DUBLIN II

national asylum procedure in Austria

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National Asylum procedure in Austria

Introduction

In Austria, the present asylum law (Asylgesetz, short AsylG) came into force the 1st January 2006. Since then it was novelised three times.
The issue of deportation and detention you can find in the Foreigner's Police Law (Fremdenpolizeigesetz FPG), which is also in force since 2005 and is novelised regularly.

National authorities in charge of asylum issues

The first instance is the Federal Asylum Office (Bundesasylamt, BAA) which is divided in the section which is responsible for the admission procedure, so called First Reception Centre (Erstaufnahmestelle, short EAST; located in Traiskirchen and Thalham) and the field offices (located in Vienna, Graz, Linz, Eisenstadt, Salzburg and Innsbruck), which take care of the procedures in merits, although even a field office is still allowed to reject an application.
Second Instance is the Asylum Court (Asylgerichtshof, AGH), which takes care of the case after the asylum seeker wrote an appeal. One court is located in Vienna, the other one in Vienna. Each Court and Senate is responsible for different countries. Dublin cases are treated in both courts. In front of the Asylum Court the asylum seeker doesn't need a lawyer due to the law, but it is recommended to search for help at a legal advisor.
Finally as an extraordinary instance the asylum seeker can write an appeal to the Constitutional Court, if the decision violates him in a law which is guaranteed by the constitution. The chances to succeed there are very low. The asylum seeker has to be represented by a lawyer. If he can't afford that, he has the right to apply for legal aid.

1- *Verfassungsgerichtshof (VfGH)*
   Constitutional Court
2- *Asylgerichtshof (AGH)*
   Asylum Court
3- *Bundesasylamt (BAA)*
   Federal Asylum Office

National authorities in charge of detention and deportation

In these cases the District's Administration (Bezirkshauptmannschaft, BH) or the Foreigner's Police (Fremdenpolizei) is responsible to set these actions. Every city has a Foreigner's Police, very small towns and villages have the District's Administration. Concerning deportation the authority is responsible for the cases of persons who live in this district or city. In cases of detention each authority is allowed to arrest a person, if the person is in the authorities territory. This means that an asylum seeker can be arrested everywhere, but if the authorities want to deport him his local responsible authority has to organise that.
Second instance is the Independent Administration Senate (Unabhängiger Verwaltungssenat, UVS), which is a kind of court organised in Senates and the members are in principal free to decide. Each province has its own UVS. An appeal has to be sent to the field office, where the act the asylum seeker wants to fight happened. So if an unlawful deportation took place or the asylum seeker was arrested in a certain province, it's the UVS of the province who ordered the deportation.
If the UVS decides negative the asylum seeker has the possibility to write an appeal to the Administrative Court (Verwaltungsgerichtshof) if his rights, guaranteed by a regular law, were violated. Furthermore he can write an appeal to the Constitutional Court (Verfassungsgerichtshof), if the decision violates him in a law which is guaranteed by the constitution. Both courts are

extraordinary instances and require a lawyer as a legal representative. In case the asylum seeker can't afford that, he has the right to apply for legal aid.

1- *Verwaltungsgerichtshof (*VwGH)
Administrative Court
and
Verfassungs-gerichtshof (VfGH)
Constitutional Court
2- Unabhängiger Verwaltungssenat (UVS)
Independent Administration Senate
3- *Bezirkshaupt-mannschaft (BH)*
District's Administration on the countryside
or
Fremdenpolizei
Foreigner's Police in cities

What are the different forms of protection existing in Austria ?

Conventional asylum
An asylum seeker receives the status as a refugee if he is persecuted in his home country for the reason of his race, religion, nationality (ethnic group), social group or political opinion.

This status gives a person almost the same rights as a citizen. He will get a Conventional passport which is valid for each country except his home country. He has the right to work without any further permission as well as the right for all kinds of social benefits.

If the asylum seeker committed a crime which might give him a prison sentence more than one year (e.g. obstructing a police officer in the course of his duty, almost all kinds of theft, robbery, aggravated assault, drug crimes…) he cannot get conventional asylum, but a tolerated stay. The title as a refugee can be deprived later on in the same cases.
If the security situation in the home country has changed the authorities can deprive the title as a refugee. If the asylum seeker works and has his own apartment even in these cases an expulsion is no longer legally possible – even if there is no longer a risk for his live in his home country. Then he would get a permanent residency permission (1.3.)
A refugee can apply for the citizenship after six years of living in Austria. Therefore he needs to speak German in a certain level, make an exam about Austrian history and democracy and have worked for at least the last three years before the application (KÜRZEN!).

