

2023 UPDATE

AUSTRIA



COUNTRY REPORT

Acknowledgements & Methodology

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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 2023, unless otherwise stated.

The Asylum Information Database (AIDA)

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



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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
AnhO	Ordinance of the federal minister of internal affairs, concerning the arrest of persons by the security authorities and elements of the public security service
AMS	Labour Market Service
AsylG	Asylum Act Asylgesetz
BBU GmbH	Federal Agency for Care and Support Services Limited Bundesagentur für Betreuungs- und Unterstützungsleistungen, BBU GmbH
BBU-G	Federal Law on the Establishment of the Federal Agency for Care and Support Services Limited Liability Company
BFA	Federal Office for Immigration and Asylum Bundesamt für Fremdenwesen und Asyl
BFA-VG	BFA Procedures Act
BVwG	Federal Administrative Court Bundesverwaltungsgericht
COI	Country of origin information
EAST	Initial reception centre Erstaufnahmestelle
ERF	European Refugee Fund
FPG	Aliens Police Act Fremdenpolizeigesetz
FrÄG	Aliens Law Amendment Act Fremdenrechtsänderungsgesetz
GVG-B	Basic Care Act Grundversorgungsgesetz-Bund
GVS-BIS	Basic Care Information System Grundversorgung-Betreuungsinformationssystem
HAP	Humanitarian Admission Programme
GVV	Basic Care Agreement Grundversorgungsvereinbarung
HStV	Regulation on countries of origin Herkunftsstaaten-Verordnung
IBF	Interventionsstelle für Betroffene von Frauenhandel
ICMPD	International Centre for Migration Policy Development
KJH	Child and Youth Service Kinder- und Jugendhilfe
LVwG	State Administrative Court Landesverwaltungsgericht
MSF	Doctors Without Borders
ÖIF	Austrian Integration Fund Österreichisches Integrationsfonds
ÖVP	Austrian People's Party Österreichische Volkspartei

PAZ	Police detention centre Polizeianhaltezentrum
TCN	Third country national
TEU	Treaty on European Union
UVS	Independent Administrative Board
VfGH	Constitutional Court Verfassungsgerichtshof
VQ	Distribution centre Verteilungsquartier

Statistics

Overview of statistical practice (1)

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: figures for 2023

	Applicants in 2023 (2)	Pending at end of 2023	Total decisions in 2023 (3)	Total other decisions (4)	Rejection on asylum (5)	Refugee status	Subsidiary protection	Humanitarian protection (6)
Total	59,232	38,053	120,216	31,066	26,941	17,293	8,222	559
Breakdown by countries of origin of the total numbers								
Syria	21,409	17,740	21,418	2,889	5,406	12,768	5,394	Not available
Afghanistan	8,567	4,723	11,965	7,972	2,319	1,647	1,268	Not available
Türkiye	7,769	4,516	6,502	5,647	731	97	14	Not available
Morocco	6,948	1,086	9,766	2,626	7,130	10	5	Not available
Pakistan	1,493	347	3,060	1,352	1,679	29	1	Not available
Somalia	1,469	2,459	1,280	90	579	611	714	Not available
Bangladesh	1,431	251	1,623	456	1,143	24	1	Not available
India	1,329	660	8,215	5,502	2,713	0	4	Not available
Egypt	1,234	267	1,346	829	498	19	5	Not available
Russian Federation	1,082	895	987	125	600	262	33	Not available

Source: Ministry of Interior, Annual Asylum Statistics 2023, available in German at: <https://shorturl.at/uVI2h>

Note 1: statistics on applicants and pending concern people, including children and dependents. The rest of the columns concern number of decisions as that is usually the (only) data available.

Note 2: "Applicants in year" refers to the total number of applicants, and not only to first-time applicants.

Note 3: Statistics on decisions cover the decisions taken throughout the year, regardless of whether they concern applications lodged that year or in previous years. This number also includes formal decisions. Please note that in Austria, asylum (refugee status) and subsidiary protection decisions are counted separately.

Note 4: this includes especially formal decisions taken on discontinued cases due to onward travel to other countries.

¹ Ministry of Interior, *Asylum Statistics December – preliminary statistics*, available in German at: <https://bit.ly/3wEfXVF>.

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

Note 5: these include all negative decisions on refugee status only, as the data on negative decisions on humanitarian protection are not differentiated between those who had previously applied for asylum and those who applied for humanitarian status independently of any asylum procedure.

Note 6: If the application for asylum and subsidiary protection are rejected, the authority has to examine whether a return decision is to be issued. In this examination the authority has to evaluate whether a return decision would disproportionately infringe upon the person's the right to private and family life (Art 8 ECHR). If the interest of the applicant outweighs the interest of the state to uphold the asylum and aliens' law system, the state has to issue a status called "Aufenthaltstitel aus Gründen des Art 8 EMRK" (Art 55 AsylG – residence permit on reasons based on Art 8 ECHR). The authority also has to examine whether the applicant has the right to get a status "Aufenthaltsberechtigung besonderer Schutz" (Art 57 AsylG – residence right special protection). This is to be issued in case the applicant e.g. was a witness or victim of human trafficking.

Applications and granting of protection status at first instance: rates for 2023

	Overall protection rate (1)	Overall rate other decisions (2)	Overall rejection rate (1)
Total	29%	40%	31%
Breakdown by countries of origin of the total numbers			
Syria	71%	12%	16%
Afghanistan	22%	64%	14%
Morocco	0.2%	27%	72%
India	0.2%	70%	29%
Türkiye	1%	82%	17%
Pakistan	1%	46%	52%
Tunisia	1%	65%	34%
Somalia	72%	6%	22%
Bangladesh	1%	29%	70%
Russian Federation	27%	10%	63%

	Protection rate (3) (4)	Refugee rate (3)	Subsidiary protection rate (3)	Humanitarian protection rate (3)	Rejection rate (3)
Total	64%	41%	23%	0.5%	36%
Breakdown by countries of origin of the total numbers					
Syria	99%	66%	34%	0%	0.6%
Afghanistan	95%	51%	44%	0.1%	5%
Morocco	0.3%	0.1%	0%	0.1%	99.7%
India	0.9%	0%	0.1%	0.8%	99%
Türkiye	9%	7%	1%	0.6%	91%
Pakistan	3%	2%	0%	1%	97%
Tunisia	2%	1%	1%	0.3%	98%
Somalia	82%	36%	46%	0.2%	18%
Bangladesh	6%	3%	0%	2%	94%
Russian Federation	58%	45%	4%	8%	42%

Source of the percentages: calculated by the author based on the raw data available from the authorities.

Note 1: These are calculated against total decisions, including formal decisions taken on discontinued cases, due to onward travel to other countries.

Note 2: these include all decisions taken in protection cases that are neither rejection decisions nor protection decisions, and especially include formal decisions taken on discontinued cases, due to onward travel to other countries.

Note 3: These are calculated excluding formal decisions taken in discontinued cases.

Note 4: These rates include humanitarian protection.

Rejections vs returns

Rejection only refers to negative decisions concerning asylum (refugee status). This does not lead to the conclusion that in all rejected cases a return decision was issued or that no other status was issued, as illustrated below. Please note that return decisions concern all third country nationals, not only rejected asylum seekers, and may concern rejected asylum seekers of previous years.

	All rejections on asylum (incl. Dublin)	Return decisions
Total	26,941	18,195
Syria	5,406	115
Afghanistan	2,319	105
Turkey	731	1,750
Morocco	7,310	5,720
Pakistan	1,679	1,365
Somalia	579	270
Bangladesh	1,143	575
India	2,713	2,150
Egypt	498	505
Russian Federation	600	295

Source: Ministry of Interior Annual statistics 2023; for return decisions, Eurostat, 'Third country nationals ordered to leave - annual data (rounded)', updated 03 May 2024.

Gender/age breakdown of the total number of applicants: 2023

	Men	Women	Adults	Children	
				Accompanied	Unaccompanied
Number	45,219	14,013	39,274	15,012	4,946
Percentage	76.3%	23.7%	66%	26%	8%

Source: Ministry of Interior, Annual statistics 2023, available in German at: <https://shorturl.at/jrHS8>.

First instance and appeal decision rates: 2023

	First instance		Appeal	
	Number	Percentage	Number	Percentage
Total number of decisions	78,741	100%	6,205	100%
Positive decisions	23,178	29.43%	3,655	58.9%
• <i>Refugee status</i>	14,748	18.73%	2,896	46.7%
• <i>Subsidiary protection</i>	8,260	10.49%	370	6.0%
• <i>Article 8 ECHR (1)</i>	170	0.2%	389	6.2%
Negative decisions on asylum (2)	24,391	30.98%	2,550	41.1%
• <i>Formal reasons (3)</i>	11,210	14.24%	N/A	-
• <i>On merits</i>	13,181	16.74%	N/A	-
Other (e.g. discontinued cases)	31,172	39.59%	N/A	-

Source: Ministry of Interior, Detailed Statistics of BFA 2023, available at: <https://shorturl.at/FLTW4>.

Note 1: In every asylum procedure the authority has to examine whether a return decision can be issued in case of a negative decision concerning asylum and subsidiary protection. In this examination it has to evaluate whether a return decision would infringe the right to private and family life guaranteed by Art 8 ECHR in a disproportionate manner. In case of an excessive infringement the authority will issue a decision that a return decision is not permitted and a status of humanitarian protection. It is examined automatically, no application is needed.

Note 2: Rejection only refers to negative decisions concerning refugee status. This does not lead to the conclusion that in all rejected cases a return decision was issued or that no other status was issued.

Note 3: Negative decisions based on 'formal reasons' include decisions in Dublin cases and cases in which there is no examination on merits because of protection granted by another EU Member State or because of adjudicated case (res judicata).

Overview of the legal framework

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

Title (EN)	Original Title (DE)	Abbreviation	Web Link
Federal Act concerning compulsory education and training for Youth up to 18 years	Bundesgesetz, mit dem die Verpflichtung zu Bildung oder Ausbildung für Jugendliche geregelt wird (Ausbildungspflichtgesetz – ApfIG) StF: BGBl. I Nr. 62/2016	Compulsory Education and Training Act (ApfIG)	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 Einreisetiteln 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	Verwaltungsgerichtsv erfahrensgesetz (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 <i>Amended by:</i> Agreement between the federal state and states under Article 15a concerning the raise of selected maximum cost rates of Article 9 Basic Care Agreement	Vereinbarung zwischen dem Bund und den Ländern gemäß Artikel 15a B-VG über die Erhöhung ausgewählter Kostenhöchstsätze des Artikel 9 der Grundversorgungsvereinbarung StF: BGBl I 46/2013 <i>Geändert durch:</i> Vereinbarung zwischen dem Bund und den Ländern gemäß Artikel 15a B-VG über eine Erhöhung ausgewählter Kostenhöchstsätze des Art. 9 der Grundversorgungsvereinbarung StF: BGBl 48/2016		http://bit.ly/2jR2MXQ (DE) http://bit.ly/2jwNiHN (DE)

Federal Constitutional Act concerning the Accommodation and Allocation of aliens in need of help and protection	Bundesverfassungsgesetz Unterbringung und Aufteilung von hilfs- und schutzbedürftigen Fremden, BGBl 120/2015		http://bit.ly/2jwFaqz (DE)
Federal Act concerning the Implementation of Identity Checks at the instance of Border Crossings	Bundesgesetz über die Durchführung von Personenkontrollen aus Anlass des Grenzübertritts StF: BGBl 435/1996		http://bit.ly/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/1FombIG (DE)
Ordinance of the federal minister of internal affairs, concerning the arrest of persons by the security authorities and elements of the public security service	Verordnung der Bundesministerin für Inneres über die Anhaltung von Menschen durch die Sicherheitsbehörden und Organe des öffentlichen Sicherheitsdienstes StF: BGBl. II Nr. 128/1999	Anhalteordnung (AnhO)	http://bit.ly/1AEPtA9 (DE)
Remuneration for legal advice in appeal procedures at the asylum court	Entgelte für die Rechtsberatung in Beschwerdeverfahren vor dem Asylgerichtshof		http://bit.ly/1I0hAMx (DE)
Ordinance of the minister of internal affairs on the determination of remuneration for legal advice	Verordnung der Bundesministerin für Inneres über die Festlegung von Entschädigungen für die Rechtsberatung		http://bit.ly/1ENcXOh (DE)

Overview of the main changes since the previous report update

The last version of this report was previously updated in **May 2023**.

International protection

- ❖ **Key asylum statistics:** 58,686 applications were lodged in 2023, a decrease of almost 50% compared to 2022 (112,000), but it is still the fifth highest number of asylum applications since World War II. At the same time, the number of discontinued cases remained at a very high level as well. Almost 30,000 cases were discontinued due to the onward travel of applicants to other countries. Syria was the top country of origin of applicants (21,208) followed by Afghanistan (8,516). This is a sharp decline in applications from Afghanistan, which had reached 25,000 in 2022. Moreover, almost 8,000 cases of Afghan applicants were discontinued in 2023 as they had left the country. While the backlog of pending cases in first instance was reduced to 28,000 (2022: 46,000), the number of pending cases in second instance grew slightly to 8,700 (2022: 6,300).

Asylum procedure

- ❖ **Registration:** The number of applications plummeted in fall 2023. While there were between 4,000-8,000 monthly first applications from July to October, in January 2024 only 800 first applicants were registered. This is a consequence of a change of migratory routes due to heavy military presence in Serbia and a controversial joint police operation with Hungary called “Operation Fox”.
- ❖ **Pushbacks:** there were no reports of pushbacks by Austrian officials on Austrian territory. There have been some unproven allegations against the joint police operation with Hungary called “Operation Fox” as there have been more than 100,000 apprehensions in Hungary in 2023 but only 31 asylum applications and reports from people on the move claiming to be pushed back to Serbia from Hungary despite having tried to apply for asylum. On the other hand, over 11,000 persons were transferred from Germany to Austria after Germany denied entry to German territory. There were also allegations that German police officers had not reacted to asylum applications by people later transferred to Austria (see [Access to the territory](#)).
- ❖ **Dublin procedures:** 17,369 incoming Dublin requests and 2,156 transfers by other member states to Austria were registered in 2023. Half of the transfers came from Germany, 16% from Switzerland and 15% from France. In the same time, 13,545 outgoing Dublin requests were sent to other states and 1,240 persons were transferred. The main recipient countries were Germany (24%), Croatia (21%) and Romania (12%) (see [Dublin](#)).
- ❖ **Legal counselling and representation:** The controversial system of legal counselling and representation in Austria introduced in 2021 was found to be unconstitutional by the Constitutional Court in December 2023. The Court found that the independence of the legal counselling which was offered by the state-owned agency BBU GmbH was not guaranteed by the existing legal framework and ordered that the law be amended accordingly by the end of June 2025. In case the law is not amended in line with the decision by this time, legal counselling and representation will cease to be entrusted to the BBU GmbH (see [Legal assistance](#)).
- ❖ **Fast track procedures:** In 2023, 8,258 “fast track” procedures were initiated and 8,421 decisions taken. This is a sharp decrease after almost 24,000 conducted fast track procedures in 2022, due to the decrease of applications from Morocco, India and Tunisia (see [Regular procedure – General](#) and [Accelerated procedure](#)).
- ❖ **Discontinued cases:** The number of discontinued cases remained a high level with 30,032 discontinued cases in 2023 (2022: 42,000). Of 70,000 decisions taken in 2023, 43% were formal

decisions because of people having travelled onwards after lodging an asylum application (see [Regular procedure – General](#)).

Reception conditions

- ❖ **Reception centres:** At the end of 2023, 21 federal reception centres with a total capacity of around 4,000 were in use. 3,591 persons were accommodated in these centres at the end of 2023. Due to the decrease in applications in the last months of 2023, four centres were permanently closed and 6 locations were temporarily closed (see [Housing](#)).
- ❖ **Lack of adequate housing for UAM:** As the financial resources have not been raised for the provision of adequate accommodation facilities in the provinces, many minors were left to be accommodated in the large federal reception facilities even though their admission procedure has already been concluded. By the end of the year, 500 UAM were placed in inadequate first reception facilities of which 401 UAM were already admitted to the procedure in Austria (see [Reception of unaccompanied minors](#)).
- ❖ **Lack of cooperation between the Federal state and provinces:** A lack of cooperation between the federal basic care system (admission phase) and the provinces resulted more than 2,000 persons staying in large reception facilities. Even though some provinces such as Upper Austria, Vienna and Tyrol created more smaller facilities after the reception crisis of 2022, the lack of cooperation resulted in a high amount of additional costs at the federal level (see [Housing](#)).

Detention of asylum seekers

- ❖ **Lack of data:** There is still no data proactively published by the Ministry of Interior on how many asylum seekers were held in detention or how many rejected asylum seekers left the country upon receiving an order to leave the country.
- ❖ **Detention conditions:** A CPT report in 2023 documented massive shortcomings in the conditions in pre-deportation detention. At the biggest detention unit in Vienna-Hernalser Gürtel, the overall material conditions have significantly deteriorated. Most parts of the accommodation and communal areas were in an appalling state of repair with corridors, cells and their sanitary annexes dilapidated and dirty. Such conditions were found to be not suitable for holding foreign nationals for prolonged period of time (see [Detention conditions](#)).

Content of international protection

- ❖ **Increase in family reunification applications:** As the authorities worked on deciding on a backlog of Syrian protection cases in 2023, many applications for entry authorisations were brought before Austrian embassies upon the issuance of positive asylum decisions in these cases. This led to a sharp increase in asylum applications via the family reunification process. More than 14,000 applications were brought in, leading to 9,180 asylum applications in Austria in 2023. More than 95% were Syrian nationals, 70% minors (see [Family reunification](#)).

Temporary protection

The information given hereafter constitute a short summary of the 2023 Report on Temporary Protection, for further information, see [Annex on Temporary Protection](#).

- ❖ **Key temporary protection statistics:** Since 2022, around 107,000 persons have registered as beneficiaries of temporary protection in Austria. As of January 2024, around 70,000 Ukrainians that entered Austria after the start of the Russian invasion were registered in the Central Register of

Residence. 40,000 beneficiaries received basic care, of which 25,000 were sheltered in private housing.

Temporary protection procedure

- ❖ **Restrictive Interpretation:** In 2023, the registration process seemed to be quicker, since the number of arriving Ukrainians decreased substantially. As Austria implemented the TPD in a very restrictive manner some strategic litigation cases concerning the eligibility of third country nationals with permanent residence status in Ukraine and TCN partners (instead of spouses) are pending before Courts.

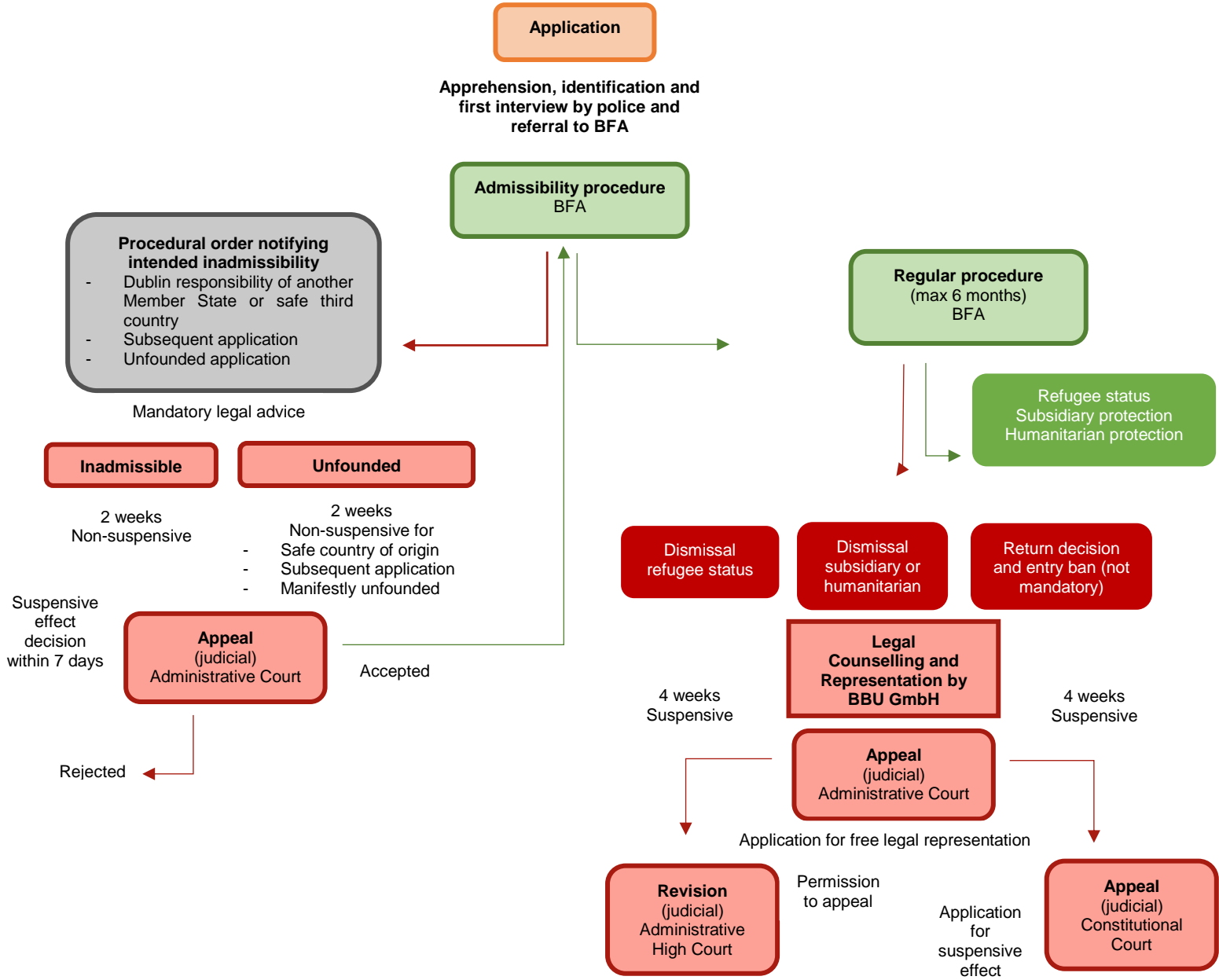
Content of temporary protection

- ❖ **Social benefits and title of stay:** As the temporary protection was prolonged until 2025, also the access of beneficiaries to family allowance and childcare subsidies was extended. In spring 2024, a bill was introduced into parliament enabling Ukrainians registered as beneficiaries to change to a regular title of stay if they fulfil certain conditions such as having worked at least 12 months within the last 2 years.

Asylum Procedure

A. General

1. Flow chart



2. Types of procedures

Indicators: Types of Procedures

Which types of procedures exist in your country?

- | | | |
|---|---|-----------------------------|
| ❖ Regular procedure: | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| ▪ Prioritised examination: ³ | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| ▪ Fast-track processing: ⁴ | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| ❖ Dublin procedure: | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| ❖ Admissibility procedure: | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| ❖ Border procedure: | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| ❖ Accelerated procedure: ⁵ | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> 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 as of 1 September 2023	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)	1,013	Ministry of Interior	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No

Source: Ministry of Interior, Answer to parliamentary request 15847/AB, 21 November 2023, available in German at: <https://tinyurl.com/4mju5ryp>.

The BFA is the determining authority responsible for examining applications for international protection and competent to take decisions at first instance as well as for residence permits on exceptional humanitarian grounds and certain Aliens' Police proceedings. It is an administrative body falling under the responsibility of the Ministry of Interior. The BFA has its headquarters in Vienna and one regional

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.

directorates 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 September 2023, the BFA had 1,014 staff members, compared to 1,031 at the end of 2022. 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 1,014 officials of the BFA, 441 were caseworkers (compared to 420 in 2022). The majority of these caseworkers were permanent staff.⁷

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

As regards quality assurance and control, the BFA has established both quality assurance and quality control mechanisms, with quality assessors (*Qualitätssicherer*) specifically dedicated to that end. The quality assessors of the BFA are responsible for double-checking decisions, providing support and guidance to caseworkers and contributing to their development.⁹ 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.¹⁰ UNHCR can further be consulted in specific procedures, such as the airport procedure.

5. Short overview of the asylum procedure

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

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

The Asylum Act contains norms on the granting of international protection, expulsion procedures in connection with the rejection or dismissal of applications, provisions on the rejection of applications due to the existence of a “safe third country” or to the responsibility of another state according to the Dublin Regulation, norms on family reunification procedures and on airport procedures. In 2016, “special provisions to maintain public order during border checks” were added to the Asylum Act. It allows the Ministry of Interior to issue a decree that would enable the authorities not to 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/2kjlwRUC>.

⁷ Ministry of Interior, *Answer to parliamentary request 15847/AB*, 21 November 2023, available in German at: <https://tinyurl.com/4mju5ryp>.

⁸ BFA, *Country of origin information*, available at: <https://bit.ly/33XqYia>.

⁹ Ministry of Interior, *Answer to parliamentary request 14788/AB XXVII. GP*, 02 August 2023, available in German at: <https://bit.ly/3P29B8U>.

¹⁰ Ministry of Interior, *Answer to parliamentary request 14788/AB XXVII. GP*, 02 August 2023, available in German at: <https://bit.ly/3P29B8U>.

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

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

Appeal: Appeals to the Federal Administrative Court are possible against a decision rejecting the asylum application as inadmissible and also against a decision dismissing the application on the merits. The BFA Procedures Act (BGA-VG) regulates the appeal and its effects. Appeals against the decision rejecting the asylum application on the merits have to be submitted within four weeks and have suspensive effect, unless the BFA does not allow for the appeal to have suspensive effect. In the past, there were several legislative attempts to shorten the appeal period of four weeks to two weeks in all cases. The last legislative attempt was annulled by a ruling of the Constitutional Court in 2017.¹¹ Following the reform, in cases in which the appeal is rejected on formal or inadmissibility reasons and the decision is connected with a measure terminating residence, or when a return decision has already been issued, the appeal lasts only two weeks and does not have suspensive effect. Suspensive effect may be granted by the Court to an appeal against an expulsion order issued together with a decision rejecting the asylum application as inadmissible.¹²

Moreover, 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 their true identity or nationality or the authenticity of their documents, the lack of reasons for persecution, if the allegations made by the asylum seeker concerning the danger they face are manifestly unfounded or if an enforceable deportation order and an enforceable entry ban was issued against the asylum seeker prior to the lodging of the application for international protection.

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

¹¹ Verfassungsgerichtshof, VfGH hebt verkürzte Beschwerdefrist in Asylverfahren als verfassungswidrig auf, 9 October 2017, G 134/2017, available in German at: <https://bit.ly/3P2EFoU>.

¹² § 16 BFA-VG.

the first instance procedure was irregular (e.g. if the right to be heard about the findings of the BFA was not respected, or if outdated country of origin information was used or evidence is missing to substantiate the reasoning of the BFA); if such new facts and evidence were not accessible earlier or if the asylum seeker had been unable to submit such new facts and evidence.¹³ Decisions of the Court are issued in the form of judgments and all other decisions, such as those allowing the appeal to have suspensive effect, the rejection of an appeal because it was lodged too late, or on the continuation of an asylum procedures that was discontinued (i.e. decisions on procedural issues), are issued in the form of resolutions.

Onward appeal: The BVwG may decide that the rejection of the application can be revised before the Administrative High Court (*Verwaltungsgerichtshof*, VwGH). This possibility is foreseen if a decision on the case depends on a leading decision, e.g. if the Administrative Court's decision is not based on a previous decision of the Administrative High Court. If the BVwG declares the ordinary revision inadmissible, the asylum seeker may bring in an extraordinary revision.¹⁴ 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.

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

Any application for international protection which is deemed inadmissible or rejected on the merits is automatically connected to a decision assessing whether a return to the country of origin is possible or if the right to private and family life of the applicant prevail.¹⁵ 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.

¹³ Article 20 BFA-VG.

¹⁴ The BVwG can decide to declare the ordinary revision as admissible - which means that it considers that there is a fundamental legal question at stake - or as inadmissible – which means that the applicant and their lawyer must demonstrate themselves that there is fundamental legal question at stake so as to initiate an extraordinary revision. The main difference is that, in the case of an ordinary/regular revision, the applicant does not have to explain what fundamental legal question is at stake and that, in cases where the regular revision is declared as admissible, it is more probable that government sponsored legal aid will be granted (which is not a task of the BBU but of the bar association in case of appeals in front of the High Court).

¹⁵ § 10 AsylG.

B. Access to the procedure and registration

1. Access to the territory and push backs

Indicators: Access to the Territory

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

In July 2021, the Regional Administrative Court of Styria issued a landmark decision concerning a case of a Moroccan national living in Bosnia. Despite having asked for asylum in September 2020 after crossing the green border from **Slovenia to Austria** along with a group of other asylum seekers, he was handed over to the Slovenian police based on a readmission agreement who also ignored his claim. He was subsequently returned to **Croatia** and pushed-back to **Bosnia**.¹⁶ The Court concluded that the policemen “overheard” the asylum application, i.e. they did not carry out a proper interview; the body search resulted in inhuman treatment and the rejection to Slovenia was unlawful. In the statement of facts, the Court stated that pushbacks are “partly applied as a method in Austria.”¹⁷ 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.¹⁸ This agreement originally focused on the uncomplicated return of Slovenian citizens to Slovenia when crossing the border. No formal procedure is known: when a person identified to be returned on the basis of the agreement the police forces of the two countries interact and organise the transfer. There is no legal remedy foreseen in the process. Persons that have applied for asylum cannot be returned on the basis of this agreement.

In July 2021, a Somali minor was also unlawfully returned to Slovenia on the basis of that readmission agreement, despite the fact that he had articulated the words “asylum” various times when talking to police officers. In February 2022, the Regional Administrative Court of Styria decided that the police measures taken were unlawful and resulted in an illegal push back.¹⁹ In Slovenia, the asylum request was meanwhile accepted, and an asylum status had already been granted.²⁰

In both cases, the revision requested by the Regional Police Directorate Styria to the High Administrative Court were rejected in May 2022.²¹ As a consequence, the Ministry of Interior by non-public internal Decree GZ: 2022-0.344.927, “Awareness with regard to rejections”, 11 May 2022, regulated on how to proceed with foreigners that apply for asylum when apprehended by the police. The decree explicitly states that, just because the person does not mention the word “asylum”, that does not mean they are not applying for international protection, as the application can be brought in by “conclusive action”. The police officer should thus also come to the conclusion that the person is applying for international

¹⁶ Prozess Report, „Beschwerden nach Pushback“, available in German at: <https://bit.ly/3zaZzd9>.

¹⁷ Asylkoordination Österreich, „Gericht bestätigt systematische Menschenrechtsverletzungen durch österreichische Polizei“, 5 July 2021, available in German and English at <https://bit.ly/3GJF9cy>.

¹⁸ Ministry of Interior, *Answer to parliamentary request 4277/AB XXVII. GP*, 20 January 2021, available in German at: <https://bit.ly/2ZpZCA4>.

¹⁹ Kurier, „Gericht bestätigt illegalen Pushback von minderjährigem Somali“, 19 February 2022, available in German at: <https://bit.ly/3IHJLmv>.

²⁰ Standard, “Wieder dokumentierter Pushback von Österreich nach Slowenien”, 7 September 2021, available in German at: <https://bit.ly/3GzS54M>.

²¹ VwGH Ra 2021/21/0274-6, 5 May 2022; VwGH Ra 2022/21/0074-6, 19 May 2022 available in German at: <https://bit.ly/3miz1nc>.

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

As a response to the allegations of illegal push backs and unlawful returns taking place at the Southern border to **Slovenia** and the fact that the number of persons affected by readmissions to Slovenia almost doubled from 81 to 174 in 2020,²² 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 In 2023, the number of persons returned to Slovenia based on the bilateral readmission agreement was 62 (compared to 58 in 2022). Nationalities of the persons returned are not indicated.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. After the second judgement concerning pushbacks by Regional Administrative Court of Styria, according to the NGO Push Back Alarm Austria there were no more reports of pushbacks on Austrian territory throughout 2022 and 2023.

Since December 2022, the Austrian police entered a joint police cooperation with Hungarian police called “Operation Fox.” The goal of the joint operation which first lasted until May and then was prolonged until mid-2024 is “combating illegal migration” and transnational criminal activities such as human smuggling. As of February 2023, there were 29 Austrian police officers deployed to this unit that also operates on Hungarian soil. As there were reports of pushbacks conducted by the Hungarian police especially on the Serbo-Hungarian border, the police operation is controversial. The Ministry of Interior states that on the basis of the Prüm Decision,²⁵ Austrian officers can apply coercive power on Hungarian territory.²⁶

1.1. Refusals of entry

Following the German announcement of the prolongation of border controls in October 2019, the Austrian Minister of Interior 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 were further prolonged on 11 May 2021, based on the “continuing migration pressure” and “the tense situation resulting from Covid-19”.²⁹ Border controls with Hungary and Slovenia are currently prolonged until November 2024.³⁰ Furthermore, since September 2023 border controls to Slovakia and Czech Republic have been regularly prolonged every two months, currently until June 2024.³¹ The prolongation of border controls were justified, among others, by the fear of proliferation of weapons from Ukraine³² and the fight

²² Slovenian police, *Illegalne migracije na območju 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 območju Republike Slovenije*, November 2023, available in Slovenian: <https://bit.ly/3P29RVq>.

²⁵ Decision 2008/616/JI, 23 June 2008, available in German at: <https://shorturl.at/mJYpd>.

²⁶ Ministry of Interior, *Answer to parliamentary request 13697/AB*, 14 April 2023, available in German at: <https://tinyurl.com/mr3mbyk8>.

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/2ul59pu>.

²⁹ Kurier, ‘Österreich verlängert Grenzkontrollen zu Slowenien und Ungarn erneut’, 14 October 2020, available in German at: <https://bit.ly/2Nr4xOd>.

³⁰ To see current reintroductions: European Commission, ‘Temporary Reintroduction of Border Control’, available at: <http://bit.ly/40dSdRT>.

³¹ Kurier, ‘Österreich verlängert Grenzkontrollen zu Slowenien und Ungarn’, 11 November 2023, available in German at: <https://bit.ly/49wmmkj> and internal information of Ministry of Interior (not published).

³² Kurier, ‘Österreich verlängert Grenzkontrollen zu Ungarn und Slowenien’, 11 May 2022, available in German at: <https://bit.ly/3J97Rbv>.

against terrorism.³³ More information on the German-Austrian border controls can be found in the AIDA report on Germany.³⁴

Slovenia has reaffirmed its opposition as regards Austrian border controls in recent years. The Slovenian Ministry of the Interior considers border controls unjustified and disproportionate and has 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".³⁵ In 2023, the President of Slovenia complained that Austria has no reason to continue border controls with the country. Slovenia itself however also prolonged its own border controls with Croatia until June 2024.³⁶ As of 21 December 2023, 384 persons coming from Slovenia were denied entry.³⁷

Germany refused entry to 11,461 persons in 2023 (2022: 13,076) at the Austrian border.³⁸ At the same time, 1,319 persons were transferred from Germany to Austria via bilateral return agreement (2022: 631). Following the ECJ judgement C-143/22 regarding refusals of entry at internal borders where controls have been reintroduced, Austrian officials discussed the situation at the borders with German officials: Germany assured that asylum seekers reaching Germany will not be denied entry or be rejected at the border.³⁹

Hungary and Austria engage in a bilateral police cooperation on Hungarian territory in the so-called "Operation Fox". Since September 2021, Austria deploys police officers to the Hungarian-Serbian and Hungarian-Serbian-Romanian border. At the end of 2023, 40 Austrian police officers supported the Hungarian police. In 2024, this number should increase to 60 police officers.⁴⁰ The Ministry of Interior stated that the Austrian police is directly using force, but rather just supporting the Hungarian police in their tasks. The operation costed more than 2 million euros in 2023.⁴¹ Operation Fox was extended until May 2024 and is likely to be prolonged. 180 alleged smugglers were apprehended. In May 2023 the fact that Hungary released hundreds of convicted smugglers due to high costs and lack of detention space caused an uproar in Austria. The Hungarian ambassador was called for a consultation by the Austrian Ministry of Foreign Affairs.⁴² Until 2023, 194 persons were denied entry by Austria at the Hungarian border.⁴³ In September, an alleged pushback was reported to the NGOs asylkoordination österreich and Push-back Alarm Austria. It was observed that Austrian police officers controlled an Afghan national on a train from Budapest to Vienna. The police officers apprehended the person and took him off the train. The brother of the Afghan national residing in Austria told that his apprehended brother wanted to ask for asylum but was pushed back to Serbia without any procedure or decision. These allegations however could not be proven. The person involved decided to not take the case to court.⁴⁴

As there are no border controls from Austria at the borders with Germany, Switzerland, Italy and Liechtenstein, no rejections were made in 2022 at these borders. In 2023, 384 persons coming from

³³ Ministry of Interior, 'Innenministerium verlängert Grenzkontrollen zu Ungarn und Slowenigen', 12 November 2023, available in German at: <https://bit.ly/3wxW42l>.

³⁴ AIDA, *Country Report on Germany – Update on the year 2023*, June 2024, available [here](#).

³⁵ Der Standard, 'Österreich kontrolliert weiterhin Grenze zu Slowenien und Ungarn', 8 October 2019, available in German: <https://bit.ly/2ul59pu>.

³⁶ Vienna.at, 'Wien hat ,kein Argument' für Grenzkontrollen zu Slowenien, 25 April 2023, available in German at: <https://bit.ly/49wmu3h>.

³⁷ Ministry of Interior, Internal information, December 2023, not publicly available.

³⁸ Ministry of Interior, *Answer to parliamentary request 16365/AB XXVII. GP*, 16 January 2024, available in German at: <https://bit.ly/4b0slP2>.

³⁹ Ibid.

⁴⁰ Ministry of Interior, *Answer to parliamentary request 16290/AB XXVII. GP*, 27 December 2023, available in German at: <https://bit.ly/49AsmIE>.

⁴¹ Ministry of Interior, *Answer to parliamentary request 13071/AB XXVII. GP*, 15 February 2023, available in German at: <https://bit.ly/41IKmxa>.

⁴² Der Standard, 'Ungarns Botschafter in Wien verteidigt Schlepper-Freilassungen', 24 May 2023, available in German at: <https://bit.ly/49AF1c>.

⁴³ Ministry of Interior, Internal Information, December 2023, not publicly available.

⁴⁴ Push-back Alarm Austria, 14. September 2023, available at: <https://bit.ly/3wurF52>.

Slovenia were denied entry, 1 from Czech Republic, 194 from Hungary and 22 from Slovakia. In the same time 666 persons were denied entry to Austria at the airports.⁴⁵

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.⁴⁶

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.⁴⁷ 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 was set at 25,000 asylum applications. However, the decree of the federal government was never activated. There are no known plans to activate it in the near future and no further projections of quotas for the upcoming years. Even though more than 112,000 applications were registered in Austria in 2022, no public discussion concerning triggering the ‘emergency provision’ arose. As the number of asylum applications decreased to almost 60,000 in 2023 and the backlog of pending cases decreased by almost 15,000, reaching to 39,000 cases at the end of 2023, it was not possible to argue for the existence of the preconditions for triggering the emergency provisions, such as an existing threat to public security.⁴⁸

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*).⁴⁹

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.⁵⁰

An asylum seeker is not issued a decision ordering return and cannot appeal against the refusal to have their claim examined. In such a case, the asylum seeker has no right to remain on the territory.⁵¹ Therefore, an appeal to the State Administrative Court (LVwG) does not have suspensive effect.⁵²

Although it has not been activated yet, the amendment has been criticised by UNHCR and civil society organisations,⁵³ 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.

⁴⁵ Ministry of Interior, December 2023, not publicly available.

⁴⁶ Articles 36-41 AsylG.

⁴⁷ 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.

⁴⁸ Ministry of Interior, *Asylum statistics December 2023*, available in German at: <https://bit.ly/3wEfXVF>.

⁴⁹ Article 38 AsylG.

⁵⁰ Article 41(1) AsylG.

⁵¹ Article 39 AsylG.

⁵² Article 41(2) AsylG.

⁵³ UNHCR Austria, *Kurzanalyse zum Gesamtändernden Abänderungsantrag betreffend eine Änderung des Asylgesetzes durch Sonderbestimmungen zur Aufrechterhaltung der öffentlichen Ordnung und des Schutzes der inneren Sicherheit während der Durchführung von Grenzkontrollen*, 21 April 2016, available in German at: <https://bit.ly/3VEjtrH>; Asylkoordination Österreich et al, *Stellungnahme zum Entwurf betreffend ein Bundesgesetz, mit dem das Asylgesetz 2005, das Fremdenpolizeigesetz 2005 und das BFA Verfahrensgesetz geändert werden*, 21 April 2016; available in German at: <http://bit.ly/2jx6Z29>.

1.3. Border monitoring

There is no border monitoring mechanism in Austria.

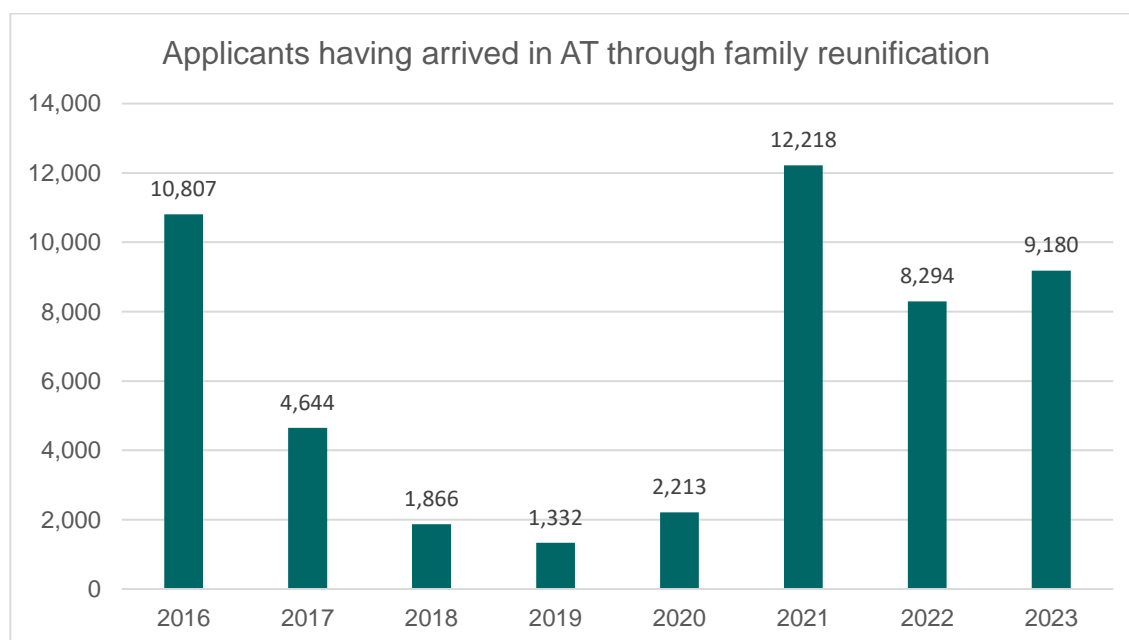
1.4. Legal access to the territory

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

Austria did not participate in refugee evacuation programmes from Afghanistan after the takeover of the Taliban regime in August 2021. The Ministry of Foreign Affairs supported Austrian nationals and persons with Austrian residency status to get out of Afghanistan (mainly to Pakistan). In one publicly known case, the Austrian embassy in Islamabad confirmed to an Afghan national that it would issue a visa for Austria, but the embassy then refused to issue it when the latter arrived in Pakistan. The woman was instead issued a visa by Germany.⁵⁴

Following the earthquake in Syria and Türkiye in February 2023, Austria announced that it will not make any visa liberalisation but will prioritise the handling applications for short term visas with a maximum duration of 6 months by persons affected by the earthquake that have relatives in Austria.⁵⁵

In 2023, 16% of all applicants (9,180)⁵⁶ arrived in Austria via **family reunification procedure**. This is a slight increase compared to 2022 (8,294).



Source: Ministry of Interior, diagram by asylkoordination österreich.

