

Country Report: Austria

Updated May 2007

Introduction

1. Current situation in the country

Over the years, Austria has received a considerable number of refugees in times of crisis in neighbouring regions. Many were given temporary protection. Refugees from Bosnia were well integrated, on the whole, while refugees from Kosovo were only granted permission to stay on for humanitarian reasons after their temporary protection expired. Some of the Balkan refugees also sought asylum, which led to rising numbers of asylum applications towards the end of the 1990s. There were also many asylum seekers from Afghanistan.

Since 2003 the number of applications for asylum has declined. The asylum system could not keep up with the growing number of applicants, and procedures took longer. As in preceding decades, Austria continued to be a transit country for refugees after 1989 due to the increasing severity of asylum regulations and cutbacks in social welfare. Homelessness in Austria induced many to go to other EU states. 80 percent of procedures (approx. 25,000) were closed in 2003 because the applicant had no fixed address, was not to be found at their address, or an application submitted from abroad lacked substance. Only 6,400 procedures were concluded with a final decision - including the decision that Austria was not responsible for them.

In 2004 the share of terminated procedures declined but, due to the accession of new EU member states, it is expected that, after a rapid examination of competences, there will be a rise in the numbers of asylum seekers sent back to the states from which they entered the country.

In July 2005 the parliament agreed to tighten the asylum law. On the pretext of combating any abuse of the asylum system several of the new provisions give cause for concern when it comes to human rights. They stipulate more obligations to cooperate and sanctions, the wide use of detention pending deportation from the beginning of the asylum-procedure on, as well as the extension of deportation custody up to 10 months. The first hearing at the first reception centres must be carried out by a security body and under certain circumstances any public security body will hold the first interview. Negative decisions shall now be served by the Alien Police, a provision which aims at detaining asylum seekers in the event of a rejection and making access to legal remedies and advice more difficult for them. Also, the residence permit during the admissibility procedure is restricted to the district where the first reception centre is located.

2. Statistics

Applications

1. Total number of individual asylum seekers who arrived (with variation in %):

2004	2005	Variation +/- (%)	2006	Variation +/- (%)
24676	22461	- 8,8	13349	- 40,6

Source: <http://www.bmi.gv.at>

2. Breakdown according to the country of origin/nationality:

Country of origin / nationality	2004	2005	Variation +/- (%)	2006	Variation +/- %
Serbia Montenegro	2835	4408	55,3	2515	-43
Russian Federation	6172	4359	-29,4	2.441	- 44
Moldavia	1346	1210	-10,1	902	- 25
Afghanistan	757	928	21,9	699	- 24
Turkey	1114	1067	-4,9	668	-37
Georgia	1731	953	-44,9	564	- 41
Mongolia	511	641	25,2	541	-15
India	1839	1530	-16,8	479	- 69
Nigeria	1828	881	-51,9	421	- 52
Iraq	232	222	-4,7	380	+ 72
Armenia	414	520	24,6	350	- 32
Iran	343	306	-10,8	274	-10
Bosnia-Herzegowina				231	+ 23
Stateless	197	374	91,4	204	- 46
China Republic	571	460	-18	194	- 49
Mazedonia	323	454	39,9	193	- 57
Somalia				183	+ 105
Ukraine	426	278	-34,5	176	- 37
Belarus	213	297	39,4	172	- 42
Bangladesh	330	548	66,1	140	- 74
Pakistan	575	498	-13,4	110	- 78

Source: <http://www.bmi.gv.at>

3. Unaccompanied minors according to the country of origin/nationality:

Country of origin	Total (2005)	Total (2006)
Afghanistan	93	46
Russian Federation	74	56
Nigeria	74	40
Moldava	70	22
India	64	22
Serbia	60	27
Mongolei	39	25
Algeria	30	25
Georgia	30	9
Gambia	27	17
Belarus	27	4

Marokko	7	23
Bangladesh	21	7
other	181	91
TOTAL	790	414

Source: <http://www.bmi.gv.at>

Recognition Rates

4. Total number of applications decided and the statuses accorded:

Statuses	2004		2005	
	Number	%	Number	%
Asylum granted	4.913	49,8	4.528	45,5
Asylum not granted	4.955	50,2	5.426	54,5
Terminated procedures (including withdrawal, no longer relevant, res judicata)	15.918		17.406	
In procedure	36.609		41.484	
Other decisions - subsidiary protection	947	17,2	772	16
Total decisions				

2006	
Statuses	Number
Asylum granted	4.063
Asylum not granted	5.867
Terminated procedures (including withdrawal, no longer relevant, res judicata)	15.488
In procedure	39.743
Other decisions - subsidiary protection	909
Total decisions	

Source: <http://www.bmi.gv.at>

5. Decisions 2005 according to the country of origin:

Country of origin	Total decisions	Geneva Convention recognition	Protection from deportation	Terminated procedures	Rejections refugee status	Formal decisions

Russian Federation	2678	2427	216	3274	251	596
Serbia and Montenegro	1475	462	91	2303	1013	828
Turky	662	70	14	1035	592	373
Afghanistan	656	517	164	860	139	204
Nigeria	638	7	9	1121	631	483
Georgia	533	58	33	1069	475	536
Indien	354	1	0	1329	353	975
Iran	287	247	19	589	40	302
Moldavia	221	7	11	1318	214	1097
Iraq	179	130	56	342	49	163
Mazedonia	174	8	8	287	166	113
Ukraine	170	32	13	322	138	152
Armenia	137	39	36	222	98	85
China Rep	129	10	1	351	119	222
Bangladesh	112	0	0	567	112	455

2006

Country of origin	Total decisions	Geneva Convention recognition	Protection from deportation	Terminated procedures	Rejections refugee status	Formal decisions
Russische Fed	2488	2090	214	2946	398	458
Serbia	1848	318	168	2717	1530	869
Afghanistan	603	475	212	748	128	145
Georgia	542	38	27	853	504	311
Turky	493	113	30	800	380	307
India	434	2	3	776	432	342
Nigeria	363	11	11	683	352	320
Iran	273	211	15	353	62	80
Moldavia	272	13	10	1020	259	748
Armenia	225	100	35	316	125	91
Mazedonia	167	10	11	273	157	106
Mongolia	161	2	8	369	159	208
China Rep	143	25	1	315	118	172
Iraq	142	92	46	264	50	122
Ukraine	127	20	10	222	107	95
Bosnia-Herzegowina	122	17	21	259	105	137

Source: <http://www.bmi.gv.at>

Deportations / Removals

6. Persons returned on "safe third country" grounds:

No figures available for returned asylum seekers. Number of decisions on asylum-applications based on "safe third country" grounds 2005: 18 (figures not available for 2006)

Rejections at the borders in 2005 (various reasons): 27.013

Rejections at the borders in 2006 (various reasons): 31.189

Asylum seekers should not be included in these figures, because rejection at the borders is not allowed. We do not know if all asylum seekers are able to act on their wish to apply for asylum.

Source: www.bmi.gv.at

7. Deportations of rejected asylum seekers:

This figure includes deportations of other aliens in 2005, rejected asylum-seekers included: 4.277

Source: www.bmi.gv.at

Deportations of aliens to country of origin or third countries: no figures available for 2005

8. Dublin II Convention practice:

Countries	Number of requests by Austria to other Dublin II states (2005)	Number of requests to Austria (2005)
Belgien BE	83	205
Tschechien CZ	370	53
Deutschland DE	625	1116
Estland EE	0	0
Griechenland EL	119	0
Spanien ES	99	25
Frankreich FR	204	558
Irland IE	7	29
Italien IT	325	99
Zypern CY	24	0
Lettland LV	0	0
Litauen LT	8	2
Luxemburg LU	17	19
Ungarn HU	946	17
Malta MT	1	0
Niederlande NL	63	229
Polen PL	1915	243
Portugal PT	6	1
Slowenien SI	120	1
Slowakei SK	2117	60
Finnland FI	10	71
Schweden SE	142	286
Vereinigtes Königreich UK	13	198
Island IS	0	2
Norwegen NO	37	36
Total	7251	3250

Source: Parlamentarische Anfragebeantwortung 2319/AB XXII.GP of 18 January 2005

Special Procedures

9. Airport procedure

70 asylum-procedures at the airport in 2005, 81 in 2006.

