First instance determination - Austria

Overview of first instance procedures

Content updated on: 15/05/2025

Relevant EU legislation

Austria is bound by the recast Asylum Procedures Directive (APD/APR), the recast Reception Conditions Directive and the Dublin III Regulation (AMMR) and has transposed their provisions through the Asylum Act (AsylG) | Bundesgesetz über die Gewährung von Asyl, StF: BGBl. I Nr. 100/2005.

National legislation

The Asylum Act (AsylG 2005) | Bundesgesetz über die Gewährung von Asyl, StF: BGBl. I Nr. 100/2005 provides for the following asylum procedures:

- The regular asylum procedure
- Special procedures:
    - The admissibility procedure (Article 28)
    - The accelerated procedure (Article 27a)
    - The airport procedure (Articles 31-33)
    - The subsequent application procedure (Article 2(1)(23))

In addition, the BFA Procedures Act | BFA-Verfahrensgesetz and the General Administrative Procedures Act | Allgemeines Verwaltungsverfahrensgesetz AVG are also relevant for first instance procedures.

Competent authority and other stakeholders

National authorities: The Federal Office for Immigration and Asylum (BFA) | Bundesamt für Fremdenwesen und Asyl is responsible for examining/processing

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requests for international protection in the regular asylum procedure and in special procedures. The Federal Office for Immigration and Asylum (BFA) reports to the Ministry of the Interior. The BFA is responsible for the implementation of:

- The Federal law on the establishment and organisation of the Federal Office for Immigration and Asylum (BFA) | BFA-Einrichtungsgesetz;
- The Asylum Act 2005 (AsylG 2005);
- The 7th, 8th and 11th main part of the Aliens Police Act 2005 | Fremdenpolizeigesetz (FPG); and
- The Basic Welfare Service Act | Grundversorgungsgesetz (2005). In individual cases, the BFA is responsible for exchanging information on applicants within the Dublin procedure.

The Federal Minister of the Interior is authorised to set up initial reception centres by ordinance, which are part of the BFA. The BFA is responsible for the Staatendokumentation, which is the COI unit, providing country of origin information for all bodies and institutions involved in the asylum procedure and contributing to its quality assurance.

Staff: No information is available

Other actors: No information is available

Types of procedures and case processing

The Asylum Act (AsylG) provides for the following asylum procedures:

- The regular asylum procedure
- Special procedures:
  - The admissibility procedure (Article 28)
  - The accelerated procedure (Article 27a)
  - The airport procedure (Articles 31-33) - A person applying for international protection after arriving at an airport is transferred to an initial reception centre at the airport. The BFA must first allow entry and admit the applicant to the regular procedure.
  - The subsequent application procedure (Article 2(1)(23))

The Asylum Act has special provisions for unaccompanied minors.

Time limit for a decision and length of the procedure

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Applicable time limits for taking a decision:

A decision must be taken within 6 months after the application has been submitted.

Within 20 calendar days, the BFA must decide if an application is inadmissible due to:

1. the responsibility is with another Member State under the Dublin procedure;
2. the applicant comes from a safe third country;
3. the application is a subsequent asylum application; or
4. the application is dismissed for other reasons.

If a procedural order is not notified to the asylum seeker within 20 days, the asylum application is admitted to the regular procedure – except in Dublin cases if a request to another Member State to take charge or take back the asylum seeker is made within this timeframe. An amendment of Article 22 of the Asylum Act, in force since June 2016, allows for an extension of the duration of procedures at first instance up to 15 months (this exceptional prolongation will cease on 1 June 2018, but will remain applicable to cases pending after 31 May 2018, Articles 73(15) and 75(24) AsylG).

Both the BFA and the Federal Administrative Court must take a decision within 3 months when an asylum seeker is detained pending deportation.

Thus, the time limits in special procedures are the following:

- The admissibility procedure (Article 28): 20 calendar days
- The accelerated procedure (Article 27a): A maximum of 5 months; this deadline can be exceeded if necessary for an appropriate and complete examination of the application for international protection. In this case, the decision deadline according to Article 73(1) AVG applies.
- The airport procedure (Articles 31-33): 1 week
- The subsequent application procedure (Article 2(1)(23)): 20 calendar days

Measures to enforce the legal time limit for processing an application: When the BFA exceeds the time limit to decide, the applicant can lodge an appeal against the delay. The BFA then has 3 months to decide.

Penalty payment for exceeding processing time: No information is available

Prioritisation policies: No information is available

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Quality assurance of first instance procedures

Information currently not available

Interinstitutional cooperation

Information currently not available

Regular asylum procedure at first instance

Legal basis

The Asylum Act (AsylG 2005)

Competent authority and stakeholders

The Federal Office for Immigration and Asylum (BFA) | Bundesamt für Fremdenwesen und Asyl, a department of the Austrian Federal Ministry of the Interior, is the competent authority in the regular first instance asylum procedure and responsible for examining applications for international protection, taking decisions at first instance and issuing residence permits on exceptional humanitarian grounds.

