

European Migration Network

The Organisation of Asylum and Migration Policies in Austria

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the position of the Austrian Ministry of the Interior.

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LIST OF ABBREVIATIONS

Abbr. DE	German Term	English Translation	Abbr. EN
AHS	Allgemeinbildende Höhere Schule	academic secondary school	-
AK	Arbeiterkammer	Federal Chamber of Labour	-
AMS	Arbeitsmarktservice	Public Employment Service	-
AsylG	Asylgesetz	Asylum Act	-
AsylGH	Asylgerichtshof	Asylum Court	-
AsylGHG	Asylgerichtshofgesetz	Asylum Court Act	-
AuslBG	Ausländerbeschäftigungsgesetz	Aliens Employment Act	-
AVG	Allgemeines Verwaltungsverfahrensgesetz	General Administrative Act	-
BAA	Bundesasylamt	Federal Asylum Office	-
BGBI	Bundesgesetzblatt	Federal Law Gazette	-
BH	Bezirkshauptmannschaft	District Commission	-
BKA	Bundeskanzleramt	Federal Chancellery of Austria	-
BMeiA	Bundesministerium für europäische und internationale Angelegenheiten	Federal Ministry for European and International Affairs	-
BMF	Bundesministerium für Finanzen	Federal Ministry of Finance	-
BMI	Bundesministerium für Inneres	Federal Ministry of the Interior	MoI
BMJ	Bundesministerium für Justiz	Federal Ministry of Justice	-
BMUKK	Bundesministerium für Unterricht, Kunst und Kultur	Federal Ministry for Education, Arts and Culture	-
BMWA	Bundesministerium für Wirtschaft und Arbeit	Federal Ministry for Economics and Labour	-
BZÖ	Bündnis Zukunft Österreich	Alliance for the Future of Austria	-
EAST	Erstaufnahmestelle	Initial Reception Centre	-
EK	Europäische Kommission	European Commission	EC

EMN	Europäisches Migrationsnetzwerk	European Migration Network	EMN
EU	Europäische Union	European Union	EU
EU 10	Estland, Lettland, Litauen, Malta, Polen, Slowakei, Slowenien, Tschechische Republik, Ungarn, Zypern	Cyprus, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia, Slovenia	-
EU 14	Belgien, Dänemark, Deutschland, Finnland, Frankreich, Griechenland, Irland, Italien, Luxemburg, Niederlande, Österreich, Portugal, Schweden, Spanien, Vereinigtes Königreich	Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, Malta, the Netherlands, Portugal, Spain, Sweden, United Kingdom	-
EU 8	Estland, Lettland, Litauen, Polen, Slowakei, Slowenien, Tschechische Republik, Ungarn	Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Slovakia, Slovenia	-
EURODAC	Europäisches Fingerabdruck- Identifizierungssystem	European Dactyloscope	-
EWR	Europäischer Wirtschaftsraum	European Economic Area	EEA
FPG	Fremdenpolizeigesetz	Aliens' Police Act	-
FPÖ	Freiheitliche Partei Österreichs	Austrian Freedom Party	-
FrG	Fremdengesetz	Aliens' Act	-
GKK	Gebietskrankenkasse	Health Insurance Fund	-
GrekoG	Grenzkontrollgesetz	Border Control Act	-
GVV	Grundversorgungsvereinbarung	Basic Welfare Support Agreement	-
	EU - Grundrechteagentur	EU Fundamental Rights Agency	FRA
HS	Hauptschule	general secondary school	-
ICMPD	---	International Centre for Migration Policy Development	ICMPD
IOM	Internationale Organisation für	International Organization for	IOM

	Migration	Migration	
IV	Industriellenvereinigung Österreich	Federation of Austrian Industries	-
IV	Integrationsvereinbarung	Integration Agreement	-
MRB	Menschenrechtsbeirat	Human Rights Advisory Board	HRAB
NAG	Niederlassungs- und Aufenthaltsgesetz	Settlement and Residence Act	-
NKP	Nationaler Kontaktpunkt	National Contact Point	NCP
NLV	Niederlassungsverordnung	Settlement Regulation	-
ÖBH	Österreichisches Bundesheer	Austrian Federal Army	-
OECD	Organisation für wirtschaftliche Zusammenarbeit und Entwicklung	Organisation for Economic Co-operation and Development	OECD
OeEB	Österreichische Entwicklungsbank	Austrian Development Bank	-
OEZA	Österreichische Entwicklungszusammenarbeit	Austrian Development Cooperation	ADC
ÖIF	Österreichischer Integrationsfond	Austrian Integration Fund	-
ÖGB	Österreichischer Gewerkschaftsbund	Federal Chamber of Labour	-
OGH	Oberster Gerichtshof	Supreme Court	-
ÖRK	Österreichisches Rotes Kreuz	Austrian Red Cross	-
OSZE	Organisation für Sicherheit und Zusammenarbeit in Europa	Organisation for Security and Co-operation in Europe	OSCE
ÖVP	Österreichische Volkspartei	Austrian People's Party	-
SIS	Schengener Informationssystem	Schengen Information System	-
SPÖ	Sozialdemokratische Partei Österreichs	Social Democratic Party of Austria	-
StbG	Staatsbürgerschaftsgesetz	Citizenship Act	-
UNHCR	Flüchtlingshochkommissariat der Vereinten Nationen	United Nations High Commission for Refugees	-
UVS	Unabhängiger Verwaltungssenat	Independent Administrative Senate	-
VfGH	Verfassungsgerichtshof	Austrian Constitutional Court	-

VS	Volksschule	primary education	-
VwGH	Verwaltungsgerichtshof	Federal Administrative Court	-
WKÖ	Wirtschaftskammer Österreichs	Austrian Federal Economic Chamber	-

Executive Summary

This national study “*The organisation of the migration and asylum system in Austria*” is the contribution of the Austrian National Contact Point to the European Migration Network (EMN) to the European Study on “*The organisation of the migration and asylum systems in the European Member States*”. In this context, it is meant to serve as an up-to-date reference document for European and national policy makers.

The study outlines the general structure of the political, legislative and institutional framework of the Austrian migration and asylum system. It also seeks to identify the main stakeholders involved in the asylum and migration procedures. After a brief historical outline of the migration and asylum developments and the system, the current organisation of policy (i.e. entry procedures, admission conditions, legal residence, access to the labour market, return) is described. Links to other policy areas are also being illustrated. Finally, a short analysis looks at the lessons learned from the past, and at possible future developments of the system.

“Austria has become a country of immigration – not voluntarily, nor self-determined, but *de facto*”:¹ This opening statement by the first Austrian Migration and Integration Report summarizes the most important developments of migration in Austria. In 2008, 10.3% of the 8,331 930 million inhabitants of Austria had a non-Austrian citizenship. Taking into account the country of birth (i.e. also naturalized immigrants), the percentage of immigrants in the Austrian population is 15.2%. With this share, Austria ranks sixth among the EU Member states in 2007. In total, 1.4 million inhabitants² had a migration background³ in the beginning of 2008, representing 17.3% of the total population.

Despite these facts, the relevance of immigration for the country and its migration history are not part of the collective self-image of Austria. This implies that, to a large extent, Austrian politicians, until today, have not reflected on Austria as being a “country of immigration”. Until the 1980s, migration policies were foremost driven by labour market policies, which were mainly oriented towards the temporary stay of migrant workers; only then did the

¹ Fassmann, 2003: 6.

² Statistics Austria, Microcensus, Labour Survey, 2008.

³ The definition of “population with migration background” underlies the “Recommendations for the 2010 censuses of population and housing”, p. 90, United Nations Economic Commission for Europe (UNECE).

Austrian authorities start to implement first integration policies for migrants, aiming for gradual equalization with the resident population. Recent events such as the implementation of an “Integration Platform” for the coordination of integration measures in Austria, the development of a “National Plan for Integration” and the plans for a “Red-White-Red-Card” for highly skilled workers could indicate a change in the country’s self-perception.

Looking at the institutional setting of immigration policies, there is no specific immigration office in Austria; however, there is a variety of institutions and organisations involved in migration and asylum issues on all levels. The leading institution in terms of immigration and asylum matters is the Austrian Federal Ministry of the Interior, while access to the labour market in general and in this respect also for immigrants is regulated by the Ministry of Economics and Labour. The federal structure of Austria is also reflected in the current migration and asylum system. While the main competencies are with the Federal State, the Provinces too have relevant functions, in particular with regard to the execution of the immigration laws which stipulate the annual quotas for settlement and residence permits. In terms of asylum, the Ministry of the Interior has established separate asylum offices.

Another important characteristic of the Austrian immigration system are the double track procedures for settlement and work permits, which are only dispersed for highly skilled third-country nationals. The current legislation is predominantly shaped by the Aliens’ Act Package 2005, which contains the Asylum Act, the Settlement and Residence Act and Aliens’ Police Act. The Aliens’ Employment Act is the main law governing access to the labour market, while the Citizenship Act establishes the conditions for naturalisation of third-country nationals.

1. INTRODUCTION: PURPOSE AND METHODOLOGY FOLLOWED

Purpose

The Austrian country study presents one of the 26 country reports⁴ which are elaborated by the National Contact Points of the European Migration Network (EMN) and aims at an illustration of the organisation of asylum and migration policies in Austria, inclusive of the institutional context, basic laws and regulations, the ministries involved and the organisations dealing with immigrants (i.e. third-country nationals). The main findings of the 26 country reports will be consolidated in a Synthesis Report by mid-2009.

The study is primarily intended for policy makers, particularly at national and European levels, as well as for the wider public, particularly as an up-to-date reference document. In this context, and in order to assure that the study is of permanent value, the national reports as well as the Synthesis Report will be updated annually.

Structure

In order to better understand the governance of migration and asylum in Austria, the study investigates decision-making processes by adopting an analytical perspective that focuses on the following dimensions:

1. a general overview of the various levels of government (national, provincial and local level)
2. formal, semi-formal and informal decision-making processes (i.e. civil society, unions, NGOs, immigrant associations, etc.)
3. administrative structures of institutions involved in the management of migration and asylum

While the first chapter provides a general overview of the organisation of the political, legislative and institutional frameworks relevant to migration and asylum, the second chapter displays the development of migration and asylum in Austria in a brief historical outline, including the development of the asylum and migration system. The third chapter gives a description of how the system is organized and describes the links to other policy areas. Following this description, the last chapter briefly analyses the current system, the lessons

⁴ Country Reports have been produced for all 27 European Union Member states with the exception of Denmark.

learned from the past and possible future developments.

In order to render the study more practical and assailable, concrete information on procedures and institutions is provided in the form of Annexes. Annex 1 provides a schematic overview of the application procedure for residence and settlement permits from abroad and of the asylum procedure. Annex 2 presents a list of relevant institutions and organisations in Austria working in the field of migration and asylum, including contact details for easy reference and follow-up (this list is not exhaustive).

Methodology

This country study follows the methodology applied by the European Migration Network (EMN) which does not engage in primary research *per se*, but draws together and evaluates collected data and information, making it more accessible. The value added by the study is to draw an overall picture of the migration and asylum system in Austria through a compilation of published literature and official documents. The standard literature which forms the basis of this study are Schumacher/Peyrl 2007, Kutscher/Poschalko/Schmalzl 2006, Bachmann 2008, Fassmann 2007 and Bauböck/Perchinig 2006. Furthermore, national network partners with the EMN have been consulted for the revision of parts and aspects of the study.

The reference period for the analysis of the migration and asylum system in Austria is 31st December, 2008. The year 2007 serves as reference year for the broad and indicative statistics provided. The statistical data referred to was provided by the Federal Ministry of the Interior, the Public Labour Market Service and the National Statistics Office “Statistik Austria”.

It is important to underline that the study does not focus on migration of EU nationals (e.g. transition agreements for EU-8 nationals) but exclusively on the migration of “third-country nationals” as defined in Council Regulation EC No 862/2007: “Any person who is not citizen of the Union within the meaning of Article 17(1) of the Treaty, including stateless persons.”

In order also to improve comparability, the terms and definitions given are taken from the EMN Glossary, which will be published in early 2009 and made publicly accessible on the website of the EMN.

As this study can only give a short and simplified insight into the current state of the

migration and asylum system in Austria, it must be emphasized that its development and its political and public perception is subject to an ongoing process in a very dynamic field where further developments and provisions are continuously evolving.

Furthermore, the report looks at the complex system of migration and asylum in a simplified way and seeks to provide a general overview rather than an integral enumeration of all particulars. Therefore, the study does not claim to provide a complete and detailed picture of all regulations and facets of the system, but intends to represent a reference document for a better understanding of the system as such.

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2. OVERVIEW OF ORGANISATION OF POLITICAL, LEGISLATIVE AND INSTITUTIONAL FRAMEWORK IN AUSTRIA

2.1 The Austrian Political System

Political constitution

Austria is a parliamentary representative democratic republic, with a Federal President (Bundespräsident) who is directly elected as Head of State by the citizenry for six years. The citizenry also elects a Federal Chancellor (Bundeskanzler) as the Head of Government.⁵ The Austrian constitution is based on the undisputed principles of democracy, republican state form, federalism and rule of law⁶. Since 1955, Austria is a permanently neutral state.⁷

*Federal Principle*⁸

A federal republic,⁹ Austria consists of nine Federal Provinces, also referred to as “States” (Bundesländer): Burgenland, Carinthia, Lower Austria, Salzburg, Styria, Tyrol, Upper Austria, Vienna and Vorarlberg. The state functions are divided among the Federal State and the Provinces.¹⁰ The State Diet or Provincial Parliament (Landtag) exercises the Province’s legislative powers. Its members are elected by the residents of the Province.¹¹ The executive authority in each Province is the Provincial Government (Landesregierung), which is elected by the State Diet.¹² The Provincial Government is made up of the Governor of the Province (Landeshauptmann), deputies, and other members (Provincial Councillors, Landesräte).¹³ Province legislation must be passed by the State Diet and then certified, countersigned and

⁵ Müller 2006a: 106ff.

⁶ Ucakar 2006: 118ff. The system of governance can be characterised as presidential-parliamentarian system, in the political reality, however, the parliamentarian element has proved to be more dominant than the presidential one (Müller, 2006a and 2006b; Neisser 1996).

⁷ However with the integration of Austria into the European Union, the principle of neutrality has been de facto weakened, and is despite a high popularity among the Austrian population subject of political contestation (Skhura 2006: 859).

⁸ The federal principle in Austria is, compared to other federal states, relatively weak. While legislative and executive powers are divided among the federal and the Province level, the judicative belongs only to the federal level. Moreover, the Federal Council of the Austrian Parliament (i.e. the parliamentarian chamber which represents the Province level), is not as strong as the National Council (Neisser 1996).

⁹ Art. 2 B-VG.

¹⁰ Neisser 1996.

¹¹ Aigner 2006: 959f.

¹² Art. 101 B-VG.

¹⁴ Fallend 2006: 979.

published in the state gazette by the Governor of the Province.¹⁴

In the Provinces, the Governor exercises federal executive power (indirect federal administration) where no separate federal authority exists (direct federal administration). In matters pertaining to indirect federal administration, the Governor is subject to directives issued by the Federal Government and individual Federal Ministers.¹⁵

Legislative Powers

Federal legislative power is vested in both the government and the two chambers of the Austrian parliament (Parlament), the National Council (Nationalrat) and the Federal Council (Bundesrat). The National Council has 183 members, directly elected for a five year term by all Austrian citizens who have reached the age of 16,¹⁶ according to the principle of proportional representation.¹⁷

The Federal Council represents the interests of the Provinces. In contrast to the directly elected National Council, the Federal Council representatives are delegated by the State Diets in proportion to the number of seats each of the parties hold on the provincial level.¹⁸

The first stage of legislation is the submission of a bill containing the proposed legislation to the National Council.¹⁹ Once the bill is adopted by the National Council, it is referred to as a National Council enactment. Every National Council enactment is transferred to the Federal Council without delay. The Federal Council has a right to object to the adoption of laws of the National Council, which it must assert within eight weeks of the legislative act being adopted. If this right is exercised, the National Council may confirm its original decision by virtue of a simple majority, passing an “insisting vote” (Beharrungsbeschluss), against which the Federal Council has no further recourse. The Federal Council has an absolute right of veto if the competence of the Provinces is limited by constitutional law.²⁰

Executive Powers

¹⁴ Aigner 2006: 964f.

¹⁵ Pelinka/Rosenberger 2007: 242f.

¹⁶ Parlament, Wahlrecht available at: http://www.parlinkom.gv.at/NR/WAHLR/Wahlrecht_Portal.shtml, (consulted on 7 January 2009).

¹⁷ Müller 2006a: 105ff.; Neisser, 1996.

¹⁸ Müller 2006a: 106.

¹⁹ Legislative initiatives are to a large extent constituted governmental bills, submitted to parliament. Due to the de facto identity of government and parliamentary majority and a rather strict system of party discipline, these legislative proposals are usually met by little resistance by the National Council, and the control of the executive is primarily the task of the opposition (Pelinka 1998).

²⁰ Müller 2006a: 112.

The supreme federal executive organs are the Federal President and the members of the Federal Government, headed by the Federal Chancellor. The Chancellor and, on recommendation, the other members of the Federal Government (Deputy Chancellor, Federal Ministers and State Secretaries), are appointed by the Federal President. While the Federal President technically could assign the office of Chancellor and, by extension, the offices of the Federal Ministers to whoever is seen as fit, in practice the cabinet's composition reflects National Council election results rather than presidential election results. The President customarily assigns the office of Chancellor to the leader of the party with the highest number of seats in the National Council.²¹

Judicial Powers

Austria's judiciary is independent of the executive and the legislature, and exclusively federal in nature. The independence of the courts is enshrined in the constitution. The courts are bound to act solely in accordance with the law, in the same way as the administration. In addition to the civil and criminal courts, with stages of appeal to the Supreme Court (Oberster Gerichtshof, OGH), there are two other High Courts in Austria: the Constitutional Court (Verfassungsgerichtshof, VfGH), and the Administrative Court (Verwaltungsgerichtshof, VwGH). The Administrative Court deals with cases of alleged legal offences in connection with decisions taken by the administrative authorities. The Constitutional Court deals with proprietary claims lodged against the federal, provincial, regional or municipal authorities when these claims cannot be dealt with by normal legal channels or by an administrative authority.²²

Political Parties in Austria

Austria's political system is dominated by the political parties. According to Müller (2006),²³ 400 parties existed in Austria in 1996; in 2005, 790 parties were registered. The most influential are those parties that currently form the National Council:²⁴ The Social Democratic Party of Austria (Sozialdemokratische Partei Österreichs, SPÖ), the Austrian People's Party (Österreichische Volkspartei, ÖVP), the Freedom Party of Austria (Freiheitliche Partei Österreichs, FPÖ), the Alliance Future Austria (Bündnis Zukunft Österreich, BZÖ), and the

²¹ Pelinka/Rosenberger 2007: 136ff.

²² Pelinka/Rosenberger 2007: 145ff. Procedures dealing with Migration and Asylum are explained in detail in chapter 4.

²³ Müller 2006a: 105-119.

²⁴ Elections September 2008.

Green Party (Grüne Alternative, die Grünen).²⁵

Until the elections in 1999, most governments of the Second Republic (1945 to the present) were formed by the two major traditional parties, the SPÖ and the ÖVP. With one exception from 1983-86, when a small coalition was formed by SPÖ and FPÖ, all governments until 1999 were formed either as a coalition by SPÖ and ÖVP, or as a single government by one of these two parties. All of these governments were majority governments, except in 1970/71.²⁶ From 2000 to 2006, the ÖVP formed a coalition government with the right-wing FPÖ.²⁷ When the FPÖ split into two parties in 2003 – the FPÖ and the BZÖ – the ÖVP continued the coalition with the BZÖ.

After the elections in 2006, SPÖ and ÖVP formed a new coalition, which broke up in summer 2008. Elections on 28th September 2008 resulted in a revival of the coalition, with the new Social Democratic Chancellor Werner Faymann. Since then, the distribution of seats in the National Council has been as follows: 57 SPÖ, 51 ÖVP, 34 FPÖ, 21 BZÖ, and 20 Die Grünen.²⁸

Austria and the European Union

After a referendum on 12th June 1994, Austria joined the European Union on 1st January 1995. Community law has autonomous effect and is directly applicable and takes precedence over national legislation as well as national constitutional laws (with the exception of the fundamental principles anchored in the constitution).²⁹

Political Culture

The Austrian political system is shaped by a strong institutionalization of a corporatist system, the “Austrian Social Partnership” (Österreichische Sozialpartnerschaft), which is based on a tripartite arrangement between “state, capital and labour”. It acts as “a dense network of interactions between government, state bureaucracy, coalition parties and highly monopolized, centralized and politically privileged interest organisations, combined with an equally dense bargaining system relating sectoral wage bargaining to a centralized coordination of wage policy.”³⁰ Within this system, employers and employees are represented

²⁵ Pelinka/Rosenberger 2007: 152ff.

²⁶ Pelinka, 1998. From 21 April 1970 to 4 November 1971, a SPÖ minority government, made possible by the support of the FPÖ in the parliament, was in power.

²⁷ As a result of the inclusion of the FPÖ in the government, the EU imposed symbolic sanctions on Austria, which were revoked six months later.

²⁸ Federal Ministry of the Interior, available at: <http://wahl08.bmi.gv.at/>, (consulted on 7 January 2009).

²⁹ Pelinka/Rosenberger 2007: 97ff.

³⁰ Cf. Kittel 2000: 109, cit. after Mourão Permoser and Rosenberger, 2009.

by a small circle of major organisations, the Social Partners. On the employees' side, these are represented by the Austrian Trade Union Federation (Österreichischer Gewerkschaftsbund, ÖGB) and the Federal Chamber of Labour (Bundesarbeiterkammer, BAK). The employers' side is represented by the Economic Chamber of Austria (Wirtschaftskammer Österreich, WKÖ), the Standing Committee of Presidents of the Chambers of Agriculture (Präsidentenkonferenz der Landwirtschaftskammern Österreichs, PKLWK) and the the Federation of Austrian Industries (Industriellenvereinigung, IV).³¹

The system of cooperation on economic and social issues is a voluntary arrangement. Developed over time, this cooperation of the various interest groups is mostly of an informal nature and was not regulated by law until 2008.³² Several avenues for political decision-making are open to the large national federations. A traditional channel is their close relationship with one or the other of the two biggest parties, i.e. the SPÖ or the ÖVP. In addition, the federations are incorporated, both formally and informally, into the political opinion-forming process of the relevant ministries, as evidenced by their participation in a number of committees, advisory boards and commissions. Also at the parliamentary level, involvement of experts from the federations and chambers is a normal practice.

The cooperation and coordination of interests among the associations and with the government are, however, only applied in specific areas, such as income policies and certain aspects of economic and social policies (e.g. industrial safety regulations, agrarian market legislation, labour market policies and principles of equal treatment).³³

Austria has been categorized by Lijphart (1977) and others as a “consociation” democracy (Konkordanzdemokratie); however, the second half of the second republic was characterized by “a slow erosion of the system of ‘consociation politics’ ”, and in the 1980s, the role of the social partners in the political decision making process began to lose its importance.³⁴ These developments were accompanied and reinforced by changes in political participation patterns, especially with regard to consensual democracy, such as low electoral participation, instable

³¹ Tálos/Kittel 2001: 64ff. The Trade Union Federation is organised as a registered society or association, while the three chamber organisations are self-administrating entities under public law with compulsory membership. While WKÖ and PKLWK are considered to be “classic” social partners, the influence of the IV and its participation in decision making processes has turned it into a relevant partner. Furthermore, the IV is also the only Austrian social partner represented at BUSINESSSEUROPE, the Union of Industrial and Employers' Confederations of Europe (out of the aforementioned, it is the only institution which fulfils the necessary prerequisite of free membership), thus taking part in the EU's Social Dialogue. On the employees' side, the ÖGB is represented in the Social Dialogue of the EU via its participation in the European Trade Union Confederation (ETUC).

³² Since Jan. 01 2008, the Social Partnership is explicitly mentioned in the Constitution (Art. 120a B-VG).

³³ Tálos 2006: 425ff.

³⁵ Tálos 2006: 436.

voting behaviour, and a smaller degree of organisation. As a consequence, parties such as the Green party and the far right parties FPÖ and BZÖ have experienced a rise in voters. This diversification, to which the rise of new social movements (e.g. ecological and women's movements) contributed, has led to a further development of the Austrian political system towards a competitive/conflict democracy.³⁵

2.2 Migration Policies: The Main Actors

A variety of actors is involved in deciding on and implementing migration policies.

