



# POLICY REPORT

## IMMIGRATION AND INTEGRATION IN AUSTRIA

## REFERENCE PERIOD 1 JULY 2004 TO 31 DECEMBER 2005

**The opinions presented in this document are those of the NCP Austria alone and do not represent the position of the Austrian Ministry of Interior.**

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## *FOREWORD*

This report covering the reference period from 1 July 2004 to 31 December 2005 is another result of our work as the National Contact Point (NCP) for Austria within the European Migration Network (EMN). One of the tasks for the individual contact points is the writing of selected policy reports, small-scale studies and research studies in the field of migration and asylum in Austria. These reports aim at providing a concise overview on the respective subject in all participating countries and serve both internal and external information needs by providing information about legislation and policy debate in Austria. Based on a common template (elaborated by the coordinating scientific unit of the Migration Network "Berliner Institut für Vergleichende Sozialforschung" – http://www.emz-berlin.de) for all participating contact points the report offers at the same time a gate for comparison and information exchange with other EU members states.

The present report has been made possible through input by the staff of NCP Austria with respect to their specific competences. Ms. Brigitte Schütz gave her valuable input as the data and research expert of the NCP especially with regard to the data relevant sections (see pt. 2) as well as with regard to other, even more specific topics (see pt. 5) with the exception of discrimination (see pt. 5.3), which has been produced by Mr. Volker Frey, the head of the Austrian NCP. The political debate has been written by Mr. Alexander Dinhobl and Mr. Hubert Weitzer during their time as researchers and/or consultants at the NCP. The remaining items of the policy report have been written by Dr. David Reisenzein in his function as the legal adviser at the NCP.

We trust that this report proves to be useful for the readers and thank all contributors for their input and efforts to compile a well-balanced and comprehensive report on Austria's recent immigration policy.

Volker Frey, IOM Vienna

Project Manager for Austria – Head of the National Contact Point Austria

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## *LIST OF ABBREVIATIONS*

| | | |
|---|---|---|
| aA | andere Auffassung | contrary opinion |
| ABGB | Allgemeines Bürgerliches Gesetzbuch | Austrian Civil Code |
| AlVG | Arbeitslosenversicherungs-gesetz | Unemployment Insurance Law |
| AP | Österreichisches Parlament | Austrian Parliament |
| AsylG | Asylgesetz | Asylum Act |
| AsylG – DV | Asylgesetz – Durchführungsverordnung | Executive order to the Asylum Act |
| AuslBG | Ausländerbeschäftigungs-gesetz | Law on the Occupation of Aliens |
| BbetrG | Bundesbetreuungsgesetz | Federal Law Regulating the Provision of Federal Care for Asylum Seekers |
| BEBV | Betreuungseinrichtungen – Betretungsverordnung | Decree Regulating the Access to Federal Care Facilities |
| BGBl | Bundesgesetzblatt | Federal Law Gazette |
| B-GlBG | Bundesgleichbehandlungs-gesetz | Federal Law on Equal Treatment |
| BKA | Bundeskanzleramt | Federal Chancellery of Austria |
| BMG | Bundesministeriengesetz | Law on the Federal Ministries |
| BMJ | Bundesministerium für Justiz | Austrian Ministry of Justice |
| BMSG | Bundesministerium für soziale Sicherheit, Generationen und Konsumentenschutz | Ministry for social security, generations and consumerism |
| BMWA | Bundesministerium für | Federal Ministry of Economics |

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|---|---|---|
| | Wirtschaft und Arbeit | and Labour of the Republic of Austria |
| BZOE | Bündnis Zukunft Österreich | Alliance for Austria's Future |
| EAST | Erstaufnahmestellen | Initial Reception Centres |
| EC | Europäische Kommission | European Commission |
| EEA | Europäischer Wirtschaftsraum | European Economic Area |
| EMN | Europäisches Migrationsnetzwerk | European Migration Network |
| FPOE | Freiheitliche Partei Österreichs | Austrian Freedom Party |
| FrG | Fremdengesetz | Aliens´ Law |
| FrG – DV | Fremdengesetz – Durchführungsverordnung | Executive Order to the Aliens´ Law |
| FPG | Fremdenpolizeigesetz | Aliens' Police Act |
| FURCHE | Die Furche | Die Furche (daily Newspaper) |
| GRUENE | Die Grünen | Green Party |
| HERALD | The International Herald Tribune | The International Herald Tribune (daily Newspaper) |
| IOM | Internationale Organisation für Migration | International Organization for Migration |
| IPR-G | Internationales Privatrechtsgesetz | International Civil Law Act |
| IV | Integrationsvereinbarung | Integration Agreement |
| IV-V | Integrationsvereinbarungs-verordnung | Integration Agreement Decree |
| KLEINE | Kleine Zeitung | Kleine Zeitung (daily Newspaper) |
| KRONE | Neue Kronen Zeitung | Neue Kronen Zeitung (daily Newspaper) |
| KURIER | Kurier | Kurier (daily Newspaper) |

| | | |
|---|---|---|
| MRB | Menschenrechtsbeirat | Human Rights Advisory Board |
| ME- | Ministerialentwurf | Ministerial proposal |
| NAG | Niederlassungs- und Aufenthaltsgesetz | Settlement and Residence Act |
| NCP | Nationaler Kontaktpunkt Österreich | National Contact Point Austria |
| NLV | Niederlassungsverordnung | Settlement Regulation |
| OEIF | Österreichischer Integrationsfonds | Austrian Integration Fund |
| OGH | Oberster Gerichtshof | Austrian Supreme Court of Justice |
| OEVP | Österreichische Volkspartei | Austrian Peoples Party |
| OOEN | Oberösterreichische Nachrichten | Oberösterreichische Nachrichten (daily Newspaper) |
| POPREG | Populationsregister | Population Register |
| PR- | Presseaussendung der | Press Release of |
| PRESSE | Die Presse | Die Presse (daily Newspaper) |
| SA | Statistik Austria | Statistics Austria |
| SN | Salzburger Nachrichten | Salzburger Nachrichten (daily Newspaper) |
| SPOE | Sozialdemokratische Partei Österreichs | Social Democratic Party of Austria |
| STANDARD | Der Standard | Der Standard (daily Newspaper) |
| StbG | Staatsbürgerschaftsgesetz | Nationality Act |
| UBAS | Unabhängiger Bundesasylsenat | Independent Federal Asylum Review Board |
| UVS | Unabhängiger Verwaltunssenat | Independent Administrative Senate |
| VfGH | Verfassungsgerichtshof | Constitutional Court |
| WIF | Wiener Integrationsfonds | Viennese Integration Fund |

| | | |
|---|---|---|
| ZMR | Zentrales Melderegister | Central Registration Register |

# 1. INTRODUCTORY SUMMARY

The following report tries to give an overview about recent developments in the Austrian immigration, asylum and integration policy. Moreover, the most controversial issues in the public debate either preceding, accompanying or following policy developments have been sketched in a separate chapter of this report. The covered period reaches from 1 July 2004 to 31 December 2005. However, as it is always the case for policy developments and debates, it is the outline of an ongoing process, which has its roots in the past and seeks to challenge future problems. Therefore, the abovementioned period has to be seen as a rough indication, which builds on the past and looks out into the future.

Many of the changes in the Austrian migration policy have been pushed by developments on EU level. The evolution of an EU Acquis on migration and asylum has experienced acceleration during the last few years, with the effect that a series of EU Directives have to be transposed in the near future. The new Austrian Aliens' Act Package entering into force on 1 January 2006 has been driven by the anticipation of the deadlines for transposition of a number of such Directives. This fact and the circumstances of a number of local elections (accompanied by controversial election campaigns calling for a restrictive migration policy) that took place during the reference period have led to a completely overworked Aliens' Act Package.

The previously complicated system of migration related Acts has been restructured and clearly split into an Asylum Act, a Settlement and Residence Act as well as an Aliens' Police Act. In general, the new system bears the advantage of being easier to understand and to read than the previous system. Nevertheless, the present European trend of introducing a tighter migration regime, focused more and more on the selection of highly skilled immigrants and the burden sharing with regard to asylum applicants, can also be recognised in the newly introduced Austrian Acts. The connection of policy developments with the public discussion, however, can explain some of the major changes that can be identified in the following chapters.

# 2. IMMIGRATION OVERVIEW: GENERAL TRENDS IN MIGRATION AND ASYLUM

As from 2002, population and migration statistics have considerably changed with the development of a population register (POPREG) by Statistics Austria. This register is based on the central registration register (Zentrales Melderegister).

Migration statistics in the period 1996-2001 did not record movements of persons but change of residence across borders. Basis for these statistics was aggregated local population register data. Based on the new methodology as from 2002, the compiled migration events can be linked to individuals.

In the following, the most recent statistical trends will be discussed, comparing them to the developments of previous years (see tables in the Annex for detailed figures). Unfortunately, at this moment some statistics relevant for the reference period of this report have not yet been published, e.g. the detailed migration statistics for the years 2004 and 2005.

## 2.1. Main groups of migrants, refugees and asylum seekers

By 1 January 2005, 9.6% of the residing population were non-nationals. About three quarters of these were third country nationals compared to 26% EU-nationals. The largest group among EU nationals are German nationals (45.8%), followed by Polish nationals (13.1%). The most important countries of origin among third countries are the successor states of Former Yugoslavia and Turkey.[1]

At first glance, the countries of origin of foreign nationals have not changed considerably during the last years. Nevertheless, the foreign population has become more diversified; this is also due to inflows of asylum seekers from an increasing number of countries of origin in the last two decades. Certainly, another important criterion besides citizenship is country of birth. According to the

[1] Data source: Statistics Austria.

census of 2001, the percentage of foreign-born persons in the Austrian population was 12.5%[2].[3] Austria has had a long tradition of immigration during its Second Republic, which also becomes manifest in the rising number of naturalisations, particularly in recent years.

The main nationalities of asylum seekers have not changed significantly in the last two years. In 2005, the largest group among asylum seekers were citizens of Serbia and Montenegro. In 2003 and 2004, the largest group were Russian citizens (presumably Chechens). In 2005, they are still the second among the main groups of asylum applicants. Other main groups are citizens of India, Moldova, Turkey, Georgia, Afghanistan and Nigeria, which are among the top-10 countries of origin, both in 2004 and 2005. Concerning the gender of asylum seekers, the percentage of men and women has remained relatively stable throughout the reference period as well as preceding years (about 70% men and 30% women).

The recognition rate for asylum seekers is still at a significantly higher level than in previous years (2004: 49.5%; 2005: 44.7%). It is important to point out that the number of positive decisions sharply increased from 2003 to 2004 (1,829 compared to 4,986 positive decisions), slightly declining again in 2005 (4,552).

Recognition rates vary considerably comparing different nationalities of asylum seekers: while Russian nationals (presumably Chechens) had a very high recognition rate with 89.8% in 2005 (2004: 93.4%), only few asylum seekers coming from the other main countries of origin are recognised, such as e.g. citizens of India and Nigeria (0.3% and 1.1% in 2005). [4]

There is no official data on recognised refugees living in Austria.

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[2] The Population Register also comprises data on country of birth, but unfortunately, a considerable amount of data entries are still missing.

[3] Data source: Statistics Austria.

[4] Data source: Ministry of the Interior.

## *2.2. General trends of emigration and immigration*

It is interesting to see that immigration has significantly increased since 2002, even though the guiding principle for the Austrian immigration policy has been "integration before new immigration". While immigration of foreign nationals has been sharply rising since 2002 (2004: 108,947 foreigners immigrated to Austria) emigration of foreign nationals has not changed accordingly. On the contrary, the number of emigrating Austrian nationals has been rising. Net migration – in total as well as of foreign nationals – has considerably grown since 2002 (2004: 50,582, including nationals and non-nationals). Looking at the countries of origin of immigrants in 2003[5], main countries of origin are third countries[6].[7]

These immigration trends seem to be contradictory to the intention of official immigration policy, which aims at restricting immigration to Austria further on. The quota for settlement permits has been continuously reduced in recent years (2004: 8,050[8]; 2005: 7,500[9]). For the year 2006, the quota was fixed at 7,000[10] settlement permits.

There is not one single explanation for the increasing immigration to Austria. Besides methodological explanations (e.g. that the newly established population register also counts asylum seekers or that foreign nationals might not deregister) König/Perchinig (2005: 2) point out that a large number of third country nationals immigrating to Austria is exempt from the quota regime, as they are dependants of Austrian nationals. To give an example, in 2005, 23,444 quota-free settlement permits have been issued to third country nationals being dependants of Austrian nationals.[11]

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[5] For the year 2004, only general migration statistics are available, which are neither broken down by country of origin nor citizenship.

[6] Excluding the countries acceding the EU in 2004 (in our statistics already differentiated as 'EU-10').

[7] Data source: Statistics Austria.

[8] Niederlassungsverordnung (NLV) (Settlement regulation) 2004 (BGBl. II 616/2003).

[9] NLV 2005 (BGBl. II 496/2004).

[10] NLV 2006 (BGBl. II 426/2005).

[11] Data source: Ministry of the Interior

### *2.3. Recent changes*

Looking at the field of asylum, the number of persons seeking for asylum has been further declining in 2004 and 2005. In general, after Austria was facing a sharp rise in asylum applications from 1997 (6,719 applications) to 2002 (39,354 applications), the number of asylum applications has been declining since 2003 (32,364 applications). In 2004, a decline in asylum applications of 23.7% was registered (total number of applications: 24,676); in 2005, the total number of asylum applications was 22,471, thus again a decrease of about 9%.[12]

The number of naturalisations has been further declining in 2005[13]: after the third quarter 2005 a fall in the number of naturalisations of 14.7% was registered compared to the preceding year[14]. Looking at the development of the number of naturalisations in the past decade, it has been declining recently since the second quarter of 2004, after a constant rise during the preceding years. A peak was reached in 2003 with 44,694 naturalisations[15]. In 2004 41,645 persons were naturalised, which is a drop of 6.8%. Like in 2004, also in 2005 the largest group among naturalised persons were former Turkish nationals, followed by nationals of Bosnia and Herzegovina, Serbia and Montenegro and Croatia (which are the traditional countries of origin of immigrants in Austria).[16]

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[12] Data source: Ministry of the Interior.

