

RESPOND

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Refugee Protection in Austria

Country report - Austria

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Acknowledgements

This report contains information on the legal framework of protection in Austria, its implementation and experiences of policy recipients, namely asylum seekers and beneficiaries of international protection. Sections on the legal framework were partly adopted from WP1 Country Report: Legal and Policy Framework in Austria (Josipovic & Reeger, 2018) and WP2 Country Report: Border Management and Migration Controls in Austria (Josipovic & Reeger, 2019) and updated where necessary. These reports are not cited in the text due to the integrated character of the RESPOND Working Paper Series and in order to improve readability.

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List of Abbreviations

Abbreviation	German	English
AsylG	Asylgesetz	Asylum Act
BFA	Bundesamt für Fremdenwesen und Asyl	Federal Office for Immigration and Asylum
BFA-VG	BFA-Verfahrensgesetz	BFA Proceeding Act
BMASK	Bundesministerium für Arbeit, Soziales, Gesundheit und Konsumentenschutz	Federal Ministry for Labour, Social Affairs and Consumer Protection
BMEIA	Bundesministerium für Europa, Integration und Äußeres	Federal Ministry for Europe, Integration and Foreign Affairs
BM.I	Bundesministerium für Inneres	Federal Ministry of the Interior
BVwG	Bundesverwaltungsgericht	Federal Administrative Court
FPG	Fremdenpolizeigesetz	Aliens Police Act
GrekoG	Grenzkontrollgesetz	Border Control Act
NAG	Niederlassungs- und Aufenthaltsgesetz	Settlement and Residence Act
VfGH	Verfassungsgerichtshof	Constitutional Court
VwGH	Verwaltungsgerichtshof	Administrative High Court

About the Project

RESPOND is a Horizon 2020 project, which aims at studying the multilevel governance of migration in Europe and beyond. The consortium is formed of 14 partners from 11 source, transit and destination countries and is coordinated by Uppsala University in Sweden. The main aim of this Europe-wide project is to provide an in-depth understanding of the governance of recent mass migration at macro, meso and micro levels through cross-country comparative research and to critically analyse governance practices with the aim of enhancing the migration governance capacity and policy coherence of the EU, its member states and third countries.

RESPOND studies migration governance through a narrative which is constructed along five thematic fields: (1) Border management and security, (2) Refugee protection regimes, (3) Reception policies, (4) Integration policies, and (5) Conflicting Europeanization. Each thematic field between (1) and (5) reflects a juncture in the migration journey of refugees and is designed to provide a holistic view of policies, their impacts, and responses given by affected actors within.

In order to better focus on these themes, we divided our research question into work packages (WPs). The present report is concerned with the findings related to WP3, which focuses specifically on asylum procedures and refugee protection.

Executive Summary

This report deals with the protection of refugees in Austria between 2011 and 2018 by drawing (1) from an analysis of the legal framework and its implementation and (2) by building on extensive field research conducted under the framework of the RESPOND project. It shows that the so-called “refugee crisis” of 2015 represents a crucial turning point in asylum policy. While refugee protection remains intact as a constitutionally secured right, the Austrian government introduced a number of legal restrictions, including procedural hurdles, emergency provisions allowing for restricted access to federal territory and thus the asylum procedure, as well as restrictions for persons who obtain protection status. These reforms occurred at a time when the Common European Asylum System displayed serious deficiencies.

Professionals in the field of asylum that we have interviewed for this project, largely point to the need for an alternative to the Dublin regime, for example in the form of solidary distribution mechanisms as well as a stronger harmonization of national asylum procedures within the European Union. At the national level, an implementation gap became evident in relation to the quality of first instance decisions by the Immigration Office as well as a in the context of rejected asylum seekers and effectively conducted returns. Experts further pointed to the improved appeal conditions for applicants following the institutional reform of 2014, but heavily criticised recent policies regarding the communization of legal aid services for asylum seekers.

Among asylum seekers and beneficiaries of international protection, a central topic is the long waiting time connected to the asylum procedure, particularly in combination with a ban on taking up formal employment. Both asylum seekers and beneficiaries of international protection expressed a sense of incomprehension regarding legal criteria for asylum decisions. From a practical stance, this means a lack of transparency regarding certain procedural steps. From a normative stance, it implies that particularly persons who have spent several years in Austria, making great integration efforts, developed frustration and anger about receiving a negative first instance decision.

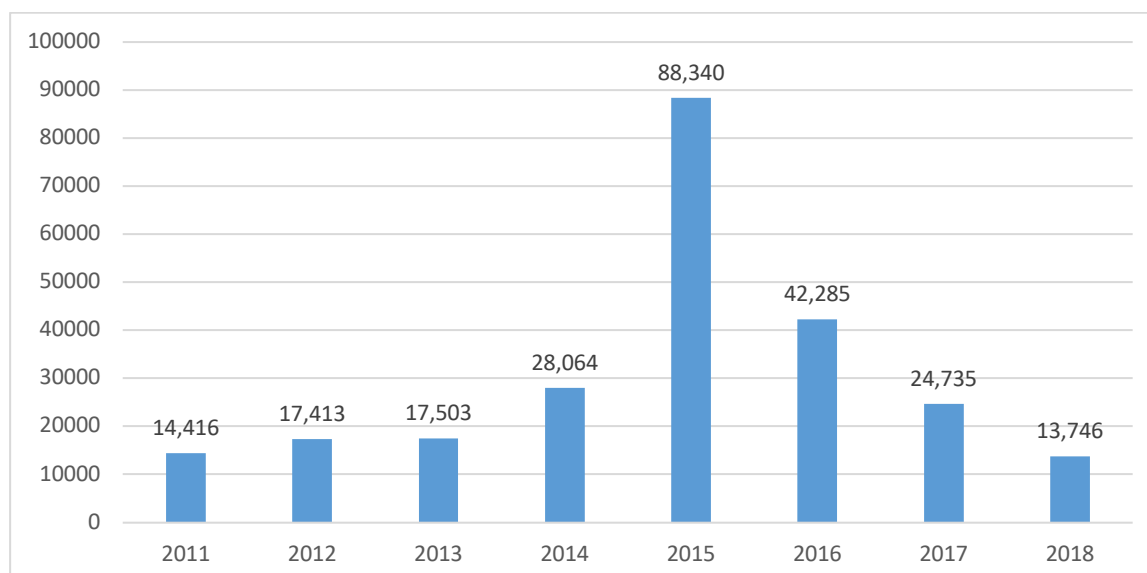
1. Introduction

The aim of this report is to describe policy developments in the field of asylum between 2011 and 2018 and to provide an in-depth account of the lived experiences of the recipients of these policies: practitioners working in the field as well as asylum seekers and beneficiaries of international protection. We focus on the issues of access to federal territory and the asylum procedure, the substantive procedure and appeal, as well as the rights and duties associated with protection status.

In Austria, fundamental and human rights as established under the Geneva Convention have been in effect since 1955 and were supplemented in 1973 under the protocols relating to the status of refugees. Since 1958, Austria is signatory to the European Convention on Human Rights (ECHR) provided by the Council of Europe. Since 1964, the ECHR has been ranked as a “[...] directly applicable federal constitutional law in Austria and is therefore formally fully equivalent to the original catalogue of fundamental rights in the Austrian Federal Constitution, the Basic Law of the State on the General Rights of Citizens taken from the 1867 monarchical constitution” (Öhlinger, 1990: 286). A third source of human rights is the Charter of Fundamental Human Rights of the European Union. Since it became applicable in 2009, it has not only been coequal to EU primary law, but has also been ruled by the Austrian Constitutional Court in 2012 as part of the normative criteria for assessing the constitutional conformity of Austrian law (VfGH-Pressinformation, 2012a).

Like many other EU countries, Austria has witnessed a peak inflow of refugees in 2015 with 88,340 applications for asylum (see Figure 1), further politicizing refugee protection, which had, like many other migration related issues moved to the top of the political agenda in previous years.

Figure 1: Total number of annual asylum applications, 2011-2018



Source: Own graphics based on annual Asylum Statistics by the B.M.I.

2. Methodology and Sources

In line with the overall RESPOND objectives, we seek to analyse Austrian governance in the realm of refugee protection along three levels, namely the macro, meso and micro levels. The macro level relates to policy makers and their output in terms of setting and enforcing certain rules. The meso level addresses implementation of policies and is supplemented with expert knowledge from fields of professional engagement with the asylum system. Finally, the micro level relates to the primary recipients of public policies, namely asylum seekers and beneficiaries of international protection.

In the first section of chapters 4.1. to 4.5., we provide a descriptive account of the institutional framework and major national policies targeting (1) the access to the asylum procedure, (2) the interview and appeal procedures, (3) family reunification, (4) legal statuses resulting from an application for international protection, and (5) rejected asylum seekers. Across all sections, we build on the Country Reports “Legal and Policy Framework in Austria” and “Border Management and Migration Controls”. We have updated our data with information on developments between mid-2018 and mid-2019. These parts of the report are based on legislative texts, national or European reports, official statements, newspaper articles, and press releases of governing bodies.

Expert interviews

Within the implementation sections in the chapters 4.1.to 4.5., we address the meso level. Here, we provide publically available statistics and complement these figures with insights from persons who are working in the field of asylum or who are monitoring developments in the field. What are their experiences and how do they assess policy reforms between 2011 and 2018? We draw on data material collected through semi-structured interviews that were conducted between August 2018 and February 2019. Regarding the selection of our interview partners, we considered three dimensions:

Spatial scope of professional activity and differences between provinces:

- Urban – Province 1 (Vienna)
- Rural – Province 2 (non-urban areas in Upper Austria)
- National level

Type of institution:

- (Semi-)public administration, representatives of local governments
- NGOs, immigrant organizations

Work profile (related to the type of institution):

- More administrative in nature (no direct contact with refugees in daily work)
- More practical in nature (everyday contact with refugees)

Following two pilot interviews with legal counsellors from an NGO, we conducted a total of 11 qualitative face-to-face interviews and one written Q&A.¹

With each of our eleven experts, we led semi-structured interviews of approximately one and a half hours, based on a joint RESPOND questionnaire. This questionnaire was divided into a general part about their own work and three thematic modules: borders and refugee protection, reception conditions (*Grundversorgung*) and integration². For each of these areas, we asked open questions, addressing the expert's own experiences and assessments. Regarding protection, we asked the experts to elaborate on their experiences and assessments regarding current provisions in refugee protection, access to the asylum procedure, the Dublin-regulation, deportation, return policies and detention. The conversations were recorded, anonymized, and transcribed. Based on these texts, we conducted a content analysis, allowing us to summarize and contrast the most important arguments with regard to the topics discussed in this report.

Interviews with asylum seekers and beneficiaries of international protection

The final sections in the chapters 4.1. – 4.5. account for the micro level of analysis, namely experiences of asylum seekers and beneficiaries of international protection. In this context, we were interested in the policy recipients' encounters within the Austrian asylum system and the problems they perceive to be relevant. Therefore, we carried out 29 semi-structured interviews between August 2018 and January 2019.

Micro level sampling was conducted with consideration of a person's country of origin; his/her place of residence in Austria, and his/her legal status. Concerning the country of origin, we largely focused on two groups: persons from Afghanistan and Syria. This choice was motivated by statistical figures indicating a strong attribution of these groups to the most recent immigration dynamics. In the period under consideration, the Syrian population in Austria increased by 1,265 per cent (from 3,046 persons in 2011 to 41,588 in 2017), while the Afghan population increased by 430 per cent (from 8,428 persons in 2011 to 44,684 in 2017). These two groups accounted for 46.6 per cent of all asylum applications between 2011 and 2016. In contrast to that and due to limited time resources, we also interviewed persons from Iraq, Georgia, Iran, Nigeria, and Pakistan.

Concerning the place of residence, our focus was first on persons living in Vienna, which is home to 35.5 per cent of Afghans and 44.7 per cent of Syrians. The province of Vienna is of great salience as the largest urban centre in Austria, particularly for beneficiaries of international protection, who largely chose to move there upon the acquisition of a permit. In the second phase of our interview process, we moved our focus to a rural area in Upper Austria, accounting for perspectives of people who live in small and medium-sized municipalities. In this regard, the aim was also to consider different conditions between two provinces, which have different reception and integration policies within Austria's federal system.

¹ For a full list, cf. the Appendix section; in the empirical parts of this report, we use the abbreviations E01 to E12 when we refer to expert interviews.

² For the Q&A, we narrowed down and adapted our questionnaire to the topics of refugee protection and border management.

In terms of legal status, we mainly differentiated between applicants for asylum and beneficiaries of international protection (which included recognized refugees and beneficiaries of subsidiary protection). Considering sociodemographic aspects, we included 15 female participants and 14 male participants, despite the statistical dominance of men among the refugee populations investigated. Likewise, we included a few adults who arrived as (unaccompanied) minors.³

We led semi-structured interviews of approximately one to one and a half hours. In order to compensate for the invested time, participants received shopping vouchers after the interview. Similar to the preparation for the expert interviews, we had developed a joint RESPOND questionnaire that was later translated into German and modified to account for specific Austrian terminology. The thematic modules discussed entailed the following topics:

1. General questions about the person
2. Current everyday life in Austria
3. Arrival in Austria and experiences during reception
4. Life in the country of origin
5. Journey to Austria
6. Process of asylum application and status determination procedure
7. Physical and mental health
8. Possibility for interviewees to discuss unmentioned topics

Within each of these modules, we started the conversation with an invitation to share experiences and points of view regarding the respective topics with us. This approach allowed interviewees to first elaborate on the aspects that they considered personally important or generally relevant thereby developing a narration. Once they had set the thematic agenda in an area, we continued with open questions targeting more specific dimensions. In module 6 dealing with protection (or more specifically with the process of the asylum application and the status determination procedure), we asked people i. a., about their prior knowledge of the asylum procedure and their expectations, about their concrete experiences during the interviews, their current status, whether they were offered legal advice and the help of a translator during the interviews and whether they were subject to transfers to other EU countries, or to detention.

With regard to the problem of language proficiency, particularly in connection to interviews with asylum seekers, we employed an Afghan native speaker of Dari. Based on an introduction by the project leaders on methodological and ethical approaches, as well as existing experience in social research projects, she conducted, translated and transcribed 12 of the 29 interviews.