A. Statutory and structural conditions

1. Ratifications

	Ratified	In force since	Status
Geneva Convention	1 November 1954	30 January 1955	Statutory status, self-executing
European Convention on Human Rights	5 August 1958	3 September 1958	Constitutional status (relevant for examining obstacles to deportation)
Convention on the Rights of the Child	6 August 1992		Statutory status, with reservations
UN Convention against Torture	6 January 1989	1 May 1989	
Asylum Act (AsylG 2005)	7 July 2005	1 January 2006	Statutory Status
Constitution			Contains no legal right to asylum

2. Legal basis

Basic Provision Agreement (*Grundversorgungsvereinbarung*) – Art. 15a B-VG (Federal Gazette BGBl. I No. 80/2004), 15 July 2004 Agreement between the federal and state governments under Art. 15a B-VG concerning joint measures to provide temporary basic care in Austria for foreigners in need of assistance and protection (asylum applicants, those entitled to asylum, displaced persons and other persons who cannot be deported for legal or practical reasons)

The Basic Provision Agreement lays down the competences of the federal government and states, defining target groups and services. This agreement went into force on 1 May 2004. It is also regarded as a contribution to implementing the EU Directive on reception conditions.

Federal law regulating the basic provision of asylum seekers during the asylum procedure and the basic provision of certain other aliens (Federal Basic Provision Act 2005 – GVG-B 2005) BGBl. No. 405/1991 idF BGBl. I No. 100/2005.

The Federal Interior Minister's ordinance prohibiting unauthorised entry to and presence in the federal care facilities of the federal government of 2005 (*Betreuungseinrichtungen-BetretungsV 2005 – BEBV 2005*)

BGBl. II No. 2/2005, issued on 3 January 2005.

It lays down the access to five federal care facilities of the federal government

At the federal level, support for the asylum seeker's livelihood is laid down in the **Federal Basic Provision Act** from 2005. It contains criteria for benefit claims, and for the type and duration of benefits. As a consequence of the Basic Provision Agreement between the federal government and the states changes of competences emerge. This is allowed for in the version of the Federal Basic Provision Act effective from 2005 by the federal government restricting its competence for guaranteeing material reception conditions to asylum seekers in federal care centres (it runs five such centres, including three for initial reception). In other words, the bulk of asylum seekers are subject to the statutory arrangements of the federal states. A number of competences were transferred to the states as early as 1 May 2004.

So far, all federal states have governmental decisions to implement the Basic Care Agreement. However, legal provisions for the implementation of the § 15a Agreement or changes of the Social Welfare Law have occurred only partly.

Such changes have been enforced by the federal states Vienna and Styria and Tyrol until 1 January 2006, and there are draft bills from other federal states like Burgenland.¹

In the belated federal states, the benefits of the basic provision, for which no legal claim exists, though, are unsettled, because the Federal Basic Provision Act only applies to a fraction of asylum seekers, mainly during the admission examination.

According to the social welfare laws of the states, asylum seekers in most federal states are entitled to receive benefits from social welfare benefits, but the principle of subsidiarity applies. With the amendments of the social welfare law or the introduction of a basic provision law in the respective federal states, asylum-seekers lost the right to receive social welfare benefits like nationals.

The Aliens' Police Act 2005 (BGBl. I No. 100/2005) is applicable to asylum seekers, with exceptions for measures for the termination of residence.

The Aliens Employment Act (BGB. No. 218/1975), last amended in BGBl. I No. 104/2005) provides for maximum quota and criteria for taking up employment. The amendment provides for asylum seekers to be granted a permit after a period of three months, if no final decision has been taken by then.

School Organisation Act (SchOG, BGBl. 1996/242)

Compulsory Education Act (SchPflG, BGBl. 1985/76)

3. Competences

Federal government	
Interior Ministry	The asylum authority of first instance is the Federal Asylum Office. It reports to the Federal Interior Ministry. The appeal department, the Independent Federal Asylum Senate (UBAS), has been allocated to the Interior Ministry since 2003.
School / higher education	Ministry for Education, Research and Culture
Employment	Ministry for Economics and Labour

¹ During 2006 other Federal States enforced such laws: Burgenland, Vorarlberg, Carinthia. In Upper Austria the law passed the federal parliament, still pending at the end of 2006 are the implementation of laws in Lower Austria and Salzburg.

The states are meanwhile responsible for supporting asylum seekers who cannot (adequately) finance their livelihood with their own resources (basic provision or social welfare), unless their provision lies within the competence of the federal government.

4. Societal context

Access to the states' social welfare is blocked by the Basic Provision Agreement. In the states' Social Welfare Laws, provision is granted only - provided that asylum seekers even have legal claim to social welfare - if comparable provisions cannot be claimed from other legal foundations. Access to welfare benefits for asylum seekers has become increasingly restrictive in several states in the last few years, either through the introduction of a specific term of residence as a prerequisite for benefits (Styria) or through the total exclusion of all migrants without equal status with Austrian citizens (Tyrol).

The states' Social Welfare Laws are by no means uniform, but allow for different conditions and benefits.

The recommended levels for a person receiving individual support in the federal states (*Länder*) range from €382.10 in Burgenland to €532.20 in Upper Austria.

The social welfare system of the federal states does not just feature differing levels of subsistence, it covers different kinds of supplementary benefit, e.g. for heating, clothing and education; rent is either covered in full or subsidised according to a flat rate.

Only the support for asylum seekers in private accommodation lends itself to a comparison with the social benefits available to Austrians, since in organised accommodation the costs of the operator (staff, investments, maintenance) are included in the daily rate (*Tagessatz*).² In the case of those supported privately, the gap as compared to benefits for Austrians becomes even clearer: someone in Styria receives €486 per month for subsistence (as the amount is disbursed fourteen times, it is actually €567 per month according to the benefit levels of the social welfare system of 2005). An asylum seeker only receives €180, though. However, in Styria and also in Upper Austria social welfare benefit may have to be paid back when the person no longer suffers hardship. Regarding the cost of rent, the Viennese example shows it is allowed to amount to not even half the normal rate. Asylum seekers receive a maximum of €10, while Austrians receive a maximum of €251.60. Normal rents are far above €10. Whereas there have been valorisations of the social welfare benefits, nothing has happened for the basic provision so far.³ The massive shortfall of the social welfare's benefit levels by basic provision makes the access to a life outside organised quarters and refugee homes difficult and has an impact on the integration of asylum seekers.

There is no disadvantage regarding health insurance. All asylum seekers covered by the Basic Provision Agreement are insured against sickness. Costs not covered by the insurance may be assumed in individual cases.

Drawing family benefit for children is considered in the social welfare systems when setting the benefit levels. For asylum seekers, the eligibility for this benefit was cancelled in December 2004.⁴

5. Access to the asylum process: conditions of entry and making application

An asylum application is *made* when someone tells a security authority (*Sicherheitsbehörde*) or

² A daily rate of €16 results in €480 a month, which is below the total sum (subsistence plus individual rent) paid by the federal states to social welfare claimants.

³ The daily rate for subsistence and accommodation for asylum seekers has not been increased since the Federal Care Ordinance of 1992; then, a maximum rate of €16.40 was determined.

⁴ Amendment of the law on compensation for the financial burden of having a family BGBl. No. 142/2004 from 15 December 2004

a department of the public security service that he or she seeks protection from persecution. The application is *filed* when it is made in person to a first reception centre (EAST) or is brought before it by a security body. There are three first reception centres: EAST East (Traiskirchen and airport) and EAST West (Thalham).

The average duration of an asylum procedure, in the first instance, is several months. An appeal procedure takes on average one to two years; some procedures are still pending for over five years (after a lot of shuttling between the Administrative Court and the appeal body).

Legal _____ *protection*

Protection from deportation during the asylum procedure

In the case of appeals against rejecting notifications (safe third country or competence of another EU state), the Independent Federal Asylum Senate (UBAS) may recognise the suspensive effect within seven days from receipt of the appeal document. If the suspensive effect is not adjudicated within the period stipulated, the protection against deportation ends.

Since the non-admission of the application is linked to expulsion, there must be an examination of whether Art. 2, 3, 8 or the additional protocol No. 6 or 13 of the European Convention on Human Rights (ECHR) would be violated through implementing expulsion. There can be a further suspension of deportation in the individual case during the appeal procedure.

In the third instance appeal the suspensive effect can be recognised by the higher administrative or constitutional court.

Protection against deportation during the regular asylum procedure

Once the procedure has been admitted, deportation protection exists as a general rule pending the decision of the second instance (UBAS) in the form of a provisional residence permit. The authorities of the first instance (federal asylum office (*Bundesasylamt*)) can disallow the appeal its suspensive effect if the asylum seeker comes from a safe country of origin; if he or she tries to commit fraud with regards to his or her identity, nationality and the authenticity of his or her documents; if he or she brings forward reasons for persecution that do not correspond to the facts; if he or she does not bring forward any reasons for persecution at all; or if he or she has lodged the application only after an enforceable expulsion order or the prohibition of residence had been issued. In case of an appeal, the protection against deportation lasts up to seven days after arrival at the UBAS. After this time limit the protection is only held up if the suspensive effect is adjudicated.

