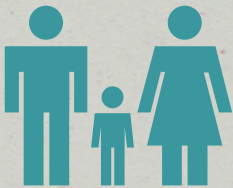
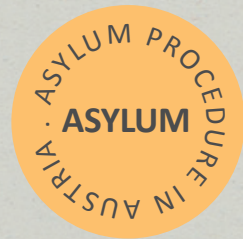


# Federal Office for Immigration and Asylum (BFA)

## Asylum Procedure



**.BFA**



REPUBLIC OF AUSTRIA  
FEDERAL OFFICE FOR IMMIGRATION AND ASYLUM

# Foreword

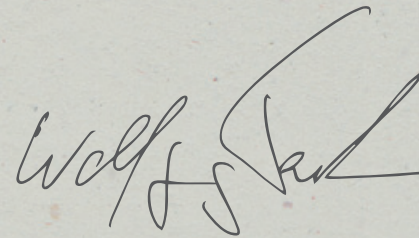
The Austrian Federal Office for Immigration and Asylum (BFA) began its operative work on January 1, 2014. Its main tasks are conducting first instance procedures relating to asylum and aliens as well as granting residence permits in cases of exceptional circumstances.

Coordination measures in the area of voluntary return and forcible deportation likewise come under the jurisdiction of the BFA. The Aliens Police will still be in charge of visa procedures, administrative criminal procedures, refusals, refoulements, transits, monitoring lengths of stays, and law enforcement in the police detention centers.

One of the main duties of the BFA is that of reviewing applications for asylum. For this highly responsible and demanding job, the agency needs highly educated executive caseworkers who possess broad professional know-how as well as tact and sensitivity.

Each case is therefore reviewed individually by a caseworker in accordance with the principle of individualized proceedings. This is a very demanding task in which the decision regarding an application for asylum is made in an objective manner, in accordance with legal requirements and taking into account all known facts and issues raised.

This brochure gives an overview of the key steps of the asylum procedure in Austria. In addition, more detailed information on this topic as well as statistics, brochures, and forms are available online at [www.bfa.gv.at](http://www.bfa.gv.at). We highly appreciate your interest in our activities and accomplishments here at the BFA.