The interview process also included early project- and team-internal reflections on research ethics. In line with Coleman's (2009) consideration of consent-based, risk-based and justice-based vulnerabilities, we particularly invested thought into two aspects: First, how we can convey a sufficient amount of information regarding the content and purpose of the project in an understandable way. Second, how we can avoid strong negative emotions or re-traumatization during interviews. Due to ongoing reflections and deliberations between the two interviewers

³ For a full list, cf. the Appendix section; in the empirical parts of this report, we use the abbreviations R01 to R29 when we refer to the interviews with asylum seekers and beneficiaries of international protection.

and gatekeeper persons, we managed to complete all interviews without any incidents or withdrawals from the project. For cases of emergency, we kept the phone number of a socio-psychiatric emergency service on standby.

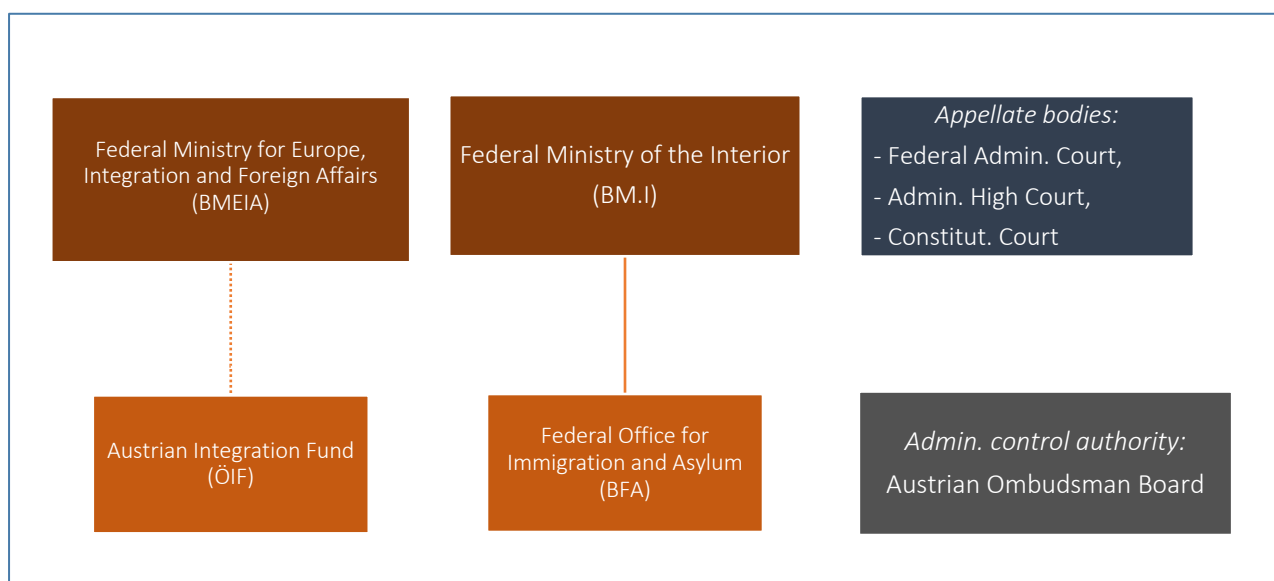
All conversations were recorded, anonymized, and transcribed. Among all German language interviewees, the language skills were sufficient to make sense of our questions and communicate meaningful answers. However, given the fact that most people had only recently started learning German, we had to reckon with many grammatical errors during the transcription. In order to render the material accessible to researchers other than those involved in the interviews, we changed the grammatical structure of sentences where necessary and only to the degree that it did not alter the meaning of a statement. In case of doubt about the meaning, we refrained from editing. Based on these texts, we conducted a content analysis using the software Nvivo, which allowed us to summarize and contrast the most important arguments.

3. Background of the National Legal and Institutional Framework⁴

3.1. Institutional and legal framework regarding the asylum procedure and refugee protection

At the highest institutional level, matters of refugee protection are largely the concern of the portfolio of the Federal Ministry of Interior (BM.I). The BM.I covers issues related to federal borders, immigration and emigration, return, citizenship, as well as asylum. The Federal Office for Immigration and Asylum (BFA) works as a subordinated agency that carries out first instance procedures on asylum and issues residence titles as well as return decisions (EMN, 2015: 85). Regarding certain aspects, the Federal Ministry for Europe, Integration and Foreign Affairs (BMEIA) holds relevant competences. It is linked to the diplomatic authorities abroad and responsible for visa issuance, as well as for cooperation on development with third states and the UNHCR. The BMEIA also carries responsibilities for integration programmes at the federal level. It finances the Austrian Integration Fund (ÖIF) as an executive body carrying out integration projects and conducting evaluations.

Figure 2: Institutional framework in Austria



Source: Figure based on institutional chart by EMN, 2015: 85.

Since its introduction in 2014, the BFA has been the single public authority involved in the processing of applications to international protection. It is a monocratic authority with its headquarters in Vienna and a regional directorate in each province providing uniform services and technical supervision. Its main tasks encompass the conduct of first instance asylum proceedings. The BFA implements the Asylum Act (AsylG), as well as matters related to return and

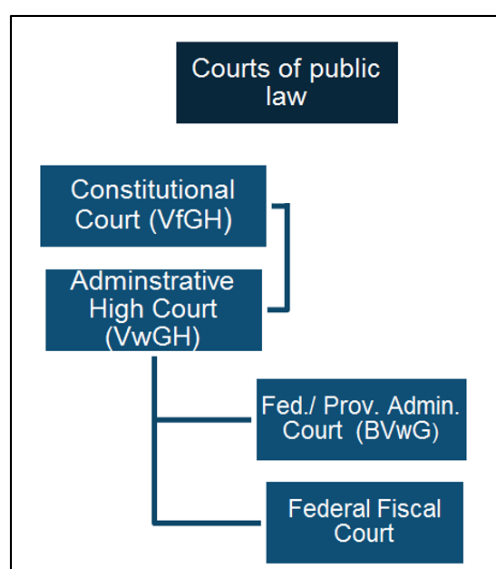
⁴ Chapters 3.1. and 3.2. were adopted from WP1 Country Report: Legal and Policy Framework in Austria (Josipovic & Reeger, 2018) and updated where necessary.

toleration⁵, residence terminating measures, and the issuance of documents for foreigners as stipulated under the Aliens Police Act (FPG).

Under the Austrian judiciary, the courts of public law are responsible for decisions on international protection. The Federal Administrative Court (BVwG) is the appellate body against first instance decisions in the asylum procedure. The BVwG was created in 2012 and has since replaced the Asylum Court and other specialized administrative entities. In the case of contradictions, in default of decisions from higher instances, or in matters of open legal questions, complaints can be brought before the Constitutional Court (VfGH) and revisions before the Administrative High Court (VwGH). Aside from its function as an appellate body, the VfGH may also set up judicial reviews on the constitutionality of legislative acts.

The Austrian Ombudsman Board is a control authority for public administration and has an expert commission on the protection and promotion of human rights (Volksanwaltschaft, 2017)

Figure 3: Overview of the courts of public law in Austria



Source: own design.

Non-governmental actors

In Austria, NGOs are active as contract partners to state authorities providing services in the realms of the asylum procedure and refugee reception. Some of them are also independent actors protecting refugees' and immigrants' rights beyond their contractual obligations regarding legal assistance in the asylum procedure and social counselling. In the realm of legal consultation, *Diakonie* and *Volkshilfe Upper Austria* (under the arch of *ARGE Rechtsberatung*) share the policy implementation with *Verein Menschenrechte Österreich* (Human Rights Association Austria). As stipulated under the B-VG, the organisations are required to provide legal advice in case of a dismissal of an application for international protection in the admissibility procedure, and in appeal procedures following a negative first instance decision. Upon

⁵ Persons who are neither granted any type of protection, nor can be returned due to legal, technical or political obstacles can be granted toleration (*Duldung*; para. 46a FPG). They receive a toleration card in order to prove their identity. However, this is not a residence permit.

asylum seekers' demand, legal advisers are also to attend to or represent their clients at the hearing before the BVwG. In 2019, Austria adopted a law to install a federal agency that will replace non-profit NGOs and private firms, and take over their activities concerning asylum seeker accommodation and legal consultation.

UNHCR monitors laws and established practices concerning refugees and asylum seekers. Furthermore, it issues statements on reforms of refugee policies and leads information campaigns addressing both the public as well as specific authorities and aid organisations. However, UNHCR is not involved in the asylum procedure.

National immigration and asylum laws in the context of a European asylum system

The first pillar of Austrian immigration and asylum law encompasses the realm of regular (labour) migration. The Settlement and Residence Act (NAG; 100/2005) as a general national law governs conditions of permission, rejection and withdrawal of residence titles that cover any sojourn beyond six months of duration. Whereas the term “residence” refers to the aim of finding a residency for more than six months, relocating the centre of life interests or taking on a long-term job, “settlement” addresses a form of immigration that can solidify and allows for family reunification (Feik, 2016: 173). This distinction is characteristic of Austrian immigration law (EMN, 2015).

The second pillar governs the entrance to federal territory, the grounds for rejection as well as the issuance of residence terminating measures, return, toleration, and the issuance of documents for foreigners (Feik, 2016: 156). The most important laws are the Aliens Police Act (FPG; 100/2005) and the Border Control Act (GrekoG; 435/1996), which is informed by the Schengen provisions.

The third pillar covers the realm of asylum. Complementary to national law, this area consists of a complex layering of primary law in terms of the EU Charter of Fundamental Rights, EU secondary law, and additional national laws. The Asylum Act (AsylG; 100/2005) governs obligations stipulated in the Geneva Convention and under European Union law. It holds provisions for asylum applicants and beneficiaries of international protection with regard to entry, identification, and qualification, while the BFA Proceeding Act (BFA-VG) covers procedural aspects (Rössl & Frühwirth, 2016).

Among EU secondary law, there are five legal instruments of relevance in the field of asylum. The Asylum Procedures Directive 2013/32/EU sets up common standards for safeguards and guarantees of access to a fair asylum procedure. The Reception Conditions Directive 2013/33/EU establishes minimum standards with regard to asylum seekers' living conditions during the assessment of their application. The Qualification Directive 2011/95/EU addresses the determination criteria of refugee status and associated rights. Finally, the Dublin Regulation 604/2013 in combination with the EURODAC Regulation 603/2013 establish criteria and mechanisms for determining the state of first contact and conducting transfers.

3.2. Important Developments since 2011

Austria's asylum system underwent profound institutional changes in 2014, when the Federal Office for Immigration and Asylum (BFA) was introduced as the first instance authority in asylum procedures. Prior to that, competences for asylum and other immigration matters had been divided. For second instance decisions, the Federal Administrative Court (BVwG) replaced the Asylum Court. This also re-opened legal channels to the Administrative High Court (VwGH) as an instance for the revision of decisions.

Key legal amendments between 2011 and 2018

2011 – Aliens Law Amendment Act (No. 38/2011)

2013 – FNG-Adaptation Act (No. 68/2013)

2015 – Aliens Law Amendment Act (No. 70/2015)

2016 – Amendment Act (No. 24/2016)

2017 – Aliens Law Amendment Act (No. 145/2017)

2018 – Aliens Law Amendment Act (No. 56/2018)

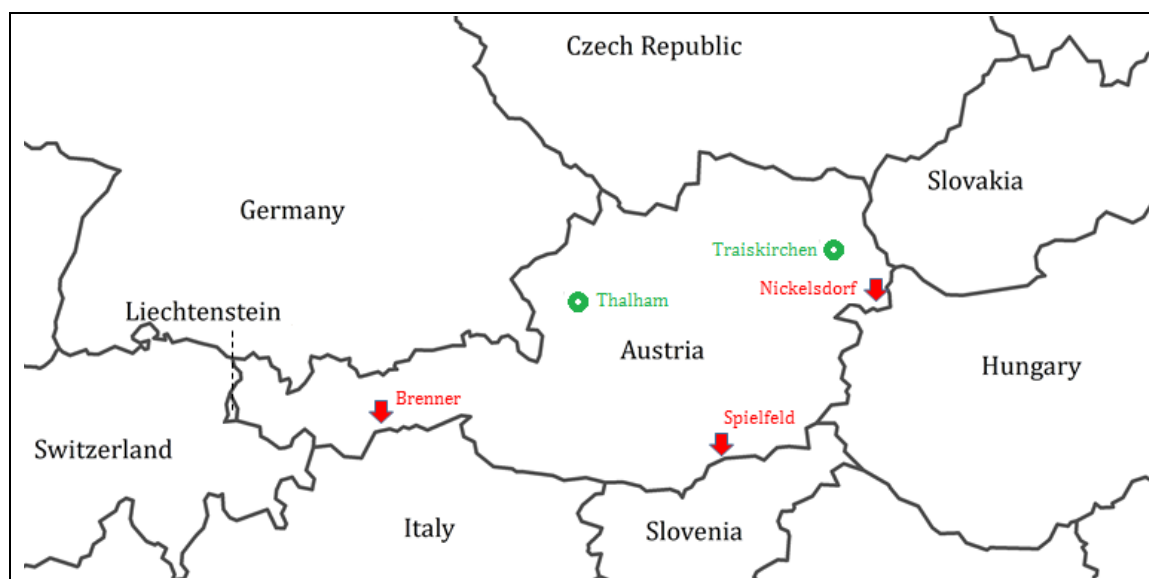
Following the 2015 Aliens Law Amendment Act (70/2015), the asylum admissibility procedure was locally shifted from the Initial Reception Centre to the BFA and fast track procedures with a maximum decision period of 5 months were introduced for applicants from “safe countries of origin”⁶. are countries in which there is no political persecution or inhuman or degrading punishment (Rössel & Frühwirth, 2016). The same amendment act also provided for a drafting of annual country reports (for the top five countries of origin by holders of international protection), which form the basis for reviewing asylum cases. In the following years, a report on Afghanistan was met with heavy public criticism by NGOs. It concluded, “no grounds were found which would prevent the return of single males to Afghanistan or would represent a serious difficulty or entail a risk for such returnees” (Mahringer, 2017: 54 cited in Heilemann & Lukits 2017: 18). As a consequence, many major NGOs active in the field of refugee protection started a political campaign against returns to Afghanistan under the slogan “*Sicher Sein*” (meaning “being safe” as well as “being sure” in German). They called upon international reports and underlined that in 2017 alone there were more than 10,000 civilian victims in Afghanistan due to acts of war and terrorism (Diakonie, 2018). In 2019, the High Administrative Court ruled that Karl Mahringer is no longer allowed to carry out this job, due to a lack of knowledge – yet, the asylum procedure affected by his reports are not reopened.⁷

⁶ This relates to countries in which authorities assume no political persecution or inhuman or degrading punishment, such as for example Kosovo, Montenegro, Serbia, Morocco, or Algeria.