Subsidiary protection
With this title you get a grey card, which is valid for one year. Before this year is over you have to write an application for the extension of subsidiary protection – usually that is no problem and the *Bundesasylamt* sends you a new grey card, which is once again valid for one year.
It is hardly possible to receive a foreigner's passport (Fremdenpass), although the law is giving you the (theoretical) possibility.
With subsidiary protection you are allowed to work without any further permission and choose the place you live. You also have the possibility to stay in *Grundversorgung*. In that case you can continue living in the accomodation the state told you to and, furthermore, you will receive pocket money and an insurance.
I would recommend to leave *Grundversorgung* in these cases as soon as possible, visit a German course and go to work, so that an expulsion is no longer legally possible – even if there is no longer a risk for your life in your home country.
If you committed a crime which might give you a prison sentence more than one year (e.g. obstructing a police officer in the course of his duty, almost all kinds of theft, robbery, aggravated assault, drug crimes…) you cannot get subsidiary protection, but tolerated stay (see below).
After five years of living with subsidiary protection you have the right to receive permanent residency permission ('Niederlassungsbewilligung') in case you have work and your own apartment.

If you were in Austria for all together ten years and had the *Niederlassungsbewilligung* for five years you can apply for citizenship.

Tolerated Stay (Duldung)
You get this title if you committed a crime which might give you a prison sentence more than one year but still there would be a serious danger for your health, security or life in case of your return. This title gives you only the right to stay until this danger does not longer exist. You are not allowed to work and have no right for social benefits.

Humanitarian Visum, *Niederlassungsbewilligung*:
If neither conventional asylum, nor subsidiary protection, nor tolerated stay is granted, or in cases where subsidiary protection or the status as refugee is deprived, the asylum authority has to decide about the expulsion. The most important thing is to speak German, to have an apartment and to go to work.
If expulsion is declared to be inadmissible, you can apply for residence permission. If the expulsion is declared as forbidden, the Visum Authorities (in principle the Bezirkshauptmannschaft, in Vienna MA35) have to give you a so called *Niederlassungsbewilligung*.
There are different types of residence permission. All of them have in common that the person receives a card and a visum in his passport. He is free to travel with these papers within the territory of Schengen.

Rights of the asylum seekers

In the admission procedure the applicant has (between the first short interviews in the police station and the first interview in the First Reception Centre) the right to speak with a Legal Adviser (employed by the state) who will be also present during the first interrogation.
One of the problems with these Legal Advisers is that they are selected and paid by the Ministry of Interior. Formally, they are in dependent and not bound by directives. In reality not all of them take the risk to defend asylum seekers' rights against their sponsor.

If the asylum seeker is an unaccompanied minor, one of the legal advisers has to be his legal representative in the asylum procedure.
Every asylum seeker has the right to have a legal representative. This legal representative has to receive every paper the asylum authorities give to the asylum seeker himself – otherwise they don't have a legal effect. The legal representative has the right to join every interrogation and see his client in a detention centre whenever he wants to. He is allowed to write statements, applications and bring his own proves, witnesses or experts to the asylum authorities. During interrogations he has the right to ask his client or possible witnesses questions.
Still, this does not hinder the asylum seeker to do all that by himself.

The asylum seeker has to be interrogated in his mother language or in a language comprehensible for him, the asylum office provides interpreters. (But for example Chechen asylum seekers are often interviewed in Russian what can lead to mistakes.)

The asylum seeker has the right to write an appeal against a decision.

As long as the application for asylum is not finally decided, the asylum seeker cannot be deported and is free to move within Austrian territory. However, if he is in the procedure for the submission of his application, he is only allowed to stay within the district he lives in. He is only allowed to leave it, when he has to fulfil legal duties, if he has to take part in an interrogation of a court or an administrative authority or if it is necessary to visit a doctor. In case the asylum seeker has to visit a doctor he receives a paper which he can show the police in case he will be controlled.
This protection from deportation can be denied for consecutive applications, except in cases, where the situation in the home country changed, so that the person could be a victim in a war or a civil war. Still the authorities can give even in consecutive applications a protection during the

procedure.

The asylum seeker has a right for social help. This so-called basic services ('Grundversorgung') include accommodation, food or money for food, pocket money and a health insurance. However, he is not allowed to chose where to live, but has to take the apartment or room the Federal State Government offers him.
The asylum seeker is transferred from the First Reception Centre to an accommodation place which he cannot choose himself. If he leaves the place for more then three days (can be extended up to six days in agreement with the owner) you loose everything and it's hard to get back in *Grundversorgung*. If the asylum seeker chooses to live in a private place in very few cases a financial support by the state is granted.
Most of these accommodations are inns in little villages which are no longer in public interest. The owners of these inns survive by being paid by the state for accommodating asylum seekers. Other accommodations in the cities are organised by NGOs like Caritas (catholic), Diakonie (protestant) or Volkshilfe (social democratic).
The asylum seeker who is in *Grundversorgung* has access to medical care services. Social services depend from where he is accommodated. The NGOs mentioned above employ social workers in their accommodation places. Those asylum seekers who are accommodated in provincial inns (often far away from the next town) are dependent from the goodwill of the inn's owner. Some of them try themselves to play the role of social workers in spite of the fact that they don't have such formation; others refuse each kind of help. In some regions exist NGOs (for ex. SOS Mitmensch Burgenland) which provide mobile advice visiting the accomodations regularly.

In the admission procedure, the asylum seeker is granted only a factual protection of deportation which ends if the court does not agree suspensive effect within seven days after the appeal arrives there.

