



سازمان جهانی جامعه مدنی در اروپا
Europeans' Global Civil Society Organization

Asylum In Austria

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Asylum in Austria

If you are afraid to return to your country of origin, or country of previous residence in case you are stateless because you are in danger of suffering serious harm you can get protection in Austria. The first step to receive protection is to apply for asylum.

Applications for international protection (asylum applications) have to be done directly at the police station or with a police officer. Following the application, you will be brought to a specialized police department where the so-called “initial interview” will take place. The police will question you on your identity, your fleeing route and – very briefly – your reasons for fleeing.

The police department will then forward your data to the Federal Office for Immigration and Asylum (BFA). The BFA will decide whether you will be admitted to the regular asylum procedure in Austria or if another European country is responsible for examining your asylum application (see: “Can my application for asylum be examined in another European country?”) In any case, you will have an interview at the BFA before this decision.

If you are not admitted to the Austrian asylum procedure, you may appeal against the negative decision within the given period. Legal counselling will be provided to assist you in this case.

If you are admitted to the Austrian asylum procedure, you will receive a residence entitlement card (= white card). At this point you will likely be transferred to a reception facility in one of the Austrian Provinces. You will then have an interview at the BFA Office in your Province where you will be asked detailed questions about your reasons for fleeing your country.

In case your asylum application is rejected, you can file an appeal against the decision, on which the Federal Administrative Court will decide within the given period. Legal counselling will be provided to assist you in this case. All decisions in the asylum procedure are taken by the Austrian authorities and courts.

As already mentioned, the BFA is a specific department of the Ministry of interior, dealing with asylum matters. In 2014, the tasks of the BAF were further extended to cover some immigration law procedures.

According to the General Administrative Procedures Act (AVG), decisions have to be taken within 6 months after the application for international protection has been submitted. Within 20 calendar days, the BFA has to decide whether it intends to reject the application as inadmissible due to the responsibility of another Member State under the Dublin Regulation, the existence of a safe third country or for being a subsequent asylum application, or to dismiss the application for other reasons. Since 2018, the admissibility procedure may be prolonged by lifting the 20 days deadline in manifestly unfounded cases. However, if no information about the intention to reject the application is issued within 20 calendar days, the application is

automatically admitted into the regular procedure. Thus, the asylum-seeker should receive the preliminary residence permit and be allocated to the reception system of a federal province. On the contrary, if the asylum application is deemed inadmissible the asylum-seeker receives legal assistance and has to be heard in presence of his/her lawyer. There is no legal remedy against this procedural order.

If no procedural order is notified to the asylum seeker within 20 days, the asylum application is admitted to the regular procedure – except in Dublin cases if requests to other Member States to take charge or take back the asylum seeker are made within this time frame. An amendment to Article 22 AsylG, which entered into force on 1 June 2016, allowed for the extension of the duration of procedures at first instance up to 15 months. This exceptional prolongation is no longer applicable since 1 June 2018, however.

In 2019, the average duration of the asylum procedure at first instance amounted to 2.3 month, compared to 6.6 months at the beginning of 2018 and 14 months at the beginning of 2017. [2] While the average time of 2.3 months in 2019 refers to all asylum procedures at first instance, the Ministry of Interior had stated that the average duration was 6 months for regular procedures and 27 days for fast track procedures (which concerned 750 cases) in 2018.[3] A breakdown of average length depending on the applicable procedure was thus not made available for the whole year 2019, but in the first ten months of 2019, 493 fast track procedures were conducted and the average length for these fast-track cases was 18 days.

However, the Austrian Ombudsman continued to receive complaints on the length of asylum procedures at first instance in individual cases, including in 2019. It has received 1,500 complaints in 2016; 2,000 complaints in 2017 and 320 complaints in 2018. Out of the 320 complaints received in 2018, a violation of the duty to take a decision within the set limit was confirmed in 248 cases. Similarly, in 2018, 220 complaints were filed concerning length of procedures at second instance, and in 176 cases a violation was identified.

Moreover, at the end of 2019, a total of 27,156 cases were pending, out of which 4,014 cases were pending at first instance and 23,142 cases were pending at second instance, thus demonstrating the importance of the volume of pending cases at second instance. In comparison, there were 7,535 cases pending at first instance in 2018; 32,241 cases pending at first instance in 2017 and 63,912 cases pending at first instance in 2016.

In case of delay from the BFA, the asylum seeker may request that the case be referred to the Federal Administrative Court for a decision (Säumnisbeschwerde). However, in practice asylum seekers do not frequently make such requests, as they miss a chance of receiving a positive decision at first instance (by the BFA).

In case of delay from the Federal Administrative Court, a request for the establishment of a deadline may be addressed to the Administrative High Court. **Prioritised examination and fast-track processing**

The time limit for decisions for the BFA and the Federal Administrative Court are reduced to 3 months in case the asylum seeker is detained

pending deportation. The same maximum time limit applies to the “procedure for the initiation of a measure terminating residence” (see Accelerated Procedure).

The practice of fast-track processing of cases from certain countries of origin which do not fall within the scope of the “safe countries of origin” list and the accelerated procedure was not observed in 2019. This is due to the fact that the list of safe countries of origin has been extended to countries such as Algeria, Tunisia, Morocco, Georgia and Ghana (see Safe Country of Origin). Applications from Afghanistan were given priority in 2018 following an instruction from the Ministry of Interior in 2017.