[13] Data source: Statistics Austria, Provisional data for the first three quarters of the year 2005.

[14] Including naturalisations of persons residing abroad.

[15] Not including persons residing abroad.

[16] Data source: Statistics Austria.

# 3. POLITICAL DEVELOPMENTS IN THE MEMBER STATES

## 3.1. General structure of the political system

The Austrian institutional system in the field of migration, asylum and integration is diversified. In order to make it comprehensible, this section differentiates between institutions covering merely asylum, migration, integration, or fulfil horizontal tasks. However, an institution mainly responsible for migration related affairs could only be found under pt. 3.4 institutional development, since it will be introduced with the new Aliens' Act Package on 1 January 2006.

Two levels of authority characterize the asylum sector in Austria. The Bundesasylamt (Federal Asylum Office) as the first instance decides about decisions regarding the access to the regular asylum procedure[17] and finally takes also the status decision; organisationally, the Federal Asylum Office belongs to the Ministry of the Interior (MoI)[18]. According to the Bundesministeriengesetz (BMG) (Law of the Federal Ministries), the Unabhängiger Bundesasylsenat (UBAS) (Independent Federal Asylum Review Board) is organisationally also assigned to the Ministry of Interior.[19] In the asylum system, the UBAS is the appellate instance for decisions taken by the Federal Asylum Office[20].

The Asylgesetz (AsylG) (Asylum Act) enables[21] the Minister of Interior to create Erstaufnahmestellen (EAST) (Initial Reception Centres) by decree. The Asylgesetz-Durchführungsverordnung 2004 (AsylG – DV) (Executive Order to the Asylum Act) established three of the aforementioned centres in Austria, namely East, West and Airport, each responsible for determining the admission of an asylum seeker to the substantive asylum procedure. According to the draft of

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[17] § 24a AsylG 1997.

[18] § 37 AsylG 1997.

[19] 14 BMG 1986.

[20] § 32 AsylG 1997.

[21] § 37a AsylG 1997.

AsylG – DV 2005, this situation will remain unchanged. Furthermore, the institution of a legal counsellor[22] exists based on the Asylum Act. This is a specially qualified person[23], who is not bound by any instructions and whose task is to assist and to advice the asylum seeker during the admission procedure. The United Nations High Commissioner for Refugees (UNHCR) does have the possibility to select counsellors for asylum applicants, either holding a legal degree or having a minimum of five years counselling experience. The counsellors, who are funded by the MoI have to assist the asylum applicant with documentation and legal questions as well as providing return counselling[24].

On 1 May 2004, the Austrian federal state and its provinces concluded the Grundversorgungsvereinbarung (Basic Welfare Support Agreement), an agreement regarding the basic care for a defined group[25] of needy aliens, mainly asylum seekers. This agreement shifts part of the institutional responsibility[26] of the basic care for asylum seekers from the federal state to the nine provinces. This will be continued under the regime of the new Aliens' Act Package.

The UNHCR and the Austrian MoI funded the Österreichischer Integrationsfonds (OEIF) (Austrian Integration Fund) initially named "Austrian Refugee Fund of the United Nations". The aim of OEIF is it to support recognised refugees, during the integration process. OEIF helps them by giving assistance in the finding of appropriate accommodation facilities, by providing childcare and financial aid. OEIF runs four integration houses,[27] where refugees can live during the first time after positive notification of their asylum process. Since 1 May 2004, OEIF is managing 16 additional integration apartments, located in Haid (Upper Austria), where the residents receive the same service and support as in the integration homes.

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[22] §§ 64f AsylG 2005.

[23] §§ 64f AsylG 2005.

[24] § 66 AsylG 2005.

[25] Art. 2 Grundversorgungsvereinbarung – Art. 15a B-VG 2004.

[26] Art. 4 ibid.

[27] Kaiserebersdorf (11th district), at Nussdorferstraße (9th district), in Vorderbrühl (Mödling/Lower Austria) and in Kapfenberg (Styria).

The Integrationsvereinbarungsverordnung (IV-V) (Integration Agreement Decree) 2005 upholds the competence for the Austrian Integration Funds to certify competent language schools for offering German integration courses, which originally has been introduced in January 2003. The OEIF disseminates countrywide information, certifies and regularly evaluates all language institutes offering German integration courses.

Since July 2003, the Austrian MoI privatised its reception and care facilities for asylum seekers. During the reference period four such facilities[28] formerly run by the MoI existed: Traiskirchen, Thalham, Schwechat and Bad Kreuzen. On behalf of the MoI,[29] European Homecare[30] has been privately organising all four since July 2003.

The Menschenrechtsbeirat (MRB) (Human Rights Advisory Board) fulfils a horizontal task in the area of migration. The MRB describes its history and activities as follows:

"The Human Rights Advisory Board was established in 1999 in response to repeated recommendations by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT). It consists of 11 members and the same number of deputy members, who are appointed by the Federal Minister of the Interior for an office period of three years. (…)The mandate of the MRB is the monitoring and observation of all activities of the security services, the authorities under the Minister of the Interior and all bodies with power of direct command and compulsion. On the basis of its substantive and conceptual work with regard to the protection of human rights, it issues recommendations to the Minister of the Interior. (…) All bodies of the security services are obligated to cooperate with the MRB and its committees. The committees must be provided with all information they require and be granted

[28] § 1 BEBV 2004.

[29] § 4 BBetrG 1991.

[30] See http://www.eu-homecare.com

access to all files and all office rooms. Police agents are released from their duty to official secrecy."[31]

The MRB e.g. visits detention pending deportation centres or accompanies Aliens' Police officers during investigations. Reports issued by the MRB are being taken into consideration during the procedures of drafting new laws and regulations.

### *3.2. General political developments*

During the first quarter of 2005, Jörg Haider's Freiheitliche Partei (FPOE) (Freedom Party) weakened by several election defeats. Jörg Haider, several of the FPOE ministers and most of the parliamentary deputies left the Freedom Party, founding another movement. The new party was named Bündnis Zukunft Österreich (BZOE) (Alliance for Austria's Future). Haider's new movement remained in coalition with chancellor Schüssel's Österreichische Volkspartei (OEVP) (People's Party), whilst the FPOE found its way into opposition.

Elections on regional level were taking place in October 2005 in three out of nine federal provinces. Since migration policy is a responsibility of the federal government, it was used just as a vehicle for protest during the pre-election debates in the provinces. Mainly in Vienna, the right-wing party FPOE, after the breakaway of Jörg Haider's BZOE, a pure oppositional movement, tried to connect the voters' nagging anxieties over crime with the topic of migration and asylum.

### *3.3. Central policy debates*

At the end of August 2004, a survey of Styrian politicians showed the lack of discipline of the Austrian federal provinces in fulfilling the Basic Welfare Support Agreement of May 1, 2004.[32] Only three federal provinces (Vienna, Lower Austria and Styria) were fulfilling their quota (PRESSE 2004a) in sheltering asylum

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[31] http://www.menschenrechtsbeirat.at/en/index_en.html (accessed in December 2005).

applicants. Other provincial officials remained sceptical about the constantly rising number of beneficiaries the provinces should care for. This call for limits was harshly criticised by NGOs and the Ministry of Interior (MoI) (PRESSE 2004b).

The mayor of Traiskirchen, the town with the largest Initial Reception Centre in Austria, mobilised several 5,000 people and regional oppositional politicians in a campaign for the shutdown of the Traiskirchen care facility (PRESSE 2004c). Despite the attention of most mass media in Eastern Austria, he did not manage to find political auditory in Vienna for this plan.

The idea of Austrian politicians to use former Federal Army Barracks for establishing care facilities led to spontaneous protests of regional politicians in Steyr, Upper Austria. The local mayor warned the federal government to impose counteractions if Steyr would be selected to house asylum applicants (PRESSE 2004d). However, Wilfried Kovarnik, Head of the Administrative Police Department of Vienna later suggested the adaptation of former barracks as detention pending deportation facilities (PRESSE 2005a).

In October 2004, the Austrian Minister of Interior Ernst Strasser supported the German plan to build up care facilities for asylum applicants in selected North African countries (KURIER 2004a). Mr Strasser claimed that it was the suggestion of Head of government of Lybia[33] to build such institutions along the coast of North Africa (PRESSE 2004e). Austria even signalled its accordance with such plans since on 24 September 2004 it was unveiled that more than one EU member state was thinking about building care facilities for African migrants heading for Europe (HERALD 2004). After the criticism by UNHCR reported on Austrian media, the plan seemed to disappear from the political discourse.

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[32] Grundversorgungsvereinbarung – Art. 15a B-VG 2004.

[33] General Secretary of the General People's Committee, Mr Shoukri Ghanem.

The decision of the Constitutional Court of 15 October 2004 declaring the Asylum Act 2003 partially unconstitutional,[34] geared up the political discussion about the asylum policy in Austria. The court overruled the provision that asylum applicants are not allowed to bring up new evidence in the second instance after having received a negative decision in the first instance (the so-called prohibition of innovation (Neuerungsverbot)).[35] Another problematic provision lifted by the court was the rule that applying for asylum once again after having received a negative decision would lead straight to detention measure. Altogether, the Constitutional Court overthrew some of the most controversial points of the new Asylum Act.

Hence the autumn 2004 was characterized by impulsive discussions about the future of the Austrian legislation concerning asylum and immigration. A gradually worsening of the public opinion on asylum applicants could be recognized after the MoI published figures of delinquent asylum applicants in Austria. According to this, approximately 40 percent of all asylum applicants registered in Austria in 2004 were reported to the police because of having committed a crime (PRESSE 2004f). Officials of the Freedom Party immediately called on the minister to quicken his pace towards a new, more restrictive Asylum Act.

Amidst the debate, Federal Minister of the Interior, Ernst Strasser, announced his resignation in December 2004. The new Austrian Minister of Interior Liese Prokop outlined her plan to reform completely the Austrian Migration Law. Consequently, the first quarter of 2005 was stamped by the debate about the so-called Aliens' Act Package 2005, which should transpose several EU law provisions and harmonize Austria's legislation concerning aliens, asylum and federal care for refugees as a whole. The Package shall accelerate the proceedings, block the abuse of asylum and avert applicants from submergence and sink to criminal behaviour, the minister officially announced.[36]

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[34] VfGH G237/03 of October 15, 2004.

[35] See former §32 (1) Z4 Asylum Act (BGBl. I Nr. 76/1997 amended version BGBl. I Nr. 101/2003).

[36] Parlamentary correspondance 02/24 May 2005/No. 423.

The following public dispute generated some polemic contribution. Whilst the government tended to stress the public security argument, oppositional politicians saw the whole democratic system endangered. Initially, Social Democratic politicians keenly argued against the proposal; at the end, the sceptics finally agreed “with a heavy heart” (PRESSE 2005b). The new Asylum Act was adopted with the sanction of the deputies of OEVP and BZOE and most of the deputies of the Social Democratic Party (SPOE). That course of action might go alongside with the SPOE voters’ general opinion, since pollsters have diagnosed for a long time a large gap between the party elite’s elocution concerning migrants and asylum applicants and the thinking of the party’s basis.

One focal point of the discussion in Austria was the implementation of the idea of the “safe third country”-concept (respectively the rules of the so-called Dublin II-Regulation concerning the EU member states’ responsibilities in asylum examination processes[37]) into the new Asylum Act. Oppositional politicians expressed concerns about the safety of third countries; even EU member states were criticized for being “unsafe” in this regard. Austrian NGOs accused Slovakia of committing chain deportation of Chechnyan asylum applicants back to the Russian Federation. Austria, they argue, infringes the non-refoulement principle of the Geneva Convention sending asylum applicants back to Slovakia. The ministry announced concerns about the fact that only approximately 10% of asylum applicants coming from another Dublin-State could be expelled to the respective country. 30% claim to be traumatized, 35% submerge and 15% delay their proceeding with appeals and legal remedies.[38]

The issue of forced feeding of persons in detention pending deportation led to a controversial public discussion. The MoI announced its worries about the fact that asylum applicants in detention pending deportation centres could get released after having started a hunger strike. The police often feared the medical risks of malnutrition. Responsible officers therefore prefer to release detainees rather than to cope with the threatening consequences for the health of famished

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[37] Council Regulation (EC) No. 343/2003 of 18 February 2004, OJ L50, 2003, p. 1 – 10.

detainees. The MoI claimed to have been forced to release 1,072 detainees due to malnutrition following a hunger strike in 2004 (KURIER 2005a). Even if spontaneous research of newspapers showed that these figures were exorbitant, there were a certain number of detainees who found their way out of detention using hunger strike. Since these people, hence without residence permit, often abscond from justice, the MoI intended to introduce the possibility to enforce alimentation in order to foil their plans. Left wing oppositional politicians as well as NGOs and even the president of the Austrian Judges Union, Barbara Helige, harshly and often polemically criticized the ministerial plan as "judicial fall of mankind" (KURIER 2005b) and its social democratic supporters being "in line with Jörg Haider" (KURIER 2005c). The provision was in the end not implemented in the Aliens' Act Package of the MoI.

After the political summer break, the OEVP started a social debate by announcing plans to establish a compulsory social service for jobseekers and asylum applicants. The conservative Christopher Drexler underlined social benefits for the whole Austrian society. People, he argued, who currently do not have a chance on the Austrian labour market could get educated and integrated step by step and non-profit-organisations with social orientation could receive lots of manpower (PRESSE 2005c).

