1)(4) and 14(4) AsylG explaining the duty to register even for delivering letters abroad.

possibility of filing a complaint in front of the Administrative High Court (VwGH) and the Constitutional Court (VfGH).[322]

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

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

2. Access to NGOs and UNHCR

Indicators: Access to NGOs and UNHCR

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

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

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

According to the law, UNHCR has access to all facilities and is allowed to get in contact with asylum seekers.[323] NGOs have contracts in 7 out of 9 federal provinces for providing social counselling and visit reception centres of the federal provinces regularly. In two federal provinces, **Carinthia** and **Tyrol**, the social advice is provided by the federal administration. NGOs that do not fall under such contracts must file an application at the responsible office of the federal province in order to be granted access and visit asylum seekers. Access to detention facilities, including airport facilities, is difficult for NGOs in so far as they can only access if they already have some basic identification information on detained applicants, such as a name and date of birth. The state agency BBU that provides legal counselling is bound by secrecy and is for this reason hindered from passing on information about clients to NGOs.

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

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

[322] Article 133(4) B-VG; Article 30 VwG-VG.
[323] Article 63(1) AsylG.

Ministry also implemented more regular shuttle services per day from the Fieberbrunn centre to the village (as of 2019, there was only one shuttle per day).[324]

Officials of the BFA told representatives from the NGO asylkoordination that these recommendations do not have a binding character. Nevertheless, at the time of writing of this report, there were no children accommodated in **Fieberbrunn** and the shuttle service between the remote camp and the village has improved. This being said, reports to NGOs show that the access to medical treatment is still difficult.. Following the establishment of the BBU GmbH which started providing legal assistance as of 2021, there were rumours that access for NGOs to return centres would be restricted in future. The BBU GmbH clarified however that Diakonie Flüchtlingsdienst will have access to the centre and will be provided with a room for counselling services. With the take over of the BBU GmbH as basic care provider, the number of staff, especially during the night and for the purpose of psychological counselling, was increased. The BBU GmbH however is confronted with difficulties to find adequate staff due to the isolated situation of the facility. In 2021, the number of persons whose procedures are pending are in Dublin-procedures The centre in **Schwechat** is not used as a return centre since 11 September 2020 as it is used as an accommodation for asylum applicants at the first stage of their procedure (i..e. self-isolation due to the COVID-19 pandemic). The centres and their effectiveness is highly disputed, especially as many persons are accommodated there for up to two years. There were more than 400 persons accommodated in the return centres during 2019 and 2020, out of which only 33 opted for a voluntary return. [325]

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

H. Differential treatment of specific nationalities in the procedure

Indicators: Treatment of Specific Nationalities

1. Are applications from specific nationalities considered manifestly well-founded? ☐ Yes ☒ No
   - ❖ If yes, specify which:
2. Are applications from specific nationalities considered manifestly unfounded?[326] ☒ Yes ☐ No
   - ❖ If yes, specify which: Bosnia-Herzegovina, North Macedonia, Serbia, Montenegro, Kosovo, Albania, Mongolia, Morocco, Algeria, Tunisia, Georgia, Ghana, Benin, Armenia, Ukraine, Senegal, South Korea, Namibia, Uruguay

The list of safe countries of origin, based on which the accelerated procedure may be applied, was expanded in 2019 to cover three new countries, namely **Namibia**, **Uruguay** and **South Korea**. On the contrary, **Sri Lanka** was deleted from the list. The so-called “fast-track procedure” (see Fast-Track Processing), was applied in 3,681 cases in 2021, of which 1,100 were decided in an accelerated procedure. In the accelerated procedure, which mostly applies to persons from countries listed as safe

324 Ministry of Interior, ‘Recommendations for human rights screening of return counselling services’, available in German at: https://bit.ly/2V7umVx.
325 Ministry of Interior, *Answer to parliamentary request, 3339/AB XXVII. GP, 11 November 2020*, available in German at: https://bit.ly/3kLDV7b.
326 Whether under the “safe country of origin” concept or otherwise.

countries of origin and manifestly ill-founded applications (in 2021 Morocco: 1,014; Pakistan: 621; Egypt: 567), a decision is usually taken within 72 hours

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

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

2021 was further marked by a rise of subsequent applications lodged by Afghans from 266 in 2020 to 633 in 2021, but these were not prioritised by the BFA. After an important ruling by the Constitutional court in September 2021, the general decision making at first instance changed and now mostly includes granting subsidiary protection to Afghans.[327] Return decisions were issued by a small group of BVwG judges between September and December 2021, but they were halted by another landmark ruling by the Constitutional Court stating that this would breach Art 3 ECHR.[328] Since then, all decisions involving Afghan nationals have been granting protection.

327 VfGH, E3445/2021, 30 September 2021, available in German at: https://bit.ly/3rBSgYu.
328 VfGH, E4227/2021, 16 December 2021, summary in English available at: https://bit.ly/3KYEOWx.

Reception Conditions

Short overview of the reception system

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

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

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

Following the increase of applicants in 2021, the initial reception centres of the Federal Government have been overcrowded. Many facilities in the provinces have been closed throughout Austria in recent years, and it is therefore not possible to allocate asylum seekers quickly and adequately to the provincial facilities due to a lack of capacity. In 2021, this resulted in the re-opening of previously closed federal facilities and the opening of new facilities (e.g. Carinthia). The Covid 19 pandemic led to clusters in some federal facilities, and it was not possible to test sufficiently well for Covid 19 in all initial reception centers, which in turn led to delays in the allocation of asylum seekers to state care and to other federal care facilities. Provinces such as **Tyrol**, **Lower Austria, Carinthia** or **Styria** reported a lack of communication in the allocation of federal to provincial care (i.e. little to no preparation time for new residents to move in, transports in the middle of the night, little information for people with special needs, etc.) In addition, there were problems with regard to the payment of clothing allowances, as in many cases the BBU in the initial reception centers had already exhausted the entitlement to clothing allowances per person per year.[329]

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

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

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

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

A. Access and forms of reception conditions

1. Criteria and restrictions to access reception conditions

Indicators: Criteria and Restrictions to Reception Conditions

1. Does the law make material reception conditions to asylum seekers in the following stages of the asylum procedure?
    - ❖ Regular procedure ☒ Yes ☐ Reduced material conditions ☐ No
    - ❖ Dublin procedure ☒ Yes ☐ Reduced material conditions ☐ No
    - ❖ Admissibility procedure ☒ Yes ☐ Reduced material conditions ☐ No
    - ❖ Border procedure ☒ Yes ☐ Reduced material conditions ☐ No
    - ❖ Accelerated procedure ☒ Yes ☐ Reduced material conditions ☐ No
    - ❖ First appeal ☒ Yes ☐ Reduced material conditions ☐ No
    - ❖ Onward appeal ☒ Yes ☐ Reduced material conditions ☐ No
    - ❖ Subsequent application ☒ Yes ☐ Reduced material conditions ☐No

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

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

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

A persisting issue in this area is the insufficient funding for care, counseling and housing in the context of basic services. The daily rates for funding basic care facilities as well as for food or private housing have not been increased since 2016. By way of illustration, pocket money (€ 40,-/year), clothing allowance (€ 150,-/year), education allowance (€ 200,-) have not been increased since 2004.

Target group basic care in federal provinces (if the asylum procedure has been admitted in Austria and an allocation to a province has been made: [330]

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

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

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

Different entitlements are foreseen in the Basic Care Agreement and the Basic Care Act (GVG-B). While the Agreement declares in Article 2(1) as target group asylum seekers who have *requested* asylum, the Basic Care Act of the Federal State defines the responsibility of the Federal State for asylum seekers after having *lodged* the application during the admissibility procedure in a reception facility of the Federal State.[331] However, Basic Care conditions do not apply in detention or where alternatives to detention are applied.[332] While an alternative to detention is being applied, the asylum seeker is entitled to reception conditions that are more or less similar to Basic Care (accommodation, meals and emergency health care).

Asylum seekers subject to Dublin procedures are entitled to basic care provisions until their transfer to the Member State responsible for the examination of the asylum application is executed. This general rule is not applicable if the asylum seeker is detained or ordered less coercive measures, however. In both cases they are not covered by health insurance but have access to necessary urgent medical treatment. In contrast to asylum seekers subject to the Dublin procedure but accommodated in one of the reception facilities in Austria, those undergoing Dublin procedures whilst in detention or less coercive measures do not receive monthly pocket money (€40). This distinction in the reception conditions available to applicants detained or subject to alternatives to detention does not respect the recast Reception Conditions Directive, which should remain applicable in all Dublin procedures.[333] As regards Dublin returnees, they are brought to EAST **Traiskirchen** where an interview is conducted. Dublin returnees are then accommodated in **Traiskirchen** or detained in deportation centres. Since the outbreak of the COVID-19 pandemic, Dublin returnees are accommodated for self-isolation during the first 7 days

330 Grundversorgung, *Fonds Soziales Wien and Land Niederösterreich*, available in German at: https://bit.ly/3GGGq4l.
331 Articles 1(1) and 2(1) GVG-B.
332 Article 2(2) Basic Care Agreement; Article 2(3) GVG-B. Note that this not in conformity with Article 3 recast Reception Conditions Directive.
333 Recital 11 Dublin III Regulation. See also CJEU, Case C-179/11 *Cimade & GISTI v Ministre de l'Intérieur*, 27 September 2012, para 46.

in the federal facilities in **Schwechat** or **Bergheim**. If the applicants are without symptoms and deliver a negative COVID-19 test after 7 days, the applicants are then transported to **Traiskirchen** again.

If the suspensive effect of an appeal has been denied, Basic Care is terminated after the first instance decision becomes enforceable. Asylum seekers receive Basic Care in the case the court has awarded suspensive effect or if they wish to leave Austria voluntarily until their departure.[334]

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

After a final negative decision on the asylum application, the law provides for Basic Care until departure from Austria, if the rejected applicant cannot leave e.g. due to inability to obtain a travel document. Usually, rejected asylum seekers remain in the same reception facility. While in **Vienna**, Basic Care after a negative decision is usually prolonged, other federal provinces such as **Salzburg** and **Lower Austria** cease support almost immediately after the rejection of the asylum claim (after 10 days). In **Lower Austria** and **Salzburg**, people with legally negative asylum decisions are released after 10 days, with the exception of people who cannot be deported for legal or factual reasons, in which case the BFA is responsible for examining them. In Lower Austria, people with a legally negative asylum decision from Afghanistan in particular can remain in basic care due to the current situation in the country. In Salzburg, the BFA also checks, among other things, the obligation to cooperate for the return; if the obligation to cooperate is not met, people are also released from basic care[335].In **Vienna**, the access to basic care services is prolonged even after the asylum application was rejected, mainly because the city cannot afford having many persons without insurance and housing. However, people coming to Vienna from other provinces after their asylum application was rejected normally do not get access to the basic care services in Vienna.

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

The assessment of resources

A precondition for Basic Care is the need for support which is assessed by the BBU GmBH. This is defined by law as applicable where a person is unable to cover subsistence by their own resources or with support from third parties.[336] 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.[337] This exclusion clause is applied very strictly, even when the sponsor is unable to care for the asylum seeker. Exceptions may be made if the asylum seeker has no health insurance and gets seriously ill and needs medical treatment.

334 Article 2(7) GVG-B.
335 asylkoordination österreich, Nationwide NGO survey on basic services, Dec 21/Jan 22, unpublished
336 Article 2(1) Basic Care Agreement (GVV)-Art 15a.
337 Article 5(1)(c) Schengen Borders Code.

Although the amount of material reception conditions is specified in the Basic Care Agreement,[338] the level of income or values relevant to assessing the lack of need for Basic Care is not specified by law. Legislation does not lay down the amount of means of subsistence below which a person is entitled to Basic Care, even though the amounts for subsistence and accommodation are prescribed by law. In practice, an income beyond 1.5 times the amount of Basic Care benefits (€547) are deemed to be without need of Basic Care. In **Salzburg** and all federal provinces (except Tyrol, a single person can keep € 240),[339] the regulation for Basic Care in force since 1 July 2016 sets out that income up to 110€ is not taken into account; for any family member in a household, a further €80 of income should not lead to a reduction of basic care support; for an apprentice the respective amount is €150.[340]

Asylum seekers have to declare whether they hold resources or any source of income during the first interrogation with the police upon registration of the application. Since September 2018, asylum seekers are obliged to contribute to the basic care of the federal state they reside in. As a result, up to €840 per person can be withheld by the police when a person asks for asylum and is found to carry such an amount of money. However, out of these €840, asylum seekers always keep €120.[341] Upon termination of the provision of basic care, any difference between the actual costs incurred and the cash seized is reimbursed. In 2021, € 244,331 (2020: €127,880) was seized from 3,591 (2020: 2,237) applicants.[342] Furthermore, EU and EEA (European Economic Area) citizens are excluded from the basic care.

As of 31 December 2021, 30,363 (2020: 26,623) persons received basic care (compared to 26,623 in 2020). This refers to 18,273 (2020: 14,125) applicants for international protection and 9,484 (2020: 12,498) beneficiaries of international protection. The total number of beneficiaries of basic care increased by 14% compared to 2020.

Beneficiaries of basic care as of 31 December 2021	
Asylum applicants	**18,273**
Beneficiaries of protection and others	**12,090**
Refugees	1,982
Beneficiaries of subsidiary protection	7,502
Dublin procedure pending	738
Rejected asylum applicants	1,868
Total	**30,363**

Source: Basic care, 31 December 2021.

338 Articles 6, 7 and 9 Grundversorgungsvereinbarung (GVV); Art. 15a B-VG.
339 asylkoordination österreich, Nationwide NGO survey on basic services Dec 21/Jan 22, unpublished
340 Salzburg Basic Care Regulation LBGl. 57/2016, available in German at: http://bit.ly/2kGpqma.
341 Article 2 Abs 1 basic care law.
342 Ministry of Interior, *Answer to parliamentary request 4887/AB, XXVII. GP*, 12 March 2021, available in German at: https://bit.ly/38GNAY9; Ministry of Interior, Answer to parliamentary request 9531/AB, XXVII. GP, 11 April 2022, available in German at: https://bit.ly/3KPxwnY.

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 2021 (in original currency and in €):
   - ❖ Accommodated, incl. food — € 40
   - ❖ Accommodated without food — max € 165-215
   - ❖ Private accommodation (incl rent money) — max € 365 (single person)

Basic Care may be provided in four different forms:[343]

(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.

(2) Basic Care can be provided in reception centres where asylum seekers cook for themselves. In that case, asylum seekers receive between €165 and 186 per month mainly in cash (depending on the days per month and if €5.50 or € 6- is paid per day). Alternatively, as is practice in **Tyrol**, all adult people living in reception centres receive food allowance € 200,-, pocket money € 40,- and an monthly clothing allowance of €12,50 (all together € 252.50) transferred to a bank account (while individuals who live in private accommodation receive the benefits only in cash). In **Vorarlberg** people receive a monthly food allowance of € 215. In **Vienna**, there is basically the possibility of transfers to a bank account for private residents and for those who live in reception centres. In some federal provinces the amount for children is reduced, e.g. in **Upper Austria** children receive €132 per month and in **Tyrol** € 100.

(3) Basic Care can be provided for asylum seekers in private accommodation. In this case asylum seekers e.g. in **Vienna**, can receive €365 (food allowance & rent money) in cash. The payments for rent allowance are different and not uniformly regulated in all federal states, as demonstrated in the table below:

Federal province	Food allowance	Rent money Single/ family	Minors living private	Prerequisites for private housing
Vienna	€ 215,-	€ 150,-/ € 300,-	€ 100,-	No rental cap, but high bureaucratic effort because many documents have to be presented when applying
Lower Austria	€ 215,-	€ 150,-/ € 300,-	€ 100,-	**Rental cap**: -Family up to max. 4 pers. € 500,- /monthly -Family from 5 pers. € 50,- / per additional person monthly -single person € 250,00 / monthly
Upper Austria	€ 215,-	€ 150,-/ € 300,-	€ 100,-	**Rental cap:** - per person +20% overpayment from food allowance (max. €258 per person) possible - German A2 level requirement

343 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.

Burgenland	€ 213,-	€ 128,-/ € 256,-	€ 96,-	**Application for private housing possible**: - closure of reception centres - within the 4-month period upon approval - no negative asylum decision
Styria	€ 200,-	€ 120,-/ € 240,-	€ 90,-	**Application for private housing possible**: - Affordability is checked
Carinthia	€ 215,-	€ 150,-/ € 300,-	€ 100,-	**Application for private housing possible**: - Only allowed for people with protection status (§3 & §8)
Salzburg	€ 215,-	€ 150,-/ € 300,-	€ 100,-	**Application for private housing possible:** **-** German A1 level requirement - Affordability is checked
Tyrol	€ 215,-	€ 150,-/ € 300,-	€ 100,-	**Application for private housing possible**: - Affordability is checked - German A1 level would be good because people should be able to live independently and alone
Vorarlberg	€ 215,-	€ 150,-/ € 300,-	€ 100,-	**Application for private housing possible**: - Affordability is checked - rather people with protection status

Source: asylkoordination österreich, Own illustration based on nationwide NGO survey on basic services Dec 21/Jan 22

(4) NGOs like Caritas, Diakonie, Volkshilfe, Tralalobe, Integrationshaus rotes Kreuz Samarierbund and others rent private appartments where asylum seekers are housed. These are larger or smaller apartments with permanent or temporary leases, in so-called mobile assisted living (MoBeWo or MoWo). NGOs receive the same daily rate as for a regular organised facility with the difference that refugees are accommodated in apartments and not in reception centres. This is a suitable form of accommodation especially for vulnerable groups (LGBTIQ, single parents and so on) but also for families This form of accommodation exists in all federal states, except **Salzburg**.[344]

Federal province	Funding for organised facilities	Form of accomodation	Pocket money	Food allowance per day (month)
Vienna	€ 21,-	2-4	yes	€ 5,50 - € 6,00
Burgenland	€ 20,50	1-4	Only with full supply	€ 6,-
Lower Austria	€ 19,-	1-4	Only with full suppy	€ 6,-
Upper Austria	€ 21,-	2-4	Only with full supply	€ 6,- (children € 132, per month)
Styria	€ 21,- (or € 12,-)	1-4	yes	€ 6,-
Carinthia	€ 21,- (0r € 10,-)	1-3	Only with full supply	€ 6,-
Tyrol	€ 21,-	2-4	yes	€ 200,-/month/adult € 100,-/month/ u 18
Salzburg	€ 21,-	1-3	yes	€ 6,50
Vorarlberg	Nearly real cost accounting	2-4	yes	€ 215,-/month

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

Source: Own illustration based on nationwide NGO survey on basic services Dec 21/Jan 22 by asylkoordination österreich.

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

- In **Lower Austria** the basic daily rate is € 19,- for accommodation. NGOs and all other accommodation providers have the possibility to upgrade to € 21,- daily rate if additional services are chosen. If the Accommodation Provider is prepared to provide individual additional services, it shall be entitled to an additional daily rate surcharge of EUR 1 gross for each three points; however, these daily rate surcharges shall be limited to EUR 2. The Accommodation Provider may therefore charge a maximum of EUR 2,-- for six or more points in addition to the respective daily rate pursuant to litera a.[345]

  Additional services may include:

  a. Transports to authorities and doctors (2 points)
  b. Learning courses (computer, sewing etc) (1 point)
  c. Recreation: organised sports (1 point)
  d. Learning assistance for school children (1 point)
  e. Separate prayer room (1 point)
  f. Structural suitability and equipment for the disabled (2 points)
  g. 1 transferable downtown monthly bus pass and/or Rail per maximum of 20 residents (2 points)
  h. 1 transferable monthly bus and/or rail pass to the next city per maximum 20 residents (2points)
  i. Arrangement of rides to summonses (1 point).
  j. Neighborhood provider will provide personal hygiene items (2 points)
  k. 1 caregiver available for residents (1 point)
  l. Full service quarters as per point 3.3.2 (3points) [346]

- In **Styria**, Caritas facilities are 'Partial self-supply facilities', where individuals get partial food allowance and additionally food/breakfast/lunch in the facility. Individuals receive € 110,- per month and pocket money. Caritas receives € 21,- per day for accommodation, because they offer care and support services and partial self-supply. All other accommodation providers receive € 12,- per day instead of € 21,- because asylum seekers can cook for themselves. People receive € 6,- food allowance per day and pocket money.

- In **Carinthia**, all basic care facilities with full sufficiency receive € 21,- per day, all basic care facilities where asylum seekers can cook for themselves receive € 10,- per day. People receive € 6,- food allowance per day.

  All asylum seekers receive an additional €150 per year for clothes in vouchers/cash and pupils get €200 a year for school material, mainly in form of vouchers.[347] In **Upper Austria** babys and young children up to three years receive additionally € 20,-/month for sanitary products.[348]

Asylum seekers living in private rented flats receive 43% of the needs-based minimum allowance (*bedarfsorientierte Mindestsicherung*) for citizens in need of social welfare support, which is about €863 per month (€648 for subsistence and €215 for accommodation for a single person in **Vienna**). The level of the needs-based minimum allowance varies across the federal provinces, as political agreement to

345 Land Niederösterreich, Contract form for private accommodation providers, available in German at: https://bit.ly/3GMaRGk.
346 Land Niederösterreich, Contract form for private accomodation providers, available in German at: https://bit.ly/3GMaRGk.
347 Article 9(10) and (14) GVV-Art 15a.
348 asylkoordination österreich, Nationwide NGO survey on basic services Dec 21/Jan 22, unpublished.

prolong an Austrian-wide regulation after its expiry by December 2016 was not reached. The sum given to a care provider, €630 per month (€21 per day) for accommodation and subsistence of asylum seekers, is below the level of welfare support for citizens, although staff and administrative costs have to be covered by the care provider.

For children, the daily rate in reception centres is the same as for adults. If families receive financial support for their daily subsistence, some federal provinces like Upper Austria provide a lower amount for children (€132,-) see table above) instead instead of about €180. As of January 2021, 1,534 persons received Basic Care in federal reception centres,[349] compared to 1,354 at the end of 2019.

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, €63,50, €66,- 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 it is evident that only a smaller group are not in need of much guidance and care. Styria has set up a daily special support of €18 for children with special needs, in addition to the maximum amount of €77. In **Upper Austria**, the government provides for €88 which should cover legal assistance as well.

3. Reduction or withdrawal of reception conditions

Indicators: Reduction or Withdrawal of Reception Conditions

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

3.1. Grounds for reduction or withdrawal

Material reception conditions are reduced if the asylum seeker has an income, items of value or receives support from a third party.[350] For the first phase of the asylum procedure (the admission stage), this rule is not applicable. If an asylum seeker earns money or receives support from other sources, they are allowed to keep €110 (and € 80,- for each family member); or €240 in **Tyrol**, there is no common practice across all federal provinces. All additional income will be requested as a financial contribution for the asylum seeker's Basic Care. This is requested without a formal procedure. Reduction of reception conditions can also result in not granting the monthly pocket money for subsistence or the support for the child if the child is entitled to child benefits, which mainly applies to those who have received refugee status or subsidiary protection if the mother/father is working.

Material reception conditions may be withdrawn where the asylum seeker:[351]

(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.

349 Basic Care Registration System, 31 December 2019, unpublished.
350 Article 2(1) B-VG Art 15a.
351 Article 2(4)-(5) GVG-B.

(e) Has had his or her application rejected or dismissed and suspensive effect was excluded according to Article 18(1) BFA-VG. If the applicant cooperates to return voluntarily, he or she is eligible to material reception conditions until his departure. This rule makes a reference to Article 20(5) of the recast Reception Conditions Directive according to which a dignified living standard and access to medical treatment have to be provided.

In some federal provinces, the laws also permit the exclusion of asylum seekers who fail to cooperate with establishing their identity and need of basic care, although this is not applied in practice.[352]

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

The information about rights and duties is the so called 'Declaration of need for assistance' (*Hilfsbedürftigkeitserklärung*). In **Vienna** all people receiving (as well as private housing) basic care have to sign this declaration. The table below provides an illustration of the content of this declaration which is used in Vienna by Caritas Asylzentrum counselling center and NGOs who run facilities for basic care. [353] The form is not publicly available, but its content was shared by a relevant stakeholder:[354]

Declaration of need for assistance'
In need of help are people who: In need of assistance is anyone who cannot or cannot sufficiently provide for the livelihood of themselves and their dependent relatives living in the same household from their own efforts and resources, or who does not (sufficiently) receive their livelihood from other persons or institutions[355]. **Obligations:** I undertake to keep my advisor or guardian informed of the following on an ongoing basis: - any change concerning residence status, marital status, residential address, stay abroad - any assets such as cash, motor vehicle (car/moped), real estate, valuables, etc. - any income - from self-employment (e.g. trade) - from dependent gainful employment - any receipt of minimum income support or social assistance, unemployment benefit/emergency assistance (AMS receipt), sickness benefit, maternity allowance, family allowance (current receipt and subsequent payments), childcare allowance (incl. subsidy), scholarships, pension payments and other existing legal entitlements - Maintenance payments from parents, spouse or registered/registered partner - Maintenance claims against parents, spouse or registered/registered partner, even if no maintenance is paid maintenance is paid - existing declaration(s) of obligation or liabilitySollte eine Mitversicherung bei einem Familienmitglied möglich sein, verpflichte ich mich, diese in Anspruch zu nehmen. Co-insurance is usually possible if a family member is compulsorily insured, e.g. if he/she is in (full-time) employment or receives unemployment/emergency assistance (AMS) or childcare benefits. (full-time) employment relationship or if I receive unemployment benefits/emergency assistance (AMS-Bezug) or childcare allowance. I f I fail to meet these obligations, this may result in the discontinuation of basic benefits. I must repay any basic benefits that I have wrongly received. I must pay back. In addition, there may be consequences under criminal law.