⁵⁴ Oberösterreichische Nachrichten, „Deutschland nahm afghanische Astronomin auf, Österreich nicht“, 10 January 2022, available in German at: <https://bit.ly/3j0a7E7>.

⁵⁵ Der Standard, „Visa für Erdbebenopfer aus der Türkei und Syrien – wie geht das?“, 14 February 2023, available in German at: <https://bit.ly/3Ygx9J0>.

⁵⁶ Ministry of Interior, *Answer to parliamentary request 17222/AB*, 5 April 2024, available in German at: <https://shorturl.at/cuBCE>.

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.⁵⁷ The asylum application is registered as soon as asylum is requested. There has been no possibility to apply for asylum at Austrian embassies or consulates abroad since 2001. A first interview has to be conducted by the public security service.⁵⁸ 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.

In August 2022, the police changed the registration system by internal decree. Unaccompanied minors (UAM) continued to be handled in the regular scheme, while all other applicants were only registered and fingerprinted immediately at the border. In case of a EURODAC hit the applicants were also transferred to the first reception centres. All others were sent to other provinces to have their first interviews conducted by other Regional Police Directorates. This led to several problems as the police stations were not able to provide places to sleep.⁵⁹

In 2023, the police reverted back to the old registrations system directly at the border as the numbers of applications decreased sharply at the end of the year. The extraordinary measure was not necessary anymore as the registration capacity of the Regional Police Directorate in Burgenland (region close to the border) could cope with the number of arrivals. In January 2022, 2.261 persons were apprehended in the province of Burgenland. In January 2023, the number of apprehended persons decreased to 100.⁶⁰

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

Based on the information submitted by the police, the BFA orders the transfer of the applicant to an EAST or regional directorate of the BFA. The BFA can also order the applicant to go to the EAST or regional directorate on their own, and transfer costs will be covered.⁶¹ Through this instruction on the next steps to be followed, the application is officially lodged.⁶²

⁵⁷ Article 17 (1) AsylG states that a request for asylum can be made in front of any public security agent *in Austria*.

⁵⁸ Article 17 (2) AsylG.

⁵⁹ Der Standard, 'Polizei schickt Asylsuchende quer durchs Land, viele stranden oder verschwinden', 14 September 2022, <https://shorturl.at/acjU8>.

⁶⁰ Kurier, 'Asylrouten ändern sich: Weniger Aufgriffe, Anträge gehen zurück', 26 February 2024, <https://shorturl.at/GOPW2>.

⁶¹ BFA, *The Asylum procedure*, available in German at: <https://bit.ly/2Hn2GUI>, 10.

⁶² Article 17 (2) AsylG in connection Article 43 (1) BFA-VG

Persons legally staying in Austria (i.e. through a residence permit) must submit their asylum application at the public security service too. The BFA orders applicants to appear before the branch office within 14 calendar days.⁶³ Otherwise, the application will be terminated as being no longer relevant.

Asylum seekers parents of children born in Austria are obliged to inform the BFA within two weeks of the birth of the child. Upon receipt of this information, the application is automatically registered and lodged for the child.⁶⁴

In 2023, a total of 58,686 applications for international protection were lodged in Austria. This marks a 48% decrease compared to 2022, where 112,000 applications were lodged. Despite this, the number of asylum applications in 2023 was the fourth highest since the ratification of the Geneva Refugee Convention. In 2021, after three years of very low numbers in the context of the pandemic, the numbers of applications almost reached 2016 levels (42,285). The even higher increase in 2022 was however accompanied by a record number of discontinued cases (42,549), most likely due to onward movement of the applicants to other countries. This trend continued in 2023, as almost 30,000 discontinued cases were registered.

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.

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? | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No |
| 3. Backlog of pending cases at first instance as of 31 December 2023: | 28,417 |
| 4. Average length of the regular procedure at 31 December 2023: | 3.5 months |

The regular asylum procedure is regulated in the AsylG (predominantly material law) and AVG and BFA-VG (predominantly procedural law).

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.⁶⁵ 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

⁶³ Article 43 (1)(1) BFA-VG

⁶⁴ Article 17a (2) AsylG.

⁶⁵ Article 73 (1) AVG.

case of subsequent asylum applications, or to dismiss the application for other reasons.⁶⁶ Since 2018, the admissibility procedure may be prolonged by lifting the 20 days deadline in manifestly unfounded cases.⁶⁷ 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.⁶⁸ On the contrary, if the asylum application is deemed inadmissible the asylum-seeker receives legal assistance and has to be heard in presence of their 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.

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*).⁶⁹ 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 2023, several asylum seekers and counselling organisations reported that one lawyer based in Vienna filed *Säumnisbeschwerde* in around 1,000 asylum cases. 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 2023 the average duration of the asylum procedure at first instance amounted to 5.5 months,⁷⁰ compared to 3.5 months in 2022 and 3.2 months in 2021.⁷¹ The sharp drop after 2017 (average duration of 14 months) is a result of the broader application of fast track procedures. In 2020, 807 applications were fast tracked,⁷² 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.⁷³ The average length of the fast-track procedure was 22.7 days in 2020.

In 2023, the number of decisions taken in the fast-track procedure decreased compared to the record number of 2022. 8,121 decisions were taken in the fast-track procedures (compared to 22,109 in 2022 and 2,581 in 2021). The average length of the fast-track procedure in the first half of 2023 was 34.5 days (2022: 24.7 days).⁷⁴ The accelerated procedure led to 300 decisions in 2023, and in 88.5% of the cases the decision was issued within 72 hours (2022: 67%).

The decisions in both fast-track and accelerated procedures mainly concerned applicants from countries listed as safe countries of origin and manifestly ill-founded applications from applicants from India. In the accelerated procedure, 59% of the decisions concerned applicants from Morocco, 16% from India and 9% from Pakistan. In fast track procedures, 84% concerned Moroccan applicants, 4% applicants from Pakistan and 3% from Tunisia.⁷⁵

⁶⁶ Article 28 AsylG.

⁶⁷ Article 28 (2) AsylG.

⁶⁸ Article 28 (3) AsylG

⁶⁹ Article 130 (1) (3) B-VG

⁷⁰ BFA, *Detail-Statistik – Kennzahlen BFA 2022 – 1.-4. Quartal*, January 2023, available in German at: <https://bit.ly/3mmaxt4>.

⁷¹ Ministry of Interior, *Answer to parliamentary request 9531/AB XXVII. GP*, 11 April 2022, available in German at: <https://bit.ly/3LmbufH>.

⁷² Ministry of Interior, *Answer to parliamentary request 4887/AB, XXVII. GP*, 12 March 2021, available in German at: <https://bit.ly/3s0YBLx>.

⁷³ Kurier.at, “Nehammer: Neue Asyl-Schnellverfahren ‘verlaufen erfolgreich’”, 23 February 2021, available in German at: <https://bit.ly/2OK2Tse>.

⁷⁴ Ministry of Interior, *Answer to parliamentary request 15847/AB XXVII. GP*, 21 November 2023, available in German at: <https://shorturl.at/fig89>.

⁷⁵ Ministry of Interior, Internal information, 22 February 2024 (not published).

Year	Fast-track procedure	Accelerated procedure	Total
2019	545	N/A	545
2020	524	283	807
2021	2,581	1,100	3,681
2022	22,109	1,188	23,297
2023	8,121	300	8,421

Source: Ministry of Interior, *Answer to parliamentary request 13740/AB XXVII. GP*, 20 April 2023, <https://bit.ly/41P9e67> and internal information by the Ministry of Interior (not published)

In recent years, the Austrian Ombudsman has received numerous complaints on the length of asylum procedures at first instance. It received 1,500 complaints in 2016; 2,000 complaints in 2017 and 320 complaints in 2018. Out of the 320 complaints received in 2018, a violation of the duty to take a decision within the set limit was confirmed in 248 cases. Moreover, in 2018, 220 complaints were filed concerning length of procedures at second instance, and in 176 cases a violation was identified.⁷⁶ In 2020, the Austrian Ombudsman concluded in 197 cases that the BVwG violated its obligation to make a decision and did not take any steps in the asylum complaint procedure, reiterating that organisational deficiencies and increasing asylum applications are not a legally relevant justification. The Ombudsman suggested that the procedure should be concluded quickly in the cases brought forward. Numerous complaints were filed concerning deficiencies in the first instance proceedings.⁷⁷ 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 2021.⁷⁸ After a decrease in the number of complaints over several years, there was a significant increase in the summer of 2022. 418 persons lodged a complaint concerning the length of the procedure, of which 284 were decided by the Ombudsperson. In 195 cases, the complaints were justified; in 95 cases the BFA decided after the complaint was lodged.⁷⁹ In 2023, 771 persons lodged a complaint concerning the BFA, and 489 complaints were deemed justified. 527 complaints concerned applicants from 2022, mostly from Syria (455). 69 cases concerned the family reunification process, of which 25 complaints concerning the length of procedures were justified. In one case the embassy had sent the file to the BFA in October 2022 and the BFA had not undertaken any procedural step in a whole year.⁸⁰

At the end of 2023, 38,921 (2022: 53,107) cases were pending, out of which 30,258 (2022: 46,811) at first instance and 8,663 (2022: 6,296) at second instance.⁸¹ The second instance backlog slightly increased after decreasing for several years. The number of pending cases at first instance decreased by 34% (from 46,000 to 30,000) compared to 2022.⁸² Given that the number of recipients of Basic Care increased only by 4,500 over the year (January 17,000 in January to 21,500 in December) and the high number of discontinued cases (42,000), it is to be expected that the number of applicants actually still residing in Austria is much lower than the number of pending cases. The BFA files a case as discontinued three months after not being able to reach the applicant.

⁷⁶ *Report of the Ombudsman Board to the National Council and the Federal Council 2018*, available in German at: <https://bit.ly/31OvJdd>, 108.

⁷⁷ *Volksanwaltschaft, Findings of grievances and actions taken by the Ombudsman 2020 Federal Administration*, available in German at: <https://bit.ly/3cJPQyP>.

⁷⁸ *Fundamental Rights Agency, Migration: Key Fundamental Rights Concerns, Quarterly Bulletin*, 30 September 2021, available at: <https://bit.ly/3xoyxPQ>.

⁷⁹ *Report of the Ombudsman Board of the National Council and the Federal Council 2022*, available in German at: <https://shorturl.at/qxyBR>.

⁸⁰ *Ibid.*

⁸¹ Ministry of Interior, *Annual statistics 2022*, available in German at: <https://bit.ly/3Zsdx5e>.

⁸² Ministry of Interior, *Preliminary asylum statistics December 2023*, available in German at: <https://bit.ly/3wEfxVF>.

Backlog of pending cases at first and second instance: 2023				
	BFA	Appeal period	BVwG	Total
Syria	12,816	526	4,398	17,740
Afghanistan	3,711	156	856	4,723
Türkiye	3,921	90	505	4,516
Somalia	1,544	97	818	2,459
Morocco	914	148	24	1,086
Russian Federation	596	18	282	896
Iran	679	15	154	848
Iraq	532	26	220	778
India	410	30	220	660
Unknown	410	13	106	529
Pakistan	273	19	55	347
Egypt	221	16	30	267
Bangladesh	166	9	76	251
Georgia	184	19	45	248
China	158	4	41	203
Other	1,800	115	587	2,502
Total	28,335	1,301	8,417	38,053

Source: Ministry of Interior, Annual statistics 2023, available in German at: <https://bit.ly/3wEfXVF>; <https://shorturl.at/jrHS8>.

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.⁸³ The same maximum time limit applies to the “procedure for the initiation of a measure terminating residence” (see [Accelerated Procedure](#)).

In 2023, the practice of fast-track processing focused on applicants coming from countries listed as “safe countries of origin” and on manifestly ill-founded applications. In second instance, there is also a focus on applicants who have already been sentenced by a criminal court. The great majority of fast-track processing deals with cases from applicants originating from so called safe countries of origin (see [Safe Country of Origin](#)). This was also due to the high number of applications from Morocco at the start of 2023.

⁸³ Article 22(6) AsylG.

1.3. Personal interview

Indicators: Regular Procedure: Personal Interview

1. Is a personal interview of the asylum seeker in most cases conducted in practice in the regular procedure? Yes No
❖ If so, are interpreters available in practice, for interviews? Yes No
2. In the regular procedure, is the interview conducted by the authority responsible for taking the decision?⁸⁴ 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 No⁸⁵
❖ 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, a postponement is not requested by the applicants.

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](#).⁸⁶ 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 first interrogation is conducted by the police and not by caseworkers of the BFA,⁸⁷ 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.⁸⁸ 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.⁸⁹

Asylum seekers may be accompanied by a person they trust (i.e. person of confidence) and unaccompanied children cannot be interviewed without the presence of their legal representative.⁹⁰

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.⁹¹ The authorities must demonstrate that they have informed the asylum applicant of the possibility to be interviewed by an official of the same sex.⁹² In practice, however, this is not consistently applied with regard to interpreters.⁹³ In the appeal procedure, infringements of the right to sexual self-determination have to be expressed in the

⁸⁴ However, the official conducting the interview is no longer responsible for the decision.

⁸⁵ 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.

⁸⁶ Article 19 AsylG.

⁸⁷ Article 19 AsylG.

⁸⁸ Kainradl, „Die spontanen Angaben bei der Erstbefragung kommen der Wahrheit am nächsten. Kein Asylwerber würde wohl eine Gelegenheit ungenützt lassen, zentrales Vorbringen zu erstatten.“, 20 June 2022, available in German at: <https://bit.ly/3uPsXHv>.

⁸⁹ VfGH, Decision U 98/12, 27 June 2012, available in German at: <https://bit.ly/3IIHTlr>.

⁹⁰ Article 19 (5) AsylG.

⁹¹ Article 20 AsylG.

⁹² Article 20 Austrian Asylum Act.

⁹³ 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>.

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.⁹⁴

1.3.1. 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.⁹⁵ 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).⁹⁶ 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.⁹⁷

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.⁹⁸ 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 2023.

1.3.2. 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.⁹⁹ This new practice is based on Art. 51a of the General Administrative Act, which allows the use of technical facilities for word and image transmission - unless a personal interview is necessary for economical or personal reasons.

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 reported an increase in 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

⁹⁴ VfGH, Decision U 1674/12, 12 March 2013, available in German at: <https://bit.ly/3mSPpez> mentions Conclusions Nr. 64 (XLI) and Nr. 73 (XLIV) of the Executive Committee of UNHCR. The Asylum Court decided by a male and female judge and its decision was thus unlawful.

⁹⁵ VwGH, Decision 91/01/0047, 18 September 1991.

⁹⁶ Reports by NGOs, lawyers and counselling organisations to asylkoordination österreich in meetings 2023.

⁹⁷ UNHCR, "Training manual for translators in asylum procedures", 2015, available in German at: <https://bit.ly/2XYPzQC>.

⁹⁸ Ministry of Interior, *Answer to a parliamentary request 4145/AB*, 14 January 2021, available in German at: <https://bit.ly/37hzoE3>.

⁹⁹ Information provided by the RD Burgenland.

without encryption. The Ministry of Interior reported if there are statistics as to in how many interviews videoconferencing tools were applied in 2022 and 2023.¹⁰⁰

It should be noted that, as part of its BRIDGE project, UNHCR Austria has produced a checklist “Self-check for interviews and negotiations using technical equipment for word and image transmission in the asylum procedure” for videoconferences in asylum procedures.¹⁰¹

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.¹⁰² 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.¹⁰³ 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.¹⁰⁴ 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.¹⁰⁵

1.4. Appeal

Indicators: Regular Procedure: Appeal

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

<input checked="" type="checkbox"/>	Yes	<input type="checkbox"/>	No		
<input checked="" type="checkbox"/>	Judicial	<input type="checkbox"/>	Administrative		
<input checked="" type="checkbox"/>	Yes	<input type="checkbox"/>	Some grounds	<input type="checkbox"/>	No
2. Average processing time for the appeal body to make a decision: Not available

1.4.1. Appeal before the BVwG

Appeals against a negative first instance decision generally have to be submitted within 4 weeks of the receipt of the decision and the whole asylum file is forwarded by the BFA to the Federal Administrative Court (BVwG).¹⁰⁶ However, following an amendment that came into effect on 1 September 2018, the time limit has been set at 2 weeks for appeals in inadmissibility procedures and in cases of status withdrawals that were initiated along with a return decision.¹⁰⁷

Within 2 months following the lodging of an appeal, the BFA may decide to modify the decision that is being challenged.¹⁰⁸ This means that it can decide either to annul, reject or change its initial decision. However, where the BFA refrains from modifying its decision, it forwards the appeal to the Court. In practice, there are not many cases known where the BFA decides to modify its own decision.

¹⁰⁰ Ministry of Interior, *Answer to parliamentary request 13740/AB XXVII. GP*, 20 April 2022, available in German at: <https://shorturl.at/gjABZ>.

¹⁰¹ UNHCR Austria, *Self-check for interviews and negotiations using technical equipment for word and image transmission in the asylum procedure*, May 2020, available in German at: <https://bit.ly/3s2YUol>.

¹⁰² Article 14 AVG.

¹⁰³ Article 14 (3) AVG.

¹⁰⁴ Reports from counselling organisations to asylkoordination österreich in meetings in September 2021 and February 2024.

¹⁰⁵ OHCHR, Report on the mission to Austria focusing on the human rights of migrants, particularly in the context of return, October 2018, <https://bit.ly/2u4JoQE>.

¹⁰⁶ Article 16(1) BFA-VG.

¹⁰⁷ Article 16 (1) BFA-VG.

¹⁰⁸ Article 14(1) Administrative Court Procedures Act (VwG-VG).

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.

The BFA uses this possibility to withdraw the suspensive effect especially when there is an enforceable deportation order or when there are no reasons for persecution stated, NGO counselling organisations told asylkoordination.

Moreover, the BFA *must* withdraw the suspensive effect of an appeal where:¹⁰⁹

- (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.¹¹⁰ The reasons must be set out in the main complaint. In cases where there is an enforceable deportation order and no reason for persecution stated, the BVwG does not grant suspensive effect.¹¹¹

Appeals against the rejection of an application with suspensive effect have to be ruled by the Court within 8 weeks.¹¹² The asylum appeal has suspensive effect as long as the case is pending in court.

¹⁰⁹ Article 18(2) BFA-VG.

¹¹⁰ Articles 17(1) and 18(5) BFA-VG.

¹¹¹ Practice-based observation by asylkoordination and partners, January 2024.

¹¹² Article 17(2) BFA-VG.

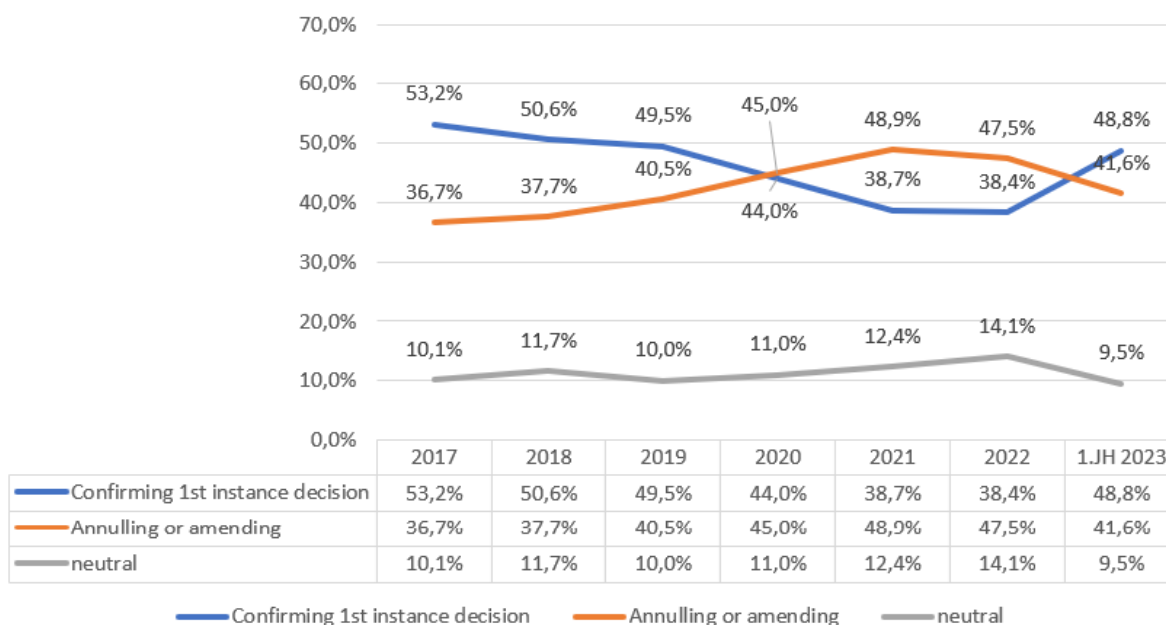
The BVwG is organised in chambers, each of which is responsible for certain groups of countries. In recent years, the Court processed appeals on asylum cases as follows:

Processed Appeals at the BVwG: 2016-2023								
	2016	2017	2018	2019	2020	2021	2022	2023
Processed cases	18,760	20,000	24,000	20,000	17,900	17,100	13,300	Not available
Pending cases	12,497	24,063	30,168	22,842	15,147	8,351	6,433	8,417

Source: Ministry of Justice, *Answer to parliamentary request 9532/AB XXVII GP*, 11 April 2022, available in German at: <https://bit.ly/3O7TwfH>; Ministry of Justice, *Answer to parliamentary request 14054/AB*, 16 May 2023, available in German at <https://shorturl.at/abnFR>.

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 2022, the BVwG concluded 13,300 procedures in which 20,500 decisions were taken. 9,700 decisions of the BFA were cancelled/annulled or amended by the BVwG, while 7,900 decisions of the BFA were confirmed.¹¹³ 6,500 court hearings were conducted in 2022 and 4,550 in the first half of 2023. In the first half of 2023, in 4,320 first instance cases the appeal was sustained and the decisions were cancelled/annulled or amended. In 5,070 cases the decisions of the first instance were confirmed.¹¹⁴

Decisions in asylum and alien law cases, BVwG



Note: JH refers to the first half of the year (January to June)

By 2023, more than 40% of all decisions challenged were dismissed or amended by the BVwG. This confirms the trend of the last years, with consistently at least one third of decisions being overturned. Moreover, the first instance authority now evaluates whether the reason why a decision was annulled or amended were external or internal. External factors are e.g. a change of situation in the country of origin

¹¹³ Ministry of Justice, *Answer to parliamentary request 14054/AB*, 16 Mai 2023, available in German at: <https://shorturl.at/abnFR>.

¹¹⁴ Ministry of Justice, *Answer to parliamentary request 15793/AB, XXVII. GP*, 04 December September 2023, available in German at: <https://bit.ly/3Wl2nRF>.

since the first instance decision took place or if new evidence was brought in. Internal factors are e.g. inaccurate investigations, (legal) interpretation mistakes or formal errors committed by the authority. In 2022, 11,049 challenged decisions (2021: 15,353) were decided upon by the BVwG. 4,662 (2021: 5,852) first instance decisions were confirmed, while 5,364 (2021: 8,146) decisions were annulled or amended. The rest were neutral decisions.

According to the analysis tool BERT, 2,803 decisions were annulled or amended because of internal reasons. This means more than 52% were annulled or amended for internal reasons such as mistakes of the authority.¹¹⁵

The BVwG can request another hearing and additional examinations if necessary. Conversely, the BFA-VG also allows for exceptions to a personal hearing on an appeal; i.e. a hearing 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.¹¹⁶ This provision must be read in light of the restrictions on the submission of new facts in the appeal procedure.

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

The question whether a personal hearing before the BVwG has to take place or not has been brought before the Constitutional Court (VfGH). The Court ruled that not holding a personal hearing in the appeal procedure does not violate Article 47(2) of the EU Charter of Fundamental Rights. Charter rights may be pleaded before the Constitutional Court. The Court stated that Article 41(7) AsylG,¹¹⁷ is in line with Article 47(2) of the EU Charter if the applicant was heard in the administrative procedure.¹¹⁸ 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.¹¹⁹ Two rulings to the same effect were delivered by the Constitutional Court in September 2014.¹²⁰

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.¹²¹ It further stated that it was not necessary to explicitly request an oral hearing if the facts were not sufficiently clear or if the statements of the applicant in their appeal contradicted the statements taken by the first instance authority.¹²²

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.¹²³

¹¹⁵ Ministry of Interior, *Answer to parliamentary request, 15314/AB XXVII. GP*, 19 September 2023, available in German at: <https://shorturl.at/aegFH>.

¹¹⁶ Article 21(7) BFA-VG.

¹¹⁷ Article 41(7) AsylG corresponds with Article 21(7) BFA-VG.

¹¹⁸ VfGH, Decisions U 466/11-18 and U 1836/11-13, 14 March 2012, available in German at: <https://bit.ly/3JIPMG0>.

¹¹⁹ VfGH, Decision U 152/13-12, 21 February 2014, available at: <http://bit.ly/1FXmqb6>.

¹²⁰ 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>.

¹²¹ VfGH, Ra 2014/20/0017, 28 May 2014, available in German at: <https://bit.ly/3le6VJx>.

¹²² VfGH Ro 2014/21/0047, 22 May 2014, available in German at: <https://bit.ly/42iAuuq>.

¹²³ 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

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.¹²⁴ 409 Dublin cases were decided in 2020, of which 353 were decided within 6 months (86%).¹²⁵ Disaggregated data on the average processing time at second instance were shared in 2020 as follows. Data from July 2022 show the processing time of pending cases during the first half of the year:

Average processing time at second instance: 2020-2023				
Waiting time	Appeals			
	2020	2021	2022	July 2023
Up to 6 months	3,550	3,575	4,053	3,550
Between 6 months and 1 year	1,354	954	1,575	1,480
Between 1 and 2 year	3,382	1,566	1,520	970
Between 2 and 3 years	4,803	3,597	1,064	240
More than 3 years	2,763	5,712	3,152	380

Source: Ministry of Justice, *Answer to parliamentary request 9532/AB XXVII GP*, 11 April 2022, available in German at: <https://bit.ly/3O7TwiH> and 11621/AB, XXVII. GP, 21 September 2022; Ministry of Justice, *Answer to parliamentary request 14054/AB, XXVII. GP*, 16 May 2023, available in German at <https://shorturl.at/abnFR>. and 15973/AB, XXVII. PG, 4 December 2023, available in German at: <https://shorturl.at/eJV04>

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.¹²⁶ 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 1,027 (2021: 2,130 2020: 1,633) revisions conducted in 2022, 29 (2021: 18, 2020: 35) were regular revisions and 998 (2021: 2,112, 2020: 1,598) were extraordinary revisions. In 2022, out of the 29 regular revisions, 9 were requested by the determining authority and 20 by applicants. Out of the 998 extraordinary revisions, 66 were requested the determining authority and 932 by applicants.¹²⁷ In 2021, 268 revisions were granted and the decision of the BVwG was cancelled. Corresponding data for 2023 is not available.

In case the asylum applicant seeks to challenge the decision in front of the BVwG and if they claim it is violating a constitutional right, they can lodge an appeal within 6 weeks, after the ruling of the Federal Administrative Court has become final. Asylum seekers are informed of the possibility to address a complaint to the Constitutional Court in writing and this information is translated in a language the asylum seeker understands. In that context, it has to be mentioned that the ECHR is part of Austria’s constitutional law. Therefore the risk of violation of Articles 2, 3 or 8 ECHR can be challenged in front of the

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.

¹²⁴ Ministry of Justice, *Answer to parliamentary request 4933/AB, XXVII. GP*, 12 March 2021, available in German at: <https://bit.ly/3s2qRgF>.

¹²⁵ Ibid.

¹²⁶ In case of regular revision, it is a precondition that the BVwG believes that there is no clear jurisdiction by the high courts yet. The VwGH is not bound to that classification by the BVwG. In practice, the difference it that free legal aid is granted automatically only in cases where the BVwG classified a possible revision as regular. Since one must be represented by a lawyer in front of the VwGH, this can make a difference in a person’s possibility to be assisted for the appeal.

¹²⁷ Ibid.

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 2019.¹²⁸ In 2020, 107 decisions were considered arbitrary and ruled unlawful by the Constitutional Court.¹²⁹ No data was available for 2021-2023 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?

<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> With difficulty	<input type="checkbox"/> No
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 - ❖ Does free legal assistance cover:

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

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

<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> With difficulty	<input type="checkbox"/> No
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 - ❖ Does free legal assistance cover

<input checked="" type="checkbox"/> Representation in courts
<input checked="" type="checkbox"/> 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.¹³⁰

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

The BBU GmbH has some AMIF funded capacities in first instance and provides open counselling in first instance as long as “possibilities are available”. The counselling services are provided at the buildings of the regional directorates of the BFA. There is no funding for transportation costs for persons willing to receive counselling at this stage. At first instance, the BBU GmbH has the legal obligation to provide legal counselling in all procedures where the first interview by the BFA is conducted within 72 hours. In these procedures, the counsellors of the BBU also have to take part in the interviews carried out with the BFA.

¹²⁸ The cases are available in German at: <https://bit.ly/377YZfZ>.

¹²⁹ The cases are available in German at: <https://bit.ly/3aoymrK>.

¹³⁰ ECRE, *Reforming legal assistance in Austria: an end to independent provision?*, June 2019, available at: <https://bit.ly/3FrmxAx>, 3.

At the time of writing, this concerned mainly subsequent applications, fast-track procedures and procedures at the airport. The BBU GmbH is not being appointed in Dublin cases by the BFA and therefore is not involved in interviews in these procedures in general in first instance.

It should be noted, however, that the previous legal aid-system in place until the end of 2020 did not meet the needs of asylum seekers either. VMÖ, which received most of the funding for legal assistance in the first instance procedure,¹³¹ 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.¹³²

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.

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.

In December 2023, the Constitutional Court issued a decision declaring the central legislative act of the BBU-G not in accordance with the Austrian constitution. The independence of legal advice for asylum seekers and aliens by the Federal Care Agency is only laid out in the form of a contract between the Agency and the Ministry, but not adequately guaranteed by law, which is why the right to an effective legal remedy is violated. The corresponding provisions in the BBU Establishment Act (BBU-G) and the BFA Procedural Act (BFA-VG) are repealed as unconstitutional. The Constitutional Court has ruled that the legislative bodies have until July 1, 2025 to introduce new legal regulations, otherwise the central legislative act of the BBU-G will be out of force by this date and hence the BBU GmbH will no longer be allowed to conduct legal assistance.

Indeed, due to several complaints from asylum seekers against the findings of the Federal Administrative Court (BVwG), the Constitutional Court had concerns as to whether the provisions regarding the provision of legal advice and representation by the Federal Agency for Care and Support Services (BBU GmbH) complied with the constitutional requirements of Article 47 of the EU -Fundamental Rights Charter (right to an effective remedy) and Article 20 B-VG (administration of bodies that are fundamentally bound by instructions).

In the view of the Constitutional Court, the prerequisite for effective legal protection is that the BBU's legal advisors are not subject to instructions and are independent, particularly from the Minister of the Interior, who is responsible for enforcing immigration law. The independence of legal advisors is enshrined in law. However, the position of the legal advisors in the BBU and in relation to the Minister of the Interior, who acts as the owner's representative in the BBU under company law, is spelled out in more detail in a contract. But, by concluding this framework agreement, the management of the BBU is bound to instructions from the Minister of the Interior (together with the Minister of Justice) in terms of corporate law. The contractual regulation is therefore not sufficient to effectively implement the independence of legal advice.

Conversely, the private law structure of BBU GmbH as such is found to be constitutional. The legal advice and representation designed in this way does not represent functional state administrative management

¹³¹ *Answer to parliamentary request 14100/J (XXV.GP)*, 8 November 2017, available in German at: <http://bit.ly/2EiMLDx>.

¹³² 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/2Ej7kzl>.

within the meaning of Article 20 Paragraph 1 B-VG. The legislature does have a legal entity controlled by the state to provide legal advice and representation. However, this activity is a service for the affected asylum seekers and aliens to enforce their rights in asylum and alien law procedures, which can also be provided (and is also provided) by private individuals. The provisions regarding legal advice and representation by the BBU therefore do not violate Article 20 Paragraph 1 and Paragraph 2 B-VG.¹³³

1.5.2. Legal assistance in appeals

Legal aid provided by the new BBU GmbH since 2021

The BBU GmbH counselling unit is now composed of former employees of Diakonie Flüchtlingsdienst and VMÖ. The BBU GmbH was obliged to offer jobs to all employees of the latter organisations. As of September 2023, a total of 140.2 full time equivalents of counselling staff was employed by the BBU GmbH.¹³⁴ 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.¹³⁵

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.¹³⁶ A particular concern was the fact that the quality of legal aid provided by VMÖ largely depended on the individual counsellor. The head of the counselling unit established a formation and training process consisting of three stages. In the third stage new counsellors work under supervision and receive permission to counsel on their own after positive evaluation. The formation and training course partly involves external experts and judges from Court and was also evaluated by the Qualitätsbeirat, an advisory council of the BBU GmbH.¹³⁷

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

One project run by Caritas Austria offers assistance during the hearing before the Federal Administrative Court, but this resource is limited and therefore only a certain number of cases can be assisted. AMIF funding is no longer guaranteed but the project continues on a smaller scale with alternative funding. It also worked on a very small scale during 2022.¹³⁸

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

¹³³ Constitutional Court (VfGH), G 328/2022, 22 December 2023, available in German at: <https://bit.ly/44q8aHF>.

¹³⁴ Ministry of Justice, *Answer to parliamentary request 15973/AB XXVII. GP*, 4 December 2023, available in German at: <https://shorturl.at/eJV04>.

¹³⁵ Framework contract between BBU GmbH and Ministry of Interior and Ministry of Justice, Detailvereinbarung Rechtsberatung (Art 2 (1) (2) BBU-G), not available for public.

¹³⁶ Framework contract between BBU GmbH and Ministry of Interior and Ministry of Justice, Detailvereinbarung Rechtsberatung (Art 2 (1) (2) BBU-G), not available for public.

¹³⁷ *Reports of the advisory council Qualitätsbeirat 2022 and 2023*, available in German at: <https://shorturl.at/rHKU4>.

¹³⁸ Caritas, BVwG-Projekt, available in German at: <https://bit.ly/3EQAYr9>.

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.

The centralisation of legal aid and founding of the BBU GmbH significantly restricts the potential role for and funding of civil society organisations. Since the beginning of 2021, only 10% of the staff of Diakonie Flüchtlingsdienst were still employed as a result of the contract cancellation in 2020. Funding remains a difficult topic for non-governmental counselling organisations. As of December 2023, there are still several NGOs such as Diakonie Flüchtlingsdienst, Caritas (active in Lower Austria, Vienna, Vorarlberg), Integrationshaus Wien, Desertours- und Flüchtlingsberatung, Queer Base, ZEBRA (Graz), Fluchtpunkt Tirol and tralalobe (Vienna) offering legal counselling to asylum seekers.¹³⁹

Considering the fact that the BBU GmbH represents most applicants in the second instance procedure and the continued high rate of overturned decisions, a backsliding compared to the work of its predecessors which used to be responsible for state-provided legal assistance cannot be observed.

In 2023, BBU GmbH provided 21,633 counselling sessions (2022: 17,052) and supported applicants in 8,660 cases (2021: 5.273) to bring an appeal against negative decisions. They represented applicants in 4,917 court hearings (2022: 3,044).¹⁴⁰

In practice, there is a constant exchange on general topics between the BBU GmbH and NGOs working in the field. There is broad acknowledgement of the well-established practice of counselling performed by the BBU GmbH, but the criticism on the general structure and possible influence by the Ministry of Interior remains. Even the so-called 'Qualitätsbeirat', a group responsible for evaluating, observing and providing recommendations to the legal counselling department, stated in its report for 2021 that the current positive development is strongly related to the personalities of the director of the institution and the head of legal counselling, who values and fosters independence in the provision of legal counselling. Nevertheless, the Qualitätsbeirat recommends to take further legislative measures to strengthen the independence of the legal counselling department.¹⁴¹ In 2022, the Qualitätsbeirat focused on the assessment and improvement of the quality of the counselling provided by the BBU GmbH and on the translation services. It underlined the good quality of the services provided and the good cooperation of the BBU GmbH with the Qualitätsbeirat. Nevertheless it stressed again that legislative changes are necessary to strengthen the independence of the legal counselling department of the BBU GmbH from the Ministry of Interior.¹⁴² The Constitutional Court's decision¹⁴³ (see [Legal assistance at first instance](#)) underlined all this criticism of the structural deficits of the BBU GmbH and found the legislative acts to be unconstitutional. At the time

¹³⁹ List of non-state-organised legal counselling organisations, <https://shorturl.at/klzNQ>, last update 3 May 2024.

¹⁴⁰ Ministry of Justice, information not published.

¹⁴¹ Qualitätsbeirat BBU GmbH, *Jahresbericht 2021*, available in German at: <https://bit.ly/38FyDbr>.

¹⁴² Qualitätsbeirat BBU GmbH, *Jahresbericht 2022*, available in German at: <https://bit.ly/40FoMrC>.

¹⁴³ VfGH, G328-335/2022, 14 December 2023, available in German at: <https://shorturl.at/hkyZ7>.

of writing, the government is negotiating a possible amendment of legal counselling within the structure of the BBU GmbH.

2. Dublin

2.1. General

Dublin statistics: 2023

As of December 2023, Austria carried out 1,240 (2022: 1,100) outgoing Dublin transfers and received 2,166 (2022: 1,575) incoming transfers.¹⁴⁴ In 2023, the main countries receiving outgoing transfers from Austria were Germany (24%), Croatia (21%) and Romania (12%).¹⁴⁵

In December 2022 Italy announced a temporary stop of Dublin transfers to Italy due to “technical reasons”. There is no official information as to when Dublin transfers to Italy will resume.¹⁴⁶ In 2023, no transfers to Italy took place.

Dublin statistics: 1 January – 31 December 2023

Outgoing procedure				Incoming procedure			
	Requests	Accepted	Transfers		Requests	Accepted	Transfers
Total	13,920	11,346	1,240	Total	18,730	11,162	2,166
Bulgaria	6,792	5,993	114	Germany	8,586	5,607	1,080
Romania	1,956	1,755	152	France	4,043	1,977	333
Croatia	1,490	1,313	263	Italy	2,085	1,137	10
Germany	1,099	541	295	Switzerland	1,474	1,007	339
Italy	1,050	874	0	Belgium	946	522	143
France	372	189	89	Netherlands	926	601	142
Switzerland	208	109	60	Sweden	94	50	25
Spain	160	86	50	Denmark	93	46	17
Netherlands	150	82	49	Spain	83	38	0
Poland	102	79	50	Norway	50	25	20

Source: Eurostat, based on total requests (first time and re-examination), as of 05 May 2024

Outgoing Dublin requests by criterion: 2023		
Dublin III Regulation criterion	Requests sent	Requests accepted
“Take charge”:	2,191	1,768
Article 8 (minors)	2	0
Article 9 (family members granted protection)	16	1
Article 10 (family members pending determination)	33	17
Article 11 (family procedure)	9	7
Article 12 (visas and residence permits)	1,455	1,201
Article 13 (entry and/or remain)	662	536
Article 14 (visa free entry)	4	1

¹⁴⁴ BFA, *BFA-Detailstatistik 2023*, available in German at: <https://shorturl.at/uL015>.

¹⁴⁵ Ministry of Interior, *Answer to a parliamentary request 9529AB/XXVII. GP*, 11 April 2022, available in German at: <https://bit.ly/3KDTYAk>.

¹⁴⁶ Ministero dell' Interno, Circular letter to all Dublin units, 5 December 2022.

"Take charge": Article 16	0	0
"Take charge" humanitarian clause: Article 17(2)	9	5
Take charge: criteria unknown	1	0
"Take back":	11,729	9,578
Article 18 (1) (b)	11,240	9,320
Article 18 (1) (c)	2	2
Article 18 (1) (d)	400	239
Article 20(5)	18	11
Take back – criteria unknown	69	6

Source: Eurostat, based on total requests (first time and re-examination), as of 23 May 2024

Incoming Dublin requests by criterion: 2023		
Dublin III Regulation criterion	Requests received	Requests accepted
"Take charge":	280	174
Article 8 (minors)	36	12
Article 9 (family members granted protection)	7	2
Article 10 (family members pending determination)	8	1
Article 11 (family procedure)	32	14
Article 12 (visas and residence permits)	131	115
Article 13 (entry and/or remain)	14	0
Article 14 (visa free entry)	0	0
"Take charge": Article 16	5	5
"Take charge" humanitarian clause: Article 17(2)	46	25
Take charge: criteria unknown	1	0
"Take back":	18,450	10,988
Article 18 (1) (b)	18,064	10,750
Article 18 (1) (c)	9	4
Article 18 (1) (d)	174	117
Article 20(5)	24	18
Take back – criteria unknown	179	99

Source: Eurostat, based on total requests (first time and re-examination), as of 05 May 2024

Outgoing Dublin transfers 2022 - 2023			Incoming Dublin transfers 2022-2023		
	2022	2023		2022	2023
Total	1,100	1,240	Total	1,575	2,166
Germany	330	298	Germany	791	1,083
Croatia	37	260	Switzerland	179	347
Romania	94	149	France	298	325
Other	639	534	Other	307	411

Source: Ministry of Interior, information not published

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.¹⁴⁷

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.¹⁴⁸

Documentation and entry

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

After the CJEU ruling in *Jafari*,¹⁴⁹ 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.¹⁵⁰

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.¹⁵¹

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 2022 Austria received 39 take back and take-charge requests from the Greek Dublin Unit, out of which 14 were accepted. Moreover, a total of 14 transfers were carried out (including transfers pending from the year before).¹⁵² According to Eurostat as reported by Austria, Austria received 44 requests from Greece,

¹⁴⁷ 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.

¹⁴⁸ Ministry of Interior, *Reply to parliamentary question 10654/J (XXV.GP)*, 2 January 2017.

¹⁴⁹ CJEU, Cases C-490/16, *A.S. v Republic of Slovenia*, 26 July 2017, available at: <http://bit.ly/3lbiyBd> and C-646/16, *Khadija Jafari and Zainab Jafari*, Judgment of 26 July 2017, available at: <http://bit.ly/3JnOzQl>.

¹⁵⁰ VwGH, Decision Ra 2016/19/0303, 20 September 2017, summary available in German at: <https://bit.ly/3YRo6ye>.

¹⁵¹ VwGH, Decision Ra 2017/19 / 0169-9, 5 April 2018, available in German at: <https://bit.ly/2usylbl>.

¹⁵² Greek Asylum Service, *Dublin Statistics*, January 2020, available at: <https://bit.ly/413bxf>.

including 22 take charge requests and 22 take back requests. Austria decided on 51 requests, potentially including some sent in 2022: 28 take charge and 23 take back requests were accepted. However, only 3 transfers took place in 2023, two based on article 8 (unaccompanied minor with a family member legally present in Austria), and one based on the humanitarian clause.

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.¹⁵³

In 2018, the BvWG had to rule on a case of family reunification concerning parents that had applied for asylum in Austria, while their minor child and the grandmother had applied for asylum in Greece. In accordance with the Dublin III Regulation, Greece requested Austria to be responsible for the applications. However, the BFA had doubts on whether family reunification would be in the best interests of the child and refused to take responsibility. The BVwG confirmed the rejection of the BFA. In the case of refusal of family reunification, the only available option for the requesting Member State is to request a re-examination. As regards the asylum applicant, they cannot act directly against the negative decision nor bring it to appeal, as this is a purely intergovernmental procedure. Therefore, in this case, it was the responsibility of Greece as the requesting Member State to challenge Austria's refusal to grant family reunification. The revision was rejected by the High Administrative Court.¹⁵⁴

As a consequence of two cases that asylukoordination österreich had put forward to the Ombudsman, the Minister of Interior and the Ombudsman agreed that the BFA should involve the Child and Youth Welfare Agency when it examines family reunification requests under the Dublin III Regulation to UAMs living in Austria.¹⁵⁵ No changes have been noted in practice, however.¹⁵⁶

In January 2021, a deportation of a family to **Georgia** in the middle of the night was debated publicly. One girl was born in Austria and resided in the country over ten years. The case shed light on the fact that children's rights are often not taken into account in asylum procedures and decisions. The Ministry of Justice introduced a Child Welfare Commission headed by former presidential candidate Irmgard Griss to evaluate the implementation of children's rights in asylum procedures.¹⁵⁷ The Commission presented an elaborated report in July 2021 with many recommendations on how the best interest of the child could be guaranteed better in the asylum process, including reception conditions and Dublin III assessment. Recommendations for improvements were presented.¹⁵⁸ In July 2022, the former member of the Commission made a press conference in which they announced that an evaluation done by Asylkoordination, and the Vienna Refugee Law Clinic shows that improvement in practice is still very poor, recommendations are neglected by the authorities. They also demanded the introduction of a permanent monitoring board concerning children's rights in Austria.¹⁵⁹

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

¹⁵³ VwGH, Decision Ra 2016/20/0384, 22 June 2017, summary available in German at: <https://bit.ly/406vWVV>.