Asylum seekers are pro forma allowed to work after three months; but only in seasonally jobs (cleaning streets, washing dishes …). For working legally the asylum seeker has to find a job, convince his future employer to apply at the Employment Bureau for a work permit. Then the Employment Bureau still can refuse the application for the reason, that this job could be also done by an Austrian and that the asylum seekers' work would by this endanger Austria's wealth. Against such a decision you have no right to write an appeal.

Duties of the asylum seeker

The asylum seeker has to cooperate with the competent authorities. This includes especially

- to reason the application of asylum and answer the questions (especially name, birth date, citizenship, their way to Austria, earlier applications for asylum, social and familial circumstances, reasons for the flight)
- to join interrogations and medical examinations in time and behave cooperative (however involuntary medical examinations are illegitimate); in cases a minor can't prove that fact with documents, he has to cooperate during an examination to ascertain his age (e.g. X-Ray)
- to cooperate when taking fingerprints and photos
- to inform the competent asylum authorities about the registered address
- to hand in all proves which are important for the decision about the case as soon as possible

If the asylum seeker can't cooperate and it is not his fault (e.g. when he is sick) he has to tell the competent authority as soon as possible.

In case an asylum seeker doesn't have a protection from deportation for reasons as described above, the competent authorities can order that he has to visit a certain police station in certain intervals (at least 48 hours).

The Asylum Procedure

1- Submission of the asylum application

The asylum seeker has to submit his application personally in a First Reception Centre („Erstaufnahmestelle"). We have two of these centres: Traiskirchen and Thalham. With the submission of the application begins the „admission procedure" („Zulassungsverfahren"). In this procedure will be decided if the application is refused (mostly for „Dublin" reason or if the Asylum Authorities have already decided about the case and it is a consecutive application, so called "entschiedene Sache") or if the applicant gets access to a procedure on the merits.
At the beginning of the procedure the asylum seeker receives a green card, which is valid as long as the admission procedure is going on – even if on the back side of the card there is a different data.

There is no deadline, but it is the best to apply for asylum as soon as possible. The asylum seeker has to submit all documents he has. The competent authority is the Federal Asylum Office („Bundesaslyamt") – First Reception Centre („Erstaufnahnestelle") east (Traiskirchen) or west (Thalham).

Recording procedure: first a very short interview at the police in the first reception centre, which pertains mainly the way the applicant came to Austria. The next step is a short interrogation in the First Reception Centre of the Federal Asylum Office. In that phase of the procedure the Asylum Authority decides if the applicant is admitted to the procedure on the merits or if he is refused because of the Dublin regulation (or other obstacles as mentioned below).
If the application is rejected by the Federal Asylum Office, the asylum seeker can write an appeal within one week. The Asylum Court can give the appeal the suspensive effect within one week.
If the Asylum Court decides the appeal positive, the procedure comes back to the Federal Asylum Office, which should now make a procedure about the merits. However, it might also happen that the Federal Asylum Office rejects the application one more time. In this case the asylum seeker can appeal once more within one week.
The Asylum Authorities makes protocols concerning these first interrogations.

Only if the application is admitted, the applicant will be interviewed about the merits.
If the admission procedure is finally decided positive the asylum seeker receives a white card, which is valid as long as the whole asylum procedure is going on.

a) Airport Procedure

If an asylum seeker arrives at the airport and applies for asylum, there is a special procedure used in these cases, the so called "Flughafenverfahren" (Airport procedure).
The principles are the same: The Federal Asylum Office decides about the case in the first instance. The asylum seeker has the right to appeal against this decision, the Asylum Court finally decides about the appeal. However, there are special procedural rules in the airport procedure.
If the asylum seeker arrives at an airport, which has a reception centre (what is only the case in Vienna) he will be summoned to the reception centre, as far as the Federal Asylum Office does not allow the entry to Austrian territory due to the information it has concerning the case.
The same procedure is started when a person applies for asylum during his deportation. However this is only possible if the application is your first in Austria. If you apply in Austria for a second time without leaving the country in the mean time, the application is a so called consecutive application (Folgeantrag), which does not hinder a deportation.
The Federal Asylum Office permits the entry if it is, due to the information it has to the case, not likely any longer that the application will be rejected or refused. In case the Federal Asylum Office permits the entry to Austrian territory, he will be taken to another reception centre (Traiskirchen or Thalham). If the asylum seeker is taken to these centres, his procedure will not be handled as an Airport procedure, but gets a regular asylum procedure as described before.
There is a special possibility to refuse the application at the reception centre on the airport, if the

Federal Asylum Office can't find a founded reason to award the status as a refugee or subsidiary protection; if the asylum seeker tried to mislead the asylum authorities about his identity or his documents although he was informed about the consequences; if the reasons for the application for asylum are obviously contrary to the facts; if the asylum seeker doesn't claim any persecution in his home country and if the asylum seeker comes from a safe state.[1]
A rejection of an application for the reason that the asylum seeker comes from a safe state is only allowed if the UN High Commissioner for Refugees agrees with this.
Against a negative decision in the airport procedure the asylum seeker can appeal within one week after he received the decision. After this the Asylum Court has to decide within two weeks about the appeal. The asylum seeker can not be deported because of a rejection of his application, as long as his case is not decided finally negative.