352 Article 3(1) GVG-B.
353 Caritas Vienna, Inofmation on counselling services https://bit.ly/3HRqU6V.
354 asylkoordination österreich, Nationwide NGO survey on basic services Dec 21/Jan 22, unpublished
355 Article 1(1)GVG-Wien

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

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

The declaration of need further serves as basis for the discontinuation, sanctions and benefit restrictions of basic care benefits. The declaration of need and the house rules are two important fundaments in the accommodation area. The NGOs in the provinces have different procedures for providing information on basic care. Some NGOs in the federal provinces have incorporated the information on rights and obligations into their house rules which are signed by asylum seekers. In most cases there are translations into relevant first languages available. However, occurs occur for illiterate asylum seekers, for which information about basic care and house rules must be explained orally with an interpreter. The documents must be signed in writing, including by illiterate asylum seekers. Overall, in practice, asylum seekers receive adequate information from NGOs and the BBU agency about basic care and their rights and duties.

There are no special reception centres to accommodate asylum seekers for public interest or public order reasons. In **Lower Austria**, a refugee centre was opened at the border with the Czech Republic for unaccompanied minor refugees who had become maladjusted. This reception centre in **Drasenhofen** had to be closed due to public protests and a report by the child and juvenile Ombudsstelle.[356] Following a complaint lodged by one asylum seeker placed in **Drasenhofen** the Administrative Court of Lower Austria came to the conclusion that the conditions in Drasenhofen violated the law. It even led to a criminal procedure against the right wing Landesrat Waldhäusl (Freedom Party) because of the suspicion that it had abused the power of office. The procedure is still pending as of February 2022.[357]

Until the end of 2020, asylum seekers who violated house rules were sometimes placed in less favourable reception centres in remote areas, although these sanctions are not foreseen by law. This practice has not been officially confirmed by the authorities but was reported by the persons concerned. There are no reports yet whether this practice has continued following the take over of BBU GmbH in December 2020. Although the freedom of movement is considered as not being limited in this case, presence at night is compulsory. In 2020, Basic care services on the federal level was reduced in 82 cases and withdrawn in 42 cases. There is no information on the reasons for this reduction and withdrawal.[358]

3.2. Procedure for reduction or withdrawal

Withdrawal or reduction of Basic Care provisions should be decided by the BFA as long as asylum seekers are in the admissibility and/or in merits and Basic Care is provided by one of the federal provinces. In practice, only few procedures of reduction or withdrawal of Basic Care have been carried out. This is

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

357 NÖN, „'Waldhäusl vor Gericht: „Bin Bauer, kein Jurist'", 9 February 2022, available in German at: https://bit.ly/3rLPL6t.

358 Ministry of Interior, *Answer to parliamentary request, 5038/AB, XXVII. GP*, 17 March 2021

partly due to the fact that NGOs manage to find a solution for their clients and because the competent offices are unwilling to make a written decision. Decisions are taken on an individual basis but written reasoned decisions are rare. Since December 2020, the Federal Agency (BBU-GmbH) is responsible for the reduction or withdrawal of reception conditions while the persons are accommodated in federal reception centres.

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

There are no official decisions/notifications by the implementing authorities on the granting, restriction of benefits, sanctions or dismissal from basic benefits. Instead of that NGOs concerned and/or person concerned receive an information letter which explains and declares restrictions of basic care, from the implementing authority either by mail and/or by post. Restrictions on benefits are enforced differently in the provinces, and the amount of the allowances for income also vary. In **Upper Austria**, persons with an income due to employment receive an invitation from the authority for a personal meeting in which income, overpayment of basic benefits, and repayment is recorded. This agreement must be signed by the asylum seeker and is binding. Individual basic care benefits are not withheld immediately, but repayment instalments are ordered. In cases where the person does not fulfill his or her obligation to pay in installments, financial benefits such as pocket money or food allowance will be withheld. In **Vienna**, people in basic care usually receive the information letter with repayment agreements via the supervising NGO. Previously, pay slips had to be sent to the authority (FSW), who was in charge of calculating the repayment. In some cases, the calculations were incorrect and the care team had to intervene with the authority.[359]

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

Asylum seekers whose Basic Care has been terminated or reduced may re-apply for the provision of basic care in the federal province they have been allocated to. In practice, it is difficult to receive Basic Care again after it has been terminated, or at least it takes some time to receive it again. Asylum seekers who endanger the security of other inhabitants are sometimes placed in other reception centres with lower standards. Asylum seekers who have left their designated place of living may get a place in another reception centre in the same federal province after applying for Basic Care. In **Upper Austria**, one of the sanctions foreseen for several disciplinary incidents in residential facilities is that the person involved has to move to private accommodation. In addition, there is mandatory anti-violence training which must be carried out, otherwise the place of residence may be lost.[360]

Basic benefits are provided as a substitute, while any income must be reported and will be calculated in the basic care benefits. With regard to spouses who also earn an income, as well as income that may have been gained in the context of detention (if the asylum seeker worked in the centre where he/she was held), other restrictions may arise. If a person marries, the spouse is actually responsible for

[359] asylkoordination österreich, Nationwide NGO survey on basic services Dec 21/Jan 22, unpublished.
[360] asylkoordination österreich, Nationwide NGO survey on basic services Dec 21/Jan 22, unpublished.

maintenance, and the marriage certificate and income of the spouse must be presented to the authorities. Depending on the financial situation of the spouse, basic care benefits are granted, reduced or discontinued. In the case of longer periods of detention and a working activity while in detention, released asylum seekers receive a so-called release allowance, which is paid to the applicant and counted as an income. The amount of the release allowance varies depending on the duration of the imprisonment and the work performed. In any case, it is counted towards the basic care benefits, as basic pension benefits are only granted as a substitute. Depending on the amount of the release allowance, basic care is granted immediately or benefits like pocket money may not be paid, which is decided and examined by the authority.[361]

If Basic Care is withdrawn because the asylum seeker is no longer considered to be in in need of benefits, for example because he or she has an income, they may receive Basic Care if it is proven that they are again in need of it. However, asylum seekers may end up homeless or in emergency shelters of NGOs mainly because they do not succeed in obtaining Basic Care after withdrawal or they have left the federal province for various reasons such as presence of community, friends or family in other federal provinces, unofficial job offers and so forth. Homelessness or accommodation in emergency shelters following the withdrawal of basic care is an issue that persisted in 2020. National figures on the number of asylum seekers concerned by this issue are not available. However, NGOs in **Lower Austria** estimate that 20-30% of people with a legally binding negative asylum decision continue to stay in Austria without legal residence permit and are illegalised. Official statistics do not exist.

In federal provinces such as **Lower Austria** people with negative return decision have to leave residential facilities within 10 days. However, if deportations are de facto not possible basic care benefits are further granted by the BFA. Individuals holding a residence permit called AB+ (Aufenthaltsberechtigung plus) receive basic care benefits until 12 days after receiving the title of stay. In **Salzburg** a reason for loss of basic care after a negative decision is, when people do not cooperate during the return procedure. In **Vienna** people with negative return decision can stay in the facilities or in their private apartments but have to participate in a of voluntary return interview. It happens that these people are picked up directly from the facilities by the police and taken into removal centres. In **Upper Austria**, persons who receive residence permit called RWR/RWR+ ("*RotWeißRot"*) receive basic care benefits as long as 10 days after the status is being granted. [362]
In 2018, the VwGH has stated that the non-provision of benefits in kind can nevertheless allow for the authorities the possibility to grant cash benefits. This money substitute can also be claimed at a later stage through a formal request. The case concerned an asylum applicant whose application had been admitted by the Land Upper Austria which did not grant him cash benefits. The VwVG considered that, if no accommodation is available, other arrangements should be found to grant the applicant the material benefits he is entitled to.[363] The reason behind this decision is the lack of care that asylum seekers faced back in autumn of 2015, as they did not receive any benefits under the basic federal care and were supported by private initiatives instead. Therefore, it only applies in cases where there is a massive influx of displaced persons, in accordance with Article 5 of Directive 2001/55/EC.

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

361 asylkoordination österreich, Nationwide NGO survey on basic services Dec 21/Jan 22, unpublished
362 asylkoordination österreich, Nationwide NGO survey on basic services Dec 21/Jan 22, unpublished
363 VwGH, Decision Ra 2018/21/0154-8, 20 December 2018

The freedom of movement of asylum seekers may be restricted for reasons of public order, public interest, or for the swift processing of the asylum application. Applicants coming from a Safe Country of Origin or those who received a return decision before making are an application may be affected. The necessity of assigned residence must be demonstrated on a case-by-case basis.[364] However, this restriction on freedom of movement is not a formal decision that can be appealed *per se*; it can only be challenged together with the asylum decision.

In 2020, the freedom of movement was restricted in 1,154 cases and a procedural order following Art 15b AslyG was issued. There is no available information on the reasons for the restriction.[365]

4.1. Restricted movement during the admissibility procedure

After requesting asylum at the police, asylum seekers are apprehended for up to 48 hours, until the BFA branch office decides whether the asylum seeker should be transferred or advised to go to an initial reception centre or to a distribution centre.[366] During the admissibility procedure, they receive a green card also known as procedure card, which indicates the tolerated stay in the district of the reception centre of the state. Asylum seekers are allowed to leave the district for necessary medical treatment or to appear in court. Dublin cases that are usually cared for in the initial reception centres of the Ministry of Interior may also be transferred to reception centres of the federal provinces.[367] Violations of this restriction of movement may be punished with fines varying between €100 and €1,000 or with detention of up to 2 weeks if payment of the fine cannot be enforced. These restrictions of movement limit the access of asylum seekers to family members, friends and lawyers.

Asylum seekers whose application is admitted to the regular procedure receive the white card, which is valid until the final decision on the application and allows free movement in the entire territory of Austria.

In the airport procedure, asylum seekers are not allowed to leave the designated area in the airport facilities onto Austrian territory. However, they remain free to leave by plane to another country.

4.2. Dispersal across federal provinces

Every federal province has to offer reception places according to its population. Asylum seekers are spread throughout the country to free reception places and according to their needs, for instance in places for unaccompanied minor asylum seekers, single women or handicapped persons. Governments of federal provinces have claimed that information about necessary medical treatment or handicap are not always communicated, with the result that asylum seekers are transferred to inadequate places. However, asylum seekers have no possibility to choose the place where they will be accommodated according to the dispersal mechanism, although family ties are usually taken into consideration. Moreover, it is not possible to appeal the dispersal decision because it is an informal decision taken between the Ministry of Interior and the respective federal province. Upon taking office, there have been some positive signals from the CEO of the BBU GmbH to improve the clearing phase at the start of the reception process with the aim to detect vulnerabilities and to better communicate with the authorities providing basic care in the provinces. These ongoing talks have not led to any results in practice yet, however.

The distribution of Basic Care recipients – including some beneficiaries of protection – across the provinces as of 31 December 2021was as follows:

364 Article 15b AsylG, in force since 1 November 2017.
365 Ministry of Interior, *Answer to parliamentary request 5038/AB, XXVII. GP*, 17 March 2021.
366 Article 43(1) BFA-VG.
367 Article 2(1)(2) GVG-B.

Dispersal of recipients of Basic Care: 31 December 2021			
Federal province	Quota	Total number of recipients	Actual share
Vienna	21.24%	10,447	42.77%
Upper Austria	16.71%	3,296	13.15%
Lower Austria	19.01%	2,620	9.9%
Styria	14.12%	3,029	10.16%
Tyrol	8.5%	1,988	6.9%
Carinthia	6.4%	1,348	5.21%
Salzburg	6.26%	1,353	5%
Vorarlberg	4.43%	1,017	3.92%
Burgenland	3.33%	833	2.3%
Total Provinces	**100%**	**25,931**	**100%**
Total federal reception facilities (EAST)	-	4,432	**-**
Total	**-**	**30,363**	**-**

Source: Basic care information system, unpublished. Figures on quota and actual share refer to the total number of recipients of basic care.

While in 2017, 32 reception centres were in operation, the Ministry of Interior has announced in 2019 that 7 out of the 20 remaining federal centres will be closed until the end of 2019.[368] In July 2019, only 11 federal centres were in use, with a total capacity of 2,203. Only 868 persons were accommodated in these centres as of July 2019.[369] At the start of the COVID-19 pandemic only 10 centres were operating. Reluctantly, the Ministry of Interior had to open two facilities in **Villach** and **Vienna**. Due to the reluctance of the provinces to take over persons already admitted to the procedure to the province basic care system, the BBU GmbH had to reopen all possible accommodations to meet the needs and the legal obligations concerning the Covid-19-pandemic. Thus, at the end of 2021, there were 24 federal facilities (2020: 13) accommodating a total of 4,239 (2020: 1,750) persons, while the maximum capacity reached 6,898..[370]

The province of **Vienna** offers many more reception places than those foreseen by the quota system (see Types of Accommodation), while all other provinces have failed to provide enough places for several years. This discrepancy leads to negotiations between the responsible departments of the federal provinces, while the malfunctioning of the dispersal system overall raises public reactions. During the first months of operation of the BBU GmbH as federal basic care provider, the communication between the actors have improved. However, following increasing numbers of applicants, this positive trend stopped and resulted in overcrowded federal reception centres. In October 2022, the CEO of BBU GmbH resigned "at his own will" even though his 5-year contract had been renewed in May 2021.[371] He withdrew his resignation in December 2021. Following unconfirmed reports, the resignation had its reason in the interference of the Minister of Interior in the area of Basic Care, which hindered adequate management.[372]

368 Der Standard, Jede dritte Asyl-Erstbetreuungsstelle soll geschlossen werden, 1 October 2018, available in German at: https://bit.ly/2S1ZrEI.
369 Ministry of Interior, Answer to parliamentary request, 3837/AB, XXVI. GP, 16 August 2019, available in German at: https://bit.ly/2PH2WCd.
370 Ministry of Interior, *Answer to parliamentary request, 9123/AB, XXVII. GP*, 14 March 2022, available in German at: https://bit.ly/3vqktTz.
371 Minstry of Interior, "Geschäftsführer Achrainer zieht sich aus der Bundesagentur für Betreuungs- und Unterstützungsleistungen GmbH (BBU) zurück", 11 October 2021, available in German at: https://bit.ly/3KClOg0.
372 Ministry of Interior, "BBU: Geschäftsführer Andreas Achrainer bleibt weiterhin an Bord", 22 December 2021, available in German at: https://bit.ly/3CBcKVH.

Following the rising number of asylum applications in 2021,the BBU agency faced difficulties in dealing with covid 19 related challenges (such as the need for more room due to distancing rules) the lack of capacity in reception centres. The state-run agency had to reopen facilities which were shut down in 2017/18 and additionally opened new facilities, including due to the significant increase in the number of unaccompanied minors who were mostly accommodated in the reception centre of Traiskirchen[373]

NGOs in the federal provinces reported several communication problems with the Basic Care Department of BBU GmbH. This concerned issues relating to the transition of people from reception centres to basic care facilities in the provinces, as there was a general lack of information about people with special needs and/or mental health issues. There was thus no transfer to specialised and dedicated facilities and, instead, vulnerable groups were transferred to regular facilities which overburdened the relevant staff increased logistical difficulties due to a lack of adequate equipment and infrastructure, incl. inadequate transport means (often occurring in the middle of the night and thus with no available staff upon arrival). In some cases, individuals were allocated to federal states without proper identification (i.e. the white card granted to asylum seekers upon registration). As regards the clothing allowance (€ 150,-/per person and year); most of it was spent quickly by the BBU agency, which hindered asylum seekers from receiving additional support from NGOs and led to frustration as they did not understand the functioning of the system. NGOs tried to secure clothes by way of donations but the resources remain limited and the agency is not officially allowed to accept donations. The specific issue of clothing was flagged to the agency which is trying to find a solution.

Asylum seekers who are allocated to a province after admission to the asylum procedure are usually not transferred to other federal provinces, even if they wish to do so. Within the same province, asylum seekers may be placed in other reception centres for different reasons, for instance if another reception centre is better equipped to address the needs of the asylum seeker.

Many people who have lost their basic care benefits move on to Vienna with the hope to access basic care in the capital. A major point of contact for them is the Caritas asylum center, which encourages readmissions in federal states and tries to ensure at least access to health insurance. In practice, only two reasons are accepted for a change of federal state: either because there are family members in another federal state or due to medical reasons. In addition, LGBTIQ persons are usually allowed to be transferred to Vienna, where the NGO Queer Base in Vienna povides support.

People who move on their own to another federal province without asking for permission are likely to lose their basic care benefits in their former federal province. In some federal states like Lower Austria and Salzburg people get ‘Quartier unstet’ Status in the GVS BIS System, which means that they are still health insured but have no access to accommodation or other benefits. As a result, it is hard to receive basic care again and applicants have to prove that they still need assistance. This also applies to LGBTIQ cases or people with relevant health or mental issues.[374]

Often asylum seekers do not have enough money for travelling, as the monthly allowance for those living in reception centres is only €40. If they stay away from their designated place (reception facility) without permission for more than three days, Basic Care will be withdrawn (see Reduction or Withdrawal of Material Reception Conditions). As discussed above, it is almost impossible to receive Basic Care in a province other than the designated province.

[373] Die Presse, "Wieder mehr Flüchtlinge in Europa", 26 February 2020, available in German at: https://bit.ly/34FpAFV; Wiener Zeitung, "Der fast unbemerkte Crash im Asylwesen", 18 October 2021, available in German at: https://bit.ly/3HJWFie.

[374] Nationwide NGO survey on basic services Dec 21/Jan 22 asylkoordination österreich, unpublished

If grounds for detention of asylum seekers arise, an alternative to detention should be prioritised if there is no risk of absconding. Due to reporting duties – often imposed every day – and exclusion from pocket money allowance, however, asylum seekers subjected to alternatives to detention are in practice not able to make use of their freedom of movement.

B. Housing

1. Types of accommodation

Indicators: Types of Accommodation	
1. Number of reception centres (federal):	24
2. Total number of places in initial reception centres (EAST):	2,048
3. Total number of places in federal accommodation centres:	6,898
4. Total number of persons in Basic Care (Federal and Provinces):	30,363
5. Total number of places in private accommodation:	Not available
6. Type of accommodation most frequently used in a regular procedure: ☒ Reception centre ☒ Hotel or hostel ☒ Emergency shelter ☒ Private housing ☐ Other	
7. Type of accommodation most frequently used in an accelerated procedure: ☒ Reception centre ☐ Hotel or hostel ☐ Emergency shelter ☐ Private housing ☐ Other	

With exception of the total number of places in private accommodation, all figures above refer strictly to the federal centres, as it is not possible to provide figures on the number of apartments and houses used at provincial level to accommodate asylum seekers. Asylum seekers are accommodated in facilities of different size and capacity. A quota system requires the federal provinces to provide places according to their population.[375]

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).

During the first year of activity of the BBU GmbH in 2021, the main challenge was to provide shelter as the agency was confronted to the sharp increase of applications and had to integrate staff from different companies and NGOs at operational level. Moreover, given that the reimbursement of the costs for accommodation in the provinces has not been adjusted for years and following the decrease of applications in 2019 and 2020, many NGO-led accommodation centres in the provinces have closed. As a result, many applicants already admitted to the asylum procedure had to be accommodated in federal reception centres pending a transfer. In 2021, the BBU GmbH reopened all available centres across the territory and reached its capacity limits at the end of the year. This is supposedly also one of the reasons why the Director of the BBU GmbH ("*Geschäftsführer*"), whose contract was prolonged in May 2021,

[375] Article 1(4) GVV-Art.15a.

resigned in October 2021. He withdrew his resignation in December 2021, but the reasons were not officially communicated.[376]

As of February 2022, the capacity of BBU GmbH for providing accommodation to applicants during the admissibility procedure is still at the limit due to massive problems in transfers. Interestingly, the number of individuals receiving basic care has not increased significantly since 2019 while the number of applications rose significantly in 2021. This means that a great share of the persons applying for asylum moved onward to other countries with the result of their asylum procedures being discontinued in Austria. Reports communicated to asylkoordination österreich indicate that applicants moved to other countries because Austria was not their final destination but also because of the difficult accommodation situation in overcrowded reception centres.

1.1. Federal reception capacity

The initial reception centre serves as centre for asylum seekers with an admissibility procedure likely to be rejected. The 2 initial reception centres in **Traiskirchen** and in **Thalham** are therefore reserved for asylum seekers in the admissibility procedure and for unaccompanied asylum-seeking children as long as they are not transferred to reception facilities of the federal provinces. Instead of streaming all asylum seekers to the initial reception centre, they should have their first accommodation in the so-called distribution centres (VQ), which should be set up in 7 federal provinces. Traiskirchen serves as a VQ too. The federal centre in **Fieberbrunn** is used for rejected asylum seekers, and another former federal centre at the **Vienna airport** serves as a departure centre. NGOs reported that the federal centre in Graz-Andritzhosts rejected asylum-seekers too. The Ministry of Interior announced in October 2018 the closure of 7 of the remaining 20 reception facilities, including the special care centre in **Upper Austria** and the distribution center in **Styria-Graz Puntigam**. Due to the low number of asylum seekers two more federal centres have been closed in 2019. As of July 2019, there were thus 11 federal reception centres with a total capacity of 2,203 places, out of which only 868 were in use in July 2019. The average cost per person accommodated in a federal centre is €183 per day.[377] As of December 2021, the maximum capacity in federal facilities was 6,898. [378]

Newly arrived asylum seekers stay only 4 to 5 days in the distribution centres according to information from the Centre in **Ossiach**. From January to May 2018, asylum seekers spent an average of 19 days in the course of the basic admission procedure in federal care facilities.[379] The number of asylum seekers in the initial reception centre of **Traiskirchen,** which reportedly has inhuman living conditions,[380] has also sharply decreased, from 5,000 asylum seekers to about 500 at the end of 2018.[381] At the end of 2020, around 1,200 persons, among which around 1,000 were asylum seekers, were accommodated in Traiskirchen.[382]

As already mentioned, as of December 2020, there were 13 federal centres hosting a total of 1,750 persons.[383] The law allows the Ministry of Interior to open reception facilities in federal provinces that do not fulfil the reception quota. Such centres may be opened even when the facility is not adapted to host

376 Standard, „Andreas Achrainer widerruft Kündigung als Leiter der Asylagentur“, 22 December 2021, available in German at: https://bit.ly/3rOo11k.

377 Ministry of Interior, Answer to parliamentary request, 3837/AB, XXVI. GP, 16 August 2019, available in German at: https://bit.ly/2PH2WCd.

378 Ministry of Interior, *Answer to parliamentary request, 9123/AB, XXVII. GP*, 14 March 2022, available in German at: https://bit.ly/3vqktTz.

379 Ibid.

380 Tages-Anzeiger, 'Endstation Traiskirchen', 30 June 2015, available in German at: http://bit.ly/1Zdotj3.

381 NÖN.at, Flüchtlingsbewegung als Herkulesaufgabe, 20 November 2018; available in German at: https://bit.ly/2GvcayP.

382 Ministry of Interior, Care information system, unpublished.

383 Ministry of Interior, *Answer to parliamentary request 5038/AB, XXVII. GP*, 17 March 2021.

asylum seekers, provided that certain special safeguards are ensured such as fire protection and related building regulations.[384] Since 2018, however, such centres were not needed. During the first lockdown, the provinces protested against the opening of federal Centres in Leoben (**Styria**). Due to the protests, the Ministry of Interior did not open any new centres in provinces during the first lockdown but reported challenges in accommodating asylum applicants, since COVID-19 prevention measures require lower occupancy and separate accommodation. The COVID-19 measures upheld in 2021 resulted in lower capacity due to distancing rules established in the centres. All newly arriving persons were tested twice and isolated until the test result was made available. As of 25 September, 118 asylum applicants were tested positive for COVID-19. A positive test result implies that many parts of the entire facility cannot be used for the duration of the quarantine. The Ministry of Interior opened new reception facilities in Villach (**Carinthia**) in May 2020, as well as in **Vienna**.[385]

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.

1.2. Reception capacity at provincial level

In practice, most federal provinces do not provide the number of places required under their quota, which is partly due to the fact that provinces such as **Vienna** exceed their quota (almost double of the quota agreed). At the end of 2020, the entire Austrian reception system hosted a total of 26,659 persons[386] (including beneficiaries of international protection and rejected asylum applicants), out of which 14,214 (2019: 18,313) were asylum applicants. The distribution across the federal provinces is detailed in Freedom of Movement. While **Vienna** continues to exceed its relative reception share, other federal provinces 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.