BFA has its headquarters in Vienna and one regional directorate in each of the provinces.

Personal interview

A personal interview with adult asylum applicants takes place at least once after the admission procedure, unless the case has already been decided within that procedure. The applicant receives via registered mail an official notification about the interview at least two weeks ahead. The notification includes that that the applicant will be summoned in case he/she fails to appear for the personal interview. The interview takes place in the offices of the responsible regional office.

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Besides the first (initial) interview (*Erstbefragung*) conducted 48 (or 72) hours after requesting asylum to the authorities, there is no special time limit foreseen in the Austrian legislation for the personal interview with BFA.

Interviews with accompanied children can take place under specific criteria, such as the psychological maturity or capacity of the child to contribute to establishing material facts and with the presence of a legal representative. Interviews with minors younger than 14 years are not generally conducted. They only take place when a minor expresses a wish to do so and the legal representative expresses consent. Specialised officers conduct the personal interview with children.

Interviews with unaccompanied minors only take place in the presence of a legal representative from the Youth Welfare Authority (*Jugendwohlfahrtsträger*) or - in the framework of the admission procedure - in the presence of a legal advisor and in a child-friendly manner.

Assessment of an application

The Federal Office for Immigration and Asylum (BFA) is responsible for assessing applications for international protection.

Scope and outcomes of a decision

The BFA takes one single decision on asylum and return. The decision is taken within 6 months from making an application, as a main rule (Art. 73(1) Asylum Act).

The Austrian Asylum Act 2005 provides for the granting of asylum if a person fulfils the criteria of Art. 1 A (2) Geneva Refugee Convention and for the granting of subsidiary protection. The decision about the granting of subsidiary protection is rendered within the asylum proceedings.

As another national form of protection, a tolerated stay may be granted but it is not a residence permit or a right to stay. The provision applying Residence Title for Particularly Exceptional Circumstances are set out under Chapter 7 of the Art. 56 of the Asylum Act 2005.

Withdrawal of an application

Competent authority to withdraw an application

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The Federal Office for Immigration and Asylum (BFA) | Bundesamt für Fremdenwesen und Asyl examines first instance procedures and is also the determining authority for implicit and explicit withdrawals.

Implicit withdrawal

Grounds for an implicit withdrawal: According to Articles 24 and 25 of AsylG, the asylum procedure is discontinued when:

- The applicant breached reporting obligations and their whereabouts are unknown or cannot be easily identified by the authorities;
- The applicant voluntarily left the territory of Austria and the application cannot be considered invalid according to Article 25(1) of the Asylum Act;
- The applicant does not show up for the personal interview(s).

Consequences of an implicit withdrawal: The asylum procedure can be resumed within 2 years ex officio as soon as it becomes possible to establish the relevant facts to take a decision (Article 24(2) Asylum Act). The procedure is definitely discontinued when the application can be considered invalid based on Article 25(1) of the Asylum Act or if it has been withdrawn as the applicant is legally established in Austria under the provision of the Austrian Residence and Settlement Act. The proceedings are discontinued informally.

Appeal against a decision to discontinue the examination due to an implicit withdrawal:

Information currently not available

Explicit withdrawal

Grounds for an explicit withdrawal: Article 25(2) of the Asylum Act clarifies that the application for international protection cannot be withdrawn unless the applicant is legally established in Austria based on the Austrian Residence and Settlement Act. When the application is withdrawn at the appeals level, it is considered to be the withdrawal of the appeal and not that of the application.

Consequences of an explicit withdrawal: The asylum procedure can be resumed within 2 years ex officio as soon as it becomes possible to establish the relevant facts to take a decision (Article 24(2) Asylum Act). The procedure is

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definitely discontinued when the application can be considered invalid based on Article 25(1) of the Asylum Act or if it has been withdrawn as the applicant is legally established in Austria under the provision of the Austrian Residence and Settlement Act. The proceedings are discontinued informally.

Appeal against a decision to discontinue the examination due to an explicit withdrawal:

Information currently not available.

Personal interview

Competent authority: Interviewers

The Federal Office for Immigration and Asylum (BFA) | Bundesamt für Fremdenwesen und Asyl is in charge for conducting interviews.

Special procedural guarantees during the interview

Minors: Interviews with accompanied children can take place under specific criteria, taking into consideration the psychological maturity or capacity of the child to contribute to establishing material facts. In general, minors older than 14 years have a personal interview in the presence of a legal representative. Interviews with minors younger than 14 years are not generally conducted. They only take place when a minor expresses a wish to do so and the legal representative expresses consent. Specialised officers conduct the personal interview with children.