In the field of migration, executive powers lie mainly within the competence of the **Federal Government**.³⁶ However, many tasks are performed by a variety of actors, on various levels. This is especially true for the field of integration,³⁷ where a number of issues need to be addressed: housing, education, access to the labour market, access to health care, and participation in the social, political and cultural life of society.³⁸ Thus, integration is treated as a horizontal issue ("Querschnittsmaterie"), and competences are distributed between different actors at the federal, provincial and municipal level.

The **Federal Ministry of the Interior** (Bundesministerium für Inneres, BM.I) is mainly responsible for policies in the field of immigration regulation and the policing of immigrants³⁹. Since 2003, immigration of third-country nationals (except for family reunification and asylum) has been limited to key professionals and persons of independent means. A yearly quota for settlement permits⁴⁰ is published in the Settlement Decree,⁴¹ issued by the Federal Government based on the proposal of the Ministry of the Interior. On the federal level, the responsibility for all matters of integration of immigrants lies with the Ministry of the Interior; unless addressed in specific settings.⁴²

³⁵ Melchior 2005.

³⁶ Art. 10 B-VG.

³⁷ There is no generally accepted definition of the term "integration", thus for the purpose of this study only a few areas are highlighted.

³⁸ Fassmann 2007: 85.

³⁹ Since 1999, the Human Rights Advisory Board (Menschenrechtsbeirat) acts as a consulting organ for the Ministry of the Interior. It monitors and observes all activities of the security services, the authorities under the Minister of the Interior and all bodies with power of direct command and compulsion, and issues recommendations to the Minister of the Interior. (Available at: <http://www.menschenrechtsbeirat.at/>, (consulted on 9 February 2009). König/ Perchinig 2005: 20; Fassmann 1999: 75.

⁴⁰ For more details please refer to Section 4.12.1.

⁴¹ Art. 13 NAG.

⁴² E.g. by the Ministry for Education, Arts and Culture, which traditionally focuses also on the Intercultural

The **Federal Ministry for Economics and Labour** (Bundesministerium für Wirtschaft und Arbeit, BMWA)⁴³ is one of the key players in the area of labour market policies, issuing decrees concerning the easing of conditions for the issue of work permits and thus directly influencing labour market regulations. The Federal Ministry for Economics and Labour is also in charge of policies and measures against unemployment, which affects migrants as work permits are issued according to a quota system (see above).⁴⁴

Within the framework of the Settlement and Residence Act (Niederlassungs- und Aufenthaltsgesetz, NAG), the **Provincial Governments** are involved in setting the maximum number of residence permits to be issued in the specific year for each Province. The Federal Government may set the numbers lower, but not higher than the Provincial Governments suggest. The responsible authority for granting a residence permit is, according to the Residence and Settlement Act, the **Governor of the Province**.⁴⁵ The Governor can delegate the subordinate **Regional Administrative Authorities** (Bezirksverwaltungsbehörde) as the competent authority for residence and settlement permits, as per the usual practice.⁴⁶

Additionally, the Provincial Governments must also be consulted on setting the quota for seasonal work. Thus, the Provincial Governments play a key role in the actual regulation of immigration.⁴⁷ “They can regulate their own number of new foreign workers, based on their particular social or economic situation (e.g. unemployment, shortage of dwellings, high proportion of foreign population). They can also carry out specific measures aimed at the rapid social integration of the foreign population in the realm of federal housing and education policy.”⁴⁸

With regard to policies on naturalisation, the Provincial Governments are in charge of executing the federal act and thus hold important powers to administratively interpret the conditions for naturalisation laid down in the Naturalisation Act.⁴⁹

At the provincial level, several players have started to address integration as a major public

Dialogue.

⁴³ From February 2009 onwards, several ministries will be renamed. Thus, the Federal Ministry for Economics and Labour will turn into the “Federal Ministry for Economics, Family and Youth” (Bundesministerium für Arbeit, Familie und Jugend); and the Federal Ministry for Social Affairs will turn into the “Federal Ministry for Labour, Social Affairs and Consumer Protection” (Bundesministerium für Arbeit, Soziales und Konsumentenschutz). Competences will shift accordingly.

⁴⁴ König/Perchinig 2005: 20ff.

⁴⁵ Art. 3 NAG.

⁴⁶ Consequently, the legal acts are issued by the District Commission, in the name of the Governor. Thus, the administrative decision is attributed to the Governor.

⁴⁷ König/Perchinig 2005: 20ff.

⁴⁸ Fassmann 1999: 76.

⁵¹ König/Perchnig 2005: 21.

policy issue, and many have developed or are developing “mission statements on integration” (Integrationsleitbilder). Additionally, housing policies are administered by the provincial governments, who have the power to legislate on the conditions of access to public social housing.

In the area of integration, the **Municipalities** (Magistrate) and **District Commissions** (Bezirkshauptmannschaften) provide advisory structures and other types of assistance to immigrants.⁵⁰ An increasing number of municipalities have established specialized units or bodies in charge of integration matters, such as social work.⁵¹ Moreover, many of them have started to develop guiding principles on integration.⁵²

The **Social Partners** are involved in the area of labour market policies. As the regulation of access to the labour market is generally decided by the Social Partners, the Ministry for Economics and Labour consults them before setting the percentage quota for the employment of foreigners. Thus, they “have a vital influence in deciding how many foreigners may be employed and in which sectors.”⁵³

The **Public Employment Service** (Arbeitsmarktservice, AMS), a formally independent body governed by the Social Partners and the Ministry for Economics and Labour, is in charge of the issuance and administration of work permits. In administrative terms, the Public Employment Service can influence the practical implementation of policies exercising its discretionary powers, for instance by deciding whether an applicant could be considered as fulfilling the tasks of a “key employee“(Schlüsselkraft).⁵⁴

The **Austrian Integration Fund** (Österreichischer Integrationsfonds, ÖIF), which was founded in 1960 by the United Nations High Commissioner for Refugees (UNHCR, Flüchtlingshochkommissariat der Vereinten Nationen) and the Austrian Federal Ministry of the Interior, supports recognised refugees and migrants in their integration process. It further assists recognised refugees and beneficiaries of subsidiary protection in finding appropriate

⁵⁰ On a federal level the Government initiated in 2007 a so called “Integration Plattform”, which aimed to map the current situation of immigrants in Austria. (Available at: <http://www.integration.at/>, consulted on 7 January 2009).

⁵¹ Politis, 2005: 24.

⁵² Bischof et al., 2007: 354.

⁵³ Fassmann 1999: 75.

⁵⁴ König/Perchinig 2005: 20ff.

accommodation facilities, providing childcare and financial aid. It also runs several integration houses, where recognized refugees are accommodated during the initial period after positive notification of their asylum process. On behalf of the Ministry of the Interior, the Austrian Integration Fund is also responsible for the implementation of the “Integration Agreement”⁵⁵ (Integrationsvereinbarung), as well as for the administration of the projects of the European Refugee Fund and the European Integration Fund.⁵⁶

2.3 Asylum Policies: The Main Actors

In the field of asylum, executive powers in general lie within the competence of the **Federal Government**.⁵⁷ Asylum policies fall into the realm of the **Federal Ministry of the Interior**.⁵⁸ In legislation processes, the Ministry of the Interior and the Ministry of Justice work closely together. The Asylum Act (Asylgesetz, AsylG) enables the Minister of the Interior to create **Initial Reception Centres** for refugees (Erstaufnahmestellen, EAST) by decree. The Executive Order to the Asylum Act⁵⁹ established three of these centres in Austria, each responsible for determining the admission of asylum seekers to the substantive asylum procedure. In 2003, the Ministry of the Interior privatized its first reception and care facilities for asylum seekers and charged the private company **European Homecare** with this task.⁶⁰ The **Federal Asylum Office** (Bundesasylamt, BAA) is the first instance in the asylum process. It makes decisions regarding access to the regular asylum procedure and takes the final status decision. The Federal Asylum Office is under the responsibility of the Ministry of the Interior.⁶¹

The competencies and provisions of temporarily granted basic welfare support for asylum seekers, persons entitled to asylum, displaced persons and persons who may not be deported are divided between the Federal Government and the **Provincial Governments**⁶²: During the admission procedure, the costs of the basic welfare support is borne by the Federal State,

⁵⁵ See Section 4.1.2.1

⁵⁶ Integrationsfond, available at: <http://www.integrationsfonds.at> (consulted on 9 February 2009).

⁵⁷ Art. 10 B-VG.

⁵⁸ König/ Perchinig 2005: 20; Fassmann 1999: 75.

⁵⁹ Asylgesetz-Durchführungsverordnung 2004, AsylG – DV.

⁶⁰ European Homecare, available at: <http://www.eu-homecare.com/at/index.htm> (consulted on 9 February 2009).

⁶¹ Art. 58. AsylG

⁶² The Federal Government of Austria has signed a Basic Welfare Support Agreement with the provincial governments; Art. 15a B-VG.

while in later stages of the asylum procedure the Provinces are the competent authorities to provide housing, pocket money, medical insurance, etc.⁶³

The **Asylum Court** (Asylgerichtshof, AsylGH) is the second instance in the asylum procedure.⁶⁴ It is the last instance court for all individual appeals against decisions of the Federal Asylum Office.⁶⁵ Where the Asylum Court has upheld a complaint, the administrative authorities have to establish without delay, in the case concerned, the means available to them in law, i.e. the lawful situation corresponding to the legal opinion of the Asylum Court. In principle, there is no regular remedy against decisions of the Asylum Court, although appeals to the **Austrian Constitutional Court** (Verfassungsgerichtshof, VfGH) are possible.⁶⁶

A branch office of the **United Nations High Commissioner for Refugees (UNHCR)** was established in Vienna in 1951, the founding year of UNHCR. Its tasks include: the observation and monitoring of laws relevant to asylum in Austria according to the criteria of the Geneva Refugee Convention; making official statements concerning refugee-related questions; working in partnership with authorities responsible for refugees, cooperating with NGOs active in the refugee field; the supporting and co-financing of an Austria-wide network of lawyers who give legal assistance and advice to refugees and asylum seekers, providing information and further training to government officials and refugee counsellors; as well as the directly intervening in particularly difficult individual cases. The UNHCR is also very active in public information and awareness-raising for the refugee situation as carried out through media relations and the website www.unhcr.at. The UNHCR Office in Vienna also maintains relations with the Organisation for Security and Cooperation in Europe (OSCE) and other international organisations.⁶⁷ The UNHCR Office has the possibility to recommend legal counsellors who assist the asylum applicants with documentation and legal questions as well as with return counselling. These counsellors are appointed and funded by the Ministry of the Interior, which can take the UNHCR's suggestions into account.⁶⁸

2.4 Other stakeholder/actors

⁶³ In most of the Provinces, separate Basic Welfare Acts have been adopted. Therefore, the target groups, who can receive basic care and the services which are provided, can vary in the different Provinces.

⁶⁴ Until 30 June 2008, the Independent Federal Asylum Review Board (Unabhängiger Bundesasylsenat, UBAS) was the appellate instance for decisions taken by the Federal Asylum Office.

⁶⁵ Art. 61 AsylG; AsylGHG.

⁶⁶ Art. 61a AVG; Art. 22 (4) AsylG.

⁶⁷ UNHCR, available at: <http://www.unhcr.at/> (consulted on 9 February 2009).

⁶⁸ Art. 66 AsylG. For further details, please confer to Section 4.1.3.2.

A number of NGOs are working in the field of immigration and asylum: for example, the **Counselling Centre for Migrants** (Beratungszentrum für Migranten und Migrantinnen) offers legal and social counselling to immigrants, independent of their nationality and legal status.⁶⁹ NGOs such as **Caritas**, **Diakonie Flüchtlingsdienst**, **Austrian Red Cross** (Österreichisches Rotes Kreuz, ÖRK), **Volkshilfe Austria** and others play an important role on the Austrian immigration and asylum scene. For asylum seekers, they provide legal counselling, financial help, return counselling, social services, health assistance, care for persons in detention pending deportation, etc. For recognised refugees and other immigrants, they provide assistance in housing and education. Some of these NGOs work together with the Ministry of the Interior and provide counselling to asylum seekers, as well as the care for people receiving basic welfare support as foreseen in the Austrian laws. Other NGOs, like **Amnesty International**, are mainly involved in lobbying and public information regarding the situation of refugees.⁷⁰

The **Asylkoordination Österreich** is an umbrella organisation. Its main task is to provide training and support for its members, documentation and research, awareness-raising and public information, as well as political lobbying. They also implement a number of projects, the best known of which is “Connecting People”, a project linking unaccompanied minors and Austrian mentors.⁷¹

The **Network AsylumAdvocate** (Netzwerk AsylAnwalt) is a combined effort by Caritas, Red Cross and other partners, which provides qualified legal representation for refugees in Austria. UNHCR acts as a strategic partner. The network provides destitute asylum seekers in different cases with free-of-charge legal representation and brings about fundamental decisions for a wider range of people concerned.⁷²

Another player in the field of migration, the **International Organisation for Migration** (IOM), is represented by an office in Vienna since 1952. It develops and implements projects in a variety of areas of migration, including assisted voluntary return and reintegration

⁶⁹ Beratungszentrum für Migranten und Migrantinnen, available at: <http://www.migrant.at/>, (consulted on 9 February 2009).

⁷⁰ Amnesty International Austria, available at: <http://www.amnesty.at/>, (consulted on 9 February 2009).

⁷¹ Asylkoordination, available at: <http://www.asyl.at/> (consulted on 9 February 2009).

⁷⁴ Netzwerk Asylanwalt, available at: <http://www.asylanwalt.at/> (consulted on 9 February 2009).

programs (AVR), family reunification, fighting trafficking in human beings, and migration research.⁷³

The **European Union Agency for Fundamental Rights** (FRA) has been set up in Vienna to provide assistance and independent expertise relating to fundamental rights, in the domain of Community law.⁷⁴

The **International Centre for Migration Policy Development** (ICMPD), an intergovernmental organisation with UN Observer status which was created in 1993 at the initiative of Switzerland and Austria, is also located in Vienna.⁷⁵

Another relevant group of actors are **immigrant organisations**. There is only limited comprehensive data and research about Austrian immigrants' organisations available. Most of the research focuses on the provincial level. For Vienna, for instance, 728 immigrant organisations were mapped out in 2004.⁷⁶ The highest share of organisations in Vienna was founded by Turkish immigrants, followed by immigrants from the former Yugoslavia.⁷⁷ The dominant principle of organisation is national origin, followed by religious affiliation.⁷⁸ Those actors provide a.o. integration work and represent interest organisations aiming to strengthen the rights of immigrants.⁷⁹

Austrian migration research developed belatedly in Austria in the 1980s. Immigration research was strengthened by the research programme on xenophobia by the Ministry of Science and Art (1996-2001), and gained further impetus with research funds from the European Union. However, in an international comparison, the research on immigration and integration is still underrepresented and marginalized in the Austrian university landscape, as well as in Austrian academia in general.⁸⁰

According to a study⁸¹ which was published in March 2009, integration and migration research in Austria is implemented in a very broad disciplinary context, ranging from

⁷³ IOM, available at: www.iomvienna.int (consulted on 9 February 2009).

⁷⁴ EU Fundamental Rights Agency, <http://fra.europa.eu/> (consulted on 9 February 2009).

⁷⁵ ICMPD, <http://www.icmpd.org/whatisicmpd.html> (consulted on 7 January 2009).

⁷⁶ Waldrauch/Sohler 2004.

⁷⁷ Sohler 2007: 378.

⁷⁸ *ibid.*

⁷⁹ Sohler 2007: 391.

⁸⁰ Perchinig 2005.

⁸¹ Fassmann 2009.

theology to history, sociology, political sciences, philology, psychology, communication studies, geography, law and economics. With few exceptions, migration and integration research are not exclusive fields of research in most institutions. Almost half of all projects in that area are application oriented and contract based. From about 200 people who work in the field, about 70 persons were identified as integration and migration researchers (about 60% of them are women). National cooperation among researcher and research institutions is, however, not well established yet.

2.5 Legal Framework

In terms of legal framework, the Aliens' Act Package 2005 is the main source of reference. The Aliens' Act Package (Fremdenrechtspaket) has restructured the previous system of immigration legislation and involves three main laws: Asylum Act (Asylgesetz), a Settlement and Residence Act (Niederlassungs- und Aufenthaltsgesetz, NAG) as well as an Aliens' Police Act (Fremdenpolizeigesetz, FPG). The Settlement and Residence Act codifies the rules for immigration into Austria (including quota-free family reunification). The Aliens' Police Act regulates the entry and termination of legal as well as illegal stay on Austrian territory.⁸² The Asylum Act governs the provisions concerning access to the labour market which can be found in the Aliens' Employment Act and has also been amended with the Aliens' Act Package. Last but not least, the Citizenship Act regulates access to Austrian citizenship.

3. DEVELOPMENT OF ASYLUM AND MIGRATION SYSTEMS

Migration to and from Austria has undergone several reorientations since the middle of the 19th century.⁸³ It has been characterised by several major breaks, all of which led to important reconfigurations of the patterns of migration and the emergence of new migratory phenomena.⁸⁴ Austria has been a country of origin and country of destination of economically driven migration, as well as a country of origin, transit and destination for refugees.⁸⁵ The following chapter gives a brief overview of the different periods and episodes of migration throughout the recent history of Austria.

⁸² See NCP Austria, 2006: pp. 26.

⁸³ Fassmann 1995: 13.

⁸⁴ Kraler/Sohler 2007: 19.

⁸⁵ Bauböck/Perchinig 2006: 726.

Austria has become a country of immigration – not voluntarily nor self-determined, but *de facto*:⁸⁶ since 1951, Austria's population has grown by 1.1 million people. Although part of this growth resulted from birth balance (693.000), a major part of population growth (406.000) according to estimations is due to migration. In the beginning of 2008, 1.42 million inhabitants had an migration background⁸⁷, representing 17.3% of the total population. Among these, 854.752 did not possess Austrian citizenship, bringing the share of foreign nationals (EU and non-EU nationals) of the total population to 10.3%.⁸⁸ Taking into account the country of birth and naturalised immigrants, 16,6 % of the total population (1.38 million persons) have immigrated to Austria within their life-time (foremost from Former Yugoslavia and Turkey).⁸⁹

Moreover, regarding the current migration flows, Austria is one of the EU countries⁹⁰ with the highest immigration rates in proportion to its population size.⁹¹ At the same time, Austria is also characterized by emigration (2007: -74.191 persons), especially of Austrian nationals: 854.752 foreign nationals regularly living in Austria contrasted with an estimated 450.000 to 500.000⁹² Austrian nationals living in another country, mostly Germany and Switzerland, but also in other countries e.g. in South and North America.⁹³

Historical developments until 1945

Until the 19th century, three migratory movements were characteristic of the predominantly German-speaking “Alp lands” (Alpenländer) of the Habsburg Monarchy:⁹⁴ politically and religiously motivated displacement of protestants, seasonal migration from the Alpine and

⁸⁶ Fassmann 2003: 6.

⁸⁷ Statistics Austria, Microcensus, Labour Survey, 2008. The definition of “Population with migration background underlies the “Recommendations for the 2010 censuses of population and housing”, p. 90, United Nations Economic Commission for Europe (UNECE).

⁸⁸ Statistics Austria, Statistics of the population stock as of 01.01. 2008. To some extent, the growth of the of foreign resident population (in particular during the 1990s) is a consequence of the *ius sanguinis* principle, as a result of which children born to parents of foreign citizenship in Austria automatically obtain the nationality (or nationalities) of their parents. In 2001, 116.015 (16.3%) of the overall foreign resident population were born in Austria. (Kraler/Sohler, 2007: 23)

⁸⁹ Statistics Austria, Statistics of the Population Stock as of 01.01.2008

⁹⁰ Behind Luxembourg (37,4%), Liechtenstein (33,9%), Switzerland (22,9%), Latvia (19,5%) and Estonia (15,2%). (Münz 2007:6)

⁹¹ In 2005, Austria ranked with a net migration of 0.7% of its population on the fifth place behind Luxembourg, Cyprus, Ireland and Spain (Eurostat).

⁹² In 2008, 370.000 Austrians were registered at Austrian authorities abroad. The Austrian Federal Ministry for European and International Affairs estimates that the actual number of Austrians living abroad lies between 450.000-500.000 persons.

⁹³ Konsularstatistik MIEA.

⁹⁴ Until 1918, Austria was part of the Habsburg Monarchy which was composed of the territories ruled by the Habsburgs since 1156, developing from the Habsburg Hereditary Land (mostly contemporary Austria and Slovenia) which the Habsburgs had accumulated by 1278. (Aigner 2008: 19)

Carpathian regions into the agricultural regions of the Alpine foothills and the core regions of Hungary, as well as migration of elites from abroad to Vienna. Nevertheless, it has to be underlined that in actual numbers, migration movements in the pre-industrial phase were very low compared to later periods.⁹⁵

At the turn of the 20th century, when the territory of today's Austrian Republic represented 10% of the Austrian-Hungarian Empire (1867-1918), two major migratory movements emerged: emigration to the West, especially transatlantic emigration,⁹⁶ and immigration from the East (mainly within the empire), especially to the primary urban and industrial centres of the Habsburg Empire⁹⁷ and to the major cities (Vienna, Prague and Budapest) - both migration trends driven by quick population growth, industrialization, and the recognition of free movement as a civil right.⁹⁸

While emigration had to be authorized until the adoption of the "National Basic Law" (Staatsgrundgesetz) in 1867,⁹⁹ internal migration was not regulated as such. However, as a person's "residency right" (and with this also e.g. poor relief) was tied to their municipality of birth, municipalities could expel those "foreign" residents (i.e., foreigners in legal terms) they considered a burden, as regulated by the "Shear Act" (Schubgesetz) of 1871. Consequently, a considerable number of residents were foreigners in legal terms, characterized by an extreme status of insecurity.¹⁰⁰ As Jandl and Kraler (2003) put it, migration policies in the Habsburg monarchy were more important in terms of their effects on migrants' status than in regulating entry and residence in a given residential area.

World War I (1914-1918) and the foundation of the First Republic of Austria (1918) brought fundamental changes: with the dissolution of the Austro-Hungarian Empire and the

⁹⁵ See Fassmann/Münz 1995: 13.

⁹⁶ Between 1870 and 1910, more than 3.5 million inhabitants of the Austrian-Hungarian Empire (of which 12% were German speaking) emigrated overseas, especially to the United States (Harbour statistics, English 1913 cited in Fassmann/Münz 1995). Especially the first decade of the 20th century is known as "Austrian decade" of the US-American immigration.

⁹⁷ While in the 1790, according to estimations, Vienna (including its suburbs) had barely 200.000 inhabitants, in 1860, the number of inhabitants had grown to 500.000 inhabitants and reached a number of more than 2 million inhabitants in 1910. In general, the share of foreign nationals in the Austrian part of the Empire grew since 1869 and reached 2% in 1910. (Fassmann/Münz 1995: 17).

⁹⁸ Jandl/Kraler 2003.

⁹⁹ Bauböck/Perchinig 2003: 1. As emigration stood in contrast to the aim of the mercantilist objective of increasing the population size of the own state, emigration had to be authorized by provincial institutions through the "emigration consensus" (Emigrationskonzens) which was accompanied with the loss of citizenship. (cf. Fassmann 1995: 14).

¹⁰⁰ At the turn to the 20th century, 60 % of the Viennese population and about 80 % of Prague's population were therefore considered "aliens." (Jandl/Kraler 2003).

reshaping of its borders, Austria was confronted with numerous refugees as well as the transformation of former Austrian citizens into foreigners in legal terms under the new laws.¹⁰¹ In an effort to make the new state more ethnically homogeneous, the majority of the 310.000 officially registered "non-German" refugees who had fled the empire's north-eastern regions during World War I, was repatriated. Those who had a residency right in a successor state other than Austria but were "in race and language" part of the Austrian population were allowed to opt for Austrian citizenship.¹⁰²

In the wake of increasing unemployment after World War I, foreign workers were considered to be a threat to Austrian employees. A "Citizen Work Protection Law" (Inlandarbeiterschutzgesetz), passed in 1925, stipulated for the first time that the work of foreigners had to be registered.¹⁰³ What was meant to be an exceptional and transitional measure has become a stable part of Austrian law up to the present.¹⁰⁴

The global economic crisis and the subsequently difficult economic situation in Austria between the two World Wars provoked considerable emigration;¹⁰⁵ later, economic reasons for leaving Austria were substituted by political reasons for people who fled restrictions either from the Austro-fascist regime, or from the Nazi regime.¹⁰⁶

At the **end of World War II**, Austria harboured some 1.4 million foreigners, most of them Displaced Persons (DPs) – foreign workers forcibly recruited by the NS regime, prisoners of war, as well as Jewish survivors – and German minorities displaced from Eastern and Central Europe. While most of them returned home within a few months, others were in due course repatriated to their respective countries of origin; about 530,000 ethnic Germans from Eastern Europe settled permanently in Austria, 350.000 of them were later naturalised.¹⁰⁷

Asylum in Austria

Due to its geopolitical position during the **Cold War**, Austria was one of the most important reception and transit countries for refugees and other migrants in Europe. Only one year after

¹⁰¹ Bauböck/Perchinig 2006: 727.