b) Detention in the Airport Procedure

If an asylum seeker is in an airport procedure he can be kept in a detention centre, which is located next to the airport, the so called special transit centre (Sondertransitraum). This is legally not exactly the same as a usual detention centre, but it has the same effect – the asylum seeker is not allowed to leave this centre. However, he has the possibility to leave the country as he wishes.
The Federal Asylum Office has to inform the UN High Commissioner for Refugees within one week after the application which decision it intends to make. If the Federal asylum office intends to reject the application due to the Dublin Regulation, consultations have to get started within one week after the application, which the asylum seeker must be informed about. Apart from these cases the asylum seeker can be kept in the detention centre until the UN High Commissioner for Refugees accepts or disclaims the Federal Asylum Office's decision, until the period for writing an appeal is over or as long as the procedure concerning the appeal is going on. The absolute limit for this detention is six weeks. However, when the Federal Asylum Office permits the entry in Austrian territory, the asylum seeker has to be set free.
In this detention centre there is a special Social Service, which visits the asylum seekers regularly and assists them in their asylum procedure.

The asylum procedure in merits

Competent authority in first instance is the Federal Asylum Office, First Reception Centre
Second instance: Asylum Court
Third instance (extraordinary): Constitutional Court

When the application is admitted, the applicant will be interviewed about the merits. This interview takes place in a field office of the Federal Asylum Office („Außenstelle"), which are located in Vienna, Eisenstadt, Graz, Linz, Salzburg, Innsbruck and Traiskirchen.
Before this interrogation takes place the asylum seeker receives an invitation. It is recommedable to go and see a legal advisor who prepares the asylum seeker for the interrogation. The profit of such a preparation is to get the things that happened in the home country into order, think about dates and other small circumstances and check which parts are the most important.
Based on this interrogation, the application will be considered by the Federal Asylum Office as first instance. In case there is a whole family who seeks for asylum, usually each person who is at least 18 years old will be interrogated separate. In some cases even minors who came with their parent can be interrogated if it is necessary.
During this interrogation there is a translator present. If the asylum seeker does not understand him or her you are allowed to ask what that means. If he can't understand him or her properly at all the asylum seeker has the right to ask for another translator. If there is a reason to think the

[1] Safe states due to the law are Belgium, Bulgaria, Denmark, Germany, Estonia, Finland, France, Greece, Ireland, Italy, Latvia, Lithuania, Luxemburg, Malta, the Netherlands, Poland, Portugal, Romania, Sweden, Slovakia, Slovenia, Spain, the Czech Republic, Hungary, United Kingdom, Cyprus, Australia, Iceland, Canada, Liechtenstein, New Zealand, Norway, Switzerland.

translator is prejudiced, the asylum seeker has the right to refuse him or her as a translator, but he has to give a founded reason why he refuses him or her.
Usually the asylum seeker is first asked for a short *curriculum vitae*, in some cases the way they came to Austria. He will be once more informed about his rights and duties in the asylum procedure. Then the asylum seeker has to reason his application for asylum as detailed as possible. The officer in charge might ask questions in between if anything is not clear, or he asks questions in the end.
The Federal Asylum Office also has to translate reports to the asylum seeker's home country so that he can comment them. If he does not agree, he has the right to give his opinion during the interrogation orally, or (what is recommendable) ask for a two weeks periods of time to present his point of view in written. In case he gives his opinion in written this has to be in German language. The best way to organise that is to search for information on your own on the one hand, but on the other hand also go and see a legal advisor, who might help you with translating and might have his own information as well.
After the interrogation the protocol (which should content everything that was said during the interrogation) is orally translated back into a language comprehensible to the asylm seeker. If there are any mistakes the asylum seeker wants to correct, if anything is incomplete or if he wants to add something, he has the right to do that. Corrections later in the procedure are not possible and might be held for contradictions. With the signature on every page of the interrogation's protocol he finally confirms that the protocols content is correct and complete.

After this interrogation the asylum seeker receives a decision, which is in most cases negative. Against this decision he has the right to appeal within two weeks.
As the appeal has to be written in German and ideally contains also legal considerations, it is recommendable to see a legal advisor as soon as possible. For the reason that the legal advisor does not have all these papers, it is important that the asylum seeker brings all his papers concerning the asylum case.
The appeal has to analyse the process mistakes and legal misjudgement of the reasons which were made by the Federal Asylum Office. Facts which had not been declared at first instance are only allowed to be told in the appeal if the asylum seeker “was not able” to do it before and give reason for it.

