

Country Report: Austria



2017
Update

asyl*koordination*
Österreich



Acknowledgements & Methodology

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

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

The information in this report is up-to-date as of 31 December 2017, unless otherwise stated.

The Asylum Information Database (AIDA)

The Asylum Information Database (AIDA) is coordinated by the European Council on Refugees and Exiles (ECRE). It aims to provide up-to date information on asylum practice in 23 countries. This includes 20 EU Member States (AT, BE, BG, CY, DE, ES, FR, GR, HR, HU, IE, IT, MT, NL, PL, PT, RO, SE, SI, UK) and 3 non-EU countries (Serbia, Switzerland, Turkey) which is accessible to researchers, advocates, legal practitioners and the general public through the dedicated website www.asylumineurope.org. The database also seeks to promote the implementation and transposition of EU asylum legislation reflecting the highest possible standards of protection in line with international refugee and human rights law and based on best practice.



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Glossary & List of Abbreviations

Basic Care	Material reception conditions offered to asylum seekers
Dismissal	Negative decision on the merits of the application
Rejection	Negative decision on the admissibility of the application
AHZ	Pre-removal detention centre Anhaltezentrum
AMIF	Asylum, Migration and Integration Fund
AsylG	Asylum Act Asylgesetz
BFA	Federal Office for Immigration and Asylum Bundesamt für Fremdenwesen und Asyl
BFA-VG	BFA Procedures Act
BVwG	Federal Administrative Court Bundesverwaltungsgericht
COI	Country of origin information
EAST	Initial reception centre Erstaufnahmestelle
ERF	European Refugee Fund
FPG	Aliens Police Act Fremdenpolizeigesetz
FrÄG	Aliens Law Amendment Act Fremdenrechtsänderungsgesetz
HAP	Humanitarian Admission Programme
IBF	Interventionsstelle für Betroffene von Frauenhandel
ICMPD	International Centre for Migration Policy Development
LVwG	State Administrative Court Landesverwaltungsgericht
MSF	Doctors Without Borders
ÖIF	Austrian Integration Fund Österreichisches Integrationsfonds
ÖVP	Austrian People's Party Österreichische Volkspartei
PAZ	Police detention centre Polizeianhaltezentrum
TEU	Treaty on European Union
UVS	Independent Administrative Board
VfGH	Constitutional Court Verfassungsgerichtshof
VQ	Distribution centre Verteilungsquartier
VwGH	Administrative High Court Verwaltungsgerichtshof

Statistics

Overview of statistical practice

Asylum statistics are published on a monthly basis by the 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: 2017

	Applicants in 2017	Pending at end 2017	Refugee status	Subsidiary protection	Humanitarian protection	Rejection	Refugee rate	Subs. Prot. rate	Hum. Prot. rate	Rejection rate
Total	24,296	57,677	21,079	6,985	1,524	13,781	50.9%	16.9%	3.7%	28.5%

Breakdown by countries of origin of the total numbers

Syria	7,375	4,256	11,555	1,248	3	436	87.2%	9.4%	0.02%	3.38%
Afghanistan	3,676	24,590	4,031	3,171	87	2,835	39.8%	31.3%	0.9%	28%
Pakistan	1,541	1,420	34	9	33	1,199	2.7%	0.7%	2.6%	94%
Iraq	1,389	7,926	1,135	1,027	11	1,409	31.7%	28.7%	0.3%	39.3%
Nigeria	1,382	1,693	15	26	90	1,565	0.9%	1.5%	5.3%	92.3%
Russia	1,351	2,304	495	70	279	817	29.8%	4.2%	16.8%	49.2%
Iran	972	3,501	1,248	33	9	295	78.7%	2.1%	0.6%	18.6%
Unknown	689	788	1,260	113	32	138	81.7%	7.3%	2.1%	8.9%
Somalia	688	2,457	693	969	2	593	30.7%	42.9%	0.1%	26.3%
Ukraine	484	789	7	13	27	321	1.9%	3.5%	7.3%	87.3%

Source: Ministry of Interior. "Rejection" refers to the cases listed as "asylum rejection" by the Ministry of Interior.

¹ Ministry of Interior, *Asylum Statistics*, available in German at: <http://bit.ly/2xmiKOT>.

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

Gender/age breakdown of the total number of applicants: 2017

	Number	Percentage
Total number of applicants	24,296	-
Men	14,723	60%
Women	9,573	40%
Children	12,138	50%
Unaccompanied children	1,751	7.2%

Source: Ministry of Interior.

Comparison between first instance and appeal decision rates: 2017

The Ministry of Interior does not disaggregate statistics on decisions between the first and second instance.

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 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 Einreiseteil StF: BGBl. I Nr. 100/2005	Aliens Police Act (FPG)	http://bit.ly/1QkRGqx (DE)
General Administrative Procedures Act	Allgemeines Verwaltungsverfahrensgesetz 1991 StF: BGBl. Nr. 51/1991	AVG	http://bit.ly/1GQJ9Gp (DE)
Federal Act on the general rules for procedures at the federal office for immigration and asylum for the granting of international protection, the issuing of residence permits for extenuating circumstances reasons, deportation, tolerated stay and issuing of stay terminating measures, furthermore the issuing of documents for aliens.	Bundesgesetz, mit dem die allgemeinen Bestimmungen über das Verfahren vor dem Bundesamt für Fremdenwesen und Asyl zur Gewährung von internationalem Schutz, Erteilung von Aufenthaltstiteln aus berücksichtigungswürdigen Gründen, Abschiebung, Duldung und zur Erlassung von aufenthaltsbeendenden Maßnahmen sowie zur Ausstellung von österreichischen Dokumenten für Fremde geregelt werden (BFA-Verfahrensgesetz – BFA-VG) StF: BGBl. I Nr. 87/2012	BFA Procedures Act (BFA-VG)	http://bit.ly/1Jdmw0F (DE)
Federal Act on the implementation and organisation of the federal immigration and asylum office	Bundesgesetz über die Einrichtung und Organisation des Bundesamtes für Fremdenwesen und Asyl (BFA-Einrichtungsgesetz – BFA-G) idF BGBl. I Nr. 68/2013 StF: BGBl. I Nr. 87/2012	BFA-Einrichtungsgesetz (BFA-G)	http://bit.ly/1Fom1KY (DE)
Federal Administrative Court Act Amendment of administrative litigation	Bundesverwaltungsgerichtsgesetz – Verwaltungsgerichtsbarkeits-Novelle 2012	BVwGG	http://bit.ly/1FWUFj1 (DE)
Federal Act on Procedures at Administrative Courts	Bundesgesetz über das Verfahren der Verwaltungsgerichte StF: BGBl. I Nr. 33/2013	Verwaltungsgerichtsverfahrensgesetz (VwGVG)	http://bit.ly/1REw4mM (DE)
Agreement of 15 July 2004 between federal state and states under Article 15a	Vereinbarung zwischen dem Bund und den Ländern gemäß Art. 15a B-VG über gemeinsame Maßnahmen zur	Grundversorgungsvereinbarung	http://bit.ly/1PYPndi (DE)

of the Federal Constitution concerning joint action for the temporary basic provision of aliens in need of help and protection in Austria	vorübergehenden Grundversorgung für hilfs- und schutzbedürftige Fremde (Asylwerber, Asylberechtigte, Vertriebene und andere aus rechtlichen oder faktischen Gründen nicht abschiebbare Menschen) in Österreich StF: BGBl. I Nr. 80/2004		
Federal Act to regulate the basic care of asylum seekers in the admission procedure and certain other foreigners	Bundesgesetz, mit dem die Grundversorgung von Asylwerbern im Zulassungsverfahren und bestimmten anderen Fremden geregelt wird StF: BGBl. I Nr. 405/1991	Basic Care Act (GVG-B)	http://bit.ly/1JdmHcw (DE)
Agreement between the federal state and states under Article 15a of the Basic Care Act concerning the raise of selected maximum cost rates of Article 9 Basic Care Agreement <i>Amended by:</i> Agreement between the federal state and states under Article 15a concerning the raise of selected maximum cost rates of Article 9 Basic Care Agreement	Vereinbarung zwischen dem Bund und den Ländern gemäß Artikel 15a B-VG über die Erhöhung ausgewählter Kostenhöchstsätze des Artikel 9 der Grundversorgungsvereinbarung StF: BGBl I 46/2013 <i>Geändert durch:</i> Vereinbarung zwischen dem Bund und den Ländern gemäß Artikel 15a B-VG über eine Erhöhung ausgewählter Kostenhöchstsätze des Art. 9 der Grundversorgungsvereinbarung StF: BGBl 48/2016		http://bit.ly/2JR2MXQ (DE) http://bit.ly/2jwNiHN (DE)
Federal Constitutional Act concerning the Accommodation and Allocation of aliens in need of help and protection	Bundesverfassungsgesetz Unterbringung und Aufteilung von hilfs- und schutzbedürftigen Fremden, BGBl 120/2015		http://bit.ly/2jwFaqz (DE)
Federal Act concerning the Implementation of Identity Checks at the instance of Border Crossings	Bundesgesetz über die Durchführung von Personenkontrollen aus Anlass des Grenzübertritts StF: BGBl 435/1996		http://bit.ly/2kszyOO (DE)
Federal Act on Citizenship	Bundesgesetz über die österreichische Staatsbürgerschaft StF: BGBl. Nr. 311/1985	StbG	http://bit.ly/2j7KSTL (DE)
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	Staatendokumentationsbeiratsverordnung	http://bit.ly/1BBLaAf (DE)
Ordinance by the federal government, concerning the determination of countries as safe countries of origin	Verordnung der Bundesregierung, mit der Staaten als sichere Herkunftsstaaten festgelegt wrden StF: BGBl. II Nr. 177/2009	Safe Countries of Origin Ordinance (HStV)	http://bit.ly/1K3OqeM (DE)
Ordinance of the federal minister of internal affairs, for the application of the Asylum Law 2005	Verordnung der Bundesministerin für Inneres zur Durchführung des Asylgesetzes 2005	Asylgesetz-Durchführungsverordnung 2005 (AsylG-DV 2005)	http://bit.ly/1K3OqM2 (DE) http://bit.ly/1FWUTGD (DE)
Ordinance of the federal minister of internal affairs, concerning the prohibition of unauthorised entry and stay in federal care facilities	Verordnung der Bundesministerin für Inneres, mit der das unbefugte Betreten und der unbefugte Aufenthalt in den Betreuungseinrichtungen des Bundes verboten wird 2005 StF: BGBl. II Nr. 2/2005	Betreuungseinrichtungen-Betreuungsverordnung 2005 (BEBV)	http://bit.ly/1FombIG (DE)
Ordinance of the federal minister of internal affairs, concerning the arrest of persons by the security authorities and elements of the public security service	Verordnung der Bundesministerin für Inneres über die Anhaltung von Menschen durch die Sicherheitsbehörden und Organe des öffentlichen Sicherheitsdienstes StF: BGBl. II Nr. 128/1999	Anhalteordnung (AnhO)	http://bit.ly/1AEPtA9 (DE)
Remuneration for legal advice in appeal procedures at the asylum court	Entgelte für die Rechtsberatung in Beschwerdeverfahren vor dem Asylgerichtshof		http://bit.ly/110hAMx (DE)
Ordinance of the minister of internal affairs on the determination of remuneration for legal advice	Verordnung der Bundesministerin für Inneres über die Festlegung von Entschädigungen für die Rechtsberatung		http://bit.ly/1FOrP2P (DE) http://bit.ly/1ENcXOh (DE)

Overview of the main changes since the previous report update

The report was previously updated in **February 2017**.

Asylum procedure

- ❖ **Appeal:** Following the most recent ruling of the Constitutional Court, the time limit for appealing a negative decision is 4 weeks in all cases. Where an appeal has no automatic suspensive effect, this must be granted *ex officio* if there is a risk of violation of Articles 2, 3 or 8 ECHR and need not be requested by the applicant.
- ❖ **Onward appeal:** The new government has announced further restrictions in the asylum procedure, including the abolition of the onward appeal (“extraordinary revision”) before the Administrative High Court. This has been criticised by the Federal Administrative Court and Constitutional Court as an undue departure from uniform rule of law standards in a particularly sensitive human rights area.
- ❖ **Medical reports:** A reform entering into force in November 2017 extends the obligations of asylum seekers to cooperate in the procedure. These include the submission of medical reports and relevant findings on their condition.

Reception conditions

- ❖ **Freedom of movement:** A reform entering into force in November 2017 introduces a residence restriction for asylum seekers whose claims are deemed admissible. Applicants are only allowed to reside in the federal province in which they have been assigned for Basic Care, even if Basic Care is waived or withdrawn. Moreover, they may be ordered specific accommodation for reasons of public order, public interest or for the swift processing of their application. Violation of residence restrictions can lead to an administrative fine, as well as grounds for detention.

Detention of asylum seekers

- ❖ **Duration of detention:** A reform entering into force in November 2017 extends the maximum duration of pre-removal detention from 4 months to 6 for adults, and from 2 months to 3 for children above the age of 14. Extensions allow detention to reach 18 months in exceptional cases.

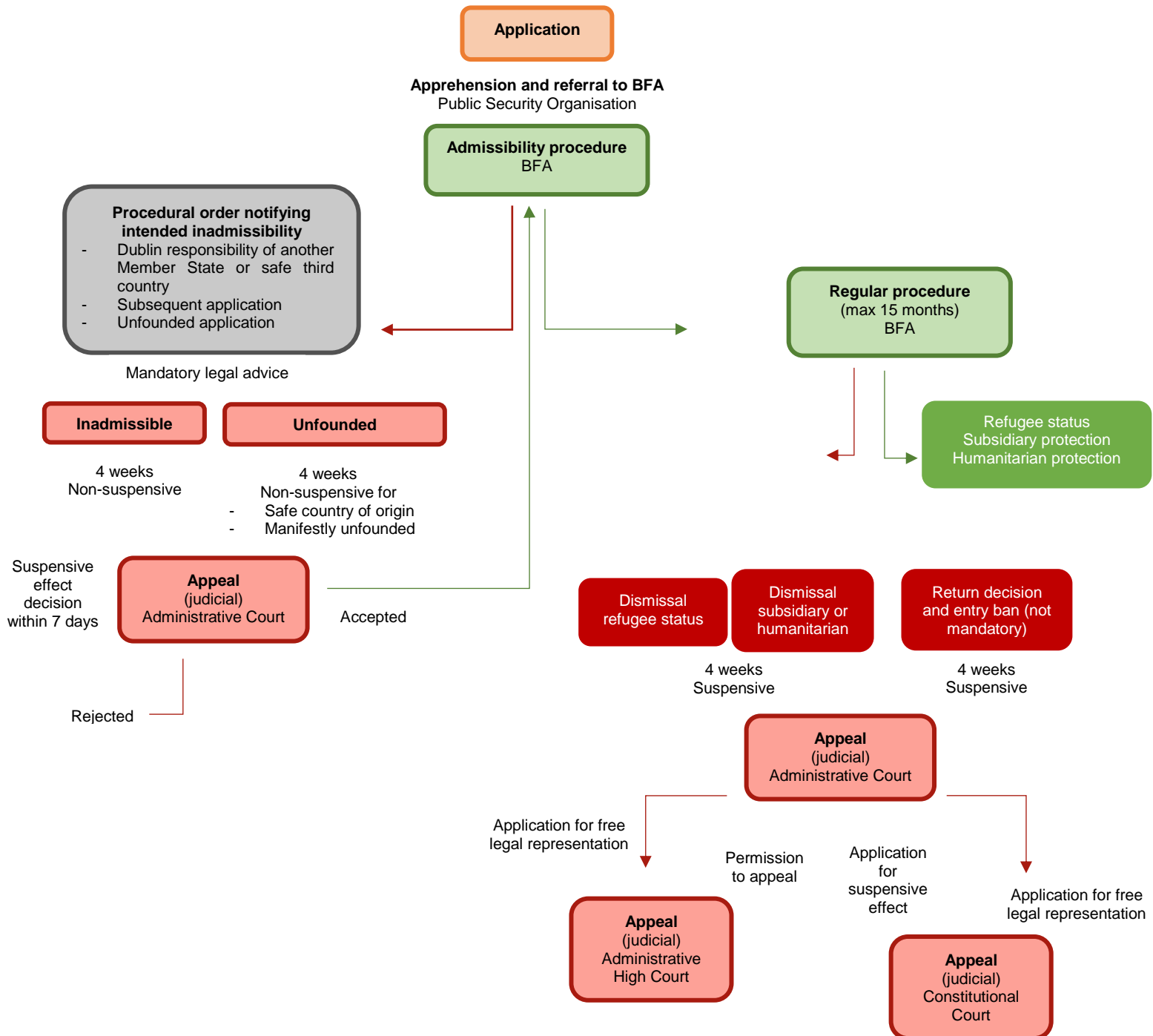
Content of international protection

- ❖ **Withdrawal:** A reform entering into force in November 2017 enables the BFA to start a withdrawal procedure where it is likely that the person has committed a criminal offence.
- ❖ **Family reunification:** To be eligible for family reunification, spouses no longer need to be married in the country of origin, as long as the marriage or partnership existed prior to their flight.
- ❖ **Social welfare:** Restrictions in the level of social benefits granted to beneficiaries for international protection, as well as conditions such as participation in integration programmes, have been introduced in a number of federal provinces.

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 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 first instance authority

Name in English	Number of staff	Ministry responsible	Is there any political interference possible by the responsible Minister with the decision making in individual cases by the first instance authority?
Federal Agency for Immigration and Asylum (BFA)	1,383	Ministry of Interior	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No

Source: Ministry of Interior, 26 January 2018.

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.

5. Short overview of the asylum procedure

Asylum and aliens law procedures are administrative procedures. For these procedures, the General Administrative Procedures Act (AVG) applies. 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 Federal Agency for Immigration and Asylum (*Bundesamt für Fremdenwesen und Asyl*, BFA) is responsible for deciding as the first instance authority in asylum procedures, as well as for residence permits on exceptional humanitarian grounds and certain Aliens' Police proceedings. The procedure before the Federal Administrative Court (*Bundewertwaltungsgericht*, BVwG) is also regulated by the Asylum Act, the BFA Procedures Act (BFA-VG), by the General Administrative Procedures Act and the Federal Administrative Court Act.⁶

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. When the provision (discussed publicly as "emergency provision") enters into force through a decree of the federal government, asylum seekers no longer have access to the asylum procedure in Austria. Decisive for denying asylum applications is a maximum number, otherwise a 'quota', of asylum applications to be examined on the merits. This number was set at 35,000 applications for 2017 and was not reached. The limit has been set at 30,000 applications for 2018. The Ombudsman has criticised the fact that the benchmarks set are open to wide interpretation and that the figures in the explanatory notes to the law are not comprehensible.⁷

First instance procedure: The Asylum Act provides for a single procedure for applications for international protection. If such an application is lodged, the authorities have to decide whether the application is to be rejected on account of safety in a third country or the responsibility of another state. In the first stage of the procedure – called **admissibility procedure** – the authorities have to decide on the admissibility of the application. If the application is declared admissible, the authorities decide whether the person is to be granted refugee status. Only where an application for asylum is dismissed on the merits do the authorities have to grant subsidiary protection if the person qualifies for that status. A separate application for subsidiary protection is not possible. There is also an **accelerated procedure** for certain claims.

Appeal: Appeals to the Federal Administrative Court are possible against a decision rejecting the asylum application as inadmissible and also against a decision dismissing the application on the merits. The BFA Procedures Act (BGA-VG) regulates the appeal and its effects. Appeals against the decision rejecting the asylum application on the merits have to be submitted within four weeks and have suspensive effect, unless the BFA does not allow for the appeal to have suspensive effect. An appeal against a decision rejecting an application as inadmissible does not have suspensive effect and has to be submitted also within four weeks, following a recent ruling from the Constitutional Court; the new government has nonetheless announced plans to reduce the time limit again. 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.

⁶ See the section on [Overview of the Legal Framework](#).

⁷ Ombudmsan, *Kontrolle der öffentlichen Verwaltung*, March 2017, available in German at: <http://bit.ly/2GOY8Vj>, 115.

Article 18(1) BFA-VG provides a number of grounds for not allowing suspensive effect. These include, *inter alia*, the applicant's attempt to deceive the BFA concerning their true identity or nationality or the authenticity of their documents, the lack of reasons for persecution, if the allegations made by the asylum seeker concerning the danger they face are manifestly unfounded or if an enforceable deportation order and an enforceable entry ban was issued against the asylum seeker prior to the lodging of the application for international protection.

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

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

The evidential requirements are the same for refugee and subsidiary protection status. In appeal procedures before the Court, new facts and evidence may only be submitted in the following cases: if the grounds on which the first instance negative decision was based have undergone any material change; if the first instance procedure was irregular (e.g. if the right to be heard about the findings of the BFA was not respected, or if outdated country of origin information was used or evidence is missing to substantiate the reasoning of the BFA); if such new facts and evidence were not accessible earlier or if the asylum seeker had been unable to submit such new facts and evidence.⁸ 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 appealed to the Administrative High Court (*Verwaltungsgerichtshof*, VfGH). This possibility is foreseen if a decision on the case depends on a leading decision, e.g. if the Administrative Court's decision is not based on a previous decision of the Administrative High Court. If the BVwG does not allow the appeal, the asylum seeker may demand an extraordinary remedy.

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

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

⁸ Article 20 BFA-VG.

B. Access to the procedure and registration

1. Access to the territory and push backs

Indicators: Access to the Territory

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

1.1. Refusals of entry at the Italian and Slovenian borders

Italian border: In 2015, Italy, Germany and Austria agreed to common police controls in trains from Italy to Germany between the train stations **Trentino** and **Brenner**. Refugees without valid travel documents had to leave the train in Bozen. The government of South-Tyrol installed a centre for refugees at the railway station at the Austrian-Italian border of Brenner.⁹ Italy started border controls in June 2015, reacting to a request from Germany, as reported by Der Spiegel.

Since August 2017, the Austrian army assist the police with controls on the territory, mainly involving inspection of lorries and trains by soldiers. Germany, Italy and Austria signed in November 2017 an agreement for controls which are already taking place in Italy.¹⁰ Nevertheless, the Italian police has reported that more migrants and refugees come to Italy from Austria – after coming to Austria via Slovenia – than *vice versa*. This mainly concerns Afghan and Pakistani nationals who arrive in Italy either because they have family members or *en route* to France and Switzerland.¹¹

Slovenian border: At the beginning of 2016, there were a lot of rejections at the Slovenian border. Out of 3,723 rejections, 3,225 concerned Slovenia where 2,246 persons were rejected in January 2016 and 775 in February 2016.¹² It turned out that policemen at the border relied on interpreters with poor knowledge of the languages spoken by the people trying to enter.¹³ After the closure of the so-called Western Balkan route, however, the number of persons apprehended at the Slovenian border has significantly dropped.

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

⁹ ORF, ‘Kritik an österreichischen Grenzkontrollen’, 22 April 2015, available in German at: <http://bit.ly/1ILWXF1>.

¹⁰ Der Standard, ‘Verstärkte Grenzkontrollen am Brenner’, 15 November 2017, available in German at: <http://bit.ly/2nHONZp>.

¹¹ Tirol.ORF, ‘Mehr illegal Einreisende an Brenner-Grenze’, 12 August 2016, available in German at: <http://bit.ly/2nKJy8S>.

¹² Ministry of Interior, Reply to parliamentary question 10544/J (XXV.GP), 9 December 2016, available in German at: <http://bit.ly/2jez65e>.

¹³ Ö1, ‘Mängel bei Grenzmanagement in Spielfeld’, 10 March 2016, available in German at: <http://bit.ly/2jeETaS>.

¹⁴ LVwG Styria, Decision 20.3-918/2016-15, 9 September 2016, available in German at: <http://bit.ly/2jRiX7z>.

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.¹⁵

The provision (discussed publicly as “emergency provision”), upon activation by a decree of the federal government, entails that asylum seekers no longer have access to the asylum procedure in Austria. Decisive for denying asylum applications is a maximum number, otherwise a ‘quota’, of asylum applications to be examined on the merits. For 2016 this number was set at 37,500 applications and was not reached.¹⁶ For 2017 the limit was set at 35,000 applications and was not reached either. The limit for 2018 will be 30,000 applications.

The possibility of rejection at the border relies on the distinction between “making” and “lodging” an asylum application as per Article 6 of the recast Asylum Procedures Directive. After an application is made before a police officer at the border, or in a registration centre (*Registrierstelle*) if the person is found to be irregularly on the territory, the Aliens Police will be able to reject the person at the border or to issue a return decision during the initial interview (*Erstbefragung*).¹⁷

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.¹⁸

An asylum seeker is not issued a decision ordering return, and cannot appeal against the refusal to have his or her claim examined. In such a case, the asylum seeker has no right to remain on the territory,¹⁹ therefore an appeal to the State Administrative Court (LVwG) does not have suspensive effect.²⁰

The amendment has been criticised by UNHCR and civil society organisations,²¹ as it enables police authorities rather than the BFA to deny a person access to the asylum procedure, without procedural guarantees or legal assistance, while an appeal can only be made after the expulsion has been carried out. The activation of the emergency provision also suspends the application of the Dublin Regulation.

2. Registration of the asylum application

Indicators: Registration

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

An application for international protection can be made before an agent of the public security service or a security authority. Within a period of 48 hours after apprehension by the security authority – that may be extended to 72 hours – after the request was made, the first interrogation (*Erstbefragung*) has to

¹⁵ Articles 36-41 AsylG.

¹⁶ 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.

¹⁷ Article 38 AsylG.

¹⁸ Article 41(1) AsylG.

¹⁹ Article 39 AsylG.

²⁰ Article 41(2) AsylG.

²¹ UNHCR Austria, Kurzanalyse zum Gesamtändernden Abänderungsantrag betreffend eine Änderung des Asylgesetzes durch Sonderbestimmungen zur Aufrechterhaltung der öffentlichen Ordnung und des Schutzes der inneren Sicherheit während der Durchführung von Grenzkontrollen, 21 April 2016, available in German at: <http://bit.ly/1MJVVM5>; Asylkoordination Österreich et al, *Stellungnahme zum Entwurf betreffend ein Bundesgesetz, mit dem das Asylgesetz 2005, das Fremdenpolizeigesetz 2005 und das BFA-Verfahrensgesetz geändert werden*, 21 April 2016; available in German at: <http://bit.ly/2jx6Z29>.

take place.²² All documents, including the minutes of the first interrogation, are sent to the asylum authorities, which will have to continue the procedure with the interview. The application is registered as soon as the security authorities have submitted the minutes of the interrogation and all the documents of the asylum seekers to the BFA's branch office. Currently, applications are forwarded to the BFA without delay. In some cases, some public security offices do not provide correct information and send asylum seekers to the initial reception centre (EAST) of **Traiskirchen** to make an asylum application.

The application is lodged with the instruction of the branch office of the BFA to the police on the next steps. This could be the transfer of the applicant to EAST by the security authorities. Asylum seekers may otherwise be transferred to a dispersal centre (VQ) or helped to go there.

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

C. Procedures

1. Regular procedure

1.1. General (scope, time limits)

Indicators: Regular Procedure: General

- | | |
|--|---|
| 1. Time limit set in law for the determining authority to make a decision on the asylum application at first instance: | 15 months |
| 2. Are detailed reasons for the rejection at first instance of an asylum application shared with the applicant in writing? | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No |
| 3. Backlog of pending cases at 31 December 2017: | 33,161 |

The Federal Agency for Immigration and Asylum (BFA) is a specific department of the Ministry of interior, dealing with asylum matters. From 2014 onwards, the tasks of the Agency are extended to cover some immigration law procedures.

According to the General Administrative Procedures Act (AVG), decisions have to be taken within 6 months after the application has been submitted. Within 20 calendar days, the BFA has to decide whether it intends to reject the application as inadmissible due to the responsibility of another Member State under Dublin, the existence of a safe third country or for being a subsequent asylum application, or to dismiss the application for other reasons. If no procedural order is notified to the asylum seeker within 20 days, the asylum application is admitted to the regular procedure – except in Dublin cases if requests to other Member States to take charge or take back the asylum seeker are made within this time frame. An amendment of Article 22 AsylG, entering into force on 1 June 2016, allows for the extension of the duration of procedures at first instance up to 15 months. This exceptional prolongation will cease on 1 June 2018 but will remain applicable to cases pending after 31 May 2018.²³

²² Article 29(2) AsylG.

