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Annual Policy Report 2008

National Report Austria

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Executive Summary

This Policy Report gives an overview of the key political debates and developments in the field of migration and asylum in Austria in 2008.

Next to the elections of the provincial parliaments in the Federal Provinces of Lower Austria and Tyrol, the **most prominent political development** in 2008 was the parliamentary elections held in September 2008. In the context of the election campaigns, migration and asylum policies were important issues of discussion.

The Social Democrats (SPOE) received 29,3% of the votes before the Austrian People's Party (OEVP) (26%), the Austrian Liberal Party (FPOE) (17,5%), the Alliance Future Austria (BZOE) (10,7%) and the Green (10,4%).

A main topic of discussion dominating the media after the elections was the polling behaviour of the young voters, as 18% of all 16-18 year old voters had voted for the right-winged party FPOE. Notably, for the first time in national elections, the minimum age of voters was lowered to 16 years

The new coalition government of the SPOE and the OEVP under chancellor Werner Faymann (SPOE) took office on 2 December 2008, composed of vice-chancellor Josef Proell (OEVP), 7 ministers (SPOE), 6 ministers (OEVP), 4 state secretaries (2 SPOE, 2 OEVP).

The Federal Ministry of the Interior, which is the responsible institution for immigration and asylum policies in Austria, continued to be governed by the OEVP: Ms Maria Fekter, who has been announced Federal Minister of the Interior on 1 July 2008 by President Heinz Fischer, maintained her position after the formation of the new government.

The **most important institutional development** constituted the establishment of the Asylum Court (Asylgerichtshof). As of 1 July 2008, the Asylum Court has replaced the Independent Federal Asylum Senate (Unabhängiger Bundesasylsenat, UBAS) as the second instance asylum authority. Unlike the Independent Federal Asylum Senate, the Asylum Court is not only an appellate authority but a court of last resort. With the establishment of the Asylum Court, the legal remedy to the Administrative Court (Verwaltungsgerichtshof, VwGH) has been abolished.

The **main policy and legislative developments in the area of migration and asylum** in 2008 were the debate on the criteria upon which residence can be granted for humanitarian reasons. In particular the case of a Kosovan family fuelled public debate as part of the family were deported when their asylum application was rejected after years of residency in Austria. The debate led to a request by the Constitutional Court to specify the criteria for humanitarian stay in the Settlement and Residence Law (NAG 2005).

A second important aspect which featured in Austrian politics was the topic of Trafficking in Human Beings when the first national report on this topic was published, under the auspices of the Federal Ministry of

European and International Affairs. Further, the establishment of a National Action Plan on Trafficking in Human Beings has been decided.

Furthermore, the legalization of migrant home care workers, already heavily discussed in 2007, continued to make the media in 2008.

With regard to labour migration, the request for skilled migrants by the employers has found its way into the government agreement, i.e. the implementation of a point system along the lines of the Canadian immigration model and of a Red-White-Red Card (“Rot-Weiss-Rot Karte”) for highly skilled migrants.

Concerning integration, during the election campaign in June 2008, the then Federal Minister of the Interior Günter Platter presented a concept of a new integration strategy. However, the new concept, which was to specify the institution of framework for integration was not adopted by the parliament.

In the field of asylum, the establishment of a “special accommodation” in the Alps for asylum seekers suspected of violence in Carinthia and the financing of legal advice centres for asylum seekers made the news.

Finally, in relation to the transposition of EU legislation in the field of migration and asylum into national law, the most important developments were the implementation of the Regulation on Community statistics on migration and international protection (EC 862/2007) under which the year 2008 constituted the first reporting year.

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List of abbreviations

AMS	Arbeitsmarkt Service	Labour Market Service
AsylG	Asylgesetz	Asylum Act
BMI	Bundesministerium für Inneres	Federal Ministry of Interior
BMASK	Bundesministerium für Arbeit, Soziales und Konsumentenschutz	Federal Ministry of Labour, Social Affairs and Consumer Protection
BMWA	Bundesministerium für Wirtschaft und Arbeit	Federal Ministry of Economics and Labour
BZOE	Bündnis Zukunft Österreich	Alliance for Austria's Future
EMN	Europäisches Migrationsnetzwerk	European Migration Network
ECHR	European Convention for Human Rights	Europäische Menschenrechtskonvention
EEA	Europäischer Wirtschaftsraum	European Economic Area
EU	Europäische Union	European Union
EU MS	Mitgliedsstaaten der Europäischen Union	European Union Member States
FPOE	Freiheitliche Partei Österreichs	Austrian Freedom Party
FPG	Fremdenpolizeigesetz	Aliens' Police Act
GRUENE	Die Grünen	Green Party
IOM	Internationale Organisation für Migration	International Organization for Migration
LIF	Liberales Forum	Liberal Forum Party
NAG	Niederlassungs- und Aufenthaltsgesetz	Settlement and Residence Act
NCP	Nationaler Kontaktpunkt	National Contact Point
OECD	Organisation for Economic Co-operation and Development	Organisation für wirtschaftliche Zusammenarbeit und Entwicklung
OEVP	Österreichische Volkspartei	Austrian People's Party
PRESSE	Die Presse	Die Presse (daily newspaper)
RK	Rotes Kreuz Österreich	Austrian Red Cross
SPOE	Sozialdemokratische Partei Österreichs	Social Democratic Party of Austria
STANDARD	Der Standard	Der Standard (daily newspaper)
StbG	Staatsbürgerschaftsgesetz	Citizenship Act
UBAS	Unabhängiger Bundesasylsenat	Independent Federal Asylum Review Board
UNHCR	Hoher Flüchtlingskommissar der Vereinten Nationen	United Nations High Commissioner for Refugees
UNODC	Büro der Vereinten Nationen für Drogen- und Verbrechensbekämpfung	United Nations Office on drugs and Crimes
VfGH	Verfassungsgerichtshof	Federal Constitutional Court
ZARA	Zivilcourage und Anti-Rassismus Arbeit	Civil Courage and Anti-Racism Work