In the extraordinary appeal procedure, the administrative or constitutional court may recognise the suspensive effect by which the provisional residence permit (extinguished with the negative decision of the second instance) is revived. In the meantime there is a gap in protection. Since the rejection of the asylum application - with the simultaneous rejection of subsidiary protection - is always connected to expulsion, this gap in protection can be very problematic.

6. Special procedures

Border procedure

As soon as they have crossed the border, refugees have, by law, to be brought before the first reception centre, regardless of whether they fulfil the entry prerequisites of the Aliens Act (valid passport, visa, crossing at border control points). To this end they may also be detained. If transport to the EAST is not immediately possible, asylum seekers may be detained for up to 48 hours in detention premises of the security authorities.

Special procedures at the airport

For asylum seekers arriving via an airport, due to a ruling by the federal asylum office the admission procedure can be carried out at the airport or the entry can be granted if the refoulement and rejection of the application is not probable. If the procedure is carried out at the airport, the asylum seeker has to be within the area of border control (special transit or area of dismissal) to guarantee their forcible return up to a maximum of six weeks.

An asylum application can only be dismissed in the airport procedure if the application is classified as being "manifestly unfounded", i.e. if there are no justified signs of reasons for protection; if the asylum seeker tries to commit fraud in front of the asylum office with regard to his or her identity, nationality or the authenticity of his or her documents; if the statement of the applicant does not correspond to the facts; if no persecution has been brought forward; or if the asylum seeker comes from a safe country of origin. In contrast to admission procedures in the other EAST, there is only one hearing in the airport procedure, at which a legal advisor is present.

Rejection and refoulement on grounds of third state safety may only take place at the airport with the permission of the UNHCR. This right of veto does not apply for refoulement under the Dublin procedure. Procedures at the airport appeals are subject to a special regulation; they must be submitted within a period of only seven days. The time period for the ruling by the UBAS has been shortened to two weeks.

Admission Procedures

In this procedure of intermediate examination in the EAST, primarily inadmissible applications shall be dealt with, among which are applications to be rejected due to third country safety or the competence of another EU state as well as follow-up applications. However, during the admission procedure also a decision as regards content (positive or negative) can be made.

The admission procedure must only take a maximum of twenty days, after which the asylum application is admitted, unless Dublin consultations take place. During the admission procedure, the asylum seeker is only allowed to stay within the area of the respective district's administrative authorities. Until the person has been fingerprinted and photographed, which is part of this procedure, the EAST must not be left. Besides the taking of fingerprints and photographs, security authorities are also responsible for an "interview" (regarding the escape route as well as the reasons for the escape in a limited way) in the admission procedure.

Within a maximum period of 72 hours stipulated by law an interrogation of the asylum seeker has to take place. At the end of the interrogation, the asylum seeker must be informed about whether or not his or her application will be admitted, rejected or if refugee or subsidiary status will be granted. If a negative decision is already planned during the admission procedure, legal advice has to be granted as well as a second hearing under the presence of the legal advisor.

7. Distribution

As of 1 May 2004 all asylum seekers must first be taken to the EAST or, rather, must file their asylum applications there. If the asylum procedure is admitted, the asylum seeker is transferred to the care of one of the federal states, depending on where there are free places in a centre. The Basic Care Law provides that after admission of the asylum procedure, the federal state will provide basic care for a maximum of 14 days. If the asylum seeker cannot be directed to a particular state for care, he or she will live in a legal no man's land without basic care.

Asylum seekers whose procedure is judged inadmissible either remain in the EAST or are remanded in deportation custody. Detainees due to be deported may - on humanitarian grounds - also be taken instead to accommodation known as "gentler means" (private accommodation with reporting requirement under §77 FPG). This usually applies to the wife and children of men in deportation custody.

As of 1 January 2006 asylum seekers can be remanded in deportation custody already at the beginning of the procedure, if it can be assumed as a result of the interrogation by the security authorities that the application will be rejected as inadmissible.

Asylum-seekers who file their application in custody (deportation- or disciplinary custody), remain imprisoned the whole procedure. Furthermore if an expulsion or a residence ban had been issued before the asylum was applied

8. Dublin II

Asylum seekers handed over to Austria are generally transferred to the care of the federal state again, where they had last been registered. In practice, there is usually a waiting list due to a scarce number of places for basis provision, until the asylum seeker is admitted to a federal state. The asylum seekers spend this waiting time with their consent in the airport's area of special transit, i.e. in a closed centre, although there are no legal reasons for a detention. During the instruction about this voluntary detention it comes to misunderstandings again and again. As a consequence, many asylum seekers also decide to leave the airport in order to go to the EAST Traiskirchen or other places themselves. However, by doing so they lose their right to basic provision (the legal basis for this approach is not clear; § 6 Federal Care Act may be applicable, according to which the authorities = federal asylum office (*Bundesasylamt*) decides on the first place of accommodation after admission has taken place in consent with the responsible authority of the respective state).

Returned asylum seekers who make a further application within six months after their application has been finally decided (in first or second instance) during their absence may be excluded from care (GVG-B §3 Par1 #3).

Asylum seekers awaiting the result of a Dublin consultation procedure are accommodated in the EAST, or a care centre of the State.

As of 1 January 2006 asylum seekers can be detained in deportation custody already during the consultation procedure – as a means of guaranteeing the expulsion. Asylum seekers stay the whole of the Dublin process in deportation custody until they are sent back. The expulsion can already be issued by the security authorities due to an illegitimate entry or stay if the wish to apply for asylum is not revealed. So far asylum seekers have been remanded in deportation custody immediately after being served with the decision. In order not to be sent back, several asylum seekers have left the EAST in 2005 as soon as they were being told of the intended deportation. The pre expulsion custody during the Dublin II procedure may effect the rights of

asylum-seekers of the reception directive. Persons providing legal advice and assistance (NGOs, lawyers) may only visit those asylum-seekers who managed to give them power of attorney. State appointed legal advisers give the legal advice immediately before the application is rejected and have therefore no time for further research). Detained asylum-seekers who should be sent to other EU countries do not fall under the scope of the Basic Provision Agreement and the implementing laws of the state or the federal states.

Austrian authorities make no use of the possibility of travelling to the competent country by their own, the police brings asylum-seekers to the airport or the border.

B. Details

1. Information (CD Art. 5)

Asylum seekers receive several fact sheets in the EAST, available in the most usual languages.⁵ There are also data viewers (informators) at the EAST and the outposts of the federal asylum office (*Bundesasylamt*), which give an audiovisual presentation of the most important stages of the asylum procedure in several languages⁶. If so desired, illiterate asylum seekers can have the information sheets read to them by interpreters. The written information is too difficult for many asylum seekers to cope with due to the language used and its graphic design, and also due to its quantity. Inquiries by NGO workers have shown that many are not familiar with the content. For asylum seekers who do not understand the usual languages sufficiently, there is no guarantee of information at the beginning of the asylum procedure and reception as provided by the Directive. In the admission procedure a consulting service is offered by a legal advisor if a negative advice is planned to be issued.

In the further course of the procedure asylum seekers can turn to refugee advisors at the federal asylum office.

Information on transfers to the care centres of the states is insufficient; in the majority of cases, asylum seekers receive information about their transfer only at short notice. It is not compulsory to have multilingual house rules in the accommodation centres and they hardly exist at all. In several cases, NGOs have created house rules in written form. For the federal care centres, house rules have been created by the federal asylum office as an unpublished ordinance.⁷ Relevant information is indispensable, above all with respect to the exclusion from benefits because of unacceptable behaviour.

Dublin II

Asylum seekers are not just informed about the planned date for handing over to the competent state. In particular, the police often come for female asylum seekers in "gentler means" without warning, early in the morning, and then their husbands are taken from deportation custody. This does not comply with the provisions of the Dublin regulation.

2. Documentation (CD Art. 6)

Asylum seekers in the EAST receive a procedure card with a photo, which certifies the tolerated

⁵ Informative material in the EAST on accommodation and provision (meal-times, compulsory presence, medical examination); initial information on the asylum procedure, an information sheet on the duties and rights of asylum seekers, an information sheet on EURODAC (data collection, transfer, information) and instructions according to the Dublin regulation.