Unaccompanied minors: Interviews with unaccompanied minors only take place in the presence of a legal representative from the Youth Welfare Authority (*Jugendwohlfahrtsträger*) or in the presence of a legal advisor in the framework of the admission procedure. Furthermore, they are interviewed in a manner appropriate for children.

Victims of trafficking or other forms of violence: In initial reception centres, psychologists are requested by the BFA to assess if the asylum applicant has any mental health issue, e.g. as a result of torture, which may affect the applicant during the interview.

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Applicants with disabilities or other health issues: Written leaflets inform applicants in initial reception centres about the necessity of informing the doctor or legal advisor about psychological issues. At the beginning of the interview, applicants are asked if they have any special needs or health issues that could have an impact on their ability to cooperate.

Possibility to omit the personal interview

Positive decision	Yes (Positive decision on the basis of evidence already available)
Previous meeting - essential information	Not applicable
Issues raised are not relevant or of minimal relevance	Not applicable
Safe country of origin	Not applicable
Safe third countries	Yes
Inconsistent, contradictory, improbable, insufficient representations	Not applicable
Subsequent application	Yes, the BFA may omit the personal interview if: a last-minute subsequent application is lodged to prevent the execution of an expulsion order; or it is a subsequent application without de facto protection against deportation.
Application to merely delay/frustrate enforcement	Yes, in the framework of a last-minute subsequent application.

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Not reasonably practical to conduct it	Yes, when the applicant has absconded but the facts relevant to the decision have already been established, the BFA can make a decision without a personal interview.
Applicant unfit or unable to be interviewed	Yes, when the applicant is unable to contribute in person to the determination of the relevant facts due to personal circumstances.

Organisational aspects

Information provision (before the personal interview): The applicant receives an official notification about the interview by registered mail at least 2 weeks ahead. The notification includes that the applicant will be summoned if they fail to appear for the personal interview.

Modalities of carrying out the interview: The interview takes place in the offices of the responsible regional office. The interview cannot be carried out remotely by phone or teleconference.

Choice of gender of the interviewer/interpreter: The applicant is informed about the possibility to choose the gender of the interviewer or interpreter or to object to a particular interviewer/interpreter. As laid down in the Austrian Asylum Act, Article 20(1): When an applicant claims he/she has been persecuted due to his/her sexual orientation, the interview must be conducted by a person of the same sex, unless the applicant expressly requires otherwise. This article also applies to unaccompanied minors.

An interpreter of the same gender is automatically selected for cases with violations of sexual integrity and unaccompanied children, unless the applicant expressly asks otherwise.

Objecting to the interviewer/interpreter: Based on the General Administrative Procedures Act, Article 53(1), an applicant may object to a particular interviewer (irrespective of gender) if he/she credibly puts forward circumstances suggesting reasonable doubts as to the interviewer's impartiality or professional experience.

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Language and interpretation: Since 1 January 2021, the Federal Agency for Reception and Support Services (BBU) is responsible for providing interpreters for the asylum procedure. If there is no professional interpreter available for the language preferred by the applicant, the interview can be held in another language which the applicant is reasonably presumed to understand. Interpreters are subject to official secrecy and may not disclose information to third parties. Asylum applicants are asked at the beginning of the interview to confirm if they can understand the interpreter.

People present during the interview: The following persons may be present during the interview:

- Interviewer from BFA.
- Applicant.
- Person of trust (*Vertrauensperson*): Present, if requested. Each applicant, minor or not, accompanied or not, has the right to freely choose a trusted person to accompany them to the interview. The trusted person only has the right to be present at the interview and he/she cannot pose questions nor access the files. Overall, the person of trust is not a party to the asylum procedure.
- Interpreter: The BFA arranges for interpreters and they are typically available for most languages of the countries of origin. However, interviews may also be conducted in a language the asylum seeker is deemed to understand sufficiently. For example, asylum seekers from African countries are often interviewed in English or French, languages they are presumed to understand. Usually interpreters are contracted on a case-by-case basis and interpretation is often not done by accredited interpreters. There are no standards for the qualification of interpreters in the asylum procedure and they do not undergo specific training on standards applicable to the asylum field. It is a professional requirement for legally-sworn and certified interpreters to be familiar with the law of administrative procedure, of which the asylum procedure is a variant (cfr. the Federal Act on Experts and Interpreters, Section 2(2f). Together with UNHCR, the Quada project was developed in order to provide asylum-specific training to interpreters. (Source: EUAA Quality Matrix Report: Personal interview. September 2020, internal use only)
- Legal counsel or representative: The Federal Agency For Reception and Support Services (BBU) provides legal advice and representation. Their advisers must meet specific requirements. In January 2021, there were 120

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counsellors providing legal assistance at all steps of the first instance procedure, except for the Dublin procedure.
- Family members: The presence of family members is allowed if necessary and is decided on a case-by-case basis.
- Representation of unaccompanied minors: The presence of the legal representative/guardian of an unaccompanied minor is obligatory.

