

AUSTRIA

1 Arrivals

1 Total number of applications for asylum lodged, with monthly breakdown and percentage variation between years

Table 1:

Month	2003	2004	Variation +/- (%)
January	2504	1531	-38.86
February	1866	1834	-1.71
March	2267	2553	12.62
April	2453	3132	27.68
May	2785	1289	-53.72
June	2898	2107	-27.29
July	3146	1851	-41.16
August	3192	2040	-36.09
Sept.	3455	2352	-31.92
October	3682	2167	-41.15
November	1989	1889	-5.03
December	2122	1889	-10.98
Total	32,359	24,634	-23.87

Source: Ministry of Interior

Comments

The higher arrivals rate in March and April was probably due to the admission of new member states. After this the new asylum legislation in Austria came into effect. Figures include applications abroad at Austrian embassies.

2 Breakdown according to the country of origin/nationality of applicant, with percentage variation

Table 2:

Country	2003	2004	Variation +/- (%)
Russian Fed.	6706	6172	- 7,96
Serbia & Montenegro	2526	2835	12,23
India	2822	1839	34,83
Nigeria	1849	1828	- 1,14
Georgia	1525	1731	13,51
Moldova	1178	1346	14,26
Turkey	2854	1114	- 60,97
Afghanistan	2357	757	- 67,88
<i>Others</i>	<i>10,542</i>	<i>7,014</i>	<i>- 33,47</i>

Source: Ministry of Interior

Comments

The reduction can possibly be explained by the general decrease in European figures.

3 Persons arriving under family reunification procedure

No figures available.

4 Refugees arriving as part of a resettlement programme

Austria does not operate any resettlement programmes.

5 Unaccompanied minors

1,212 in 2004 (2,049 in 2003).

2 Recognition Rates

6 The statuses accorded at first instance and appeal stages as an absolute number and percentage of overall decisions

Table 3:

Statuses	2003				2004			
	First instance Number	%	Appeal Number	%	First instance Number	%	Appeal Number	%
No status awarded	2709		1499		3939		792	
Convention status	1339	28	745	32	3157	43	1979	69
Subsidiary status	642	18	101	7	238	7.6	100	9.6
Humanitarian residence permits	1575				1327			

Source: Ministry of Interior

Comments

There is a single procedure for Convention Status and if Convention Status is not granted, refoulement status is considered. The percentage for Convention Status is calculated from total final decisions within the asylum procedure, including decisions on the merits and inadmissible applications. Not considered are closed procedures e.g. discontinuation due to absence of the applicant or withdrawal of application or applications regarded as no longer relevant. Furthermore, non-refoulement decisions are not included, because there is only one procedure with two possible outcomes: Recognition as a Convention refugee or if this is not the case, non-refoulement-status. Humanitarian status falls outside the asylum system. This is granted by the Minister of the Interior not by the asylum office. Information on rejected applications is not available.

7 Refugee recognition rates (1951 Convention: as an absolute number and as a percentage of total decisions) according to country of origin, at first instance and appeal stages

Table 4:

Country of origin	2003				2004			
	First instance and appeal		Appeal		First instance and Appeal			
	Number	%	Number	%	Number	%	Number	%
Russian Federation	788	77			2905	93.8		
Afghanistan	339	67			744	87.1		
Serbia Montenegro	162	13			419	31.3		
Iran	164	62			414	78.4		
Iraq	143	74			128	61.5		
Turkey	73	15			94	12.8		
Georgia	60	20			53	11.8		
DRC	30	90.9			46	75.4		
Armenia	26	17.1			35	30.4		
Azerbaijan	13	43.33			23	63.9		
Angola	21	63.63			21	72.4		
Sudan	16	59.26			21	52.5		
Syria	18	56.25			21	60		
Ukraine	10	9.9			18	19.1		
Albania	30	58.8			16	45.7		
Somalia	24	68.57			12	80		
Ethiopia	14	100			11	84.6		
Total	2,084	30			5,136	50.3		

Source: Ministry of Interior

Comments

There are countries of origin with higher recognition rates, but the number of cases is very low (Eritrea 6, Tajikistan 2, Turkmenistan 2 - recognition rate 100%), therefore listing is done according to number of positive decisions.

8 Subsidiary and other status granted (as an absolute number and as a percentage of total decisions) according to country of origin, at first instance and appeal stages

Table 5:

Country of origin	2003				2004			
	First instance and Appeal		Appeal		First instance and Appeal			
	Number	%	Number	%	Number	%	Number	%
Russian Fed.	788	77			348			
Iraq	143	74			251			
Afghanistan	339	67			158			
Serbia Montenegro	162	13			60			
Turkey	73	15			24			
Georgia	60	20			18			
Total	2084	30			994	17.4		

Source: Ministry of Interior

Comments

Due to changes in the statistical system, percentages according to country of origin are not available for 2004. Changes in recognition practise (granting of asylum) for Chechens result in fewer subsidiary statuses being awarded; the same applies to Iranians.

