

## AUSTRIA

Austria is a state party to the United Nations Convention Relating to the Status of Refugees and its Protocol, as well as to the major United Nations human rights instruments and to the European Convention on Human Rights. Austria's asylum procedure is governed by the country's 1997 Asylum Act.<sup>1</sup>

In Austria, 8,269 asylum applications were lodged during the first quarter of 2002, 30,140 during the year 2001 and 18,280 during the year 2000.<sup>2</sup> The Federal Refugee Office, an agency within the Interior Ministry, is responsible for making decisions on asylum applications in the first instance. Asylum seekers may appeal negative decisions to the independent Federal Asylum Review Board and make further appeals within the administrative courts.<sup>3</sup>

Information on the number of asylum seekers in detention is not available. However, Austria has perhaps the strictest detention policy in Europe, with most immigrants who arrive without valid travel documents being detained until they are formally admitted into the asylum determination process.<sup>4</sup> Those who arrive at airports or directly from the countries they are fleeing are subject to pre-admissibility detention in border control areas

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<sup>1</sup> U.S. COMMITTEE FOR REFUGEES, WORLD REFUGEE SURVEY 2002 at 189 *available at* <http://www.refugees.org/WRS2002>. (Immigration and Refugee Services of America 2002) [hereinafter USCR WORLD REFUGEE SURVEY 2002].

<sup>2</sup> UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES, NUMBER OF ASYLUM APPLICATIONS SUBMITTED IN 30 INDUSTRIALIZED COUNTRIES, 1992-2001, (May 31, 2002), *available at* [http://www.unhcr.ch/cgi-bin/texis/vtx/home/+NwwBmem\\_Xx8wwwwqwwwwwwhFqAIRERfIRfgItFqA5BwBo5Boq5AFqAIRERfIRfgIcFqEvXafDm1BGowcoSnmagd1DBGon5Dzmxwwwwww/opendoc.pdf](http://www.unhcr.ch/cgi-bin/texis/vtx/home/+NwwBmem_Xx8wwwwqwwwwwwhFqAIRERfIRfgItFqA5BwBo5Boq5AFqAIRERfIRfgIcFqEvXafDm1BGowcoSnmagd1DBGon5Dzmxwwwwww/opendoc.pdf) (last accessed Aug. 29, 2002) [hereinafter *Asylum Applications Lodged in 1992-2001*]; UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES, ASYLUM TRENDS IN 28 INDUSTRIAL COUNTRIES: JANUARY TO MARCH 2001—JANUARY TO MARCH 2002, *available at* <http://www.unhcr.ch/cgi-bin/texis/vtx/home/+2wwBmeIFXx8wwwwwnwwwwwwwhFqAIRERfIRfgItFqA5BwBo5Boq5AFqAIRERfIRfgIcFqF+8afDm15BGowcoSnmagd1DBGon5Dzmxwwwwww/opendoc.pdf> (June 13, 2002) (last accessed Aug. 29, 2002) [hereinafter *Asylum Trends in 28 Industrialized Countries*].

<sup>3</sup> USCR WORLD REFUGEE SURVEY 2002, *supra* note 1, at 189-190.

<sup>4</sup> Pam O'Toole, *Analysis: Australia's tough asylum policy*, BBC News (Jan. 24, 2002), *available at* <http://news.bbc.co.uk/1/hi/world/asia-pacific/1780365.stm> (last accessed Sept. 16, 2002).

pending decisions by the Federal Asylum Office as to whether they will be admitted to the asylum application process, decisions that must be made within 5 days.<sup>5</sup>

Asylum Officers generally admit those who arrive with proper documentation to the asylum procedure, grant them provisional residency rights and release them from detention.<sup>6</sup> However, those who arrive without proper documentation are only admitted to the asylum procedure, granted provisional residency rights, and released from detention if Asylum Officers find that their applications are not “manifestly unfounded” (see discussion below).<sup>7</sup>

Asylum seekers who arrive at Austrian land borders from third countries without proper documentation are refused entry and must await decisions on their applications outside Austria.<sup>8</sup> Asylum seekers who are apprehended after having entered the country illegally do not have provisional rights of residency and thus may be subject to detention.<sup>9</sup> The majority of asylum seekers reportedly enter the country illegally and apply for asylum once inside.<sup>10</sup>

Asylum seekers, whether they have arrived with valid documents or not, who are deemed likely to abscond if they are denied asylum are not granted provisional residency rights and are not released from detention pending adjudication of their claims.<sup>11</sup> Such detentions may last for 2 months, with the possibility of single 4-month extensions.<sup>12</sup>

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<sup>5</sup> UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES, RECEPTION STANDARDS FOR ASYLUM SEEKERS IN THE EUROPEAN UNION at 43 (July 2000) [hereinafter UNHCR EU REPORT 2000].

