Universal Periodic Review Austria

Joint submission by AGENDA ASYL
for the 10th Session of the UPR Working Group in January 2011
12. July 2010

Human rights concerns about asylum-related regulations and practices in Austria

Austria's asylum policy is largely determined by minimum standards defined by European legislation. Together with national legislative initiatives, they have frequently resulted in partly radical changes in asylum regulations so that we can justly speak of increasing "legal uncertainty".[1] At present, three versions of the Asylum Act are applicable; when asylum seekers and persons entitled to protection compare their situation with the one of compatriots, they suspect to be treated arbitrarily and unequally as they cannot understand the changes in requirements caused by numerous amendments in legislation.[2]
When European legislation is transposed, there are sometimes gaps, and in some cases previously higher procedural standards were lowered even though this was not necessary as the Member States were explicitly authorised to maintain higher standards.[3]

Human rights organisations active in the field of refugee protection as well as lawyers specialising in asylum issues recently face increasing criticism and pressure: Policy-makers accuse lawyers and NGOs of advising refugees to file applications that are deemed to fail and the Ministry of the Interior discontinued its support for counselling projects of NGOs that allegedly prolong proceedings wantonly.[4] The political debates on amendments to asylum and alien legislation as well as on the planned third first reception centre almost exclusively focus on "combating abuse". This promotes prejudice against refugees.

The numerous amendments are characterised by an intensified trend towards control and combating of alleged abuse; security aspects prevail and asylum legislation loses its effectiveness as an instrument designed to protect refugees.

> **The fields of asylum, migration and integration should be shifted from the Ministry of the Interior to a new, separate ministry.**

1. Access to asylum proceedings

The EU's Dublin II Regulation gives the Member States leeway for taking account of both human rights concerns and humanitarian aspects. In Austria, the Dublin II Regulation is applied very restrictively. For this reason, families are separated again and again if the mandatory criteria of family reunification are not met, e.g. when adult children flee to their parents recognised as refugees in Austria and when parents come to their adult children living here. The humanitarian provision of the Dublin Regulation is hardly applied at all. This practice especially affects Chechen refugees who frequently are deported to Poland although they have family members in Austria but none in Poland.

Asylum seekers are transferred to Member States where they cannot expect fair proceedings in line with the rule of law and/or care and assistance services in line with their needs. In many cases, they did not apply for protection in the country of entry and lived as illegal immigrants without any social security. At present, we can see that Greece does not provide the protection required.[5] As a consequence of the rigid application of the Dublin Regulation, refugees do not request international protection in order to avoid deportation to life without perspectives. This system results in "refugees in orbit".

More and more frequently, asylum seekers agree to "voluntary" repatriation to prevent being deported to the country of entry. In particular, asylum seekers detained awaiting deportation get persuaded to return to their country of origin in order to avoid several months of detention in Austria. Asylum seekers who are detained pending deportation while responsibility is determined are prevented from exerting their right of lodging appeals. Moreover, detained asylum seekers are in fact deprived of legal counselling and assistance and are only offered advice on repatriation.

They may even be deported to the competent Dublin country before the decision becomes legally effective unless suspensive effect is accorded within seven days.

> **Therefore, the Austrian asylum authorities should be urgently called upon to use their discretionary powers in applying the sovereignty clause under the Dublin Regulation at least in those cases in which access to fair asylum proceedings governed by the rule of law is not guaranteed in the country or in which a transfer would result in humanitarian hardship because of health and family reasons.**

2. Legal protection

<u>Shorter appeal periods for rejection decisions</u>

The Aliens Law Amendment Act 2009 reduced the period for appealing against rejection decisions from two weeks to one week. In particular, in types of proceedings that require specific legal expertise given their implications in terms of constitutional, international and European law and given the complexity of national procedural law, the shorter appeal periods make it impossible for asylum seekers in many cases to lodge well-founded appeals in due time.[6] More and more relevant procedural errors as well as decisions that are simply incorrect in substantive terms are not contested or can only be contested through poorly prepared appeals. This problem is even exacerbated by the fact that so-called territorial restriction[7] regularly impedes asylum seekers from obtaining legal advice from independent NGOs. Infringements of this territorial restriction are not only punishable by an administrative fine (repeated infringements are punishable by a fine amounting to up to EUR 15,000 or, if the fine cannot be paid, by imprisonment for up to six weeks).