Second instance is the Asylum Court. The first Asylum Court is located in Vienna and is responsible for most of the countries. The other Asylum court is located in Linz and is responsible for the countries Iran, Turkey, Iraq, Armenia, Azerbaijan, Israel, Jordan, Lebanon, Yemen and Kuwait. Asylum applications for all the other countries are decided in Vienna.
If the appeal had a high quality or the Asylum Court thinks that there are more things about the asylum case he has to question, there will be another invitation to an interrogation. However, in many cases they decide negative without a hearing. This happens when the judges don't expect any further clearing of the situation by that. That affects mostly people from the former Yugoslavian states, Nigeria, Gambia, Morocco, Algeria and India and can be seen as an indicator, which Citizens hardly ever get the status as a refugee.
Following the law, this decision should fall within six months. The time it takes in fact – and also the result - depends completely from the chance to which judge the asylum seeker’s file will be distributed.
During this interrogation there are two judges, a secretary, a translator and in a few cases a representative of the Federal Asylum Office. It is also possible to present witnesses who will be questioned during the trial. Every asylum seeker has also the right to take a legal representative of his own choice who joins the trial. Additional he has also the right to take a confidant to the trial. In general the trial is public, however there are hardly ever extern listeners.
The interrogation is about the same as in front of the federals Asylum Office. Once more the asylum seeker has to explain the reasons for his flight and the judges ask further questions. There will be also country information, the asylum seeker can comment on, orally or in written.
After this interrogation there will be another decision in written.

If the Asylum Court decides negative, the decision is in principle in force and the asylum seeker can be deported. There is an extraordinary instance - the Constitutional Court – the asylum seeker

can write an appeal to within six weeks. A further appeal usually has no suspensive effect.
In front of the Constitutional Court the asylum seeker has to be represented by a lawyer. If he can't afford a lawyer, he has the possibility to apply for legal aid. As the Constitutional Court rends to refuse these applications, it is recommended to write an additional letter, which explains shortly the reasons why the decision is incorrect. Hereby the asylum seeker should seek for competent help by a legal advisor.
The only reasons why an asylum seeker can appeal in front of the Constitutional Court is if he is violated in a right which is guaranteed by the constitution. These would be mostly human rights or the right for equal treatment.

If the Constitutional Court decides negative, there is no further possibility to appeal in front of an Austrian court against the decision.

Special provisions for unaccompanied minors and vulnerable persons

Unaccompanied minors are legally represented in the admission procedure by a legal adviser employed by the state in the first reception centre. In the ordinary procedure they are represented by the youth office. They shall not be taken in detention, but it still happens in several cases.

People who claim to be a victim of a violation in the sexual integrity have to be interrogated by a person with the same sex, except they explicitly wish the opposite.

For other vulnerable persons there are no special provisions.

Outcomes and consequences

The asylum procedure has two possible outcomes. Any kind of right to stay in Austria is granted as described above.

If the asylum procedure is decided negative the person has to leave the territory immediately. If the person does not leave the country voluntarily the Foreigner's Police can deport the person, which might be connected with detention.
If a person can't leave the country on his or her own for any reason, but still does not want to be deported, he or she can contact the Service for voluntary return („Rückkehrberatung"), which is offered by *Caritas* and *Verein Menschenrechte Österreich*. These organisations provide persons with tickets, a little pocket money and the so called *Heimreisezertifikat*, a kind of one-way passport, with which the home country agrees to take the person back, although he or she has no official passport).

If the person doesn't want to return voluntarily the police starts trying to organize the *Heimreisezertifikat*. Therefore the person is usually invited several times to the Foreigners Police, has to answer questions to his family, where he or she lived, ... to convince in a further step the home country to take him or her back. At this time the Foreigners Police also informs persons about the possibility of voluntary return and asks them to take contact with *Verein Menschenrechte Österreich*.
If a person accepts to return on his or her own he or she gets a certain time and place where he or she has to enter the bus (or train or airplane). The police checks if the person follows this order or hands them over a paper which they have to present at the border, so that the authorities can check in a way that he or she left the Austria territory. If the person does not follow this order, the Foreigners Police starts an ordinary deportation as described below.

Dependent of the home country the Foreigners Police is more or less successful. Some countries refuse more or less consequently to take their citizens back, especially if they haven't been to their home country for a long time. This is especially the case with persons from Nigeria, China or Algeria and leads in several cases to the problem that they are often in detention for month.
In some cases the Foreigners Police tries to get a Heimreisezertifikat once a year and so there persons are in detention centres every year for a few months, without having committed a crime. In these cases it is very important to contact any helping organisation outside the detention centre – otherwise the detention might have duration up to six months.

The deportation itself can be totally different, depending mostly on from which country the person comes from. Many groups of persons are seen – independent from their individual behaviour – as problematic, which is the reason why they are deported in a very inhuman way.
If the person is in a detention centre some time before the deportation an officer tells them that they will be deported on a certain day. On this day a special unit comes, wearing masks and doesn't say a word. People are handcuffed and taken to the airport, often they are even handcuffed or in a different way fixed during the flight. A translator and a doctor are also with them, but usually they behave quite passive.
Deportations to Africa are usually organised with chartered planes. Persons are usually for a longer time in a detention centre before getting deported and are taken to the airport by a special unit, which also was accused a several times for seriously injuring persons.