3 Returns, Removals, Detention and Dismissed Claims

9 Persons returned on safe third country grounds

No figures available. Only 37 asylum applications were dismissed on safe third country grounds. After the admission of the new member states these former safe third countries have become Dublin states.

10 Persons returned on safe country of origin grounds

No figures available.

11 Number of applications determined inadmissible

963 in 2004 (2003: 374).

12 Number of asylum seekers denied entry to the territory

No figures available. The opportunity to apply for an entry visa at the Austrian embassy has been restricted to family members (family reunification with recognised refugees) since 1st May 2004. In 2004 5,320 applications from abroad were terminated as of no relevance, almost all of them from Afghan nationals.

13 Number of asylum seekers detained, the maximum length of and grounds for detention

No figures available. In total 9041 non-nationals were detained. The main reason for this detention was the lack of a residence permit or existence of an expulsion order. Asylum seekers may be detained after their application has been determined inadmissible or if they leave the first reception centre without reason. The maximum length of detention is two months but can increase to six months on certain grounds, such as a pending non-refoulement procedure, the inability to establish nationality or identity of the detained person, the lack of a laissez-passé or travel document or resisting deportation.

14 Deportations of rejected asylum seekers

No figures available. 5,274 non-nationals were deported in 2004, information on nationality is not available.

15 Details of assisted return programmes, and numbers of those returned

In 2004, IOM [...] supported 1,158 rejected asylum seekers or immigrants who had instructions to leave the country, with return, in particular to Serbia & Montenegro, (188 – 95% of whom were Kosovan Albanians), Georgia (161) and Turkey (161).

Caritas Austria ran a voluntary return project in 2004. Of a total of 664 persons who returned 80 percent were asylum seekers in different stages of the procedure or following a final negative decision. The main countries of origin were Georgia, Serbia Montenegro (Kosovo) and Turkey. Returning persons were entitled to an allowance of between 365 € and 1500 € according to their length of stay in Austria and individual situation.

For Afghan refugees, IOM offers a special assisted return programme. It comprises of information provision regarding the general socio-economic factors in different regions, including measures for re-

integration. Single adults can receive 500€, couples 800€ and each child 100€, up to a maximum family allowance of 1200€. IOM Kabul receives the returnee and arranges training and qualification programmes, or guarantees to subsidise a new enterprise, up to a maximum of 1700€

16 Number of asylum seekers sent back to the Member State responsible for examining the asylum application under the Dublin II Regulation

418 between May and December 2004. More interesting is the number of agreements to take back asylum seekers during the same period, which amounted to 2,645 cases. Most requests to take back asylum seekers were submitted to the Slovak Republic, followed by Poland.

4 Specific Refugee Groups

17 Developments regarding refugee groups of particular concern

Chechnya

The fast-track granting of asylum to refugees from Chechnya started at the end of 2003.

One of the reasons for this was that just before modification of the asylum law came into effect, at the end of May 2004, it was possible to settle many outstanding cases quickly (between December 2003 and May 2004).

At the beginning of 2005, the Internal Flight Alternative (IFA) was yet again applied at first instance. Due to article 24b of the Asylum law, which has a clause providing for traumatised refugees to have their cases processed in Austria, Austria refrains from taking advantage of the responsibilities of other EU member states in the case of asylum seekers from Chechnya. Traumatized asylum seekers, identified by a positive Eurodac result, therefore, will not be transferred and following the Higher Constitutional Court's decision in October, suspensive effect in the appeal procedure is accorded in most cases.

Unaccompanied asylum-seeking children

Following the Asylum amendment of 2003, a child's legal adviser becomes their representative during the admissions procedure. This responsibility, therefore, does not fall on the Youth welfare agency until after the admissions procedure has been concluded. This gives rise to an unclear situation in legal representation, or rather a loophole, if a negative decision is taken in the admissions procedure. In this case it is unclear whether the youth welfare agency or the legal representative will be responsible for filing an appeal.

Interesting decisions - The deportation of a Nigerian child whose application was considered inadmissible

The under-16 year old asylum seeker was an orphan and had left Nigeria on economic grounds. The Independent Federal Asylum Review Board (UBAS) decided that, on the basis of his young age and his relative immaturity, it would be impossible for him to return and survive financially, at the current time. The UBAS summoned sources to substantiate that the financial survival of a person (particularly in relation to a vulnerable group such as single women or children) depends greatly on integration into the family network.