⁷ See: <https://www.derstandard.at/story/2000110653303/umstrittener-asygutachter-darf-nicht-mehr-taetig-sein?ref=rec>.

During the summer of 2015, as growing numbers of asylum seekers arrived at Austria's borders, the federal government initially refrained from any particular legal or administrative actions. In September 2015, when Hungarian authorities tolerated the onward journey of thousands of asylum seekers towards central and northern Europe, Austria's government re-installed systematic border controls at major checkpoints towards Slovenia (in Spielfeld) and Hungary (in Nickelsdorf). However, in coordination with Germany, it adopted a pragmatic approach, waving through many newly arriving asylum seekers.

Figure 4: Schematic overview of major checkpoints (red) and Initial Reception Centres (green) in Austria



Source: own design.

In early 2016, an amendment act (No. 24/2016) introduced a unilateral quota for the annual admission of persons to the asylum procedure.⁸ Under the title of “exceptional provisions for the maintenance of public order and the protection of inner security during the enforcement of border controls” (section 5), the law allows the federal government (together with the main committee of the National Chamber) to pass a decree suspending further processing of asylum applications outside of temporary border control posts and registering points of the provincial police directorate. Following an examination of the enforceability of a repulsion or denial of entry without violation of the non-refoulement principle, persons could then be easily returned to the neighbouring country (bmi.gv.at, 2016, pp. 82-83). This legal provision suggests that a threat to public order and internal security is given with consideration of “the number of foreigners applying for international protection” (Section 36, 2016 Amendment Act, No. 24/2016) and the functioning of state systems. Accordingly, annual upper limits of new asylum applications for the following four years were introduced: 37,500 in 2016, 35,000 in 2017, 30,000 in 2018 and 25,000 in 2019. As of 2019, the upper limit has never been reached and thus no decree has been passed. Legal scholars and NGOs, however, have issued grave concerns about the constitutional conformity of this law.

⁸ In public and political discourse, this provision has often been discussed under the term “upper limit” (*Obergrenze*) or “emergency decree” (*Notverordnung*).

Agenda Asyl, a national network of refugee protection NGOs, referred to it as an “erosion of EU law and fundamental human rights” (Agenda Asyl, 2017: 2) and argued that such a policy must not be replicated by other EU member states. An evaluation report by two experts on international and European law, Bernd-Christian Funk and Walter Obwexer (2016), concluded that the quota presents a legal novelty. They argue that EU law does provide for the option of passing emergency decrees for the purpose of sustaining public order (Art. 78 TFEU) and that such threats indeed may exist during periods of temporary border controls, which in turn have to be permitted by the Commission in accordance with the Schengen Border Code. According to these legal scholars, this would also place constraints on the general duty of at least having to consider an application for asylum, which has to take place with an unreserved adherence to the fundamental rights of private and family life and non-refoulement. In this vein, immediate repulsions to neighbouring countries would be possible unless ECJ decisions suggest the possibility of chain-refoulement due to deficiencies in a member state’s asylum system. Another legal scholar, Peter Hilpold (2017), takes a more critical stance, arguing that Art. 78 TFEU cannot stand in opposition to the Geneva Convention and the Common European Asylum System, which is based on the Convention and its core legal principles. Likewise, an interpretation according to which the Commission’s approval of Schengen exemption provisions also implies an acknowledgement of distorted public order would present an invalid conflation of the Schengen and the Dublin regimes. According to Hilpold (2017: 79), a unilateral quota contradicts basic principles of human rights law and is not sufficiently supported by international and European law.

Although the European Commission issued concerns about the early plans, arguing, “such a policy would clearly be incompatible with Austria’s obligations under European and international law” (Dimitris Avramopoulos, EU Commissioner for Migration, Home Affairs and Citizenship; cited in: Salzburger Nachrichten, 2016), no lawsuit has been initiated upon the introduction of the amendment act.

A legal conflict ensued around the issue of appeal periods in the asylum procedure. In October 2017, for the third time in two years the Constitutional Court found itself faced with provisions on the appeal period for first instance decisions associated with residence terminating measures in international protection procedures. It annulled the federal government’s two-week provision and stressed the relevance of legal remedy that stood in contrast to the procedures of the BVwG, which had arguably been inefficient. Accordingly, the BFA Procedures Act had to be emended after the VfGH had already invalidated a general two-week appeal provision in 2016 (VfGH-Presseinformation, 2017a).

Under the Amendment Act (No.24/2016) modifying the AsylG, the FPG and BFA-VG, the lawmaker also introduced restrictions for beneficiaries of international protection. The initial protection period and thus the initial period of legal residence for beneficiaries of international protection was limited to three years, downgrading the status to the minimum time limit stipulated in the EU Qualification Directive 2011/95/EU. In addition, time limits were introduced for family reunification, according to which beneficiaries of subsidiary protection can bring their family members to Austria after three years and recognized refugees within the first three months upon acquiring a permit (ÖIF, 2016).

Following other restrictions in the context of reception, detention and return policies under the 2017 Aliens Law Amendment Act (No. 145/2017; see WP2 and WP4), the new federal government consisting of a conservative-right-wing coalition⁹ proceeded to further tighten control measures.

The 2018 Aliens Law Amendment Act (No. 56/2018) enabled authorities to inspect geo-data from asylum seekers' digital devices in case of doubts with regard to their identity, their country of origin or their travelling route. Likewise, it allows police officers to withdraw up to 840 EUR of cash carried by asylum seekers as a contribution to the costs of their asylum procedure.

In 2019, the federal government introduced a law to create a federal agency that will replace non-profit NGOs and private firms and take over their activities concerning asylum seeker accommodation and legal consultation, which has been heavily criticised by NGO stakeholders active in refugee protection. They argue that it is highly problematic that the body deciding on individual cases could be the one providing legal advice at the same time. Pointing to the high error rate in first instance decisions, the Director of the social organisation *Diakonie* argued: "If the legal representation of asylum seekers is transferred to an agency of the Ministry of the Interior, there is a growing danger that illegal or erroneous decisions will no longer be revised. [...] It's about effective legal protection for those affected."¹⁰ Similarly, the Director of UNHCR Austria stated: "The planned exclusion of all civil society institutions would create a closed system with all the potential negative consequences of such systems, such as lack of transparency, lack of control and higher susceptibility to error."¹¹

⁹ In office from December 2017 until May 2019; coalition between ÖVP (Austrian People's Party) and FPÖ (Freedom Party of Austria).

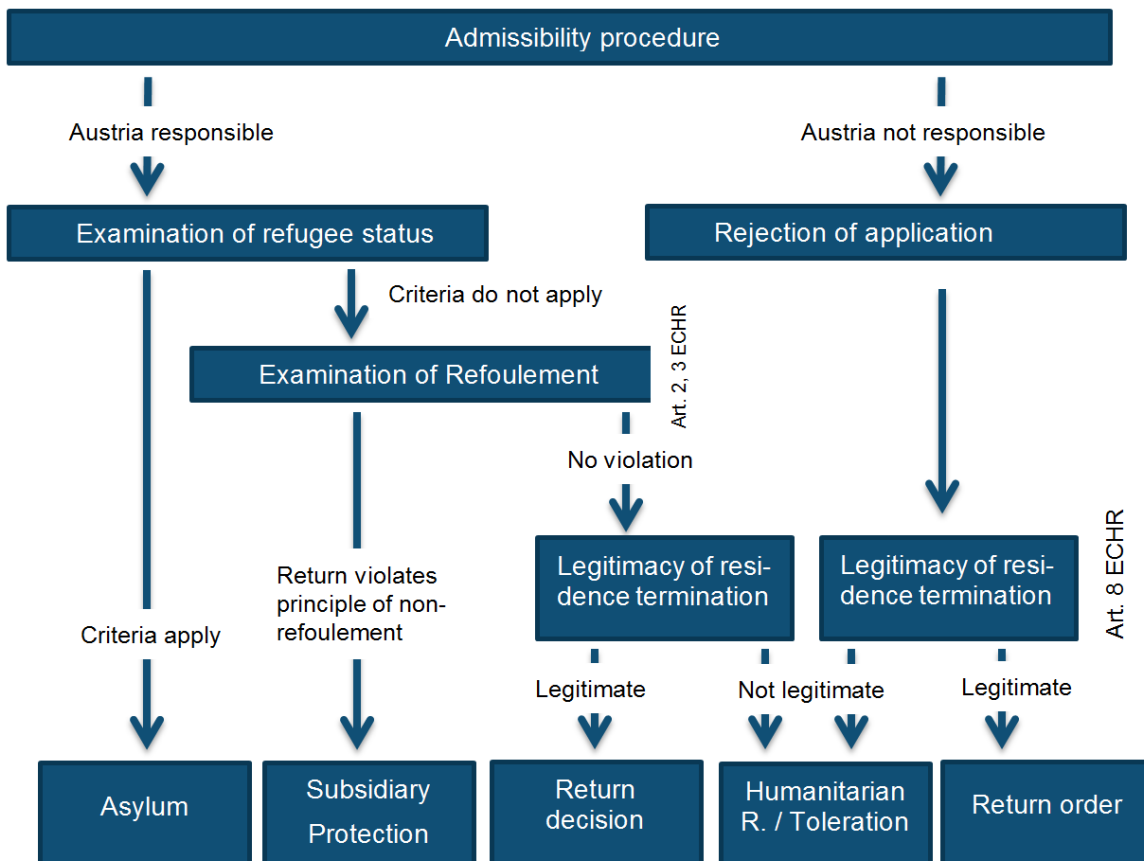
¹⁰ Statement in Die Presse: <https://diepresse.com/home/innenpolitik/5557189/Wie-die-Rechtsberatung-fuer-Asylwerber-funktioniert>.

¹¹ Statement in APA-OTS: https://www.ots.at/presseaussendung/OTS_20190412_OTS0034/unhcr-zu-bbu-errichtungsgesetz-schwere-bedenken-zu-geplanter-neuorganisation-der-rechtsberatung-im-asylbereich.

4. Asylum Procedure and Refugee Protection: Practices, Experiences and Perceptions

The asylum procedure in Austria consists of two to three stages in general. First, during the admissibility procedure, the BFA primarily examines whether another EU country is responsible for the asylum procedure according to the Dublin Regulation. Second, during the substantive procedure, the BFA must examine the reasons for the flight through interrogations and investigations and then decide whether the asylum seeker is to be granted protection status or a residence permit for Austria. Third, in case of a negative decision, appeal against this decision can be lodged within two weeks in general. The NGOs “*Verein Menschenrechte Österreich*” and “*ARGE Rechtsberatung*” support asylum seekers in submitting their complaints and in the complaint procedure. The Federal Administrative Court (BVwG) decides on appeals against decisions of the BFA.

Figure 5: Asylum procedure in Austria



Source: graphic based on Muzak 2017, p. 191.

4.1. Entering federal territory and admissibility procedure

Legal framework¹²

Section 10 of the GrekoG (No. 435/1996) provides that entry into federal territory is only permitted at border crossing points. Border control posts have generally been abolished in Austria under Schengen, however since 2015, exemption provisions (Art. 26-27 SBC) are implemented at Spielfeld and Nickelsdorf. Section 15 of the FPG (No.100/2005) stipulates the criteria for the lawful entry of third country nationals, whereby travelling documents and visas (where necessary) represent the two central documents for identification.

However, in the context of asylum, identification largely takes place after a person has already entered the country. Generally, the first police authorities that are addressed upon the arrival of a person seeking for international protection are responsible for immediate registration. Beside the EUODAC Regulation, the VIS Regulation and the SIS II Regulation, the AsylG and the BFA-VG hold important national provisions. Art. 36 Section 2 of the BFA-VG (No. 87/2012) together with Art. 34 Section 2 of the FPG (No. 100/2005) provide a definition of identity establishment as “recording a person’s names, date of birth, nationality and address of residence” (Lukits, 2017: 13). The procedure includes the taking of fingerprints and queries in the EUODAC database, the Visa Information System, but also the national fingerprint database, which contains data from detected irregular migrants or criminal suspects. Furthermore, identity documents must be presented and can be seized by authorities who detect potential forgery (Lukits, 2017: 18-19). The 2018 Aliens Law Amendment Act (No. 56/2018) furthermore enables authorities to inspect geo-data from asylum seekers’ digital devices in case of doubts with regard to their identity, their country of origin, or their travelling route.

At this stage, applicants are generally de facto protected from forced return (EMN, 2015: 45). Upon an application for asylum, the police records the personal data, takes a photo, takes fingerprints and conducts a brief initial interview. After a first inquiry with an interpreter is recorded within a maximum of 48 hours in police custody, the documents including a report of the inquiry are submitted to the Federal Office for Immigration and Asylum (BFA). Only the following prognosis decision about the likeliness of Austria’s responsibility for the respective case marks the formal starting point of any asylum procedure (HELPgv, 2018a; BFA, 2018a). Consequently, persons are transferred to a Distribution Centre or invited to present themselves at one of the two Initial Reception Centres in Traiskirchen (Eastern Austria) and Thalham (Western Austria; see Figure 4, p.18).

At this point, they enter the first stage of the twofold asylum procedure, namely the admissibility procedure, where authorities assess whether Austria is responsible for an asylum case. The BFA founds its decision on the first police inquiry (with interpreters) about the applicant’s personal circumstances, his/her journey to Austria, and the reasons for his/her flight. As from 2017, every false testimony in this interrogation is considered a legal offence. Applications are only considered admissible if a person was unable to find protection in another safe third country or if no other EU member state is responsible for the examination (EMN, 2015: 46).

¹² This section and the footnote 8 were adopted from WP1 Country Report: Legal and Policy Framework in Austria (Josipovic & Reeger, 2018) and WP2 Country Report: Border Management and Migration Controls in Austria (Josipovic & Reeger, 2019) and updated where necessary.

During the period of this pending decision (20 days), applying persons carry a green identification card and are obliged to cooperate at any time. They have no legal residence as such and are merely tolerated within the territory of their Distribution or Reception Centre's district.