Structure/steps of the interview

Information currently not available

Structure/steps of the interview

On average, the interview takes between 45 minutes to 6 hours or more, depending on the individual case. Breaks can be taken at regular intervals at the request of the applicant or the interpreter.

The internal guidelines of the BFA state that hearing rooms must be accessible only to the case officers conducting the interview. Those taking part in the interview must sit down in a triangular manner (case officer – interpreter – applicant), the applicant should not be blinded by sources of light. The case officer must offer drinking water to the applicant. The hearing rooms must be equipped with at least one computer working station in order to record the interview.

The structure of personal interviews is adjusted to the circumstances of the case. However, the internal guidelines of the BFA establish the main obligatory parts of the personal interview:

- At the beginning, the case officer must check the applicant’s identity (name, date and place of birth) and examine the situation of his/her family, living conditions, education and working opportunities in the country of origin. The case officer explains the rights and duties of the applicant during the interview. The information provided is also typed down in the transcript of the interview. The explanation includes information about confidentiality, the duty to provide true statements, modalities of legal representation, the procedure after the interview and the obligation to inform the BFA about a change of address. Applicants are asked if they can understand the interpreter.
- The interviewee must be given the opportunity to explain freely the motivation for leaving the country of origin. A free narrative or flexible/open

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questioning is used for the main part of the personal interview.
- The case officer must try to clarify any contradictions or inconsistencies in the applicant's account in order to assess overall credibility.
- At the end of the interview, the case officer asks the applicant if he/she understood all the questions well and whether he/she has any additional remarks. The applicant is also informed about the possibility to submit further evidence.

Audio/Video recording and written report

The Asylum Act, Article 19(3) allows for the audio recording of the interview, depending on the decision the competent case officer. However, this is rarely used in practice.

The case officer conducting the interview drafts an almost verbatim written report.

The transcript is translated immediately after the interview in a language that the applicant understands. The applicant has the possibility to ask for corrections and completion. The applicant shows that he/she agrees with the content of the transcript by signing it. If the applicant still finds something incorrect in the transcript after having signed it at the end of the interview, he/she should send a written statement to the BFA as soon as possible.

The case officer hands over a copy of the approved written record to the applicant and his/her legal representative or counsel after the interview. The UNHCR representative also has access to the report.

Postponing the personal interview

There is the possibility to postpone the personal interview at least one time when the applicant provides serious reasons, such as justified medical grounds

Failure to appear

Should the applicant fail to appear without a valid justification, the BFA can make a decision without a personal interview if the facts relevant to the decision have already been established.

Audio/video recording and written report: The case officer conducting the interview drafts an almost verbatim written report. The transcript is translated immediately after the interview in a language that the applicant understands.

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The applicant has the possibility to ask for corrections and completion. The applicant shows that he/she agrees with the content of the transcript by signing it. If the applicant still finds something incorrect in the transcript after having signed it at the end of the interview, he/she should send a written statement to the BFA as soon as possible.

The Asylum Act, Article 19(3) allows for the tape recording of the interview, depending on the decision the competent case officer.

Other aspects

Information currently not available

Special asylum procedures at first instance

Admissibility procedure

An application may be rejected as inadmissible for the following reasons:

- The person can find protection in a safe third country;
- The person enjoys international protection in an EEA country or Switzerland;
- Another country is responsible for examining the application under the Dublin III Regulation;
- The person files a subsequent application and “no change significant to the decision has occurred in the material facts”.

Competent authority and other stakeholders

The Federal Office for Immigration and Asylum BFA | Bundesamt für Fremdenwesen und Asyl BFA is the competent authority for the admissibility procedure.

Procedural aspects

The admissibility procedure is a separate step within the overall asylum procedure, which takes place after the registration of the application. The BFA makes a prognosis decision on the basis of the first (screening) interview conducted by the police: it can either turn down the application as inadmissible or approve the procedure.

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Within 20 calendar days, the BFA must decide whether it will reject the application as inadmissible due to the responsibility of another Member State under the Dublin III Regulation, the application of the safe third country concept or due to a subsequent asylum applications.

If a decision is not issued within 20 days, the application will automatically be admitted to the regular procedure.

Decision and time limits to decide

Within 20 days, the BFA must:

- Make a decision on the merits of the application (grant international protection or reject it);
- Declare the application admissible; or
- Notify the applicant about the intention to issue an inadmissibility decision.
- The application is admitted to the regular procedure when the BFA fails to reach any of these conclusions within the 20-day deadline.