Personal interview

All asylum seekers must undergo a personal interview, provided that they have legal capacity to do so. Asylum seekers are further subject to an interrogation by security services shortly after making the application for the purposes of the Dublin and Admissibility Procedure. These interrogations are carried out with a view to establish the identity and the travel route of the asylum seeker. They should not, however, refer to the specific reasons for fleeing and lodging an asylum application. Despite the fact that the interrogation is conducted by the police and not by caseworkers of the BFA, the statements made by the asylum seeker at this stage of the admissibility procedure have an important impact on the asylum procedure as they are accorded particular importance. The Constitutional Court confirmed in a judgement of 2012 that reasons for applying for international protection shall not be in the focus of the first interview conducted by police services.

Asylum seekers may be accompanied by a person they trust (i.e. person of confidence) and unaccompanied children can not be interviewed without the presence of their legal representative.

The law further provides for a choice of interviewer and/or interpreter according to gender considerations in cases where the asylum seeker's fear of persecution is related to sexual self-determination.[11] The authorities must demonstrate that they have informed the asylum applicant of the possibility to be interviewed by an official of the same sex.[12] In practice, however, this is not consistently applied with regard to interpreters. In the appeal procedure, infringements of the right to sexual self-determination have to be expressed in the written appeal in order to have the hearing at the Court held by a judge of the same sex. The Constitutional Court ruled that UNHCR guidelines have to be applied to male asylum seekers accordingly.

Interpretation

Interpreters are provided by the BFA and cover most of the languages, but interviews may also be conducted in a language the asylum seeker is deemed to understand sufficiently. The provision of interpreters has been reported as not satisfactory with regard to certain languages, even in cases where a significant number of asylum seekers may be concerned (e.g. Chechen refugees are often interviewed in Russian). Asylum seekers from African countries are often interviewed in English or French, languages that they are "supposed" to understand. Asylum seekers are asked at the

beginning of the interview if they understand the interpreter. There are no standards for the qualification of interpreters in asylum procedures.

Interpretation is often not done by accredited interpreters; usually persons with the requested language knowledge are contracted on a case-by-case basis. UNHCR has published a training manual for interpreters in asylum procedures.

The Federal Law on the Establishment of the Federal Agency for Care and Support Services Limited Liability Company (BBU-G) passed in June 2019 foresees that a federal agency annexed to the Ministry of Interior should be responsible for the provision of interpreters for the purpose of asylum procedures as of 1 January 2021. This includes the provision of interpreters both at first and second instance, but also in case of oral hearings in front of the BVwG as well as in procedures concerning basic support. The law lists a wide range of areas in which interpreters should be provided by the federal agency, inter alia for interviews related to the making of an application for international protection; for measures relating to the termination of the right to stay as well as for the granting or limitation of basic services. The current plans of the “pilot phase” only provide for the employment of 5 persons for the purpose of interpretation during the first half year of 2021; a number which should reach 15 employees in the second half of that year. The authorities and Courts will still have the possibility to hire external interpreters, however.

Recording and transcript

Article 19(3) AsylG allows for tape recording of the interview, which is, however, rarely used in practice. Video conferencing was introduced in

2018. The BFA in Burgenland held interviews to assist the BFA in Vienna and in Vorarlberg in this context.[16] This new practice is based on Art. 51a of the General Administrative Act, which allows the use of technical facilities for word and image transmission - unless a personal interview is necessary for economical or personal reasons. There are concerns about the practice of conducting video conferences as personal credibility plays a major role in the asylum procedure.

The transcript is more or less verbatim. Its content may depend on the interpreter's summarising the answers, choosing expressions that fit the transcript or translating each sentence of the asylum seeker. Immediately after the interview, the transcript is translated by the same interpreter in a language the asylum seeker understands and the asylum seeker has the possibility to ask for corrections and completion immediately after the interview. By signing the transcript, they agree with its content. If asylum seekers find something incorrect in the transcript after having signed it at the end of the interview, they should send a written statement to the BFA as soon as possible. In practice, asylum seekers do not frequently ask immediately after the interview for correction of the report. Some asylum seekers explain that they were too tired to be able to follow the translation of the transcript. The OHCHR stated in its report on the mission to Austria from October 2018 that many caseworkers of the BFA are not adequately trained in using techniques that fit the needs of asylum applicants. In a number of cases monitored by the OHCHR, negative decisions of the BFA were based on personal views and involved biased questioning during interviews as well as stereotypes on gender and race. NGOs providing

legal advice reported to asylkoordination that asylum seekers often realise that mistakes in the translation or the transcript were made when they receive a negative first instance decision and a legal adviser explains them the details of the transcript.

Appeal

Appeal before the BVwG

Appeals against a negative first instance decision have to be submitted within 4 weeks of the receipt of the decision and the whole asylum file is forwarded by the BFA to the Federal Administrative Court (BVwG).

However, following an amendment that came into effect on 1 September 2018, the time limit has been set at 2 weeks for appeals in inadmissibility procedures and in cases of status withdrawals that were initiated along with a return decision.

Within 2 months following the lodging of an appeal, the BFA may decide to modify the decision that is being challenged.[20] This means that it can decide either to annul, reject or change its initial decision. However, where the BFA refrains from modifying its decision, it forwards the appeal to the Court.