1. Political Developments in Austria

1.1. General structure of the political system and institutional context relevant for migration and asylum

As previous policy reports provide a detailed overview on the structure of the political system of Austria in the area of migration and asylum, the report at hand will not further elaborate on this topic. The policy report 2005 also describes the newly adopted Aliens' Law Package (the Niederlassungs- und Aufenthaltsgesetz (NAG) (Settlement and Residence Act) and the Fremdenpolizeigesetz (FPG) (Aliens' Police Act)) and the amended Asylgesetz (AsylG) (Asylum Act), which entered into force on 1 January 2006. Thus, we refer the interested reader to the policy reports of the years 2004 – 2007.¹

For further information, you may also consult the extensive description on the report on general structure and institutional setting of migration and asylum policies in Austria in the National Report for Austria of the EMN Study “Organisation of Asylum and Migration Policies in the European Union Member States” (2009)².

¹ The National Reports can be downloaded from the website of the National Contact Point Austria www.emn.at.

² National Contact Point Austria to the EMN (2009): Organisation of Asylum and Migration Policies in the European Member States. National Report for Austria. Available at www.emn.at.

1.2. General political developments

The most prominent event in 2008 was the elections to the National Council of the Austrian Parliament³ which were brought forward to 28 September 2008 after the failure of the former Coalition Government of the Social Democrats Party (SPOE) and the Austrian People's Party (OEVV) in Austria. Due to legislative changes during the last legislative period, the minimum age of voters was, for the first time, lowered to 16 years. With this initiative, Austria played in an international comparison a leading and pioneer role.

Furthermore, elections of the provincial parliaments (Landtagswahlen) in the Federal Provinces of Lower Austria and Tyrol have taken place.

1.2.1. Parliamentary elections

In the framework of the election campaigns, migration and asylum policies were important issues of discussion. Stances of the most important political parties toward asylum and migration in Austria as proclaimed during the election campaigns in 2008 are summarized below:

The **Social Democratic Party of Austria (Sozialdemokratische Partei Österreichs, SPOE)** called in their election program⁴ for a “responsible” immigration and integration policy that would allow for people in Austria clear rights and clear duties (commitment to the European values and the Austrian legal system). Criteria for future immigration and integration concepts should be defined and assure that changing basic conditions, i.e. on the labor market, can be responded to. Further, all legally staying foreign nationals should have access to the labor market. As overall goal, the successful integration of migrants, their participation in the political, cultural and economical life, was proclaimed. Knowledge of the German language was seen as imperative prerequisite for this undertaking. For this reason, affordable and a sufficient offer of German courses, as well as intensified language training before the entering of school and during school, were seen as necessary.

Moreover, through according measures intercultural dialog and mutual respect regardless of the respective origin should be reinforced and diversity, i.e. multilingualism, seen as chance.

They further called for deportation for irregularly staying migrants.

Asylum was seen as a human right. Intentions were expressed to reduce the tailback of open asylum procedures and with regards to asylum policies on the European level, the party called for solidarity in the attribution of asylum seekers.

³ The Austrian Parliament consists of two Chambers: the Nationalrat (National Council), which is elected directly by the Austrian electorate, and the Bundesrat (Federal Council) who's deputies are elected by the Landtage (Provincial Parliaments).

⁴ For the detailed election programme of the SPOE (Wahlmanifest der Sozialdemokratischen Partei Österreichs) see <http://wienerzeitung.at/DesktopDefault.aspx?TabID=4966&Alias=wahlen&cob=369697> (as of 30 June 2009).

In their 2008 Election Campaign, the **Austrian People's Party (Österreichische Volkspartei, OEVP)**⁵ promoted clear rules for all residents in Austria. In this context, the party emphasized that it will safeguard Austrian's cultural values and thereby enhance integrative measures. For assuring the successful integration of migrants in Austria, the importance of pertaining to rules and traditions is highlighted: No tolerance would be granted to "cultural crimes" such as killings of honor, forced marriages or genital mutilation and the equality of men and women to be respected. Further, the proper knowledge of the German language (a minimum of 600 German lessons for each migrant) is regarded for successful integration as indispensable. In this context, immigrants coming to Austria ought to acquire a German language certificate as well as a course on Austrian culture (language, history, culture and traditions) prior to their arrival in Austria. Parallel societies are seen as breeding ground for risk of terrorism; in order to prevent radicalism, a reinforced and obligatory integration of communities on all levels and the detection, through reinforced surveillance measures, and subsequent deportation of hate preachers are seen as key.

In the light of a lack of skilled labor force on the labor market, the party called for immigration of highly skilled migrants – "the best heads" i.e. researchers who would be needed for the prosperity of Austria's economy.

The "right for asylum" should be granted to prosecuted refugees only and it would be made sure that the asylum system cannot be abused. Long asylum procedures would not be tolerated any longer as they are considered "inhuman" because they leave asylum-seekers insecure about their situation. Deportation should be arranged subsequently to a given decision of deportation, in particular asylum-seekers being deported for committing crime.