Article 7 of the International Covenant on Civil and Political Rights (ICCPR) of 19 December 1966 provides that "no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment." Article 13 demands that an alien must have the right to have an expulsion decision reviewed (by means of an appeal). The parties to the Covenant undertook "to adopt such legislative or other measures as may be necessary to give effect to the rights recognised in the present Covenant" (see Article 2). As outlined above, the unjustified shortening of the appeal period gives rise to an elevated risk that an increasing number of incorrect decisions become legally effective and, hence, people are indirectly subjected to a treatment that especially contradicts Article 7. Moreover, the current legal framework is in conflict with Article 13 in combination with Article 2 of the Covenant.

Insufficient legal protection during pre-deportation detention

Strikingly, detainees have only had very poor information on the status of their asylum proceedings or immigration policing procedures for many years. Likewise, they are largely unaware of the fact that they can initiate a review of the lawfulness of their detention as such and they do not know how this can be done in concrete terms. As there is no general access to detainees awaiting deportation and visiting them requires a power of attorney in each case, the majority of detainees cannot be visited by representatives of independent NGOs in Austria. For lack of information on the status of proceedings and in the absence of concrete legal assistance, detainees are as a rule unable to exert the rights given them by law (e.g. having the lawfulness of detention reviewed).

Insufficient access to adequate legal protection during pre-deportation detention conflicts with Articles 13, 6 and 7 in combination with Article 2 of the Covenant.

No notification of the elected representative in the admission procedure

In the admission procedure, summonses only have to be served to the asylum seeker in person but not to the elected representative (as well).[8] The latter may only be informed of summonses by a person who is independent of the authority and not subject to its instructions — the legal advisor in the admission procedure —, if the asylum seeker requests this. This legal framework means in practice that, as a rule, the elected representative is excluded from the admission procedure.

The fact that the elected representative does not have to be summoned to attend hearings in the admission procedure undermines the right of being represented that is laid down in Article 13 of the ICCPR.

The subsequent application regime forbids an examination of the grounds for fleeing

The subsequent application regime that entered into force on 1 January 2010 partly restricts the examination powers of the asylum authority with regard to subsequent applications (i.e. applications submitted after proceedings have been closed) in such a way that the identified grounds for fleeing do not have to be considered any more. Moreover, deportations can increasingly be implemented while asylum proceedings are still pending, i.e. before the asylum authorities have taken a legally effective decision on the asylum application. Because of these new provisions, there is a risk that refugees under the terms of the Geneva Refugee Convention, i.e. persons who actually should be given the status of refugees, are deported to the country persecuting them.[9]

Therefore, this regulation also conflicts with Articles 13 and 7 in combination with Article 2 of the Covenant.

Supreme court review by the Administrative Court was eliminated for asylum cases.

Since 1 July 2008, asylum seekers have not been able any more to appeal to the competent supreme court, i.e. the Administrative Court, for a review of decisions taken in their asylum proceedings. In the years before this review competence was abolished for asylum cases, the Administrative Court found in up to 22% of the asylum cases referred to it that the then appellate court incorrectly applied legislation in force in asylum proceedings — as a rule to the detriment of asylum seekers. In parallel to the elimination of appeals to the Administrative Court in asylum cases, the appellate court was reformed, but the measures taken largely constituted formal changes. Almost all the judges of the previous appellate court were taken over and the applicable law was hardly modified. As a result, we can speak of continuity in many respects. In particular, it is to be assumed — and this also corresponds to the practical experiences made in legal representation by NGOs in asylum proceedings — that the previous error rate did not disappear on 1 July 2008. Thus, special legal protection was reduced in a highly sensitive area with regard to human rights.