In July, BZOE Minister of Justice Karin Gastinger, vitalised an integration policy debate kicked off in February. Accordingly, the Austrian Citizenship Act should become more restrictive. Main topic of the reform plans was the minister's intention to harmonize the periods for naturalisation. Since the federal provinces substitute the federation in naturalisation proceedings, the waiting time for aliens to receive an Austrian passport differs considerably between western and eastern provinces. The minister presented her intention to harmonize these periods at an elevated level of 12 years (PRESSE 2005d).

In addition, spouses married to an Austrian should wait considerably longer for their Austrian passport than present regulations prescribe. Minister Gastinger

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[38] Parlamentary correspondance 02/24 May 2005/No. 423.

wanted to raise this period from five to seven years. Later, the minister also published her plans to tighten measures concerning naturalisation of refugees, proof of own legal income and knowledge of the German language (PRESSE 2005e).

Although the federal government left the impression of its will to raise the naturalisation periods[39], there were also some OEVP officials who wanted to drop them. During the election campaign in autumn, the leader of OEVP Vienna, Johannes Hahn, discovered newly integrated Austrians as possible voters when raising the claim for a lowered barrier for integration (PRESSE 2005f).

After the regional elections in October 2005 took place, the debate about the Aliens' Act Package 2005 started again because the Austrian Minister of Interior Liese Prokop gave consideration to her plan to reform completely the aliens and asylum law, outlined at her appointment in December 2004. Mid November, the new Citizenship Act was adopted, and so the new law has been intended to become operative with beginning of 2006. The renewal of the Citizenship Act would mean the equalisation of early naturalisations, for all privileged groups like EU and EEA citizens, wives and husbands and also for recognised refugees are counting the same premises: a six year waiting period for naturalisation. Children will be naturalised without a subsistent waiting period. For all other groups the waiting period will be ten years. However, due to an objection by the Bundesrat (Federal Council), the final adoption has been blocked and still is by now.[40]

The Austrian Minister of Transport, Innovation and Technology Hubert Gorbach reported the new Citizenship Act as a great success, but the President of the Austrian Lawyers Gerhard Benn-Ibler thought of many more necessary changes (KLEINE 2005a). In the first draft of the new Citizenship Act aliens living on social assistance were completely banned from receiving the Austrian Citizenship. As this restriction had also been criticised by officials of the Ministry for Social Affairs (KLEINE 2005b), this passage was removed afterwards.

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[39] i.e. Tyrol's governor H. van Staa claimed a raise of the period up to 15 years.

[40] 2006-02-02.

The BZOE celebrates the tightening as a real profit for Austria; on the other hand the FPOE called the act a mere farce (STANDARD 2005a). A completely different kind of criticism came from the Opposition. The spokeswoman for Human Rights of the Green Party Terezija Stoisits bothered that the new Citizenship Act was only a change for the worse and a hindrance to integration (KURIER 2005d). The Viennese City Councillor for Integration Sonja Wehsely (SPOE) is of the opinion that the new changes of the Citizenship Law were not necessary. She also mentioned that hopefully some ideas of the Viennese City Council were implemented, e.g. the omission of an exam in German and in applied Geography for elderly people (KURIER 2005e).

Johann Bezdeka, official of the MoI, negates Terezija Stoisits statement that the new Citizenship Law is the peak of disintegration because people with permanent residence do already have more and better access to social benefits in Austria as required by the EC (STANDARD 2005d).

Another discussion about elderly migrants in Austria was launched at the beginning of December 2005 following a survey, which was conducted by the Austrian NGO Asylkoordination Österreich. Within the framework of the survey, 27 migrants were interviewed. One of the outcomes was that migrants have little information about social services and would need a “native speaker home healthcare service” in the future. Interviewees also mentioned that they fear language barriers and are afraid of getting misapprehended by some German speaking home healthcare service people. As a reaction to the survey results, Marion Kremla, the initiator of the survey, wants to develop a pool of interpreters for migrants suffering from different diseases. Another outcome of this survey is a desire for migrant retiree communities and retiree accommodations for migrants because integration has not worked so far (STANDARD 2005b).

Heinrich Neisser, vice president of the Austrian League for Human Rights (Liga für Menschenrechte) thinks that the judicial acquaintance with migrants is an indicator for the openness of a society (STANDARD 2005c).

Christa Gangl, Member of the Tyrolean Provincial Government, presented a unique programme for integrating 35 recognised refugees in Tyrol in December 2005 (STANDARD 2005e). The integration project will be based on an assisted living in a household in cooperation with the municipality, the federal government, federal states and some external partners. There are two main ideas on which the project is based: firstly the idea of providing accommodation for migrants in order that the Caritas is able to supply them in a better way, and secondly, to create an integration package for vocational and professional training with the local Arbeitsmarktservice (AMS) (Public Employment Service) and the Wirtschaftsförderungsinstitut (WIFI) (Economic Advancement Centre). It is also planned to create an adult centre with the focus on employment structures and a youth centre with focus on kindergarten and school. Other intentions lead into the direction of language courses, intercultural events and hosted public relations. The outcome is that migrants will benefit from effective integration, but also society as a whole (STANDARD 2005f).

To establish better conditions for asylum seekers, the numbers of the employees at the Independent Asylum Review Board (UBAS) will be extended by 16 people, ten for the agency in Linz (capital of Upper Austria) and six more for the headquarter in Vienna. The reason is that the backlog of asylum applications increased from 24.000 up to 27.000 within one year (STANDARD 2005g).

### *3.4. Institutional development*

By virtue of the Niederlassungs- und Aufenthaltsgesetz (NAG) (Settlement and Residence Law) of 2005, the so-called Beirat für Asyl- und Migrationsfragen (Asylum and Migration Advisory Board)[41] has been modified. It will act as an advisor to the Ministry of Interior (MoI) in the area of migration and asylum. It has as such a horizontal function. Its task is to advise on the implementation and funding of integration measures foreseen by the NAG[42]. It consists of 23 members proposed by the ministries and the social partners and it will support

[41] § 18(1) NAG.

[42] § 17 NAG.

the Ministry of Interior in administrative matters. Its members work on a voluntary basis[43].

Another institutional change has been introduced with the Fremdenpolizeigesetz 2005 (FPG) (Aliens' Police Act). As a consequence of the directive 2004/38/EC and the current proceedings of the European Court of Justice (ECJ) against Austria C-136/03, the Unabhängiger Verwaltungssenat (UVS) (Independent Administrative Senate), became competent for appeals against decisions against EEA citizens, which either have been based on the Asylum Act 2005 or the Fremdenpolizeigesetz (FPG) 2005 (Aliens' Police Act). The above Directive and the advocate general require more favorable appeal possibilities for EEA citizens that have been detained pending deportation, stopped or arrested for grounds laid down in the Asylum or Aliens' Police Act[44]. The UVS is an Article 6 ECHR tribunal, which decides about individual complaints against direct administrative acts of order and coercion[45].

The Austrian Asylum Act[46] enables the MoI to establish the Staatendokumentationsbeirat (Country of Origin Documentation Council) by decree[47]. The task of the members of the council is to advise the director of the Federal Asylum Office in all issues with regard to the establishment and further development of the country of origin information system (details can be found under pt. 4.2).

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[43] § 18(2) NAG.

[44] §§ 82, 83 FPG.

[45] Th. Öhlinger, „Verfassungsrecht", 259.

[46] § 60(4) AsylG 2005.

[47] Staatendokumentationsbeirats-Verordnung, BGBl II 413/2005, 13.12.2005.

# 4. LEGISLATIVE DEVELOPMENTS IN THE AREA OF MIGRATION AND ASYLUM

## 4.1. General structure of the legal system

Until the end of 2005, the legislative framework described in detail in the Austrian policy report 2004 gives an in depth picture on how the legal system of Austria in the area of migration and asylum is structured. Therefore, the reader interested in the former system should focus on the Austrian policy report 2004, which is available for download at the webpage of the NCP Austria: www.emn.at. A list of the relevant laws can be found in the Annex of the aforementioned report. All old and new laws are available for download in German language with an English description at the above URL in the section > Data > Legislation.

Since the Austrian legal system in the field of migration and asylum has been significantly restructured with the Aliens' Act Package 2005, the forthcoming section will only concentrate on the new laws entering into force on 1 January 2006. The re-enactments comprise a whole set of new laws, regulations and administrative proceedings which touch almost all migration related areas such as gates of entry, citizenship, asylum, return, illegal migration, labour law, and integration.

The new set of rules of the Aliens' Act Package will enter into force on 1 January 2006. Triggered by different reasons, and under the leadership of the Ministry of Interior together with the Ministry of Justice and the Ministry of Economy and Labour it has been decided to introduce a new set of laws. Such main reasons were e.g. the transposition of a number of EC directives, the challenge of different passages in the old laws at the Austrian Constitutional Court, current proceedings at the ECJ and last but not least the infinite number of amendments to the old laws, which made the old laws very hard to read and understand. The new laws try to establish a system with a limited number of exceptions (e.g. to the integration agreement), a clear structure by the division of the old Fremdengesetz (FrG) (Aliens' Act) into an Aliens' Police Act (FPG) and a Settlement and

Residence Law (NAG) 2005 and the introduction of an edited Asylgesetz (AsylG) (Asylum Act). Moreover, revised versions of the Staatsbürgerschaftsgesetz (Citizenship Act) and of the Ausländerbeschäftigungsgesetz (AuslBG) (Law on the Occupation of Aliens) were due to enter into force on 1 January 2006, however, the first one has been blocked by the Federal Council (Bundesrat).

## *4.2. Legislative Developments in the Area of Migration and Asylum*

a) Managed Immigration

Managed immigration is divided into (short-term) residence and (long-term) settlement. This differentiation between two groups of people: those, who reside temporarily (e.g. students, temporary employed persons, commuters)[48] and those expressing *animus domiciliandi*, which means people who want to settle in Austria has been upright since 1 January 1998 when the Aliens' Act (FrG) 1997 entered into force. The new Aliens' Act Package continues with this division and the regime of a number of different residence and settlement permits as a consequence.

The Settlement and Residence Law (NAG) codifies the rules for immigration into Austria. As a general rule of procedure, the application for a first-time residence title has to be issued personally at the Austrian diplomatic representation abroad[49]. The most important groups that are excepted from this rule are: Austrian, Swiss and EEA citizens and their relatives, third-country nationals that apply as scientists, children born in Austria up to the age of six months, persons that are exempt from obligation to carry a passport/visa[50]. Applications for the renewal of residence titles can be issued at national authorities during the period of validity of the old residence title[51]. The competent authority to decide on all

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[48] § 4 FrG-DV 1997.

[49] §19 NAG in corroboration with §21 NAG.

[50] § 21 (2) NAG.

[51] § 24 NAG.

mentioned applications is the Governor (Landeshauptmann)[52] of the federal province in which the applicants intends to (continue to) reside.

Aliens applying for a residence title have to meet preliminary conditions, meaning that no grounds of refusal must be occurant at the time of decision[53] (e.g. *ordre public* clause, refusal of signing the Integrationsvereinbarung (IV) (Integration Agreement)). Additionally, applicants for first settlement permits are subject to quota regulations. Such settlement permits can only be granted in accordance with the Niederlassungsverordnung (NLV) (Settlement Regulation).[54] This regulation limits purposes and numbers of foreigners that are allowed to receive a right of settlement according to a preliminary established threshold (quota). From 1 January 2006 onwards, this regulation is valid for a period of one calendar year and is renewed yearly[55]. § 13 NAG enumerates the permits that are subject to quota restrictions[56]; in principle quota restrictions limit the number of first-time residence permits and a renewal of old permits with a change in purpose. The Austrian Federal Government issues the NLV after consultation with various Austrian stakeholders of the labour and housing market. In addition to the quota for settlement permits, the NLV also contains the maximum number of short-term employed aliens as well as agricultural helpers according to §5 AuslBG[57] (Law on the Occupation of Aliens).

Aliens fulfilling the general requirements and having an open position according to the quota fixed for the calendar year can be granted various residence and settlement permits for a number of purposes:[58] 'settlement permits for intended long-term stay', which can later be changed to 'permanent residence – EC'; such settlement permits can be granted for the purposes of 'key professionals' with the

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[52] § 3 NAG.

[53] § 11 NAG.

[54] § 12 NAG.

[55] § 13 NAG.

[56] Key professionals and their family members; third-country nationals holding a long term EC residence permit entering Austria for employment; family members of persons holding a restricted settlement permit; persons changing the settlement permit from the purpose 'family member' to 'restricted';

[57] NLV 2006, in corroboration with § 13 NAG.

[58] § 8 NAG.

right to be employed, ‘settlement permit except employment’, ‘settlement permit – without restriction’ comprising the right for (self-) employment according to § 17 AuslBG, ‘settlement permit – restricted’ for all sorts of employment, ‘settlement permit – family member’ without permission to work (quota obligation if the purpose is changed later on). Short-term stayers can receive the following permits: ‘residence title – family member’ with the possibility to be extended later on to ‘permanent residence – family member’, residence title ‘permanent residence – EC’ for declarative purposes, ‘temporary residence permit for purposes according §§ 58-69 and § 72 NAG’[59].