In case refugee status or subsidiary protection status is not granted by the BFA, the asylum applicant will be assigned a free legal adviser provided by the state at the time of notification of the first instance decision. As of

January 2021, legal assistance will be provided by a new federal agency, however (see Legal Assistance).

Article 18(1) BFA-VG provides that the suspensive effect of the appeal may be withdrawn by the BFA where the application is manifestly unfounded, i.e. where:

1. The applicant comes from a safe country of origin;
2. Has already been resident in Austria for at least 3 months prior to the lodging of the application;
3. The applicant has attempted to deceive the BFA concerning their true identity or nationality or the authenticity of their documents;
4. The asylum seeker has not adduced any reasons for persecution;
5. The allegations made by the asylum seeker concerning the danger they face clearly do not correspond with reality;
6. An enforceable deportation order or an enforceable entry ban was issued against the asylum seeker prior to the lodging of the application for international protection; or
7. The asylum seeker refuses to give fingerprints.

Moreover, the BFA must withdraw the suspensive effect of an appeal where:

1. The immediate departure of the third-country national is required for reasons of public policy or public security;
2. The third-country national has violated an entry ban and has returned to Austrian territory; or

3. There is a risk of absconding.

The BVwG must grant automatic suspensive effect within 1 week from the lodging of the appeal, where it assumes that return would expose the concerned person to a real risk of a violation of Articles 2, 3, 8 and 13 ECHR or Protocols 6; or to a serious threat to life or person by reason of indiscriminate violence in situations of conflict in line with Article 15(c) of the recast Qualification Directive. The reasons must be set out in the main complaint.

Appeals against the rejection of an application with suspensive effect have to be ruled by the Court within 8 weeks. The asylum appeal has suspensive effect as long as the case is pending in court.

The BVwG is organised in chambers, each of which is responsible for certain groups of countries. The Court processed 18,760 appeals in 2016, about 20,000 in 2017 and around 24,000 in 2018. The number of appeals pending was 12,497 in 2016, 2017 was 24,516 in 2017, 30,518 in 2018. At the end of 23,142 appeals were pending at second instance.

Following the increase of appeals and backlog of cases at second instance, judges from different fields of law have gradually been assigned to decide upon asylum procedures since 2017; despite their lack of expertise on asylum-related matters. In the first half of 2019, the Federal Administrative Court (BVwG) concluded 10,180 procedures concerning appeals against decisions of the BFA, taking around 11,700 decisions. Out of the 11,700 decisions at second instance, the BVwG dismissed or amended 4,610 decisions and confirmed 5,840 decisions of the BFA. For the year 2020, it

is foreseen that 152 out of 236 judges of the BVwG will be assigned to take decision in asylum and alien's law cases.

The BVwG can request another hearing and additional examinations if necessary. Reversely, the BFA-VG also allows for exceptions to a personal hearing on an appeal; i.e. an appeal must not be held if the facts seem to be established from the case file or if it is established that the submission of the applicant does not correspond to the facts.[29] This provision must be read in light of the restrictions on the submission of new facts in the appeal procedure.

The question whether a personal hearing before the BVwG has to take place or not has been brought before the Constitutional Court (VfGH). The Court ruled that not holding a personal hearing in the appeal procedure does not violate Article 47(2) of the EU Charter of Fundamental Rights. Charter rights may be pleaded before the Constitutional Court. The Court stated that Article 41(7) AsylG, is in line with Article 47(2) of the EU Charter if the applicant was heard in the administrative procedure. However, subsequent rulings of the Administrative High Court and the Constitutional Court have conversely specified the obligation of the Administrative Court to conduct a personal hearing. In the case of an Afghan asylum seeker, the Administrative Court had confirmed the first instance decision which found the asylum seeker's application to be lacking credibility due to discrepancies in statements about his age. The Constitutional Court ruled that, by deciding without a personal hearing, the Administrative Court had violated the right laid down in Article 47(2) of the EU Charter. Two rulings to

the same effect were delivered by the Constitutional Court in September 2014.

The Administrative High Court has specified that all relevant facts have to be assessed by the determining authority and have to be up to date at the time of the decision of the court. It further stated that it was not necessary to explicitly request an oral hearing if the facts were not sufficiently clear or if the statements of the applicant in his or her appeal contradicted the statements taken by the first instance authority.

The possible outcome of an appeal can be the granting of a status, the refusal of a status, or a referral by the BVwG back to the BFA for further investigations and a re-examination of the case. Hearings at the Court are public, but the public may be excluded on certain grounds. Decisions of the BVwG are published on the legal information website of the Federal Chancellery.

As regards the average processing time for the appeal body to make a decision, the Ministry of Justice indicated that, in 2019, 33% of appeals challenging decisions of the BFA were concluded within 6 months, while 67% took longer than 6 months. Further details on these statistics are not available.

Onward appeal before the VwGH

Decisions of the BVwG may be appealed before the VwGH. The eligibility to appeal to the VwGH is determined by the BVwG, but in case the Administrative Court declares a regular revision as inadmissible, the asylum seeker may lodge an “extraordinary” revision. For that purpose, the applicant may submit a request for free legal assistance as well as for the suspensive effect of the complaint.

Out of 775 revisions conducted in the first half of 2019, 26 were regular revisions and 749 were extraordinary revisions. Out of the 26 regular revisions, 16 were requested by the determining authority and 10 by applicants. Out of the 749 extraordinary revisions, 105 were requested the determining authority and 644 by applicants.