¹⁵⁴ BvWG, W175 2206076-1, 1 October 2018, available in German at: <https://bit.ly/3yDXrKC>;

¹⁵⁵ Letter from the Ombudsman to Asylkoordination Österreich, Fr. Dr. Glawischnig, 12 June 2018.

¹⁵⁶ Practice-based observation by asylukoordination österreich and partners, January 2024.

¹⁵⁷ Standard, "Viele Unklarheiten um Asyl-Kommission von Irmgard Griss", 5 February 2021, available in German: <https://bit.ly/3ai25Tu>.

¹⁵⁸ Federal Ministry of Justice, *Bericht der Kindeswohlkommission*, 21 July 2021, available in German at: <https://bit.ly/3EZEEdmz>.

¹⁵⁹ Bündnis Gemeinsam für Kinderrechte (GfK), <https://bit.ly/3ZLTXS7>.

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 suggested¹⁶⁰ 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.¹⁶¹

The High Administrative Court ruled in December 2022 concerning the responsibility of a state for family members: Article 9 of the Dublin III Regulation contains special jurisdiction for family members of beneficiaries of international protection. If the applicant has a family member – regardless of whether the family already existed in the country of origin – who is a beneficiary of international protection and has the right to reside in a Member State, that Member State is responsible for examining the application for international protection, provided that the persons concerned express this wish in writing. This regulation not only allows the persons concerned (the applicant and the beneficiaries of international protection) to have a say, but gives them the power to decide whether they want to be reunited. These rules out the possibility that people are brought together against their will. The applicant must be informed of the requirement for such declarations within the framework of their right to information (cf. Art. 4 Para. 1 lit. b and c Dublin III Regulation) and, in the event of such a request by the applicant, it must be verified that the beneficiaries of the international protection agree to a reunification.¹⁶²

Unaccompanied children

Following the judgment of the CJEU in *M.A.* which concerned Article 8(4) of the Dublin III Regulation,¹⁶³ 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.¹⁶⁴ In 2018, there was another case related to the deadline for replying to a transfer request. In accordance with Article 21 (1) of the Dublin III Regulation, a request for transfer had been sent 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.¹⁶⁵

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.¹⁶⁶

¹⁶⁰ 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.

¹⁶¹ Fremdenrechtsänderungsgesetz 2017 – FrÄG 2017, 18 October 2017, available at: <http://bit.ly/2Cel0Ku>.

¹⁶² VwGH Decision, 15 December 2022, Ra 2022/18/0182, available in German at: <https://bit.ly/3mYCKQZ>.

¹⁶³ CJEU, Case C-648/11, *M.A. v. Secretary of State for the Home Department*, Judgment of 6 June 2013, available at: <http://bit.ly/42fxej7>.

¹⁶⁴ VwGH, Decision Ra 2017/19/0081, 22 November 2017, available in German at: <https://bit.ly/3ZNUePQ>.

¹⁶⁵ VwGH, Decision Ra 2016/18/0366, 06 November 2018, available in German at: <https://bit.ly/2SUc21D>.

¹⁶⁶ VwGH, Decision Ra 2017/18/0433, 20 May 2018, available in German at: <https://bit.ly/3FttmkP>.

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.¹⁶⁷

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.¹⁶⁸ 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.¹⁶⁹

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.¹⁷⁰

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.¹⁷¹

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

As of August 2023, article 17 Dublin-VO III was applied in 31 cases (2022: 14).¹⁷²

¹⁶⁷ BVwG, Decision W149 2009627-1, 21 July 2014, available in German at: <https://bit.ly/3Toxfxd>.

¹⁶⁸ BVwG, Decision W149 2009673-1, 20 June 2014, available in German at: <https://bit.ly/40eDHcz>.

¹⁶⁹ BVwG, Decision W149 2001851-1, 3 July 2014, available in German at: <https://bit.ly/3ZTBwv3>.

¹⁷⁰ BVwG, Decision W185 2005878-1, 2 July 2014, available in German at: <https://bit.ly/3mWXS0c>.

¹⁷¹ BVwG Decision W233 2177425-2, 23 January 2018, available in German at: <https://bit.ly/2SKvZrn>.

¹⁷² Ministry of Interior, *Answer to parliamentary request 15846/AB*, 21 November 2023, available in German at: <https://shorturl.at/gCF49>.

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.¹⁷³ 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 to 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*,¹⁷⁴ 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.¹⁷⁵

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.¹⁷⁶

In a ruling of January 2017 concerning the transfer of a family including two children to Croatia, the BVwG found that it was irrelevant that the adult brother was not legally responsible for the custody of his minor siblings. As the separation of the adult brother from his minor siblings would constitute an unacceptable interference with the right to family life and the children's well-being, the application of the sovereignty clause was ordered.¹⁷⁷

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.¹⁷⁸

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

¹⁷³ VfGH, Decision 237/03, 15 October 2004, VfSlg. 16.122/2001, available in German at: <https://bit.ly/3JIE3m5>.
¹⁷⁴ CJEU, Joined Cases C-411/10, *NS v Secretary of State for the Home Department* and C-493/10 *ME v Minister for Justice, Equality and Law Reform*, Judgment of 21 December 2011, available at: <http://bit.ly/3mMSRak>, para 98.
¹⁷⁵ BVwG, Decision W125.1257809-8, 20 January 2014, available at: <http://bit.ly/1Jp8HLh>.
¹⁷⁶ BVwG, Decision W205 1438717-1, 29 April 2014, available at: <http://bit.ly/1EUlw8X>.
¹⁷⁷ BVwG, Decision W165 2140213-1, 26 January 2017, available at: <http://bit.ly/2meMkAF>.
¹⁷⁸ VwGH, Decision Ra 2017/01/0068, 5 December 2017, available at: <https://bit.ly/3mQduCt>.

that the applications of the spouse and children should be admitted and the sovereignty clause used in order to preserve family unity.¹⁷⁹

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.¹⁸⁰

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.¹⁸¹ 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.¹⁸² 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 BVwG had made reference).

In September 2022, the Constitutional Court ruled against a decision by BVwG in which the second instance found a planned transfer of a Syrian national to Malta to be admissible. The Syrian national claimed that he would be put in detention upon return to Malta and the conditions in detention in Malta would violate his rights guaranteed by Art 2, 3 ECHR. The BVwG did not assess the situation in detention in Malta and ignored the deterioration following the Covid-19 situation in Malta.¹⁸³

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

¹⁷⁹ VfGH, Decision Ra 2015/18/0192 to 0195, 15 December 2015, available at: <https://bit.ly/3ZSe6WO>.

¹⁸⁰ VfGH, Decision W239 2152802-1, 30 July 2018; available in German at: <https://bit.ly/2WYwccj>.

¹⁸¹ BVwG, Decision W185 2188585-1, 13 November 2018, available in German at: <https://bit.ly/42gIME0>.

¹⁸² VfGH, Decision E2418/2017, 11 June 2018, available in German at: <https://bit.ly/3JIV5VZ>.

¹⁸³ VfGH, Decision E622/2022, 20 September 2022, available in German at: <https://bit.ly/3mUGSrm>.

asylum procedure based on the Dublin III Regulation.¹⁸⁴ 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.¹⁸⁵

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

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

Once an application for asylum is lodged, a preliminary interview by the police (*Erstbefragung*) takes place on the circumstances of entering Austria and the first country of entry in the EU, the personal data and – in a very brief manner – also on the reasons why an applicant left their home country. The applicant receives a copy of the report and is further fingerprinted and photographed. Fingerprints are taken from all asylum seekers older than 14 years of age. No problems have been reported with regard to the taking of fingerprints. In case an applicant refuses to be fingerprinted, the appeal against a negative decision may not benefit from suspensive effect,¹⁸⁶ but this is not relevant to the Dublin procedure. Due to the increase in applications in summer 2022, non-vulnerable applicants without EURODAC hits were not questioned right at the border but sent to another police directorate in different parts of Austria. The aim was to distribute the work of the police in the province close to Hungary, Burgenland, to other provinces. After the first months of 2023, the police returned to the normal procedure as the number of applications decreased significantly.

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 2022, 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.¹⁸⁷ As of September 2023, 16 data storage devices were seized and searched by the BFA.¹⁸⁸

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

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

¹⁸⁴ Article 2(1)(8) BFA-VG.

¹⁸⁵ Article 5(2) AsylG.

¹⁸⁶ Article 18 BFA-VG.

¹⁸⁷ Ministry of Interior, *Answer to parliamentary request 3614AB/XXVI. GP*, 23 July 2019, available in German at: <https://bit.ly/38PLAK7>.

¹⁸⁸ Ministry of Interior, *Answer to parliamentary request 15847/AB*, 21 November 2023, available in German at: <https://shorturl.at/yzFIU>.

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*.¹⁸⁹ 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.¹⁹⁰ The same applies to so called fast-track in-merits procedures. After the requested Member State accepts responsibility, the asylum seeker is given the possibility to be heard. Before that interview, they have an appointment with a legal adviser who must be present at the interview and who can also access documents in the case file.¹⁹¹ These tasks will be carried out by legal advisors of the BBU as of 2021.

2.2.1. 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.¹⁹²

2.2.2. Transfers

Transfers are normally carried out without the asylum applicant concerned being informed of the time and the location they are transferred to before the departure from Austria, giving them no possibility to return to the responsible Member State voluntarily.¹⁹³ 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

¹⁸⁹ VwGH, Decision Ra 2016/01/0274, 17 October 2017, available in German at: <https://bit.ly/40eEUR9>, citing CJEU, Case C-670/16 *Mengesteab*, Judgment of 26 July 2017, available at: <http://bit.ly/3Tk9tSZ>.

¹⁹⁰ 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.

¹⁹¹ Article 29 AsylG.

¹⁹² BVwG, Decision W241 2157798-2, 31 January 2018, available in German at: <https://bit.ly/3Fu4gm2>.

¹⁹³ Reports by NGOs during an exchange meeting at asylkoordination österreich, January 2024.

for asylum seekers requiring special care.¹⁹⁴ This raises questions with regard to Recital 24 and Article 26(2) Dublin III Regulation according to which a transfer decision must contain the details of the time carrying out the transfer and “if necessary, contain information on the place and date at which the applicant should appear, if he is travelling to the Member State responsible by their own means.”

In case of an enforced transfer to another EU Member State, the police first apprehend the asylum applicant and transfers them to a detention centre (see [Detention of Asylum Seekers](#)).¹⁹⁵ 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).¹⁹⁶ 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.¹⁹⁷

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 2023, 1,240 Dublin-out transfers were conducted.¹⁹⁸ 2,166 Dublin-in transfers were completed in the same time period. As more than 30,000 cases were discontinued due to absconding to other countries, the share of Dublin transfers completed only represents a small part of the applicants. Around 8,000,000 discontinued cases concerned Afghan nationals.

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

After the initial registration process and interview by the police is concluded, another interview conducted by the BFA has to be conducted during admission phase.¹⁹⁹ The law allows for an exception in case the asylum seeker has absconded from the procedure in the initial reception centre (EAST).²⁰⁰ 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.²⁰¹ 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.

¹⁹⁴ ECRE, *Balkan Route Reversed: The return of asylum seekers to Croatia under the Dublin system*, December 2016, available at: <https://bit.ly/3mWZAYe>, 33.

¹⁹⁵ In some cases, asylum seekers have reportedly been apprehended by the police during the night: *Ibid.*

¹⁹⁶ Article 77(5) FPG.

¹⁹⁷ VwGH, Decision Ro 2017/21/0010, 26 April 2018, available in German at: <https://bit.ly/3yELynY>.

¹⁹⁸ Ministry of Interior, *BFA-Detailstatistik 2023*, available in German at: <https://shorturl.at/CGMRW>.

¹⁹⁹ Article 19 (2) AsylG.

²⁰⁰ Article 24(3) AsylG.

²⁰¹ 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

The reform of June 2019 establishing the BBU introduces a new threshold which grants the asylum applicant the right to free legal assistance by the Agency only if an appointment – during which the applicant exercises their right to be heard – is scheduled within 72 hours (3 days) after having been notified by the BFA of the intention to reject the asylum application. This means that, if the BFA grants the asylum applicant the right to be heard at a later stage (e.g. in 4 or 5 days), free legal assistance by the Agency will only be available if resources so allow.²⁰² 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 practice, legal advisers are present when appointed. But they are often informed only shortly before the interview, which means that they lack time to study the file. In case of detention, legal advice to asylum seekers takes place immediately before the hearing in the detention centre.²⁰³ The provision of § 29 (4) AsylG foresees that an interview may not be conducted by the BFA within the first 24 hours of the asylum application.

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

The records 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.²⁰⁴ The Court noted that the dependency clause should have been applied in this case. In another case which involved Bulgaria, Austria did not inform the authorities that the asylum-seeker had been in Serbia for more than 3 months, although there was enough evidence.²⁰⁵

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?

<ul style="list-style-type: none"> ❖ If yes, is it ❖ If yes, is it suspensive 	<input checked="" type="checkbox"/> Yes <input checked="" type="checkbox"/> Judicial <input type="checkbox"/> Yes	<input type="checkbox"/> No <input type="checkbox"/> Administrative <input checked="" type="checkbox"/> No
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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

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.

²⁰² ECRE, *Reforming legal assistance in Austria: an end to independent provision?*, July 2019, available at: <https://bit.ly/3FrmxAx>, 3.

²⁰³ Practice based observation by partner organisations of asylkoordination, December 2023.

²⁰⁴ BVwG, Decision W149 2009627-1, 21 July 2014, available in German at: <https://bit.ly/3JGmTof>.

²⁰⁵ BVwG, Decision W239 2106763-3, 12 October 2018, available in German at: <https://bit.ly/3Ft58Y4>.

the court.²⁰⁶ The expulsion order may not be executed before the BVwG has decided if the appeal must be given suspensive effect.²⁰⁷ 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.²⁰⁸

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.²⁰⁹

The BVwG can either refuse the appeal, confirming the BFA decision, 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). The documentation of decisions of the Court shows, that the Court decides on the basis of the written appeal and the asylum file without a personal hearing of the asylum seeker.²¹⁰

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.²¹¹ In 2021, 770 (2020: 394) Dublin decisions were appealed.²¹² In 2022, 549 Dublin decisions were appealed with the assistance of BBU GmbH.²¹³

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.²¹⁴ In practice, it only happens in few cases that suspensive effect is granted after transfer/deportation. No cases were reported to asylkoordination in which re-entering the county was denied in such cases.

²⁰⁶ Art 16 (1) BFA-VG.

²⁰⁷ Art 16 (4) BFA-VG.

²⁰⁸ Reports from NGOs to asylkoordination österreich, September 2023.

²⁰⁹ VwGH, Decision Ra 2018/14/0133, 24 October 2018, available in German at: <https://bit.ly/3ThQFUA>.

²¹⁰ Rechtsinformationssystem des Bundes, ris.bka.gv.at.

²¹¹ The cases are available in German at: <http://bit.ly/3LKhOOP>.

²¹² Ministry of Justice, *Answer to parliamentary request 9532/AB, XXVII. GP*, 11 April 2022, available in German at: <https://bit.ly/3xwMwK6>.

²¹³ Ministry of Justice, *Answer to parliamentary request 15973/AB XXVII. GP*, 4 December 2023, available in German at: <https://shorturl.at/zMQS7>.

²¹⁴ Article 14 AsylG.

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. As of September 2023, in 45 cases a punishment of violation of restricted residence was applied by the authorities.²¹⁵ 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.²¹⁶ There is no legal guardian appointed as the Child and Youth Welfare Authority denies its responsibility arguing that during the admissibility procedure it is not clear whether the children have a perspective to stay in Austria. UAM 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. After the admissibility procedure is concluded UAM are supposed to be transferred to the provinces where the authorities of Kinder- und Jugendhilfe take over legal guardianship (see [Legal representation of unaccompanied minors](#)).

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 their

²¹⁵ Ministry of Interior, *Answer to parliamentary request 15846/AB XXVII. GP*, 21 November 2023, available in German at: <https://shorturl.at/eprxN>.

²¹⁶ Art 49 (3) BFA-VG.

right to be heard – is scheduled within 72 hours (3 days) after having been notified by the BFA of the intention to reject the asylum application. This means that, if the BFA grants the asylum applicant the right to be heard at a later stage (e.g. in 4 or 5 days), free legal assistance by the Agency will only be available if resources so allow. The discretion of the BFA as regards the timing of the appointment thus has an influence on whether legal assistance will be provided at first instance because the Federal Agency is legally obliged to do so, or whether it will be provided if the Agency's available resources allow so. In addition, the provision specifies that, if the asylum seeker did not make use of the right to be heard, this does not affect the outcome of the decision on their application for international protection.²¹⁷ 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 places where the asylum applicant may find protection from persecution. An exception applies to cases in which there is an obvious risk of lack of protection, e.g. if it is well-known to the authorities, or if the asylum applicant brings evidence that there is a risk that they will not be protected properly. This real risk cannot be based on mere speculations, but has to be based on individual facts and evidence. This statement of risk has to be related to the individual situation of the asylum applicant.²¹⁸

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.

According to the jurisprudence, notorious severe human rights violations in regard of Article 3 ECHR have to be taken into consideration *ex officio*.²¹⁹ 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.²²⁰

In 2023, 1,240 outgoing Dublin transfers were completed. The main recipient countries were Germany, Croatia and Romania.

²¹⁷ ECRE, *Reforming legal assistance in Austria: an end to independent provision?*, July 2019, available at: <https://bit.ly/2PQ1H3N>.

²¹⁸ Article 5 AsylG.

²¹⁹ VwGH, 2008/19/0163, 21 June 2010, available in German at: <https://bit.ly/3y0Ed4W>.

²²⁰ e.g. BVwG, W144 2287262, 28 February 2024, available in German at: <https://bit.ly/4aOMuYh>.

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* in 2011, Austria suspended transfers to Greece. The director of the BFA announced Dublin procedures with Greece would start again in March 2017,²²¹ in line with the European Commission's recommendation of December 2016, however they did not resume in practice, including in 2023. There were no take back requests sent to Greece until September 2023.²²² The Austrian authorities sometimes immediately make use of the discretionary clause, but this is not general practice²²³ despite the lack of transfers in over 10 years. There are no Dublin transfers to Greece due to legal reasons.²²⁴ In cases of persons that already have received a protection status in Greece before applying in Austria the situation is different (see [Suspension of returns for beneficiaries of protection in another Member State](#)).

Hungary: In 2019 and 2020, one transfer was reportedly 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. Until September 2023, 21 (2022: 34) take charge and 2 (2022: 11) take back requests were sent to Hungary. No transfers were completed.²²⁵

Italy: Until September 2023, 414 take charge and 258 take back requests were sent to Italy. In a letter from December 2022, Italy announced that due to technical reasons no Dublin returnees would be taken back from other countries. At the time of writing, this has not changed and no Dublin returns were completed throughout 2023. Decisions are still being made by the authorities but cannot be implemented.

In the past, the Italian Ministry of Interior had been issuing a number of letters guaranteeing that all families with minors transferred to Italy under the Dublin III Regulation would remain together and be accommodated in a facility adapted to their needs. Previous case law has also allowed for the transfer of families to Italy, including of a single mother and her baby;²²⁶ and of a family with four children (out of which two were minors) and their grandparents.²²⁷ The Constitutional Court also found that the situation of asylum seekers in Italy has improved and that special safeguards are no longer necessary.²²⁸ There is no recent jurisdiction on Dublin returns to Italy by Austrian Courts: Requests are issued and the applicants are only admitted to the procedure when the 6 months have passed. Detentions are generally not upheld as there is no feasible perspective for returns to be resumed.²²⁹

Bulgaria: Transfers to Bulgaria are carried out by the BFA and generally upheld by the BVwG.²³⁰ The VwGH in 2017 found that the BFA must make a thorough assessment of the conditions in Bulgaria before transferring families.²³¹ In March 2023, the Constitutional Court annulled two decisions of the BVwG in which the latter found a decision of the first instance determining a transfer to Bulgaria to be lawful. In one case the decision was found to have been taken in an arbitrary manner because the BVwG did not

²²¹ See Kurier, 'Griechenland soll ab März wieder Flüchtlinge zurücknehmen', 20 January 2017, available in German at: <http://bit.ly/2kaZVLc>.

²²² Ministry of Interior, *Answer to a parliamentary request 15846/AB, XXVII GP*, 21 November 2023, available in German at: <https://shorturl.at/ehmKZ>.

²²³ Practice based observation by asylkoordination österreich and partners, January 2024.

²²⁴ Ministry of Interior, *Answer to a parliamentary request 15846/AB, XXVII GP*, 21 November 2023, available in German at: <https://shorturl.at/ehmKZ>.

²²⁵ Ministry of Interior, *Answer to a parliamentary request 15846/AB, XXVII GP*, 21 November 2023, available in German at: <https://shorturl.at/ehmKZ>.

²²⁶ VwGH, Decision Ra 2016/20/0051, 23 June 2016.

²²⁷ VwGH Decisions Ra 2017/20/0061 to 0067, 23 March 2017, available in German at: <https://bit.ly/3n0Bbbh>.

²²⁸ VfGH, Decision E2646/2016, 7 March 2017, available in German at: <https://bit.ly/3lgRqR8>.

²²⁹ Practice-based observation by asylkoordination österreich and partners, January 2024.

²³⁰ See e.g. BVwG, Decision W239 2217177-1, 26 April 2019, available in German at: <https://bit.ly/3FqNHHq>; W165 2174429-1, available in German at: <https://bit.ly/3mNKHbk>, 23 November 2017; W241 2178020-1, 7 December 2017, available in German at: <https://bit.ly/3JIMmOL>.

²³¹ VwGH, Decision Ra 2017/18/0039, 30 August 2017; Ra 2017/19/0100, 13 December 2017, available in German at: <https://bit.ly/3yJsBAu>.

examine whether the person concerned would have an effective access to the asylum system without having to fear of a chain pushback to Türkiye.²³² As a reaction to the High Court's judgements all appeals concerning Bulgaria were upheld. This changed with the update of the country information sheet provided to the authorities and courts by the Staatendokumentation. There it was stated that Bulgaria is no longer rejecting applications by arguing that Turkey is a safe third country. Following this, the Court's decisions upheld most first instance decisions and confirmed the legality of Dublin returns to Bulgaria.²³³ As of May 2024, Dublin transfers to Bulgaria are conducted and the appeals against negative decisions are dismissed in general.

In 2023, in a case of a single mother with her minor daughter the decision was annulled because the BVwG did not take into account that the persons concerned were members of a vulnerable group.²³⁴ In 2024, in one case in which the applicant claimed to have suffered violence in Bulgaria because of his homosexuality, the appeal was sustained by the BVwG; the decision was annulled and sent back to the first instance for further investigations.²³⁵

In 2023, around 50% (2022: 70%) of all Austrian take back requests were sent to Bulgaria (6,688). 5,893 (2022: 6,619) were accepted by Bulgaria, 114 (2022: 34) transfers were effectively completed.²³⁶

Croatia: Following the CJEU ruling in *A.S. / Jafari* in 2017, the BVwG rejected previously suspended cases and the persons concerned were returned to Croatia. In some cases the applications were admitted in Austria due to the expiry of the time limit for the transfer. Since 2019, transfers to Croatia have been completed without Austria asking for individual guarantees. In a case of an accompanied child that needed medical treatment, the revision was rejected from the High Administrative Court, and an individual guarantee was not deemed to be necessary. Almost all BVwG decisions confirm the first instance decisions that find Croatia responsible.²³⁷ Until September 2023, 57 take charge requests and 821 take back requests were sent to Croatia. In the same time, 196 (2022: 37) transfers were completed to Croatia.²³⁸ In 2023, NGOs reported about many negative Dublin decisions and transfers to Croatia. In all cases, Croatia became responsible by not responding to the requests. Some persons transferred claimed that they have never been to Croatia before.

2.7. The situation of Dublin returnees

Asylum seekers returning to Austria under the Dublin Regulation, and whose claim is pending a final decision, do not face obstacles if their transfer takes place within two years after leaving Austria. In this case, the discontinued asylum procedure will be reopened as soon as they request for it at the BFA or the BVwG. If a final decision has already been taken on the asylum application upon return to Austria, the new asylum application will be processed as a subsequent asylum application. Dublin returnees are confronted with the same issues as other asylum seekers in accessing the basic care system. As provinces are reluctant to take over asylum seekers from the federal reception centres Dublin returnees might end up staying several weeks or even months in bigger first reception facilities. .

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

²³² VfGH, Decision E 2944/2022, 15 March 2023, available in German at: <https://bit.ly/3JJhj4K>.

²³³ Staatendokumentation, LIB Bulgaria, 17 Mai 2023 and 29 September 2023, not publicly available; e.g. W144 2273612-2/4E, 06 July 2023 or W239 2273159-2/6E, 21 September 2023.

²³⁴ VfGH, Decision E 1044/2022, 9 March 2023, available in German at: <https://bit.ly/3WnU1J7>.

²³⁵ BVwG, W239 2286457-1/4E, 22 February 2024, available in German at: <https://bit.ly/4bizjhZ>.

²³⁶ Ministry of Interior, *Answer to parliamentary request 13976/AB*, 28 April 2023, available in German at: <https://bit.ly/3ndzU1k>; Ministry of Interior, *Answer to parliamentary request 17284/AB*, 15 April 2024, available in German at: <https://shorturl.at/efwE4>.

²³⁷ VfGH, Decision Ra 2023/01/0305-6, 12 December 2023.

²³⁸ Ministry of Interior, *Answer to parliamentary request 13976/AB*, 28 April 2023, available in German at: <https://bit.ly/3ndzU1k>; Ministry of Interior, *Answer to parliamentary request 15846/AB*, 21 November 2023, available in German at: <https://shorturl.at/fs067>.

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 within 24 hours on average. If the applicant is admitted to the regular procedure they are ordered to travel to the initial reception centre (EAST) or transferred there by the police.²³⁹ There are three EAST which are responsible for the admissibility procedure: one is located in **Traiskirchen** near Vienna, one in **Thalham** in Upper Austria and one at the **Airport Vienna Schwechat**. If the asylum applicant is not admitted to the regular procedure, they stay in the Federal reception system and are not being allocated to one of the provinces. The person has then 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.²⁴⁰

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

- (1) The person comes from a safe third country;²⁴¹
- (2) The person enjoys asylum in an EEA country or Switzerland;²⁴²
- (3) Another country is responsible for the application under the Dublin III Regulation;²⁴³
- (4) The person files a subsequent application and “no change significant to the decision has occurred in the material facts”.²⁴⁴

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

Within 20 days after the application for international protection has been lodged, the BFA must admit the asylum applicant to the in-merit procedure or notify them formally by procedural order about the intention to issue an inadmissibility decision on the ground that another state is considered responsible for the examination of the asylum claim; or that it intends to revoke the suspensive effect of a subsequent application. If the BFA does not notify the asylum applicant of its intention to issue an inadmissibility decision within 20 days, the application is thus admitted to the regular procedure. This time limit does not apply if consultations with another state on the application of the Dublin III Regulation take place.²⁴⁵

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.²⁴⁶ The duty of asylum seekers to cooperate includes the duty to provide the BFA with information and evidence about their identity and reasons for applying for international protection, to be present at hearings and personal interviews as well as to inform the authorities about their address. If the asylum seeker is unable to cooperate during the

²³⁹ Article 29(1) AsylG.

²⁴⁰ Article 17(3) AsylG.

²⁴¹ Article 4(1) AsylG.

²⁴² Article 4a(1) AsylG.

²⁴³ Article 5(1) AsylG.

²⁴⁴ Article 12a(2)(2) AsylG.

²⁴⁵ Article 28(2) AsylG.

²⁴⁶ Article 28(2) AsylG.

procedure for reasons relating to their person (e.g. illness, postponing the interview due to duty to comply with summons etc.), the 20-day time limit shall be suspended.²⁴⁷

If the BFA has ordered an age assessment, the 20-day time limit also does not apply.²⁴⁸

As a result of the admissibility procedure, the application may either be admitted to the regular procedure, 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.²⁴⁹ An admissible application shall nevertheless be rejected if facts justifying such a rejection decision become known after the application was admitted.²⁵⁰ In practice, this provision is applied in Dublin cases without the precondition that the facts justifying admissibility were not known before.²⁵¹

The information provided by the Ministry of Interior did not include the number of inadmissibility decisions issued in 2019.²⁵² However, the admissibility procedure lasted for approximately 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.²⁵³ 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.²⁵⁴ 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.²⁵⁵ As of September 2023, the average time of a person's accommodation in federal basic care is 123 days (2022: 153 days), compared to 622 days in province basic care (2022: 528 days).²⁵⁶

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 a second time by officials of the BFA during the admissibility procedure at the initial reception centre. The police are 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. There is a 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. In reality, this sometimes leads to problems: the last question

²⁴⁷ Article 28(2) AsylG.

²⁴⁸ Article 28 (2) AsylG in connection with Article 29 (6) AsylG.

²⁴⁹ Article 28(2) AsylG.

²⁵⁰ Article 28(1) AsylG.

²⁵¹ VwGH, Decision Ra 2006/20/0624, 25 November 2008.

²⁵² Information provided by the Ministry of Interior, 18 February 2020.

²⁵³ *Answer to parliamentary request, No 3235/AB-BR/2018*, 31 July 2018.

²⁵⁴ Ministry of Interior, *Answer to parliamentary request 4244/AB, XXVII. GP*, 18 January 2021, available in German at: <https://bit.ly/2OPthRn>.

²⁵⁵ Ministry of Interior, *Answer to parliamentary request 9123/AB, XXVII. GP*, 14 March 2022, available in German at: <https://bit.ly/4bdHDAh>.

²⁵⁶ Ministry of Interior, *Answer to parliamentary request 14066/AB, XXVII GP*, 22 November 2023, available in German at: <https://shorturl.at/dzSZ5>.

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 at the police stage. There is jurisprudence by the High Administrative Court that the evidence gathered in the initial interview at the police shall not be used in an "unreflective manner" by the authorities and the Court as the initial interview does not focus on the reasons why the person is seeking international protection.²⁵⁷

In this regard, Article 19(4) AsylG explicitly foresees that, in the admission procedure, the asylum seeker shall also be informed that their own statements will be accorded particular attention, meaning that they should be aware of the consequences of false testimonies.

The law allows for an exception from the personal interview in case the asylum seeker has absconded from the procedure while being accommodated in the initial reception centre. If the facts relevant to a decision on an asylum claim are established, the fact that the asylum seeker has not been interviewed yet by the BFA or by the BVwG shall not preclude the rendering of a decision. In practice this exception is not applied very often, however. The BFA files most of these cases as "discontinued", which means that upon request by the asylum seekers the procedure will be reopened. An exception may apply in a subsequent asylum application that was submitted within two days before the execution of an expulsion order.²⁵⁸ An interview during the admission procedure may be dispensed with if the procedure is admitted.

3.3. Appeal

Indicators: Admissibility Procedure: Appeal

Same as regular procedure

1. Does the law provide for an appeal against the decision in the admissibility procedure?

- | | | |
|----------------------------|--|--|
| ❖ If yes, is it | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| ❖ If yes, is it suspensive | <input checked="" type="checkbox"/> Judicial | <input type="checkbox"/> Administrative |
| | <input type="checkbox"/> Yes | <input type="checkbox"/> Some grounds <input checked="" type="checkbox"/> 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.²⁵⁹

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

If the application is rejected on the merits in the admissibility procedure and the second instance grants suspensive effect after the appeal was brought in, the granting of suspensive effect also means that the application has been admitted in Austria.²⁶⁰

Appeals against a decision rejecting the asylum application as inadmissible do *not* have suspensive effect unless this is granted by the BVwG.²⁶¹ 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](#).

²⁵⁷ VwGH, 14.6.2017, Ra 2017/18/0001.

²⁵⁸ Article 19(1) AsylG.

²⁵⁹ Article 16 (2) BFA-VG.

²⁶⁰ Article 17 BFA-VG

²⁶¹ 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

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

Yes With difficulty No

❖ Does free legal assistance cover

Representation in courts
 Legal advice

The BBU GmbH as 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 second interview, the one with the BFA, during which the asylum seeker is given the opportunity to be heard. If the interview is conducted within 72 hours, presence of legal advisers during the interview is mandatory unless the applicant dismisses the advisor explicitly. If the interview is conducted more than 72 hours after, the BBU will not even be informed of the case until a negative decision is issued.

Free legal advice is foreseen for subsequent asylum applications under the same conditions (interview within 72 hours) as well, including at appeal stage.²⁶² Most of the cases that are regarded as inadmissible are Dublin cases (see [Dublin: Legal Assistance](#)) and [Safe Third Country](#) cases.

Since January 2021, legal assistance has been provided by the new Federal Agency, the BBU GmbH (see [Regular procedure: Legal assistance](#)).

3.5. Suspension of returns for beneficiaries of protection in another Member State

There is no general suspension of returns of beneficiaries of protection to any EU member state. In practice, there are mainly cases of Afghan and Syrian nationals with a protection status in either Greece or Bulgaria.

Rejections for existing protection in another EU state are also issued regularly by the BFA concerning countries such as **Greece** or **Hungary**, even though the appeal is regularly granted suspensive effect.

Hungary: 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.²⁶³ 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 an Art 3 ECHR violation.

Greece: There is no general policy of suspension of transfers of BIPs to Greece. Applications by beneficiaries of international protection in **Greece** have risen since 2020. While the first instance authority

²⁶² Article 52(1) BFA-VG.

²⁶³ BVwGH, Decision W235 2238204-1/10E, 26 April 2021, available in German at: <https://bit.ly/3sBERzt>.

initially admitted vulnerable cases to the asylum procedure, a change of strategy was observed throughout 2021. Until then, in general, in single cases where protection status was granted by Greek authorities, the Courts rejected applications lodged in Austria. This changed in June 2021 as the Constitutional Court ruled that, due to inadequate reception conditions in Greece a thorough assessment has to be carried out before transferring beneficiaries of international protection back to Greece.²⁶⁴ 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. 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.²⁶⁵ A project called "Tetraa" was initiated by asylkoordination together with Diakonie Flüchtlingsdienst and lawyer Christian Schmaus. In this project, strategic litigation is being conducted focusing on asylum procedures of beneficiaries of International protection in Greece coming to Austria applying for asylum because of dire living conditions in Greece.²⁶⁶

There is an examination of the individual cases and communication with the Greek authorities. However, in at least one case a person who had received subsidiary protection in Greece and whose application was rejected in Austria, was deported to Greece in 2022.²⁶⁷ There was no transfer in 2023. In the particular case of 2022, the case is still pending at the Constitutional Court in Austria at the time of writing.

Also in 2023, the Constitutional Court upheld the appeals in two cases due to lack of investigations concerning access to basic care systems²⁶⁸ and in a case of a pregnant applicant with a recognised refugee status in Greece.²⁶⁹ The Federal Administrative Court had wrongly based the rejection of the applications on the fact that the applicant is based in Austria due to her residence permit and will not be transferred to GR anyway. Therefore the decision would be a "purely hypothetical "Return" act. The Constitutional Court found that the general reference to the reporting situation is insufficient.

Bulgaria: 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.²⁷⁰ In 2023, the BVwG granted suspensive effect in several cases concerning Bulgaria and appeals were upheld as the investigations of the first instance concerning living conditions were not thorough enough.²⁷¹

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.²⁷² In the case of a single Syrian who obtained

²⁶⁴ Austrian Constitutional Court, Decision E599/2021, 25 June 2021, available in German at: <https://bit.ly/42jISuq>.

²⁶⁵ BVwG, Decisions W235 2244837-1/8E, 21 September 2021, available in German at: <https://bit.ly/409ialm> and W144 2244839-1/8E, 14 September 2021, available in German at: <https://bit.ly/3ZQc7SR>.

²⁶⁶ Asylkoordination österreich, TETRAA, available in German at: <https://bit.ly/41SC2dQ>.

²⁶⁷ Decision BFA, IFA 1312763810, 9 November 2022.

²⁶⁸ VfGH, Decision E 818/2023-11, 13 June 2023.

²⁶⁹ VfGH, Decision E 1490/2023-14, 13 December 2023, available in German at: <https://shorturl.at/zJwC5>.

²⁷⁰ BVwG, Decision W192 2131676, 8 September 2016.

²⁷¹ BVwG, Decision W232 2287167, 24 February 2024.

²⁷² BVwG, Decision W205 2180181-1, 21 December 2017, available in German at: <https://bit.ly/3lcwISB>.

subsidiary protection in Bulgaria, however, the BVwG found no real risk on the ground that he did not belong to a vulnerable group.²⁷³

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?²⁷⁴ 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 for this purpose.²⁷⁵ Moreover, the Austrian airport procedure foresees the possibility to carry out both an admissibility assessment of the asylum claim as well as a full in-merit examination of the asylum claim, in accordance with Article 43 recast Asylum Procedures Directive. There is no available data on the number of applicants for international protection subject to the airport procedure. Overall the border procedure can be described as a black box and there is a serious lack of transparency on the functioning of procedure. UNHCR shares little information on the functioning of the airport procedure.

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

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

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 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.²⁷⁶

²⁷³ BVwG, Decision W233 2166376-1, 18 September 2017, available in German at: <https://bit.ly/3Jgb7R4>.

²⁷⁴ Time limit to send the file to UNHCR rather than to take a first instance decision.

²⁷⁵ Article 31- 33 AsylG.

²⁷⁶ Article 31(1) AsylG.

For airport procedures, the Asylum Act foresees a 'four-eyes principle' whereby a rejection of an application on the merits or because of existing protection in a safe third country requires the explicit consent of UNHCR. However, that involvement does not substitute any due process guarantees but is a further safeguard in addition to e.g. the rights to be heard, to legal counselling and to appeal. If the BFA intends to reject the application in the airport procedure, UNHCR has to be informed within one week, a time limit which is generally respected.²⁷⁷ If the time limit is not met, the application is admitted to the regular procedure and the asylum seeker is allowed entry.²⁷⁸ Moreover, UNHCR is entitled to contribute to the procedure (e.g. examine the application and talk to the applicant). In practice, UNHCR decides most cases based on the case files including interview records by the BFA since in case of doubts it does not agree with a rejection in the airport procedure.²⁷⁹ 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.²⁸⁰ In case the UNHCR does not give its consent it has to bring in a written reasoning. Data on the number of cases concerned are not available. In the context of Dublin procedures at the airport, UNHCR is not involved.

The law foresees that the persons are not allowed to enter the territory but can leave for another country at any time.²⁸¹ 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.²⁸² 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.

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 2023, the measure had still not been implemented in practice.

4.2. Personal interview

Indicators: Border Procedure: Personal Interview

Same as regular procedure

1. Is a personal interview of the asylum seeker in most cases conducted in practice in the border procedure?

<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
❖ If so, are questions limited to nationality, identity, travel route?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
❖ If so, are interpreters available in practice, for interviews?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> 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,²⁸³ after the initial interview with the police. 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

²⁷⁷ Article 32(2) AsylG.

²⁷⁸ Article 33(2) AsylG.

²⁷⁹ Article 33 (2) AsylG

²⁸⁰ Abkommen Mitwirkung UNHCR im Asylverfahren, Art III (2), available in German at: <https://bit.ly/3jX4OVm>.

²⁸¹ Article 32 (1) AsylG

²⁸² Article 32 (4) AsylG

²⁸³ Article 33(2) AsylG.

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 UNHCR's 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?

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

The time limit for lodging appeals against a decision by the BFA in procedures at the airport is 1 week.²⁸⁴ The BVwG must issue its decision within 2 weeks from the submission of the complaint.²⁸⁵ A hearing in the appeal proceedings must be conducted at the initial reception centre at the airport,²⁸⁶ but this rarely happens in practice.²⁸⁷ The appeal has automatic suspensive effect.²⁸⁸

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?

<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> With difficulty	<input type="checkbox"/> No
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 - ❖ Does free legal assistance cover:

<input type="checkbox"/> Representation in interview
<input checked="" type="checkbox"/> Legal advice
2. Do asylum seekers have access to free legal assistance on appeal against a negative decision in practice?

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

 - ❖ Does free legal assistance cover

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

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

The BBU GmbH also provides basic care at the EAST at the airport. As of September 2022, there was a capacity of 28 beds at the transit zone at the airport.²⁸⁹

²⁸⁴ Article 33(3) AsylG.

²⁸⁵ Article 33(4) AsylG.

²⁸⁶ Article 33(4) AsylG.

²⁸⁷ Information by BBU GmbH to asylkoordination österreich, August 2023.

²⁸⁸ Article 33 (5) AsylG

²⁸⁹ Ministry of Interior, *Answer to parliamentary request 11630/AB XXVII. GP*, 21 September 2022, available in German at: <https://bit.ly/40SDLyv>.

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;²⁹⁰
- (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;²⁹¹
- (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.²⁹² Public interest exists in particular, albeit not exhaustively, where an applicant:²⁹³
 - i. Has committed a criminal offence;
 - ii. Has been charged with a criminal offence by the Department of Public Prosecution;
 - iii. Has been subject to pre-trial detention; or
 - iv. Has been caught in the act of committing a criminal offence.

In case a “procedure for the imposition of measures to terminate residence” has been initiated, a decision on the asylum application shall be taken as quickly as possible and no later than 3 months.²⁹⁴

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

- (a) The asylum seeker comes from a safe country of origin;
- (b) There are indications that the asylum seeker endangers public security and order;
- (c) The asylum seeker has provided false statements on their identity, nationality and authenticity of documents;
- (d) No reasons for persecution have been asserted;
- (e) Statements adduced are obviously false or contradictory;
- (f) An executable return decision has been issued before applying for international protection; and
- (g) The asylum seeker refuses to provide fingerprints.²⁹⁵

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

By law, no vulnerable groups are automatically exempted from accelerated procedures. There is no information available as to a general practice on the matter.

In 2020, 524 applications were subject to an accelerated procedure with an average duration of less than 72 hours. Another 283 procedures were conducted as classic fast track procedures with an average

²⁹⁰ Article 27(1)(1) AsylG, citing Article 29(3)(4)-(5) AsylG.

²⁹¹ Article 27(1)(2) AsylG, citing Article 24(2) AsylG.

²⁹² Article 27(2) AsylG.

²⁹³ Article 27(3) AsylG.

²⁹⁴ Article 27(8) AsylG.

²⁹⁵ Article 18 BFA-VG.

duration of 22.7 days.²⁹⁶ 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%).²⁹⁷ In 2021, 1,100 cases were channelled into the accelerated procedure. In 2022, 23,297 decisions were taken in a fast track procedure, among which 1,188 were taken in an accelerated procedure. The top three nationalities concerned were India (30%), Tunisia (29%) and Morocco (17%). In 2023, 8,421 decisions were taken in a fast track procedure, among which 300 were taken in an accelerated procedure. The top three nationalities processes in fast track procedures were Morocco (84%), India (16%) and Pakistan (9%).²⁹⁸ These procedures are not necessarily conducted at the border.²⁹⁹

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.³⁰⁰ If the facts are established, failure by the BFA or by the Federal Administrative Court to conduct an interview should not preclude the rendering of a decision. No differences are observed from the [Regular Procedure: Personal Interview](#).