**Wolfgang Taucher, M.A.**  
Director of the Federal Office for Immigration and Asylum

**.BFA**



REPUBLIC OF AUSTRIA  
FEDERAL OFFICE FOR IMMIGRATION AND ASYLUM

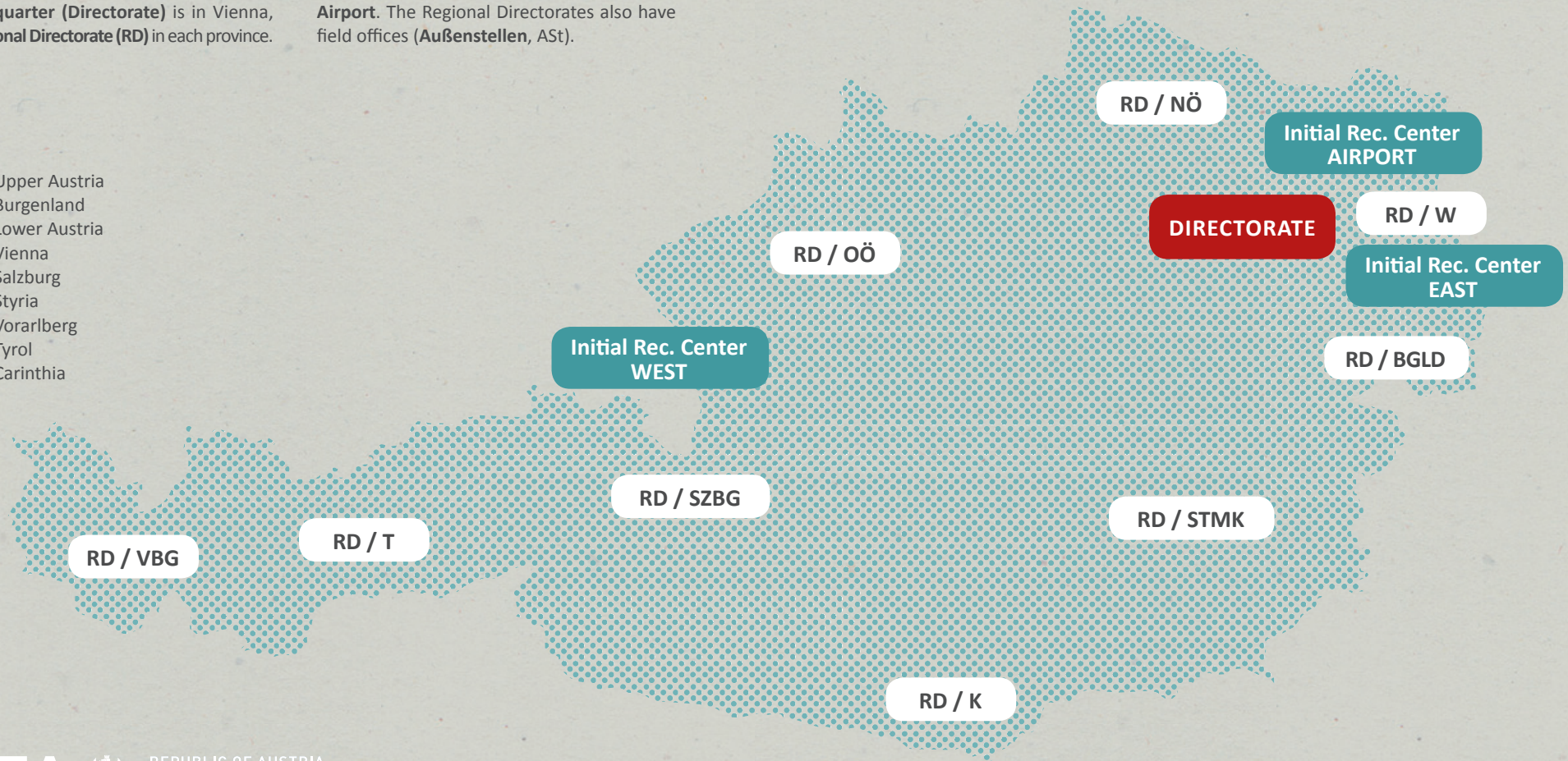


# The Austrian Federal Office for Immigration and Asylum (BFA) and its Tasks

The BFA is a federal authority that reports directly to the Federal Minister of the Interior. The **Headquarter (Directorate)** is in Vienna, with a **Regional Directorate (RD)** in each province.

Other organizational units of the BFA are the **Initial Reception Centers East, West and Airport**. The Regional Directorates also have field offices (**Außenstellen, ASt**).

ÖO = Upper Austria  
BGLD = Burgenland  
NÖ = Lower Austria  
W = Vienna  
SZBG = Salzburg  
STMK = Styria  
VBG = Vorarlberg  
T = Tyrol  
K = Carinthia



.BFA



REPUBLIC OF AUSTRIA  
FEDERAL OFFICE FOR IMMIGRATION AND ASYLUM



# Which matters are decided by the BFA?

The main tasks of the BFA are:

- Conducting of asylum procedures
- Granting and denial of international protection, i.e., of status of person entitled to asylum and status of person entitled to subsidiary protection
- Imposing of residence termination measures (residence termination procedures)
- Issuance of humanitarian rights to stay (residence status granted for exceptional circumstances and issuance of residence permits, residence permits plus, and residence permits for special protection)
- Confirmation of temporary residence permits for displaced persons
- Issuance of cards for tolerated persons
- Issuance of aliens' passports and convention travel documents
- Procedures in the federal basic welfare support area
- Imposing security measures (e.g., pre-deportation detention)

**Asylum:** The rules concerning who shall be granted asylum are set forth in the Geneva Refugee Convention of 1951. A refugee is someone who has well founded fear of persecution because of race, religion, nationality, affiliation with a certain social group or political position, and who is not in his country of origin.

**Subsidiary protection:** Persons who are not granted asylum but who face, in their country of origin, a real risk of death, torture, inhuman or degrading punishment or treatment, or who are in danger as civilians in the context of an armed conflict are eligible/qualify for subsidiary protection. Although they are not persons entitled to asylum, they are given a protection status.