⁶ Available in 14 languages, e.g. German, English, French, Spanish, Turkish, Arabic, Russian

⁷ Decree by the federal asylum office on the implementation of house rules for the federal care centres according to § 5 Par 3 of the Federal Basic Provisions Act BGBl 405/1991 as amended in BGBl I No100/2005

residence and records the stage in the admission procedure. Asylum seekers at the airport do not get any documents. Once the asylum procedure has been allowed, a residence permit card with a photo is issued, that entitles to receive documents from the federal asylum office, and may be revalidated until the final conclusion of the asylum procedure. Asylum seekers whose application has already been rejected in the merits in the EAST without the granting of a suspensive effect for the appeal, receive the residence card only when they file an appeal.

3. Legal support, legal protection, social counselling, NGO access (CD Art. 14)

If a dismissal or refoulement decision is to be taken during the admission process, legal advice is mandatory. The activity of the legal advisors selected, ordered and paid by the Interior Ministry is confined to the admission process. The composition of appeals is not part of their work, except for unaccompanied minors.

At the Federal Asylum Office, consultation hours are held by full-time NGO refugee advisors on behalf of the Interior Ministry. However, the demand exceeds their capacity.⁸ NGOs consider advice on voluntary return given, in the EAST to be problematic: it focuses, and generally starts after the first hearing in the EAST. In the EAST West the association *Menschenrechte Österreich* has been commissioned to give advice on matters dealing with return. In such cases, a legal advisor must be present at the final interview. Furthermore, advice on return is offered by several NGOs to asylum seekers as well who have been admitted to the procedure.

NGOs and charitable organisations offer legal advice and, in some cases, receive (inadequate) funding for this from the federal or state government. They advise on the drafting of legal remedies or take legal action as authorised representatives, participating in oral proceedings in the appeal procedure. After the final conclusion of the asylum procedure they sometimes prepare for appeals to the Higher Administrative Court (procedural aid application). The public assistance for legal advice has for years been regarded as completely inadequate, as have the number of professional staff in legal advice.

Since legal advice has been offered at central locations (state capitals), but the asylum seekers are often accommodated in remote locations, reaching the legal advice centre is difficult. Travel costs to the legal advice centres have to be funded from monthly spending money. In some cases the mobile social advisors take on the task of mediating legal assistance from NGOs.

For asylum seekers in deportation custody, there is no guarantee of access to legal advice and representation by NGOs. In every deportation custody facility run by the police there is a social service giving information on legal questions but not able to give advice. In practice some social services establish contact with legal advisors (e.g. in Eisenstadt or Salzburg), while others do not (e.g. Vienna, Linz, Innsbruck). In addition, there is no guarantee that asylum seekers have contact with the social service since advice is only given when the former request it.

Some specialised lawyers are ready to take on clients from NGOs, thanks to the Asylum Lawyer Network project. This applies to interesting legal questions, in particular, or to procedures before the supreme courts requiring a lawyer.

In the admission procedure the legal advisors can use interpreters from the EAST. NGOs have to organise their own interpreters - they are either colleagues who know languages, volunteers, or someone the asylum seekers themselves have brought along to translate.

⁸ A total of about 45 hours per week for all seven outposts of the Federal Asylum Office.

Advice on the reception conditions

Information and advice is given in the federal care centres by European Homecare. Written information material in the EAST was provided by the Federal Asylum Office and distributed by European Homecare. The Federal Asylum Agency ordered the rules of the house of the state's reception centres.

Since November 2003, unauthorised entry to the federal care centres has been punished by administrative sanction of up to €700 or a imprisonment as substitute for the penalty of up to four weeks, in case of recurrence by a fine and/or a prison sentence. According to the ordinance,⁹ there must be a justified interest in entering the care centre, which is always the case with the UNHCR and lawyers - including, in the latter case, working to gain a power of attorney. In the case of an NGO this is the case when its contact point is in the care centre or "as an organ or representative of an organisation entrusted with the tasks of care [it] has to enter this care institution to fulfil its tasks" (§1(3)2). It is unclear whether there has to be a public order here. Little empirical experience has been gained to date: authorised NGO representatives report no problems, and even non-authorised "persons of trust" have been able to accompany asylum seekers to make their application.

The ordinance on unauthorised entry is more restrictive than the Directive allows, since it not only stipulates restrictions for safety reasons, but also restrictions to maintain order.

With accommodation under state administration it is up to the private operators to check on who enters the premises.

Information and advice by charitable organisations and NGOs: refugee advisors with the federal asylum office and refugee advice centres may also be approached about questions of food and lodging.

The social care of the asylum seekers in accommodation centres is provided for by the Basic Provision Agreement. Most federal states have authorised NGOs with the social care; only in Tyrol the welfare office is under the state's administration. The carer-client ratio (1:170) provided for in the Basic Provision Agreement is regarded by NGOs as much too low. A further complicating factor is that travelling to the often distant accommodation centres frequently shortens the time available for advice, as well as the time for administrative duties given over to the welfare office. Many accommodation centres can therefore not be visited weekly.

4. Residence and freedom of movement (CD Art. 7)

In general there is freedom of residence and movement. A restriction exists for the period of the admission procedure (§24(4) AsylG), Due to the alien law package, which is responsible for the change of the Asylum Law and the Alien Police Law, new facts have been introduced considering the restriction of the freedom of movement up to the imposition of deportation custody, while in the event of unjustified leaving of the EAST deportation custody is no longer a reason for imprisonment. Until the new law came into effect, 181 such cases were recorded in 2005.

What is new is for example the limitation of districts during the admission procedure up to a maximum of twenty days or longer for Dublin-cases, i.e. a tolerated residence in the district the asylum seeker is looked after. As long as the first interrogation did not take place asylum-seekers are not allowed to leave the first reception centre. A limitation of the right of residence on the respective district can also be imposed during the regular procedure (denial of return) if there are grounds for the imposition of a residence ban (in most cases because of a judicial conviction; but

⁹ Ordinance on unauthorised entry into care centres 2005, BGBl. II No 2/2005

also because of repeated penalisation due to administrative violations like illegal employment or business, because of suspected affiliation with a criminal or terrorist organisation; when endangering public security by invoking or resorting to violence, or by public approval of terrorist activities etc.).

De facto asylum seekers may draw their benefits from the federal care system or Basic Provision Agreement only in the federal state to which they were assigned or in which they were registered. Moving from one federal state to another still involves major difficulties because this is generally only possible as an exchange and with the agreement of the competent *länder* authorities.

Asylum seekers can absent themselves from organised accommodation for up to three days without permission, but after that they are considered to have checked out. There is no procedure for readmission after a period of over three days; this is decided by the federal or state authorities in the individual case, with no guidelines having been issued on this to date.

There is protection of the inalienable sphere of private life. The Basic Provision Act provides in article 2 for the respect of family ties and the special needs of single women and minors when assigning an accommodation. In practise the conditions in the first reception centre and in detention, where asylum-seekers have to share the room with other persons and are living under permanent control give reasons for concerns

5. Families (CD Art. 8)

The Basic Provision Agreement provides for respect for family unity in terms of accommodation (Art 6 GV-V). As far as possible, account is to be taken of family ties when allocating accommodation (§2 Par2 GV-V).

Enabling family reunification is a responsibility in the context of caring for unaccompanied minors (Art 7(3)4 GV-V).

In practice, family unity is maintained. On request, relatives outside the core family are also assigned to the same accommodation.

The systematic separation of families does happen, however, when asylum seekers are to be sent back to a Dublin state. Mostly it is only the husband who is put in deportation custody, his wife and children remaining in the EAST or being sent to a care centre, particularly to "gentler means" (FrG §77). This separation of families gives reasons of concern. Very often woman and children have in practise no possibility to visit the husband and father in the police detention, because they are not able to travel. Generally the whole family is handed over to the competent Dublin state, but in some cases families became seperated.

6. Medical screening (CD Art. 9)

In the EAST, asylum seekers are assigned to a general medical check-up. This involves a compulsory lung X-ray as a precaution against TB. No quarantine is foreseen. In the case of a suspected illness, the asylum seeker is referred to a hospital. Furthermore, vaccinations have been conducted, a basic immunisation for children as with Austrian children. With adults, basic immunisation or a booster is recommended against diphtheria-tetanus-whooping cough (letter from the Ministry of Health and Women of 15 March 2004). The general practitioners working in the EAST refer patients to specialists as required. Further doctors with psychotherapeutic training or psychiatrists draw up diagnoses relevant for the asylum procedure.