²³ Articles 73(15) and 75(24) AsylG.

Numbers for asylum applications not decided within 15 months by the BFA are not available. During the first quarter of 2017, the average duration of the procedure reached 12.9 months.²⁴ The average duration of procedure in the first 6 months of 2017 was 14 months,²⁵ and reduced to 6.6 months at the beginning of 2018 for applications made after 1 July 2016. 33,161 cases were pending at first instance at the end of the year, compared to 63,912 at the end of 2016.²⁶ According to experience of NGOs, still a lot of asylum seekers in 2017 waited more than 10 months for an appointment for the first interview. The Austrian Ombudsman has received over 2,000 complaints concerning the duration of the asylum procedure in 2017, in addition to about 1,500 complaints in 2016.²⁷

Whereas the procedure for Syrians and Iraqis seems to be concluded within the 15-month time limit, other nationalities face longer delays for a decision.²⁸

In case of delay of the BFA, the asylum seeker may apply for devolution, upon which the file will be rendered to the Federal Administrative Court for a decision. However, in practice asylum seekers do not frequently apply for such devolution, as they miss a chance of receiving a positive decision at first instance (by the BFA). However, due to the amendments entering into force on 1 June 2016, which have restricted refugees' right of residence to 3 years (see [Residence Permit](#)) and have imposed restrictions on [Family Reunification](#), such complaints were often introduced in the first half 2016. The Administrative High Court held that applications made in 2015 which had not been decided upon by the BFA did not amount to an infringement, given the impact the sharp increase in asylum applications had on the length of the asylum procedure.²⁹

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

1.2. Prioritised examination and fast-track processing

The time limit for decisions for the BFA and the Federal Administrative Court are reduced to 3 months in case the asylum seeker is detained pending deportation.³⁰ The same maximum time limit applies to the "procedure for the initiation of a measure terminating residence" (see the section on [Accelerated Procedure](#)).

The practice of fast-track processing of cases from certain countries of origin which do *not* fall within the scope of the "safe countries of origin" list and the accelerated procedure was not observed in 2016. This is due to the fact that the list of safe countries of origin has been extended to countries such as **Algeria, Tunisia, Morocco, Georgia** and **Ghana** (see [Safe Country of Origin](#)). In the second half of 2016, the BFA concentrated on Dublin procedures to keep the option of sending asylum seekers to other EU Member States. In the second half of 2017, NGOs noticed that applications from **Afghanistan** were given priority following an instruction from the Ministry of Interior.

²⁴ Parliament, Hearing on Fremdenrechtsänderungsgesetz 2017 – FrÄG 2017, 13 June 2017, available in German at: <http://bit.ly/2EwrXvR>, 16.

²⁵ Information provided by the Ministry of Interior, 26 January 2018. See also Der Standard, 'Asyl: Freiwillige Rückkehr ging um ein Drittel zurück', 11 July 2017, available in German at: <http://bit.ly/2D3nDiK>.

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

²⁷ FRA, *Monthly data collection on the migration situation in the EU*, January 2017, September 2017, available at: <http://bit.ly/2nZIU8B>, 4.

²⁸ FRA, *Monthly data collection on the migration situation in the EU*, January 2017, available at: <http://bit.ly/2jUsOcl>, 20, citing information from Caritas Vienna.

²⁹ VwGH, Decision Ro 2016/01/0001-0004, 24 May 2016, available in German at: <http://bit.ly/2ktbiM2>.

³⁰ Article 22(6) AsylG.

In relation to refugees from Syria that are resettled in Austria,³¹ the Ministry of Interior announced that they will be granted asylum immediately upon arrival (*asylum ex officio*). In 2014 and 2015 most of the resettled refugees received positive decisions within a few days. However, in 2016 and 2017 the procedures took much longer, and they often had to wait for several months for the interview on their case. Generally, Syrians have faced longer procedures in 2017 compared to previous years.³²

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?³³ Yes No
3. Are interviews conducted through video conferencing? Frequently Rarely Never

All asylum seekers must have one personal interview. Asylum seekers are subjected to an interrogation by the public security service shortly after making the application for the purposes of the [Dublin](#) and [Admissibility Procedure](#).³⁴ Such interrogation is conducted in particular with a view to ascertaining the identity of the asylum seeker and the travel route. Such interrogation shall not refer to the specific reasons for fleeing and lodging an asylum application. In practice, statements of the asylum seeker in this part of the admissibility procedure are accorded increased credibility, notwithstanding the fact that the interrogation is conducted by the police and not by the person responsible for the decision. The Constitutional Court ruled that the provision protects asylum seekers who may arrive exhausted and should therefore not be interrogated about their possibly traumatising reasons for flight by uniformed security officers.³⁵

A personal is always conducted with applicants provided they have legal capacity.

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

If the asylum seeker's fear of persecution is based on infringement of the right to sexual self-determination, they shall be interviewed by an official of the same sex unless they request otherwise. The authorities must prove that they have informed the asylum seeker of such possibility.³⁶ In practice, this is not consistently applied with regard to interpreters. In the appeal procedure, infringements of the right to sexual self-determination have to be expressed in the written appeal in order to have the hearing at the Court held by a judge of the same sex. The Constitutional Court ruled that UNHCR guidelines have to be applied to male asylum seekers accordingly.³⁷

³¹ A total 349 refugees were resettled in 2017, compared to 174 in 2016: Ministry of Interior, *Asylum Statistics December 2017*, available in German at: <http://bit.ly/2CePv2Q>, 26.

³² FRA, *Monthly data collection on the migration situation in the EU*, January 2017, available at: <http://bit.ly/2jUsOcl>, 20, citing information from the Red Cross.

³³ However, the official conducting the interview is no longer responsible for the decision.

³⁴ Article 19 AsylG.

³⁵ VfGH, Decision U 98/12, 27 June 2012.

³⁶ Article 20 AsylG.

³⁷ VfGH, Decision U 1674/12, 12 March 2013 mentions Conclusions Nr. 64 (XLI) and Nr. 73 (XLIV) of the Executive Committee of UNHCR. The Asylum Court decided by a male and female judge and its decision was thus unlawful.

Interpreters are provided by the BFA. Interpreters are available for most languages of the countries of origin, but interviews may also be conducted in a language the asylum seeker is deemed to understand sufficiently. With regard to countries with higher numbers of asylum seekers this practice is still not satisfactory (e.g. Chechen refugees are often interviewed in Russian). Asylum seekers from African countries are often interviewed in English or French, languages they are supposed to understand. Asylum seekers are asked at the beginning of the interview if they understand the interpreter. There are no standards for the qualification of interpreters in asylum procedures. Interpretation is often not done by accredited interpreters; usually persons with the requested language knowledge are contracted on a case-by-case basis.

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

The transcript is more or less verbatim. Its content may depend on the interpreter's summarising the answers, choosing expressions that fit for the transcript or translating each sentence of the asylum seeker. Immediately after the interview, the transcript is translated in a language the asylum seeker understands and the asylum seeker has the possibility to ask for corrections and completion immediately after the interview. By signing the transcript, they agree with the content. If asylum seekers find something incorrect in the transcript after having signed it at the end of the interview, they should send a written statement to the BFA as soon as possible. In practice, asylum seekers do not frequently ask immediately after the interview for correction of the report. Some asylum seekers explain that they were too tired to be able to follow the translation of the transcript. Asylum seekers often realise that mistakes in the translation or the transcript were made when they receive a negative first instance decision and a legal adviser explains them the details of the transcript.

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 |
| ❖ If yes, is it | <input checked="" type="checkbox"/> Judicial | <input type="checkbox"/> Administrative |
| ❖ If yes, is it suspensive | <input checked="" type="checkbox"/> Yes | <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 have to be submitted within 4 weeks of the receipt of the decision and the whole file is forwarded by the BFA to the Federal Administrative Court (BVwG).³⁸

Previously, the time limit was 2 weeks. However, the Constitutional Court ruled on 23 February 2016 that the deviation of Article 16(1) BFA-VG from the general 4-week time limit for submitting an appeal to the Federal Administrative Court³⁹ is unjustified, as it is not necessary in the case of a rejection decision which is not connected with an expulsion order and the applicant is still entitled to remain on the territory.⁴⁰ The BFA-VG was amended to reflect the ruling. On 26 September 2017, the Constitutional Court ruled that even for rejection decisions accompanied by a residence-ending measure affecting the legal position of the applicant, the constitutional guarantees before the BVwG are of considerable

³⁸ Article 16(1) BFA-VG.

³⁹ Article 7(4) BVwG-VG.

⁴⁰ VfGH, Decisions G 589/2015-6, G 653/2015-4, G 9/2016-4, 23 February 2016, available in German at: <http://bit.ly/2jwOISx>.

importance. Against that backdrop, the shortening of the 4-week appeal period is not indispensable to promoting efficiency. Following the ruling, the time limit for appeals is 4 weeks for all cases.⁴¹

The BFA may make a pre-decision on the appeal within 2 months.⁴² This pre-decision may change the decision in any direction (annul, reject or change the decision). The BFA, however, may refrain from deciding and forward the appeal to the Court.

In case refugee status or subsidiary protection status is not granted by the BFA, the asylum applicant will be assigned a free legal adviser provided by the state at the time of notification of the first instance decision (see the section on [Legal Assistance](#) below).

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

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

Moreover, the BFA *must* withdraw the suspensive effect of an appeal where:⁴³

- (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 suspensive effect within 1 week from the lodging of the appeal, where it assumes that return would expose the person to a real risk of a violation of Articles 2, 3 and 8 ECHR or Protocols 6 or 13 ECHR, or to a serious threat to life or person by reason of indiscriminate violence in situations of conflict in line with Article 15(c) of the Qualification Directive.⁴⁴ Appeals against the rejection of an application with suspensive effect have to be ruled by the Court within 8 weeks.⁴⁵ The asylum appeal has suspensive effect as long as the case is pending in court.

The BVwG is organised in chambers, each of which is responsible for certain groups of countries. Most of the judges of the BVwG previously worked at the Asylum Court, before it was replaced. The Court processed 18,760 appeals in 2016 and about 20,000 in 2017. The number of appeals pending at the end of 2017 was 24,516, almost doubling the 12,497 appeals pending at the end of the previous year.⁴⁶ As the number of appeals increased, judges from other areas of law were assigned to decide on asylum procedures in 2017.

The BVwG has only limited competence of review, determined by the content of the appeal. In the view of the Federal Administrative Court and in relation to this link to the grounds and argumentation of the

⁴¹ VfGH, Decision G 134/2017, 26 September 2017, available in German at: <http://bit.ly/2EmVJ6Y>.

⁴² Article 14(1) Administrative Court Procedures Act (VwG-VG).

⁴³ Article 18(2) BFA-VG.

⁴⁴ Articles 17(1) and 18(5) BFA-VG.

⁴⁵ Article 17(2) BFA-VG.

⁴⁶ Ministry of Interior, *Asylum Statistics December 2017*, available in German at: <http://bit.ly/2CePv2Q>, 50.

appeal that limits the subject of the appeal, it is necessary to accept an appeal with at least rudimentary grounds during the time limit, in order to handle the appeal at all. An appeal lacking any argumentation or ground is not to be accepted for a process of improvement and has to be rejected immediately.⁴⁷

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

The question whether a personal hearing before the BVwG has to take place or not has been brought before the Constitutional Court (VfGH). The Court ruled that not holding a personal hearing in the appeal procedure does not violate Article 47(2) of the EU Charter of Fundamental Rights; Charter rights may be pleaded before the Constitutional Court. The Court stated that Article 41(7) AsylG⁴⁹ is in line with Article 47(2) of the EU Charter if the applicant was heard in the administrative procedure.⁵⁰ However, subsequent rulings of the Administrative High Court and the Constitutional Court have conversely specified the obligation of the Administrative Court to conduct a personal hearing. In the case of an Afghan asylum seeker, the Administrative Court had confirmed the first instance decision which found the asylum seeker's application to be lacking credibility due to discrepancies in statements about his age. The Constitutional Court ruled that, by deciding without a personal hearing, the Administrative Court had violated the right laid down in Article 47(2) of the EU Charter.⁵¹ Two rulings to the same effect were delivered by the Constitutional Court in September 2014.⁵²

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

The possible outcome of this procedure can be the granting of a status, the refusal of status, or a referral by the BVwG back to the BFA for further investigations and a re-examination of the case. Hearings at the Court are public, but the public may be excluded on certain grounds. Decisions of the BVwG are published on the legal information website of the Federal Chancellery.⁵⁵

Statistics on the number of appeals received and outcomes of decisions in 2017 were not provided by the BVwG. Media reported that the BVwG cancelled or amended at least 36% of BFA decisions in 2017. In short this means that more than one third of negative decisions have been revised by the court.⁵⁶

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

⁴⁸ Article 21(7) BFA-VG.

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

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

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

⁵² VfGH, Decision U 610/2013, 19 September 2014, available at: <http://bit.ly/1RIQrPN>; U 2529/2013, 22 September 2014, available at: <http://bit.ly/1G4KDfF>. See also K Kessler, 'The right to an oral hearing in Austrian asylum appeal procedures in the light of Article 47(2) of the Charter of Fundamental Rights of the European Union', EDAL, 14 January 2015, available at: <http://bit.ly/1CGfjzK>.

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

⁵⁴ VwGH Ro 2014/21/0047, 22 May 2014.

⁵⁵ Decisions of the Federal Administrative Court are available at: <http://www.ris.bka.gv.at/Bvwg/>. However, according to the General Administrative Procedures Act, decisions may not be made public if it is necessary for reasons of public order or national security, morality, the protection of children or the private life of the asylum seeker or for the protection of a witness.

⁵⁶ Kurier, 'Asylverfahren: Jeder dritte Negativbescheid ist falsch', 7 February 2018, available in German at: <http://bit.ly/2G6K5tc>.

1.4.2. Onward appeal before the VwGH

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

The new government has announced further restrictions in the asylum procedure, including the abolition of the onward appeal (“extraordinary revision”) before the Administrative High Court. This has been criticised by the Federal Administrative Court and Constitutional Court as an undue departure from uniform rule of law standards in a particularly sensitive human rights area.⁵⁷

In case the asylum applicant seeks to challenge the decision of the BVwG and if he or she claims it is violating a right that is guaranteed by the constitution, he or she can appeal to the Constitutional Court within 6 weeks, after the ruling of the Federal Administrative Court has become final. Asylum seekers are informed of the possibility to address a complaint to the Constitutional Court in writing; the information is translated in a language the asylum seeker understands. In that context, it has to be mentioned that the ECHR is a part of Austria’s constitutional law. Therefore the risk of violation of Articles 2, 3 or 8 ECHR could be claimed at the Constitutional Court, while the refusal of refugee status is not covered by the Court’s competence. The appeal does not have automatic suspensive effect. Only very few decisions of the BVwG have been found unlawful by the Constitutional Court, and in those cases mainly because the decision was found extremely arbitrary to the extent that it amounted to being unlawful.

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

1.5. Legal assistance

Indicators: Regular Procedure: Legal Assistance

1. Do asylum seekers have access to free legal assistance at first instance in practice?
 Yes With difficulty No
❖ Does free legal assistance cover:
 Representation in interview
 Legal advice
2. Do asylum seekers have access to free legal assistance on appeal against a negative decision in practice?
 Yes With difficulty No
❖ Does free legal assistance cover
 Representation in courts
 Legal advice

1.5.1. Legal assistance at first instance

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

This legal advice is funded by the Asylum, Migration and Integration Fund (AMIF) and co-funded by the Ministry of Interior. One association, [Verein Menschenrechte Österreich](#), covers legal advice in 6 out of

⁵⁷ VwGH, ‘Verwaltungsgerichtshof spricht sich gegen den geplanten Ausschluss der außerordentlichen Revisionen in Asylverfahren aus’, 19 December 2017, available in German at: <http://bit.ly/2oLnL22>.

9 BFA branch offices and also offers counselling at its offices in the federal states. Information on the number of consultation hours funded has been made public for the period 1 July 2015 to 31 December 2016. Verein Menschenrechte Österreich received funding for 20,744 consultation hours, while Caritas offered 9,184 consultation hours in the same period.⁵⁸

This offer of free legal advice does not meet the needs of asylum seekers, however. Verein Menschenrechte Österreich, which currently receives most of the funding for legal assistance in the first instance procedure,⁵⁹ is not regarded as very helpful or committed to the protection of the rights of asylum seekers due to its cooperation with the Ministry of Interior.⁶⁰ For instance, the call for AMIF proposals mentions that legal advice provision should be organised in cooperation with the authorities. Furthermore, these legal advisers have to inform asylum seekers about voluntary return assistance and send asylum seekers to voluntary return projects (which are provided by the same organisation) during the asylum procedure. This funding framework and the activities of the contracted organisation affect the confidence of asylum seekers in the free legal advice offered. Asylum applicants may also opt to contact an NGO offering free legal advice to asylum seekers, but this resource is limited and may not be accessible for asylum seekers living in remote areas. The founder and Director of the organisation has met criticism with the argument that challenging negative decisions has no prospect of success. In addition, the organisation takes a different approach from others, holding that not everyone seeking asylum is entitled to it. However, the task of a legal advisor and/or representative is to represent a client rather than judge in appeal proceedings.⁶¹

The tasks are prescribed in the call for AMIF proposals: providing information or assistance for administrative or legal formalities and providing information or advice on possible outcomes of the asylum procedure including voluntary return. One of the goals of legal advice must also be to avoid asylum applications without positive perspective. The requirement to provide advice on return as a condition for submitting a project for legal advice under AMIF funding, as was the case under the European Refugee Fund (ERF), has been criticised by NGOs.⁶²

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

1.5.2. Legal assistance in appeals

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

The system of free legal aid for the appeal was introduced by amendment of the Asylum Act in 2011 and entered into effect on 1 October 2011.⁶³ Two organisations, ARGE Rechtsberatung (Diakonie and

⁵⁸ Ministry of Interior, Reply to parliamentary question 14100/J, 8 November 2017, available in German at: <http://bit.ly/2EiMLDx>.

⁵⁹ Ministry of Interior, *AMIF List of selected projects 2015/2016 (Asylum & Return)*, available in German at: <http://bit.ly/1OqSfsR>; Reply to parliamentary request 14100/J (XXV.GP), 8 November 2017, available in German at: <http://bit.ly/2EiMLDx>.

⁶⁰ 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>.

⁶¹ Die Presse, 'Asylverein im Visier der Behörden', 13 May 2017, available in German at: <http://bit.ly/2slkQkO>.

⁶² See S Pferschingner, *Unabhängige Beratung von AsylwerberInnen in Österreich?*, Diplomarbeit, Wien, August 2011, available at: <http://bit.ly/1IHAbnY>, 98.

⁶³ BGBl I Nr. 38/2011.

Volkshilfe) and Verein Menschenrechte Österreich, are contracted by the Federal Chancellery to give legal advice with regard to the appeal procedure.

The task described by law entails the obligation to provide advice in case of dismissal of the application. Legal advisers shall be present at hearings before the Administrative Court if the asylum seeker wishes so.⁶⁴ Based on procedural guarantees in accordance with the rule of law and respective EU law, asylum seekers should be able to make effective use of their right to legal advice, according to a ruling of the Higher Administrative Court.⁶⁵

Although the role of the legal adviser in such a hearing was unclear following the 2015 amendment, the Constitutional Court clarified on 9 March 2016 that legal advisers who are summoned to the hearing at the Court have to represent the asylum seekers before the Court, if applicants wish so.⁶⁶ Asylum seekers may be represented by NGOs,⁶⁷ or pay themselves for a private lawyer.

Financial compensation for legal advice ordered by decree seems to be insufficient. The refunding rate per case is €221.55 (excluding VAT) including all other costs (overhead, travel expenses, interpretation). This flat rate is reduced by 25% when the organisation has provided legal advice in asylum and aliens law proceedings in more than 4,001 cases during the year and by 35% when legal advice was provided to more than 7,000 clients.⁶⁸ This reduction has been justified with reduced overhead expenses, but this argument is not suitable for the main expenses of legal advice, which are staff, interpreter, and travel expenses. Such reduction bears the risk of the organisation avoiding to get in contact with asylum seekers to keep the number of clients below the mark of 4,000 or 7,000. No extra or increased remuneration is granted for cases that are more time-consuming such as unaccompanied children, abused women or other heavily traumatised asylum seekers, negatively affecting the quality of legal counselling provided accordingly. NGOs have long criticised compensation as being too low for providing good standards of legal assistance.⁶⁹

An additional compensation of €159.58 is paid for legal representation in hearings before the BVwG.

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

Legal advisers have to decide whether to help asylum seekers to write an individual appeal (which must be written in German) and assist them with regard to all procedural requests in the appeal procedure. Asylum seekers have no choice as to which organisation will be responsible for providing legal assistance to them. Joachim Stern reports the findings of a short evaluation of decisions of the BVwG in the case law database between 1 April 2014 and 1 April 2016. The evaluation found 139 procedures before the Court with legal representation of the asylum seekers by ARGE Rechtsberatung and 4 cases with legal representation by Verein Menschenrechte Österreich.⁷⁰ This evaluation shows that asylum

⁶⁴ Article 52(2) BFA-VG.

⁶⁵ VfGH, Decision Ro 2016/18/0001, 3 May 2016.

⁶⁶ VfGH, Decision G 447-449/2015-13, 9 March 2016, available in German at: <http://bit.ly/2jR9OMi>.

⁶⁷ See e.g. the AMIF-funded project of Caritas Austria, 'Representation at hearings before the Federal Administrative Court', available in German at: <http://bit.ly/1OqSfsR>.

⁶⁸ BGBl. II Nr. 320/2011, available at: <http://bit.ly/1dL1VE4>.

⁶⁹ See e.g. Agenda Asyl, 'Stellungnahme zur Änderung des... Asylgesetzes 2005 (*Comment on the changes to Asylum Law 2005*)', 28 January 2011, available in German at: <http://bit.ly/1NkpgcC>; Der Standard, 'Gute Rechtsberatung wäre doppelt so teuer' (*Good legal assistance would be twice as expensive*), 9 November 2011, available in German at: <http://bit.ly/1Jp7y6h>.

⁷⁰ J Stern, 'Verfahrenshilfe und Rechtsberatung – Neue Entwicklungen und alte Fragen' in C Filzweiser and I Taucher (eds), *Asyl- und Fremdenrecht Jahrbuch 2016* (NWV 2016), 151-168.

seekers who are entitled to receive legal advice by Verein Menschenrechte Österreich are in most cases not represented by this organisation.

In 2017, however, NGOs observed improvements in the system of legal advice. The Federal Chancellery evaluated several appeals prepared by Verein Menschenrechte Österreich,⁷¹ among which the case of an 18-year-old Afghan assisted by the organisation who had submitted only three lines in poor German against his deportation to Afghanistan was raised by the media.⁷² It seems that the allegation of insufficient quality in the appeal led to an improvement in the legal assistance provided by Verein Menschenrechte Österreich.

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 for the period 2017-2019 was not granted any longer but the project continues on a smaller scale with alternative funding.

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

A “merits test” is not foreseen with regard to legal assistance at the appeal stage. Legal assistance free of charge is provided in case of the rejection of a subsequent asylum application on *res judicata* grounds too.

The Constitutional Court and the Administrative High Court apply a merits test and tend to refuse free legal aid, if the case has little chance of succeeding.

2. Dublin

2.1. General

Dublin statistics: 2017

Outgoing procedure			Incoming procedure		
	Requests	Transfers		Requests	Transfers
Total	10,490	3,760	Total	5,521	:
Italy	3,347	:	Germany	2,117	:
Germany	1,763	:	France	1,465	:
Bulgaria	1,490	:	Greece	446	:

Source: Ministry of Interior, 26 January 2018.

Partial statistics on the application of the Dublin Regulation during the entire year 2017 were made available by the Ministry of Interior. Austria issued 10,490 outgoing requests and implemented 3,760 transfers. No information has been made available for the main countries receiving outgoing transfers, or the incoming transfers to Austria.

⁷¹ Federal Chancellery, Reply to parliamentary question 12783/J, 21 June 2017, available in German at: <http://bit.ly/2o0o6R>.

⁷² Salzburger Nachrichten, ‘Bundeskanzleramt prüft Vorwürfe gegen Asylverein’, 20 April 2017, available in German at: <http://bit.ly/2EnU94z>.

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.⁷³ Christian Filzwieser, judge at the Administrative Court, has doubted whether Austria's neighbouring countries will agree to take persons back under such conditions, whereas under the Dublin III Regulation they are obliged to take charge or take back.

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.⁷⁴

Documentation and entry

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

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

After the CJEU ruling in *Jafari*,⁷⁶ which found that the state-organised transit through the Western Balkan route qualified as "illegal entry" under Article 13 of the Regulation, the VwGH dismissed the appeal. The Court did not indicate that Austria applied the discretionary clauses in these cases.⁷⁷

Family unity

The BFA has put forward remarkable arguments in the context of family reunification under the Dublin Regulation. In the case of an unaccompanied child granted protection 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. Crucially, 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, resulting in the takeover by Austria not being decided after one year. According to statistics from the Greek Asylum Service, Austria received 465 requests but only accepted 216 throughout 2017.⁷⁸

⁷³ 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.

⁷⁴ Ministry of Interior, Reply to parliamentary question 10654/J (XXV.GP), 2 January 2017.

⁷⁵ VwGH, Decision Ra 2016/18/0172, 16 November 2016.

⁷⁶ CJEU, Cases C-490/16 A.S. and C-646/16 *Jafari*, Judgment of 26 July 2017.

⁷⁷ VwGH, Decision Ra 2016/19/0303, 20 September 2017.

⁷⁸ Greek Asylum Service, *Dublin statistics*, December 2017.

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.⁷⁹

To prove family status – in case family members did not arrive simultaneously in Austria – every asylum applicant must have mentioned the existence of other family members in their respective asylum procedure, i.e. in Austria as well as in the other Member States where they have applied for asylum. Marriage certificates or birth certificates are required on a regular basis. Depending on the country of origin, these documents are surveyed by the Federal Bureau of Criminal Investigation to prove authenticity. Austria requires the original documents, where available, to be sent for verification and does not leave such verification to the other Member States.

DNA tests may be ordered to provide proof of family links but these are not required at the moment. DNA tests have to be paid by the asylum seeker. If a DNA test has been suggested⁸⁰ 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.⁸¹

Unaccompanied children

Following the judgment of the CJEU in *M.A.* in relation to Article 8(4) of the Dublin III Regulation,⁸² for asylum applications lodged by unaccompanied children, the BFA/EAST has ordered age assessments even in cases where there are no reasons for doubts in regard to the age of the asylum seeker. Age assessments were ordered in 2,252 cases in 2016 and 867 in 2017. 59% of age assessments in 2016 and 61% of age assessments in 2017 confirmed the minority of the applicant.⁸³

In one case concerning a transfer to Hungary, the BFA submitted that the deadline for replying to a request is suspended until age assessment is conducted. The VwGH disagreed, however, and ruled that the deadline had expired.⁸⁴

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 made several strong protests due to the fact that Italy had already issued a Schengen visa. The asylum seeker in question was over 60 years old and, because of his Chechen origin, considered to be very old. In addition, the asylum seeker suffered from a serious illness and a disability which suggested that he relied on support from his son who is legally residing in Austria. The Administrative Court found the decision unlawful and reverted the case back to the first instance authority because Article 16(1) of the Regulation had not been sufficiently

⁷⁹ VwGH, Decision Ra 2016/20/0384, 22 June 2017.

⁸⁰ 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.

⁸¹ Fremdenrechtsänderungsgesetz 2017 – FrÄG 2017, 18 October 2017, available at: <http://bit.ly/2Cel0Ku>.