Finally, for those migrants that have voluntarily returned to their countries of origin, projects supported by Austria in these countries are arranged to assure their successful economic reintegration.

While in their 2008 Election Campaign, the **Austrian Liberal Party⁶ (Freiheitliche Partei Österreichs, FPÖE)** assured that every hard-working person, who brings in their capacities in Austria and estimate its culture and savoir-vivre is welcome in Austria, the party also proclaimed severe restrictions with regard to the Austrian immigration policy and warned of an overpopulation by immigrants from "foreign cultures", and in particular by people of Islamic faith. Their program emphasized the number of 100.000 "illegal" immigrants staying in Austrian. A "humanitarian and consequent deportation" of those foreigners, who are "delinquent", "abuse the social security system", have seen their asylum claims rejected or those for who no "employment opportunities" or "human accommodation possibilities" should be Austria's number one priority and responsibility. In particular, the campaign pointed at foreign criminal delinquents who should be deported and imprisoned in their countries of origin only and be imposed a life-long ban of entry in Austria. With regard to asylum, this should be granted for "racist, religious, or political persecution" for a certain period of time; Folgeanträge should be undermined; further, readmission agreements should be signed on a

⁵ For the detailed election programme of the OEVP see <http://wienerzeitung.at/DesktopDefault.aspx?TabID=4966&Alias=wahlen&cob=369718> (as of 30 June 2009).

⁶ For the detailed election programme of the FPÖE see <http://wienerzeitung.at/DesktopDefault.aspx?TabID=4966&Alias=wahlen&cob=369737>.

bilateral basis with the countries of origin of asylum applications and official development aid dependant on cooperation in the area of asylum.

Traditional family values of Austrian man-woman-partnerships and equal opportunities would be at stake because of increasing migration from outer-European countries, “forced marriage, genital mutilation or a forced wearing of headscarves” which should no longer be tolerated in Austria.

An obligatory German Assessment Examination is demanded for children who do not hold the Austrian citizenship and children who do not speak German as their mother tongue before they can join the regular public education system.

In their campaign, under their focus “green program for human rights”, the **Austria’s Green Party**⁷ (**Die Grünen**) highlighted the need in Austria for immigrants and emphasized the importance of clear rules as to assure that migration is beneficial to all. Instead of arbitrary and rigid quotas, immigration provisions should be based on clear criteria and consider factors such as education levels, language qualifications, work experience as well as relatives already living in Austria. Access to Austrian citizenship should be eased. With regard to integration, neither a “clash of cultures” nor an aggressive “asylum policy” is aspired: diversity is proclaimed to be favored. Multilinguality according to the Green Party was promoted in order to enhance children’s future qualifications. In this context, education for migrant children has to be supported and improved by extending offers of language courses and further education facilities.

With regard to asylum procedure, they proclaimed that procedures should not take longer than six months. This should be achieved through an increase of the number of officials and clearer laws. A proper procedure with a clear decision should replace an arbitrary policy on asylum seekers.

Deportation in the case of splitting up well-integrated families and destroying the future of highly qualified migrants was denounced as “inhuman and senseless” act.

The **Alliance for Austria’s Future (Bündnis Zukunft Österreich, BZOE)** called in their 10-points programme⁸, as one point for „Austria to the Austrians“ through consequent deportation of criminal asylum seekers, convicted foreign national delinquents and asylum seekers from safe third countries. They further urged for the protection of culture and traditions and demanded a construction ban for mosques and minarets.

1.2.2. Election results⁹

⁷ For the detailed election programme of the Green Party see <http://wienerzeitung.at/DesktopDefault.aspx?TabID=4966&Alias=wahlen&cob=369685> (retrieved on 31 July 2009).

⁸ For the detailed election programme of the BZOE see <http://wienerzeitung.at/DesktopDefault.aspx?TabID=4966&Alias=wahlen&cob=369738> (as of 31 July 2009).

⁹ Statistical Results of the Austrian National Council Elections 2008 (nationwide) are available at <http://wahl08.bmi.gv.at/> (as of July 2009).

The voter participation of the parliamentary elections was 78,8% which represents a decrease of 0,3% compared to the preceding elections in 2006. With regard to the election results of the mayor parties, although the SPOE under the leadership of Werner Faymann won the elections once again (with 29,3% of the votes) before the OEVP (26% of votes), both the SPOE and the OEVP had lost a significant number of votes (SPOE: loss of 6% of votes, OEVP: loss of 8,3%), especially to the right-winged parties, the FPOE, which won 17,5% of votes, constituting an increase of 6,5%, and the the BZOE, attaining 10,7% of the votes (+4,1% compared to 2006); the latter won a majority in Austria's southernmost province of Carinthia (Kaernten), where BZOE leader Joerg Haider¹⁰ was also Carinthia's governor. The Green Party obtained 10,4% of the votes (+0,6%).

A main discussion topic that dominated the media after the elections was the polling behaviour of the young voters: Results of a study¹¹ had shown that 18% of all 16-18 year old voters had voted for the right-winged party FPOE. Amongst apprentices, the ratio was even 25%. An existence of a possible "shift to the right" of the young voters however was denied by the authors of the study. The results would show that about a half of this group as attached to parties of the centre, the support of both right-winged and left-winged parties was balanced (OEVP: 22%, Greens; 14%, SPOE: 12%, BZOE: 6%).