With regard to quota free family reunification a widely discussed new regime has been introduced with the NAG. This new regime is based on the differentiation between “real” Free Movement situations and “imaginary” Free Movement in the light of the European Court of Justice’s case law. Family members (definition in Article 2/2 of Regulation 2004/38/EC) of EEA citizens who are third country nationals are obliged to report their presence and to apply for a “permanent residence card” (§ 54 NAG), whereas Family members of Austrians have to applicate for a special residence permit “Familiymember”. The Fact that the “permanent residence card” is only a documentation – not a residence permit – is both new and uncommon in comparison to the old system in Austria. Familiy members in a broader sense, in the meaning of Article 3/2 of the Regulation 2004/38/EC (i.e. partners who can proof a continued relationship in the country of origin and other family members who actually received subsistence in the country of origin by the EEA citizen or who lived in the same household before or who need personal care because of severe health conditions[60]) can be granted a quota free ‘settlement permit – family members’ upon application. Additional to the general conditions, the reunifying EEA citizen has to issue a declaration concerning liability and the third country national has to proof the aforementioned

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[59] for persons working under job rotation schemes, staff on short-term corporate assignment, self-employed persons, artists, specific enumerated cases of employed aliens, pupils, students, bearer of ‘permanent residence-EC’ for pupils and students of another EU member state, social workers, scientists, continuation of family union, humanitarian grounds;

[60] § 52 (4, 5) NAG.

characteristics of the relationship.[61] The rules for the family reunification by documentation are also valid for Swiss citizens and their family members as well as for family members of Austrians who *already* used their right of free movement.

b) Gates of Entry and Border Control

A complex set of laws determines the gates of entry into Austria and the way border controls are being implemented.

The newly introduced Aliens' Police Act (FPG) regulates the entry and termination of legal as well as illegal stay on Austrian territory. However, residence and settlement permits issued according to the rules of the NAG do also qualify for legal entry into Austria. Regarding the exact figures for the different gates of entry, please consult chapter 2.2.

According to the FPG, third country nationals, neither having Austrian nor EU or any other preferred citizenship[62] need a valid visa in addition to a passport valid three months longer than the duration of the visa[63] for regular entry into Austria. The visa system is characterized by the Schengen regulation, therefore A, B, C and D visa have been issued until the end of 2005. Since 1 January 2006 on, a new category of visa "D+C" has been introduced[64]. This so-called residence-travel visa allows for a temporary limited period of self-employed or employed activity or for activities under §5 AuslBG (e.g. temporary agricultural workers) and is issued for a maximum duration of 6 months. D+C visas issued by other member states allow for a residence in Austria for up to three months, the same is true vice versa[65].

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[61] § 56 (1, 2) NAG.

[62] e.g. EEA or Swiss citizens.

[63] §§ 15 and 21(2) FPG.

[64] § 20(1)Z5 FPG.

[65] § 20(2) and (6) FPG.

Visas are only granted upon personal application at Austrian consular offices or diplomatic missions. The General Consular Instructions (GCI)[66] contain the rules of procedure for the handling of visa applications. Main grounds for the rejection of an application are void travel documents, missing of a health certificate, public interest (missing of health insurance, lack of financial means, *ordre public*), an upright residence ban, indications of organised crime activities or an indication of the person seeking illegal employment[67]. In specific cases, humanitarian visas can be granted despite the existence of grounds for refusal. Such visas are restricted to the Austrian territory only[68].

Exceptions for third country nationals from the obligation to carry a passport are the following[69]: possession of a take-over declaration, a valid residence title according to the NAG, entry for the purpose of transit, or refugee or subsidiary protection status. Likewise, there are certain exceptions from the obligation to carry a visa for:[70] third country nationals who do not leave the transit areas at the Austrian airports, bearers of privileges and immunities, children under the age of six months, recognized refugees or subsidiary protected persons and persons who are part of international agreements exempting them from visa obligations.

As a general rule, applications for the first residence permit have to be issued at diplomatic representations abroad. Abovementioned third-country nationals, who are allowed to enter Austria without a visa and/or passports, are exempt from this rule[71]. In case of a positive decision and upon application within a period of three months, the diplomatic representation has to issue a visa for a single entry[72].

Border controls are laid down in the Grenzkontrollgesetz (GrekoG) (Border Control Law). The law foresees that organs of public security are in charge of

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[66] OJ C 310 of 19.12.2003, pp 0001-0108.

[67] § 21 FPG in corroboration with § 25 FPG.

[68] § 22 FPG.

[69] § 18 FPG.

[70] §§ 28-30 FPG.

[71] § 21 FPG.

[72] § 23 FPG.

border controls[73]. Border crossings are only allowed at designated border crossing points. Everybody crossing the border is subject to the control order/obligation[74]. By way of a series of ministerial council decisions, the Österreichische Bundesheer (BH) (Austrian Federal Army) assists in controlling the Austrian Schengen external borders[7576]. This countermeasure against illegal immigration was introduced in 1990 as a reaction to the fall of the Iron Curtain. However, since 1990, the decision has been extended each year. About 2,000 recruits in rotation spend six weeks of their military service supporting the Federal Police by controlling the east Austrian borders. Further, the deployment was increased in 1999 to also cover the border of the federal province of Lower Austria with Slovakia. In principle, the Federal Army has a control effect. For many "illegal immigrants", the recruits are the first contact in Austria after having illegally crossed the green border.[77]

c) Integration and Settlement

The Integrationsvereinbarung (IV) (Integration Agreement) has originally been introduced in 2002 It is the obligation of a third country national who plans to stay in Austria for a period of more than 24 months within two years and need a residence title, to learn German at a level, which enables him/her to participate in the social and cultural life. The NAG extends and hereby divides the IV into two modules: Module 1 is an alphabetization course, whereas Module 2 is the German language training[78]. The list of exceptions has been considerably shortened in comparison to the old law. Excluded are only children under age, old or sick people who are not able to fulfil the IV as well as asylum applicants, refugees or subsidiary protected persons who do not need a residence title[79]. Module 1 is regarded as being completed if the persons show their ability to read

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[73] § 9 GrekoG.

[74] §§ 10 and 11 GrekoG.

[75] For more information: http://www.bundesheer.gv.at/cms/artikel.php?ID=2083 (accessed in December 2005).

[76] Art. 79 B-VG allows for this special form of security police support.

[77] A master thesis on Austria's refugee policy on the special aspect of the Border Surveillance and Support Operation was written by Herbert Böhm in 1998.

[78] § 14 (2) NAG.

[79] § 14 (3), (4) NAG.

and write. Module 2 is completed if a German integration course (300 hours) plus the consecutive exam have been taken, or if a German class comparable to the 9th grade in Austria has been positively passed, or if the proof of language knowledge is shown, or if a graduation which allows for university studies in Austria is shown or vocational training in Austria has been completed. Moreover, bearers of a 'settlement permit – key professional', managers according to § 2 (5a) AuslBG as well as their family members are exempt from this rule.[80] Non-compliance with the IV will be sanctioned: usually the IV has to be fulfilled after five years with the possibility of adjournments of two years if personal grounds hindered the fulfilment[81]. The alphabetisation course must be completed during the first year of residence.[82] Those who do not start to fulfil the IV during the first three years and those who did not fulfil it during five years for grounds attributable in their sphere are subject to an expulsion order[83] or an administrative punishment[84]. The Austrian refunds 100% of the costs for module 1 if fulfilled within one year and for people of subsequent family reunifications 50% if the IV is fulfilled within two years[85].

The Austrian Integration Fund (OEIF) is still in charge of certifying institutions that can provide abovementioned courses according to the NAG[86]. Moreover, the Asylum and Migration Advisory Board (UBAS) will be in charge of determining additional integration related measures (i.e. courses, language trainings, cultural excursions etc.), which should be granted to immigrants.[87]

Competence-wise, integration is a horizontal task, touching also competencies of the federal provinces and the municipalities of Austria. Integration measures vary from establishing integration mission statements for whole provinces or cities to a

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[80] § 14 (5) NAG.

[81] § 14 (8) NAG.

[82] § 11 (2)6 NAG

[83] § 54 FPG.

[84] § 77(1)4 NAG.

[85] § 15 NAG.

[86] § 16 (2) NAG.

[87] §§ 17, 18 NAG.

zero offer in other regions. The social partners too, have developed approaches to integrate migrants into the labor market and different agencies and representations. Together with the Ministry of Interior (MoI), the International Organization of migration (IOM) Vienna has recently published a report of integration measures throughout Austria, which cannot be discussed due to length constraints. This report gives quite a good overview of how diverse integration approaches are allover Austria[88].

d) Refugee Protection and Asylum

In comparison with the last policy report, only few changes regarding the asylum procedures have been introduced with the Asylum Act 2005. It is a major change that the new Asylum Act does not allow any longer to dismiss asylum applications as “obviously unfounded”. Thus, all asylum applications under the 2005 Act have to be examined content wise. As a countermove, the suspensive effect of appeals based on certain grounds can be lifted. It is now new that the asylum applicant must meet certain obligations of cooperation during the asylum procedure. The second instance (UBAS) has now the power to set precedents in order to accelerate similar future cases[89]. Moreover, a country of origin documentation centre has been set up in order to meet the growing demand for information of the asylum authorities.

The Austrian asylum procedure starts with the application for asylum at administrative officers or officers for public security. The application is filed if it takes place personally at one of the initial reception centers (EAST)[90]. The admission procedure, which lasts up to 20 days, starts with this personal application[91] and an interview led by organs of public security (i.e. police officers)[92]. If the applicant is admitted to the regular procedure, a temporary

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[88] For details see “Report über Integrationspraktiken in Österreich“, IOM, June 2005.

[89] § 42 AsylG 2005.

[90] § 17 AsylG 2005.

[91] § 28 (2) AsylG 2005.

[92] § 29 (2) AsylG 2005.

residence permit for the duration of the procedure is issued[93], whereas the asylum applicant is only "tolerated" on Austrian territories restricted to the administrative district, where the admission procedure takes place[94], and is de facto non expellable.

The airport procedure is different to the above procedures. The procedures take place at the EAST Airport, if the Federal Asylum Office does not allow the entry into Austria. If indications are given that a rejection is unlikely during the airport procedure, the entry has to be granted. Applicants who apply during an expulsion procedure are also processed at the EAST Airport.[95] The procedures take place at the airport to secure the rejection of the person in case of a negative decision on the application. This security measure can only be upheld up to six weeks. Within one week after a decision on the application has been taken, the UNHCR has to be informed and Dublin Consultations have to be initiated.[96] An application under the airport procedure can only be rejected in case of absence of well founded facts for asylum or subsidiary protection *and* in case that the applicant deceived about his/her identity, citizenship or documents, or produced obviously untrue facts, or did not produce any grounds for persecution, or the applicant is a citizen of a safe third country. A dismissal of the application because of this grounds and a rejection of the application because of third-country security can only be issued with the consent of the UNHCR[97].

During the asylum procedures, the applicant is obliged to cooperate with the authorities. This means that the application has to be justified truthfully, the personal and timely presence during the procedures has to be guaranteed, cooperation during identifying procedures must be guaranteed, necessary documents or objects have to be presented to the officers and all changes of addresses/residence have to be communicated. In particular, the obligation to

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[93] § 29 (3) AsylG 2005 in corroboration with § 51 AsylG 2005.

[94] § 12 (2) AsylG 2005.

[95] § 31 AsylG 2005.

[96] § 32 AsylG 2005.

[97] § 33 AsylG 2005.

cooperate comprises information about citizenship, name, aliases, states of previous residence and most important, travel routes.[98] In case of non-compliance, suspensive effect of appeals can be lifted[99].

In case of rejected applications, suspensive effect of appeals must be granted separately. This is also valid for expulsion decision, which is issued based on a rejection. In all other cases, appeals do have suspensive effect, if not lifted separately.[100] In a number of cases the Federal Asylum Office can lift suspensive effect of appeals (i.e. the asylum applicant is citizen of a safe third country, the applicant already resided for more than three months in Austria without applying for international protection, the applicant does not produce grounds for persecution, the produced grounds do obviously not reflect the facts, a residence ban and expulsion decision are upright against the applicant issued before the application).[101]

One of points under discussion during the last policy report period has been the restriction of the introduction of new facts during the appeal procedure. New facts can now be introduced under specific conditions. It is eligible if the facts of the case changed during the decision of the first instance and the appeal, if the procedures in the first instance have been defective, if the facts were not accessible during the first instance procedure or if the applicant was not able to produce the facts.[102]

Another point of discussion has been the possibility to expel traumatised asylum applicants. If it is very likely that the applicant is suffering mentally from torture or any similar event, which constitute an obstacle for making ones position clear in the procedures or which could constitute a permanent damage or late sequelae to the health of the applicant, the applicant will not receive the indication that the

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[98] § 15 AsylG 2005

[99] § 38 AsylG 2005.

[100] § 36 AsylG 2005.

[101] § 38 AsylG 2005.

[102] § 40 AsylG 2005.

application is going to be rejected. Neither is the application to be dismissed during the admission procedure.[103]

By virtue of the new Asylum Act 2005, a country of origin information system has been introduced[104]. The purpose of the system is to have a database, which contains the most important information about countries of origin from asylum applicants. The information is to be used by the Federal Asylum Office and the UBAS to base their decision on facts collected in the database. An advisory council belonging to the MoI has been created by decree[105], which consists of nine members and is in charge of advising on the data collection, evaluation of facts and sources of information. The members of the council work on a honorary basis. The country of origin information database is public. A number of institutions (i.e. UNHCR, legal advisors of asylum applicants, courts, ECHR, ECJ etc.) do have unlimited and free access. Other interested persons or institutions can get access in return for €60[106] of administrative fee.[107]

e) Citizenship and Naturalisation

The revision of the Citizenship Act has been subject to harsh public discussion. Overall it can be said that a general tightening of the rules on how to acquire Austrian citizenship would have been introduced with the intended entry into force of the revised law on 1 January 2006. However, since the Act has been blocked by the Bundesrat (Federal Council), the new rules regarding citizenship and naturalisation in Austria will be presented in Austrian policy report covering the reference period 2006.

f) Return

The main changes regarding return policy have been introduced in the Aliens' Police Act (FPG) with regard to detention pending deportation and appeals

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[103] § 30 AsylG 2005.