An applicant whose case is not concluded within the time limit is entitled to enforce a decision by lodging a complaint against the delay (*Säumnisbeschwerde*) with the Federal Administrative Court, according to the Austrian Constitution, Article 130. The asylum administration must then conclude the proceedings or the court will issue a decision. A penalty payment does not exist for exceeding the processing time. However, the applicant - as well as any other person who is a victim of damage caused by illegal and negligent behaviour of public administration - is entitled to compensation for any damages caused, such as costs of a lawyer. These damages must be claimed within a civil law process.

Appeal

In the admissibility procedure, the applicant can lodge an appeal within 4 weeks of the BFA decision. he appeal has in general no suspensive effect, except when decided otherwise by the Austrian Federal Administrative Court BVwG (*Bundesverwaltungsgericht* BVwG) within one week.

Impact on reception conditions

During the admission procedure, the federal state is in charge of the reception of applicants and only organised housing is provided

Accelerated procedure

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Legal basis and grounds

Based on the Asylum Act, Article 27a, which refers to the grounds listed under the BFA Procedures Act, Article 18, the BFA can apply the accelerated procedure in the following cases:

- The applicant comes from a safe country of origin;
- Serious reasons justify the assumption that the applicant endangers public security or public order;
- The applicant has attempted to mislead the BFA by providing false information or documents or by withholding important information or documents concerning their identity or nationality;
- The applicant has not raised any reasons for persecution;
- The applicant has clearly made false representations about the reasons for persecution;
- An enforceable return decision, an enforceable expulsion order or an enforceable residence ban has been issued against the applicant prior to applying for international protection;
- The applicant refuses to comply with the obligation to have their fingerprints taken.

Competent authority and other stakeholders

The Federal Office for Immigration and Asylum BFA | Bundesamt für Fremdenwesen und Asyl BFA ist he competent authority for the accelerated procedure.

Procedural aspects

Information currently not available

Decision and time limits to decide

According to the Asylum Act, Article 27a, the time limit to take a decision is 5 months. The law provides for the possibility to extend the time limit within the accelerated procedure.

Appeal

The applicant can lodge an appeal within 4 weeks of the BFA decision. The Federal Administrative Court decides in merit within 6 months. The appeal has an automatic suspensive effect, which the BFA may deny in first instance under

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certain circumstances.

Border procedure

Legal basis and grounds

There is no general border procedure, but an airport procedure applies for arrivals at an Austrian airport which have with the necessary infrastructure for people requesting international protection (Sections 31-33 Asylum Act).

Competent authority and other stakeholders

The Federal Office for Immigration and Asylum (BFA) | Bundesamt für Fremdenwesen und Asyl is the competent authority for the airport procedure.

Procedural aspects

Information currently not available

Decision and time limits to decide

Applicants can be held at the airport EAST for a maximum of 6 weeks. When the BFA does not deliver its decision within this timeframe, applicants are admitted to the territory and their case is processed according to the rules of the regular procedure.

Appeal

The applicant can lodge an appeal within 1 week of the BFA decision (Art. 33, par. 3, Asylum law). The Federal Administrative Court (BVwG) must decide within two weeks of the lodging of the appeal.

Impact on reception conditions

If a decision in the context of the airport procedure is possible, third-country nationals are accommodated in the Initial Reception Centre at the airport. Currently, such a centre operates at the Vienna International Airport Schwechat, where applicants remain for the duration of the airport procedure (special transit). At other Austrian airports, the BFA must permit entry and present the foreigner to an Initial Reception Centre on the national territory.

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Subsequent application procedure

Legal basis and grounds

Article 2(1)(23) of the Asylum Act defines subsequent applications as all applications lodged after a final decision was taken on a previous application. The Asylum Act divides subsequent applications into two different types, which are typically handled in a different manner:

1. subsequent applications following an inadmissibility decision when the person receives international protection in an EEA country or Switzerland or when another country is responsible for examining the application under the Dublin III Regulation;
2. All other subsequent applications.

Competent authority and other stakeholders

The Federal Office for Immigration and Asylum (BFA) | Bundesamt für Fremdenwesen und Asyl is the competent authority for the subsequent application procedure.

Procedural aspects

Information currently not available.

Decision and time limits to decide

Information currently not available.

Appeal

The Federal Administrative Court (BVwG) must decide within 8 weeks of the lodging of the appeal.

Impact on reception conditions

Information currently not available.

Last-minute application pending removal

Last-minute applications lodged by first-time applicants pending a removal

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In a first-time application, the fast-track procedure can be done under specific circumstances. For instance, if the returnee's country of origin is a declared a safe country of origin, a fast-track procedure can be conducted depending on the specific circumstances of the individual case.

Last-minute applications lodged as subsequent applications pending a removal

The Asylum Act, Section 12a related to applicants making last-minute, subsequent applications in an abusive manner. Such last-minute applications occur before or at the event of the actual removal (during the last 24 hours), once the returnee is already at the detention centre.