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> U.S. COMMITTEE FOR REFUGEES, WORLD REFUGEE SURVEY 2001 *available at* <http://preview.refuges.org/world/worldmain.htm> (Immigration and Refugee Services of America 2001) [hereinafter USCR WORLD REFUGEE SURVEY 2001]; UNHCR EU 2000 REPORT, *supra* note 5, at 43; DANISH REFUGEE COUNCIL, LEGAL AND SOCIAL CONDITIONS FOR ASYLUM SEEKERS AND REFUGEES IN WESTERN EUROPEAN COUNTRIES at 11, *available at* <http://www.english.drc.dk/publications/> (May 2000) [hereinafter DRC W. EUR. REPORT 2000].

<sup>10</sup> DRC W. EUR. REPORT 2000, *supra* note 9, at 11.

<sup>11</sup> USCR WORLD REFUGEE SURVEY 2001, *supra* note 9.

<sup>12</sup> DRC W. EUR. REPORT 2000, *supra* note 9, at 16.

Austria has come under considerable criticism for subscribing to the “safe third country” concept.<sup>13</sup> According to the 1997 Asylum Act, an application for asylum is considered “manifestly unfounded” if, inter alia, the claimant was already safe from persecution in a “safe third country” before coming to Austria, or if the asylum seeker comes from a so-called “safe country of origin.”<sup>14</sup> Austria considers third countries as safe for the return of asylum seekers if they: are signatories to the UN Refugee Convention and the European Convention Human Rights; have established asylum procedures, including a system for appeals; allow returning asylum seekers to utilize that procedure; and allow them to remain in the country safely while awaiting the outcome of their status determinations.<sup>15</sup> If the asylum request is deemed “manifestly unfounded” after the initial review, a decision not to admit the application to the normal asylum procedure must be taken without further investigation, appeals are often denied suspensive effect and deportation rapidly follows.<sup>16</sup>

A 1999 amendment to the Asylum Act authorized the Ministry of Interior to draw up a “white list” of “safe third countries”, drawing sharp criticism from human rights and refugee advocacy groups, on the grounds that it compromises the principle of individual investigation of claims.<sup>17</sup> The High Court upheld the principle in February 1999 and March 2000 rulings, when it reversed a denial of asylum made on the basis of the “safe third country” rule.<sup>18</sup> The asylum law was amended again in July, 2001, but only minor procedural improvements were made.<sup>19</sup>

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<sup>13</sup> United States Department of State, HUMAN RIGHTS COUNTRY REPORTS: AUSTRIA (2001), available at <http://www.state.gov/g/drl/rls/hrrpt/2001/eur/8223.htm> (last accessed Sept. 16, 2002) [Hereinafter DOS 2001 REPORT];

<sup>14</sup> DANISH REFUGEE COUNCIL, SAFE THIRD COUNTRY POLICIES IN EUROPEAN COUNTRIES, available at <http://www.flygtning.dk/publikationer/rapporter/safe3rd/austria/index.php#Austria> (Nov. 1997) [hereinafter DRC SAFE THIRD COUNTRY REPORT] (last accessed Sept. 16, 2002).

<sup>15</sup> USCR WORLD REFUGEE SURVEY 2001, *supra* note 9, at 197. The refugee office reportedly considers most of Austria’s eastern neighbors—Slovenia, Hungary and the Czech Republic—to be safe third countries. *Id.*

<sup>16</sup> DRC SAFE THIRD COUNTRY REPORT, *supra* note 14.

<sup>17</sup> DOS 2001 REPORT, *supra* note 13.