NGOs or owners of hostels and inns, who run reception centres under the responsibility of the federal provinces, have contracts with the governmental department of the respective federal provinces. While in some federal provinces almost all asylum seekers are placed in reception centres (e.g. 90% of asylum seekers in **Styria** and 70% in **Burgenland**), private accommodation is more often used in others states such as **Vienna**, where 70% of applicants lived in private accommodation.[387]

Federal state	Private accomodation	Basic care facility
Vienna	70%	30%
Burgenland	30%	70%
Lower Austria	50%	50%
Upper Austria	30%	70%
Styria	10%	90%
Carinthia	1%	99%
Tyrol	12%	88%
Salzburg	15%	85%
Vorarlberg	5%	95%

Own illustration based on nationwide NGO survey on basic services Dec 21/Jan 22 by asylkoordination österreich

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

385 Fundamental Rights Agency, *Migration: Key fundamental rights concerns - Quarterly bulletin* 4, 2020, https://bit.ly/3cMWnZH.

386 Ministry of Interior, answer to parliamentary request 5038/AB, XXVII. GP, 17 March 2021

387 Information provided by the federal provinces.

2. Conditions in reception facilities

Indicators: Conditions in Reception Facilities

1. Are there instances of asylum seekers not having access to reception accommodation because of a shortage of places? ☐ Yes ☒ No
2. What is the average length of stay of asylum seekers in the reception centres? 80 days[388]
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 a company, while remaining the responsible authority. ORS, a company running accommodation centres for asylum seekers in Switzerland, provides Basic Care in the reception centres under the responsibility of the Ministry. This company was criticised because it generated considerable profits through the care of needy asylum seekers. As already mentioned, a new Federal Agency (the BBU) took over the responsibility for reception in December 2020.

Conditions in the reception centres of the federal provinces vary, but they have constantly improved along with the decrease of persons staying in the centres Moreover, a decrease of reception capacity at federal state level is expected in the future, given the upcoming establishment of the Federal Agency (BBU-GmbH) as well as the possibility for the BFA to decide on the merits during admissibility procedures, thus allowing the authorities to keep applicants in the federal basic care. During the Covid-19 pandemic, the Ministry of Interior hesitated to re-open facilities that used to function as reception centres during 2015-2016 due to local protests. This led to high numbers of persons accommodated in the EAST Ost in **Traiskirchen** which increased the infection risk inside the facility. Due to poor COVID-19 management, the whole centre was put under quarantine in May 2020 with important restrictions for residents.[389] This led to the fact that over 600 inhabitants of the camp were not allowed to leave the centre for more than one month. In two cases,[390] the decree restricting the freedom of movement of asylum seekers was challenged and is currently under review in front of the Constitutional Court.[391]

Systematic research on the standards in the basic care system of the federal provinces has not been carried out in recent years. At the end of 2021, however, asylkoordination österreich carried out a nationwide survey where the concerned NGOs working in basic care, were interviewed. The findings of this research have been incorporated throughout this Chapter. As regards the minimum standard, the Regional Ministers on Integration agreed on a common recommendation on a minimum standard of $8m^2$ for each person and $4m^2$ for each additional person in September 2014.[392] According to the findings of the survey, the minimum standard is met in all states. In **Lower Austria**, a better standard is being applied ($9m^2+5m^2+6m^2$). However, due to the increase in asylum applications in 2021, the authority reduced the standard within the framework of the 'Emergency Ordinance' to $8m^2+4m^2+4m^2$, which in reality means that more people can be accommodated in one room. The minimum standards also define a maximum occupancy of 5 persons per room. This is complied with in most places, and some NGOs try to advocate for a 2-bed occupancy where possible. In **Burgenland**, **Styria** and **Tyrol**, single adults are also partly

388 80 days is the average duration a person stays in federal basic care. There is no separate data provided for asylum seekers only. Ministry of Interior, answer to parliamentary request 9123/AB XXVII. GP, 14 March 2022, available in German at: https://bit.ly/3vwJHiW:.

389 Der Standard, „*Zweiter Corona-Lockdown im Asylzentrum Traiskirchen*“, 25 May 2020, available in German at: https://bit.ly/38YQgjR.

390 Der Standard, ‚*Geflüchtete wehren sich gegen Ausgangsverbot in Traiskirchen*“, 30 April 2020, available in German at: https://bit.ly/2QoiPAT.

391 Österreichischer Verfassungsgerichtshof, ‚*Prüfbeschluss zu E3811/2020-10*‘, available in German at: https://bit.ly/3vJMYdU.

392 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.

placed in 6-8 bed rooms. During regular inspections by the authorities in Burgenland, other structural deficiencies have been reported.[393]

Depending on the infrastructure, asylum seekers may live in an apartment and have their own kitchen and sanitary facilities, which is sometimes the case in former guesthouses. Usually single persons share the room with other people. Housing in flats offers more privacy and the possibility of retreat and enables more independent living. This form of housing is also particularly suitable for vulnerable groups such as victims of violence or LGBTIQ people.

Basic care facilities in Austria vary widely in terms of size, equipment and infrastructure. There are facilities with up to 260 places (**Tyrol**, **Vienna**) but also facilities with 20, 50, 80, 90, 120-150 places. In addition, asylum seekers are also accommodated in private flats rented by NGOs, coordinated on a mobile basis via care teams. This form of housing is also 'called mobile assisted living'. In the provinces as well as in **Vienna**, some asylum seekers are also accommodated in flats. The city of Vienna has announced that it would like to move away from large-scale reception models and invest in smaller accommodation units or flats. In the federal states, there are mainly smaller facilities with capacity ranging from 5 to 40 places. Larger facilities are rather rare and usually located in the cities or near a city (e.g. in Linz in Upper Austria, Eisenstadt in Burgenland, Innsbruck in Tyrol). In Vienna, most facilities are supervised 24h due to a higher amount of care capacity and accommodation of person with increased need of care.

Organisations providing care for asylum seekers receive a fixed sum per person and per day, which is aimed to cover all relevant costs. The last increase in the daily rates took place in 2016. This means that although staffing costs, rent and operating and material costs increase annually, refugee aid organisations always have to cope with the same budget. There are no other compensation from the state that could compensate for these costs. Yet, raising the daily rates and an annual valorisation are essential to ensure quality care and services for asylum seekers. NGOs argue that the amount of the daily rates must be oriented towards the needs of asylum seekers, so that care can take place "with respect for human dignity", as stated in the minimum standards of basic care.[394]

In July 2021, asylkoordination and several NGOs working in the field of refugee care jointly sent a letter to the Ministry of the Interior pointing to the insufficient funding and the fact that this financial burden lies entirely with the NGOs, which is no longer sustainable. The letter was not published but urged the authorities to increase daily rates and an annual valorisation. The increasing number of asylum applications in 2021 has led to bottlenecks in the distribution of asylum seekers among the provinces, as there is not enough reception capacity. In this context, the issue of the lack of a valorisation of the daily rates for the care and counselling of refugees was raised again. The federal provinces demanded an increase in the daily rates before new places are created, as well as better planning, financing and the appropriate creation of precautionary capacities. In particular, the standards and daily rates for the care of unaccompanied children should be increased. At peak times, around 800 unaccompanied minors were in the care centres of the federal government. On 2 December 2021, a first meeting took place between the federal government and the federal states (without the participation of NGOs) to discuss the increase in daily rates, standards in care, and the distribution of asylum seekers. The outcome of these discussions remain to be seen in practice.[395]

In most reception centres, asylum seekers are responsible for keeping their rooms and the common areas clean, and in some cases this can be remunerated (from €2,5 to €5 per hour – this refers to the so-called

393 Nationwide NGO survey on basic services Dec 21/Jan 22 asylkoordination österreich, unpublished
394 Asylkoordination, "Menschenwürdiges Wohnen", asyl aktuell 2/2021, available in German at: https://bit.ly/3HRpDNb.
395 Standard, "Kostenhöchstsätze für Unterbringung von Asylwerbern werden valorisiert, 2 December 2021, available in German at: https://bit.ly/3LwPbS5

"remuneration for auxiliary and cleaning activities in accommodation facilities"; i.e. "Remu-work" in short). Regarding the allowed free amount for income, the same guidelines apply in almost all federal states. Remu-work has a monthly allowance of € 110,- in all federal states except Vienna, Burgenland and Tyrol. In Vienna and Burgenland there is € 200,- per person for Remu-work and in Tyrol € 240,-. In Tyrol and Burgenland there is an additional allowance of € 80,- for each family member, in Vienna this does not apply for Remu-work , but only for regular work[396].

There is a tendency of allowing asylum seekers to cook themselves as it contributes to their well-being and reduces tensions. In the reception centres of the state, cooking or taking food into the living room or bedroom is not allowed.

In **Vienna**, **Tyrol** and **Upper Austria**, there are only facilities that allow self-sufficiency. All other provinces have facilities both with self-sufficiency and full-sufficiency. In **Styria,** as explained above, all facilities run by Caritas Styria have partial self-sufficiency, which means that part of the food is provided and part is paid out. People receive € 110 per month and pocket money. All other facilities in Styria are self-catering facilities where people receive €6 food allowance per day and pocket money In **Tyrol** adult asylum seekers are given € 200,- per month to organise meals by themselves. In **Vienna**, the amount of the food allowance varies between € 5.50 and € 6 at the different NGOs, which is due to different organisational structures. Some organisations are tax-exempt, for example Caritas, and others are not. Depending on this, the daily rate provided can be used gross for net or 10% VAT must be deducted.[397]

Federal province	Self sufficiency	Full sufficiency	Partial self sufficiency	Pocketmoney	Food allowance per day (month)
Vienna	x	-	-	yes	€ 5.50 - € 6.00
Burgenland	x	x	-	Only with full supply	€ 6,-
Lower Austria	x	x	-	Only with full suppy	€ 6,-
Upper Austria	x	-	-	Only with full supply	€ 6,- (children € 132, per month)
Styria**	x	x	x	yes	€ 6,-
Carinthia	x	x		only with full supply	€ 6,-
Tyrol	x	-	-	yes	€ 200,-/month/adult € 100,-/month/ u 18
Salzburg	x	x	-	yes	€ 6.50
Vorarlberg	x	x	-	yes	€ 215,-/month

Source: Own illustration based on nationwide NGO survey on basic services Dec 21/Jan 22 by asylkoordination österreich

A monthly amount of €10 is foreseen in the Basic Care agreement for leisure activities, events, celebrations and community activities. **Vienna** is the only province that pays €10 leisure moneys directly to residents. The requirement for the payment of leisure money is the presentation of a movie ticket, theater, museum and also a part of the monthly ticket for public transport can be paid through the leisure money. In **Tyrol** there is a co-financing with the province of Tyrol for German courses where the budget

396 asylkoordination österreich, Nationwide NGO survey on basic services, Dec 21/Jan 22, unpublished
397 asylkoordination österreich, Nationwide NGO survey on basic services, Dec 21/Jan 22, unpublished

of the leisure money is used with additional financing from the province for German courses. In all other provinces German courses, material costs for volunteers who hold German courses or community activities such as summer program for children (e.g. Salzburg) are also financed through the leisure money. However, this is not often used in practice mainly due to administrative obstacles The processing of the leisure money runs either directly through the accommodation providers or through the organisation that offers counselling in the facilities in the federal states. Participating NGOs report that, especially since Covid 19, the possibility of requesting leisure allowances has been made more difficult as the changing measures led to an increase of demands and of the bureaucracy.[398]

Hotels and inns usually do not have staff trained to adequately welcome asylum seekers. These reception centres are, however, visited by social workers (e.g. NGO staff) on a regular basis (every week or every second week). Reception centres of NGOs have offices in the centres. The law foresees that there should be 1 social worker for 140 clients, which is not sufficient, especially when social workers have to travel to facilities located in remote areas or need the assistance of an interpreter. NGOs work with trained staff. Some landlords have been hosting asylum seekers for many years, but as opposed to NGO staff they have not received any specific training. In **Vienna,** the system is different: in nearly all basic care facilities is care staff available 24/7 who are responsible for counselling, information and basic care. In these care facilities the care ratio is 1:55, this is mostly the same in all federal states in basic care facilities, except Tyrol where it is 1:70. In fact, most NGOs try to have a better care key than 1:55, E.g. in **Vienna** and **Upper Austria** it differs between 1:38 to 1:55. Care staff is responsible for providing food allowance, pocket money, hygiene material, social counselling and crisis support. In **Vienna**, additional counselling services may be provided by specialised NGOs (e.g. specific counselling for women, men, work, education, health, youth and young adults, housing, LGBTIQ) for people in basic care.[399]

The system of dispersal of asylum seekers to all federal provinces and within the federal provinces to all districts results in reception centres being located in remote areas. One of these centres is located in the mountains of **Tyrol**, as part of a former military camp. It cannot be reached by public transport and a shuttle bus brings the asylum seekers to the next village only twice a week. The walking distance to the next village is about two and a half hour. Access to internet is provided in the centre.[400] The centre was closed by the Tyrolian government but was reopened by the Ministry of Interior to operate as a reception centre for rejected asylum seekers.[401]

In June 2019, several persons accommodated in this federal centre in Tyrol entered in a hunger strike which caused public uproar. The Ministry of Interior subsequently conducted a human rights assessment in cooperation with UNHCR concerning the reception conditions of the centres in **Tyrol** and **Schwechat**, which mainly host rejected asylum seekers who ca not be deported. In these centres, the persons receive regular counselling concerning voluntary return.

Following the assessment, the Ministry of Interior published recommendations and several objectives. This includes no longer accommodating children in these two centres and introducing more frequent shuttle services to the village.[402] The system of isolating rejected asylum seekers in this centre was criticised heavily and had proven to be inefficient as only 18 persons have left the country out of the total of 65 persons accommodated in the first half of 2019.[403] Moreover, it has been reported that the

398 Nationwide NGO survey on basic services Dec 21/Jan 22 asylkoordination österreich, unpublished
399 Fonds Soziales Wien, Information on Counselling organisations for asylum seekers, available in German at: https://bit.ly/3sD4CQ6.
400 Profil, 'Nächtlicher Angriff auf Asylwerber in tiroler Bergen' 30 October 2014, available at: http://bit.ly/1G8a8MZ.
401 Bezirksblätter, 'Heim am Bürglkopf wird zur Rückkehreinrichtung', 24 August 2017, available in German at: http://bit.ly/2H8o5j2.
402 Ministry of Interior, Human rights recommendations, available in German at: https://bit.ly/3cILFCO.
403 Ministry of Interior, Answer to a parliamentary request, 3837/AB XXVI GP, 16 August 2019, available in German at: https://bit.ly/38gMr6r.

recommendations were not strictly applied in practice by the Ministry of Interior, as some children were reportedly still being accommodated in Schwechat. According to officials of the BFA, these recommendations are considered as non-binding.

An important issue that still receives too little attention in the field of accommodation in basic care is the participation of asylum seekers and refugees in reception, for example spokespersons who could represent the others. Diakonie is the first organisation that is currently setting up an internal ombudsman service for residents of the facilities.[404]

C. Employment and education

1. Access to the labour market

Indicators: Access to the Labour Market

1. Does the law allow for access to the labour market for asylum seekers? ☒ Yes ☐ No
   - ❖ If yes, when do asylum seekers have access the labour market? 3 months
2. Does the law allow access to employment only following a labour market test? ☒ Yes ☐ No
3. Does the law only allow asylum seekers to work in specific sectors? ☒ Yes ☐ No
   - ❖ If yes, specify which sectors: Tourism, agriculture, forestry
4. Does the law limit asylum seekers' employment to a maximum working time? ☒ Yes ☐ No
   - ❖ If yes, specify the number of days per year: 180 days
5. Are there restrictions to accessing employment in practice? ☒ Yes ☐ No

The Aliens Employment Act (AuslBG) states that an employer can obtain an employment permit for an asylum seeker 3 months after the asylum application is admitted to the regular procedure, provided that no final decision in the asylum procedure has been taken prior to that date.[405]

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.).[406]

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

404 Nationwide NGO survey on basic services Dec 21/Jan 22 asylkoordination österreich, unpublished
405 Article 4(1) AuslBG.
406 *Ibid*.
407 Article 20(1) and (3) AuslBG.

In addition, a 2004 ordinance introduced further restrictions to the access to the labour market by limiting employment to seasonal work either in tourism, agriculture or forestry.[408] These seasonal jobs are limited by a yearly quota for each federal province and can only be issued for a maximum period of 6 months.

A further problem for asylum seekers working as seasonal workers is the regulation in the Basic Care Acts of the state and the federal provinces that requires a contribution to Basic Care, if asylum seekers have an income. In practice, there is only an allowance of €110 plus € 80,- for each family member, left to asylum seekers in most of the federal provinces, while the rest of the money earned contributes to the cost of reception.[409] If they have been receiving an income for more than 3 months, Basic Care support is no longer provided. If the asylum seeker asks for readmission into Basic Care after they have finished the employment, cash contributions to the provision of Basic Care are demanded. In fact, it is assumed by the authorities that only about €550 (1.5 times the basic provision amount) per month have been spent by the asylum seeker on subsistence and accommodation during the period of employment. Income exceeding this amount is deducted from the allowance received under Basic Care from that time onwards until repaid. As mentioned above, **Tyrol** has an allowance of € 240,- per person, all other federal states € 110,- per person.

Moreover, asylum seekers are not registered at the Public Employment Service as unemployed persons. Therefore they are not entitled to vocational trainings provided or financed by the Public Employment Service. As they are not registered as persons searching for work at the Public Employment Service, access to the labour market largely depends on their own initiative and pro-activity in job hunting. Their lack of resources can also be an additional obstacle in securing in job; e.g. when it comes to travel costs for job interviews.

Until October 2018, asylum seekers below the age of 25 had the right to get a work permit for an apprenticeship in shortage occupations. However, the ministerial decrees of 2012 and 2013 were revoked, and asylum seekers below the age of 25 are not offered this possibility anymore. Those who are still apprentices are allowed to continue working as long as they stay in Austria. In **Upper Austria**, where a particularly large number of young asylum-seekers are apprentices, a broad protest has been formed against this "disintegration policy".

The Federal Administrative Court found that restricting access to the labor market is contrary to Article 15(2) of the recast Reception Conditions Directive and concluded that asylum seekers should have effective access to the labor market.[410] They may also be self-employed under the general conditions as soon as they are registered as asylum seekers.

Since 1 April 2018, asylum seekers admitted to the regular procedure for 3 months or more can also be employed through service vouchers in private households (e.g. for gardening, cleaning or child care etc.). Vouchers can be bought at the post office or online.[411] However, in practice, the necessary registration is complicated and this possibility is not very known nor used. The Ministry of Social Affairs decided in 2018 that asylum seekers have no longer access to vocational training. Since then, the possibility of working through vouchers is one of the only possibilities to work for asylum seekers.

Asylum seekers can carry out non-profit activities and receive an acknowledgment of their contributions. The amount of this remuneration was debated throughout 2018 and 2019. The Ministry of Interior lowered the maximum remuneration to €1,50 by way of decree. This decree was revoked by the interim government in May 2019, thus re-instating the former regulation which foresees that asylum seekers are

408 Ordinance GZ 435.006/6-II/7/2004,11 May 2004.
409 In Tyrol, asylum seekers may earn €240 per month without contribution to the cost of basic care.
410 BVwG, Decision, No W209 2184750-1, 25 June 2018.
411 Dienstleistungsscheckgesetz, 12 February 2018, available at: http://bit.ly/2nSSz0m.

allowed to earn up to €110 per month.[412] These non-profit jobs include administrative and/or office assistance, translation services, support for parks and sports facilities, playgrounds, elderly care, assistance in nursery schools, school attendance services, assistance in animal shelters, or support for minor resettlements in the municipality.[413] Since April 2018, the Minister of Interior has the power to regulate which NGOs will be able to enlist asylum seekers on a voluntary basis for charitable activities and to set the maximum amount for such work.[414] The minimum fee is regulated for each sector e.g. €11.75 an hour for gardening. The monthly income for this kind of employment is limited to €600. In **Vienna** allowance is € 200,- per person and in **Tyrol** € 240,- per person.

On 25 January 2017, the Ministry of Social Affairs submitted a decree to the Labour Market Service (AMS). The Decree clarifies that:[415]

a. Asylum seekers are allowed to complete practical experience and internships within the framework of their training in vocational schools or secondary schools;
b. Adult asylum seekers are also allowed to do unpaid voluntary work for certain companies. An asylum seeker may take 3 months in a one-year period with several companies.

Companies have to register asylum seekers for internships at the AMS no later than 14 days before the start of the internship. Interns are also entitled to reasonable remuneration.[416]

By the end of 2018, 1,249 asylum seekers had a valid work permit, out of which 1,070 were apprentices and, during that same year, 1,615 additional work permit have been issued to asylum seekers, out of which 757 concerned apprentices.[417] 2019 was marked by a drastic decrease in the number of apprentices given that the Ministerial decrees foreseeing the access to vocational training for asylum applicants aged below 25 years old were revoked in 2018. As a result, only 943 work permits have been issued during the year, out of which only 12 were issued to apprentices. In these special cases, the asylum applicants had challenged the decisions in front of the Labour Market Service Agency, arguing that denying access to labour market infringes their rights guaranteed under the Recast Reception Directive. The Constitutional Court announced on 1 March 2021 that it will examine whether the ministerial decrees are infringing the constitutional rights of the asylum seekers.[418] By the end of 2019, only 996 asylum applicants had valid working permits, out of which 741 were apprentices and 110 concerned seasonal work. For most applicants who could still start an apprenticeship the formation ends in 2021. By the end of 2020, 576 applicants had valid working permits, out of which 397 were apprentices. In 2021, the Constitutional Court ruled that the internal decrees denying the access to the labour market for asylum seekers (Barteinstein-Erlass) and access to apprenticeship for asylum seekers (Hartinger-Klein-Erlass) violated the fundamental rights of asylum seekers. As a result, asylum seekers can start apprenticeship if certain conditions are met.

412 Wiener Zeitung, ‚Innenminister Ratz macht Kickls Entscheidung rückgängig‘, 23 May 2019, available in German at: https://bit.ly/2wlXfmw.
413 Ministry of Interior, ‚Sobotka: Leistungskatalog für Hilfstätigkeiten von Asylwerbern erstellt', 28 October 2016, available in German at: http://bit.ly/2kS0dHB.
414 Article 7(3a) GVG-B.
415 Oberösterreichische Nachrichten, 'Asylwerber dürfen nun in Firmen schnuppern', 1 February 2017, available in German at: http://bit.ly/2k2eEtz.
416 Ministry of Labour, *Anzeigebestätigungen gem. § 3 Abs. 5 AuslBG für Ferial- und Berufspraktika und Volontariate von AsylwerberInnen*, 25 January 2017, available in German at: http://bit.ly/2oTXTjU.
417 Information provided by the Labour Market Service (AMS) on February 2019.
418 Constitutional Court, *Prüfbeschluss E2420/2020-11*, 1 March 2021, available in German at: https://bit.ly/38Xopkh.

2. Access to education

Indicators: Access to Education	
1. Does the law provide for access to education for asylum-seeking children?	☒ Yes ☐ No
2. Are children able to access education in practice?	☒ Yes ☐ No

School attendance is mandatory for all children living permanently in Austria until they have finished 9 classes, which are usually completed at the age of 15. Asylum seeking children attend primary and secondary school after their asylum application has been admitted to the regular procedure. As long as they reside in the initial reception centre of the state, school attendance in public schools is not provided, however. Preparatory classes are usually set up where many children have a poor knowledge of the German language. Schools often register pupils without sufficient knowledge of the German language as extraordinary pupils for a maximum period of 12 months.

Access to education for asylum seekers older than 15 may become difficult, however, as schooling is not compulsory after the age of 15 for asylum seekers. Moreover, children who did not attend the mandatory school years in Austria have difficulties in continuing their education. For those unaccompanied children, who have not successfully finished the last mandatory school year, special courses are available free of charge. For children accompanied by their family, this possibility is often not available for free.

The Aliens Employment Act restricts access to vocational training, because the necessary work permits can only be issued for seasonal work. In July 2012, however, exceptions were introduced for asylum seeking children up to the age of 18. A decree of the Ministry of Social Affairs allowed for children to obtain a work permit as apprentices in professions where there is a shortage of workers.[419] 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.[420] However, in 2018, the possibility for asylum seekers to complete an apprenticeship in a profession with a shortage of apprentices has been deleted.[421]

According to a law that entered into force on 1 August 2017, young people under the age of 18 who have completed the 9-year schooling and who are permanent residents in Austria are obliged to pursue education or training.[422] However, this law is not applied to asylum seekers, despite criticism from NGOs and the Chamber of Employment for failing to address a problematic aspect of integration and education policy.[423] In October 2019, the Federal Youth Association (*Bundesjugendvertretung*) called for the inclusion of underaged asylum seekers as target group of the law.[424] Nevertheless, they can benefit from a wide range of language and literacy courses. In **Vienna**, the educational hub arranges course places for literacy courses, German courses, and basic education. There are also special courses available for women and mothers. At a few high schools transitional courses are organised in order to prepare for regular classes. Free language courses are further offered in refugee homes and also by NGOs. However, these courses are not always sufficient in terms of time and quality. Language courses are only accessible to asylum seekers when the government has sufficient financial resources.