Type of procedure: Subsequent, last-minute applications are not processed within the scope of the accelerated procedure but under specific circumstances the de facto protection against deportation can be withdrawn.

Practical aspects and consequences: If a returnee makes a subsequent application within 18 days prior to the return date, the de facto protection from deportation does not apply. However, the BFA is obliged to check if the person will be granted protection from deportation if the returnee provides credible reasons that he/she could not have filed the subsequent application at an earlier stage of the procedure or that the objective situation in the country of origin has changed decisively since the last decision.

If a returnee submits a subsequent application within 2 days prior to the deportation date, the BFA is also obliged to check if the applicant is granted protection from deportation. The BFA only considers whether there is a change of the objective situation in the country of origin.

Safe country concept

Safe country of origin

The concept of a safe country of origin is defined in the Governmental Order (Herkunftsstaaten-Verordnung HStV), paragraph 1. It is applied in practice through an accelerated procedure.

A list of safe countries of origin is drafted by the Ministry of the Interior, based on COI research. NGOs can submit comments to the list. The Federal Act, para 19 on

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the general rules of procedures of the BFA provides a list of safe countries of origin, which can be adopted by Regulation of the Federal Government.

The list was last updated on 31 March 2022 with amendment to the regulation on countries of origin (Federal Law Gazette II No. 129/2022). Ukraine was removed from the list. The list was last supplemented by an amendment to the BFA-AG, para 19 in 2021. The UK was added on the list of safe countries of origin as of 1 January 2021 (amendment here).

National list of safe countries of origin:

1. Albania
2. Algeria
3. Armenia
4. Benin
5. Bosnia and Herzegovina
6. North Macedonia
7. Georgia
8. Ghana
9. Kosovo
10. Mongolia
11. Montenegro
12. Morocco
13. Namibia
14. Senegal
15. Serbia
16. South Korea
17. Tunisia
18. Uruguay

More safe countries of origin are according to the BFA-AG, paragraph 19 (list):

1. EU Member States (on the basis of Article 2(1)(18) Asylum Act 2005).
2. Australia
3. Iceland
4. Canada
5. Liechtenstein
6. New Zealand
7. Norway
8. Switzerland
9. United Kingdom and Northern Ireland (since 1 January 2021)

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States are defined as safe countries of origin by Governmental Order | Herkunftsstaaten-Verordnung (HStV). Amendments to the list include:

- § 1 valid from 31 March 2022, last amended by Federal Law Gazette II No 129/2022 (Ukraine removed from list)
- § 1 valid from 6 June 2019 to 30 March 2022 last amended by Federal Law Gazette II No. 145/2019. Sri Lanka (added in 2018) was removed from the list, while Namibia, South Korea and Uruguay were added to the list.
- § 1 valid from 9 May 2019 to 5 June 2019 last amended by Federal Law Gazette II No. 113/2019
- § 1 valid from 21 June 2018 to 5 August 2019 last amended by Federal Law Gazette II No. 130/2018
- § 1 valid from 15 February 2018 to 20 June 2018 last amended by Federal Law Gazette II No. 25/2018
- § 1 valid from 17 February 2016 to 14 February 2018 last amended by Federal Law Gazette II No. 47/2016
- Federal Law Gazette II No. 405/2013
- Section 1 valid from December 15, 2010 to February 16, 2016 , last amended by Federal Law Gazette II No. 428/2010 (Albania was added)
- § 1 valid from 07/01/2009 to 12/14/2010 adopted by Federal Law Gazette II No. 177/2009 (Bosnia and Herzegovina; Kosovo; Croatia; Macedonia; Montenegro; Serbia were added).

States are defined as safe countries of origin by an amendment to the BFA Procedure Act, Article 19 87th Federal Act, which enacted a BFA Establishment Act and a BFA Procedural Act as well as the Asylum Act | Verfahrensgesetz - Bundesrecht konsolidiert, 25 May 2022

Previously it was amended:

- 2005, the Aliens Police Act 2005 | Fremdenpolizeigesetz, the Settlement and Residence Act, the Citizenship Act 1985, the Federal Basic
- Welfare Act 2005 and the Introductory Act to the Administrative Procedure Acts 2008 (Aliens Authority Restructuring Act - FNG).

This designation is without prejudice to positions on status and is in line with UNSCR 1244 and the ICJ Opinion on the Kosovo Declaration of Independence.

Safe third country

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The concept of a safe third country is defined in the Asylum Act, para 4. The concept is applied on a case-by-case basis through an admissibility procedure. According to the Asylum Act, the requirements are met in a state if it has ratified the Geneva Convention on Refugees and has set up an asylum procedure by law that complies with the principles of the Convention, the ECHR and Protocol No 6, No 11 and No 13 to the Convention.