If during the admissibility procedure the BFA finds that any of the criteria or provisions of the Dublin III Regulation apply or if biometric data corresponds to that in the EURODAC database, Austrian authorities enter into a consultative procedure with immigration offices in the respective member state (BFA, 2018b). In this procedure, time limits for return requests become effective: three months upon a negative decision of the BFA, two months upon a EURODAC hit, and reversely two months to reply in regular cases. The person applying for international protection, on the other hand, has an appeal period of seven days. He/she can turn to the Federal Administrative Court (BVwG), which needs to decide within seven days upon accepting the case. If the person does not cooperate on his/her return to his/her respective member state, Basic Welfare Support¹³ is reduced by withdrawing, for example, pocket money as well as schooling allowances and clothing allowances which are otherwise part of the social benefits. Once Austrian authorities have received a positive reply from a Dublin state, the authorities have six months to conduct the return. The applicant, on the other hand, cannot be granted a suspension despite an ongoing appeal. In case of an accepted appeal, the person can return to Austria with a white card for temporary residence, but may not automatically be accepted for a substantive examination, if there was a mere procedural error (Knapp, 2016b: 3).

As from 2015, the federal government also provides details on legal cases of accelerated procedures that are referred to as "fast track procedures". In general, these are enforced when a person's application is "evidently unfounded", meaning the applicant has arrived from or crossed through a safe third country,¹⁴ has tried to hide his/her identity or does not state reasons of persecution. These cases need to be ruled upon within a maximum of five months and negative decisions do not have a suspensory effect (EMN, 2015: 25).

During periods of border controls, persons can also be denied entry directly upon arrival and authorities can conduct repulsions within 14 days (No. 24/2016). This applies to cases where authorities have doubts about a person's identity, in case of unauthorized entrance via the green border or upon a given entry ban (which often exists in conjunction with a prior return decision following a negative decision in Austria). Authorities may conduct a readmission to countries where agreements allow for it. If this is not possible, the BFA initiates a residence terminating procedure based on Section 52 FPG (No.100/2005), also allowing for detention.

¹³ Basic Welfare Support is a social aid system for aliens in need of help and protection, which can be provided through cash or in-kind allowances. Typically, this implies accommodation for asylum seekers provided by NGOs or provincial bodies, as well as health insurance and allowances for food and clothing.

¹⁴ The list of safe countries of origin has been expanded in 2018 to include Ukraine, Armenia and Benin. These were added to states such as Morocco, Algeria, Tunisia, Georgia, Ghana, Mongolia, Albania, Serbia and Kosovo.

Implementation

From 2011 until 2018, 246,502 persons from 142 countries applied for asylum in Austria. The three most important countries of origin are Afghanistan (around one quarter of all applications), Syria and Iraq. These three countries make up 55 per cent of all asylum applicants in this period (see Table 1).

Regarding gender, there is a clear, albeit diminishing dominance of males. While 26% of the asylum applicants in 2011 were women, this share grew to 40% in 2018, which is mostly due to family reunification. There are many reasons why these shares are still relatively low. According to the UNHCR, the risks for women who flee are often assessed as being too high in the countries of origin. Married men, therefore, are to some extent the pioneers on the dangerous journey to Europe. They then try to have their families join them once they are recognized as refugees. Furthermore, women often lack the financial resources to flee to Europe on their own.

Table 1: Asylum applications by country of citizenship, 2011-2018

	2011	2012	2013	2014	2015	2016	2017	2018	Total	In %
Afghanistan	3,609	4,005	2,589	5,076	25,563	11,794	3,781	2,120	58,537	23.7
Syria	422	915	1,991	7,730	24,547	8,773	7,356	3,329	55,063	22.3
Iraq	484	491	468	1,105	13,633	2,862	1,403	762	21,108	8.6
Other	9,901	12,002	12,455	14,153	24,597	18,856	12,195	7,535	111,694	45.5
Total	14,416	17,413	17,503	28,064	88,340	42,285	24,735	13,746	246,502	100.0
Share of women	26.0	26.2	28.4	24.2	27.7	33.0	39.3	39.7		

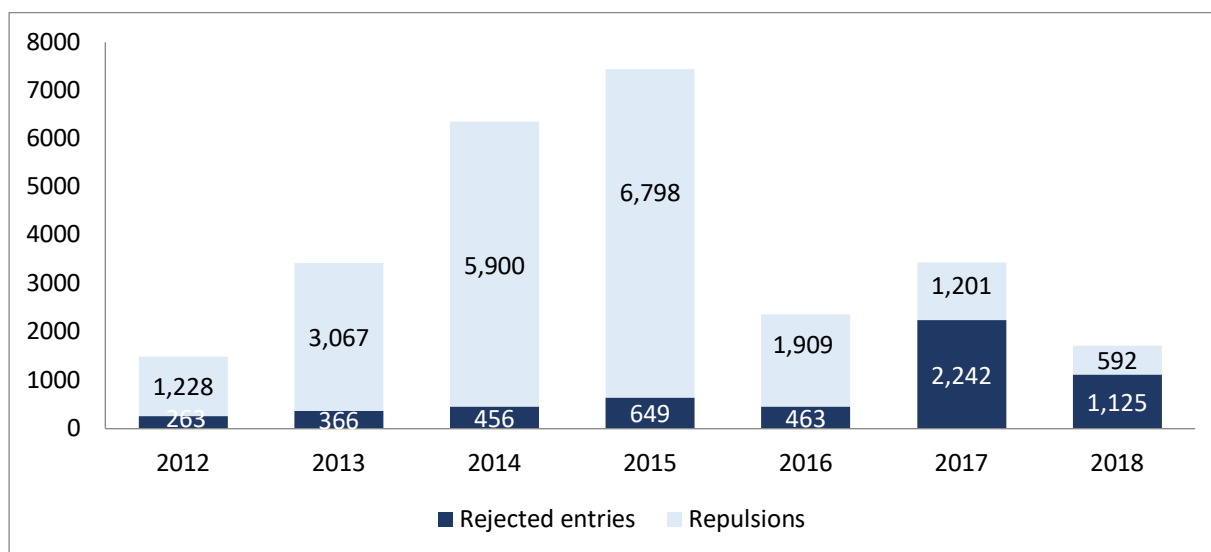
Source: Statistics Austria based on annual Asylum Statistics by the BM.I.

The principle of non-refoulement is still well maintained in Austria, despite new legal restrictions. This assessment was shared by an interviewed expert on refugee protection monitoring (E07), who argues that persons seeking to apply for asylum in Austria are generally provided good access. Provisions allowing for the suspension of new admissions to the asylum procedure following a state of emergency have not entered into force as of 2019. Despite relatively low numbers of rejected entries and repulsions relating to any non-citizens¹⁵ (Figure

¹⁵ The rejection of entry into federal territory is generally possible, but it is subject to important constraints, particularly in the case of asylum applications. If border controls are conducted, rejection of entry (*Zurückweisung*; Section 40 FPG) is possible. This generally refers to the hindrance of entering federal territory and may apply where authorities have doubts about a person's identity, in case of irregular immigration via the green border, or upon a given entry ban or exclusion order. Apart from forced return, (*Abschiebung*; see last chapter), Austrian law provides for two other types of residence terminating measures, namely repulsion (*Zurückschiebung*; Section 45 FPG), and re-admission through another state (*Durchbeförderung*; Section 45b FPG). Repulsions cover cases in which persons have already entered the country unlawfully. They are consequently ordered to return to the neighbouring EU member state which they entered through. Authorities may conduct re-admission to countries where agreements allow for it. If this is not possible, the BFA initiates a residence-terminating procedure based on Section 52 FPG (No.100/2005), also allowing for detention. All residence-terminating measures are firmly restricted by the principle of non-refoulement in accordance with Art. 3 ECHR.

6), the same expert (E07) criticizes the lack of independent border monitoring to control whether persons requesting to lodge an application for asylum are granted access to respective procedures. This particularly relates to the border towards Hungary, where human rights conditions have worsened over the last years. Furthermore, the expert also argues that cross-border policing such as that between Austria and Italy makes it difficult to assess whether a person who would have had a legitimate claim for asylum in Austria has been kept from reaching its territory in the first place. With regard to the events of 2015, the expert additionally points out the paradoxical situation in which some Afghan or Syrian individuals were not granted entrance to Austria, while most people were waved through and even received state support for their onward journey to Germany and Sweden.

Figure 6: Total number of rejected entries and repulsions of non-citizens, 2012-2018¹⁶



Source: own compilation based on BM.I annual statistics, retrieved from: <https://www.bmi.gv.at/302/Statistik/start.aspx>, 23.1.2019.

Regarding the admissibility procedure, our meso level interview partners pointed to the difficulty many asylum applicants had in understanding the implications of police registration and interrogation procedures for the processing of their case. Situations of stress would cause them to not properly recognise the aspects which were relevant to the interrogation. In this context, several experts issued concerns about the fact that applicants are confronted with questions that go beyond aspects of their journey and previous applications, instead touching upon substantive matters that are to be dealt with during the official interview at the BFA.

Asylum seekers' and beneficiaries' of international protection point of view

Remembering exactly what happened when they first entered Austria seems to be hard for many of our respondents. The first arrival in Austria is largely characterized by a lack of orientation and confusion about the administrative steps in an asylum procedure. Especially those who arrived in 2015 and early 2016 often had not planned to come to Austria or did not even know that they had arrived in Austria. The decision of staying in Austria was often made en

¹⁶ Official statistics provided by the BM.I do not list which country persons had to return to following the respective measures.

route as a result of being exhausted and tired from the flight, but also due to the perception of being in a safe and “European” country. A woman from Afghanistan who came with her family, explains:

“And the path was just so long. No matter how far we went, we just didn't get there. When we were in Austria, we didn't even know we were here. Then we asked the policemen where we were. They then said that we were in Austria. And yes. My mother was suddenly in a bad health condition. She was fine all the way until the day we were in Austria. And in the camp, they didn't give us the opportunity to go out. Then we thought to ourselves, ok, we stay here. Then I said to my father that it would be better if we went on. It would have been great to move to the Scandinavian countries. But we also thought about my sister who was still a baby and my mother who was sick. Then we decided to stay here” (R11).

For those arriving in 2015, volunteers and NGOs welcoming and supporting refugees played a role in creating positive perceptions. In other cases, persons had made a decision in advance and had arrived with the help of smugglers. Only a few of our interviewees have stayed because they already had friends or family in Austria. This is not very surprising given the characteristics of our group of interviewees, which largely entailed Afghans and Syrians who do not have a long immigration tradition regarding Austria. Among this group, a few people also took into consideration the chances of receiving asylum in deciding to come to Austria. A man from Syria aged 36 years states:

“When I came to Austria, I did not know Austria, I did not have any information about Austria. In Arabic Austria is called ‘al-Nimsa’. So the name of Austria is completely different, my information was only that it is a small country and what language the people speak and Vienna, yes Vienna is known, Mozart and music... but the system, the government, the people, I didn't know all that. But my friends - I left my children and my wife in Turkey and I called my friend here - and he told me that in Austria you can get asylum very quickly” (R07).

Generally, our interviewees displayed some confusion about the steps of their asylum procedure with some explicitly referring to their limited understanding upon arrival. A young man from Afghanistan, who came with his parents, elaborates on his first interview at the police:

“We didn't know at all what an asylum procedure is, what a case is or what an interview is, or anything like that. Then we came to the police and they asked ‘What is your case, what is your reason for escape, why did you come here?’ and I said ‘What is an interview?’” (R02).

The step of lodging an application for asylum in Austria has not been problematized as such, given the fact that this only requires approaching a police authority and expressing an acceding will. Yet, while there is a widespread notion of asylum being a legal channel towards staying in Austria, many of our interviewees were unfamiliar with the complex bureaucratic procedures between this initial declaration of will and the eventual attribution of a formal status.

From a practical point of view, this sometimes meant a lack of transparency regarding the question of identifying the point at which the procedure has started amid all the contacts with police officers and civil servants. A young woman from Afghanistan who had come with her parents and siblings, related in her interview:

“It wasn't difficult. We did not know exactly when to make the request. They took us directly to the police where we had to file the application. We didn't even know when to do it. When we were taken to the police station in Linz, we immediately made the application. And only then did we understand that this had been the interview for the asylum application” (R11).

4.2. Substantive procedure and appeal

Legal framework¹⁷

Upon admission to the asylum procedure in Austria, a person is formally recognized as an asylum applicant with a corresponding white temporary residence card that is valid during the entire substantive procedure. It grants persons legal residence within the entire federal territory (EMN, 2015: 52). However, applicants are only allowed to register for a place of residence within the federal state that provides their Basic Welfare Support.

During the substantive or regular procedure, applicants are interviewed a second time. They then have to provide reasons for seeking asylum in Austria. BFA authorities are obliged to examine whether there is any entitlement to international protection. There is an ex officio duty for investigating all possible relevant information and pieces of evidence (Limberger, 2017: 173). The presence of a legal representative is possible and evidence can be submitted.

While Austrian law is only familiar with a single category of application for international protection, it provides for at least three different statuses that might derive from a respective procedure: recognized refugee, beneficiary of subsidiary protection, and beneficiary of humanitarian protection.

Recognized refugees: in line with the Geneva Convention, asylum is granted to persons who, for well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or their political opinion, are outside their country of origin and cannot claim protection of the same. While political opinions represent the most common reason for persecution, other aspects have been more greatly contested jurisdictionally. Belonging to a religious minority or changing inner convictions (conversion), which cannot be freely expressed, might present a well-founded reason if chances are significant that it might lead to persecution. Yet, although it has been proven difficult to assess inner convictions, current procedures foresee the questioning of knowledge on the newly adopted religion (Limberger, 2017: 176). With regard to belonging to a social group, an ECJ ruling of 2013 (C-199/12 to C-201/12) has pointed out, for example, that persons cannot be expected to hide their homosexuality in the country of origin (Limberger, 2017: 177). Another social group might be that of women with a “western orientation”. Concerning this aspect, the VwGH has ruled that such a claim might be justified even after adopting said orientation in the host country (Limberger, 2017: 179). In this sense, subjective post-flight reasons for asylum in general (but also objective ones) are acknowledged. On the other hand, applications are rejected when inner-state fleeing alternatives had been an option (Limberger, 2017: 182).

¹⁷ This section was adopted from WP1 Country Report: Legal and Policy Framework in Austria (Josipovic & Reeger, 2018) and updated where necessary.

Subsidiary protection: if the authorities conclude in the context of an asylum procedure that there are no grounds for granting asylum, subsidiary protection must be granted in cases where articles 2 and 3 of the European Convention on Human Rights apply. This covers cases where a person faces torture, inhuman punishment or degrading treatment, if his/her right to life is endangered, or in case of serious danger to life and limb in conflict situations, for example during civil wars.