At present, the introduction of first-instance administrative courts is under discussion in Austria (the related bill was already submitted to public consultation). While appeals against decisions of these administrative courts to the supreme court are to be possible, the bill still excludes asylum cases so that legal protection will remain reduced for asylum seekers.

This second-rate legal protection in the asylum field is in conflict with Article 2 of ICCPR that provides — as mentioned above — that the parties to the Covenant have to adopt such legislative or other measures as may be necessary *"to give effect to the rights recognised in the present Covenant"*. Because of the insufficient legal protection regime in the asylum field, the substantive correctness of decisions taken at the various asylum instances is not ensured to the extent required. Hence, it is just a matter of time before Articles 6, 7 and 13 of the Covenant will be violated for reasons inherent in the system.

> **Agenda Asyl recommends to reduce provisions applicable in asylum proceedings that deviate from general procedural law and to ensure appropriate legal protection, including access to the Administrative Court, so that asylum seekers may adequately exercise their procedural rights.**

3. Pre-deportation detention

Austria still places detainees pending deportation in institutions very ill suited for that purpose, i.e. police detention centres. The guards do not have any specific training in addition to standard police training. They are only offered in-service[10] seminars in the form of one-day courses.
Austria responded to the related criticism voiced by the CPT (European Committee for the Prevention of Torture) in January 2010[11] by pointing out that a detention centre would be built in Styria still in 2009. That detention centre will not be taken into operation before 2012.

The contracts with charitable organisations that had offered social services in police detention centres until June 2009 were largely terminated. Since that time, more than 90 percent of detainees are supported by an uncritical association with close relations to the Federal Ministry of the Interior. Social services provided by NGOs to assist the detainees were discontinued and replaced by pre-return preparation.

Again and again, cases become known in which persons are illegally placed in pre-deportation detention. On 25 March 2009, an Austrian national of Sudanese origin was detained after a check of identity papers at Urban-Loritz-Platz in Vienna because he did not have any ID documents on him. 21-year old, mentally handicapped Mohammed A. was only found in pre-deportation detention at Hernalser Gürtel after eight days although his parents immediately reported him missing.[12]
In April 2009, together with their father Ahmed R., three Afghan children aged four, seven and ten years were placed in detention prior to their transfer to Greece under the Dublin II Regulation.[13] Because of her mental illness, the mother was separated from the rest of the family and placed in in-patient care in a psychiatric hospital. The aliens police authorities gave as a reason for the detention of the children that they would not have been taken care of otherwise. The Independent Administrative Tribunal confirmed that the children were detained unlawfully.

Pre-deportation detainees continue to have no access to legal advice and free legal aid[14] so that they are not able to use effectively legal remedies against decisions taken by the authorities.[15] They are not enabled to get into contact with counselling centres of NGOs.
The amendment to the Asylum and Alien Acts that entered into force in January 2010 introduces five additional cases in which the alien police is obliged to place asylum seekers into pre-deportation detention; this obligation is only waived if pre-deportation detention is necessary to safeguard the proceedings and if "special circumstances related to the person of the asylum seeker" speak against it.[16] These measures are also designed to prevent appeals and facilitate rapid deportation.
Hence, it is not to be expected that the construction of the new detention centre will bring about an abandonment of the principle of detaining asylum seekers awaiting deportation even if they are willing to leave the country; according to the concept, the planned pre-deportation centre in Vordernberg will be operated as a closed facility especially for persons willing to leave Austria. This concept is extremely problematic from a human rights perspective.
The mandatory judicial review of detentions ordered by the administrative authority is only scheduled to take place after six months. This is neither compatible with European standards nor with the European Return Directive.[17]

Asylum seekers should not be placed in pre-deportation detention. Pre-deportation detention must meet international standards. Qualified legal and social advice and counselling have to be ensured.
Mandatory and immediate judicial review of detention.