In other cases persons are not in detention centres, but taken out of their beds in the middle of the night and are deported very quickly, within few hours. That is mostly practiced with families. A typical scenario is that the police knocks at the door, a family member opens the door, then several uniformed police officers and a translator immediately enters the apartment.
The persons are told that they will be deported right away and they have to pack their stuff. In many cases the persons are stressed by the officers, told in a harsh way to hurry up, their clothes are often put into their bags for them in a very rude way, in some cases they don't even get the possibility to pack everything they have, often they are shouted at and insulted. In Traiskirchen the police takes the person's mobile phones away to prevent them from calling their lawyer or family

members.
In several cases one of the family members is also handcuffed to furniture to prevent the whole family from fleeing.
Before being deported persons are checked by a doctor. This is more or less a formal procedure and should only ensure that the person doesn't die on his way – other problems are hardly ever taken serious regard to.
This is also the common way of a "Dublin-transfer".

There are also deportations without inhuman treatment, however these are a minority.

Implementation of the Dublin regulation in Austria

The Dublin Regulation

1- How to find the state which is responsible

The Dublin Regulation means that every person has to stay in the first country he enters the European Union. There is only one country responsible of the asylum case and it's not the asylum seekers' choice.
If the asylum seekers wife's / husband's or your minor children's procedure is admitted in a country before you enter the territory of the Dublin Regulation, this country will be responsible for his asylum procedure too.
If he has other relatives, like (grand)parents, grown up children or siblings in one of the states, he can could try from the state where you are to reach a change of the responsibility by applying for it in the country you entered the territory first due to Art 15 Dublin Regulation.

If the asylum seeker has a visum for a country in the EU, due to the law it is the same as if he entered this country first, even if he has never been there. Exceptions are hardly ever possible. This country has to check the reasons why you left your home country.
This is not the case if the asylum seeker had a visum that ended before he entered the territory. So in case the visum was no longer valid when he entered the territory of the Dublin Regulation, Dublin-Consultations are not possible. He should be able to prove that fact, indeed.

2- How to end the state's responsibility for the case

Reasons why the state he first entered the territory of the Dublin Regulation is not longer responsible are:

— if there is an acceptance by the first entry state and the asylum seeker is not deported within six months after this date, without being flighty; in cases where an appeal had suspensive effect, this period starts once again after the decision. Once the asylum seeker is flighty, the period extends immediately up to 18 months. An asylum seeker is already flighty, when he has no registration card.

— if the Federal Asylum Office does not start Dublin Consultations within 20 days after the application of asylum and informed the asylum seeker about this.

— if Austria consumes it's right to consider the case on his own, e.g. for the reason that there are close family members in Austria, if the deportation would violate the asylum seeker's right he has through Art 2, 3 ECHR

— if you left the territory of these states for more than three months (and you are able to prove that)

— if a state once deported you to your home country or you left it with the state's support

If asylum seekers come to us before having applied for asylum, we check together with them their chances. If they passed through a Dublin state and gave there their fingerprints, we explain to them that Austria will try to expel them to that country.

So first we clarify three points: If they have family members in Austria; if they are sick or traumatised so that their deportation will bring their health in danger; and if they suffered a serious harm in the Dublin state they passed through so that in case of return to that country they would be in a real risk of violation of their human rights.

If all three points are the case, then our legal remedies could be successful.

Dublin Out Cases

1- The Dublin Procedure in Austria

When the asylum seeker falls within the scope of the Dublin regulation while he/she has lodged his/her asylum application in Austria the admission procedure (Zulassungsverfahren) is started. The asylum seeker recognises that fact by having a green card.

During this admission procedure the asylum seeker is not allowed to leave the district his accommodation is located in, except in cases he has to fulfil legal duties, if he has to take part in an interrogation of a court or an administrative authority or if it is necessary to visit a doctor.

At the beginning he has to give his fingerprints to check if he has applied for asylum in another countries before, he has to give his signature and he is photographed. Then he has a short interrogation, which deals mostly with the way how he came to Austria. He has to summarise the reasons why he left his home country in two to three sentences – it is important to still try to find out what is the most important reason for your flight. This interrogation is with a uniformed and weaponed officer and a translator is also there.
During this interrogation the police decides whether he will be taken to a detention centre or not.
After this interrogation he receives his green card and gets a room where he can stay in the reception centre. Later on he might be taken to another place to stay (this can be in Bad Kreuzen, Reichenau or Thalham).

If the asylum seeker gave his fingerprints in another country, if he admits that he has been to another country – although he didn't give his fingerprints, if it could be proved that he has been to another country by evidence (tickets, ...) or if he had a visum for another country within Europe a Consultation Procedure is started.
This means that he gets an invitation to the first reception centre within 20 days after he applied for asylum. There he will receive an information sheet which tells him that the asylum authorities intend to reject the application and deport him to the country he first entered Europe.
Depending on the case, he might get a medical examination to explore if there are medical reasons which would make deportation an inhuman treatment. This is hardly ever declared.

After that there will be another interrogation with an officer. Before he has this interrogation he have the right to talk to a legal advisor, who is employed by the Ministry of Interior and works in the Reception Centre. He will explain the situation to you and prepare you for the interrogation.
In this interrogation you have to point out all the reasons why you would prefer staying in Austria and can't be deported to the country you entered Europe first. These main points are relatives in Austria, serious health problems (physical and psychological) and a probably lack of medical treatment in the country you have been before, individual insecurity of a certain reason in this country or other conditions which make a deportation seem unlawful.