Despite protection in a safe third country, the application for international protection is not to be rejected as inadmissible if it is determined in the course of an examination of Section 9(2) of the BFA-VG that a return decision would lead to a violation of Article 8 of the ECHR. If a third-country national whose application for international protection has been rejected as inadmissible cannot be deported within 3 months of the enforceability of the decision for reasons that are not based on his/her behaviour, the decision will expire.

The Constitutional and Administrative High Court have also established that the ratification of legal instruments as a presumption of compliance with safety criteria is not sufficient and the granting of protection in practice must be taken into consideration. Both courts agree that transit or stay in a third country is not sufficient to apply the safe third country concept.

The BFA-VG, Section 12(2) also foresees that if the application is rejected as inadmissible according to the safe third country concept, the BFA must present a translation of relevant articles and a confirmation in the language of the third country that the application was not assessed on the merits and that an appeal does not have a suspensive effect.

First country of asylum

The concept of a first country of asylum is defined in Article 4a of the Asylum Act. It is applied in practice for EEA states or Switzerland through an admissibility procedure. The application for international protection is rejected as inadmissible if the foreigner has been granted asylum or subsidiary protection status in another EEA state or Switzerland. With the rejection decision, it must also be determined to which state the foreigner must return.

European safe third country

The concept of European safe third country is not defined in the Law.

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Assessment of an application at first instance

Legal provisions relevant for an assessment

Information currently not available

Competent authority for the assessment

The Federal Agency for Immigration and Asylum (BFA) is under the Ministry of the Interior and responsible for examining applications for international protection, taking decisions at first instance and issuing residence permits on exceptional humanitarian grounds. The BFA headquarters are in Vienna and there is one regional directorate in each province.

Required qualifications: Information currently not available

Training: The BFA Director must offer specialised education and vocational training to staff, which is fulfilled with the Annual Training Programme, organised by the department for Quality Development and Training, based on the General ordinance on education and training. The courses include basic and advanced modules, specialised training for individual needs and ad hoc training on current needs. They consist of a preparation part and a face-to-face session. The main target group of the training programme is case officers. Each seminar is held by trainer teams, at least one internal trainer, usually experienced case officers and one external trainer, for example, judges of the Federal Administrative Court. The main focus is on modules, such as decisions, interview techniques, exclusion/end of protection, unaccompanied minors, evidence assessments, etc.

Grounds

Grounds for protection are outlined in Federal Act concerning the Granting of Asylum (Asylum Act)

The Austrian Asylum Act 2005 provides for the granting of asylum if a person fulfils the criteria of Art. 1 A (2) Geneva Refugee Convention.

The Austrian Asylum Act 2005 provides for the granting of subsidiary protection. The decision about the granting of subsidiary protection is rendered within the asylum proceedings.

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Guidelines for case officers

Information currently not available

Credibility assessment

The caseworker conducting the interview has access to the written report of the first (initial) interview and the applicant's file several weeks prior to the interview, including all personal documents and evidence submitted before the personal interview. The caseworker has access to internal COI reports in order to prepare.

During the interview, the case officer carries out a first credibility assessment.

Assessment of facts and circumstances when aspects of the applicant's statements are not supported by documentary or other evidence

Information currently not available

Time limit for submitting evidence during credibility

Information currently not available

COI research

Country of origin information is used to:

- assess whether facts exist which allow for the conclusion that there is a danger of persecution in a certain country as defined in the present federal act;
- assess the credibility of the statements by the asylum applicant;
- decide whether a certain country is safe within the meaning of Article 39 (safe country of origin) or Article 4 (safe third country).

The BFA publishes its COI reports and methodology of the COI department on their website.

Decision and outcomes

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The BFA takes one single decision on asylum and return. The decision is taken within 6 months from making an application, as a main rule (Art. 73(1) Asylum Act).

COI units

Background information

COI unit: The COI Unit was established in 2006. The COI Unit was originally part of the Federal Asylum Office (BAA), in accordance with the Asylum Act of 2005.

Legal basis: In 2014, the BAA was transformed into the new Federal Office for Immigration and Asylum (BFA, *Bundesamt für Fremdenwesen und Asyl*), of which the COI Unit became part as mandated under the BFA-G, Section 5.

Further information about the COI department can be found at: www.staatendokumentation.at

Structure and capacity

Organisation: The COI Unit was originally part of the Federal Asylum Office (BAA), in accordance with the Asylum Act of 2005. In 2014, the BAA was transformed into the new Federal Office for Immigration and Asylum (BFA, *Bundesamt für Fremdenwesen und Asyl*), of which the COI Unit became a part as mandated under the BFA-G, Section 5.