4. Right of abode for asylum seekers / aliens who have lived in Austria for many years

Since April 2009, aliens who must not be expelled on account of Article 8 of the EHRC are to be granted the right of abode. The Constitutional Court ruled in 2008 that the absence of the right to submit an application for maintaining one's private and family life in Austria violated human rights.[18]
Thousands of asylum cases are not decided within the period defined by law. At the end of 2008, around 6,500 proceedings had been pending in the appeals stage with the Asylum Court since 2004. After a negative decision, only well integrated persons who also have (prospects of) sufficient income may be allowed to stay. Thus, disadvantages exist for asylum seekers who, within the framework of basic welfare support, are placed in regions where there are no

opportunities for legal work. Former asylum seekers who were able to integrate into the labour market under the more favourable employment regulations for aliens that applied until the summer of 2004 also lose their job upon the expiry of their (unrestricted) work permit and, therefore, the income required for the right of abode.

The legal framework defined for the procedure for obtaining the "right of abode" results into an unequal treatment of aliens. In the expulsion procedure, legal protection is exhausted for asylum seekers after the review of the first-instance expulsion decision by the Asylum Court, while it is possible after a rejection of the appeal by the Public Security Authority to appeal to the Administrative Court by way of an extraordinary legal remedy. In both cases, complaints can only be lodged with the Constitutional Court as an extraordinary legal remedy in the case of an imminent violation of fundamental rights.
The right of abode cannot be applied for while the asylum proceedings are pending; but when the asylum proceedings are closed with a legally effective expulsion order, the person in question is obliged to leave the country and can be deported anytime. An application for the right of abode results neither in a temporary toleration nor in a right of residence. When the applicant does not stay in Austria any more, the procedure becomes pointless. Compliance with the expulsion order, i.e. conformity with the law, thwarts efforts to obtain the right of abode considered necessary with a view to human rights.
The right of abode is granted in the form of a limited or unlimited authorisation of establishment (AE) with the unlimited AE requiring a certificate on a language test. A limited AE, however, does not provide free access to the labour market. The obligation of legal immigrants to submit a certificate on a language test (within five years) constitutes an unjustified disadvantage for persons with the right of abode in view of access to the labour market.

The "right of abode" should also provide free access to the labour market in all cases.
For asylum seekers having lived in Austria for many years, it should be made possible in a non-bureaucratic way to continue their stay in Austria irrespective of any obstacles to expulsion related to human rights.

5. Restricted social rights

The support provided to asylum seekers is not determined by *Land* social assistance legislation, but is defined by the agreement on basic welfare support between the federal government and the *Land* governments that has the status of constitutional law. The support differentiates between persons living in organised accommodation and private homes. In the case of organised accommodation, the accommodation provider receives a daily rate of € 15 to € 17 per person depending on the equipment and the asylum seekers are entitled to € 40 of monthly pocket money, € 150 of annual clothing allowance and, in the case of children attending school, vouchers in the amount of € 200 per year.
Asylum seekers living in private homes only receive € 180 per adult and € 80 per child as a monthly subsistence allowance. Thus, the financial support provided to poor asylum seekers is even less than half the subsistance allowance considered necessary for poor Austrians.[19] In Styria, for example, the subsistence allowance amounts to € 548 paid 14 times a year. In addition, there is an entitlement to financial support for acceptable rental expenses. An asylum seeker living in a private home may only receive a maximum of € 110 for monthly rental expenses. In Vienna, single welfare recipients incapable to work are paid up to € 923.01 per

month (including max. € 179 of rent allowance), while asylum seekers only receive € 302 (including clothing allowance) per month.

In 2010, social assistance is to be harmonised by means of a "means-tested minimum income scheme" nation-wide. Asylum seekers continue to have no access to social assistance and will not be covered by the "means-tested minimum income scheme" so that they will also be discriminated against in securing their livelihood in the future.[20]
This completely insufficient funding under basic welfare support prevents asylum seekers from living in private homes or forces them to return to organised accommodation. Living for many years under supervision and in cramped conditions without adequate possibilities for structuring the day and own initiatives results in hospitalism.