The BFA may omit the personal interviews in cases of subsequent applications which aim to prevent the execution of an expulsion order and/or subsequent applications without *de facto* protection against deportation. Subsequent applications within 18 days of the deportation date have no suspensive effect, the expulsion order issued after the rejection of the first asylum application can be executed.³⁰¹

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.³⁰² The BVwG has to decide on the appeal against negative decisions – which include expulsion orders – within 8 weeks.³⁰³

²⁹⁶ Ministry of Interior, *Answer to parliamentary request 4887/AB, XXVII. GP*, 12 March 2021, available in German at: <https://bit.ly/2P47uVW>.

²⁹⁷ Ministry of Interior, „Nehammer: Schnellverfahren trennt erfolgreich zwischen Asyl und Migration“, 25 February 2021, available in German at: <https://bit.ly/2P4CBRd>.

²⁹⁸ Ministry of Interior, internal information, not publicly available.

²⁹⁹ Ministry of Interior, *Answer to parliamentary request 13740/AB, XXVII. GP*, 20 April 2023, available in German at: <https://bit.ly/3NoQQfV>.

³⁰⁰ Article 24(3) AsylG.

³⁰¹ Article 19(1) AsylG.

³⁰² Article 27(8) AsylG.

³⁰³ Article 17(2) BFA-VG.

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.³⁰⁴

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 subsequent asylum applications too.³⁰⁵ 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.³⁰⁶ 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 (see [Freedom of movement](#)) significantly limits their access to NGOs which are not present in certain initial reception centres.

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

³⁰⁴ Article 18(2)(5) BFA-VG. See e.g. AsylGH (Asylum Court), A8 260.187-2/2011, 2 August 2011.

³⁰⁵ Article 49(2) BVA-VG in conjunction with Article 29(3) BFA-VG.

³⁰⁶ For additional information on the BBU-G, § 51 BFA-VG, see in German: <https://bit.ly/378koFH>.

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 crimes against 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 Article 19 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 all interviews in the asylum procedure it is foreseen that the applicants are asked whether they have any health or mental problems that could influence their ability to cooperate during the asylum procedure. In individual cases 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.³⁰⁷

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 organisations working with migrants in vulnerable situations.³⁰⁸ In 2021, the exchange between the first instance authority and NGOs remained difficult. In 2023, there were meetings between NGOs such as asylkoordination österreich and Diakonie Flüchtlingsdienst who were received by the Director of the BFA. In several regional directorates such as Carinthia there are regular exchange meetings between the authority and NGOs. 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.

³⁰⁷ Article 30 AsylG.

³⁰⁸ OHCHR, *Report on the mission to Austria focusing on the human rights of migrants, particularly in the context of return*, October 2018, available at: <https://bit.ly/2u4JoQE>, 7.

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.³⁰⁹ In practice, there are still no systematic identification of victims of trafficking in place. In November 2021, the Ministry of Foreign Affairs presented the 6th national action plan to combat trafficking in human beings for 2021 to 2023, consisting of 109 measures ranging from prevention and awareness raising to improving law enforcement measures.³¹⁰

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.³¹¹ There are no current statistics, however, on the number of victims of human trafficking in Austria.

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

1.2. Age assessment of unaccompanied children

Most age assessments are ordered by the BFA 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.

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.³¹² In 2022, 461 (2021: 428) multifactorial age assessments and 951 (2021: 1,170) wrist X-rays were conducted by the BFA. As a result of age assessments, in 233 cases (2021: 200) the applicant was considered to be of age while in 228 (2021: 228) cases the applicant’s minority was confirmed.³¹³ In 2023, there were 4,946 applications of unaccompanied minors in Austria. In less than 10% of the cases (489), a multifactorial age assessment was conducted. In 56,2% of the cases the result was that the applicant was not found to be a minor (275 cases).³¹⁴

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

³⁰⁹ Ibid.

³¹⁰ Ministry of Foreign Affairs, *Report to the Parliament: Bekämpfung des Menschenhandels, Arbeitsausbeutung, Kinderhandel, Prostitution*, November 2021, available in German at: <https://bit.ly/36pRC9n>.

³¹¹ Report from LEFÖ to asylkoordination österreich, April 2022.

³¹² Ministry of Interior, *Reply to parliamentary request*, No 1240/AB, 4 September 2018, available in German at: <http://bit.ly/2nU4rz4>.

³¹³ *BFA-Detailstatistik 1.-4. Quartal 2022*, available in German at: <https://bit.ly/3SMUZLj>.

³¹⁴ *BFA-Detailstatistik 2023*, available in German at: <https://shorturl.at/cghmr>.

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.³¹⁵ 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).³¹⁶

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.³¹⁷ 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.

In 2017, there was an example in which the VwGH applied the benefit of the doubt and ruled that the applicant should be considered to be a minor, concerning a Gambian asylum seeker. His birth certificate, delivered by the Gambian authorities, indicated that he was a minor but the authorities in Norway and Italy had determined that he was an adult. The BFA considered that the concerned Gambian applicant was between 17.04 and 18.44 years.³¹⁸

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.³¹⁹ 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 € 1,246.80.³²⁰ The statistical data of the Ministry of Interior is incomplete and does not allow conclusions to be drawn on the proportionality and scientific value of the application of age assessment.

Challenging age assessments

Age assessments are not an administrative decision but an expert opinion which is communicated to the applicant. As a result, there is no possibility to appeal the opinion. The question whether it is possible to challenge the decision declaring the majority of an asylum applicant has been referred to the Constitutional Court (VfGH). In a ruling of 3 March 2014, the Court ruled that the declaration of majority of an asylum applicant by the BFA, and the subsequent discharge of the legal representative, may not be appealed during the first instance procedure.³²¹ 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.³²²

³¹⁵ Article 13(3) BFA-VG.

³¹⁶ Ministry of Interior, *Reply to the parliamentary request No 1240/AB*, 4 September 2018, available in German at: <http://bit.ly/2nU4rz4>.

³¹⁷ Human Rights Board, Bericht des Menschenrechtsbeirates zu Kindern und Jugendlichen im fremdenrechtlichen Verfahren, 2011; Stellungnahme der Ärztekammer, FPG 2010, 21 July 2009.

³¹⁸ VwGH, Decision Ra 2017/18/0118, 27 June 2017, available in German at: <https://bit.ly/3JIEMIG>.

³¹⁹ Report by Diakonie Flüchtlingsdienst in an exchange meeting with asylkoordination österreich in March 2022.

³²⁰ Ministry of Interior, *Answer to parliamentary request 4983/AB, XXVII. GP*, 11 March 2021, available in German at: <https://bit.ly/30VT4dd>.

³²¹ VfGH, Decision U 2416/2013-8, 3 March 2014.

³²² See in particular D Lukits and R Lukits, 'Neues zur Volljährigerklärung im österreichischen Asylverfahren', *Fabl*, January 2014.

The VwGH has confirmed the VfGH's position, stating that age assessments should be seen as part of the examination of the asylum application. Since the age assessment is a mere procedural matter according to the VfGH, the asylum seeker does not lose any rights in the procedure that they would otherwise enjoy as an unaccompanied child.³²³

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.³²⁴

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.³²⁵ 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.³²⁶ 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.³²⁷

In that context, the Austrian Queer base counselling centre criticised the fact that BFA employees were not adequately trained in that regard. The Ministry of Interior responded that there are ongoing training courses offered to BFA staff and highlighted that specific trainings on LGBTI rights had been planned even before the aforementioned scandal.³²⁸ Since 2019, there is a course offered by the BVwG for its judges in cooperation with the LGBTIQ-organisation Queer Base. This is not mandatory for the judges. In addition, as part of the annual training programme for BFA employees a course presented by Queer Base is offered for dealing with particularly vulnerable groups in order to meet the special needs necessary sensitivity when identifying particularly vulnerable people and their special interests in the context of asylum and immigration law procedures.³²⁹

³²³ VfGH, Decision U 2416/2013-8, 3 March 2014.

³²⁴ Amnesty International, *Studie zur Situation besonders vulnerabler Schutzsuchender im österreichischen Asyl- und Grundversorgungsrecht*, August 2016.

³²⁵ *Answer to parliamentary request, No 1571/AB*, 2 November 2018, available in German at: <https://bit.ly/2tt2bS5>.

³²⁶ UNHCR, Projekt Bidge, available in German at: <https://bit.ly/2N5zfZ0>.

³²⁷ Wiener Zeitung, "Sie sind nicht homosexuell", 15 August 2018, available in German at: <https://bit.ly/219PtBD>.

³²⁸ 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>.

³²⁹ Ministry of Interior, *Answer to parliamentary request, 11559/AB XXVII GP*, available in German at: <https://shorturl.at/hkIO5>.

In the past there were several cases in which it became public that decisions of the BFA were based on personal views and involved biased questioning in interviews as well as stereotypes on gender and race.³³⁰ In 2021, in one case in which the NGO Queer Base represented the applicant was made public: The BFA had used inappropriate and inadequate questions concerning the sexual life of the applicant and had made the applicant undress according to her.³³¹

If an asylum seeker bases the fear of persecution on infringements of their right to sexual self-determination, they should be interviewed by an official of the same sex, unless requested otherwise.³³² 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.³³³ 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.³³⁴

Moreover, asylum claims lodged by vulnerable asylum seekers (e.g. victims of 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.³³⁵

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).³³⁶ 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.³³⁷

³³⁰ See previous updates to this report: AIDA, *Country Report: Austria*, available at: <https://bit.ly/489tH8z>.

³³¹ *Tiroler Tageszeitung*, Anhaltende Schikanen für LGBTIQ-Personen in Asylverfahren, 22 April 2021, available in German at: <https://bit.ly/381jXTD>.

³³² Article 20(1) AsylG.

³³³ VfGH, U 688-690/12-19, 27 September 2012, available in German at: <https://bit.ly/42fvkdL>.

³³⁴ Article 30 AsylG.

³³⁵ Information provided to asylkoordination österreich at a meeting with stakeholders, March 2023.

³³⁶ Article 28(4) AsylG.

³³⁷ 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.

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).³³⁸ However, in practice, capacities are insufficient and clients often have to wait several months to start the treatment.³³⁹

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 (BVG) 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."³⁴⁰ 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.³⁴¹ 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.

³³⁸ Network for Intercultural Psychotherapy and Extreme Trauma (NIPE), see official website available in German at: <https://bit.ly/2HDlkaH>.

³³⁹ Information provided by organisation Hemayat to asylkoordination in February 2024.

³⁴⁰ VwGH, Decision Ra 2007/19/0830, 19 November 2010.

³⁴¹ VwGH, Decision Ra 2006/01/0355, 15 March 2010.

4. Legal representation of unaccompanied children

Indicators: Unaccompanied Children

1. Does the law provide for the appointment of a representative to all unaccompanied children?

Yes

No

A legal representative for the asylum procedure is appointed by the BFA as soon as an unaccompanied child applies for asylum.³⁴² As opposed to adult asylum seekers, unaccompanied minors have to lodge the asylum application at a specific place, 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.³⁴³

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. There is no legal guardian appointed as the Child and Youth Welfare Authority denies its responsibility arguing that during the admissibility procedure it is not clear whether the children have a perspective to stay in Austria. UAM 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. Legal advisers were either from Verein Menschenrechte Österreich or from ARGE Rechtsberatung up until 2020. By taking over legal assistance, the BBU GmbH also took over the responsibility of legal representation of unaccompanied children in January 2021. According to the Human Rights Board (*Menschenrechtsbeirat*),³⁴⁴ 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 still lacks 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.³⁴⁵

With the takeover 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.³⁴⁶ NGOs, and UNHCR, IOM and UNICEF have urged the government to take measures without delay to implement a better protection.³⁴⁷ In 2022, the government has not yet presented a draft for a possible new guardianship law even though the pressure has increased following the report of the *Kindeswohlkommission*, an independent commission appointed by the Ministry of Justice

³⁴² Article 49 BFA-VG.

³⁴³ Article 49 (3) BFA-VG.

³⁴⁴ Menschenrechtsbeirat, *Bericht des Menschenrechtsbeirates zu Kindern und Jugendlichen im fremdenrechtlichen Verfahren*, 2011.

³⁴⁵ Bundesjugendvertretung, 'Bundesjugendvertretung fordert Aufklärung bezüglich abgängiger UMFs in Österreich', 20 January 2020, available in German at: <https://bit.ly/33epMHf>.

³⁴⁶ Austrian coalition programme 2020-2024, available in German at: <https://bit.ly/376xseX>, 197.

³⁴⁷ 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>.

following deportations of children in January.³⁴⁸ 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.³⁴⁹ The situation of unaccompanied minors got worse during the reception crisis in fall 2022: As the provinces failed to take over asylum seekers from the federal reception centres the centres' capacity reached its limits. This resulted in up to 1,000 UAM having to stay in inadequate reception centres for months.

In 2023, 4,946 UAM (2022: 13,151) applied for asylum but 4,715 (2022: 11,629) absconded from the procedure.³⁵⁰ This represents 95,3% (2022: 88,4%) of all applications by UAMs in 2023.³⁵¹

In the case of siblings, the BFA and BVwG have assumed that an adult sibling has the power to represent their underage sibling in the admissibility procedure. The VfGH 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.³⁵²

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 representation 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.³⁵³

The quality of the assistance provided has been considered to be problematic in practice in some provinces as well. NGOs report that in some cases the legal representative refrained from lodging an appeal, thereby disregarding the best interests of the child.³⁵⁴ 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.³⁵⁵

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, returned voluntarily. In 2018, IOM, provided support to 10 unaccompanied minors for their voluntary return.³⁵⁶ In 2019, 61 unaccompanied minors left the country voluntarily, including in the context of Dublin procedures, and two unaccompanied children were deported

³⁴⁸ Kindeswohlkommission (Commission on the rights of the child), *Report of the Kindeswohlkommission*, 13 July 2021, available in German at: <https://shorturl.at/msLOY>.

³⁴⁹ Parlamentskorrespondenz, *Flucht, Migration und Kinderrechte dominieren Innenausschuss*, 20 October 2021, available in German at: <https://bit.ly/3JV6DOb>.

³⁵⁰ BFA, *BFA-Detailstatistik 2023*, available in German at: <https://shorturl.at/CQZ79>.

³⁵¹ Asylkoordination österreich, "Kind ist Kind? 550 Schulklassen voll Flüchtlingen verschwunden", available in German at: <https://bit.ly/3ZMRV3W>; BFA, *BFA-Detailstatistik 2023*, available in German at: <https://shorturl.at/CQZ79>.

³⁵² VfGH, Decision E2923/2016, 9 June 2017, available in German at: <https://bit.ly/3ZJbhYd>; VfGH, Decision Ra 2016/18/0324, 30 August 2017, available in German at: <https://bit.ly/3lmtjF>.

³⁵³ UNHCR, *Rechtsvertretung von unbegleiteten Kindern und Jugendlichen im Asylverfahren*, April 2018, available in German at: <https://bit.ly/2ByL1GR>.

³⁵⁴ Meeting of legal counselling NGOs at asylkoordination, November 2023.

³⁵⁵ Asylkoordination österreich, *Obsorge bei Fluchtwaisen*, 28 June 2022, available in German at: <https://shorturl.at/deMR4>.

³⁵⁶ IOM, Press release: *Freiwillige Rückkehr aus Österreich bleibt 2018 hoch: IOM unterstützt mehr als 3.400 Menschen*, 1 January 2019.

to Nigeria and Serbia respectively.³⁵⁷ In 2020, there was no deportation of unaccompanied minors.³⁵⁸ At the same time, IOM provided support to three unaccompanied minors for their voluntary return to Afghanistan, Pakistan and Russian federation.

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

The number of unaccompanied children seeking asylum in Austria steadily decreased from 8,277 in 2015 to 4,551 in 2016, 1,751 in 2017 and 488 in 2018. After however, an increase in the number of applications for international protection by unaccompanied children was noted, reaching 859 applications in 2019.³⁵⁹ 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 with 5,605 unaccompanied children, mainly from Afghanistan (3,363) and Syria (1,435). In 2022, a record number of 13,276 UAM applied for asylum in Austria. At the end of 2022, however, an alarming number of 11,613 persons absconded from the procedure.³⁶⁰

Unaccompanied asylum-seeking children 2021-2023			
Country of origin	2021	2022	2023
Afghanistan	3,363	9,371	2,601
Syria	1,435	1,864	1,365
Pakistan	52	506	64
Egypt	186	368	311
Tunisia	195	293	6
India	75	271	9
Total	5,605	13,276	4,946

Source: Ministry of Interior, Annual statistics 2023, available in German at: <https://shorturl.at/ahkV5>.

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 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.³⁶¹ The Ministry of Interior argued that Child and Youth Service is responsible for the guardianship of unaccompanied minors while the Province 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.³⁶²

³⁵⁷ Ministry of Interior, *Answer to parliamentary request 42/J (XXVII. GP)*, 19 December 2019, available in German at: <https://bit.ly/427wBHA>.

³⁵⁸ Ministry of Interior, *Answer to parliamentary request 3051/AB, XXVII. GP*, 6 October 2020, available in German at: <https://bit.ly/30eFWzz>.

³⁵⁹ Ministry of Interior, *Answer to parliamentary request 42/J (XXVII. GP)*, 19 December 2019, available in German at: <https://bit.ly/427wBHA>.

³⁶⁰ BFA, *BFA-Detailstatistik 2022*, available in German at: <https://bit.ly/40RXfDP>.

³⁶¹ Asylkoordination Österreich, "asylkoordination fordert Maßnahmen und hofft auf Ankündigung im Regierungsprogramm", available in German at: <https://bit.ly/2Spmyvo>.

³⁶² Der Standard, 'Die Hälfte der unbegleiteten Flüchtlingskinder in Österreich verschwindet', 6 December 2020, available in German at: <https://bit.ly/2HCyQLZ>.

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.³⁶³ In 2021, around 4,500 unaccompanied minors disappeared after applying for international protection in Austria.³⁶⁴ In 2023, 4,946 UAM (2022: 13,276) applied for international protection of which 4,715 (2022: 11,613) absconded, mostly within the first week after the application was lodged, NGOs and BBU GmbH reported to asylkoordination.

E. Subsequent applications

Indicators: Subsequent Applications

1. Does the law provide for a specific procedure for subsequent applications? Yes No
2. Is a removal order suspended during the examination of a first subsequent application?
 - ❖ At first instance Yes No
 - ❖ At the appeal stage Yes No
3. Is a removal order suspended during the examination of a second, third, subsequent application?
 - ❖ At first instance Yes No
 - ❖ At the appeal stage Yes No

The AsylG defines subsequent applications as further applications after a final decision was taken on a previous asylum application.³⁶⁵ 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.³⁶⁶

The Federal Administrative Court (BVwG) can either refuse the appeal rejecting the subsequent application as inadmissible 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.³⁶⁷

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.³⁶⁸

³⁶³ Ministry of Interior, *answer to a parliamentary request 9406/AB, XXVII. GP*, 28 March 2022, available in German at: <https://bit.ly/3xCwszN>.

³⁶⁴ Asylkoordination österreich, Press release, *Kampagne KIND ist KIND fordert Obsorge ab Tag eins*, April 2022, available in German at: <https://bit.ly/3ryMYwU>.

³⁶⁵ Article 2(1)(23) AsylG.

³⁶⁶ Article 68 AVG.

³⁶⁷ See AsylGH 09 April 2013, C6 408.412-2/2013; VwGH v. 20 March 2003, ZI. 99/20/0480, AsylGH, 10 April 2013, B10 305.993-2/2013.

³⁶⁸ Article 12a(1) AsylG.

Suspensive effect against the expulsion order 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.³⁶⁹ The expulsion may be enforced 3 days after the Court has received the file.

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 applications, 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](#)).³⁷⁰ If Basic Care is not granted, detention or a less coercive measure such as a designated place of living and reporting duties is ordered.³⁷¹

In 2023, 5% (2022: 2.2%) of all applications came from subsequent applicants.

Subsequent applicants: 2021-2023			
Country	2021	2022	2023
Afghanistan	633	592	806
Russian Federation	121	195	228
Nigeria	83	80	60
Somalia	117	122	90
Iraq	84	139	186
Iran	90	150	110
India	N/A	190	185
Syria	N/A	163	559
Other	760	839	850
Total	1,265	2,470	3,074

Source: Ministry of Interior, Annual statistics 2023, available in German at: <https://shorturl.at/hknDI>.

³⁶⁹ Article 22(1) BFA-VG.

³⁷⁰ Article 3(1)(3) Basic Care Act (GVG-B).

³⁷¹ 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? | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| ❖ Is there a national list of safe countries of origin? | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| ❖ Is the safe country of origin concept used in practice? | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| 2. Does national legislation allow for the use of “safe third country” concept? | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| ❖ Is the safe third country concept used in practice? | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| 3. Does national legislation allow for the use of “first country of asylum” concept? | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |

1. Safe country of origin

Article 19 BFA-VG provides for 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.³⁷²

In asylum cases relating to applicants originating from a safe country of origin, the BFA can withdraw suspensive effect of the appeal in case of a negative decision.³⁷³ 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.³⁷⁴ The examination of the list of safe countries of origin by the Ministry of Interior is also based on previous COI reports produced by the (former) Federal Asylum Agency.

This list of article 19 BFA-VG includes all EU Member States,³⁷⁵ 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 2023, 24 (2022: 26) EU-nationals originating from 10 Member States applied for asylum in Austria.³⁷⁶

Further states are defined as safe countries of origin by Governmental order (*Herkunftsstaaten-Verordnung, HStV*). As of December 2023, the list was last amended in March 2022, and included the following states:³⁷⁷

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

³⁷² BFA, *Methodology of the COI Department*, available in German at: <https://bit.ly/2Sype9Q>, 52.

³⁷³ Art 18 AsylG.

³⁷⁴ Art 19 (5) AsylG.

³⁷⁵ Defined as states party to the EU Treaties: Article 2(1)(18) AsylG.

³⁷⁶ Ministry of Interior, *Annual statistics 2023*, available in German at: <https://shorturl.at/jrHS8>.

³⁷⁷ 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>.

The 2019 amendment took Sri Lanka, which had been added in June 2018,³⁷⁸ off the list.³⁷⁹ In March 2022, Ukraine was taken off the list.³⁸⁰

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 2023 8,533 (2022: 22,520; 2021: 3,495) applications were submitted by applicants originating from 16 different “safe countries of origins”, which represents 14% (compared to 21% in 2022) of the total numbers of applications for international protection. The largest numbers of applications were lodged by the following nationalities: **Morocco** (6,948), **Tunisia** (437) and **Georgia** (367).³⁸¹

2. Safe third country

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

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

If the person cannot be deported within 3 months for reasons unrelated to their conduct, the inadmissibility decision ceases to be valid.³⁸² There is no list of safe third countries.

2.1. Safety criteria

Protection in a safe third country is deemed to exist if a procedure for the granting of refugee status in accordance with the Refugee Convention is available to the person in a country where they are not exposed to persecution or serious harm, and the person is entitled to reside in that country during such procedure and has protection there against deportation to the country of origin, provided that the person is exposed to such risk in the country of origin.³⁸³ 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 13.³⁸⁴

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.³⁸⁵ However, the Constitutional Court has ruled that the formal criteria of ratification of the Refugee Convention, the

³⁷⁸ BGBl. II Nr. 130/2018, available in German at: <https://bit.ly/2GI2XJ2>.

³⁷⁹ Modification of the regulation on countries of origin, 5 June 2019, available in German at: <https://bit.ly/2H5wZz4>.

³⁸⁰ Modification of the regulation on countries of origin, 30 March 2022, available in German at: <https://bit.ly/3vxexQf>.

³⁸¹ Ministry of Interior, *Annual Statistics 2023*, available in German at: <https://shorturl.at/tuzT1>.

³⁸² Article 4(5) AsylG.

³⁸³ Article 4(2) AsylG.

³⁸⁴ Article 4(3) AsylG.

³⁸⁵ VwGH, Decision 98/01/0284, 11 November 1998, available in German at: <https://bit.ly/3ZTLVH7>.

declaration according to 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.³⁸⁶

2.2. Connection criteria

According to the aforementioned Constitutional Court and VfGH 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.³⁸⁷

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 for validity of the inadmissibility decision 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, see [Suspension of returns of beneficiaries of protection in another Member State](#).

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.³⁸⁸

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

³⁸⁶ VfGH, Decision U 5/08, 8 October 2008, available in German at: <http://bit.ly/2jilW73>.

³⁸⁷ VfGH, Decision 98/01/0284, 11 November 1998, available in German at: <https://bit.ly/3ZTLVH7>; VfGH, Decision U 5/08, 8 October 2008, available in German at: <https://bit.ly/42i5URj>.

³⁸⁸ BVwG, Decision L518 2109232-1, 6 August 2015, available at: <http://bit.ly/2jUv9oc>.

the BFA in 12 different languages.³⁸⁹ At the beginning of the interview, the applicant must be informed about their rights and obligations throughout the procedure.

The BFA has published a brochure about the asylum procedure on its website. This brochure is in German and English only and is aimed at the general public.³⁹⁰

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.”³⁹¹ 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.³⁹² UNHCR has also produced a brochure about the asylum procedure for unaccompanied child refugees. It is available in four languages (German, English, Pashtu, Dari).³⁹³ 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.³⁹⁴

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.³⁹⁵

The system of free legal advice should, at least, provide information and counselling during the mandatory consultation with the appointed legal adviser in case the BFA intends to reject the asylum application as inadmissible or dismiss it on the merits in the admissibility procedure. The BFA has to include information in its decision about the right to appeal in a language understandable to the applicant. Besides the mother tongue, this could be the *lingua franca* of a country. In the decision of the Federal Administrative Court (BVwG), reference shall also be made, in a language understandable to the asylum seeker, to the possibility of filing a complaint in front of the Administrative High Court (VwGH) and the Constitutional Court (VfGH).³⁹⁶

³⁸⁹ These are available at *Erstinformation über das Asylverfahren*: <https://bit.ly/300maHR>.

³⁹⁰ BFA, *Asylverfahren*, available in German and English at: <https://bit.ly/2ZXVo2Z>.

³⁹¹ UNHCR, *Your asylum procedure in Austria*, December 2018, available at: <https://bit.ly/2Tx5RkS>.

³⁹² ‘Asylterminologieführer Deutsch/Russisch’, Deutsch/Englisch, Deutsch/Arabisch available at: <http://bit.ly/211wsFj>.

³⁹³ UNHCR, *Your Asylum Procedure in Austria*, available at: <http://bit.ly/1IjRCDT>.

³⁹⁴ Refugee Law Clinic Vienna, ‘The Austrian asylum system easily explained’, available in German at: <http://www.asyl-faq.at/>.

³⁹⁵ Articles 15(1)(4) and 14(4) AsylG explaining the duty to register even for delivering letters abroad.

³⁹⁶ Article 133(4) B-VG; Article 30 VwG-VG.

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

The BFA can also order consultation with regard to return. This is systematically done when a return decision is issued. When an asylum seeker leaves the country in the context of voluntary repatriation to their country of origin, the asylum proceeding is filed as redundant. Counselling on voluntary returns is a priority and information is provided at every stage and material provided in many languages.³⁹⁷

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.³⁹⁸ 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.³⁹⁹ 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 of asylum seekers was not considered as a major problem by NGOs to get in contact and provide assistance to asylum seekers, as long as they also received care by the federal province. However, NGOs noticed that fines had been imposed and those having received a final rejection of their asylum application were ordered to live in the return centre **Fieberbrunn**, which is located in a very remote area. Moreover, access of NGOs to the centre in **Schwechat Airport** was not allowed and did not provide a suitable room for private consultations.

The situation in the return centres of **Fieberbrunn** (Tyrol) and **Schwechat** (Lower Austria) attracted public interest in 2019 as several rejected asylum seekers in Fieberbrunn initiated a hunger strike. A commission, composed of external experts and UNHCR, evaluated the situation in return centres in cooperation with the Ministry of Interior, especially in **Fieberbrunn**. An investigation was conducted and recommendations were published. The Ministry of Interior thus announced that it would follow the recommendations accordingly and monitor more closely the best interest of the child – meaning that, in the future, children should not be accommodated in **Fieberbrunn** and **Schwechat** but in another return centre which opened in **Bad Kreuzen**, Upper Austria, where they will be able to attend school. The Ministry also implemented more regular shuttle services per day from the Fieberbrunn centre to the village (as of 2019, there was only one shuttle per day).⁴⁰⁰

³⁹⁷ Ministry of Interior, Return from Austria, available at: <https://bit.ly/3wiPygo>.

³⁹⁸ Article 63(1) AsylG.

³⁹⁹ Article 21, 22 AnhO.

⁴⁰⁰ Ministry of Interior, 'Recommendations for human rights screening of return counselling services', available in German at: <https://bit.ly/2V7umVx>.

Officials of the BFA told representatives from the NGO asylkoordination that these recommendations do not have a binding character. Nevertheless, at the time of writing of this report, there were no children accommodated in **Fieberbrunn** and the shuttle service between the remote camp and the village has improved. This being said, reports to NGOs show that the access to medical treatment is still difficult. Following the establishment of the BBU GmbH which started providing legal assistance as of 2021, there were rumours that access for NGOs to return centres would be restricted in future. The BBU GmbH clarified however that Diakonie Flüchtlingsdienst will have access to the centre and will be provided with a room for counselling services. In 2022, due to the high number of applications and the failing cooperation of the provinces, the facilities in **Fieberbrunn** were not only used to accommodate persons whose Dublin procedures were pending but also other applicants due to the high number of new arrivals in 2022.⁴⁰¹

Following the forced experience during covid lockdowns,⁴⁰² 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?⁴⁰³ 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

“Fast-track”/accelerated procedures

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 initiated in 8,285 (2022: 32,875) cases in 2023, leading to 8,241 (2022: 23,297) decisions of which 300 (2022: 1,188) were decided in an accelerated procedure. In most of the fast track procedures, which mostly applies to persons from countries listed as safe countries of origin and manifestly ill-founded applications (in 2023 55% Morocco, 21% India)), a decision was taken within 72 hours in 2023.⁴⁰⁴

Afghanistan

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

After the fall of Kabul and the takeover by the Taliban in summer 2021, the situation changed. Even though Austria was one of the last countries to stop deportations to Afghanistan, the Ministry of Interior

⁴⁰¹ Ministry of Interior, *Answer to parliamentary request, 3339/AB XXVII. GP*, 11 November 2020, available in German at: <https://bit.ly/3kLDV7b>.

⁴⁰² See previous updates to this country report at: <https://bit.ly/489tH8z>.

⁴⁰³ Whether under the “safe country of origin” concept or otherwise.

⁴⁰⁴ Ministry of Interior, unpublished internal information, 25 January 2024.

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.⁴⁰⁵ 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.⁴⁰⁶ 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.⁴⁰⁷ Since then, all decisions involving Afghan nationals have been granting protection. In 2022 and 2023, return decisions were issued in single cases but no deportations to Afghanistan took place or were planned. In September 2022, the Supreme Administrative Court referred a case concerning an Afghan woman to the CJEU for guidance on two questions relating to Art 9 of the Qualification Directive: Firstly, whether a combination of measures adopted, encouraged or tolerated by a state which limit a women's freedom could amount to persecution within the meaning of Article 9(1)(b) of the Qualification Directive (recast) and secondly, whether a woman who is affected by such measures taken by the state should be granted refugee status solely on the basis of her sex or if it would be necessary to examine the individual circumstances of the applicant to determine how the measures impact a woman's individual situation.⁴⁰⁸ The opinion of the Advocate General concluded that a combination of measures could amount to persecution per the Qualification Directive when those have the cumulative effect of depriving those women and girls of their most basic rights in society and thus undermine full respect for human dignity, and that the authorities could consider there was a well-founded fear of being subjected to such acts of persecution on account of gender, without having to look for other factors particular to the person's personal circumstances.⁴⁰⁹

Palestine

Regarding applicants coming from Gaza, the BFA introduced new questions in the first interview conducted by the police. The applicants were questioned how they view the conflict between Gaza and Israel and what their position towards Israel is. These questions have led to several complaints brought in by affected applicants before courts based on discriminatory grounds. The procedures are pending at the time of writing.⁴¹⁰

⁴⁰⁵ Reports from asylkoordination österreich and partner organisations, January 2024.

⁴⁰⁶ VfGH, E3445/2021, 30 September 2021, available in German at: <https://bit.ly/3rBSgYu>.

⁴⁰⁷ VfGH, E4227/2021, 16 December 2021, summary in English available at: <https://bit.ly/3KYEOWx>.

⁴⁰⁸ VwGH, Ra 2021/20/0425 and Ra 2022/20/0028, 14 September 2022 (C-608/22, C-609/22), available in German at: <https://bit.ly/3VjJUT8>; to follow the evolution of this case, see procedure before the CJEU, registered as case C-608/22 here: <https://bit.ly/3TyZLOM>.

⁴⁰⁹ CJEU, *AH (C-608/22) and FN (C-609/22) intervener: Bundesamt für Fremdwesen und Asyl*, Opinion of Advocate General Richard de la Tour, 9 November 2023, available at: <https://shorturl.at/2bUr9>.

⁴¹⁰ Report from Diakonie Flüchtlingsdienst to asylkoordination österreich, February 2024.

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 2004.⁴¹¹

During the admissibility 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 seventeen 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, flats 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.

As of September 2023, the average time of a person's accommodation in federal basic care is 123 days (2022: 153 days), compared to 622 days in province basic care (2022: 528 days).⁴¹²

Following the increase of applicants in 2021, the initial reception centres of the Federal Government have been overcrowded. Many facilities in the provinces have been closed throughout Austria in recent years, and it is therefore not possible to allocate asylum seekers quickly and adequately to the provincial facilities due to a lack of capacity. In 2021, this resulted in the re-opening of previously closed federal facilities and the opening of new facilities (e.g. Carinthia). The Covid 19 pandemic led to clusters in some federal facilities, and it was not possible to test sufficiently well for Covid 19 in all initial reception centres, which in turn led to delays in the allocation of asylum seekers to state care and to other federal care facilities. Provinces such as **Tyrol, Lower Austria, Carinthia, Vienna, Salzburg** or **Styria** reported a lack of communication in the allocation of federal to provincial care (i.e. little to no preparation time for new residents to move in, transports in the middle of the night, little information for people with special needs, etc.) In addition, there were problems with regard to the payment of clothing allowances, as in many cases the BBU in the initial reception centres had already exhausted the entitlement to clothing allowances per person per year.⁴¹³

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

If a person receives a refugee status, they can stay up to four months in the reception centre before being forced to leave the accommodation, while there is no time limit applicable to persons holding a subsidiary protection. In some states such as **Styria**, rejected asylum seekers are told to leave the next day after

⁴¹¹ <https://bit.ly/3waChWt>, 15a Vereinbarung Grundversorgung available in german.

⁴¹² Ministry of Interior, *Answer to parliamentary request 14066/AB, XXVII GP*, 22 November 2023, available in German at: <https://shorturl.at/dzSZ5>.

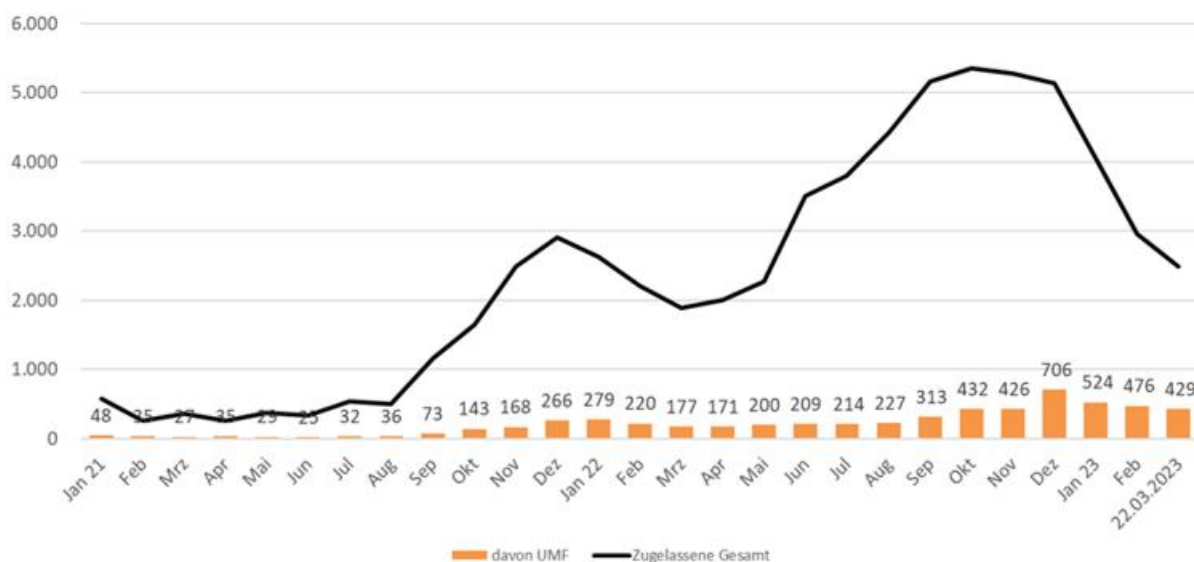
⁴¹³ asylkoordination österreich, Nationwide NGO survey on basic services, Dec 21/Jan 22, unpublished.

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.

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

In 2022, a reception crisis hit Austria. Due to a high number of applications and non-cooperation of the provinces who are supposed to take over asylum seekers upon completion of the admissibility procedure, the capacities in the federal reception centres reached their limits in the fall of 2022. The number of asylum seekers in basic care only increased moderately from 17,000 in January 2022 to 21,500 in December 2022 even though Austria registered more than 100,000 asylum applications in the same time, as many applicants travelled on to other countries after registration. Even though the number of applicants absconding from the procedure was very high, the BBU GmbH had to build up tents in order to prevent homelessness.⁴¹⁴

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



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

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

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

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

⁴¹⁴ Wiener Zeitung, „Bund beginnt mit Aufbau von Zelten nahe Innsbruck“, 19 October 2022, available in German at: <http://bit.ly/3mW8mNo>.

When the weather reached lows and snow fell a public outcry resulted in closing down the tents and moving persons to buildings in November.⁴¹⁵

NGOs presented a plan with seven measures to be taken to resolve the reception crisis in fall 2022.⁴¹⁶

Another reason for the accommodation crisis in 2022 is the underfunded care of refugees. The last valorisation in the context of regular care took place in 2022, from € 21,- to € 25,- which was only due to the fact that Ukrainians with displaced person status are target group of basic care system⁴¹⁷. No further adjustment was decided, but this seems more than necessary in view of inflation and high inflation rates. However, the maximum cost rates for vulnerable groups, such as the care of unaccompanied minors, for refugees with increased care needs and the maximum cost rate for people with care needs were not increased. The latter has not been increased since the introduction of basic care in 2004.⁴¹⁸ In 2023, there was a conference of the regional refugee councils in September where it was decided to increase the maximum cost rates for vulnerable groups (as mentioned above):

- ❖ Unaccompanied minors € 95,- to € 112,-/day
- ❖ Unaccompanied minors in children and youth welfare facilities to € 130/day
- ❖ Increased care from € 44,- to € 60,-/day
- ❖ People with care needs: increased from € 2,480 to € 3,360/month

A further increase in the regular rate was rejected, as well as no increase in private benefits, as well as individual benefits. The Ministry of the Interior was asked to submit a corresponding draft incl. proposal for a supplementary agreement to the 15a agreement. In December 2023 there was another conference of the refugee state councils where unfortunately was no decision or resolution to increase the maximum cost rates for vulnerable groups, as there are differences of opinion between the Ministry of the Interior and the federal states.

Transparent real cost model

Due to the poor funding, committed NGOs have long been demanding/requested a real cost accounting system in which ALL costs incurred in the context of care are also paid. These costs vary depending on the location/province etc. and must also be considered on an organisation-specific basis. Base funding as basic funding plus a daily rate per day/per person for the caring organisation would also be a possible model. In principle, a daily rate model needs to be embedded in an annual valorisation. However, such changes require the political will and conviction to guarantee high-quality care for this vulnerable group of people seeking protection. This conviction now exists, at least between the Federal Ministry of the Interior and the City of Vienna: The transparent real cost model (transparentes Realkostenmodell) was presented at the State Refugee Council Conference in September and will be launched as a pilot between the City of Vienna and the Federal Ministry of the Interior. With the real cost model, the actual costs incurred in the accommodation will be billed, not a capped daily rate/flat rate as was previously the case. For vulnerable groups (increased care needs, unaccompanied minors and care places), retroactive billing will take place from 1 January 2023 and from 1 January 2024 as part of regular care.⁴¹⁹

EUAA operations in Austria

In December 2022, the EUAA signed its first operational plan with Austria, to help enhance the capacity of the Austrian authorities to respond to emergency reception needs. The operational plan covered the period from 6 December 2022 until 30 September 2023 and was subsequently extended.⁴²⁰ The plan was

⁴¹⁵ ORF.at, „Asylzelte in Villach wurden geräumt“, 23 November 2022, available in German at: <http://bit.ly/3Tjj8sY>.

⁴¹⁶ Asylkoordination, „Offener Brief zur Unterbringungskrise“, 19 October 2022, available in German at: <https://bit.ly/3ZpCBuh>.

⁴¹⁷ Ministry of Interior, Grundversorgung, available in German at: <https://shorturl.at/zAGUZ>.

⁴¹⁸ Asylkoordination österreich, Plattform Asyl Grundversorgung, available in German at: <https://shorturl.at/ju356>.

⁴¹⁹ Ministry of Interior, available in German at: <https://shorturl.at/szl26>.

⁴²⁰ EUAA, *Operational Plan 2022-2023 agreed by the European Union Agency for Asylum and Austria*, December 2022, available at: <https://bit.ly/3rwMqLj>.

yet again amended in February 2024 due to limited availability of sufficient EUAA statutory staff posts in 2024, to reduce the implementation of the plan to June 2024 and adjust priorities and assistance in that context.⁴²¹

Throughout 2023, the EUAA deployed 12 experts to Austria,⁴²² 9 of which were external experts and 3 staff members. They constituted 3 members of the roving team, 3 senior social workers, 2 intermediate reception child protection experts, 2 junior asylum information provision experts, 1 intermediate asylum information provision expert and 1 junior social worker.⁴²³ As of 19 December 2023, a total of 5 EUAA experts were deployed in Austria, 3 of which were senior social workers and 2 members of the roving team.⁴²⁴

In 2023, the EUAA delivered 12 training sessions to a total of 80 experts and personnel of national authorities, relevant partners and EUAA contracted personnel.⁴²⁵

The two operations had different goals: While the first one focused on rapid response and capacity building, the second one focused on building up long term expertise. The main challenge observed in practice was the difficulty for the EUAA to find personnel. The preparation time took longer than expected, then the whole project time was shortened by EUAA due to financial reasons. Both operations were described as helpful for the Austrian staff.⁴²⁶

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 allow for access to material reception conditions for asylum seekers in the following stages of the asylum procedure?

- | | | | |
|---------------------------|---|--|-----------------------------|
| ❖ Regular procedure | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> Reduced material conditions | <input type="checkbox"/> No |
| ❖ Dublin procedure | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> Reduced material conditions | <input type="checkbox"/> No |
| ❖ Admissibility procedure | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> Reduced material conditions | <input type="checkbox"/> No |
| ❖ Border procedure | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> Reduced material conditions | <input type="checkbox"/> No |
| ❖ Accelerated procedure | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> Reduced material conditions | <input type="checkbox"/> No |
| ❖ First appeal | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> Reduced material conditions | <input type="checkbox"/> No |
| ❖ Onward appeal | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> Reduced material conditions | <input type="checkbox"/> No |
| ❖ Subsequent application | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> Reduced material conditions | <input type="checkbox"/> No |

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

Asylum seekers and other persons who cannot be expelled are not entitled to the same social benefits as citizens. In 2004, the Basic Care Agreement between the State and the federal provinces entered into force and has been implemented at national and provincial level. The agreement sets out the duties of the Federal State and the states and describes material reception conditions such as accommodation, food, health care, pocket money, clothes and school material, leisure activities, social and return assistance, by prescribing the amount for each.⁴²⁷

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

⁴²¹ EUAA, *Operational Plan 2023-2024 agreed by the European Union Agency for Asylum and Austria – Amendment 2*, February 2024, available at: <https://bit.ly/4aXVURm>.