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

[420] AMS, *Beschäftigungsmöglichkeiten für Asylwerberinnen und Asylwerber*, November 2015, available in German at: http://bit.ly/1msi8SL.

[421] Salzburger Nachrichten, Ende der Lehre für Asylbewerber fix - Betroffene dürfen begonnene Lehre abschließen, 27 August 2018; available in German at: https://bit.ly/2TOA3Ev.

[422] Article 3, Ausbildungspflichtgesetz (ApflG), BGBl. I Nr 120/2016, available at: http://bit.ly/2lkgXsh.

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

[424] APA-OTS, 'Bundesjugendvertretung: Ausbildungspflicht für alle öffnen!',28 October 2019, available in German at: https://bit.ly/2vOy2RB.

Due to the Covid-19 pandemic, schools were closed for long time periods in 2020. Home schooling was generally organised in a rather chaotic way (especially during the first months) and NGOs reported that children asylum seekers had problems having access to home-schooling due to the lack of technical equipment. No considerable effort of the Ministry of Integration was conducted to address these issues. NGOs tried to provided laptops, tablets and technical staff which is needed for home-schooling, as there was no support from the government

D. Health care

Indicators: Health Care

1. Is access to emergency healthcare for asylum seekers guaranteed in national legislation?
   ☒ Yes ☐ No
2. Do asylum seekers have adequate access to health care in practice?
   ☐ Yes ☒ Limited ☐ No
3. Is specialised treatment for victims of torture or traumatised asylum seekers available in practice? ☐ Yes ☒ Limited ☐ No
4. If material conditions are reduced or withdrawn, are asylum seekers still given access to health care? ☐ Yes ☒ Limited ☐ No

The initial medical examination of asylum seekers after their initial admission to a reception centre (EAST or VQ) is usually conducted within 24 hours. A general examination is conducted through a physical examination including vital signs, skin lesion, injuries, including Tuberculosis (TBC) X-ray and questions on their state of health by means of a standardised medical history. If, within the scope of the medical examination, circumstances indicate that further investigations are required, asylum seekers are transferred to specialist doctors or a hospital.[425]

Every asylum seeker who receives Basic Care has health insurance. Treatment that is not covered by health insurance may be paid, upon request, by the federal provinces' departments for Basic Care or the Ministry of Interior. If Basic Care is withdrawn, asylum seekers are still entitled to emergency care and essential treatment.[426]

In practice, this provision is not always easy to apply, however. If an asylum seeker has lost basic care due to violent behaviour or absence from the EAST for more than three days, he or he will not receive medical assistance, because it is assumed that they have had the opportunity to visit the medical station in the EAST. However, as those asylum seekers are no longer registered in the EAST, they will not be allowed to enter and receive medical treatment there. Without health insurance or access to the medical station of the EAST, asylum seekers may face severe difficulties in receiving necessary medical treatment. Some of them come to the NGO-run health project AMBER MED with doctors providing treatment on a voluntary basis.[427]

In some federal provinces such as **Vienna**, asylum seekers receive an insurance card in the same way as other insured persons and can thus access health care with their insurance contracts without complications. In all other provinces, asylum seekers do not receive an ecard, instead of the ecard they receive a replacement document (c-card *Ersatzbeleg*), except **Tyrol** where people in basic care have their insurance number written on the back side of their white ID card, which is working well when going to a doctor's office. Caritas Salzburg reports that it is also working without replacement document, and

425 Ministry of Interior, Reply to parliamentary question 8774/J (XXV.GP), 17 May 2016, available in German at: http://bit.ly/2lq2GHj.
426 Article 2(4) GVG-B.
427 See the official website AmberMed available in German at: http://www.amber-med.at/.

doctor's appointments could also be made this way because of the plug-in card system, it is only necessary to tell the insurance number.[428].

After the asylum seeker has submitted the asylum application, he or she must undergo a mandatory medical examination, including a tuberculosis examination. The Ministry of the Interior has commissioned the BBU GmbH to carry out the medical examination, which is part of the admission procedure. The company has contracts with general practitioners and nurses to provide health care in the federal reception centres.

Asylum seekers are obliged to submit medical findings and expert opinions, if those help to assess the presence of a mental disorder or other special needs (§ 2 Abs. 1 GVG-B).[429]

Since September 2018, hospitals have the obligation to inform the BFA of the upcoming release of a foreigner against whom a deportation procedure is pending. This is not mandatory but happens upon requests of the BFA. However, once such a request has been issued, hospitals are obliged to keep the BFA updated of relevant developments (e.g. if there a change in the release date for example). The police may further also be informed on the matter by the BFA upon explicit request. [430]

The Austrian Integration Fonds (*Integrationsfonds*) took some time before providing information on the Covid-19-pandemic to refugees and asylum seekers. In April 2020, the Integrationsfonds sent short messages via mobile phones to inform refugees and asylum seekers about the Corona pandemic and the legal situation. Critics were raised as the information was at times incorrect and incomplete; e.g. he Integrationsfonds did not inform the concerned persons about their right to go for a walk during the lockdown.[431] It took the Integrationsfonds up until January 2021 to establish Online Counselling for persons with low German skills. Through this counselling service, the Integrationsfonds aims to inform interested persons about the possibility to get tested and/or vaccinated.[432] In the Austrian vaccination strategy, asylum seekers accommodated in larger facilities are categorised as Priority group number 3 together with person over 70 years old.

In **Vienna**, in 2021, there were regular translations about information related to COVID, but it still took some time for this to work in a timely manner. The possibility to call and ask questions into the national language was also provided by the Magistrate's department 17 on integration and diversity.[433] Despite these efforts, the written information material about COVID-19 regulations and access to vaccination was not sufficient to reach all people in basic care, which is partly due to the fact that not all people are literate or that written translations were not available in all relevant first languages. There is also the possibility that infected persons are brought into quarantine quarters, as well as regular screenings (once or twice per month) in the facilities themselves, especially if there are positive cases in a facility. In Vienna there is 'Alles Gurgelt'- PCR tests that can be done independently at home, where asylum seekers also have access.[434] In **Burgenland**, for example, NGOs would like to see more COVID-19 screenings in the facilities, not only on an occasion-related basis.

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

429 Article 15 (1)3 Asylum Law.

430 § 46 (7) Aliens police Law 2005.

431 Der Standard, „Integrationsfonds informierte Migranten unvollständig über Corona-Maßnahmen", 16 April 2020, available in German at: https://bit.ly/3f3TPJg.

432 Integrationsfonds, "Informationen zu Impfungen und Testungen: mehrmals täglich COVID-19-Onlineberatungen für Migrant/innen und Flüchtlinge", 14 January 2021, available in German at: https://bit.ly/3ttXRii.

433 City Council of Vienna, Multilingual Information channel on Covid-19, available in German at: https://bit.ly/3oLG3iJ.

434 Corona Test App „alles gurgelt", available in German at: https://bit.ly/3Lx6h2b.

In all federal states there were vaccination campaigns for asylum seekers and refugees with extra appointments or extra vaccination routes in the facilities themselves, which started in April 2021 until June 2021. However, there were limited information sessions before the vaccination appointments. In certain communities there is a high level of vaccination skepticism (e.g. Chechnya) and there is a lot of fake news circulating on the internet. Due to the low resources in basic care facilities, the staff cannot adequately respond to all questions about COVID-19 or vaccination, and furthermore, it is mainly medical staff that is required for providing such information, not social workers.

One concern that has been raised by NGOs is the compulsory vaccination that will be introduced in Austria in 2022 and to what extent this will be sanctioned by police. Some NGOs would like vaccinations to take place in the initial reception centres and only be assigned once two partial vaccinations have been carried out.[435]

Specialised treatment

In each federal province, one NGO part of the Network for Intercultural Psychotherapy and Extreme Trauma provides treatment to victims of torture and traumatised asylum seekers. This is partly covered by AMIF funding, partly by the Ministry of Interior and regional medical insurance. However, the capacity of these services is not sufficient. Victims often have to wait for more than 6 months in **Vienna**, **Styria** and **Tyriol** for psychotherapy, while in other federal states they wait approximately 3 months.

The Basic Care system - and thus the health care provided - varies from one federal province to another and is regulated in many different laws on state level. In some federal provinces, asylum seekers will be provided care in regular special care facilities (see Special Reception Needs). "Increased care" for special needs must however be requested by the asylum seeker. A prerequisite for receiving additional care is the submission of up-to-date specialist medical findings and assessments demonstrating a need for care, as well as social reports not older than 3 months. These requirements contribute to the asylum seeker's obligation to cooperate throughout the procedure. Reports from NGOs are also taken into account when examining the additional need for care.

E. Special reception needs of vulnerable groups

Indicators: Special Reception Needs

1. Is there an assessment of special reception needs of vulnerable persons in practice?
☒ Yes ☐ No

The legislation relating to the reception of asylum seekers does not foresee a mechanism for identifying vulnerable persons with special needs. Article 2(1) GVG-B states that attention should be paid to special needs when the asylum seeker is registered in the Basic Care System. As already mentioned, asylum seekers have to undergo a mandatory health examination after having submitted the asylum application. In principle, all asylum seekers should have health insurance and they may be transferred to a hospital for necessary medical treatments.

The Basic Care laws of **Lower Austria**, **Salzburg**, **Tyrol** and **Vorarlberg, Burgenland, Carinthia, Upper Austria** mention special needs of vulnerable persons. Elderly persons, handicapped persons, pregnant women, single parents, children, victims of torture, trafficking, rape or other forms of severe psychological, physical or sexual violence are considered as vulnerable persons. In the laws of the federal province of **Vienna**, vulnerable asylum seekers are not mentioned. Nevertheless, the federal provinces have to respect national and international law, including the recast Reception Conditions Directive. A special

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

monitoring mechanism is not in place. It is the responsibility of the asylum seeker, social adviser, social pedagogue or the landlord to ask for adequate reception conditions from the relevant authority and service provider. Strategic litigation on the matter is very difficult due to the complexity of the legal situation.

The monthly amount of €2,480 for nursing care in specialised facilities is included in the Basic Care Agreement between the State and the federal provinces, which describes the material reception conditions.

Not all federal provinces have special care centres for vulnerable groups besides unaccompanied children. Special care needs are often determined only after an asylum seeker has been placed into a reception centre in one of the provinces. In this regard, the Burgenland Court of Auditors stated that the allocation to a specific centre was the responsibility of the social department and should be based on a departmental list of criteria, which include *inter alia* marital status, gender, nationality, religion and age.[436]

1. Reception of unaccompanied children

There are several facilities for unaccompanied asylum-seeking children. While on federal level, BBU GmbH had planned to open three more facilities for UAM in 2021, which did not happen, in the province some of them are run by private companies and others by the Children and Youth Assistance. Children aged less than 14 years are provided care in socio-pedagogic institutions of the federal provinces.[437]

1.1. Federal centres

There are 2 reception centres for unaccompanied children managed by the Ministry of Interior, out of which one is a separate facility for unaccompanied children in the Federal Reception Centre EAST in **Traiskirchen**.[438] Since 1 December 2020, the Federal Agency BBU GmbH is also responsible for the care of unaccompanied children.

As of 31 December 2018, there were 40 unaccompanied children accommodated in special federal reception centres, while another 1,479 were accommodated in specialised facilities in the different federal provinces.[439] As of 7 November 2019, there were 69 unaccompanied children accommodated in special federal reception centres.[440] After the outbreak of the COVID-19 pandemic, the transfer to reception facilities in the provinces was massively delayed in 2020, partly due to insufficient COVID-19 test-management. This resulted in very high numbers of unaccompanied minors accommodated in large and inadequate federal facilities. In November 2020, around 240 children were accommodated in those facilities whereas in 2017 – when the number of applicants was much higher – only 91 were housed in federal centres.[441] As of 21 January 2021, there were still 200 unaccompanied children accommodated in the federal reception centres.[442] The situation deteriorated in 2021 resulting in 700 unaccompanied minors being placed in inadequate housing in federal reception facilities due to the reluctance of provinces to take over these children into basic care. This was largely motivated by the fact that the Ministry refused to increase funding for housing in the provinces.

436 BVZ, ‚Landesrechnungshof nahm Grundversorgung unter die Lupe', 19 April 2018, available in German at: https://bit.ly/2TE7aMq.
437 Der Standard, *Frequently Asked Questions on Unaccompanied children*, 3 August 2015, available in German at: http://bit.ly/1gGuyE3.
438 Information provided by the Ministry of Interior, 26 January 2018.
439 Information of the Basic care system, unpublished.
440 Ministry of Interior, Answer to a parliamentary request, 38/AB XXVII. GP, 19 December 2019, available in German at: https://bit.ly/2w2RTg5. Information about accommodation in different provinces is not available however.
441 Asylkoordination österreich, ‚asylkoordination fordert Einhaltung der Kinderrechte', 20 November 2020, available in German at: https://bit.ly/2LYQ3oG.
442 Ministry of Interior, Answer to parliamentary request 3337/AB XXVII. GP, 11.November 2020, available in German at: https://bit.ly/2NAkD8E.

An important concern is that from January to September 2020, only 126 children out of 888 minor applicants were transferred from the federal system to the states. Given that only around 200 children were being accommodated in federal facilities as of January 2021, it is still unclear what happened to the other children and where they are being accommodated. The NGO asylkoordination has counted around 350 missing children between January and September 2020,[443] whereas 228 missing children with non-EU-citizenship were registered in the SIS II, of whom 61 were under 14 years old.[444] The situation has deteriorated in 2021: 4,489 minors have gone missing after applying for asylum in Austria. This represents 78 % of all applications of minors in 2021. The Ministry of Interior stated that these minors went on to other European countries but has not presented further proof.[445]

1.2. Reception of unaccompanied children at federal province level

Basic Care provision for unaccompanied asylum-seeking children reflect the need of care with regard to accommodation and psychosocial care. Unaccompanied asylum-seeking children must be hosted according to their need for guidance and care. The daily fee for NGOs hosting unaccompanied asylum-seeking children ranges from €40 to €95 depending on the services provided. Additional support may be provided by the Child and Youth Agency of the federal province. Unaccompanied asylum-seeking children are placed in three different groups depending on their needs. Accordingly, a social worker will be in charge of groups varying from maximum 10, 15 or 20 children depending on their needs (the higher the needs, the smaller the group).

The Ministry of Interior and the competent department of the federal provinces have agreed on a quota system for unaccompanied children.[446]

The number of unaccompanied children, including asylum seekers, rejected asylum seekers and persons with a protection status, receiving Basic Care on 31 December 2021 was as follows:

Unaccompanied children receiving Basic Care: 31 December 2021		
Federal province	Total Basic Care recipients	Unaccompanied children
Vienna	10,447	212
Upper Austria	3,296	77
Lower Austria	2,620	123
Styria	3,029	101
Tyrol	1,988	48
Carinthia	1,348	72
Salzburg	1,353	54
Vorarlberg	1,017	43
Burgenland	833	57
Initial reception centres (EAST)	4,455	717
Total	**30,363**	**1,504**

443 Asylkoordination österreich, ‚asylkoordination fordert Einhaltung der Kinderrechte', 20 November 2020, available in German at: https://bit.ly/2LYQ3oG.

444 FRA, *Migration Bulletin 4*, 6 November 2020,available at : https://bit.ly/3qswRhX, 28

445 Ministry of Interior, Answer to parliamentary request 9406/AB XXVII. GP, 28 March 2021, available in German at: https://bit.ly/3v4E2AE.

446 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.

Source: Ministry of Interior, GVS Statistics

In some cases the transfer of an unaccompanied asylum-seeking child from the initial reception centre to Basic Care facilities of the federal provinces takes place randomly, without knowing what the specific needs of the child are.

Numerous facilities set up after 2015 have been phased out after the number of unaccompanied children arriving in Austria dropped. This decrease was also noted in 2019 and facilities have been closed accordingly. In 2020, facilities of the NGO Volkshilfe in **Upper Austria** have closed leaving few specialised accommodations. The type of facilities available in the different provinces varies from one province to another:

Carinthia, **Tyrol** and **Burgenland** only offer accommodation in residential groups.

Lower Austria and **Upper Austria** generally offer accommodation in residential groups, subject to a few exceptions. The daily rate of €95 for unaccompanied minors residential groups applies in Upper Austria only for groups of up to 20 people.[447] Larger facilities receive a daily rate of €88. This amount should also cover the legal representation of the minors.

Salzburg: Children over the age of 14 are first housed in residential groups but may be assigned to other types of accommodation if deemed necessary by the care provider.

Vienna: Since 2015 only residential groups have been opened. There are still a few places for unaccompanied children with a lower level of care, however.

Styria: Styria has no residential groups for unaccompanied children. All children over the age of 14 are accommodated in dormitories or in assisted living. The situation in Styria is criticised by the Ombudsman, who recommends the establishment of residential groups in the future.

Since 2016, unaccompanied children may also live with families. Several federal provinces offer such possibilities. About 95 children lived with families in December 2018.

The Child and Youth Agency is responsible for providing adequate guidance and care to these children. BBU GmbH is responsible in providing legal counselling and representation of the minors in their asylum procedure. However, it is unclear who is responsible for their guardianship during the admissibility procedure or during their stay in the reception centre, or for any other legal issue that may rise. It can be either a legal adviser acting as legal representative in the initial reception centre, or the Child and Youth Agency, which becomes responsible after the child is allocated to a federal province. An answer to a parliamentary request in December 2019 showed that half of the unaccompanied children disappeared after lodging an asylum application during the admissibility procedure.[448] Media reports raised important attention to the fact that no authority is appointed as legal guardian for unaccompanied minors during the admissibility procedure.[449] The government programme issued in January 2020 includes a plan to better ensure the protection of unaccompanied minors in the admissibility procedure,[450] but this was still not implemented as of March 2022.

447 Oberösterreichischer Landesrechnungshof, June 2017, available in German at: https://bit.ly/2SyZLzZ.
448 Ministry of Interior, Answer to a parliamentary request, 38/AB XXVII. GP, 19 December 2019, available in German at: https://bit.ly/2w2RTg5 . Information about accomodation in provinces is not available.
449 Der Standard, ‚Die Hälfte der unbegleiteten Flüchtlingskinder in Österreich verschwindet', 6 February 2020, available in German at: https://bit.ly/3bdzoEL.
450 Government program 2020-2024, available in German at: https://bit.ly/2wDq0eL, 197.

Some of the Basic care laws of certain federal provinces provide that social educational and psychological care for unaccompanied asylum-seeking children should stabilise their psychic condition and create trust.[451] Furthermore daily-organised activities (e.g. education, sport, group activities, and homework) and psychosocial support are foreseen, taking into account the age, identity, origin and residence of family members, perspective for the future and integration measures.

A report on the situation of accompanied children in Austria published in 2019 by asylkoordination and UNICEF showed that accompanied children face – to a large extent – the same problems as those faced by unaccompanied minors. Moreover, some specific problematic issues have been identified; such as inadequate housing situations (due to often small accommodation places for large families) or role that children play as translators for their parents in certain situations etc.[452]

The report further criticises the lack of staff in many institutions and the lack of qualified staff, especially regarding pedagogical care that is needed to deal with an emerging risk of radicalisation and to deal with persons with psychic issues. Also, the Ombudsman described a shared apartment that it had visited as being incompatible with pedagogical standards and qualified it as a humiliating treatment. The shared flat was closed shortly after the Commission's visit and the young persons living there were transferred. In that regard, other basic care facilities were visited by the commissions and considered as impersonal, empty and/or cramped. Dorm rooms were sometimes so small that no retreat or visit opportunities existed and the environment was not adequate for learning. Minors were therefore sometimes found in a neglected state. As follow-up visits demonstrated, many issues were corrected after the NPM's intervention. It was noted that a new system called "New authority' - "*Neue Autorität*" – was being implemented: "*Neue Autorität*" is a systemic approach that strengthens managers, educators and parents. It enhances a respectful culture of relationships and encourages development processes. This also led to a better integration of the children into local communities.[453]

Regarding the access to education, the report indicates that - apart from the minors that are enrolled in schools and attend lessons - young persons do not receive adequate training or further education everywhere. German courses are offered in some regions only once or twice a week and language remains an important barrier. This situation persisted throughout 2020 and was aggravated by the Covid-19-pandemic. An expert council on Integration of the Federal chancellery stated in August 2020, that the Covid-19-crisis deepens integration problems of migrants. According to the expert Council, children with a migrant background faced important obstacles and difficulties to cope with the new learning process resulting from home schooling.[454]

Aged-out children

A few places are available for children who have reached the age of 18 and who need higher care compared to adults. This possibility corresponds to youth welfare regulations, stating that under special circumstances the Child and Youth Agency will take responsibility for young adults up to the age of 21.

The Ombudsman observed that the situation of children aged more than 18 years old can be particularly precarious if they have to leave the unaccompanied minors' homes although they are not sufficiently prepared to an independent life.[455]

451 Art. 7 Tyrolean Basic Care Act (*Tiroler Grundversorgungsgesetz*).
452 Asylkoordination/UNICEF, *Dreimal in der Woche weinen, viermal in der Woche glücklich sein*, 2019, available in German at: https://bit.ly/33cWHvs.
453 Ibid.
454 Federal Chancellory, „Expertenrat für Integration: Corona-Krise verschärft Integrationsprobleme", 13 August 2020, available in German at : https://bit.ly/3qXOXaZ.
455 Ombudsman board, *Special report on childrens' rights*, 2017, available in German at: https://bit.ly/3cQhEkx.

Some NGOs in **Vienna** (Samariterbund Wien, Don Bosco Sozialwerk, SOS Kinderdorf, Caritas) and **Lower Austria** (e.g. NGO tralalobe) offer so-called 'after-care places' for children asylum seekers who have come of age during their stay in facilities, in so-called mobile supervised flats where social workers come 1-3 times a week to provide counselling and support. However, aftercare for young adults in basic care is funded at the same daily rate as for adults, even if young adults require more care in most cases. In **Upper Austria**, the NGO Volkshilfe has tried several times to point out the needs of young adults and has also presented concepts, but they have always been rejected by the authorities.

For 2022, there is a temporary increased daily rate foreseen **in Vienna** for young adults who have only been in Austria for a few months, as young men, all 17 ½ years old, came to a large institution in Vienna in December 2021. Many of them will reach their majority in 2022 and will be transferred from the minor-facility to an adult facility. The City of Vienna has recognised that this group in particular requires more care and has therefore offered a temporary increased daily rate for NGOs responsible for providing support to these young men.[456]

Children with special needs

Information gathered by Asylkoordination in the fall of 2016, demonstrated that 10.6% of accommodated children needed medication ordered by a psychiatrist. It indicated that some suffered from depression, suicidal thoughts and mental disorders. A further 9% were suspected to be suffering from a mental illness, although there was no diagnostic yet as most of them refused to undergo an investigation - out of fear of being stigmatised or due to delays in the assessments. Another 5% were in therapy and were not taking medication. According to the caregivers, about 15% were in urgent need of therapy. 8% were further moved to another facility due to their behaviour (threats, violence against staff or other residents), but in one third of the cases the behavioural problems did not improve.[457]

The Ombudsman has criticised **Lower Austria** for not providing additional funding for children with mental illness. The federal province responded that the higher daily rate of €95 paid for Basic Care since July 2016 should cover any additional costs. Following criticism from the Ombudsman, the province of **Styria** has introduced a supplementary package of €18 from July 2018 onwards for unaccompanied children with special care needs. This brings the daily rate in Styria to €95.[458] NGOs from Styria reported that families with severely ill children were not placed in reception facilities for persons with special needs, on the grounds that their parents should have enough resources to take care for them.

2. Reception of women and families

Special facilities exist in some of the federal provinces to welcome single women and mothers. In the initial reception centre of Traiskirchen, for example, single women are accommodated in a separate building.

Some specialised reception facilities for single women are run by NGOs.[459] In bigger facilities, separated rooms or floors are reserved for single women or families. The protection of family life for core family members is laid down in the law of the federal provinces.[460] As regards family members who arrived through a Family Reunification scheme and receive Basic Care as asylum seekers, there is no satisfactory solution in practice in case with the holder of the refugee status does not have a suitable private flat. The family may be separated until the status is granted, because recognised refugees can no longer live in

456 asylkoordination österreich, Nationwide NGO survey on basic services Dec 21/Jan 22, unpublished.
457 Unpublished survey. These 40 reception centres took care of 924 unaccompanied asylum-seeking children.
458 Verordnung der Steiermärkischen Landesregierung vom 27 October 2016, mit der das Steiermärkische Grundversorgungsgesetz durchgeführt wird (StGVG-DVO), available in German at: http://bit.ly/2EKGW22.
459 Such as Caritas Styria, available in German at: https://bit.ly/3aQs4yG.
460 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.

the Basic Care centre. It is also problematic that provinces such as **Styria** refrain from granting any basic care to asylum seekers in the family reunification process.