Another debate arose around the voting preferences of the 400.000 voters with migration background (first and second generation) who have constituted regarding to their numbers a not ignorable voter segment. While the SPOE, the OEVP and the Green Party tried to score among this group with their own candidates with migration background (all of them from Turkey)¹², the FPOE attempted to achieve this on the one hand by attracting immigrants from Serbia, who form one of the biggest naturalized immigration groups in Austria, through a very positive attitude towards their country of origin and the there ongoing political debates (e.g. non-recognition of the Kosovo).¹³ On the other hand, the party also tried to attract those voters with migration background, who in their aim to secure their own position, were against further immigration.

The voting results of voters with migration backgrounds remain topics of debate: a sample survey of the research institute SORA¹⁴, with a limited sample,¹⁵ finds that voters with migration background that have been born in Austria have voted for 27% for the SPOE, for 26% for the OEVP, for 19% for the FPOE, for

¹⁰ After the sudden death of the party's populist leader, Joerg Haider, on 11 October 2008, the BZOE had lost its charismatic protagonist and ended up in internal conflicts in the designation process of Haider's legitimate successor.

¹¹ SORA Institut (2009): Wählen mit 16 bei der Nationalratswahl. www.sora.at/.../sora_isa_kozeluh_waehlen_mit_16_zusammenfassung.pdf (retrieved on 20 June 2009)

¹² Due to the losses of votes, finally, only the candidate with migration background from the Greens, Ms Alev Korun, entered into the parliament.

¹³ Die Presse (2008): SPÖ, ÖVP ohne Migrationskandidaten. 01.10.2008 <http://diepresse.com/home/politik/neuwahlen/418772/index.doc> (retrieved on 30 June 2009)

¹⁴ SORA Institut (2008): SORA-Wahlanalyse 2008. http://www.sora.at/images/doku/SORA_ISA_Analyse_NRW_2008.pdf (retrieved on 29 June 2009)

¹⁵ A sample of 1200 eligible voters with migration background have been interviewed, of which 900 before the elections.

12% for the BZOE, for 11% for the Green Party and for 6% for other parties. Among those voters, that have been naturalized¹⁶, the Greens have figured at third place, before the FPÖ.

1.2.3. New formation of the Government

The new coalition government of the Austrian Social Democratic Party (SPOE) and Austrian People's Party (ÖVP) under chancellor Werner Faymann (SPOE) took office on 2 December 2008, composed of vice-chancellor Josef Proell (ÖVP), 7 ministers (SPOE), 6 ministers (ÖVP), 4 state secretaries of whom 2 SPOE and two ÖVP.

The new government also effected a new distribution of the governmental departments and ministries. The Federal Ministry of Justice, formerly governed by the SPOE, was now governed by the ÖVP.

The Federal Ministry of the Interior continued to be governed by the ÖVP: Ms Maria Fekter (ÖVP), who has been announced Minister of Interior on 1 July 2008 by President Heinz Fischer, maintained her position after the formation of the new government.

1.2.4. Government programme¹⁷

Below, the most important provisions concerning asylum and migration of the Government Programme are summarized.

The Government Programme promotes that migration has to be based on the needs and the interests of Austria with the aim to integrate migrants to the best extent possible. The 2005 Aliens' Law Package¹⁸ will be maintained and adjusted to new circumstances and challenges: In this context, in order to assure needs-based access to the labour market, adaptations to the existing system are envisaged: i.e. abolition of the quota for "Key professionals" (Schlüsselkräfte), retention of a regulation for seasonal workers and harvest workers, eased access of family members of immigrants to the labour market. Furthermore, as the quota system could not reflect the needs of the Austrian labour market and the society precisely enough, it is envisaged to establish a "Red-White-Red Card" for highly skilled migrants based on parameters such as effects on the labour market, performance of the national economy as well as the expected capacity for integration of the security related aspects. Holders of such a red-white-red card will have eased access to immigration, better access to the labour market as well as receive support in their integration process. The card will be a joint collaboration between the social partners and other relevant stakeholders. Furthermore, abuses of immigration should be combated efficiently.

¹⁶ Note that only a sample of 60 people has been interviewed.

¹⁷ The government programme for the period 2008-2013 can be downloaded from <http://www.austria.gv.at/DocView.axd?CobId=32965>.

¹⁸ The package comprises the Asylum Act, the Settlement and Residence Act, and the Aliens' Police Act.

Integration is seen as cross-sectional and cross-social matter, which concerns all national levels. Built on the existing projects and in cooperation with involved stakeholders (federal provinces, municipalities, civil society), the development of a National Action Plan for Integration is envisaged which will structure the Austrian-wide cooperation for successful integration measures and optimises their implementation.

With regard to integration into the Austrian labour market, an activation of the potential of persons with migration background is envisaged, through continuation of integration initiatives by the Labour Market Service AMS (e.g. support in the recognition process of diplomas, visualisation of informally gained competences).

In relation to education, the government plans to offer incentives for qualified persons with migration background to take up pedagogical professions. Furthermore, all teachers receive intercultural competencies within the framework of their trainings.

Special attention is also drawn to the parents of pupils with migration background for which specific language and legal information courses are offered.

As a response to the latest judgement of the Constitutional Court concerning humanitarian residence permits, the system of humanitarian residence permits is to be revised. One particular aim of the new provisions is that humanitarian considerations (esp. right to private and family life) should be examined in the asylum and immigration procedures, instead of creating additional procedures.