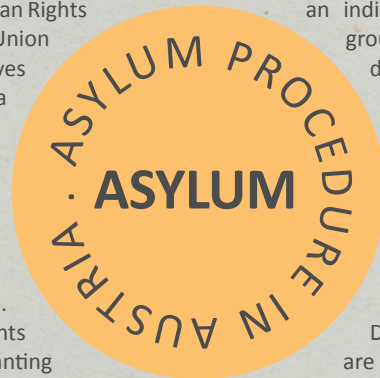
## The tasks of the BFA do not include:

- Visa procedures
  - Administrative criminal procedures
  - Refusals (denial of entry at the border)
  - Refoulements (forced return to another EU Member State shortly after entry)
  - Transits
  - Monitoring lengths of stay
  - Managing police detention centres
  - Enforcement of deportations
  - Integration
  - Employment of aliens
  - Provision of basic welfare support in the care facilities of the Republic of Austria and initial allocation of asylum seekers in the basic welfare support of the provinces of Austria
  - Basic welfare support affairs of the provinces
- These are duties of the provincial police departments and in visa cases, of the Austrian embassies/consulates



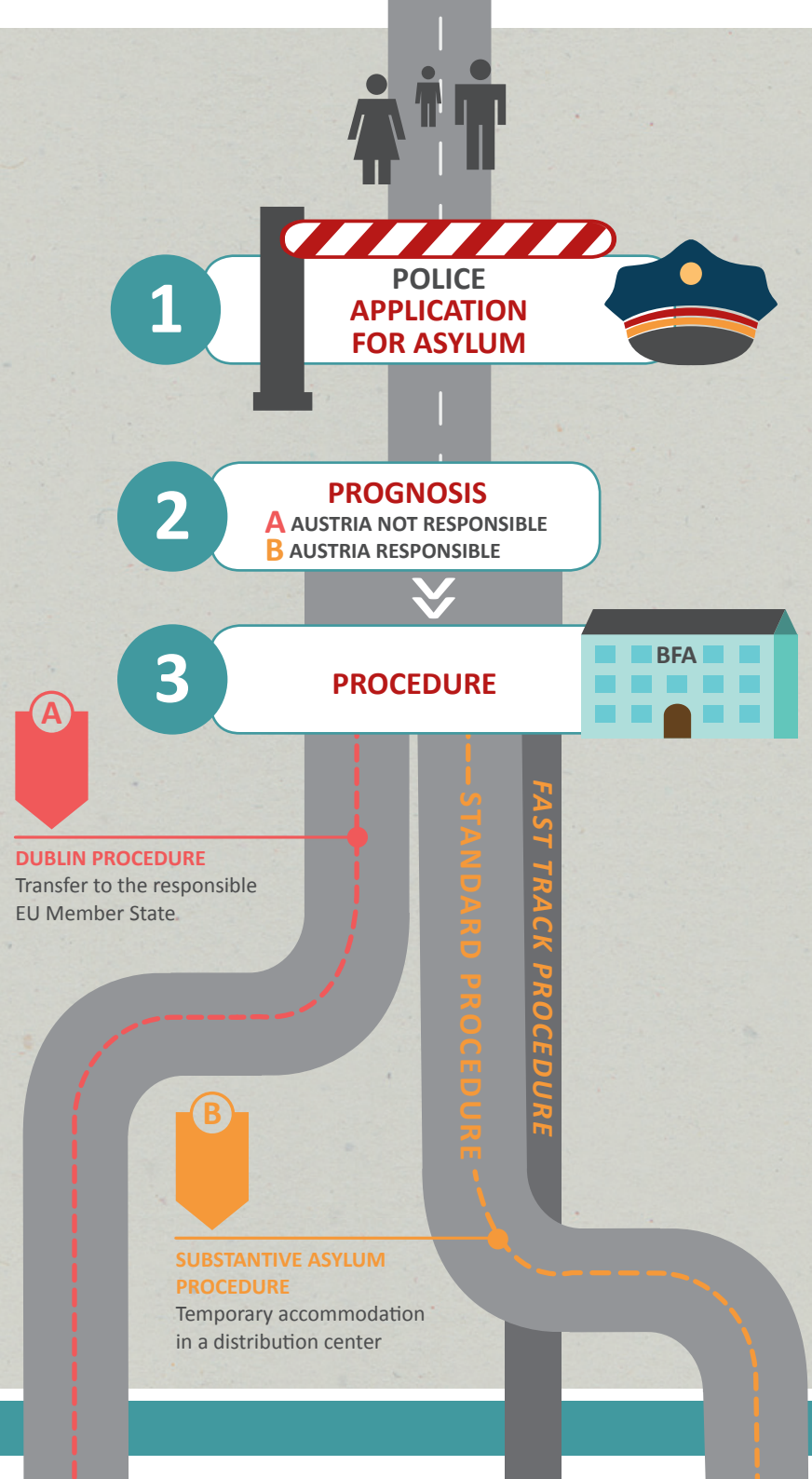
# The process of the Austrian Asylum Procedure