¹⁰² Bauböck 1996: 4.

¹⁰³ Pelz 1994.

¹⁰⁴ See Bauböck/Perchinig 2005.

¹⁰⁵ Between 1921 and 1937, around 75.000 Austrians left for overseas destinations (Fassmann/Münz 1995: 29).

¹⁰⁶ Between 1938 and 1941, about 128.000 Jews were forced to leave Austria (Jandl/Krahler, 2003).

¹⁰⁷ Fassmann/Münz 1995: 34.

the Geneva Convention had entered into force in Austria, the Second Republic, between 1955 and 1956, 180.000 people fled from Hungary to neighbouring Austria. From 1955 to 1989, three other large groups fled from the Soviet Union to Austria: 162.000 Czechoslovakians came in the aftermath of the “Prague Spring” (1968/69), 34.557 Poles arrived as a result of the Polish *Solidarność* (1981/82) and from 1973 to 1989, an estimated 250.000 Jews, prosecuted arrived from the Soviet Union. Many of them moved on to other Western countries (or Palestine as in the case of Jews); some, however, stayed in Austria.¹⁰⁸

Since 1972, Austria received refugees from overseas on a voluntary basis: Chile, Argentina, Uganda, Iran and Afghanistan. The later these refugees arrived, however, the less they were politically and socially accepted.¹⁰⁹ After the eastern borders were opened in 1989, the number of asylum seekers increased and was supplemented by refugees from Croatia, Bosnia-Herzegovina, and later Kosovo, who came after the collapse of Yugoslavia and were granted “temporary protection status” - a special legal provision for admission and residence apart from the regular asylum procedures.¹¹⁰

For a long time, Austria regarded itself merely as a country of transit, rather than a country of destination for immigrants, and therefore willingly accepted its role as a “neutral state”¹¹¹ as required by the international community.¹¹² This status later became the self-ascribed expression of Austrian identity and foreign policy.¹¹³ In this context, national asylum policies were not developed until the late 1960s, when the first Asylum Act was passed in 1968 in order to define how to assess asylum applications.¹¹⁴

Guest Worker Recruitment for Austria

Contemporary labour immigration dates back to the 1960s. After the Second World War, Austria entered a phase of economic growth. These developments, in combination with a decrease in industrial labour force reserves within the rural population, stagnation/decrease of women’s labour participation due to higher birth rates as well as social gender barriers and

¹⁰⁸ Ibid.

¹⁰⁹ Bauböck, 1996.

¹¹⁰ Bauböck/Perchinig 2007: 737. While until the end of the 1970s, the chance of being recognized as refugee laid at 90% and until the middle of the 1980s between 40-50%, in the early 1990s it oscillated between 7-20%. In 2007, 43% of all decisions were positive.

¹¹¹ With the State Treaty of 1955, Austria achieved its independence, under the condition of becoming a neutral state.

¹¹² Schuhmacher/Peyrl, 2006: 185.

¹¹³ Bauer 2008: 4.

¹¹⁵ Putzer/Rohrböck, 2007: 10.

prolonged schooling, resulted in a considerable labour force shortage. As a result, the Social Partners, comprised by organized labour and employers' representatives, and the government concluded the "Raab-Olah-Agreement" which granted 47.000 temporary labour migrants access to the Austrian labour market. In this context, bilateral agreements with countries like Spain (1962), Turkey (1964) and Yugoslavia (1966) were concluded for the recruitment of so-called "guest workers", young unmarried men mainly from rural areas. In 1969, 76.500 people from Turkey and Yugoslavia were working in Austria, and in 1973, 178.000 foreign workers from Yugoslavia and 27.000 from Turkey migrated to Austria,¹¹⁵ augmenting the total stock of recruited "guest workers" in Austria to 230.000. In the same year, economic recession followed the oil crisis, resulting in a considerable decrease of efforts in recruiting migrant workers.¹¹⁶

Guest Workers in Austria: Between return and settlement

In the framework of this so called "Guest-worker Scheme", the rights of foreign workers in Austria, especially with regard to residence security and freedom of employment, were comparatively weak compared to those of migrants in other western European countries¹¹⁷. The stay of recruited migrant workers was conceptualized to be of a temporary nature only: labour immigrants were expected to stay only for a short period ("Rotation principle"), according to economic necessities, and then to return to their countries of origin. This principle, based on the models of Germany and Switzerland¹¹⁸, intended to allow a strong reduction of the number of working foreigners in Austria in times of economic crises. However, already in the course of the 1960s, this principle was gradually replaced by a perspective of long-term employment with definitive settlement and family reunification.¹¹⁹ Moreover, restrictive legislation with regard to the labour market in 1973 and the Aliens Employment Act (Ausländerbeschäftigungsgesetz, AuslBG) passed in 1975, which restricted immigration, reinforced the influence of the Social Partners in decisions concerning the regulation of foreign work.¹²⁰ However, it did not produce the desired effect. Recruitment suspension and limitations on new entries into the labour market,¹²¹ induced migrants to stay

¹¹⁵ Jandl/ Kraler 2003.

¹¹⁶ IOM 2005: 5.

¹¹⁷ Bauböck/Perchinig 2006: 730.

¹¹⁸ Fassmann 1999: 66.

¹¹⁹ Fassmann/Münz 1995: 41.

¹²⁰ See Bauböck, 1996: 14.

¹²¹ Between 1974 and 1984, the number of employees with foreign nationality decreased by 40% (Bauer 2008: 4).

permanently and have their families join them.¹²² Despite permanent settlement and the change of the composition of the migrant population,¹²³ the state continued to pursue “guest worker-policies”, which led to ethnic segmentation and dependencies from immigrated persons from those family members which were granted access to the labour market.¹²⁴

In 1987, the Alien Police Act of 1954, which regulated both issuance and loss of the residence permit, was amended for the first time, after the Constitutional Court had annihilated the provision on the prohibition of residence due to a lack of compliance with the European Convention on Human Rights.¹²⁵ In the process, the decision making responsibilities in alien policies were transferred from the Ministry for Labour and Social Affairs and the Social Partners to the Ministry of the Interior. Thus, the policy field shifted from an economic context, regulated by employment policy, to a security context,¹²⁶ and finally became subject to public political debate. This development was also triggered by the increasing influence of the Freedom Party (FPÖ) and the Green party, who were not represented in any organisation participating in the “Social Partnership”,¹²⁷ and who used the issue of immigration for political mobilization, in a polarizing way.¹²⁸ Within this context, migration has become a medium of symbolic politics and profiling within the competition of parties.¹²⁹

Increasing Immigration: A “Migration Crisis”?

With the economic growth of the late 1980s, the opening to the East in 1989 and the crisis in Yugoslavia at the beginning of the 1990s, immigration in Austria increased to a hitherto unseen level: between 1987 and 1994, the stock of the foreign population in Austria more than doubled from 326.000 to 713.000.¹³⁰ The strongest influxes were registered from 1990 to 1993 with an average net migration of 80.500 per year. This net migration rate (1%)

¹²² See Bauböck 2005: 591; Bauböck/Perchinig, 2006: 730. The return migration of foreign migrant workers was thus compensated by family reunification leaving the share of foreign nationals on the total population at five %.

¹²³ The share of female migrants increased from 39.4% (1974) to 44.8% (1981) and the share of children grew in the same period even from 14.8% to 22.5%. (Bauer 2008: 4).

¹²⁴ Bauböck/Perchinig, 2006: 730-31.

¹²⁵ Bauböck/Perchinig 2006: 731.

¹²⁶ Bauböck/Perchinig 2005: 591.

¹²⁷ For further information see chapter “Overview on the organisation of migration and asylum policies in Austria”.

¹²⁸ Bauböck/Perchinig 2006: 732.

¹²⁹ Bauböck/Wimmer 1988.

¹³⁰ Bauböck/Perchinig 2006: 732.

represented one of the highest values within Europe.¹³¹

This development, which was perceived as “migration crisis”,¹³² was first discussed and politicized as an “asylum crisis”.¹³³ With the number of asylum applications increasing and the political discourse moving away from a discourse of solidarity towards one focusing on the “abuse of the asylum system” on the side of the new refugees, very emotional inner-political debates increased the pressure on the government to pass new asylum regulations.¹³⁴ In 1991, the government passed the Asylum Act 1991, a stricter asylum law which corresponded to developments in other European countries.¹³⁵ It introduced the principles of "safe third countries" and "safe countries of origin" and brought restrictions to residence permits and to the suspension effect of legal remedies. Additionally, a new Federal Asylum Office was created, which was to receive asylum applications from this point onwards and decide whether an application for asylum was “evidently founded” or “evidently unfounded”.¹³⁶

In the context of these developments, Austria became the first country in Europe to adopt an immigration policy based on a quota system.¹³⁷ This quota system defined a maximum share of foreign workers in the total workforce at 8%.¹³⁸ Furthermore, the new Aliens Act (Fremdengesetz) passed in 1992 tightened regulations on the entry and residence of foreign nationals and was soon followed by another law, the Residence Act 1993, which established limited contingents for different categories of migrants who were granted residence in Austria.¹³⁹ In contrast to the quota used for the issuing of work permits, the contingents for residence permits defined the absolute number of permits that could be issued in a single year. Transition from tourist status to residence permit was made impossible. After the first permission (subject to the contingent), temporary extensions are issued.¹⁴⁰ Until the reform of the act in 1995,¹⁴¹ children born in Austria were included in this comprehensive quota

¹³¹ SOPEMI, 1995:15. Cited in: Bäuböck/Perchinig 2006.

¹³² Bäuböck/Perchinig 2006: 732.

¹³³ Ibid: 733.

¹³⁴ Bauer 2008: 6.

¹³⁵ Bäuböck/Perchinig: 2006: 733.

¹³⁶ Putzer/Rohrböck 2007: 10f.

¹³⁷ Cinar/Waldrauch 2007: 49.

¹³⁸ Jandl/Kraler 2003.

¹³⁹ After the introduction of the quota system the net migration was reduced in the period 1994-2000 to an average of 10.000 persons annually. (Lebhart/Marik-Lebek, 2007: 145).

¹⁴⁰ Bäuböck/Perchinig 2005: 593.

¹⁴¹ In 1995, an integration index, measuring the legal integration of immigrants in different European countries gave Austria due to its policies the worst ratings with regard to integration. (IOM 2005: 13).

system.¹⁴²

This polarisation of immigration also led to the establishment of an anti-racist movement in Austria. As a reaction to a referendum “Austria First” (“Ausländervolksbegehren”) launched by the FPÖ in 1993 to restrict immigration, the biggest demonstration of the Second Republic was organized, which saw the participation of 300.000 people.¹⁴³ The trend of politicization of immigration has continued to the present as all parties use migration-related topics according to their political interests.

Joining the European Union: Effects on Austrian Migration Policies

With the accession of Austria to the European Union in 1995, the Asylum Act was revised in 1997 in order to allow for inclusion of the Schengen agreement and the harmonization of the Austrian law with the 1990 EU Dublin Convention. In the course of the revision, the “safe country of origin” principle was abolished and a second instance for the asylum process, the Independent Federal Asylum Review Board, was introduced.¹⁴⁴

In 1997, the Aliens Act 1992 and the Residence Act 1993 were merged into a single law: the Aliens Act 1997. It was guided by the principle of “integration before immigration”, putting further restrictions on new immigration but simultaneously increasing the security of residence of those foreigners who were already settled in the country. Thus, the Aliens Act 1997 promoted the consolidation of residence (Aufenthaltsverfestigung), by increasing security of residence with increasing duration of residence.

The principle of “integration before immigration” was also followed by the Citizenship Act (“Staatsbürgerschaftsgesetz”), which was passed in 1998. A major social political reform regarding immigrants was reached by the decision of the European Court of Human Rights, who judged exclusion from emergency social benefits of third-country nationals to be a violation of human rights.¹⁴⁵

The Citizenship Act retained the core elements of previous regulations, as, for instance, the principle of *ius sanguinis* and a regular waiting period of 10 years for naturalisation. With the

¹⁴² IOM 2005: 6.

¹⁴³ Politis 2005: 9.

¹⁴⁴ Rohrböck 1999: 5.

¹⁴⁵ Bauböck/Perchinig 2006: 735.

new law, however, the immigrant also had to show sufficient “integration” into Austrian society by proving German language skills and a basic knowledge of Austrian civilization and culture. Additionally, the immigrant had to prove to be economically self-sufficient (i.e. does not need social assistance). Naturalisation was thus not seen as a way to enhance “integration”, but as a reward for successful “integration”.¹⁴⁶ These premises have continued until today. (see below)

Further steps towards the EU-wide harmonization of migration and asylum policies were necessary with the entry into force of the Amsterdam Treaty in May 1999 and in response to the EU Summit in October 1999 in Tampere. In this context, the law was amended in 2003, and several restrictions introduced in the process. One of the most important features was the introduction of the European Council Regulation (EC No 343/2003; “Dublin II”) establishing “the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national”. It also provided that an application for asylum deemed inadmissible if the asylum seeker entered Austria via a safe third country; and it stated the processing of an asylum application within 72 hours, during which authorities can immediately reject it or decide to allot time for an in-depth examination. With these new regulations, applications for asylum from outside Austria were no longer possible and appeals against negative decisions were made more difficult. This last point was found by the Austrian Constitutional Court to be amongst other issues a breach of the constitution.¹⁴⁷ In order to repair the provision in question, the government passed a new Asylum Law in the frame of the Aliens Act Package 2005.¹⁴⁸

Before that and in light of these developments, in July 2002, the Aliens Act was further amended, restricting labour immigration to highly skilled key personnel, with a minimum wage requirement for prospective immigrants (in 2005, the minimum salary for qualified personnel was defined as 2.178 Euros per month¹⁴⁹). On the other hand, the employment of seasonal workers was facilitated by allowing labourers in areas outside agriculture and tourism and extending the employment period to up to one year. Additionally, all new immigrants from third countries were required to attend “integration courses”, consisting mainly of language instruction and an introduction to fundamental legal, historical, and

¹⁴⁶ Bauböck/Perchinig 2005: 733f.

¹⁴⁷ Schuhmacher/Peyrl 2006: 189.

¹⁴⁸ Bauböck/Perchinig 2006: 738.

¹⁴⁹ König/Perchinig, 2005: 3.

political aspects of Austria. Non-participation led to sanctions, both financial and legal, e.g. the denial of more secure residence titles.¹⁵⁰

With the evolution of an EU Acquis on migration and asylum, further amendments of the Austrian law were necessary. The anticipation of the deadlines for transposition of a number of EU Directives was part of the reason to completely restructure the Austrian laws on immigration, resulting in the new Austrian Aliens Act Package, which was passed in 2005. The previous system of immigration-related acts was restructured and clearly split into an Asylum Act, a Settlement and Residence Act as well as an Aliens Police Act: the Settlement and Residence Act codifies the rules for immigration into Austria (including quota-free family reunification); the Aliens Police Act regulates the entry and termination of legal as well as illegal stay on Austrian territory.¹⁵¹

For a comprehensive overview on the development of migration and asylum policies in Austria, the general trends and specific measures from 1960 to 2005 are summarized in table 1.

¹⁵⁰ Jandl/Kraler 2003.

¹⁵¹ NCP Austria, 2006: pp. 26.

Table 1 General trends and specific measures 1960-2005

Phase	General Legal Trends	Specific Measures
1960 to 1973	no specific immigration policies at hand; labour market policy is dominating	1962 Raab-Olah-Agreement on the recruitment of temporary “guest workers” with the dominance of the rotation principle
		1964 Recruitment Agreement with Turkey
		1965 Recruitment Agreement with Yugoslavia
		1968 First Austrian Asylum Act
1973 - 1993	oscillating between liberalization and tightening of political measures	1975 Aliens Employment Act introduces a system of step access to different types of permits
		1991 Asylum Act, introducing the principles of “safe third countries” and “safe country of origin”
		1993 Residence Law marks the beginning of a controlled immigration system, following the US-American example
1994 to the present	differentiated legislation with a multitude of “channels of immigration” to control migration more efficiently	1997 Revision of the Asylum Act 1991, abolishes the heavily criticized “safe country of origin” principle and provided for the inclusion of the Schengen Agreement and the harmonization of the Austrian asylum law with the 1990 EU Dublin Convention
		1997 Aliens Act, merges the 1992 Aliens Act and the 1993 Residence Act into a single law. The main aim of the reform is to promote the integration for aliens already living in Austria, in place of new immigration. This concept was called “Integration before immigration”, and the law became known as the “Integration Package”
		1998 Naturalisation Act retained the core elements of the previous regulations: principle of <i>ius sanguinis</i> and a regular waiting period of 10 years for naturalisation. It shifted the burden of proof to the individual immigrant, who now has to prove that he/she is sufficiently integrated into Austrian society, is economically self-sufficient and has a sufficient command of German language
		2003 Amendments to the Asylum Act: introduction of an admission procedure prior to the actual asylum procedure, acceleration of the asylum procedure and enforced involvement of the security organs
		2005 Aliens Law Package, a comprehensive legislative reform in order to implement EU directives and strengthened measures against irregular immigration and fraudulent marriage and adoptions. The reform contains among others the Asylum Act the Settlement and Residence Act, the Aliens Police Act and the revised Aliens Employment Act

Source: Fassmann/Reeger 2008: 25 (modified).

Recent Developments

Regarding the most recent developments of migration and asylum policies in Austria, in October 2007, an “Integration Platform”¹⁵² was founded by the then Minister of the Interior, Günther Platter, aiming at coordinating efforts in the area of integration policy among different government levels. The objective of the platform is to advance proposals for better integration. In January 2008, a paper on eight fields linked to integration was published in collaboration with renowned experts, and the ideas and proposals of different people and organisations collected within the framework of the Integration Platform were presented. In an effort to increase awareness of integration issues among the broad public, a road-show was organized in Austria during the year 2008.

The government elected in 2008, constituted by the Social Democrats Party (SPÖ) and the Austrian People’s Party (ÖVP), plans several modifications to the current legislation. The most important changes announced in the government programme for the XXIVth legislative period¹⁵³ is the readjustment of the settlement and residence permits for **humanitarian** purposes.¹⁵⁴ Furthermore, it is intended to introduce, following the model of the European Blue Card and the US Green Card, a “Red-White-Red” Card for highly skilled migrant workers. With the “Red-White-Red” Card, the current quota based system shall be replaced by a criterion driven system. Accordingly, the influence on the Austrian labour market, the economic capacity, the expected integration and the qualification of the third-country national shall be the relevant parameters for new immigration.¹⁵⁵

Concerning integration measures, the government confirms that integration is a cross-social task which concerns all levels of government. Therefore, it intends to develop a “National Action Plan for Integration” in collaboration with partners from all relevant ministries, academia, civil society, and representatives from the provincial and local level. This Plan aims to structure Austrian-wide cooperation for successful integration measures and optimize their implementation.

The current procedures and migration and asylum trends are explained in detail in the following chapter.

¹⁵² MoI, Integrationsplattform, available at: <http://www.integration.at/> (consulted on 5 January 2009).

¹⁵³ Regierungsprogramm für die XXIV. Gesetzgebungsperiode (2 December 2008). Available at: <http://www.bka.gv.at/DocView.axd?CobId=32965> (Consulted on 9 February 2009).

¹⁵⁴ For further details please confer to Section 4.2.2.2.

¹⁵⁵ Regierungsprogramm für die XXIV. Gesetzgebungsperiode (2 December 2008). Available at: <http://www.bka.gv.at/DocView.axd?CobId=32965> (consulted on 9 February 2009).

4. ORGANISATION OF POLICY

4.1 Asylum and Migration

Before illustrating the organisation of policy towards migration and asylum in Austria, a short overview of recent migration and asylum trends in Austria is given in order to present a framework for the policy described later.

Recent migration trends in Austria¹⁵⁶

In 2007, Austria registered a net migration of 32.714 people; the figure resulting from 106.905 arrivals and 74.191 departures. In comparison to former years, the net migration was higher than in 2006 (+27.477 people), but below the years 2005 (+49.172) and 2004 (+50.582). In line with a longstanding trend, net migration losses with Austrian nationals continued in 2007 with -5.509 persons. This continuing trend was counterbalanced by migration gains of foreign citizens of +38.223 persons, which was higher than in 2006 (+32.480).

As the statistics on immigrant nationalities show, most migration inflows in 2007 are arriving from the enlarged European Union. In this regard, the increase in the net migration of foreign nationals was almost exclusively the result of a significant rise of migration gains of Romanian and Bulgarian nationals (2006: +1.639; 2007: +6.915).¹⁵⁷ Two thirds (+25.640 people) of Austria's migration gain in foreign nationals were EU citizens. The largest group was formed by German (+10.242) and Romanian (+5.712), Polish (+2.022) and Hungarian citizens (+1.795). Due to the increase of the inflows of Romanian and Bulgarian citizens, the migration gains of citizens of the EU 12 having accessed the EU since 2004 (+12.562) were at the same level as net migration of citizens of the "old" EU 14 (+12.583).

The immigration of non EU-nationals in 2006 and 2007 lost importance compared to previous years, not least because of increasingly restrictive Austrian immigration laws. For example,

¹⁵⁶ The following paragraph is based on data provided by Statistics Austria. Since 2002, the main source of information on migration statistics in Austria presents the Central Register of Residents (Zentrales Melderegister, ZMR). The processing of the data stock from the ZMR is based on a standardized concept for the classification of registration events for the purposes of analyzing demographic and migration statistics, enabling both sets of statistics to be harmonized. Migration statistics take account of persons with a minimum stay in Austria of more than 90 days. This procedure can be indirectly deduced from the recommendations made by the United Nations (1998) for recording and differentiating migrants according to the duration of their stay. (Statistik Austria.)

net migration gains of Serbian citizens accounted only to 909 people, representing a decrease of almost -60% compared to 2006. Looking at Turkish citizens, a small rise was registered (+14%) in net migration gain, growing from +1.949 to +2.226 persons. Furthermore, in 2007, there was an increasing migration surplus with non-European citizens, which were, however, below the level of years prior to 2006: for Asian citizens the registered net migration was +4.079 people (2006: 3.282), for African citizens +907 (2006: 642). In addition, the net migrant numbers of citizens from Latin America has doubled from 2006 to 2007. The net migration from North America and Oceania remained largely stable.

Against the background of these developments, on the 1st of January 2008, a total of 854.752 foreign nationals were living in Austria, representing 10.3% of the total resident population of Austria. Among them, 301.692 were EU-citizens, of which 174.807 from the “old” EU 14 countries, 90.093 from the EU 10 countries who had joined the EU in 2004, and 36.792 from Romania and Bulgaria. From the 553.060 third-country nationals living in Austria (representing 65% of all foreign nationals), the majority (292.169) came from countries of the Former Yugoslavia (especially from Former Serbia and Montenegro with 133,692, and from Bosnia & Herzegovina with 85,215 nationals) and Turkey (109,716 nationals). An additional 113.433 people had a non-European nationality, Asian citizens representing the biggest group among them (58.361), followed by 21.486 African nationals and 17.748 nationals from North- and South America.

Recent Asylum trends in Austria

In 2007, a continued decrease in asylum applications was registered: while in 2006 13.349 first-time asylum applications were lodged, in 2007, only 11.921 were lodged, representing a decrease of -11%. This decrease followed a trend which continued since 2003, after a period of steady increase of asylum applications, with a peak of 39.354 asylum applications in 2002. Most applications were filed by citizens from the Russian Federation (2.676), foremost from Chechnya, Serbia (1.760), Afghanistan (761), Turkey (659), Moldova (545), Iraq (472), Somalia (467), Armenia (405), Georgia (400) and Nigeria (394).