With regard to asylum, through the establishment of the Asylum Court in July 2008, the basis for an acceleration of the asylum procedures as well as the reduction of the pending decisions was set. Controls of asylum abuse shall be intensified. Detention laws for alleged asylum seekers will be extended. With regard to Dublin II, the procedures of the identification of responsibility (Zuständigkeitsfeststellung) and the efficiency of the transfer should be optimised. The situation of the country of origin of asylum seekers with a negative decision by court is to be closely examined. A so-called “Last-Minute Proceeding” will examine the legality of a new asylum application in the course of deportation proceedings.

Due to apparent pacification in West Balkan countries, the list of safe countries of origin will be extended. In order to meet growing institutional demands of asylum seekers, the Ministry of the Interior considers establishing a new Initial Reception Centre in the South of Austria.

Furthermore, the Austrian government will call on the European level for a solidary distribution of asylum-seekers.

Concerning law enforcement, an enhancement of the efficiency of deportation measures is announced i.e. enlargement of the Aliens' Police, improvement of cooperation between institutions, augmentation of the number of charter deportations on land and overseas, also through participation in international charter deportation procedures. Dublin-Out proceedings will be regulated in a more efficient way with all EU Member States.

Provisions concerning detention pending deportation will be revised (extension and modifications of more lenient measures) and EU and bilateral negotiations with third-countries with regard to readmission agreements promoted and extended. Furthermore, offers of voluntary return procedures for migrants without a residency title or refugees for which risk of persecution in the country of origin has ceased, shall be extended.

Improvements in the national security and police system are necessary in order to keep up with new and increasing challenges. Therefore, the government promotes an enhanced integration of migrants as trainees (Bachelor and Master Programs for 'Strategic Security Management') and as policemen, policewomen, and officers.

Finally, research in the field of migration is promoted.

1.3. Institutional developments

The establishment of the Asylum Court (Asylgerichtshof) constitutes the most important institutional development. As of 1 July 2008 the Asylum Court has replaced the Independent Federal Asylum Senate (Unabhängiger Bundesasylsenat, UBAS) as the second instance asylum authority. The Asylum Court consists of a president, vice-president, 77 judges and the administrative staff, most of the present-day judges had already been in office in the former Independent Federal Asylum Senate.¹⁹

Unlike the Independent Federal Asylum Senate, the Asylum Court is not only an appellate authority but a court of last resort. With the establishment of the Asylum Court, the legal remedy to the Administrative Court (Verwaltungsgerichtshof, VwGH) has been abolished. In its Annual Report 2008, the Asylum Court reports a decrease in pending decisions from 23.607 (additionally, 4.659 new appeals has been brought before the Court) to 22.119 cases as well as an acceleration in their responses to appeals and considers this development as a trend reversal with regard to the duration of the asylum procedures.²⁰

For further information regarding the debates concerning the Asylum Court please consult the Policy Report 2007.

¹⁹ Asylgerichtshof, available at: <http://www.asylgh.gv.at/> (as of 20 June 2009).

²⁰ Idem.

Further institutional changes concern the reorganization of Ministries after the formation of the new government. The former Federal Ministry of Economics and Labour is supposed to be split as of 1 January 2009 into a new Federal Ministry of Economics, Family and Youth (Bundesministerium für Wirtschaft, Familie und Jugend)²¹ which will be responsible for national economy, family and youth-related issues (e.g. social security for families, custody, marital and family laws etc.), while the new Federal Ministry of Labour, Social Affairs and Consumer Protection (Bundesministerium für Arbeit, Soziales und Konsumentenschutz)²² will be responsible for the labor market policies, employment laws, employment protection, equality standards, anti-discrimination policies on the national labor market, consumer protection, corporate social responsibility etc. The competencies of the former Federal Ministry of Economics and Labour with regard to immigration, access to the labour market are transferred to the Federal Ministry of Labour, Social Affairs and Consumer Protection.²³

²¹ Bundesministerium für Wirtschaft, Familie und Jugend, available at: <http://www.bmwfj.gv.at/BMWA/default.htm> (as of 20 June 2009)

²² Bundesministerium für Arbeit, Soziales und Konsumentenschutz, available at <http://www.bmsk.gv.at/cms/site/index.html> (as of 24 June 2009).

²³ Arbeitsmarktservice Österreich, available at: http://www.ams.or.at/sfa/14104_1488.html (as of 24 June 2009).

2. Policy and Legislative Developments in the area of Migration and Asylum

2.1 General structure of the legal system in the area of migration and asylum

The report of 2005 provided detailed information on the Aliens' Law Package (Settlement and Residence Act (Niederlassungs- und Aufenthaltsgesetz, NAG), the Aliens's Police Act (Fremdenpolizeigesetz, FPG) and the Asylum Act (Asylgesetz, AsylG), which came into force on 1 January 2006. The report is available for download on the website of the NCP Austria (www.emn.at). Accordingly, the current report will not elaborate on the general structure of the legal system. Suffice it to say that the administrative procedures in the migration field involve two regulatory institutions - the Federal Ministry of the Interior and the Federal Ministry of Labour, Social Affairs and Consumer Protection. While the former regulates the inflow and resident status of immigrants and short-term movers, the latter regulates access to the labour market of specific groups of workers of third-country origin and of workers from new EU-MS who have to abide by transition regulations until unrestrained freedom of mobility applies. The Chancellery has the position of a mediator in certain situations.

The inflow of workers of third-country origin is regulated by quotas, except in the case of the following groups of persons:

- persons working for foreign media with sufficient income,
- artists with sufficient income,
- wage and salary earners who may access the labour market without labour market testing (specific groups of persons defined in the foreign worker law),
- partners and dependants of Austrians and citizens of the EEA, who are third-country citizens.