Access to gainful employment
As access to the Austrian labour market is reglemented for aliens, asylum seekers are in fact excluded from employment. Apart from priority being given to Austrian nationals and integrated migrants as well as the review of the labour market situation, restrictions for asylum seekers are defined in a ministerial decree issued in 2004 according to which asylum seekers may only be granted seasonal work permits for the tourism and agricultural sector (subject to a quota). The three-level system for the integration of alien employees in the labour market was abolished for asylum seekers so that even persons who had been employed for many years were downgraded when their work permits expired. As a consequence, asylum seekers employed in other economic sectors lost their jobs as they could no longer obtain a work permit.

> **Agenda Asyl calls for an adjustment of the basic welfare support system with a view to the minimum income scheme and for reducing the dependence of asylum seekers on welfare support by improving their access to the labour market.**

Family allowances
Because of the amendment of the Family Burdens Equalisation Act of 15 December 2004, asylum seekers only are entitled to family allowances and child care benefits after they are granted asylum (permanent residence permit). Persons granted asylum continue to receive basic welfare support for four month during which these family allowances are not directly available to the families but are offset against basic welfare support. Because of delays in giving the asylum status to children born in Austria or entering Austria within the framework of family reunification, their claims are again and again reduced.
Although the protection needs of persons entitled to subsidiary protection frequently do not differ from those of persons granted asylum, their entitlement to child care benefits is regulated in a discriminatory way. In general, persons permanently residing in Austria are entitled to receive child care benefits if their income does not exceed a minimum threshold. Persons granted asylum are treated like Austrian nationals. Persons entitled to subsidiary protection are not entitled to any benefits if another family member receives basic welfare support. In contrast to other eligible persons, the provisions demand that the parent who applies for child care benefits must be gainfully employed but must not exceed the income limit of € 16,200 per year.

> **Persons entitled to subsidiary protection should be treated like nationals with regard to social benefits for families and children.**

Restricted mobility
The basic welfare support scheme restricts the freedom of residence and movement of asylum seekers. They are assigned accommodation by the asylum authorities in consultation with the *Land* representatives, and they can only move to another *Land* for special reasons in exchange for other asylum seekers. University studies are regularly not accepted as a reason for moving.

> **Asylum-seekers should be heard when assigning accommodation and their preferences should be taken into account at least for educational, health and employment reasons and to enable regular contact with relatives or friends**

Prejudgement
In 2008, several Chechen families were "deported" from Carinthia because individual family members were accused of criminal offenses by the Carinthian Refugee Office and the Carinthian governor even though police investigations did not result in any relevant findings. Governor Haider called upon the local population "to inform me immediately about violent acts by asylum seekers so that I can initiate their immediate deportation."[21]
In October 2008, the *Land* Carinthia opened a "special institution" for delinquent asylum seekers at Saualm, a remote location at an altitude of 1,200 metres that can only be reached on forest roads. There is no public transport to this facility. According to Governor Haider, this special institution was only an interim solution and the ultimate goal was to expel delinquent asylum seekers from Austria.[22]
Subsequently, asylum seekers against whom no criminal charges had been brought and who had not been convicted of criminal offenses were also assigned to this facility. Most asylum seekers transferred to Saualm fled from the facility and lost their entitlement to basic welfare support. A related suit for basic welfare support filed with the Independent Administrative Tribunal of Carinthia by an asylum seeker without a criminal record succeeded and the steps taken by the *Land* were declared unlawful.

6. Violations of children's rights

Diverse human rights organisation again and again criticise Austria for its treatment of minor refugees. In its observations on the situation of the rights of the child in Austria dated 28 January 2005, the UN's Committee on the Rights of the Child criticised, for example, how refugee children are treated[23]; asylum seeking minors would be discriminated against, inadequately accommodated and received insufficient legal representation. Austria was requested to reform numerous aspects: ensuring that guardians are systematically assigned to unaccompanied minors; interviewing minors by professionally qualified personnel; accommodating minors in line with their age and state of development; specific examination before any minors are deported; avoiding placement in detention pending deportation.

Three issues are discussed in greater detail below:

Long duration of asylum proceedings — disadvantages in education and vocational training
The long duration of asylum proceedings and the resulting insecurity about their residence status frequently cause mental and physical stress. For young people, this also leads to disadvantages in the field of education and vocational training. While children subject to compulsory schooling are integrated into the Austrian education system irrespective of their residence status, higher schools are not obliged to admit asylum seekers (this is also true for Austrian children).