There are only a few reception facilities with more than 80 or 100 places, while most of the other larger facilities are run by NGOs in **Vienna**. In Tyrol there are two facilities with up to 300-400 places. Hostels and inns have between 20 and 40 places. As a consequence, single women are not always separated from single men, although there are separate toilets and showers. **Vienna** also has centres for victims of trafficking and LGBTIQ persons. Similarly, **Tyrol**, **Lower Austria** and **Salzburg** also has a reception centre for single women and single parents, and one for LGBTIQ persons.

3. Reception of handicapped and seriously ill persons

3.1. Federal centres

Some places in facilities of the state or run by NGOs are reserved for traumatised or ill asylum seekers ("*Sonderbetreuungsbedarf*"). In the last years, the number of places for asylum seekers with disabilities or other special needs of care increased. There is one special care centres for people in need of special medical care at the federal level:

- ❖ The special care centre is located in **Graz Andritz** and has a maximum capacity of 120 persons;
- ❖ the centre in **Gallspach** with a capacity of 110 persons has been closed beginning of 2019

In addition, where necessary, persons with special needs are accommodated in separate rooms or houses in the Federal Reception Centre in **Traiskirchen** during the admissibility procedure.[461] Special care centres for 25 persons in a barrier-free building (house 1) are provided in Traiskirchen.

The placement of a person in need of special care in one of the special care centres is determined on a case-by-case basis depending on the individual's health situation.

The special care centre of **Graz Andritz**, for example, offers quality medical care for patients in need of both regular or special care, e.g. persons with cancer, cardiovascular diseases, epileptics, diabetics, patients in rehab etc. This is due to the optimal accessibility of the Graz Country Hospital. It has a specially equipped doctor's station. In addition to medical staff, the care provider ORS is responsible for the care of the asylum seekers who are housed there, and also offers an operational manager, 22 social assistants as well as a trained clinical psychologist.

3.2. Centres at provincial level

The criteria taken into consideration by all federal states to provide special care *(Erhöhter Betreuungsbedarf – EBB)* include:[462]

- severe psychiatric illness;
- at least moderate physical infirmities (e.g. paralysis);
- sensory impairments (e.g. blindness, deaf-blindness);
- intellectual disabilities (below average cognitive abilities);
- chronic diseases (e.g., cancer, TB, dialysis);
- incurable epidemiological diseases (e. g. HIV, hepatitis C);
- short-term dangerous diseases (e.g. multi-resistant TB, epidemics), as long as there is no danger for the residents and the care staff;
- pathological dependence on psychoactive substances (except alcohol and nicotine) - substitution program.

461 Information provided by the Ministry of Interior, 26 January 2018.
462 These criteria are based on the so-called KOORAT resolution 74-2008, which is not publicly available.

Persons suffering from addiction can only be assigned to an increased need for care place if the secondary illness justifies said assignment. Even a diagnosis of post-traumatic stress disorder alone is not accepted by the Federal Ministry of the Interior as a prerequisite for increased need for care[463].

When applying for special care, NGOs/landlords must submit following documents:
- Specialist medical report (not older than 3 months) ;
- Nursing or situation report in case of insufficient findings ;
- (In Vienna, a declaration of consent of person concerned must be signed)

In all federal states, the authority decides on the granting of an increased need of care, usually this is granted for one year and then it must be applied for it again before expiration.

Moreover, the following documents must be submitted to renew applications (especially in Vienna):
- a specialised medical report (not older than 3 months) ;
- 2 social reports in total, submitted 6 months apart ;
- A confirmation of treatment from doctors

Federal province	Financial funding	Care ratio[464]	Capacity
Vienna	€ 44,- special care € 100,- special care stabilisation	1,25:10 1:1-3 Psychologists, nurses	Around 200 + 25 extra places for stabilsation
Lower Austria	€ 40,50 - € 44,-	care key and specifications unclear	Around 40-80 places
Upper Austria	€ 21,- plus surcharge by three sub categories: A +€8,-, B +€13,- C +€19,09/21	category A: 1-3h care hours category B: 3h care hours category C: 6h or more hours	Around 120 places
Burgenland	€ 20,50 surcharge possible, between +€10,- to € 20,-, max. € 40,-	No defined care ratio	Around 5 -10 places
Styria	€ 44,-	care ratio and specifications not defined	Around 60 places
Carinthia	€ 44,-	care ratio and specifications not defined	Around 5-10 places
Salzburg	€ 44,-	care ratio and specifications not defined	single places unclear how many
Tyrol	€ 44,-	Care ratio not defined Psychologists, nurses,	Capacity for 120 places, 20 of them for specialised nursing, 50-60 places billed
Vorarlberg	Real cost accounting	Care ratio and specifications not available	No information available on how many single places

Source: Own illustration based on nationwide NGO survey on basic services Dec 21/Jan 22 by asylkoordination österreich

463 asylkoordination österreich, Nationwide NGO survey on basic services Dec 21/Jan 22, unpublished.
464 Care ratio: ratio social workers per clients (asylum seekers accommodated)

The daily rate of increased care varies in the federal provinces. Organisations providing reception receive a maximum €44 according to the number of hours of care provided per week. In **Vienna**, there are also so-called 'stabilisation places' within the framework of accommodation for increased care needs. These places are dedicated to individuals who already have an increased need for care and are in an acute severe crisis such as a suicidal state; and for people who obviously have severe psychiatric problems, but so far cannot show any findings because they do not perceive themselves as mentally ill or sick. The latter are often those who are repeatedly discharged from facilities because they exceed the care resources and are not compatible for multi-bed occupancy. Currently, three NGOs have stabilisation places available. The daily rate is € 100,- whereby the difference from € 44 to € 100 is only paid by the City of Vienna. Diakonie also has a small residential group for people with increased care needs with 1:1 care.

In some federal states (e.g. **Vienna**, **Tyrol**) , there are cooperative agreements with pharmacies that provide important medication for persons with increased care needs. The prescriptions issued by the doctors or psychiatrists are sent in advance to the pharmacy. In the facilities themselves, this makes the dispensing of medication much easier, also for the people concerned.[465]

The needs of ill, handicapped asylum seekers, as well as asylum seekers with nursing care, are not sufficiently met in practice. There is no allowance to cover extra costs as long as nursing care is provided by relatives or friends. NGOs have to employ professionals if they offer places for asylum seekers with special – mainly medical – needs.

In all federal states except **Vienna** and **Lower Austria**, people with special care are accommodated in regular basic care facilities due to the lack of specialised accommodation facilities. As a result, the level of care, financial costs and type of care differs significantly across the federal states. In **Vienna** five NGOs (Caritas Vienna, Diakonie, Integrationshaus, Samariterbund Vienna and Volkshilfe Vienna) are specialised in increased care accommodation and offer places in their basic care facilities. All involved NGOs try to provide single rooms for persons with increased special care and also for stabilisation places. The care teams include psychologists, social workers, health and medical nurses. In addition, a psychiatric consultation service and interpreting costs are covered.

The facilities also try to create smaller projects (often funded by donations or smaller subsidies from various governmental funds) that can contribute to a tailored and more supportive daily structure for the people concerned. Daily structure is an important element of social care, not only for those with an increased need for care, but for all people in ongoing asylum procedures. Due to the long duration of the asylum procedure and the prolonged state of limbo, mental illnesses, traumas and stress may increase for asylum seekers.

In **Lower Austria** the NGO tralalobe has set up a facility for women and female unaccompanied minors only, where the daily rate for increased care needs for adults is paid (for care and accommodation for minors there is another daily rate). There is also another facility by another private basic care provider (the SLC Eder in the city of Baden) for people with increased care needs, but according to reports from NGOs in Lower Austria, the facility is not well run – but there is limited information available. In Lower Austria, the findings must be sent on a 10-month interval, and reasons must be given as to why people in the family cannot take responsibility for providing care. Additionally, there are 6-8 places for several traumatised unaccompanied children by NGO tralalobe.[466]

465 asylkoordination österreich, Nationwide NGO survey on basic services Dec 21/Jan 22, unpublished.
466 Projekt Tralalobe, available in German at: https://bit.ly/33inkUk.

Tyrol: The Basic Care system does not offer special care places. The concerned persons are looked after by a Case & Care team in various accommodation facilities. The most common criteria for support from the Case & Care team are psychiatric, mental and physical conditions or disabilities.

In **Styria**, the care ratio and specialisation of care staff is not defined. Depending on the number of persons with increased care, services can be purchased in addition. Caritas Styria provides support to people with increased care in psycho-psychiatric area and no longer its own special care accommodation facilities. Another private basic care provider who runs a former hostel (Wisniewski) is more specialised in physical diseases and high maintenance care.

In **Upper Austria,** people who do not need special accommodation but have an increased need for care (e.g. dialysis patients) are accommodated exclusively in basic care facilities of nonprofit organisations like Caritas and Volkshilfe. Although there is no specification of the professional groups, psychologists and nurses work at both NGOs.

In **Burgenland** Caritas has around 5 places for people with increased special care, but here again there is no staff specialised in working with individuals in need of special care. The authority allows monthly compensation contribution of max. € 700,-for the purchase of external care services which have to be applied by concerned NGOs. NGOs reported that they were not made aware for several years of the possibility to accommodated individuals with special needs in Burgenland.

In **Salzburg** people with increased special care are accommodated in regular basic care facilities, but here as well there is no specialized staff.

Vorarlberg: there is no information available on increased care.

In **Carinthia,** the availability of places with need of increased care is not clearly communicated and there are no guidelines for care personnel. Diakonie de la Tour is the only institution that provides care for people with increased care on a case-by-case basis. Applications for increased care places are submitted in writing, where increased need must be justified. In practice, it is difficult to be granted an increased care (even for children or for suicidal individuals), and authorities have reportedly stated that trauma-related illness, "everyone has it anyway". [467]

Diakonie has set up a telephone hotline called **AMIKE** for people under stress, which is available in several languages such as Dari/Farsi, Arabic, English, Turkish, Kurdish, etc.[468]

In **Vienna**, there are mobile teams of psychologists (Caritas MIT Team[469], Fem Süd, NEDA[470]) who offer counselling for people in basic care facilities. Both are valuable services that offer support, especially in light of the limitations in terms of resources and funding in this area.

- Caritas MIT Team offers clinical-psychological counselling with a focus on relief, psychoeducation, resource activation, clarification and, if necessary, professional referral to other counselling centers.
- FEM Süd NEDA offers gender and culturally sensitive services for people in primary care with mental health problems. In the NEDA project, clinical-psychological or psychotherapeutic counselling, as well as psychoeducation workshops for women and men with refugee experience in primary care are offered in the respective first languages. This services are provided at the

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467 asylkoordination österreich, Nationwide NGO survey on basic services Dec 21/Jan 22, unpublished.
468 Diakonie Flüchtlingsdienst, AMIKE Telephone counselling service, available in German at: https://bit.ly/3GJV2Qh.
469 Caritas Vienna, Information on psycho-social counselling services, availabe in German at: https://bit.ly/3oOpHpv.
470 FEM, Projekt NEDA, available in German at: https://bit.ly/3uNurzn/

three locations of the health centres FEM, FEM South and MEN,[471] as well as on an outreach basis in facilities in the asylum sector. The aim is to provide initial psychological care, stabilisation and relief for people seeking asylum.

However, all federal states suffer from a lack of capacity in psychiatric hospitals, which means that people who actually need an inpatient admission are sent back to their respective facility after a few hours. Additional barriers include the lack of interpreters, which makes it particularly difficult for doctors to communicate with persons in acute crisis. This has been reported as a serious problem and no solution has been found so far. Asylum seekers in crises (i.e. with a suicidal danger) or people with acute paranoid schizophrenic episodes often do not receive the adequate care.[472]

F. Information for asylum seekers and access to reception centres

1. Provision of information on reception

The information leaflets in the initial reception centre provide brief information on rights and obligations with regard to reception conditions, e.g. the possibility and obligation to visit a doctor, the possibility to contact UNHCR, the obligation to declare resources or sources of income, the restricted movement and the meaning of the different documents (such as the green card). Information leaflets are available in most of the languages spoken by asylum seekers.

The residence restriction applicable since 1 November 2017 is notified in writing in all federal provinces. Asylum seekers are required to sign the notice (see Freedom of Movement). NGOs and private operators have produced information sheets in a wide range of languages. There have been a number of cases where asylum seekers have been sanctioned for violating their residence restrictions, including in cases where the concerned person was visiting friends in Vienna and did not change his or her residence. Apart from Vienna and Lower Austria, the residence restriction is of little relevance.

In the reception centres, asylum seekers are provided information about the house rules, as well as on their duties and the possible subsequent sanctions.[473] The house rules in the reception centres of **Styria**, for example, are available at the digital federal legal information system RIS (*Rechtsinformationssystem*).[474] Information is either posted in the most common languages (e.g. English, Russian, French, Arabic, Farsi, Urdu, Serbian) or a paper containing brief written instructions has to be signed by the asylum seeker. In the states of **Lower Austria**,[475] and **Salzburg**,[476] 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.[477] Advice from social workers is included in the reception provisions laid down by law. Social advisers visit reception centres on a regular basis, but have to fulfil at the same time administrative tasks such as handing over the monthly pocket money or the vouchers for clothes and school material. Organisations providing social advice usually also have departments for legal advice to asylum seekers.

Asylum seekers living in rented flats have to go to the offices of the social advice organisations. The current system of provision of information is not satisfactory, as there is only one social worker responsible

471 FEM (Womens' Health Center Frauen Eltern Mädchen), MEN (Mens' Health Center)
472 asylkoordination österreich; Nationwide NGO survey on basic services Dec 21/Jan 22, unpublished.
473 Stmk. Grundversorgungsgesetz-Durchführungsverordnung, available in German at: https://bit.ly/2CfJ2rs.
474 House rules of the reception centre of Sytria, available in German at: https://bit.ly/3cvM23j.
475 City of Vienna, *Grundversorgung Wien,* available at: http://bit.ly/1YqTAVV. The Basic Care brochure for Lower Austria is available in 16 languages.
476 Province of Salzburg, *Grundversorgung*; available at http://bit.ly/1UKUkoI.
477 Fonds Soziales Wien, *Wiener Grundversorgung. Die Beratungsstellen*, available at: http://bit.ly/1cz0cQP.

for 170 asylum seekers. This means that the quality of the services provided by social workers is low in practice. Furthermore, there are considerable differences from one federal province to another: one social worker is responsible for 50 asylum seekers in Vorarlberg and for 70 asylum seekers in Vienna. Moreover, reception centres located in remote areas cannot be visited very often by social workers due to insufficient funding.

As a consequence, many volunteers and communities help asylum seekers, for example by sharing information via social networks.[478] Although their number has reduced in recent years, volunteers are still active in 2021 and assist asylum seekers in various aspects. This includes providing German language lessons and conversation, explaining asylum seekers' obligations and rights, helping with the family reunification procedure or helping to access housing or employment upon termination of the asylum procedure. Some initiatives organise petitions and press reports against deportations to Afghanistan and other countries.[479]

2. Access to reception centres by third parties

Indicators: Access to Reception Centres

1. Do family members, legal advisers, UNHCR and/or NGOs have access to reception centres?
☐ Yes ☒ With limitations ☐ No

UNHCR has unrestricted access to all reception centres. In the initial reception centres, access of legal advisers and NGOs to the reception buildings is not allowed, based on the argument that it would disrupt the private life of other asylum seekers. This restriction is laid down in a regulation introduced by the Minister of Interior ("*Betreuungseinrichtung-Betretungsverordnung*") intending to secure order and preventing assaults to life, health or freedom and protecting the facility.[480] UNHCR has the right to be present in any interview and oral hearings and is allowed to get in contact with the applicants at any time. UNHCR has also access to airport facilities in the border procedures where the authorities have to ask for UNHCR's consent for rejecting decisions.[481]

The restriction of access to the facilities does not apply to lawyers or legal representatives. Family members may meet their relatives in the visitors' room, and legal advisers and NGOs in the premises of the BFA. In the federal provinces, NGOs with a contract for providing advice in social matters have access to the reception centres, while other NGOs have to ask for permission, sometimes on a case-by-case basis.

Asylum seekers living in reception centres located in remote areas usually have difficulties to contact NGOs, as they have to pay for public transportation on their own (their pocket money amounts to €40 per month). Travel costs for meetings with the appointed legal adviser are only paid by BBU GmbH if it is necessary i.e. in preparation for a court session.

Due to the Covid-19 pandemic, there were restrictions on visits and at times bans on visits by external persons in general, with the exception of external services such as nursing or home help. This continued in 2021.

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478 E.g. information about accommodation: http://asylwohnung.at/faq/.
479 See for example: NGO fairness asyl,available at: http://www.fairness-asyl.at/; Plattform #sichersein, available at: https://www.sichersein.at/.
480 BGBl. II Nr. 2005/2 and 2008/146.
481 Article 31 AsylG; Article 63 AsylG

G. Differential treatment of specific nationalities in reception

Basic Care is provided until the final decision is made, and if the decision is negative until the departure or deportation. Authorities in **Lower Austria** requested asylum seekers who had received a final negative decision but had not left the country and lived in private accommodation, to move to a state organised asylum accommodation, without the possibility to legally challenge this request. If they refused to do so, their social benefits would be cut. The official press release of the responsible provincial member of parliament of the Freedom Party in April 2018 stated that the aim of this measure was to ensure a "noticeable break in living conditions" as a consequence of non-participation in the return.[482] This is still being applied in practice as of March 2022.

Asylum seekers who have not complied voluntarily within the 14-day deadline will receive an order from the BFA to go to a return center. Currently, there is a center at the airport in **Vienna / Schwechat** as well as in **Tyrol / Fieberbrunn** and both centers are run by the Ministry of the Interior. Increased return counseling are carried out in these centers. The establishment of the BBU will further increase return counseling.

For asylum seekers whose application has been rejected and for whom the appeal has no suspensive effect, the right to basic care was removed during the appeal proceedings (see Criteria and Restrictions to Access Reception Conditions). Asylum seekers from safe countries of origin are particularly affected by this restriction. If an asylum seeker participates to the voluntary return, the entitlement to the Basic Care will be granted until the departure.

NGOs report that there is an imbalance between Syrians and other refugees, as Syrians have access to a German course through the Austrian Integration Fund (ÖIF) during the asylum procedure, while others do not. This has created frustration but also confusion, including among the support teams.[483]

482 Freiheitlicher Klub im Landtag, „Illegalen-Lüge in NÖ – Landesrat Waldhäusl zieht die Konsequenzen", 27 April 2018, available in German at: https://bit.ly/3343CY5.
483 asylkoordination österreich, Nationwide NGO survey on basic services Dec 21/Jan 22, unpublished.

Detention of Asylum Seekers

A. General

Indicators: General Information on Detention	
1. Total number of persons detained in 2021:	4,023
2. Number of persons in detention as of 31 Dec 2021:	313
3. Number of detention centres:	15
4. Total capacity of detention centres:	1,248

A total of 4,023 (2020: 3,971) persons were detained throughout 2021 but there is no public data available on how many of them are asylum seekers or how many persons applied for asylum during detention.[484] During 2020, 13 minors were held in detention while in 2021 no minors were registered as being held in detention. However, in most cases, rejected asylum seekers are being arrested 48 hours prior to deportation. This is not counted as formal detention prior to deportation. Data on arrests prior to detention without detention order is not available.

There are 4 main detention centres currently operating in Austria: Vordernberg, Styria; Police Apprehension Centres (PAZ) Vienna Hernalser Gürtel, PAZ Vienna Rossauer Lände and Familienunterbringung Vienna Zinnergasse.

There are 11 smaller Detention Centres (PAZ) under the responsibility of the police – **Bludenz, Eisenstadt, Graz, Innsbruck, Klagenfurt, Linz, Salzburg, St Pölten, Villach, Wels** and **Wiener Neustadt** – that are used for short term arrests. In most cases, detainees are transferred to the main centres after an average of 7 days.

The answer to a parliamentary request demonstrated that it is not possible to assess the total capacity of detention centres, as most of them are used for different measures (e.g. administrative and penal detention). Only the detention centre (*Anhaltezentrum* – AHZ) **Vordernberg** in **Styria** and PAZ **Hernalser Gürtel** and PAZ **Roßauer Lände** are designated for the sole purpose of pre-removal detention. The maximum total capacity of these three centres amounts to 685.[485]

In practice, asylum seekers are subject to detention mainly under Dublin procedures as well as *de facto* detention in the airport procedure. Persons who submit a subsequent asylum application are often detained as well. If a person applies for asylum while in detention, he or she may be detained during the admissibility procedure.

When asylum seekers are detained, the personal interview examining their application is held in the detention centre. Interpreters are present and legal representatives have to be summoned to the interview. The BFA may also order to bring the asylum seeker to the BFA for the interview. A person of confidence has the right to be present at the interview of an asylum seeker. If the asylum application is processed as an inadmissible application a legal advisor has to counsel the asylum seeker before the interview and has to be present at the interview.

[484] Ministry of Interior, *answer to parliamentary request 9405AB / XXVII. GP*, 28 March 2022, available in German at https://bit.ly/36Hso6C.

[485] Ministry of Interior, *Answer to parliamentary request 9405AB / XXVI. GP*, 28 March 2022, available in German at: https://bit.ly/36Hso6C.

B. Legal framework of detention

1. Grounds for detention

Indicators: Grounds for Detention

1. In practice, are most asylum seekers detained
   - on the territory: ☒ Yes ☐ No
   - at the border: ☐ Yes ☒ No

2. Are asylum seekers detained in practice during the Dublin procedure?
   ☒ Frequently ☐ Rarely ☐ Never

3. Are asylum seekers detained during a regular procedure in practice?
   ☐ Frequently ☒ Rarely ☐ Never

Asylum seekers who apply for international protection at the police may be detained for up to 48 hours, without a detention order for safeguarding the first steps of the procedure and a security check. This detention period is reaches up to 1 week in the context of the border procedure, as asylum seekers are de facto detained in the airport facility.

With the exception of the border procedure which is not formally recognised as detention in law, the detention of asylum seekers is regulated by the Aliens Police Act (FPG), which has been amended several times to specify the grounds for detention. The last amendment entered into force on 1 September 2018. Detention may be ordered by the BFA to secure a return procedure, for example if a "risk of absconding" exists and detention is proportionate. Furthermore, the FPG allows detention according to the Dublin III Regulation.

Since September 2018 asylum seekers can further be detained if they are considered as a threat to the public order or security. The recast Article 76 (2) FPG states: "Detention may only be ordered to enable the issuing of a measure terminating residence, provided that detention is appropriate and that the foreigner's stay endangers public order or security in accordance with Article 67, and that there is a risk of absconding."

Article 76 FPG defines the "risk of absconding" on the basis of a number of wide-ranging criteria, namely whether:[486]

1. The person has avoided or hampered a deportation order;

1a. The person has not complied with the obligation to obtain a travel document for his or her removal;[487]

2. The person has violated a travel ban;
3. An enforceable expulsion order exists and the person has absconded during the asylum procedure or during the removal procedure;
4. The person makes a subsequent application without right to remain;
5. The person is in pre-deportation detention at the time he or she lodges the application;
6. It is likely that another country is responsible under the Dublin Regulation, namely as the person has lodged multiple applications, tried to travel to another member state, or it can be assumed that, based on past behaviour he or she intends to travel on to another member state;
7. The person does not comply with alternatives to detention;
8. The person does not comply with residence restrictions, reporting duties and designated accommodation or similar instructions;[488]

486 Article 76(3) FPG.
487 Article 76(3)(1a) FPG, in force as of 1 November 2017, citing Article 46(2)-(2a) FPG.
488 Article 76(3)(8) FPG, in force as of 1 November 2017.

9. 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, the long list of criteria in Article 76(3) is non-exhaustive, thereby unduly granting the authorities the discretion to identify a "risk of absconding" and to proceed to detention.

So far, it is difficult to assess the practice of the authorities with regard to the use of detention grounds, as the official statistics do not distinguish between the different detention grounds.

Arrest (i.e. detention without official order) is almost systematic during the 72 hours preceding the transfer of an asylum applicant to the responsible Member State under the Dublin Regulation.

In the detention centres of **Vordernberg** and **Vienna**, the numbers of detentions have doubled in 2017 and have further increased in 2018.[489] Observations from NGOs in 2019 show that the number of EU citizens from Eastern Europe (e.g. Slovakia, Hungary) held in detention centres have grown significantly over the past years. Even during the pandemic in 2020, more than 20% (810) of all 3,910 detainees were from EU countries and another 879 persons from the Balkans (mainly Serbia with 450 nationals).[490]

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 has to be taken into account by the BFA when issuing detention orders. Detention has to be necessary to reach one of the stated objectives.[491] When examining the proportionality of detention, criminal offences committed by the applicant are taken into account to assess whether the public interest is affected by the seriousness of the offences. Similarly, the authorities must assess whether the public interest in speedy deportation overrides the personal liberty of the individual.[492] Proportionality means to weight or balance the interests between the public interest of securing the procedure (i.e. mainly in the context of deportations) and the right to liberty of the individual.