Humanitarian protection: if the authorities conclude that there are neither any grounds for granting asylum, nor for subsidiary protection, the BFA examines whether a “residence title for reasons of Art 8 ECHR” is to be granted (Hinterberger, 2018).

- This applies to cases where a return decision is permanently inadmissible for reasons of private and family life. In each case, authorities must balance considerations of public interest against the private and family interests of the individual in line with Art. 8 ECHR. “Here, for example, the nature, duration and legality of the stay, the actual existence of a family life, the worthiness of the protection of private life, the degree of integration, the ties to the home country and the integrity of the criminal court must be taken into account” (Hinterberger, 2018).
- Similar to this option, a “Residence Permit in Cases Requiring Special Consideration” (*Aufenthaltstitel in besonders berücksichtigungswürdigen Fällen*) can be issued. It applies to cases in which a person has been resident in Austria for five years, of which three years must have been spent under a regular status. “According to decisions of the VwGH, ‘the degree of integration’ must also be taken into account in addition to the length of stay. Further (essential) prerequisites are a legal entitlement to accommodation customary in the place of residence, adequate KV¹⁸ as well as fixed and regular income” (Hinterberger, 2018).

Furthermore, a “Special Protection Residence Permit” (*Aufenthaltsberechtigung besonderer Schutz*) may be granted to victims of human trafficking, cross-border prostitution, or violence.

If neither of these conditions are fulfilled, the BFA must issue a return decision (see section “Dealing with rejected asylum seekers”).

There are special provisions for unaccompanied minors with regard to the substantive procedure. These persons enjoy legal representation by legal staff of the respective provincial children and youth aid authorities (Kinder- und Jugendhilfe). Like all other applicant groups, they have an appeal period of four weeks following unfavourable decisions after the substantive procedure.

In case of a negative first instance decision, a person may appeal against this decision before the BVwG. The period within which an appeal may be lodged is laid down in the BFA decision. Generally, it is limited to four weeks, whereas two weeks apply for Dublin proceedings and for status withdrawal procedures. For the purpose of appeal, the person is generally called into a hearing before a judge, who can rule that the BFA must re-examine the case, decide in favour of protection status, or confirm the negative decision of the BFA.

¹⁸ The abbreviation “KV” refers to “*Krankenversicherung*”, health insurance.

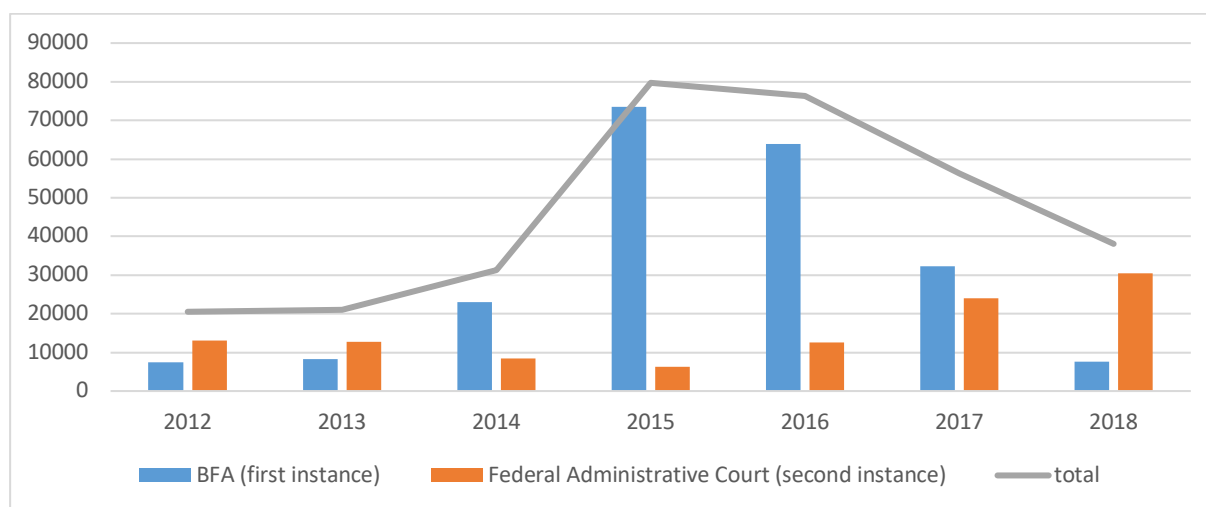
Generally, persons can obtain free legal advice in the appeal proceedings. This includes support and advice in filing the complaint, as well as a clarification of perspectives. Legal advisers may also represent asylum seekers in the proceedings. In Austria, procedural assistance for asylum seekers is provided by two NGOs: the *ARGE Rechtsberatung* (“Association for Legal Consultation” operated jointly by *Volkshilfe Oberösterreich* (“Peoples Aid Upper Austria”) and *Diakonie Flüchtlingsdienst* (“Diakonie Refugee Service”) and *Verein Menschenrechte Österreich* (“Human Rights Association Austria”; VMÖ).

An appeal against decisions of the BFA generally has a suspensory effect, which means that in these cases the complainant may remain in Austria until the decision of the BVwG. In contrast, the complaint in “Dublin proceedings” has no suspensory effect and may only be granted in special cases.

Implementation

Parallel to the peak in arrival of asylum seekers in 2015, the number of “open”, yet undecided asylum procedures also reached a peak in 2015 (79,723), remaining high in 2016 (76,409) and declining ever since (2018: 38,053). A closer look reveals a pronounced shift from open procedures at the BFA (first instance) to those at the Federal Administrative Court (second instance) with more than 30,500 open cases at the end of 2018. Almost half of all open cases pertain to asylum seekers from Afghanistan (15,750 at the beginning of 2019) followed at a substantial distance by Iraq (5,720) and Iran (2,465).

Figure 7: Open asylum procedures, 31 December 2012 – 31 December 2018



Source: Annual Asylum Statistics BM.I; own design.

The last official measurement of the average duration of first instance asylum procedures in 2019 indicated an average of 2.6 months for 2018 (only including cases which started from 1 January 2018) (BM.I-3614/AB, 2019). Statistics relating to measures taken at the end of 2017 by contrast showed an average of 16.5 months. The Ministry of the Interior argued that this was due to the effects of the migration crisis, arguably those cases which started between mid-2015 and mid-2016 (BM.I-3228/AB, 2018). The average duration between 1 July 2016 and 31 December 2017 was 6.6 months.

Speaking about the particulars of the concrete implementation of asylum procedures, some of our respondents shared concerns about the quality of BFA interviews in the face of an increased workload since 2015. An expert active in refugee protection monitoring (E07) argues that the quality of this procedural step heavily depends on resource availability and civil servants' professional capabilities. In particular, this expert points out the necessity of allowing applicants to develop their story regardless of their country of origin. In close conjunction with this, some interviewed experts share the opinion that much depends on the quality of interpretation and the integrity of interpreters. Here, more often than not, interpreters have not received professional training, the only criterion for their work being their knowledge of the language. An expert from public administration (E06) claims that there was an enormous lack of interpreters during the phase that was characterised by a high number of new arrivals in 2015. A raising demand for interpreters rather quickly went hand in hand with a loss in quality of interpreting work. The expert active in refugee protection monitoring (E07) also takes a critical stance, arguing that it is necessary to constantly evaluate the qualifications of interpreters and the quality of their work.

The second central topic in this context was legal advice for asylum seekers. Until now (2019) this legal advice has been offered by the NGOs *Diakonie* and *Volkshilfe* as well as *Verein Menschenrechte Österreich*. At the time of the interviews, there had been an ongoing public and political discussion about the plans of the government in office to abolish the independent legal counselling system provided by the three NGOs mentioned above and to establish a state-owned counselling system provided by a federal agency. These plans were heavily criticised by many of the expert participants in our research. A major point of concern was doubts about ensuring *de facto* independence and instructional autonomy within such a federal agency (elaborated on by experts active in refugee reception on a daily basis, E01, E03). Our interlocutors largely argued that it would be very difficult to fulfil the requirement of objectivity. One expert active in public administration (E08) was extremely pessimistic about this, arguing that legal advice would practically be reduced to return advice in future. Experts taking part in the interviews who are active at NGOs do not themselves provide legal counselling for asylum seekers, but they do provide psychosocial support and basic information prior to the interviews at the BFA, at least at the larger centres of accommodation.

Asylum seekers' and beneficiaries' of international protection point of view

Twelve out of 29 respondents were still asylum seekers at the time of the interview, which means that for them the decision in the first instance had been negative. Many of them had appealed this decision. All other respondents are beneficiaries of international protection (recognized refugees or beneficiaries of subsidiary protection). We did not interview anyone who also had received a negative decision in the second instance or for whom the decision was overturned by the court.

Waiting periods and processing times: There is much variation in the time span between filing an asylum application, the interview at the BFA, and the first decision, which obviously also depends on the country of origin of the applicant. Refugees from Syria are much more likely to be accepted quickly than are persons from Afghanistan. Some respondents only had to wait for a few weeks, while others waited for years for the first interview and then still received a negative decision on their application, as a young male from Afghanistan, stated.

“In the first month I asked a person in Traiskirchen how long an asylum procedure would take. And he told me that it would only take six months or a year. And that was my first idea of an asylum procedure that it would not take so long. And all these problems go away with the housing situation, the economic situation, the financial situation. The first year was already over, in the second year there was nothing. In the third year I first got the interview and that was also negative. And if you get negative after three years, that's just like losing the last hope. You just lose everything. I know so many people who have received a negative reply and who no longer go to school or attend a German course. Because they are afraid, they don't know what will happen in the future because of the current situation” (R03).

Among all interviewed asylum seekers, the topic of being in legal limbo was a highly relevant issue. Typically, our respondents perceived a stable legal status as the precondition for a sense of normality in their lives. The condition of waiting for a final decision for years (most of them had received a negative first instance decision) was associated with permanent worrying and a sense of uncertainty. A young Afghan for example describes his inability to establish solid expectations about the future as a significant distinguishing feature of his present life compared to his former life in Iran:

“Now I don't have to work here [compared to Iran], but from my side of thinking, from the psychological side of having to think every day about what will come tomorrow. Whether I get [asylum]. So many thoughts before falling asleep. That destroys everyone. I mean from the psychological side” (R05).

Likewise, some interview partners described the difference between the current situation and the euphoric months of 2015, when volunteers, NGOs and municipal initiatives offered increased opportunities, drawing asylum seekers into leisure activities, language courses, and part-time jobs. The extended waiting for a decision, the completion of basic language courses, and the ban from the labour market now created a sense of not being able to decide about the own destiny, as a male asylum seeker, aged 26, elaborates:

“What is our future here: We cannot decide that for ourselves, the others decide about our future. It's bad if you can't do something for yourself, then there are big problems. But yes, life is like that, like the Austrians say: ‘let's wait and see’” (R04).

Added to this lack of knowledge of the Austrian and European systems, false expectations sometimes led to great frustration and disappointment. A male asylum seeker expresses that in the following way:

“At first I thought Europe was like Iran. You go there and find a job and just go on living. After 7 or 10 years you get the citizenship. And then I came here and everything was completely different. I always thought we would go there and look for a job. Just like that. And when I arrived here in Austria: You have to wait for an asylum decision. There is no such thing in Asia. There you simply go into a country and find a job. Illegally or something” (R06).

Legal support: Among our interlocutors, many seemed to be overwhelmed by the many different actors and institutions they encounter. They thus tended to confuse legal support with other forms of advice that they have received on other subjects, or with informal discussions that they have had in accommodation centres.

Sometimes, there was too little time for obtaining legal consultation before the first interview at the police, although other preparatory measures could be taken. In other cases, preparing for the second interview at the BFA took place, but finally, other, unprepared questions came up or, as the following example of a young woman from Syria shows, everything worked out in favour of the individual:

“Yes, once I was at *Diakonie Rechtsberatung*, that’s such a preparation, you can go there, he then does a simulation where you really sit down and are asked the same questions as they might appear in the interview... That really helped” (R10).

An alternative is to hire a private lawyer, an expensive option that not all asylum seekers can afford. A female from Afghanistan, said:

“Maybe the interview is this month, maybe next month, and if I need a lawyer, I need money and this is difficult” (R22).

Role of interpreters in the asylum procedure: Interpreters are crucial when it comes to decisive interviews at authorities during the asylum procedure and much depends on their ability to understand what is happening. Some of the refugees who were interviewed seem to have had difficulties in their encounters with interpreters, though beneficiaries in retrospect have a more positive or neutral assessment than asylum seekers. In general, not understanding German in such a tensed situation and thus not being able to follow the conversation between the officer and the interpreter causes a lot of discomfort and insecurity. An asylum seeker from Afghanistan, describes this as follows:

“The interpreters do not understand German well. Every asylum seeker has different problems. For everyone one would need specialized German. For example, one is a doctor, another was in the military, another was a politician, and the interpreters don’t understand enough, they have B2. I also have B2, but I am not an interpreter either. They don’t understand many things, say wrong things” (R06).

4.3. Obtaining protection status in Austria: rights and duties

Legal framework¹⁹

Upon the granting of asylum, recognized refugees receive a Convention Passport, which entitles them to residence and entry for three years. Furthermore, persons receive a blue identification card for the duration of their initial temporary residence (HELPgv, 2018a). If asylum is not granted, applicants can also be granted the status of subsidiary protection, meaning that return to the country of origin would present a threat to the applicant’s life and integrity due to prevalent war or violent conflict (Art 2. ECHR, Art. 3. ECHR; Limberger, 2017: 182). Holders of subsidiary protection are entitled to a temporary residence of one year and are issued a grey Card for Persons Eligible for Subsidiary Protection (EMN, 2015: 52).

A third category of international protection titles are beneficiaries of humanitarian protection. The issuance of temporary residence permits can be based on humanitarian considerations that generally apply to persons who cannot be returned long-term due to a number of reasons.

¹⁹ This section was adopted from WP1 Country Report: Legal and Policy Framework in Austria (Josipovic & Reeger, 2018) and updated where necessary.

Most often, this concerns the preservation of family units or so-called hardship cases (*Härtefälle*) that display a high level of integration (BFA, 2014). It can, however, also be granted under consideration of a need for “particular protection”, meaning that a person is either a victim of or witness to human trafficking, has been a victim of violence in his/her family, or that his/her forced return has been de facto suspended for more than one year (Unternehmensservice-Portal, 2018). In these cases, an ordinary residence permit, a Residence Permit for Individual Protection or a Residence Permit Plus is issued (each for the duration of one year). While the first two titles require an authorization as stipulated under the Federal Act on the Employment of Foreigners, the latter as such entitles persons to pursue employment.