[104] http://www.staatendokumentation.at (accessed in January 2006).

[105] Staatendokumentationsbeirats-Verordnung, BGBl II 413/2005, 13.12.2005.

[106] § 4(1) AsylG-DV 2005, BGBl II 448/2005, 27.12.2005.

[107] § 60 AsylG 2005.

against return obligations. Structurally, rules about return and detention pending deportation can be found in the FPG, whereas procedural rules on decisions to return remain in the specific categories of law (i.e. § 10 AsylG 2005 for rejected asylum applicants).

Detention pending deportation can be imposed for different reasons. The most important grounds are to secure the expulsion procedure, to implement a residence ban, or to secure the transit through Austrian territories. Detention pending deportation is based on an administrative decree except for detained persons on other grounds than illegal residence. Detention pending deportation can be continued for persons who apply for asylum whilst being kept in detention pending deportation.[108] More lenient measures can be imposed if it is assumed that the alien does not prevent an eventual expulsion, and have to be imposed for minors under age except that there is an indication that expulsion cannot be secured without detention.[109] As a general rule, detention pending deportation must be implemented in specially designated rooms of the aliens' police authority, with the exceptions that if such rooms are not available, or detention pending deportation is imposed right after penal detention, detention can be implemented in penitentiaries.[110] Minors under the age of 16 can be detained if they are in good conditions for their age, however they have to be detained separately from adults other than their family members. The regular period of detention can last up to six months within a total of two years, if the citizenship or identity of the alien cannot be identified, if the expulsion or transit through/to a third country is not possible because of a missing permission, or if the alien prevents the expulsion by physical opposition to police force. If the alien causes abovementioned grounds for failure of implementation of the expulsions, the detention pending deportation can last up to ten months within two years. In case of continuous detention for more than six months, the Independent Administrative Senate (UVS) has to review the decision every eight weeks and decide whether

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[108] § 76 FPG.

[109] § 77 FPG.

[110] § 78 FPG.

the reasons for detention are still valid.[111] If this is not the case, the alien has to be released.[112]

g) Other

As already mentioned in the last policy report[113] the rise in numbers of bogus adoptions and marriages has been claimed also during the introductory phase of the Aliens' Act Package 2005. Hence, rules regarding adoptions of third country nationals and marriages with third-country nationals who lead to a derived right to reside in Austria have been tightened. According to the NAG, residence titles are void which have been granted upon adoptions and marriages, concluded for the mere reasons to benefit from a derived right of residence.[114] In order to be able to investigate such cases, the obligation for the concerned administrative authorities to report to the aliens' police all granted citizenships as well as applications for name changes and adoptions has been adopted.[115] Courts and administrative units, which handle cases of adoptions/marriages of third-country nationals and which have a well-founded suspicion of bogus adoptions/marriages have to report those cases to the aliens' police.[116] If it is the administrative unit in charge of residence and settlement acts, which reports such facts to the aliens' police, the aliens' police must investigate the case within three months and report the results to the administrative unit. The investigation is supposed to be closed if no reporting is done within three months.[117] Austrians or settled third-country nationals who knowingly conclude bogus marriages/adoptions can be fined up to 360 daily rates, in case of intention and remuneration, a punishment of up to one year of arrest is possible. Procuration on a commercial basis is subject to punishment from one to three years of arrest. Third-country nationals involved as spouse or adoptee are not subject to punishment in cases where no payment is

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[111] § 80 FPG.

[112] § 81 FPG.

[113] Policy Report Austria 2004, 24.

[114] § 30 NAG.

[115] § 104 (4,5) FPG.

[116] § 109 FPG.

[117] § 110 FPG.

involved. The same is true for Austrians in unpaid cases and self-reporting to the police.[118]

New provisions regarding human smuggling have also been introduced. In general, whoever knowingly facilitates illegal transit or entry of a third-country national into a EU Member State or neighboring country of Austria is subject to punishment. In unpaid cases arrest up to one year is foreseen, in paid cases up to two years, in repeated paid cases (within five years) the punishment raises up to three years. In case of commercial facilitation or very painful treatment of the third-country nationals over a longer time during the transport, the foreseen punishment has to be between six months and five years. In life-threatening cases or in cases committed by members of criminal organizations, the sentence can be between one and ten years. Smuggled third-country nationals must not be treated as associates to the crime and can be granted temporary residence if necessary for investigating the facts of the case.[119]

In connection the provisions for smuggling, trafficking related elements of offence have been introduced into the FPG. Persons who intentionally exploit illegally resident third-country nationals (i.e. employment without work permit or in a dependency status from the exploiter) are to be fined with arrest up to three years. If that person causes a state of destitution of the third-country national or exploits an elevated number of third-country nationals, the sentence reaches from six months to five years. If the concerned third-country national dies because of one of the aforementioned cases, arrest from one to ten years is foreseen.[120]

For the first time assisting in the facilitation of illegal stay on Austrian territory is penalized if committed intentionally, with a fine of up to 360 daily rates or arrest of up to six months. If the facilitation is done for a substantive amount of payment, the arrest can be up to one year, while the fine remains the same. In commercial

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[118] §§ 117, 118 FPG.

[119] § 114 FPG.

[120] § 116 FGP.

cases arrest of up to three years is foreseen. The concerned third-country nationals are not to be sentenced associates to the crime.[121] This paragraph has widely been discussed since also lawyers would have been subject to these provisions. Therefore, the first amendment to the new Aliens' Act Package has been introduced already at the same day of the introduction of the original version. This it is now foreseen *expressis verbis* that advocates and trial lawyers are not acting illegally if they act in obligation of the duties of their professions.[122]

### *4.3. Implementation of EU Legislation*

The following EU directives in the field of migration either were to be implemented already or are soon due for implementation. Hence, the new Aliens' Act Package focused to a great part on the transposition of the following directives. It has to be mentioned, however that the policy report is not the instrument to proof correct and comprehensive transposition of EU law, since the EC has separate instruments for this purpose. Therefore, and for the reason of length constraints of the report, this section only gives a brief and general overview with regard to implementation of EU law.

1. Council Regulation (EC) No 1030/2002 of 13 June 2002 laying down a uniform format for residence permits for third-country nationals;

   The regulation has been introduced *expressis verbis* for residence permits mentioned in § 8 (1) NAG[123] in a cheque card format following the Council Regulation (EC) No 1030/2002.

2. Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification (applicable as of 3 October 2005);

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[121] § 115 FPG.

[122] § 115 (1) FPG, BGBl I 100/2005 of 16.08.2005 as amended by BGBl I 158/2005 of 30.12.2005.

[123] § 1 Niederlassungs- und Aufenthaltsgesetz-Durchführungsverordnung – NAG-DV, BGBl II 451/2005 of 27.12.2005.

3. Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents (applicable as of 26 January 2006);

4. Council Directive 2004/38/EC of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) 1612/68, and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC;

Council Directives 2003/86/EC, 2003/109/EC, and 2004/38/EC were transposed in an interdependent manner. A series of definitions and concepts (e.g. core family, residence titles issued by member states, permanent residence EU etc.) have been introduced by transposing the aforementioned Directives. Specific data exchange mechanisms between member states with regard to long-term residing persons have been introduced along with freedom of movement rules concerning EEA citizens.

As mentioned under pt. 3.4, second paragraph, a new institutional competence has been introduced, transposing the abovementioned Directive[124]. The Independent Administrative Senate (UVS) became competent for appeals against decisions regarding EEA citizens, which either have been based on the Asylum Act 2005 or the Aliens' Police Act 2005[125].

5. Council Directive 2004/81/EC of 29 April 2004 on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities (applicable as of 6 August 2006);

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[124] In detail: Articles 27 (2) and 28 (3) lit a of the Council Directive 2004/38/EC of 29 April 2004, OJ L 158, pp 114-115.

[125] §§ 82 and 83 FPG.

§72 NAG is the basis for the possibility of issuing humanitarian residence permits. Such a permit can be issued for victims of trafficking, who cooperate with the competent authorities for a period comprising the period of the legal proceedings, however a minimum of six months.

6. Council Directive 2004/82/EC of 29 April 2004 on the obligation of carriers to communicate passenger data (applicable as of 5 September 2006);

§§ 111 and 112 FPG transpose the above Directive, enumerating detailed obligations for carriers with regard to the collection of data and travel dates from and about their passengers. In corroboration with Council Directive 2001/51/EC, a minimum sanction of 3000 is set per person carried without the necessary documents or with bogus information forwarded to the competent Austrian authorities.

7. Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third-country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted (applicable as of 10 October 2006);

Article 5 of the above directive has now been introduced into the Austrian Asylum Act 2005[126] regulating that activities engaged in by the applicant after leaving the country of origin (objective grounds) being a continued expression of convictions or orientations of the applicant (subjective grounds) constitute well-founded fear of persecution. However, in case of subsequent applications because of alleged persecution, which however are based on circumstances created by the applicant's own decision, the applicant is normally not granted refugee status, unless the activities are legal in Austria and a continued expression of the orientation shown in the country of origin.

In transposition of Article 8 of the Status-Directive, possibilities of internal protection in the country of origin lead to a dismissal of the asylum application.

Internal protection is given if the applicant can reasonably be expected to stay in the safe part of the country of origin and if safety can be granted[127].

8. Council Directive 2004/114/EC of 13 December 2004 on the conditions of admission of third-country nationals for the purposes of studies, pupil exchange, unremunerated training or voluntary service (applicable as of 12 January 2007);

In § 64 NAG, the students Directive is transposed, however, excluding studies which exclusively focus on the acquisition of language skills. § 66 NAG establishes the category for a one year residence title for the purpose of unremunerated social services.

9. Council Directive 2005/71/EC of 12 November 2005 on a specific procedure for admitting third-country nationals for purposes of scientific research (applicable as of 12 November 2007);

§§ 67 and 68 NAG transpose the Researchers' Directive, which has only been in a draft stadium at the time of the transposition. The residence permit "researcher" has been introduced together with the possibility to certify specific research institutes, which can conclude a research contract with specific researchers, who, in return receive their residence permits on the basis of this contract.

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[126] § §(2) AsylG 2005.

[127] § 3(3) AsylG 2005 in corroboration with § 11 AsylG 2005.

# 5. OTHER POLICY IMPLEMENTATION ISSUES

## 5.1. Labour Market and Employment

In 2005, the annual average of employed foreign nationals was 373,692 persons, which is 11.5% of the total number of employees in this period. 60.2% of foreign national employees are male.

In general, recent years were characterised by an increase in the number of unemployed persons. The average unemployment rate[128] for 2005 was 7.2%. Non-nationals are more affected than Austrian nationals: the average unemployment rate among non-nationals was already at 10.6% compared to 6.8% among Austrian nationals.[129]

The Public Employment Service provides support for unemployed and employed persons in terms of qualification, training, occupation projects, advisory services, foundation of enterprises, human resources development etc. In the year 2005, 39,063 foreign nationals were supported, which is an increase of 16.3% compared to the preceding year. Hence, the percentage of non-nationals among supported persons amounts to 13.4% (2004: 12.6%).

Aside from a residence title third country nationals are required to hold a work permit to get access to the Austrian labour market. In 2005, an average number of 211,227 foreign nationals were holding this kind of permit. It is interesting to see that already 36% (2004: 25.4%) hold a proof of settlement granting long-term residence and full and unlimited access to the labour market. Another 41% (2004: 52.1%) have an exemption certificate, which is an unrestricted work permit.[130] On the contrary, only around 11% hold the

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[128] National calculation: Percentage of registered unemployed persons in the total labour supply (defined as the sum of registered employed and registered unemployed persons).

[129] Data source: Federation of Austrian Social Insurance Institutions/Public Employment Service

[130] The proof of settlement was introduced in 2003: it is a residence title, which grants the right to settle in Austria and the unrestricted right to work. The proof of settlement follows the provisions of Council Directive 2003/109/EC concerning the status of third-country nationals who are long-term residents.

employment permit, which restricts the right to work to a specific job and employer. It is granted for up to one year, an extension is possible.[131]

In general, labour immigration is restricted to key professionals since 2003. Key professionals are defined by an income threshold, which is set at more than 60% of the income threshold for social security contributions. In 2005, third country nationals earning more than € 2,178 were considered as key professionals. However, an exception has been made for the health and care-taking sector: in 2004, the income threshold was lowered for health and care-taking professions for EU-10 citizens, as persons working in these sectors start with considerably lower wages (König/Perchinig 2005:3). [132] This group is also exempt from the "Bundeshöchstzahl", which defines the maximum percentage of non-national employees and unemployed persons in the total labour supply.

In summer 2005, a statement to the media made by the head of the Chamber of Labour Tyrol on Germans (mainly from the former GDR) working in Austria launched a public debate: against the background of increasing unemployment, the rising numbers of German employees (particularly in tourism) was vigorously criticised. The number of Germans working in Austria has been significantly rising in recent years and was at 50,753 in December 2005 compared to a yearly average of 26,342 in 2002 (data source: Statistics Austria). This development is also the result of an agreement of joint recruitment procedures between the Austrian Public Employment Service and its German counterpart to attract unemployed German citizens to work in Austria (König/Perchinig 2005: ibid.). This agreement was primarily focused on tourism.

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[131] Data source: Public Employment Service

[132] See also Bundeshöchstzahlenüberziehungsverordnung BGBl. II Nr. 352/2004

## *5.2. Education*

The results of Austrian pupils in the Programme for International Student Assessment (PISA)[133], which where published in autumn 2004, have been extensively discussed in the media. Compared to the preceding study, the results were weaker, particularly in the fields of reading, mathematics and sciences; thus, the PISA-Study initiated a general debate about the Austrian educational system and its reform, focusing both on organisational issues and contents taught in courses (KURIER 2005f).