In 2017, the government had announced further restrictions in the asylum procedure, including the abolition of the onward appeal (“extraordinary revision”) before the Administrative High Court. This had been criticised by the Federal Administrative Court and Constitutional Court as an undue departure from uniform rule of law standards in a particularly sensitive human rights area. No further proposals have been presented by the interim government as of end of 2019, nor by the newly formed government of the ÖVP/Greens coalition in early 2020.

In case the asylum applicant seeks to challenge the decision in front of the BVwG and if he or she claims it is violating a constitutional right, he or she can lodge an within 6 weeks, after the ruling of the Federal Administrative Court has become final. Asylum seekers are informed of the possibility to

address a complaint to the Constitutional Court in writing and this information is translated in a language the asylum seeker understands. In that context, it has to be mentioned that the ECHR is part of Austria's constitutional law. Therefore the risk of violation of Articles 2, 3 or 8 ECHR can be challenged in front of the Constitutional Court, while the rejection of an application for international protection does not fall under the Court's competence. The appeal does not have automatic suspensive effect, however. Around 75 decisions of the BVwG, in which the decision was considered arbitrary, have been ruled unlawful by the Constitutional Court in 2019.

Asylum seekers face difficulties to access constitutional appeals as the payment of a fee of €240 is required to that end. Furthermore, asylum seekers are not heard in person before the Constitutional Court, which rather requests written statements from the BVwG.

Legal assistance

Legal assistance at first instance

In June 2019, the Austrian Parliament adopted a law establishing a Federal Agency for Care and Support Services (Bundesagentur für Betreuungs- und Unterstützungsleistungen, BBU GmbH) which will be in charge inter alia of providing legal assistance to asylum seekers at first and second instance as of 1 January 2021. The new law has been criticised by several organisations, as it raises concerns over the risk of arbitrary access to free

legal assistance. In its Legal note on the Austrian law, ECRE demonstrated that while access to legal assistance at first instance was the general rule under the previous Article 49(1) BFA-VG, it becomes the exception under the new law. Legal assistance at first instance shall now only be provided according to the “available possibilities”, and does not constitute a right, except in specific cases listed in the Asylum Act. In other words, access to free legal assistance at first instance is only granted when existing resources are available (e.g. staff and funding), and is not a right for all.

Moreover, the reform introduces a new threshold which grants the asylum applicant the right to free legal assistance by the Agency only if an appointment - during which the applicant exercises his or her right to be heard - is scheduled within 72 hours (3 days) after having been notified by the BFA of the intention to reject the asylum application. This means that, if the BFA grants the asylum applicant the right to be heard at a later stage (e.g. in 4 or 5 days), free legal assistance by the Agency will only be available if resources so allow. Consequently, there is a risk of arbitrary access to free legal assistance at first instance which will largely depend on the BFA’s goodwill allowing the asylum applicant to be heard in due time.

Until the BBU is established, asylum seekers are offered free legal assistance at the branch offices of the BFA. However, in practice, this access is limited and largely depends on available resources and staff. Asylum seekers further have to travel to the BFA on their own, which means that the costs of transportation are not covered. The long distances between the accommodation centres and the branch offices of the BFA are

a further obstacle to the effective access to free legal assistance at first instance.

At the time of writing, legal advice is still funded by the Asylum, Migration and Integration Fund (AMIF) and co-funded by the Ministry of Interior. One association, Verein Menschenrechte Österreich (VMÖ), covers legal advice in 6 out of 18 BFA branch offices and also offers counselling at its offices in the federal states. In Styria, Caritas has a contract to provide legal advice as well. Updated Information on the number of consultation hours funded are not available.

While the current legal aid system will stay in place until the Federal Agency takes over the responsibility of providing legal assistance (i.e. on 1 January 2021); the Government officially cancelled on 28 February 2020 the extension of the contracts with the NGOs currently providing legal assistance.[42] As of 2021, these organisations will thus no longer receive funding for the purpose of legal assistance, which has been heavily criticised by civil society organisations.

It should be noted, however, that the current legal aid-system does not meet the needs of asylum seekers. VMÖ, which currently receives most of the funding for legal assistance in the first instance procedure,[43] has been criticised for not being very helpful nor committed to the protection of the rights of asylum seekers due to its cooperation with the Ministry of Interior.[44]

Legal advisers are usually not present during interviews at first instance, except where they are authorised by the asylum seeker for legal

representation. According to the information available to Asylkoordination, legal advisers of VMÖ do not accept to act as legal representatives before the BFA due to a strict interpretation of the contract with the government. Only other organisations or lawyers act as legal representatives for asylum seekers during interviews. Representatives from VMÖ further explained to OHCHR that their role is to “uphold the rule of law and not necessarily to be the defender or the advocate of the migrant, who often do not help themselves.”

Legal assistance in appeals

The system of free legal aid for the appeal stage was introduced by amendment of the Asylum Act in 2011 and entered into effect on 1 October 2011.[46] Thus, in the current system, when an application for international protection is rejected, a legal adviser is assigned to the asylum applicant by the determining authority. Two organisations, ARGE Rechtsberatung (Diakonie and Volkshilfe) and Verein Menschenrechte Österreich, are contracted by the Ministry of Justice to provide free legal aid at appeal stage. Asylum applicants may also decide to contact an NGO offering free legal advice to asylum applicants, however.