7. Schooling and education of minors, access to employment, vocational training (CD Art. 10, 11, 12)

7a. Schooling (CD Art. 10)

In Austria all six to fifteen-year-olds have to attend school, regardless of their residential status or language. Special classes for asylum seekers can only be set up in special cases with the approval of the education ministry. Due to their lack of knowledge of German, school children can only be accepted for a maximum of 12 months as extraordinary pupils in public schools (extendable by another twelve months). Children who do not have German as their native language are also offered special classes in primary schools to improve their mastery of the language, but these tend to be an exception.

Children of school age in the EAST are generally not sent to school as it is assumed that they will be assigned to a care centre within three months. Should this period be exceeded, the children are sent to local schools. Those living in a "gentile means" often do not go to school, because no one cares about, because it is assumed that they will be sent back to a Dublin-state.. There is no special instruction for children at state schools at present.

Refugees over 15 years of age with insufficient language skills may be accepted in public vocational training or secondary schools as long as there are free places.

To attend compulsory vocational schools it is necessary to have successfully completed nine years of schooling in Austria or elsewhere, and to have signed an apprenticeship contract. Access to apprenticeships is determined by labour law, not by education legislation, contrary to the recommendations of the International Labour Organization (ILO). Young asylum seekers are subject to the regulations of the Aliens Employment Act (AuslBG) and, in order to be able to take up an apprenticeship, need an employment permit. Young asylum seekers generally fulfil none of the prerequisites for the granting of a permit. Only in the case of advanced integration (several years of residence) and a great demand for labour is there de facto a chance that the application for an employment permit will be approved by the labour market service.

Courses are offered for young asylum seekers and young adults in the context of the EQUAL project EPIMA. However, a fundamental problem is that even project-related work experience in companies is regarded as "employment" and thereby assessed as requiring a permit.

Fee-paying courses to complete elementary education offered by different educational organisations enable young people up to 21 years of age to obtain a school leaving certificate. This facilitates access to vocational schools.

When young people are no longer required to attend school it is particularly difficult to complete training. Travel costs to the training place or vocational school and other expenses - unlike with children and compulsory education - are not covered by basic provision, nor can they be afforded from the monthly spending money of €40. Moreover, there are frequently no opportunities in the region.

For school expenses and activities each child is granted contributions of €200 per year, mostly in the form of vouchers. Most of the times, this amount is not enough for older children for covering several costs of school events as well, like skiing or sports courses.

7b. Access to the labour market (CD Art. 11)

The current version of the Aliens Employment Act does not rule out the granting of an employment permit to asylum seekers if he or she submitted an asylum application, on which has not been decided legally binding since more than three months (AuslGB §4 Par3 #7). However, the limitation on seasonal work, quotas at federal and regional level and the administrative procedures required for substitute labour exclude the granting of employment permits to asylum seekers in practice. An employment permit granted by the regional labour market service allows for the employment of an asylum seeker by the employer. The permit is not transferable to other employers, though. As of 1 January 2006 asylum seekers cannot avoid this dependence on employers and new permit procedures. An employment permit (the condition for which is an employment for twelve months within fourteen months) which is issued to the employee must not be given anymore, because for that a legitimate settlement is required now (§14a AuslBG Par1 #1).

The possibility of starting self-employment has meanwhile failed due to the requirements of industrial law and the classification of self-employment. By analogy with non-self-employment, a three-month bar was introduced (GVG-B §7 Par2). In practice, asylum seekers mainly engage in selling newspapers in the street or delivering advertising leaflets to households. These jobs had been regarded as self-employment, but it is unclear whether asylum-seekers will need a working-permit for such activities or not. In a few cases the foreigner police issued a “ban on return” due to violation of the Foreigners Employment Act.

The Federal Care Act provides for a cash contribution as appreciation of voluntary casual work in a direct connection with the accommodation of asylum seekers (§7(1)). Pay rates here are, by order, between €3 and €5. Asylum seekers may be asked to do community jobs for the federal, state or local government, once their procedure has been admitted. These two forms of activity do not count as employment within the meaning of the Aliens Act and thus do not require a permit. However, this special arrangement completely undermines labour and social legislation.

Since summer 2005, it is stipulated that asylum seekers who have an income need to pay an expense load for the basic provision. There is only an allowance of €100 for the asylum seeker. If he or she has had an income for more than three months, the basic provision comes to an end. If the asylum seeker asks for readmission into basic provision after he or she has stopped the employment, cash contributions for the basic provision are demanded. It is assumed then that only €435 (1,5 times of the basic provision amount) have been spent for subsistence and accommodation during the period of employment. Income exceeding this amount is being demanded or deducted in the following months. This request of contribution causes many troubles, as in reality asylum-seekers spent the earned money and do not know how to survive the following months. NGOs have doubts if this kind of contribution is in line with the reception directive.

A number of asylum seekers have also had opportunities from time to time to top up their spending money by irregular employment, particularly through helping out in their accommodation or in the vicinity. Asylum seekers with dark skin have mostly been excluded from this for fear of spot-checks.

7c. Access to vocational training (CD Art. 12)

The access to assisted education and training programmes is bound to placement on the labour market. Since the labour market service does not cater for asylum seekers they are de facto excluded from training schemes.

If an asylum seeker meets the conditions for access to tertiary education (admission in the country of origin) he/she can obtain a scholarship to begin or continue the degree programme. A precondition is the completion of a preliminary course to acquire a sufficient knowledge of German.

8. (Material) reception conditions

8a. Modalities of provision (CD Art. 13, 14)

Since the Basic Provision Agreement there have been several possibilities of drawing benefit:

- a) in organised accommodation in the form of full provision or with self-catering
- b) disbursement of benefits for living costs and rent for those accommodated privately

Organised accommodation is run both by charitable organisations and NGOs and also by private companies. In the case of organised accommodation centres the daily rate for benefits is also geared to the standard of the respective accommodation. In Vienna, for example, a list of criteria was used for the selection process by which the accommodation facilities were classified in categories of €15, €16 or €17. Where self-catering is allowed there are mixed systems with disbursement of a monthly €150 per person for living costs or the provision of food by the operators. Commercial operators tend to offer full board and lodging.

The benefits of basic provision include accommodation, board, monthly spending money (€40, only in organised accommodation), health insurance and costs not covered by health insurance, free travel for school children, a clothing allowance, journeys to attend official appointments, leisure activities in organised accommodation, bridging assistance and travel costs for voluntary repatriation plus psychosocial care. These services are not linked to any special duration of residence and are not just granted to asylum seekers but also to other migrants in need of protection and assistance who cannot leave the country for legal or practical reasons.

Benefits from basic provision are only provided after the asylum seeker has personally appeared in the EAST and submitted an asylum application, and they cease on his/her leaving the country if the application was rejected. The period between the filing of an application (in writing or to a security authority) and the submission is not stipulated, which contravenes the EU Directive. Meeting material needs is also foreseen in the case of procedures before the supreme courts after the final conclusion of the procedure. In practise the basic provision is often terminated with the final rejection of the asylum application. The resuming of basic provision in case of suspensive effect of a higher courts complaint is handled differently in the federal states.

Providing accommodation is organised by the states. The federal government is responsible for four care centres.

Establishing standards and checking on them is, as of 1 May 2004, primarily the responsibility of the *Länder*. Several quarters of the *Länder* which met objections again and again in the past are closed now. In the state Upper Austria, privately owned guesthouses are being controlled by agents of the state together with NGOs. Due to the regional responsibility, NGOs control these quarters regularly.

The Federal Interior Ministry is responsible for the care centres of the federal government. The ministry's Human Rights Advisory Board is only responsible for them, although the board has no unanimous opinion. In the past, human rights spokespersons of the parliamentary parties also had an oversight function. For example, the standard of care provided by European Homecare was evaluated at their request. The building and health police assume their responsibilities as

required.¹⁰

8b. Facilities / Living conditions¹¹

Lower Austria	56 accommodation centres + Private flat	5.150 persons
Lower Austria	EAST East Traiskirchen ¹²	1.130 persons
Burgenland	15	850 persons
Vienna	31 homes + Private flat	7.300 persons
Upper Austria	88 accommodation centres	4.730 persons
Upper Austria	EAST West Thalham (11)	327 persons
Styria	70 accommodation centres	3.780 persons
Carinthia	28 accommodation centres	1,250 persons
Salzburg	19	1.440 persons
Tyrol	About 25	1590 persons
Vorarlberg	40 accommodation centres	980 persons

Figures as from 20. March 2006

In November 2005, all over Austria, the social provision system was catering for approx. 28,500 asylum seekers and other migrants who can not be deported.

The vast majority of accommodation outside Vienna, the federal capital, is in decentralised locations in structurally disadvantaged areas. Many are boarding houses and inns that would not be profitable for tourism.