But PISA also has had an influence on the integration debate, which popped up from time to time in the media in recent years. Criticism was raised from different sides that the lack of German knowledge of children with migration background might be one reason for the poor results that were achieved in the PISA-Study.

As a result, political actors suggested measures to address this issue. For example the Austrian Freedom Party (FPOE) claimed the limitation of pupils with foreign mother tongue to a certain percentage, particularly in Vienna. In addition, they suggested that pupils have to be sent to German language courses before integrating them in normal classes.[134] The obligation for children with migration background to attend at least one year of kindergarten was suggested by single political representatives of OEVP and SPOE and other institutions[135] in the past, but did not find a broader support. Nevertheless, politicians of different parties realised a need for improved integration measures and individual language training in school.

The Schulpakete (Educational reform packages) I and II, which were adopted in October and December 2005 by the Austrian Parliament with broad majority (including parties of the opposition), include measures to improve language skills of pupils with foreign mother tongue. The registration for school attendance will

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[133] see also www.pisa-austria.at (accessed in January 2006)

[134] see www.fpoe.at

[135] i.e. the Arbeiterkammer (AK) (Chamber of Labour) http://wien.arbeiterkammer.at/www-397-IP-21263.html (accessed in January 2006)

be brought forward and take place already about one year before the first school year starts; together with registration, a language skills assessment will take place, which shall help to identify needs for pre-school language teaching. These language courses, amounting to 120 hours in total, shall be organised and take place in kindergarten, which transfers the responsibility to the municipalities. The ministry will pay 80 € per child attending these pre-school language classes. For pupils already attending school, additional language lessons in smaller groups besides normal classes will be offered (STANDARD 2005h and 2005i).[136]

However, it is not yet clear how effective these measures will prove to be. Concerning the pre-school language training, it is not compulsory, but a recommendation by the Ministry of Education, Science and Culture. However, the question remains, if the kindergartens are going to organise these courses and if parents will make use of this offer for their children. Furthermore, it was criticised that the language education was delegated to kindergartens and does not remain in the responsibility of schools (KURIER 2005g).

### *5.3. Discrimination*

The transposition of the EU-Antidiscrimination Directives[137] into Austrian law is almost completed[138] with only the province of Salzburg missing. As Austria is a federal state, there are federal and provincial laws. With over 20 acts it is impossible to give an overview within the frame of this report. The Gleichbehandlungsgesetz[139] (Equal Treatment Act) and the Gleichbehandlungskommissions-/Gleichbehandlungsanwaltschaftsgesetz[140] (Act on the Equal Treatment Commission and the Equal Treatment Advocacy) are the

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[136] see also "Schulpaket I – OEVP-Info": http://www.oevpklub.at/download/1088.pdf (accessed in January 2005)

[137] Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin and Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation

[138] A comprehensive list of the Austrian legislation can be found at www.klagsverband.at/recht.php (accessed in December 2005).

[139] BGBl I 66/2004 as amended by BGBl I 82/2005.

[140] BGBl I 66/2004.

central legal instruments to combat discrimination, as they refer to all private labour contracts and the access to services regulated by federal law.

Generally, the existing legislation covers the requirements of the directives. Still the execution cannot be evaluated as the competent bodies have been installed only recently.

On the federal level, the Equal Treatment Advocacy[141] (Gleichbehandlungsanwaltschaft) is responsible for individual advice and the newly set up senates 2[142] and 3[143] of the Equal Treatment Commission[144] (Gleichbehandlungskommission) can give opinions on individual cases. The opinions issued by the Equal Treatment Commission are not binding and none has been published yet. There are very few lawsuits based on the Equal Treatment Act but apparently no rulings yet.

On the provincial level, Vienna, Lower Austria and Upper Austria have already set up independent institutions within their jurisdiction.

The social dialogue and the dialogue with the civil society have been launched varying in their intensity. The Arbeiterkammer (AK) (Chamber of Labour), the Wirtschaftskammer (Chamber of Commerce), the Österreichischer Gewerkschaftsbund (OEGB) (Austrian Trade Union Federation) and the Industriellenvereinigung (Federation of Austrian Industries) are members of the Equal Treatment Commission. The cooperation with the civil society is less distinctive. NGOs are not members of the Equal Treatment Commission but can be invited as experts and accompany claimants in hearings. The Klagsverband zur Durchsetzung der Rechte von Diskriminierungsopfern (Austrian Association

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[141] Details on http://www.bmgf.gv.at/cms/site/themen.htm?channel=CH0210 (accessed in December 2005).

[142] Senate 2 is competent for discrimination on the grounds of race and ethnic origin, religion or belief, sexual orientation and age in employment and education.

[143] Senate 3 is competent for discrimination on the grounds of race and ethnic origing accessing goods and services that are available to the public.

[144] Details on http://www.bmgf.gv.at/cms/site/themen.htm?channel=CH0365&news=CMS1127289942687 (accessed in December 2005).

against Discrimination) is authorized to support plaintiffs in any lawsuit under the Equal Treatment Act[145] and has done so twice.

[145] § 62 Equal Treatment Act, BGBl I 66/2004. Reports on their activites can be found at http://www.klagsverband.at.

## *6. SUMMARY*

Many of the occurred changes to the Austrian Aliens' Act system have been introduced because of need for transposition of a number of EU Directives into national law. The public debate and the acting of various societal stakeholders i.e. political parties or NGOs have had a minor influence on the decision making process with regard to the new Aliens' Act Package. By minor influence it is meant that broad lines of the Aliens' Act Package have remained the same from the first presentation of the Package until its adoption. Harsh criticism by political parties and other interest groups have not been integrated into the package despite of a series of consultations and intense media coverage.

However, it has to be noticed that three changes have been made either before the adoption of the package or before the entering into force of it. The first one was the issue of forced feeding of persons on hunger strike being kept in detention pending deportation. Although foreseen to be mentioned expressis verbis in the Aliens' Police Act (FPG), this paragraph has been taken out from the original proposal and did not enter into force. Secondly, regarding the facilitation of illegal stay in Austria, where the original proposal would have potentially treated lawyers and advocates as associates to the crime, a paragraph has been added which states an explicit exception for these legal counsellors. Thirdly, the whole reformation of the Citizenship Act making it more restrictive than before, has been blocked by the Bundesrat (Federal Council). The official motive for blocking it has been the argument of the new Citizenship Act to be too restrictive. However, since the opposition holds the majority in this chamber, a mere political movement could be possible with respect to this decision.

On the whole and despite of the criticism by members of the opposition and of various NGOs it has to be recognised that the legal and textual qualities of the Aliens' Acts have been improved. However, the practical effects when implementing the new laws can only be assessed after a certain period. Some Articles will find their way to the High Courts and one has to see whether they are going to be declared constitutional or not. Answers about these questions and an

eventually adopted reform of the Austrian Citizenship Act can only be given in course of the next policy report, covering the reference period of the year 2006.

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Council Directive 2004/114/EC of 13 December 2004 on the conditions of admission of third-country nationals for the purposes of studies, pupil exchange, unremunerated training or voluntary service, Official Journal L 375, 23/12/2004, p. 12.

(Council Directive: 2005/71/EC)

Council Directive 2005/71/EC of 12 November 2005 on a specific procedure for admitting third-country nationals for purposes of scientific research, Official Journal L 289, 03/11/2005, p. 15.

(Council Regulation: 1030/2002/EC)

Council Regulation (EC) No 1030/2002 of 13 June 2002 laying down a uniform format for residence permits for third-country nationals, Official Journal L 157, 15/06/2002, p. 1.

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(König / Perchinig 2005)

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(NCP: 2004)

NCP: 2004, National Contact Point Austria, The impact of immigration on Austria's society. Vienna. 2004.

(NCP: 2004a)

NCP: 2004, National Contact Point Austria, Policy Report 'Integration and Immigration in Austria'. Vienna. 2004.

# *8. ANNEX: STATISTICS*

Table 1: Resident Population by citizenship (by 1 January 2005)

| Citizenship | Resident Population by 1st January 2005 | | |
|---|---|---|---|
| | Total | Men | Women |
| **Total** | **8.206.524** | **3.986.296** | **4.220.228** |
| **Austrian Nationals** | **7.417.915** | **3.577.095** | **3.840.820** |
| **Non nationals** | **788.609** | **409.201** | **379.408** |
| **EU-24 countries** | **206.715** | **102.775** | **103.940** |
| Belgium | 1.287 | 674 | 613 |
| Cyprus | 74 | 36 | 38 |
| Czech Republic | 751 | 433 | 318 |
| Denmark | 1.023 | 457 | 566 |
| Estonia | 133 | 37 | 96 |
| Finland | 1.153 | 383 | 770 |
| France | 5.249 | 2.351 | 2.898 |
| Germany | 94.672 | 46.269 | 48.403 |
| Greece | 2.451 | 1.633 | 818 |
| Hungary | 7.498 | 2.882 | 4.616 |
| Ireland | 6.870 | 3.813 | 3.057 |
| Italy | 12.206 | 7.183 | 5.023 |
| Latvia | 358 | 89 | 269 |
| Lithuania | 414 | 144 | 270 |
| Luxembourg | 476 | 268 | 208 |
| Malta | 45 | 24 | 21 |
| Netherlands | 5.077 | 2.627 | 2.450 |
| Poland | 27.056 | 14.446 | 12.610 |
| Portugal | 1.191 | 752 | 439 |
| Slovakia | 11.479 | 4.582 | 6.897 |
| Slovenia | 6.540 | 3.796 | 2.744 |
| Spain | 2.204 | 990 | 1.214 |
| Sweden | 3.053 | 1.424 | 1.629 |
| United Kingdom | 15.455 | 7.482 | 7.973 |
| **Selected non-EU countries** | **581.894** | **306.426** | **275.468** |
| Albania | 1.501 | 779 | 722 |
| Bosnia-Herzegovina | 90.988 | 49.065 | 41.923 |
| Bulgaria | 6.496 | 2.882 | 3.614 |
| Croatia | 58.719 | 31.006 | 27.713 |
| Macedonia | 15.986 | 9.048 | 6.938 |
| Romania | 21.871 | 9.476 | 12.395 |
| Switzerland | 6.692 | 3.040 | 3.652 |
| Serbia Montenegro | 137.662 | 72.800 | 64.862 |
| Turkey | 116.882 | 63.690 | 53.192 |
| Others | 125.097 | 64.640 | 60.457 |

Source: Statistics Austria (POPREG)

Table 2: Immigration and emigration 2002 by sex and citizenship

| Citizenship | | Immigration | | | Emigration | | |
|---|---|---|---|---|---|---|---|
| | | Total | Men | Women | Total | Men | Women |
| **Nationals and foreign citizens** | | **113.165** | **62.674** | **50.491** | **79.658** | **46.097** | **33.561** |
| Nationals | | 20.598 | 12.583 | 8.015 | 40.881 | 22.417 | 18.464 |
| Non-nationals | | 92.567 | 50.091 | 42.476 | 38.777 | 23.680 | 15.097 |
| **EU-14** | **EU-14 total** | **14.222** | **7.785** | **6.437** | **8.080** | **4.557** | **3.523** |
| | Belgium | 151 | 90 | 61 | 106 | 64 | 42 |
| | Denmark | 160 | 79 | 81 | 161 | 91 | 70 |
| | Finland | 233 | 105 | 128 | 193 | 79 | 114 |
| | France | 620 | 295 | 325 | 437 | 223 | 214 |
| | Germany | 8.624 | 4.540 | 4.084 | 4.338 | 2.363 | 1.975 |
| | Greece | 396 | 287 | 109 | 283 | 215 | 68 |
| | Ireland | 118 | 76 | 42 | 59 | 35 | 24 |
| | Italy | 1.284 | 769 | 515 | 899 | 555 | 344 |
| | Luxembourg | 54 | 34 | 20 | 16 | 10 | 6 |
| | Netherlands | 569 | 317 | 252 | 339 | 190 | 149 |
| | Portugal | 291 | 238 | 53 | 202 | 164 | 38 |
| | Spain | 362 | 185 | 177 | 177 | 88 | 89 |
| | Sweden | 496 | 252 | 244 | 319 | 154 | 165 |
| | United Kingdom | 864 | 518 | 346 | 551 | 326 | 225 |
| **EU-10** | **EU-10 total** | **9.070** | **4.404** | **4.666** | **6.218** | **3.831** | **2.387** |
| | Cyprus | 6 | 3 | 3 | 6 | 4 | 2 |
| | Czech Republic | 1.012 | 391 | 621 | 667 | 357 | 310 |
| | Estonia | 27 | 6 | 21 | 12 | 3 | 9 |
| | Hungary | 2.372 | 1.222 | 1.150 | 1.759 | 1.043 | 716 |
| | Latvia | 62 | 9 | 53 | 17 | 9 | 8 |
| | Lithuania | 98 | 44 | 54 | 65 | 36 | 29 |
| | Malta | 7 | 5 | 2 | 7 | 4 | 3 |
| | Poland | 2.687 | 1.441 | 1.246 | 1.831 | 1.265 | 566 |
| | Slovakia | 2.383 | 1.026 | 1.357 | 1.385 | 780 | 605 |
| | Slovenia | 416 | 257 | 159 | 469 | 330 | 139 |
| **Non-EU** | **Non-EU total** | **69.275** | **37.902** | **31.373** | **24.479** | **15.292** | **9.187** |
| | Albania | 212 | 103 | 109 | 66 | 34 | 32 |
| | Bosnia-Herzegovina | 4.346 | 2.404 | 1.942 | 2.307 | 1.381 | 926 |
| | Bulgaria | 1.431 | 675 | 756 | 589 | 315 | 274 |
| | Croatia | 3.544 | 1.896 | 1.648 | 2.336 | 1.300 | 1.036 |
| | Macedonia | 1.694 | 1.027 | 667 | 504 | 402 | 102 |
| | Romania | 4.320 | 1.812 | 2.508 | 1.529 | 753 | 776 |
| | Serbia and Montenegro | 9.142 | 5.412 | 3.730 | 3.982 | 2.523 | 1.459 |
| | Switzerland | 399 | 216 | 183 | 308 | 166 | 142 |
| | Turkey | 10.761 | 5.943 | 4.818 | 2.885 | 1.881 | 1.004 |
| | Others | 33.426 | 18.414 | 15.012 | 9.973 | 6.537 | 3.436 |