Table 2: Overview of important rights and duties for applicants of international protection and upon a positive outcome

	Status	Rights/ Guarantees	Duties
Stage I: Admissibility procedure	Tolerated (Green Procedure Card)	- Protection from forced return	- Cooperation - Residence only within municipality
Stage II: Substantive procedure	Asylum applicant (White Card for Temporary Residence)	- Basic Welfare Support - Health insurance - Access to housing market - Employment restricted to charitable work or apprenticeship	- Cooperation - Place of residence within the province of Basic Welfare Support
Stage III: Positive decision	Recognized refugee (Convention passport)	- 3 years of legal residence - Social Insurance (including Needs-Based Minimum Benefit and health insurance) - Access to labour market	- Civic integration programmes
	Subsidiary Protection (Grey Card for Persons Eligible for Subsidiary Protection)	- 1 year of legal residence - Social Insurance (including Needs-Based Minimum Benefit and health insurance) - Access to labour market	- Civic integration programmes
	Humanitarian title (for example, Residence Permit Plus)	- 1 year of legal residence - Social Insurance (including Needs-Based Minimum Benefit and health insurance) - Access to labour market	- Civic integration programmes

Source: own compilation.

A positive outcome of the asylum procedure means that Basic Welfare Support is discontinued and holders of asylum are transferred to the general social aid system. This system has a Needs-Based Minimum Benefit at its core, which falls entirely under the competence of the federal provinces. It is provided for persons who have personal savings of no more than 4,189 EUR (2016), who enjoy legal residence in Austria, and are available for employment. Until

2016, services were standardized with an average of 844 EUR per month for a single person household, yet since the expiration of a harmonizing agreement between the federal government and the federal states, standards have diverged considerably.

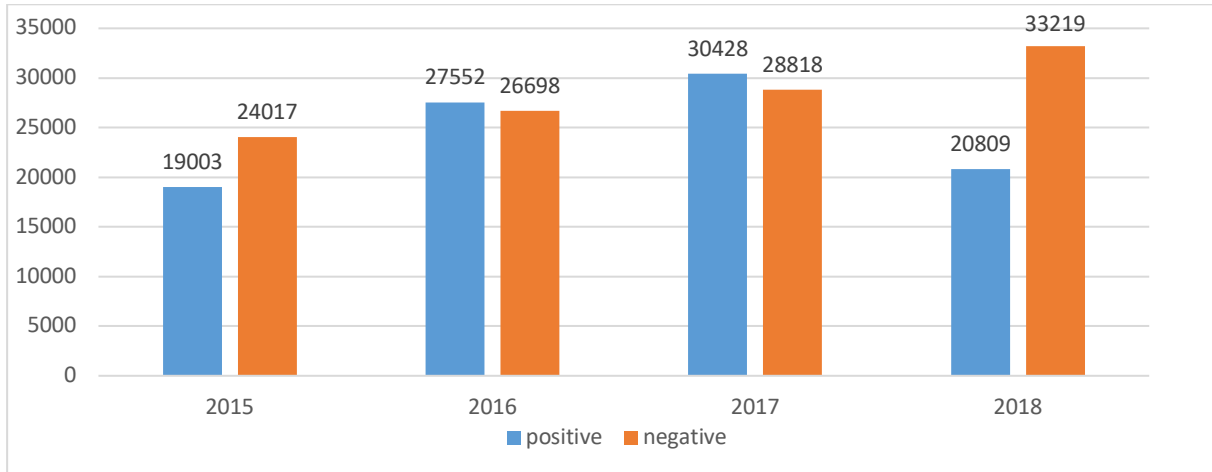
As from 2016, asylum is granted for a period initially limited to three years. The residence permit can subsequently be renewed for an indefinite period of validity if there are no conditions that require the initiation of a procedure to withdraw the asylum status. Cases of granted asylum are reviewed after three years (the process started in June 2019). Unless provisions for residence terminating measures or a withdrawal of status apply, asylum holders are then eligible for unlimited settlement on account of a Permanent Residence – EU permit after a total of five years of residence in Austria and the fulfilment of the integration criteria. Holders of subsidiary protection who initially have a residence permit of one year might receive a two-year extension, which can also lead to an entitlement to permanent residence under the same conditions (HELPgv, 2018c). Persons who have received a residence permit of one year on humanitarian considerations can only renew their title if they are holders of a Residence Permit for Individual Protection (EMN, 2015: 54). Like the other two groups, these persons can also solidify their legal residence after five years legally spent in Austria. Persons with a regular residence permit and those with a Residence Permit Plus can validate their entire time while those with a Residence Permit for Individual Protection can only validate half of their annual terms (HELPgv, 2018c).

Beneficiaries of international protection used to have a legal claim to citizenship after six years of residence, but as from 2018, they also have to wait for ten years. The Citizenship Law (311/1985) stipulates the *jus sanguinis* principle and does not allow dual citizenship, unless an Austrian-born person has parents with different citizenship. After ten years of residence, persons are generally eligible for citizenship; they however need to fulfil conditions such as the acquisition of German (level B1), knowledge about the history of Austria, and having no criminal record.

Implementation

Considering Figure 8, we find that until 2017, there were always a greater number of positive than negative decisions, a situation that was clearly inverted in 2018, when there were 20,809 positive decisions, but more than 33,000 negative ones.

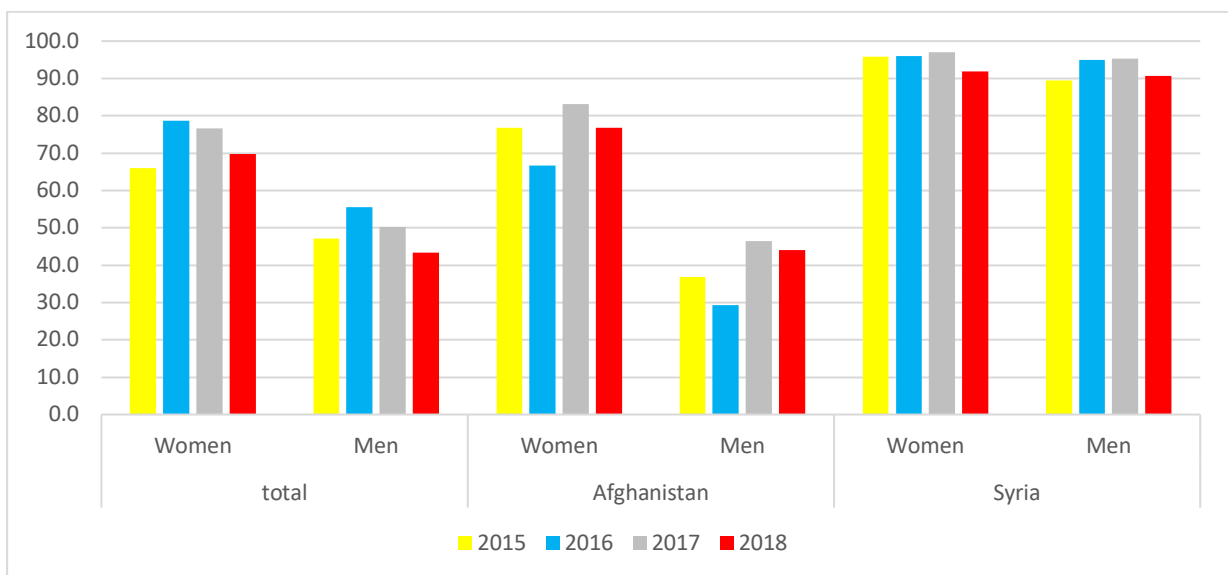
Figure 8: Overview over positive and negative decisions on asylum, subsidiary protection and humanitarian protection, 2015-2018



Source: Annual Asylum Statistics BM.I; own design.

Looking at the acceptance rates differentiated by nationality and gender (Figure 9), we see that on the average and in particular among Afghans, women have a much higher propensity to receive a positive decision than males. In the case of Syria, acceptance rates are high for both genders, remaining above 90 per cent from 2015 until 2018. Males from Afghanistan are least likely to get a positive decision among the groups under consideration; in 2016 the acceptance rate even dropped below 30 per cent.

Figure 9: Acceptance rates for asylum applicants, in total, and for Afghanistan and Syria, by gender, 2015-2018



Source: Annual Asylum Statistics BM.I; own design. Note: Subsidiary and humanitarian titles not included.

A closer look at Austria's internal statistics also reveals that a high percentage of negative first instance decisions is repealed by the Federal Administrative Court (BVwG). The ministerial answer to a parliamentary interpellation showed that in 2017, the BVwG repealed or revised 4,900 out of 11,550 asylum-related decisions of the Federal Office of Immigration and Asylum (BFA; those also include decisions on detention and return; BMVRDJ, 2018). This has led to a public debate about the high error rate, during which high workloads and the pressure for civil servants also were discussed.²⁰

According to the interviewed experts, the high level of errors arises from the considerable workload on the BFA since 2015, and from the steady pressure towards getting cases completed, rather than making careful decisions. A visible result of this pressure is the careless copying and pasting of text blocks for administrative decisions, using wrong gender pronouns, or noting down the wrong country of origin. Furthermore, some interviewed experts argued that civil servants are exposed to informal political pressure, pointing out how protection rates for Afghans dropped once the EU had established an agreement with Afghanistan in 2017, rendering a successful return of its citizens more likely.

Regarding the limitation of asylum to an initial period of three years, our experts expressed criticism. On the one hand, it might be considered as a symbolic act of deterrence, given the fact that the legal framework already holds provisions for the termination of an asylum status.

“It is quite clear, it is in the Geneva Refugee Convention, it is provided in Austrian law that there are these grounds for termination, which can be applied at any time. When I introduce such a provision, I already have in mind that I am making people insecure. Yes, that means that they cannot be sure that they can actually stay now. And then, of course, this also has negative effects on the motivation to take integration steps here” (E07).

However, as an expert active in refugee protection monitoring (E07) argues, such provisions might also imply a further stratification of legal statuses, which can become relevant for the regulation of welfare benefits. This became evident within the provincial regulation of social aid in Upper Austria, where temporary beneficiaries of asylum received reduced benefits. In 2018, the European Court of Justice ruled that this group has to be treated like other beneficiaries of asylum.

Asylum seekers' and beneficiaries' of international protection point of view

Both asylum seekers and beneficiaries of international protection expressed a sense of incomprehension regarding legal criteria for asylum decisions. A Syrian beneficiary of international protection for example voices anger, pointing to persons whom he perceives to be politically and morally undeserving of protection status:

“Well, my story is quite simple. My city is completely destroyed, in my city, there is ISIS. I have problems with Bashar al Assad, with the government, I have problems with ISIS, I have problems with all people. That's why I'm here. But I don't know, nevertheless, there are also people [here in Austria], who have no problems; for example the fans of

²⁰ See: <https://kurier.at/politik/inland/fehlerquote-bei-asylamt-gestiegen-43-prozent-vom-gericht-gekippt/400338259>.

Bashar al-Assad. And they got a decision so quickly and, I don't know, this system in Austria... This thing in Traiskirchen, that's not right, for sure, for example there was one person in our accommodation who always took too much alcohol, too much hashish and he had always made problems on our ship [during the journey] and he got a positive asylum decision, too fast. And nevertheless there is some kind of... there is me as a teacher, there are others, a politician who was also in this accommodation and we have waited too long for our decision. And these other people, they have no problems, that is incomprehensible" (R07).

Asylum seekers furthermore often felt that their positive moral behaviour and their will to conform to politically desirable behaviour were not valued, even though this is repeatedly demanded from immigrants. As the time they have spent in Austria increases, many asylum seekers are confronted with the growing tension between their individual efforts to become part of society, and national policies that only reward such behaviour once a person has obtained a certain legal status. An 18-year-old asylum seeker discusses this conflict in the context of integration efforts:

"Integration is a little bit... I got a negative decision for my asylum application. In the first interview, I had 15 letters of recommendation from other people, 'Yes, we know this person. He is a good person and we hope that he can stay here.' But with the BFA [Immigration Office], it didn't matter at all. Integration, ok, voluntary work, I already learned the language, I got to know so many people in Austria. Or school and so on... But if all these things are not integration, what does integration mean?" (R03).

Most of the beneficiaries of protection who were interviewed did not problematize their current status. They were mainly glad about having taken this hurdle and instead focused on establishing economic stability or reunifying with family members abroad. However, in some instances even this group expressed worries, pointing out current political debates in Austria. A young woman from Syria elaborates at the end of the interview:

"One topic [...] recently has been that the refugees would be sent back to Syria. Yes, that has somehow bothered us all, whether it is legal at all, whether the EU should be able to do it, or whether the states should do it individually. That is already an important issue now, but I do not think that will happen, right ...?"

Interviewer: "You mean because it's too dangerous...?"

"Yes, and there is no legal basis, I mean these people have fled Assad's regime, right, and he is still there. They cannot send anyone back and I think that is a great pity because, for example, the Minister, Mrs Kneissl, said a week ago 'we are talking about it, we are discussing it', she really said it in Arabic, 'we are going to talk about it', in Arabic she said that; it is a pity what the political situation in Austria is like [that], with this new government and so on" (R10).

Apart from this legally educated and politically interested person, the beneficiaries of international protection we interviewed rarely expressed their concerns in relation to policy consequences, but rather talked about their perceptions of political debates. Federal-level politicians and the discourse on immigration and integration were largely perceived as acting against them. Often, interviewees contrasted their sense of being unwanted, derived from mainstream political discourse, with positive societal encounters in Austria. In other instances, they experienced political discourse as connected to acts of discrimination in the public sphere.

4.4. Dealing with rejected asylum seekers

Legal framework²¹

In Austria, the return (*Abschiebung*) of third country nationals is regulated by the FPG (100/2005). Section 52 FPG stipulates that authorities may enact return decisions (*Rückkehrentscheidungen*) on third country nationals who unlawfully reside within the federal territory. This may apply to asylum seekers with a final negative decision, but also to persons whose legal residence status has expired or has been withdrawn (Trauner & Slominski, 2014, p. 155). A return decision may be issued in conjunction with an entry ban.

A return decision does not imply the execution of a forced return. Instead, persons are preferably granted a general time limit of 14 days to leave the country as provided under the category of voluntary return²². Voluntary return may include cases of departure under a readmission framework (often involving certain costs), or of persons leaving the country independent of any state measures, merely informing respective authorities.