The tasks of these organisations are laid down in law and entail the obligation to provide advice in case of dismissal of the application. Legal advisers shall be present at hearings before the Administrative Court if the asylum seeker so request.[47] Asylum seekers should be able to make effective use of their right to legal advice, in accordance with procedural

guarantees, EU law and in line with the jurisprudence of the Higher Administrative Court.

Although the role of the legal adviser in such a hearing was unclear following the 2015 amendment, the Constitutional Court clarified on 9 March 2016 that legal advisers who are summoned to the hearing at the Court have to represent the asylum seekers before the Court, if applicants so requests.[49] Since 1 October 2016, the wording of Article 52 BFA-VG is as follows: “at their request, they shall also represent the foreigners or asylum seekers concerned in the proceedings, including at a hearing.” As already mentioned, asylum seekers may also decide to be represented by NGOs or to pay themselves for a private lawyer.

Financial compensation for legal assistance ordered by decree is insufficient. The NGO Diakonie Flüchtlingsdienst as part of ARGE Rechtsberatung (one of two legal counselling providers contracted by the Ministry of Interior) reported in April 2019 that - due to the low refunding rates – it had to add in around € 860.000 from its own budget.

Legal advisers do not need to be lawyers or experienced in refugee and asylum law. Three years of practical experience in immigration law is a sufficient qualification for persons with a University degree other than law, while five years of practical experience in immigration law suffices for persons without a University degree. Pursuant to § 13 BBU-G, the same qualification criteria are to be applied for legal counsellors under the future regime of state-led legal counselling. Legal advisers have to decide whether to help asylum seekers to write an individual appeal (which must

be written in German) and assist them with regard to all procedural requests of the appeal procedure.

As already mentioned, two organisations, ARGE Rechtsberatung (Diakonie and Volkshilfe) and VMÖ, are contracted by the Ministry of Justice to provide free legal assistance at second instance. VMÖ's independence and the quality of its services has been questioned by many Austrian NGOs working in the field, including public officials. Asylum seekers have no choice as to which organisation will be responsible for providing legal assistance to them. Joachim Stern reports the findings of a short evaluation of decisions of the BVwG in the case law database between 1 April 2014 and 1 April 2016. The evaluation found 139 procedures before the Court with legal representation of the asylum seekers by ARGE Rechtsberatung and 4 cases with legal representation by VMÖ. This evaluation shows that asylum seekers who are entitled to receive legal advice by VMÖ are in most cases not represented by this organisation.

Since 2017, however, NGOs observed minor improvements in the legal aid system. A persistent issue, however, relates to the fact that the contract between the government and the service providers VMÖ and ARGE Rechtsberatung does not foresee criteria quality standards for legal aid. Thus, it is often criticised that the quality of the provision of legal aid by VMÖ differs very much depending on the individual counsellor. The Federal Chancellery evaluated several appeals prepared by the VMÖ. One of the appeals monitored concerned an 18-years-old Afghan. As reported by the media, the appeal against his deportation to Afghanistan only contained three lines drafted in poor German. In February 2020, the government

officially cancelled its contracts with NGOs providing legal assistance as of 2021, meaning that there will be no more funding provided to them for the purpose of legal assistance. The lack of funding will thus inevitably affect the activities of the relevant NGOs and raises serious concerns as regards the quality of legal assistance that will be provided to asylum seekers as of 2021.

It appears that complaints as regards the poor quality of appeals resulted in an improvement of the provision of legal assistance by VMÖ; i.e. argumentation has improved. However, quality of legal aid largely depends on the counsellor involved and there is still a lack of trust of asylum-seekers and volunteers' vis-a-vis VMÖ. Applicants reported to asylkoordination and other NGOs that in some cases VMÖ refused to provide assistance to applicants' willing to lodge an appeal, arguing that it would not make sense. The applicants were offered the possibility to write an appeal by themselves instead. It was also reported that in the second half of 2019 the average quality of appeals written by VMÖ slightly improved. However, the quality of the appeal written depends very much on the motivation of the legal counsellor involved. Thus some applicants continue to seek for legal assistance from other NGOs or other lawyers. Moreover, it should be noted that VMÖ tends to reduce the provision of legal assistance in certain circumstances, in particular when it comes to appealing a dismissal of refugee status when the person received subsidiary protection status as well as for appeals against detention orders.

One project run by Caritas Austria offers assistance during the hearing before the Federal Administrative Court, but this resource is limited and

therefore only a certain number of cases can be assisted. AMIF funding for the period 2017-2019 was not granted any longer but the project continues on a smaller scale with alternative funding. At the time of writing, it was unclear whether the project will continue throughout 2021.

Besides this free legal advice funded by the state, NGOs help asylum seekers lodging appeals and submitting written statements, accompany them to personal hearings at the Federal Administrative Court and may act as legal representatives. NGOs cannot represent asylum seekers before the Constitutional Court or the Administrative High Court, as this can only be done by an attorney-at-law.