Source: Statistics Austria (Migration Statistics 2002)

Table 3: Immigration and emigration 2003 by sex and citizenship

| Citizenship | | Immigration | | | Emigration | | |
|---|---|---|---|---|---|---|---|
| | | Total | Men | Women | Total | Men | Women |
| **Nationals and foreign nationals** | | **113.554** | **61.690** | **51.864** | **77.257** | **46.074** | **31.183** |
| Nationals | | 16.390 | 10.571 | 5.819 | 31.192 | 18.158 | 13.034 |
| Non-nationals | | 97.164 | 51.119 | 46.045 | 46.065 | 27.916 | 18.149 |
| **EU-14** | **EU-14 total** | **16.913** | **9.227** | **7.686** | **8.731** | **4.970** | **3.761** |
| | Belgium | 225 | 147 | 78 | 142 | 86 | 56 |
| | Denmark | 173 | 88 | 85 | 98 | 46 | 52 |
| | Finland | 256 | 93 | 163 | 214 | 93 | 121 |
| | France | 673 | 338 | 335 | 423 | 222 | 201 |
| | Germany | 10.644 | 5.557 | 5.087 | 4.604 | 2.592 | 2.012 |
| | Greece | 463 | 334 | 129 | 348 | 246 | 102 |
| | Ireland | 142 | 93 | 49 | 60 | 38 | 22 |
| | Italy | 1.407 | 874 | 533 | 981 | 613 | 368 |
| | Luxembourg | 40 | 19 | 21 | 26 | 13 | 13 |
| | Netherlands | 619 | 366 | 253 | 355 | 203 | 152 |
| | Portugal | 319 | 246 | 73 | 213 | 167 | 46 |
| | Spain | 445 | 232 | 213 | 221 | 110 | 111 |
| | Sweden | 456 | 228 | 228 | 398 | 192 | 206 |
| | United Kingdom | 1.051 | 612 | 439 | 648 | 349 | 299 |
| **EU-10** | **EU-10 total** | **10.163** | **4.799** | **5.364** | **7.123** | **4.089** | **3.034** |
| | Cyprus | 9 | 4 | 5 | 5 | 2 | 3 |
| | Czech Republic | 1.154 | 461 | 693 | 861 | 426 | 435 |
| | Estonia | 37 | 10 | 27 | 18 | 8 | 10 |
| | Hungary | 2.691 | 1.369 | 1.322 | 2.087 | 1.201 | 886 |
| | Latvia | 67 | 12 | 55 | 24 | 2 | 22 |
| | Lithuania | 126 | 45 | 81 | 82 | 32 | 50 |
| | Malta | 1 | 0 | 1 | 1 | 1 | 0 |
| | Poland | 3.186 | 1.656 | 1.530 | 2.115 | 1.364 | 751 |
| | Slovakia | 2.499 | 1.029 | 1.470 | 1.522 | 778 | 744 |
| | Slovenia | 393 | 213 | 180 | 408 | 275 | 133 |
| **Non-EU** | **Non-EU total** | **70.088** | **37.093** | **32.995** | **30.211** | **18.857** | **11.354** |
| | Albania | 214 | 107 | 107 | 87 | 56 | 31 |
| | Bosnia-Herzegovina | 5.005 | 2.654 | 2.351 | 2.499 | 1.542 | 957 |
| | Bulgaria | 1.714 | 771 | 943 | 830 | 437 | 393 |
| | Croatia | 3.315 | 1.666 | 1.649 | 2.486 | 1.357 | 1.129 |
| | Macedonia | 1.538 | 832 | 706 | 467 | 366 | 101 |
| | Romania | 5.333 | 2.447 | 2.886 | 2.689 | 1.436 | 1.253 |
| | Serbia and Montenegro | 9.834 | 5.342 | 4.492 | 4.849 | 3.107 | 1.742 |
| | Switzerland | 471 | 242 | 229 | 275 | 153 | 122 |
| | Turkey | 10.176 | 5.302 | 4.874 | 3.085 | 2.031 | 1.054 |
| | Others | 32.488 | 17.730 | 14.758 | 12.944 | 8.372 | 4.572 |

Source: Statistics Austria (Migration Statistics 2003)

Table 4: Immigration and emigration from and to Austria by citizenship 1996-2004

| Year | Citizenship | Immigration | Emigration | Net migration |
|---|---|---|---|---|
| **1996** | Austrians | 12.830 | 17.136 | -4.306 |
| | Foreign Nationals | 57.100 | 48.914 | 8.186 |
| | **Total** | **69.930** | **66.050** | **3.880** |
| **1997** | Austrians | 13.227 | 18.830 | -5.603 |
| | Foreign Nationals | 56.895 | 49.755 | 7.140 |
| | **Total** | **70.122** | **68.585** | **1.537** |
| **1998** | Austrians | 13.494 | 19.407 | -5.913 |
| | Foreign Nationals | 59.229 | 44.865 | 14.364 |
| | **Total** | **72.723** | **64.272** | **8.451** |
| **1999** | Austrians | 14.331 | 19.644 | -5.313 |
| | Foreign Nationals | 72.379 | 47.279 | 25.100 |
| | **Total** | **86.710** | **66.923** | **19.787** |
| **2000** | Austrians | 13.324 | 17.639 | -4.315 |
| | Foreign Nationals | 65.954 | 44.367 | 21.587 |
| | **Total** | **79.278** | **62.006** | **17.272** |
| **2001** | Austrians | 15.142 | 21.644 | -6.502 |
| | Foreign Nationals | 74.786 | 51.010 | 23.776 |
| | **Total** | **89.928** | **72.654** | **17.274** |
| **2002** | Austrians | 20.598 | 40.881 | -20.283 |
| | Foreign Nationals | 92.567 | 38.777 | 53.790 |
| | **Total** | **113.165** | **79.658** | **33.507** |
| **2003** | Austrians | 16.390 | 31.192 | -14.802 |
| | Foreign Nationals | 97.164 | 46.065 | 51.099 |
| | **Total** | **113.554** | **77.257** | **36.297** |
| **2004** | Austrians | 18.452 | 28.491 | -10.039 |
| | Foreign Nationals | 108.947 | 48.326 | 60.621 |
| | **Total** | **127.399** | **76.817** | **50.582** |

Source: Statistics Austria, ISIS database (1996-2001) and Migration Statistics (2002 and 2003)

Comments:
Migration statistics 1996-2001 did not record movements of persons but change of residence across borders. Base for these statistics was aggregated local population register data. With the introduction of a new central registration register, the methodology of migration statistics has considerably changed:
Migration statistics for the years from 2002 onwards are based on a newly developed population register (POPREG; created by Statistics Austria), which is based on the central registration register. With the creation of this new database, the compiled migration events can be linked to individuals. Furthermore, it will be possible to distinguish different categories of migrants following international concepts, like short-term and long-term migrants.

Table 5: Issued residence titles 2000-2005

**2000**

| Type of permit | Male | Female | Total |
|---|---|---|---|
| First settlement permit (quota) | 2.348 | 2.927 | 5.275 |
| First settlement permit (quota-free) | 4.556 | 6.382 | 10.938 |
| First residence permits | 11.342 | 8.268 | 19.610 |
| **TOTAL** | **18.246** | **17.577** | **35.823** |

**2001**

| Type of permit | Male | Female | Total |
|---|---|---|---|
| First settlement permit (quota) | 3.376 | 4.400 | 7.776 |
| First settlement permit (quota-free) | 6.675 | 9.024 | 15.699 |
| First residence permits | 18.939 | 14.796 | 33.735 |
| **TOTAL** | **28.990** | **28.220** | **57.210** |

**2002**

| Type of permit | Male | Female | Total |
|---|---|---|---|
| First settlement permit (quota) | 2.745 | 3.851 | 6.596 |
| First settlement permit (quota-free) | 9.231 | 11.339 | 20.570 |
| First residence permit | 21.257 | 17.544 | 38.801 |
| **TOTAL** | **33.233** | **32.734** | **65.967** |

**2003**

| Type of permit | Male | Female | Total |
|---|---|---|---|
| First settlement permit (quota) | 2.977 | 5.050 | 8.027 |
| First settlement permit (quota-free) | 12.181 | 14.356 | 26.537 |
| First residence permit | 19.891 | 15.514 | 35.405 |
| Renewal of settlement permit | 34.332 | 37.214 | 71.546 |
| Proof of settlement | 37.016 | 33.902 | 70.918 |
| Renewal of residence permit | 13.943 | 13.381 | 27.324 |
| **TOTAL** | **120.340** | **119.417** | **239.757** |

**2004**

| Type of permit | Male | Female | Total |
|---|---|---|---|
| First settlement permit (quota) | 1.840 | 3.298 | 5.138 |
| First settlement permit (quota-free) | 12.631 | 14.066 | 26.697 |
| First residence permit | 16.903 | 15.306 | 32.209 |
| Renewal of settlement permit | 33.443 | 38.304 | 71.747 |
| Proof of settlement | 26.362 | 24.775 | 51.137 |
| Renewal of residence permit | 10.757 | 12.731 | 23.488 |
| **TOTAL** | **101.936** | **108.480** | **210.416** |

**2005**

| Type of permit | Male | Female | Total |
|---|---|---|---|
| First settlement permit (quota) | 2.287 | 3.971 | 6.258 |
| First settlement permit (quota-free) | 12.221 | 13.687 | 25.908 |
| First residence permit | 11.374 | 9.826 | 21.200 |
| Renewal of settlement permit | 36.484 | 41.883 | 78.367 |
| Proof of settlement | n.a. | n.a. | 48.009 |
| Renewal of residence permit | 9.994 | 12.508 | 22.502 |
| **TOTAL** | **72.360** | **81.875** | **202.244** |

Source: Federal Ministry of the Interior

**Comments:**
For the years 2000-2002 no data on renewals of permits was issued. The "proof of settlement" was introduced with the amendment of the Aliens Act in 2002 (entry into force: 01/01/2003).

Table 6: Asylum applications 2004 by gender

| Month | Male | Female | TOTAL |
|---|---|---|---|
| **January** | 1.138 | 395 | 1.533 |
| **February** | 1.269 | 570 | 1.839 |
| **March** | 1.756 | 794 | 2.550 |
| **April** | 2.120 | 1.016 | 3.136 |
| **May** | 1.047 | 245 | 1.292 |
| **June** | 1.652 | 458 | 2.110 |
| **July** | 1.377 | 475 | 1.852 |
| **August** | 1.476 | 565 | 2.041 |
| **September** | 1.738 | 613 | 2.351 |
| **Oktober** | 1.505 | 665 | 2.170 |
| **November** | 1.363 | 528 | 1.891 |
| **December** | 1.314 | 597 | 1.911 |
| **TOTAL** | **17.755** | **6.921** | **24.676** |

Source: Federal Ministry of the Interior

Table 7: Asylum applications 2005 by gender

| Month | Male | Female | TOTAL |
|---|---|---|---|
| **January** | 1.004 | 351 | 1.355 |
| **February** | 901 | 337 | 1.238 |
| **March** | 1.173 | 437 | 1.610 |
| **April** | 1.218 | 478 | 1.696 |
| **May** | 1.178 | 428 | 1.606 |
| **June** | 1.224 | 446 | 1.670 |
| **July** | 1.255 | 519 | 1.774 |
| **August** | 1.467 | 764 | 2.231 |
| **September** | 1.567 | 693 | 2.260 |
| **October** | 1.582 | 680 | 2.262 |
| **November** | 1.711 | 726 | 2.437 |
| **December** | 1.694 | 638 | 2.332 |
| **TOTAL** | **15.974** | **6.497** | **22.471** |

Source: Federal Ministry of the Interior

Table 8: Asylum Applications and decisions 2004

| Citizenship | Asylum applications | Positive decisions | Negative decisions | Recognition rate |
|---|---|---|---|---|
| **Russian Federation** | 6.184 | 2.798 | 199 | 93,4% |
| **Serbia and Montenegro** | 2.840 | 407 | 915 | 30,8% |
| **India** | 1.842 | 0 | 520 | 0,0% |
| **Nigeria** | 1.829 | 3 | 455 | 0,7% |
| **Georgia** | 1.743 | 52 | 409 | 11,3% |
| **Moldova** | 1.350 | 9 | 216 | 4,0% |
| **Turkey** | 1.113 | 101 | 628 | 13,9% |
| **Afghanistan** | 757 | 729 | 117 | 86,2% |
| **Pakistan** | 575 | 4 | 117 | 3,3% |
| **People's Republic of China** | 565 | 4 | 81 | 4,7% |