Regarding asylum procedure statistics, 16.047 decisions were filed, of which 32% were positive, 41% negative, and 26% were “non-status decisions”. Highest recognition rates were

¹⁵⁷ Federal Ministry of the Interior.

achieved by citizens of the Russian Federation (72%), Somalia (63%), Afghanistan (62%) and Iraq (53%).

4.1.1 Entry Procedure(s)

For every third country national, there is an entry phase when they migrate to another country, whatever the reason they migrate. This could be to seek refuge, to visit as a tourist, to work, to receive medical treatment, to join family, etc.

What actors are involved to manage this phase of migration? Border control, visa assessment office, pre-entry clearance assessment? Are there different organisations involved for different categories of migrants? Are there any organisations dealing with illegally-resident persons (who never gained legal entry)?

4.1.1.1 Migration

This section deals with the entry procedures. In the first part the visa assessment is described; in the second part, border control and rejection at the border is outlined. The last part focuses on the organisations dealing with irregular persons.

What actors are involved to manage this phase of migration?

Visa assessment and pre-entry clearance

a) *Institutions*: In terms of entry procedure, the most important institutions are the **Austrian diplomatic authorities abroad** (Vertretungsbehörden).¹⁵⁸ The Austrian diplomatic authorities, the embassies and consulates, are the competent authorities to issue visas to third-country nationals.¹⁵⁹ In certain cases beyond the Austrian diplomatic authorities, the **Federal Ministry of the Interior** has additional competencies in granting visas. For nationals from Afghanistan, Bangladesh, Congo, Ghana, Iran, Iraq, Libya, Nigeria, North Korea, Pakistan, Saudi Arabia, Sudan, Togo and Yemen visas can only be issued after consultation with the Federal Ministry of the Interior.¹⁶⁰ The Ministry of the Interior is further responsible for granting humanitarian visa (Humanitäres Visum):¹⁶¹ in exceptional cases, if the entry into Austria is unpredictable and imperative, and therefore a visa application to Austrian diplomatic authorities is not possible, **organs of the Aliens' Police** (Fremdenpolizeibehörde)

¹⁵⁸ Art. 7 FPG.

¹⁵⁹ Idem.

¹⁶⁰ Schumacher/ Peyrl 2007: 30.

¹⁶¹ Art. 22 FPG.

can issue such visas at the border crossing points after consulting the Federal Ministry of the Interior.¹⁶² The issued visa in such cases is valid for 15 days.¹⁶³

b) *Legal Basis*: The Aliens Police Act (Fremdenpolizeigesetz, FPG) provides the legal base for the issuance of visas. Moreover, the General Consular Instructions (GCI)¹⁶⁴ contains the rules of procedure for the handling of visa applications.

c) *Conditions*: The visa requirements apply for every third-country national regardless of the purpose of the entry.¹⁶⁵ The application must be filed at least three weeks before departure. The applicant must fulfil all admissibility criteria: a valid travel document, health insurance with a minimum insurance sum of € 30,000, proof of sufficient financial resources for the stay in Austria (a declaration of liability is also accepted), proof of a home and a job in order to guarantee a safe and voluntary return to the country of origin.¹⁶⁶ There are no general health requirements; a health certificate can be demanded only in exceptional cases of dangerous epidemics in the country of origin.¹⁶⁷ The application has to be submitted personally. Visas cannot be issued if a residence ban has been imposed upon the applicant, or if the applicant

¹⁶² Art. 1, FPG-DV; see also IOM 2008: 133.

¹⁶³ Bundesministerium für Inneres, available at: <http://www.bmi.gv.at/einreise/> (consulted on 5 January 2009).

¹⁶⁴ NCP 2005: 30.

¹⁶⁵ The entry into the Austrian territory is visa free (Art. 28-30 FPG) for following groups: EEA and Swiss citizens; third-country nationals already settled in Austria and enjoying residence and settlement entitlement, entitlement to asylum or subsidiary protection; third-country nationals settled in a Schengen Area member state and enjoying residence entitlement; (third-country nationals living in a Schengen Area member state and enjoying entitlement to asylum or subsidiary protection are not allowed to enter the Austrian territory visa free, because Austria is not a signatory State to the agreement on dispensation from visa requirement for refugees (Strasbourg, 20.04.1959)); third-country students living in another EU member state and taking part in an academic trip; and nationals from third countries with which Austria concluded bilateral agreements on dispensation from visa requirement. Following nationals need a visa to enter Austria: Afghanistan, Albania, Angola, Antigua & Barbuda, Armenia, Azerbaijan, Bahamas, Bahrain, Bangladesh, Barbados, Belarus, Belize, Benin, Bhutan, Bolivia, Bosnia-Herzegovina, Botswana, Burkina-Faso, Burundi, Cambodia, Cameroon, Cape Verde, Central African Republic, Chad, China, Colombia, Comoros, Congo (Republic), Congo (Democratic Republic), Cote d'Ivoire, Cuba, Djibouti, Dominica, Dominican Republic, Djibouti, Dominica, Dominican Republic, Ecuador, Egypt, Equatorial Guinea, Eritrea, Ethiopia, Fiji, Gabon, Gambia, Georgia, Ghana, Grenada, Guinea, Guinea-Bissau, Guyana, Haiti, India, Indonesia, Iran, Iraq, Ivory Coast, Jamaica, Jordan, Kazakhstan, Kenya, Kiribati, Korea (Democratic People's Republic, North), Kuwait, Kyrgyzstan, Laos, Lebanon, Lesotho, Liberia, Libya, Macedonia, Madagascar, Malawi, Maldives, Mali, Marshall Islands, Mauritania, Mauritius, Micronesia, Moldova, Mongolia, Morocco, Mozambique, Myanmar, Namibia, Nauru, Nepal, Niger, Nigeria, Oman, Pakistan, Palestine, Palau, Papua New Guinea, Peru, Philippines, Qatar, Russian Federation, Rwanda, Samoa, Sao Tome & Principe, Saudi Arabia, Senegal, Serbia & Montenegro, Seychelles, Sierra Leone, Solomon Islands, Somalia, South Africa, Sri Lanka, Sudan, Suriname, Swaziland, Syria, St. Lucia, St. Kitts & Nevis, St. Vincent & Grenadines, Taiwan, Tajikistan, Tanzania, Thailand, Togo, Tonga, Trinidad & Tobago, Turkey, Turkmenistan, Tuvalu, Uganda, Ukraine, United Arab Emirates, Uzbekistan, Vanuatu, Vietnam, Yemen, Yugoslavia, Zambia, Zimbabwe. The list of countries is available at the website of the Austria Foreign Ministry: <http://www.bmeia.gv.at/en/embassy/london/practical-advice/schengen-visa-residence-permits/do-i-need-a-visa.html> (consulted on 5 January 2009). For additional information, see Regulations (EC) No. 539/2001 and No. 1932/2006).

¹⁶⁶ Art. 7 FPG.

¹⁶⁷ Art. 23 FPG.

constitutes a threat to public interest or if a ground for refusal is given by another Schengen State.¹⁶⁸

The most important reasons for refusal are the lack of travel documents, public interest (missing health insurance, lack of financial means), an upright residence ban, indications of organised crime activities or an indication of the person seeking illegal employment.¹⁶⁹ The competent authorities are not obliged to provide a justification for negative decisions; this is only foreseen in case of favoured third-country nationals who are dependents of EU citizens.¹⁷⁰

The following table provides a short overview of the different visas:¹⁷¹ Visa A to C are the so-called “Schengen Visa” based on the Schengen Convention,¹⁷² while Visa D and C+D constitute the national visa, valid only in Austria.

Table 2: Overview of the different types of visas.

Visa	Name	Entitlements
Visa A	airport transit visa (Flugtransitvisum)	entitles to wait for a connecting flight in the transit area of an Austrian airport
Visa B	transit visa (Durchreisevisum)	entitles to go through the Austrian territory and the Schengen Area within a period of five days
Visa C	tourist visa (Reisevisum)	entitles to a short-run stay up to three months in Austria and in all Schengen Area
Visa D	long-run stay visa (Aufenthaltsvisum)	entitles to a long-run stay in Austria, up to six months, but <u>only</u> in Austria
Visa C+D		entitles to a long-run stay in Austria up to six months and to a short-run stay in another Schengen Area Member State up to three months entitles to work for 6 months (e.g. seasonal workers)

Source: Own Scheme.

According to the consular statistics of the Austrian Ministry for European and International Affairs, in 2007, 409.825 visas were issued at Austrian authorities abroad.

d) Remedy: In case of a negative decision there is no ordinary legal remedy; the applicant can only file an extraordinary remedy at the **Administrative Court** (Verwaltungsgerichtshof) or at the **Constitutional Court** (Verfassungsgerichtshof).¹⁷³

¹⁶⁸ Art. 21 FPG.

¹⁶⁹ Idem. in connection with Art 25 FPG.

¹⁷⁰ Art. 11 (4) FPG.

¹⁷¹ Art. 20 FPG.

¹⁷² Convention implementing the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders, 2005.

e) *Renewal*: Generally, visas cannot be renewed;¹⁷⁴ however, a new visa application can be filed upon the expiration of the former visa. Nevertheless, according to the jurisdiction of the Administrative Court this cannot lead to a permanent residence in Austria. On the contrary, such practices are considered illegal, reiterating that several short stays only serve to elude the necessity of owning a residence permit are illegitimate.¹⁷⁵

Border control

Since 21 December 2007 Austria has external Schengen border only with Lichtenstein, furthermore there are border posts at the International Airports.

a) *Legal basis*: Provisions concerning border control are laid down in the Border Control Act (Grenzkontrollgesetz, GrekoG), while regulations concerning rejection at the border and deportation are regulated by the Aliens' Police Act.

b) *Institutions*: According to the Border Control Act **organs of the public security service**, (Öffentliche Sicherheitsorgane) in other words border police, are in charge of border control.¹⁷⁶ Despite the abolition of the internal borders between Austria and its neighbours, for the time being, the border police remains in the border area. Additionally, recruits of the **Austrian Federal Army** (Österreichisches Bundesheer, BH) continue to assist the work of the organs of the public security. About 1,500 recruits in rotation spend six weeks of their military service supporting the Federal Police by controlling the east Austrian borders. These measures are implemented in order to ensure a smooth change to the new security system.¹⁷⁷

Organs of the public security service are entitled to *reject* (zurückweisen) third-country nationals who try to cross the border irregularly.¹⁷⁸ Moreover, a third-country national can be rejected at border points, if she/he is not in possession of a valid travel document - and a valid visa when necessary -, a residence ban (Aufenthaltsverbot) has been issued against her/him in Austria or in any other Schengen State, for interests of public order and security or for suspected illegal employment, human trafficking, smuggling or indigence. In 2007, according to the statistics of the Ministry of the Interior, 612 persons have been rejected. Rejection is not possible if the third-country national has already crossed the border crossing post or due to the

¹⁷³ Art. 9 (3) FPG, see also Schumacher/ Peyrl 2007: 31.

¹⁷⁴ Art. 21 (2) FPG.

¹⁷⁵ VwGH, GZ 94/18/0258, 01 June 1994.

¹⁷⁶ Art 12 in connection with Art. 8 FPG.

¹⁷⁷ Federal Ministry of the Interior, Die Grenzen fallen. Die Freiheit gewinnt. Die Sicherheit bleibt. Available at: http://www.bmi.gv.at/downloadarea/Folder_Schengen.pdf (consulted on 11 March 2009).

¹⁷⁹ Art. 41 FPG.

principle of non-refoulement.¹⁷⁹ Within 7 days after irregular entry, third-country nationals can be *deported* (zurückschieben) from Austria without launching a return procedure.¹⁸⁰ In 2007, this was the case for 1,700 persons.¹⁸¹

c) Remedy: In terms of legal remedy the **Independent Administrative Senate** (Unabhängiger Verwaltungssenat, UVS) is the competent authority to decide on complaints against a rejection order.¹⁸²

Are there any organisations dealing with illegally-resident persons (who never gained legal entry)?

In Austria there are only limited possibilities to legalize the residence if the third-country national has entered Austria irregularly or if the third-country national remained in the country beyond the period for which entry was granted. Additionally, aiding and abetting irregularly resident persons is also punishable under Art. 115 Aliens' Police Act. Consequently, the number of organisations dealing with irregular persons is limited.

Third-country nationals who entered Austria irregularly can file an application for international protection, and in cases of a positive asylum decision they can attain a legal status.¹⁸³ In every other case, or if the asylum application is rejected, the third-country national can receive a settlement or residence permit for humanitarian reasons.¹⁸⁴ Permits for humanitarian grounds are granted *ex officio* with the consequence that there is no possibility for the concerned person to file an application him/herself; only the competent authority, the **Governor** of the respective Province, can initiate the process of granting a permit for

¹⁷⁹ Art. 50 FPG. The principle of non-refoulement involves situations if there are good reasons to believe that the life or the personal integrity of the third-country national will be endangered in the country of origin according to Art. 2 or 3 ECHR or if he or she is “for reasons of race, religion, nationality, membership of a particular social group or political opinion, [and] is outside the country of his [or her] nationality and is unable, or owing to such fear, is unwilling to avail himself [or herself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it”.

¹⁸⁰ Art. 45 FPG. For further details on return procedure please confer to Chapter 4.1.5.

¹⁸¹ Austrian Ministry of the Interior, Fremdenstatistik 2007.

¹⁸² The UVS are organised as independent administrative authorities that are considered as tribunals according to Art. 6 ECHR (European Convention of Human Rights) and Art. 234 of the EGV. UVS are set up in every Province and beyond issues concerning the Aliens' Police Act, they decide about a wide range of administrative measures.

¹⁸³ Art. 3 AsylG.

¹⁸⁴ Art. 72 NAG. Please note that the current legislation on residence and settlement permits is under review. In June 2008 the Constitutional Court declared parts of the provision unconstitutional. (VfGH, Case G246/07, 27 June 2008).

humanitarian reasons.¹⁸⁵ Additionally, the granting of permits for humanitarian reasons has to be approved by the **Minister of the Interior**.¹⁸⁶

The same applies for illegally-resident victims of human trafficking: a settlement or residence permit can be issued for humanitarian purposes if the personal situation of the victim requires regardless of cooperation with the authorities, for example if the person is particularly vulnerable¹⁸⁷ Additionally, a reflection period of 30 days has to be granted, during which the victim can decide whether he/she wants to cooperate with the authorities.¹⁸⁸ During the reflection period the presumed victim may not be expelled or deported from Austria. Additionally, an NGO, **LEFÖ - Counselling, Education and Support for Migrant Women/Intervention Centre for Women affected by trafficking**, offers emergency shelter, health care, psychological and legal support. This NGO is the nationally recognised victim support agency for women and girls affected by human trafficking since 1998 and is funded by the **Federal Ministry of the Interior** and the **Federal Chancellery**.¹⁸⁹ There are no similar institutions for male victims of trafficking.

4.1.1.2 Asylum

What actors are involved to manage this phase of migration?

In Austria the asylum process is divided into two phases. Phase one is the admission procedure where the competence of Austria is clarified, phase two is the actual asylum procedure where it is decided whether the asylum seeker can receive asylum according to the Geneva Convention on Refugees or subsidiary protection status. The actors involved in the admission procedure are described here, while the institutions responsible for the actual asylum procedure and admission to Austria are detailed in the following section on Admission Conditions.

¹⁸⁵ Art. 3 NAG.

¹⁸⁶ Art. 75 NAG.

¹⁸⁷ Regierungsvorlage Übereinkommen des Europarats zur Bekämpfung des Menschenhandels, Beilagen zum Staatsvertrag, p.16. 1565 der Beilagen zu den Stenographischen Protokollen des Nationalrates XXII. GP Regierungsvorlage Übereinkommen des Europarats zur Bekämpfung des Menschenhandels. The current legislation concerning humanitarian residence is under review. In June 2008 the Constitutional Court declared parts of the provision unconstitutional. (VfGH, Case G246/07, 27 June 2008).

¹⁸⁸ Erlass des Bundesministeriums für Inneres betreffend Umsetzung des Abkommens des Europarats "Council of Europe Convention on Action against Trafficking in Human Beings", BMI-FW1700/0090-III/4/2005, 4 July 2005.

¹⁸⁹ Planitzer 2007: 110.

According to the Austrian Asylum Act, an application for asylum¹⁹⁰ can be filed exclusively in Austria. In total, 11.921 asylum applications have been filed in 2007, presenting a decrease of 11% compared to 2006 when 13.349 were registered.¹⁹¹

Since most asylum seekers arrive from countries for which a visa requirement is in force,¹⁹² the first step is/would be to apply for a visa in the country of residence. Concerning visa regulations, the same rules apply for asylum seekers as for every other third-country national described in the previous chapter. Due to the difficulty of obtaining a visa, *de facto*, most asylum applicants enter Austria illegally in a technical sense.¹⁹³

a) Institutions and admission procedure: A peculiarity of the admission procedure is that a distinction is made between *filing* (Antragsstellung) and *submission* (Einbringung des Antrages) of the asylum application. **Organs of the public security service** are the competent authorities to receive applications for asylum.¹⁹⁴ An application can be filed informally: an application for asylum is considered as filed as soon as an asylum seeker has notified his/her intention to seek protection in Austria against persecution. At the same time the submission of an asylum application is only possible at one of the **Initial Reception Centres**, to which all asylum seekers are transferred after having *filed* an application for asylum.

The **Initial Reception Centres** are the competent authorities to lead the admission procedure and to decide on the competence of Austria.¹⁹⁵ An application can be rejected according to the provision of the Dublin II Regulation if another EU Member State is competent to lead the admission procedure, according to the safe-third-country concept.¹⁹⁶ The **Initial Reception Centres** are managed by the **Federal Asylum Office**, which is part of the Ministry of the Interior. In 2003, the Ministry of the Interior signed a service provider contract with a private

¹⁹⁰ According to the Council Directive 2004/83/EC the application for asylum is defined as application for international protection which also includes the application for subsidiary protection. However for the reason of practicality in this study the term application for asylum is used for application for international protection.

¹⁹¹ Austrian Ministry of the Interior, Asylstatistik 2007.

¹⁹² According to the figures of the Austrian Ministry of the Interior, in 2007, most asylum seekers originated from the Russian Federation (2,676), Serbia (1,760), Afghanistan (761), Turkey (659), Moldova (545) and Iraq (472). See also Schumacher and Peyrl, 2007: 191.

¹⁹³ Peyrl/Schumacher, 2007: 22 and 191.

¹⁹⁴ Art 17 AsylG. An asylum seeker enjoys from the very first moment a *de facto* protection against deportation, meaning that he or she cannot be deported before the end of the asylum process. However, the only fact to file the application is not sufficient. Indeed, the application must be submitted at a First Reception Centre.

¹⁹⁵ Art 58 AsylG.

¹⁹⁶ The safe third country concept is based on similar principles as the Dublin Regulation. Safe third countries are countries where a procedure for the granting of refugee status in accordance with the Geneva Convention on Refugees is available and a third-country national is not exposed to danger of life or personal integrity. Since the Accession of the neighbouring countries to the European Union, such as Slovenia, Hungary and Slovakia and the Czech Republic, the relevance of this provision is limited. (Schumacher and Peyrl, 2007: 195.)

company called European Homecare which is in charge of the care of asylum seekers in the national reception centres.¹⁹⁷ Together there are three initial reception centres in Austria:

- The Initial Reception Centre in Traiskirchen (Lower Austria)
- The Initial Reception Centre in Thalham (Upper Austria)
- The Airport Reception Centre (Flughafen Schwechat).

Organs of the public security service at the Initial Reception Centre are entitled to establish the applicant's identity.¹⁹⁸ This can include the scanning of finger prints, age assessment, the inspection of clothing and belongings in order to secure documents or objects which could attest the identity, the identification of the motivation for escaping, and the travel route. At this stage of the asylum procedure the asylum seekers are primarily interrogated on their identity and their travel route.¹⁹⁹ Within 20 days the asylum seeker receives a notification whether he/she is admitted to the actual asylum procedure.²⁰⁰ In case of the introduction of a consultation procedure according to the Dublin Regulation (343/2003/EC), this period can be extended up to six months.

Particularities exist for **airport arrivals**: When an asylum seeker arrives at an airport in which there is an initial reception centre (which is only the case at Schwechat Airport-Vienna), the admission procedure takes place immediately at the airport. Thus the asylum seeker is not allowed to leave the transit area and enter the Austrian territory unless the Federal Asylum Office gives approval.²⁰¹ The purpose of such disposal is to make sure that asylum seekers arriving in Austria by plane only enter the country if their asylum application has a solid chance to be confirmed.²⁰² In case of a negative decision a deportation order can only be issued after consultation with and approval of the **United Nations High Commissioner for Refugees** (UNHCR). Appeals are dealt with by the Asylum Court.

b) Other actors: i) UNHCR Beyond the specific competences in cases of the airport procedure the **UNHCR** has a broader monitoring function in the asylum procedure:²⁰³ every asylum seeker has the right to recourse to the UNHCR, and the UNHCR has to be notified without delay of the initiation of any procedure relating to an application for international protection;

¹⁹⁷ Cf. European Homecare, available at: <http://www.eu-homecare.com/at/unternehmen/unternehmen.htm> (consulted on 15 December 2008).

¹⁹⁸ Art. 44 AsylG.

¹⁹⁹ Art. 19. AsylG

²⁰⁰ Art. 12 AsylG.

²⁰¹ Art. 31 AsylG.

²⁰² Putzer/Rohrböck 2007: 197.

²⁰³ Art. 63 AsylG.

if a procedure is conducted against an asylum seeker with a view to rejection at the border, forcible return or expulsion or to the imposition of a residence ban, deportation order or asylum status withdrawal ruling. Moreover, the UNHCR has the right to request information, examine case records, be present at interrogations, interviews and oral hearings, and enter into contact with the persons concerned at any time.

ii) Legal advisor: A **legal advisor**²⁰⁴ or a person of trust assists asylum seekers during the admission procedure; in particular, he or she can be present at interrogation. A legal advisor is a legally trained person²⁰⁵ or lawyer with specific knowledge in the areas of asylum law and laws relating to foreigners. Legal advisors are funded by the Federal State - they are not subordinated to any authority, and are subject to bureau discretion (Amtsverschwiegenheit).

iii) Institutions involved in the basic care: Regarding the care for asylum seekers, the Federal Government of Austria has signed a Basic Welfare Support Agreement²⁰⁶ with the provincial governments which regulates the competencies and provisions of temporarily granted basic welfare support to asylum seekers, persons entitled to asylum, displaced persons and persons who may not be deported. Basic care involves the following benefits and services: accommodation, boarding, medical examination and health care, monthly pocket money, information and counselling concerning voluntary return, clothing, travel cost, schooling, costs of burial, etc.²⁰⁷ During the admission procedure the Federal State is responsible for the basic care, while in later stages of the asylum procedure the Provinces are the competent authorities to provide housing, pocket money, medical insurance, etc.

The Basic Welfare Support Agreement standardized the fragmented maintenance and basic welfare support; nevertheless the Provinces have implemented the Agreement differently. Therefore the target groups, who can receive basic care as well as the services which are provided, can vary in the different Provinces.²⁰⁸

²⁰⁴ Art. 64 AsylG.

²⁰⁵ A legally trained person is someone who has been engaged for at least five years on a full-time and continuous basis to provide legal advice on asylum matters in a religious or private organisation. Art. 65 AsylG.

²⁰⁶ Art. 15a B-VG.

²⁰⁷ Art. 6 Basic Care Agreement (Grundversorgungsvereinbarung, GVV).

²⁰⁹ In most of the Provinces separate basic Welfare Acts have been adopted.

4.1.2 Admission Conditions

Who assesses an application? Is it the same organisation for all categories of third-country nationals (i.e. people seeking refuge (asylum), unaccompanied minors, for labour, people who want to stay with family or want to study). Are there any other organisations involved? Are there any integration measures as prerequisites for admission?

4.1.2.1 Migration

This section deals with the admission conditions for third-country nationals. In the first section, the most important institutions involved in the assessment of the applications are described, in the second section the conditions for entry are briefly outlined, while the third subsection focuses on the system of the different permits. Due to the differentiated procedure a separate section deals with the admission of key employees. Finally, the integration measures required for third-country nationals are highlighted.

Who assesses an application?