⁸² CJEU, Case C-648/11, *M.A. v. Secretary of State for the Home Department*, Judgment of 6 June 2013.

⁸³ Information provided by the Ministry of Interior, 26 January 2018.

⁸⁴ VwGH, Decision Ra 2017/19/0081, 22 November 2017.

considered by that authority. The Court noted, in addition, that Article 17(2) could also be relevant in this case because, due to Chechen culture, the support of the son for his old parents is more likely to be accepted than foreign support.⁸⁵

This argumentation can be found in another decision of the Court in the case of a single Afghan mother who sought asylum with a small child and a new-born baby. She had been raped and was suicidal. The judgment held that the authorities should examine which female relatives, living in Austria as recognised refugees, could support her by taking care of the children. Furthermore, the help of females of a family among themselves could be preferred to foreign support based on the applicant's cultural background.⁸⁶ 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.⁸⁷

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.⁸⁸

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

The asylum applicant has the legal right to request the asylum authorities to implement the sovereignty clause. The Constitutional Court has ruled, on the basis of case law from the European Court of Human Rights (ECtHR), that even in case of responsibility of another Member State under the Dublin Regulation, the Austrian authorities are nevertheless bound by the ECHR.⁸⁹ This means that, in case of a risk of a violation of human rights, Austria has a duty to use the sovereignty clause. This decision is applicable according to Articles 2 and 3 ECHR as well as Article 8 ECHR following an interpretation consistent with the constitution.

However, the assessment of risks of human rights violation warranting for use of sovereignty clause need be conducted in a manner that does not unreasonably delay the examination of the application. The principle that admissibility procedures should not last too long was reflected in a decision of the Administrative Court. A Chechen family had applied for asylum in Poland, Austria and Switzerland by submitting consecutive applications since 2005. One family member was severely traumatised. Switzerland decided on the merits of the case and issued a deportation order before they re-entered Austria. The Court reverted the procedure back to the Federal Agency for Immigration and Asylum (BFA). The Court found that it would have been necessary to ask for the details of the procedure in Switzerland to prevent indirect violations of Article 3 ECHR through chain deportation. For one family member, the risk of suicide was obvious according to expert statements. The Court, referring to the judgment of the CJEU in the case of *NS & ME*,⁹⁰ held that the long duration of the admissibility procedure has to be taken into consideration when determining the Member State responsible for

⁸⁵ BVwG, Decision W149 2009627-1, 21 July 2014.

⁸⁶ BVwG, Decision W 149 2009673-1, 20 June 2014.

⁸⁷ BVwG, Decision W149 2001851-1, 3 July 2014.

⁸⁸ BVwG, Decision W185 2005878-1, 2 July 2014.

⁸⁹ VfGH, Decision 237/03, 15 October 2004, VfSlg. 16.122/2001.

⁹⁰ CJEU, Joined Cases C-411/10 *NS v Secretary of State for the Home Department* and C-493/10 *ME v Minister for Justice, Equality and Law Reform*, Judgment of 21 December 2011, para 98.

examining the asylum application and that applying a return procedure in such cases might be more effective.⁹¹

The sovereignty clause has to be applied in the case of very vulnerable asylum seekers to prevent violations of Article 3 ECHR (Article 4 EU Charter). In the case of a refugee from Syria who arrived in Italy in 2013, where he was fingerprinted, but immediately continued to Austria, the Administrative Court agreed that the situation in his country of origin and his state of worry and uncertainty regarding his wife and three small children led to an exceptional psychological state with the consequence of several stays in hospital.⁹²

In September 2015, in the case of an Afghan mother with 6 minor children had applied for asylum in Hungary in September 2014 and shortly after in Austria too, the Administrative High Court ruled, that due to the change of the situation in Hungary, the presumption of safety is rebutted. The BVwG should have answered the question, whether systemic deficiencies exist in Hungary, and the sovereignty clause should be applied to prevent a violation of Article 3 ECHR / Article 4 of the EU Charter.⁹³

In a ruling of January 2017 concerning the transfer of a family including two children to Croatia, the BVwG found that it was irrelevant that the adult brother was not legally responsible for the custody of his minor siblings. As separation of the adult brother from his minor siblings would constitute an unacceptable interference with the right to family life and the children's well-being, the application of the sovereignty clause was ordered.⁹⁴

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 Corut 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.⁹⁵

In another case, the BFA appealed to the VwGH against a decision to transfer a Chechen family to Poland, where the father had already applied and passed the admissibility procedure in Austria. The VwGH found that the applications of the spouse and children should be admitted and the sovereignty clause used in order to preserve family unity.⁹⁶

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

2.2. Procedure

Indicators: Dublin: Procedure

1. On average, how long does a transfer take after the responsible Member State has accepted responsibility? Not available

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

⁹¹ BVwG, Decision W125.1257809-8, 20 January 2014, available at: <http://bit.ly/1Jp8HLh>.

⁹² BVwG, Decision W205 1438717-1, 29 April 2014, available at: <http://bit.ly/1EUlw8X>.

⁹³ VwGH, Decision Ra 2015/18/0113 to 0120, 8 September 2015.

⁹⁴ BVwG, Decision W165 2140213-1, 26 January 2017, available at: <http://bit.ly/2meMkAF>.

⁹⁵ VwGH, Decision Ra 2017/01/0068, 5 December 2017.

⁹⁶ VwGH, Decision Ra 2015/18/0192 to 0195, 15 December 2017.

asylum procedure based on the Dublin III Regulation.⁹⁷ 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.⁹⁸

There are 3 initial reception centres (EAST) which are responsible for the admissibility procedure: one located in **Traiskirchen** near Vienna, one in **Thalham** in Upper Austria and one at the **Airport Vienna Schwechat**. These are specialised in conducting outgoing Dublin procedures, although all BFA branch offices conduct those now.

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

Once an application for asylum is made, a preliminary interview by the police (*Erstbefragung*) takes place on the circumstances of entering Austria and the first country of entry in the EU, the personal data and – in a very brief manner – also on the reasons why an applicant left his or her home country. The asylum applicant is fingerprinted and photographed. Fingerprints are taken from all asylum seekers older than 14 years of age. 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,⁹⁹ but this is not relevant to the Dublin procedure.

The asylum seeker gets a green “procedure card” after the public security officer has consulted the BFA about the further steps in the asylum procedure: admittance to the regular procedure or admissibility procedure. Asylum seekers are transferred or ask to go to the initial reception centre when a Dublin procedure is initiated. The green card permits the asylum seeker to stay in the district of the initial reception centre.

In every procedure, the BFA has to consider within the admissibility procedure whether an asylum seeker could find protection in a safe third country or another EU Member State or Schengen Associated State. According to the experience of NGOs in previous years, consultations with other Member States did not take place if there was no concrete evidence for the responsibility of another Member States. This practice changed from 2015 onwards. Requests were systematically addressed to Slovenia, which systematically responded that the relevant persons were not known. Requests were also sent to Croatia based on the assumption that applicants crossing through the Western Balkan route entered the EU for the first time through Croatia.

The VwGH has determined that the deadline for an outgoing request starts running from the moment the BFA receives the report of the *Erstbefragung*, in line with the CJEU ruling in *Mengesteab*.¹⁰⁰ 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.

⁹⁷ Article 2(1)(8) BFA-VG.

⁹⁸ Article 5(2) AsylG.

⁹⁹ Article 18 BFA-VG.

¹⁰⁰ VwGH, Decision Ra 2016/01/0274, 17 October 2017, citing CJEU, Case C-670/16 *Mengesteab*, Judgment of 26 July 2017.

The VfGH submitted a reference for a preliminary ruling to the CJEU on 24 November 2017, to assess whether it is possible to accept a “take charge” after the expiry of the deadline where the request has previously been rejected, if it is subsequently determined that the requested Member State is responsible.¹⁰¹

Every asylum seeker receives written information about the first steps in the asylum procedure, basic care, medical care and the Eurodac and Dublin III Regulation at the beginning of the procedure in the EAST.

Within 20 calendar days after the application, the BFA has to either admit the asylum applicant to the in merit procedure or inform the applicant formally about the intention to issue an inadmissibility decision on the ground that another state is considered responsible for the examination of the asylum claim. After the requested Member State accepts responsibility, the asylum seeker is given the possibility to be heard. Before that interview, he or she has an appointment with a legal adviser who must be present at the interview. Legal advisers can also access documents in the case file.

Individualised guarantees

Individualised guarantees are not requested systematically. Their content depends on the individual circumstances of each case according to the BFA. However, latest developments in 2017 indicate 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, the State Documentation database, in specific cases e.g. access to medical treatment for cancer patients in Italy, and to base their decision thereon.

In April 2015, in the case of a Syrian father with his underage daughter, the BVwG allowed the appeal and stated that the father is a vulnerable person due to his hearing defect. A guarantee from Italy should have been requested. In this case his already adult son has received asylum status in Austria. Therefore, further investigation of the question is necessary if the transfer would violate of Article 8 ECHR.¹⁰² However, the BFA has deemed that the obligation to obtain guarantees from Italy on the basis of the *Tarakhel v. Switzerland* judgment of the ECtHR has been fulfilled following the Italian Ministry of Interior’s Circular letters of 8 June 2015 and 10 February 2016 to all Dublin Units, stating the projects where Dublin returnees would be accommodated.¹⁰³ The Constitutional Court pointed out in a ruling of 30 June 2016, in relation to the Circular letter and other procedural steps, that an individual assurance for a vulnerable asylum seeker would have been necessary before implementing a transfer.¹⁰⁴

The Constitutional Court has also clarified in the context of transfers to Hungary that, given the particular risks faced by vulnerable persons in countries where serious doubts arise as to the provision of reception conditions, it is necessary for Austria to establish more precisely how the asylum seeker would be accommodated and whether his or her special needs would be met.¹⁰⁵

During the last months of 2016, the BFA requested guarantees from Croatia in limited cases prior to transferring vulnerable groups, including families with young children and persons with severe illness in

¹⁰¹ CJEU, Case C-657/17 *Hussein*, Reference of 24 November 2017, available in German at: <http://bit.ly/2o3rBIM>.

¹⁰² BVwG, Decision W161 2104959-1/3E, 14 April 2015, available at: <http://bit.ly/1I3clNi>.

¹⁰³ ECRE, *Navigating the Maze: Structural barriers to accessing protection in Austria*, December 2015. See Italian Ministry of Interior, *Circular Letter to all Dublin Units Re: Dublin Regulation Nr. 604/2013 – Guarantees for vulnerable cases: family groups with minors*, 10 February 2016, available at: <http://bit.ly/1QxxRqJ>.

¹⁰⁴ VfGH, Decision E 449-450/2016 and E 703-704/2016-14, 30 June 2016, available at: <http://bit.ly/2k1BfVL>.

¹⁰⁵ VfGH, Decision E 1622-1626/2015-10 and E 1673/2015-10, 10 December 2015, available at: <http://bit.ly/2k51drR>.

need of specialised health care, following a number of successful Rule 39 requests to the ECtHR for interim measures against transfers.¹⁰⁶ However, the ECtHR deemed the obligation to obtain individual guarantees as fulfilled after Austria received a letter from the Croatian Dublin Unit with a general statement of the applicable legal framework and arrangements made by the authorities for health care in reception centres.¹⁰⁷

Transfers

Transfers are normally carried out without the asylum applicant concerned being informed of the time and the location he or she are transferred to before the departure from Austria, giving him or her no possibility to return to the responsible Member State voluntarily. There continue to be reports of the BFA informing receiving countries of a Dublin transfer on very short notice, in some cases no more than a week, even for asylum seekers requiring special care.¹⁰⁸ It could be argued that this practice is questionable under Recital 24 and Article 26(2) Dublin III Regulation according to which a transfer decision must contain the details of the time carrying out the transfer and “if necessary, contain information on the place and date at which the applicant should appear, if he is travelling to the Member State responsible by his own means.”

In case of an enforced transfer to another EU Member State, the police first apprehends the asylum applicant and transfers him or her to a detention centre (see [Detention of Asylum Seekers](#)).¹⁰⁹ There is also a special detention centre for families in **Vienna**. The asylum applicant has to stay there until the deportation takes place, usually after one or two days. Under the Dublin procedure, asylum seekers can be held for up to 48 hours without detention being specifically ordered. In a less coercive measure, instead of detention asylum seekers may be ordered to stay at a certain place (such as a flat or a reception centre).¹¹⁰ 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.

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.

The BFA reported 3,760 Dublin transfers carried out in 2017, an increase from 2,582 transfers in 2016.¹¹¹

¹⁰⁶ See e.g. *Bayat v. Austria*, Application No 60014/16 of 19 October 2016; *H and A v. Austria*, Application No 61204/16 of 25 October 2016; *Qaumi v. Austria*, Application No 61164/16 of 28 October 2016; *Nadiri v. Austria*, Application No 63109/16 of 4 November 2016.

¹⁰⁷ For a copy of the letter and more information, see ECRE, *Balkan Route Reversed: The return of asylum seekers to Croatia under the Dublin system*, December 2016, available at: <http://bit.ly/2kueKpB>, 32-34 and Annex IV.

¹⁰⁸ ECRE, *Balkan Route Reversed: The return of asylum seekers to Croatia under the Dublin system*, December 2016, 33.

¹⁰⁹ In some cases, asylum seekers have reportedly been apprehended by the police during the night: *Ibid.*

¹¹⁰ Article 77(5) FPG.

¹¹¹ Information provided by the Ministry of Interior, 26 January 2018.

2.3. Personal interview

Indicators: Dublin: Personal Interview

Same as regular procedure

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

A personal interview is required by law. The law permits an exception in case the asylum seeker has evaded the procedure in the initial reception centre.¹¹² 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.¹¹³ Such relevant facts for a decision in Dublin cases could be a Eurodac hit and the acceptance of the requested Member State to take back the asylum seeker.

An appointed legal adviser must be present at the interview organised to provide the asylum seeker an opportunity to be heard. In practice, legal advisers are present at the hearing. Legal advisers are often informed only shortly before the interview, which means that they lack time to study the file. Legal advice to asylum seekers in detention takes place immediately before the hearing in the detention centre, contrary to Article 29(4) AsylG, according to which the asylum seeker must have at least 24 hours to prepare for the hearing with the assistance of the legal adviser.

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

The record of the Dublin consultation between Austria and the requested state(s) are made available to the asylum seeker and the legal adviser. 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 would rely on the care of his son.¹¹⁴ The Court noted that the dependency clause should have been applied in this case.

¹¹² Article 24(3) AsylG.

¹¹³ See Asylum Court, S6 430.113-1/2012, 5 November 2012: the Court found that the procedure was unlawful in the case of an unaccompanied minor asylum seeker from Afghanistan, who was interrogated by the police without the presence of his legal representative or a person of trust and disappeared shortly after. The Federal Agency for Aliens' Affairs and Asylum did not submit the minutes of the first interrogation or give the legal representative the opportunity to be heard before rendering the rejection of the application. However, cf. the negative decision of the Asylum Court in the case of an unaccompanied minor: S2 429505-1/2012, 04 October 2012.

¹¹⁴ BVwG, Decision W149 209627-1, 21 July .2014

2.4. Appeal

Indicators: Dublin: Appeal
 Same as regular procedure

1. Does the law provide for an appeal against the decision in the Dublin procedure?
- | | | |
|----------------------------|--|---|
| ❖ If yes, is it | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| ❖ If yes, is it suspensive | <input checked="" type="checkbox"/> Judicial | <input type="checkbox"/> Administrative |
| | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |

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

The time limit within which the appeal against the BFA's inadmissibility decisions (including Dublin decisions) must be lodged is 4 weeks. The appeal has no suspensive effect, unless the Federal Administrative Court (BVwG) grants suspensive effect within 7 calendar days after the appeal reaches the court. The expulsion order may not be executed before the time limit for granting suspensive effect expires. The BVwG has to decide *ex officio* if the appeal must be given suspensive effect. In many Dublin cases, asylum applicants never receive a final decision because they are transferred back to the responsible Member State before the Court's decision.

The BVwG can either refuse the appeal or decide to refer it back to the BFA with the instruction to conduct either an in-merit procedure or investigate the case in more detail (for instance if the Court finds that the BFA has not properly taken into account family ties or that the assessment of the situation in the responsible Member State was based on outdated material or was insufficient with regard to a possible violation of Article 3 ECHR). Usually, the Court decides on the basis of the written appeal and the asylum file without a personal hearing of the asylum seeker.

Asylum seekers whose appeals were given a suspensive effect or were accepted by the Court have the right to re-enter Austria by showing the decision of the court at the frontier. This is related to the fact that, if the court does not decide within 7 days on suspensive effect, the asylum seeker may be deported. If no suspensive effect was granted but the court finds that the decision of the BFA was unlawful, the asylum seeker is also allowed to re-enter.

2.5. Legal assistance

Indicators: Dublin: Legal Assistance
 Same as regular procedure

1. Do asylum seekers have access to free legal assistance at first instance in practice?
- | | | | |
|-------------------------------------|--|--|-----------------------------|
| ❖ Does free legal assistance cover: | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> With difficulty | <input type="checkbox"/> No |
| | <input type="checkbox"/> Representation in interview | | |
| | <input checked="" type="checkbox"/> Legal advice | | |
2. Do asylum seekers have access to free legal assistance on appeal against a Dublin decision in practice?
- | | | | |
|------------------------------------|--|--|-----------------------------|
| ❖ Does free legal assistance cover | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> With difficulty | <input type="checkbox"/> No |
| | <input checked="" type="checkbox"/> Representation in courts | | |
| | <input checked="" type="checkbox"/> Legal advice | | |

Free legal assistance during the admissibility procedure was implemented to compensate for the restricted movement of asylum seekers during this type of procedure, as they are obliged to stay within the district of the EAST. If asylum seekers leave the district of the EAST to consult an attorney-at-law or NGOs – which normally have their offices in the bigger cities – they can be given a fine ranging from €100 to €1,000. In case of repeated violation of the restricted residence (*Gebietsbeschränkung*), the fine may amount to €5,000 and even detention may be ordered in case the asylum seeker is unable to pay

the fine. A violation of the restriction of movement could furthermore be a reason for pre-expulsion custody. This punishment is not applied very often in practice. The second reason why free legal assistance is provided at this stage of the procedure is the lack of suspensive effect of an appeal in admissibility procedures, which justifies the incorporation of additional safeguards in the first instance procedure.

As discussed in the section on [Regular Procedure: Legal Assistance](#), the quality of the advice provided by legal aid counsels is problematic because they lack time and because asylum seekers do not trust them, as they are considered being too closely linked to the BFA. They have their offices within the building of the BFA and their task is only to provide objective information about the procedure to the asylum seekers; not to assist them in the procedure and defend their interests.

In case of unaccompanied asylum seeking children, the appointed legal adviser is at the same time their legal representative during the admissibility procedure. Without consent of their legal adviser they are not able to act, for example to choose a legal representative by themselves or to submit an appeal in case the legal adviser fails to do so. Here too, the quality of the assistance provided is considered to be problematic at times. NGOs report that in some cases the legal representative has refrained from lodging an appeal in disregard of the best interests of the child.

Although Article 29(4) AsylG provides that free legal assistance shall be provided to all asylum seekers at least 24 hours before the hearing on the results of the evidentiary findings determining the responsible Member State under the Dublin Regulation, legal advisers are often informed only shortly before the interview, therefore lacking time to study the file and prepare for the hearing. Asylum seekers in detention do not normally receive legal advice until immediately before the hearing in the detention centre.

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

2.6. Suspension of transfers

Indicators: Dublin: Suspension of Transfers

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

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

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

According to the jurisprudence, notorious severe human rights violations in regard of Article 3 ECHR have to be taken into consideration *ex officio*. If the asylum application is already rejected by the Member State responsible for the examination of the application, a divergent interpretation of the Refugee Convention in a Member State or manifestly unlawful procedures could be relevant in an individual case. Generally low recognition rates in a certain Member State are not regarded as a characteristic of a dysfunctional asylum system.

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

Greece: After the ruling of the ECtHR in *M.S.S. v Belgium and Greece*, Austria suspended transfers to Greece. The director of the BFA announced Dublin procedures with Greece will start again in March 2017,¹¹⁵ in line with the European Commission's recommendation of December 2016. So far Dublin procedures to Greece have not started.

Hungary: Requests to Hungary continue to be issued but transfers are not carried out. Following the legal reform passed in March 2017, as a result of which all asylum seekers are systematically detained in Hungary, no transfers to Hungary have taken place.¹¹⁶ Nevertheless, the BVwG continues to dismiss appeals against transfer decisions to Hungary in 2017.¹¹⁷

A particular issue relates to persons living in Burgenland with a pending asylum procedure in Austria. These people often take the train to Vienna, which passes through Hungary. They are arrested on the train by the Hungarian police and deported to Serbia, even though it should be clear that the trains come from Austria and the persons concerned hold valid documentation.

Italy: The majority of outgoing requests – 3,347 out of 10,490 – concerned Italy in 2017. In relation to Italy, the BFA deems that the obligation to obtain guarantees from Italy on the basis of the *Tarakhel v Switzerland* judgment of the ECtHR has been fulfilled following the Italian Ministry of Interior's letters of 8 June 2015 and 10 February 2016 to all Dublin Units, stating the projects where Dublin returnees would be accommodated.¹¹⁸ The Constitutional Court pointed out in a ruling of 30 June 2016, in relation to the Circular letter and other procedural steps, that an individual assurance for a vulnerable asylum seeker would have been necessary before implementing a transfer.¹¹⁹ Nevertheless, the BVwG has largely allowed the BFA to carry out Dublin transfers to Italy throughout 2017.¹²⁰ The Constitutional Court also found that the situation of asylum seekers in Italy has improved and that special safeguards are no longer necessary.¹²¹

Bulgaria: Transfers to Bulgaria are carried out by the BFA and generally upheld by the BVwG.¹²² No objections are raised for single asylum seekers or families. However, higher courts have taken a different line. In one case, the Constitutional Court deemed a transfer unlawful on the basis of the vulnerability of an Iraqi family with young children and the deterioration of reception conditions in

¹¹⁵ See Kurier, 'Griechenland soll ab März wieder Flüchtlinge zurücknehmen', 20 January 2017, available in German at: <http://bit.ly/2kaZVLc>.

¹¹⁶ See also VfGH, Decision E 1486/2017, 14 June 2017.

¹¹⁷ See e.g. BVwG, Decision W192 2142919-1, 7 August 2017; W243 2170660-1, 25 September 2017.

¹¹⁸ Information provided by the BFA to ECRE, November 2015. See Italian Ministry of Interior, *Circular Letter to all Dublin Units Re: Dublin Regulation Nr. 604/2013 – Guarantees for vulnerable cases: family groups with minors*, 10 February 2016, available at: <http://bit.ly/1QxxRqJ>.

¹¹⁹ VfGH, Decision E 449-450/2016 and E 703-704/2016-14, 30 June 2016.

¹²⁰ See e.g. BVwG, Decision W243 2140308-1, 27 January 2017; W144 2152033-1, 18 April 2017; W205 2144676-1, 6 June 2017; W192 2162712-1, 13 July 2017; W153 2166538-1, 22 September 2017.

¹²¹ VfGH, Decision E 2646/2016, 7 March 2017.

¹²² See e.g. BVwG, Decision W165 2174429-1, 23 November 2017; W241 2178020-1, 7 December 2017.

Bulgaria.¹²³ The VfGH has also found that the BFA must make a thorough assessment of the conditions in Bulgaria before transferring families.¹²⁴

Croatia: Following the CJEU ruling in *A.S. / Jafari*, the BVwG has rejected the cases previously suspended and the persons concerned have been returned to Croatia. In some cases the applications were admitted in Austria due to the expiry of the time limit for the transfer.

Slovenia: There are no indications that would call into question the presumption of safety, according to the VfGH.¹²⁵

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.

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

3. Admissibility procedure

3.1. General (scope, criteria, time limits)

The admissibility procedure starts with the first interrogation of the asylum seeker by the public security officer, who has to submit the findings thereof to the branch office of the BFA. The BFA officer in charge instructs the police about the next steps in the admissibility procedure: the application may be assessed as admitted to the regular procedure or the asylum-seeker ordered to travel to the EAST or transferred by the police to the EAST.¹²⁶ There are three EAST which are responsible for the admissibility procedure: one located in **Traiskirchen** near Vienna, one in **Thalham** in Upper Austria and one at the **Airport Vienna Schwechat**. Admissibility procedures are also conducted at other BFA branch offices.

All asylum seekers have to undergo the admissibility procedure except children born in Austria whose parents have received protection status in Austria or whose application is admitted to the regular procedure. Their applications are admitted immediately to the regular procedure.¹²⁷

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

- (1) The person comes from a safe third country;¹²⁸
- (2) The person enjoys asylum in an EEA country or Switzerland;¹²⁹
- (3) Another country is responsible for the application under the Dublin Regulation;¹³⁰
- (4) The person files a subsequent application and “no change significant to the decision has occurred in the material facts”.¹³¹

¹²³ VfGH, Decision E 484/2017, 9 June 2017. See also VfGH, Decision E 86/2017, 24 November 2017.

¹²⁴ VfGH, Decision Ra 2017/18/0039, 30 August 2017; Ra 2017/19/0100, 13 December 2017.

¹²⁵ VfGH, Decision Ra 2017/01/0153, 20 June 2017.

¹²⁶ Article 29(1) AsylG.

¹²⁷ Article 17(3) AsylG.

¹²⁸ Article 4(1) AsylG.

¹²⁹ Article 4a(1) AsylG.

¹³⁰ Article 5(1) AsylG.

¹³¹ Article 12a(2)(2) AsylG.

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 calendar days after the application is made, the BFA has to either admit the asylum applicant to the in-merit procedure or notify him or her formally by procedural order about the intention to issue an inadmissibility decision on the ground that another state is considered responsible for the examination of the asylum claim or that the BFA intends to revoke the suspensive effect of a subsequent application. This time limit does not apply if consultations with another state on the application of the Dublin Regulation take place.¹³²

The 20-day time limit shall not apply if the asylum seeker does not cooperate in the procedure, the procedure is deemed no longer relevant or the asylum seeker evades the procedure.¹³³ The duty of the asylum seeker to cooperate includes, among others, providing the BFA with information and evidence about their identity and reasons for applying for asylum, to come to hearings in time and to notify the authorities of their address. If, for reasons relating to his or her person (e.g. illness, postponing the interview due to duty to comply with summons etc.), the asylum seeker is unable to cooperate in the procedure, the computation of the 20-day time limit shall be suspended.¹³⁴

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

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

Within the admissibility procedure, the application may also be dismissed on the merits, or asylum or subsidiary protection status may be granted.

The granting of a status or the dismissal of the application in the admissibility procedure replaces the admissibility ruling.¹³⁵

An admissible application shall nevertheless be rejected if facts justifying such a rejection decision become known after the application was admitted.¹³⁶ In practice, this provision is applied in Dublin cases without the precondition that the facts justifying admissibility were not known before.¹³⁷

The information provided by the Ministry of Interior did not include the number of inadmissibility decisions issued in 2017.¹³⁸

¹³² Article 28(2) AsylG.

¹³³ Article 28(2) AsylG.

¹³⁴ Article 28(2) AsylG.

¹³⁵ Article 28(2) AsylG.

¹³⁶ Article 28(1) AsylG.

¹³⁷ VwGH, Decision Ra 2006/20/0624, 25 November 2008.

¹³⁸ Information provided by the Ministry of Interior, 26 January 2018.

3.2. Personal interview

Indicators: Admissibility Procedure: Personal Interview

Same as regular procedure

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

A personal interview is required by law. The asylum seeker is interrogated by agents of the public security service upon the lodging of the application or during the admissibility procedure at the EAST. The police may not ask detailed questions on the specific reasons for fleeing the country of origin or residence. The clear division of tasks between the police, which has the duty to assess identity, personal data and the travel route of the applicant, and the civil servants of the BFA for assessing the facts on which the application is based, is not always respected in practice, however. The reasons for fleeing the country of origin may be found not credible at the interview before the civil servant of the BFA if the asylum seeker has based the application on other reasons immediately upon arrival. Article 19(4) AsylG states explicitly, that in the admission procedure, the asylum seeker shall also be informed that his or her own statements will be accorded increased credibility.