Source: Federal Ministry of the Interior

Table 9: Asylum Applications and decisions 2005

| Citizenship | Asylum applications | Positive decisions | Negative decisions | Recognition rate |
|---|---|---|---|---|
| **Serbia and Montenegro** | 4.408 | 462 | 1.042 | 30,7% |
| **Russian Federation** | 4.359 | 2.395 | 271 | 89,8% |
| **India** | 1.530 | 1 | 368 | 0,3% |
| **Moldova** | 1.210 | 7 | 217 | 3,1% |
| **Turkey** | 1.067 | 67 | 579 | 10,4% |
| **Georgia** | 953 | 59 | 505 | 10,5% |
| **Afghanistan** | 928 | 533 | 141 | 79,1% |
| **Nigeria** | 881 | 7 | 637 | 1,1% |
| **Mongolia** | 641 | 3 | 59 | 4,8% |
| **Bangladesh** | 548 | 0 | 114 | 0,0% |

Source: Federal Ministry of the Interior

Table 10: Asylum applications by gender of asylum seekers 1997-2005

| Year | Total | Male | | Female | |
|---|---|---|---|---|---|
| | | Total | in % | Total | in % |
| **1997** | 6.719 | 5.093 | 75,8% | 1.626 | 24,2% |
| **1998** | 13.805 | 9.781 | 70,9% | 4.024 | 29,1% |
| **1999** | 20.129 | 13.472 | 66,9% | 6.657 | 33,1% |
| **2000** | 18.284 | 13.665 | 74,7% | 4.619 | 25,3% |
| **2001** | 30.127 | 23.430 | 77,8% | 6.697 | 22,2% |
| **2002** | 39.354 | 30.515 | 77,5% | 8.839 | 22,5% |
| **2003** | 32.364 | 23.754 | 73,4% | 8.610 | 26,6% |
| **2004** | 24.676 | 17.755 | 72,0% | 6.921 | 28,0% |
| **2005** | 22.471 | 15.974 | 71,1% | 6.497 | 28,9% |

Source: Federal Ministry of the Interior

Table 11: Asylum decisions 1997-2005

| Asylum decisions | 1997 | 1998 | 1999 | 2000 | 2001 | 2002 | 2003 | 2004 | 2005 |
|---|---|---|---|---|---|---|---|---|---|
| **Positive decisions** | 639 | 500 | 3.393 | 1.002 | 1.152 | 1.073 | 1.829 | 4.986 | 4.552 |
| **Negative decisions** | 7.286 | 3.491 | 3.300 | 4.787 | 3.840 | 4.285 | 4.604 | 5.096 | 5.638 |
| **Recognition Rates** | 8,1 | 12,5 | 50,7 | 17,3 | 23,1 | 20,0 | 28,4 | 49,5 | 44,7 |

Source: Federal Ministry of the Interior

**Comments:**
2001: status: 31/03/2002

As from 2004, decisions have been taken according to three different legal bases: old version of Asylum Act 1997, amended version of Asylum Act 1997 (since 01/05/2004) and transitional provisions.
For calculations of recognition rates non-status decisions are not taken into consideration.

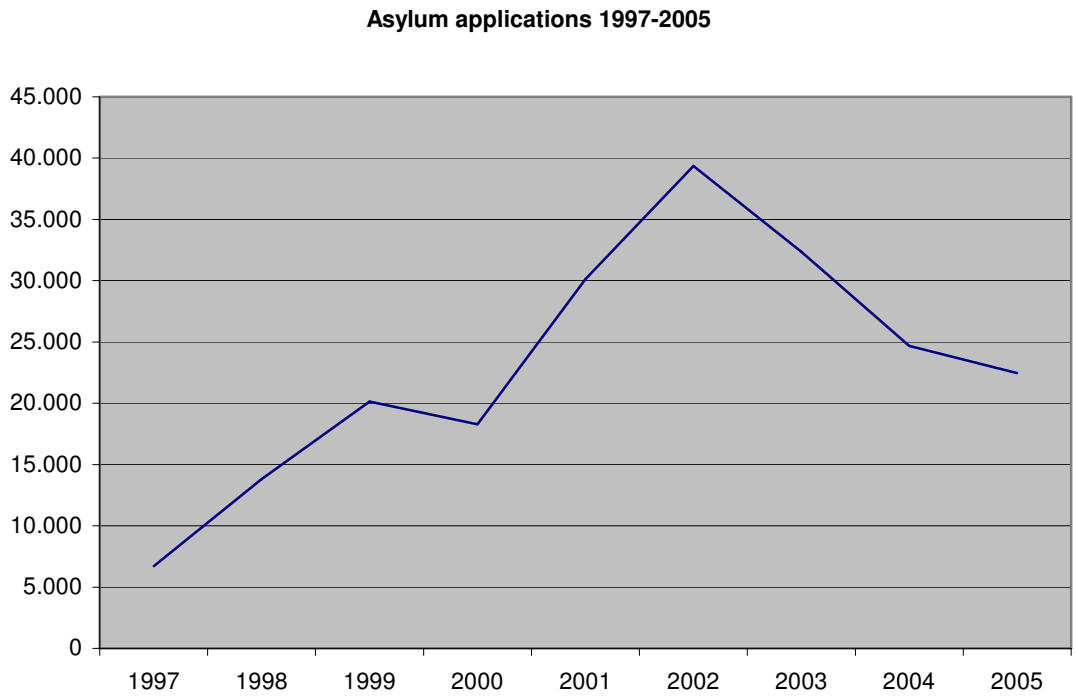


Table 12: Number of employed persons 2004 and 2005

| | Average 2004 | Average 2005 |
|---|---|---|
| **Employed persons** | 3.199.012 | 3.234.636 |
| **Male** | 1.730.780 | 1.740.816 |
| **Female** | 1.468.232 | 1.493.820 |
| | | |
| thereof: | | |
| **Employed foreign nationals** | 361.767 | 373.692 |
| **Male** | 218.736 | 225.139 |
| **Female** | 143.031 | 148.553 |

Source: Federation of Austrian Social Insurance Institutions

Table 13: Employed foreign nationals holding an obligatory work permit (average 2005)

| | Male | Female | Total | As % of total |
|---|---|---|---|---|
| **Foreign nationals holding a work permit** | 132.694 | 78.533 | **211.227** | |
| **Category of permit:** | | | | |
| Employment permit | 14.190 | 8.636 | 22.826 | 10,8% |
| Work permit | 5.120 | 3.331 | 8.451 | 4,0% |
| Exemption certificate | 58.047 | 29.099 | 87.146 | 41,3% |
| Proof of settlement | 43.616 | 32.512 | 76.128 | 36,0% |
| Others | 11.721 | 4.955 | 16.676 | 7,9% |

Source: Public Employment Service

Table 14: Employed foreign nationals holding an obligatory work permit (average 2004)

| | Male | Female | Total | As % of total |
|---|---|---|---|---|
| **Foreign nationals holding a work permit** | 139.348 | 81.535 | **220.883** | |
| **Category of permit:** | | | | |
| Employment permit | 15.787 | 9.424 | 25.211 | 11,4% |
| Work permit | 6.536 | 5.319 | 11.856 | 5,4% |
| Exemption certificate | 76.512 | 38.517 | 115.029 | 52,1% |
| Proof of settlement | 31.489 | 24.583 | 56.072 | 25,4% |
| Others | 9.024 | 3.692 | 12.715 | 5,8% |

Source: Public Employment Service

Table 15: Foreign national employees holding an obligatory work permit by nationality (all titles) 2005

| | Male | Female | Total | As % of total |
|---|---|---|---|---|
| **Serbia and Montenegro** | 27.804 | 22.726 | 50.530 | 23,9% |
| **Bosnia and Herzegovina** | 23.198 | 16.238 | 39.436 | 18,7% |
| **Turkey** | 21.189 | 7.725 | 28.914 | 13,7% |
| **Croatia** | 17.743 | 10.172 | 27.915 | 13,2% |
| **Hungary** | 10.222 | 3.463 | 13.685 | 6,5% |
| **Poland** | 7.098 | 3.005 | 10.103 | 4,8% |
| **Slovakia** | 4.621 | 2.644 | 7.265 | 3,4% |
| **Slovenia** | 4.607 | 1.706 | 6.313 | 3,0% |
| **Romania** | 3.294 | 2.369 | 5.663 | 2,7% |
| **Macedonia** | 3.541 | 1.255 | 4.796 | 2,3% |
| **Czech Republic** | 3.169 | 1.616 | 4.785 | 2,3% |
| **Others** | 6.208 | 5.614 | 11.822 | 5,6% |
| **Total** | **132.694** | **78.533** | **211.227** | **100,00%** |

Source: Public Employment Service

**Comments:**
Employment permit (= Beschäftigungsbewilligung): valid for max. 1 year and limited to a particular job (employer), extension possible
Work permit (= Arbeitserlaubnis): after 52 weeks of legal employment, valid for two years, limited to a specific region (Bundesland), extension possible
Exemption certificate (= Befreiungsschein): provides unlimited access to the Austrian labour market; requirements: five years of legal employment within the last 8 years of residence (exceptions for particular groups)
Proof of settlement (= Niederlassungsnachweis): combines unlimited settlement permit with exemption certificate; requirements: after five years of legal settlement (not residence!) and legal employment.

As the tables contain average numbers, discrepancies (due to rounding) might occur.

Table 16: Registered unemployed persons 2004-2005

| | Average 2004 | Average 2005 |
|---|---|---|
| **TOTAL** | **243.880** | **252.654** |
| thereof: | | |
| **Austrians** | 203.486 | 208.352 |
| **Foreign nationals** | 40.394 | 44.302 |

Source: Public Employment Service

**Comments:**
Austrian calculation of unemployment rate: registered unemployed persons divided through labour force (defined as the sum of registered unemployed and registered employed persons)

Table 17: Support and training for employees and unemployed persons 2004-2005

| Supported persons | Average 2004 | Average 2005 |
|---|---|---|
| **TOTAL** | **266.191** | **291.809** |
| thereof | | |
| **Foreign nationals** | 33.580 | 39.063 |

Source: Public Employment Service

Table 18: Naturalisations 2004 by province and original citizenship (selection: main countries of citizenship)

| Original Citizenship | Burgenland | Carinthia | Lower Austria | Upper Austria | Salzburg | Styria | Tyrol | Vorarlberg | Vienna | TOTAL AUSTRIA | Other countries | TOTAL |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| **TOTAL** | **660** | **1.581** | **5.123** | **6.046** | **2.758** | **3.388** | **3.431** | **2.304** | **16.354** | **41.645** | **529** | **42.174** |
| **Turkey** | 125 | 169 | 1.907 | 1.898 | 841 | 870 | 1.888 | 1.328 | 3.978 | 13.004 | 20 | 13.024 |
| **Bosnia and Herzegovina** | 123 | 642 | 933 | 1.529 | 757 | 661 | 684 | 416 | 2.912 | 8.657 | 7 | 8.664 |
| **Serbia and Montenegro** | 126 | 180 | 950 | 1.028 | 591 | 602 | 290 | 264 | 3.214 | 7.245 | 15 | 7.260 |
| **Croatia** | 71 | 171 | 145 | 444 | 155 | 266 | 218 | 112 | 630 | 2.212 | 1 | 2.213 |
| **Rumania** | 77 | 133 | 328 | 229 | 60 | 227 | 39 | 13 | 267 | 1.373 | 3 | 1.376 |
| **Macedonia, Former Yugoslavian Republic** | 2 | 18 | 122 | 137 | 58 | 44 | 1 | 11 | 410 | 803 | - | 803 |
| **Poland** | 12 | 8 | 110 | 78 | 3 | 31 | 16 | 9 | 501 | 768 | 6 | 774 |
| **Egypt** | 6 | 26 | 15 | 38 | 3 | 87 | 25 | - | 416 | 616 | 96 | 712 |
| **India** | 4 | 13 | 21 | 20 | 38 | 14 | 18 | 7 | 427 | 562 | 41 | 603 |
| **China (People's Republic)** | 3 | 16 | 39 | 37 | 21 | 37 | 8 | 12 | 346 | 519 | 9 | 528 |
| **Iran** | 1 | 8 | 32 | 37 | 24 | 42 | 7 | 4 | 256 | 411 | 4 | 415 |
| **Nigeria** | 2 | 9 | 7 | 19 | 5 | 52 | 15 | 3 | 231 | 343 | 14 | 357 |
| **Philippines** | 2 | 7 | 19 | 16 | 42 | 3 | 13 | 11 | 220 | 333 | 9 | 342 |
| **Afghanistan** | 6 | - | 4 | 54 | 4 | 13 | - | - | 241 | 322 | - | 322 |
| **Bulgaria** | 3 | 10 | 33 | 37 | 14 | 40 | 21 | 4 | 112 | 274 | 2 | 276 |
| **Pakistan** | 11 | - | 14 | 22 | 18 | 11 | 3 | 4 | 166 | 249 | 22 | 271 |
| **Ghana** | - | 3 | 6 | 44 | 1 | 105 | 14 | 1 | 71 | 245 | 25 | 270 |
| **Bangladesh** | 3 | - | 16 | 5 | 4 | 2 | - | - | 206 | 236 | 1 | 237 |
| **Ukraine** | 8 | 4 | 20 | 20 | 4 | 19 | 13 | 1 | 141 | 230 | 1 | 231 |
| **Russian Federation** | 5 | 6 | 42 | 18 | 4 | 8 | 6 | 2 | 103 | 194 | 2 | 196 |
| **Others** | 70 | 158 | 360 | 336 | 111 | 254 | 152 | 102 | 1.506 | 3.049 | 251 | 3.300 |

Source: Statistics Austria

Table 19: Naturalisations 1995-2004

| Year | Number of naturalisations |
|---|---|
| **1995** | 14.366 |
| **1996** | 15.627 |
| **1997** | 15.792 |
| **1998** | 17.786 |
| **1999** | 24.678 |
| **2000** | 24.320 |
| **2001** | 31.731 |
| **2002** | 36.011 |
| **2003** | 44.694 |
| **2004** | 41.645 |

Source: Statistics Austria

**Comments:**
The figures do not include naturalisations of persons, who are not residing in Austria.