The **Traiskirchen** care centre is about 25 km south of Vienna in a town with industry and tourism, and is easily accessible by public transport. The trip to Vienna costs €4.50. There are several buildings on the grounds of the former cadet school, catering for 1,100 to 1500 refugees. Statistics on accommodation capacity fluctuate between 800 and 1,500.

The care centre is run by European Homecare on behalf of the interior affairs ministry. The special facilities in the care centre for unaccompanied women (capacity of 100 people), along with unaccompanied minors (capacity of 78) are directed by the NGO SOS Menschenrechte (SOS human rights).

An example for a care centre in Lower Austria is the care centre of the *Grüner Kreis*, an organisation treating people with addiction-related diseases, in Aspang. It is 30 km away from the next city and hosts around 80 asylum-seekers. The accommodation lies in the middle of a forest, without any direct neighbours. The home has been used as refugee accommodation since 1998. The closest town, **Aspang**, is a 20-25-minute walk away by forest path; a bus running four times a day is used in the morning by school children. At noon the children are fetched by car by the operator. School children travel free of charge. The operator takes asylum seekers to see doctors if care is not possible through the general practitioner. Costs entailed by summons to visit the asylum authorities are covered. All other travel costs have to be covered from spending money, which in view of the great distance is clearly not feasible.

¹⁰ According to press releases of 14 October 2004, fire-police provisions are violated due to the over-crowding with 240 asylum seekers; infringements of sanitary regulations were also discovered.

¹¹ Only examples can be described here. This chapter does not cover the complete accommodation situation in one federal state; it compares standards and shows how much they differ.

¹² EAST and federal care centre.

Karwan-Haus, run by Caritas in the 8th district in Vienna, was opened in 2002. It has a capacity of 185 places. The staff is trained to scope with vulnerable asylum-seekers. A team of volunteers is helping to meet the needs of the inhabitants. Due to a project called neighbourhood-help asylum-seekers may earn some extra money. Mobility in the city is a problem for many asylum seekers as the monthly ticket for public transport costs more (€45) than their total spending money.

The number of people per room varies. Eight people per room is the norm in Traiskirchen; boarding-houses like the Grüner Kreis mostly have four-bed rooms. While families have their own room in most of the centres, even their own suites, in Traiskirchen several families have been put together in one room.

Separate sanitary facilities are part of the accommodation standard.

Board: the meals are a regular cause of conflict in the accommodation centres. The residents in hostels where they receive full board often complain about the dishes and the quantities were often insufficient. Many residents would prefer to be able to do their own shopping or at least cooking, which the operators only allow as an exception (e.g. on the weekend or on special occasions). The state Vienna and Upper Austria proves that self-catering works and makes sense – there, self-catering has priority and it became a model of good practise in other federal states. Nevertheless in a lot of accommodation facilities the operator is not able or not willing to change from providing dishes to self cooking.

Work

In Traiskirchen it is possible to work on an hourly basis for remuneration. Such activities are in great demand as a way of increasing spending money, e.g. residents of the Traiskirchen women's accommodation take on child-care in the afternoon. In accommodation centres run by NGOs, too, this has been legally permitted since the end of 2004.

Residents can be motivated to help with the work even without pay, e.g. in Karwan-Haus.

Daily structure

In most of the boarding-houses and inns there are no activities to structure the day. Since many private operators look after asylum seekers without care staff, there is often a shortage of activities. At some locations operators provide at least sport equipment (e.g. table tennis, fitness equipment, balls). Additional activities often exist only due to private and voluntary initiatives. They include German courses or homework supervision for children. The situation is different again in the homes run by charitable organisations and NGOs or the care system in Tyrol, where carers are employed in the centres. For example, a number of creative, cultural and sporting activities are on offer, along with language courses, in the Traiskirchen home for women and unaccompanied minors (UMs). Many asylum seekers try to continue attending even after they have moved out.

Security/visitors' permit

Access to the Traiskirchen centre is monitored by a private guard service on behalf of European Homecare. Surveillance cameras have been placed on the fences in order to prevent asylum seekers who are not registered there from staying overnight. In the camp there are also dog patrols. Operators conduct regular inspections in all buildings to check on the presence of residents (weekly status check) and identify people with no right to be in the camp.

Visits by family members are permitted. Voluntary workers at the youth (UM) care centre have special identity cards. Trespassing is punishable.

In the quarters of the *länder* there is either no access control or a "porter", while some privately run homes require visitors to announce their coming in advance.

8c. Sociocultural environment

In Traiskirchen the rejection by the local community has been coming to a head more and more, as the expected - and promised - reduction in the number of asylum seekers has not yet come about in 2004: on the contrary, there are twice as many asylum seekers accommodated there as agreed with the municipality. Asylum seekers are predominantly regarded as security risks. Also in Thalham, closure has been demanded regularly since the rededication of a care centre into one in EAST. Protests in Traiskirchen and Thalham are also compounded by the fact that the time of stay in the care centre and EAST is only supposed to be short. The protests of the local population resulted in a restriction of movement for the asylum-seekers. Under these circumstances integration will not be possible.

In Aspang the operator claimed that he had time and again tried to refer the residents to casual work, but to no avail. Since the amendment to the law no more work permits have been granted. Even school children go their own way after school and do not visit one another. Hence there is no integration with the local community. In Karwan-Haus events take place, voluntary workers come to the centre and the asylum seekers can make private contacts outside through the neighbourhood assistance project.

8d. Staff (CD Art. 14(5))

The responsibilities of the staff are, depending on their contract, either just providing accommodation or also meals, or, instead, providing foodstuffs or the distribution of money to buy food. Their contracts mostly include providing for school materials and clothing (in the form of vouchers), sometimes also for transport. The asylum seekers receive their mail through personal delivery in the accommodation centres. The Federal Care Act swears civil servants deployed by assigned organisations to secrecy.

In the UM and women's section in Traiskirchen the personnel is properly qualified for social work. In addition they were trained by the director and in some cases have attended in-service training elsewhere. This applies for staff in NGO run facilities

Private operators and/or their staff acquire completely unsystematic knowledge, if they are interested; this knowledge is not a prerequisite for their work. The authorities and law do most of the times not require any special preparation for the job. Nor are there any regional training programmes.

8e. Exception arrangements, detention (CD Art. 14(8) and 16)

Asylum seekers may be put into deportation custody if their application is to be dismissed due to inadmissibility (especially because of the prospective responsibility of another EU state or due to another asylum application). Furthermore, if the application is dismissed without a final decision and the appeal's suspensive effect has been denied, deportation custody is provided for. In addition, deportation custody is also continued for legally staying asylum seekers to secure an expulsion procedure" (§76 Par2 AsylG). Detention at the airport is not seen as deportation custody but as guaranteeing refoulement, on the argument that it is possible to exit the country at any time. Refugees who have entered irregularly, who make their asylum application in deportation custody, may remain in detention during the whole asylum procedure. The maximum duration of deportation custody was extended from six to ten months in the last amendment of the Foreigner Police Law. This longer period is possible, for example for asylum seekers whose nationality and identity cannot be determined.

Legal protection is restricted to the formal preconditions of imposing detention, which may be checked at the Independent Administrative Senate of the respective federal state. A judicial examination by the Independent Administrative Senate is provided for only after six months, after which it takes place every eight weeks. The examination of the legitimacy and commensurability of deportation custody is therefore mostly dependent on the information, legal advice and representation the asylum seeker has access to.

The detention of minors under sixteen occurs only in exceptional cases, a precondition for which is accommodation and subsistence according to age (§79 Par3 FPG). Also sixteen to eighteen-year-olds should be in deportation custody only in exceptional cases. In their case and in the case of refugees in need of particular protection the "gentler means" (private accommodation with reporting requirements) shall be applied instead of detaining them. However, not all federal states have appropriate accommodation at their disposal.

Obstacles are placed in the way of asylum seekers in deportation custody when it comes to access to legal advice and remedies, in particular through the practice of detention with the issuing of the decision. In each detention facility detainees can be visited and advised by social services of NGOs, however they are not commissioned by the Interior Ministry to offer legal advice. If the suspicion exists that asylum seekers get help with applying for asylum or with appealing to the Independent Asylum Senate by the advisory service in deportation custody, a notice of cancellation of the contract might be issued. Only in December 2005 the contract for the advisory service for deportation custody in Innsbruck was not extended. Visits from relatives and friends are allowed once or twice a week under strict security regulations (e.g. glass barrier).

Family unity is not guaranteed when detention is imposed.