The law permits an exception from the personal interview in the case the asylum seeker has evaded the procedure in the EAST. If the facts relevant to a decision are established, the fact that they have not been interviewed yet by the BFA or by the BVwG shall not preclude the rendering of a decision. In practice this exception is not applied very often, however. An exception may apply in a subsequent asylum application that was submitted within two days before the execution of an expulsion order.¹³⁹ An interview during the admission procedure may be dispensed with if the procedure is admitted.

3.3. Appeal

Indicators: Admissibility Procedure: Appeal

Same as regular procedure

1. Does the law provide for an appeal against the decision in the admissibility procedure?
 - Yes No
 - ❖ If yes, is it Judicial Administrative
 - ❖ If yes, is it suspensive Yes 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 4 weeks and the appeal has in general no suspensive effect, except when decided otherwise by the BVwG.

As a first step, the BVwG decides within 1 week after receiving the appeal whether the appeal will have suspensive effect during the continuing appeal procedure. If the BVwG neither issues suspensive effect nor accepts the appeal after seven days, the asylum applicant can be deported to the responsible Member State, safe third country or his or her country of origin in case of a subsequent application.

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

¹³⁹ Article 19(1) AsylG.

Appeals against a decision rejecting the asylum application as inadmissible do *not* have suspensive effect unless this is granted by the BVwG.¹⁴⁰ The reasons for not granting suspensive effect to the appeal in inadmissible cases correspond to grounds for declaring claims manifestly unfounded, as mentioned in [Regular Procedure: Appeal](#).

The appointed legal adviser is not obliged to assist the asylum seeker with writing the complaint that has to be written in German language and the requested qualification for legal advisers is also not sufficient.

3.4. Legal assistance

Indicators: Admissibility Procedure: Legal Assistance

Same as regular procedure

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

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

A legal adviser is appointed by the BFA in case it intends to reject the application in the framework of the admissibility procedure. The BFA has to notify the asylum seeker by procedural order of its intention to reject the application in the admissibility procedure and inform them about the mandatory consultation of a legal adviser. Legal advice has to be provided at least 24 hours before the next interview, during which the asylum seeker is given the opportunity to be heard. Presence of legal advisers during the interview is mandatory.

Free legal advice is foreseen for subsequent asylum applications as well,¹⁴¹ including in appeals. Most of the cases that are regarded as inadmissible are Dublin cases (see [Dublin: Legal Assistance](#)) and [Safe Third Country](#) cases.

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. Can an application made at the border be examined in substance during a border procedure? Yes No
3. 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?¹⁴² 1 week

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

¹⁴⁰ Article 16(2) BFA-VG.

¹⁴¹ Article 52(1) BFA-VG.

¹⁴² Time limit to send the file to UNHCR rather than to take a first instance decision.

Asylum seekers who apply for international protection at the airport are transferred after the interview by the police to the building of the police station with the EAST and the rejection zone. On the basis of the first interview, the BFA decides whether the procedure shall be processed under the special regulations of the airport procedure, or if the case should be considered under the regular procedure and the asylum seeker should be summoned by the BFA.¹⁴³

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.¹⁴⁴ In the context of Dublin procedures at the airport, UNHCR is not involved.

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

- (a) Inadmissible by reason of existing protection in a safe third country; or
- (b) Dismissed on the merits if there is no substantial evidence that the asylum seeker should be granted protection status *and*:
 - i. the applicant tried to mislead the authorities about their identity, citizenship or authenticity of their documents and they were previously informed about the negative consequences of doing so;
 - ii. the applicant's claims relating to the alleged persecution are obviously unfounded;
 - iii. the applicant did not claim any persecution at all; or
 - iv. the applicant comes from a safe country of origin.

For procedures in the initial reception centre of the airport, one interview is regarded as sufficient. Furthermore, the rejection decision has to be sent to UNHCR within one week and approved, otherwise the application is admitted to the regular procedure and the asylum seeker is allowed entry.¹⁴⁵

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

Most cases processed at the airport were Dublin procedures. Most decisions as manifestly unfounded claims at the airport are appealed. The BVwG rejected 15 appeals of asylum seekers in 2017,¹⁴⁶ most of them from India.

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](#)). The measure has not been implemented in practice.

¹⁴³ Article 31(1) AsylG.

¹⁴⁴ Article 32(2) AsylG.

¹⁴⁵ Article 33(2) AsylG.

¹⁴⁶ Information obtained through the legal information system (RIS), Decisions of the BVwG.

4.2. Personal interview

Indicators: Border Procedure: Personal Interview

Same as regular procedure

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

In procedures at the airport, only one personal interview is conducted.¹⁴⁷ There are no other differences compared to the system for personal interviews under the regular procedure.

4.3. Appeal

Indicators: Border Procedure: Appeal

Same as regular procedure

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

The time limit for lodging appeals against a decision by the BFA in procedures at the airport is 4 weeks.¹⁴⁸ The BVwG must render its decision within 2 weeks from the submission of the complaint.¹⁴⁹ A hearing in the appeal proceedings must be conducted at the EAST at the airport,¹⁵⁰ yet this rarely happens in practice.

4.4. Legal assistance

Indicators: Border Procedure: Legal Assistance

Same as regular procedure

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

The same system for legal assistance applies as described under the regular procedure. One NGO, Caritas, was present at the airport and assisted asylum seekers until recently. The contract of Caritas was ended after 13 years by the end of 2016. The Swiss company ORS, which is contracted by the Ministry of Interior for provision of basic care in the reception centres of the Ministry, will be responsible

¹⁴⁷ Article 33(2) AsylG.

¹⁴⁸ Article 33(3) AsylG.

¹⁴⁹ Article 33(4) AsylG.

¹⁵⁰ Article 33(4) AsylG.

for caring for asylum seekers in the airport special transit centre.¹⁵¹ This has an impact on the extent of care and advice, namely legal advice during the first instance procedure that has been provided by Caritas and is now provided by ORS.

5. Accelerated procedure

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

Before 20 July 2015, the law already provided for “procedures for the imposition of measures to terminate residence” subject to reduced time limits for appeal and decisions on appeal, with the effect that certain cases are dealt with in an accelerated manner. For the purposes of this report these are referred to as accelerated procedures.

Under Article 27 AsylG, such a procedure is applied where:

- (a) During the admissibility procedure, the BFA has notified the applicant of its intention to reject the application as inadmissible (see section on [Admissibility Procedure](#)) or dismiss the application on the merits;¹⁵²
- (b) The appeal procedure is to be discontinued where the asylum seeker has evaded the procedure and a return decision was issued by the BFA;¹⁵³
- (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.¹⁵⁴ Public interest exists in particular, albeit not exhaustively, where an applicant:¹⁵⁵
 - i. Has committed a criminal offence;
 - ii. Has been charged with a criminal offence by the Department of Public Prosecution;
 - iii. Has been subject to pre-trial detention; or
 - iv. Has been caught in the act of committing a criminal offence.

In case a “procedure for the imposition of measures to terminate residence” has been initiated, a decision shall be taken as quickly as possible and no later than 3 months on the asylum application.¹⁵⁶

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 appeal suspensive effect apply, as stated in Article 18 BFA-VG. These reasons are:

- (a) The asylum seeker comes from a safe country of origin;
- (b) There are indications that the asylum seeker endangers public security and order;
- (c) The asylum seeker has provided false statements on their identity, nationality and authenticity of documents;
- (d) No reasons for persecution have been asserted;
- (e) Statements adduced are obviously false or contradictory;
- (f) An executable return decision has been issued before applying for international protection; and
- (g) The asylum seeker refuses to give fingerprints.¹⁵⁷

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

¹⁵¹ Der Standard, ‘Aus für Caritas-Flüchtlingsbetreuung am Flughafen’, 13 January 2017, available in German at: <http://bit.ly/2kxmmsn>.

¹⁵² Article 27(1)(1) AsylG, citing Article 29(3)(4)-(5) AsylG.

¹⁵³ Article 27(1)(2) AsylG, citing Article 24(2) AsylG.

¹⁵⁴ Article 27(2) AsylG.

¹⁵⁵ Article 27(3) AsylG.

¹⁵⁶ Article 27(8) AsylG.

¹⁵⁷ Article 18 BFA-VG.

The information provided by the Ministry of Interior did not include the number of cases channelled in the accelerated procedure in 2017.¹⁵⁸

5.2. Personal interview

Indicators: Accelerated Procedure: Personal Interview

Same as regular procedure

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

All asylum seekers must have one personal interview. The law permits an exception in case the asylum seeker has absconded from the procedure.¹⁵⁹ If the facts are established, failure by the BFA or by the Federal Administrative Court to conduct an interview should not preclude the rendering of a decision. No differences are observed from the [Regular Procedure: Personal Interview](#).

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

5.3. Appeal

Indicators: Accelerated Procedure: Appeal

Same as regular procedure

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

Time limits for appeals 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.¹⁶¹ The BVwG has to decide on the appeal against decisions to reject the application including an expulsion order within 8 weeks.¹⁶²

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

Difficulties in lodging an appeal against negative decisions in the accelerated procedure are the same as those described under the [Dublin Procedure: Appeal](#) and result mainly from insufficient free legal

¹⁵⁸ Information provided by the Ministry of Interior, 26 January 2018.

¹⁵⁹ Article 24(3) AsylG.

¹⁶⁰ Article 19(1) AsylG.

¹⁶¹ Article 27(8) AsylG.

¹⁶² Article 17(2) BFA-VG.

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

assistance. Organisations contracted to provide legal assistance have to organise interpreters if necessary.

5.4. Legal assistance

Indicators: Accelerated Procedure: Legal Assistance

Same as regular procedure

1. Do asylum seekers have access to free legal assistance at first instance in practice?
 Yes With difficulty No
❖ Does free legal assistance cover:
 Representation in interview
 Legal advice
2. Do asylum seekers have access to free legal assistance on appeal against a decision in practice?
 Yes With difficulty No
❖ Does free legal assistance cover:
 Representation in courts
 Legal advice

Access to free legal assistance at first instance is difficult for asylum seekers detained during the accelerated procedure, although they may contact NGOs for advice. Free legal assistance is available for subsequent asylum applications too.¹⁶⁴

In so called fast track accelerated procedures under Article 27a AsylG in conjunction with Article 18 BFA-VG, mandatory free legal advice for the admissibility procedure is circumvented by forwarding the procedure to the BFA branch office without prior admission to the regular procedure. This practice takes place from time to time. At the time asylum seekers get the invitation for their interview, they are still subject to restrictions on freedom of movement. Therefore they are not able to consult NGOs or lawyers outside the restricted area.

D. Guarantees for vulnerable groups

1. Identification

Indicators: Identification

1. Is there a specific identification mechanism in place to systematically identify vulnerable asylum seekers?
 Yes For certain categories No
❖ If for certain categories, specify which: Unaccompanied minors
2. Does the law provide for an identification mechanism for unaccompanied children?
 Yes No

1.1. Screening of vulnerability

There is no effective system in place to identify asylum seekers in need of special procedural guarantees. During the admissibility procedure in the initial reception centre (EAST), asylum seekers are instructed in the written leaflets to state psychological problems to the doctor and the legal adviser. At the beginning of the interview, they are asked whether they have any health or mental problems that could influence their ability to cooperate in the procedure. Doctors qualified in psychology in the EAST are requested by the BFA to assess if the asylum seeker is suffering from a medically significant stress-

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

related mental disorder as a result of torture or another event which prevents them from defending their interests in the procedure or entails for them a risk of permanent harm or long term effects.¹⁶⁵

Victims of trafficking

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

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

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

According to information received, most affected persons in the asylum procedure are women from Nigeria.¹⁶⁶

1.2. Age assessment of unaccompanied children

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

It seems that age assessments are ordered systematically. In 2017, 1,751 unaccompanied children applied for asylum and 867 age assessments were conducted, of which 61% concluded on minority and 39% on majority. In 2016, out of 2,252 age assessments, 59% concluded on minority and 41% on majority.¹⁶⁷

¹⁶⁵ Article 30 AsylG.

¹⁶⁶ European Migration Network and International Organisation for Migration, *Trafficked persons as asylum seekers: The process of identification and access to residence rights in Austria*, February 2014, available at: <http://bit.ly/2l5ARnd>.

¹⁶⁷ Ministry of Interior, Reply to parliamentary question 11558/J, 21 March 2017, available in German at: <http://bit.ly/2nU4rz4>.

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

Methods for assessing age

In the case of doubt with regard to the age of an unaccompanied asylum-seeking child, authorities may order a medical examination. Several methods might be used. According to the Asylum Act and decrees of the Minister of Interior (which are not public), age assessments through medical examination should be a measure of *ultima ratio*. Other evidence to prove age should be verified first. If doubts remain after investigations and age assessment, the principle of *in dubio pro minore* (the benefit of the doubt) should apply.¹⁶⁸

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

In one case concerning a Gambian asylum seeker, who was a minor according to his birth certificate from the Gambia but had been determined to be an adult by Norway and Italy, and for whom the BFA expert opinion had given a probably age of 18.44 years but a possible age of 17.04 years at the time of his application, the VwGH applied the benefit of the doubt and ruled that the applicant should be assumed to be a child.¹⁷⁰

Challenging age assessment

Age assessments do not consist in an administrative decision but are an expert opinion – the outcome of the medical examination – that is communicated to the applicant. As a result, there is no possibility to appeal against their outcome. The question of whether or not it is possible to appeal the decision to declare an unaccompanied child an adult has been referred to the Constitutional Court (VfGH). In a ruling of 3 March 2014,¹⁷¹ the Court found that the declaration of the BFA that a person is of age and the consequent discharge of the legal representative may not be appealed during the first instance procedure. As a consequence, unaccompanied children who were erroneously declared to be adults have to continue the procedure without legal representation. An article by Daniela & Rainer Lukits presents the ruling of the Constitutional Court as disappointing.¹⁷² The authors criticise the Court for setting out criteria that are not in line with effective legal safeguards and for misunderstanding the gap in legal protection which presents itself upon such a declaration that an applicant is adult.

The VwGH has confirmed the VfGH position, stating the age assessment should be seen as part of the examination of the asylum application and be included in the decision thereon. Since the age

¹⁶⁸ Article 13(3) BFA-VG.

¹⁶⁹ Human Rights Board, Bericht des Menschenrechtsbeirates zu Kindern und Jugendlichen im fremdenrechtlichen Verfahren, 2011; Stellungnahme der Ärztekammer, FPG 2010, 21 July 2009.

¹⁷⁰ VwGH, Decision Ra 2017/18/0118, 27 June 2017.

¹⁷¹ VfGH, Decision U 2416/2013-8, 3 March 2014.

¹⁷² D Lukits and R Lukits, 'Neues zur Volljährigerklärung im österreichischen Asylverfahren, FabI, January 2014.

assessment is a mere procedural matter according to the VfGH, the asylum seeker does not lose any rights in the procedure that he or she would otherwise enjoy as an unaccompanied child.¹⁷³

However, the deprivation of legal representation under Article 10(3) BFA-VG denies unaccompanied children of the right to a representative under Article 25(1) of the recast Asylum Procedures Directive and Article 6(2) of the Dublin Regulation, as well as Article 24(1) of the recast Reception Conditions Directive.¹⁷⁴

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

Article 30 AsylG also states that consideration should be given to the asylum seekers' specific needs in course of the procedure, although the concept of "adequate support" is not defined or described in the law. However, this does not seem to be applied in first instance procedures in practice. Usually the 15-month time limit for deciding on the application is long enough to gather evidence. In cases concerning unaccompanied children, the BFA often fails to issue a decision within 15 months.

If an asylum seeker bases the fear of persecution on infringements of the right to sexual self-determination, they should be interviewed by an official of the same sex, unless they request otherwise.¹⁷⁵ 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.¹⁷⁶ A similar provision for interpreters is lacking, however.

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

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.¹⁷⁷ In practice, it is not likely that applications of vulnerable asylum seekers like victims of torture or violence or unaccompanied children are processed in the airport procedure (the only border procedure), although accelerated procedures for public security reasons may be conducted.

¹⁷³ VfGH, Decision U 2416/2013-8, 3 March 2014.

¹⁷⁴ Amnesty International, *Studie zur Situation besonders vulnerabler Schutzsuchender im österreichischen Asyl- und Grundversorgungsrecht*, August 2016, available in German at: <http://bit.ly/2EmtoNQ>.

¹⁷⁵ Article 20(1) AsylG.

¹⁷⁶ VfGH, U 688-690/12-19, 27 September 2012.

¹⁷⁷ Article 30 AsylG.

3. Use of medical reports

Indicators: Use of Medical Reports

1. Does the law provide for the possibility of a medical report in support of the applicant's statements regarding past persecution or serious harm?
 Yes In some cases No
2. Are medical reports taken into account when assessing the credibility of the applicant's statements?
 Yes No

Asylum seekers undergo a medical examination in the EAST or a federal reception centre.¹⁷⁸

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.

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

The Administrative Procedures Act (AVG) requires the assessment of all relevant facts and imposes an obligation on the authorities to undertake all necessary investigations. Statements of the applicants have to be credible, persecution need not be proved and preponderant plausibility is sufficient. If the authorities have doubts on whether the applicant has been subjected to torture or other serious acts of violence, a medical examination may be ordered by the authorities. These examinations are paid by the state. Often asylum seekers submit expert opinions e.g. a report of the psychiatric department of a hospital where they have been treated or an opinion of a psychotherapist. In every federal state, an NGO provides psychotherapy for asylum seekers with treatment free of charge, funded by the AMIF, but capacities are not sufficient, clients often have to wait several months to start the treatment

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

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

“[N]eglecting to take into account medical reports as proof of psychological conditions, which consequently deprived the applicants of an objective examination of contentious facts... The responsible authority has thereby judged the applicants' mental state without going into the substance of the individual circumstances.”¹⁷⁹

A psychiatric opinion was taken into consideration, which concerned the need to treat the psychiatric illness. Post-traumatic stress disorder (PTSD), illusions and concentration difficulties were diagnosed, but the opinion did not bring evidence of how far those issues would influence the asylum seeker's

¹⁷⁸ Article 28(4) AsylG.

¹⁷⁹ VwGH, Decision Ra 2007/19/0830, 19 November 2010.

statements. Therefore the authority believed that the asylum seeker should remember the exact date of the events reported.

The established jurisprudence of the VwGH requires exhaustive reasoning to deny the causality between alleged torture and visible scars, including through an expert opinion indicating the likelihood of alleged torture causing the visible effects.¹⁸⁰ In the same ruling, the Court repeats earlier jurisprudence to the effect that psychiatric illness has to be taken into account in regard to discrepancies that have been identified in the statements of an asylum seeker.

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

4. Legal representation of unaccompanied children

Indicators: Unaccompanied Children

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

A legal representative is appointed as soon as an unaccompanied child applies for asylum. Contrary to adult refugees, unaccompanied minors have to apply for asylum in the initial reception centre (EAST). Unaccompanied children have no legal capacity to act by themselves in the procedure; nevertheless, they are under the same obligation to cooperate in the procedure as adults. Legal representatives have to be present at interviews organised by the BFA (and hearings at the BVwG).

During the admissibility procedure, the legal advisers (who are contracted by the Ministry of Interior) act as legal representatives of the unaccompanied asylum-seeking child. Legal advisers are either from Verein Menschenrechte Österreich or from ARGE Rechtsberatung. According to the Human Rights Board (*Menschenrechtsbeirat*),¹⁸² it is problematic that these legal advisers are only responsible for the asylum procedure and do not have whole custody of the child. Furthermore, legal advisers are not required to have special expertise on children.

In one case concerning an asylum seeker who had repeatedly missed age assessment appointments and for whom custody had been transferred by the court to the Child and Youth Service (*Kinder- und Jugendhilfe*), the BFA had conducted a Dublin interview without the child's legal representative being present and rejected his asylum application, mentioning that he had seriously breached his obligation to cooperate. The BVwG had demanded an original power of attorney and deemed the one sent via email as insufficient. The VwGH found that it was not necessary for the Child and Youth Service to bring forward the original power of attorney to a Diakonie lawyer, since the formal requirements had been satisfied.¹⁸³

In the case of siblings, the BFA and BVwG have assumed that an adult sibling has the power to represent his or her underage sibling in the admissibility procedure. The VwGH and VfGH have clarified, however, that legal representation during this procedure is a task for a legal adviser and cannot be performed by a sibling. The transfer of custody requires a court decision and cannot be based on the sole decision of the Child and Youth Service.¹⁸⁴

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

¹⁸¹ United Nations Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 2004 (Istanbul Protocol), Professional Training Series No. 8/Rev.1.

¹⁸² Menschenrechtsbeirat, *Bericht des Menschenrechtsbeirates zu Kindern und Jugendlichen im fremdenrechtlichen Verfahren*, 2011.

¹⁸³ VwGH, Decision Ra 2017/19/0068, 20 September 2017.

¹⁸⁴ VfGH, Decision E 2923/2016, 9 June 2017; VwGH, Decision Ra 2016/18/0324, 30 August 2017.

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

The question of legal representation and capacity of asylum seekers declared as adults by the BFA is the subject of systematic litigation. In one case, where the BFA disregarded a court order granting custody and interviewed the asylum seeker as an adult, the decision was annulled by the BVwG.¹⁸⁵

Return advice is mandatory since 2016 and unaccompanied children are also advised to 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. 21 children, including from Afghanistan, Iran and Iraq, have returned voluntarily in 2017.

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. Family tracing takes place on the basis of an official order of the BFA and is implemented by Verein Menschenrechte Österreich, which is also responsible for the legal representation of unaccompanied children in the admissibility procedure. It is evident that a conflict of interest arises in these cases, as the organisation acts on behalf of the BFA at the same time as it represents the interests of the child. It has also been reported that the conversation between the child and the family tracing counsellor takes place in the child's mother tongue so that legal representatives are not able to follow. Children searching for family members can also contact the Red Cross.

The number of unaccompanied children seeking asylum in Austria has decreased from 8,277 in 2015 to 4,551 in 2016 and 1,751 in 2017:

Unaccompanied asylum-seeking children: 2017	
Country of origin	Number of applicants
Afghanistan	808
Pakistan	244
Nigeria	238
Total	1,751

Source: Ministry of Interior, Asylum Statistics, December 2017.

Problems reported prior to 2016 relating to inaction and delays in the procedural treatment of unaccompanied children by the BFA have not been solved in 2017, although many special reception places for unaccompanied asylum seeking children have been opened, thus distributing the file to a branch office of the BFA. There are still unaccompanied children who arrived in Austria in the autumn of 2015 and have not yet received a first instance decision.

¹⁸⁵ BVwG, Decision I403 2173192-1, 19 October 2017.

E. Subsequent applications

Indicators: Subsequent Applications

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

Subsequent applications are defined by the AsylG as further applications after a final decision was taken on a previous asylum application.¹⁸⁶ If a further application is submitted while an appeal is still pending, the new application is considered as addition to the appeal. Different legal safeguards apply depending on the previous procedure (in-merit or Dublin procedure) and the time of submitting the application. Usually, a subsequent application is not admitted to the regular procedure and is rejected as inadmissible.¹⁸⁷

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

Within the admissibility procedure, an interview has to take place, except in the case where the previous asylum application was rejected due to the responsibility of another Member State. Such interviews are shorter than in the first application and focus on changed circumstances or new grounds for the application. New elements are not defined by the law, but there are several judgments of the Administrative High Court that are used as guidance for assessing new elements.¹⁸⁸

Reduced legal safeguards apply in case an inadmissibility decision was taken within the previous 18 months (rejection is connected to an expulsion order and a re-entry ban of 18 months). In this case, there is generally no suspensive effect either for the appeal or for the application itself. In many cases the asylum applicant does not even undergo a personal interview except for the preliminary interrogation conducted by the police.¹⁸⁹

Suspensive effect may be granted for an application following a rejection of the application on the merits or a safe third country decision, if the execution of the expulsion order of the previous asylum procedure could violate the non-*refoulement* principle. If suspensive effect is not granted, the file has to be forwarded to the BVwG for review and the Court has to decide within 8 weeks on the lawfulness of not granting suspensive effect.¹⁹⁰ The expulsion may be effected 3 days after the Court has received the file.

In certain cases, it might be necessary for the person concerned to lodge a subsequent asylum application, due to the inactivity of the authorities or the lack of another possibility to get a legal residence. Family and civil status may have changed since the final decision on the first asylum application, e.g. marriage or birth of a child, and due to the expulsion order issued as a result of that

¹⁸⁶ Article 2(1)(23) AsylG.

¹⁸⁷ Article 68 AVG.

¹⁸⁸ See AsylGH 09.04.2013, C6 408.412-2/2013; VwGH v. 20.03.2003, ZI. 99/20/0480, AsylGH 10.04.2013, B10 305.993-2/2013.

¹⁸⁹ Article 12a(1) AsylG.

¹⁹⁰ Article 22(1) BFA-VG.

negative decision it is not possible for the person concerned to apply for a residence permit as family member of a legally residing person or of a person with protection status in Austria. A subsequent application for international protection would then include the question of a possible violation of Article 8 ECHR.

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

Asylum seekers sent back to Austria by other Member States 2 years after their file has been closed due to their absence have to submit a subsequent application too. The same applies if the decision has become final while the asylum seeker was staying in another Member State.

There is no limit on the number of subsequent applications that can be submitted. Different rules apply to subsequent applications with regard to suspensive effect of the application, which depends on whether the expulsion order will be executed within the following 18 days or whether the date is not yet fixed. Free legal assistance is available to appeal the rejection of the subsequent asylum application.

Asylum seekers who submit a subsequent application within 6 months after the previous application has been rejected are not entitled to Basic Care provisions; nevertheless they may receive Basic Care during the admissibility procedure of the subsequent application (see section on [Reception Conditions: Criteria and Restrictions to Access Reception Conditions](#)).¹⁹¹ If Basic Care is not granted, detention or a less coercive measure such as a designated place of living and reporting duties is ordered.¹⁹²

Subsequent applicants in 2017	
Country	Number
Russia	332
Nigeria	253
Afghanistan	247
Algeria	138
Morocco	129
Pakistan	115
Total	2,119

Source: Ministry of Interior, 26 January 2018.

¹⁹¹ Article 3(1)(3) Basic Care Act (GVG-B).

¹⁹² 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 a list of safe countries of origin. The Governmental order of safe countries of origin must take into account primarily the existence or absence of state persecution, protection from persecution by non-state actors and legal protection against human rights violations. The COI department of the BFA has to take various state and non-state sources into consideration. The Federal Government can by ministerial order decide that, in such cases, suspensive effect may no longer be refused and that the BFA and the Court are bound by such decision. The examination by the Ministry of Interior took reports of the COI of the (former) Federal Asylum Agency into consideration and drafted the list following the extension of a safe country of origin list of Switzerland. The list was drafted by the Ministry of Interior,¹⁹³ while NGOs had the possibility to submit comments on it.

This list includes all EU Member States,¹⁹⁴ although there is a mechanism to take Member States off the list in case Article 7 of the Treaty on European Union (TEU) would be applied.¹⁹⁵ As a consequence, suspensive effect must be granted for appeals in asylum procedures of nationals of such EU Member State. Other safe countries of origin mentioned in the Asylum Act are: **Switzerland, Liechtenstein, Norway, Iceland, Australia and Canada.**

Further states are defined as safe countries of origin by Governmental order (HStV). As per the latest version, amended on 14 February 2018, these are:¹⁹⁶

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

¹⁹³ According to information from the Ministry of Interior, human rights standards have been assessed by the Ministry of Interior based on the country of origin information of the Federal Asylum Agency. See Ministry of Interior, *Fremdenwesen (Alien Affairs)*, June 2009, available at: <http://bit.ly/1SXBISC>, 72.

¹⁹⁴ Defined as states party to the EU Treaties: Article 2(1)(18) AsylG.

¹⁹⁵ 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.

¹⁹⁶ 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>.

- Armenia.