The international legal basis of asylum law is the Geneva Refugee Convention and the European Convention on Human Rights (ECHR). On the European Union level, there are also directives and regulations that Austria has implemented in the context of the common European asylum system. Examples of such include the Status Directive, the Procedural Directive, and the Dublin III Regulation. In Austria, the requirements and the procedure for granting and denying international protection are governed by the Asylum Act 2005 (AsylG 2005). In the Austrian asylum procedure, the principle of individualized proceedings applies. This means that for each application



for international protection (application for asylum), it is determined in the scope of an individual assessment whether grounds for persecution according to the Geneva Refugee Convention, grounds for subsidiary protection, or grounds for humanitarian stay exist. The aim of the BFA is to conduct asylum procedures within a time frame adapted to the individual need for protection. Different types of procedures are possible, depending upon the individual case. For instance, accelerated (fast track) procedures may be conducted for persons from safe countries of origin.

## Different Types of Procedures







# Application for International Protection (Application for Asylum)

**An application for international protection (application for asylum) can only be made in person and only in the national territory of Austria.**

In Austria, an application for asylum can be made to any safety authority and to any police officer<sup>1</sup>. A police officer or other specially trained agents of national law enforcement offices will conduct an initial interview and an identification procedure. If someone makes an application, he normally has *de facto* protection from deportation. This means that he may remain in Austria until a decision regarding his application has been made. In some cases there are different regulations for subsequent applications. The police will take fingerprints. These will be used to check whether the asylum seeker has already applied previously for asylum in another European Union (EU) Member State, Iceland, Liechtenstein, Norway, Switzerland, or in Austria.

On the basis of the initial interview by the police, the BFA will make a prognosis decision. With the prognosis decision, the application for asylum shall be considered as introduced. This means that the alien is now an asylum seeker. The asylum seeker is then sent to a processing point or to a regional directorate, or he may go to a distribution center at no charge: he is eligible for federal basic welfare support.

The actual BFA asylum procedure starts with the prognosis decision. The first step is the admission procedure. The substantive asylum procedure starts with the conclusion of the admission procedure.

<sup>1</sup> For easier reading, gender-specific differences have been omitted. The terms used automatically apply to both genders, according to the principle of equal treatment.





# Prognosis

## Admission Procedure

In the admission procedure, the very first thing that is clarified is **whether Austria is responsible for the asylum procedure** and whether the application is admissible.

### *When is the asylum seeker sent to an initial reception center?*

- if Austria is **probably not responsible**
- if he makes a **subsequent application**
- if he is an **unaccompanied minor**
- to **establish identity** if the identity is still not entirely certain.

In **all other cases**, the asylum seeker is normally given the opportunity to go, at no charge, to a designated care facility in the Republic of Austria. This care facility is known as a **distribution center**.

### *What happens in the admission procedure?*

- The BFA determines whether Austria is responsible for the asylum procedure.
- The BFA inquires as to the reasons for fleeing.

If there are doubts as to whether an unaccompanied minor is truly a minor, an investigation will be launched to establish his age.

In the initial reception centers and in the distribution centers, asylum seekers are given all key information about the procedure. Should the application of an asylum seeker be turned down in the admission procedure, he will receive aid from a legal counsellor. A legal counsellor is the representative for unaccompanied minors applying for asylum.

A BFA caseworker asks the asylum seeker about

- **his personal circumstances**
- **the trip to Austria**
- **and his reasons for fleeing.**

The discussion is conducted in a language that the asylum seeker understands. An interpreter translates the discussion.

### *What happens if Austria is not responsible for assessing the application?*

Then the BFA will generally turn down the application during the admission procedure.

### *What happens if Austria approves the procedure?*

A BFA Regional Directorate or field office will then generally carry out the next steps of the procedure. The BFA will establish whether the grounds for the application for international protection are credible and well-founded.



*What happens if Austria is **not** responsible for assessing the application?*

Then, as a rule, the BFA will reject the application in the admission procedure.



*What happens if Austria **approves** the procedure?*

Then, as a rule, a BFA Regional Directorate or field office will conduct the next steps of the procedure. The BFA will further clarify the grounds for the application for international protection.