Return in terms of a forced return is stipulated under Section 46 FPG (No. 100/2005), which lists four constellations leading to a supervised enactment of return. These are: cases in which the preservation of public order and safety appears to be necessary, in which the addressee of a return decision has not departed in time, in which authorities are apprehensive of a possible violation of the duty to return, or in which a person entered federal territory in spite of an entry ban or an exclusion order. Furthermore, a return must be executable. Obstacles can be of a legal, technical or political kind. Obstacles may include a lack of travel documents, established family life in Austria, health problems, technical defects in the transfer, or the absence of a readmission agreement.

Persons who are neither granted any type of protection, nor can be returned due to legal, technical or political obstacles can be granted toleration (*Duldung*; para. 46a FPG). Tolerated persons receive a toleration card in order to prove their identity. They continue to be entitled to minor welfare provisions if there is no personal negligence of return and can remain in the employment position if they have previously acquired a work permit. Children are allowed to continue going to school; however, persons are no longer entitled to participate in integration programmes (Lukits, 2016a: 29). After one year of toleration it is possible to lodge an application for a “Special Protection Residence Permit” (*Aufenthaltsberechtigung besonderer Schutz*), which is valid for 12 months and allows for unlimited access to the labour market. Furthermore, provisions allow for the subsequent application for a Red-White-Red Card Plus, which is granted under conditions that take into account the length of stay, integration level as well as participation in the labour market (BFA, 2014).

²¹ This section was adopted from WP1 Country Report: Legal and Policy Framework in Austria (Josipovic & Reeger, 2018) and WP2 Country Report: Border Management and Migration Controls in Austria (Josipovic & Reeger, 2019) and updated where necessary.

²² Here, the term “voluntary return” is used in reflection of legal terminology. However, certain forms of voluntary return do not necessarily entail that a person leaves a country on account of personal conclusions, but may rather include indirect forms of control or coercion.

Implementation²³

Official statistics suggest that the asylum system presents a major *ex post facto* source of irregularity. Over the last decade, the number of asylum seekers with a final negative decision constantly remained far above that of returns, both voluntary and forced (Rosenberger, Atac, Schütze, 2018, p. 3; see Table 3).

Table 3: Total number of final negative decisions on international protection and other (non-asylum-related) residence terminating decisions juxtaposed with completed returns

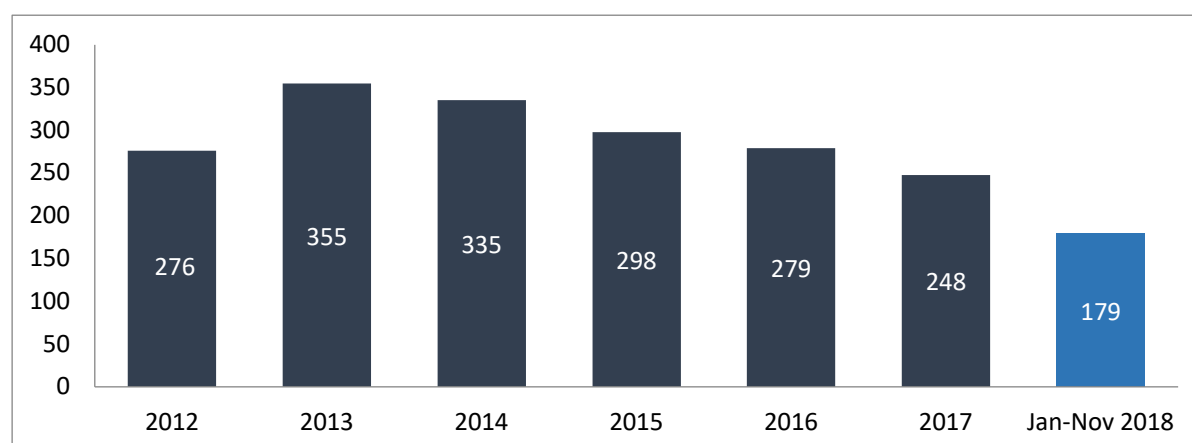
	2015	2016	2017	Jan-Jun 2018
Final negative decisions on international protection	24,017	26,698	28,818	16,544
Non-asylum residence-terminating decisions	6,668	6,035	7,096	3,391
Completed returns (voluntary and forced)	8,365	10,677	11,974	na

Source: own compilation based on bfa.gv.at (2018) and BMI-1001/AB (2018).

Furthermore, a minor share of persons who cannot be returned to their country of origin is granted toleration (*Duldung*). Federal authorities do not provide permanent statistics, yet the answer to a parliamentary interpellation of 2016 (BMI-7947/AB, 2016) reveals that the number of issued toleration cards is only very small (see Figure 10).

In addition, contrary to dominant political narratives, 60 per cent of deportations of foreign citizens concerned Europeans in the year 2018, 45 per cent were EU-citizens. In total, about 4,700 persons were deported, most of them to Slovakia, Serbia, Hungary and Romania. Many of them were homeless, beggars, or persons with a criminal sentence.²⁴ In this ranking, Nigeria ranks 5th and Afghanistan 8th. In the case of Afghanistan, it is predominantly single males who are subject to forced return after having been denied asylum in the second instance.

Figure 10: Total number of issued toleration cards, 2012-2018



Source: own compilation based on BMI-7947/AB (2016) and BMI-2483/AB (2019).

²³ This section was adopted from WP2 Country Report: Border Management and Migration Controls in Austria (Josipovic & Reeger, 2019) and updated where necessary.

²⁴ See: <https://orf.at/stories/3110228/>.

Some of the expert interview partners extensively discussed the issue of forced returns to Afghanistan. An administrative officer on the federal level (E09) sees these as highly problematic, since there are only a few places in Afghanistan that really are safe, so that it cannot be characterized as a safe third country. “In purely theoretical terms, given the overall situation in Afghanistan, nobody should actually be sent there”, he argues. Moreover, those Afghans who are now coming to Europe are very rarely from Afghanistan. They may be Afghans by nationality, but there are millions of Afghans in Iran and Pakistan, from where they are now also driven. Arguably, it is quite clear that they would want to get out, especially if they had not been there for 30 years and have nothing left there. Therefore, Afghanistan should not be considered in isolation, but should be observed in conjunction with all other states into which there is practically a kind of secondary migration from Afghanistan.

Measures in the context of forced return seem to have been tightened over time. Interviewed experts who work in accommodation centres and are thus in daily contact with asylum seekers (e.g. E02), report that asylum seekers who had received a negative decision in the second instance and therefore have to leave the country, sometimes have only very little time to pack their belongings before the arrival of police officials to enforce their departure. Sometimes handcuffs are even applied. The applicants affected by negative decisions are not informed about the date officials foresee for their departure; they only receive a general notification. For the staff and the other inhabitants of these accommodation centres, such incidents have an extremely distressing and negative effect. In some cases, it has been argued, persons would simply abscond without giving further notice.

Voluntary return rarely takes place, but when it does, the state provides supporting financial incentives.²⁵ In 2018, 3,030 persons left on this basis, which is less than in 2017. Among refugees from Syria, 58 persons for example returned home to areas where combat operations are no longer taking place. Most of them are beneficiaries of asylum or subsidiary protection; nevertheless family-related difficulties or a lack of perspective in Austria inspired their decision to return. The largest group of voluntary returnees are Iraqis (376 persons), whereas 132 persons left for Afghanistan, predominantly because they were facing forced return or detention.

Between 2018 and 2019, a controversial debate ensued with regard to the return of rejected asylum seekers who had started an apprenticeship in Austria. Since the issuing of the 2004 regulation *Bartensteinerlass* (GZ 435.006/6-II/7/2004), asylum seekers are generally not allowed to pursue any regular professional activity. Seasonal employment and harvest work are the only permitted activities. Another possibility is the so-called non-profit employment, which is compensated with a small recognition fee. The possibility for young asylum seekers up to the age of 25 to start an apprenticeship in a profession displaying a shortage of apprentices was abolished again in 2018. According to government officials, participation in an apprenticeship programme would prevent authorities from conducting returns. Several experts taking part in our research criticised this ban as unconstructive and as a way of demonstrating political rigidity.

²⁵ See: <https://kurier.at/politik/inland/asyl-3030-menschen-verliessen-2018-freiwillig-oesterreich/400098539>.

Asylum seekers' and beneficiaries' of international protection point of view

All of our respondents either had received asylum status or had a pending decision on their case.

4.5. Protection of families and family reunification

Legal framework²⁶

A special asylum procedure is foreseen for families. If several family members lodge an application for international protection, their cases are jointly examined, although each family member receives a separate written decision. Granting protection to one family member automatically leads to protection being granted to the remaining family members. However, the legal term of family in this context is very narrow. It only covers the relationship between underage unmarried children and their parents, marital or registered partners as well as legal representatives of underage children (all three statuses need to have been acquired prior to arrival) (HELPgv, 2018b).

Individuals receiving asylum or subsidiary protection in Austria may conduct a family reunification process under certain conditions. Regarding both beneficiaries of asylum and subsidiary protection, family members can contact an Austrian consular authority abroad in order to apply for a visa. This option is not only conditioned by time limits (the family member needs to apply within the first three months of asylum or after three years of subsidiary protection) but also entails further criteria that apply to beneficiaries of subsidiary protection in general and to persons granted asylum whose family member lodged the application after the three-month deadline. In these cases, the beneficiaries of protection titles need to provide proof of “adequate accommodation”, health insurance, and sufficient income (HELPgv, 2018b).

Implementation

From some of the interviewed experts' active at NGOs point of view, family reunification is a challenge full of deadlines, requirements, and bureaucratic obstacles, but generally a viable option for beneficiaries of international protection (E01, E02, E03). It seems to be especially difficult for wives of refugees, because they are often left in the country of origin or along the way, while the men alone travel onwards, because the journey would be too dangerous with the wife and children. The men accordingly hope that they can obtain asylum and thus enable family reunion. This is a taxing situation, because the families are often separated for years and the women are left in circumstances of vulnerability, as elaborated on by an expert from a NGO (E02). Unaccompanied minors who are beneficiaries of international protection have good chances towards family reunification, but only very few are entitled to asylum before they reach the age of 18 years. An expert on refugee protection monitoring (E07) elaborates on the importance of family reunification in the process of integration. Some studies have shown that the presence of children may provide an important environment for refugee families. The same

²⁶ This section was adopted from WP1 Country Report: Legal and Policy Framework in Austria (Josipovic & Reeger, 2018) and updated where necessary.

expert also heavily criticises the extended time spans in the case of subsidiary protection (in which family reunification only becomes possible after three years).

Recent figures show that there have been fewer entry applications for the purpose of family reunification in 2018 than in previous years.²⁷ According to the BM.I, 2,274 applications were submitted in 2018, 48 per cent less than in 2017. The BFA conducts a probability prognosis for family members of persons entitled to asylum or subsidiary protection in Austria when applying for entry. In 2017, the BFA made 7,612 such probability forecasts, both positive and negative. In 2018, this number dropped to 3,068 probability forecasts, proving a massive decline in applications.

Asylum seekers' and beneficiaries' of international protection point of view

A large number of our respondents have entered alone as single males and are not concretely planning to bring close family members to Austria. Many would dream of doing so, but are aware of the legal constraints. Others, among them all of the women, came with their whole family or close family members and thus are not interested in any further family reunification. Only a few came alone at first and brought in their family members at a later stage. A beneficiary of international protection from Syria describes the difficulties he had to face while he was trying to bring his wife and three small children to Austria:

“I waited eight months (for the decision on asylum), I asked everyone, *Diakonie*, *Caritas*... Why do I have to wait so long, have I done something bad or perhaps a judge believed that I am a liar and gives me a negative decision? Or does he give me a positive answer? And they said 'no, just wait'. Eight months, but I have children, they don't go to school, we don't have money and I miss my children and I miss my wife and I miss my family, but they don't answer, we're just a number, just a number.... Family reunification was also difficult for me, my wife had an interview in Istanbul and I was there at the embassy in Istanbul. I travelled to Istanbul, met my family, was there for about ten days and then came back to Vienna. And my wife had an interview in Istanbul with the embassy, and she had to wait another year, not a year, but 14 months...” (R07).

Transnational ties play a role, with family members often living in other European countries, but for a 52 year-old female beneficiary of international protection from Afghanistan, who lives in Austria with her two grown up daughters, family reunification does not matter:

“Of course you want to live together with your family, but fate leads everyone to a different country. When I came to Austria, I really liked it here. My family told me that I should go to Germany, but I didn't want that. I love Austria and I stayed here” (R14).

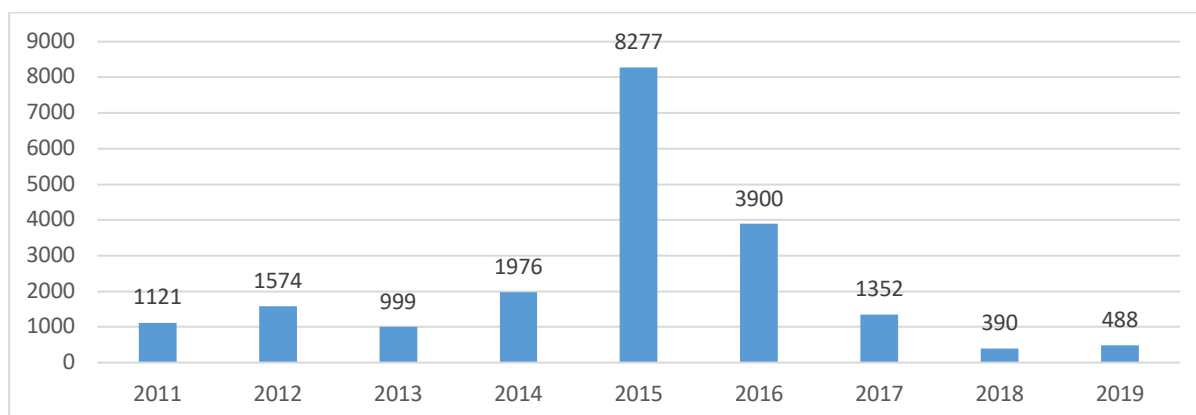
4.6. Vulnerable persons in the asylum procedure: the case of unaccompanied minors

In socio-demographic terms, the share of young persons among asylum seekers is rather high in Austria, also in comparison to other EU countries. Among the 208,021 asylum applicants who came to Austria between 2011 and 2016, 8.6% (17,847 persons) were unaccompanied

²⁷ Information retrieved from <https://volksgruppen.orf.at/v2/diversitaet/stories/2962934/>.

minors between the ages of 14 and 18. Austria ranked third behind Sweden and Germany in this respect in 2015 (Bassermann & Spiegelheld 2018: 22). Around 8% of the unaccompanied minors were younger than 14 (1,442 persons). Parallel to the overall development, the number of unaccompanied minors reached a peak in 2015 (8,277 persons, see Figure 11). Statistics on gender are not available from the BM.I, but according to EUROSTAT, 95 percent of these young persons are males. Regarding countries of origin, it is again Afghanistan (2015: 5,682 persons) and Syria (1,134 persons) who are the most important countries of origin, accounting for 82 per cent of all unaccompanied minors arriving in that year.