The BFA must review the proportionality of detention every 4 weeks.[493] Proportionality is also a constitutional principle applicable to all administrative procedures and therefore also to asylum and return proceedings. This has been confirmed by the jurisprudence of the VwGH[494] and the Constitutional Court (VfGH).[495]

In airport procedures, entry to the territory is denied and applicants are ordered to stay in a specific area of the airport designated as EAST. The entry to the territory has to be allowed as soon as a rejection of

489 Ministry of Interior, Answer to a parliamentary request, 15 November 2018, available in German at: https://bit.ly/2tPKUm6.
490 Ministry of Interior, Answer to a parliamentary request, 4901/AB XXVII. GP, 12 March 2021, available in German at: https://bit.ly/2P4ioeu.
491 Article 76(2) FPG.
492 Article 76(2a) FPG, in force as of 1 November 2017, citing Articles 2 and 28 Dublin III Regulation.
493 Article 80(6) FPG.
494 VwGH, Decision Ra 2013/21/0008, 2 August 2013.
495 See e.g. VfGH, Decision B1447/10, 20 September 2011.

the application does not seem probable anymore. If a rejection seems probable the authorities can secure the rejection of the application by not letting the applicant access the territory for a maximum of six weeks.[496] The applicant can leave from to Austria to another country at any time, however, in which case the asylum procedure is suspended.

Alternative measures to detention must be applied as much as possible. An individualised examination is foreseen by the FPG, but in practice less coercive measures are often regarded by the authorities as not sufficient to secure the return procedure or expulsion.

Article 77(3) FPG enumerates three alternatives to detention: (a) reporting obligations; (b) the obligation to take up residence in a certain place and (c) the deposit of a financial guarantee. Details about the deposit and amount of the financial guarantee are regulated by the Ordinance Implementing the Aliens Police Act (FPG-DV). This amount must be determined in each individual case and must be proportionate.[497] 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.[498] Recent observations confirmed that this was still the case in 2020 due to a lack of financial resources.

Alternatives to detention are applied in open centres, in regular reception facilities, in facilities rented by the police or property of NGOs, as well as in private accommodations of the person to be deported. They are not applied in other facilities such as *de facto* detention facilities at the border in the context of the airport procedure. If an alternative to detention is ordered, asylum seekers have reporting duties. This includes presenting themselves to the police offices of the Federal Police Directorates every day or every second day. If reporting obligations or the obligation to take up residence in a certain accommodation facility are violated, the person can be detained.[499]

The duration of alternative measures is limited. Asylum seekers benefiting from an alternative to detention are not entitled to Basic Care, although necessary medical treatment(s) must always be guaranteed. These costs may be paid by the BFA, however, there is no general access to medical care insurance while in detention. Asylum seekers may receive free emergency medical treatment in hospitals.

However, in practice, alternatives to detention are very rarely used. Alternatives to detention were applied only in approximately 270 cases per year between 2016 and 2018.[500] In 2020, the use of alternatives to detention largely increased as it was applied in 677 cases a result of the Covid-19 pandemic and the fact that deportations were not conducted for several months, i.e. a deprivation of liberty would therefore be disproportional. In 2021, the application of alternatives to detentions further increased to 804 cases.[501] There is no data on how many the different alternatives were applied.[502]

In **Vienna Zinnergasse**, alternatives to detention are provided for vulnerable persons, especially for families. However, families are detained 72 hours prior to their removal and other vulnerable persons (e.g. people with mental illnesses) are detained in regular detention facilities, unless a psychiatrist certifies that this is not appropriate.

496 Article 32 AsylG.
497 Article 13 FPG-DV.
498 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.
499 Article 77(4) FPG.
500 Ministry of Interior, Parliamentary request, 9 September 2018, available in German at: https://bit.ly/2SGqZQr.
501 Ministry of Interior, Answer to a parliamentary request, 9405/AB XXVII. GP, 28 March 2022, available in German at: https://bit.ly/3KbaS9k.
502 Ministry of Interior, *Answer to a parliamentary request, 4901/AB XXVII. GP*, 12 March 2021, available in German at: https://bit.ly/2P4ioeu

3. Detention of vulnerable applicants

Indicators: Detention of Vulnerable Applicants

1. Are unaccompanied asylum-seeking children detained in practice?
   ☐ Frequently ☒ Rarely ☐ Never

   ❖ If frequently or rarely, are they only detained in border/transit zones? ☐ Yes ☒ No

2. Are asylum seeking children in families detained in practice?
   ☐ Frequently ☒ Rarely ☐ Never

Children under the age of 14 cannot be detained. Therefore, families with young children are confined for 72 hours prior to their forced return. In general, children over the age of 14 should not be detained and alternatives to detention should apply for minors over the age of 14.[503] In 2021, only one minor (accompanied) was detained for four days and was released after applying for asylum.[504] In 2020, 13 minors were kept in deportation centre (between 3 and 17 days, on average 9.4 days),[505] 11 of them were unaccompanied minors.[506] In 2019, 25 minors were detained; compared to 27 minors in 2018,[507] and an average of 26 minors in 2017 and 2016.[508]

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.[509]

In the case of a child who was arrested by the police and taken to the **Zinnergasse** centre, the age examinations carried out by the public medical officer resulted in setting an age of 18 years with a fluctuation range of 2 years. The minor was transferred to the detention centre, applied for asylum and authorised Diakonie to act as his legal representative. However, the complaint against detention was dismissed in August 2016, arguing that he could not give power of attorney as a minor.[510] Given that deportation (*Schubhaft*) was ordered before his application for asylum had been submitted, his legal representative for all further proceedings before the BFA and the Federal Administrative Court were the youth welfare agencies. However, the latter did not wish to join the complaint lodged by Diakonie.

4. Duration of detention

Indicators: Duration of Detention

1.	What is the maximum detention period set in the law (incl. extensions):	18 months
2.	In practice, how long in average are asylum seekers detained?	Not available

[503] Article 77(1) FPG.

[504] Ministry of Interior, Answer to parliamentary request, 9405/AB XXVII. GP, 28 March 2022, available in German at: https://bit.ly/3KbaS9k

[505] Ministry of Interior, *Answer to parliamentary request, 3051/AB*, 6 October 2020, available in German at: https://bit.ly/3qmI5ny.

[506] Ministry of Interior, *Answer to a parliamentary request, 4901/AB XXVII. GP,* 12 March 2021, available in German at: https://bit.ly/2P4ioeu.

[507] Ministry of Interior, Answer to parliamentary request, No 2633/AB, 21 March 2019.

[508] Ministry of Interior, Answer to parliamentary request, 15 November 2018, available in German at: https://bit.ly/2tPKUm6.

[509] BVwG, Decision W191 2011159-1, 27 August 2014, available at: http://bit.ly/1ALJF7Q.

[510] BVwG, Decision W117 2131589-1, 10 August 2016, available at: http://bit.ly/2lnqwlZ.

Detention should be as short as possible,[511] and cannot exceed 6 months for adults,[512] and 3 months for children over the age of 14.[513] Prior to November 2017, these maximum time limits were 4 months and 2 months respectively. There is also a possibility to exceptionally extend these periods for up to 18 months, e.g. when the identity or citizenship cannot be verified or when the foreigner resisted against police force in the context of deportation.[514] As regards asylum seekers, detention should generally not last longer than 4 weeks following the final decision on the application.[515]

Figures on the average duration of detention of asylum seekers in general are not available. In 2019, however, the average time of a person kept in detention centre was 28.9 days.[516] This average time increased significantly in 2020, when asylum seekers who were detained on the ground of Article 76 (2) (1) FPG (i.e. the person has violated a travel ban) were detained for 83.3 days.[517] In 2021, the average time overall was 35.4 days, while specific data on the average detention time of asylum seekers is not available.[518] During the first lockdown, a number of detainees were released as they could not be deported as a result of travel restrictions. However, in certain cases such as persons who have committed a criminal offenses, detention continued to be applied despite the fact that deportation could not be carried out. In many cases, the maximum detention time limit of 18 months was applied on the basis that a deportation within the maximum time limit might still be possible. By way of illustration, in periodic court reviews foreseen by law, the BFA repeatedly argued from May 2020 onwards that deportations to **Afghanistan** would be feasible "in the following month"; while in reality not a single deportation to Afghanistan took place until December 2020. The last deportation flight to Afghanistan took place in June 2021. Following a BVwG judgement from August 2021, the BFA itself noted that there is no realistic forecast for next possible deportations flights.[519]

As regards, asylum seekers falling under the Dublin procedure, they are often detained immediately after lodging their application and may be kept in detention until they are transferred to the responsible Member State. In Dublin cases, detention may last for some weeks, as suspensive effect of the appeal is hardly ever granted and the transfer can be affected while their appeal is still pending. At the de facto detention facility at the **airport Vienna Schwechat**, 97 persons were accommodated in 2020. As regards the average length of *de facto* detention at the airport, there is no available information and the procedure continues to lack transparency.

511 Article 80(1) FPG.
512 Article 80(2)(2) FPG.
513 Article 80(2)(1) FPG.
514 Article 80(4) FPG.
515 Article 80(5) FPG.
516 Ministry of Interior, Answer to a parliamentary request 4023/AB XXVI GP, 16 August 2019, available in German at: https://bit.ly/39jKNlW.
517 Ministry of Interior, Answer to a parliamentary request, 4901/AB XXVII. GP, 12 March 2021, available in German at: https://bit.ly/2P4ioeu
518 Ministry of Interior, Answer to a parliamentary request, 9405/AB, XXVII. GP, 28 March 2021, available in German at: https://bit.ly/3KbaS9k.
519 BVwG, GZ W282 2242837, 19 August 2021, available in German at: https://bit.ly/3jq4IX0.

C. Detention conditions

1. Place of detention

Indicators: Place of Detention

1. Does the law allow for asylum seekers to be detained in prisons for the purpose of the asylum procedure (i.e. not as a result of criminal charges)? ☐ Yes ☒ No

2. If so, are asylum seekers ever detained in practice in prisons for the purpose of the asylum procedure? ☐ Yes ☒ No

The detention centres operating in 2020 and 2021 were as follows:

Total number of detainees in the main detention centres: 2020-2021		
Centre	2020	2021
Vordernberg Immigration Detention Centre	1,077	1,195
Vienna Roßauer Lände	1,157	835
Vienna Hernalser Gürtel	2,637	2,721
Zinnergasse	4	7

Source: Ministry of Interior, *Answer to a parliamentary request, 4901/AB XXVII. GP*, 12 March 2021, available in German at: https://bit.ly/2P4ioeu; Ministry of Interior, Answer to a parliamentary request, 9405/AB, XXVII. GP, 28 March 2021, available in German at: https://bit.ly/3KbaS9k.

Furthermore, other police facilities (PAZ) that have previously been used as detention places are now used for arrest for a period not exceeding 7 days. Following table provides an overview of their activities, although the numbers are often overestimated as the same person might have been detained in different PAZ facilities.

Number of arrested persons in the different police facilities (PAZ)		
Centre	2020	2021
PAZ Bludenz	100	90
PAZ Eisenstadt	29	27
PAZ Graz	170	192
PAZ Innsbruck	377	456
PAZ Klagenfurt	180	172
PAZ Linz	91	68
PAZ Salzburg	551	813
PAZ Steyr	0	7
PAZ St. Pölten	30	13
PAZ Villach	173	211
PAZ Wels	227	275
PAZ Wiener Neustadt	16	4

Source: Ministry of Interior, *Answer to a parliamentary request, 4901/AB XXVII. GP*, 12 March 2021, available in German at: https://bit.ly/2P4ioeu; Ministry of Interior, Answer to a parliamentary request, 9405/AB, XXVII. GP, 28 March 2021, available in German at: https://bit.ly/3KbaS9k.

The detention centre in **Vordernberg**, established in January 2014, allows detainees to stay outside their cell during the day. The facility is run by a private security company called G4S. Concerns about the division of tasks and accountability between the public security service and this private company have been raised.[520] The Minister of Interior explained in response to a parliamentary request that G4S's task is to assist the police.[521] According to a report of "Der Standard"', a series of trainings, including 36 hours dedicated to human rights, have been organised for the staff of the centre.[522]

Women or unaccompanied children aged more than 14 years old are detained in separate cells in practice. Moreover, some detention centres are particularly adapted to vulnerable persons. This is the case of the detention centres in Vienna, **Roßauer Lände**, which has a playground within the building. Similarly, the detention centre in Vienna **Zinnergasse** is equipped for families with children and unaccompanied children. There are further twelve family apartments in which families are detained for a maximum of 48 hours after having been informed of their deportation date. Moreover, one floor of the same building is used for less coercive measures and has 17 housing units, one of which is adapted to disabled persons. Detainees are allowed to leave the centre during the day.[523]

Airport (*de facto*) detention facility

At the **Vienna Schwechat Airport**, the initial reception centre is under the responsibility of the border police. Caritas Vienna had a contract to provide care for asylum seekers waiting for transfer to **Traiskirchen** or for the final decision on their application. The contract was not prolonged in 2017 and ORS, the company contracted by the Ministry of Interior to provide care to asylum seekers, provided care at the airport up until December 2020.[524] Since December 2020, the Federal Agency BBU GmbH is in charge of providing basic care at the airport. The capacity of the airport facility is 28 persons. During the first months of the pandemic in 2020, no persons were held at the facility as a result of the decrease of arrivals. However, the number of persons held slightly increased in and reached an average occupation of 25 persons as of November 2020.[525] In total, 97 persons were *de facto* detained in the facility in 2020.[526] In 2021, a total of 256 persons were *de facto* detained at the airport facility in 2021.[527]

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

521 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.")

522 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.

523 Sonja Jell, 'Alternative zur Schubhaft', Öffentliche Sicherheit 5-6/12, available at: http://bit.ly/2klLKVq.

524 Der Standard, 'Aus für Caritas-Flüchtlingsbetreuung am Flughafen', 13 January 2017, available in German at: http://bit.ly/2kmxmsn.

525 Ministry of Interior, *Answer to parliamentary request, 4244/AB, XXVII. GP*., 18 January 2021, available in German at: https://bit.ly/3uO5npL.

526 Ministry of Interior, *Answer to a parliamentary request, 4901/AB XXVII. GP*, 12 March 2021, available in German at: https://bit.ly/2P4ioeu

527 Ministry of Interior, *Answer to a parliamentary request, 9405/AB XXVII. GP*, 28 March 2022, available in German at: https://bit.ly/3uBDAed.

2. Conditions in detention facilities

Indicators: Conditions in Detention Facilities		
1. Do detainees have access to health care in practice?	☒ Yes	☐ No
❖ If yes, is it limited to emergency health care?	☐ Yes	☒ No

There were still important differences between the different detention facilities in 2021. While no major dysfunction or maladministration was reported in **Vordernberg**, there have been only few positive developments in the two major **Viennese** detention facilities. Of particular concern is the fact that people are still being detained in cells during the day, instead of open areas.

Although social counselling is not foreseen in practice, the information leaflet provided to detainees mentions that activities take place in the centre such as "social counselling". BBU GmbH does offers legal counselling for detainees who also have to undergo return counselling by another department of the BBU GmbH. NGOs receive no funding and are not regularly present in detention centres. UNHCR is not regularly present in detention centres.

The Austrian Ombudsman Board (AOB) has been responsible for protecting and promoting human rights in the Republic of Austria since 1 July 2012 and is the institution designed to promote the Austrian National Preventive Mechanism (NPM). The commission of the AOB can visit detention centres at any time. During the first months of COVID-19 in 2020, however, they had to suspend their visits to detention centres. After the lockdown, they resumed their visits to police detention centres and identified challenges regarding visiting modalities, staffing level, solitary confinement and access to the yard.[528]

Medical treatment is provided in all detention centres by medical staff. Special treatment may be organised by transferring detainees to hospitals. In the detention centres in **Vienna**, psychiatric treatment is provided. In Vienna, detainees on hunger strike may be transferred to the medical station of the prison, but forced feeding is not allowed. In case there is a high probability of a health risk due to hunger strike, asylum seekers are usually released from detention. Detainees on hunger strike should only be placed in isolation if the necessary medical treatment cannot be provided at the open detention center. In **Vordernberg**, there are two types of doctors: doctors who work alongside police authorities and help determining whether detention can be continued or not, and regular doctors who only provide care to the detainees. The system of having different doctors should be extended to other detention facilities, but is not applied in practice yet. The AOB (NPM) has further criticised the fact that medical treatment is not provided immediately in cases of mental illness or suicide risk.

As of the end of 2020, there was still no mechanism to identify vulnerable people in detention centres, which is a serious issue that was also highlighted by the mission report of the OHCHR in October 2018.[529] The conditions in the detention centres in **Vienna Hernalser Gürtel** and **Vienna Rossauer Lände** are particularly inappropriate, due to structural dysfunctions and cases of maladministration. In June 2019, a Hungarian detainee died in the detention centre Vienna **Rossauer Lände** centre. He was 58 years old and in a critical health situation. Criminal proceedings against the officials and doctors employed in the detention centre have been initiated and further aim to determine whether the circumstances of detention were lawful or not.[530] As the Court consulted a Court certified expert, the decision has not been issued yet and is expected to become available in 2022.

In its 2017 Annual Report that was published in 2018, the AOB formulated a list of recommendations necessary for the improvement of the detention facilities, which include *inter alia* the necessity of

528 Fundamental Rights Agency, *Migration Bulletin 4*, November 2020, https://bit.ly/3qmLzXa.
529 OHCHR, Report of mission to Austria focusing on the human rights situation of migrants, particularly in the context of return, October 2018, https://bit.ly/2TfscSi.
530 Der Standard, ‚Todesfall in Schubhaftzentrum: Diakonie will Aufklärung', 13 June 2019, available in German at: https://bit.ly/2vCoPvR.

establishing single cells, providing adequate access to medical care, ensuring adequate detention conditions (e.g. natural light, ventilation, hygienic measures, visits etc.) [531] These recommendations have not been implemented until 2021. There are no signs that any reform in the area of detention of foreigners is planned in the new future.

3. Access to detention facilities

Indicators: Access to Detention Facilities	
1. Is access to detention centres allowed to	
❖ Lawyers:	☒ Yes ☐ Limited ☐ No
❖ NGOs:	☐ Yes ☒ Limited ☐ No
❖ UNHCR:	☒ Yes ☐ Limited ☐ No
❖ Family members:	☐ Yes ☒ Limited ☐ No

UNHCR has access to asylum seekers without restrictions, while lawyers can visit their clients during working hours in a special visitor room. NGOs have access if they have obtained authorisation to act as legal representative of the detainee, which is obtained without delay in practice.

Other visitors such as relatives or friends have restricted possibilities to visit. Visits have to be allowed by the police for at least 30 minutes per week. In addition, restrictions may be imposed to detainees who are separated from other detainees and are put in security cells due to their behaviour, such as suicide attempts, hunger strike or violence. Visiting hours are limited to the weekend and early evening hours, and direct contact is not possible as the visit takes place in a room where the asylum seeker is separated from the visitor by a glass window. In the centre of **Vordernberg**, direct contact is made possible because of the presence of video cameras. Visits of media or politicians are usually not permitted. This centre has been presented to the public as an example of improvement of Austria's return policy.

Representatives of the churches have agreements with the police to visit detainees on a regular basis.

D. Procedural safeguards

1. Judicial review of the detention order

Indicators: Judicial Review of Detention		
1. Is there an automatic review of the lawfulness of detention?	☒ Yes	☐ No
2. If yes, at what interval is the detention order reviewed?[532]	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.[533] The main parts of such a decision, which are the decision of detention and the information on the right to appeal, have to be in a language the asylum applicant is able to understand. In each case, the detained asylum applicant is appointed a legal adviser provided by the state.

Detention is ordered by the BFA. The BFA has to review the lawfulness of detention every 4 weeks. After 4 months, the Federal Administrative Court (BVwG) must review the lawfulness of detention *ex officio*.

There is a possibility to submit an appeal to the BVwG against a detention order, which is not subject to any time limits. The BVwG has to decide on the lawfulness of the detention order on the basis of the

531 AOB, Annual Report 2017, available at: https://bit.ly/2SLaenu.
532 This refers to judicial review of detention conducted by the BVwG. The BFA reviews detention every 4 weeks.
533 Article 76(3) FPG.

appeal of the asylum seeker and must determine whether reasons for continuation of detention existed at the time of the decision. An appeal against detention in the context of the border procedure is not possible as asylum seekers are de facto detained and therefore do not obtain a detention order that can be appealed.

The Court must decide within 7 calendar days in cases where a person is still detained, and within 6 months in cases where the person is no longer detained (which is the general time limit for decisions in administrative procedures).[534]

If the detention or its duration are recognised as unlawful, the asylum applicant is entitled to a financial compensation of €100 for each unlawful day in detention. In case the appeal is rejected, there is a possibility to submit an appeal to the VwGH and to the VfGH. However, if the Federal Administrative Court (BVwG) rules on an appeal and finds that the detention order was lawful and that, at the time of the decision of the court, there is still the need to continue detention, the detained person lacks any possibility to contest this decision as unlawful.[535] In 2021, the Republic of Austria acknowledged 75 compensation claims and paid a total compensation of € 132,287 for unlawful detention.[536]

Since the implementation of the Return Directive, legal safeguards for persons in detention have improved. Nevertheless, judicial review *ex officio* after 4 months does not seem to be systematic in practice. The state led agency BBU GmbH has taken over counselling in detention centres. The contracts between the Ministry of Interior and NGOs have not been prolonged, leading to a blackbox-situation with no civil society oversight in detention centres. There has been an exchange between NGOs offering free legal counselling and BBU GmbH in 2021 on general matters. There are no reports that the counselling service by BBU GmbH has deteriorated yet.

2. Legal assistance for review of detention

Indicators: Legal Assistance for Review of Detention

1. Does the law provide for access to free legal assistance for the review of detention?
   ☒ Yes ☐ No
2. Do asylum seekers have effective access to free legal assistance in practice?
   ☒ Yes ☐ No

The detained asylum applicant is appointed a legal adviser provided by the BBU GmbH (see Legal assistance). The law contains only the obligation for the legal adviser to take part in hearings and to represent the asylum applicant, if the person so requests.[537] This was also underlined in a ruling of the Supreme Administrative Court, which concluded that the legal provision according to which lawyers have to attend the oral proceedings at the request of the foreigner "can only be understood as meaning that the lawyer's participation in the hearing must be" on behalf of the applicant ", and thus has to act as a representative.[538]

A legal adviser shall be appointed according to Articles 51-52 BFA-VG in return procedures, detention and apprehension orders.[539] However, the right to receive legal advice for people benefiting from alternatives to imprisonment was abolished on 1 January 2014.

534 Article 22a(3) BFA-VG.
535 VfGH, Decision E4/2014-11, 26 June 2014.
536 Ministry of Interior, *Answer to parliamentary request, 9405/AB, XXVII. GP*, 28 March 2022, available in German at: https://bit.ly/3vakJFU.
537 Article 52(2) BVA-VG.
538 VwGH, Decision No Ra 2016/21/0152, 23 February 2017.
539 VfGH, Decision E4/2014-11, 26 June 2014.

Legal advisers can meet their clients in the visitors' room during office hours. Appointed legal advisers have to arrange for an interpreter. As their service is included in the lump sum for legal advice, it can be assumed that interpreters are not always present.

Moreover, asylum seekers are usually detained during the admissibility procedure. Member states requested to take back or take charge an application have to respond to the request within one month, in accordance with the Dublin Regulation. As a result, asylum seekers may face difficulties to obtain effective legal assistance and/or may fail to appeal the inadmissibility decision within two weeks. Detained asylum seekers may face more difficulties to appeal a rejection of their application if they know that the appointed legal adviser will not assist them to write an appeal. Within the short time limit of two weeks for the appeal, it is thus difficult to obtain effective legal assistance.

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

Persons who are recognised as **refugees** in Austria obtain a residence permit valid for three years.[540] If the situation in the country of origin has not changed and the protection status it thus necessary, it is prolonged to an unlimited residence permit *ex officio*. If the country of origin information (COI) indicates that the refugee may return safely, the Cessation procedure may start.[541]

Persons with **subsidiary protection** status get a residence permit valid for one year.[542] Renewal of the residence permit has to be applied for at the BFA. If protection needs continue to exist, the residence permit is prolonged for two additional years.[543]

The renewal of residence permits can take time, but the right to remain exists until the BFA decides on an application for renewal. The subsidiary protection status used to be prolonged without conducting in an interview, but this practise has changed in 2018. As the BFA is now paying particular attention to withdrawal procedures, renewal proceedings are lengthy and often result in a negative decision. The lack of valid documentation pending renewal further has a negative impact on access to housing and the labour market. The renewal has to be applied before the right to remain expires, but should not be applied more than three months before that date. If the application is not submitted in time, the stay becomes illegal. This may result in a longer waiting period for the long-term residence permit.

During the first lockdown in 2020, the application time for the renewal of subsidiary protection was suspended until 1 May 2020 in cases were the residence permit expired between 23 March and 1 May 2020. As the application for prolongation could be submitted in written form, no exception was necessary.