Family reunification is uncapped for third-country citizens who are partners of or are dependent children of an Austrian or EU citizen. Also third-country citizens with the settlement right in another EU country (after 5 years of legal residence), may settle in Austria outside quotas. As a matter of fact, a very small proportion of third-country citizens enters Austria on the basis of quotas, namely highly skilled professionals and their family members, and family members of third-country citizens who are already residents of Austria.

2.2 General overview of the main policy and/or legislative debates

The year 2008 was dominated by the debate on the criteria upon which residence can be granted for humanitarian reasons. People were of split minds about the handling of the case of a teenager from Kosovo who came to Austria in the late 1990s, together with her family, as an asylum seeker in the wake of the Serbo-Kosovo War. After several years of residence in Austria, the case was rejected, and again several years went by until the parents were deported (Süddeutsche Zeitung 2008). The girl went into hiding and continues to reside in Austria until today. The case fuelled public debate and led to a request by the

Constitutional Court to specify the criteria for humanitarian stay in the Settlement and Residence Law (NAG 2005). Accordingly, in 2009, legislation pertaining to humanitarian residence is being specified in the NAG as well as the asylum law. From now on the option for humanitarian residence has to be taken into account in asylum cases, as is the rule in many EU countries. In addition, the conditions under which humanitarian residence may be granted under the NAG are also under review.

Another aspect featured in Austrian politics, namely trafficking of humans. In 2008, the first report on trafficking of humans in Austria has been published, under the auspices of the Ministry of European and International Affairs (task force of the various ministries affected).

Another topic continued to make the media in 2008 (after heated discussions in 2007), namely the legalisation of migrant home care workers. In the course of 2008, some 20,000 migrant care workers, largely women from Slovakia and Romania, but also from non-EU MS further East, legalised their status. The majority registered as self-employed.

2.3 Details of policy and legislative developments

2.3.1 Control and Monitoring of Immigration

No major change can be recorded in the area of control and monitoring of immigration. Only the action plan on trafficking of humans has been decided, but no monitoring as of yet.

2.3.2 Refugee Protection and Asylum

2.3.2.1 Decision on humanitarian residence

Until 2009, the Austrian asylum law granted residence only on the basis of a positive judgment of the asylum case. Rejected cases could, under certain humanitarian grounds, remain in Austria legally. The humanitarian residence status was, however, granted on the basis of the residence and settlement law (NAG), and not under asylum law. The criteria, on the basis of which humanitarian residence could be granted were, however, not specified and in no direct connection with asylum cases. E.g. the need to apply for humanitarian status from abroad is a requirement an asylum seeker can hardly fulfill. Therefore, in June 2008, the Constitutional Court (Verfassungsgerichtshof) requested the Federal Ministry of the Interior to amend that part of the legislation.

Accordingly, the Austrian asylum legislation has to make provisions for rejected asylum cases which nonetheless could be granted the right to stay in Austria on humanitarian grounds, e.g. in cases of human trafficking or non-refoulement reasons. In addition, the spirit of the law of the European Convention of Human Rights Art. 8, (the right of respect for one's private and family life, one's home and one's correspondence) has to be integrated in Austrian asylum law.

The main issue of the Constitutional Court with the legal provisions for humanitarian residence was that it did not allow the individual to apply for the humanitarian right of residence but expected the authorities to act on their own initiative (*ex officio* – *von Amts wegen*). Consequently, only in cases where the Federal Ministry of the Interior initiated the proceeding, it was possible to obtain the right of residence on humanitarian grounds (Plattform Bleiberecht 2007). This was considered not to be in line with the ECHR (European Convention of Human Rights). In addition, no appeals were envisaged. It was not until March 2009 that the Ministry of Interior presented a revised law. The proposed legislative change is under review until 22 July 2009, where upon the final decision will have to be made (BMI 2009).

The Ludwig Boltzmann Institute for Human Rights has proclaimed agreement with the proposed changes of legislation. Apart from the introduction of the right of application by a person, the inclusion of the will to take “humanitarian criteria” into account when processing asylum applications is seen as a positive move. As a consequence, one hopes to reduce the duration of proceedings (Ludwig Boltzmann Institute for Human Rights 2008).

2.3.2.2 Camp for asylum seekers in Carinthia

At the end of 2008, a “special camp” (Sonderanstalt) for asylum seekers in Carinthia made the news. The then governor Jörg Haider confirmed that asylum seekers who were suspected of violence had been moved to a special accommodation in the Alps (Saulalm). The place was a former children’s home at an altitude of 1.200 meters, away from any inhabited areas (Zeit 2008). Amnesty International as well as UNHCR considered this action as a move towards criminalisation of asylum seekers (Standard 2008a).

2.3.2.3 Crisis of legal advice centres for asylum seekers

The Austrian Federal Ministry of the Interior met with criticism when announcing to discontinue financing legal advice centres for asylum seekers. Affected by this decision were NGOs like Caritas and Volkshilfe who were conducting centres in which they were providing legal advice to asylum seekers in Tyrol and Upper Austria. The situation is particularly critical in Tirol as the Caritas centre is the only independent legal advice establishment in the Region (Standard 2008b).

Broad criticism came from UNHCR, referring to the legal obligation of the Federal Ministry of Interior to provide legal advice. In addition, UNHCR indicated that without adequate legal advice asylum procedures may not succeed in establishing the case made by the asylum seeker. Thus, without or with too little advice, the work load of the administration would increase significantly (Red Cross Migration News 2008).