As stipulated by law, the purpose of the COI department is to gather relevant facts to:

- Assess whether evidence exists to conclude that there is a danger of persecution in a specific country, as defined in the Federal Act;
- Assess the credibility of an asylum applicant; and
- Decide whether a certain country is safe within the meaning of Article 39 (safe country of origin) or Article 4 (safe third country), Austrian Asylum Act 2005.

Mandate and tasks: The COI department is tasked with collecting relevant facts on countries of origin for all instances of asylum and immigration procedures.

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This task requires continuous scientific, scholarly reappraisal, and research and analysis, under the guidelines of the Austrian COI Methodology. Additionally, the tasks of the COI department include, but are not limited to: conducting fact-finding missions; international cooperation; training and workshops; support of the advisory council; constant improvement of the database; and maintaining continuous evaluations.

Internal tasks can differ. Some staff focus on responding to queries and developing topical reports. Others work on specific projects (e.g. cartography, developing specific research tools, etc.). Some staff specialise in specific topics, e.g. medical query responses.

Staff capacity: Currently, the unit is comprised of 28 experts. It is organised into geographical areas (Asia, Middle East, Europe/Africa), an Open-Source Information Unit (OSIF) and administration.

Requirements: The criteria to select COI specialists in the department have become increasingly sophisticated. Requirements include linguistic skills, a rigorous analytical ability, interest in current affairs and thematic exposure. Previous work experience in the asylum system is an advantage. Academics have also been increasingly hired.

Regular training and updates: COI experts undertake internal and external training.

COI products

The COI department’s main products comprise:

- Query responses (AFB), e.g. specific responses to questions submitted by decision-makers, courts and other national and international institutions;
- Country information in the Country of Origin Information – Content Management System (COI-CMS) database, which offers general information on the most relevant countries of origin to the Austrian asylum and alien law procedures. The database provides for quick and targeted updates on asylum-related information;
- Country information provided by Country Fact Sheets offers general information from all other countries of origin that are not listed in the COI-CMS database and from some Dublin states, providing relevant facts for asylum and immigration cases. Updates are made on demand;

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- Short information briefings (KI) offer immediate facts relevant to incidents in countries of origin and new developments;
- COI topical reports are on certain topics of interest for asylum and immigration cases which are not sufficiently covered in country reports or query responses (AFB);
- FFM-protocols structure and summarise all relevant information gathered on a fact-finding mission (FFM); and
- FFC-protocols structure and summarise all relevant information gathered in fact-finding calls (FFC).

Country information sheets are produced on an annual basis or on demand. Updates and short information briefings (KI) are produced as required by the particular security situation and political developments. The country information sheet of the most relevant country of origin that were transferred into the COI-CMS are updated at least once a year (depending on the country and the situation in place).

Query responses (AFB) are produced on a daily basis on request for individual cases. Following the decision of the higher courts in Austria, which state that COI products must be updated on a daily basis, the Austrian COI department initially responded by developing the short information briefing system (*Kurzinformationen*, KI). In case of relevant developments in a country of origin, a short information briefing will be drafted and distributed and added to the relevant country information sheet.

The department has a mapping for Afghanistan. Additional maps are planned for more countries of origin. The department also ran a mapping project for the Middle East and North Africa (MENA) region, but it did not include security incidents.

COI products cover the whole world and COI specialists hold expertise in a wide range of topics, but the product line is not limited to these. The COI Unit mainly uses publicly accessible sources (media, social media, NGO reports, governmental reports), as well as sources of restricted access, such as embassy reports, liaison officers, etc. Information obtained through FFM (Fact-Finding-Missions), FFC (Fact-Finding-Calls) or through commissioned studies are also used. Furthermore, external experts can be mandated to write special reports, for example on the socio-economic situation in a country.

The sources used are in English, German, French, Russian and other European and non-European languages of some of the countries of origin, such as Arabic,

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Persian, Dari, etc. COI products are produced in German and sometimes in English (e.g. EUAA research collaborations). Some of the country information sheets in the COI-CMS are also available in English (e.g. Afghanistan, Iraq, Syria). The COI-CMS database also provides the possibility of issuing all country reports in different languages (EU-MS) as well.

The COI department does not produce country guidance or policy briefings, only COI.

The COI Unit also participate in workshops, meetings, lectures, carries out specific internal tasks (relating to e.g. jihadism, exclusion, relocation, resettlement), provides EUAA support, promotes DACHL asylum cooperation (Germany, Austria, Switzerland and Luxembourg), etc.

Internal and external peer review is carried out prior to publication or dissemination.

Other aspects of COI units

COI and country guidance information interplay and support the work of case officers and judges. The COI department does not produce country guidance or policy notes. Country guidance falls under the responsibility of the legal department. For country guidance, the legal department relies on COI. However, the two tasks are strictly separated.

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