## Dublin Procedure

If another EU Member State or Iceland, Liechtenstein, Norway, or Switzerland and not Austria is responsible for assessing the application for asylum, then the BFA carries out a **Dublin Procedure**. In the Dublin Procedure, the BFA establishes **which European state is responsible for assessing the application for asylum**. The other state needs to accept its responsibility. There are various **criteria** and **rules** in the Dublin III Regulation:

- If another state already is conducting or has already conducted an asylum procedure, it remains responsible until the person in question has actually left the territory of the Member States or until his asylum or subsidiary protection is granted.
- If no other state is conducting an asylum procedure, then there are various criteria for determining which state must assess the application. Criteria are family members, residence permit, visa, and illegal initial entry (into the EU from outside the EU).

Each application for asylum shall be assessed for credibility and well-foundedness by only one state! The Dublin III Regulation shall not be applied if an asylum seeker has

already been granted refugee status or subsidiary protection in a Dublin Member State. In the case of unaccompanied minors, the authority must take child welfare into account. The responsible state is normally the one in which the minor is currently located. If there are family members in another state, then that state is also responsible for the minor.

*What happens if the fingerprints of an asylum seeker already show up in the EURODAC database?*

In this case the BFA makes a request to the responsible Member State. This is known as a consultation procedure. If the responsible Member State accepts the transfer of the asylum seeker, then there will be a hearing (interview). A legal counsellor takes part in the hearing in the admission procedure. In the discussion, the BFA informs the asylum seeker of the facts and gives him the opportunity to comment. In this process the BFA must take personal or family backgrounds or health problems into consideration.

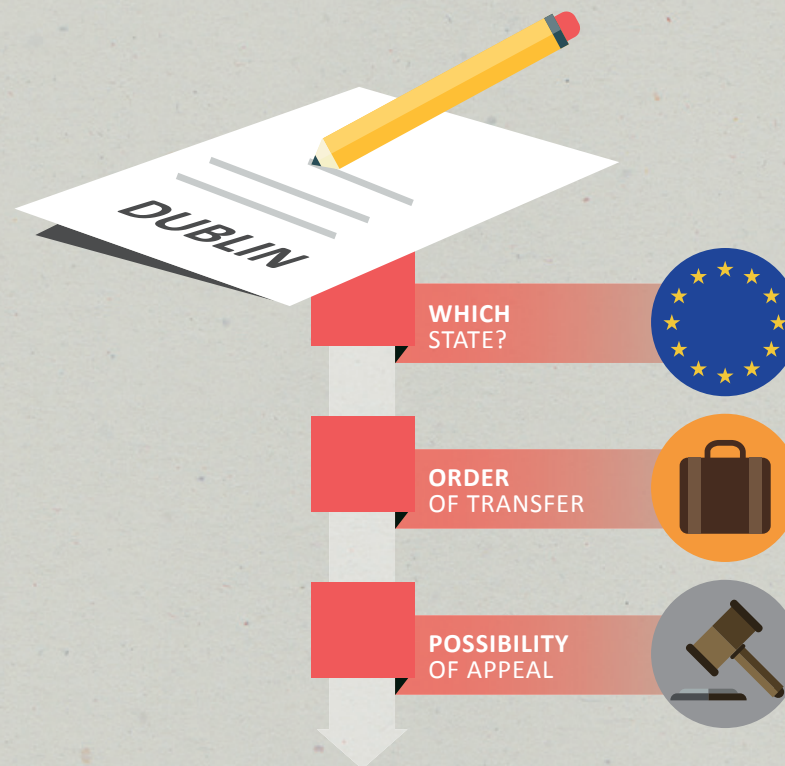
Afterwards the BFA issues a transfer decision with an order of transfer out of the country. The asylum seeker may appeal this decision with the Austrian Federal Administrative Court (Bundesverwaltungsgericht, BVwG).

The appeal does not have any suspensive effect. This means that the BFA can still transfer the asylum seeker to the responsible Member State.

In certain cases the BVwG must grant suspensive effect within a week after the filing of the appeal. This means that the asylum seeker may not be deported until this period is up.

The asylum seeker can be taken to the responsible Member State:

- if the asylum seeker does not make an appeal;
- if the Federal Administrative Court does not grant suspensive effect.



## Time Limit for Transfer

The agency must transfer the asylum seeker to the responsible Member State within 6 months.

The 6 months start with the responsible Member State consenting to accept the transfer of the person in question.