The 2018 amendment added Benin, Ukraine and Armenia to the list.¹⁹⁷

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. The procedure may be accelerated, but there are no exceptional time limits for deciding such applications.

In 2017, Austria received 324 applications from Moroccan nationals (1.3% of the total number of applications), 347 from Algerian nationals (1.4%) and 436 from Georgian nationals (1.7%).¹⁹⁸

2. Safe third country

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

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

If the person cannot be deported within 3 months for reasons unrelated to his or her conduct, the inadmissibility decision ceases to be valid.¹⁹⁹

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

2.1. Safety criteria

Protection in a safe third country is deemed to exist if a procedure for the granting of refugee status in accordance with the Refugee Convention is available to the person in a country where he or she is not 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.²⁰⁰ 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 13.²⁰¹

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.²⁰² However, the Constitutional Court has ruled that the formal criteria of ratification of the Refugee Convention, the declaration according Article 25 ECHR and the existence of an asylum law are not sufficient to establish safety in a third country, but the granting of protection in practice has to be taken into consideration.

¹⁹⁷ BGBl 2018 II/25, available at: <http://bit.ly/2BJvUvh>.

¹⁹⁸ Ministry of Interior, *Asylum Statistics December 2017*.

¹⁹⁹ Article 4(5) AsylG.

²⁰⁰ Article 4(2) AsylG.

²⁰¹ Article 4(3) AsylG.

²⁰² VwGH, Decision 98/01/0284, 11 November 1998.

Asylum authorities have to be prepared to have up-to-date information of relevant organisations to be able to assess the factual situation.²⁰³

2.2. Connection criteria

According to the aforementioned Constitutional Court and VfGH rulings, mere transit or stay in a third country is not sufficient to apply the safe third country concept.²⁰⁴

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.

Article 4a is applied for persons with a protection status applying for asylum in Austria too. A Syrian mother with 3 children gave birth after she arrived in Bulgaria, and suffered from prenatal depression. She was granted subsidiary protection in Bulgaria shortly after her journey to Austria. The Bulgarian authorities denied responsibility under the Dublin system, but were ready to take over as a result of the readmission agreement. The BVwG considered the deportation to Bulgaria as not permissible because of the PTSD from which the children were suffering and which was triggered, among other things, by experiences during the imprisonment in Bulgaria at the end of September 2015, as well as the intensive family relationship with relatives living in Austria.²⁰⁵

The BVwG has also accepted an appeal of an Afghan family who had received subsidiary protection in Hungary, due to the need to clarify whether the current situation of beneficiaries of protection in Hungary raises an Article 3 ECHR risk.²⁰⁶ In the case of a single Syrian who got subsidiary protection in Bulgaria, however, the BVwG found no real risk on the ground that he did not belong to a vulnerable group.²⁰⁷

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

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

²⁰³ VfGH, Decision U 5/08, 8 October 2008, available at: <http://bit.ly/2jilW73>.

²⁰⁴ VfGH, Decision 98/01/0284, 11 November 1998; VfGH, Decision U 5/08, 8 October 2008.

²⁰⁵ BVwG, Decision W192 2131676, 8 September 2016.

²⁰⁶ BVwG, Decision W205 2180181-1, 21 December 2017.

²⁰⁷ BVwG, Decision “233 2166376-1, 18 September 2017.

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

G. Relocation

Indicators: Relocation

1. Number of persons effectively relocated since the start of the scheme 29
2. Are applications by relocated persons subject to a fast-track procedure? Yes No

Relocation statistics: 22 September 2015 – 31 December 2017

Relocation from Italy			Relocation from Greece		
	Requests	Relocations		Requests	Relocations
Total	:	29	Total	0	0
Eritrea	:	23			
Syria	:	6			

Source: Vienna.at, 31 January 2018: <http://bit.ly/2nV9hwh>.

Austria was required to relocate 1,953 persons from Italy and Greece under the Relocation Decisions and demanded to relocate them in 2016 due to high number of asylum seekers received in 2015. Austria agreed to relocate 50 asylum seekers from Italy. A total of 29 persons had been relocated by the end of 2017.

The intention to relocate unaccompanied children from Italy could not be realised due to the dispersal and guardianship system operated in Italy.

Upon arrival in Austria, relocated asylum seekers follow the regular procedure.

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

1. Provision of information on the procedure

Indicators: Information on the Procedure

1. Is sufficient information provided to asylum seekers on the procedures, their rights and obligations in practice? Yes With difficulty No
 - ❖ Is tailored information provided to unaccompanied children? Yes No

Asylum seekers must receive written information sheets in a language understandable to them during the first interview.²⁰⁹ At the beginning of the interview, the applicant must be informed about his or her duties in the procedure.

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

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

- (1) The “first information sheet” explains the first steps and possible outcomes in the admissibility procedure including mandatory or voluntary advice on return including information;

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

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

- (2) Information sheet on the duties and rights of asylum seekers;
- (3) Information for asylum seekers according the Eurodac Regulation;
- (4) A short written information regarding the Dublin III Regulation.

An overview on the asylum procedure is available on the webpage of the BFA.²¹¹ Several NGOs provide information on the procedure on their respective websites, such as Diakonie, Caritas or Asylkoordination.

Detailed written information about the different steps of the procedure and rules and obligations does not exist so far. As asylum legislation changes very often, it does not seem to be affordable for NGOs to have brochures or other written information in the various languages required. [Plattform Asyl für Menschenrechte](#), an NGO in Tyrol, produced short videos that were available on the internet and give information about the asylum procedure in some languages. At the time of writing they offer some audio-files in German, English, Arabic, Pashto, Dari, French and Somali.

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.²¹² UNHCR has also produced a brochure about the asylum procedure for unaccompanied child refugees. It is available in four languages (German, English, Pashtu, Dari).²¹³

Asylum seekers against whom an enforceable but not yet final expulsion order is issued shall be informed in an appropriate manner (if available, a leaflet is provided in a language understandable to them) that, for the notification of decisions in the asylum procedure, they may avail themselves of the services of a legal representative and that they are obliged to inform the authority of their place of residence and address, including outside Austria.²¹⁴

The system of free legal advice should, at least, provide information and counselling during the mandatory consultation with the appointed legal adviser in case the BFA intends to reject the asylum application as inadmissible or dismiss it on the merits in the admissibility procedure. The BFA has to include information in its decision about the right to appeal in a language understandable to the applicant. Besides the mother tongue, this could be the *lingua franca* of a country. In the decision of the Federal Administrative Court (BVwG), reference shall also be made, in a language understandable to the asylum seeker, to the possibility of filing a complaint with the Administrative High Court (VwGH) and the Constitutional Court (VfGH).²¹⁵

For Dublin cases, a project entitled “Go Dublin” – previously under ERF and now continuing under the AMIF – assists the authorities to enable quick transfers.²¹⁶ The project is run by Verein Menschenrechte Österreich, an association that has a close working relationship with the authorities and that does not cooperate at all with NGOs. This organisation also provides information and advice on voluntary return. This is why it is unknown whether and how comprehensive information is provided in Dublin cases. The aim of the project is to inform asylum seekers about the Dublin system, modalities and time limits of transfer, but in several known cases asylum seekers agreed to voluntary return (an activity carried out by the same organisation) but were nevertheless sent back to the Member State responsible for the asylum procedure.

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

²¹² ‘Asylterminologieführer Deutsch/Russisch’, Deutsch/Englisch, Deutsch/Arabisch available at: <http://bit.ly/211wsFj>.

²¹³ UNHCR, ‘Your Asylum Procedure in Austria’, available at: <http://bit.ly/1ljRCdT>.

²¹⁴ Articles 15(1)(4) and 14(4) AsylG explaining the duty to register even for delivering letters abroad.

²¹⁵ Article 133(4) B-VG; Article 30 VwG-VG.

²¹⁶ Ministry of Interior, *List of AMIF funded projects 2015-2016 (Asylum and Return)*, available at: <http://bit.ly/1OqSfsR>; Verein Menschenrechte Österreich, *Information on Dublin Procedures*, available at: <http://bit.ly/1NrSLac>.

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

2. Access to NGOs and UNHCR

Indicators: Access to NGOs and UNHCR

1. Do asylum seekers located at the border have effective access to NGOs and UNHCR if they wish so in practice? Yes With difficulty No
2. Do asylum seekers in detention centres have effective access to NGOs and UNHCR if they wish so in practice? Yes With difficulty No
3. Do asylum seekers accommodated in remote locations on the territory (excluding borders) have effective access to NGOs and UNHCR if they wish so in practice? Yes With difficulty No

According to the law, UNHCR has access to all facilities and is allowed to get in contact with asylum seekers.²¹⁷ NGOs have contracts in 7 out of 9 federal provinces for providing social counselling and visit reception centres of the federal provinces regularly. In two federal provinces, **Carinthia** and **Tyrol**, the social advice is provided by the federal administration. NGOs without such a contract may have to apply at the responsible office of the federal province for a permit to visit an asylum seeker. Access to asylum seekers in detention is difficult for NGOs, insofar as they are not the authorised legal representative of the asylum seeker. The two contracted organisations providing legal advice, ARGE Rechtsberatung and Verein Menschenrechte Österreich, are bound by secrecy and are for this reason hindered from passing on information about clients to NGOs.

I. Differential treatment of specific nationalities in the procedure

Indicators: Treatment of Specific Nationalities

1. Are applications from specific nationalities considered manifestly well-founded? Yes No
❖ If yes, specify which: Syria
2. Are applications from specific nationalities considered manifestly unfounded?²¹⁸ Yes No
❖ If yes, specify which: Bosnia-Herzegovina, FYROM, Serbia, Montenegro, Kosovo, Albania, Mongolia, Morocco, Algeria, Tunisia, Georgia, Ghana

The list of safe countries of origin, based on which the accelerated procedure may be applied, was expanded in 2018 to cover three new countries.

The so-called “fast-track procedure”, applied to swiftly examine and deliver negative decisions on asylum applications, usually from a certain country of origin beyond the safe countries of origin list (see [Fast-Track Processing](#)) was not seen in any cases in 2017 known to the author, due to the expansion of the list.

²¹⁷ Article 63(1) AsylG.

²¹⁸ Whether under the “safe country of origin” concept or otherwise.

Reception Conditions

A. Access and forms of reception conditions

1. Criteria and restrictions to access reception conditions

Indicators: Criteria and Restrictions to Reception Conditions

1. Does the law make material reception conditions to asylum seekers in the following stages of the asylum procedure?
- | | | | |
|---------------------------|---|--|--|
| ❖ Regular procedure | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> Reduced material conditions | <input type="checkbox"/> No |
| ❖ Dublin procedure | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> Reduced material conditions | <input type="checkbox"/> No |
| ❖ Admissibility procedure | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> Reduced material conditions | <input type="checkbox"/> No |
| ❖ Border procedure | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> Reduced material conditions | <input type="checkbox"/> No |
| ❖ Accelerated procedure | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> Reduced material conditions | <input type="checkbox"/> No |
| ❖ First appeal | <input type="checkbox"/> Yes | <input type="checkbox"/> Reduced material conditions | <input checked="" type="checkbox"/> No |
| ❖ Onward appeal | <input type="checkbox"/> Yes | <input type="checkbox"/> Reduced material conditions | <input checked="" type="checkbox"/> No |
| ❖ Subsequent application | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> Reduced material conditions | <input checked="" type="checkbox"/> No |
2. Is there a requirement in the law that only asylum seekers who lack resources are entitled to material reception conditions? Yes No

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

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

Since the amendment of the Asylum Act in July 2015, the registration of the application and the provision of Basic care has changed. Asylum seekers do not submit the application in the EAST, but request for asylum at a police station. As long as the application is not regarded as submitted, the person is not an asylum seeker in the sense of Article 2(14) AsylG. Different entitlements are foreseen in the Basic Care Agreement and the Basic Care Act (GVG-B). While the Agreement declares in Article 2(1) as target group asylum seekers who have *requested* for asylum, the Basic Care Act of the Federal State defines the responsibility of the Federal State for asylum seekers after having *submitted* the application during the admissibility procedure in a reception facility of the Federal State.²¹⁹ However, Basic Care conditions do not apply in detention or where alternatives to detention are applied.²²⁰ While an alternative to detention is being applied, the asylum seeker is entitled to reception conditions that are more or less similar to Basic Care (accommodation, meals and emergency health care). Some NGOs have contracts to care for asylum seekers and other aliens.²²¹

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

²¹⁹ Articles 1(1) and 2(1) GVG-B.

²²⁰ Article 2(2) Basic Care Agreement; Article 2(3) GVG-B. Note that this not in conformity with Article 3 recast Reception Conditions Directive.

²²¹ E.g. Verein Menschen.Leben, available at: <http://bit.ly/1QuetAe>.

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.²²²

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.²²³

A precondition for Basic Care is the need for support. This is defined by law as applicable where a person is unable to cover subsistence by their own resources or with support from third parties.²²⁴ 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.²²⁵ This exclusion clause is applied very strictly, even when the sponsor is unable to care for the asylum seeker. Exception may be made if the asylum seeker has no health insurance and gets seriously ill and needs medical treatment. Although the amount of material reception conditions is specified in the Basic Care Agreement,²²⁶ the level of income or values relevant to assessing the lack of need for Basic Care is not specified by law. Legislation does not lay down the amount of means of subsistence below which a person is entitled to Basic Care, even though the amounts for subsistence and accommodation are prescribed by law. In practice, an income beyond 1.5 times the amount of Basic Care benefits (€547) are deemed to be without need of Basic Care. In **Salzburg**, the regulation for Basic Care in force from 1 July 2016 sets out that income up to €110 is not taken into account; for any family member in a household, a further €80 of income should not lead to a reduction of basic care support; for an apprentice the respective amount is € 150.²²⁷

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

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

After a final negative decision on the asylum application, the law provides for Basic Care until departure from Austria, if the rejected applicant cannot leave e.g. due to inability to obtain a travel document. Usually, rejected asylum seekers remain in the same reception facility. While in Vienna, Basic Care after a negative decision is usually prolonged, other federal provinces cease support. Depending on available places, rejected asylum seekers may stay in the reception centre on the basis of a private agreement with the landlord or NGO.

²²² Recital 11 Dublin III Regulation. See also CJEU, Case C-179/11 *Cimade & GISTI v Ministre de l'Intérieur*, 27 September 2012, para 46.

²²³ Article 2(7) GVG-B.

²²⁴ Article 2(1) Basic Care Agreement (GVV)-Art 15a.

²²⁵ Article 5(1)(c) Schengen Borders Code.

²²⁶ Articles 6, 7 and 9 Grundversorgungsvereinbarung (GVV); Art. 15a B-VG.

²²⁷ Salzburg Basic Care Regulation LBGl. 57/2016, available in German at: <http://bit.ly/2kGpqma>.

By the end of 2017, 61,310 asylum seekers and beneficiaries of international protection received Basic Care.²²⁸ Figures refer to: 43,273 (71%) asylum seekers, of whom 61% awaited a first-instance decision and 1.9% were in the Dublin procedure, 15,415 wait for the outcome of the appeal and 14,044 (23%) beneficiaries of international protection. 2,969 persons were unaccompanied children.

2. Forms and levels of material reception conditions

Indicators: Forms and Levels of Material Reception Conditions

1. Amount of the monthly financial allowance/vouchers granted to asylum seekers as of 31 December 2017 (in original currency and in €):	
❖ Accommodated, incl. food	€40
❖ Accommodated without food	€150-200
❖ Private accommodation	€320-365

Basic Care may be provided in three different forms:²²⁹

- (1) Asylum seekers can be accommodated in reception centres where catering is provided. Asylum seekers in such reception centres receive €40 pocket money per month, while the care provider (NGOs, private companies contracted by the Government) receives €21 maximum compensation for the costs per day, depending on the standards of the facility. All federal provinces agreed by June 2016 to raise the daily rates for care providers, nevertheless this is not implemented in all federal provinces. **Carinthia** for example has decided to provide €21 from 2019 on; in the meantime the daily rate is €20. **Burgenland** has introduced a maximum daily rate of €20.50, while **Styria** has not raised the daily rate.
- (2) Basic Care can be provided in reception centres where asylum seekers cook by themselves. In that case, asylum seekers receive between €150 and 200 per month mainly in cash. Alternatively, as is practice in Tyrol, they receive €215 for subsistence (which equals the amount given for subsistence to those living in private flats). In some federal provinces the amount for children is reduced, e.g. in Tyrol children receive €100. The amounts in **Carinthia** in the next two years will be lower, €205 for adults and €95 for children.²³⁰
- (3) Basic Care can be provided for asylum seekers in private rented accommodation. In this case asylum seekers receive €320 and 365 in cash.

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

Asylum seekers living in private rented flats receive 43% of the needs-based minimum allowance (*bedarfsorientierte Mindestsicherung*) for citizens in need of social welfare support, which is about €860 per month (€645 for subsistence and €215 for accommodation for a single person in **Vienna**). The level of the needs-based minimum allowance varies across the federal provinces, as political agreement to prolong an Austrian-wide regulation after its expiry by December 2016 was not reached. The sum given to a care provider, €630 per month (€21 per day) for accommodation and subsistence of asylum seekers, is below the level of welfare support for citizens, although staff and administrative costs have to be covered by the care provider.

²²⁸ Information provided by the Ministry of Interior, 26 January 2018.

²²⁹ Article 9(1)-(3) GVV-Art 15a and the respective Basic Care Acts of the federal provinces. See also Article 17(1) recast Reception Conditions Directive.

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

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

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 provide a lower amount for children (€90-100) instead of about €180.

Unaccompanied asylum-seeking children must be accommodated according to their need of guidance and care. The daily fee for NGOs hosting unaccompanied asylum-seeking children ranges from €40.50 to €95, depending on the intensity of psychosocial care. In some federal provinces like **Styria** the maximum amount is not given to care providers, although 400 unaccompanied children were cared for by the end of 2017 and it is evident that only a smaller group are not in need of much guidance and care. Styria has set up a daily special support of €18 for children with special needs, in addition to the maximum amount of €77. In **Upper Austria**, the government provides for €88 which should cover legal assistance as well.

3. Reduction or withdrawal of reception conditions

Indicators: Reduction or Withdrawal of Reception Conditions

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

3.1. Grounds for reduction or withdrawal

Material reception conditions are reduced if the asylum seeker has an income, items of value or receives support from a third party.²³² For the first phase of the asylum procedure (the admission stage), this rule is not applicable. If an asylum seeker earns money or receives support from other sources, they are allowed to keep €110; or €240 in **Tyrol**, there is no common practice across all federal provinces. All additional income will be requested as a financial contribution for the asylum seeker's Basic Care. This is requested without a formal procedure. Reduction could also consist in not granting the monthly pocket money for subsistence or the support for the child if the child is entitled to child benefits, which mainly applies to those who have received refugee status.

Unjustified Basic Care benefits may also be prescribed after the termination of Basic Care. A few former asylum seekers have been requested to pay back several thousand euros although their monthly Basic Care benefits had already been reduced due to the fact that they had a job and income.

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

- (a) Repeatedly violates the house rules and/or his or her behaviour endangers the security of other inhabitants;
- (b) Leaves the designated place for more than 3 days, as it is assumed that they are no longer in need of Basic Care;
- (c) Has submitted a subsequent application;
- (d) Has been convicted by court for a crime on a ground which may exclude him or her from refugee status according to Article 1F of the Refugee Convention. This ground for withdrawal is not in line with Article 20 of the recast Reception Conditions Directive but does not seem to be applied or relevant in practice.
- (e) Has had his or her application rejected or dismissed and suspensive effect was excluded according to Article 18(1) BFA-VG. If the applicant cooperates to return voluntarily, he or she is eligible to material reception conditions until his departure.²³⁴ This rule makes a reference to

²³² Article 2(1) B-VG Art 15a.

²³³ Article 2(4)-(5) GVG-B.

²³⁴ Article 2(7) GVG-B.

Article 20(5) of the recast Reception Conditions Directive according to this article a dignified living standard and access to medical treatment have to be provided.

In some federal provinces and the state, the laws also permit the exclusion of asylum seekers who fail to cooperate with establishing their identity and need of basic care, although this is not applied in practice.²³⁵

In relation to cases where asylum seekers unduly benefit from reception conditions by providing false information on their age – namely to benefit from specific care for children – three persons were accused to have obtained social security by fraudulently posing as unaccompanied children in 2017, thus receiving higher care standards amounting to approximately €50,000. In one case where the conviction had already been issued, the Higher Regional Court (*Oberlandesgericht*, OLG) reversed the decision of the lower court and referred back the case, finding that the undue use of reception conditions is only punishable if the person commits fraud in order to obtain a right of residence.²³⁶ Criminal sanctions are not applied if the applicant would have been granted a residence permit anyway. Nevertheless, the reform entering into force on 1 November 2017 sets out sanctions for false information provided not only to the BFA and the BVwG but also to the police in the context of the first interview (*Erstbefragung*).²³⁷

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 procedure and by the governmental office of the federal province if the asylum seeker is admitted to the procedure in merits and Basic Care is provided by one of the federal provinces. In practice, only few procedures of reduction or withdrawal of Basic Care have been carried out. This is partly because NGOs manage to arrange a solution for their clients, partly because the competent offices are unwilling to make a written decision. Decisions are taken on an individual basis but written reasoned decisions are rare.

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

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

Asylum seekers whose Basic Care has been terminated or reduced may re-apply for the provision of basic care in the federal province they have been allocated to. In practice, it is difficult to receive Basic Care again after it has been terminated, or at least it takes some time to receive it again. Asylum seekers who endanger the security of other inhabitants are sometimes placed in other reception centres with lower standards. Asylum seekers who have left their designated place of living may get a place in another reception centre in the same federal province after applying for Basic Care.

²³⁵ Article 3(1) GVG-B.

²³⁶ OLG Linz, Decision 9 Bs 150/17y, 1 June 2017.

²³⁷ Articles 119-120 FPG.

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

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](#) may who have a return decision before making an application are also affected. The necessity of assigned residence must be demonstrated on a case-by-case basis.²³⁸ 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.

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 the EAST or to a distribution centre.²³⁹ During the admissibility procedure, they receive a green card also known as procedure card, which indicates the tolerated stay in the district of the reception centre of the state. Asylum seekers are allowed to leave the district for necessary medical treatment or to appear in court. Dublin cases that are usually cared for in the initial reception centres (EAST) of the Ministry of Interior may also be transferred to reception centres of the federal provinces.²⁴⁰ Violations of this restriction of movement may be punished with fines between € 100 and €1,000 or with detention of up to 2 weeks if payment of the fine cannot be enforced. These restrictions of movement impede asylum seekers' access to family members or friends and consultations with legal advisers of trust or lawyers.

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

At the end of 2017, 1,692 persons received Basic Care in federal reception centres.²⁴¹

4.2. Dispersal across federal provinces

A residence restriction applies from 1 November 2017 onwards. Asylum seekers who have been admitted to the regular procedure are only allowed to reside in the federal province assigned to them. even if the Basic Care provision is waived or withdrawn, they are not allowed to change federal provinces without authorisation from the provincial administration. Consecutive breaches of the

²³⁸ Article 15b AsylG, in force since 1 November 2017.

²³⁹ Article 43(1) BFA-VG.

²⁴⁰ Article 2(1)(2) GVG-B.

²⁴¹ Information provided by the Ministry of Interior, 26 January 2018.

residence restriction are punishable by an administrative fine of up to €5,000 or a three-week non-custodial sentence.²⁴² Asylum seekers can be arrested and detained for 24 hours to secure this administrative fine.²⁴³

Every federal province has to offer reception places according to its population. Asylum seekers are dispersed throughout the country to free reception places and according to their needs, for instance in places for unaccompanied minor asylum seekers, single women or handicapped persons. Governments of federal provinces have claimed that information about necessary medical treatment or handicap are not always communicated, with the result that asylum seekers are transferred to inadequate places. However, asylum seekers have no possibility to choose the place where they will be accommodated according to the dispersal mechanism, although family ties are taken into consideration and usually asylum seekers can be transferred to the federal province where the family lives. Moreover, it is not possible to appeal the dispersal decision because it is an informal decision taken between the Ministry of Interior and the respective federal province.

The distribution of Basic Care recipients – including some beneficiaries of protection – across the provinces at the end of 2017 was as follows:

Dispersal of recipients of Basic Care: 31 December 2017			
Federal province	Quota	Number	Actual share
Vienna	21.2%	19,316	31.4%
Upper Austria	16.7%	10,204	16.6%
Lower Austria	19%	9,284	15.1%
Styria	14.1%	7,431	12.1%
Tyrol	8.5%	4,745	7.7%
Carinthia	6.4%	3,225	5.2%
Salzburg	6.2%	3,135	5.1%
Vorarlberg	4.4%	2,521	4.1%
Burgenland	3.3%	1,669	2.7%
Total		61,530	

Source: Ministry of Interior, 26 January 2018.

In the summer of 2015, Austria signed an agreement with the Slovak Republic to provide reception places for 500 asylum seekers in **Gabčíkovo**. Transfer to this centre outside of Austria should be on a voluntary basis and asylum seekers have the possibility to travel to Austria if this is necessary for the asylum procedure. Their stay in Slovakia is tolerated.²⁴⁴ The contract with the Slovak government from summer 2015 was concluded for 2 years. The former university building was only used for the basic care of Syrian refugees.²⁴⁵ 13 asylum seekers were placed there at the beginning of 2017, but by the end of the year the centre was no longer used.

The province of **Vienna** offers many more reception places than those foreseen by the quota system (see [Types of Accommodation](#)), while other provinces such as **Salzburg** have failed to provide enough

²⁴² Article 121(1a) FPG.

²⁴³ Article 39 FPG.

²⁴⁴ ORF, 'Flüchtlinge „gegen ihren Willen“ nach Gabcikovo gebracht' (refugees transferred to Gabcikovo against their will), 27 September 2015, available in German at: <http://bit.ly/1JhBH5d>; ORF, 'Slowakei soll 500 Asylwerber versorgen' (Slovakia shall care for 500 asylum-seekers), 9 July 2015, available at: <http://bit.ly/1Rua9Bj>. See also AIDA, 'Austria: Plans to relocate 500 asylum seekers to Slovakia rejected by local population', 3 August 2015, available at: <http://bit.ly/1OyWmZs>.

²⁴⁵ Profil, 'Die Platzhalter', 19 October 2016, available in German at: <http://bit.ly/2k1BJwd>.

places for several years. This discrepancy leads to negotiations between the responsible departments of the federal provinces, while the malfunctioning of the dispersal system overall raises public reactions. In 2015 the lack of reception places caused homelessness and overcrowded initial reception centres, leading to inhuman living conditions. All federal states opened a lot of new facilities and the Ministry of Interior made use of its power to run reception centres in regions that host less refugees than 1.5% of their population. In 2017, many reception places are no longer needed and closed gradually.

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

Often asylum seekers do not have enough money for travelling, as the monthly allowance for those living in reception centres is only €40. If they stay away from their designated place (reception facility) without permission for more than 2 nights, 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.

There are no special reception centres to accommodate asylum seekers for public interest or public order reasons. One such centre in **Carinthia**, which was heavily criticised,²⁴⁶ was closed in October 2012. In practice asylum seekers who violate the house rules may be placed in less favourable reception centres in remote areas, but such sanctions are not foreseen by law.

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

²⁴⁶ Ombudsman, Misstände in Kärntner Flüchtlingsunterkünften, 27 March 2013, available in German at: <http://bit.ly/1Ruaq7i>.