⁴²² EUAA personnel numbers do not include deployed interpreters by the EUAA in support of asylum and reception activities.

⁴²³ Information provided by the EUAA, 26 February 2024.

⁴²⁴ Information provided by the EUAA, 26 February 2024.

⁴²⁵ Information provided by the EUAA, 26 February 2024.

⁴²⁶ Report to asylkoordination österreich, May 2024.

⁴²⁷ <https://bit.ly/3waChWt>, 15a Vereinbarung Grundversorgung, available in German.

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, counselling and housing in the context of basic services. The daily rates for funding basic care facilities as well as for food or private housing have been raised in 2022 for the first time since 2016: the rates for organised housing in the federal provinces have been raised from € 21 to € 25 per person/day (accommodation and eating included). The rates for private accommodation were raised to € 260 (from € 215) for and € 165 (from € 150) for rent. Pocket money in organised housing (€ 40,-/year), clothing allowance (€ 150,-/year), education allowance (€ 200,-) have not been increased since 2004.⁴²⁸

In the federal provinces, NGOs function as accommodation providers for organised housing. Due to high costs of living, several NGOs threatened to close down facilities as the money provided by the state was not sufficient.⁴²⁹ With the raise by € 4, a crisis was temporarily avoided but there is still not enough financial resources provided to cover all costs (see further down, same section).

Eligibility to basic care

Are part of the target group for basic care in federal provinces, if the asylum procedure has been admitted in Austria and an allocation to a province has been made:⁴³⁰

- ❖ 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;
- ❖ Displaced persons from Ukraine §62 Asylum Act since March 2022.

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

Asylum seekers are entitled to Basic Care immediately after lodging the asylum application until the final decision on their asylum application in all types of procedures. The provision of Basic Care as currently regulated may violate Article 17(1) of the recast Reception Conditions Directive. Indeed, in Austria, Basic Care is provided as soon as the person 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 then asks the BFA for instructions: 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 and thus is not entitled to Basic Care.

⁴²⁸ Der Standard, "Bund fixiert höhere Beiträge für Quartiergeber von Geflüchteten", 8 June 2022, available in German at: <https://bit.ly/3w33D0V>.

⁴²⁹ NGO exchange meeting organised by asylkoordination, not published.

⁴³⁰ Grundversorgung, *Fonds Soziales Wien and Land Niederösterreich*, available in German at: <https://bit.ly/3GGGq4l>.

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.⁴³¹ However, Basic Care conditions do not apply in detention or where alternatives to detention are applied.⁴³² 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).

Furthermore, EU and EEA (European Economic Area) citizens are excluded from the basic 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.⁴³³ As regards Dublin returnees, they are brought to EAST **Traiskirchen** where an interview is conducted. Dublin returnees are then accommodated in **Traiskirchen** or **Thalham** or detained in deportation centres.

If the suspensive effect of an appeal has been denied, Basic Care is terminated after the first instance decision becomes enforceable. Asylum seekers receive Basic Care in the case the court has awarded suspensive effect or if they wish to leave Austria voluntarily until their departure.⁴³⁴

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 and Salzburg**, counselling centres in particular have access to the GVS BIS within the framework of basic services, but only reader rights, no administration rights.

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 the verification. 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

⁴³¹ Articles 1(1) and 2(1) GVG-B.

⁴³² Article 2(2) Basic Care Agreement; Article 2(3) GVG-B. Note that this not in conformity with Article 3 recast Reception Conditions Directive.

⁴³³ Recital 11 Dublin III Regulation. See also CJEU, Case C-179/11 *Cimade & GISTI v Ministre de l'Intérieur*, 27 September 2012, available at: <http://bit.ly/3mZ9tvv>, para 46.

⁴³⁴ Article 2(7) GVG-B.

cooperate is not met, people are also released from basic care.⁴³⁵ In **Vienna**, 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.⁴³⁶

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.⁴³⁷ 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.⁴³⁸ 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.⁴³⁹

Although the amount of material reception conditions is specified in the Basic Care Agreement,⁴⁴⁰ 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 **Salzburg** and all federal provinces (except Tyrol, a single person can keep € 240),⁴⁴¹ 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 €150.⁴⁴²

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.⁴⁴³ 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, the authority has to leave them at least € 120.⁴⁴⁴ Upon termination of the provision of basic care, any difference between the actual costs incurred and the cash seized is reimbursed. In 2022, € 405,605 (compared to € 244,331 in 2021, and €127,880 in 2020) were seized from 7,502 (2021: 3,591;2020: 2,237) applicants.⁴⁴⁵ As of September 2023, € 144,019 were seized from 1,816 applicants.⁴⁴⁶

As of 2 January 2024 78,830 people received basic care (compared to 92,984 in 2022 and 30,363 in 2021). The total number of beneficiaries of basic care more than tripled in 2022 compared to 2021. The main reason for the increase is the political decision to put TPD beneficiaries from Ukraine into the basic care system, where they represent 55,262 persons. The rest refers to 21,661 (2020: 18,273) applicants for international protection and 11,655 (2020: 9,484) beneficiaries of international protection. In 2022,

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

⁴³⁶ NGO exchange meeting organised by asylkoordination, not published.

⁴³⁷ Article 2(1) Basic Care Agreement (GVV)-Art 15a.

⁴³⁸ Article 5(1)(c) Schengen Borders Code.

⁴³⁹ NGO exchange meeting organised by asylkoordination, not published, Articles 6, 7 and 9 Grundversorgungsvereinbarung (GVV); Art. 15a B-VG.

⁴⁴¹ asylkoordination österreich, Nationwide NGO survey on basic services Dec 21/Jan 22, unpublished.

⁴⁴² Salzburg Basic Care Regulation LBGL. 57/2016, available in German at: <http://bit.ly/2kGpQma>.

⁴⁴³ Article 15 (3) AsylG.

⁴⁴⁴ Article 2 Abs 1 basic care law.

⁴⁴⁵ Ministry of Interior, *Answer to parliamentary request 4887/AB, XXVII. GP*, 12 March 2021, available in German at: <https://bit.ly/38GNAY9>; Ministry of Interior, *Answer to parliamentary request 9531/AB, XXVII. GP*, 11 April 2022, available in German at: <https://bit.ly/3KPxwnY>; Ministry of Interior, *Answer to parliamentary request, 13740/AB, XXVII. GP*, 20 April 2023, available in German at: <https://bit.ly/3AezMuF>.

⁴⁴⁶ Ministry of Interior, *Answer to parliamentary request 15847/AB, XXVII. GP*, 21 November 2023, available in German at: <https://shorturl.at/kOR37>

17,286 asylum applicants were transferred from the first reception centres to the basic care facilities in the provinces after admission procedure was completed. Given the high number of applications in 2022 (112,272) this shows that many applicants left Austria immediately after applying for asylum.⁴⁴⁷

Beneficiaries of basic care as of 31 December 2021-2023			
	31 December 2021	31 December 2022	31 December 2023
Asylum applicants	18,273	21,661	20,572
Beneficiaries of protection and others	12,090	71,323	56,156
<i>Refugees</i>	1,982	2,596	3,666
<i>Beneficiaries of subsidiary protection</i>	7,502	9,059	10,743
<i>Dublin procedure pending</i>	738	768	604
<i>TPD (Ukraine)</i>	N/A	55,262	40,011
<i>Rejected asylum applicants</i>	1,868	1,607	1,261
Total	30,363 (no TPD)	92,984	78,830

Source: Ministry of Interior, Basic care system, 31 December 2022, 2 January 2024 (not public).

2. Forms and levels of material reception conditions

Indicators: Forms and Levels of Material Reception Conditions

- Amount of the monthly financial allowance/vouchers granted to asylum seekers as of 31 December 2023 (in original currency and in €):
 - ❖ Accommodated, incl. food € 40
 - ❖ Accommodated without food max € 260
 - ❖ Private accommodation (incl. rent money) max € 425 (single person)

Basic Care may be provided in four different forms:⁴⁴⁸

- Asylum seekers can be accommodated in reception centres where catering is provided. Asylum seekers in such reception centres receive € 40 pocket money per month, while the care provider (NGOs, private companies contracted by the Government) receives € 25 maximum compensation for the costs per day, depending on the standards of the facility. For the first time since 2016, the maximum compensation rate was increased in 2022, but in practice the change was not implemented by all provinces. In 2023, all federal states implemented the maximum compensation rate of € 25.⁴⁴⁹
- Basic Care can be provided in reception centres where asylum seekers cook for themselves. In that case, asylum seekers receive between € 165 and 186 per month mainly in cash (depending on the days per month and if € 6,50 or € 7 is paid per day). In **Vienna**, there is basically the possibility of transfers to a bank account for private residents and for those who live in reception centres.

⁴⁴⁷ OÖ Landesregierung, Beantwortung einer Anfrage an LR Hattmansdorfer, Beilage 13124/2023, XXIX. GP, 5. April 2023, available in German at: <https://bit.ly/3LJOF5h>; ORF.at, "Österreich nicht „Zielland Nummer eins“", 5 February 2024, available in German at: <https://bit.ly/3QtkHEv>.

⁴⁴⁸ 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.

⁴⁴⁹ asylkoordination österreich, Kompetenz Netzwerk Asyl, available in German at: <http://bit.ly/3liEBG8>.

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

Federal province	Food allowance	Rent money Single/ family	Minors living independently	Prerequisites for private housing
Vienna	€ 260,-	€ 165,-/ € 330,-	€ 145,-	No rental cap, but high bureaucratic effort because many documents have to be presented when applying
Lower Austria	€ 260,-	€ 165,-/ € 330,-	€ 145,-	Rental cap: <ul style="list-style-type: none"> • Family up to max. 4 pers. € 530,- /monthly • Family from 5 pers. € 50,- / per additional person monthly • Single person € 265,00 / monthly • Exclusion of rejected asylum seekers
Upper Austria	€ 260,-	€ 165,-/ € 330,-	€ 145,-	Rental cap: <ul style="list-style-type: none"> • German A2 level requirement
Burgenland	€ 260,-	€ 165,-/ € 330,-	€ 145,-	Application for private housing possible: <ul style="list-style-type: none"> • Closure of reception centres • Within the 4-month period upon approval • No negative asylum decision
Styria	€ 260,-	€ 165,-/ € 330,-	€ 145,-	Application for private housing possible: <ul style="list-style-type: none"> • Affordability is checked
Carinthia	€ 260,-	€ 165,-/ € 330,-	€ 145,-	Application for private housing possible: <ul style="list-style-type: none"> • Only allowed for people with protection status (§3 & §8)
Salzburg	€ 260,-	€ 165,-/ € 330,-	€ 145,-	Application for private housing possible: <ul style="list-style-type: none"> • German A1 level requirement • Affordability is checked
Tyrol	€ 260,-	€ 165,-/ € 330,-	€ 145,-	Application for private housing possible: <ul style="list-style-type: none"> • Affordability is checked • German A1 level would be good because people should be able to live independently and alone
Vorarlberg	€ 260,-	€ 165,-/ € 330,-	€ 155,-	Application for private housing possible: <ul style="list-style-type: none"> • Affordability is checked • Rather people with protection status

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

(4) NGOs like Caritas, Diakonie, Volkshilfe, Tralalobe, Integrationshaus rotes Kreuz, Samariterbund and others rent private apartments 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**.⁴⁵⁰

The following table presents an overview on funding provided to accommodation providers, forms of accommodation possible in the province, pocket money and food allowances:

Federal province	Funding for organised facilities	Form of accommodation	Pocket money	Food allowance per day (month)
Vienna	€ 25	2-4	Yes	€ 6.50
Burgenland	€ 25	1-4	Only with full supply	€ 6 to € 7 adults € 3.50 to € 7 children
Lower Austria	€ 23	1-4	Only with full supply	€ 7
Upper Austria	€ 25	2-4	Only with full supply	Adults € 7, children € 5
Styria	€ 25 (or € 16)	1-4	Only with full supply or partial self-supply	€ 6
Carinthia	€ 25 (or € 12)	1-3	Yes	€ 180 (adults per month) € 80 (children per month)
Tyrol	€ 25	2-4	Yes	€ 245/month/adult € 145/month/child under 18
Salzburg	€ 25	1-3	Yes	€ 6.50
Vorarlberg	Nearly real cost accounting	2-4	Yes	€ 260/month/adult € 155/month/child

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

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

- ❖ In **Lower Austria** the basic daily rate is € 23 for accommodation. NGOs and all other accommodation providers have the possibility to upgrade to € 25 daily rate if additional services are chosen. If the Accommodation Provider is prepared to provide individual additional services, it shall be entitled to an additional daily rate surcharge of EUR 1 gross for each three points; however, these daily rate surcharges shall be limited to EUR 2. The Accommodation Provider may therefore charge a maximum of EUR 2 for six or more points in addition to the respective daily rate.⁴⁵¹ Additional services may include:
 - (a) Transports to authorities and doctors (2 points)
 - (b) Learning courses (e.g. computer, sewing, etc.) (1 point)
 - (c) Recreation: organised sports (1 point)
 - (d) Learning assistance for school children (1 point)
 - (e) Separate prayer room (1 point)
 - (f) Structural suitability and equipment for the disabled (2 points)
 - (g) 1 transferable downtown monthly bus pass and/or Rail per maximum of 20 residents (2 points)
 - (h) 1 transferable monthly bus and/or rail pass to the next city per maximum 20 residents (2 points)

⁴⁵⁰ asylkoordination österreich, Nationwide NGO survey on basic services Dec 21/Jan 22, unpublished.

⁴⁵¹ Land Niederösterreich, Contract form for private accommodation providers, available in German at: <https://bit.ly/43Nko7W>.

- (i) Arrangement of rides to summonses (1 point).
 - (j) Neighbourhood provider will provide personal hygiene items (2 points)
 - (k) 1 caregiver available for residents (1 point)
 - (l) Full service quarters as per point 3.3.2 (3 points)⁴⁵²
- ❖ 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.
 - ❖ In **Carinthia**, all basic care facilities with full sufficiency receive € 25 per day. All basic care facilities where asylum seekers can cook for themselves receive € 12 per day. People receive € 6 food allowance per day.

Asylum seekers living in private rented flats receive 36.5% of the needs-based minimum allowance (*bedarfsorientierte Mindestsicherung*) for citizens in need of social welfare support, which is about € 1,155.84 for subsistence per month (accommodation for a single person in **Vienna**, rent allowance is calculated individually and will be added).⁴⁵³ The level of the needs-based minimum allowance varies across the federal provinces, as political agreement to prolong an Austrian-wide regulation after its expiry by December 2016 was not reached. The sum given to a care provider, € 750 per month (€ 25 per day) for accommodation and subsistence of asylum seekers, is below the level of welfare support for citizens, despite staff and administrative costs having to be covered by the care provider.

For children, the daily rate in reception centres is the same as for adults. If families receive financial support for their daily subsistence, some federal provinces like Upper Austria provide a lower amount for children.

As of December 2023 3,772 persons received Basic Care in federal reception centres,⁴⁵⁴ compared to 7,500 at the end of 2022, 4,500 at the end of 2021 and 1,534 at the end of 2020.

Unaccompanied asylum-seeking children must be accommodated according to their need of guidance and care. The daily fee for NGOs hosting unaccompanied asylum-seeking children ranges from € 40.00 to € 95.00 depending on the intensity of psychosocial care. In some federal provinces like **Styria** the maximum amount is not given to care providers, although it is evident that only a smaller group are not in need of much guidance and care. Styria has set up a daily special support of €18 for children with special needs, in addition to the maximum amount of € 95. In **Upper Austria**, the government provides for € 95, which should also cover legal assistance.⁴⁵⁵

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

In 2022, there was an increase in funding granted to accommodation providers. However, especially the monthly rates for accommodated unaccompanied minors were not raised yet, leading to high numbers of unaccompanied minors being housed in inadequate federal camps. The housing operators, mostly civil society organisations, could not afford to open new housing places in provinces, which led to a backlog

⁴⁵² Land Niederösterreich, Contract form for private accommodation providers, available in German at: <https://bit.ly/43Nko7W>.

⁴⁵³ Mindestsicherung, Mindest-Standards ab 1.1.2024 - MA 40 - Soziales, Sozial- und Gesundheitsrecht - Sozialinfo Wien, available at: <https://bit.ly/3TieWvn>.

⁴⁵⁴ Basic Care Registration System, 31 December 2022, 2 January 2024, unpublished.

⁴⁵⁵ NGO exchange meetings with asylkoordination in January 2024, unpublished.

of over 600 UAM still accommodated in federal camps at the end of 2022 and still 542 at the beginning of 2024.⁴⁵⁶

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.⁴⁵⁷ For the first phase of the asylum procedure (the admission stage), this rule is not applicable. For the second phase, 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, for example, result in not granting the monthly pocket money.⁴⁵⁸

Material reception conditions may be withdrawn where the asylum seeker:⁴⁵⁹

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

In some federal provinces, the laws also permit the exclusion of asylum seekers who fail to cooperate with establishing their identity and need of basic care, although this is not applied in practice.⁴⁶⁰

In all federal provinces, individuals in basic care facilities or those who apply for private living, go through a move-in process.⁴⁶¹ 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.

⁴⁵⁶ Basic Care Registration System, 31 December 2022, 2 January 2024 unpublished

⁴⁵⁷ Article 2(1) B-VG Art 15a.

⁴⁵⁸ See e.g. Vienna, *Arbeit | Fluechtlinge*, available in german

⁴⁵⁹ Article 2(4)-(5) GVG-B.

⁴⁶⁰ Article 3(1) GVG-B.

⁴⁶¹ Dachverband Wiener Sozialeinrichtungen, *Qualitätleitlinien Wiener Flüchtlingshilfe*, November 2018, available in German at: <https://bit.ly/4a2wWPv>, 28.

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 centre and NGOs who run facilities for basic care.⁴⁶² The form is not publicly available, but its content was shared by a relevant stakeholder:⁴⁶³

Declaration of need for assistance'
<p>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 institutions⁴⁶⁴.</p> <p>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 - existing declaration(s) of obligation or liability: „Sollte eine Mitversicherung bei einem Familienmitglied möglich sein, verpflichte ich mich, diese in Anspruch zu nehmen“.</p> <p>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. If 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.</p> <p>Other reasons for discontinuation of basic care: - Failure to keep important appointments, e.g. summonses, appointments at the service centre of Grundversorgung Wien (Caritas Asylum Centre), appointments at the Basic Care Counselling Centre. - Leaving the residential facility of the Vienna Refugee Assistance: In case of unjustified absence of more than more than 72 hours, I will be discharged immediately. - Moving to another province without an agreement with the Basic Care Counselling Centre - Stay abroad</p> <p>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.</p>

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 fundamentals 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,

⁴⁶² Caritas Vienna, Information on counselling services <https://bit.ly/3HRqU6V>.

⁴⁶³ asylkoordination österreich, Nationwide NGO survey on basic services Dec 21/Jan 22, unpublished.

⁴⁶⁴ Article 1(1)GVG-Wien.

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.⁴⁶⁵

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.⁴⁶⁶ Following a complaint lodged by one asylum seeker placed in **Drasenhofen** the Administrative Court of Lower Austria concluded that the conditions in Drasenhofen violated the law. It even led to a criminal procedure against the right wing Landesrat Waldhäusl (Freedom Party), due to the suspicion that it had abused the power of office. The court acquitted the defendant in September 2022.⁴⁶⁷

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 the law. This practice has not been officially confirmed by the authorities, but was reported by the persons concerned. There are yet no reports attesting whether this practice has continued following the takeover 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. From January to September 2023, basic care services on the federal level was reduced in 61 cases and withdrawn in 46 cases.⁴⁶⁸

3.2. Procedure for reduction or withdrawal

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

Procedural safeguards in case of withdrawal or reduction do not fully meet the requirements set out in Article 20 of the recast Reception Conditions Directive. In some federal provinces, reduction or withdrawal of reception conditions may be ordered without prior hearing of the asylum seeker and without written notification of the decision, if the hearing imposes a disproportionate burden. In some federal provinces, the latter is only rendered upon request of the asylum seeker. It has also happened that the reception conditions of all asylum seekers involved in a violent conflict in a reception facility were withdrawn without examination of the specific role of all individuals concerned in the conflict. In Salzburg, free legal advice is available in the event of official cuts or discontinuation of basic benefits.⁴⁶⁹

There are no official decisions/notifications by the implementing authorities on the granting, restriction of benefits, sanctions or dismissal from basic benefits. In practice, often NGOs concerned and/or person concerned receive an information letter explaining and declaring the reasons behind 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 vary. In **Upper Austria**, persons with an income due to employment receive an invitation from the authority for a personal meeting in which

⁴⁶⁵ Asylkoordination österreich, NGO exchange meeting, unpublished.

⁴⁶⁶ Kurier, Skandal-Asylquartier Drasenhofen wird geschlossen, 30 November 2019, available in German at: <https://bit.ly/2SGQN3d>.

⁴⁶⁷ Der Standard, 'Freisprüche für Waldhäusl und Mitangeklagte in St. Pölten', available in German [here](#).

⁴⁶⁸ Ministry of Interior, *Answer to parliamentary request, 15855/AB, XXVII. GP*, 22 November 2023, available in German at: <https://bit.ly/430UyCj>.

⁴⁶⁹ Land Salzburg, "Rechtsberatung im Asylbereich", available in German at: <https://bit.ly/3WIIlBpi>.

income, overpayment of basic benefits, and repayment is recorded. This agreement must be signed by the asylum seeker and is binding. Individual basic care benefits are not withheld immediately, but repayment instalments are ordered. In cases where the person does not fulfil their obligation to pay in instalments, financial benefits such as pocket money or food allowance will be withheld. In **Vienna**, people in basic care usually receive the information letter with repayment agreements via the supervising NGO. Previously, pay slips had to be sent to the authority (FSW), who was in charge of calculating the repayment. In some cases, the calculations were incorrect and the care team had to intervene with the authority.⁴⁷⁰ There are still recurring miscalculations for the cases of people with earned income and residual entitlement to basic benefits, and the social counselling or care team has to intervene.⁴⁷¹

A legal remedy in the Basic Care Act of the Federal State is foreseen in case material reception conditions are withdrawn.⁴⁷² 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 re-gain access.⁴⁷³ 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.⁴⁷⁴

Reduction or withdrawal in case of income

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 they were held), other restrictions may arise. If a person marries, the spouse is actually responsible for maintenance, and the marriage certificate and income of the spouse must be presented to the authorities. Depending on the financial situation of the spouse, basic care benefits are granted, reduced or discontinued. In the case of longer periods of detention and a working activity while in detention, released asylum seekers receive a so-called release allowance, which is paid to the applicant and counted as an income. The amount of the release allowance varies depending on the duration of the imprisonment and the work performed. In any case, it is counted towards the basic care benefits, as basic pension benefits are only granted as a substitute. Depending on the amount of the release allowance, basic care is granted immediately or benefits like pocket money may not be paid, which is decided and examined by the authority.⁴⁷⁵

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

⁴⁷⁰ asylkoordination österreich, Nationwide NGO survey on basic services Dec 21/Jan 22, unpublished.

⁴⁷¹ asylkoordination österreich, NGO exchange meeting, unpublished.

⁴⁷² Article 9 (1) B-GVV.

⁴⁷³ asylkoordination österreich, NGO exchange meeting, January 2024, unpublished.

⁴⁷⁴ asylkoordination österreich, Nationwide NGO survey on basic services Dec 21/Jan 22, unpublished.

⁴⁷⁵ asylkoordination österreich, Nationwide NGO survey on basic services Dec 21/Jan 22, unpublished.

withdrawal of basic care was an issue that persisted in 2023. Official statistics on the number of asylum seekers concerned by this issue are not available.⁴⁷⁶

Termination of basic care upon a negative asylum decision

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 rejected asylum seekers can receive a tolerated status and consequently are entitled to receive basic care benefits. After a year of tolerated status, individuals qualify for a residence permit called AB+ (*Aufenthaltsberechtigung plus*). Individuals holding this residence permit 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 voluntary return interview. It happens that these people are picked up directly from the facilities by the police and taken to 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.⁴⁷⁷

Alternative provision of benefits

In 2018, the VwGH stated that the non-provision of benefits in kind can nevertheless allow for the authorities the possibility to grant cash benefits. This money substitute can also be claimed at a later stage through a formal request. The case concerned an asylum applicant whose application had been admitted by the Land Upper Austria, which did not grant him cash benefits. The VwVG considered that, if no accommodation is available, other arrangements should be found to grant the applicant the material benefits he is entitled to.⁴⁷⁸ The reason behind this decision was the lack of care that asylum seekers faced back in autumn of 2015, as they did not receive any benefits under the basic federal care and were supported by private initiatives instead. Therefore, it only applies where there is a massive influx of displaced persons, in accordance with Art. 5 Directive 2001/55/EC (see [Annex on temporary protection](#)).

4. Freedom of movement

Indicators: Freedom of Movement

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

The freedom of movement of asylum seekers may be restricted for reasons of public order, public interest, or for the swift processing of the asylum application. Applicants coming from a [Safe Country of Origin](#) or those who received a return decision before making an application may be affected. The necessity of assigned residence must be demonstrated on a case-by-case basis.⁴⁷⁹ 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.

As of September 2023, freedom of movement was restricted in 4 cases and a procedural order following Art 15b AsyG was issued (2022: 2). There is no available information on the reasons for the restriction.⁴⁸⁰

⁴⁷⁶ asylkoordination österreich, NGO exchange meeting, unpublished.

⁴⁷⁷ asylkoordination österreich, Nationwide NGO survey on basic services Dec 21/Jan 22, unpublished.

⁴⁷⁸ VwGH, Decision Ra 2018/21/0154-8, 20 December 2018, available in German at: <https://bit.ly/3lj5t8N>.

⁴⁷⁹ Article 15b AsyG, in force since 1 November 2017.

⁴⁸⁰ Ministry of Interior, *Answer to parliamentary request 15847/AB, XXVII. GP, 21 November 2023*, available in German at: <https://shorturl.at/rzEHL>.

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.⁴⁸¹ Following that, during the admissibility procedure, asylum seekers may only move within the district of the assigned reception centre.⁴⁸² 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.⁴⁸³ 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.⁴⁸⁴ 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 persons living with disabilities. NGOs of federal provinces have claimed that information about necessary medical treatment or disability are not always communicated, with the result that asylum seekers are transferred to inadequate places.⁴⁸⁵ 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 led to some results in practice, but significant improvements are still necessary. As part of the dispersal process, the BBU coordination office contacts the federal states and passes on all relevant information. Often, the basic care authorities do not pass on the full scope of information to the facilities providing care. However, it is not desirable for the authorities that NGOs and BBU communicate directly with each other. Communication in the dispersal process should take place directly with the basic care authorities and BBU. This is what basic care authorities want.⁴⁸⁶

⁴⁸¹ Article 43(1) BFA-VG.

⁴⁸² Article 12 (2) AsylG.

⁴⁸³ Article 2(1)(2) GVG-B.

⁴⁸⁴ Article 121 FPG.

⁴⁸⁵ asylkoordination österreich, NGO exchange meeting, unpublished.

⁴⁸⁶ asylkoordination österreich, NGO exchange meeting, unpublished.

The distribution of Basic Care recipients – including some beneficiaries of protection – across the provinces as of 31 December 2023 was as follows:

Dispersal of recipients of Basic Care: 31 December 2023			
Federal province	Quota	Total number of recipients	Actual share
Vienna	21.69%	31,735	39.13%
Upper Austria	16.74%	8,479	10.60%
Lower Austria	18.89%	11,873	13.02%
Styria	13.90%	9,787	10.22%
Tyrol	8.47%	5,227	5.63%
Carinthia	6.25%	2,888	2.95%
Salzburg	6.24%	3,136	3.87%
Vorarlberg	4.46%	3,276	3.30%
Burgenland	3.31%	2,429	3.13%
Total Provinces	100%	75,058	100%
Total federal reception facilities (EAST)	-	3,772	-
Total	-	78,830	-

Source: Basic care information system 2 January 2024, unpublished. Figures on quota and actual share refer to the total number of recipients of basic care.

The province of **Vienna** offers many more reception places than those foreseen by the quota system (see [Types of Accommodation](#)), while all other provinces have failed to provide enough places for several years. This discrepancy leads to negotiations between the responsible departments of the federal provinces, while the malfunctioning of the dispersal system overall raises public reactions. During the first months of operation of the BBU GmbH as federal basic care provider, the communication between the actors has improved. However, following increasing numbers of applicants, this positive trend stopped and resulted in overcrowded federal reception centres. In October 2021, the CEO of BBU GmbH resigned “at his own will” even though his 5-year contract had been renewed in May 2021.⁴⁸⁷ 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.⁴⁸⁸

NGOs in the federal provinces reported several communication problems with the Basic Care Department of BBU GmbH. These 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 assigned 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 is spent quickly by the BBU agency, which hindered asylum seekers from receiving

⁴⁸⁷ Ministry of Interior, “Geschäftsführer Achrainger zieht sich aus der Bundesagentur für Betreuungs- und Unterstützungsleistungen GmbH (BBU) zurück”, 11 October 2021, available in German at: <https://bit.ly/3KCI0g0>.

⁴⁸⁸ Ministry of Interior, “BBU: Geschäftsführer Andreas Achrainger bleibt weiterhin an Bord”, 22 December 2021, available in German at: <https://bit.ly/3CBckVH>.

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.⁴⁸⁹

Asylum seekers who are assigned 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 centre, 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 transferred to Vienna, where the NGO Queer Base⁴⁹⁰ in Vienna provides specialised support.⁴⁹¹

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 unstat' 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.⁴⁹²

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

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

⁴⁸⁹ asylkoordination österreich, NGO exchange meeting, unpublished.

⁴⁹⁰ See queerbase.at, available in German and English.

⁴⁹¹ asylkoordination österreich, NGO exchange meeting, unpublished.

⁴⁹² Nationwide NGO survey on basic services Dec 21/Jan 22 asylkoordination österreich, unpublished.

B. Housing

1. Types of accommodation

Indicators: Types of Accommodation	
1. Number of reception centres (federal):	21
2. Total number of places in initial reception centres (EAST):	931
3. Total number of places in federal accommodation centres:	3,772
4. Total number of persons in Basic Care (Federal and Provinces):	78,830
5. Total number of places in private accommodation:	Not available
6. Type of accommodation most frequently used in a regular procedure:	
<input checked="" type="checkbox"/> Reception centre <input checked="" type="checkbox"/> Hotel or hostel <input checked="" type="checkbox"/> Emergency shelter <input checked="" type="checkbox"/> Private housing <input type="checkbox"/> Other	
7. Type of accommodation most frequently used in an accelerated procedure:	
<input checked="" type="checkbox"/> Reception centre <input type="checkbox"/> Hotel or hostel <input type="checkbox"/> Emergency shelter <input type="checkbox"/> Private housing <input type="checkbox"/> Other	

While in 2017, 32 reception centres were in operation, the Ministry of Interior announced in 2019 that 7 out of the 20 remaining federal centres would be closed by the end of 2019.⁴⁹³ 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 2019.⁴⁹⁴ 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 6,898.⁴⁹⁵ At the end of 2022, 27 federal facilities with a maximum capacity of 8,000 were in use. During the reception crisis from October until December 2022, the BBU GmbH built up tents in 4 locations to house asylum seekers.⁴⁹⁶ The crisis was a result of a lack of cooperation of the provinces that failed to take over asylum seekers after their admissibility procedure was completed. This led to a backlog of over 8,500 asylum seekers in federal accommodation facilities. The inadequate reception conditions in the tents caused a public uproar.⁴⁹⁷

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.⁴⁹⁸

With the exception of the total number of places in private accommodation, all figures above refer strictly to the federal centres (if not explicitly stated otherwise), as it is not possible to provide figures on the number of apartments and houses used at provincial level to accommodate asylum seekers. Asylum

⁴⁹³ Der Standard, Jede dritte Asyl-Erstbetreuungsstelle soll geschlossen werden, 1 October 2018, available in German at: <https://bit.ly/2S1ZrEI>.

⁴⁹⁴ Ministry of Interior, *Answer to parliamentary request*, 3837/AB, XXVI. GP, 16 August 2019, available in German at: <https://bit.ly/2PH2WCd>.

⁴⁹⁵ Ministry of Interior, *Answer to parliamentary request*, 9123/AB, XXVII. GP, 14 March 2022, available in German at: <https://bit.ly/3vqktTz>.

⁴⁹⁶ Ministry of Interior, *Answer to parliamentary request*, 12699/AB, XXVII. GP, 13 January 2023, available in German at: <https://bit.ly/3YsYUOI>.

⁴⁹⁷ Kurier „Asyl: Zelte in Kärnten wegen Schneefalls geräumt“, 23 November 2022, available in German at: <https://bit.ly/41NNXd7>.

⁴⁹⁸ 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>.

seekers are accommodated in facilities of different size and capacity. A quota system requires the federal provinces to provide places according to their population (see [Dispersal across Federal provinces](#)).⁴⁹⁹

Each of the 9 federal provinces has a department in the regional government responsible for administering Basic Care. These departments search suitable accommodation places, and conclude contracts with NGOs or landlords, owners of hotels or inns, to provide a certain number of places and Basic Care provisions. Regular meetings of the heads of the provincial departments and the Ministry of Interior take place to evaluate the functioning of the Basic Care system and the level of financial compensation for the federal provinces. According to the Basic Care agreement between the State and the federal provinces, the latter have to cover 40% of the expenditures, while the Federal Ministry has to pay 60% of the costs. This share of the Ministry of Interior could rise to 100% if an asylum application is not processed within due time. After 6 months, 100% of the accommodation costs of the provinces are covered by the Ministry.⁵⁰⁰

During the first year of activity of the BBU GmbH in 2021, the main challenge was to provide shelter as the agency was confronted to the sharp increase of applications and had to integrate staff from different companies and NGOs at operational level. Moreover, given that the reimbursement of the costs for accommodation in the provinces has not been adjusted for years and following the decrease of applications in 2019 and 2020, many NGO-led accommodation centres in the provinces had closed. As a result, many applicants already admitted to the asylum procedure had to be accommodated in federal reception centres pending a transfer. In 2021, the BBU GmbH reopened all available centres across the territory and reached its capacity limits at the end of the year. This is supposedly also one of the reasons why the Director of the BBU GmbH ("*Geschäftsführer*"), whose contract was prolonged in May 2021, resigned in October 2021. He withdrew his resignation in December 2021, but the reasons were not officially communicated.⁵⁰¹

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 (see [Overview of reception conditions](#)). 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. After the admission phase of the asylum procedure is finished the responsibility to house asylum seekers during their asylum procedure shifts to the provinces. Throughout 2022, 17,286 asylum seekers were transferred from the EAST to the provinces.⁵⁰² There is not data for 2023 at the time of writing.

⁴⁹⁹ Article 1(4) GVV-Art.15a.

⁵⁰⁰ Article 10, 11, GVV-Art. 15a.

⁵⁰¹ Standard, „Andreas Achrainger widerruft Kündigung als Leiter der Asylagentur“, 22 December 2021, available in German at: <https://bit.ly/3rOo11k>.

⁵⁰² OÖ Landesregierung, Beantwortung einer Anfrage an LR Hattmansdorfer, Beilage 13124/2023, XXIX. GP, 5. April 2023, available in German at: <https://bit.ly/3LJOF5h>.

1.1. Federal reception capacity



Map data © 2024 GeoBasis-DE/BKG (© 2009), Google, Inst. Geogr. Nacional

Created based on the information provided in BBU GmbH, “Übersicht zu den Standorten in Österreich (Stand 03.04.2024”, available in German [here](#).

The initial reception centre serves as centre for asylum seekers with an admissibility procedure likely to be rejected. The two 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. As of February 2024, the maximum capacity in 22 federal facilities was 5,889.⁵⁰³

The number of asylum seekers in the initial reception centre of **Traiskirchen** has also sharply decreased from 2,000 asylum seekers to about 600 at the end of 2023.⁵⁰⁴ At the end of 2020, around 1,200 persons, among which around 1,000 were asylum seekers, were accommodated in Traiskirchen.⁵⁰⁵ At the end of 2023, approximately 3,100 asylum seekers were accommodated in federal care facilities, in **Traiskirchen** there were 730.⁵⁰⁶

The law allows the Ministry of Interior to open reception facilities in federal provinces that do not fulfil the reception quota. Such centres may be opened even when the facility is not adapted to host asylum seekers, provided that certain special safeguards are ensured such as fire protection and related building regulations.⁵⁰⁷ In 2018-2019, however, such centres were not needed. During the first lockdown in 2020, 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 tested positive for COVID-19. A positive test result implies that many parts of the entire facility cannot be used

⁵⁰³ Ministry of Interior, *Answer to parliamentary request, 17218, XXVII. GP*, 5 April 2024, available in German at: <https://shorturl.at/kP8OA>.

⁵⁰⁴ NÖN.at, *Flüchtlingsbewegung als Herkulesaufgabe*, 20 November 2018; available in German at: <https://bit.ly/2GvcayP>.

⁵⁰⁵ Ministry of Interior, *Care information system*, unpublished.

⁵⁰⁶ Information from the Ukraine refugee coordination unit, 19 January 2024, unpublished.

⁵⁰⁷ Bundesverfassungsgesetz: *Unterbringung und Aufteilung von hilfs- und schutzbedürftigen Fremden*. BGBl 120, 28 September 2015, available at: <http://bit.ly/1JdszhK>.

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**.⁵⁰⁸

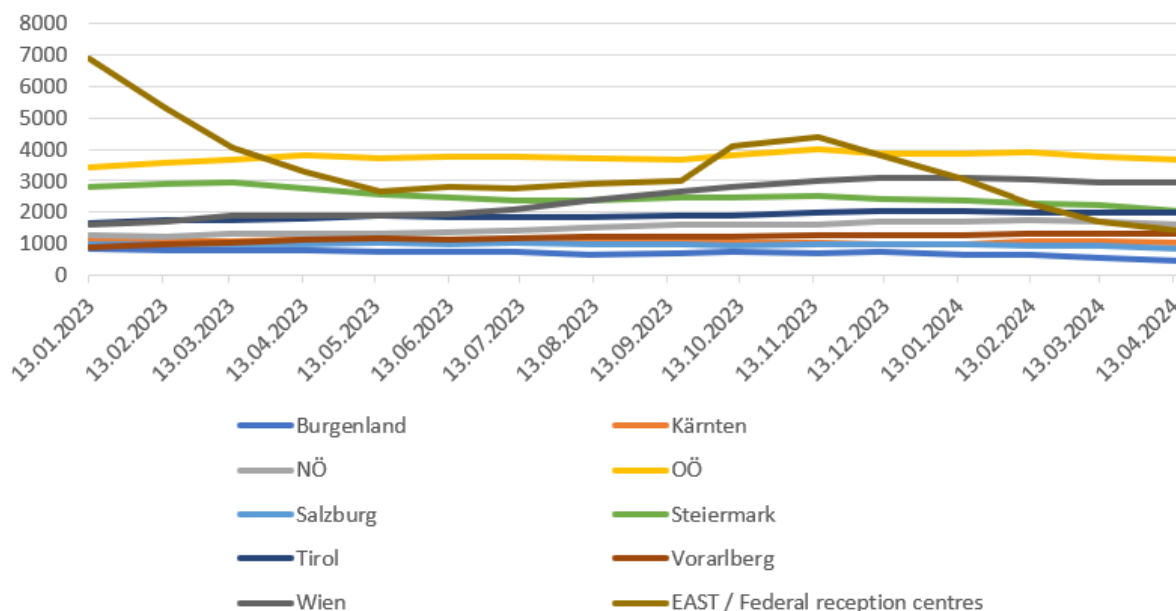
In case of larger numbers of arrivals and difficulties in transferring asylum seekers to reception facilities in the federal provinces, the Federal State may host asylum seekers even after their asylum application is admitted to the regular asylum procedure for a maximum period of 14 days.

In 2022, federal reception capacity reached its limit. Due to the lack of cooperation of the provinces to take over asylum seekers after admission phase, a huge backlog of persons already admitted to the procedure had to stay in the federal reception centres (see also [Overview of reception conditions](#)).

In June 2022, the Ministry of Interior and BBU GmbH asked the provinces to live up to their obligations to take over asylum seekers as agreed in the Basic Care agreement and warned of a possible collapse of the federal reception centres in case of non-cooperation. This lack of accommodation in the provinces has many reasons. First, the basic care system is chronically underfinanced which consequently leads to the fact that costs can barely be covered for the accommodation providers. Second, while financial resources were raised for the provinces in June 2022, implementation in some provinces took almost another half year. During this time, the high cost of living due to high inflation rates already raised the real costs more than the raise of the financial resources would cover. Third, after the start of the Russian aggression around 50,000 Ukrainians had to be accommodated in the basic care system. However, most of the Ukrainians are accommodated in private housing. Moreover, in three provinces there were elections which led to a lack of cooperation in the takeover of asylum seekers due to public debate.

Data on asylum seekers accommodated in the basic care systems of the provinces show that there was almost no reaction in the sense of taking over more asylum seekers after June 2022. In 2023, the provinces of Tyrol, Vorarlberg and partly Upper Austria stepped up to fulfil their obligations regarding the quota of accompanied asylum seekers and other foreigners in basic care. The province of Burgenland fell short of fulfilling the quota after the Head of the province, Hans-Peter Doskozil, announced that Burgenland would not take more than approx.. 300 asylum seekers in province basic care in 2024.⁵⁰⁹

Asylum seekers in Basic Care System 2023 - April 2024



Source: asylkoordination österreich, unpublished (data by Ministry of Interior, Basic Care System, unpublished)

⁵⁰⁸ Fundamental Rights Agency, *Migration: Key fundamental rights concerns - Quarterly bulletin 4*, 2020, <https://bit.ly/3cMWnZH>.

⁵⁰⁹ „Doskozil will Obergrenze bei Grundversorgung und 10.000 Asylanträge“, kurier.at, 01 February 2024, available in German at: <https://shorturl.at/LpPUg>.

The brown line represents accommodation of asylum seekers in the federal reception centres (January 2023: 7,000 to April 2024:1,600). The other lines represent the development of the accommodation figures of asylum seekers accommodated in the provinces.

In 2023, there were almost 60,000 asylum applications of which half of the applicants continued to travel on to other countries and their procedures were discontinued. In the same time, the provinces Tirol, Vorarlberg and Upper Austria increased their accommodation places in the basic care system by a couple hundred places maximum per province while the other provinces have not reacted or even reduced accommodation capacity.. This has not led to another collapse of the federal reception centres like in October 2022, when the CEO of the BBU GmbH announced that asylum seekers would have to be accommodated in tents on the grounds of the federal reception centres, due to the high number of onward travel.⁵¹⁰

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 2023, the entire Austrian reception system hosted a total of 78,830⁵¹¹ (2022⁵¹²: 92,984; 2021: 30,075) persons (including beneficiaries of temporary protection, international protection and rejected asylum applicants), out of which 20,572 (2022: 21,661, 2021: 17,138) were asylum applicants in 2023. Information on distribution across the federal provinces is provided in the section on [Freedom of Movement](#). While **Vienna** continues to exceed its relative reception share, other federal provinces only reached 50-60% of the quota agreed. Due to the high number of Ukrainians entering Austria after 24 February 2022, the basic care system in the provinces had to accommodate a large number of refugees in a dysfunctional basic care system. Around 78% of the Ukrainian refugees were accommodated privately at the start. This share has gone down to 63%⁵¹³ at the end of 2023. Refugees from Ukraine are the responsibility of the basic care systems of the provinces due to the fact that there is no admission phase (for which the basic care system in the federal centres would be responsible). For further information, please see the [annex on temporary protection](#).

NGOs or owners of hostels and inns, who run reception centres under the responsibility of the federal provinces, have contracts with the governmental department of the respective federal provinces. While in some federal provinces almost all asylum seekers are placed in reception centres (e.g. 90% of asylum seekers in **Styria** and 70% in **Burgenland**), private accommodation is more often used in others states such as **Vienna**, where 70% of applicants lived in private accommodation.⁵¹⁴

Federal state	Private accommodation	Basic care facility
Vienna	25,956	5,736
Burgenland	414	1,986
Lower Austria	6,125	5,570
Upper Austria	2,656	5,803
Styria	2,637	7,025
Carinthia	952	1,941

⁵¹⁰ ORF.at, „Asyl: Bund stellt Zelte in Thalham auf“, 14 October 2022, available in German at: <https://bit.ly/3Lq6FjG>.