A “merits test” is not foreseen with regard to legal assistance at the appeal stage. Legal assistance free of charge is provided in case of the rejection of a subsequent asylum application on res judicata grounds too. The Constitutional Court and the Administrative High Court apply a merits test and tend to refuse free legal aid, if the case has little chance of succeeding. The BBU-G introduces a worrying change in this regard, however. The law only includes an obligation to inform applicants of the prospects of success of their appeal without stipulating any consequences. However, the approach suggested by the impact assessment of the law, if applied in practice by the Federal Agency, is extremely problematic. Whereas the recast APD does not specify which other authorities could be considered competent to apply a merits test, entrusting the Federal Agency with that task will create an obvious conflict of interest. Moreover, where another authority than a court or tribunal carries out a merits test, the applicant must have the right to an effective remedy before a court or tribunal against

that decision, according to Article 20(3) recast Asylum Procedures Directive. If in practice the Federal Agency were to refuse free legal assistance and representation on that basis without the applicant having an effective opportunity to challenge that decision before a court or tribunal, there would be a clear breach of the recast Asylum Procedures Directive.

Overall, the Austrian law of June 2019 introduced drastic changes with regard to the provision of legal assistance at second instance. It explicitly foresees that it will be provided by the BBU-GmbH as of 2021. As explained by several commentators, the establishment of the Federal Agency raises concerns with regard to the right to an effective remedy because one of its key components - namely the access to free legal assistance – could be affected by the potential conflict between the appointed legal advisers' and asylum seekers' interests. Similarly, the significant influence granted to the Ministry of Interior over the functioning and the role of the BBU GmbH (e.g. appointing the CEO of the BBU GmbH or designing the work plan and guidelines of the BBU GmbH etc.) raises serious concerns over lack of independence, subsequently raising a risk of violation of the right to an effective remedy. Moreover, there are no provisions in the law which allow or indicate the contribution of non-governmental actors, external service providers or welfare organisations which could supplement, monitor or intervene in the role and the powers of the Agency. The Austrian Government has therefore created what has been described by both UNHCR and Diakonie Austria as a “black box”, which is steered mainly by the Ministry of Interior. All external actors are prevented from intervening to potentially correct mistakes or erroneous

decisions, subsequently creating an Agency that is fully self-sufficient and non-transparent.

In its coalition programme released in January 2020, the government announced that it would not amend the law already in force. The programme foresees however that there will be slight changes concerning the nomination of the members of the supervisory board and that an experts' board will be introduced. At the time of writing it was not clear who would be nominating such experts and what effective rights and influence this experts' board will have.

In 2019, a well-known lawyer specialised in the field of asylum and aliens' police law, Ronald Frühwirth, decided to stop working as a lawyer due to grave deficits and inconsistencies in the jurisdiction. This caused public uproar as he argued publicly that the jurisdiction of the High Administrative Court is inconsistent and hinders him from offering adequate counselling and representation of his clients in Court. "The jurisdiction does not follow the rule of law anymore but can only be understood as "doing politics", he stated. Frühwirth's resignation resulted in a significant gap as he was recognised as one of the best experts in the field and represented many asylum seekers, especially in Styria.

1. Ministry of Interior, Answer to parliamentary request 232/AB, 20 January 2020, available in German at: <https://bit.ly/37Vzhf6In>.
2. Information provided by the Ministry of Interior, 26 January 2018. See also Der Standard, 'Asyl: Freiwillige Rückkehr ging um ein Drittel zurück', 11 July 2017, available in German at: <http://bit.ly/2D3nDiK>.

- 3) Orf.at, „Trendumkehr“ Kickl präsentiert Bilanz zu Asylzahlen‘, 24 January 2019, available in German at: <https://bit.ly/2NVI4pY>.
- 4) Ministry of Interior, Answer to parliamentary request 232/AB, 20 January 2020, available in German at: <https://bit.ly/37Vzhf6ln>.
- 5) Report of the Ombudsman Board to the National Council and the Federal Council 2018, available in German at: <https://bit.ly/31OvJdd>, 108.
- 6) Ministry of Interior, Reply to parliamentary question 11560/J (XXV.GP), 31 March 2017, available in German at: <http://bit.ly/2o1os5Z>. According to the Ministry, the average processing times for asylum applications made after 1 July 2016 was 6.6 months: Information provided by the Ministry of Interior, 26 January 2018.
- 7) Article 22(6) AsylG.
- 8) However, the official conducting the interview is no longer responsible for the decision.
- 9) Article 19 AsylG.
- 10) VfGH, Decision U 98/12, 27 June 2012.
- 11) Article 20 AsylG.
- 12) Article 20 Austrian Asylum Act.
- 13) OHCHR, Report on the mission to Austria focusing on the human rights of migrants, particularly in the context of return, October 2018, available at: <https://bit.ly/2u4JoQE>.

- 14) VfGH, Decision U 1674/12, 12 March 2013 mentions Conclusions Nr. 64 (XLI) and Nr. 73 (XLIV) of the Executive Committee of UNHCR. The Asylum Court decided by a male and female judge and its decision was thus unlawful.
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- 17) OHCHR, Report on the mission to Austria focusing on the human rights of migrants, particularly in the context of return, October 2018, <https://bit.ly/2u4JoQE>.
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- 19) Article 16 (1) BFA-VG.
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- 21) Article 18(2) BFA-VG.
- 22) Articles 17(1) and 18(5) BFA-VG.
- 23) Article 17(2) BFA-VG.
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- 25) Ministry of Interior, Asylum Statistics November 2018, available in German at: <https://bit.ly/2N1H5mK>.
- 26) Ministry of Interior, Asylum Statistics December 2019, available in German at: <https://bit.ly/2TcjynH>.