If the asylum seeker is in detention, the deadline can be prolonged to at most one year. If the asylum seeker goes into hiding, then the deadline can be prolonged to 18 months. The BFA coordinates and organizes the transfer. The police carry it out.



# Substantive Asylum Procedure

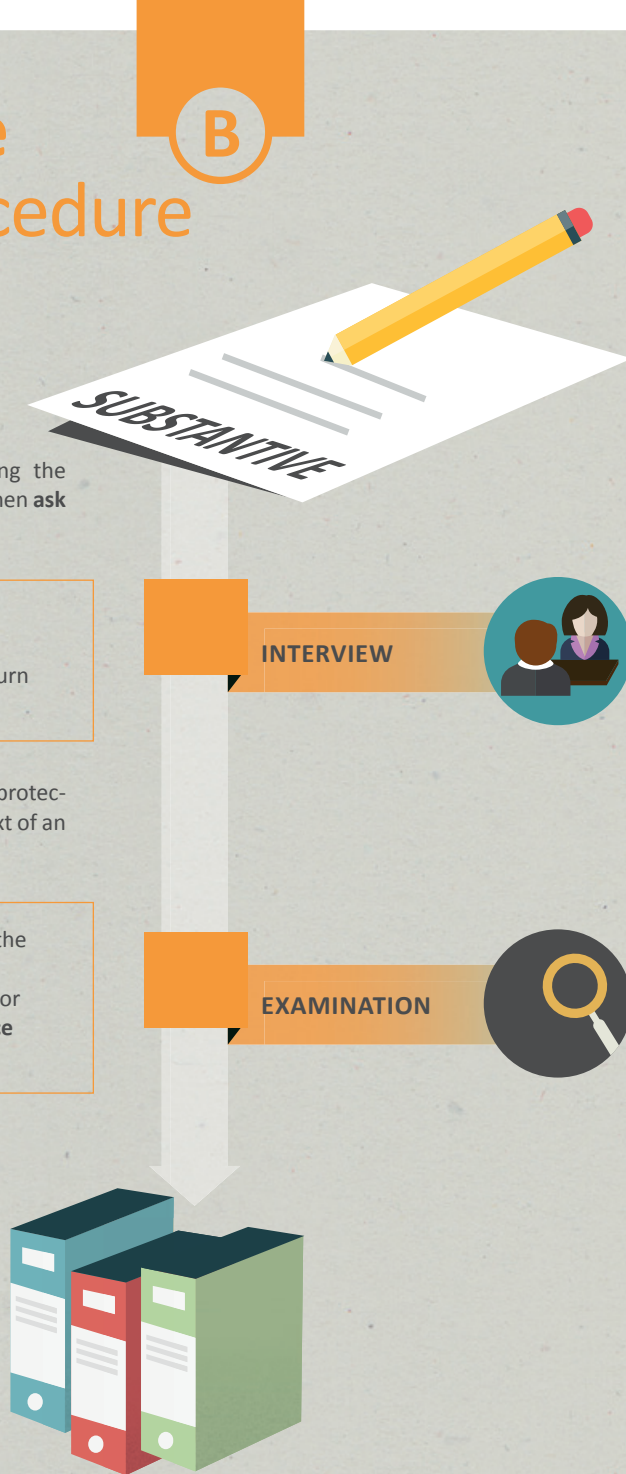
## Standard Procedure

If Austria is responsible for assessing the asylum procedure, a caseworker will then ask the asylum seeker

- about his **personal circumstances**
- about his **reasons for fleeing**, and
- about any **fears** in the event of a return to his home country.

For each application for international protection, the BFA determines (in the context of an **individual case assessment**) whether

- **persecution grounds** according to the Geneva Refugee Convention,
- grounds for **subsidiary protection**, or
- grounds for **humanitarian residence status** exist.



## Interview

**The interview is the most important event for the applicant in the asylum procedure.**

The **caseworker** conducts the interview, during which he asks questions and asks the asylum seeker to tell everything that is relevant. False statements on the asylum seeker's part can have a negative impact on the decision. These can be statements about the country of origin, for example.

**It is important for the asylum seeker to tell the truth.**

If the asylum seeker has proof, he must present it. The caseworker will speak to the asylum seeker in German. However, an **interpreter** will be engaged, who will translate

everything into a language that the asylum seeker understands.