In Austria, no specific immigration office exists for foreign nationals. Due to the distribution of competencies between the Federal State and the Provinces, the legislation in the field of migration belongs to the competence of the Federal State; while the execution of the same laws is carried out by the Provinces on behalf of the Federal State (mittelbare Bundesverwaltung).²⁰⁹

a) Institutions: Generally, the first application for a residence title (residence or settlement permit)²¹⁰ has to be filed at the **Austrian diplomatic authority abroad** in the country of origin.²¹¹ An application in Austria is only possible if the person concerned is entitled to visa-free entry,²¹² and/or is a family member of an EEA or Swiss national, provided that he or she has entered Austria regularly.²¹³ Even in these cases, however, the application in Austria does not automatically mean a right to residence beyond the period of a visa-free stay, which

²⁰⁹ Bachmann 2008: 85.

²¹⁰ In Austria distinction is made between **settlement** (Niederlassung) and **residence** (Aufenthalt). A residence permit (Art. 58 f) is a residence title which allows third-country nationals a temporary stay without the aim of permanent settlement. On the contrary, permanent settlement permits (Art. 41 f) are construed for a duration of stay in Austria for more than six months, when the aim for permanent settlement is given (e.g. key workers (Schlüsselarbeitskräfte)). Only issued settlement permits – but not residence permits – might then lead to achieving Austrian citizenship.

²¹¹ Art. 3 (3) NAG.

²¹² Art. 21 (2 (5)) NAG.

²¹³ Art. 21 (2) NAG. Please note that according to the recent case-law of the European Court of Justice (Sahin vs. Austria, C-551/07) the way of entry (regularly or irregularly) is irrelevant.

usually amounts to three months.²¹⁴ In 2007, 46,767 first applications for residence titles were filed.²¹⁵

The competent authority for decisions on applications for all kinds of residence and settlement permits is the **provincial governor** in which Province the applicant intends to reside. In practice the decision is mandated to the local **Regional Administrative Authorities** (Bezirksverwaltungsbehörde, BVB): **Municipalities** (Magistrate) or **District Commissions** (Bezirkshauptmannschaft), in Vienna the Municipal Department 35, Immigration, Citizenship, and Registry Offices performs this task.²¹⁶ The substantial decision is taken by the Governor or the mandated Regional Administrative Authorities,²¹⁷ the authorities abroad are only entitled to examine the applications with regard to the fulfilment of the formal conditions.²¹⁸

b) Remedy: The **Minister of the Interior** serves as second instance, and decides on appeals against decisions taken by the provincial governor or by the mandated administrative authorities.²¹⁹ Against decisions of the Minister of the Interior the applicant has the right for an extraordinary remedy to the **Administrative Court**,²²⁰ if the decision was unlawful or to the **Constitutional Court** if the decision has violated constitutional rights.²²¹

Decisions concerning residence and settlement permits have to be taken within six months.²²² If the authority does not decide within this time frame, the applicant has the right to a special remedy, so-called devolution remedy; in this case the competence devolves to the second instance. However, if the quotas for a certain category are already exhausted, the period for the decision making can be prolonged until a quota place is available.

c) Conditions: The residence title can be granted to third-country nationals if no ground for refusal exist, such as: a residence ban of Austria or any other EU member state, an expulsion order within the last 12 months, a proven marriage or adoption of convenience, the third-country national has exceeded the period of visa-free entry or the residence permitted, or conviction for evasion of the border control or illegal entry. Additionally, the following so-

²¹⁴ Art. 24 (4) NAG.

²¹⁵ Austrian Ministry of the Interior, Fremdenstatistik 2007.

²¹⁶ Stadt Wien, available at:

<http://www.wien.gv.at/verwaltung/personenwesen/einwanderung/aufenthalt/zustaendigkeit.html> (consulted on 2 December 2008).

²¹⁷ Please confer to Scheme 1 in Annex 1.

²¹⁸ IOM, Comparative Study of the laws in the EU Member States for Legal Migration including an assessment of the conditions and formalities imposed by each member state for newcomers, 2008, 134.

²¹⁹ Art. 3 NAG.

²²⁰ Art. 130 B-VG.

²²¹ Art. 144 B-VG.

²²² Art. 73 AVG.

called “general” requirements are fulfilled: no threat to public interests, proof of accommodation according to Austrian standards, medical insurance, proof of sufficient financial means (i.e. a declaration of liability) and the foreigner’s residence does not harm the relations between Austria and another State or international subject.²²³

An important characteristic of the Austrian immigration system is the quota regulation. In addition to the preliminary conditions the majority of applications for first settlement permits are subject to quota regulations. The quota regulation limits the purposes and the maximum number of third-country nationals that can receive a residence/settlement permit annually. The total quota for 2007 has been set at 6,500 persons, for 2008 that quota has been 8,050.

These quotas are determined annually by the **Federal Government** upon the proposal of the **Minister of the Interior** in a Settlement Regulation (Niederlassungsverordnung, NLV)²²⁴ after consultation with various Austrian stakeholders from the labour and housing market. In addition to the quota for settlement permits, the Settlement Regulation also contains the maximum number of short-term employed foreign nationals as well as agricultural helpers according to Art. 5 Aliens’ Employment Act (Ausländerbeschäftigungsgesetz, AuslBG).²²⁵

The following table illustrates the exhaustion of the quotas in 2007:

Category	Fixed Quota	Titles granted	Exhaustion rate
Settlement permit- key-employee (employed) and their dependents	1.790	1.353	75,6%
Settlement permit- key-employees (self-employed)	145	40	27,6%
Family reunification	4.540	4.081	89,9%
Settlement permit- private purposes	140	107	76,4%
Residence title-EC long term (employed)	65	14	21,5%
Residence title-EC long term (unemployed)	50	4	8,0%
Residence title-EC long term (private purposes)	50	0	0,0%
Change of settlement permit ²²⁶	90	73	81,1%

As a consequence to the transposition of the EU Directive 2004/38/EC dependents of EEA and Swiss citizens who enjoy freedom of movement do not have to fulfil the general conditions described above, and are also not subject to the quota restrictions - upon

²²³ Art. 11 NAG.

²²⁴ Art. 13 NAG.

²²⁵ NLV 2007, in conjunction with Art. 13 NAG.

²²⁶ Third-country nationals holding a “settlement permit – relative” and wish to change their settlement permit to “settlement permit – restricted”.

application they are issued a “long-term residence card” valid for 10 years.²²⁷ A “long-term residence card” is only a documentation of residence permit as such is not foreseen.

d) Settlement and resident titles

Due to the implementation of the EU Directives in the field of migration, and the given structure of settlement and residence permits in Austria, five different levels of permits can be identified: settlement permits, residence permits, residence title “family member”, residence title “EC long term”, residence title “EC long-term family member”.²²⁸ The following table illustrates the settlement permits which can be granted to third-country nationals who intend long-term establishment in Austria depending on the purpose of stay.

Settlement	Quota	Entitlements
Settlement permit – key employee (Art. 41 NAG)	Yes	Entitles to limited settlement and to certain employment
Settlement permit – private purpose (Art. 42 NAG)	Yes	Entitles to limited settlement, employment is not possible
Settlement permit – unrestricted (Art. 43 NAG)	Yes	Entitles to limited settlement and provides free access to the labour market Granted for person with settlement permit – key employee after a period of 18 months
Settlement permit – restricted (Art. 44 NAG)	Yes	Entitles to limited settlement and employment in a self-employed capacity or with a work permit according to Art. 17 Aliens Employment Act
Settlement permit – relative (Art. 47 NAG)	No	Granted for family members of EEA and Swiss nationals if they are not enjoying their right to free movement. ²²⁹ Entitles to a limited settlement without pursuing an occupation

After five years of residence, third-country nationals can apply for the residence title “EC long term”,²³⁰ which grants an unlimited stay in Austria, provided that he or she has fulfilled the Integration Agreement. Third-country nationals holding the settlement title “EC long term” of another Member State can apply for a settlement permit restricted or private

²²⁷ Art. 9 and 54 NAG. Art. 54 NAG refers only to cases of family **reunification**, thus to cases where the family ties already existed prior to the settlement in Austria. However, in the light of the most recent cases of the European Court of Justice (C—127/08 *Metock and others vs. Ireland* and C-551/07 *Sahin vs. Austria*) these provisions also apply for cases of family **formation**, e.g. when an EEA or Swiss national, who is enjoying his/her right to freedom of movement marries a third-country national in Austria.

²²⁸ Until June 2008 residence and settlement permits could be also granted for humanitarian purposes, even if the general requirements were not fulfilled. (Art.72 NAG) Humanitarian purposes involves situations where the third-country national cannot be expelled due to the principle of non-refoulement, or where the third-country national is a victim of human trafficking. However this provision is currently under review, the Constitutional Court has declared the provision unconstitutional because the residence and settlement permits were issued *ex officio* and the persons concerned had not right to file an application. (VfGH, Case G246/07, 27 June 2008).

²²⁹ This provision primarily applies to family members of Austrian nationals.

²³⁰ Art. 45 NAG.

purposes provided in every case that a quota place is available.²³¹ Upon one year of settlement, the settlement permit “unrestricted” can be granted.²³²

Distinction has to be drawn between settlement permits described above and short-term residence permit which allows a temporary stay without the aim of permanent settlement. Short-term residence permit can be granted for the following categories: rotational workers, business envoys, independents, artists, pupils, students, social service workers, researchers and their family members as well as for humanitarian purposes.²³³

e) Family reunification: The residence titles for family members are already covered by the previous section, however in the interest of comprehensibility they are separately described here. Firstly, i) the different titles for family members of third-country nationals are highlighted; secondly, ii) a few additional remarks are made concerning the conditions for family reunification if the sponsor is EEA or Swiss national.

i) Third-country nationals: Depending on the legal status of the sponsor, family members can receive different residence permits.²³⁴ The settlement permits issued to family members of third-country nationals are also subject to quota restrictions.²³⁵ However, in cases that the quota places in a certain year are exhausted, the competent authority must postpone the decision until a quota place becomes available, provided that every other condition is fulfilled. After three years waiting period, the family member shall receive a residence title regardless a quota place.²³⁶ The definition of family member, provided by Art. 2 (9) NAG, encompasses the nuclear family and defined as spouse, unmarried minor children, including adopted and step-children; parents and siblings are not included. The following table illustrates which settlement permits family members of third-country nationals can receive depending on the settlement title of the sponsor. The system of the different settlement permits is very complicated; therefore the table provides only a simplified overview:

²³¹ Art. 49 NAG.

²³² Idem.

²³³ Art. 58-69 NAG.

²³⁴ Art. 46 NAG.

²³⁵ Idem.

²³⁷ Art. 12 (7) NAG.

Table 3: Overview of Settlement Permits issued in Austria

Settlement Permit - Sponsor	Settlement Permit – Family Member
Settlement permit – key employee	Settlement permit – restricted
Settlement permit - restricted	Settlement permit – private purpose
Settlement permit – private purpose	Settlement permit – private purpose
“long-term resident – EC”, “settlement permit – unrestricted”, “settlement permit – private purpose”, refugee status	Settlement permit – restricted Settlement permit – unrestricted (after 1 year)
Settlement permit - relative	Settlement permit – restricted
Residence title – EC long term of another Member State	Settlement permit – private purpose or Settlement permit – restricted ²³⁷

Source: own scheme.

Additionally family members, who have been entitled to a settlement permit for five years can be granted a residence title “EC long term – family member”.

ii) *EEA and Swiss citizens*: As a consequence of the transposition of the EU Directive 2004/38/EC, specific provisions apply for family members of EU and Swiss citizens, if they are permanently residing in Austria; and if they are enjoying their right to free movement:²³⁸ they are exempted from the quota regulations and they do not need to fulfil the general requirements described above. Merely the proof of family ties is sufficient. Upon application they are issued a “long-term residence card”.

The benefits of the EU Directive 2004/38/EC, do not apply for family members of Austrian nationals who are not enjoying their freedom of movement. Consequently, the family member has to fulfil the general requirements for a residence or settlement permit. For these family members a residence title “family member” or a “settlement permit – relative” can be issued.²³⁹

Provided that the sponsor is from the EEA or is a Swiss national, and in cases beyond the nuclear family, a quota-free “settlement permit – relative” can be issued to first-degree relatives in the ascending line of the sponsor or the spouse of the sponsor,

²³⁷ If the marriage with the third-country national existed prior to the settlement.

²³⁸ Art. 56 NAG.

²³⁹ Art. 47 NAG.

unmarried partners and certain other relatives under specific conditions, provided that they receive financial support from the sponsor.²⁴⁰

Is it the same organisation for all categories of third-country nationals (i.e. people seeking for labour, people who want to stay with family or want to study)?

It is the same organisation; however, procedural differences exist for the issuance of the settlement permit – key employees (“One-stop-shop procedure”). Key employees²⁴¹ are third-country nationals who possess a specific vocational qualification or experience which is in demand on the Austrian labour market and earn as gross monthly salary 60% of the highest contributory amount according to Art. 108 Work and Social Insurance Act (Arbeits- und Sozialversicherungsgesetz, ASVG), in 2008 this amounted to € 2358,00. Furthermore one of the following criteria has to be fulfilled: the intended employment serves economic interests that go beyond those of the business; the intended employment contributes to the creation of new jobs or the securing of existing jobs; the migrant worker holds a key position with regard to the management of the business/enterprise; the intended employment includes a transfer of investment capital to Austria or the labour migrant holds an academic degree. Graduates of Austrian universities and colleges of higher education can be issued a settlement permit - key employer if they meet the general requirements for a settlement permit. However, they are not subject to quota restrictions.

In cases of key employees, the competent **Municipality** (Magistrat) or **District Commission** (Bundeshauptmannschaft) and the competent **Public Employment Service** (Arbeitsmarktservice, AMS)²⁴² decides in a joint procedure whether the third-country national can be considered a key employee, provided that all other requirements are met, in particular, that a specific workspace is already available. The settlement permit simultaneously serves as a work permit.

The aim of this provision is to increase location attractiveness of Austria and to attract high-skilled workers and to prevent emigration of highly-skilled graduates.²⁴³

²⁴⁰ Art. 56 NAG.

²⁴¹ Art. 41 NAG.

²⁴² For further details on the competencies and function of the Public Employment Service please confer to section 4.1.4.1.

²⁴³ RV zu BGBl I 100/2005, see also Hauer and Keplinger, 2008: 341.

Are there any integration measures as prerequisites for admission?

There are no integration measures as prerequisites for admission; however third-country nationals who wish to settle in Austria have to sign a so-called “Integration Agreement”.²⁴⁴ The obligation arises with the grant of the first or extended settlement permit and has to be fulfilled within five years.²⁴⁵

a) Integration Agreement: The Integration Agreement consists of two modules: a first module focusing on the “acquisition of the ability to read and write” (75h) and a second module providing a German language course (300h) in order to be enabled to participate in the social, economic and cultural life in Austria. The final exam has to be passed within five years after the issuance of the residence title.²⁴⁶

Minors, elderly persons (depending on age or state of health) are exempted from the Integration Agreement. Furthermore, third-country nationals can be exempted if they file a written resignation for a prolongation of the residence permit (such is possible, if residence will not exceed 12 months within a period of 24 months). Additionally, the Integration Agreement is considered to be fulfilled by proving a sufficient knowledge of German, by attending a public school in Austria for at least five years, including a positive completion of the subject “German language”, or by passing the final apprenticeship examination in accordance with the law on vocational education or with the positive completion of the subject “German language” at a school abroad, etc.²⁴⁷

b) Costs: While the costs for module 1 are borne by the Federal State, if it is completed within one year, the cost for module 2 have to be borne by the third-country national. Only in cases of family dependents of Austrian, EEA or Swiss citizens are 50% of the costs covered by the Federal State. In every other case the costs are borne by the third-country national.

c) Institutions: The Austrian Integration Fund is in charge of certifying institutions that can provide language courses which are foreseen in the Integration Agreement.

²⁴⁴ Art. 14 NAG.

²⁴⁵ Art. 11 NAG. The provision concerning integration does not apply for family member of EEA and Swiss nationals.

²⁴⁶ Art. 14 NAG.

²⁴⁷ Idem.

4.1.2.2 *Asylum*

The following section provides an overview of the relevant actors and the procedures in the second phase of the asylum procedure, after the admission procedure.

a) Institutions: The **Federal Asylum Office**²⁴⁸ (Bundesasylamt, BAA) is responsible for the second phase of the asylum procedure.²⁴⁹ The Federal Asylum Office is headquartered in Vienna and has six further branch offices in the Provinces.

Following the admission procedure, the Federal Asylum Office²⁵⁰ examines whether the asylum seeker is to be considered as a refugee under the Geneva Convention on Refugees or entitled to subsidiary protection or if the application has to be rejected. The interrogation of the asylum seeker plays a central role in the first instance procedure. Additionally, the **Country of Origin Information Unit** (Staatendokumentation)²⁵¹ assists the Federal Asylum Office by collecting up-to-date information concerning third countries. This information primarily serves the evaluation of the applications in order to verify the reliability and credibility of asylum seeker statements or to evaluate if a third country can be considered as safe within the meaning of Art. 39 of the Asylum Act. In 2007, 5,112 decisions (2,500 positive and 2,612 negative) have been taken at the first instance.²⁵²

b) Remedy: Since 1 July 2008, appeals against decisions of the Federal Asylum Office are dealt with by the **Asylum Court** (Asylgerichtshof).²⁵³ The members of the Asylum Court are appointed by the Federal President on the proposal of the Federal Government. Generally, cases and applications are tackled by single judges or a panel of two judges. However, in exceptional cases, the panel can be enlarged to five judges.²⁵⁴

Furthermore, the **Constitutional Court** (Verfassungsgerichtshof) has the competence to review decisions of the Asylum Court, if fundamental rights of the applicant are potentially violated.²⁵⁵ Beyond that, the Ministry of the Interior or the Asylum Court can call upon the

²⁴⁸ Art. 58 AsylG.

²⁴⁹ General Directors' Immigration Services Conference, available at: [http://www.gdisc.org/index.php?id=174&no_cache=1&tx_gdiscdb_pi3\[showUid\]=32](http://www.gdisc.org/index.php?id=174&no_cache=1&tx_gdiscdb_pi3[showUid]=32) (visited on 15 December 2008).

²⁵⁰ Art. 58 AsylG.

²⁵¹ Art. 42 AsylG.

²⁵² Austrian Ministry of the Interior, Asylstatistik 2007.

²⁵³ Art. 61 AsylG.

²⁵⁴ Idem.

²⁵⁵ Since July 2008, the establishment of the Asylum Court, an appeal cannot be lodged before the Administrative Court (Verwaltungsgerichtshof) anymore. Until then the Administrative Court was responsible to decide on merits regarding administrative rules.

Administrative Court (Verwaltungsgerichtshof) to decide on issues of basic principle.²⁵⁶ Since 1 July 2008, filing an individual application on the part of the asylum applicant is no longer possible.

c) Family Procedure: Family members of persons with asylum status or subsidiary protection status can file an asylum application for international protection at the **diplomatic authorities abroad**. Such an application is deemed to be an application for the same protection as the sponsor. The asylum status/subsidiary protection status has to be granted if it is not possible to continue an existing family life with the family member in another country, within the meaning of article 8 of the European Convention on Human Rights.²⁵⁷

d) Other actors: **Refugee Advisors** (Flüchtlingsberater)²⁵⁸ assist asylum seekers during the second part of asylum procedure.²⁵⁹ Their responsibilities encompass legal questions concerning the asylum application, the stay in Austria and information on voluntary return. Similarly, as legal advisors in the admission procedure, refugee advisors are assigned by the Ministry of the Interior. In practice, beyond that, a number of NGOs and church institutions provide legal assistance to asylum seekers on a voluntary basis.

Is it the same organisation for all categories of third-country nationals (i.e. people seeking refuge (asylum), unaccompanied minors)?

It is the same organisation for all categories of third-country nationals to assess the asylum applications, however following the admission additional actors are involved in the care and representation of unaccompanied minors.

Following the admission procedure, unaccompanied minors²⁶⁰ are assigned to a care centre in the Provinces. With the assignment to the care centres in the Provinces, the legal representation with regard to the asylum procedure is transferred to the locally competent **Youth Welfare Authority** (Jugendwohlfahrtsbehörde).²⁶¹ In many cases the youth welfare authorities are also appointed as guardians for the unaccompanied minors.²⁶² Guardianship

²⁵⁶ Art. 42 AsylG.

²⁵⁷ Art. 34 AsylG.

²⁵⁸ Refugee advisors have to be distinguished from legal advisors in the Initial Reception Centres.

²⁵⁹ Art. 66 AsylG.

²⁶⁰ In 2007, 582 unaccompanied minors (40 under the age of 14, 466 above the age of 14) have been have applied for asylum. (Austrian Ministry of the Interior, Asylstatistik 2007).

²⁶¹ Art. 16 AsylG.

²⁶² Art. 213 Civil Code. Assessment of Kinder- und Jugendanwaltschaft Steiermark and of the NGO asylkoordination Österreich, in the framework of a UNHCR project concerning guardianship in Austria, available at: http://www.asyl.at/umf/umf/guardianship_austria.pdf (consulted on 26 June 2009).

includes care, education, property administration and legal representation, according to the case law of the Highest Court of Austria this goes beyond the services provided in the framework of the basic welfare support for asylum seekers.²⁶³

4.1.3 Legal Residence

Here we mean third-country nationals with a legal residence status of any kind. Are there institutions / organisations that are occupied in any way with this category? Are there different institutions involved for different types of permits? Do third-country nationals have to renew their residence permit? Are there any integration measures as prerequisites for residence, or for gaining citizenship if a legally-residing third-country national would want to opt for citizenship.

The institutions involved in different types of permits were discussed in the previous section. This section focuses on the renewal of different settlement and residence permits, naturalisations and integration measures of recognised refugees.

4.1.3.1 Migration

Do third-country nationals have to renew their residence permit?

a) *Conditions:* Settlement and resident permits have to be renewed.²⁶⁴ Applications have to be filed before the expiration of the last granted permit, thus on the last day of validity, and after six months after the expiration by the latest. After the six month limit, an application is deemed to be a first application with the consequence that the application is subject to the quota system and has to be submitted in the country of origin. In any other case the application for extension entitles a legal stay in Austria, preliminarily, until a decision is taken.²⁶⁵

b) *Institutions:* The competent authority for the decision is the **Governor** (Landeshauptmann); however the decision in the case of renewal is mandated to the local

²⁶³ Art. 144 Civil Code, Koziol/Welser: 2002, 510.

²⁶⁴ Art. 24 NAG. In 2007, a total of 154.688 applications for the prolongation of residence titles have been issued. (Austrian Ministry of the Interior, Asylstatistik 2007).

²⁶⁵ Idem. Please note that the current legislation concerning the renewal of residence title is under review.

Municipalities (Magistrate) or **District Commissions** (Bezirkshauptmannschaften) at the third-country nationals' place of residence.²⁶⁶

Are there any integration measures as prerequisites for residence, or for gaining citizenship if a legally-residing third-country national would want to opt for citizenship?

Concerning integration measures as prerequisites for residence please refer to the integration measures described under section 4.1.2.1.

Additionally, third-country nationals wanting to opt for citizenship have to prove German language skills on level A2 according to the Common European Framework of Reference for Languages (CEFR)²⁶⁷ and a basic knowledge of the democratic system and the history of Austria and of the federal Province where the person concerned has his/her residence.²⁶⁸ The latter varies in the different Provinces.²⁶⁹

Generally, the minimum duration of settlement prior to naturalisation is 10 years.²⁷⁰ Six years settlement is satisfactory *inter alia* for spouses of Austrian nationals, recognised refugees and for third-country nationals born in Austria.²⁷¹

4.1.3.2 Asylum

The legal residence of recognised refugees and foreign nationals with subsidiary protection status is regulated by the respective provisions in the Asylum Act 2005 and Aliens' Police Act 2005. In terms of recognised refugees, the **Regional Administrative Authorities (Bezirksverwaltungsbehörde)** are responsible for the issuance of a so-called Convention Passport.²⁷² Outside of Austria, the passport belongs to the competence of the diplomatic authority abroad. The passport serves as a certificate of refugee status and as a regular passport and is valid for all countries of the world, except the refugee's country of origin.

²⁶⁶ Art. 4 NAG.

²⁶⁷ A2 means that a person "[c]an understand sentences and frequently used expressions related to areas of most immediate relevance (e.g. very basic personal and family information, shopping, local geography, employment). Can communicate in simple and outline tasks requiring a simple and direct exchange of information on familiar and routine matters. Can describe in simple terms aspects of his/her background, immediate environment and matters in areas of immediate need" Council of Europe, http://www.coe.int/T/DG4/Portfolio/documents/Framework_EN.pdf (10 June 2009).