B. Housing

1. Types of accommodation

Indicators: Types of Accommodation	
1. Number of reception centres: ²⁴⁷	Not available
❖ Ministry of Interior	26
❖ Carinthia	146
❖ Upper Austria	375
❖ Salzburg	150
❖ Lower Austria	600
❖ Tyrol	193
❖ Vorarlberg	593
2. Total number of persons in Basic Care:	61,530
3. Total number of places in private accommodation:	22,240
4. Type of accommodation most frequently used in a regular procedure:	
<input checked="" type="checkbox"/> Reception centre	<input checked="" type="checkbox"/> Hotel or hostel
<input type="checkbox"/> Emergency shelter	<input checked="" type="checkbox"/> Private housing
<input type="checkbox"/> Other	
5. Type of accommodation most frequently used in an accelerated procedure:	
<input checked="" type="checkbox"/> Reception centre	<input type="checkbox"/> Hotel or hostel
<input type="checkbox"/> Emergency shelter	<input type="checkbox"/> Private housing
<input type="checkbox"/> Other	

Asylum seekers are accommodated in facilities of different size and capacity. A quota system requires the federal provinces to provide places according to their population.²⁴⁸

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

1.1. Federal reception capacity

The EAST serves as centre for asylum seekers with an admissibility procedure likely to be rejected. The 2 initial reception centres in **Traiskirchen** and in **Thalham** are therefore reserved for asylum seekers in the admissibility procedure and for unaccompanied minor asylum seekers as long as they are not transferred to reception facilities of the federal provinces. Instead of streaming all asylum seekers to the EAST, they should have their first accommodation in the so-called distribution centres (VQ), which should be set up in 7 federal provinces. Some of the VQ are located in remote areas. The government of Tyrol closed the reception centre in **Fieberbrunn**, but it was reopened by the Ministry of Interior as distribution centre. The Ministry now uses this centre for rejected asylum seekers and has established a distribution centre in **Innsbruck**. Newly arriving asylum seekers stay only 4 to 5 days in the distribution centres according to information from the Centre in **Ossiach**.

²⁴⁷ Both permanent and first arrivals. Information only available for federal level (September 2016:) and specific provinces such as Salzburg (June 2016), Carinthia (November 2016), Upper Austria (October 2016), Lower Austria: <https://grundversorgungsinfo.net/>.

²⁴⁸ Article 1(4) GVV-Art.15a.

Only a few asylum seekers are cared for in distribution centres (VQ). The number of asylum seekers in initial reception centre (EAST) of **Traiskirchen** has also sharply decreased, from 5,000 asylum seekers under inhuman living conditions in August 2015,²⁴⁹ to about 449 at the end of 2017.²⁵⁰

There are 26 federal reception centres, which hosted 1,692 persons at the end of 2017.²⁵¹ 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 dedicated as refugee home, where special safeguards apply like fire protection or building regulations.²⁵² Immediately after the law entered into effect in October 2015, the Ministry started to prepare three bigger centres and started negotiations with 15 municipalities.²⁵³

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.

At the **Vienna Schwechat Airport**, the EAST is under the responsibility of the border police. Caritas Vienna had a contract to provide care for asylum seekers waiting for transfer to **Traiskirchen** or for the final decision on their application. The contract was not prolonged in 2017 and ORS, the company contracted by the Ministry of Interior to provide care to asylum seekers, now provides care at the airport.²⁵⁴

1.2. Reception capacity at federal province 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. According to recent information from the Ministry of Interior, the entire Austrian reception system hosted 61,530 persons at the end of 2017. The distribution across the federal provinces is detailed in [Freedom of Movement](#). While **Vienna** continues to exceed its relative reception share, other federal provinces have had several empty places. Consequently, several centres have free capacity and are planned to close as they are not able to cover the general costs of rent, heating, staff etc. Volkshilfe has announced the closure of several centres in **Upper Austria**, similar to **Vorarlberg**, where Caritas has started closing the big halls.

According to earlier figures referring to 1 December 2017, 71.5% of persons receiving Basic Care were asylum seekers.

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. 82% of asylum seekers in **Styria** and 93.6% in **Burgenland**), private accommodation is more often used in others such as **Vienna**, where 67% of applicants lived in private accommodation as of 1 January 2018.²⁵⁵

²⁴⁹ Tages-Anzeiger, 'Endstation Traiskirchen', 30 June 2015, available in German at: <http://bit.ly/1Zdotj3>.

²⁵⁰ Wiener Zeitung, 'Massenquartiere ohne Massen', 17 January 2018, available in German at: <http://bit.ly/2Cgb42Z>.

²⁵¹ Information provided by the Ministry of Interior, 26 January 2018.

²⁵² Bundesverfassungsgesetz: Unterbringung und Aufteilung von hilfs- und schutzbedürftigen Fremden. BGBl 120, 28 September 2015, available at: <http://bit.ly/1JdszhK>.

²⁵³ Orf, 'Durchgriffsrecht in ersten Gemeinden', 2 October 2015, available at: <http://bit.ly/1m9mKws>.

²⁵⁴ Der Standard, 'Aus für Caritas-Flüchtlingsbetreuung am Flughafen', 13 January 2017, available in German at: <http://bit.ly/2kxmmsn>.

²⁵⁵ Orf, 'Durchgriffsrecht in ersten Gemeinden (right to take drastic measures in first municipalities)', 2 October 2015, available at: <http://bit.ly/1m9mKws>.

2. Conditions in reception facilities

Indicators: Conditions in Reception Facilities

1. Are there instances of asylum seekers not having access to reception accommodation because of a shortage of places? Yes No
2. What is the average length of stay of asylum seekers in the reception centres? Not available
3. Are unaccompanied children ever accommodated with adults in practice? Yes No

The Ministry of Interior, which is responsible for Basic Care during the admissibility procedure, subcontracts their day-to-day management to a company, while remaining the responsible authority. Until 2012, European Homecare, which is mainly active in Germany, was providing federal care to asylum seekers. Since 2012, ORS, a company running accommodation centres for asylum seekers in Switzerland, provides basic care in the reception centres under the responsibility of the Ministry.

Conditions in the reception centres of the federal provinces vary, though they have constantly improved with the reduction of persons staying in the centres. According to the standards of the facility, NGOs or the landlord receive up to €21 per person a day for providing housing, food and other services like linen or washing powder. There are still some reception centres that get only €19 per person refunded due to low standards, e.g. because there is no living room or more people have to share the bathroom and toilet. A survey by journalists in summer 2014 showed big differences in the reception centres of three federal provinces.²⁵⁶ One of the centres was overcrowded, while others had severe sanitary problems and asylum seekers complained about the poor and unhealthy meals. Racist behaviour and bad conditions led to the closure of a reception centre in **Lower Austria** in September 2016 after years of complaints.²⁵⁷ The federal provinces agreed on a minimum standard of 8m² for each person and 4m² for each additional person in September 2014.²⁵⁸ Systematic research on conditions has not been undertaken in the last year.

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

There is a trend of allowing asylum seekers to cook for themselves because it is evident that this contributes to the well-being of the asylum seeker and reduces tensions. In the reception centres of the state, cooking is not possible and even taking food into the living room or bedroom is not allowed. If meals are served, dietary or religious requirements have to be respected, but there are complaints about quality and some failures to take religious requirements into account.²⁵⁹ In **Burgenland** and **Styria**, meals are often served by the centre, while in **Tyrol** asylum seekers can cook in the reception centres.

The amount given to asylum-seekers if meals are not provided differ in the federal provinces. **Burgenland, Carinthia, Upper Austria, Tyrol** und **Vorarlberg** give a lower amount for the nutrition of children (€80-100), while other federal provinces make no difference between minors and adults. In

²⁵⁶ Dossier, 'Asyl – Ein Jahr Danach', 3 November 2014, available at: <http://bit.ly/1cyZZNB>, contains reports on each of about 100 facilities visited.

²⁵⁷ Profil, 'Flüchtlingsheim in Annaberg: Ein Haus mit schiefem Segen', 26 September 2016, available in German at: <http://bit.ly/2kRZA0o>.

²⁵⁸ 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>.

²⁵⁹ Dossier, 'Asyl – Ein Jahr Danach', 3 November 2014, available at: <http://bit.ly/1cyZZNB>.

Styria asylum seekers in reception centres get €150 for subsistence but are no longer entitled to €40 pocket money, which means that in fact the monthly amount for food is €110. In **Tyrol** adult asylum seekers are given € 200 to organise meals by themselves.

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

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

The system of dispersal of asylum seekers to all federal provinces and within the federal provinces to all districts results in reception centres being located in remote areas. One of these centres in the mountains of **Tyrol**, a former military camp, cannot be reached by public transport, a shuttle bus brings the asylum seekers two times a week to the next village, two and a half hour walking distance. Internet is accessible in the meanwhile.²⁶⁰ The centre was closed by the Tyrolian government but was reopened by the Ministry of Interior to operate as a so-called departure centre for rejected asylum seekers.²⁶¹

C. Employment and education

1. Access to the labour market

Indicators: Access to the Labour Market

- | | |
|--|---|
| 1. Does the law allow for access to the labour market for asylum seekers?
❖ If yes, when do asylum seekers have access the labour market? | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
3 months |
| 2. Does the law allow access to employment only following a labour market test? | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No |
| 3. Does the law only allow asylum seekers to work in specific sectors?
❖ If yes, specify which sectors: Tourism, agriculture, forestry | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No |
| 4. Does the law limit asylum seekers' employment to a maximum working time?
❖ If yes, specify the number of days per year | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
180 days |
| 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.²⁶²

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

²⁶⁰ Profil, 'Nächtlicher Angriff auf Asylwerber in tiroler Bergen' 30 October 2014, available at: <http://bit.ly/1G8a8MZ>.

²⁶¹ Bezirksblätter, 'Heim am Bürglkopf wird zur Rückkehrinrichtung', 24 August 2017, available in German at: <http://bit.ly/2H8o5j2>.

²⁶² Article 4(1) AuslBG.

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.).²⁶³

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.²⁶⁴ The decision has to be made within 6 weeks; in case of appeal proceedings, the same time limit must be applied.

In addition, a 2004 ordinance includes further restrictions for the access to the labour market for asylum seekers, by limiting employment to seasonal work either in tourism, agriculture or forestry.²⁶⁵ These seasonal jobs are limited by a yearly quota for each federal province and can only be issued for a maximum period of 6 months.

A further problem for asylum seekers working as seasonal workers is the regulation in the Basic Care Acts of the state and the federal provinces that requires a contribution to Basic Care, if asylum seekers have an income. In practice, there is only an allowance of €110 left to asylum seekers in most of the federal provinces, while the rest of the money earned contributes to the cost of reception.²⁶⁶ If they have been receiving an income for more than 3 months, Basic Care support is no longer provided. If the asylum seeker asks for readmission into Basic Care after they have finished the employment, cash contributions to the provision of Basic Care are demanded. In fact, it is assumed by the authorities that only about €550 (1.5 times the basic provision amount) per month have been spent by the asylum seeker on subsistence and accommodation during the period of employment. Income exceeding this amount is deducted from the allowance received under Basic Care from that time onwards until repaid. This request of contribution causes many problems, as in reality the asylum seekers have spent the money earned and do not have sufficient means to survive the following months.²⁶⁷

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

Asylum seekers below the age of 25 may be granted a work permit for an apprenticeship in shortage occupations. They may also be self-employed under the general conditions as soon as they are registered as asylum seekers.

Since 1 April 2018, asylum seekers admitted to the regular procedure for more 3 months or more can also be employed with service vouchers in private households for jobs such as gardening, cleaning or child care. Vouchers can be bought at the post office or online.²⁶⁸

Asylum seekers can carry out non-profit activities and receive an acknowledgment of their contributions. The amount of this remuneration was debated, however. While previous provisions provided for a sum

²⁶³ *Ibid.*

²⁶⁴ Article 20(1) and (3) AuslBG.

²⁶⁵ Ordinance GZ 435.006/6-II/7/2004, 11 May 2004.

²⁶⁶ In **Tyrol**, asylum seekers may earn €240 per month without contribution to the cost of Basic Care.

²⁶⁷ Asylkoordination Österreich, *Leben im Flüchtlingsquartier*, December 2010, 37f.

²⁶⁸ Dienstleistungsscheckgesetz, 12 February 2018, available at: <http://bit.ly/2nSSz0m>.

of €3 to €5 and the Social Referees of the federal provinces regarded €5 as more appropriate, Minister of Interior Sobotka proposed a sum of €2.50 per hour. Meanwhile, the Austrian People's Party (ÖVP) representatives also demand to pay only €1 or not to pay any recognition fees. Minister Sobotka published a list of such non-profit jobs, e.g. administrative messenger or office assistance, translation services, support for parks and sports facilities, playgrounds, care for the elderly, assistance in nursery schools, school attendance services, assistance in animal shelters, or support for minor resettlements in the municipality.²⁶⁹ From April 2018 onwards, 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.²⁷⁰ 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.

On 25 January 2017, the Ministry of Social Affairs submitted a decree to the Labour Market Service (AMS). The Decree clarifies that:²⁷¹

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

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.²⁷²

1,526 work permits have been issued in 2017, of which 697 concerned apprentices. By the end of 2017, 908 asylum seekers had a valid work permit, of which 727 were apprentices.²⁷³

2. Access to education

Indicators: Access to Education

1. Does the law provide for access to education for asylum-seeking children? Yes No
2. Are children able to access education in practice? Yes No

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

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

²⁶⁹ Ministry of Interior, 'Sobotka: Leistungskatalog für Hilfstätigkeiten von Asylwerbern erstellt', 28 October 2016, available in German at: <http://bit.ly/2kS0dHB>.

²⁷⁰ Article 7(3a) GVG-B.

²⁷¹ Oberösterreichische Nachrichten, 'Asylwerber dürfen nun in Firmen schnuppern', 1 February 2017, available in German at: <http://bit.ly/2k2eEz>.

²⁷² Ministry of Labour, *Anzeigebestätigungen gem. § 3 Abs. 5 AusIBG für Ferial- und Berufspraktika und Volontariate von AsylwerberInnen*, 25 January 2017, available in German at: <http://bit.ly/2oTXtJU>.

²⁷³ Information provided by AMS, January 2018.

The Aliens Employment Act restricts access to vocational training, because the necessary work permits could only be issued for seasonal work. In July 2012, however, exceptions were introduced for asylum seeking children up to the age of 18. A decree of the Ministry of Social Affairs allowed for children to obtain a work permit as apprentices in professions where there is a shortage of workers.²⁷⁴ Yet this measure proved to be insufficient in ensuring vocational training, as only 18 children have received such a permit since July 2012. A further decree of the Ministry of Social Affairs of March 2013 increased the maximum age for benefitting from the exceptions to vocational training restrictions from 18 to 25.²⁷⁵

Young people under the age of 18 who have completed the 9-year schooling and who are permanent residents in Austria are obliged to pursue education or training, under a law entering into force on 1 August 2016. This law, however, is not applied to asylum seekers, despite criticism from NGOs and the Chamber of Employment for failing to address a problematic aspect of integration and education policy.²⁷⁶

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 is usually conducted within 24 hours. A general examination is made through a physical examination including vital signs, skin lesion, injuries, including TBC-X-ray and questions on their state of health by means of a standardised medical history. If, within the scope of the investigation, circumstances become known which require further investigations, asylum seekers are transferred to specialist doctors or a hospital.²⁷⁷

Every asylum seeker who receives Basic Care has health insurance. Treatment or cures that are not covered by health insurance may be paid, upon request, by the federal provinces' departments for Basic Care or the Ministry of Interior. If Basic Care is withdrawn, asylum seekers are still entitled to emergency care and essential treatment.²⁷⁸

In practice, this provision is not always easy to apply, however. If an asylum seeker has lost basic care due to violent behaviour or absence from the EAST for more than 2 days, they will not receive medical assistance, because it is assumed that they have the opportunity to visit the medical station in the EAST. However, as those asylum seekers are no longer registered in the EAST, they will not be allowed to enter and receive medical treatment there. Without health insurance or access to the medical station

²⁷⁴ Asylkoordination, *Expansion of employment opportunities for asylum seekers*, 14 June 2012, available in German at: <http://bit.ly/1k7cAuY>.

²⁷⁵ AMS, *Beschäftigungsmöglichkeiten für Asylwerberinnen und Asylwerber*, November 2015, available in German at: <http://bit.ly/1msi8SL>.

²⁷⁶ Employment Office of Upper Austria, 'Ausbildungspflicht bis 18: AK fordert Nachbesserungen', 19 August 2016, available in German at: <http://bit.ly/2kNmJSc>.

²⁷⁷ Ministry of Interior, Reply to parliamentary question 8774/J (XXV.GP), 17 May 2016, available in German at: <http://bit.ly/2lq2GHj>.

²⁷⁸ Article 2(4) GVG-B.

of the EAST, asylum seekers may face severe difficulties in receiving necessary medical treatment. Some of them come to the NGO-run health project AMBER MED with doctors providing treatment on a voluntary basis.

The delay in registration as asylum seeker results in delayed registration in the health insurance. In cases where urgent treatment is required, registration in the health insurance system will be backdated. 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 others like **Styria** or **Salzburg**, they must first request a replacement document in order to visit doctors.

After the asylum seeker has submitted the asylum application, a general health examination is carried out and asylum seekers are obliged to undergo this examination, including a TBC (Tuberculosis) examination. The Ministry of the Interior has commissioned the company ORS 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.

Specialised treatment

In each federal province, one NGO provides treatment to victims of torture and traumatised asylum seekers. This is partly covered by AMIF funding, partly by the Ministry of Interior and regional medical insurance. However, the capacity of these services is not sufficient. Clients often have to wait several months for psychotherapy.

One of such specialised therapy projects in **Vienna** has announced that the waiting period for an initial consultation is 1-3 months, and 1 year for a therapy place. Around 400 people are waiting for a place, including 70 children.²⁷⁹ Similar problems are reported in the Zebra project in **Styria**, Ankyra in **Tyrol** and Jefira in **Lower Austria**.

In the Basic Care systems of the federal provinces there are various possibilities of health care. In some federal provinces, asylum seekers are also cared for in regular special care facilities (see [Special Reception Needs](#)). “Increased care” for special needs must be requested by the asylum seeker. A prerequisite to receiving additional care is the submission of up-to-date specialist medical findings and assessments of need for care, as well as social reports not older than 3 months; these form part of the asylum seeker’s obligation to cooperate in the procedure. Reports from NGOs are also taken into account when examining the additional need for care.

The new government plans to restrict the obligation of confidentiality of doctors in the case of Basic Care concerning relevant diseases or other disabilities.

E. Special reception needs of vulnerable groups

Indicators: Special Reception Needs

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

The laws relating to the reception of asylum seekers include no mechanism for identifying vulnerable persons with special needs. Article 2(1) GVG-B states that regard should be given to special needs when the asylum seeker is registered in the Basic Care System. Basic Care conditions shall safeguard

²⁷⁹ Wien.orf.at, ‘Hemayat: 400 Flüchtlinge warten auf Betreuung’, 8 January 2018, available in German at: <http://bit.ly/2CdVoC3>.

human dignity at least. After the asylum seeker has submitted the asylum application, a general health examination is carried out and asylum seekers are obliged to undergo this examination, including a TBC (Tuberculosis) examination. All asylum seekers have health insurance. For necessary medical treatment they may be transferred to a hospital.

The Basic Care laws of **Lower Austria, Salzburg, Tyrol and Vorarlberg, Burgenland, Carinthia, Upper Austria** mention special needs of vulnerable persons. The elderly, handicapped, pregnant women, single parents, children, victims of torture, rape or other forms of severe psychological, physical or sexual violence are considered as vulnerable persons, victims of trafficking. In the laws of the federal province of **Vienna**, vulnerable asylum seekers are not mentioned. Nevertheless, the federal provinces have to respect national and international law, including the recast Reception Conditions Directive. A special monitoring mechanism is not in place. It is up to the asylum seeker, social adviser, social pedagogue or the landlord to ask for adequate reception conditions.

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

Approximately 200 special care centres were available by the end of 2017 for people with special needs.²⁸⁰ Not all federal provinces have special care centres for vulnerable groups besides unaccompanied children.

1. Reception of unaccompanied children

Since 2014 several new facilities for unaccompanied asylum-seeking children opened, some of them run by private companies or the Children and Youth Assistance. Those under 14 years are cared for in socio-pedagogic institutions of the federal provinces.²⁸¹

1.1. Federal centres

There are 3 reception centres for unaccompanied children managed by the Ministry of Interior. In addition to a separate facility for unaccompanied children in the Federal Reception East in **Traiskirchen**.²⁸² The private company ORS is responsible for the care of unaccompanied children.

As of 29 December 2017, there were 126 unaccompanied children accommodated in special federal reception centres, while another 3,066 were accommodated in specialised facilities in the different federal provinces.²⁸³

1.2. Reception of unaccompanied children at federal province level

The Ministry of Interior and the competent department of the federal provinces have agreed on a quota system for unaccompanied children.²⁸⁴

The number of unaccompanied children, including asylum seekers, rejected asylum seekers and persons with a protection status, receiving Basic Care on 29 November 2017 was as follows:

²⁸⁰ Ministry of Labour, Social Affairs and Consumer Protection, *Nationaler Aktionsplan Behinderung - Zwischenbilanz 2012-2015*, available in German at: <http://bit.ly/2lbWTXQ>, 198.

²⁸¹ Der Standard, *Frequently Asked Questions on Unaccompanied children*, 3 August 2015, available in German at: <http://bit.ly/1gGuyE3>.

²⁸² Information provided by the Ministry of Interior, 26 January 2018.

²⁸³ Information provided by the Ministry of Interior, 26 January 2018.

²⁸⁴ Die Presse, 'Länder beschließen Quote für unbegleitete Minderjährige' (Federal provinces agree on quota for unaccompanied minors), 6 May 2015, available in German at: <http://bit.ly/1ZgsjrH>.

Unaccompanied children receiving Basic Care: 27 December 2017		
Federal province	Unaccompanied children	Total Basic Care recipients
Vienna	712	19,316
Upper Austria	350	10,204
Lower Austria	642	9,284
Styria	403	7,431
Tyrol	241	4,745
Carinthia	190	3,225
Salzburg	225	3,135
Vorarlberg	120	2,521
Burgenland	183	1,669
Total	3,066	61,530

Source: Ministry of Interior, 26 January 2018.

In some cases the transfer of an unaccompanied asylum-seeking child from the EAST to Basic Care facilities of the federal provinces takes place randomly, without knowledge of the specific needs of the child.

Approximately 125 centres for unaccompanied children operated across the federal provinces by the end of 2017. Numerous facilities set up after 2015 have been phased out after the number of unaccompanied children arriving in Austria dropped. The type of facilities available in the different provinces varies from one province to another:

Carinthia, Tyrol and Burgenland only offer accommodation in residential groups.

Lower Austria and Upper Austria generally offer accommodation in residential groups, subject to a few exceptions.

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 60 places for unaccompanied children with a lower level of care, however.

Styria has no residential groups for unaccompanied children. All children over the age of 14 are accommodated in dormitories or in assisted living. The situation in Styria is criticised by the Ombudsman, who recommends the establishment of residential groups in the future.

Since 2016, unaccompanied children may also live with families. Several federal provinces offer such possibilities; in **Styria** this is the case for children over the age of 14.²⁸⁵ The responsibility remains at the Child and Youth Agency.

The Child and Youth Agency is responsible for providing adequate guidance and care. It is unclear who is responsible for the legal representation of those children; the legal adviser who has to fulfil their tasks in the EAST, or the Child and Youth Agency, which becomes responsible after the child is allocated to a federal province. Social educational and psychological care for unaccompanied asylum-seeking children

²⁸⁵ Parliament of Styria, Reply to question 496/1 on "Quality of reception of child refugees", 24 February 2016, available in German at: <http://bit.ly/2l0kXv3>.

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

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

A report on the legal situation of unaccompanied children in Austria was published in October 2016 by SOS Children's Villages. The report points out that the relevant Austrian laws do not differentiate between Austrian and non-Austrian nationals,²⁸⁶ and therefore asylum-seeking children are entitled to child and youth welfare to the same extent as Austrian children. It also states that the regulations on basic care (*Grundversorgung*) are not specific to child and youth welfare regulations, and therefore must be applied cumulatively; child and youth welfare must provide the required educational and psychological help in addition to the basic care regime, which aims to address basic living needs. The legal opinion concludes that the daily rates (*Tagsätze*) for unaccompanied children, which are lower than child and youth welfare provisions for Austrian children, are a problem, since unaccompanied children are entitled to the same services as Austrian children. This does not necessarily mean, however, that the daily rates need to be equivalent.²⁸⁷ Similar concerns have previously been raised by the Ombudsman expressed in a report on **Burgenland** published in June 2015.²⁸⁸

Aged-out children

A few places are available for those children who have reached the age of 18, responding to their higher need of care compared with older adults. This possibility corresponds to youth welfare regulations, stating that under special circumstances the Child and Youth Agency will care for young adults up to the age of 21. Usually, transitional homes for aged-out children offer higher care than adult centres, yet NGOs receive the adult rate for care.

Children with special needs

There are still very few places for unaccompanied children with special needs, including 6 places in **Vienna** and 10 places in **Lower Austria**. This is by no means sufficient to meet demand. A new facility for traumatised children and one emergency centre were opened in Lower Austria, while **Salzburg** has also opened up an emergency centre.

Information gathered by Asylkoordination in the fall of 2016,²⁸⁹ from 40 NGOs caring for unaccompanied minors, showed that 10.6% of accommodated children need medication ordered by a psychiatrist: some

²⁸⁶ Austrian Civil Code (ABGB) and Federal Child and Youth Welfare Act (B-KJHG).

²⁸⁷ SOS Kinderdorf, *Gutachten zu Rechtsproblemen von SOS-Kinderdorf – Österreich mit unbegleiteten minderjährigen Flüchtlingen*, Innsbruck, 27 October 2016, available in German at: <http://bit.ly/2kr5LIB>.

²⁸⁸ Ombudsman, *Bericht der Volksanwaltschaft an den burgenländischen Landtag, Bericht 2013-2014*, June 2015, available at: <http://bit.ly/1PbKxG7>.

²⁸⁹ Unpublished survey. These 40 reception centres cared for 924 unaccompanied child asylum seekers.

suffer from depression ranging up to danger of suicide, others from borderline and adjustment disorder. A further 9% are thought to be suffering from a mental illness, but there is no diagnosis yet because the young people refuse an investigation for fear of stigma, or due to delays an assessment has not yet taken place. About 5% are in therapy and do not take medication. According to the opinion of the caregivers, about 15% were in urgent need of therapy. 8% were moved to another facility due to their striking behaviour (threats, violence against staff or other residents), but in one third of cases the behavioural problems were not improved.

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 as well.²⁹⁰

2. Reception of women and families

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

For single women, there are some specialised reception facilities, one in the EAST and a few others run by NGOs. In bigger facilities of NGOs, separated rooms or floors are dedicated for single women. There may also be floors for families. The protection of family life for core family members is laid down in the law of the federal provinces.²⁹¹ For family members who arrived in the framework of **Family Reunification** and receive Basic Care as asylum seekers, there is no satisfactory solution if the person with refugee status does not have a suitable private flat. The family may be separated until the status is granted, because recognised refugees can no longer live in the Basic Care centre. It is also problematic that provinces such as **Styria** refrain from granting any basic care to asylum seekers in the family reunification process. According information from Caritas Styria, the person with asylum status is no longer in basic care, but usually receives minimum benefits (*Mindestsicherung*). This income is taken into consideration when calculating the benefits to be allocated to the family members coming to Austria within the framework of family reunification. As a result, the arriving family members are not entitled to basic care.²⁹²

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

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

²⁹⁰ 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>.

²⁹¹ 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.

²⁹² FRA, *Monthly data collection: September 2016*, available at: <http://bit.ly/2k2wcko>, para 1.5.3.

3. Reception of handicapped and seriously ill persons

3.1. Federal centres

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

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

In addition, where necessary, persons with special needs are accommodated in separate rooms or houses in the Federal Reception Centre East in **Traiskirchen** during the admissibility procedure.²⁹³ Special care centres for 25 persons in a barrier-free building (house 1) are provided in Traiskirchen.

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

The special care centre **Graz Andritz** offers the best possible medical care for patients with regular or special care and treatment needs e.g. cancer patients, persons with cardiovascular diseases, epileptics, diabetics, patients in the drug replacement program etc., due to the optimal accessibility of the Graz Country Hospital. It has a specially equipped doctor's station. In addition to medical staff, the care provider ORS is responsible for the care of the asylum seekers who are housed there, and also offers an operational manager, 22 social assistants as well as a trained clinical psychologist.