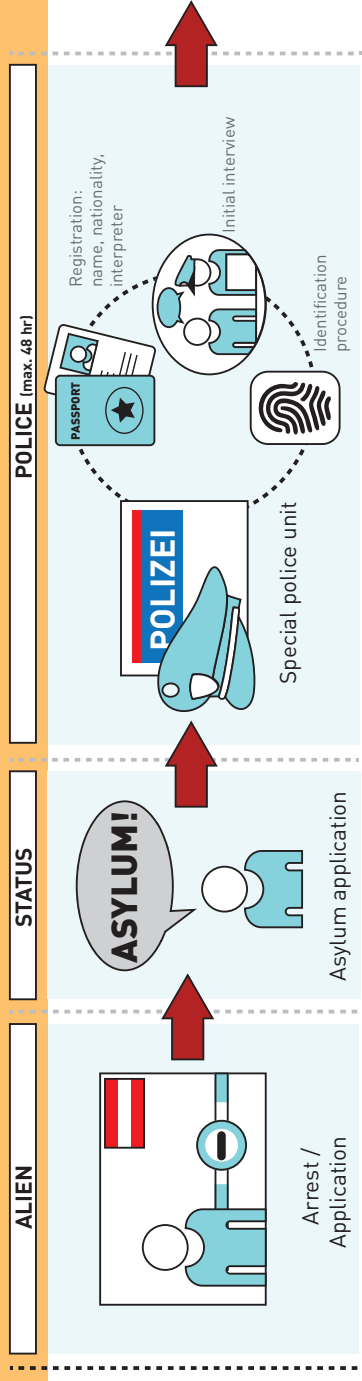
The authority shall assume the costs for the interpreter.

A **legal counsellor** may also be present during the discussion. In the case of minors, the legal representative (parents, child and youth welfare, legal counsellor) shall be present. The length of the interview depends upon the persecution history of the asylum seeker. The interview is not public.

The caseworker records the interview. All of the applicant's statements are in the **record**. The applicant shall receive a copy of the record.