²⁶⁸ Art. 10a StbG.

²⁶⁹ The learning materials are available on the homepage of the Ministry of the Interior, available at: <http://www.bmi.gv.at/staatsbuergerschaftswesen/> (consulted on 12 December 2008).

²⁷⁰ Art. 10 Citizenship Act (Staatsbürgerschaftsgesetz, StbG).

²⁷¹ Art. 11a and 16 Citizenship Act (Staatsbürgerschaftsgesetz, StbG).

²⁷² Art. 94 NAG.

Persons with subsidiary protection status are granted a so-called “Card for persons eligible for subsidiary protection” (Karte für subsidiär Schutzberechtigte).²⁷³

Do third-country nationals have to renew their residence permit?

a) Recognised refugees: Recognised refugees do not have to renew their residence title. However, this should not lead to the conclusion that in every case protection is granted for an unlimited period. On the contrary, the asylum status can be *withdrawn*: a) if a reason for ineligibility for asylum status appears²⁷⁴ (e.g. if the refugee constitutes a danger to national security or if she/he has been convicted for certain crimes, etc.); b) if grounds according to the cessation clauses in article 1, section C, of the Geneva Convention on Refugees have arisen; or c) if the refugee has the centre of his vital interests in another country.²⁷⁵ However, after five years residence the refugee is granted the residence title “EC long term” with the consequence that should her/his refugee status expire, the residence title “EC long term” grants the same rights as before.²⁷⁶

The competent authority for the withdrawal of refugee status is the Federal Asylum Office, while the residence title “EC long term” is issued by the **Municipalities** (Magistrate) or **District Commissions** (Bezirkshauptmannschaften) upon notification of the Federal Asylum Office.

b) Persons with subsidiary protection status: Unlike recognised refugees, **persons with subsidiary protection status** have to renew their residence title annually.²⁷⁷ The residence title can be renewed, if the conditions required for subsidiary protection status continue to exist. The competent authority in these cases is the **Federal Asylum Office**.

Are there any integration measures as prerequisites for residence, or for gaining citizenship if a legally-residing third-country national would want to opt for citizenship?

In terms of integration of recognised refugees the **Austrian Integration Fund** (Integrationsfond) is the leading institution in Austria. The Integration Fund was established in 1960 by UNHCR and the Ministry of the Interior as the “Refugee Fund of the United

²⁷³ Art. 52 AsylG.

²⁷⁴ Art. 6 AsylG.

²⁷⁵ Art. 7 AsylG.

²⁷⁶ Art 45 (5) NAG.

²⁷⁷ Art. 8 AsylG.

Nations”.²⁷⁸ The Integration Fund offers assistance in areas such as housing, job search and language courses. It has four hostels in Vienna, Lower Austria and Upper Austria, which provide accommodation for up to 600 persons and a comprehensive integration programme including support by social workers, language courses and assistance in finding jobs. Furthermore the Integration Fund has approximately 5000 flats that are allocated to recognised refugees.

Beyond housing, the Austrian Integration Fund offers persons entitled to asylum some assistance regarding integration-start-up, mainly in the form of financial subsidies. Furthermore, asylum seekers can be assisted by “mobile integration care”, especially via house calls. A job centre and mentoring can help persons with a migration background with integration into the Austrian job market.²⁷⁹

Concerning citizenship please refer to Section 4.1.3.2.

4.1.4. Access to the Labour Market

What are the conditions for granting third-country nationals access to the labour market, e.g. under what conditions may an asylum applicant take up employment? How are Employment/Work permits issued and by whom?

4.1.4.1 Migration

This section focuses on access to the labour market by third-country nationals. Firstly, it provides a brief overview of the institutional and legal framework. Secondly, it describes the conditions for employment. Due to the given structure of the Austrian migration system in the field of labour and the transposition of various EU directives, the current system of different permits is complex. For the purpose of this study, a distinction is made between third-country nationals who are legally settled in Austria with a residence title which grants access to the labour market and those who need an additional work permit. In the interest of comprehensibility family members are dealt with separately.

²⁷⁸ Austrian Integration Fund, available at: www.integrationsfonds.org. (consulted on 23 December 2009).

²⁷⁹ Idem.

a) *Legal framework:* In Austria the legal framework for the access to the labour market is based on two pillars.²⁸⁰ On the one hand access to the labour market is part of the labour market policy and as such belongs to the competence of the **Federal Minister of Economics and Labour (Bundesminister für Wirtschaft und Arbeit, BMWA)** and the Public Employment Service (Arbeitsmarktservice, AMS). On the other hand, as described above, entry and residence is regulated by the Settlement and Residence Act and the Aliens' Police Act, which falls into the competence of the Minister of the Interior. Although these fields do not primarily regulate work issues, they have an influence on work-related matters.²⁸¹

Therefore, the most important laws in the field of employment are the Aliens' Employment Act and the Settlement and Residence Act. Generally speaking, third-country nationals have access to the labour market if they hold an appropriate permit under the Aliens' Employment Act (e.g. a work permit, exemption certificate, confirmation of free movement) or if they are granted free access under the Settlement and Residence Act (e.g. proof of settlement, "long-term resident", EC residence permit, etc.).

Immigration to Austria simply for the purpose of work is considered to be difficult,²⁸² particularly, because the Settlement and Residence Act envisages an immigration quota only for key employees, and seasonal workers, not for non-skilled or simply qualified employees.²⁸³

b) How are Employment/Work permits issued and by whom?

The central institution for employment of third-country nationals is the **Public Employment Service**. The Public Employment Service is a State agency, established primarily to assist unemployed persons by providing counselling, information, qualification and financial support. In the field of migration, the Public Employment Service is the competent authority to issue the different work permits for third-country nationals upon application. Furthermore, the Public Employment Service is involved in the issuance of the "settlement permits – key employee".

²⁸⁰ Fassmann 2007: 47.

²⁸¹ Idem.

²⁸² Idem.

²⁸³ This example illustrates the interaction between the quota system of the Settlement and Residence Act and of the regulations of the Employment of Foreign Nationals Act very well. Even, if the Austrian Employment Service would issue a work permit, this is not possible, if the annual quotas are already filled, or if no quota for a certain category exists.

c) What are the conditions for granting third-country nationals access to the labour market, e.g. under what conditions may an asylum applicant take up employment?

Generally, a distinction has to be made between third-country nationals who are already legally settled in Austria with a residence title which grants access to the labour market (e.g. settlement permit - unrestricted, 2004/38 EC documentation) and those who need an additional work permit according to the Aliens' Employment Act (e.g. settlement permit - restricted). The general rule underlying the system of different work permits is that the more a foreigner is integrated in Austria, the easier is to get a permit, and consequently the dependence on the labour market policy is smaller. The following list provides a brief overview of the different titles.

*a) Work permit (Beschäftigungsbewilligung):*²⁸⁴ A work permit is restricted to a certain occupation and is valid for one year. The application has to be filed by the future employer. It can be granted to a foreigner if the following conditions are fulfilled: a) Labour market examination: whether the job vacancy which is to be occupied may be occupied by another suitable unemployed Austrian citizen;²⁸⁵ b) Quotas: the work permits are subject to quota regulations - the total number of work permits issued in a certain Province is stipulated annually by a regulation. Additionally, the number of employed and unemployed must not exceed 8% of the number of employed and unemployed Austrian citizens. In limited cases a work permit can be granted even if the quotas are already exhausted: e.g. if the Regional Advisory Board (Regionalbeirat)²⁸⁶ approves the work permit, or the applicant is already integrated, or is a family member of a person with a settlement permit, or fulfils the requirements for a key employee, etc.

*b) Working allowance (Arbeitserlaubnis):*²⁸⁷ A working allowance is valid for up to two years and gives free access to the labour market in a certain Province. A working allowance can be granted to a person after 12 months legal employment within the last 14 months or to certain family members of a person who obtains a work permit and is settled for at least 12 months.

²⁸⁴ Art. 12a AuslBG.

²⁸⁵ Art 4b AuslBG.

²⁸⁶ The Regional Advisory Board is composed of representatives of the employer and the employees and of the Public Employment.

²⁸⁷ Art. 14a AuslBG.

c) *Exemption card (Befreiungsschein):*²⁸⁸ After five years of legal work, the third-country national has the right to apply for an exemption card which is valid for up to five years and which can be renewed. The same applies for certain family members of a person who obtains an exemption card, if they have been settled for at least 12 months. Additionally, Turkish nationals are granted an exemption card²⁸⁹ based on the Association Agreement EEC-Turkey.

d) *Seasonal work:* Specific provisions apply for **seasonal work**: Although immigration and settlement for non-skilled workers is not possible, an additional quota is foreseen for short-term employment. The reason for this regulation is to meet a temporary demand for manpower in the agricultural and tourist sector. The quotas are included in the annual quota regulation according to the Residence and Settlement Act and belong to the competence of the Federal Minister of Economics and Labour that can allow the additional admission of short term economic sectors. The Provinces are entitled to make suggestions for the admission of seasonal workers. Seasonal workers can apply for D+C visa.

e) *Other:* Third-country nationals with “settlement permit - unrestricted”²⁹⁰ and “EC long-term residence permit”²⁹¹ have unrestricted access to the labour market and do not need an additional permit according to the Aliens’ Employment Act.

f) *Family reunification:* The access to the labour market of dependents follows from the description above, however it is briefly outlined once again. Depending on the legal status of the sponsor, family members have limited or unrestricted access to the labour market. Family members of third-country nationals have free access to the labour market after one year residence, if the sponsor has free access.²⁹² In the first year of settlement, employment is only allowed if the family member obtains a work permit. However, employment is not allowed in case of a settlement permit – private purpose. Family members of EEA and Swiss nationals, who reside permanently in Austria, have free access to the labour market. This regulation transposes the EU Directive 2004/38/EC. While the family status is maintained and the

²⁸⁸ Art. 15 AuslBG.

²⁸⁹ Art. 4c AuslBG.

²⁹⁰ The “settlement permit – unrestricted” can be granted to family members, if they have legally settled in Austria for 12 month and if they are reunifying.

²⁹¹ The “settlement permit – EC- long term residence” is issued to foreigners who have been living in Austria for 5 years without interruption and if the Integration Agreement is fulfilled.

²⁹² This is the case if the sponsor holds a settlement permit-unrestricted or a residence title “EC long term”.

settlement permit exists, the family members are exempted from the Aliens' Employment Act; upon application they can receive an "exemption certificate".

Below is an overview of the different permits which grant access to the Austrian labour market. In 2007, in total, 226,526 foreign nationals (of which 63% were male foreign nationals) held an obligatory permit to access the labour market. If most permits are granted with the settlement permit directly (66.4%), one third (33%) has been granted through additional permits.

Table 4: Employed foreign nationals holding an permit for labour market access (average 2007)

	Male	Female	Total	As % of TOTAL
Category of permit:				
Employment permit	15,284	8,352	23,636	10.4%
Work permit	2,193	1,225	3,418	1.5%
Exemption certificate	28,840	15,910	44,750	19.8%
Exemption certificate – Art. 4c				
AuslBG	1,979	1,063	3,042	1.3%
Proof of settlement ²⁹³	54,938	40,209	95,147	42.0%
Permanent Residence - EC	12,537	7,818	20,355	9.0%
Settlement permit - unrestricted	3,106	3,064	6,170	2.7%
EU Documentations ²⁹⁴	19,321	8,458	27,779	12.3%
Settlement permit - key employee	611	269	880	0.4%
Others	1,026	323	1,349	0.6%
Foreign nationals holding a permit for labour market access (TOTAL)	139,835	86,691	226,526	100.0%

Source: Public Employment Service. Own illustration.

Most foreign national employees holding an obligatory work permit by nationality have been from Former Yugoslavia (44,498, 20%), Bosnia and Herzegovina (40,844, 18%), Turkey (29,235, 13%) and Croatia (11%).²⁹⁵

4.1.4.2 Asylum

²⁹³ Proof of settlement (= Niederlassungsnachweis): combines unlimited settlement permit with exemption certificate; requirements: after five years of legal settlement and legal employment. As of 2006, the proof of settlement (Niederlassungsnachweis) was replaced by the settlement permit "Daueraufenthalt -EG" ("permanent residence -EC"), which is granted to third country nationals, who are long-term residents (Directive 2003/109/EC).

²⁹⁴ EU documentations: include three categories (EU documentation, EU documentation - family dependants, EU-key professional-employment permit); these are permits for EU nationals, who do not have access to the labour market (EU-10: EU MS that joined the EU in 2004 and 2007).

The system is less complicated in terms of asylum regime; a distinction must be made merely between asylum seekers and recognised refugees/persons with subsidiary protection status.

a) Asylum seekers: According to Art 7 Basic Welfare Support Agreement (Grundversorgungsvereinbarung, GVG) in the first three months after filing the asylum application, the applicant is generally prohibited to work. After the expiry of the three month period, the asylum applicant can apply for a work permit according to the general conditions.²⁹⁶ In practice, it is difficult for an asylum applicant to receive a work permit.²⁹⁷ The same applies for self-employment. Furthermore, asylum seekers who are accommodated at a care facility can be employed in auxiliary activities which are directly connected with their accommodation (for example, cleaning, kitchen work, transport and maintenance) and auxiliary activities for the public benefit (for example, landscape conservation and layout work, upkeep of parks or sports facilities and help in the administration).

b) Recognised refugees and persons with subsidiary protection status: Recognised refugees and persons with subsidiary protection are exempted from the Aliens' Employment Act and have free access to the labour market.²⁹⁸

4.1.5 Return

Provide a description of the organisation of return. Distinction could be made between third-country nationals who return after having been denied the right to enter, who have resided illegally, who have not been admitted, or whose right to reside has ended.

This section deals with the organisation of return in Austria. A distinction is made between return procedures related to the field of migration and asylum. The first subsection on migration provides an overview both of forced and voluntary return, while the second subsection refers only to variations in the asylum procedure. The reason for this division follows from the system of return legislation in Austria, accordingly the Aliens' Police Act contains general provision concerning return: expulsion, detention pending deportation, deportation, while the Asylum Act contains additional provisions relevant to the asylum procedure.

²⁹⁵ Public Employment Service (AMS).

²⁹⁶ Art. 4 (3) 7 AuslBG, concerning the general conditions please confer to 4.1.4.1.

²⁹⁷ Schumacher/Peyrl 2007: 222.

²⁹⁸ Art. 4 (2) a AuslBG.

The statistics at the end of the first subsection refer to both asylum and migration data.

4.5.1.1 Migration

Looking at the Austrian return policy, a distinction has to be made between **forced** and **voluntary return**. **Forced return** refers to cases where a person *must* leave Austria for a certain reason, while **Assisted Voluntary Return (AVR)** encompasses cases where a person *makes a free decision* to leave the country and the return process is supported by different actors.²⁹⁹

While the Aliens' Police Act contains detailed provisions about forced return and the compulsion measures carried out by the **Aliens' Police** (rejection, expulsion, detention pending deportation, residence and return ban, deportation), no comprehensive legal basis exists until the present for assisted voluntary return.

a) Forced Return

i) Institutions: The most important authority in terms of forced return is the **Aliens' Police**. The Aliens' Police forms part of the security administration in Austria.³⁰⁰ The **Regional Administrative Authorities** (Bezirksverwaltungsbehörde, BVB) and the **Federal Police Directorates** (Bundespolzeidirektionen) act as first instance organs of the Aliens' Police. Due to the heavy workload in Vienna, a separate Aliens' Police Office has been established for this purpose.³⁰¹ The **Security Directorates** (Sicherheitsdirektionen) act as second instance and decides on appeals against decisions of the Regional Administrative Authorities or the Federal Police Directorates. Regarding decisions on detention pending deportation, the **Independent Administrative Senates** are the competent appellate bodies.³⁰²

In terms of forced return the Aliens' Police is responsible for decisions concerning expulsions, residence bans, detention pending deportation and if necessary, the Aliens' Police escorts the third-country national while leaving Austria (deportation).

The competence of the Aliens' Police goes beyond these tasks and is further responsible for the issuance of passports for recognised refugees, conducting administrative penalty procedures, assessment of costs concerning activities carried out by the Aliens' Police and issuance of visas under specific conditions.

²⁹⁹ Confer IOM 2004: 7.

³⁰⁰ Art. 3 FPG.

³⁰¹ Schumacher/Peyrl: 2007: 307.

³⁰² Idem.

In addition to the Aliens' Police different NGOs and a governmental institution are active in the field of return. For example, Caritas Sozialdienst am Flughafen, Caritas, Evangelischer Flüchtlingsdienst (EFDÖ), ARGE Schubhaft, SOS Menschenrechte and Verein Menschenrechte Österreich support persons in detention pending deportation based on a special agreement between the Ministry of the Interior. These organisations provide humanitarian, social and psychosocial assistance. This includes the provision of relief supplies, in the form of sanitary articles or books or the accompaniment of the person to medical inspections if demanded. Furthermore, they provide return counseling for assisted voluntary return and provide essential commodities.³⁰³ Beyond the above-mentioned organisations, the following institutions provide additional assistance: Flughafensozialdienst (originally, this organisation was responsible for the airport instead of Caritas), Asyl in Not, Amnesty International, Deserteursberatung Wien, ZEBRA.³⁰⁴

Furthermore, the **Human Rights Advisory Board** (Menschenrechtsbeirat, HRAB), an independent monitoring body, is in charge of monitoring detention pending deportation.³⁰⁵ The HRAB 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 eleven 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 members of the HRAB are fully independent and act on an honorary basis. Six commissions were established to guarantee nationwide relevance.³⁰⁶

In addition to its competences regarding detention pending deportation, the HRAB monitors the activities of the security services, the authorities under the Ministry of the Interior and all bodies with power of direct command and compulsion, in particular the activities of the police from a human rights perspective and gives recommendations to the Ministry of the Interior.³⁰⁷

ii) Procedures: The Aliens' Police Act knows four different procedures concerning forced return:³⁰⁸ 1) expulsion of irregularly resident foreign nationals, 2) expulsion of foreign nationals with a residence title, 3) procedures concerning a residence ban, 4) procedures

³⁰³ Hofer 2006: 69.

³⁰⁴ Hofer 2006: 72.

³⁰⁵ Art. 15c Security Police Act (Sicherheitspolizeigesetz, SPG).

³⁰⁶ Art. 15a SPG. For further information please consult: www.menschenrechtsbeirat.at (consulted on 20 December 2008).

³⁰⁷ Idem.

³⁰⁸ Bachmann. 2008: 97.

concerning the prohibition of return to Austria. Detention pending deportation and deportation is closely linked to these procedure.

1) Expulsion of irregularly resident foreign nationals: a foreign national *can* be expelled from Austria due to the fact that the person does not possess a valid residence title (visa, residence or settlement permit, etc.). However, an irregularly staying foreign national *must* be expelled if he/she has been sentenced for certain criminal offences, if he/she has violated laws related to prostitution within three months after entry, if he/she cannot prove sufficient financial means within three months after entry, etc.³⁰⁹

2) Expulsion of foreign nationals with a residence title: a foreign national with a residence title *can* be expelled based on (retroactive) inhibiting the issuance of a residence permit.³¹⁰ A foreign national *must* be expelled for lack of integration in the job market,³¹¹ if he/she did not fulfil the integration agreement (for reasons within his/her own responsibility) within five years of residence or did not start to fulfil the integration agreement within the first three years of residence; also in cases of a residence title “family reunification” where the family ties no longer exist.

These provisions are moderated by the legal institutions of the “consolidation of residence”; meaning that the longer a person resides in Austria, the harder it is to expel him/her. After continuous legal residence of five years, the person can no longer be expelled on the grounds of lacking health insurance or means of subsistence. After eight years of continuous and legal residence, foreign nationals can only be expelled in cases of a conviction for certain criminal acts or if the person constitutes a threat to public order and security. In cases of continuous legal residence for ten years or more, only a conviction for trafficking in human beings or for specific drug offences as well as for certain other criminal offences punishable with imprisonment of at least six years can justify an expulsion. For foreign nationals of the second generation, additional protection provisions exist. Furthermore, third-country nationals with a residence title “EC- long term” can only be expelled if they constitute a serious threat to public security or order, which in principle can be grounds similar to the ones valid for expulsions of persons with continuous residence of at least ten years.³¹²

Moreover, the third-country national’s right to privacy and family life according to Art 8 ECHR has to be taken into account. This means that the State’s interests have to be balanced

³⁰⁹ Art. 53 FPG.

³¹⁰ Art. 54 FPG.

³¹¹ This is the case for instance, if a third country national with a settlement permit – restricted is unemployed for more than 4 months in the first year of settlement.

against the third-country national's right to privacy and family life. Accordingly, the expulsion is only allowed for the State's interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others which prevails over the individual's rights.³¹³ Beyond the length of stay, the integration of the third-country national and the intensity of the family ties - as explicitly set out by Aliens' Police Act - the criminal record, ties to the country of origin and the knowledge about the insecurity of the residence title have to be considered following the case law of the European Court of Human Rights.³¹⁴ In case of an expulsion notification, the third-country national has to leave Austria immediately.

3) Procedures concerning a residence ban: A residence ban can be imposed if the residence of the foreign national might endanger interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others. This is the case for example, if the third-country national has been convicted for certain criminal or administrative offences, in case of marriages of convenience, etc.³¹⁵

4) Procedures concerning the prohibition of return to Austria: A return ban can be imposed against asylum seekers if the asylum seeker leaves Austria before a legally binding asylum decision. The reason behind this regulation is that during an asylum procedure a residence ban cannot be imposed against asylum applicants. However, if the asylum seeker leaves Austria voluntarily, a return ban can be imposed, provided that his/her residence constitutes a danger to public order and security or any other public interest according to Art 8 (2) ECHR.³¹⁶

Detention pending deportation is a security measure to ensure the return procedure and has to be distinguished from custody for criminal offences. Detention pending deportation can be imposed on third-country nationals on those who are legally-staying and illegally-staying in Austria, and on asylum seekers during the asylum procedure.³¹⁷

More *lenient measures* have to be imposed if it is assumed that the third-country national will not prevent an eventual expulsion and that he/she has been subject to the police identification service. Furthermore, more lenient measures have to be imposed on minors, except when there is an indication that expulsion cannot be secured without detention. More lenient

³¹² Art. 55 FPG.

³¹³ Art. 66 FPG.

³¹⁴ Bachmann 2008: 100.

³¹⁵ Art. 60 FPG.

³¹⁶ Art. 62 FPG.

³¹⁷ Art. 76 FPG.

measures encompass accommodation in designated rooms or buildings or require the individual to report regularly to a designated police station.

The *duration* of detention pending deportation has been expanded with the Aliens' Act Package 2005. Generally, detention pending deportation must not exceed two months, but under specific conditions the duration can be prolonged up to six months. The maximum duration amounts to ten months within two years. Nevertheless, in cases of detention of more than six months, the Independent Administrative Senate has to review the proportionality of the detention.³¹⁸

Generally, *costs* of detention pending deportation have to be borne by the third country national. However, detention pending deportation has to be borne by a third person when there is a declaration of liability or by the employer in case of illicit work.³¹⁹

Finally, *deportation* is the enforcement of an expulsion order, a residence ban or of a rejection.³²⁰ A deportation is applied if the departure or travel of the deportee endangers public order and security, if the third-country national, is not willing or it can be assumed he/she is not willing to leave Austria, or if the third-country national returns to Austria even though an entry ban is in force.

According to the principle of the non-refoulement, deportation is prohibited if there are good reasons to believe that the life or the personal integrity of the third-country national will be endangered in the country of origin.³²¹ This involves *inter alia* the following situations: civil war, lack of health care, lack of livelihood, traumatising, inhuman or degrading treatment or torture in the country of origin or owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, political opinion or membership of a particular social group according to Article 1 of the Geneva Convention.³²² Furthermore, deportation is factually impossible if the third-country national does not obtain a valid passport.³²³

b) Assisted Voluntary Return (AVR)

³¹⁸ Art 80 FPG.

³¹⁹ Art. 113 FPG.

³²⁰ Art. 46. FPG

³²¹ Art. 50 FPG.

³²² Idem.