After this interrogation it is very likely that he receives a decision that rejects your application for asylum within a few days. Beginning with this day he has one week to write an appeal against it. For doing that it is recommended to go as soon as possible to one of the support organisations for asylum seekers (addresses are below) and bring all the papers he has about the case, including medical papers.
For writing an appeal it is recommended to search for a legal advisor, as it has to be in German and requires in many cases legal knowledge.
After writing an appeal the case is decided by the Asylum Court („Asylgerichtshof"). The Asylgerichtshof usually decides in one to eight weeks. It might take longer if it gives the appeal the suspensive effect, which means that the asylum seeker can't be deported while the Court has not yet decided about the appeal.
In case the Asylgerichtshof doesn't give the appeal the suspensive effect, the asylum seeker can also be deported without having a decision on your case. This is legal possible one week after he made the appeal.

If the Asylgerichtshof decides negative the asylum seeker have theoretical the possibility to write an appeal to the Constitutional Court. However, the chances to succeed with this are very low and it usually even refuses the appeals for the reason that not constitutional right seems to be violated.

2- Vulnerable groups in the Dublin Process

A vulnerable person or a person affected by a psychological or a physical disease might be also deported.
Following the law, transfer should be delayed if its execution would be a violation of Art 3 of the European Convention on Human Rights. As the above mentioned diseases could also be treated in the other Dublin state, this does not hinder a deportation due to the latest jurisprudence to Art 2, 3 ECHR.
Only in a few cases, our appeals are successful at the Asylum Court.

3- Detention during the Dublin Process

Due to the Foreigners Police Law („Fremdenpolizeigesetz" FPG) a foreigner can be arrested and be taken to a detention centre, if it is necessary to ascertain the procedure to expel or deport him from Austrian territory. Foreigners who are legal on Austrian territory can be arrested, if it is likely that they won't participate in such a procedure other ways.
The Foreigners Police can arrest a foreigner to ascertain the procedure or the deportation if

— he was expelled from Austrian territory and the decision is executable – even if it is not in force yet; this would be in cases the Asylum Court did not give the appeal suspensive effect within seven days after he received it

— if a procedure was started to expel a person from Austrian territory; in a Dublin case that would be at the moment a person receives the information that the Federal Asylum office intends to reject the application

— if the asylum seeker was expelled from Austrian territory or received a residence prohibition before he applied for asylum; this is especially in cases of consecutive applications or if the asylum seeker lived in Austria with another title, then lost it and therefore applied for asylum

— if due to the interrogation, examination or the fingerprints in the EURODAC system it seems that the application for asylum will be rejected; this would be in principle every Dublin case
In all these cases there has to be a special reason founded in the person, why it is likely that he won't participate in his asylum procedure, e.g. if he has been to many different countries which take part at the Dublin regulation, if he was in Austria before and was flighty then, ...

The Foreigner's Police has to arrest a foreigner,

— if the asylum authorities rejected the application for asylum and is executable or the application does not hinder the deportation (as described in I.2. Rights of the asylum seeker); this is the case if the asylum seeker is expelled from Austrian territory and the decision is executable – as described before and in cases of consecutive applications

— if the asylum seeker received the information that the Federal Asylum Office intends to reject his application for Dublin reasons and the asylum seeker violates his duty to stay within the county he lives in

— if the asylum seeker did not follow the order that he has to visit a certain police station in certain intervals (at least 48 hours) more than once

— if a procedure to expel the asylum seeker was started and he did not follow his duty to inform the competent asylum authority within three days about his change of his address
when it is necessary to ascertain the procedure.
So although the law says the asylum seeker has to be arrested, it is only allowed if it is necessary to ascertain the procedure. So in fact there has to be a special reason founded in the person, why it is likely that he won't participate in his asylum procedure.

If a person is arrested he has the right to receive a legal decision (so called „Schubhaftbescheid") and get to know the reasons why he gets arrested in a language comprehensible. He has to receive a sheet which explains his rights as an arrested person in a language comprehensible for

him. He has the right to inform his legal advisor.
And he surely has the right to appeal against it as long as he is still in prison and even six weeks after he was released. Therefore he should contact a legal advisor. If the detention is found illegitimate by the court, the asylum seeker has a right for financial compensation.

The detention has to be as short as possible. The law says it can't be longer than six months all in all.

Dublin-In Cases

1- The Case is still open in Austria

In that case, Austria enters in the procedure on the merits. The asylum seeker arrives usually at the airport in Vienna, gets a first short interrogation at the police station. In any case it is the best if the asylum seeker expresses clearly that he wants to apply for asylum – even if his case is still open.
The Austrian officers in charge have to take the asylum seeker to one of the reception centres, which are located in Traiskirchen and Thalham. He will have first a short interrogation; a photo will be taken as well as his fingerprints. Then a green card is handed over to him.
As the asylum seeker is taken in charge by the authorities and must in principal not take an initiative himself. He has only to answer the questions in the interviews and organise as many proves for his identity and the reasons why he left his country as possible.
As Austria agreed to take the case back due to the Dublin Regulation, Austria's asylum authorities will decide whether he receives any kind of protection. This means furthermore, that the Federal Asylum office has to admit the application for asylum. At the time of admission of the application he will receive a white card.