As apprenticeships are governed by the provisions of the Aliens Employment Act and asylum seekers can only work in the field of seasonal and harvesting work on account of a decree issued by the Economic Ministry in 2004, young asylum seekers find it impossible to start apprenticeship training after the completion of compulsory schooling.

Detention pending deportation
In the past, minor aliens were again and again placed in detention (2005: 171 cases; 2006: 185; 2007: 163 and 2008: 181). The Aliens Police Act provides that the "most lenient means" is to be applied to minors, but in practice age information is frequently disputed. Repeatedly, the placement in pre-deportation detention turned out to be unlawful later on.
In 2000, the Human Rights Advisory Council found in its report on "Minderjährige in Schubhaft" (minors in pre-deportation detention) that placing minors in pre-deportation detention is not in line with international minimum standards for the treatment of children and young people in custody.[24]
Up to now, the recommendations of the Human Rights Advisory Council have been neglected just like the UNHCR's Guidelines on Policies and Procedures in Dealing with Unaccompanied Children Seeking Asylum according to which "children seeking asylum should not be kept in detention".

Age determination
The age-related expert opinions commissioned or prepared by asylum authorities and the aliens police largely lack scientific methods for determining the age relevant for the proceedings. Although several methods, such as visual inspection or renal sonography, are not applied any more, medical examinations have systematically been performed since early 2010 to determine the age of unaccompanied minors seeking asylum and in some cases also of subsequently arriving family members. In this context, methods are used that are not suited for determining majority, such as carpal X-ray, and that are embarrassing, such as examinations on the development of the sexual organs.[25]

7. Sanctions in case of delinquency

The far-reaching deviations from the termination reasons defined in the Geneva Convention impair the maintenance of private and family life and discriminate against innocent family members.
Since early 2010, family members are excluded from being granted the same protection status if they committed a criminal offense. Moreover, an expulsion procedure has to be initiated in the asylum proceedings of "delinquent" applicants if the investigation findings available make it unlikely that asylum or subsidiary protection status will be granted. The statutory requirement of taking a decision on an asylum application as quickly as possible and within three months at the latest raises the fear that further investigations that may be required will not be undertaken. Accelerated proceedings already have to be applied upon the suspicion of a premeditated offense irrespective of its severity. With regards to human rights, the procedural deviations are of particular concern because of the unequal application of the presumption of innocence.

The introduction of these delinquency provisions into the Asylum Act rendered virtually inoperative an essential element of the Geneva Refugee Convention, namely the principle of eligibility for protection. If somebody can become ineligible of protection under the Geneva Convention if he/she committed a serious crime, this conversely means that eligibility is maintained at any rate if no serious crime was committed.

People may also need international protection even though they committed criminal offenses. The asylum law as laid down in the Geneva Refugee Convention is not a "reward system" for refugees complying with the rules, but an instrument of protection.
Therefore, the strict separation of the Asylum Act as an instrument of protection from penal law for punishing offenses proved very well in the past. Of course, offenders have to be held accountable in the criminal justice system. Denying international protection to offenders who have served their sentence constitutes an unjustified additional punishment unless the crime committed was particularly serious.
Persons who are "delinquent" under the Asylum Act (this only requires two small-scale offenses) cannot be recognised as refugees and cannot be granted subsidiary protection (Article 34 (2) (1) and (3) (1)).
This is particularly tragic in cases in which young people commit an offense while the asylum proceedings are still pending and do not have their own reasons for fleeing. As long as they are minors, they will probably have the status of tolerated persons. However, it also seems possible that such minors are separated from their family by deportation if they do not have any personal reasons for fleeing.

Restriction of the denial and exclusion reasons to the ones laid down in the Geneva Refugee Convention.