³²³ Third country nationals who could not be expelled for the above reasons could be granted a residence permit or settlement permit for humanitarian reasons "ex officio". "Ex officio" means that the person concerned could not file an application for a residence title. This leads to the fact that the person concerned has no legal residence but can also not be removed from the country. Due to a recent decision of the Constitutional Court this provision is currently under review.

i) Legal basis: As mentioned earlier there is no comprehensive legal basis for voluntary return, only a few articles in the Asylum Act and of the Basic Welfare Agreement refer to voluntary return, stipulating that an asylum seeker has at every stage of the procedure the right to return-counselling.

ii) Institutions: The main actors involved in assisted voluntary return programmes are the **Ministry of the Interior**, the **International Organization for Migration Vienna (IOM Vienna)**, and the following organisations: Caritas, Verein Menschenrechte Österreich (Association Human Rights Austria), Diakonie Flüchtlingsdienst (Deaconry Refugee Service), European Homecare, Volkshilfe Oberösterreich (Volkshilfe Upper Austria), several Provincial Refugee Offices (counselling) and the UNHCR (regular exchange of information with IOM).³²⁴

The Ministry of the Interior acts as a donor: finances the counselling service (together with the European Refugee Fund) and the costs of return, including the travel costs and a lump sum of up to a maximum of € 370 to facilitate reintegration. The decision on the amount of the reintegration allowance is taken by the return counselling entity based on guidelines established by the Ministry of the Interior.

IOM is primarily responsible for logistics and general assistance. Based on a Memorandum of Understanding between the Ministry of the Interior and IOM from 2000, IOM is implementing the General Humanitarian Voluntary Return Programme. According to this agreement, IOM organises the homeward journey and provides assistance before, during and after return, taking into consideration the special needs of unaccompanied minors, women and the elderly.

The target groups of the general humanitarian voluntary return programme are (rejected) asylum seekers and irregularly resident immigrants in Austria. Asylum seekers can be granted return counselling in every phase of their procedure. Return counselling comprises clarification of perspectives during and after closure of their asylum procedure.³²⁵ At present, reintegration assistance in the home country in the form of special country programmes is offered to returnees to Kosovo and Moldova.

³²⁴ IOM Vienna, Unterstützte Freiwillige Rückkehr, available at: <http://www.iomvienna.at/index.php?module=Content&idc=69> (consulted on 19 December 2008).

³²⁵ Art 67 AsylG.

Looking at statistics on forced return,³²⁶ 7.612 persons have been rejected at the Austrian borders and an additional 1.700 persons have been deported within seven days of their (irregular) arrival. While the deportation cases within seven days have stayed at the same level as in 2006 (1.685), the numbers of rejections at the border have declined by -75% (2006: 31.189).

At the same time, the number of expulsions has declined from 3.737 (2006) to 2.273 (2007). In 2007, 4.542 cases received a residence ban and in 629 cases a return ban was imposed compared to 5.294 respectively 975 cases in 2006.

Concerning detention pending deportations, a decline of -20% has been registered from 2006 (8.694) to 2007 (6.960). The same applies for a decline in deportations which have diminished by -31% from 4.090 cases in 2006 to 2.838 cases in 2007.

While the number of forced returns is decreasing, IOM statistics³²⁷ of voluntary return programmes since the year 2000 show that the number of assisted voluntary returns is continuously increasing. The IOM assisted 194 people to return in 2000, and this figure has been climbing gradually to reach a number of 2.122 people assisted in 2007. This development could be explained in the remarkable reduction of asylum applications but it is partially due to the fact that since 2004, voluntary return is also possible for detention pending deportation.³²⁸

4.5.1.2 Asylum

The Asylum Act contains a few separate provisions concerning return procedure for asylum applicant. Regarding *forced return* the most important difference is that the *expulsion* order is always combined with a negative decision on asylum and subsidiary protection. Consequently, the Federal Asylum Office or the Asylum Court is the competent authority to issue such an order. Nevertheless, attention has to be paid to the third country nationals' right to family life according to Art. 8 ECHR in such cases.³²⁹ Furthermore, an expulsion procedure can be introduced before the final decision on the asylum status, provided that a negative

³²⁶ According to the statistics published in the „Fremdenstatistik“ 2006, 2007.

³²⁷ Concerning the statistics on voluntary return, in addition to the statistics compiled by IOM, statistics of the NGOs Caritas and Verein Menschenrechte who organise (in a smaller number of cases) returns without the assistance of IOM are relevant (NCP Austria, 2006: 23). According to its Annual Report 2007, Caritas assisted 839 persons to return home in 2007; Verein Menschenrechte, in 2005, assisted 516 persons, corresponding to a return quota of 73% of the proceedings.

³²⁸ NCP Austria 2006: 78.

³²⁹ Art. 10 AsylG.

decision is very likely and specific public interests exist in the acceleration of the procedure.³³⁰

Detention pending deportation during the asylum procedure can be commanded in the following cases: during the admission procedure if Dublin-consultation has been introduced or in cases of a negative asylum decision or if the asylum application has been filed after the initiation of an expulsion procedure.³³¹

4.2. Links with other policy areas

The following section provides a non-exhaustive overview of the different policy areas linked to the field of migration: migration and health with a special focus on social security and FGM, gender, education, development, fight against illegal migration, in particular regarding trafficking in human beings, and family.

4.2.1. Migration and Health

Health Services for Migrants: Austria has a system of compulsory insurance system for all self-employed and employed, as well as some of their relatives, which guarantees social protection.³³² As soon as a person takes up an occupation, he or she is automatically covered by insurance.³³³ Insurance protection extends to pupils and university students, as well as pensioners. Social insurance is composed of health, pension and accident insurance. Austria's **28 social insurance institutions** are statutory bodies under public law. All insurance institutions are members of the main association of Austrian social insurance institutions. Health insurance offers a full package of services in the event of illness or maternity. Services are rendered primarily by contracting parties (panel doctors, therapists, hospitals) or specialised institutions (day clinics, health centres, hospitals, spas) operated by the social insurance institution, the responsible **District Health Insurance Fund** (Gebietskrankenkasse).

³³⁰ Art. 27 AsylG.

³³¹ Art. 76 FPG.

³³² The relevant provisions can be found in the General Social Insurance Act (Allgemeines Sozialversicherungsgesetz, ASVG).

³³³ Prior to the commencement of work, employers are obliged to sign up their employees (including independent contractors exceeding the minimum income limit) for individual or all insurance programmes (health, accident, pension, and unemployment insurance) depending on the nature of the job and the amount of wage/salary paid.

Third-country nationals who need a visa and/or a settlement or residence permit to Austria have to provide proof of a valid health insurance when applying for the visa.³³⁴ Asylum seekers receiving basic welfare support are health insured and therefore can consult regular doctors/hospitals without costs and obtain free prescription drugs.³³⁵ There is no support for medical treatments which are not funded by governmental health insurance.

In Austria, there is a variety of services dedicated to providing health services especially to migrants, e.g. the **Women's Health Center „Frauengesundheitszentrum FEM Süd“** at Kaiser Franz Josef Hospital offers consultations in German, Turkish, Bosnian, Croatian, Serbian, English, French and Arabic.³³⁶ **Amber-Med** additionally offers free medical care and counselling to persons without health insurance (consultations in German, Russian, Chinese und Turkish).³³⁷

Special actors are involved in the policies in the fight against **Female Genital Mutilation/Cutting (FGM)** and in the care of victims of FGM. FGM is regarded as bodily harm by the penal law in Austria. In order to avoid legal insecurity due to confusion with the kind of bodily harm that is not prosecuted (e.g. aesthetic surgery), the law was amended in 2001 and now states that consent to any form of “mutilation or other harm to the genitals which can bring about a continuous impediment to sexual emotions” is forbidden.³³⁸ In Austria, the **Federal Ministry of Health, Family and Youth** plays a key role in fighting this kind of harmful practice.³³⁹ Other actors involved are the **Ministry for Women** as well as the **municipalities** (e.g. the City of Vienna). Additionally, the **Austrian National Council of the Parliament** has taken on the issue as one of major concern. In the frame of the EU-funded project “Daphne”, a national action plan against FGM/C was designed by a national action committee (five working groups, including government authorities, federal authorities and NGOs) and was presented by Barbara Prammer, President of the National Council of the Parliament in November 2008. The national action plan will be implemented between 2009 and 2011 and aims at offering information in schools, counselling of victims, and general

³³⁴ Art. 23 FPG in terms of visas and Art. 11 NAG.

³³⁵ Art. 6 GVV.

³³⁶ Institut für Frauen und Männergesundheit, available at: www.fem.at (consulted on 10 January).

³³⁷ AMBER-MED, available at: <http://amber.diakonie.at/> (consulted on 10 January).

³³⁸ Art. 90 Criminal Code (Strafgesetzbuch, StGB).

³³⁹ Bundesministerin für Frauen und Öffentlichkeitsdienst, Genitalverstümmelung, available at <http://www.frauen.bka.gv.at/site/5477/default.aspx> (consulted on 10 February 2009).

awareness-raising. Training for teachers, police force, and health staff is envisaged. **NGOs** working in the field are **StopFGM**,³⁴⁰ **FEM Süd** (Health centre for women in the Kaiser Franz Josef Hospital), **Bright Future**³⁴¹ (Information Centre for women's health and FGM) as well as **Orient Express**³⁴² (Information Centre for Women). They offer counselling for women and girls and are committed to raising awareness.

4.2.2. Migration and Gender

The **Austrian Ministry for Women and Public Services**³⁴³ has a special focus on migrant women. In cooperation with governmental and non-governmental institutions, the ministry provides intercultural services to migrant women, focusing especially on discrimination issues.

Another important topic for the ministry is violence against women. With regard to “honour-related violence”, “crimes of honour”, or “harmful traditions against women”, the ministry aims to provide information and counselling for migrant women concerned and fosters research and awareness-raising.

The **Network of Austrian Counselling Centres for Women and Girls**³⁴⁴ is an umbrella organisation of 38 counselling services for women and girls in eight Austrian Provinces. It aims at securing a high standard of counselling for Austrian and immigrant women and girls, introducing the perspective of women and girls into all spheres of life.

4.2.3. Migration and Education

Education is regarded to be an important factor in the integration of immigrants and so the “intercultural dialogue” is promoted by the Ministry of Education, Science and Culture. Responsibility for schools rests largely with the **Ministry of Education, Arts and Culture**,

³⁴⁰ STOPFGM, available at: <http://www.stopfgm.net/> (consulted on 10 January 2009).

³⁴¹ Sozialinfo der Stadt Wien, available at: http://sozialinfo.wien.gv.at/content/en/10/InstitutionDetail.do?it_1=2099595&senseid=1420 (consulted on 10 January 2009).

³⁴² Orient Express, Frauenberatungsstelle, available at: <http://www.orientexpress-wien.com/> (consulted on 5 February 2009).

³⁴³ Bundesministerium für Frauen und Öffentlichen Dienst, available at: <http://www.frauen.bka.gv.at/site/5478/default.aspx> (consulted on 5 February 2009).

³⁴⁴ Netzwerk Frauenberatung, available at: <http://www.netzwerk-frauenberatung.at/nfb/Dokumente/eng.pdf> (consulted on 2 February 2009).

and the **Provinces**.³⁴⁵ The national Ministry of Education, Arts and Culture is responsible for founding schools, class size, amount of hours, and the framework curriculum, while the Provinces administer and manage the schools.

The **provincial governments** and the **provincial school councils** (Landesschulrat) are responsible for the implementation of policies, and the provincial governments regulate access to social assistance.³⁴⁶ Additionally, the **Ministry of Social Affairs and Consumer Protection** supports campaigns for awareness-raising as well as research. Such a recent project “3rd Millennium Muslim Man” assessed the situation of young Muslim men in Austria.³⁴⁷

4.2.4. Migration and Development

Many actors are involved in Austrian Official Development Assistance (ODA): The **Federal Ministry for European and International Affairs (MFA)** coordinates Austrian development policies and develops strategies and programmes accordingly. The **Austrian Development Agency (ADA)** implements these programmes together with public institutions, international and non-governmental organisations and enterprises.³⁴⁸

Austrian Development Cooperation (ADC)³⁴⁹ supports countries in Africa, Asia and Central America as well as in South-Eastern Europe in their sustainable social, economic and democratic development, reducing global poverty, ensuring peace and human security and preserving the environment in an international framework. The policies and programme parameters are agreed on with the European Union and in international committees (EU, UN, OECD, IFIs). Two policy pillars of bilateral and multilateral development cooperation are the Millennium Development Goals and the Paris Declaration. The Austrian Development Agency also implements, together with partners, projects linked to migration, especially in those countries with high priorities, e.g. Assisted Voluntary Return and Reintegration Programs for migrants who wish to return from Austria to their country of origin such as Moldova or Kosovo (currently implemented by the International Organisation for Migration,

³⁴⁵ Bundesministerium für Unterricht, Kunst und Kultur, available at: <http://www.bmukk.gv.at/> (consulted on 5 January 2009).

³⁴⁶ König/Perchnig 2005: 21.

³⁴⁷ 3rd Millennium Muslim Man, available at: <http://www.frauen-ohne-grenzen.org/projekte/laufende/27/> (consulted on 5 January 2009).

³⁴⁸ Idem.

³⁴⁹ Austrian Development Cooperation, available at: <http://www.entwicklung.at/en.html> (consulted on 4 January 2009).

IOM).³⁵⁰

In addition to Austrian Development Cooperation, the **Austrian Development Bank** (Österreichische Entwicklungsbank), ministries, Provinces and municipalities also contribute with public funds to the national development assistance budget.

4.2.5. Fighting against illegal migration and smuggling

The Aliens' Act defines the lawful residence of third-country nationals, but an illegally resident immigrant is not legally defined as such in Austrian legislation. Nevertheless, the Aliens' Act outlines the consequences of unauthorised residence as well as aiding and abetting unauthorised residence for reward. The Austrian legal system does not explicitly refer to the rights of illegal residents. Yet, besides human rights, which apply to all persons within a country's territory, irrespective of their legal status, there are several rights in Austrian legislation that are neither explicitly granted to nationals nor to citizens of specific third countries; therefore such rights apply to illegally resident and/or working immigrants as well. Illegally resident immigrants have access to public health care in case of emergencies; they have also access to education services, such as language courses, but no access to the formal labour and the housing markets.³⁵¹

The **Ministry of the Interior** is responsible for all measures and actions taken against illegal migration. To counter organized people-smuggling and illegal migration, Austria draws on strong legislation with continuous adjustments, and relies on cooperation with the neighbouring countries as well as with the countries of origin and transit (e.g. with information campaigns about the consequences of illegal immigration to Austria; pre-boarding controls at risk destinations by the Advisory team to prevent illegal immigration (Beratungsteam für die Verhinderung der illegalen Einreise, BTVerdiE)).³⁵²

In 2007, about 9.600 cases of organised human smuggling and illegal migration were found by the national police forces.³⁵³ Altogether, 9.842 smuggled persons were detected in 2007.

³⁵⁰ IOM Vienna, available at: <http://www.iomvienna.at/index.php?module=Content&func=display&id=265> (consulted on 20 January 2009).

³⁵¹ NCP Austria 2005: 11.

³⁵² Bundeskriminalamt 2008: 3.

³⁵³ This is a decrease of about 45% compared to 2006 (17,334 cases), which is, in the first place, based on the number of detections of persons who had illegally entered or were illegally staying in Austria, especially

The leading nationalities among the smuggled persons were the Russian Federation (1,664), Serbia (1,447), Moldova (772), Ukraine (612), and Iraq (547). Detected people entering Austria illegally were nationals from Serbia (603), followed by the Ukraine (329), Romania (294), Turkey (205), and Moldova (175).³⁵⁴

The abolition of border controls on 21 December 2007 in the course of the extension of the Schengen area saw the reinforcement of cooperation with neighbouring countries, in particular with respect to the removal of the Austrian external border to Hungary, Slovakia, the Czech Republic, and Slovenia, as well as the strengthening of the teams known as "**Estb-IM**" (Illegal Migration Units of the Regional Police Commands). An expert body, referred to as "**GAF**" (Gemeinsame Steuerung Asyl- und Fremdenwesen, i.e. Joint Steering Group for Asylum and Alien Issues) was established in order to increase efficiency by pursuing a transparent information policy and providing a concept for an overall strategy and optimisation of process flows.³⁵⁵

4.5.6 Trafficking in Human Beings

Austria is affected by trafficking in human beings (THB) as a transit country and as a destination due to its location at the very centre of Europe. Austria is strongly committed to the integration of a human rights perspective in the (further) development and implementation of policies addressing human trafficking. The Austrian approach comprises national coordination, prevention, the protection of victims, prosecution and international cooperation. In addition to ratifying all relevant international treaties, Austria established the "**Human Trafficking Task Force**" in 2004 under the chairmanship of the **Federal Ministry for European and International Affairs (MFA)**.³⁵⁶ The Taskforce involves representatives of all relevant ministries and agencies as well as representatives of the Intervention Centre for Women affected by Trafficking, representatives of the Austrian Provinces and invited NGOs and research institutions. Its tasks encompass the coordination of Austrian activities, the provision of information on relevant projects, the early recognition of trends and the

Romanian nationals: Due to the EU accession, Romanian nationals are now for the most part processed only if there is a residence ban in force against them (cf. Bundeskriminalamt 2008).

³⁵⁴ Bundeskriminalamt 2008:4.

³⁵⁵ Bundeskriminalamt 2007: 64.

³⁵⁶ Federal Ministry for European and International Affairs, Kampf gegen den Menschenhandel, available at: <http://www.bmeia.gv.at/aussenministerium/aussenpolitik/menschenrechte/schwerpunktthemen/kampf-gegen-menschenhandel.html> (consulted on 8 February 2009).

strengthening of cooperation between all participating actors. Thus, the Taskforce prepared the first “National Action Plan against Human Trafficking” which was endorsed by the Austrian government in March 2007. This action plan includes chapters on coordination, prevention, victim protection and compensation, prosecution, international cooperation, data collection, monitoring and evaluation.³⁵⁷ Both the National Action Plan against Human Trafficking and the National Task Force bring together representatives from the **Ministries of the Interior, Justice and Foreign Affairs** with NGOs working in the protection and assistance of trafficking victims.

On the operational level, the **Criminal Intelligence Service** as part of the Federal Ministry of the Interior cooperates within a comprehensive operational network involving all relevant national authorities. On the international level, the Criminal Intelligence Service uses bilateral and multilateral contacts and networks to fight cross-border crime.³⁵⁸ Concrete actions of the Federal Ministry of the Interior are awareness-raising measures for police and border guards, training and courses for police students, advanced education for police officers and multilingual information campaigns. The Ministry also implements and participates in international projects focussing on the fight against THB.³⁵⁹

On the international level, Austria has taken concrete steps to support regional cooperation particularly in the Western Balkans. Thus, regional women’s networks are being supported both in their efforts to raise awareness among women at risk about the dangers of human trafficking and about cooperation with local police, justice and social institutions, and police forces in the region are trained and sensitized in their fight against human trafficking.³⁶⁰

The Austrian NGO **LEFÖ - Counselling, Education and Support for Migrant Women/Intervention Centre for Women affected by trafficking (LEFÖ Beratung, Bildung und Begleitung für Migrantinnen, LEFÖ)** is a recognised intervention centre for migrant women affected by trafficking.³⁶¹ LEFÖ offers help and support to female migrants who became sex workers in Austria as a result of violence, threat, false promise or wilful deceit, or by the exploitation of their (structurally) powerless situation, as well as to female migrants who came to Austria by means of trafficking into marriage or trafficking into domestic work and who are living in Austria under conditions of gross exploitation. To these

³⁵⁷ Federal Ministry for European and International Affairs, Nationaler Aktionsplan gegen Menschenhandel, available at: http://www.bmeia.gv.at/fileadmin/user_upload/bmeia/NAP_Menschenhandel.pdf (consulted on 8 February 2009).

³⁵⁸ Sablattnig 2007: 29.

³⁵⁹ Sablattnig 2007: 30.

women, LEFÖ offers legal, social and psychological counselling and advice, as well as support in the process of recovering their rights, as well as temporary shelter where women receive support, accompaniment and counselling. LEFÖ also works together with women's organisations in the victim's countries of origin to investigate prospects for their return.

In 2003, the City of Vienna identified the need to create a special shelter for children and for this purpose established "**Die Drehscheibe**" – a centre for victims of child trafficking and unaccompanied minor foreigners. The aim was not only to take care of these children but also to cooperate with their countries of origin such as Romania, Bulgaria, Slovakia, Hungary, Georgia and China to find long-term solutions. Social workers from Vienna hold training courses for staff in the countries of origin, and Vienna also supports the construction of "crisis centres" in the country of origin. These long-term measures of the "Drehscheibe" provide children with the possibility of a safe return to their home countries.

³⁶¹ Planitzer 2007:110.

5. ANALYSIS OF ASYLUM AND MIGRATION SYSTEMS

When analyzing the Austrian migration and asylum system, it is important to keep in mind Austria's attitude towards its own migration and asylum history: Although immigration has for decades been of increasing importance for Austria's demographic development and economic needs, this has not been reflected in the country's self perception until recently. As Austria's migration policies during the Second Republic were at first driven only by labour market needs, and migration was conceived as "temporary migration", the necessity of integrating immigrants was not regarded as an issue. Thus, the first integration policies aiming at the gradual equalization of migrants were not implemented until the 1980s.

Although the majority of Austrian politicians have not officially admitted until today that Austria is a country of immigration, to a large extent, awareness of the necessity to adapt to reality is rising, despite contentions of the right-wing parties. The adoption of a "Red-White-Red - Card" for highly skilled immigrants and the development of a "National Action Plan for Integration" by the current Austrian government can be regarded as a development in self-perception.

It is also pertinent to look at the institutional and administrative framework which has been established within the field of migration and asylum: relevant issues are not administered by one single institution, but are handled by a multitude of different actors which are involved throughout the complex process of immigration to Austria and applying for asylum. The large number of different institutions involved reflects the complexity of Austria's immigration policies. Especially in relation to integration issues, there are numerous stakeholders active on the national, provincial and local levels, thus preventing integration from being regulated as a "one-stop-shop". In this context, the creation of a "State Secretariat for Integration Issues" has already been discussed widely and been foreseen in several programs for governments of various parties, but not yet implemented.

With regards to migration and asylum policies themselves, clear concepts and long-term perspectives are sometimes missing, while different measures sometimes conflict with one another, such as the double track procedures for settlement and work permits, which are only dispersed for highly skilled third-country nationals. However, a new coherent approach with the involvement of social partners is being developed lately.

Another reason for the increasing number of different resident titles results from EU legislation, which has significantly increased in this policy area in the past years. In particular, the number and types of the different residence titles has risen because of EC Directives in the field of migration and asylum.

The Migrant Integration Policy Index (MIPEX), which covers six policy areas that shape a migrant's journey to full citizenship, gives Austria credit for best practice policies with regard to security of employment and rights associated with labour market access. On the other hand, it also underlines that Austria might wish to reconsider certain policies regarding the eligibility for and security of nationality as well as the electoral rights of migrants, fields of application for anti-discrimination law, implementation policies for political participation, conditions for family reunion and labour market integration measures.

It must be pointed out, however, that migration policies as well as the underlying system are subject to an ongoing process which is under constant development. Shortly after the completion of this study, the Austrian Government implemented major changes in ministerial competences, which also affect the complex field of migration and asylum, and are evidence of further development.

