

## Country factsheet Austria

Based on its 2010 Work Programme, the European Union Agency for Fundamental Rights (FRA) carried out a study on access to justice for asylum seekers. This study illustrates the perspective of asylum seekers on two specific issues relating to the asylum procedure, namely information on the procedure itself and access to remedies against a negative decision.

The FRA interviewed almost 900 asylum seekers throughout the European Union. The information received has been analysed taking into account the relevant national legal provisions and the responses to a questionnaire on information received from national asylum authorities. The research has resulted in two comparative reports, the first on the duty to inform and the second on access to effective remedies. The research does not cover non-harmonised forms of protection that may exist at a national level, nor does it cover children and persons in detention.

This factsheet complements these two comparative studies by providing some basic background information, including statistics and relevant domestic legal provisions relating to the two issues covered in the two reports.

## 1. Statistics

Statistics on asylum applications (Total and top 10 nationalities)

2009 Top 10 Nationalities		2008 Top 10 Nationalities	
Total	15,815	Total	12,750
Russian Federation	3,565	Russian Federation	3,445
Afghanistan	2,215	Serbia	1,700
Kosovo	1,305	Afghanistan	1,345
Georgia	975	Nigeria	530
Nigeria	835	Georgia	510
Serbia	730	Iraq	500
Turkey	555	Turkey	415
Armenia	445	Somalia	380
India	430	Armenia	360
Iraq	395	India	355

Statistics on first instance asylum decisions (Total positive decisions - top five nationalities)

2009							
	Geneva Convention Status	Subsidiary protection status	Humanitarian <sup>1</sup>	Rejected	Total number of decisions	Total positive decisions	Recognition rate <sup>2</sup> %
Total	1,885	1,335	n.a.	11,625	n.a.	n.a.	
Russian Federation	735	240	n.a.	2,895	n.a.	n.a.	
Afghanistan	280	600	n.a.	890	n.a.	n.a.	
Iraq	165	120	n.a.	90	n.a.	n.a.	
Somalia	120	65	n.a.	95	n.a.	n.a.	
Iran	75	20	n.a.	155	n.a.	n.a.	

Statistics on final decisions (Total positive decisions - top five nationalities)

2009							
	Geneva Convention Status	Subsidiary protection status	Humanitarian <sup>1</sup>	Rejected	Total number of decisions	Total positive decisions	Recognition rate <sup>2</sup> %
Total	1,405	375	n.a.	10,085	n.a.	n.a.	
Russian Federation	680	110	n.a.	2,045	n.a.	n.a.	
Afghanistan	325	45	n.a.	420	n.a.	n.a.	
Iran	75	0	n.a.	70	n.a.	n.a.	
Georgia	35	40	n.a.	705	n.a.	n.a.	
Serbia	25	35	n.a.	965	n.a.	n.a.	

Notes: These tables are based on categories used by Eurostat. The way Eurostat presents its data may not necessarily correspond to categories used at national level. This can particularly be the case with statistics provided under 'humanitarian status'. For a more detailed understanding of the data, the reader is invited to consult national statistics at: [http://www.bmi.gv.at/cms/BMI\\_Asyhwesen/statistik/start.aspx](http://www.bmi.gv.at/cms/BMI_Asyhwesen/statistik/start.aspx).

Data has been rounded to the nearest 5. Due to the rounding, the sum of individuals may not necessarily match the given total. 0 means less than 3; n.a. = not available. Kosovo (under United Nations Security Council Regulation 1244); Islamic Republic of Iran.

<sup>1</sup> Covering persons granted authorisation to stay for **humanitarian reasons** under national law by administrative or judicial bodies. It includes persons who are not eligible for international protection as currently defined in the first stage legal instruments but are nonetheless protected against removal under the obligations that are imposed on all Member States by international refugee or human rights instruments or on the basis of principles flowing from such instruments.

<sup>2</sup> The **recognition rate** corresponds to the proportion of positive first instance or final on appeal decisions out of the total number of decisions in 2009. Positive decisions include the provision of refugee status, subsidiary protection and humanitarian protection (where data is available).

Source: [Eurostat](http://www.bmi.gv.at), Data extracted on 01 September 2010.

## 2. Background Information

### Asylum legislation<sup>1</sup>

[Asylgesetz \(2005\)](#) (in German)

[Asylgerichtshofgesetz \(2008\)](#) (in German)

[Asylgesetz-Durchführungsverordnung \(2005\)](#) (in German)

[Herkunftsstaatenverordnung \(2009\)](#) (in German)

### Asylum authorities

#### **First instance authority**

Federal Asylum Office

#### **Second instance authority**

[Asylgerichtshof](#) (Asylum Court)

## 3. Duty to inform asylum seekers

The 2005 *Asylgesetz* (Asylum Act) guarantees asylum seekers the right to information as well as the opportunity to communicate with the UNHCR.