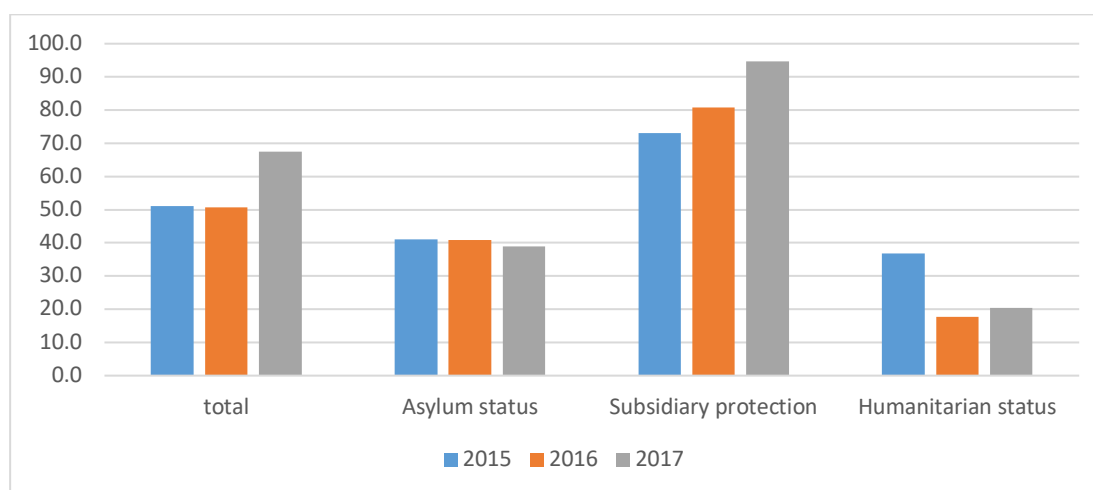
Figure 11: Asylum applications of unaccompanied minors, 2011-2019



Source: Asylum Statistics BM.I; own design. Note: Numbers for 2019 are preliminary.

In terms of international protection, unaccompanied minors can apply for and receive the same titles as adult asylum seekers. There however are special provisions for this vulnerable group with regard to the admissibility and the substantive procedures. Unaccompanied minors are legally represented first by a legal advisor and in the substantive procedure by legal staff of the respective provincial children and youth aid authorities (*Kinder- und Jugendhilfe*) in some provinces, while other provinces choose to deploy representatives of specialised organisations. Like all other applicant groups, they have an appeal period of four weeks after the substantive procedure in the case of unfavourable decisions.

Figure 12: Acceptance rates of unaccompanied minors, 2015-2017



Source: Own calculation based on data derived from Bassermann & Spiegelheld (2018). Note: acceptance rate = number of positive final decisions divided by number of total final decisions.

As Figure 12 shows, unaccompanied minors are most likely granted subsidiary protection with growing chances from 2015 until 2017. Acceptance rates for asylum status are considerably lower and oscillate around 40 per cent in the years under consideration.

In some cases, where there is doubt about the age of a person claiming to be a minor and the respective person cannot provide legal documents to prove his/her actual age, age assessment takes place (Koppenberg 2014: 14). Implemented in 2010, this multifactorial medical procedure includes physical, dental and radiological procedures. Until the results are available, the person in question is treated as a minor. NGOs active in the protection of unaccompanied minors heavily criticise the methods applied for age assessment in terms of their lack of reliability. This especially relates to wrist x-ray procedures that have a standard deviation of 14.5 months for male adolescents and 11.2 months for female adolescents.²⁸

A young asylum seeker from Afghanistan claims to have been a minor upon his arrival in 2015. He was forced to undergo an age assessment, which determined that he was two years older than he had claimed to be:

“I am originally 18 years old, but on my Austrian passport, or on the passport I received from the region, it says that I am 20 years old. And they did a test in the first year. An age test or something like that. That’s when they found out that I was 20 years old. But originally I am 18 years old. And that’s two years difference. This has caused a lot of difficulties in the last three years” (R03).

At the time of the interview, he had already spent more than three years in Austria without having been granted asylum. In the substantive procedure, his first interview at the BFA took place only in the third year of his stay. It had turned out negative and he was in the phase of appeal when we spoke to him.

The exercise of custody over unaccompanied minor refugees was an unresolved problem in Austria until 2005, when the Supreme Court declared that this group must be provided an observer with custodial rights. Today, the overwhelming majority of unaccompanied minors are assigned an observer after being admitted to the asylum procedure.

A significant phenomenon is the abscondence of unaccompanied minors from accommodation centres, although no official numbers are available. The supposed reasons for absconding are manifold, and according to Bassermann & Spiegelfeld (2018: 87) and Koppenberg (2014: 77ff.) they include not having reached the final country of destination where family members or friends are staying, vanishing chances of getting asylum in Austria in combination with generally being disappointed with their situation. Some also evade removal, an age assessment, or imminent detention pending removal. A further reason is that unaccompanied minors who are victims of trafficking might be ordered to abscond. According to Koppenberg (2014), unaccompanied minors are most likely to abscond within the first few days after arriving, that is, during the admissibility procedure.

²⁸ For further details please visit: <https://www.asyl.at/de/themen/umf/altersfeststellung/>.

4.7. Governance of refugee protection: Which level should be responsible?

Since 2015, and even before that, the question of responsibilities for refugees, their protection, reception, and integration has been a controversial topic, which is discussed at both the national and European level. Accordingly, the meso level interview partners commented extensively on the future of the European asylum system, the role of various nation states and reforms that they considered necessary. First, they criticised the variation in recognition rates across member states, which is particularly observable pertaining to certain groups such as Chechens and Afghans. There is broad consensus among our interviewees that there is an urgent need for deeper integration and a uniform system, so that the chances for a refugee of obtaining appropriate protection in every member state are equal everywhere. Thus, there is the call for a European asylum agency with uniform European procedures.

As do some other interview partners, an expert on refugee protection working at an NGO (E07) criticises the current political focus on the EU's external borders and the trend of trying to entirely prevent refugees from coming to Europe. All of our meso level interview partners criticized the Dublin system for its practical deficiencies and its normative premises. Against the background of a heavy burden on southern member states, they largely argued in favour of more solidarity and the creation of a durable distribution mechanism. Such dispersal policies would have to be connected to the provision of financial resources for economically weaker member states. Similarly, a representative of a local government (E10) elaborated on the possibilities of a bonus system for regions and cities rather than for member states. Such a system could provide per capita financial support for reception and integration purposes. As a compulsory allocation quota on the level of member states appears not to be feasible, at least for the moment, such a bonus system would represent a minimum consensus. Cities and regions that are politically more liberal or economically interested in human resources would be provided with incentives to contribute to an even distribution across the EU. In this regard, this interview partner (E10) pointed to an existing cooperation on refugee protection and integration between Ravenna in Italy and different cities such as Vänersborg in Sweden.

Other meso level interview partners discussed the role of the subnational level in relation to the attribution of humanitarian protection titles. The local level has been argued to be more open towards certain individuals who might not fall under asylum considerations, but have integrated into local communities. In this regard, they discussed the degree to which the municipal level should have a right to be heard when it comes to forced returns. Arguably, many municipalities put a lot of work into integration measures and have difficulties understanding and accepting decisions made by authorities on the national level.

5. Conclusion

Overall, we found that national policies in Austria have aimed at curbing immigration via the asylum system, particularly following the crisis of 2015. This was pursued by means of procedural hurdles, an emergency provision that enables limiting the access to federal territory, and new restrictions for persons who receive the status of international protection. While legal changes largely remained within the confines of EU law, some provisions clashed with constitutionally provided individual rights, as the examples of appeal periods in asylum procedures and social aid legislation have shown. Not only high courts, but also administrative courts responsible for appeals against first instance decisions of the Immigration Office have acted as safety nets protecting individual rights. In this regard, it is also important to highlight the institutional reform of 2014, which enabled appeals before the Administrative High Court.

At the level of implementation, we found a considerable work overload within the Immigration Office and the Federal Administrative Court following 2015. This has been accompanied by multiple problems regarding the quality of first instance decisions. Furthermore, there are growing concerns among NGOs in relation to the communization of asylum seekers' legal aid services and a potential lack of independence. Likewise, refugee rights organizations heavily criticized deportations to Afghanistan as ethically unwarrantable. Besides that, return orders can often not be implemented, producing a high level of irregularity, particularly given the small number of granted tolerations.

Among asylum seekers and beneficiaries of international protection, a central topic is the long waiting time during the asylum procedure, particularly in combination with a ban on taking up formal employment. Both asylum seekers and beneficiaries of international protection expressed a sense of incomprehension regarding the legal criteria for asylum decisions. This was particularly pronounced among persons who had spent several years in Austria making considerable integration efforts and then had received a negative first instance decision. Here, the discrepancy between asylum seekers' de facto integration into society and their legal exclusion became particularly evident.

Multi-level governance of asylum experienced a considerable shock during the crisis of 2015. According to the meso level interview partners, urgent reforms of the CEAS need to find an alternative to the Dublin regime and provide solidary distribution mechanisms as well as a stronger harmonization of national asylum procedures.

6. Policy recommendations

For future policy reforms, we recommend considering the following aspects:

- High workloads within the Immigration Office, long processing time of applications and high error rates indicate bureaucratic overload and quality concerns within the asylum procedure. Therefore, engagement in reforms of the Common European Asylum System (CEAS) appears crucial. In the long term, new EU policy should aim to achieve an ordered legal entry or admission of asylum seekers to federal territory and introduce mechanisms of burden sharing. This might further reduce pressure for legally questionable national policy solutions such as unilateral asylum quotas. Furthermore, sub-national governing bodies should be taken into account for future reforms.
- Beside European burden sharing, internal investment in human resources within the Immigration Office and the Federal Administrative Court might contribute to faster and better quality decisions. Quality also needs to be ensured with regard to information gathering. Internal reports on the situation in countries of origin should avoid political biases, for example through basing drafts on multiple independent sources. Political and administrative actors must ensure sufficient resources for qualified interpreters during first instance interviews.
- Policy makers must address conditions of protracted reception, whereby asylum seekers spend several years in the country without a final decision on their case. With regard to rejected asylum seekers who have developed social ties and invested in individual integration efforts during this time, substantive asylum law needs to account for low-threshold options of regularisation, for example through a reform of humanitarian protection titles.
- Substantiation of individual rights: First, transparency for persons applying for asylum needs to be ensured. With regard to the admissibility procedure, policy makers and implementing actors must take into consideration the lack of system knowledge on the side of applicants regarding two questions in particular: What is the formal starting point of an asylum procedure and what is the legal purpose of the interrogation in relation to the entire procedure? Second, regarding the future communization of refugee reception and legal aid, policy makers must ensure the independence of legal counsellors for appeals against first instance decisions.
- The production of irregularity in the current Austrian and European asylum system must be addressed politically in order to increase governability and minimize the scope of difficulties arising in the context of administrative procedures, secondary movement, and return.

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Appendix

Interviews with asylum seekers and beneficiaries of international protection

	Country of Origin	Federal state	Gender	Age	Status
R01	Syria	Vienna/ Graz	m	27	Recognized refugee
R02	Afghanistan	Vienna	m	21	Asylum seeker
R03	Afghanistan	Vienna	m	20	Asylum seeker
R04	Afghanistan	Vienna	m	26	Asylum seeker
R05	Iran	Vienna	m	n.S. (>18)	Asylum seeker
R06	Afghanistan	Vienna	m	19	Asylum seeker
R07	Syria	Vienna	m	36	Recognized refugee
R08	Syria	Vienna	f	31	Recognized refugee
R09	Syria	Vienna	m	33	Recognized refugee
R10	Syria	Vienna	f	22	Recognized refugee
R11	Afghanistan	Vienna	f	19	Recognized refugee
R12	Afghanistan	Vienna	f	23	Recognized refugee
R13	Afghanistan	Vienna	f	35	Recognized refugee
R14	Afghanistan	Lower Austria	f	52	Recognized refugee
R15	Afghanistan	Burgenland	f	23	Recognized refugee
R16	Afghanistan	Vienna	f	34	Ben. subsidiary protection
R17	Nigeria	Upper Austria	m	21	Asylum seeker
R18	Iraq	Upper Austria	f	22	Asylum seeker
R19	Syria	Upper Austria	m	34	Recognized refugee
R20	Syria	Upper Austria	m	41	Recognized refugee
R21	Georgia	Upper Austria	f	40	Ben. subsidiary protection
R22	Iraq	Upper Austria	f	31	Asylum seeker
R23	Syria	Upper Austria	m	23	Recognized refugee
R24	Afghanistan	Upper Austria	f	34	Ben. subsidiary protection
R25	Afghan./Pakistan	Upper Austria	m	26	Asylum seeker
R26	Iran	Upper Austria	f	39	Asylum seeker
R27	Afghanistan	Upper Austria	f	64	Asylum seeker
R28	Pakistan	Upper Austria	f	47	Asylum seeker
R29	Syria	Vienna	m	27	Recognized refugee

Interviews with experts

	Main field of expertise	Type of institution	Work profile
Vienna			
E01	Reception/ Integration	NGO	Administrative & practical
E02	Reception	NGO	Administrative & practical
E03	Reception/ Integration	NGO	Practical
E06	Integration	Public administration	Administrative
E08	Reception	Public administration	Administrative
Upper Austria			
E04	Reception/Integration	NGO	Administrative & practical
E05	Reception/Integration	NGO	Administrative
E10	Reception/Integration	Local government	Administrative
E12	Reception/Integration	Public administration	Administrative & practical
National level			
E07	Refugee protection monitoring	NGO	Administrative
E09	Border management	Academia / Federal administration	Administrative
E11	Q&A: refugee protection and border management	Federal Ministry of Interior	Administrative