The child asylum seeker, in this case, had no social network whatsoever. Economic survival would not have been possible for him at the time, and, if deported he would have been put in a "cruel situation" according to article 3 (ECHR). UBAS 244.280/0-XI/34/03 of 28.4.2004

5 Legal and Procedural Developments

18 New legislation passed

Asylum amendment of 2003

In November 2003, the Asylum amendment of 2003 was finalised (BGBl. I nr. 101/2003) and it came into effect on 1.5.2004. With the amendment, special admissions procedures for asylum claims were created, a ban on new information during appeal procedures was introduced and appeals against denied or inadmissible applications (e.g. Dublin, safe third country) no longer had suspensive effect. The same applied to subsequent applications and unjustified applications, with the effect that deportations or returns can take place immediately following the first instance decision. Applications by traumatised asylum seekers should be admissible immediately, regardless of Dublin II. If a negative decision is made in the admissions procedure, obligatory legal advice will be provided by legal advisors appointed by the Ministry of Interior Affairs. The Higher Constitutional Court decided that several regulations of the 2003 amendment violate Constitutional Rights and annulled them, in particular the general exclusion of suspensive effect of appeal and pre-expulsion custody in the case of a subsequent application. They also ruled that more exceptions from the ban of new facts in the appeal procedure were necessary. (G 237, 238/03-35, G16, 17/04-28, G 55/04-28).

In April 2004 the basic care agreement between the state and the federal states was settled (BGBl. the federal care law was amended (BGBl. Nr. 32/2004 as of 27.04.2004). The state is only responsible for the care of asylum seekers during the admissibility procedure, during the ongoing procedure the federal states must provide accommodation and basic care. Two thirds of the federal state's expenses will be refunded by the state. The conditions for material provisions were laid down in regulation (BGBl. II Nr. 214/2004). The regulations concerning state-provided care and accommodation restrict access to these facilities, and entrance to and use thereof by ineligible persons is punishable.

19 Changes in refugee determination procedure, appeal or deportation procedures

Applications for asylum must be filed in the First Reception Centre and asylum seekers are obliged to remain within the FRC during the admissions procedure. The outcome of the admissibility procedure must be decided within twenty days. Appeals have no suspensive effect in the case of rejection due to inadmissibility, (Dublin II and safe third countries), and in the case of subsequent applications. In the case of an obviously unjustified expulsion, the suspensive effect can be applied.

During the appeal procedures, a ban on the use of new facts was introduced, from which traumatised refugees are exempt. The authors believe from experience that almost all Chechens are traumatised. Occasionally, Chechen refugees are not sent to psychologists during the admissibility procedure and their application is rejected due to the Dublin-regulation. There are, however, several documented cases of people who have managed to return to Austria after being transferred - mainly from Slovakia - submitted a new application and proved on their own initiative (or with the help of NGOs) that they are traumatised. Others might return to Austria after they have been sent back during the pending appeal procedure, due to notification of post traumatic stress disorder or other traumatic diseases had not been taken into consideration during the first instance procedure. In its ruling of 15.10.2004, the High Constitutional Court considered other factors such as communication problems, post-travel exhaustion etc which could exempt asylum seekers from this ban.

Obligatory advice during the admissions procedure: The independent legal advisor must be present during the interrogation before a negative decision is made in the procedure.

Asylum applications from abroad: only family members of refugees are still entitled to apply for asylum and entry visas at Austrian embassies.

Family procedures: Applications from family members are processed together and all family members receive the same status.

The withdrawal of asylum applications is no longer possible.

Return advice from the FRC: When an asylum seeker decides to return, his application is considered no longer relevant.

20 Important case-law relating to the qualification for refugee status and other forms of protection

In several cases, the Independent Asylum Senate decided that return to Italy (due to Dublin I + II reg.) could violate the non-refoulement principle. The Ministry of Interior Affairs appealed to the Higher Administrative Court (HAC) against these decisions and was successful.

The H.A.C stated that in respect of Article 3 of the European Convention on Human Rights, the risk of chain deportation, which was a potential result of procedures in the respective third states, had to be taken into consideration. The jurisdiction of the European Court of Human Rights does not specify that the third state must guarantee all of the rights of article 13 ECHR. The real risk has to be considered in relation to the personal background of the applicant. The UBAS only considered the provisions of article 13 ECHR in Italy, but not the personal factors of the case, with a view to the "real risk" according to article 3 ECHR. VwGH -2002/20/0582 from 31.03.2005

21 Development s in the use of the exclusion clauses of the Refugee Convention in the context of the national security debate

No developments.

22 Developments regarding readmission and cooperation agreements

A working agreement was signed with the Slovak Republic on 1st June 2005 for the processing of Dublin consultations.