2.3.3 Unaccompanied Minors (and other vulnerable groups)

The numbers of unaccompanied minors continue to rise. To support public authorities in their efforts to help, in October 2008 the International Organisation for Migration Vienna organized a discussion/handbook

presentation covering best practice models, exchange of information and assistance and protection of victims.

2.3.4 Economic Migration

Persons residing less than 6 months for purposes of work in Austria do not require a temporary resident permit by the Federal Ministry of the Interior (NAG 2005). Only for stays beyond 6 months a residence permit is required (SOPEMI Report 2008). Third-country citizens may settle in Austria if they have scarce skills or if they join their family members who have a legal right to settle in Austria. The majority of economic migrants are EU citizens who take advantage of the free mobility within the EU and employment opportunities in Austria, in particular Germans. By the end of 2008, as many Germans were residing in Austria as Austrians in Germany.

As for highly-skilled third-country workers (§§2/5 and 12/8 AuslBG and § 41 NAG), their partners and dependent children (§46/3 NAG) the inflow quota for 2008 was fixed at 2,700, almost double the quota of 2007. The substantial increase was a reaction to requests of employers for skilled migrants as the economy was in a boom and skilled labour shortages surfaced. With the onset of the economic crisis at the end of 2008, the demand for migrant labour is rapidly declining.

Nonetheless, the request for skilled migrants by the employers has found its way into the government agreement (Kleine Zeitung 2008), i.e. the implementation of a point system along the lines of the Canadian immigration model. The adoption of a system of skilled immigration is on the agenda of the EU, where it is referred to as a blue card. In Austria the model is referred to as Red-White-Red Card (“Rot-Weiss-Rot Karte”), and will most probably be an addition/complement to the current immigration legislation rather than a complete overhaul of the immigration model (Presse 2008).

Low skilled workers will continue to enter Austria basically as a result of family reunification, considering the low educational attainment level of the majority of Austria’s third-country migrants (Federation of Austrian Industries 2008). With the onset of the economic crisis, transition regulations for citizens of the new EU-MS have been extended to 2011, with the objective to protect unskilled Austrian labour from competition.

2.3.5 Family Reunification

The inflow of third-country family members is regulated by quotas in the residence and settlement law (NAG 2005). This inflow quota, set by the Minister of Interior in cooperation with the Bundesländer, is kept at a low level at 4,755 in 2008 (SOPEMI 2008). As a result some backlogs are building up in the countries of origin.

The residence and settlement law (2005) introduced a minimum income requirement for family reunification (family sponsoring), in line with regulations in other immigration countries in Europe and overseas. This amendment has reduced the inflow of migrants with low earning capacity, who want to join a partner in

Austria who himself/herself is living off welfare benefits (long-term unemployment benefits (Notstandshilfe) and social assistance). In addition, forced and/or arranged marriages are increasingly a target of control (SOPEMI 2008).

2.3.6 Other legal migration

As far as international student mobility is concerned, no legal changes took place. However, as a result of the decision of the new government in 2008, to reduce the fees for third-country students (by fifty percent to 363 Euros per semester) and to abandon fees for Austrians and EU citizens, it can be expected that the inflow of migrant students will increase (Standard 2008c).

2.3.7 Integration

Since 1.1.2006 every person who wants to settle in Austria has to sign the Integration Agreement (Integrationsvereinbarung). The Integration Agreement obliges newcomers to learn German, albeit at a very low level (A1).²⁴

The Agreement has two parts: the first is on minimal reading and writing skills, the second on civic education, i.e. “core values” of the society (Schumacher & Peyrl 2008).

During the election campaign in June 2008, the then Federal Minister of Interior Günter Platter presented a concept of a new integration strategy. However the new concept, which was to specify the institution of framework for integration was not adopted by the parliament (Presse 2008b).

Further information about the implementation and legal requirements is provided in the policy reports of 2006 and at the Austrian Integrationfund (Integrationsfonds 2008).²⁵

2.3.8 Citizenship and Naturalisation

The rate of naturalisation follows with a certain time lag the waves of immigration. It increased in the course of the 1970s, in the wake of the consolidation of foreign worker employment, family reunion and eventual settlement; it declined in the early 1980s and fluctuated at a relatively low level of 2.2 percent of the foreign population between 1987 and 1995. Ever since then the naturalisation rate rose, reaching the peak in 2003 with 5.9 percent of the foreign population and declining since then to 1.2 in 2008 (SOPEMI 2008).

The law regulating naturalisation specifies that foreigners may apply for citizenship after 10 years of legal residence. The communities have a certain discretionary power in granting citizenship, i.e., under certain conditions a foreigner may be naturalized after less than 10 years. Citizens of the EU/EEA may apply for Austrian citizenship after 6 years of residence, in contrast to citizens of third country origin who have to prove 10 years of residence. Exceptions are cases of special service to the country or special talent, e.g., artists, high achievers in sports, science, business, etc. It is on average easier to be naturalised in Eastern

²⁴ According to the Council of Europe’s standards of language proficiency:
http://www.coe.int/t/dg4/linguistic/Source/Austria_CountryReport_final_EN.pdf

²⁵ Austrian Integration Fund (ÖIF, Österreichischer Integrationsfonds): available at www.integrationsfonds.at

regions than in western and Southern regions of Austria. The population of Vienna augments only due to the influx of foreigners. In spite of the increasingly narrow interpretation of the law on naturalisation the number of naturalisations augmented significantly since 1991. The increasing propensity of third-country citizens to take up the Austrian citizenship is an indicator of the permanent character of a large proportion of migration to Austria. The increasing difficulties of citizens of a non-member country of the EU to access the labour market tend to boost the propensity to apply for Austrian citizenship. The significant boost to naturalisations since 1999 is a result of the eligibility to citizenship of the large wave of immigrants of the late 1980s and early 1990s.²⁶

2.3.9 Illegal Immigration

The Austrian legal system does not mention of rights of illegal residents. However, human rights apply to all persons on the territory irrespective of legal status. Persons residing illegally in Austria have access to public health care in case of emergencies, they have also access to education services such as language courses, but they have no access to the formal labour and housing market. Furthermore, the possibility of issuing a residence permit on humanitarian grounds offers routes of legalisation of residence.

