

## EMN-STUDY

### „The Organization of Asylum and Migration Policies“ (2015)

#### National Contact Point Austria in the European Migration Network

##### Thematic focus:

This factsheet provides an overview of how asylum and migration policies are organized in Austria, including the organization of the institutional and regulatory context and framework for dealing with third country nationals coming for the purpose of legal immigration or for international protection. It is based on information provided in the Austrian National Report of the EMN Study *The Organization of Asylum and Migration Policies in Austria*, updated in the year 2015, following significant changes in legislation and policy in Austria.

#### 1. Overview of the organization of political, legislative and institutional framework in Austria:

##### 1.1 Political Framework

Austria's federal structure is stipulated in the constitution and, as such, is a fundamental principle in Austrian law. Austria is a federation consisting of nine provinces. Each province is governed by a provincial government, which is under the leadership of the governor of the province. The provincial parliaments represent the interests of the citizens in the respective province and are in charge of the provincial legislation and the election of the provincial government.

Legislative and executive jurisdiction is divided between the Federal State and the provinces. The legislative branch is exercised by the federal and the provincial parliaments. The implementation of the legislation is the task of the executive branch. The executive branch consists of two components – the administration and the judiciary.

Austria's judiciary has recently undergone significant restructuring due to a wide-ranging reform of the Austrian system of administrative jurisdiction, which took effect on 1 January 2014. This reform created the so-called "9+2 model": nine provincial administrative courts, a Federal Administrative Court and a Federal Fiscal Court. From now on most administrative acts can be contested before one of the eleven administrative courts.

During the course of this administrative reform a restructuring of the asylum and aliens authorities also took place. In this respect the main change was the establishment of the Federal Office for Immigration and Asylum, which since 1 January 2014 has replaced the former Federal Asylum Office.

##### 1.2 Legislative Framework

The main legal documents in the field of migration are the Asylum Act, the Federal Police Act, the Settlement and Residence Act, the Citizenship Act, the Act Governing the Employment of Foreigners and the basic welfare support acts of the federal state and the provinces. The interplay of these legal documents is often quite complex. Many legal documents are determined by legal acts of the European Union, which again renders the legal situation more complicated.

A main change in the Austrian legal system was the establishment of administrative courts in 2014. Now any administrative decision may be appealed to an independent administrative court with full jurisdiction. These administrative courts are supposed to be independent tribunals within the meaning of Article 6 ECHR. Appeals to the Constitutional Court and to the Administrative High Court against decisions of the administrative courts are possible.

##### 1.3 Institutional Framework

In the field of migration, legislative and executive powers lie mainly within the competence of the Federal State. The Federal Ministry of the Interior holds the main responsibility for the area of asylum and migration policies. It has established the so-called Migration Council for Austria. This body consists of experts from academia and public life and assists with

the development of a comprehensive migration strategy. The Federal Office for Immigration and Asylum is under the responsibility of the Federal Ministry of the Interior and, since 1 January 2014, is the first instance authority in asylum and other migration procedures.

Police officers and the police administrations of the provinces are also under the responsibility of the Federal Ministry of the Interior and play an important role in the implementation and execution of tasks in the field of asylum and migration.

The Federal Ministry for Europe, Integration and Foreign Affairs is specifically responsible for integration issues. Its partner, the Austrian Integration Fund supports recognized refugees and migrants in their integration process.

The Federal Ministry of Labour, Social Affairs and Consumer Protection is inter alia responsible for labour market policies and, therefore, also for policies linked to employment of foreigners. Under its responsibility is the Public Employment Service Austria, which assumes its role as an enterprise under public law in close cooperation with labour and employers' organizations.

## **2. Development of asylum and migration systems**

Immigration has constituted a major component of Austria's population growth in the last decades. Three major events in the modern Austrian migration history were the influx of Hungarians after the uprising in 1956, the influx of Czechoslovakians in 1968 and the war in former Yugoslavia in the 1990s. Austria has also been influenced by the immigration of so called "guest workers" since the 1960s. Nowadays, Austria tries to attract qualified workers through the so called Red-White-Red – Card. An increasing focus is given to the integration of immigrants in Austria. For example, basic German language skills must be acquired in order to obtain certain residence titles. Further, third-country nationals with a Settlement Permit in general have to fulfill the so called Integration Agreement.

## **3. Asylum and migration policies**

So far, asylum applications in general may only be lodged in the territory of Austria. Responsible authority is the Federal Office for Immigration and Asylum. The Federal Office for Immigration and Asylum examines whether the application has to be rejected or whether the asylum-seeker is to be considered as a refugee under the Geneva Convention on Refugees or entitled to subsidiary protection. In addition there exist three different residence permits for humanitarian reasons.

On the contrary, applications for residence titles usually have to be lodged outside of Austria at the respective representation authority. The Austrian Settlement and Residence Act mainly distinguishes between temporary residence and long-term settlement. For each year, the Federal Government issues a Settlement Regulation determining quotas for certain residence titles and work permits. The variety of residence permits in the Austrian migration law is particularly difficult to oversee.

Third-country nationals may appeal against a negative decision to the respective administrative court. Against a decision of an administrative court it is possible to lodge an appeal before the High Administrative Court or before the Constitutional Court.

As regards Austria's return policy a distinction has to be made between forced and voluntary return. Forced return refers to cases where a person is forcibly removed from Austria for a certain reason, while voluntary return to the country of origin, transit or another third-country based on the free will of the returnee is either independent or assisted. In the case of assisted voluntary return the return process is supported by various actors.

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# Institutional Chart for Austria