2. Civil registration

Registration of childbirth takes place at the district administrative or municipal authority. This is done directly by state hospitals as soon as a child is born. If the parents of the new-born are not married, or if the husband is not the father, an affidavit is required from the biological father to recognise paternity. Both parents are given joint custody of the child if they are married; if not, custody is granted to the mother unless the parents decide on joint custody.

As regards marriage registration, the Register must determine the capacity of the future spouses to enter into marriage during a hearing, on the basis of the documents submitted. These include: an official identification document with a photograph; a document equivalent to a copy of the birth certificate; and proof of citizenship. An affidavit may be given if the person cannot provide these documents. Practice varies between local Registers, with some demanding all the aforementioned documents while others are more flexible.

540 Article 3(4) AsylG.
541 *Ibid.*
542 Article 8(4) AsylG.
543 *Ibid.*

Civil registration in Austria is necessary for people to have access to health insurance, child and family allowances and other social rights. In addition, the family allowance is granted only after asylum has been granted to the baby. This procedure may take several months.

3. Long-term residence

Indicators: Long-Term Residence

1. Number of long-term residence permits issued to beneficiaries in 2021 (for the first time – "Erstbewilligungen"): 1,193

Long-term resident status for third-country nationals 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 for international protection. 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.[544]
- 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 €1,030 or more if the cost of rent is higher than € 309,93 for a single person since 1 January 2022;
  - 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.

1,193 beneficiaries of international and subsidiary protection obtained a long-term resident status in 2022, compared to 1,097 in 2020, 498 in 2018 and 1,193 in 2019.[545] This sharp increase since 2018 is likely to be the result of the focus of the BFA on withdrawal procedures of protection statuses. In cases where the international protection has been granted more than five years ago, a withdrawal procedure can only be started after a long-term residence status is granted by the responsible settlement authorities.

4. Naturalisation

Indicators: Naturalisation

1. What is the waiting period for obtaining citizenship?
   - Refugees: 10 years
   - Subsidiary protection beneficiaries: 15 years
2. Number of citizenship grants in 2021: 1,660

Refugees are entitled to naturalisation after 10 years of lawful and uninterrupted residence in Austria, which includes the period of stay during the asylum procedure.[546] The length of the legal stay, and thus

544 Article 45(12) Residence Act.
545 Ministry of Interior, *Residence permit statistics*, 2019, available in German at: https://bit.ly/2uH11q3.
546 Article 11a(4)(1) and (3) Citizenship Act (StbG).

the waiting period for obtaining citizenship, has been extended from 6 to 10 years in September 2018.[547] UNHCR and NGOs criticised this prolongation, because the prospect of rapid naturalisation promotes a successful integration process and is desirable for strengthening the cohesion of society as a whole.[548] Citizenship must be granted to a person entitled to asylum after 10 years of residence if the BFA, upon request, notifies that no cessation procedure under the Asylum Act 2005 has been initiated nor are the conditions for initiating such a procedure. For beneficiaries of subsidiary protection, the waiting period is 15 years.

In order to be naturalised, a beneficiary of protection must also demonstrate:

- Sufficient income during the last 3 years;
- Proof of knowledge (B1) of the German language;
- Successful completion of integration course (*Werteskurs*);
- Absence of a criminal record (*Unbescholtenheit*).

Refugees and Beneficiaries of subsidiary protection may have faster access to naturalisation in less than 15 years of residence under certain conditions. They may shorten their waiting period if: (a) they have acquired B2-level knowledge of German; or (b) have acquired B1-level knowledge and can prove efforts of personal integration. The at least three-year voluntary work or activity in the social field must serve the common well-being and represent an integration-relevant added value in Austria. If they fulfil these criteria and the general conditions, the waiting period for obtaining citizenship may be reduced to 6 years. In any other case, it is easier for beneficiaries of subsidiary protection to obtain naturalisation by obtaining long-term resident status after 5 years (see Long-Term Residence); then, they may be naturalised after 10 years.

As opposed to 2016 and 2017 where respectively 1,244 and 1,252 refugees received citizenship after 6 years of residence due to integration efforts,[549] only 1,086 persons with asylum-status have received citizenship in 2018 under the new law which extended the waiting period from 6 to 10 years. In 2021, 1,660 persons with asylum status received citizenship.

Year	Number of persons with asylum status receiving citizenship
2010	600
2011	1,015
2012	941
2013	1,286
2014	1,148
2015	1,028
2016	1,224
2017	1,252
2018	1,086
2019	1,276
2020	1,022
2021	1,660

Source: Ministry of Interior, *Answer to parliamentary request, 9407/AB, XXVII. GP*, 28 March 2022, available in German at: https://bit.ly/3rf5kDk.

547 Article 11(7) Naturalization Act.
548 Tiroler Tageszeitung, UNHCR kritisiert österreichische Flüchtlingsnovelle, 9 May 2018, available in German at: https://bit.ly/2UYyHad.
549 Statistics Austria, Einbürgerungen, available in German at: https://bit.ly/2TOTPzJ.

5. Cessation and review of protection status

Indicators: Cessation

1. Is a personal interview of the asylum seeker in most cases conducted in practice in the cessation procedure? ☒ Yes ☐ No
2. Does the law provide for an appeal against the first instance decision in the cessation procedure? ☒ Yes ☐ No
3. Do beneficiaries have access to free legal assistance at first instance in practice? ☒ Yes ☐ With difficulty ☐ No

The Asylum Act contains the provisions on cessation and withdrawal of international protection in a single provision: Article 7 for refugees and Article 9 for beneficiaries of the subsidiary protection.

Refugee status can be ceased if the conditions in Article 1C of the Refugee Convention are met, or if the refugee status has been granted in another country.[550] **Subsidiary protection** can be ceased where the conditions on which status was granted no longer exist, where the person obtains the subsidiary protection status in another country, or obtains the nationality of another country and return thereto would not violate the principle of *non-refoulement*.[551]

Procedure

Where the BFA considers that the conditions in the country of origin have changed, thus questioning whether the beneficiary's fear of persecution is still valid, it shall inform the person *ex officio* of the initiation of a cessation procedure - irrespective of whether the person has a permanent or temporary residence permit.[552]

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 2021, 265 (2020: 194) tolerated status cards were issued,[553] compared to 162 in 2019, [554] 179 in 2018,[555] and 279 in 2016.[556]

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.

Cessation procedures for beneficiaries of the **subsidiary protection** are often initiated by the BFA when they apply for a prolongation of their residence permit. Persons originating from **Russia**, **Syria** and **Afghanistan** are particularly concerned by these procedures. The Administrative Court stated that a subsidiary protection status, that was granted because of the minority of a person, can be withdrawn once the minor becomes an adult and commits a crime.[557]

550 Article 7(2)-(3) AsylG.
551 Article 9(1) AsylG.
552 Article 7(2a) AsylG.
553 Ministry of Interior, *Answer to parliamentary request, 4887/AB, XXVII. GP*, 12 March 2021, available in German at: https://bit.ly/30XDwWv; Ministry of Interior, Answer to parliamentary request 9531/AB, XXVII. GP, 11 April 2022, available in German at: https://bit.ly/3KPxwnY.
554 Ministry of Interior, Answer to parliamentary request 3698/AB, 4 December 2020, available in German at: https://bit.ly/3qu7n3K
555 Ministry of Interior, Answer to parliamentary request 2483/AB XXVI. GP, 27 February 2019.
556 Ministry of Interior, Answer to parliamentary question 12114/AB, 30.05.2017(XXV.GP18 April 2016, available in German at: http://bit.ly/2kmW2Ri.
557 VwGH, Decision Ra 2018/18/0343, 21 June 2018.

A cessation procedure is further initiated when entering the country of origin or applying for a passport from the country of origin. The entry of persons entitled to protection in Austria with a Convention or Foreigner passport is reported by the border police to the BFA. As of today, it is not clear yet if every case of entry from third countries is reported.

Statistics on the number of *initiated* cessation/withdrawal procedures

Statistics made available by the Ministry of Interior do not distinguish between cessation and withdrawal procedures. The number of initiated cessation or withdrawal procedures of the asylum status has consistently remained between 5,500 and 6,000 cases since 2018. In 2018, 5,991 cessation/withdrawal procedures were initiated,[558] resulting in the withdrawal/cessation of the refugee status in 450 cases and of the subsidiary protection in 475 cases.[559] In 2019, out of the total of 5,547 initiated withdrawal procedures, the asylum status was ceased or withdrawn in 856 cases, while the subsidiary protection was ceased or withdrawn in 917 cases.[560]

In 2021, 4,745 cessation and withdrawal procedures of the **asylum status** were initiated on the following grounds:

Initiated cessation/withdrawal procedures of the asylum status: 2021							
Country of Origin	Delinquency[561]	Danger to public security[562]	Travel movement (COI)[563]	Altered circumstances[564]	Withdrawal/Cessation status of reference person	Other reasons	Total
Syria	540	3	867	5	5	146	**1,566**
Russia	134	4	140	588	225	73	**1,164**
Afghanistan	360	2	333	14	2	49	**760**
Iran	125	0	123	6	3	20	**277**
Iraq	65	0	147	10	3	25	**250**
Somalia	52	0	100	47	30	7	**236**
stateless	72	1	78	1	1	11	**164**
Serbien	3	0	9	12	0	6	**30**
DRC	7	0	8	3	6	0	**24**
Kosovo	4	0	7	8	0	3	**22**
Other	74	0	73	56	27	22	**252**
Total	**1,436**	**10**	**1,885**	**750**	**302**	**362**	**4,745**

Source: Ministry of Interior, *Answer to parliamentary request 9530/AB, XXVII. GP,* 11 April 2022, https://bit.ly/3rv5pTg.

As regards **subsidiary protection**, the BFA imitated a total of 1,179 cessation/withdrawal procedures in 2021:

558 Ministry of Interior, Answer to parliamentary request, 4105/AB XXVI GP, 30 October 2019.
559 Information provided by the Ministry of Interior on 1 February 2019.
560 Ministry of Interior, Answer to a parliamentary request 4024/AB XXVI. GP, 16 September 2019, available in German at: https://bit.ly/2PEhsuJ.
561 Article 7 (2) AsylG, in connection with Article 27 (3) (1-4) AsylG
562 Article 7 (1) (1), in connection with Article 6 (1) (3) AsylG
563 Article 7 (2) last sentence AsylG
564 Article 7 (2a) AsylG

Initiated cessation/withdrawal procedures of the subsidiary protection: 2021							
Country of Origin	Delinquency [565]	Danger to Public Security[566]	Travel Movement (COI)[567]	Altered circumstances [568]	Examination in the course of prolongation	Other reasons	Total
Afghanistan	213	0	141	0	49	61	**464**
Iraq	56	0	38	0	16	69	**179**
Somalia	27	0	39	0	53	12	**131**
Russian Federation	15	0	22	0	33	28	**98**
Kosovo	2	0	1	0	4	77	**84**
Syria	18	0	11	0	1	6	**36**
stateless	5	0	14	0	8	1	**28**
Serbia	0	0	0	0	1	20	**21**
Nigeria	2	0	3	0	9	3	**17**
Kirgisistan	0	0	0	0	10	2	**12**
Other	24	1	14	0	46	25	**109**
Total	**362**	**1**	**283**	**0**	**230**	**304**	**1,179**

Source: Ministry of Interior, *Answer to parliamentary request 9530/AB, XXVII. GP, 11 April 2022, https://bit.ly/3rv5pTg*

Statistics on the number of protection status ceased/withdrawn by the BFA at first instance

Not all of the initiated procedures represented above resulted in a withdrawal or cessation of protection. In 2021, the BFA ceased and withdrew **asylum status** in 1,304 cases as follows (2020: 1,341):

	Ceased/withdrawn asylum status by BFA: 2021						
Country of Origin	Delinquency	Danger to public security	Travel movement (COI)	Altered circumstances	Withdrawal/cessation status of reference person	Other reasons	Total
Russian Federation	80	3	106	476	272	78	1,015
Syria	1	0	8	2	4	38	53
Kosovo	4	0	6	20	12	2	44
Iraq	7	0	7	9	4	8	35
Afghanistan	3	0	18	1	0	11	33
Georgia	3	0	1	9	0	3	16
Serbia	1	0	0	11	1	2	15
Iran	2	0	6	2	0	5	15
Somalia	1	0	1	1	2	4	9
Turkey	0	0	1	4	0	3	8
Other	4	0	6	33	7	11	61
Total	**106**	**3**	**160**	**568**	**302**	**165**	**1,304**

Source: Ministry of Interior, *Answer to parliamentary request 9530/AB, XXVII. GP,* 11 April 2022, https://bit.ly/3rv5pTg.

In 7 cases the cessation of asylum status was followed by the granting of subsidiary protection, and in 116 cases a status on humanitarian grounds was granted.

565 Article 9 (3) AsylG
566 Article 9 (2) (2) AsylG
567 Article 9 (1) (1-2) AsylG
568 Artcile 9 (1) (1)AsylG

As regards the **subsidiary protection**, it was withdrawn or ceased in a total of 342 cases in 2021 (2020: 499) :

Withdrawal of subsidiary protection status by BFA: 2021	
Afghanistan	101
Iraq	69
Russian Federation	55
Kosovo	34
Serbia	26
Armenia	9
Somalia	8
Nigeria	5
stateless	4
Congo	4
Other	27
Total	**342**

Source: Ministry of Interior, *Answer to parliamentary request 9530/AB, XXVII. GP,* 11 April 2022, https://bit.ly/3rv5pTg.

It should be noted that the above figures only represent the number of protection status ceased/withdrawn by the BFA at first instance. In 2021, the BVwG decided on 409 appeals concerning withdrawal of asylum status and on 720 appeals concerning withdrawal of subsidiary protection.[569] However, there are no statistics available statistics on the outcome of these decisions and on how many of the withdrawal decisions became enforceable. In October 2020, the NGO "Menschen.Würde.Österreich" presented an evaluation of the cessation/withdrawal procedures carried out between January 2019 and September 2020. Based on publicly available decisions by the BVwG, 841 decisions of the BFA in withdrawal/cessation procedures were challenged and 79% of all withdrawal decisions by the BFA concerning cases other than withdrawal of delinquency were dismissed by the court.[570] There is no such evaluation available for the year 2021.

6. Withdrawal of protection status

Indicators: Withdrawal

1. Is a personal interview of the asylum seeker in most cases conducted in practice in the withdrawal procedure? ☒ Yes ☐ No
2. Does the law provide for an appeal against the withdrawal decision? ☒ Yes ☐ No
3. Do beneficiaries have access to free legal assistance at first instance in practice? ☐ Yes ☒ With difficulty ☐ No

Refugee status is withdrawn where the refugee should have been excluded under the exclusion clauses,[571] or is convicted of a criminal offence.[572] **Subsidiary protection** is withdrawn if the exclusion

569 Source: Ministry of Justice, *Answer to parliamentary request 9532/AB, XXVII. GP*, 11 April 2022, https://bit.ly/3rxqhJw.

570 Der Standard, „Die absurd hohe Fehlerquote des Bundesamts für Fremdenwesen und Asyl", 10 December 2020, available in German at: https://bit.ly/3eUlkoR.

571 Article 7(1)(1) AsylG.

572 Article 7(2) AsylG.

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.[573] A withdrawal procedure shall be initiated by the BFA where a beneficiary of the subsidiary protection is under prosecution for a serious crime, and the provisions on withdrawals are likely to be applied.[574] To that end, the BFA as well as the BVwG receive information on the prosecution from the Prosecutor's Office and the Court.

An appeal challenging a withdrawal decision has suspensive effect. Nevertheless, it is a truncated procedure with a lot of difficulties as the concerned applicants do not have documentation of their status.

Article 7(2) AsylG, as amended by the alien law reform (FrÄG 2017), further allows that withdrawal proceedings are initiated where the beneficiary is suspected of having committed a criminal offence.[575]

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. Since 1 September 2018, young offenders are no longer protected from losing their protection status.

The VwGH referred a preliminary ruling to the CJEU regarding the interpretation of Article 19(1) of Directive 2011/95 on the possibility of revocation of subsidiary protection status without a change in the relevant factual circumstances, but rather only where the knowledge of the authority has changed and the person concerned cannot be accused of having misled the Member State. The CJEU found that where the Member State has new information which establishes that, contrary to its initial assessment based on incorrect information, that person never faced a risk of serious harm, within the meaning of Article 15 of that Directive, that Member State must conclude that the circumstances underlying the granting of subsidiary protection status have changed in such a way that retention of that status is no longer justified. That this error was not attributable to the applicant does not alter the fact that the applicant is not eligible for subsidiary protection.[576]

B. Family reunification

1. Criteria and conditions

Indicators: Family Reunification

1. Is there a waiting period before a beneficiary can apply for family reunification?
   - ❖ Refugee status ☐ Yes ☒ No
   - ❖ Subsidiary protection ☒ Yes ☐ No
     3 years

2. Does the law set a maximum time limit for submitting a family reunification application?
   For refugees be exempt from material conditions ☒ Yes ☐ No
   - ❖ If yes, what is the time limit? 3 months

3. Does the law set a minimum income requirement?
   - ❖ Refugee status ☐ Yes ☒ No
   - ❖ Subsidiary protection ☒ Yes ☐ No

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573 Article 9(2) AsylG.

574 Article 9(3) AsylG.

575 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.

576 CJEU, *Bilali*, Case C-720/17, 23 May 2019.

1.1. Eligible family members

Family members eligible for family reunification include:[577]

- Parents of a minor child;
- Spouses and registered partners, where the marriage / partnership existed before fleeing the country of origin. In case concluded in another country, the marriage / partnership must be legally valid in the country of origin;
- Children who are minors at the time of the application;

According to the VwGH, siblings are not considered a family member eligible for reunification.[578]

Beneficiaries of international protection who get married after having arrived in Austria cannot reunite with their spouses under the AsylG. In addition to the material conditions set out below, spouses must also pass a German exam before entering Austria. They are also subject to the annual quota on family reunification.

On 12 April 2018, the CJEU ruled in case *A. and S.*, which concerned a request for a preliminary ruling from the Dutch Court of The Hague on the right to family reunification of unaccompanied children who reach the age of majority after lodging an asylum application. The CJEU concluded that an asylum applicant who is below the age of 18 at the time of his or her entry into the territory of a Member State and of the introduction of his or her asylum application in that State, but who, in the course of the asylum procedure, attains the age of majority and is thereafter granted refugee status, must still be regarded as a “minor” for the purposes of that provision.[579] This judgement of the CJEU was implemented by the VwGH in its decision of 3 May 2018.[580] However, the VwGH saw no basis for changing its previous decision-making practice. If an unaccompanied minor attains the age of majority during the asylum procedure, the family status of the parents and thus the conditions for joining an asylum-entitled child who is an adult at the time of the decision, cease to apply.

The refusal to grant an entry title in the context of family reunification refers to proceedings that are regulated under the Settlement and Residence Act (*Niederlassungs- und Aufenthaltsgesetz* - NAG). The NAG further regulates the legal route for third-country nationals seeking to obtain a residence permit in Austria. Family members of persons entitled to asylum may be granted, under certain conditions, a residence permit called "Red-White-Red-Card-Plus" in accordance with Article 46 NAG. This card grants access to the labour market, is valid for one year and can be prolonged to 3 years.

Following a reform proposal aiming to restrict the right to family reunification in 2016, also discussed below, a draft law on alien law (FrÄG 2017) included measures which required from family members to be able to cover the costs for the purpose of proving family links (e.g. DNA tests) in order to be reunited with beneficiaries of international protection. The amendment, criticised for imposing adding hurdles on family members and for creating risks of rendering family reunification ineffective in practice, was not adopted.[581] Costs of DNA tests are reimbursed where these are ordered by the BFA.

The Administrative High Court emphasised that an application for family reunification cannot be dismissed on the ground that there are doubts on the family ties, without having informed the concerned persons about the possibility to undertake a DNA test.[582]

577 Article 35(5) AsylG.
578 VwGH, Decision Ra 2015/21/0230 to 0231, 28 January 2016; Ra 2016/20/0231, 26 January 2017.
579 CJEU, Case C-550/16 *A. and S.*, Opinion of AG Bot of 26 October 2017.
580 VwGH, Decision No Ra 2017/19/0609, 3 May 2018.
581 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.
582 VwGH, Decision Ra 2017/18/0131, 22 February 2018.

1.2. Waiting periods and material 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.[583] 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.[584] These are material requirements set in line with requirements for other third-country nationals. No language knowledge is required for family reunification.

Subsidiary protection beneficiaries' family members can only submit an application after at least 3 years of the sponsor's recognition.[585] The aforementioned requirements – sufficient income, health insurance and accommodation – in force since 1 June 2016 are always applicable to beneficiaries of the subsidiary protection,[586] with the exception of unaccompanied children.[587]

The fact that a beneficiary of subsidiary protection has to wait three years before initiating a family reunification procedure has been ruled as non-discriminatory by the Constitutional Court.[588] The case concerned a 13-years-old unaccompanied minor from Syria who had received subsidiary protection in July 2016 and who had therefore to wait for 3 years to benefit from family reunification instead of 1 year. In its ruling, the Constitutional Court considered that differentiating between persons entitled to asylum and persons entitled to subsidiary protection did not pose a risk of unequal treatment, as they are evident differences between these two groups (e.g. with regards to the temporary right of residence).

NGOs have expressed concerns 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 currently exceeding 3 months. In practice, applications submitted in writing are thus very lengthy. This situation deteriorated in 2021 due to the takeover of the Taliban in Afghanistan: The responsible embassy in Islamabad, Pakistan, scheduled appointments with several months of waiting time.

This is despite the fact that the law makes explicit reference to Article 8 ECHR in Article 35(4) AsylG, and the explanatory notes cite a ruling of the Administrative High Court that an application for a visa for family reunion with a person entitled to protection should be granted if this is necessary to maintain private and family life.[589]

It should be further noted that, in order to benefit from family reunification, the family members of persons entitled to asylum or subsidiary protection make an application at the Austrian embassy. In that regard, the BFA conducts a probability diagnostic for the grant of family reunification, during which the family ties are particularly examined. In 2018, the BFA has conducted a total of 3,068 of these probability evaluations.

The BFA processed 9,495 family reunification applications in 2016, 7,612 in 2017 and 2,247 in 2018.[590] In 2021, 2,459 (2020: 1,189) applications for family reunification were lodged and concerned following

583 Article 35(1) AsylG.
584 *Ibid*, citing Article 60 AsylG.
585 Article 35(2) AsylG.
586 Article 35(2) AsylG.
587 Article 35(2a) AsylG.
588 VfGH, Decision E 4248-4251/2017-20,10 October 2018.
589 VwGH, Decision Ra 2013/22/0224, 11 November 2013.
590 BFA, '2017: Das Jahr der Aufarbeitung', 11 January 2018, available in German at: http://bit.ly/2FnCV4G. For the year 2018, the information was provided by the Ministry of Interior.

nationalities: **Syria** (1,335), **Afghanistan** (589), **Somalia** (216).[591] There is no data available at the time of writing on how many visa were finally issued in 2021.

The Austrian Red Cross, who also supports the family reunification of persons benefitting from a protection status, assisted 1,355 families in 2017, out of which 56% originated from Syria, 18% from Afghanistan and 9% from Somalia. However, the number of visas being delivered has fallen sharply in 2018: around 5,600 visas were issued in 2017, but the number decreased by 65% in 2018. There are currently around 750 applications under consideration.[592] There is no data on how many cases are being processed at the end of 2020.

In 2019, the Austrian Red Cross provided support to 573 family reunification procedures, which concerned 1,442 family members willing to be reunited with a person granted international protection in Austria. In total, the Austrian Red Cross assisted 5,143 persons in 1,862 open cases. Throughout 2019, 1,264 counselling units with clients were thus carried out, while another 2,942 persons obtained assistance from the open counselling service. 388 written submissions were brought in by the Austrian Red Cross in 2019.[593] In 2020, there were no updated statistics on the activities of the Red Cross made available by the time of writing of this report. It was reported that due to Covid-19 related travel restrictions and limited working hours at the Austrian embassies abroad, there was a significant delay in processing family reunification cases.

In 2021, 4,073 applications for visa related to family reunifications were registered, of which 2,659 were from Syrian and 767 from Afghan nationals. There are no statistics available concerning the decisions of the authorities. As of 31 December 2021, 1,309 applications were still pending.[594]

2. Status and rights of family members

Family members are entitled to at least the same status as the sponsor. However, upon arrival in Austria, they submit an application to the police to obtain such protection, and an assessment is carried out to inquire whether they may have their own reasons for seeking international protection.

In a ruling of November 2017, the VwGH stated that the principles of the Family Reunification Directive need not be complied with in the family procedure set out in Article 35 AsylG and that the BFA was not obliged to grant the family members international protection in the particular case, since Article 35 AsylG offers more favourable standards to the Directive.[595]

C. Movement and mobility

1. Freedom of movement

Persons who are granted international protection are free to move and settle throughout the Austrian territory. However, in practice, freedom of movement might be restricted for certain beneficiaries when they depend on specific services (see Social welfare). The restriction of residence that used to apply to

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

592 Die Presse, Familienzusammenführung: Immer weniger wollen nach Österreich, 6 February 2019, available in German at: https://bit.ly/2GN3SBH.