2.3.10 Actions against human trafficking

Austria, situated at the Schengen-boarders, is both transit and destination country for women trafficked from Romania, Bulgaria, Hungary, Moldova, Belarus, Ukraine, Slovakia, and Nigeria for the purposes of commercial sexual exploitation and forced labor. Austria is not only a country of destination for human trafficking, but also a transit country along the route to Italy, France or Spain. Authorities report a decreasing number of children from Bulgaria and Romania trafficked to Austria for the purpose of forced petty theft and sexual exploitation (United States Department of State, 2008).

Austria decided upon a “national action plan against human trafficking”, which specifies broad interministerial cooperation, prevention, assistance to the victims, prosecution of smugglers and international cooperation. The agreement on the fight against human trafficking, which was issued by the Council of Europe, was signed by Austria in 2005 (BMASK).

A task force on Human Trafficking (Arbeitsgruppe Menschenhandel) is funded involving several Austrian NGOs and experts, key anti-trafficking NGOs, that provide shelter and assistance to victims, got continuously funded in recent years. In addition federal and local governments finance seven immigration and domestic abuse centers that assiste victims outside of Vienna. In general Victims have access to the Austrian welfare system including health insurance (United States Department of State, 2008).

Within the taskforce ‘Human Trafficking’, a working group focused on child trafficking. Several ministries and other organisations of civil society cooperate in the area of prevention, assistance, monitoring, data collection and put in place a supra-regional victim protection-centre (BMWFI 2008).

²⁶ Statistics Austria, <http://www.statistik.at>, Naturalisations since 1998

Apart from that, Austrian ministries organised in cooperation with Ecpat and Unicef, a preparatory conference for the world congress against sexual exploitation of children (BMWA 2008).

2.3.11 Return Migration

In Austria, there are two forms of return actions, the coercive measures of the Aliens' Police (Aliens' Police Act) and the programmes for assisted voluntary return. Various programmes for (rejected) asylum seekers and refugees, who wish to return, are available.

For an analysis see (National Contact Point Austria to the EMN 2006). Since the publication of the report in 2006, no legislative change has occurred.

2.3.12 Financial crisis

The financial crisis has provided the background for Austria to demand the prolongation of the transition regulations for new EU-MS (8) until 2011. The crisis had no immediate impact on migration procedures or legislation, apart from transition regulations.

3. Implementation of EU Legislation

3.1. Transposition of EU legislation in the field of migration and asylum into national law and administrative practices

In accordance with the EC Council Decision 2008/381/EC of 14 May 2008 establishing a European Migration Network (OJ L 131 of 12 May 2008), the Federal Ministry of the Interior nominated the International Organisation for Migration in Vienna as National Contact Point Austria.

The year 2008 constitutes the first reporting year under the Regulation on Community statistics on migration and international protection (EC 862/2007). Eurostat is provided with data by the Federal Ministry of the Interior (Article 4,5, 6 and 7) and Statistics Austria (Article 3).

3.2. Experiences, debates in the implementation or non-implementation of the most significant EU legislation in asylum and immigration

No progress or developments have occurred for particular legislation in 2008.

Annex 1: Methodology

The National Report Austria has been produced in the framework of the yearly Annual Policy Reports of the European Migration Network (EMN). The National Reports, compiled by the National Contact Points to the EMN²⁷, aim at providing an insight into the most significant political and legislative developments, as well as public debate in the area of migration and asylum in the European Union Member States.

This National Report for Austria is the fifth of its kind. Covering the reference period from 1 January to 31 January 2008, it aims at providing an overview on the legal situation, policy developments and policy debates in Austria. The main findings of this report will be integrated in a Synthesis Report which will be accessible on the website of the European Migration Network (EMN) in autumn 2009.

The target groups of the Policy Reports are policy makers on the national and European level as well academics and other stakeholders working in the field of migration. Based on a common template developed by the EMN members and the European Commission, the EMN Policy Reports facilitate comparison and information exchange with other European Union Member States. Chapter 1 gives an overview of the general political and institutional developments in 2008. Chapter 2 focuses the political and legal developments and important political debates on migration, integration and asylum. In Chapter 3 the implementation and interpretation of EU law in the field of asylum and migration are summarised.

Chapter 2 of the present report was written by Professor Gudrun Biffl, Head of the Center for Migration, Integration and Security at the Danube University Krems and Member of the National Steering Committee of the National Contact Point Austria to the EMN.

Furthermore, the Chapter 1 and 3 has been drafted by Ms Elisabeth Petzl and Ms Mária Temesvári of the National Contact Point Austria under close oversight of Dr. Heike Wagner, Head of Research and Dr. David Reizenzein, Head of the National Contact Point Austria to the EMN. Special thanks go to Mr. Stephan Haderer, intern at the National Contact Point Austria, who further contributed in the collaboration of this study.

²⁷ National Reports have been produced for 26 European Union Member States (all 27 Member States with the exception of Denmark).

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