There are numerous provisions in the 2005 Asylum Act with respect to information, including Sections 14(2), 15(3), 17(9), 23(9), 29(1), and 55(5). As far as the information material to be handed out to asylum seekers is concerned, the Asylum Act (Section 17.9) provides that the Federal Minister of the Interior has to issue an explanatory leaflet setting out asylum seeker's rights and obligations and, in particular, the obligation to place themselves at the disposal of the authorities for the asylum procedures. A copy of this leaflet shall be provided at the latest upon submission of the application, at the initial reception centre, in a language understandable to the asylum seeker.

In August 2010, the Federal Asylum Office provided the following information to the FRA as regards written information materials.

<b>Written information materials</b>	Brochure on the asylum procedure translated into 40 languages.
<b>Provided when?</b>	During the first instance interview and information on the admissibility procedure immediately at the reception centre.
<b>Provided by whom?</b>	During the first instance interview – by the official in charge of the case and, where necessary, illustrated by the legal advisor.
<b>Has an evaluation of information tools been carried out?</b>	Yes. The evaluation in Austria found that although extensive information is provided by the asylum authorities, the means used do not necessarily result in all asylum seekers understanding or relying on the information they receive from official sources.

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<sup>1</sup> The legal information in this factsheets has been updated to reflect the situation on 1 September 2010.

## 4. Effective Remedy

### Type of procedures

The procedure is divided into two stages: an admissibility procedure, where it is examined if Austria is competent to deal with the application (Dublin, safe third country, as well as decisions on subsequent applications) or where decisions on the merit in simple cases are taken (manifestly founded and manifestly unfounded applications). A special procedure exists for applications submitted at the airport (Sections 31-33 Asylum Act). The second stage is the examination of the claim in the merits.

### Duty to state reasons for rejection and procedure to appeal

All rejection decisions have to be motivated. In addition, the type of decision taken and the instructions concerning the right of appeal have to be translated in a language the asylum seeker understands. If an application is rejected pursuant to Section 4 of the Austrian Asylum Act (safety in a third country) the decision shall be accompanied by a note in the official language of the third country certifying that the asylum application has not been examined in its merits (Section 22(2)).

### Time limits for appeal

Section 63.5 of the General Administrative Procedures Act provides that an appeal shall be lodged within two weeks from the receipt of a written first instance decision. This timeframe also applies to asylum decisions, with certain exceptions as listed in the table below.

Type of procedure	Time limits	Right to remain
General rule	2 weeks	Automatic suspensive effect as a general rule, but considerable exceptions whereby the right to remain can only be granted by the appeals body in the individual case.
Decisions rejecting the application as inadmissible (Dublin, safe third country, subsequent applications)	1 week	No suspensive effect but the appeals body may grant suspensive effect (the appeals body needs to examine this question in each individual case even if the granting of suspensive effect was not explicitly requested by the applicant). The first instance decision is not enforceable during the time limit for appeal as well as within seven days after the appeals body has received the appeal.
Airport procedure	1 week	Suspensive effect can be granted by the appeals body in the individual case.

### Right to remain in the country during appeal

As a general rule, an appeal against a negative decision has automatic suspensive effect (Asylum Act, Section 36.2). However, Section 38.1 introduces a number of circumstances where the Federal Asylum Office can depart from this general principle. This is, for instance, the case for applicants from safe countries of origin or for applicants who have misled the authorities on their identity or origin. In such cases the Asylum Court can grant suspensive effect only in the individual case within 1 week.

Non-admissibility decisions based on the Dublin Regulation, on safe third country or on subsequent applications do not have automatic suspensive effect. The enforcement of the first instance decision can however be suspended in the individual case by the Asylum Court (Section 36.1).

## Legal aid

During the *admissibility procedure*, the 2005 Asylum Act provides for a mechanism to ensure that legal advice is provided to all asylum seekers whose applications are being rejected or declared inadmissible (Section 29.4). For this purpose, a “legal adviser in the admissibility procedure” is appointed by the Federal Ministry of the Interior (but not subject to its instructions) to provide asylum seekers with help and information during such initial stage of the asylum procedure (Asylum Act, Sections 64 and 65). Required qualifications are listed in Section 65 of the Asylum Act. Where necessary, legal advisers should be provided with interpreters by the Federal Asylum Office.

The law further obliges the Ministry of Interior to provide for a sufficient number of legal advisors to support aliens in matters of asylum law (Asylum Act, Section 66).

According to the general administrative law, the parties have – with certain exceptions – a right of inspection of the files or parts of the files concerning their case. They are allowed to make their own copies of documents (Section 17 General Administrative Procedure Act). This also applies to asylum procedures.

## Language assistance

Appeals against negative first instance decisions have to be lodged in German language.

## Hearing

The Asylum Court has the possibility to conduct an oral hearing with the asylum-seeker, however Section 41.7 provides for the possibility of avoiding a hearing in clear-cut cases.

New facts and new evidence can only be presented in the appeals procedure under certain conditions (Section 40.1).