Medical care is given by the official doctor, and if the asylum seekers require hospital treatment they are taken out in an ambulance or released on grounds of incapacity for detention. There are no sickrooms and sometime patients are placed in single cells. This applies regularly to deportation detainees who take up a hunger strike. If the rejection of the asylum application became final, a release of detention due to health risks is no longer possible, detainees have to be transferred to prisons and to be treated with forcible feeding. In most detention centres there is no open enforcement and deportation detainees have to spend 23 hours in the cells. Few detention centres have a common room, fitness room or library. The card telephone can only be used under supervision.

In the special transit facility at the airport the situation can not really be compared to the other detention centres. The asylum seekers have a kitchen, TV and two common rooms, plus a small yard that can be used during the day. They have access to the telephone at all times. Contact to the airport social service is available at the press of a button. Even the guards seem to have an open ear for their concerns, which is hardly possible in the other detention centres due to lack of staff and the closed regime.

Apart from that, there is a zone of refoulement within the area of transit at the airport, which is not accessible by the airport social service.

9. Health care

In the EAST Thalham and Traiskirchen doctors trained to give psychotherapy have been contracted by the federal asylum office to give medical instruction, and carry out X-rays and vaccinations. Asylum seekers are health insured. Costs not covered by the insurance are assumed in individual cases by the Federal Interior Ministry and the *länder*. Costs for giving birth of a child are not covered by the health insurance if the mother has not been insured the last six weeks – which is the case for newly arrived pregnant women. Issuing health insurance certificate does not yet run entirely smoothly: there is a considerable waiting time until people are registered in the health insurance system but major problems regarding medical provision were not reported. In some care centres the operators have agreements with private doctors who hold surgeries in the centres. From case to case, the asylum seekers are brought to the specialist by the accommodation operator, but in many accommodation centres they have to organise these visits themselves. The travel expenses are refunded by the basic provision; however, in Vienna this is only possible for chronic invalids. All parties, including the doctors, mentioned the language problem. The doctors employed in the EAST who are supposed to recognise traumatised get support of qualified interpreters provided by the asylum office. When they go and see the doctor, the asylum seekers often take along compatriots who speak German a bit better than themselves. In some places there have been doubts about the insurance protection since the general conversion from the insurance certificate to the ecard in autumn 2005, because asylum seekers still receive insurance certificates.

In the Basic Provision Agreement, medical emergency care is regarded as a service not to be limited or terminated (Art. 6(4)). Hospitals are obliged to provide medical care in emergencies for asylum seekers who for any reasons are not part of the basic provision and are therefore not insured. If the patient cannot pay the costs, they fall to the hospital.

The medical care of asylum seekers in deportation custody is cause for concern. In its annual report of 2005, the Human Rights Advisory Board concluded that asylum seekers in some police detention centres do not even receive the minimum standards for basic medical care. One of the problems is the lack of comprehension between those in custody and the treating physicians. The Advisory Board, who regularly monitors the detention centres, determined that independent interpreters are in principle not brought into the examinations. The report was also critical that physicians are often only called for obvious injuries and often the decision whether to call a physician is made by the guards. The cases are increasing in which treatment only occurs after the urging of members of the Advisory Board. There is an increasing tendency towards self-inflicted injuries. These as well as suicide attempts are often perceived as manipulations by the overwhelmed guards and not taken seriously.

10. Withdrawal and reduction (CD Art. 16)

10a. Procedure

The legal restrictions provide for both grounds for exclusion from care and grounds for termination and restriction. As criteria for exclusion, court judgements that may constitute grounds for exclusion from refugee status are cited in the Basic Provision Agreement (Art. 2(4)). The restriction or termination of basic provision may ensue if asylum seekers continually and constantly threaten order in an accommodation centre, or if the police banned them from the premises (§38a security police act (SPG)) (Art. 7(3)).

The grounds for exclusion in the Federal Care Act have been reduced to a few constellations since 1 January 2006: lack of cooperation in ascertaining identity or need of help (§2(1)2); a

further asylum application within six months after a legally binding conclusion of the procedure (§3(1)3); and lack of cooperation in investigation in the asylum procedure (§3(1)4).

Basic provision can be dismissed, granted on certain conditions or restricted for asylum seekers for the following reasons: if they have been convicted for a crime in front of court, which could also be a reason for the exclusion from asylum; if they have violated the house rules repeatedly and endangered the maintenance of order by doing so; or if they have been evicted from the care centre because of violent acts (§2(2)).

As of 2005 an interview with the Federal Asylum Office is foreseen regarding decisions to restrict or withdraw provision for asylum seekers in federal care centres, as far as this is possible without delay (§2(6)).

The impartial decision required according to Art. 16 of the Directive is not guaranteed, because the Interior Ministry is also responsible for the granting of the benefits. Only in the appeal procedure before the Independent Administrative Senate is a judicial-type review foreseen. As of yet, the Independent Administrative Senate has withdrawn its responsibility and challenged the legislation as unconstitutional. Decisions as to appeals have therefore not yet occurred.

The federal states have not yet transposed the Basic Provision Agreement into state law. The federal state of Vienna does not recognise any legal claim to benefits from basic provision. It has adopted the provisions of the Federal Care Act regarding reasons for the exclusion from asylum; it is possible to object to the advice of the Viennese magistrate at the Independent Administrative Senate of Vienna.¹³

The amendment of the Styrian Social Welfare Act rules out a legal claim on the aid to guarantee the subsistence of the asylum seekers.¹⁴ The responsible authority is the district's administrative authority, for appeals it is the government of the state. By the end of 2005 other federal states implemented the Basic Provisions Agreement, some follow the Viennese model some the Styrian model for decisions and appeal

10b. Form

No consistent practice could be identified so far with regards to the execution of the basic provision. This also concerns sanctions or the dismissal of benefits. Asylum seekers who have been evicted from an accommodation due to violations of security and order are partly transferred to another accommodation within the federal state, which is less standard. If asylum seekers leave an accommodation, the basic provision come to an end. A resumption sometimes fails because the need for help is assumed to be lacking. A number of criteria for the proof of the claim for benefits have been developed concerning the acquisition of benefits, especially by asylum seekers who are living in a private flat. Sometimes the persons affected are not able to meet this criteria, like a charged lease contract which is needed for the acquisition of rent aid.

Most of the times, official notifications are only issued, if it comes to the dismissal or restrictions of benefits

11. Persons with special needs (CD Art. 17-20)

¹³ State's Law Gazette for Vienna 46/2004: A law with which the law on procedures for the temporary basic provision for aliens in need of help and protection (asylum seekers, persons entitled to asylum, displaced persons and other persons who cannot be deported on legal and factual grounds) is issued in Vienna (Viennese Basic Provision Act – WGVG) and with which the Viennese Social Welfare Act, the Viennese Hospital Act, the Disability Act 1986, the Viennese Nursing Allowance Act and the Viennese Home Care Act are changed. Issued 13 October 2004.

¹⁴ §4 Par.1a of the Styrian Social Welfare Act LGBL No 29/1998, last amended LGBI No 47/2004; in force since 1 October 2004

The Basic Provision Agreement considers the increased care required for persons with special needs and unaccompanied minors.

The Federal Basic Provision Act provides that the assignment to care centres takes account of the special needs for protection of single women and unaccompanied minors (§2(2)). The Federal Care Ordinance of 2004 again only mentions these two groups among the principles of care (§2(1) and (2)). In summer 2004 the first special accommodation and care facility was set up for single women in Traiskirchen. In autumn 2005 another quarter was arranged in Lower Austria.

11a. Minors (CD Art. 18)

Children are generally accommodated in one room with their parents. Families with several children may obtain two rooms. Most accommodation centres have a playground or play corner. On the basis of the years of criticism by NGOs, great importance is attached to the provision of nappies and baby food, and also of additional meals for children.

Psychological care and rehabilitation measures through specialised institutions may be organised in the context of existing ERF contracts, but their capacities do not suffice. In the last few years a lack of capacities has become particularly evident due to the considerable numbers of Chechen refugees, many of them suffering from traumatic experiences.

11b. Unaccompanied minors (CD Art. 19)

The Youth Welfare Act is applicable without restriction to unaccompanied minors (UMs) (prohibition of discrimination). In practice, however, there is clearly unequal treatment, and so youthful asylum seekers are only rarely put in institutions of youth welfare services. In this case the welfare of the child is subordinate to financial considerations. Instead, UMs are accommodated in the context of the Basic Provision Agreement and there recognised as a group with special needs. These are facilities with differing intensity of care. Likewise lessons in language (up to 200 classroom hours) and for the higher elementary school leaving certificate are financed for minors in the context of basic provision. It is problematic that at present only a small number of UMs are actually accommodated in suitable institutions. There are only 500 specific places available for approx. 1,000 UMs. In the whole of Austria there is only one centre offering about 20 places for adolescents with a need for intensive care.