<sup>18</sup> *Id.*

<sup>19</sup> *Id.* For example, asylum-applicants may be granted temporary residency rights until their cases are processed (renewals every 3 months are no longer necessary), and the legal age limit has been lowered from 19 to 18. *Id.*

According to the U.S. Committee for Refugees, a startlingly large and growing number of asylum seekers are being denied admission to Austria's asylum procedure on the basis of their applications being "manifestly unfounded" in accordance with the safe country rule.<sup>20</sup> Others are being denied asylum on the same grounds.<sup>21</sup>

*Is there independent review of the detention decision?* No.

Appeals are limited to substantive review of decisions related to admissibility.

*Are there limits on the period of detention?* 5 days on pre-admissibility detention and 6 months on post-admissibility detention.

Pre-admission detention at the airport is limited to five days, during which admissibility decisions must be made. Asylum seekers arrested after attempting illegal entry or because they lack provisional residency rights may be held in administrative detention for up to six months even after they have applied for asylum. Detention to ensure the removal of rejected asylum seekers is limited to six months.<sup>22</sup>

*Is there periodic review of detention?* No.

*Is there access to government-funded legal aid?* Limited.

The police are not required to inform asylum seekers of their right to counsel, and refugee advisors are not provided with lists of detainees. It is estimated that twenty-five percent of detainees in Vienna do not receive any legal assistance or information.<sup>23</sup>

State funded lawyers are provided only to those asylum seekers who file appeals to the Higher Administrative Court and cannot afford their own lawyers.<sup>24</sup> Under the "Schubhaftbetreuung" program, the Minister of the Interior retains a limited number of refugee advisors, drawn primarily from NGOs, to visit jails to provide information to detainees about legal proceedings. They are not authorized to provide legal assistance, however, but rather to refer asylum seekers to NGOs that do so. Lawyers reportedly have

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<sup>20</sup> USCR WORLD REFUGEE SURVEY 2001, *supra* note 9.

<sup>21</sup> *Id.*

<sup>22</sup> DRC W. EUR. REPORT 2000, *supra* note 9, at 3, 16.

<sup>23</sup> EUROPEAN COUNCIL ON REFUGEES AND EXILES, STUDY ON THE AVAILABILITY OF FREE AND LOW-COST LEGAL ASSISTANCE FOR ASYLUM SEEKERS IN EUROPEAN STATES at 43, available at <http://www.ecre.org/research/legalassistance/index.shtml> (November 2001) [hereinafter ECRE EUR. STUDY 2001].

<sup>24</sup> UNHCR EU REPORT 2000, *supra* note 5, at 38, citing Article 38 of the Higher Administrative Court Law.

limited or no access to their detained clients. Most jails allow two to three visits per week during specific hours, while some prohibit all such contact.<sup>25</sup>

*Alternatives to detention:* Reporting requirements, open centers and directed residence.

According to the Asylum Act, if more lenient alternatives to detention exist, authorities should exhaust them before detaining asylum seekers.<sup>26</sup> All applicants for asylum who are not detained must register their addresses with federal authorities. Those able to prove their identities and provide financial information may qualify for accommodation, food, medical care, pocket money, clothing and school supplies until decisions have been made on their asylum claims. However, to receive such assistance they must reside in one of several federally-operated accommodation centers, a federally-contracted private pension, or other federally-contracted accommodations.<sup>27</sup>

The Aliens Police may also order asylum seekers to reside in hostels or hotels with frequent reporting obligations as an alternative to detention. If such asylum seekers fail to comply with reporting requirements, they may be detained.<sup>28</sup>

*Vulnerable groups:*

Austria detains certain unaccompanied minors, including children under 14, pending their deportation, provided that appropriate facilities are available.<sup>29</sup> A Youth Welfare Agency acts as legal representative to unaccompanied minors in their applications for asylum.<sup>30</sup>

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<sup>25</sup> ECRE EUR. STUDY 2001, *supra* note 23, at 42-43.

<sup>26</sup> ECRE EUR. STUDY 2001, *supra* note 23, at 42.

<sup>27</sup> UNHCR EU REPORT 2000, *supra* note 5, at 38-39, 43.

<sup>28</sup> DRC W. EUR. REPORT 2000, *supra* note 9, at 19.

<sup>29</sup> USCR WORLD REFUGEE SURVEY 2001, *supra* note 9, at 198; UNHCR EU REPORT 2000, *supra* note 5, at 42.

<sup>30</sup> UNHCR EU REPORT 2000, *supra* note 5, at 42.