6 The Social Dimension

23 Changes in the reception system

Fundamental changes have taken place within the reception system since 1st May 2005. The new system intends to provide basic care for all asylum seekers. Until May 2005 only 30 percent of all asylum seekers received federal care, others relied upon social assistance from the federal states or benefits from NGOs or private persons. During the first months of 2005 more asylum seekers were taken into federal care. The new regulation provides basic care for all asylum seekers, for non-nationals whose deportation is suspended or who have subsidiary protection status. Furthermore, refugees who were granted asylum receive basic care instead of social care for the first four months after recognition.

Basic care encompasses almost all of the same material conditions as Federal care, but health insurance (for all persons falling under the basic care regulation) and social counselling are now also provided. Furthermore it is possible for a refugee to live in private property and receive benefits for basic care and property rental. Every Federal state must provide accommodation according to its number of inhabitants. The Federal states were only able and willing to provide sufficient places from the beginning of 2005. Asylum seekers are allocated to a Federal state in the FRC. Asylum seekers, whose applications are rejected at the admission procedure are not sent to a Federal state but stay in one of the reception centres of the state or are taken into detention. The withdrawal of material reception conditions may now be appealed against, at the Independent Administrative Senate of the Federal state.

There is a maximum allowance limit of 290 €for a single person living in private accommodation. The basic care agreement intends to implement the Reception Directive although it does not provide for subjective rights. At a state level the amendment of the Federal care law more or less provides the rights detailed in the Reception Directive for those who are in the admissibility procedure. At the level of the Federal state there is still need of regulations to implement the rights of asylum seekers according to the directive e.g. the right to get benefits and appeal against withdrawal, exclusion or reduction of reception conditions. The Basic Care Agreement has not yet been fully implemented by Federal state law. Even the provision for social counselling was implemented very late i.e. one whole

year after the new regulation came into effect, one Federal state failed to offer social counselling to more than 700 asylum-seekers.

24 Changes in the social welfare policy relevant to refugees

The Basic Care Agreement diminished the rights of recognised refugees. During the first four months after recognition they are not entitled to social care but receive basic care, which is, in turn, less than social care. With this new regulation the state and the Federal states now share social care costs for the first four months, which was previously the sole responsibility of the Federal states. The state had to agree to the proposal of the Federal states, which was raised during the last minutes of negotiations on the agreement on "basic care". Refugees now also have to search for a flat while staying in the organised facilities in preparation for the time when they will not have organised support from the state.

A change in the law annulled the right to receive a family allowance as an asylum seeker (this allowance was paid prior to 15.12.2004 after the recognition of refugee status for the whole period of legal residence as an asylum-seeker).

25 Changes in policy relating to refugee integration

No significant changes, though the lack of integration projects or measures became remarkable as such a lot of Chechens received refugee status.

26 Changes in family reunion policy

The asylum law amendment of 2003 allows for family reunification for persons with subsidiary protection, three years after recognition of status. All Family members get the same status, previously family members of persons with subsidiary protection status had to apply for a humanitarian residence permit.

8 Political Context

31 Government in power during 2004

Coalition of Conservatives (ÖVP – Austrian People Party) and Right Wing Conservatives (FPÖ – Freedom Party).

32 Governmental policy vis-à-vis EU developments

There is no public information regarding the Austrian position in EU asylum matters.

33 Asylum in the national political agenda

Asylum was one of the main political issues in Austria in 2004. The implementation of the Basic Care Agreement resulted in conflicts between the state and the Federal states and between the Federal states themselves, due to shortcomings and boycotts. Minister Strasser tried to put pressure on the defaulting Federal states. The second theme on the political agenda was the combating of misuse of the asylum system and the necessity of shortening asylum procedures. Politicians and the media described the main problems as being misuse of the asylum system by criminal individuals and the prohibition of deportation (when a final decision has not been made). A more restrictive asylum-regulation was demanded and at the end of 2004 the new Minister of Interior Affairs, Ms. Lisl Prokop, presented a draft for a new asylum law.

The 2003 asylum law amendment was brought before the Higher Constitutional Court by two Federal states. In October 2004 the law was found to violate constitutional rights in several regulations. Since

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the presentation of the new proposal and the consultations, which followed, conformity with constitutional rights has been the source of lively debate. Despite much objection, the 2005 asylum laws (also the new Foreigner Police Law and new Residence Law) were adopted by parliament on 7. July 2005.

Biography

Anny Knapp

ASYLKOORDINATION ÖSTERREICH

Asylum Coordination Austria is a non-profit organisation. It aims to secure human rights and the rights of Refugees and Migrants. The main target is co-ordinating organisations working with refugees and migrants in Austria.

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