⁵¹¹ Ministry of Interior, basic care information, unpublished.

⁵¹² Ministry of Interior, *Answer to parliamentary request 5038/AB, XXVII. GP*, 17 March 2021, available in German at: <https://bit.ly/42urJgX>.

⁵¹³ Information ukraine refugee coordination unit 29 December 23, unpublished.

⁵¹⁴ Information provided by the federal provinces.

Tyrol	1,374	3,831
Salzburg	566	2,489
Vorarlberg	702	2,575

Source: Basic care information system 9 January 2024, unpublished.

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 days⁵¹⁵
3. Are unaccompanied children ever accommodated with adults in practice? Yes No
4. Are single women and men accommodated separately? Yes No

The Ministry of Interior, which is responsible for Basic Care during the admissibility procedure, outsourced their day-to-day management to a state-owned agency, BBU GmbH, while remaining the responsible authority. The BBU GmbH took over in December 2020 from a private company that used to be subcontracted by the Ministry.

Conditions in the reception centres of the federal provinces vary, but they had constantly improved along with the decrease of persons staying in the centres. When the BBU GmbH was funded to take over in December 2020, a decrease of reception capacity at federal state level was expected. During the Covid-19 pandemic, the Ministry of Interior hesitated to re-open facilities that used to function as reception centres during 2015-2016 due to local protests. This led to high numbers of persons accommodated in the EAST Ost in **Traiskirchen** which increased the infection risk inside the facility. Due to poor COVID-19 management, the whole centre was put under quarantine in May 2020 with important restrictions for residents.⁵¹⁶ 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,⁵¹⁷ the decree restricting the freedom of movement of asylum seekers was challenged and is currently under review in front of the Constitutional Court.⁵¹⁸ The federal reception capacity reached its limits in October 2022, mainly because of the lack of cooperation of the provinces and the high number of arrivals from Ukrainian refugees.

There was public uproar when the BBU GmbH only provided tents for some asylum seekers due to the lack of facilities and the lack of cooperation of the provinces in fall 2022. Due to the high number of arrivals in the province of Burgenland the police was not able to start off the asylum procedures for all the applicants entering the country (see [access to the territory](#) and [Procedures](#)).

In December 2022, the NGO Diakonie Flüchtlingsdienst represented an asylum seeker from Belarus who was denied entry at a so-called waiting zone and thus grew homeless. An application for an interim measure was brought in at the ECtHR. The authorities reacted immediately and offered accommodation and modified the process of the waiting zones. As a consequence, and due to the decrease in arrivals, at

⁵¹⁵ 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>.

⁵¹⁶ Der Standard, „Zweiter Corona-Lockdown im Asylzentrum Traiskirchen“, 25 May 2020, available in German at: <https://bit.ly/38YQgjR>.

⁵¹⁷ Der Standard, „Geflüchtete wehren sich gegen Ausgangsverbot in Traiskirchen“, 30 April 2020, available in German at: <https://bit.ly/2QoiPAT>.

⁵¹⁸ Österreichischer Verfassungsgerichtshof, „Prüfbeschluss zu E3811/2020-10“, available in German at: <https://bit.ly/3vJMYdU>.

the start of 2023 there were no more reports of cases of homeless applicants. The situation has calmed down further over the year 2023 (see chart above).

The registration process reverted back to the old system without distributing the asylum seekers to all provinces for their first interview, as the numbers of asylum seekers decreased substantially in 2023. At the start of 2024, the numbers continued to decrease even further: while the police apprehended 1,400 persons with the intention to seek asylum in April 2023 in the province of Burgenland, in April 2024 only 40 persons were apprehended.⁵¹⁹

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 8m² for each person and 4m² for each additional person in September 2014.⁵²⁰ According to the findings of the survey, the minimum standard is met in all states. In **Lower Austria**, a better standard is being applied (9m²+5m²+6m²). However, due to the increase in asylum applications in 2021, the authority reduced the standard within the framework of the 'Emergency Ordinance' to 8m²+4m²+4m², which in reality means that more people can be accommodated in one room. The minimum standards also define a maximum occupancy of 5 persons per room. This is complied with in most places, and some NGOs try to advocate for a 2-bed occupancy where possible. In **Burgenland, Lower Austria, Styria and Tyrol**, single adults are also partly placed in 6-8 bedrooms. During regular inspections by the authorities in Burgenland, other structural deficiencies have been reported.⁵²¹

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 260/300 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 2022, before 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

⁵¹⁹ Ministry of Interior, „Massiver Rückgang der Aufgriffe – Schlepper meiden Österreich“, 1 May 2024, <https://shorturl.at/8Klny>.

⁵²⁰ 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>).

⁵²¹ Nationwide NGO survey on basic services Dec 21/Jan 22 asylkoordination österreich, unpublished.

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.⁵²²

In July 2021, asylkoordination and several NGOs working in the field of refugee care jointly sent a letter to the Ministry of the Interior pointing to the insufficient funding and the fact that this financial burden lies entirely with the NGOs, which is no longer sustainable. The letter was not published but urged the authorities to increase daily rates and an annual valorisation. The increasing number of asylum applications in 2021 led to bottlenecks in the distribution of asylum seekers among the provinces, as there is not enough reception capacity. In this context, the issue of the lack of a valorisation of the daily rates for the care and counselling of refugees was raised again. The federal provinces demanded an increase in the daily rates before new places are created, as well as better planning, financing and the appropriate creation of precautionary capacities. In particular, the standards and daily rates for the care of unaccompanied children should be increased. At peak times, around 800 unaccompanied minors were in the care centres of the federal government. On 2 December 2021, a first meeting took place between the federal government and the federal states (without the participation of NGOs) to discuss the increase in daily rates, standards in care, and the distribution of asylum seekers. The outcome of these discussions remain to be seen in practice.⁵²³ In 2022, for the first time since 2016, the rates for organised housing in the federal provinces were raised from € 21 to € 25 per person/day (accommodation and eating included). See [Forms and levels of material reception conditions](#) and [annex on temporary protection](#).

In most reception centres, asylum seekers are responsible for keeping their rooms and the common areas clean, and in some cases this can be remunerated (from € 2.5 to € 5 per hour – this refers to the so-called "remuneration for auxiliary and cleaning activities in accommodation facilities"; i.e. "Remu-work" in short). Regarding the allowed free amount for income, the same guidelines apply in almost all federal states. Remu-work has a monthly allowance of € 110 in all federal states except Vienna, Burgenland and Tyrol. In Vienna and Burgenland there is € 200 per person for Remu-work and in Tyrol € 240. In Tyrol and Burgenland there is an additional allowance of € 80 for each family member, in Vienna this does not apply for Remu-work but only for regular work.⁵²⁴

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 € 150⁵²⁵ per month and pocket money. All other facilities in Styria are self-catering facilities where people receive € 195/month food allowance and pocket money. In **Tyrol** adult asylum seekers are given € 245 per month to organise meals by themselves. In **Vienna**, the amount of the food allowance was increased to € 6.50 per person in 2022. 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.⁵²⁶

⁵²² Asylkoordination, "Menschenwürdiges Wohnen", asyl aktuell 2/2021, available in German at: <https://bit.ly/3HRpDNb>.

⁵²³ Standard, "Kostenhöchstsätze für Unterbringung von Asylwerbern werden valorisiert", 2 December 2021, available in German at: <https://bit.ly/3LwPbS5>.

⁵²⁴ asylkoordination österreich, Nationwide NGO survey on basic services, Dec 21/Jan 22, unpublished.

⁵²⁵ Das Land Steiermark, 'Gundversorgung von AsylwerberInnen', available in German at: <https://bit.ly/3Um1WEo>.

⁵²⁶ asylkoordination österreich, Nationwide NGO survey on basic services, Dec 21/Jan 22, unpublished.

Federal province	Self sufficiency	Full sufficiency	Partial self sufficiency	Pocket money	Food allowance per day (month)	Food allowance per day (month)
Vienna	x	-	-	Yes	€ 6.50	€ 5.50 - € 6.00
Burgenland	x	X	-	Only with full supply	€ 6 to € 7 adults € 3.50 - € 7 children	€ 6
Lower Austria	x	X	-	Only with full supply	€ 7	€ 6
Upper Austria	x	-	-	Only with full supply	Adults € 7, children € 5	€ 6 (children € 132, per month)
Styria**	x	X	X	Yes	€ 6	€ 6
Carinthia	x	x		only with full supply	€ 180 (adults per month) € 80 (children per month)	€ 6
Tyrol	x	-	-	Yes	€245/month/adult € 145/month/child under 18	€200/month/adult € 100.-/month/child under 18
Salzburg	x	x	-	Yes	€ 6.50	€ 6.50
Vorarlberg	x	x	-	Yes	€ 260/month/adult € 155/month/child	€ 215/month

Source: Own illustration based on nationwide NGO survey on basic services Dec 21/Jan 22/December 22/January 2024 by asylkoordination österreich. Kompetenz Netzwerk Asyl, available in German at: <https://bit.ly/3Lrcwaa>.

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, theatre, museum and also a part of the monthly ticket for public transport can be paid through the leisure money. 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.⁵²⁷

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.⁵²⁸ 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

⁵²⁷ Nationwide NGO survey on basic services Dec 21/Jan 22 asylkoordination österreich, unpublished.

⁵²⁸ asylkoordination Österreich, 'Kompetenznetzwerk Grundversorgung', last modified 17 March 2024, available in German at: <https://bit.ly/3xUv51G>.

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.⁵²⁹

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 hours. Access to internet is provided in the centre.⁵³⁰ 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.⁵³¹ In June 2019, several persons accommodated in this federal centre in Tyrol entered in a hunger strike which caused public uproar. The Ministry of Interior subsequently conducted a human rights assessment in cooperation with UNHCR concerning the reception conditions of the centres in **Tyrol** and **Schwechat**, which mainly host rejected asylum seekers who cannot be deported. In these centres, the persons receive regular counselling concerning voluntary return. Following the assessment, the Ministry of Interior published recommendations and several objectives. This includes no longer accommodating children in these two centres and introducing more frequent shuttle services to the village.⁵³² 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 2019.⁵³³ 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.⁵³⁴

Affordable mobility

A major problem is the lack of affordable mobility for people in the basic care system. Vorarlberg⁵³⁵ has created an affordable ticket that can be purchased by both welfare recipients and people in basic care. In all other federal states, there are only urban solutions, if at all, and not for rural areas. The tickets for parents who accompany their children to school are not covered, as well as costs to go grocery shopping. The assumption of costs within the framework of basic care is limited to the following:

- Transfers between federal care centres and those of the federal states;
- Transport costs for attending interviews and other appointments related to the asylum procedure;
- Transport costs for medical appointments;
- Transport costs required for school attendance;
- Transport costs for participation in German courses (not uniform nationwide, paid by the federal states themselves, with the exception of ÖIF courses).

Affordable mobility: In the context of a meeting of the Ukraine Refugee Coordination Unit, the process for the creation of a (uniform) affordable regional social ticket for people seeking protection was started in 2023. The starting point of the discussion was that beneficiaries of temporary protection from Ukraine

⁵²⁹ Fonds Soziales Wien, Information on Counselling organisations for asylum seekers, available in German at: <https://bit.ly/3sD4CQ6>.

⁵³⁰ Profil, 'Nächtlicher Angriff auf Asylwerber in tiroler Bergen' 30 October 2014, available at: <http://bit.ly/1G8a8MZ>.

⁵³¹ Bezirksblätter, 'Heim am Bürglkopf wird zur Rückkehrinrichtung', 24 August 2017, available in German at: <http://bit.ly/2H8o5j2>.

⁵³² Ministry of Interior, Human rights recommendations, available in German at: <https://bit.ly/3cILFCO>.

⁵³³ Ministry of Interior, *Answer to a parliamentary request, 3837/AB XXVI GP*, 16 August 2019, available in German at: <https://bit.ly/38gMr6r>.

⁵³⁴ Nationwide NGO survey on basic services Dec 21/Jan 22 asylkoordination österreich, unpublished.

⁵³⁵ VCO, "FairCard & maximo fair – Leistbare Mobilität für Menschen mit keinem oder geringem Einkommen", 2016, available in German at: <https://bit.ly/3JGGMvs>.

could use public transport for free until the end of 2022. The end of the free use was partly linked to discussions about the fact that it created an unjust situation for applicants in the regular asylum system. The option of opening up the group of eligible persons to other groups was dismissed. A discussion regarding access to already existing reduced ticket options (such as Mobilpass in Vienna, SozialCard Graz) for people in basic care, similar to the model in Vorarlberg, was started at a political level but reached no results, as the transport systems are organised mostly on a province level. Border regions in the federal provinces in particular should be taken into account here; a cross-border ticket would be needed here to guarantee local supplies, as in some cases it is closer to go food shopping in another federal province than in one's own province if, for example, it would be necessary to travel 1 hour to the nearest local supplier.⁵³⁶

C. Employment and education

1. Access to the labour market

Indicators: Access to the Labour Market

- | | |
|--|---|
| 1. Does the law allow for access to the labour market for asylum seekers?
❖ If yes, when do asylum seekers have access the labour market? | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
3 months |
| 2. Does the law allow access to employment only following a labour market test? | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No |
| 3. Does the law only allow asylum seekers to work in specific sectors?
❖ If yes, specify which sectors: | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No |
| 4. Does the law limit asylum seekers' employment to a maximum working time?
❖ If yes, specify the number of days per year | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No |
| 5. Are there restrictions to accessing employment in practice? | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No |

The Aliens Employment Act (AuslBG) states that an employer can obtain an employment permit for an asylum seeker 3 months after the asylum application is admitted to the regular procedure, provided that no final decision in the asylum procedure has been taken prior to that date.⁵³⁷

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.).⁵³⁸ From 2004 to 2021, asylum seekers were practically excluded from the access to the labour market as an internal decree obligated public officials to deny working permits when the applicants are asylum seekers. The Constitutional Court declared these decrees as unlawful in 2021.⁵³⁹

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.⁵⁴⁰ The decision has to be made within 6 weeks; in case of appeal proceedings, the same time limit must be applied.

⁵³⁶ Minutes, Ukraine Refugee coordination unit, unpublished.

⁵³⁷ Article 4(1) AuslBG.

⁵³⁸ *Ibid.*

⁵³⁹ VfGH, E 2420/2020, 5 June 2021, available in German at: <https://shorturl.at/BvFMY>.

⁵⁴⁰ 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.⁵⁴¹ These seasonal jobs were limited by a yearly quota for each federal province and could only be issued for a maximum period of 6 months.⁵⁴² In 2021, the Supreme Administrative Court struck down the decrees that limited the right to work of asylum seekers to specific work areas and to a specific time limit during the year.⁵⁴³

A further problem for asylum seekers working 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.⁵⁴⁴ Moreover, 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.⁵⁴⁵

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.

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.⁵⁴⁶ 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.

Non-profit work, voluntary work and internships

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 allowed to earn up to € 110 per month.⁵⁴⁷ 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

⁵⁴¹ Ordinance GZ 435.006/6-II/7/2004, 11 May 2004.

⁵⁴² Supreme Administrative Court, Ro 2019/09/0011, available at: <https://bit.ly/431rAC5>. See also: EMN, *Access to the Labour Market and Labour Market Integration of Asylum-seekers in Austria*, April 2023, available at: <https://bit.ly/3Tht4EW>.

⁵⁴³ VwGH, Decision Ro 2019/09/0011, 28 April 2020, available in German [here](#).

⁵⁴⁴ In Tyrol, asylum seekers may earn €240 per month without contribution to the cost of basic care.

⁵⁴⁵ asylkoordination Österreich, 'Kompetenznetzwerk Grundversorgung', last modified 17 March 2024, available in German at: <https://bit.ly/3xUv51G>.

⁵⁴⁶ Dienstleistungsscheckgesetz, 12 February 2018, available at: <http://bit.ly/2nSSz0m>.

⁵⁴⁷ Wiener Zeitung, 'Innenminister Ratz macht Kickls Entscheidung rückgängig', 23 May 2019, available in German at: <https://bit.ly/2wlXfmw>.

minor resettlements in the municipality.⁵⁴⁸ 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.⁵⁴⁹ 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:⁵⁵⁰

- 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.⁵⁵¹

At the conferences of provincial councillors for refugees in September and December, a discussion on mandatory work for asylum seekers was opened. Specifically, the proposal focused on mandatory community service for asylum seekers. If they do not comply, it should be possible for basic care benefits to be cut. This proposal is controversial and is rejected above all in the NGO sector, migration studies and workers organisations (Arbeiterkammer). There is no need for compulsory charitable work, as people would like to work anyway. Conversely, it would be important to assess whether there enough 'jobs' positions would be available in case work for asylum seekers became mandatory.⁵⁵²

Statistical information

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 permits were issued to asylum seekers, out of which 757 concerned apprentices.⁵⁵³ 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 were 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 would examine whether the ministerial decrees are infringing the constitutional rights of the asylum seekers.⁵⁵⁴ 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

⁵⁴⁸ Ministry of Interior, 'Sobotka: Leistungskatalog für Hilfstätigkeiten von Asylwerbern erstellt', 28 October 2016, available in German at: <http://bit.ly/2kS0dHB>.

⁵⁴⁹ Article 7(3a) GVG-B.

⁵⁵⁰ Oberösterreichische Nachrichten, 'Asylwerber dürfen nun in Firmen schnuppern', 1 February 2017, available in German at: <http://bit.ly/2k2eEz>.

⁵⁵¹ 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>.

⁵⁵² ORF.at, 'Arbeitsverpflichtung rechtlich „fraglich“', 21 September 2023, available in German at: <https://bit.ly/3UIIWQH> and Keline Zeitung, 'Beschluss zur Grundversorgung – oder doch nicht?', 7 December 2023, available in German at: <https://bit.ly/3WqkyWs>.

⁵⁵³ Information provided by the Labour Market Service (AMS) in February 2019.

⁵⁵⁴ Constitutional Court, *Prüfbeschluss E2420/2020-11*, 1 March 2021, available in German at: <https://bit.ly/38Xopkh>.

fundamental rights of asylum seekers. As a result, asylum seekers can start an apprenticeship if certain conditions are met.

In 2023, 40 asylum seekers were working as an apprentice, 3,240 work permits were issued, and as of December 2023 1,642 asylum seekers had a valid working permit.⁵⁵⁵ Beneficiaries of TPD have easier access to the labour market: They need a working permit which is not bound to any other conditions other than their status as displaced person. As of December 2022, 11,776 beneficiaries of temporary protection from Ukraine had a valid working permit. For further information, see [annex on temporary protection](#).

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

Children aged 5 or 6 must be enrolled in kindergarten 1 year before school enrolment. Attendance must be at least 16-20 hours per week on at least 4 days and is free of charge. Fees are charged for excursions and meals. Exceptions to compulsory kindergarten attendance are e.g. medical reasons, children with disabilities.⁵⁵⁶

School attendance is mandatory for all children living permanently in Austria until they have finished 9 study cycles, 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. In 2023, the labour market service launched the youth college together with the city of Vienna. This is an educational opportunity for young people and young adults aged 15-25 and is primarily intended to support those who are no longer subject to compulsory schooling. It also has the effect that this educational measure provides a daily structure and gives prospects for future jobs or studies.⁵⁵⁷

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.⁵⁵⁸ 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.⁵⁵⁹ In October 2019, the Federal Youth Association (*Bundesjugendvertretung*) called for the inclusion of underage asylum seekers as target group of the law.⁵⁶⁰ Nevertheless, they can benefit from a wide range of language and literacy courses. In **Vienna**,⁵⁶¹ the educational hub arranges course places

⁵⁵⁵ Enquiry to labour market service by asylkoordination austria, unpublished.

⁵⁵⁶ Agreement in accordance with Art. 15a B-VG on the introduction of half-day free and compulsory early support in institutional childcare facilities, available in German at: <https://bit.ly/3JJM8Gw>.

⁵⁵⁷ Stadt Wien, "Jugendcollege", available in German at: <https://bit.ly/3JGNUs3>.

⁵⁵⁸ Article 3, Ausbildungspflichtgesetz (ApfIG), BGBl. I Nr 120/2016, available at: <http://bit.ly/2lkgXsh>.

⁵⁵⁹ Employment Office of Upper Austria, 'Ausbildungspflicht bis 18: AK fordert Nachbesserungen', 19 August 2016, available in German at: <http://bit.ly/2kNmJSc>.

⁵⁶⁰ APA-OTS, 'Bundesjugendvertretung: Ausbildungspflicht für alle öffnen!', 28 October 2019, available in German at: <https://bit.ly/2vOy2RB>.

⁵⁶¹ VHS, "StartWien – Integration ab Tag 1", available in German at: <https://bit.ly/3QtNV6p>.

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 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.⁵⁶²

In the fall of 2023, the high number of family reunifications in Austria led to schools being overwhelmed. Vienna, in particular, as the capital city, was severely affected. Many schools and teachers describe that it is difficult to integrate school-age children into regular school life. Many children have often been in refugee camps for months or years and had no chance to attend regular schools, and must first be slowly introduced to the institution of school. Many children are not literate in their first language and sometimes bring with them multiple traumas and have problems concentrating.⁵⁶³ Above all, there is a lack of additional staff for children who do not have German as their first language. Additionally, effects of the Covid-19 pandemic and the overall shortage of teachers in the country - as many teachers will be retiring in the next few years – negatively impact on the quality of educational services offered.⁵⁶⁴

D. Health care

Indicators: Health Care			
1. Is access to emergency healthcare for asylum seekers guaranteed in national legislation?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	
2. Do asylum seekers have adequate access to health care in practice?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> Limited	<input type="checkbox"/> No
3. Is specialised treatment for victims of torture or traumatised asylum seekers available in practice?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> Limited	<input type="checkbox"/> No
4. If material conditions are reduced or withdrawn, are asylum seekers still given access to health care?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> Limited	<input type="checkbox"/> 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.⁵⁶⁵ After the asylum seeker has submitted the asylum application, they must undergo a mandatory medical examination, including a tuberculosis examination. The Ministry of the Interior has commissioned the BBU GmbH to carry out the medical examination, which is part of the admission procedure. The company has contracts with general practitioners and nurses to provide health care in the federal reception centres.

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.⁵⁶⁶

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, they will not receive medical assistance, because it is assumed that they have had the opportunity to visit the medical station in the

⁵⁶² Fonds Soziales Wien, "Bildung", available in German at: <https://bit.ly/3UEZA4M>.

⁵⁶³ Wien ORF.at, 'Tausende ukrainische Kinder neu in Schulen', 8 January 2024, available in German at: <https://bit.ly/49WEQtG>.

⁵⁶⁴ Kleine Zeitung, "'Viele schmeißen hin, es ist eine totale Überlastung'", 11 May 2023, available in German at: <https://bit.ly/3y9ekjk>.

⁵⁶⁵ Ministry of Interior, *Answer to parliamentary question 8774/J (XXV.GP)*, 17 May 2016, available in German at: <http://bit.ly/2lq2GHj>.

⁵⁶⁶ Article 2(4) GVG-B.

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.⁵⁶⁷

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 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.⁵⁶⁸

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).⁵⁶⁹ (See [Use of medical reports](#)).

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.⁵⁷⁰ In practice, there are no reports by hospitals that the police or BFA have issued such information requests.

Specialised treatment

In each federal province, one NGO part of the Network for Intercultural Psychotherapy and Extreme Trauma provides treatment to victims of torture and traumatised asylum seekers. This is partly covered by AMIF funding, partly by the Ministry of Interior and regional medical insurance. However, the capacity of these services is not sufficient. Victims often have to wait for more than 6 months in **Vienna**, **Styria** and **Tyrol** for psychotherapy, while in other federal states they wait approximately 3 months.⁵⁷¹

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 social worker. 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.⁵⁷²

⁵⁶⁷ See the official website AmberMed available in German at: <http://www.amber-med.at/>.

⁵⁶⁸ asylkoordination österreich, Nationwide NGO survey on basic services, Dec 21/Jan 22, unpublished.

⁵⁶⁹ Article 15 (1)3 Asylum Law.

⁵⁷⁰ § 46 (7) Aliens police Law 2005.

⁵⁷¹ Projekt NIPE [asylkoordination österreich de](#), available in German.

⁵⁷² asylkoordination Österreich, 'Kompetenznetzwerk Grundversorgung', last modified 17 March 2024, available in German at: <https://bit.ly/3xUv51G>.

E. Special reception needs of vulnerable groups

Indicators: Special Reception Needs

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

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

The Basic Care laws of **Lower Austria, Salzburg, Tyrol and Vorarlberg, Burgenland, Carinthia, Upper Austria** mention special needs of vulnerable persons. Elderly persons, handicapped persons, pregnant women, single parents, children, victims of torture, trafficking, rape or other forms of severe psychological, physical or sexual violence are considered as vulnerable persons. In the laws of the federal province of **Vienna**, vulnerable asylum seekers are not mentioned. Nevertheless, the federal provinces have to respect national and international law, including the recast Reception Conditions Directive. A special monitoring mechanism is not in place. It is the responsibility of the asylum seeker, social worker, 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. As mentioned in the starting chapter, there has been a decision to increase the cost rate for increased care needs to € 3,360 per month, but so far no final decision at the political level.

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.⁵⁷³

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.⁵⁷⁴

In 2022, 13,276 UAM applied for asylum in Austria. In 11,659 cases the authority discontinued the case as the UAM absconded and had left Austria. Nevertheless, the number of UAM in federal reception centres grew up to 1,200 as the provinces were reluctant to take over UAM in their basic care systems. As of December 2022, 1,169 UAM were accommodated in inadequate federal reception centres for an average time of 133 days. The BBU GmbH opened up new facilities: At the end of 2022, there were 5 facilities operating on a federal level accommodating UAM.⁵⁷⁵ At the end of 2023, 530 UAM received basic care in federal basic care, for an average time of maximum 381 days.⁵⁷⁶

⁵⁷³ BVZ, 'Landesrechnungshof nahm Grundversorgung unter die Lupe', 19 April 2018, available in German at: <https://bit.ly/2TE7aMq>.

⁵⁷⁴ Der Standard, *Frequently Asked Questions on Unaccompanied children*, 3 August 2015, available in German at: <http://bit.ly/1gGuyE3>.

⁵⁷⁵ Presentation by BBU GmbH at Asylforum 2023, available in German at: <https://bit.ly/41OV8RL>.

⁵⁷⁶ Information of the Basic care system, unpublished.

1.1. Federal centres

There are 5 to 6 reception centres for unaccompanied children managed by the Federal Agency BBU GmbH, out of which one is a separate facility for unaccompanied children in the Federal Reception Centre EAST in **Traiskirchen**.⁵⁷⁷

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.⁵⁷⁸ As of 7 November 2019, there were 69 unaccompanied children accommodated in special federal reception centres.⁵⁷⁹ 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.⁵⁸⁰ As of 21 January 2021, there were still 200 unaccompanied children accommodated in the federal reception centres.⁵⁸¹ The situation deteriorated in 2021 resulting in 700 unaccompanied minors being placed in inadequate housing in federal reception facilities due to the reluctance of provinces to take over these children into basic care. This was largely motivated by the fact that the Ministry refused to increase funding for housing in the provinces. The situation continued in 2022 with 1,200 UAM accommodated in inadequate federal reception centres due to the reluctance of the provinces to take over the minors, as their accommodation cost are even higher than other asylum seekers. Unaccompanied minors are the only group for which the Ministry has not raised the financial resources for basic care at the time of writing and is still the same⁵⁸² in 2023. Per 2 January 2024 500 UAM⁵⁸² were accommodated in federal reception centres. As mentioned in the introductory chapter, willingness to increase the maximum cost rates for vulnerable groups (including unaccompanied minors) was expressed, but no decision has yet been taken.

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 2020,⁵⁸³ whereas 228 missing children with non-EU-citizenship were registered in the SIS II, of whom 61 were under 14 years old.⁵⁸⁴ 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.⁵⁸⁵ In 2022 and 2023, this worsened: around 95% (2022: 88.5%) of the UAM who applied for asylum absconded.⁵⁸⁶

⁵⁷⁷ Information provided by the Ministry of Interior, 26 January 2018.

⁵⁷⁸ Information of the Basic care system, unpublished.

⁵⁷⁹ 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.

⁵⁸⁰ Asylkoordination österreich, 'asylkoordination fordert Einhaltung der Kinderrechte', 20 November 2020, available in German at: <https://bit.ly/2LYQ3oG>.

⁵⁸¹ Ministry of Interior, *Answer to parliamentary request 3337/AB XXVII. GP*, 11. November 2020, available in German at: <https://bit.ly/2NAkD8E>.

⁵⁸² Information of the Basic care system, unpublished.

⁵⁸³ Asylkoordination österreich, 'asylkoordination fordert Einhaltung der Kinderrechte', 20 November 2020, available in German at: <https://bit.ly/2LYQ3oG>.

⁵⁸⁴ FRA, *Migration Bulletin 4*, 6 November 2020, available at: <https://bit.ly/3qswRhX>, 28

⁵⁸⁵ Ministry of Interior, *Answer to parliamentary request 9406/AB XXVII. GP*, 28 March 2021, available in German at: <https://bit.ly/3v4E2AE>.

⁵⁸⁶ Ministry of Interior, *BFA-Detailstatistik 2023*, available in German at: <https://shorturl.at/4umnj>.

1.2. Reception of unaccompanied children at federal province level

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.⁵⁸⁷ Media reports raised important attention to the fact that no authority is appointed as legal guardian for unaccompanied minors during the admissibility procedure.⁵⁸⁸ The government programme issued in January 2020 includes a plan to better ensure the protection of unaccompanied minors in the admissibility procedure,⁵⁸⁹ but this was still not implemented as of March 2023 and is not likely to happen before the next general elections in 2024.

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.⁵⁹⁰

The number of unaccompanied children, including asylum seekers, rejected asylum seekers and persons with a protection status, receiving Basic Care on 31 December 2023 was as follows:

Unaccompanied children receiving Basic Care: 31 December 2023		
Federal province	Total Basic Care recipients	Unaccompanied children
Vienna	31,574	542
Upper Austria	7,973	144
Lower Austria	10,608	136
Styria	8,979	210
Tyrol	5,132	140
Carinthia	2,330	66
Salzburg	2,806	77
Vorarlberg	3,276	64
Burgenland	2,380	44
Initial reception centres (EAST)	3,772	542
Total	78,830	1,879

Source: Ministry of Interior, GVS Statistics 2 January 2024 (unpublished).

⁵⁸⁷ 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 provinces is not available.

⁵⁸⁸ Der Standard, 'Die Hälfte der unbegleiteten Flüchtlingskinder in Österreich verschwindet', 6 February 2020, available in German at: <https://bit.ly/3bdzoEL>.

⁵⁸⁹ Government program 2020-2024, available in German at: <https://bit.ly/2wDq0eL>, 197.

⁵⁹⁰ 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>.

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.⁵⁹¹

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.⁵⁹²

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.⁵⁹³ 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.

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.⁵⁹⁴ 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.⁵⁹⁵

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. Therefore, minors were sometimes found in a

⁵⁹¹ NGO UMF exchange meeting asylkoordination österreich, unpublished.

⁵⁹² NGO UMF exchange meeting asylkoordination österreich, unpublished.

⁵⁹³ Oberösterreichischer Landesrechnungshof, June 2017, available in German at: <https://bit.ly/2SyZLzZ>.

⁵⁹⁴ Art. 7 Tyrolean Basic Care Act (*Tiroler Grundversorgungsgesetz*).

⁵⁹⁵ Asylkoordination/UNICEF, *Dreimal in der Woche weinen, viermal in der Woche glücklich sein*, 2019, available in German at: <https://bit.ly/33cWHvs>.

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.⁵⁹⁶

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.⁵⁹⁷

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 21.⁵⁹⁸

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.⁵⁹⁹

Some NGOs in **Vienna** (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.⁶⁰⁰

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.⁶⁰¹

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,

⁵⁹⁶ Ibid.

⁵⁹⁷ Federal Chancellery, „Expertenrat für Integration: Corona-Krise verschärft Integrationsprobleme“, 13 August 2020, available in German at: <https://bit.ly/3qXOXaZ>.

⁵⁹⁸ Der Standard, 'Fremdbetreuung: Jugendliche, die (zu) früh erwachsen werden müssen', 17 February 2023, available in German at: <https://bit.ly/3xVMaZ4>; Kinder- und Jugendanwaltschaft Wien, "*Über den Bedarf eines Gesamtkonzepts für junge Erwachsene in der Wohnungslosenhilfe*", March 2021, available in German at: <https://bit.ly/3y99J0A>.

⁵⁹⁹ Ombudsman board, *Special report on childrens' rights*, 2017, available in German at: <https://bit.ly/3cQhEkx>.

⁶⁰⁰ NGO exchange meeting asylkoordination österreich; Tralalobe, '18+ Wohngemeinschaften', available in German at: <https://bit.ly/3y35TGv>.

⁶⁰¹ asylkoordination österreich, Nationwide NGO survey on basic services Dec 21/Jan 22, unpublished.

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.⁶⁰²

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 € 95.⁶⁰³ 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. The minimum standards (chapters 6 and 7) for the accommodation of asylum seekers stipulate that women with children must be accommodated in separate rooms and bathrooms and toilets must be physically separated for men and women.⁶⁰⁴

Some specialised reception facilities for single women are run by NGOs.⁶⁰⁵ 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.⁶⁰⁶ As regards family members who arrived through a **Family Reunification** scheme and receive Basic Care as asylum seekers, there is no satisfactory solution in practice in case with the holder of the refugee status does not have a suitable private flat. The family may be separated until the status is granted, because recognised refugees can no longer live in the Basic Care centre. It is also problematic that provinces such as **Styria** refrain from granting any basic care to asylum seekers in the family reunification process.

There are only a few reception facilities with more than 80 or 100 places, while most of the other larger facilities are run by NGOs in **Vienna**. In Tyrol, there are two facilities with up to 300 places. Hostels and inns have between 20 and 40 places. As a consequence, single women are not always separated from single men, e.g. separate floor, but the rooms are separate and 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.

⁶⁰² Unpublished survey. These 40 reception centres took care of 924 unaccompanied asylum-seeking children.

⁶⁰³ Verordnung der Steiermärkischen Landesregierung vom 27. Oktober 2016, mit der das Steiermärkische Grundversorgungsgesetz durchgeführt wird (StGVG-DVO), available in German at: <http://bit.ly/2EKGW22>.

⁶⁰⁴ *Mindeststandards betreffend die Unterbringung in der Grundversorgung in Österreich*, 2014, available in German at: <https://bit.ly/4aWHb97>.

⁶⁰⁵ Such as Caritas Styria, available in German at: <https://bit.ly/3aQs4yG> and Tralalobe, 'Tralalobe Haus der Frauen Hollabrunn', available in German at: <https://bit.ly/3UIx4zl>.

⁶⁰⁶ 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.

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 centre 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.⁶⁰⁷ 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 BBU Gmbh is responsible for the care of the asylum seekers⁶⁰⁸.

3.2. Centres at provincial level

The criteria taken into consideration by all federal states to provide special care (*Erhöhter Betreuungsbedarf – EBB*) include:⁶⁰⁹

- ❖ 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 programme.

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.⁶¹⁰

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.

⁶⁰⁷ Information provided by the Ministry of Interior, 26 January 2018.

⁶⁰⁸ NGO exchange meeting asylkoordination österreich, unpublished.

⁶⁰⁹ These criteria are based on the so-called KOORAT resolution 74-2008, which is not publicly available.

⁶¹⁰ asylkoordination österreich, Nationwide NGO survey on basic services Dec 21/Jan 22, unpublished.

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 ⁶¹¹	Capacity
Vienna	€ 48 special care € 104 special care stabilisation Real cost accounting	1,25:10 1:1-3 Psychologists, nurses	Around 300 + 25 extra places for stabilisation
Lower Austria	€ 40.50 - € 48	care key and specifications unclear	Around 40-80 places
Upper Austria	€ 25 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	€ 25 surcharge possible, between +€ 10 to € 20, max. € 40	No defined care ratio	Around 60 places
Styria	€ 48	care ratio and specifications not defined	Around 60 places
Carinthia	€ 48	care ratio and specifications defined	Around 5-10 places
Salzburg	€ 48	care ratio and specifications defined	single places unclear how many
Tyrol	€ 48	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: Source: asylkoordination österreich, Kompetenz Netzwerk Asyl, available in German at: <https://bit.ly/3Lrcwaa>.

The daily rate of increased care varies in the federal provinces. Organisations providing reception receive a maximum € 48 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,

⁶¹¹ Care ratio: ratio social workers per clients (asylum seekers accommodated).

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 € 104, 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.⁶¹²

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.⁶¹³

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.⁶¹⁴

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 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.⁶¹⁵

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 because there is not enough professional staff– 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 the NGO Tralalobe.⁶¹⁶

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

⁶¹² NGO exchange meeting, asylkoordination österreich, unpublished.

⁶¹³ asylkoordination österreich, Nationwide NGO survey on basic services Dec 21/Jan 22, unpublished.

⁶¹⁴ NGO exchange meeting, asylkoordination österreich, unpublished.

⁶¹⁵ NGO exchange meeting, asylkoordination österreich, unpublished.

⁶¹⁶ Projekt Tralalobe, available in German at: <https://bit.ly/33inkUk>.

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 non profit 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 60 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 accommodate individuals with special needs in Burgenland.⁶¹⁷

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".⁶¹⁸

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.⁶¹⁹

In **Vienna**, there are mobile teams of psychologists (Caritas MIT Team⁶²⁰, Fem Süd, NEDA⁶²¹) 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 centres.
- ❖ FEM Süd NEDA offers gender and culturally sensitive services for people in primary care with mental health problems. In the NEDA project, clinical-psychological or psychotherapeutic counselling, as well as psychoeducation workshops for women and men with refugee experience in primary care are offered in the respective first languages. These services are provided at the three locations of the health centres FEM, FEM South and MEN,⁶²² 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.

⁶¹⁷ asylkoordination Österreich, 'Kompetenznetzwerk Grundversorgung', last modified 17 March 2024, available in German at: <https://bit.ly/3xUv51G>.

⁶¹⁸ asylkoordination österreich, Nationwide NGO survey on basic services Dec 21/Jan 22, unpublished.

⁶¹⁹ Diakonie Flüchtlingsdienst, AMIKE Telephone counselling service, available in German at: <https://bit.ly/3GJV2Qh>.

⁶²⁰ Caritas Vienna, Information on psychosocial counselling services, available in German at: <https://bit.ly/3oOpHpv>.

⁶²¹ FEM, Projekt NEDA, available in German at: <https://bit.ly/3uNurzN/>.

⁶²² FEM (Womens' Health Centre Frauen Eltern Mädchen), MEN (Mens' Health Centre).

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.⁶²³

F. Information for asylum seekers and access to reception centres

The information leaflets in the initial reception centre provide brief information on rights and obligations with regard to reception conditions, e.g. the possibility and obligation to visit a doctor, the possibility to contact UNHCR, the obligation to declare resources or sources of income, the restricted movement and the meaning of the different documents (such as the green card). Information leaflets are available in most of the languages spoken by asylum seekers.

The residence restriction applicable since 1 November 2017 is notified in writing in all federal provinces. Asylum seekers are required to sign the notice (see [Freedom of Movement](#)). NGOs and private operators have produced information sheets in a wide range of languages. There have been a number of cases where asylum seekers have been sanctioned for violating their residence restrictions, including in cases where the concerned person was visiting friends in Vienna and did not change their residence. Apart from Vienna and Lower Austria, the residence restriction is of little relevance.

In the reception centres, asylum seekers are provided information about the house rules, as well as on their duties and the possible subsequent sanctions.⁶²⁴ The house rules in the reception centres of **Styria**, for example, are available at the digital federal legal information system RIS (*Rechtsinformationssystem*).⁶²⁵ 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**,⁶²⁶ and **Salzburg**,⁶²⁷ 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.⁶²⁸ Advice from social workers is included in the reception provisions laid down by law. Social advisers visit reception centres on a regular basis, but have to fulfil at the same time administrative tasks such as handing over the monthly pocket money or the vouchers for clothes and school material. Organisations providing social advice usually also have departments for legal advice to asylum seekers.

Asylum seekers living in rented flats have to go to the offices of the social advice organisations. The current system of provision of information is not satisfactory, as there is only one social worker responsible for 170 asylum seekers. This means that the quality of the services provided by social workers is low in practice. Furthermore, there are considerable differences from one federal province to another: one social worker is responsible for 50 asylum seekers in Vorarlberg and for 70 asylum seekers in Vienna. Moreover, reception centres located in remote areas cannot be visited very often by social workers due to insufficient funding.

⁶²³ asylkoordination österreich; Nationwide NGO survey on basic services Dec 21/Jan 22/Jan 23, unpublished.

⁶²⁴ Stmk. Grundversorgungsgesetz-Durchführungsverordnung, available in German at: <https://bit.ly/2CfJ2rs>.

⁶²⁵ House rules of the reception centre of Styria, available in German at: <https://bit.ly/3cvM23j>.

⁶²⁶ City of Vienna, *Grundversorgung Wien*, available at: <http://bit.ly/1YqTAVV>. The Basic Care brochure for Lower Austria is available in 16 languages.

⁶²⁷ Province of Salzburg, *Grundversorgung*; available at <http://bit.ly/1UKUkol>.

⁶²⁸ Fonds Soziales Wien, *Wiener Grundversorgung. Die Beratungsstellen*, available at: <http://bit.ly/1cz0cQP>.

As a consequence, many volunteers and communities help asylum seekers, for example by sharing information via social networks.⁶²⁹ Although their number has reduced in recent years, volunteers are still active in 2023 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.⁶³⁰

G. 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.⁶³¹ 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.⁶³²

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.

H. 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.⁶³³ This is still being applied in practice as of March 2024.

⁶²⁹ E.g. information about accommodation: <http://asylwohnung.at/faq/>.

⁶³⁰ See for example: NGO fairness asyl, available at: <http://www.fairness-asyl.at/>; Plattform #sichersein, available at: <https://www.sichersein.at/>.

⁶³¹ BGBl. II Nr. 2005/2 and 2008/146.

⁶³² Article 31 AsylG; Article 63 AsylG.

⁶³³ Freiheitlicher Klub im Landtag, „Illegalen-Lüge in NÖ – Landesrat Waldhäusl zieht die Konsequenzen“, 27 April 2018, available in German at: <https://bit.ly/3343CY5>.

Asylum seekers who have not complied voluntarily within the 14-day deadline will receive an order from the BFA to go to a return centre. Currently, there is a centre at the airport in **Vienna / Schwechat** as well as in **Tyrol / Fieberbrunn** and both centres are run by the Ministry of the Interior. Increased return counselling are carried out in these centres. The establishment of the BBU will further increase return counselling.

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.⁶³⁴

⁶³⁴ asylkoordination österreich, Nationwide NGO survey on basic services Dec 21/Jan 22, unpublished.

Detention of Asylum Seekers

A. General

Indicators: General Information on Detention

2. Total number of persons detained in 2023:	3,998
3. Number of persons in detention as of 1 September 2023: ⁶³⁵	233
4. Number of detention centres:	15
5. Total capacity of detention centres:	1,203

A total of 3,998 (2022: 3,700, 2021: 4,023) people were detained on immigration-related grounds throughout 2023 but there is no public data available on how many of them are asylum seekers or how many persons applied for asylum during detention.⁶³⁶ During 2023, 7 unaccompanied minors were held in detention.⁶³⁷ The average time of detention of minors was 9.8 days. However, in most cases, rejected asylum seekers are arrested 48 hours prior to deportation. This is not counted as formal detention prior to deportation, and 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 **Rosauer Lände** are designated for the sole purpose of pre-removal detention. The maximum total capacity of these three centres amounts to 667.⁶³⁸

In practice, asylum seekers are subject to detention mainly under Dublin procedures as well as *de facto* detention in the airport procedure. Persons who submit a subsequent asylum application are often detained as well. If a person applies for asylum while in detention, they may be detained during the admissibility procedure.