If the asylum seeker returns to Austria on his own it is important to take the decision from the country which decided that Austria is responsible in your case with him. When he comes back to Austria he has to go to one of the reception centres on his own and apply for asylum.

After the admission of his procedure, he will be transferred to another accommodation and the asylum procedure will start as described in I.

2- If the case is already closed in Austria

If the asylum case is already decided negative in Austria, in principle there is no possibility to apply for a second time. In these cases the application is a so called consecutive application („Folgeantrag"), which does not hinder a deportation, except in cases of a (civil) war in his home country.
In this case the asylum seeker receives only a green card as long as the application is not admitted for the reason that there are new reasons, which now may be a basis for any kind of protection.

Contact information in Austria

1- Partner organization activities and contact details:

Asyl in Not

A-1090 Wien
Währingerstraße 59/2
www.asyl-in-not.org
☎+43 140 842 10
@ office@asyl-in-not.org; j.ruderstaller@asyl-in-not.org

Activities: Legal advise for asylum seekers; representation of the interests of political persecuted or in other way disadvantaged foreigners.

2- Support organizations for asylum seekers:

a) Vienna

Asyl in Not
Währingerstraße 59/2
1090 Wien

Caritas Asylzentrum
Mariannengasse 11
A-1090 Wien

Diakonie Flüchtlingsdienst
Steinergasse 3
1170 Wien

Volkshilfe
Forsthausgasse 19
1200 Wien

Integrationshaus
Engerthstraße 161
1020 Wien

MigrantInnenverein St. Marx
Pulverturmg 4/2
1090 Wien

Deserteurs- und Flüchtlingshilfe
Schottengasse 3a/1/59
1010 Wien

Flüchtlingsprojekt Ute Bock
Große Sperlgasse 4
1020 Wien

Bewegung Mitmensch/ Hilfe für Menschen in Not
Boltzmanngasse 7
A-1090 Wien

b) Lower Austria

Bewegung Mitmensch/ Flüchtlingshilfe Poysdorf
Kolpingstraße 7
2170 Poysdorf

Flughafen Sozialdienst
Wien Schwechat
Postfach 152
1300 Wien

Caritas St. Pölten
Hasnerstraße 4
3100 St. Pölten

Diakonie Traiskirchen
Josef-Ferschnerstraße 20/II
2514 Traiskirchen

c) Upper Austria

Volkshilfe Oberösterreich
Glimpfingerstraße 48
4020 Linz

SOS-Menschenrechte Österreich
Tummelplatz 5/2
4020 Linz

Caritas der Diözese Linz
Kapuzinerstr. 84
4021 Linz

d) Styria

Caritas Graz-Seckau
Raimundgasse 16
8011 Graz

Verein Zebra
Schönaugürtel 29/1. Stock
8010 Graz

e) Carinthia

Caritasverband Kärnten
Sandwirtgasse 2
9010 Klagenfurt

Ausländer Beratungsstelle Kärnten
Kolpinggasse 10
9020 Klagenfurt

f) Burgenland

SOS-Mitmensch Burgenland
Wienerstraße 6
7400 Oberwart

Caritas Eisenstadt
St.Rochus Str. 15
7000 Eisenstadt

g) Tirol

Caritas Innsbruck
Heiliggeiststraße 16
6020 Innsbruck

h) Salzburg

Caritas Salzburg
Universitätspl. 7
5020 Salzburg

helping hands Salzburg Verein für fremdenrechtliche Beratung, Integration und antirassistische Projekte
Kaigasse 28
5020 Salzburg

i) Vorarlberg

Caritas Vorarlberg
Wichnergasse 22
6800 Feldkirch

3- Administrations

a) Asylum Office – First reception Center

Bundesasylamt, Erstaufnahmestelle Ost
Otto Glöckelstraße 24
2514 Traiskirchen

Bundesasylamt, Erstaufnahmestelle West
Thalham 80
4880 St. Georgen im Attergau

b) Federal Asylum office – Field Offices

Bundesasylamt, Außenstelle Wien
Landstraßer Hauptstraße 171
1030 Wien

Bundesasylamt, Außenstelle Graz
Grabenstraße 88
8010 Graz

Bundesasylamt, Außenstelle Eisenstadt
Neusiedlerstraße 84
7001 Eisenstadt

Bundesasylamt, Außenstelle Salzburg
Münchner Bundesstraße 202
5020 Salzburg

Bundesasylamt, Außenstelle Innsbruck
Egger-Lienz-Straße 130
6020 Innsbruck

Bundesasylamt, Außenstelle Traiskirchen
Otto Glöckelstraße 24
2514 Traiskirchen

Bundesasylamt, Außenstelle Linz
Derfflingerstraße 1
4020 Linz

c) Asylgerichtshof

Asylgerichthof
Laxenburgerstraße 36
1100 Wien

Asylgerichtshof, Außenstelle Linz
Derfflingerstraße 1
4020 Linz

d) Constitutional Court

Verfassungsgerichtshof
Judenplatz 1
1010 Wien