- 27) Ministry of Justice, Answer to parliamentary request 3929/AB XXVI. GP, 4 September 2019, available in German at: <https://bit.ly/387CZI>.
- 28) Federal Administrative Court, Geschäftsverteilung 2020, available in German at: <https://bit.ly/2Tb5QI5>.
- 29) Article 21(7) BFA-VG.
- 30) Article 41(7) AsylG corresponds with Article 21(7) BFA-VG.
- 31) VfGH, Decisions U 466/11-18 and U 1836/11-13, 14 March 2012, available at: <http://bit.ly/1eLj54J>.
- 32) VfGH, Decision U 152/13-12, 21 February 2014, available at: <http://bit.ly/1FXmqb6>.
- 33) VfGH, Decision U 610/2013, 19 September 2014, available at: <http://bit.ly/1RIQrPN>; U 2529/2013, 22 September 2014, available at: <http://bit.ly/1G4KDfF>. See also K Kessler, 'The right to an oral hearing in Austrian asylum appeal procedures in the light of Article 47(2) of the Charter of Fundamental Rights of the European Union', EDAL, 14 January 2015, available at: <http://bit.ly/1CGfjzK>.
- 34) VwGH, Ra 2014/20/0017, 28 May 2014.
- 35) VwGH Ro 2014/21/0047, 22 May 2014.
- 36) Decisions of the Federal Administrative Court are available at: <http://www.ris.bka.gv.at/Bvwg/>. However, according to the General Administrative Procedures Act, decisions may not be made public if it is necessary for reasons of public order or national security, morality, the

protection of children or the private life of the asylum seeker or for the protection of a witness.

37) Ministry of Justice, Answer to parliamentary request 3929AB/XXVI. GP, 4 September 2019, available in German at: <https://bit.ly/2TzGywW>.

38) Ibid.

39) VwGH, 'Verwaltungsgerichtshof spricht sich gegen den geplanten Ausschluss der außerordentlichen Revisionen in Asylverfahren aus', 19 December 2017, available in German at: <http://bit.ly/2oLnL22>.

40) The cases are available in German at: <https://bit.ly/377YZfZ>.

41) ECRE, Reforming legal assistance in Austria: an end to independent provision?, June 2019, available at: <https://bit.ly/2NHkaB0>, 3.

42) Orf.at, 'Asyl: Beratungsverträge mit NGOs gekündigt', 28 February 2020, available in German at: <https://bit.ly/3dlwQq4>.

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- 46) BGBl I Nr. 38/2011.
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- 52) J Stern, 'Verfahrenshilfe und Rechtsberatung – Neue Entwicklungen und alte Fragen' in C Filzweiser and I Taucher (eds), Asyl- und Fremdenrecht Jahrbuch 2016 (NWV 2016), 151-168.
- 53) Federal Chancellery, Reply to parliamentary question 12783/J, 21 June 2017, available in German at: <http://bit.ly/2o0oo6R>.
- 54) Salzburger Nachrichten, 'Bundeskanzleramt prüft Vorwürfe gegen Asylverein', 20 April 2017, available in German at: <http://bit.ly/2EnU94z>.
- 55) ORF, 'Asyl: Beratungsverträge mit NGOs gekündigt, 28 February 2020', available in German at: <https://bit.ly/3ctSYOI>.
- 56) Caritas, BVwG-Projekt, available in German at: <https://bit.ly/2la6tF>.
- 57) Article 2 BBU-G.

- 58) ECRE, Reforming legal assistance in Austria : an end to independent provision ?, June 2019, 5, available at: <https://bit.ly/2NHkaB0> ; UNCHR, Analysis of the law establishing a Federal Agency for Supervision and Support Services, April 2019, 1, available in German at: <https://bit.ly/2W8c1Fx>; Diakonie Austria, Position statement on the Federal law amending the BFA Procedures Act (BFA-VG), the Asylum Act and the Basic care act, April 2019, 3, available in German at: <https://bit.ly/2W4cAAb>.
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- 63) Anwalt aktuell, ‚Klare Worte‘, 4 October 2019, available in German at: <https://bit.ly/2TRsXkM>; ORF.at, ‚Grazer Anwalt hört auf, 9 August 2019‘, available in German at: <https://bit.ly/2QjXgP1>.

Where to seek help?

Federal Office for Immigration and Asylum

The Federal Office for Immigration and Asylum (BFA) is the only public authority deciding on asylum applications and related procedures in Austria.

The BFA has regional offices (Regional Directorates) in all 9 Austrian provinces while its headquarter (the Directorate) is based in Vienna. You can find the contact details in German if you click on the respective Province on this link).

For more information on the BFA and its tasks please see the official brochure of the BFA which also gives an overview of the asylum procedure in Austria.

On the website of the BFA, you can also find various official forms necessary for asylum applications and related procedures (click on “Englisch” for forms in English).