593 Information by Austrian Red Cross, Beratungsstelle Familienzusammenführung, 13 March 2019

594 Ministry of Interior, *Answer to parliamentary request, 9407/AB, XXVII. GP*, 28 March 2022, available in German at: https://bit.ly/3rf5kDk.

595 VwGH, Decision Ra 2017/19/0218, 22 November 2017.

beneficiaries of subsidiary protection who were awaiting an appeal has been deleted by the recent amendment to Article 15b AsylG.[596]

2. Travel documents

Since 2015, travel documents for beneficiaries of international protection are issued for a period of up to 5 years.[597] Refugees obtain a Convention travel document (‘*Konventionsreisepass*’) without further conditions, unless there are compelling reasons in terms of national security and public order against the issuance of a document,[598] whereas beneficiaries of subsidiary protection must establish that they are unable to obtain a travel document from their country of origin.[599] A geographical limitation further applies to beneficiaries of protection who are not allowed to travel to their country of origin with these documents.

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

In 2021, 44,516 Convention travel documents were issued to refugees and 5,016 *Fremdenpässe* (travel documents for foreigners) were issued. However, there is no data how many of those were issued to beneficiaries of subsidiary protection.[600]

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 21 January 2021	9,478

Refugees are entitled to Basic Care in the first 4 months after the recognition of their status.[601] After this period, they have access to the general welfare system and can obtain basic care and social assistance similarly to any other Austria citizen. Beneficiaries of **subsidiary protection** have no temporal limit on receiving Basic Care but are excluded from the general welfare system. The only precondition is need.

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).

As of 31 December 2021, a total of 1,980 refugees and 7,498 beneficiaries of subsidiary protection received Basic Care, of which 68 %% resided in **Vienna** (compared to 67% in 2020):

596 Fremdenrechtsänderungsgesetz 2018, available in German at: https://bit.ly/2Vyj5h5.
597 Article 90(1) FPG.
598 VwGH, Decision 2013/21/0003, 16 May 2013. One example of such reasons was found in the case of a person convicted of international drug dealing: VwGH, Decision 2009/21/0340, 29 April 2010.
599 Article 88(2a) FPG.
600 Ministry of Interior, *Answer to parliamentary request, 9407/AB, XXVII. GP*, 28 March 2022, available in German at:. https://bit.ly/3rf5kDk
601 Article 2 (1) (6) Grundversorgungsvereinbarung.

Beneficiaries of international protection in Basic Care: 31 December 2021			
Province / Federal centre	Refugee status	Subsidiary protection	Total
Burgenland	22	69	91
Carinthia	58	185	243
Lower Austria	222	282	504
Upper Austria	255	413	668
Salzburg	65	158	223
Styria	82	356	438
Tyrol	229	199	428
Vorarlberg	145	295	440
Vienna	902	5,541	6,443
Total	**1,980**	**7,498**	**9,478**

Source: Ministry of Interior.

Support after the end of Basic Care is insufficient. Although there are some consultation services which provide advice on finding a flat and concluding a rental contract, there are no financial resources available to actively help beneficiaries to find accommodation. This is particularly concerning given that the real estate market has significantly risen. Recipients of Basic Care, which includes beneficiaries of subsidiary protection in several 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 is a slightly higher amount as in this regime the size of a family is taken into account and it is possible to either completely subsidise the rent (as is the case in **Tyrol**) or receive subsidies for the rent.

In **Lower Austria**, the authorities regularly send letters to beneficiaries of subsidiary protection asking them to move out. In reality, this means a lot of pressure for people with subsidiary protection. The care teams intervene and send social reports to the authorities explaining why the beneficiaries of protection should not lose basic care benefits, especially families with school-age children or families with sick people who benefit from staying in a basic care facility. On the other hand, there is a trend for people with subsidiary protection to move to Vienna because the community is bigger there, there are greater chances of finding a job and there is entitlement to social benefits.[602]

In **Vorarlberg**, refugees who receive a minimum income do not receive a housing compensation but are transferred to landlords directly through the social department. Single refugees receive the minimum income only if they live in shared flats. If a person entitled to asylum decides to live in his or her own apartment, the compensation will amount only to the costs of a shared room. Single persons receive up to €503 for their rent. This is significantly higher compared to other federal states, where only €210 are granted.[603] In **Tyrol**, housing costs are capped and are awarded as a contribution in kind. The benefits are based on the real estate price table. In **Vorarlberg,** there have been cuts in the allowances of people residing in shared apartments: they now receive €473 instead of the previous €633.

Moreover, refusing a flat assigned by the country's social department may result in the loss of housing benefits. This measure should also help the city of **Innsbruck**, which is often preferred by refugees as a place of residence after **Vienna**.

602 asylkoordination österreich, nationwide NGO survey on basic services Dec 2021/Jan 2022.
603 Der Standard, Vorarlberg und Tirol beschließen Westlösung für Mindestsicherung, 17 January 2017, available in German at: https://bit.ly/2tkJb83.

Refugees can also apply for social housing when they are at risk of becoming homeless. Nevertheless, the waiting lists are long and an emergency flat is rarely available. Certain conditions (e.g. proof of residence of 2 years at the same address) applicable to the city of **Vienna** make it more difficult to get a cheaper community flat. In many regions of Austria, there are no social housing schemes available. Refugees are usually excluded from the second possibility of cheap accommodations, co-operative flats, because they have to contribute to the construction cost and they lack the necessary resources.

In **Upper Austria**, the Landesrat responsible for integration has announced that subsidised housing will also be available to recognised refugees as long as they show sufficient efforts to cope with the social emergency, such as registering to the Labour Market Service.[604]

In **Styria**, Caritas has developed a project to finance housing costs of asylum seekers.[605] A major hurdle is the deposit that refugees cannot afford when they have to move out of the basic care 4 months after their protection has been granted. Caritas Styria offers persons benefitting from a protection status or holding a humanitarian residence permit interest-free loan guarantees. This is granted, however, only after verification of the financial situation and must be repaid in individually agreed rates.

Experience shows that persons benefitting from a protection status often change their flat in the first year(s) after recognition and the costs for rent are much higher than those prescribed by law. The introduction of a time limited Residence Permit of 3 years for refugees has also been criticised by NGOs and experts as it makes it more difficult to rent a flat without perspective to stay.

A study conducted by the Technical University of Vienna found that, due to several obstacles, refugees are extensively excluded from the benefit of municipal accommodations in practice and beneficiaries of the subsidiary protection do not have access to municipal housing at all. Cases of exploitation and discrimination in the private sector have also been reported. A worrying informal sub-market has emerged, offering housing at inflated prices, such as sleeping places – that are not even real rooms – and cost about €200 to €350 per month.[606] Facilities for homeless persons are also sometimes visited by refugees.

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. This includes language barriers, lack of qualifications and/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.[607] Funding for language courses has furthermore been largely reduced in 2019 and has not been increased under the newly introduced government in 2020. While the federal states still offer classes to asylum-seekers originating from Syria, other nationals are regarded as not having enough prospects of obtaining a positive decision upon their asylum procedure.

604 OÖ Nachrichten, ‚Leere Wohnungen für Asylberechtigte', 27 October 2018, available in German at: https://bit.ly/2SUhaT6; Land Oberösterreich, ‚Hilfe zur Unterstützung des Lebensunterhalts und des Wohnbedarfs', available in German at: https://bit.ly/3aX9ULK.

605 Caritas Steiermark Flüchtlingsbetreung, available in German at: https://bit.ly/38co7T9.

606 Anita Aigner, Housing entry pathways of refugees in Vienna, a city of social housing, Housing Studies, 2018, available at: https://bit.ly/2N7A57J.

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

There have been some improvements through targeted assessment of qualifications and facilitated recognition of work experience. The Act on Recognition and Evaluation entered into force on 12 July 2016 and accelerates the procedure for the recognition of education and professional qualifications obtained outside Austria.[608] This decision aims at facilitating access to the labour market for refugees. Refugees or asylum seekers could also apply for recognition of their academic and professional qualifications, even if they cannot provide the documents as proof.

A study conducted in 2016-2017 involving 1,200 beneficiaries of international protection found group-specific differences in the integration to the labour market. Despite the shortage of skilled workers in Austria, former technicians seem to have had very little chances of finding work. The mismatch between qualifications and employment is high: more than 75% of respondents worked in a field, which did not or only partially fit with their academic background. 25% of respondents had participated in a competence check by the AMS, but participation in the check and value courses had no direct impact on the integration of their previous work experience; the potential effects of these recent measures are only expected to be made visible in the medium term.[609]

Austria has set up a number of counselling and contact points, as well as an information portal (AST). In **Vienna**, however, all beneficiaries now undergo a competency evaluation. Where recognised beforehand, highly qualified persons in regulated profession e.g. doctors are sent to "Check In Plus" immediately to receive assistance in the recognition process.

Beneficiaries have to consult the Austrian Integration Fund (ÖIF) after they have received the protection status. The ÖIF places these persons to language courses and courses on Austrian values. They have to register with the job centre and can then take part in job-related assistance measures, if their language proficiency is sufficient, or in language-related assistance measures. Surveys of the job centres found that 10% of the persons with protection status can be integrated into the labour market within the first year.

On the other hand, since September 2017, beneficiaries of international protection who are able to work but cannot secure employment are required to complete a one-year standardised integration programme focusing on language acquisition, career orientation and vocational qualification (see Social Welfare).

As of 31 March 2018, a total of 18,845 beneficiaries of international protection received support from the Public Employment Service (AMS) as part of the so-called integration year. This was introduced in September 2017 and concerned people who had received the refugee status or the subsidiary protection in Austria since 1 January 2015. The programme was abolished by the government in 2019, however. More precisely, it decided in April 2019 that financial support for the purpose of the so-called "integration year" should no longer be provided and that persons currently participating to the programme will no longer receive support as of 1 May 2020.[610] The end of the integration year programme along with the COVID-10 pandemic resulted in increased difficulties to integrate and access the labour market for beneficiaries of international protection.

The imbalanced distribution of supply and demand within Austria also presents a challenge to integration into the labour market. Many persons with protection status relocate into urban centres, especially **Vienna**, where the unemployment rate is also higher than in the western federal provinces. There is a great demand for workers in the tourism regions of the West. In the public debate, the tense situation of the Austrian labour market is one area, which militates for the closing of borders.

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

609 ICMPD, *Integrationsmassnahmen und Arbeitsmarkterfolg von Flüchtlingen und subsidiär Schutzberechtigen in Österreich*, November 2017, available in German at: http://bit.ly/2Fj7S9h.

610 Labour market service, "*Integrationsjahr*", available in German at: www.integrationsjahr.at.

In July 2019, the director of the Labour Market Service stated that 40% of the total recognised refugees in 2016 found employment, and that 35% of recognised refugees in 2017 also found employment. In total, around 9% of all persons registered as unemployed were asylum status holders,[611] and 20% of all unemployed beneficiaries of international protection under 25 years are residing in Vienna.[612] In July 2021, the Head of the Labour Market Service announced, that out of the 9,500 persons that were granted asylum in 2015 and subsequently registered at the Labour Market Service, more than 50% found employment. Nevertheless, refugees and beneficiaries of subsidiary protection were heavily affected by the consequences of the Covid-19 pandemic on the labour market. Especially women lost work, and the integration into the labour market has deteriorated in this aspect according to the Head of the Labour Market Service.[613]

At the end of December 2021, 36,358 beneficiaries of the Labour Market Service (AMS) were registered as unemployed, compared to 35,632 in 2020. Out of them, 21,234 were seeking work and 13,706 were completing trainings (compared to 24,026 and 11,606 in 2020 respectively).

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*).[614] The violation of the mandatory training is punishable since 1 August 2018 with a fine ranging from 100 to 1,000 euros in case of recurrence.

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

F. Social welfare

1. Forms and levels of social benefits

1.1. Needs-based minimum benefit

Access to social benefits is not the same for refugees and subsidiary protection beneficiaries. Holders of **subsidiary protection** have the right to Basic Care, which is significantly lower than the needs-based minimum benefit (*bedarfsorientierte Mindestsicherung*, BMS) to which **refugees** are entitled. Eligibility for the needs-based minimum benefit is derived directly from Article 29 of the recast Qualification Directive for subsidiary protection beneficiaries who do not receive Basic Care but reside in a rented flat. Currently, however, some federal provinces (**Burgenland**, **Lower Austria**, **Salzburg** and **Styria**) do not provide needs-based minimum benefits to beneficiaries of subsidiary protection at all, but only provide so-called “core benefits” under their Basic Care legislation.

611 Kurier, ‚44 Prozent der Flüchtlinge aus 2015 haben bereits einen Job‘, 28 July 2019, available in German at: https://bit.ly/2lOmEbF.
612 Wiener Zeitung, ‚Jeder fünfte Asylberechtigte unter 25 ohne Job kommt aus Wien,‘ 24 January 2020, available in German at: https://bit.ly/33jf4z6.
613 Kleine Zeitung, „2015 bekamen sie Asyl – 50 Prozent der Geflüchteten haben heute einen Job“, 2 July 2021, available in German at: https://bit.ly/3H2Vnib.
614 Ausbildungspflichtgesetz (ApflG), BGBl. I Nr 120/2016, available at: http://bit.ly/2lkgXsh.

Beneficiaries of subsidiary protection represent the largest group of the Basic Care beneficiaries, except in Tyrol. As a rule, they can remain in the Basic Care system after being granted the protection status. However, as long as they live in an organised accommodation, they will only receive the basic care provided for these type of accommodation (food, pocket money, clothing, school fees).

The Constitutional Court has dismissed a complaint from a beneficiary of subsidiary protection against this differentiation in **Lower Austria**, on the ground that subsidiary protection is more provisional a status than refugee status, thereby justifying differential treatment in social benefits.[615]

In addition, **refugees** who apply for the needs-based minimum benefit are no longer on equal terms with nationals in some federal provinces. In 2020, nationals received €885 (€664 for subsistence and €221 for rent).

Lower Austria: Since 2016, refugees receive lower amounts of needs-based benefits than nationals. Nationals receive €889.84, while refugees receive €522.50, including a bonus of €155 granted when they take part in integration measures such as language courses. The Administrative Court (LVwG) of Lower Austria has challenged the maximum amounts introduced by the reform before the Constitutional Court.

The fact that **Burgenland** decided to cap the minimum benefits per household, by limiting it at €1,500 per household regardless of its size and the number of persons concerned has been considered as unconstitutional by the Constitutional court. The Court considered that, even if the cost of living per person may decrease depending on the size of the household, additional expenses are still required for each additional person.[616]

In Burgenland, just as in Lower Austria, a waiting period for obtaining social benefits had been envisaged: those who had not been in Austria for at least five years within the last six years had received less social benefits. The Constitutional Court ruled that this waiting period constitutes a different treatment of Austrian citizens and aliens. Regarding persons entitled to asylum, the scheme was considered particularly unjustified as they had to leave their country of origin and cannot return there. They must therefore not be assimilated to other strangers (EU citizens and third-country nationals) who are free to return to their country of origin. The length of stay in Austria should not lead to a differentiation of the amount of benefits granted and does not allow for assumptions on the willingness to work of a person. [617]

Upper Austria: The general level of needs-based benefits is €921,30 per month, including for refugees with a permanent Residence Permit. Refugees with a temporary residence permit granted from 1 July 2016 onwards and subsidiary protection holders only receive core benefits of €405 per month, as well as an additional amount of €155 (integration bonus) per month subject to compliance with integration measures. The total amount of benefits granted per month if €560.

The Administrative Court (LVwG) of Upper Austria has made a preliminary reference to the CJEU to ask: whether Article 29 of the recast Qualification Directive is directly applicable; and whether it is possible to differentiate the level of benefits granted on the basis of the duration of the right of residence.[618] On 21 November 2018, the CJEU concluded that EU law precludes national legislation, which provides that refugees with a temporary right of residence in a Member State are to be granted social security benefits

615 VfGH, Decision E 3297/2016, 7 July 2017, available in German at: http://bit.ly/2EOPlFB.
616 VfGH, Decision E1277/2018, 12.12.2018, available in German at: https://bit.ly/2UO2EtQ.
617 VfGH, Decision G 308/2018-8, 1 December 2018.
618 LVwG, Upper Austria, 'Bedarfsorientierte Mindestsicherung für befristet Asylberechtigte: Landesverwaltungsgericht Oberösterreich legt EuGH Fragen zur Vorabentscheidung vor', 19 December 2017, available in German at: http://bit.ly/2GDxy0I.

which are less than those received by nationals of that Member State and refugees who have a permanent right of residence in that Member State.[619]

For all minimum income beneficiaries, there is a maximum amount of €1,512 granted per household, which is a regulation that was not contested by the Constitutional Court. For larger families, the minimum standards of all persons of a household community will be reduced evenly in percentage terms. In addition, in assessing whether a sufficient amount is available to avoid social distress, minor dependent persons may also take into account the basic amount of the family allowance and the child deduction amount. These services serve to secure livelihoods, the Constitutional Court decided.[620]

Vorarlberg: Restrictions have been introduced as of 1 January 2017 for refugees and subsidiary beneficiaries. Cash benefits may be replaced by benefits in kind if this better suits the purpose of the guaranteed minimum income. Different minimum personal security rates are introduced depending on the type of accommodation; single or in shared flats, because in shared apartments "regular cost savings, especially in the area of household effects, heating and electricity" are assumed. The maximum flat rate for housing needs for six people is €772 per month. The changes were contested by the Ombudsman of Vorarlberg as unconstitutional before the Constitutional Court, as these maximum rates for rent are too low in view of the situation on the Vorarlberg housing market. The Constitutional Court upheld most restrictions and only found the retroactive application of the measure to be unconstitutional.[621]

In November 2018, the Ministry of Social Affairs presented a draft law on social benefits.[622] The proposal sets a maximum amount of benefits that federal provinces are obliged to grant and drastically reduces subsidies for households with several children. It also promotes compensation in kind rather than in cash. The draft law further sets certain conditions to receive the full amount of social benefits, which includes knowledge of German (level B1) or alternatively of English (C1). Refusing to integrate the labor market will also lead to cuts of about 300 euros for single persons. While Austrian citizens will hardly be concerned by these new measures, refugees will be strongly affected. As regards beneficiaries of subsidiary protection, they will be excluded from the new social benefits law, which is contrary to Article 29 (2) of the recast Qualification Directive and the obligation to treat aliens equally with nationals.

The law was passed under heavy criticism by NGOs in May 2019 and immediately brought to the Constitutional Court by the opposition party SPÖ.[623] In December 2019, the Court declared several parts of the law as unconstitutional. This includes the provision which foresaw that language skills are a precondition for receiving the full amount of social benefits; as well as the provision foreseeing that a reduction of social benefits depending on the number of children (i.e. 25% for the first child; 15% for the second child and 5% for every remaining child).[624] The law as a whole was not abandoned, however, and the lifted up provisions were not replaced.

1.2. Other social benefits

Beneficiaries of subsidiary protection are also treated differentially with regard to the family and child care allowances, to which they are only entitled if they do not receive Basic Care. An additional condition for child care allowance for these persons is to earn an income.

A particular difficulty emerges when delays occur in the extension of the right of residence of beneficiaries of the subsidiary protection. In fact, the family allowance for the children will no longer be granted if the

619 CJEU, *Ayubi*, Case C-713/17, 21 November 2018.
620 VfGH, Decision G 156/2018, 11 December 2018.
621 VfGH, Decision V 101/2017-11, 12 December 2017, available in German at: http://bit.ly/2EMeAnP.
622 Entwurf Sozialhilfe-Grundsatzgesetz, Sozialhilfe-Statistikgesetz (104/ME), https://bit.ly/2GshdzV.
623 Statements to the draft law, available in German at: https://bit.ly/38hQW0w.
624 VfGH, Decision G 164/2019-25, G 171/2019-24, 12 December 2019, available in German at: https://bit.ly/39iNmop.

right of residence is not extended in due time, i.e. before its expiry. This practice of the tax offices was unsuccessfully criticized by the Ombudsman Board, and the relevant case law has not been complied with yet.

2. Conditions for social benefits

The main condition for the needs-based minimum benefit is the need for assistance, which also applies to nationals.

Additional requirements have further been introduced in some federal provinces in the last years. These include an integration contract and participation to integration measures. Since September 2017, beneficiaries of international protection who are able to work and have not secured employment must complete a standardised integration programme of one year. This obligation applies to refugees and subsidiary protection holders who were granted status after 31 December 2014. As of April 2018, asylum seekers that have a high recognition rate should also be able to participate to the integration programme.[625] According to information provided by the Austrian Integration Fund (ÖIF), this applies particularly to Syrians.

In **Styria**, benefits can be cut up to 25% already for small misdemeanours, e.g. missing an appointment. In **Lower Austria**, where German language courses are mandatory for persons in the needs-based minimum benefit system, the allowance can be reduced by up to 50% if the person refuses to attend, 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.

Social assistance is distributed by the Social Department of the federal province. The Tax Office is responsible for the family allowance, while health insurance is responsible for the child care allowance. The needs-based minimum benefit is granted in the respective federal province where the beneficiary resides. Beneficiaries may transfer their residence to another federal province, however. In one case, **Upper Austria** reduced benefits by 15% due to the beneficiary's relocation to **Tyrol**. The Administrative Court of Tyrol found the reduction unlawful, as it was necessary for the person to move to Tyrol in order to find employment.[626]

Lower Austria has also introduced a 5-year residence requirement, which has been appealed by the LVwG before the Constitutional Court. This precondition is violating constitutional rights (see decision above).

G. 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 more than a few hours, the mandatory health insurance takes effect. When refugees are considered to be without resources and receive needs-oriented minimum basic benefits, they also have health insurance.

Access to psychological therapy of traumatised refugees and torture survivors is possible as a transitional measure within AMIF projects when the therapy was already begun during the asylum procedure.

[625] Labour Integration Act, BGBl. I No 75/2017, 19 June 2017, available in German at: http://bit.ly/2EXvtPU.
[626] LVwG Tyrol, Decision 2016/41/0301-1, 24 February 2016.

Although such projects exist in every federal province, their capacities barely cover the demand. Starting with 2021, a new project called RESET funded by the Ministry of Social Affairs was introduced. It provides extra funding for organisations offering psychotherapy to refugees.[627] Other costs of psychological therapy are only partly covered by health insurances.

COVID-19 vaccination plans foresaw asylum seekers to be eligible for vaccination in an early phase which caused a controversial debate. The willingness of getting vaccinated differed a lot, depending on the nationality: As of December 2021, the vaccination quota of Syrian nationals residing in Austria only reached 55%, while the quota of vaccinated Afghan nationals (72%) exceeded the number of vaccinated Austrian nationals (68%).[628]

627 Asylkoordination österreich, RESET heißt Neustart, available in German at: https://bit.ly/3O0cF3d.
628 Statisik Austria, *Nationales Impfregister*, 30 November 2021.

ANNEX I – Transposition of the CEAS in national legislation

Directives and other CEAS measures transposed into national legislation

Directive	Deadline for transposition	Date of transposition	Official title of corresponding act	Web Link
Directive 2011/95/EU Recast Qualification Directive	21 December 2013	1 January 2014	Federal Act concerning the Granting of Asylum (AsylG) Aliens Law Restructuring Law - Adjustment Law	http://bit.ly/1QjH2M7 http://bit.ly/2lyUjvp
Directive 2013/32/EU Recast Asylum Procedures Directive	20 July 2015 Article 31(3)-(5) to be transposed by 20 July 2018	20 July 2015	Aliens Law Amendment Act (FrÄG 2015) BGBl 70/2015 of 18 June 2015	http://bit.ly/1SzV6Du
Directive 2013/33/EU Recast Reception Conditions Directive	20 July 2015	20 July 2015	Aliens Law Amendment Act (FrÄG 2015) BGBl 70/2015 of 18 June 2015	http://bit.ly/1SzV6Du
Regulation (EU) No 604/2013 Dublin III Regulation	Directly applicable 20 July 2013	20 July 2015	Aliens Law Amendment Act (FrÄG 2015) BGBl 70/2015 of 18 June 2015	http://bit.ly/1SzV6Du

The following section contains an overview of incompatibilities in transposition of the CEAS in national legislation:

Directive	Provision	Domestic law provision	Non-transposition or incorrect transposition
Directive 2013/33/EU Recast Reception Conditions Directive	Art 15(1)	Implementing Decree of the Ministry of Economy and Labour concerning the EU-Enlargement-Amendment-Act	The decree foresees that asylum seekers can only receive temporary employment permits as part of the seasonal quotas; thus there is no effective access to the labour market.

		(BGBl I 28/2004) of 11 May 2004, GZ 435.006/6---II/7/04.	
	Art 20(4)(5)	§ 3 Basic Care Act (GVG-B)	The national law foresees that applicants can be excluded from basic care in case of certain violations.