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[1] For example, the introduction of basic welfare support in March 2004 that transposed the European Directive 2003/9/EC brought about far-reaching structural changes in the asylum proceedings (establishment of first reception centres and entry proceedings, territorial restriction, involvement of public security officials into the proceedings, expulsion by the asylum agency) and was amended in the alien legislation package of 2005 (Federal Law Gazette I No. 100; e.g. pre-deportation detention during the entry proceedings), change of the appellate court in July 2008 (Federal Law Gazette. I No. 4/2008: establishment of the Asylum Court),

amendment in 2009 (Federal Law Gazette I No.29/2009 implementing the right of action demanded with regard to the protection implied under Article 8 of the EHRC demanded by the Constitutional Court; Aliens' Law Amendment Act 2009 (Federal Law Gazette I 122/2009; additional reasons for detaining asylum seekers awaiting deportation, consequences of delinquency for the status already granted and for family reunification, shorter period for appeals,…).

[2] For example, residence permits for persons entitled to subsidiary protection were issued for a term of five years until 2005. From 2006 on, their maximum term has been one year, while longer periods are still applicable in "old" cases. Asylum seekers who applied for asylum before 2006 and have gainful employment are entitled to family allowances, whereas those who filed their application from 2006 on do not receive family allowances on principle.

[3] This is true, for example, in the case of minimum standards for shorter appeal periods applying to inadmissible asylum applications and the extension of subsidiary protection by a maximum of one year; inadequate transposition of the European Reception Directive with regard to asylum seekers detained pending deportation and, in particular, their right to counselling and care.

[4] Die Presse, 08.04.2009 "Ein Problem sieht die Innenministerin mit den Organisationen, die bei den AsylwerberInnen die Rechtsberatung durchführen. Da stellen manche mutwillig einen Antrag nach dem anderen, nur damit der Charterflieger für die Abschiebung halb leer wegfliegt…. Außerdem will Fekter künftig nur noch jene Organisationen mit der Rechtsberatung von AsylwerberInnen beauftragen, die rasch Rechtssicherheit für die AsylwerberInnen schaffen." [The Interior Minister sees a problem in the organisations that provide legal advice to asylum seekers. Some file a multitude of applications and requests just to make the aircraft chartered for deportation leaves half empty. … Moreover, Ms. Fekter wants to award contracts on legal counselling for asylum seekers only to those organisations that quickly create legal certainty for asylum seekers.]
Federal Ministry of the Interior: Europäischer Flüchtlingsfonds III. Leitlinien für Projektwerber zum EFF Projektaufruf 2009 [European Refugee Fund III. Guidelines for project apllicants with regard to the ERF call for proposals 2009]. Vienna, 5 May 2009, p. 10
The guidelines state in the priority area *"Legal counselling in asylum proceedings"* that counselling is to promote fast and efficient proceedings and to refer clients to centres providing repatriation advice — according to indicators, for one third of the asylum seekers with admitted proceedings: "Entgegen bestehender Tendenzen, wonach Schutzsuchende ohne Aussicht auf Erfolg durch falsch verstandene Hilfeleistungen in Verfahren gedrängt werden, besteht Bedarf an nützlicher, sachlicher Hilfe, die aber auch darin besteht, rechtzeitig auf eine mögliche Chancenlosigkeit in Bezug auf das Verfahren aufmerksam zu machen." [In contrast to existing tendencies of pushing persons seeking protection into proceedings without any prospects of succeeding as a result of a misconception of assistance services, there is a need for useful, objective help that, however, also includes timely information on the possible hopelessness of the proceedings.

[5] Third party intervention by the Council of Europe Commissioner for Human Rights, under Article 36, paragraph 2, of the European Convention on Human Rights. Strasbourg, 10 March 2010, CommDH(2010)9

[6] See comment of the Federal Ministry for European and International Affairs on Article 22 (12) of the Asylum Act, 32/SN-65/ME XXIV. GP S 2.

[7] Until a decision is taken on the admissibility of the proceedings, asylum seekers are only permitted to stay in the district of the first reception centre. At the time when they receive the rejection decision, they are frequently detained pending deportation.

[8] Article 23 (2) of the Asylum Act 2005.