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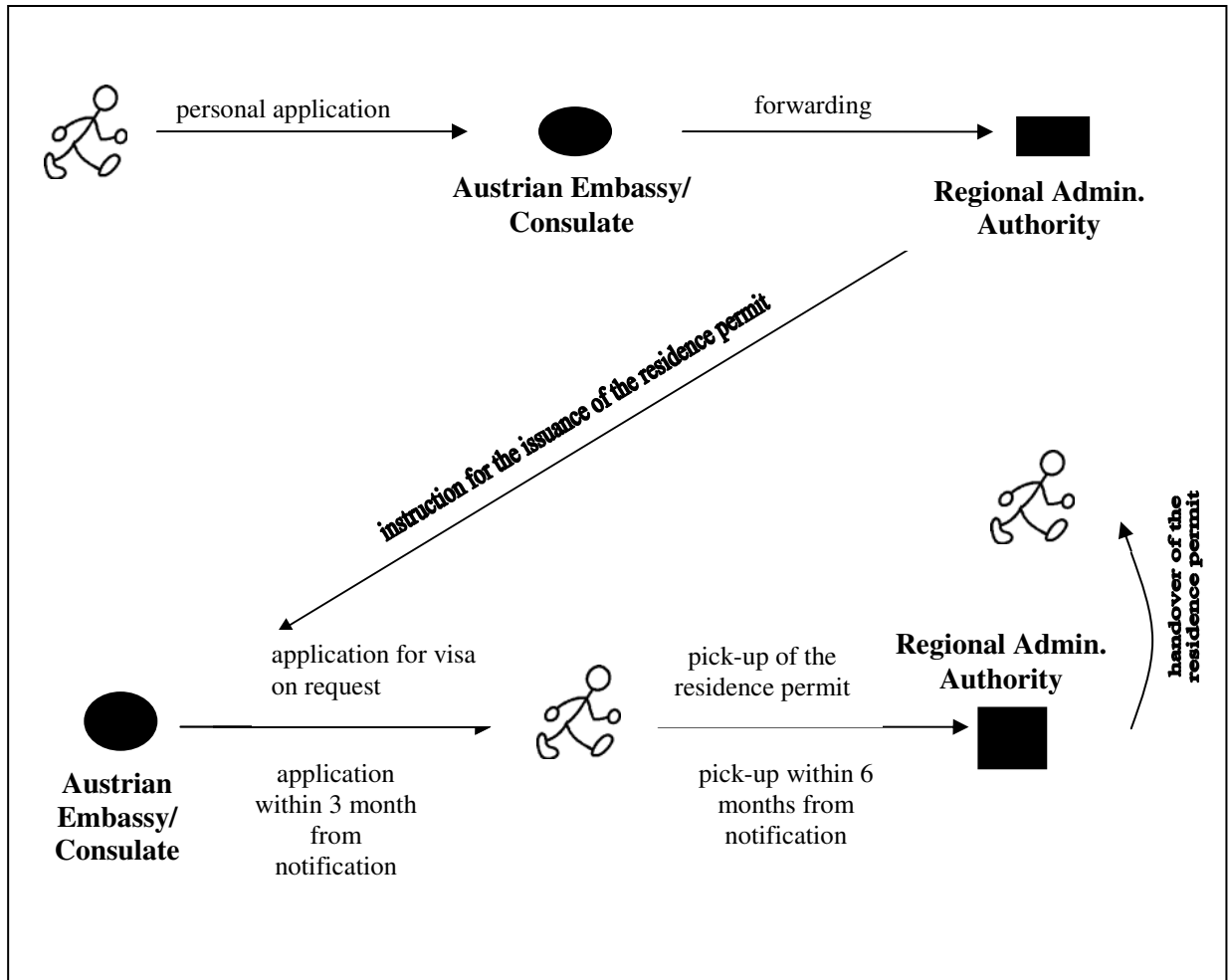
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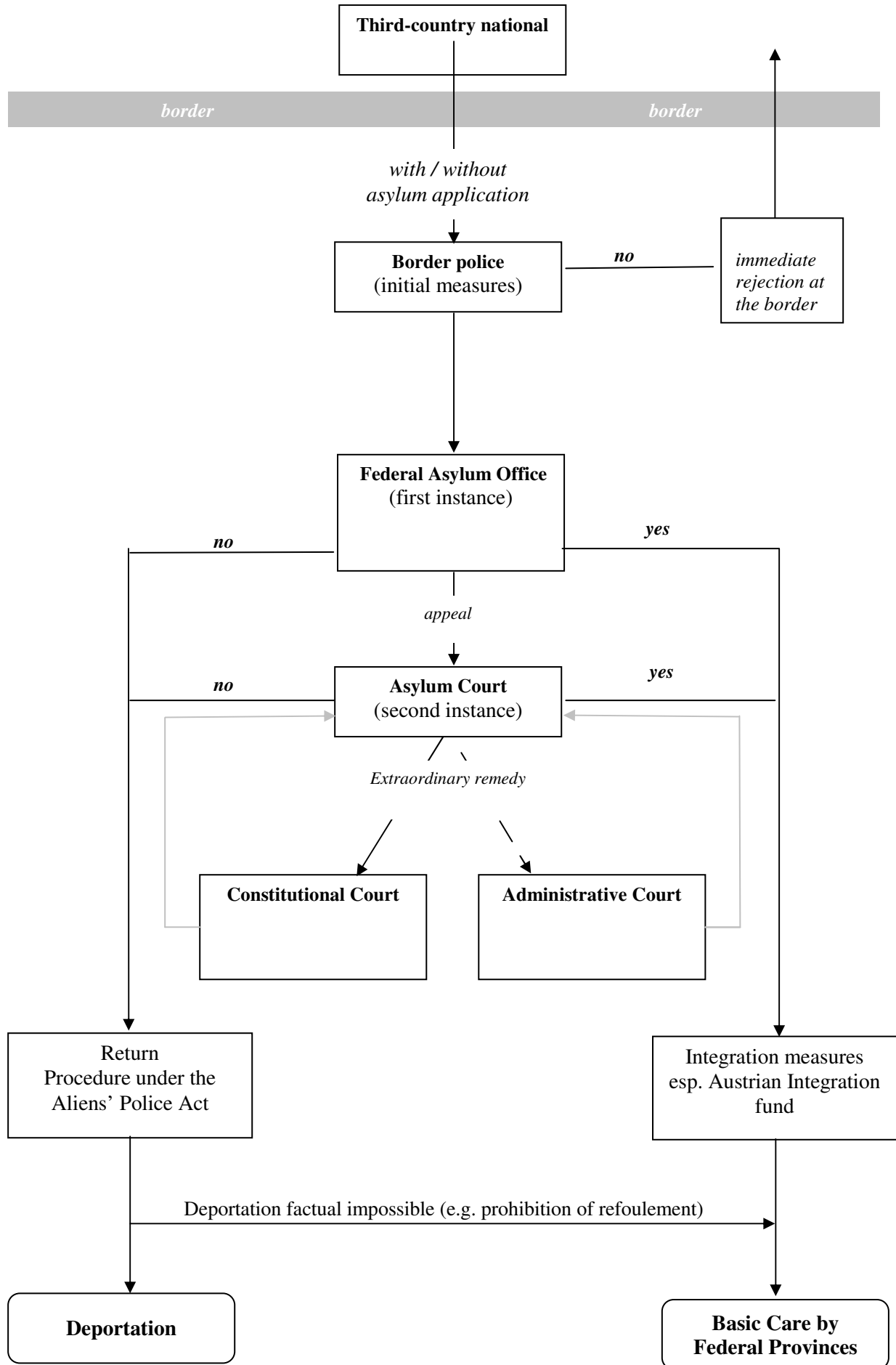
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ANNEX 1**Scheme 1. Procedural steps of the application for a residence permit from abroad**

Source: Federal Ministry of the Interior

Scheme 2: Asylum Procedure



ANNEX 2

I. GOVERNMENTAL INSTITUTIONS AND ORGANISATIONS

**Federal Ministry of the Interior
(Bundesministerium für Inneres) (BM.I)**
Herrengasse 7
A-1014 Vienna
Tel.: +43-(0)1/531-26-0
E-Mail: oeffentlichkeitsarbeit@bmi.gv.at
URL: <http://www.bmi.gv.at>

Department II/3

Fremdenpolizei und Grenzkontrollwesen
E-Mail: bmi-II-3@bmi.gv.at

- **Department II/3/a (Border Control)**
BMI-II-3-a@bmi.gv.at
- **Department II/3/b (Passport and Visa Issues for Aliens)**
BMI-II-3-b@bmi.gv.at
- **Unit II/3/C (Coercive Measures of Aliens' Police)**
BMI-II-3-c@bmi.gv.at

Section III – Law

E-Mail: bmi-III@bmi.gv.at

Department III/5

Asylum and Care
E-Mail: bmi-III-5@bmi.gv.at

- **Department III/5/a (Asylum and Care)**
BMI-III-5-a@bmi.gv.at
- **Department III/5/b (Integration)**
BMI-III-5-b@bmi.gv.at
- **Department III/5/c (Coordination and Basic Welfare Support)**
BMI-III-5-c@bmi.gv.at

**Federal Ministry of Social Affairs and Consumer Protection
(Bundesministerium für Soziales und Konsumentenschutz, BMSK)**

Stubenring 1
A-1010 Wien
Tel: +43 (0)1 711 00-0
E-Mail: webmaster@bmsk.gv.at
URL: <http://www.bmsk.gv.at/>

**Federal Ministry of Economics and Labour
(Bundesministerium für Wirtschaft und Arbeit)**

Stubenring 1
A-1011 Wien
Tel.: +43-(0)1-71100-0
E-Mail: service@bmwa.gv.at

URL: <http://www.bmwa.gv.at>

**Federal Ministry for European and International Affairs
(Bundesministerium für europäische und internationale Angelegenheiten)**

Minoritenplatz 8
A-1014 Wien
Tel: +43 (0) 50 11 50-0
Fax: +43 (0) 50 11 59-0
URL: <http://www.bmeia.gv.at/>

**Federal Ministry of Education, Arts and Culture
(Bundesministerium für Unterricht, Kunst und Kultur, BM:UKK)**

Minoritenplatz 5
1014 Wien,
Tel: +43-(0)1 53 120-0
Fax: +43 (0)1 53 120-3099
E-Mail: ministerium@bmukk.gv.at
URL: <http://www.bmukk.gv.at>

**Federal Ministry of Justice
(Bundesministerium für Justiz)**

Museumstraße 7
1070 Wien
Tel: +43-(0)1 521 52-0
Fax: +43-(0)1 521 52-2730
URL: <http://www.bmj.gv.at>

**Federal Ministry of Finance
(Bundesministerium für Finanzen, BMF)**

Hintere Zollamtsstraße 2b
1030 Wien
Tel: +43-(0)1 51433 0
URL: <https://www.bmf.gv.at>

Section II – Directorate General for Public Security

(Sektion II – Generaldirektion für die öffentliche Sicherheit)
E-Mail: bmi-II@bmi.gv.at

**First Reception Centre Traiskirchen
(Erstaufnahmestelle Traiskirchen)**

Otto Glöckel-Strasse 22-24
A-2514 Traiskirchen
Tel: +43-(0) 2252 53015

**First Reception Centre Thalham
(Erstaufnahmestelle Thalham)**
Thalham 80

A-4880 Attergau
Tel: +43-(0) 7667-6420

**First Reception Centre Flughafen
(Erstaufnahmestelle Flughafen)**

Flughafen Wien Schwechat
 Nordstraße
 Objekt 800
**Office of the Human Rights Advisory Board
 (Menschenrechtsbeirat)**
 Minoritenplatz 9
 A-1014 Vienna
 Tel: +43-(0)1/53126 3501
 Fax: +43-(0)1/53126 3504
 E-Mail: office@menschenrechtsbeirat.at
 URL: <http://www.menschenrechtsbeirat.at>

**Asylum and Aliens' System
 Information Centre for Asylum and Integration
 (Asyl- und Fremdenwesen
 Informationszentrum für Asyl und Integration)**
 Bräunerstraße 5
 A-1014 Vienna
 Tel.: +43-(0)1/53126-5224; -5223
 URL: <http://www.bmi.gv.at/fremdenwesen>

**Federal Police
 (Bundespolizei)**
 Herrengasse 7
 A-1014 Vienna
 Tel.: +43-(0)1/531-26-0
 E-Mail: oeffentlichkeitsarbeit@bmi.gv.at
 URL: <http://www.bundespolizei.gv.at>

**Federal Asylum Authorities – Headquarters
 (Bundesasylamt – Zentrale)**
 Landstraßer Hauptstraße 171
 A-1030 Vienna
 Tel: +43-(0)1/7144063-0
 Fax: +43-(0)1/53126-5914
 E-Mail: sekr.baa@bmi.gv.at

**Federal Asylum Authority Salzburg
 Bundesasylamt Salzburg**
 Münchner Bundesstraße 202
 A-5020 Salzburg
 Tel: +43-(0)662 442864 0
 Fax: +43-(0)662 442863
 E-Mail: sekr.bas@bmi.gv.at

**Independent Federal Asylum Tribunal
 (Unabhängiger Bundesasylsenat)**
 Laxenburger Strasse 36
 A-1100 Vienna
 Tel: +43-(0)1/601 49-0
 Fax: +43-(0)1/601 49-4310 oder 4311
 E-Mail: einlaufstelle@ubas.gv.at

**Bureau of the provincial government of
 Carinthia/ Diakonie Carinthia
 (Amt der Kärntner Landesregierung/Diakonie
 Kärnten)**
 Refugee office Carinthia
 (Flüchtlingsstelle für Kärnten)
 Tel: +43-(0)463/32303-499
 Fax: +43-(0)463/32303-401

**Public Employment Service
 (Arbeitsmarktservice, AMS)**
 Treustraße 35-43
 1200 Wien
 Telefon: +43 1 33178-0
 Telefax: +43 1 33178-121
 URL: <http://www.ams.at/>

**Austrian Development Bank
 (Österreichische Entwicklungsbank AG)**
 Strauchgasse 3
 A-1011 Wien
 Tel: +43 (0)1 533 12 00-0
 Fax: +43 (0)1 533 12 00-5252
 E-Mail: office@oe-eb.at
 URL: <http://www.oe-eb.at>

**Federation of Austrian Industries
 (Industriellenvereinigung Österreich)**
 Schwarzenbergplatz 4
 A-1031 Wien
 Tel: +43-(0)1 711 35-0
 Fax: +43-(0)1 711 35 29 10
 E-Mail: iv.office@iv-net.at
 URL: <http://www.industriellenvereinigung.at/>

**Bureau of the provincial government Tyrol
 (Amt der Tiroler Landesregierung)**
 Meinhardstraße 8
 A-6020 Innsbruck
 Tel: +43-(0)512/508-3291
 Fax: +43-(0)512/508-2605
 E-Mail: p.logar@tirol.gv.at

**Social Partners
 (Sozialpartner Österreich)**

- **Trade Union Federation
 (Gewerkschaftsbund, ÖGB)**
 Laurenzerberg 2
 A-1010 Wien
 Tel: +43-(0)1 53444-0
 Fax: +43-(0)1 53444-204
 E-Mail: oegb@oegb.at
 URL: www.oegb.at
- **Austrian Federal Economic Chamber
 (Wirtschaftskammer Österreich, WKÖ)**
 Wiedner Hauptstraße 63a
 A-1045 Wien
 Telefon: +43-(0)5 90 900
 Hotline: 0800 221 223
 E-Mail: wkoe@wko.at
 URL: www.wko.at
- **Federal Chamber of Labour
 (Bundesarbeitskammer, BAK)**
 Prinz Eugen Straße 20-22
 A-1040 Wien
 Tel: +43-(0)1 50165-0

E-Mail: mailbox@akwien.at
 URL: www.arbeiterkammer.at

- **Chamber of Agriculture
 (Landwirtschaftskammer
 Österreich, LK)**
 Schauflergasse 6
 A-1010 Wien
 Tel: +43-(0)1 53441-0
 Fax: +43-(0)1 53441-8509
 E-Mail: office@lk-oe.a
 URL: www.landwirtschaftskammer.at

**Asylum Court - Headquarters
 (Asylgerichtshof - Hauptsitz)**
 Laxenburger Straße 36
 A-1100 Wien
 Tel: +43-(0)1 601 49 – 0
 Fax: +43-(0)1 601 49 – 4310 und 4311
 E-Mail: einlaufstelle@asylgh.gv.at
 URL: <http://www.asylgh.gv.at>

**Austrian Constitutional Court
 (Verfassungsgerichtshof, VfGH)**
 Judenplatz 11
 A-1010 Wien
 Tel: +43-(0)1 53 122-0
 Fax: +43-(0)1 53 122 – 499
 E-Mail:
 URL: <http://www.vfgh.gv.at>

**Austrian Development Corporation (ADC)
 Österreichische Entwicklungszusammenarbeit
 (OEZA)**
 Zelinkagasse 2
 A-1010 Vienna
 Tel: +43 (0)1 90399 – 0
 Fax: +43 (0)1 90399 – 1290
 E-Mail: office@ada.gv.at
 URL: <http://www.ada.gv.at>

II. NON-GOVERNMENTAL ORGANISATIONS AND INSTITUTIONS

asylkoordination Österreich
 Laudongasse 52/9
 A-1080 Wien
 Tel: +43-(0)1 53 212 91
 Fax: +43-(0)1 53 212 91 – 20
 E-Mail: asylkoordination@asyl.at
 URL: <http://www.asyl.at/>

SOS Mitmensch
 Postfach 220
 A-1070 Vienna
 Tel.: +43-(0)1 524 9900
 Fax: +43-(0)1 524 9900-9
 E-Mail: office@sosmitmensch.at
 URL: <http://www.sosmitmensch.at>

**Initiative Marriage without Borders
 (Initiative Ehe ohne Grenzen)**
 Stiftgasse 8
 A-1070 Vienna
 Email: office@ehe-ohne-grenzen.at
 URL: <http://www.ehe-ohne-grenzen.at>

**Volkshilfe Upper Austria
 (Volkshilfe Oberösterreich)**
 Schillerstraße 34
 A-4020 Linz
 Tel: ++43-0-732/603099-50
 Fax: +43-0-732/603099-
 Email: iva.petkova@volkshilfe-ooe.at
 URL: <http://www.volkshilfe-ooe.at>

European Homecare
 Otto-Glöckel-Straße 24
 A-2514 Traiskirchen
 Tel: +43-(0)2252 508919 –26
 Fax: +43-(0)2252 508919 –69
 Email: presse-at@eu-homecare.com
 URL: <http://www.eu-homecare.com/at/index.htm>

**For Vienna, Lower Austria, Upper Austria and
 Burgenland**

Verein Menschenrechte Austria
 Postfach 69
 A-1095 Vienna
 Austria
 Tel.: ++43-(664) 3003224
 Fax: ++43-(0)1/4090480-2
 Email: wien@verein-menschenrechte.at
 URL: <http://verein-menschenrechte.at>

**Network Asylum Advocate
 (Netzwerk AsylAnwalt)
 Caritas Österreich**
 Albrechtskreithgasse 19-21
 A-1160 Vienna
 Tel.: +43-(0)1 488 31-440
 Fax: +43-(0)1 480 45 83
 Email: office@asylanwalt.at
 URL: <http://www.asylanwalt.at>

UNHCR Austria
 Postfach 550
 A-1400 Vienna

Tel: +43-(0)1 26060-4048
 Fax: +43-(0)1 2633748
 E-Mail: ausvi@unhcr.ch
 URL: <http://www.unhcr.at>

**International Organisation for Migration (IOM)
 (Internationale Organisation für Migration,
 IOM)**

Nibelungengasse 13/4
 A-1010 Vienna
 Tel.: +43-(0)1 5853322
 Fax: +43-(0)1 5853322-30
 E-Mail: iom-vienna@iom.int
 URL: <http://www.iomvienna.at>

**Organisation for Security and
 Co-operation in Europe (OSCE)
 (Organisation für Sicherheit und
 Zusammenarbeit in Europa, OSZE)**

Wallnerstr 6
 A-1010 Wien
 Tel: +43 (0)1 51436-6000
 Fax: +43 (0)1 51436-6996
 URL: www.osce.org

**International Centre für Migration Policy
 Development (ICMPD)**

Gonzagagasse 1
 1010-Vienna
 Austria
 Tel: +43-(0)1 504-46-77-0
 Fax: +43-(0)1 504-46-77-75
 E-Mail: icmpd@icmpd.org
 URL: <http://www.icmpd.org>

**Austrian Integration Fund
 (Österreichischer Integrationsfond, ÖIF)**

Schlachthausgasse 30
 A-1030 Wien
 Tel.: +43-(0)1 710 1203-0
 Fax: +43-(0)1 710 1203-500
 E-Mail: mail@integrationsfonds.at
 URL: <http://www.integrationsfonds.at>

**Austrian Integration Fund – Mobile Care
 (Österreichischer Integrationsfond –
 mobile Betreuung)**

Kranzmarkt 1
 A-5020
 Donnerstag 9:30 – 13:30 Uhr
 Tel: +43-(0)662 8072 2293
 URL: <http://www.integrationsfonds.at/index.php?id=96>

Caritas

Albrechtskreithgasse 19-21
 1160 Wien
 Tel.: +43-(0)1 488 31-0
 E-Mail: office@caritas-austria.at
 URL: <http://www.caritas.at>

Diakonie Flüchtlingsdienst gem. GmbH

Steinergasse 3/12
 A-1170 Wien
 Tel.: +43-(0) 402 67 54
 Fax: +43-(0) 402 67 54 16
 E-Mail: gf.efdoe@diakonie.at
 URL: <http://fluechtlingsdienst.diakonie.at/>

Volkshilfe Österreich

Auerspergstraße 4
 A-1010 Wien
 Tel: +43-(0)1 402 62 09
 Fax: +43-(0)1 408 58 01
 E-Mail: office@volkshilfe.at
 URL: <http://www.volkshilfe.at>

Bright Future

Schwarzspanierstraße 15/1/2
 A-1090 Wien
 Tel: +43-(0)1 319 26 93
 Fax: +43-(0)1 310 51 45-312
 E-Mail:
afrikanisc.frauenorganisation@chello.at

Amnesty International Österreich

Moeringgasse 10
 A-1150 Wien
 Tel: +43-(0)1 78008
 Fax: +43-(0)1 78008-44
 E-Mail: info@amnesty.at
 URL: <http://www.amnesty.at/>

StopFGM

**Österr. Plattform gegen weibliche Genital-
 verstümmelung**
<http://www.stopfgm.net>

FEM Süd

**Health centre for women
 (FEM Süd Frauengesundheitszentrum)
 im Kaiser Franz Josef Spital**
 Kundratstraße 3
 1100 Wien
 Tel: +43-(0)1 60 191-5201
 Fax: +43-(0)1 60 191-5209
 URL: <http://www.fem.at>

Orient Express

**Beratungs-, Bildungs- und Kulturinitiative für
 Frauen**
Frauenservicestelle
 Hillerstraße 6/3-5
 A-1020 Wien
 Tel.: +43 (0)1 728 97 25
 Fax: +43 (0)1 728 97 25-13
 E-Mail: office@orientexpress-wien.com
 URL: <http://www.orientexpress-wien.com>

Verein Lefö

Kettenbrückengasse 15/4
A-1050 Wien
Tel.: +43 (0)1 5811881
Fax: +43 (0)1 5811882
E-Mail: office@lefoe.at

Die Drehscheibe**Austrian Red Cross****(Österreichisches Rotes Kreuz)**

Tel: +43-(0)1 58900 0
URL: <http://www.rotekreuz.at/>

Caritas Sozialdienst am Flughafen

Wien Schwechat
Postfach 152
1300 Wien
Tel: +43-(0)1 7007 32401
Fax: +43-(0)1 7007 32403
E-Mail:
sondertransitping@caritas-wienpong.at

SOS-Menschenrechte Österreich

Tummelplatz 5/2
4020 Linz
Tel: +43-(0)70 777 404
Fax : +43-(0)70 777 404 4
E-Mail: office@sos.at
URL: <http://www.sos.at>

Flughafensozialdienst

Magdalenagasse
1060 Wien

Afro-Asiatisches Institut

Wiener Philharmoniker-Gasse 2
A-5020 Salzburg
Tel: +43 (0)662 841 413 11
Fax: +43 (0)662 841 327 6
URL: <http://www.aai-salzburg.at>

**Emergency Call for Women
(Frauennotruf – Gewaltnotruf)**

Haydnstraße 2
A-5020 Wien
Tel: +43 (0)662 88 11 00
E-Mail: frauennotruf.salzburg@aon.at

Helping Hands

Kaigasse 28
A-5020 Salzburg
Tel: +43-(0)662 8044 6003
Fax: +43-(0)662 8044 6037
E-Mail: helphand.oeh@sbg.ac.at
URL: <http://www.8ung.at/helping-hands-salzburg/>

**Schulberatung für AusländerInnen
des Landesschulrats in Schulfragen**

Mozartplatz 8-10
A-5020 Salzburg
Tel: +43-(0)662 80 42 30 13
URL: <http://land.salzburg.at/landesschulrat/>

VeBBAS

Elisabethkai 60/50
A-5020 Salzburg
Tel: +43-(0)662 87 32 48 11
Fax: +43-(0)662 87 32 48 7
E-Mail: office@vebbas.at
URL: <http://www.vebbas.at/>

Verein Kristall

Oberhofgasse 3
A-5400 Hallein
Tel: +43-(0)664 454 10 71
E-Mail: vereinkristall@sbg.at
URL: <http://www.verein-kristall.at>

V.I.E.L.E

Rainerstraße 27
A-5020 Salzburg
Tel: +43-(0)662 87 02 11
E-Mail: verein-viele@aon.at