When asylum seekers are detained, the personal interview examining their application is held in the detention centre. Interpreters are present and legal representatives have to be summoned to the interview. The BFA may also order to bring the asylum seeker to the BFA for the interview. A person of confidence has the right to be present at the interview of an asylum seeker. If the asylum application is processed as an inadmissible application a legal advisor has to counsel the asylum seeker before the interview and has to be present at the interview.

⁶³⁵ Ministry of Interior, *answer to parliamentary request 15846/AB XXVII. GP*, 21 November 2024, available in German at <https://shorturl.at/7WvSU>.

⁶³⁶ Ministry of Interior, *answer to parliamentary request 17451/AB XXVII. GP*, 26 April November 2024, available in German at <https://shorturl.at/5mYEs>.

⁶³⁷ Ministry of Interior, *answer to parliamentary request 17166/AB XXVII. GP*, 29 March 2024, available in German at <https://shorturl.at/KGBok>.

⁶³⁸ Ministry of Interior, *answer to parliamentary request 15846/AB XXVII. GP*, 21 November 2024, available in German at <https://shorturl.at/7WvSU>.

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.⁶³⁹ This detention period reaches up to 1 week in the context of the border procedure, as asylum seekers are de facto detained in the airport facility.⁶⁴⁰

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:⁶⁴¹

1. The person has avoided or hampered a deportation order;
 - 1a. The person has not complied with the obligation to obtain a travel document for their removal;⁶⁴²
2. The person has violated a travel ban;
3. An enforceable expulsion order exists and the person has absconded during the asylum procedure or during the removal procedure;
4. The person makes a subsequent application without right to remain;
5. The person is in pre-deportation detention at the time they lodge the application;
6. It is likely that another country is responsible under the Dublin Regulation, namely as the person has lodged multiple applications, tried to travel to another member state, or it can be assumed that, based on past behaviour they intend 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;⁶⁴³
9. There is a sufficient link with Austria such as family relations, sufficient resources or secured residence.

⁶³⁹ Article 40 AsylG.

⁶⁴⁰ Article 33 AsylG.

⁶⁴¹ Article 76(3) FPG.

⁶⁴² Article 76(3)(1a) FPG, in force as of 1 November 2017, citing Article 46(2)-(2a) FPG.

⁶⁴³ Article 76(3)(8) FPG, in force as of 1 November 2017.

The FPG does not refer to a “serious” risk of absconding in line with Article 28(2) of the Dublin III Regulation. However, the long list of criteria in Article 76(3) is non-exhaustive, thereby unduly granting the authorities the discretion to identify a “risk of absconding” and to proceed to detention.

The law foresees three different grounds for detention: While § 76 Abs 1 and 2 FPG are applied in cases where detention is deemed necessary to secure the asylum and return decision proceedings in cases of threats to public security (Abs 1) or to secure return decision proceedings or deportation (Abs 2), § 76 Abs 3 foresees detention in Dublin cases when the conditions of Art 28 (1) and (2) of the Dublin directive are met.

§ 76/2 (1) and (2)		§ 76/2 (3)	
Country	Persons detained	Country	Persons detained
Romania	214	Bangladesh	100
Serbia	192	Morocco	70
Slovakia	134	Afghanistan	69
India	121	Pakistan	58
Nigeria	98	Syria	56
Georgia	89	Algeria	55
Bulgaria	65	Türkiye	49
Albania	63	Russian Federation	39
Poland	62	Tunisia	27
Bosnia	56	Georgia	26
Other	604	Other	247
Total	1,698	Total	796

Source: Data referring to **Jan-Aug 2023**; Ministry of Interior, *answer to parliamentary request 15846/AB XXVII. GP*, 21 November April 2023, available in German at: <https://shorturl.at/Ng89b>.

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.⁶⁴⁴

In the detention centres of **Vordernberg** and **Vienna**, the numbers of detentions doubled in 2017 and further increased in 2018.⁶⁴⁵ 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).⁶⁴⁶ In 2023, 79% of all deportation detainees were nationals from EU member states and Balkan countries (excluding Dublin transfers).⁶⁴⁷

⁶⁴⁴ Report from Diakonie Flüchtlingsdienst to asylkoordination österreich, November 2023.

⁶⁴⁵ Ministry of Interior, *Answer to a parliamentary request*, 15 November 2018, available in German at: <https://bit.ly/2tPKUm6>.

⁶⁴⁶ Ministry of Interior, *Answer to a parliamentary request*, 4901/AB XXVII. GP, 12 March 2021, available in German at: <https://bit.ly/2P4ioeu>.

⁶⁴⁷ Ministry of Interior, *BFA-Detailstatistik 2023*, available in German at: <https://shorturl.at/9XfUQ>.

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.⁶⁴⁸ 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.⁶⁴⁹ 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.⁶⁵⁰ 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 VwGH⁶⁵¹ and the Constitutional Court (VfGH).⁶⁵²

In airport procedures, entry to the territory is denied and applicants are ordered to stay in a specific area of the airport designated as EAST. The entry to the territory has to be allowed as soon as a rejection of the application does not seem probable anymore. If a rejection seems probable the authorities can secure the rejection of the application by not letting the applicant access the territory for a maximum of six weeks.⁶⁵³ 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.⁶⁵⁴ 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.⁶⁵⁵ Recent observations confirmed that this was still the case in 2020-2023 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

⁶⁴⁸ Article 76(2) FPG.

⁶⁴⁹ Article 76(2a) FPG, in force as of 1 November 2017, citing Articles 2 and 28 Dublin III Regulation.

⁶⁵⁰ Article 80(6) FPG.

⁶⁵¹ VwGH, Decision Ra 2013/21/0008, 2 August 2013.

⁶⁵² See e.g. VfGH, Decision B1447/10, 20 September 2011.

⁶⁵³ Article 32 AsylG.

⁶⁵⁴ Article 13 FPG-DV.

⁶⁵⁵ 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.

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.⁶⁵⁶

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 2018.⁶⁵⁷ 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.⁶⁵⁸ There is no data on how many the different alternatives were applied.⁶⁵⁹ From January to end of August 2023, in 228 (whole of 2022: 634) cases alternatives to detention were applied, in 12 (whole of 2022: 19) cases the persons concerned were minors.⁶⁶⁰

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. In the first 8 months of 2023, 7 persons were apprehended and accommodated in this facility.⁶⁶¹

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 / apprehended (see above, [Grounds for detention](#)) 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 14.⁶⁶² In 2023, seven unaccompanied minors were detained for an average time of 9.8 days (2022: 11.6).⁶⁶³

⁶⁵⁶ Article 77(4) FPG.

⁶⁵⁷ Ministry of Interior, *Parliamentary request*, 9 September 2018, available in German at: <https://bit.ly/2SGqZQr>.

⁶⁵⁸ Ministry of Interior, *Answer to a parliamentary request, 9405/AB XXVII. GP*, 28 March 2022, available in German at: <https://bit.ly/3KbaS9k>.

⁶⁵⁹ Ministry of Interior, *Answer to a parliamentary request, 4901/AB XXVII. GP*, 12 March 2021, available in German at: <https://bit.ly/2P4ioeu>.

⁶⁶⁰ Ministry of Interior, *Answer to parliamentary request 13976/AB XXVII. GP*, 28 April 2023, available in German at <https://bit.ly/425y8xW>; Ministry of Interior, *Answer to parliamentary request 15846/AB, XXVII. GP*, 21 November 2024, available in German at: <https://shorturl.at/Ng89b>.

⁶⁶¹ Ministry of Interior, *Answer to parliamentary request 15846/AB, XXVII. GP*, 21 November 2024, available in German at: <https://shorturl.at/Ng89b>.

⁶⁶² Article 77(1) FPG.

⁶⁶³ Ministry of Interior, *Answer to parliamentary request 13098/AB XXVII. GP*, 9 March 2023, available in German at <https://bit.ly/3ABQ7Aq>; Ministry of Interior, *Answer to parliamentary request 15846/AB, XXVII. GP*, 21 November 2024, available in German at: <https://shorturl.at/Ng89b>.

Unaccompanied or separated children who are awaiting or undergoing age assessment are not detained, but accommodated at the UAM reception centres of the BBU.

4. Duration of detention

Indicators: Duration of Detention

1. What is the maximum detention period set in the law (incl. extensions):	18 months
2. In practice, how long in average are asylum seekers detained?	Not available

Detention should be as short as possible,⁶⁶⁴ and cannot exceed 6 months for adults,⁶⁶⁵ and 3 months for children over the age of 14.⁶⁶⁶ 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.⁶⁶⁷ As regards asylum seekers, detention should generally not last longer than 4 weeks following the final decision on the application.⁶⁶⁸

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.⁶⁶⁹ 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.⁶⁷⁰ As of September 2023, the average time overall was 29 days (2022: 32.8 days), while specific data on the average detention time of asylum seekers is not available.⁶⁷¹

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.⁶⁷²

At the start of 2023, applicants with the prospect of being returned to Italy via Dublin directive were kept in detention as the BFA assumed that Italy would change its policy of not taking back Dublin returnees. At the end of 2023, possible Dublin returnees to Italy were released after a short time as Italy has not changed its policy.⁶⁷³

⁶⁶⁴ Article 80(1) FPG.

⁶⁶⁵ Article 80(2)(2) FPG.

⁶⁶⁶ Article 80(2)(1) FPG.

⁶⁶⁷ Article 80(4) FPG.

⁶⁶⁸ Article 80(5) FPG.

⁶⁶⁹ Ministry of Interior, *Answer to a parliamentary request 4023/AB XXVI GP*, 16 August 2019, available in German at: <https://bit.ly/39jKNIW>.

⁶⁷⁰ Ministry of Interior, *Answer to a parliamentary request, 4901/AB XXVII. GP*, 12 March 2021, available in German at: <https://bit.ly/2P4ioeu>

⁶⁷¹ Ministry of Interior, *answer to parliamentary request 13976/AB XXVII. GP*, 28 April 2023, available in German at <https://bit.ly/425y8xW>; Ministry of Interior, *Answer to parliamentary request 15846/AB, XXVII. GP*, 21 November 2023, available in German at: <https://shorturl.at/Ng89b>.

⁶⁷² Report from NGOs to asylkoordination österreich.

⁶⁷³ Reports from Diakonie Flüchtlingsdienst and BBU GmbH to asylkoordination österreich, December 2023.

C. Detention conditions

1. Place of detention

Indicators: Place of Detention

1. Does the law allow for asylum seekers to be detained in prisons for the purpose of the asylum procedure (i.e. not as a result of criminal charges)? Yes No
2. If so, are asylum seekers ever detained in practice in prisons for the purpose of the asylum procedure? Yes No

The detention centres operating in 2021 and 2022 were as follows:

Total number of detainees in the main detention centres: 2021-2022			
Centre	2021	2022	Jan-Aug 2023
Vordernberg Immigration Detention Centre	1,195	N/A	77
Vienna Roßauer Lände	835	639	258
Vienna Hernalser Gürtel	2,721	2496	1,585
Zinnergasse	7	5	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>; Ministry of Interior, *answer to parliamentary request 13976/AB XXVII. GP*, 28 April 2023, available in German at <https://bit.ly/425y8x>; ; Ministry of Interior, *Answer to parliamentary request 15846/AB, XXVII. GP*, 21 November 2024, available in German at: <https://shorturl.at/Ng89b>.

Furthermore, other police facilities (PAZ) that have previously been used as detention places are now used for arrest for a period not exceeding 7 days.

The detention centre in **Vordernberg**, established in January 2014, allows detainees to stay outside 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.⁶⁷⁴ The Minister of Interior explained in response to a parliamentary request that G4S's task is to assist the police.⁶⁷⁵ 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.⁶⁷⁶

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

⁶⁷⁴ Der Standard, *Securitys auf Rundgang in der neuen Schubhaft*, 2 April 2014, available at: <http://bit.ly/1dgpJ1Y>.

⁶⁷⁵ 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.")

⁶⁷⁶ 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>.

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.⁶⁷⁷

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 2020.⁶⁷⁸ 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 2020.⁶⁷⁹ In total, 97 persons were *de facto* detained in the facility in 2020.⁶⁸⁰ In 2021, a total of 256 persons were *de facto* detained at the airport facility in 2021.⁶⁸¹ Data for 2022 and 2023 is not available.

D. Conditions in detention facilities

Indicators: Conditions in Detention Facilities

- | | | |
|---|---|--|
| 1. Do detainees have access to health care in practice? | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| ❖ If yes, is it limited to emergency health care? | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |

There were still important differences between the different detention facilities in 2023. 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. There are very few allegations on mistreatment but serious and well-founded complaints about the bad material conditions in the Viennese detention facilities. In its report presented in 2023 following a visit in 2021, the CPT stated that the accommodation and communal areas were “in an appalling state of repair with corridors, cells and their sanitary annexes dilapidated and dirty.” The atmosphere is described as “very carceral and oppressive” and as “not suitable for holding foreign nationals in Schubhaft for prolonged periods.”⁶⁸² As of the end of 2023, 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 2018.⁶⁸³

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 offer legal counselling for detainees who also have to undergo return counselling by another department of the BBU

⁶⁷⁷ Sonja Jell, ‘Alternative zur Schubhaft’, Öffentliche Sicherheit 5-6/12, available at: <http://bit.ly/2klLKVq>.

⁶⁷⁸ Der Standard, ‘Aus für Caritas-Flüchtlingsbetreuung am Flughafen’, 13 January 2017, available in German at: <http://bit.ly/2kxmmsn>.

⁶⁷⁹ Ministry of Interior, *Answer to parliamentary request, 4244/AB, XXVII. GP.*, 18 January 2021, available in German at: <https://bit.ly/3uO5npL>.

⁶⁸⁰ Ministry of Interior, *Answer to a parliamentary request, 4901/AB XXVII. GP.*, 12 March 2021, available in German at: <https://bit.ly/2P4ioeu>

⁶⁸¹ Ministry of Interior, *Answer to a parliamentary request, 9405/AB XXVII. GP.*, 28 March 2022, available in German at: <https://bit.ly/3uBDAed>.

⁶⁸² CPT, *Report on periodic visit 2021*, June 2023, <https://shorturl.at/ca3jN>.

⁶⁸³ 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>.

GmbH. NGOs receive no funding and are not regularly present in detention centres. UNHCR is not regularly present in detention centres.⁶⁸⁴

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.⁶⁸⁵

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 centre. 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.⁶⁸⁶ The AOB (NPM) has further criticised the fact that medical treatment is not provided immediately in cases of mental illness or suicide risk.⁶⁸⁷

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 establishing single cells, providing adequate access to medical care, ensuring adequate detention conditions (e.g. natural light, ventilation, hygienic measures, visits etc.)⁶⁸⁸ These recommendations had not been implemented as of 2023. There are no signs that any reform in the area of detention of foreigners is planned in the new future.

E. Access to detention facilities

Indicators: Access to Detention Facilities

1. Is access to detention centres allowed to

- | | | | |
|-------------------|---|---|-----------------------------|
| ❖ Lawyers: | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> Limited | <input type="checkbox"/> No |
| ❖ NGOs: | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> Limited | <input type="checkbox"/> No |
| ❖ UNHCR: | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> Limited | <input type="checkbox"/> No |
| ❖ Family members: | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> Limited | <input type="checkbox"/> No |

UNHCR has access to asylum seekers without restrictions, while lawyers can visit their clients during working hours in a special visitor room. NGOs have access if they have obtained authorisation to act as legal representative 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,

⁶⁸⁴ Reports to asylkoordination by UNHCR, NGOs and BBU GmbH in January 2024, not published.

⁶⁸⁵ Fundamental Rights Agency, *Migration Bulletin 4*, November 2020, <https://bit.ly/3qmLzXa>.

⁶⁸⁶ Report from Diakonie Flüchtlingsdienst and Deserteurs- und Flüchtlingsberatung to asylkoordination österreich March 2023

⁶⁸⁷ Volksanwaltschaft, Menschenrechtsbeirat, "Medizinische Versorgung von Verwaltungshäftlingen", available in German at <https://shorturl.at/atmr1>.

⁶⁸⁸ AOB, Annual Report 2017, available at: <https://bit.ly/2SLaenu>.

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.⁶⁸⁹

F. Procedural safeguards

Indicators: Judicial Review of Detention

- | | | |
|---|---|-----------------------------|
| 1. Is there an automatic review of the lawfulness of detention? | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| 2. If yes, at what interval is the detention order reviewed? ⁶⁹⁰ | 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.⁶⁹¹ 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.

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.

Detention is ordered by the BFA. The BFA has to review the lawfulness of detention every 4 weeks.⁶⁹² After 4 months, the Federal Administrative Court (BVwG) must review the lawfulness of detention *ex officio*.⁶⁹³

There is further a possibility to submit an appeal to the BVwG against a detention order, which is not subject to any time limits. The BVwG has to decide on the lawfulness of the detention order on the basis of the appeal of the asylum seeker and must determine whether reasons for continuation of detention existed at the time of the decision.⁶⁹⁴

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).⁶⁹⁵

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.⁶⁹⁶ In case the appeal is rejected, there is a possibility to submit an appeal to the VfGH 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.⁶⁹⁷ In 2022, the Republic of Austria acknowledged 79 (2021: 75) compensation claims and paid a total compensation of € 185,819 (2021: € 132,287) for unlawful

⁶⁸⁹ Reports to asylkoordination by Church representatives, December 2023.

⁶⁹⁰ This refers to judicial review of detention conducted by the BVwG. The BFA reviews detention every 4 weeks.

⁶⁹¹ Article 76(3) FPG.

⁶⁹² Article 80 (6) FPG.

⁶⁹³ Article 22a (4) BFA-VG.

⁶⁹⁴ Article 22a (1) BFA-VG.

⁶⁹⁵ Article 22a(3) BFA-VG.

⁶⁹⁶ There is no legal provision that regulates the amount of compensation; in the past, there were some civil court cases in which an amount of € 100,00 were found to be justified (e.g. 25.03.2003 - LG f ZRS Wien 32 Cg 13/01v).

⁶⁹⁷ VfGH, Decision E4/2014-11, 26 June 2014.

detention.⁶⁹⁸ As of September 2023, in 50 cases compensations claims amounting to a total compensation of € 121,219 were accepted.⁶⁹⁹

Since the implementation of the Return Directive, legal safeguards for persons in detention have improved. The state led agency BBU GmbH has taken over counselling in detention centres since 31 December 2020. The contracts between the Ministry of Interior and NGOs have not been prolonged, leading to a blackbox-situation with no civil society oversight in detention centres. There has been an exchange between NGOs offering free legal counselling and BBU GmbH in 2021 on general matters. There are no reports that the counselling service by BBU GmbH has deteriorated yet. In 2022, several NGOs reported that there is an obvious need for social counselling in the deportation centres as the BBU GmbH has a very limited scope of counselling by law.

G. 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.⁷⁰⁰ 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.⁷⁰¹

A legal adviser shall be appointed according to Articles 51-52 BFA-VG in return procedures, detention and apprehension orders.⁷⁰² However, the right to receive legal advice for people benefiting from alternatives to imprisonment was abolished on 1 January 2014.

Legal advisers can meet their clients in the visitors' room during office hours. Appointed legal advisers have to arrange for an interpreter.

The High Administrative Court ruled in 2023 that in ex officio detention review court sessions the detainee has a right to be represented by BBU GmbH and therefore the legal representation has to be summoned by court.⁷⁰³

H. Differential treatment of specific nationalities in detention

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

⁶⁹⁸ Ministry of Interior, *answer to parliamentary request 13976/AB XXVII. GP*, 28 April 2023, available in German at <https://bit.ly/425y8xW>.

⁶⁹⁹ Ministry of Interior, *Answer to parliamentary request 15846/AB, XXVII. GP*, 21 November 2024, available in German at: <https://shorturl.at/Ng89b>.

⁷⁰⁰ Article 52(2) BVA-VG.

⁷⁰¹ VwGH, Decision No Ra 2016/21/0152, 23 February 2017.

⁷⁰² VfGH, Decision E4/2014-11, 26 June 2014.

⁷⁰³ VwGH 02 March 2023, Ro 2021/21/0007, VwGH 02.03.2023, Ra 2021/21/0137.

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.⁷⁰⁴ If the situation in the country of origin has not changed and the protection status remains thus necessary, it is prolonged to an unlimited residence permit *ex officio*. If the country-of-origin information (COI) indicates that the refugee may return safely, the **Cessation** procedure may start.⁷⁰⁵

Persons with **subsidiary protection** status get a residence permit valid for one year.⁷⁰⁶ Renewal of the residence permit has to be applied for before the BFA. If protection needs continue to exist, the residence permit is prolonged for two additional years.⁷⁰⁷

A residence permit extension request must be made prior to the expiration of the current residence permit (at most three months before). Until the decision on the extension application is made, the stay in Austria remains legal if the extension request was made prior to expiration, even if the previous residence permit has already expired.⁷⁰⁸

If a beneficiary of subsidiary protection files the request for an extension after the current residence permit has expired, there is no consequence for the validity of the status of subsidiary protection. However, it interrupts the period of legal residence which is a precondition e.g. to acquire the status of EU-Daueraufenthalt (EU permanent status).

The renewal of residence permits can take time, but the right to remain exists until the BFA decides on an application for renewal. Subsidiary protection status used to be prolonged without conducting an interview, but this practice changed in 2018. As the BFA is now paying particular attention to withdrawal procedures, renewal proceedings are lengthy and might result in a negative decision in first instance (see **Cessation and review of protection status**). The lack of valid documentation pending renewal further has a negative impact on access to housing and the labour market as counselling organisations such as Diakonie Flüchtlingsdienst or Deserteurs- und Flüchtlingsberatung report. The renewal has to be applied before for the right to remain expires but should not be applied for more than three months before that date. If the application is not submitted in time, the stay becomes illegal. This may result in a longer waiting period for the long-term residence permit.

2. Civil registration

Registration of childbirth takes place at the district administrative or municipal authority. This is done directly by state hospitals as soon as a child is born. If the parents of the new-born are not married, or if the husband is not the father, an affidavit is required from the biological father to recognise paternity. Both parents are given joint custody of the child if they are married; if not, custody is granted to the mother unless the parents decide on joint custody.

⁷⁰⁴ Article 3(4) AsylG.

⁷⁰⁵ *Ibid.*

⁷⁰⁶ Article 8(4) AsylG.

⁷⁰⁷ *Ibid.*

⁷⁰⁸ Article 8 (4) AsylG.

As regards marriage registration, the Register must determine the capacity of the future spouses to enter into marriage during a hearing, on the basis of the documents submitted. These include: an official identification document with a photograph; a document equivalent to a copy of the birth certificate; and proof of citizenship. An affidavit may be given if the person cannot provide these documents. Practice varies between local Registers, with some demanding all the aforementioned documents while others are more flexible.

Civil registration in Austria is necessary for people to have access to health insurance, child and family allowances and other social rights. In addition, the family allowance is granted only after asylum has been granted to the baby. This procedure may take several months.⁷⁰⁹

3. Long-term residence

Indicators: Long-Term Residence

1. Number of long-term residence permits issued to beneficiaries in 2023 (for the first time – “Erstbewilligungen”):⁷¹⁰ 1,746

Long-term resident status for third-country nationals is called “*Daueraufenthalt EU*”. The right to permanent residence in Austria and unrestricted access to the job market is granted by the residence title “*Daueraufenthalt EU*”.

To obtain it, a beneficiary of international protection must fulfil the following conditions:⁷¹¹

- ❖ Lawful residence in Austria for the last 5 years preceding the application for long term residency. Half of the period between the application for international protection and the awarding of refugee status or subsidiary protection is counted towards the five-year period. When the duration of the asylum procedure was longer than 18 months, the whole period is counted.⁷¹²
- ❖ Successful completion of “Module 2” of the so-called agreement on integration (“*Integrationsvereinbarung*”), entailing knowledge of German at B1 level.
- ❖ General requirements for obtaining a residence permit, namely:
 - A regular income per month of € 1,217.96 or more if the cost of rent is higher than € 359.72 for a single person as of 1 January 2024; for every child extra € 187.93;⁷¹³
 - Sufficient health insurance;
 - Suitable accommodation; and
 - The person must not present a security risk.

The filing of additional papers may be required in some circumstances.

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

In practice the responsible authority is usually the district council (*Bezirkshauptmannschaft*). There are exceptions for some cities such as **Vienna** where the responsible authority is MA 35, whereas in **Graz** it is the Styrian Land government. Once all costs have been paid, the applicant may be eligible to acquire the residence permit. The costs for the procedure amount to about € 210 for persons over 6 years old, and € 195 for persons under 6 years old.

1,746 beneficiaries of international and subsidiary protection obtained a long-term resident status in 2023, compared to 1,360 in 2022 and 1,193 in 2021.⁷¹⁴ The sharp increase since 2018 (498) is likely to be the result of the focus of the BFA on withdrawal procedures of protection statuses. In cases where the

⁷⁰⁹ Meeting with the Refugee Coordinator and NGOs, April 2023.

⁷¹⁰ Ministry of Interior, *Fremdenwesen* 2023, available in German at: <https://shorturl.at/wLTx1>.

⁷¹¹ Article 11 NAG

⁷¹² Article 45(12) Residence Act.

⁷¹³ ASVG Ausgleichszulagen Höhe 2024, available in German at: <https://shorturl.at/kVPGY>.

⁷¹⁴ Ministry of Interior, *Fremdenwesen*, 2022, available in German at: <https://bit.ly/3KZkOUI>, Ministry of Interior, *Fremdenwesen* 2023, available in German at: <https://shorturl.at/wLTx1>.

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 ⁷¹⁵
❖ Subsidiary protection beneficiaries	15 years
2. Number of citizenship grants in 2023:	3,619

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.⁷¹⁶ The length of the legal stay, and thus the waiting period for obtaining citizenship, was extended from 6 to 10 years in September 2018.⁷¹⁷ 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.⁷¹⁸ Citizenship must be granted to a person entitled to asylum after 10 years of residence if the BFA, upon request, notifies that no cessation procedure under the Asylum Act 2005 has been initiated and the conditions for initiating such a procedure do not currently exist. For beneficiaries of subsidiary protection, the waiting period is 15 years.

In order to be naturalised, a beneficiary of protection must also demonstrate:

- ❖ Sufficient income during the last 3 years;
- ❖ Proof of knowledge (B1) of the German language;
- ❖ Successful completion of integration course (*Werteskurs*);
- ❖ Absence of a criminal record (*Unbescholtenheit*).

Refugees and beneficiaries of subsidiary protection may have faster access to naturalisation in less than 15 years of residence under certain conditions. They may shorten their waiting period if: (a) they have acquired B2-level knowledge of German; or (b) have acquired B1-level knowledge and can prove efforts of personal integration. The at least three-year voluntary work or activity in the social field must serve the common well-being and represent an integration-relevant added value in Austria. If they fulfil these criteria and the general conditions, the waiting period for obtaining citizenship may be reduced to 6 years. In any other case, it is easier for beneficiaries of subsidiary protection to obtain naturalisation by obtaining long-term resident status after 5 years (**Long-Term Residence**); then, they may be naturalised after 10 years.

Year	Number of persons with asylum status receiving citizenship
2016	1,224
2017	1,252
2018	1,086
2019	1,276
2020	1,022
2021	1,660
2022	2,359
2023	3,619

Source: Ministry of Interior, *Answer to parliamentary request, 9407/AB, XXVII. GP*, 28 March 2022, available in German at: <https://bit.ly/3rf5kDk>; Statistik Austria, *Einbürgerungen*, available at: <https://bit.ly/3VkpMjC>.

⁷¹⁵ Under certain circumstances the waiting period can be shortened to 6 years, see Art 11a (6) StBG.

⁷¹⁶ Article 11a(4)(1) and (3) Citizenship Act (StbG).

⁷¹⁷ Article 11(7) Naturalization Act.

⁷¹⁸ *Tiroler Tageszeitung*, 'UNHCR kritisiert österreichische Flüchtlingsnovelle', 9 May 2018, available in German at: <https://bit.ly/2UYyHad>.

5. Cessation and review of protection status

Indicators: Cessation

1. Is a personal interview of the asylum seeker in most cases conducted in practice in the cessation procedure? Yes No
2. Does the law provide for an appeal against the first instance decision in the cessation procedure? Yes No
3. Do beneficiaries have access to free legal assistance at first instance in practice? Yes With difficulty No

The Asylum Act contains the provisions on cessation and withdrawal of international protection in a single provision: Article 7 for refugees and Article 9 for beneficiaries of the subsidiary protection.

Refugee status can be ceased if the conditions in Article 1C of the Refugee Convention are met, or if refugee status has been granted in another country.⁷¹⁹ **Subsidiary protection** can be ceased where the conditions upon which status was granted no longer exist, where the person obtains subsidiary protection status in another country or obtains the nationality of another country and return thereto would not violate the principle of *non-refoulement*.⁷²⁰

Procedure

Every asylum seeker that comes to Austria is entitled to the free legal aid, when needed. In Austria, free legal counselling within the cessation and review of protection status procedures is provided by a state-based organisation BBU (*Bundesagentur für Betreuungs- und Unterstützungsleistungen*). BBU has been offering legal counsel and representation before the Federal Office for Immigration and Asylum (BFA) in accordance with Section 49 BFA-VG Federal Law Gazette I No. 87/2012 and before the Federal Administrative Court (BVwG) in accordance with Section 52 BFA-VG Federal Law Gazette I No. 87/2012 as amended since January 1, 2021.

BBU offers free legal counsel to those facing criminal charges, both at the initial hearing and during an appeal. However, the counselling provided by the organisation during the first-instance procedure is not needs based, but rather available only within specific hours established by the organisation.

Where the BFA considers that the conditions in the country of origin have changed, thus questioning whether the beneficiary's fear of persecution is still valid, it shall inform the person *ex officio* of the initiation of a cessation procedure – irrespective of whether the person has a permanent or temporary residence permit.⁷²¹

The authorities must assess whether return would be contrary to Articles 2, 3 or 8 ECHR and, in such a case, issue a residence permit. Where return would amount to *refoulement*, or in case of practical obstacles, the BFA is responsible for issuing a tolerated status card (*Duldungskarte*). In 2022, 325 tolerated status cards were issued,⁷²² compared to 265 in 2021 and 194 in 2020. As of September 2023, 213 tolerated status cards were issued.⁷²³

⁷¹⁹ Article 7(2)-(3) AsylG.

⁷²⁰ Article 9(1) AsylG.

⁷²¹ Article 7(2a) AsylG.

⁷²² Ministry of Interior, *Answer to parliamentary request, 13740/AB, XXVII. GP*, 20 April 2023, available in German at: <https://bit.ly/3AEzMuF>; Ministry of Interior, *Answer to parliamentary request 9531/AB, XXVII. GP*, 11 April 2022, available in German at: <https://bit.ly/3KPxwnY>.

⁷²³ Ministry of Interior, *Answer to parliamentary request, 15847/AB, XXVII. GP*, 21 November 2023, available in German at: <https://shorturl.at/kmOBv>.

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 has stated that a subsidiary protection status that was granted because of the minority of a person can be withdrawn once the minor becomes an adult and commits a crime.⁷²⁴

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 by the BFA at first instance re. asylum statuses

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,⁷²⁵ resulting in the withdrawal/cessation of refugee status in 450 cases and of subsidiary protection in 475 cases.⁷²⁶ In 2019, out of the total of 5,547 initiated withdrawal procedures, asylum status was ceased or withdrawn in 856 cases, while subsidiary protection was ceased or withdrawn in 917 cases.⁷²⁷

As of September 2023, 1,389 cessation and withdrawal procedures of the **asylum status** had been initiated on the following grounds:

Initiated cessation/withdrawal procedures of the asylum status: Jan-Aug 2023							
Country of Origin	Delinquency ⁷²⁸	Danger to public security ⁷²⁹	Travel movement (COI) ⁷³⁰	Altered circumstances ⁷³¹	Withdrawal/Cessation of status of the reference person	Other reasons	Total
Syria	470	3	62	14	3	39	591
Russia	65	0	47	79	58	19	268
Afghanistan	160	0	26	1	0	11	198
Iran	50	0	16	2	0	12	80
Iraq	27	0	24	0	1	13	65
stateless	34	0	6	0	0	13	53
Somalia	18	0	3	10	7	6	44
Serbia	1	0	0	11	0	0	12
Türkiye	4	0	0	3	0	3	10
DRC	3	0	1	2	0	1	7

⁷²⁴ VwGH, Decision Ra 2018/18/0343, 21 June 2018, available in German at: <https://bit.ly/3lgT5pZ>.

⁷²⁵ Ministry of Interior, *Answer to parliamentary request, 4105/AB XXVI GP*, 30 October 2019, available in German at: <http://bit.ly/40aA4UL>.

⁷²⁶ Information provided by the Ministry of Interior on 1 February 2019.

⁷²⁷ Ministry of Interior, *Answer to a parliamentary request 4024/AB XXVI. GP*, 16 September 2019, available in German at: <https://bit.ly/2PEhsuJ>.

⁷²⁸ Article 7 (2) AsylG, in connection with Article 27 (3) (1-4) AsylG.

⁷²⁹ Article 7 (1) (1), in connection with Article 6 (1) (3) AsylG.

⁷³⁰ Article 7 (2) last sentence AsylG.

⁷³¹ Article 7 (2a) AsylG.

Other	18	1	1	0	7	4	61
Total	850	4	196	142	76	121	1,389

Source: Ministry of Interior, *answer to parliamentary request 15846/ABXXVII. GP*, 21 November 2023, available in German at: <https://shorturl.at/1RcIP>.

Not all of the initiated procedures represented above resulted in a withdrawal or cessation of protection. As of September 2023, the BFA ceased and withdrew **asylum status** in 412 cases as follows (2022: 611; 2021: 1,304; 2020: 1,341):

Ceased/withdrawn asylum status by BFA January - August 2023							
Country of Origin	Delinquency ⁷³²	Danger to Public Security ⁷³³	Travel Movement (COI) ⁷³⁴	Altered circumstances ⁷³⁵	Examination in the course of prolongation	Other reasons	Total
Russia	24	1	38	117	51	30	261
Iran	7	0	25	1	0	6	39
Syria	5	0	4	2	3	15	29
Somalia	1	0	2	5	0	5	13
Kosovo	2	0	3	4	1	1	11
Serbia	0	0	1	6	3	0	10
Iraq	1	0	5	0	0	3	9
Türkiye	0	0	0	2	2	3	7
Pakistan	1	0	2	1	0	0	4
DRC	1	0	1	0	0	2	4
Other	4	0	3	5	5	8	25
Total	46	1	84	143	65	73	412

Source: Ministry of Interior, *answer to parliamentary request 15846XXVII. GP*, 21 November 2023, available in German at: <https://shorturl.at/1RcIP>.

Statistics on the number of initiated cases of protection status ceased/withdrawn by the BFA at first instance re. subsidiary protection statuses

As regards **subsidiary protection**, the BFA initiated a total of (2022: 611) cessation/withdrawal procedures from January to August 2023:

Initiated cases of withdrawal/cessation of subsidiary protection January – August 2023							
Country of Origin	Delinquency	Danger to public security	Travel movement (COI)	Altered circumstances	Withdrawal / cessation status of reference person	Other reasons	Total
Afghanistan	122	0	20	0	4	12	158
Iraq	32	0	27	0	20	7	86
Syria	37	0	10	0	2	4	53
Somalia	19	0	0	0	6	3	28
Russia	9	0	2	0	0	8	19
Armenia	2	0	1	0	0	7	10

⁷³² Article 9 (3) AsylG.

⁷³³ Article 9 (2) (2) AsylG.

⁷³⁴ Article 9 (1) (1-2) AsylG.

⁷³⁵ Article 9 (1) (1)AsylG.

stateless	5	0	0	0	2	0	7
Kosovo	1	0	0	0	0	6	7
Georgia	0	0	3	0	2	0	5
Ukraine	3	0	0	0	0	0	3
Other	8	0	0	0	5	6	21
Total	238	0	65	0	41	53	397

Source : Ministry of Interior, *Answer to parliamentary request 15846AB XXVII. GP*, 21 November 2023, available in German at <https://shorturl.at/1RclP>.

As of September 2023, in 6 cases cessation of asylum status was followed by the granting of subsidiary protection, and in 23 cases a status on humanitarian grounds was granted.

As of September 2023 with regard to first instance decisions, asylum status was withdrawn in 412 cases (2022: 949), subsidiary protection was withdrawn in cases. As regards **subsidiary protection**, in 122 cases the status was withdrawn or ceased by the first instance authority (2022: 135; 2021: 342):

Withdrawal of subsidiary protection status by BFA: January - August 2023		
Country of origin	Asylum	Subsidiary protection
Russian Federation	261	14
Iraq	9	50
Syria	29	6
Afghanistan	N/A	9
Somalia	13	2
Nigeria	N/A	N/A
Stateless	N/A	N/A
Armenia	N/A	2
Serbia	10	N/A
Kosovo	11	23
Other	79	5
Total	412	122

Source: Ministry of Interior, *answer to parliamentary request 15846AB XXVII. GP*, 21 November 2023, available in German at: <https://shorturl.at/1RclP>.

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.⁷³⁶ Data for 2022 and 2023 is not available at the time of writing. Concerning the high number of withdrawal and cessation decisions regarding nationals of the Russian federation it has to be noted that the persons received a residence permit. The authority focused on cases that have been beneficiaries since the start of the 2000s, in those cases a status can only be withdrawn if a residence permit is granted.

⁷³⁶ Source: Ministry of Justice, *Answer to parliamentary request 9532/AB, XXVII. GP*, 11 April 2022, <https://bit.ly/3rxqhJw>.

6. Withdrawal of protection status

Indicators: Withdrawal

1. Is a personal interview of the asylum seeker in most cases conducted in practice in the withdrawal procedure? Yes No
2. Does the law provide for an appeal against the withdrawal decision? Yes No
3. Do beneficiaries have access to free legal assistance at first instance in practice? Yes With difficulty No

Refugee status is withdrawn where the refugee should have been excluded under the exclusion clauses,⁷³⁷ or is convicted of a criminal offence.⁷³⁸ **Subsidiary protection** is withdrawn if the exclusion clauses in Article 1F Geneva Convention apply, or the beneficiary poses a threat to public order or national security, or has been convicted of a serious crime.⁷³⁹ 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.⁷⁴⁰ 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. The Court has to decide upon the appeal within 3 months.⁷⁴¹

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.⁷⁴²

As mentioned in [Cessation](#), there is no systematic distinction between the two procedures. When initiating a withdrawal procedure following a conviction, the BFA must weigh the individual situation of the beneficiary upon return against the implications of their continued residence for public order and security. The same procedural guarantees are applied as for the [Regular Procedure](#) for granting protection. Since 1 September 2018, young offenders are no longer protected from losing their protection status.

The VwGH referred a preliminary ruling to the CJEU regarding the interpretation of Article 19(1) of Directive 2011/95 on the possibility of revocation of subsidiary protection status without a change in the relevant factual circumstances, but rather only where the knowledge of the authority has changed, and the person concerned cannot be accused of having misled the Member State. The CJEU found that where the Member State has new information which establishes that, contrary to its initial assessment based on incorrect information, that person never faced a risk of serious harm, within the meaning of Article 15 of that Directive, that Member State must conclude that the circumstances underlying the granting of subsidiary protection status have changed in such a way that retention of that status is no longer justified. That this error was not attributable to the applicant does not alter the fact that the applicant is not eligible for subsidiary protection.⁷⁴³

⁷³⁷ Article 7(1)(1) AsylG.

⁷³⁸ Article 7(2) AsylG.

⁷³⁹ Article 9(2) AsylG.

⁷⁴⁰ Article 9(3) AsylG.

⁷⁴¹ Article 21 (2a) BFA-VG.

⁷⁴² For a critique, see Diakonie, *Stellungnahme der Diakonie Österreich zum Entwurf betreffend ein Fremdenrechtsänderungsgesetz 2017*, 18 January 2017, available in German at: <https://bit.ly/3yKXMLC>.

⁷⁴³ CJEU, *Bilali*, Case C-720/17, 23 May 2019, available at: <http://bit.ly/3Fu83zB>.

B. Family reunification

1. Criteria and conditions

Indicators: Family Reunification

1. Is there a waiting period before a beneficiary can apply for family reunification?
 - ❖ Refugee status Yes No
 - ❖ Subsidiary protection Yes No3 years
2. Does the law set a maximum time limit for submitting a family reunification application?
For refugees be exempt from material conditions Yes No
 - ❖ If yes, what is the time limit? 3 months
3. Does the law set a minimum income requirement?
 - ❖ Refugee status Yes No
 - ❖ Subsidiary protection Yes No

1.1. Eligible family members

Family members eligible for family reunification include:⁷⁴⁴

- ❖ Parents of a minor child for family reunification of unaccompanied minors;
- ❖ Spouses and registered partners, where the marriage / partnership existed before fleeing the country of origin. In case concluded in another country, the marriage / partnership must be legally valid in the country of origin;
- ❖ Children who are minors at the time of the application;

According to the VwGH, siblings in themselves are not considered a family member eligible for reunification.⁷⁴⁵ However, underaged siblings will be allowed to reunite as well when an unaccompanied minor beneficiary of international protection reunites with their parents.⁷⁴⁶

Essentially, the same rules apply for same sex spouses in theory. As the precondition requires an equivalent to the formally registered partnership in Austria which does not exist in many countries of origin same sex couples are barred from family reunification in practice.⁷⁴⁷

Beneficiaries of international protection who get married after having arrived in Austria cannot reunite with their spouses under the AsylG. They will have to go through the regular family reunification procedure as opposed to the one specific to the asylum law. In such a case, in addition to the material conditions set out below, spouses must also pass a German exam before entering Austria. They are also subject to the annual quota on family reunification.⁷⁴⁸

Regarding family on the territory during the asylum procedure, all underage, unmarried child of an asylum seeker who resides in federal territory is considered to have received protection when an application for international protection was lodged by the asylum seeker now beneficiary of international protection. Indeed, if one family member qualifies for international protection, the other members must also enjoy the same level of protection.

Three years after receiving subsidiary protection, family members of those individuals may apply for entry permits via family reunification. They must also show proof of suitable housing, health insurance, and sufficient income.

⁷⁴⁴ Article 35(5) AsylG.

⁷⁴⁵ VwGH, Decision Ra 2015/21/0230 to 0231, 28 January 2016, available at: <https://bit.ly/42cBeBf>; Ra 2016/20/0231, 26 January 2017, available at: <https://bit.ly/3JHM2jk>.

⁷⁴⁶ Report from Austrian Red Cross Family reunification unit to asylkoordination österreich, February 2024.

⁷⁴⁷ Article 35 in connection with Article 2 (22) AsylG.

⁷⁴⁸ Article 35 (2) in connection with Article 60 AsylG.

Date of assessment of age for the purposes of family reunification

On 12 April 2018, the CJEU ruled in case *A. and S.* on the right to family reunification of unaccompanied children who reach the age of majority after lodging an asylum application. The CJEU concluded that an asylum applicant who is below the age of 18 at the time of their entry into the territory of a Member State and of the introduction of their asylum application in that State, but who, in the course of the asylum procedure, attains the age of majority and is thereafter granted refugee status, must still be regarded as a “minor” for the purposes of that provision.⁷⁴⁹ This judgement of the CJEU was taken into consideration by the VwGH in its decision of 3 May 2018.⁷⁵⁰ However, the VwGH saw no basis for changing its previous decision-making practice. If an unaccompanied minor attains the age of majority during the asylum procedure, the family status of the parents and thus the conditions for joining an asylum-entitled child who is an adult at the time of the decision, cease to apply.

In order to clarify open questions arising from the ECJ's judgment C-550/16, the Vienna Administrative Court itself submitted a reference for a preliminary ruling, numbered C-560/20: is it necessary that the parents of the third-country national comply with the period for submitting an application for family reunification referred to in the judgment of the CJEU of 12 April 2018, C-550/16, *A and S*, paragraph 61, namely ‘in principle within a period of three months of the date on which the “minor” concerned was declared to have refugee status’?