[9] With regard to the fundamental rights concerns about Article (5) and (6) of the Asylum Act, see the comment of the Federal Chancellery/Constitutional Department on the bill 25/SN-65/ME XXIV. GP, p. 7f , and with regard to Article 41a, p. 13f; comments of the Ministry of European and International Affairs, p. 2.

[10] Response of the Republic of Austria to the report on CPT's visit to Austria from 15 to 25 February 2009, p. 17f (English version).

[11] CPT's report on its visit to Austria from 15 to 25 February 2009, p. 21ff (English version).

[12] Die Presse, 3 April 2009.

[13] Der Standard, 11 April 2009.

[14] REPORT BY THE COMMISSIONER FOR HUMAN RIGHTS MR. THOMAS HAMMARBERG ON HIS VISIT TO AUSTRIA CommDH(2007)26, 12 December 2007, paragraph 76;
for further details see: Rechtschutz für Schubhäftlinge. Bericht und Empfehlungen des Menschenrechtsbeirats (Legal protection for pre-deportation detainees. Report and recommendations of the Human Rights Advisory Board), 2008.

[15] See UNHCR-"MONITORING" DER SCHUBHAFTSITUATION VON ASYLSUCHENDEN (UNHCR "monitoring" of the conditions of pre-deportation detention of asylum seekers), December 2008, p 10f: This report states that detainees awaiting deportation who are assisted by the association Verein Menschenrechte are not informed about their proceedings and the legal remedies available. In the majority of cases, the detainees had accepted the repatriation support offered by this organisation mainly because they could not stand detention any longer or wanted to avoid a chain of deportations via other EU Member States to their home country.

[16] cf. comments of the Human Rights Advisory Council on the federal bill amending the Asylum Act 2005, the Aliens Police Act 2005, the Federal Basic Welfare Support Act 2005, the Nationality Act and the Act on the Erasure of Convictions and Limitation of Information, Vienna, 7 August 2009.
[17] Article 15 (3) of the European Return Directive, Article 18 (2) of the European Asylum Procedures Directive.
[18] G 246, 247/07 etc., 27 June .2008.
[19] Concluding Observations of the Committee on Economic, Social and Cultural Rights E/C.12/AUT/CO/3 (25 November 2005), "16. The Committee is concerned about reports that social assistance benefits provided to asylum seekers are often considerably lower than those received by citizens of the State party,"and (31) "calls on the State party to ensure that adequate social support is provided to asylum seekers throughout their asylum proceedings."
[20] In 2005, the CESCR stated: "(29) The Committee recommends… a minimum guaranteed income for everyone without a sufficient source of income."
[21] Direct mail of Governor Dr. Jörg Haider to all households in Villach, January 2008.
[22] Die Presse, 6 October 2008.
[23] UN document CRC/C/15/Add.251 of 28 January 2005, Para. 8, 20, 47, 48.
[24] "Der Beirat empfiehlt, solange in Österreich keine Einrichtungen geschaffen worden sind, die den international normierten und empfohlenen Standards entsprechen, von der Verhängung der Schubhaft über Minderjährige mangels geeigneter Unterbringungsmöglichkeit Abstand zu nehmen" [The Advisory Council recommends that, as long as there are no facilities in Austria that comply with internationally regulated and recommended standards, minors should not be placed in pre-deportation detention for a lack of suitable accommodation facilities]. Report of the Human Rights Advisory Council on "Minderjährige in Schubhaft" [Minors in pre-deportation detention. 2000
[25] Carpal X-rays only permit the determination of the age up to 17 years for males and up to 15 years for females; the development of the sexual organs only permits valid findings up to the age of 15. See comments of the Health Ministry on the federal bill amending the Asylum Act 2005, the Aliens Police Act 2005, the Federal Basic Welfare Support Act 2005, the Settlement and Residence Act, the Nationality Act 1985 and the Act on the Erasure of Convictions and Limitation of Information 1972. In these comments, the Health Ministry expresses concerns both with regard to the radiation exposure involved in the radiological examination method and in its inaccuracy.