Counselling Services

Counselling in the asylum procedure

- There are several NGOs in all 9 Austrian provinces, providing legal counselling in the asylum procedure:
 - Vienna (Wien): Caritas Asylzentrum, Asyl in Not (link only in German), MigrantInnenverein St. Marx
 - Lower Austria (Niederösterreich): Caritas St. Pölten – Flüchtlingsberatung (link only in German)

- Upper Austria (Oberösterreich): Caritas Linz (link only in German), Helping Hands Linz
- Burgenland: Diakonie Burgenland, SOS Mitmensch Burgenland (links only in German)
- Styria (Steiermark): Caritas Graz (link only in German)
- Carinthia (Kärnten): Caritas Kärnten (link only in German)
- Salzburg: Caritas Salzburg, SABERA (links only in German)
- Tyrol (Tirol): FLUCHTpunkt Innsbruck
- Vorarlberg: Caritas Vorarlberg, Vindex (links only in German)

All asylum-seekers who received a negative first instance decision are assigned a free-of-charge legal counsellor from one of the two legal counselling organizations: ARGE Rechtsberatung (Diakonie/Volkshilfe) or Verein Menschenrechte Österreich (VMÖ). The assigned legal counsellor assists asylum-seekers with lodging an appeal with the Federal Administrative Court. Upon request, they also provide representation in the appeal procedure and accompany asylum-seekers in case the court decides to hold a hearing.

Basic counselling with regards to the asylum procedure is furthermore available at BFA directorates in all 9 Provinces. It is provided by Verein Menschenrechte Österreich. For further information, please see here.

On the website of the Austrian NGO asylkoordination, you can find an extensive list of organizations providing counselling on legal, social, housing, psychological and more issues.

There are also organizations offering counselling on voluntary return (Caritas, VMÖ).

Counselling in detention

In Austria there are several detention centers (“Polizeianhaltezentrum“, PAZ). If persons are detained for more than a week, they are mostly transferred to one of the three largest PAZ which are located in Vienna (PAZ Rossauer Lände and PAZ Hernalser Gürtel) and Styria (Vordernberg):

- PAZ Rossauer Lände: Roßauer Lände 9, 1090 Wien
- PAZ Hernalser Gürtel: Breitenfelder Gasse 21, 1080 Wien
- AHZ Vordernberg: Hauptstraße 162, 8794 Vordernberg

Persons in detention (who are not just arrested for maximum 48 hours) have access to free-of-charge legal counselling from one of the two legal counselling organizations: Diakonie or Verein Menschenrechte Österreich (VMÖ). The annex to the detention decision (“Verfahrensordnung“) informs them who is in charge of their case and includes contact details of legal counsellors. Legal counsellors will provide information on the legal detention situation and assist detainees with lodging an appeal against the detention decision with the Federal Administrative Court.

Organisations providing legal counselling

- Detention Centers in Vienna (PAZ Rossauer Lände, PAZ Hernalser Gürtel)
- Diakonie
- VMÖ
- Detention Center in Vordernberg, Styria
- Diakonie
- VMÖ
- Further, VMÖ provides social counselling for detainees (e.g. support to get in touch with family members) and counselling on voluntary return:
 - Detention Centers in Vienna (PAZ Rossauer Lände, PAZ Hernalser Gürtel): VMÖ in Vienna
 - Detention Center in Vordernberg, Styria: VMÖ in Styria
- If detainees wish to speak with their legal or social counsellor, they can approach the police in the detention centers.
- Detainees can be visited. Information on visiting procedures and visiting hours are available here:
 - PAZ Rossauer Lände
 - PAZ Hernalser Gürtel
 - AHZ Vorderberg

Emergency Services

Sexual or gender-based violence: In case you need help regarding sexual or gender-based violence you can call the following hotline: 0800 222 555 (all information you share will be treated confidentially!).

Human trafficking: For any help regarding human trafficking, you can call the 24/7 hotline on human trafficking: 0677 61343434 (all information you share will be treated confidentially!).

Finding lost family members: If you lost contact with your family members, you can contact the Tracing Services of the Austrian Red Cross in the Austrian Province you are currently residing.

Other emergencies:

For medical emergencies, please dial 144.

To reach the police in an emergency, please dial 133.

In case of fire, please dial 122

Life in Austria

General information

For general information on life in Austria, please see the website “You’ve arrived” by the Austrian Red Cross.

Furthermore, there are several buddy programs offering possibilities to meet Austrians, e.g.:

<https://www.refugeebuddy.at/>

<http://www.fluechtlinge-willkommen.at/ticket-anmeldung-patinnen-paten/>
<http://www.volkshilfe-wien.at/migration-asyl/buddies-for-refugees/>.

German classes

German language classes are offered by the following organisations:

For recognized refugees and beneficiaries of subsidiary protection:

The website

<https://sprachportal.integrationsfonds.at/kurse/oesterreichische-kursinstitute> lists German classes for recognized refugees in Austria. Some of these classes are open to asylum-seekers as well.

For asylum-seekers:

- Vienna (Wien): Caritas
- Styria (Steiermark): Caritas
- Salzburg: Volkshochschule Salzburg
- Upper Austria (Oberösterreich): map with available German classes
- Lower Austria (Niederösterreich): Information Sheet in German (only for asylum-seekers from Syria, Iran, Iraq and Afghanistan)
- Carinthia (Kärnten): Caritas
- Vorarlberg: Caritas
- Burgenland: Volkshochschule Burgenland

Work and Education in Austria:

UNHCR compiled comprehensive information on the Austrian education system (in German, Dari, Arabic) here.

If you were granted protection in Austria and you are looking for work in Austria, please contact the Public Employment Service (AMS).

Furthermore, the initiatives “More Than One Perspective” and “JUST Integration” may be useful to you.

If you are still in the asylum procedure and would like to work, please find relevant information here.

Regards,

Sabir Hussain Turi

Vorarlberg, Austria.