Alternatives to family reunification

The refusal to grant an entry title in the context of family reunification refers to proceedings that are regulated under the Settlement and Residence Act (*Niederlassungs- und Aufenthaltsgesetz – NAG*). The NAG further regulates the legal route for third-country nationals seeking to obtain a residence permit in Austria. This legal way via NAG is often the only way for family reunification in cases where the application for legal entry was not lodged within three months of the date when the asylum status was granted to the anchor family member in Austria. Family members that do not fall under the restrictive definition of “family member” in the asylum law also have to apply for family reunification via NAG. Family members of persons entitled to asylum may be granted, under certain conditions, a residence permit called “Red-White-Red-Card-Plus” in accordance with Article 46 NAG. This card grants access to the labour market, is valid for one year and can be prolonged to 3 years.

In the case of family members of holders of a residence title “Red-White-Red – Card”, the period of validity of the title shall be determined by the period of validity of the residence title of the sponsor. The residence title “Red-White-Red – Card plus” issued to family members of holders of a residence title “Red-White-Red – Card plus” shall be issued for a period of two years.

Proof of family ties

Costs of DNA tests for the purpose of proving family links are reimbursed where these are ordered by the BFA. These tests are ordered systemically by the authority.

The Administrative High Court has emphasised that an application for family reunification cannot be dismissed on the ground that there are doubts on the family ties, without having informed the concerned persons about the possibility to undertake a DNA test.⁷⁵¹ Also, there have been cases pending before the Administrative Court on the question of whether an application for family reunification can also be filed within the EU.

⁷⁴⁹ CJEU, Case C-550/16 *A. and S.*, Opinion of AG Bot of 26 October 2017, available at: <http://bit.ly/3YUeH9t>.

⁷⁵⁰ VwGH, Decision No Ra 2017/19/0609, 3 May 2018, available in German at: <https://bit.ly/3TmAwgr>.

⁷⁵¹ VwGH, Decision Ra 2017/18/0131, 22 February 2018, available in German at: <https://bit.ly/3yIMjMJ>.

In case of rejection of an application for family reunification, the applicants can file an appeal against the decision of the embassy before the BVwG.⁷⁵² The complaint has to be in German language. The Court does not have to conduct an oral hearing. As the Court is bound to all facts already brought in into the procedure and does not accept any new proofs, the appeal procedure is not often started in practice. In reality, the applicants rather put forward a new application.⁷⁵³

1.2. Waiting periods and material conditions

Family members of **refugees** can apply for an entry visa immediately after status recognition of the sponsor. However, a number of restrictions have been put in place as of 1 June 2016. If the application is submitted to an Austrian representation within 3 months, no further requirements are imposed.⁷⁵⁴ 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.⁷⁵⁵ These are material requirements set in line with requirements for other third-country nationals. However, contrary to other third country nationals, no language knowledge is required for asylum law family reunification, nor is there a quota.

Subsidiary protection beneficiaries' family members can only submit an application after at least 3 years from the sponsor's recognition.⁷⁵⁶ The aforementioned requirements – sufficient income, health insurance and accommodation – in force since 1 June 2016 are always applicable to beneficiaries of the subsidiary protection,⁷⁵⁷ with the exception of family members of unaccompanied children.⁷⁵⁸

The fact that a beneficiary of subsidiary protection must wait three years before initiating a family reunification procedure has been ruled as non-discriminatory by the Constitutional Court.⁷⁵⁹ The case concerned a 13-years-old unaccompanied minor from Syria who had received subsidiary protection in July 2016 and who had therefore to wait for 3 years to benefit from family reunification instead of 1 year (the previous waiting time imposed). In its ruling, the Constitutional Court considered that differentiating between persons entitled to asylum and persons entitled to subsidiary protection did not pose a risk of unequal treatment, as they are evident differences between these two groups (e.g. with regards to the temporary right of residence). Following the judgement by the ECtHR in the case *M.A. against Denmark* which found the 3-year waiting period to be in conflict with art 8 ECHR, beneficiaries of subsidiary protection applied for family reunification before the 3-year-limit had passed. In one case, the Constitutional Court dismissed the appeal and did not put the regulation in question.⁷⁶⁰

1.3. Procedure and statistics

The law provides that the authorities have to decide on family reunification requests within 6 months.⁷⁶¹

NGOs have expressed concerns in relation to the time limit for applying for family reunification, given that applications must be submitted personally to an Austrian embassy. Indeed, waiting times for submitting an application currently exceed 3 months. In practice, applications submitted in writing are thus very lengthy. This situation deteriorated in 2021 due to the takeover of the Taliban in Afghanistan: the responsible embassy in Islamabad, Pakistan, scheduled appointments with several months of waiting time. The situation has worsened in 2022: due to the high number of applications and lack of resources at the Austrian Embassy in Syria, which is located in Beirut, the waiting time for the registration

⁷⁵² Article 9 (3) FPG, Article 11a FPG.

⁷⁵³ Report from Austrian Red Cross to asylkoordination österreich, April 2024.

⁷⁵⁴ Article 35(1) AsylG.

⁷⁵⁵ *Ibid*, citing Article 60 AsylG.

⁷⁵⁶ Article 35(2) AsylG.

⁷⁵⁷ Article 35(2) AsylG.

⁷⁵⁸ Article 35(2a) AsylG.

⁷⁵⁹ VfGH, Decision E 4248-4251/2017-20, 10 October 2018, available in German at: <https://bit.ly/3mS9cup>.

⁷⁶⁰ VfGH, Decision E 933/2022-16, 13 December 2022, available in German at: <https://bit.ly/41Qswbl>.

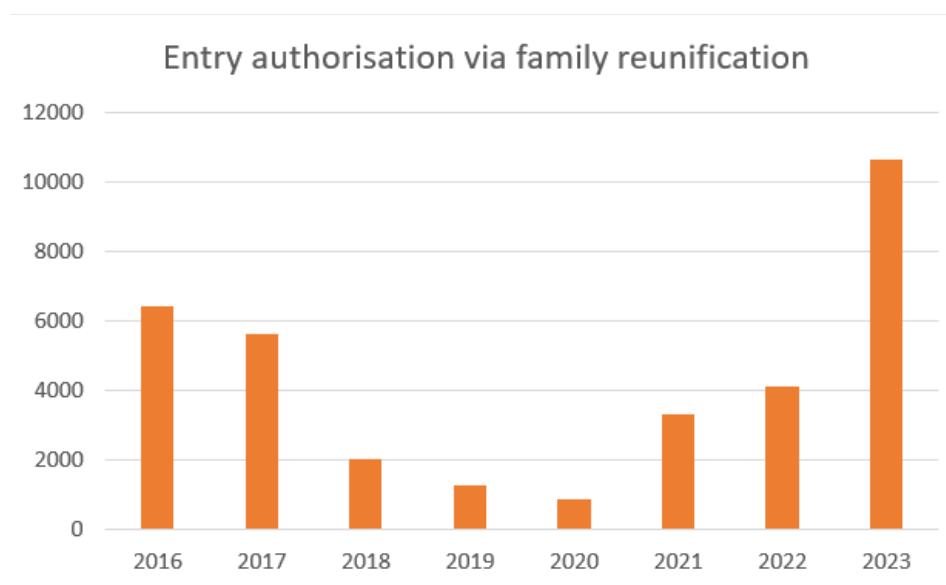
⁷⁶¹ Article 73 (1) AVG.

appointment at the Embassy is more than 12 months, increasing the length of procedure to at least 2 to 3 years according to reports from the Austrian Red Cross.

Regarding specific difficulties, the Austrian Red Cross (ÖRK) established that the Taliban takeover in Afghanistan made it increasingly difficult for Afghan families to obtain the necessary documents (especially passports) for family reunification. Moreover, the large number of cases has dramatically extended the waiting periods and the duration of procedures at Austrian embassies.

This is despite the fact that the law makes explicit reference to Article 8 ECHR in Article 35(4) AsylG, and the explanatory notes cite a ruling of the Administrative High Court that an application for a visa for family reunion with a person entitled to protection should be granted if this is necessary to maintain private and family life.⁷⁶²

In order to benefit from family reunification, family members of persons entitled to asylum or subsidiary protection make an application at the Austrian embassy. In that regard, the BFA conducts a probability diagnostic for the grant of family reunification, during which the family ties are particularly examined. In 2018, the BFA conducted a total of 3,068 of these probability evaluations.



Source: asylkoordination österreich, data by Ministry of Interior and Ministry of External Affairs

The BFA processed 9,495 family reunification applications in 2016, 7,612 in 2017 and 2,247 in 2018.⁷⁶³ In 2021, 2,459 (2020: 1,189) applications for family reunification were lodged and concerned the following nationalities: Syria (1,335), Afghanistan (589), Somalia (216).⁷⁶⁴ In 2022, 5,830 applications for an entry visa via family reunification were lodged of which 4,871 came from Syrian nationals, 490 from Afghan nationals and 254 from Somalian nationals. In 3,335 cases of Syrian nationals the forecast decision taken by the BFA was positive, in 169 cases were negative.⁷⁶⁵

2023 saw a sharp rise in family reunification cases: more than 14,000 applications were lodged before the embassies. In more than 10,000 cases an entry authorisation was issued. In 9,180 cases, an asylum application was lodged upon arriving via entry authorisation. 8,193 were lodged by Syrian nationals (89%),

⁷⁶² VwGH, Decision Ra 2013/22/0224, 11 November 2013.

⁷⁶³ 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.

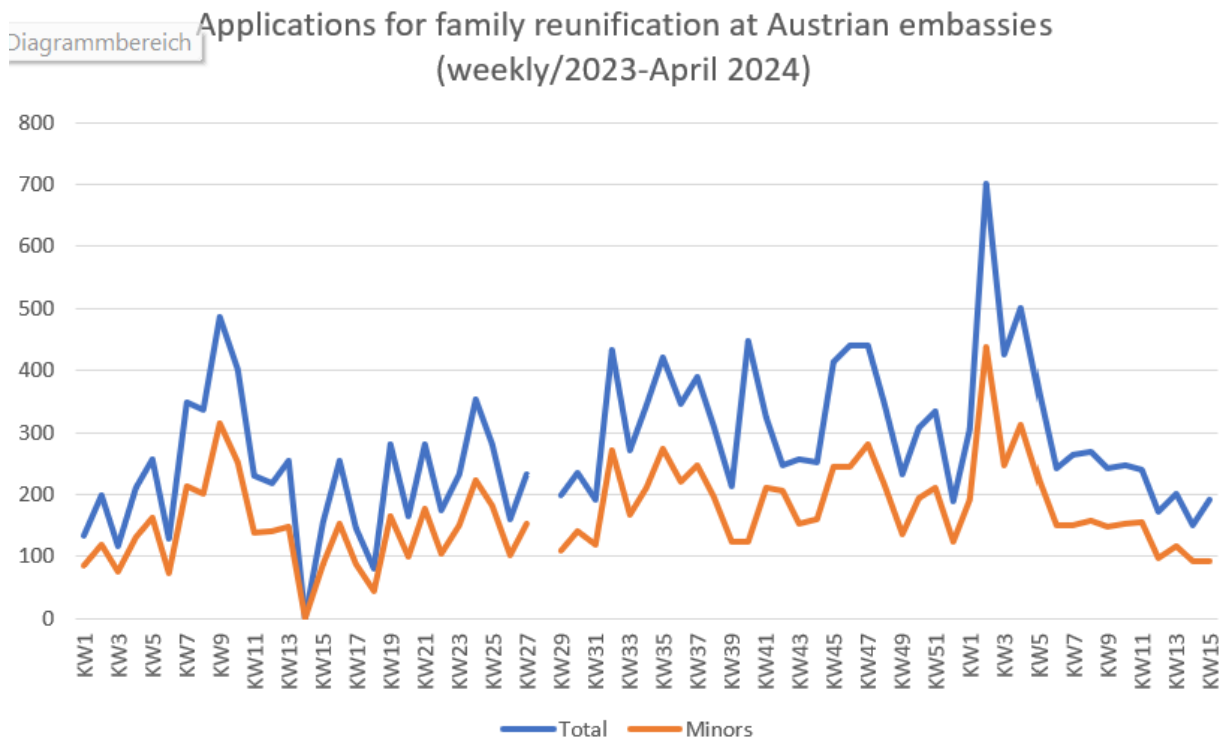
⁷⁶⁴ Ministry of Interior, *Answer to parliamentary request 9531/AB, XXVII. GP*, 11 April 2022, available in German at: <https://bit.ly/3KPxwnY>.

⁷⁶⁵ BFA, *Detail-Statistik 1.-4. Quartal 2022*, available in German at: <https://bit.ly/3EXJCdl>.

356 by Afghan nationals (4%). 6,390 were children which amounts to 70% of all asylum applications via family reunification.⁷⁶⁶

The increase led to public debate, because most beneficiaries of family reunification move to Vienna. Vienna experienced pressure in the school system as around 90% of all beneficiaries of international protection that receive basic care or social subsidies in Austria live in Vienna. With approx. 5,000 additional students from Ukraine, the school system could not easily adapt to another 2,000 students without German language skills. Some politicians have suggested introducing an obligation for beneficiaries to reside in other provinces after receiving their status, while other parties have suggested restricting access to family reunification.⁷⁶⁷

In January 2024 the number of applications for family reunification peaked with more than 700 applications per week. Since then, the numbers have dropped sharply.



Source: asylkoordination österreich, <https://shorturl.at/RfeHk>.

This was caused by the management of asylum applications in 2022 and 2023: as Austria saw a large number of applications in 2022 (more than 100,000) the authorities focused on cases in which there was a low probability of recognition (applications from nationals from Tunisia, India etc). This resulted in a backlog of cases from Syrian applicants that were then decided in 2023. With higher numbers of positive decisions, family members then applied for family reunification at the embassies in a rush as there is a strict 3 months limit to be able to enter Austria without having to fulfil conditions regarding level of income.

By the end of 2023, the authorities and the BVwG had already changed their jurisprudence regarding Syria: in most cases, only subsidiary protection is being granted, leading to less family reunification cases as of early 2024. The authorities expect the situation to calm down by September/October 2024.⁷⁶⁸

⁷⁶⁶ Ministry of Interior, *Answer to parliamentary request 17222/AB, XXVII. GP*, 5 April 2024, available in German at: <https://shorturl.at/D6g5M>.

⁷⁶⁷ Der Standard, „Familiennachzug erhöht Druck auf Schulen“, 15 April 2024, available in German at: <https://shorturl.at/HFkNH>.

⁷⁶⁸ Report to asylkoordination österreich, April 2024.

In 2023, the Austrian Red Cross assisted 2,233 new families representing 7,379 family members in opening family reunion requests. 96% of all cases concerned Syrian nationals, 1.5% Afghan and 2% Somalian nationals. As of end of March 2024, 5,568 cases are pending. The average procedure between application at the embassy and entering Austria via entry authorisation lasts between 6 to 7 months.⁷⁶⁹

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.⁷⁷⁰

C. Movement and mobility

1. Freedom of movement

Persons who are granted international protection are free to move and settle throughout the Austrian territory. The restriction of residence that used to apply to beneficiaries of subsidiary protection who were awaiting an appeal was deleted by the 2018 amendment to Article 15b AsylG.⁷⁷¹ This 2018 reform was mainly aimed at implementing actions under aliens law that were outlined by the federal government in the Government Program 2017-2022 ("Together. Government Program 2017-2022 for Austria"). At the start of 2024, there was a broad public debate followed by a resolution by the Viennese regional parliament asking the Federal government to introduce a residence restriction for beneficiaries of international protection that receive social subsidies.⁷⁷² This initiative was instantly rejected by the governing coalition in the Federal government and by the Heads of some provinces.⁷⁷³

2. Travel documents

Since 2015, travel documents for beneficiaries of international protection are issued for a period of up to 5 years,⁷⁷⁴ unless other conditions apply.

Refugees obtain a Convention travel document ('*Konventionsreisepass*') without further conditions, unless there are compelling reasons in terms of national security and public order against the issuance of a document.⁷⁷⁵

In the past, beneficiaries of subsidiary protection had to establish that they are unable to obtain a travel document from their country of origin.⁷⁷⁶ This partly changed in 2023 as the Constitutional Court ruled that beneficiaries of subsidiary protection have the right to get an aliens' passport. The law foresees that the issuance has to be in the "interest of the republic". The Constitutional Court ruled that it is to be viewed to

⁷⁶⁹ Ministry of Interior, unpublished information. Report to asylkoordination österreich.

⁷⁷⁰ VwGH, Decision Ra 2017/19/0218, 22 November 2017, available in German at: <https://bit.ly/3Tp6ysu>.

⁷⁷¹ Fremdenrechtsänderungsgesetz 2018, available in German at: <https://bit.ly/2Vvj5h5>.

⁷⁷² Kleine Zeitung, „Frühe Integration als Mittel gegen Abwanderung nach Wien“, 24 April 2024, <https://shorturl.at/ITbaC>.

⁷⁷³ Kurier, "Mit Sicherheit nicht": Doskozil weist Wiener Asyl-Forderungen zurück, 19 May 2024, <https://shorturl.at/RpULg>.

⁷⁷⁴ Article 90(1) FPG.

⁷⁷⁵ VwGH, Decision 2013/21/0003, 16 May 2013, available in German at: <https://bit.ly/3JGGEgp>. One example of such reasons was found in the case of a person convicted of international drug dealing: VwGH, Decision 2009/21/0340, 29 April 2010, available in German at: <https://bit.ly/3n1eV0X>.

⁷⁷⁶ Article 88(2a) FPG.

be in the “interest of the republic” that a person is able to effectively its right to leave a country granted by Article 2 (2) of the 4. Additional Protocol to the ECHR.⁷⁷⁷ Aliens whose presence on federal territory is tolerated are to be issued a permit for tolerated persons. As a general rule, it is valid for one year and can be extended for another year provided certain conditions are met. A geographical limitation further applies to beneficiaries of protection, who are not allowed to travel to their country of origin with these documents.

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

Aliens who applied for international protection on or after November 15, 2015 and were awarded asylum status on or after June 1, 2016 are eligible to apply for the card for those entitled to asylum. In 2022, 45,484 (2021: 44,516) Convention travel documents were issued to refugees and 7,464 (2021: 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.⁷⁷⁸

D. Housing

Indicators: Housing

1. For how long are beneficiaries entitled to receive basic care?	
❖ Refugee status	4 months
❖ Subsidiary protection (in case of unemployment)	No time limit
2. Number of beneficiaries receiving basic care as of December 2023	14,523

Refugees are entitled to Basic Care during the first 4 months after recognition of their status.⁷⁷⁹ After this period, they have access to the general welfare system and can obtain basic care and social assistance similarly to any other Austrian citizen. There are in general no longer stay options or other specialised accommodation for vulnerable groups or young people who have recently turned 18. Beneficiaries of **subsidiary protection** have no temporal limit on receiving Basic Care but are excluded from the general welfare system. No preconditions for receiving Basic Care are applied.

Basic Care consists of organised accommodation in inns, boarding houses, reception centres of NGOs or of the respective federal province, or a rent subsidy when an asylum seeker rents a flat themselves. The prevailing form of Basic Care is organised accommodation, except for **Vienna** where private accommodation prevails (see [Reception Conditions: Forms and Levels](#)).

As of the end of December 2023, 20,629 asylum seekers, 3,804 people with refugee status and 10,719 beneficiaries of subsidiary protection were receiving basic benefits (in addition to Ukrainians):

Beneficiaries of international protection in Basic Care: 31 December 2023			
Province / Federal centre	Refugee status	Subsidiary protection	Total
Burgenland	32	92	124
Carinthia	67	144	211
Lower Austria	221	284	505
Upper Austria	137	355	492
Salzburg	78	180	258

⁷⁷⁷ VfGH, 16 June 2023, E 3489/2022, available in German [here](#).

⁷⁷⁸ Ministry of Interior, *Answer to parliamentary request, 9407/AB, XXVII. GP*, 28 March 2022, available in German at: <https://bit.ly/3rf5kDk>; Ministry of Interior, *Answer to parliamentary request, 14477/AB, XXVII. GP*, 27 June 2023, available in German at: <https://shorturl.at/SANWI>.

⁷⁷⁹ Article 2 (1) (6) Grundversorgungsvereinbarung.

Styria	147	503	650
Tyrol	116	182	298
Vorarlberg	148	231	379
Vienna	2,751	8,725	11,476
Total	3,804	10,719	14,523

Source: Ministry of Interior, Basic Care statistics, unpublished.

Support after the end of Basic Care is insufficient. Although there are some consultation services which provide advice on finding a flat and concluding a rental contract, there are no financial resources available to actively help beneficiaries to find accommodation. This is particularly concerning given that prices on the real estate market have significantly risen. Recipients of Basic Care, which includes beneficiaries of subsidiary protection in several provinces, cannot find adequate accommodation with a subsidy of € 165 per month for renting a flat. Families in Basic Care receive € 330. Financial support for refugees and beneficiaries of subsidiary protection is a slightly higher amount as in this regime the size of a family is taken into account and it is possible to either completely subsidise the rent (as is the case in **Tyrol**) or receive subsidies for the rent.

In **Lower Austria**, the authorities regularly send letters to beneficiaries of subsidiary protection asking them to move out of basic care. In reality, this means a lot of pressure for people with subsidiary protection. The care teams intervene and send social reports to the authorities explaining why the beneficiaries of protection should not lose basic care benefits, especially families with school-age children or families with sick people who benefit from staying in a basic care facility. On the other hand, there is a trend of people with subsidiary protection moving to Vienna because the community is bigger there, there are greater chances of finding a job and there is entitlement to social benefits.⁷⁸⁰

A total of 15,055 people under the jurisdiction of the federal government and the province were housed in **Lower Austria** as of the investigation's cut-off date (November 21, 2022).

Age Group	Number of people
> 7 y.o.	1,470
From 7 to 14 y.o.	2,192
From 14 to 18 y.o.	1,928
From 18 to 24 y.o.	1,378
From 24 to 60 y.o.	6,431
< 60 y.o.	1,656
TOTAL:	15,055

In **Vorarlberg**, refugees who receive a minimum income do not receive a housing compensation but are transferred to landlords directly through the social department. Single refugees receive the minimum income only if they live in shared flats. If a person entitled to asylum decides to live in their own apartment, the compensation will amount only to the costs of a shared room. Single persons receive up to € 503 for their rent. This is significantly higher compared to other federal states, where only € 210 are granted.⁷⁸¹ 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.

⁷⁸⁰ asylkoordination österreich, nationwide NGO survey on basic services Dec 2021/Jan 2022.

⁷⁸¹ Der Standard, ‚Vorarlberg und Tirol beschließen Westlösung für Mindestsicherung‘, 17 January 2017, available in German at: <https://bit.ly/2tkJb83>.

Moreover, refusing a flat assigned by the country's social department may result in the loss of housing benefits. This measure should also help the city of **Innsbruck**, which is often preferred by refugees as a place of residence after **Vienna**.

Refugees can also apply for social housing when they are at risk of becoming homeless. Nevertheless, the waiting lists are long and an emergency flat is rarely available. Certain conditions (e.g. proof of residence of 2 years at the same address) applicable to the city of **Vienna** make it more difficult to get a cheaper community flat. In many regions of Austria, there are no social housing schemes available. Refugees are usually excluded from the second possibility of cheap accommodations, co-operative flats, because they have to contribute to the construction cost and they lack the necessary resources.⁷⁸²

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.⁷⁸³

In **Styria**, Caritas has developed a project to finance housing costs of asylum seekers.⁷⁸⁴ A major hurdle is the deposit that refugees cannot afford when they have to move out of the basic care 4 months after their protection has been granted. Caritas Styria offers persons benefitting from a protection status or holding a humanitarian residence permit interest-free loan guarantees. This is granted, however, only after verification of the financial situation and must be repaid in individually agreed rates.

Experience shows that persons benefitting from a protection status often change their flat in the first year(s) after recognition and the costs for rent are much higher than those prescribed by law. The introduction of a time limited **Residence Permit** of 3 years for refugees has also been criticised by NGOs and experts as it makes it more difficult to rent a flat without perspective to stay.

As a result of the Basic Social Welfare Act, this allowance will be increased to around EUR 6,322 in 2023 and is available to every beneficiary. Additionally, only after a continuous three-year benefit period can residential assets be safeguarded in the land register.

A study conducted by the Technical University of Vienna found that, due to several obstacles, refugees are extensively excluded from the benefit of municipal accommodations in practice and beneficiaries of the subsidiary protection do not have access to municipal housing at all. Cases of exploitation and discrimination in the private sector have also been reported. A worrying informal sub-market has emerged, offering housing at inflated prices, such as sleeping places – that are not even real rooms – that cost about € 200 to € 350 per month.⁷⁸⁵ Facilities for homeless persons are also sometimes visited by refugees.

When demonstrating the eligibility criteria, refugees from Ukraine might get Municipal Housing (*Gemeindewohnung*) or Cooperative Flats (*Genossenschaftswohnung*). Different laws apply in different parts of Austria as to the qualifying requirements for cooperative apartments, subsidised housing, and municipal housing.

In order to submit housing benefits, a refugee has to submit an application to receive it.

⁷⁸² Meeting at asylkoordination österreich, partner organisations involved in basic care provision in the provinces.
⁷⁸³ 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>.

⁷⁸⁴ Caritas Steiermark Flüchtlingsbetreuung, available in German at: <https://bit.ly/38co7T9>.

⁷⁸⁵ Anita Aigner, *Housing entry pathways of refugees in Vienna, a city of social housing*, Housing Studies, 2018, available at: <https://bit.ly/2N7A57J>.

E. Employment and education

1. Access to the labour market

Between collecting minimum income support and finding a job, there is no freedom of choice. Social support or minimum security for those who are able to work is dependent on their desire to use their own labour force. Benefits obtained by an employee who refuses appropriate labour may be diminished or, in rare circumstances, even completely revoked. The same holds true for refusing to take part in activities like German classes or other course requirements, as well as for breaking integration agreements.

Starting with the recognition of their protection status, refugees and beneficiaries of subsidiary protection have free access to the labour market. However, several difficulties such as language barriers, lack of qualifications and/or lack of proof have to be overcome before successfully integrating into the labour market. The public budget for language courses has been increased significantly and, in most federal provinces, language courses are already offered during the asylum procedures, albeit in limited amounts.⁷⁸⁶

The integration sector in 2022 was marked by a sharp increase in the number of asylum seekers and beneficiaries of subsidiary protection, as well as a large number of Ukrainian displaced persons seeking protection in Austria: the Austrian Integration Fund (ÖIF) responded to the changed framework conditions with appropriate offers. In 2023, the ÖIF's integration centres reported over 265,000 (2022: 250,000) counselling contacts throughout Austria, with around 11,000 (2022: 11,200) individuals taking part in the values and orientation courses. Furthermore, in 2023, more than 66,000 German course spots were available throughout Austria.⁷⁸⁷

According to current evaluations of the Austrian Integrationsfonds, the level of education of those having been granted protection in 2022 has fallen significantly compared to the years before: 7 out of 10 persons entitled to asylum and subsidiary protection who received asylum in the last 12 months and a German course according to the Integration Act visit have a need for literacy. In the last three years, this value has increased by half (2019: 48%), and by as much as 80% for men (41% vs. 73%).

However, there has been some public debate on the definition of literacy. Experts believe that 7 out of 10 is an exaggerated number and the challenge is being unintentionally "inflated". Second language learners are not illiterate as they come to Austria. They are only supposed to learn a new and different writing system, which is not their native one.

There have been some improvements through targeted assessment of qualifications and facilitated recognition of work experience. The Act on Recognition and Evaluation entered into force on 12 July 2016 and accelerates the procedure for the recognition of education and professional qualifications obtained outside Austria.⁷⁸⁸ This decision aims at facilitating access to the labour market for refugees. Refugees or asylum seekers could also apply for recognition of their academic and professional qualifications, even if they cannot provide the documents as proof.

A study conducted in 2016-2017 involving 1,200 beneficiaries of international protection found group-specific differences in the integration to the labour market. Despite the shortage of skilled workers in Austria, former technicians seem to have had very little chances of finding work. The mismatch between qualifications and employment is high: more than 75% of respondents worked in a field which did not or only partially fit their academic background. 25% of respondents had participated in a competence check by the AMS, but participation in the check and value courses had no direct impact on the integration of

⁷⁸⁶ SOS Mitmensch, *Deutschkurse für Asylsuchende – Ein Bundesländervergleich*, January 2017, available in German at: <http://bit.ly/2kHqM0a>.

⁷⁸⁷ ÖIF, *Leistungsbilanz 2023*, available in German at: <https://shorturl.at/IOww8>.

⁷⁸⁸ Anerkennungs- und Bewertungsgesetz (AuBG), BGBl. I Nr 55/2016, available at: <http://bit.ly/2lkdc5S>.

their previous work experience; the potential effects of these recent measures are only expected to be made visible in the medium term.⁷⁸⁹

Austria has set up a number of counselling and contact points, as well as an information portal (AST). In **Vienna**, however, all beneficiaries now undergo a competency evaluation. Where recognised beforehand, highly qualified persons in regulated profession e.g. doctors are sent to “Check In Plus” immediately to receive assistance in the recognition process.

Beneficiaries have to consult the Austrian Integration Fund (ÖIF) after they have received protection status. The ÖIF places these persons to language courses and courses on Austrian values. They have to register with the job centre and can then take part in job-related assistance measures, if their language proficiency is sufficient, or in language-related assistance measures. Surveys of the job centres found that 10% of persons with protection status can be integrated into the labour market within the first year.

On the other hand, since September 2017, beneficiaries of international protection who are able to work but cannot secure employment are required to complete a one-year standardised integration programme focusing on language acquisition, career orientation and vocational qualification (see [Social Welfare](#)).

Concerning labour forces, the imbalanced distribution of supply and demand within Austria also presents a challenge to integration into the labour market. Many persons with protection status relocate into urban centres, especially **Vienna**, where the unemployment rate is also higher than in the western federal provinces. There is a great demand for workers in the tourism regions of the West. In the public debate, the tense situation of the Austrian labour market is one area which is used to argue in favour of the closing of borders.

In July 2019, the director of the Labour Market Service stated that 40% of all recognised refugees in 2016 had found employment, and that 35% of recognised refugees from 2017 had also found employment. In total, around 9% of all persons registered as unemployed were asylum status holders,⁷⁹⁰ and 20% of all unemployed beneficiaries of international protection under 25 years were residing in Vienna.⁷⁹¹ In July 2021, the Head of the Labour Market Service announced that out of the 9,500 persons that were granted asylum in 2015 and subsequently registered at the Labour Market Service, more than 50% had found employment. Nevertheless, refugees and beneficiaries of subsidiary protection were heavily affected by the consequences of the Covid-19 pandemic on the labour market. Women, in particular, lost work, and their integration into the labour market has deteriorated in this aspect according to the Head of the Labour Market Service.⁷⁹²

As of December 2023, a total of 399,005 persons were listed as unemployed in Austria, of which 69,677 participated in training courses. The unemployment quota was 7.8% in total. Regarding beneficiaries of international protection, 33,060 persons were listed as unemployed (of which 12,414 were in training). 9,644 beneficiaries of subsidiary protection were listed as unemployed of which 3,883 people were participating in training courses.⁷⁹³

⁷⁸⁹ ICMPD, *Integrationsmassnahmen und Arbeitsmarkterfolg von Flüchtlingen und subsidiär Schutzberechtigten in Österreich*, November 2017, available in German at: <https://bit.ly/3LrQP9Q>.

⁷⁹⁰ Kurier, ‘44 Prozent der Flüchtlinge aus 2015 haben bereits einen Job’, 28 July 2019, available in German at: <https://bit.ly/2IOmEbF>.

⁷⁹¹ Wiener Zeitung, ‘Jeder fünfte Asylberechtigter unter 25 ohne Job kommt aus Wien’, 24 January 2020, available in German at: <https://bit.ly/33jf4z6>.

⁷⁹² 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>.

⁷⁹³ Evaluation of the Public Employment Service Austria (AMS), 18 April 2024, unpublished.

2. Access to education

Access to education is the same for beneficiaries as for asylum seekers (see [Reception Conditions: Education](#)). However, there is no restriction with regard to apprenticeships for beneficiaries. **Refugees** can receive a public grant, including support for public transport, in order to study, which is not available for asylum seekers. As of January 2023, all minors, including refugees and beneficiaries of subsidiary protection, are under the duty to attend either a higher school, to do an apprenticeship or to prepare for an apprenticeship through other courses (*Ausbildungspflicht*).⁷⁹⁴ The violation of mandatory training is punishable since 18 January, 2023 by a fine ranging from 100 to 1,000 euros in repeated cases.

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

In 2023, the City of Vienna introduced another programme called “Jugendcollege”. It offers education and training programmes especially focused on persons coming from other EU member states and third country nationals. The focus group is people between 15 and 25 years old, and it is accessible for people that have completed 8 years of school and live in Vienna. It promotes language skills in German and English to prepare the persons for a training process upon completion.⁷⁹⁵

In Upper Austria, the Regional government promoted special formation courses for asylum seekers from Syria already during their asylum procedure. In three projects, asylum seekers should already get German classes and training offered directly by companies that are in need of labour force.⁷⁹⁶

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.⁷⁹⁷

Beneficiaries of subsidiary protection represent the largest group of the Basic Care beneficiaries, except in Tyrol. As a rule, they can remain in the Basic Care system after being granted protection status. However, as long as they live in an organised accommodation, they will only receive the basic care provided for these types of accommodation (food, pocket money, clothing, school fees).

The Constitutional Court has dismissed a complaint from a beneficiary of subsidiary protection against this differentiation in **Lower Austria**, on the ground that subsidiary protection is more provisional a status than refugee status, thereby justifying differential treatment in social benefits.⁷⁹⁸

⁷⁹⁴ Ausbildungspflichtgesetz (ApfG), BGBl. I Nr 120/2016, available at: <http://bit.ly/2lkgXsh>.

⁷⁹⁵ Stadt Wien, Jugendcollege, available in German at: <https://shorturl.at/7haPc>.

⁷⁹⁶ Der Standard, „Asylwerber in Jobs bringen: In Oberösterreich wagt Schwarz-Blau ein erstaunliches Experiment“, 7 April 2024, available in German at: <https://shorturl.at/zBdQc>.

⁷⁹⁷ Asylkoordination österreich, Aufenthaltstitel und Sozialleistungen, available in German at: <https://shorturl.at/paGz>.

⁷⁹⁸ VfGH, Decision E 3297/2016, 7 July 2017, available in German at: <http://bit.ly/2EOPIFB>.

Existing assets must be used before claiming social assistance or basic security. However, certain assets (such as motor vehicles or valuable household goods) must be excluded from realisation if doing so could cause an emergency, exacerbate it, or jeopardise its resolution. Asset allowances are included in the minimum security provisions of state legislation (around €5,268 in 2023).

Lower Austria: Since 2016, refugees receive lower amounts of needs-based benefits than nationals. Nationals receive € 889.84, while refugees receive € 522.50, including a bonus of € 155 granted when they take part in integration measures such as language courses. The Administrative Court (LVwG) of Lower Austria has challenged the maximum amounts introduced by the reform before the Constitutional Court. The regulation was annulled by the Constitutional Court as it constituted an infringement of the principle of equality.⁷⁹⁹

The fact that **Burgenland** decided to cap minimum benefits per household, by limiting it at € 1,500 per household regardless of its size and the number of persons concerned has been considered as unconstitutional by the Constitutional court. The Court considered that, even if the cost of living per person may decrease depending on the size of the household, additional expenses are still required for each additional person.⁸⁰⁰

In Burgenland, just as in Lower Austria, a waiting period for obtaining social benefits had been envisaged: those who had not been in Austria for at least five years within the last six years received less social benefits. The Constitutional Court ruled that this waiting period constitutes a different treatment of Austrian citizens and aliens. Regarding persons entitled to asylum, the scheme was considered particularly unjustified as they had to leave their country of origin and cannot return there. They must therefore not be assimilated to other strangers (EU citizens and third-country nationals) who are free to return to their country of origin. The length of stay in Austria should not lead to a differentiation in the amount of benefits granted and does not allow for assumptions as to the willingness to work of a person.⁸⁰¹

Upper Austria: The general level of needs-based benefits is € 921,30 per month, including for refugees with a permanent **Residence Permit**. Refugees with a temporary residence permit granted from 1 July 2016 onwards and subsidiary protection holders only receive core benefits of € 405 per month, as well as an additional amount of € 155 (integration bonus) per month subject to compliance with integration measures. The total amount of benefits granted per month is € 560. The regulation was annulled by the Constitutional Court as it constituted an infringement of the principle of equality.⁸⁰²

The Administrative Court (LVwG) of Upper Austria made a preliminary reference to the CJEU to ask whether Article 29 of the recast Qualification Directive is directly applicable; and whether it is possible to differentiate the level of benefits granted on the basis of the duration of the right of residence.⁸⁰³ On 21 November 2018, the CJEU concluded that EU law precludes national legislation which provides that refugees with a temporary right of residence in a Member State are to be granted social security benefits which are less than those received by nationals of that Member State and refugees who have a permanent right of residence in that Member State.⁸⁰⁴

For all minimum income beneficiaries, there is a maximum amount of € 1,512 granted per household, a regulation that was not contested by the Constitutional Court. For larger families, the minimum standards of all persons of a household community will be reduced evenly in percentage terms. In addition, in

⁷⁹⁹ VfGH, Decision G136/2017, 7 March 2019, available in German at: <https://bit.ly/2pbTuc3>.

⁸⁰⁰ VfGH, Decision E1277/2018, 12.12.2018, available in German at: <https://bit.ly/2UO2EtQ>.

⁸⁰¹ VfGH, Decision G308/2018-8, 1 December 2018, available in German at: <https://bit.ly/3yJA6HO>.

⁸⁰² VfGH, Decision G164/2019, 12 December 2019, available in German at: <https://bit.ly/3nntkVZ>.

⁸⁰³ LVwG, Upper Austria, 'Bedarfsorientierte Mindestsicherung für befristet Asylberechtigte: Landesverwaltungsgericht Oberösterreich legt EuGH Fragen zur Vorabentscheidung vor', 19 December 2017, available in German at: <https://bit.ly/3ZQEKzn>.

⁸⁰⁴ CJEU, *Ayubi*, Case C-713/17, 21 November 2018, available at: <http://bit.ly/3Lo3Otk>.

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.⁸⁰⁵

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.⁸⁰⁶

In November 2018, the Ministry of Social Affairs presented a draft law on social benefits.⁸⁰⁷ The proposal sets a maximum amount of benefits that federal provinces are obliged to grant and drastically reduces subsidies for households with several children. It also promotes compensation in kind rather than in cash. The draft law further sets certain conditions to receive the full amount of social benefits, which includes knowledge of German (level B1) or alternatively of English (C1). Refusing to integrate the labour market will also lead to cuts of about € 300 for single persons. While Austrian citizens will hardly be concerned by these new measures, refugees will be strongly affected. As regards beneficiaries of subsidiary protection, they will be excluded from the new social benefits law, which is contrary to Article 29 (2) of the recast Qualification Directive and the obligation to treat aliens equally with nationals.

The law was passed under heavy criticism by NGOs in May 2019 and immediately brought to the Constitutional Court by the opposition party SPÖ.⁸⁰⁸ In December 2019, the Court declared several parts of the law unconstitutional. This includes the provision which foresaw that language skills are a precondition for receiving the full amount of social benefits; as well as the provision foreseeing a reduction of social benefits depending on the number of children (i.e. 25% for the first child; 15% for the second child and 5% for every remaining child).⁸⁰⁹ The law as a whole was not abandoned, however, and the ruled out provisions were not replaced.

1.2. Other social benefits

Beneficiaries of subsidiary protection are also treated differentially with regard to family and childcare allowances, to which they are only entitled if they do not receive Basic Care. An additional condition for the childcare allowance for these persons is to earn an income.

A particular difficulty emerges when delays occur in the extension of the right of residence of beneficiaries of subsidiary protection. In fact, the family allowance for children will no longer be granted if the right to residence is not extended in due time, i.e. before its expiry. This practice of the tax offices was unsuccessfully criticised by the Ombudsman Board,⁸¹⁰ 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.

⁸⁰⁵ VfGH, Decision G 156/2018, 11 December 2018, available in German at: <https://bit.ly/3YNcSLr>.

⁸⁰⁶ VfGH, Decision V 101/2017-11, 12 December 2017, available in German at: <http://bit.ly/2EMeAnP>.

⁸⁰⁷ Entwurf Sozialhilfe-Grundsatzgesetz, Sozialhilfe-Statistikgesetz (104/ME), available at: <https://bit.ly/2GshdzV>.

⁸⁰⁸ Statements to the draft law, available in German at: <https://bit.ly/38hQW0w>.

⁸⁰⁹ VfGH, Decision G 164/2019-25, G 171/2019-24, 12 December 2019, available in German at: <https://bit.ly/39iNmop>.

⁸¹⁰ Volksanwaltschaft 2021, available in German at: <https://bit.ly/3p0z5tj>.

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.⁸¹¹ According to information provided by the Austrian Integration Fund (ÖIF), this applies particularly to Syrians.

In **Styria**, benefits can be cut up to 25% already for small misdemeanours, e.g. missing an appointment. In **Lower Austria**, where German language courses are mandatory for persons in the needs-based minimum benefit system, the allowance can be reduced by up to 50% if the person refuses to attend. In **Vorarlberg**, where beneficiaries are obliged to sign an integration agreement since January 2016, benefits can be reduced or withdrawn when refugees do not adhere to the integration agreement which they have to enter, e.g. by refusing to attend a language course.

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.⁸¹²

Lower Austria also introduced a 5-year residence requirement, which was appealed by the LVwG before the Constitutional Court. This precondition was violating constitutional rights (see decision above).

G. Health care

Asylum seekers and persons entitled to subsidiary protection who are in Vienna's basic health care system are automatically insured with the **Austrian Health Insurance Fund (ÖGK)** if free co-insurance with relatives is not possible. Persons entitled to asylum are insured through the needs-based minimum income scheme (BMS) or through their employer.

As **beneficiaries of subsidiary protection** have no maximum time limit on basic care, they always enjoy health insurance similar to asylum seekers (see **Reception Conditions: Health Care**). Meanwhile, **refugees** enjoy basic care for 4 months after recognition of their status. When participating in courses of the job centres, they are also covered by health insurance. As soon as they start to work more than a few hours, the mandatory health insurance takes effect. When refugees are considered to be without resources and receive needs-oriented minimum basic benefits, they also have health insurance.

Access to psychological therapy for traumatised refugees and torture survivors is possible as a transitional measure within AMIF projects when the therapy had already begun during the asylum procedure. Although such projects exist in every federal province, their capacities barely cover the demand. Starting in 2021, a new project called RESET funded by the Ministry of Social Affairs was introduced. It provides extra funding for organisations offering psychotherapy to refugees.⁸¹³ Other costs of psychological therapy are only partly covered by health insurances.

⁸¹¹ Labour Integration Act, BGBl. I No 75/2017, 19 June 2017, available in German at: <http://bit.ly/2EXvtPU>.

⁸¹² LVwG Tyrol, Decision 2016/41/0301-1, 24 February 2016, available in German at: <https://bit.ly/40aIueP>.

⁸¹³ Asylkoordination österreich, RESET heißt Neustart, available in German at: <https://bit.ly/3O0cF3d>.

Asylum seekers are not eligible for childcare subsidies. The care allowance is reduced from the minimal income for persons who qualify for asylum. Only those who have previously been employed are eligible for childcare assistance under subsidiary protection.

Childcare allowance must be applied for at the [Insurance Fund \(ÖGK\)](#). It is important that the application is submitted in good time - if necessary before the family allowance notice is received. Because the childcare allowance is only paid out retrospectively for 6 months and a full compliance with all mandatory mother-child passport examinations is required. The confirmation of this must be submitted to the health insurance company by the 15th month of the child's life. Otherwise the childcare allowance will be reduced.

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 20(4)(5)	§ 3 Basic Care Act (GVG-B)	National law foresees that applicants can be excluded from basic care in case of certain violations.