On the basis of the lack of places, UMs need to stay in the first reception centres for a longer period of time than necessary. However, in Vienna also special accommodation facilities were closed recently, because admissions in Vienna are now only possible in exceptional cases in order to counterbalance the unequal distribution in the respective federal states. UMs are also accommodated individually in the context of basic provision – and thus without any pedagogical support.

Until 30 April 2004 there were five clearing centres in Austria. With the reorganisation to the basic provision system most of them were turned into permanent accommodation centres. The clearing process had not worked so smoothly before anyway, since there were hardly any places for follow-up care available. While educational needs were very carefully defined they generally could not be met.

It is also problematic that the question of responsibility for the child's welfare remains unclear in most cases. Frequently the youth welfare agency refuses to take the steps necessary to initiate a welfare procedure, although this is a statutory obligation. Regionally there is completely divergent practice in dealing with the question of responsibility for the young person. While in Upper Austria this is transferred in many cases to the youth welfare agency, in the *länder* of Vienna, Salzburg and Styria there is almost never any clarification on this. If the youth welfare agencies are entrusted with custody for the child they generally perform the related duties inadequately, if

at all. A recent ruling by the Supreme Court, with which the custody duty of the youth welfare agency was clarified, will probably lead to a change of practice.

11c. Victims of torture and violence (CD Art. 20)

Since the amended Asylum Act of 2003 it has been up to the authorities in the EAST to recognise victims of torture and traumatised refugees in the admission procedure. Austria's duty to take over responsibility (*Selbsteintrittspflicht*) for processing the asylum application regardless the responsibility of other member states was cancelled under the Asylum Act 2005. However, applications must not be rejected in the admission procedure, if the asylum seeker is probably suffering of a mental illness triggered by torture or similar incidences. An early recognition of traumatisation comes up against diagnostic limits, however. At present asylum seekers in the EAST health departments are handed a questionnaire including trauma items. Should this reveal indications of traumatisation one of the doctors writes a note to the asylum authorities. Treatment in specialised units is usually initiated by refugee counsellors. Usually there is a waiting list. In acute cases the asylum seeker is taken to psychiatric emergency service by the accommodation operator or private doctors. There they tend to be discharged rapidly for out-patient treatment. Through the physician's report, it should be determined whether the transfer to a responsible Dublin state would constitute a danger to one's health and how long, if necessary, the transfer should be postponed.

Of greatest concern is the incarceration in deportation custody since according to the report of the Human Rights Advisory Board, psychiatric care is lacking. The agency physicians lack the necessary training and the psychiatrists are often not brought in in a timely manner.

Accommodation places with psychological care in the centre are rare. In Vienna there are two homes with psychological care (Integrationshaus and Karwan-Haus), as also in the Traiskirchen women's section, but the demand for places with psychological care in Vienna and Austria as a whole is much higher.

12. Training staff of authorities and organisations (CD Art. 24)

The change of system in May 2004 confronted the state authorities, in particular, with new responsibilities. The capacities for implementing the Basic Provision Agreement have been inadequate for a long time so that public tendering for accommodation and care, contracts, and the legal enforcement are progressing very slowly. Nothing has been heard yet regarding basic training for authorities and authorised organisations. However, NGOs emphasise a proficient legal knowledge of their staff.

C. Actions needed to transpose the Directive

There is an urgent need for action to transpose the Basic Provision Agreement into law at the federal state level, in order to guarantee a unified system of benefits for all asylum seekers. Here, it is not just necessary to refer to the EU Directive. In addition, those exclusion criteria not in conformity with the Directive must be removed (possible grounds for exclusion).

A procedure must definitely be set up in cases involving grounds for exclusion, restriction or termination. The possible access to the benefits provided for in the admission guidelines by a civil law claim is difficult with regards to the procedure's costs and risks for asylum seekers without means.

Chapter II

General provisions on reception conditions

Art. 7 Residence and freedom of movement

Art. 14 para. 8 Changed modalities in exceptional cases

After the admission procedure asylum seekers are distributed in coordination with the federal states. The information about the allocation of accommodation is given as soon as the responsible authorities have resolved the question of accommodation and not only shortly before the relocation takes place. A change of residence from organised into private accommodation shall be approved after clarification with the asylum seekers. There is no domestic legal basis for waiting periods (up to one year) which are practised in several federal states.

With regards to the restriction of the freedom of mobility, the principle of proportionality is given priority over procedure-saving considerations. This concerns the restriction of the right of residence to one district as well as the imposition of deportation custody. The possibility in Article 7, para. 2 of the Directive of ordering a particular place of residence for reasons of public interest or public order constitute a restriction on the freedom of movement. But this restriction cannot legitimate the imposition of detention. The possibility of ordering asylum seekers to a particular place of residence under para. 3 calls for legal reasons as a prerequisite, such as a legal judgment or reasons of public order. This can only be imposed when despite the tolerated status and the entitlement to care, accommodation and medical insurance, particular circumstances exist which endanger the public order.

The practice of detaining asylum seekers who will allegedly be transferred to a different EU state has no backing in the Reception Directive. Although the Directive allows for “custody” in Art. 2k and other modalities of material reception conditions (Art. 14 para. 8) for as short a time period as possible, when asylum seekers are in custody or border centres which they are not allowed to leave. The modalities include accommodation centres, private houses, hotels, apartments or other places of residence for the accommodation of asylum seekers who have filed an application at the border. The police-like reception centres, in which deportation custody takes place, cannot be classified as one of the above accommodation modalities. During the Dublin consultation process and up to the transfer, deportation custody is the rule, rather than the exception. Access to information, counselling and legal representation should not be hampered by these restrictions to material reception conditions. Access to representation is not provided to asylum seekers in deportation custody. In addition, to protect family unity, deportation custody should be limited (Art. 14 para. 3).

Art. 11, 12 Employment, vocational training

Present legislation and its application do not allow asylum seekers any access to employment and further training. Without access to the labour market asylum seekers have no right to vocational training as well. A simpler approval procedure and the criterion for lasting integration should be applied at least for asylum seekers after one year, to meet the requirements of the Directive.

Art. 13 (3 and 4) Sufficient means for subsistence and expense loadings

The financial aid for subsistence and the costs of accommodation for asylum seekers is far below the standard rates for social welfare, although the situation is similar: in both cases, financial aid

is necessary for a humane life due to the lack of own funds. The contributions from the basic provision shall therefore be adapted to the social welfare.

There are currently no announced regulations for the imposition of expense loadings. However, asylum seekers who receive some kind of contribution by a third party or get benefits due to other legal regulations, are only granted an allowance of €100 per month. Expense loadings are demanded or retained as soon as an income above the allowance is generated without awaiting a certain time of occupation. Even tribute payments for voluntary work at local authorities or in accommodation facilities are demanded as expense loadings. Those shall be arranged in that way that asylum seekers are not totally demotivated to start an occupation and that they have the chance to satisfy more than basic needs through their income.

Art. 14(5) Modalities for material reception conditions

Resources must be allocated for the training of staff of authorities, organisations and in accommodation facilities. Further, qualification requirements for activities in the area of asylum must be established. So far there has been no legislation on the topic of qualifications. Many accommodation centres are run by private operators.

Art. 14(7) Modalities for material reception conditions

The decree of the Interior Ministry to ban the free access to government-run accommodation is incompatible with the free access for NGOs set out in the Directive. According to it, access must not be restricted merely for security reasons. The Interior Ministry, by contrast, claims to want to maintain order.

Art. 16(4) Decisions as to Restrictions on or Withdrawals of Benefits

The only partially successful transposition of the Directive into national law has led to the discontinuation of benefits without due process. Asylum seekers should not bear the burden of having benefits discontinued due to a lack of reception space in one of the states. The legality of the appellate court proceeding is unclear. It must be guaranteed that all forms of restriction and withdrawal of benefits as well as the rules to the reimbursement of benefits take place in the context of a legal proceeding. In addition, in principle, an appeal should have suspensive effect.

Chapter IV

Provisions for persons with special needs

Art. 19(2), (4) Unaccompanied minors

In the case of unaccompanied minors, the accommodation in foster families preferred by the Directive should not just be an exception for immature adolescents but be included in the Basic Provision Agreement as an option for mature minors. More suitable accommodation places must also be established. Minors will continue to be placed in adult accommodation without specially trained staff.

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