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

3.2. Centres at federal province level

Special care centres exist in different provinces:

Vorarlberg: a total of 6 people received special treatment by the end of 2017, including 2 people in a nursing home and 4 people in a *Kolpinghaus*.

Lower Austria: There are 6 places in an emergency centre and another 6 in a centre for severely traumatised unaccompanied children.

Tyrol: The Basic Care system does not offer special care places. Currently, Tyrol has approximately 350 clients looked after by a Case & Care team in a wide range of accommodation facilities. The most common criteria for support from the Case & Care team are psychiatric, mental and physical conditions or disabilities.

²⁹³ Information provided by the Ministry of Interior, 26 January 2018.

The needs of ill, handicapped asylum seekers and asylum seekers with nursing care are not sufficiently met. There is no allowance to cover extra costs as long as nursing care is provided by relatives or friends. NGOs have to employ professionals if they offer places for asylum seekers with special – mainly medical – needs.

The daily rate of increased care varies in the federal provinces. In **Upper Austria** the organisation providing reception receives a maximum of €42 and differentiates the need for care according to the number of hours of nursing care per week, while in **Vienna** and **Salzburg** it is a maximum €44, and in **Tyrol** and **Carinthia** €40.

F. Information for asylum seekers and access to reception centres

1. Provision of information on reception

The information leaflets in the EAST provide brief information about obligations and entitlements with regard to reception conditions e.g. the possibility and obligation to visit a doctor, the possibility to contact UNHCR, the restricted movement and the meaning of the different documents such as 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. NGOs and private operators receive information sheets in 52 languages. Asylum seekers are required to sign the notice (see [Freedom of Movement](#)).

In the reception centres, asylum seekers are informed about the house rules, including information about their duties and sanctions. Information is either posted in the most common languages (like English, Russian, French, Arabic, Farsi, Urdu, Serbian) or a paper containing brief written instructions has to be signed by the asylum seeker. The federal province of **Carinthia** has published the latter on its website.²⁹⁴ In the states of **Lower Austria**,²⁹⁵ **Salzburg**,²⁹⁶ 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.²⁹⁷ 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 system of information is not satisfactory, because one social worker is responsible for 170 asylum seekers. This entails that the standards for social work are not met in practice. Some federal provinces provide for more effective social advice than others; for instance, 50 clients per social worker in **Vorarlberg** or 70 in **Vienna**. It has to be taken into consideration that reception centres in remote areas cannot be visited very often by the social workers because of insufficient funding.

Since summer 2015 a lot of volunteers and communities help asylum seekers. They share information via social networks.²⁹⁸ Although they have been reduced in number, volunteers are still active in 2017

²⁹⁴ Province of Carinthia, *Erstinformation für Asylwerber. Grundversorgung Kärnten*, available at: <http://bit.ly/1lfpb7h>.

²⁹⁵ City of Vienna, *Grundversorgung Wien*, available at: <http://bit.ly/1YqTAVV>. The Basic Care brochure for Lower Austria is available in 16 languages.

²⁹⁶ Province of Salzburg, *Grundversorgung*; available at <http://bit.ly/1UKUkol>.

²⁹⁷ Fonds Soziales Wien, *Wiener Grundversorgung. Die Beratungsstellen*, available at: <http://bit.ly/1cz0cQP>.

²⁹⁸ E.g. information about accommodation: <http://asylwohnung.at/faq/>.

and assist asylum seekers in various challenges such as German language lessons and conversation, explaining duties and rights, helping with the family reunification procedure or to get an affordable flat or a job after the asylum procedure is terminated. Some initiatives organise petitions and press reports against Dublin transfers to Croatia or Bulgaria, while others are active against deportations to Afghanistan.

2. Access to reception centres by third parties

Indicators: Access to Reception Centres

1. Do family members, legal advisers, UNHCR and/or NGOs have access to reception centres?

Yes

With limitations

No

UNHCR has unrestricted access to all reception centres. In the EAST, access of legal advisers and NGOs to the reception buildings is not allowed, based on the argument that it would disrupt the private life of other asylum seekers. This restriction is laid down in a regulation introduced by the Minister of Interior ("*Betreuunseinrichtung-Betretungsverordnung*") intending to secure order and preventing assaults to life, health or freedom and protecting the facility.²⁹⁹ The restriction of access to the facilities does not apply to lawyers or legal representatives in order to meet their clients. Family members may meet their relatives in the visitor room and legal advisers and NGOs in the premises of the BFA. In the federal provinces, NGOs with a contract for providing advice in social matters have access to the reception centres, while other NGOs have to apply for permission, sometimes on a case-by-case basis. Asylum seekers living in reception centres in remote areas usually have difficulties to contact NGOs, because they have to pay the tickets for public transport from their pocket money (which amounts to €40 per month). Travel costs for meetings with the appointed legal adviser should be paid by the organisations that provide legal advice, Verein Menschenrechte Österreich and ARGE Rechtsberatung. In the majority of cases, asylum seekers are only reimbursed by the organisations for one journey to meet their appointed legal adviser.

G. Differential treatment of specific nationalities in reception

Basic Care is provided until the final decision is made, and then until departure or deportation. For asylum seekers whose appeal has no suspensive effect, the right to basic care was removed during the appeal proceedings (see [Criteria and Restrictions to Access Reception Conditions](#)). Asylum seekers from **safe countries of origin** are affected by this restriction.

²⁹⁹ BGBl. II Nr. 2005/2 and 2008/146.

Detention of Asylum Seekers

A. General

Indicators: General Information on Detention

1. Total number of persons detained in 2017: ³⁰⁰	4,962
2. Number of persons in detention at the end of 2017:	Not available
3. Number of detention centres:	4
4. Total capacity of detention centres:	914

The BFA reported a total of 4,962 persons detained throughout 2017.³⁰¹ NGOs report that according to their experience detention of asylum seekers was ordered rarely.

There are 4 detention centres currently operating in Austria: Vordernberg, Styria; Police Apprehension Centres (PAZ) Vienna Hernalser Gürtel, PAZ Vienna Rossauer Lände and Familienunterbringung Vienna Zinnergasse.

Most of the PAZ under the responsibility of the police – Bludenz, Eisenstadt, Graz, Innsbruck, Klagenfurt, Leoben, Linz, Salzburg, Schwechat, St Pölten, Villach and Wiener Neustadt – that have been used before as detention centres are now used for arrest for no longer than 7 days.

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

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

³⁰⁰ Including *both* applicants detained in the course of the asylum procedure and persons lodging an application from detention.

³⁰¹ BFA, *Jahresbilanz 2017*, available in German at: <http://bit.ly/2FjHeBi>.

B. Legal framework of detention

1. Grounds for detention

Indicators: Grounds for Detention

1. In practice, are most asylum seekers detained
 - ❖ on the territory: Yes No
 - ❖ at the border: Yes No
2. Are asylum seekers detained in practice during the Dublin procedure?
 Frequently Rarely Never
3. Are asylum seekers detained during a regular procedure in practice?
 Frequently Rarely Never

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

The detention of asylum seekers is regulated by the Aliens Police Act (FPG), which has been amended several times to specify the grounds for detention; the last amendment entered into force on 1 November 2017. Detention may be ordered by the BFA to secure a return procedure, if a return procedure or deportation have to be secured in regard of an application for international protection and a “risk of absconding” exists and detention is proportionate. Furthermore, the FPG allows detention according to the Dublin III Regulation.

Article 76 FPG defines the “risk of absconding” on the basis of a number of wide-ranging criteria, namely whether:³⁰²

1. The person has avoided or hampered a deportation order;
 - 1a. The person has not complied with the obligation to obtain a travel document for his or her removal;³⁰³
2. The person has violated a travel ban;
3. An expulsion order is made or the asylum application has been withdrawn;
4. The person makes a subsequent application without right to remain;
5. The person is in pre-deportation detention at the time he or she lodges the application;
6. It is likely that another country is responsible under the Dublin Regulation, namely as the person has lodged multiple applications or based on past behaviour intends to travel on to another country;
7. The person does not comply with alternatives to detention;
8. The person does not comply with residence restrictions, reporting duties and designated accommodation;³⁰⁴
9. There is a sufficient link with Austria such as family relations, sufficient resources or secured residence.

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

The Constitutional Court (VfGH) ruled on this issue in June 2016.³⁰⁵ The VfGH did not share the constitutional concerns raised by the BVwG as to whether the “risk of absconding” defined in the Dublin

³⁰² Article 76(3) FPG.

³⁰³ Article 76(3)(1a) FPG, in force as of 1 November 2017, citing Article 46(2)-(2a) FPG.

³⁰⁴ Article 76(3)(8) FPG, in force as of 1 November 2017.

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

So far, it is difficult to assess the practice of the authorities with regard to the use of detention grounds. In the detention centre in **Vordernberg**, there has been an increase in detentions in 2017.

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

2. Alternatives to detention

Indicators: Alternatives to Detention

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

According to Article 76 FPG, the principle of necessity is to be taken into account. Detention has to be necessary to reach one of the stated aims.³⁰⁶ When examining the proportionality of detention, criminal offences committed by the applicant must be taken into account, to assess whether the public interest is affected by the seriousness of the offences and to whether the public interest in speedy deportation outweighs the personal liberty of the individual.³⁰⁷

It is, however, mentioned that the BFA has to review the proportionality of detention every 4 weeks.³⁰⁸ Proportionality is also a constitutional principle applicable to all administrative procedures and therefore also to asylum and return proceedings. This is confirmed by the jurisprudence of the VwGH³⁰⁹ and the Constitutional Court (VfGH).³¹⁰ Proportionality means to weigh or balance the interests between the public interest of securing the procedure (mainly expulsion procedure) and the right to liberty of the individual.

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

Article 77(3) FPG enumerates 3 alternatives to detention: (a) reporting obligations; (b) the obligation to take up residence in a certain place of accommodation and (c) the deposit of a financial guarantee. Details about the deposit and amount of the financial guarantee are regulated by the Ordinance Implementing the Aliens Police Act (FPG-DV). This amount must be determined in each individual case

³⁰⁵ VfGH, Decision V 152-153/2015-19, 13 June 2016, available at: <http://bit.ly/2ljWKT0>.

³⁰⁶ Article 76(2) FPG.

³⁰⁷ Article 76(2a) FPG, in force as of 1 November 2017, citing Articles 2 and 28 Dublin III Regulation.

³⁰⁸ Article 80(6) FPG.

³⁰⁹ VwGH, Decision Ra 2013/21/0008, 2 August 2013.

³¹⁰ See e.g. VfGH, Decision B1447/10, 20 September 2011.

and must be proportionate.³¹¹ 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.³¹²

Alternatives to detention are applied in open centres. Such measures are executed in regular reception facilities, facilities rented by the police or property of NGOs, or the private accommodation of the person to be deported. If an alternative to detention is ordered, asylum seekers have reporting duties. They have to present themselves at the police offices of the Federal Police Directorates every day or every second day. If reporting obligations or the obligation to take up residence in a certain accommodation facility are violated, the person is detained.³¹³

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

In **Vienna Zinnergasse**, more lenient measures are executed for vulnerable persons. Verein Menschen.leben is contracted to give care and advice to the persons who are usually restricted in their freedom of movement.

3. Detention of vulnerable applicants

Indicators: Detention of Vulnerable Applicants

1. Are unaccompanied asylum-seeking children detained in practice?
 Frequently Rarely Never

❖ If frequently or rarely, are they only detained in border/transit zones? Yes No
2. Are asylum seeking children in families detained in practice?
 Frequently Rarely Never

Children under the age of 14 cannot be detained. Therefore, families with young children are confined only for 24 hours prior to forced return. In general, children over the age of 14 should not be detained and alternatives to detention should apply for minors over the age of 14.³¹⁴

In 2014, the Federal Administrative Court found the detention order for an asylum seeker from Afghanistan who claimed to be 16 years old to be unlawful. The decision of the BFA was based on the improper opinion of the medical officer according to which he was between 18 and 22 years of age and therefore not treated as a child.³¹⁵

In the case of a child who was stopped by police and taken to the **Zinnergasse** centre, the age examinations carried out by the public medical officer resulted in setting an age of 18 years with a fluctuation range of 2 years, without a multifactor medical age assessment. The minor was transferred to the detention centre, applied for asylum and authorised Diakonie for his legal representation. However, the complaint against detention was dismissed in August 2016, arguing that he could not give power of attorney as a minor.³¹⁶ Since the relevant interrogation of the police, in which deportation (*Schubhaft*) was ordered before his application for asylum was submitted, his legal representative for all

³¹¹ Article 13 FPG-DV.

³¹² 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.

³¹³ Article 77(4) FPG.

³¹⁴ Article 77(1) FPG.

³¹⁵ BVwG, Decision W191 2011159-1, 27 August 2014, available at: <http://bit.ly/1ALJF7Q>.

³¹⁶ BVwG, Decision W117 2131589-1, 10 August 2016, available at: <http://bit.ly/2lnqwLZ>.

further proceedings before the BFA and the Federal Administrative Court were the youth welfare agencies in whose district the minor is staying is competent. However, the latter did not wish to join the complaint lodged by Diakonie.

4. Duration of detention

Indicators: Duration of Detention

- | | |
|--|---------------|
| 1. What is the maximum detention period set in the law (incl. extensions): | 18 months |
| 2. In practice, how long in average are asylum seekers detained? | Not available |

Detention is only permissible for as short a period as possible,³¹⁷ and cannot exceed 6 months for adults,³¹⁸ and 3 months for children over the age of 14.³¹⁹ Prior to November 2017, these maximum time limits were 4 months and 2 months respectively. There is also a possibility of exceptional extensions up to 18 months while before November 2017 it was 6 months within 18 months.³²⁰

More particularly in relation to asylum seekers, detention should generally not last longer than 4 weeks following the final decision on the application.³²¹

Figures on the average duration of detention of asylum seekers in general are not available. The average duration of detention in the detention centre of **Vordernberg** was 25 days from 1 January to 7 May 2017.³²² As asylum seekers whose applications are processed under the Dublin procedure are often detained immediately after submitting their applications, they may be kept in detention until they are transferred to the Member State determined to be responsible for the examination of their asylum applications. In Dublin cases, detention may last for some weeks, as suspensive effect of the appeal is hardly ever granted and the transfer can be effected while their appeal is still pending.

C. Detention conditions

1. Place of detention

Indicators: Place of Detention

- | | | |
|--|------------------------------|--|
| 1. Does the law allow for asylum seekers to be detained in prisons for the purpose of the asylum procedure (i.e. not as a result of criminal charges)? | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| 2. If so, are asylum seekers ever detained in practice in prisons for the purpose of the asylum procedure? | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |

The detention centres currently operating are:

Capacity of pre-removal detention centres	
Centre	Capacity
Vordernberg Immigration Detention Centre	193
Vienna Roßauer Lände	379
Vienna Hernalser Gürtel	292

³¹⁷ Article 80(1) FPG.

³¹⁸ Article 80(2)(2) FPG.

³¹⁹ Article 80(2)(1) FPG.

³²⁰ Article 80(4) FPG.

³²¹ Article 80(5) FPG.

³²² Ministry of Interior, Reply to parliamentary question 12937/J (XXV.GP), 27 June 2017, available in German at: <http://bit.ly/2Cc6bfT>.

Zinnergasse	50
Total	914

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

Furthermore, other police facilities (PAZ) that have previously been used as detention places are now used for arrest for a period not exceeding 7 days.

The detention centre in **Vordernberg**, established in January 2014, allows detainees to stay outside the cell during the day. The facility is run by a private security company, G4S. This has raised concern about the division of tasks and accountability between the public security service and this private company.³²³ The Minister of Interior explained in response to a parliamentary request that G4S is to assist the police.³²⁴ A series of trainings have been organised for the staff of the centre; according to a report in *Der Standard*, 36 hours were dedicated to human rights issues.³²⁵

The original goal of the Federal Government to set up a “competence centre” for detention with 250 detention places and thus to ensure efficiency improvements in aliens police measures has not been achieved, according to a 2016 report of the Court of Auditors. The decision for the location of **Vordernberg** was not based on “traceable strategic and economic planning”, the auditors said. Around 80% of deportations were carried out via border crossing points in close proximity to the police stations in **Vienna**. This alone led to clear disadvantages of the location for the profitability and practicality of the centre located in **Styria**. The average occupancy rate of the police detention centres fell by 86%, between 357 and 52 people per day, between 2010 and 2015. Compared to other detention centres, such as **Vienna** where the daily cost of detention is €207, the costs per day of imprisonment in **Vordernberg** are significantly higher, reaching €834. The Court recommended a new approach to the detention system.³²⁶

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

One floor of the same building is used for less coercive measures and has 17 housing units, one of which is equipped for disabled persons. They are allowed to leave the centre during the day.³²⁷

³²³ *Der Standard*, *Securitys auf Rundgang in der neuen Schubhaft*, 2 April 2014, available at: <http://bit.ly/1dgpJ1Y>.

³²⁴ 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.”)

³²⁵ *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>.

³²⁶ Court of Auditors, *Vollzug der Schubhaft mit Schwerpunkt Anhaltezentrum Vordernberg*, 2016/22, available at: <http://bit.ly/2kNGiKi>.

³²⁷ Sonja Jell, ‘Alternative zur Schubhaft’, *Öffentliche Sicherheit* 5-6/12, available at: <http://bit.ly/2klKVq>.

2. Conditions in detention facilities

Indicators: Conditions in Detention Facilities

1. Do detainees have access to health care in practice? Yes No
❖ If yes, is it limited to emergency health care? Yes No

As of January 2014, as several detention facilities are no longer used since the Vordernberg detention centre opened, conditions in the detention facilities are satisfactory. Problems such as lack of space or clothes have not been reported. Detention in cells during the day instead of open floors is still a reality for most of the detained persons, however. Following a recommendation for the improvement of detention conditions in April 2014,³²⁸ the Ombudsman (*Volksanwaltschaft*) referred to improved conditions in a June 2016 report,³²⁹ covering the year 2015. Interpretation is available through video conference for medical appointments in Vordernberg, and has also been established in Vienna and Tyrol as of February 2016. Television, radio and limited internet access has been provided, as per recommendation.

Social counselling is not foreseen. Nevertheless, the information leaflet provided to detainees calls the activities taking place in the centre “social counselling”.³³⁰ NGOs receive funding under the AMIF to provide advice on voluntary return in detention centres.³³¹ Verein Menschenrechte Österreich provides such advice in the detention centres in **Vienna** and **Salzburg**, while Caritas Styria is active in **Vordernberg**. These NGOs are present in detention centres on a regular basis. Furthermore, asylum seekers are visited by the appointed legal adviser in the admissibility procedure, to assist with the appeal against the rejection of the asylum application or complaints against the detention order. UNHCR is not regularly present in detention centres.

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

Medical treatment is provided in all detention centres by the public medical officer. Special treatment may be organised by transferring detainees in hospitals. In the detention centres in Vienna, psychiatric treatment is provided. In Vienna, detainees on hunger strike may be transferred to the medical station of the prison, but forced feeding is not allowed.³³² In case there is a high probability of a health risk due to hunger strike, asylum seekers are usually released from detention.³³³ However, the Ombudsman has criticised the fact that medical treatment is not immediately provided in cases of mental illness or suicide risk.³³⁴

There is no mechanism to identify vulnerable people in detention.

³²⁸ Volksanwaltschaft, *Mängelbehebungen in Polizeianhaltezentren* (Ombudsman, *Remedy deficiencies in police detention centres*) 2 April 2014, available at: <http://bit.ly/1FVutnw>.

³²⁹ Volksanwaltschaft, *Bericht über den 39. Bericht der Volksanwaltschaft (1. Jänner bis 31. Dezember 2015) (III-235 der Beilagen)*, 8 June 2016, available at: <http://bit.ly/2kNRSo4>.

³³⁰ Ministry of Interior, *Zusatzinformation für Schubhäftlinge im Polizeianhaltezentrum Roßauer Lände*, April 2014, available at: <http://bit.ly/1FvJbPB>.

³³¹ Datum, ‘Mission Impossible’, 1 February 2013, available at: <http://bit.ly/1H36Rzv>.

³³² Nowak Manfred, *Rechtsgutachten zur Frage der Zwangsernährung von Schubhäftlingen in Österreich*, 3 February 2006, available at: <http://bit.ly/1FwraQt>.

³³³ M Sterkl. ‘Starvation for the doctor’s visit’ (2011) *Der Standard* 25 May 2011.

³³⁴ Volksanwaltschaft, *Bericht über den 39. Bericht der Volksanwaltschaft (1. Jänner bis 31. Dezember 2015) (III-235 der Beilagen)*, 8 June 2016.

3. 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 to the detainee, which most NGOs known by the police may get without delay. In other cases, NGOs or relatives or friends of detainees must get the same authorisation during regular visiting hours on the weekend to have access to detainees during office hours.

Other visitors such as relatives or friends have restricted possibilities to visit. Visits have to be allowed by the police for at least 30 minutes per week. In addition, restrictions may be imposed to detainees who are separated from other detainees and are put in security cells due to their behaviour, such as suicide attempts, hunger strike or violence. Visiting hours are limited to the weekend and early evening hours, and direct contact is not possible as the visit takes place in a room where the asylum seeker is separated from the visitor by a glass window. In the centre of **Vordernberg**, direct contact should be possible, as all rooms and floors are video monitored. Family members may stay overnight in a visitor cell with their relative. Visits of media or politicians are usually not permitted. This centre has been presented to the public as an example of improvement of Austria's return policy.

Representatives of the churches have agreements with the police to visit detainees on a regular basis.

D. Procedural safeguards

1. Judicial review of the detention order

Indicators: Judicial Review of Detention

- | | | |
|---|---|-----------------------------|
| 1. Is there an automatic review of the lawfulness of detention? | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| 2. If yes, at what interval is the detention order reviewed? ³³⁵ | 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.³³⁶ The main parts of such a decision, which are the decision of detention and the information on the right to appeal, have to be in a language the asylum applicant is able to understand. In each case, the detained asylum applicant is appointed a legal adviser provided by the state.

Detention is ordered by the BFA. The BFA has to review the lawfulness of detention every 4 weeks. After 4 months the Federal Administrative Court (BVwG) must review the lawfulness of detention *ex officio*.

There is a possibility to submit an appeal to the BVwG against a detention order, subject to no time limit. The BVwG has to decide on the lawfulness of the detention order according to the appeal of the asylum seeker and whether at the time of its decision reasons for continuation of detention exist.

³³⁵ This refers to judicial review of detention conducted by the BVwG. The BFA reviews detention every 4 weeks.

³³⁶ Article 76(3) FPG.

The Court must decide within 7 calendar days in cases where a person is still detained and within 6 months in cases where the person is no longer detained (which is the general time limit for decisions in administrative procedures).³³⁷ If the BVwG does not decide within 7 days in cases where the asylum seeker is still detained, an appeal may be lodged to the Administrative High Court (VwGH) to challenge the fact that no decision was taken within the maximum time limit. In that case, the VwGH sets a time limit for the BVwG within which a decision must be taken. In a recent case, the VwGH ordered the Independent Administrative Board (UVS) to decide within 3 calendar days.³³⁸

Time limits were usually respected by the former competent UVS of the provinces. The same can be said for practice at the newly installed Federal Administrative Court. One case was found eligible for review by the VwGH, because the law does not explicitly state where the complaint against the detention order has to be submitted: at the BFA which ordered detention or at the Administrative Court. The Constitutional Court decided in March 2015 that the unclear procedural character of the apprehension and detention order that should be appealed with a single appeal violates constitutional rights and Article 5(4) ECHR.³³⁹ Appeals against the detention order have to be submitted at the Administrative Court within 6 weeks.

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

If the detention or its duration are recognised as unlawful, the asylum applicant is entitled to a financial compensation of €100 for each unlawful day in detention. In case the appeal is rejected, there is a possibility to submit an appeal to the VwGH and to the VfGH. However, if the Federal Administrative Court (BVwG) rules on an appeal and finds that the detention order was correct and at the time of the decision of the court there is still the need to continue detention, the detained person lacks any possibility to contest this decision as unlawful.³⁴⁰ The Constitutional Court (VfGH) is set to assess whether the relevant provision, Article 22a(1)(3) BFA-VG, which sets this limitation is in line with the constitution or not.

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

³³⁷ Article 22a(3) BFA-VG.

³³⁸ VwGH, Decision Ra 2011/21/0126, 24 January 2013.

³³⁹ VfGH, Decision G151/2014, 12 March 2015; Petra Sussner, ‚Ausgestaltung der Schubhaftbeschwerde verfassungswidrig‘ Migralex 03/2015, 88-89.

³⁴⁰ VfGH, Decision E4/2014-11, 26 June 2014.

2. Legal assistance for review of detention

Indicators: Legal Assistance for Review of Detention

1. Does the law provide for access to free legal assistance for the review of detention?
 Yes No
2. Do asylum seekers have effective access to free legal assistance in practice?
 Yes No

The detained asylum applicant is appointed a legal adviser provided by the state, either from the organisation ARGE Rechtsberatung or Verein Menschenrechte Österreich, which closely co-operate with the Ministry of Interior. While aliens law previously contained an obligation to act as legal representative for detained asylum seekers if they wish so, the amendment of the FPG in 2014 deleted this obligation and now contains only the obligation for the legal adviser to take part in hearings if the asylum seekers wishes his presence.³⁴¹

Legal advice shall be appointed according to Articles 51-52 BFA-VG in return procedures, detention and apprehension orders.³⁴² However, the right to receive legal advice for people benefiting from alternative measures to detention was cancelled as of 1 January 2014.

The funding per case for those services does not seem to be sufficient (€200.55 per case), and the two legal aid organisations have a different understanding of what their role is with regard to providing legal advice to those detained. The organisation Verein Menschenrechte Österreich closely cooperates with the Ministry of Interior and thus avoids conflicts with the authorities.³⁴³ As discussed above, this organisation also receives funding from the Ministry of Interior for providing assistance to authorities to transfer asylum seekers to the Member State responsible for the examination of the asylum application according to the Dublin Regulation, as well as funding for counselling on voluntary return assistance.

This has resulted in situations undermining asylum seekers' right to appeal as is illustrated by the following example. Verein Menschenrechte Österreich staff responsible for "preparation for return in detention" advised asylum seekers, who were legally represented by legal advisers of Diakonie, to withdraw their right to appeal against a Dublin decision without the consent or involvement of the legal representative from Diakonie. The question whether the appeal was submitted or not was ruled by the Constitutional Court.³⁴⁴ NGOs in Austria suspect that detainees were not fully informed about the possibility of legal representation by Verein Menschenrechte Österreich and that this organisation hardly accepts to represent the detained person (whereas the legal adviser should write an appeal against the detention order if the detention order appears to be unlawful). Since 2014, this suspicion has reduced relevance, as the obligation to legally represent the detained person upon their request was cancelled by the FPG. ARGE Rechtsberatung, on the other hand, is committed to the safeguard of the human rights of detainees and has successfully appealed detention orders.

³⁴¹ Article 52(2) BVA-VG.

³⁴² VfGH, Decision E4/2014-11, 26 June 2014.

³⁴³ Edith Meinhart: Mr. Gongo. Profil 40, October 2007.

³⁴⁴ VwGH U1286/2013, 12 March 2014. The asylum seeker from Afghanistan had already experienced 18 months detention in Hungary. When he received the decision to send him back to Hungary he signed a form in which he declared that he will not submit an appeal against the Dublin decision. The following day he gave power of attorney to his legal adviser from Diakonie refugee service and wanted to have the decision appealed. The Asylum Court ruled that the appeal is inadmissible. The Constitutional Court declared that legal counselling has to include all aspects of the administrative procedure and the procedure at the Asylum Court including the submitting of an appeal. The asylum seeker has to be informed about the withdrawal of the right to appeal by the appointed legal adviser. The employee of Verein Menschenrechte Österreich who prepares detainees for the return had no legitimacy to give legal advice. See also VfGH, Decision U489/2013, 26 February 2014.

Legal advisers can meet their clients in the visitor room during office hours. Appointed legal advisers have to arrange for an interpreter. As their service is included in the lump sum for legal advice, it can be assumed that interpreters are not always present.

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

E. Differential treatment of specific nationalities in detention

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

Content of International Protection

A. Status and residence

1. Residence permit

Indicators: Residence Permit

1. What is the duration of residence permits granted to beneficiaries of protection?
 - ❖ Refugee status 3 years
 - ❖ Subsidiary protection 1 year, renewable by 2 years
 - ❖ Humanitarian protection 1 year

From 1 June 2016 onwards, persons who are recognised as **refugees** in Austria obtain a residence permit for three years.³⁴⁵ If the situation in the country of origin is more or less the same and the status still needed, it is prolonged to an unlimited residence permit *ex officio*. If the country of origin information (COI) indicate that the refugee may return safely, the **Cessation** procedure starts.³⁴⁶

Persons with **subsidiary protection** status get a residence permit for one year.³⁴⁷ Renewal has to be applied for at the BFA, if protection needs continue to exist, the residence permit is prolonged for two years.³⁴⁸

Asylum grants that were ruled before 1 June 2016 led to a permanent residence permit. For those asylum seekers who applied for asylum after 15 November 2015 and whose application was not decided before 1 June 2016, the new restriction of residence permit applied retroactively.³⁴⁹

The renewal of residence permits can take time as the asylum system remains under stress, but the right to remain exists until the BFA decides on an application for renewal. Usually the subsidiary protection status is prolonged. However, the lack of valid documentation pending renewal could have a negative impact on access to jobs or accommodation. The renewal has to be applied before the right to remain expires, but should not be applied more than 3 months before that date. If the application is not submitted in time, the stay becomes illegal. This may result in a longer waiting period for the long term residence permit.

2. Civil registration

Registration of child birth takes place at the district administrative or municipal authority. This is done directly by state hospitals as soon as a child is born. If the parents of the new born are not married, or if the husband is not the father, an affidavit is required from the biological father to recognise paternity. Both parents are given joint custody of the child if they are married; if not, custody is granted to the mother unless the parents decide on joint custody.

As regards marriage registration, the Register must determine the capacity of the future spouses to enter into marriage during a hearing, on the basis of the documents submitted. These include: an official identification document with a photograph; a document equivalent to a copy of the birth certificate; and proof of citizenship. An affidavit may be given if the person cannot provide these documents. Practice varies between local Registers, with some demanding all the aforementioned documents while others are more flexible.

³⁴⁵ Article 3(4) AsylG.

³⁴⁶ *Ibid.*

³⁴⁷ Article 8(4) AsylG.

³⁴⁸ *Ibid.*

³⁴⁹ Article 78(24) AsylG.

Civil registration in Austria is necessary for people to have access to health insurance, child and family allowances and other social rights. In addition, the family allowance is granted only after asylum has been granted to the baby. This procedure may take several months.

3. Long-term residence

Indicators: Long-Term Residence

1. Number of long-term residence permits issued to beneficiaries in 2017: 426

Long-term resident status for third-country nationals is called “*Daueraufenthalt EU*”.

To obtain it, a beneficiary of international protection must fulfil the following conditions:

- ❖ Lawful residence in Austria for the last 5 years preceding the application. Half of the period between the application for international protection and the awarding of the refugee status or subsidiary protection is counted for the five year period. When the duration of the asylum procedure, was longer than 18 months, the whole period is counted.³⁵⁰
- ❖ Successful completion of “Module 2” of the so-called agreement on integration (“*Integrationsvereinbarung*”), entailing knowledge of German at B1 level.
- ❖ General requirements for obtaining a residence permit, namely:
 - A regular income of €1.173,8 for a single person in 2017;
 - Sufficient health insurance;
 - Suitable accommodation; and
 - The person must not present a security risk.

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

In practice the responsible authority is usually the district council (*Bezirkshauptmannschaft*). There are exceptions for some cities such as **Vienna** where the responsible authority is MA 35, whereas in **Graz** it is the Styrian Land government. The costs for the procedure amount to about €170.

426 beneficiaries of international protection obtained long-term resident status in 2017, excluding quota refugees.³⁵¹

4. Naturalisation

Indicators: Naturalisation

1. What is the waiting period for obtaining citizenship?
 - ❖ Refugees 6 years
 - ❖ Subsidiary protection beneficiaries 15 years
2. Number of citizenship grants to beneficiaries in 2017: Not available

Refugees are entitled to naturalisation after 6 years of lawful and uninterrupted residence in Austria, which includes the period of stay during the asylum procedure.³⁵² For beneficiaries of **subsidiary protection**, the waiting period is 15 years.

In order to be naturalised, a beneficiary of protection must also demonstrate:

- Sufficient income in the last 3 years;
- Proof of knowledge (B1) of the German language;
- Successful completion of integration course (*Werteskurs*);

³⁵⁰ Article 45(12) Residence Act.

³⁵¹ Ministry of Interior, *Residence permit statistics*, December 2017, available at: <http://bit.ly/2oifNx6>.

³⁵² Article 11a(4)(1) and (3) Citizenship Act (StbG).

- Absence of a criminal record (*Unbescholtenheit*).

Beneficiaries of **subsidiary protection** may have faster access to naturalisation in less than 15 years of residence under certain conditions. They may shorten their waiting period if: (a) they have acquired B2-level knowledge of German; or (b) have acquired B1-level knowledge and can prove efforts of personal integration. If they fulfil these criteria and the general conditions, they may apply after 6 years of residence. In any other case, it is easier for beneficiaries of subsidiary protection to obtain naturalisation by obtaining long-term resident status after 5 years (see [Long-Term Residence](#)); then, they may be naturalised after 10 years.

1,224 refugees were granted citizenship in Austria in 2016.³⁵³ Data for 2017 is not available.

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 subsidiary protection beneficiaries.

Refugee status can be ceased if the conditions in Article 1C of the Refugee Convention are met, or if the refugee is established in another country.³⁵⁴ **Subsidiary protection** can be ceased where the conditions on which status was granted no longer exist, where the person is established in another country, or obtains the nationality of another country and return thereto would not violate the principle of *non-refoulement*.³⁵⁵

Cessation procedure

As of 1 June 2016, where the BFA deems that the conditions in the country of origin have undergone a change relevant to a beneficiary's fear of persecution, it shall inform the person *ex officio* of the initiation of a cessation procedure, irrespective of whether the person has a permanent or temporary residence permit.³⁵⁶

The authorities must assess whether return would be contrary to Articles 2, 3 or 8 ECHR and, in such a case, issue a residence permit. Where return would amount to *refoulement*, or in case of practical obstacles, the BFA is responsible for issuing a tolerated status card (*Duldungskarte*). In 2015, 294 *Duldungskarten* were issued, although it is not clear how many of those were issued following cessation of international protection.³⁵⁷

³⁵³ Medienservicestelle, 'Neue ÖsterreicherInnen: Einbürgerungen: Entwicklungen und aktuelle Trends, 24 October 2017, available in German at: <http://bit.ly/2y20B9v>.

³⁵⁴ Article 7(2)-(3) AsylG.

³⁵⁵ Article 9(1) AsylG.

³⁵⁶ Article 7(2a) AsylG.

³⁵⁷ Ministry of Interior, Reply to parliamentary question 8373/J (XXV.GP), 18 April 2016, available in German at: <http://bit.ly/2kmW2Ri>.

If a person has held refugee status for 5 years, refugee status may be terminated only after the person has received a residence permit under a different immigration status.

As of August 2016, the Ministry of Interior explained that approximately 400 cessation / termination procedures had been conducted.³⁵⁸

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,³⁵⁹ or is convicted of a criminal offence.³⁶⁰ Subsidiary protection is withdrawn if the exclusion clauses in Article 1F apply, or the beneficiary poses a threat to public order or national security, or has been convicted of a serious crime.³⁶¹ A withdrawal procedure shall be initiated by the BFA where a subsidiary protection beneficiary is under prosecution for such a crime, and the application of the withdrawal provisions is likely.³⁶² To that end, the BFA as well as the BVwG receive information on the prosecution from the Prosecutor's Office and the Court.

Article 7(2) AsylG, as amended by the alien law reform (FrÄG 2017) entering into force on 1 November 2017, permits withdrawal proceedings to be initiated where the beneficiary is suspected of having committed a criminal offence.³⁶³

As mentioned in [Cessation](#), there is no systematic distinction between the two procedures. When initiating a withdrawal procedure following a conviction, the BFA must weigh the individual situation of the beneficiary upon return against the implications of his or her continued residence for public order and security. The same procedural guarantees are applied as for the [Regular Procedure](#) for granting protection.

In response to a parliamentary question, the former Minister of Interior stated 651 withdrawal procedures had been initiated in the first five months of 2017.³⁶⁴

³⁵⁸ News.at, 'Warum Sobotkas Asylpläne wenig ändern', 23 August 2016, available in German at: <http://bit.ly/2k46D6i>.

³⁵⁹ Article 7(1)(1) AsylG.

³⁶⁰ Article 7(2) AsylG.

³⁶¹ Article 9(2) AsylG.

³⁶² Article 9(3) AsylG.

³⁶³ For a critique, see Diakonie, *Stellungnahme der Diakonie Österreich zum Entwurf betreffend ein Fremdenrechtsänderungsgesetz 2017*, 18 January 2017, available in German at: <http://bit.ly/2kwEDoK>.

³⁶⁴ Ministry of Interior, Reply to parliamentary question 13630/J (XXV.GP), 16 July 2017, available in German at: <http://bit.ly/2BlEfE5>.

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:³⁶⁵

- Parents of a minor child;
- Spouses and registered partners, where the marriage / partnership existed before fleeing the country of origin. In case concluded in another country, the marriage / partnership must be legally valid in the country of origin;
- Children who are minors at the time of the application;

According to the VwGH, siblings are not considered a family member eligible for reunification.³⁶⁶

Beneficiaries of international protection who only marry post-flight cannot reunite with their spouses under the AsylG. In addition to the material conditions set out below, spouses must also pass a German exam before entering Austria. They are also subject to the annual quota on family reunification.

As regards children, a preliminary reference is currently pending before the CJEU to clarify at what point in time the minority of the sponsor is decisive in family reunification with parents.³⁶⁷ The referring court in the Netherlands has asked the CJEU whether minority should be established at the time of the asylum application or the application for family reunification. Pending the preliminary ruling, the VwGH has allowed legal assistance in several domestic cases.

Following on from reforms to restrict the right to family reunification in 2016, discussed below, a draft law on alien law reform (FrÄG 2017) included measures to require family members to cover the costs of proving family links, for instance through DNA tests, in order to be reunited with beneficiaries of international protection. The amendment, criticised for imposing more onerous hurdles on family members and for creating risks of rendering family reunification ineffective in practice,³⁶⁸ was not adopted. Costs of DNA tests are refunded where these are ordered by the BFA.

³⁶⁵ Article 35(5) AsylG.

³⁶⁶ VwGH, Decision Ra 2015/21/0230 to 0231, 28 January 2016; Ra 2016/20/0231, 26 January 2017.

³⁶⁷ CJEU, Case C-550/16 A. and S., Opinion of AG Bot of 26 October 2017.

³⁶⁸ See e.g. Diakonie, *Stellungnahme der Diakonie Österreich zum Entwurf betreffend ein Fremdenrechtsänderungsgesetz 2017*, 18 January 2017, available in German at: <http://bit.ly/2kwEDoK>.

1.2. Waiting periods and material conditions

Family members of **refugees** can apply for an entry visa immediately after the status recognition of the sponsor. However, a number of restrictions have been put in place as of 1 June 2016. If the application is submitted to an Austrian representation within 3 months, no further requirements are imposed.³⁶⁹ 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.³⁷⁰ These are material requirements set in line with requirements for other third-country nationals. No language knowledge is required for family reunification.

Subsidiary protection beneficiaries' family members can only submit an application after at least 3 years of the sponsor's recognition.³⁷¹ The aforementioned requirements – sufficient income, health insurance and accommodation – in force since 1 June 2016 are always applicable to subsidiary protection beneficiaries,³⁷² with the exception of unaccompanied children holders of subsidiary protection.³⁷³

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

This is despite the fact that the reform makes explicit reference to Article 8 ECHR in Article 35(4) AsylG, and the explanatory notes cite a ruling of the Administrative High Court that an application for a visa for family reunion with a person entitled to protection should be granted if this is necessary to maintain private and family life.³⁷⁴

The BFA has processed 7,612 family reunification applications in 2017.³⁷⁵ In 2016, 9,494 applications were submitted. Over 50% of applications came from Syria (6,928), followed by Afghanistan (816), stateless persons (571), and Iraq (475).³⁷⁶

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.³⁷⁷

³⁶⁹ Article 35(1) AsylG.

³⁷⁰ *Ibid*, citing Article 60 AsylG.

³⁷¹ Article 35(2) AsylG.

³⁷² Article 35(2) AsylG.

³⁷³ Article 35(2a) AsylG.

³⁷⁴ VwGH, Decision Ra 2013/22/0224, 11 November 2013.

³⁷⁵ BFA, '2017: Das Jahr der Aufarbeitung', 11 January 2018, available in German at: <http://bit.ly/2FnCV4G>.

³⁷⁶ Ministry of Interior, Reply to parliamentary question 12595/J (XXV.GP), 11 May 2017, available in German at: <http://bit.ly/2sNDP0l>.

³⁷⁷ VwGH, Decision Ra 2017/19/0218, 22 November 2017.

C. Movement and mobility

1. Freedom of movement

Persons with international protection status are free to move and settle throughout the Austrian territory. However, freedom of movement is practically restricted where beneficiaries are dependent on services (see [Social Welfare](#)).

The Minister of Labour and Social Affairs has also considered the possibility of residence restrictions after recognition of status, to respond to a trend of beneficiaries going to **Vienna** after receiving a decision.³⁷⁸

2. Travel documents

Since 2015, travel documents for beneficiaries of international protection are issued for a period of up to 5 years.³⁷⁹ Before that, travel documents for recognised **refugees** had a validity of 2 years and documents for **subsidiary protection** beneficiaries could be valid for even shorter periods.

Refugees obtain a Convention travel document without further conditions, unless there are compelling reasons in terms of national security and public order against the issuance of a document,³⁸⁰ whereas subsidiary protection beneficiaries must establish that they are unable to obtain a travel document from their country of origin.³⁸¹ A geographical limitation to travel covering the country of origin applies to documents for both protection statuses.

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

The number of travel documents issued in 2017 is not available.

D. Housing

Indicators: Housing

1. For how long are beneficiaries entitled to receive basic care?	
❖ Refugee status	4 months
❖ Subsidiary protection	No time limit
2. Number of beneficiaries receiving basic care as of 31 December 2017	14,044

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

Basic Care is organised accommodation in inns, boarding houses, reception centres of NGOs or of the respective federal province, or a rent subsidy when an asylum seeker rents a flat him or herself. The

³⁷⁸ Der Standard, 'Bessere Absicherung zieht Asylberechtigte verstärkt nach Wien', 11 August 2016, available in German at: <http://bit.ly/2k7aPT0>.

³⁷⁹ Article 90(1) FPG.

³⁸⁰ VwGH, Decision 2013/21/0003, 16 May 2013. One example of such reasons was found in the case of a person convicted of international drug dealing: VwGH, Decision 2009/21/0340, 29 April 2010.

³⁸¹ Article 88(2a) FPG.

prevailing form of Basic Care is organised accommodation, except for **Vienna** where private accommodation prevails (see [Reception Conditions: Forms and Levels](#)).

At the end of 2017, a total 4,141 refugees and 9,903 subsidiary protection beneficiaries received Basic Care, of which over 50% in **Vienna**:

Beneficiaries of international protection in Basic Care: 31 December 2017			
Province / Federal centre	Refugee status	Subsidiary protection	Total
EAST Traiskirchen	10	0	10
EAST Thalham	3	0	3
Burgenland	113	169	282
Carinthia	186	253	439
Lower Austria	434	968	1,402
Upper Austria	398	676	1,074
Salzburg	293	314	607
Styria	338	543	881
Tyrol	454	340	794
Vorarlberg	194	582	776
Vienna	1,718	6,058	7,776
Total	4,141	9,903	14,044

Source: Grundversorgung Betreuungsinformationssystem

Support after the end of Basic Care is insufficient. Although there are some consultation services which give advice on searching for a flat and concluding a rental contract, there are no financial resources to actively help for a solution to the virulent accommodation problem. The rents in the private accommodation market have significantly risen. Recipients of Basic Care, which includes **beneficiaries of subsidiary protection** in a several provinces, cannot find adequate accommodation with a subsidy of €150 per month for renting a flat. Families in Basic Care receive €300. Financial support for refugees and beneficiaries of subsidiary protection who receive needs-oriented minimum basic income are slightly better off; the size of a family is taken into account and it is possible to either completely subsidise the rent (as is the case in **Tyrol**) or receive subsidies for the rent.

Refugees can also apply for social housing, when they are at risk of becoming homeless. Nevertheless, the waiting lists are long and an emergency flat is only sometimes available. Conditions like residence of 2 years in the city of **Vienna** make it more difficult to get a cheaper community flat. In many regions of Austria, there are not even any social housing schemes available. Refugees are excluded from the second possibility of cheap accommodations, co-operative flats, because they have to contribute to the construction cost and they lack the necessary capital.

Experience shows that persons with protection status often change their flat in the first year(s) after recognition and the costs for rent are much higher than those prescribed by law. The introduction of a time limited [Residence Permit](#) has also been criticised by NGOs and experts as it makes it more difficult to rent a flat without perspective to stay.

E. Employment and education

1. Access to the labour market

Starting with the recognition of their protection status, refugees and beneficiaries of subsidiary protection have free access to the labour market. To be successfully integrated in the labour market, however, many obstacles have to be overcome. Frequently cited obstacles are inadequate language proficiency, lack of qualifications or lack of proof thereof. The budget for language courses was increased significantly and in most federal provinces language courses are already offered during the asylum procedures, albeit in limited amounts. The organisation SOS Mitmensch found these differences in its latest survey, between October 2016 and January 2017.³⁸²

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 intends to accelerate the procedure for the recognition of education and professional qualifications obtained outside Austria.³⁸³ 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 labour market integration. Despite the shortage of skilled workers in Austria, it is former technicians in particular who have had very little chances of finding work until now. The mismatch between qualifications and employment is high: more than 75% of respondents worked in an area which did not or only partially fit with their education. 25% of respondents had participated in a competence check by the AMS, but participation in the check and value courses had had no direct impact on the integration of their previous work experience; the potential effects of these recent measures are only expected to be made visible in the medium term.³⁸⁴

Austria has set up a number of counselling and contact points, as well as an information portal (AST). It is too early to assess the effect of these services in practice. In **Vienna**, however, all beneficiaries now undergo a competency evaluation. Where recognised beforehand, highly qualified persons in regulated profession e.g. doctors are sent to “Check In Plus” immediately to receive assistance in the recognition process.

Beneficiaries have to consult the Austrian Integration Fund (ÖIF) after they have received the protection status. The ÖIF places these persons to language and Austrian value courses. They have to register with the job centre and can then take part in job-related assistance measures, if their language proficiency is sufficient, or in language-related assistance measures. Surveys of the job centres found that 10% of the persons with protection status can be integrated into the labour market within the first year.

The job centres expected that an additional 33,800 recognised refugees will be looking for a job or apprenticeship in 2016. To achieve better integration, their budget included 22,400 places in German courses, 13,500 places for the “qualifications check”, 18,100 consultations, 5,700 trainings and 2,100 specific occupation schemes. These Austria-wide measures cost €68.4m in 2016.³⁸⁵ The qualification

³⁸² SOS Mitmensch, *Deutschkurse für Asylsuchende – Ein Bundesländervergleich*, January 2017, available in German at: <http://bit.ly/2kHqM0a>.

³⁸³ Anerkennungs- und Bewertungsgesetz (AuBG), BGBl. I Nr 55/2016, available at: <http://bit.ly/2lkdc5S>.

³⁸⁴ ICMPD, *Integrationsmassnahmen und Arbeitsmarkterfolg von Flüchtlingen und subsidiär Schutzberechtigten in Österreich*, November 2017, available in German at: <http://bit.ly/2Fj7S9h>.

³⁸⁵ Salzburger Nachrichten, ‘AMS: Flüchtlinge können am Arbeitsmarkt integriert werden’, 12 January 2016, available in German at: <http://bit.ly/2k2PLsQ>.

checks are concluded with a certificate about the attested knowledge. The Austrian Federal Chamber of Commerce has also initiated projects to help refugees to obtain a training relevant for the Austrian labour market.³⁸⁶

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](#)).

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 with higher unemployment rates is one area which militates for the closing of borders.

As of April 2017, a total 28,925 beneficiaries of international protection were unemployed in the whole of Austria – 24,015 refugees and 4,910 subsidiary protection beneficiaries, originating mainly from Syria, Afghanistan, Russia and Iraq. The distribution of unemployed beneficiaries also varies across the provinces: at that time, 18,036 were in **Vienna**, 2,965 in **Lower Austria** and 2,760 in **Upper Austria**. According to the Labour Market Service (AMS), the number of beneficiaries who had found employment above the minimum wage at that time included: 5,192 Afghans, 3,016 Syrians, 2,997 Iranians and 1,137 Iraqis.³⁸⁷

In **Vorarlberg**, it was expected in March 2017 that about 2,800 beneficiaries needed to be integrated into the labour market in the medium term, although a significant increase in employment among the main groups of beneficiaries of protection had been noted.³⁸⁸

2. Access to education

Access to education is the same for beneficiaries as for asylum seekers (see [Reception Conditions: Education](#)). However, there is no restriction with regard to apprenticeships for beneficiaries. **Refugees** can receive a public grant including support for public transport in order to study, which is not available for asylum seekers. As of 1 January 2017, all minors, including refugees and beneficiaries of subsidiary protection, are under the duty to attend either a higher school, to do an apprenticeship or to prepare for an apprenticeship through other courses (*Ausbildungspflicht*).³⁸⁹

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

³⁸⁶ Chamber of Commerce of Salzburg, 'Für zügige Integration in Arbeitsmarkt und Wirtschaft', 15 December 2016, available in German at: <http://bit.ly/2kSsRbK>.

³⁸⁷ Salzburger Nachrichten, 'AMS wartet auf Flüchtlinge - viele noch im Asylverfahren', 2 May 2017, available in German at: <http://bit.ly/2ol7uRo>.

³⁸⁸ Province of Vorarlberg, 'Arbeitsmarktintegration von Flüchtlingen', 3 March 2017, available in German at: <http://bit.ly/2ojNRZM>.

³⁸⁹ Ausbildungspflichtgesetz (ApfIG), BGBl. I Nr 120/2016, available at: <http://bit.ly/2lkgXsh>.

F. Social welfare

1. Forms and levels of social benefits

1.1. Needs-based minimum benefit

Access to social benefits is not the same for refugees and subsidiary protection beneficiaries. Holders of **subsidiary protection** have the right to Basic Care, which is significantly lower than the needs-based minimum benefit (*bedarfsorientierte Mindestsicherung*, BMS) to which **refugees** are entitled. Eligibility for the needs-based minimum benefit is derived directly from Article 29 of the recast Qualification Directive for subsidiary protection beneficiaries who do not receive Basic Care but reside in a rented flat. Currently, however, some federal provinces (**Burgenland, Lower Austria, Salzburg and Styria**) do not provide needs-based minimum benefits to beneficiaries of subsidiary protection at all, but only provide so-called “core benefits” under their Basic Care legislation.

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.³⁹⁰

In addition, **refugees** who apply for the needs-based minimum benefit are no longer on equal terms with nationals in some federal provinces:

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.

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 per month subject to compliance with integration measures. The total amount of benefits granted per month is €560. The Administrative Court (LVwG) of Upper Austria has made a preliminary reference to the CJEU to ask: (i) whether Article 29 of the recast Qualification Directive is directly applicable; and (ii) whether it is possible to differentiate the level of benefits granted on the basis of the duration of the right of residence.³⁹¹

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.³⁹²

³⁹⁰ VfGH, Decision E 3297/2016, 7 July 2017, available in German at: <http://bit.ly/2EOPIFB>.

³⁹¹ LVwG Upper Austria, ‘Bedarfsorientierte Mindestsicherung für befristet Asylberechtigte: Landesverwaltungsgericht Oberösterreich legt EuGH Fragen zur Vorabentscheidung vor’, 19 December 2017, available in German at: <http://bit.ly/2GDxy0I>.

³⁹² VfGH, Decision V 101/2017-11, 12 December 2017, available in German at: <http://bit.ly/2EMeAnP>.

1.2. Other social benefits

Beneficiaries of subsidiary protection are also treated differentially with regard to the family and child care allowances, to which they are only entitled if they do not receive Basic Care. An additional condition for child care allowance for these persons is income through work.

2. Conditions for social benefits

The main condition for the needs-based minimum benefit is the need for assistance, which also applies to nationals.

However, additional requirements have been introduced in some federal provinces in the last 2 years. These include an integration contract and participation in 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. From April 2018 onwards, participation in the integration programme will also be possible for asylum seekers coming from countries of origin with high recognition rates.³⁹³

In **Styria**, benefits can be cut up to 25% already for small misdemeanours, e.g. missing an appointment. In **Lower Austria**, where German language courses are mandatory for persons in the needs-based minimum benefit system, the allowance can be reduced by up to 50% if the person refuses to attend. Conversely, in **Vorarlberg**, where beneficiaries are obliged to sign an integration agreement since January 2016, benefits can be reduced or withdrawn when refugees do not adhere to the integration agreement which they have to enter, e.g. by refusing to attend a language course.

Social assistance is distributed by the Social Department of the federal province. The Tax Office is responsible for the family allowance, while health insurance is responsible for the child care allowance. The needs-based minimum benefit is granted in the respective federal province where the beneficiary resides. Beneficiaries may transfer their residence to another federal province, however. In one case, **Upper Austria** reduced benefits by 15% due to the beneficiary's relocation to **Tyrol**. The Administrative Court of Tyrol found the reduction unlawful, as it was necessary for the person to move to Tyrol in order to find employment.³⁹⁴

Lower Austria has also introduced a 5-year residence requirement, which has been appealed by the LVwG before the Constitutional Court.

G. Health care

As **beneficiaries of subsidiary protection** have no maximum time limit on basic care, they always enjoy health insurance similar to asylum seekers (see [Reception Conditions: Health Care](#)). Meanwhile, **refugees** enjoy basic care for 4 months after the recognition of their status. When participating in courses of the job centres, they are also covered by health insurance. As soon as they start to work, 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.

³⁹³ Labour Integration Act, BGBl. I No 75/2017, 19 June 2017, available in German at: <http://bit.ly/2EXvtPU>.

³⁹⁴ LVwG Tyrol, Decision 2016/41/0301-1, 24 February 2016.

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

ANNEX I – Transposition of the CEAS in national legislation

Directives and other CEAS measures transposed into national legislation

Directive	Deadline for transposition	Date of transposition	Official title of corresponding act	Web Link
Directive 2011/95/EU Recast Qualification Directive	21 December 2013	1 January 2014	Federal Act concerning the Granting of Asylum (AsylG) Aliens Law Restructuring Law - Adjustment Law	http://bit.ly/1QjH2M7 http://bit.ly/2lyUjvp
Directive 2013/32/EU Recast Asylum Procedures Directive	20 July 2015 Article 31(3)-(5) to be transposed by 20 July 2018	20 July 2015	Aliens Law Amendment Act (FrÄG 2015) BGBl 70/2015 of 18 June 2015	http://bit.ly/1SzV6Du
Directive 2013/33/EU Recast Reception Conditions Directive	20 July 2015	20 July 2015	Aliens Law Amendment Act (FrÄG 2015) BGBl 70/2015 of 18 June 2015	http://bit.ly/1SzV6Du
Regulation (EU) No 604/2013 Dublin III Regulation	Directly applicable 20 July 2013	20 July 2015	Aliens Law Amendment Act (FrÄG 2015) BGBl 70/2015 of 18 June 2015	http://bit.ly/1SzV6Du