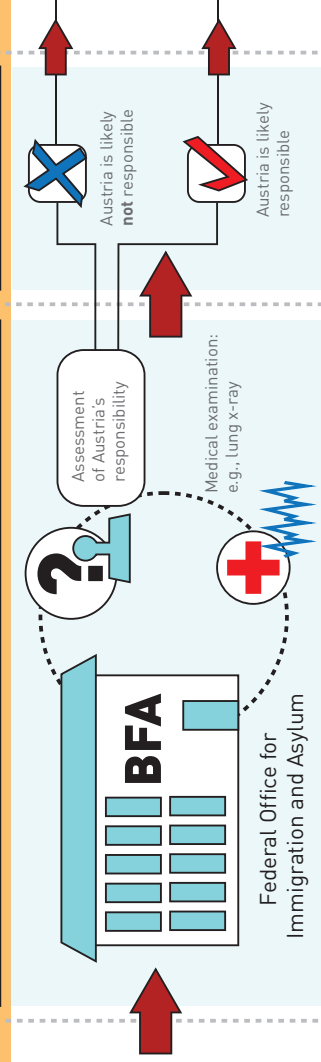


# ASYLUM PROCEDURE IN AUSTRIA



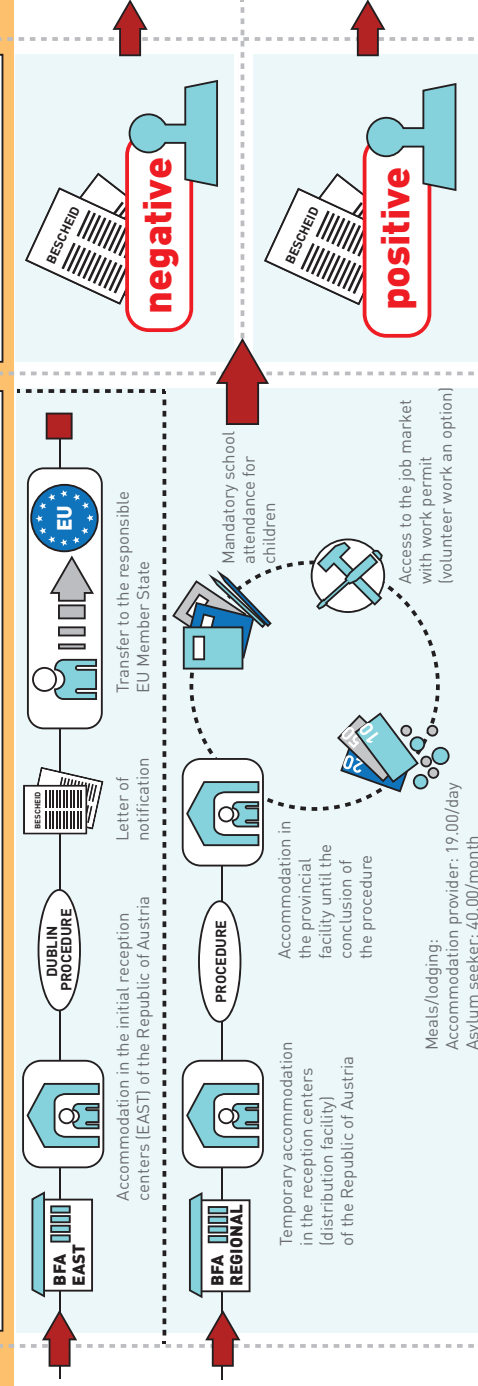
## PROGNOSIS

## START OF THE PROCEDURE



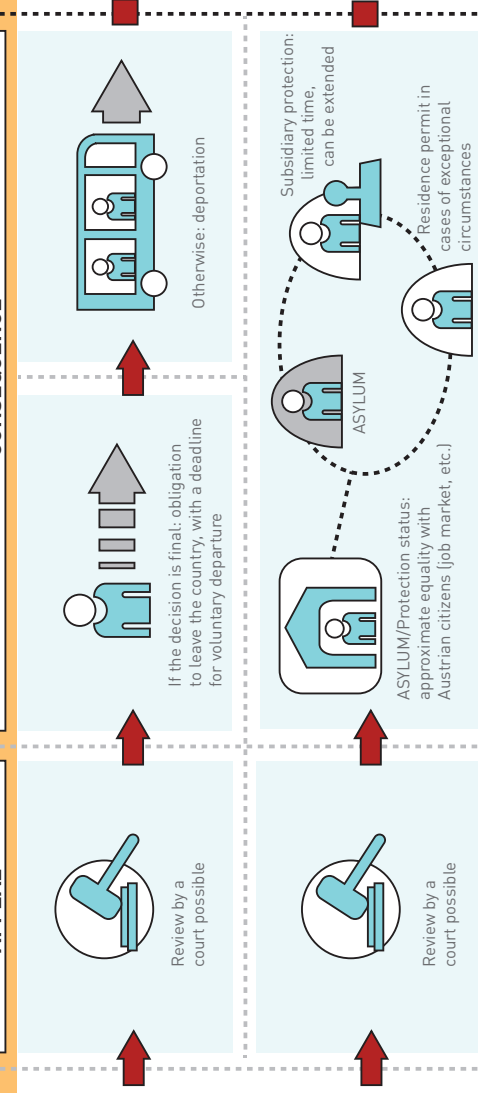
## PROCEDURE-ACCOMMODATION

## DECISION (PROCEDURE)



## APPEAL

## CONSEQUENCE





# Substantive Asylum Procedure

B

## Fast Track Procedure

The fast track procedure is an accelerated procedure. This procedure is conducted when an individual from a safe country of origin applies for asylum. Safe countries of origin are states in which neither political persecution nor inhuman or degrading punishment take place. Examples of such states include Kosovo, Montenegro, Serbia, and also Morocco, Algeria, Tunisia, and all EU Member States.

The safe countries of origin are established by decree by the Austrian Federal Government.

Characteristics of fast track procedures include **rapid decision and the possibility of revocation of suspensive effect for an appeal before the BVwG.**

## Decision

The decision regarding the application for asylum is rendered via official notification. The decision is served to the asylum seeker.

Every decision of the Federal Office contains

- the ruling, in other words the **outcome** of the procedure
- the **grounds** for the decision and
- **information on rights of appeal.**

The ruling and the information on rights of appeal are also translated into a language that the asylum seeker understands.



## Common substantive decisions of the BFA are:

- The application is approved and **asylum is granted**. The right of residence of a person entitled to asylum is initially limited to three years. After these 3 years are up, the right of residence becomes indefinite provided that no revocation proceedings are initiated. However, a revocation is still possible at any future time.
- The application for asylum is rejected, but **subsidiary protection** is granted. A right of residence limited to 1 year is also granted, which upon request can be prolonged by 2 years in each case.
- The application for asylum as well as for subsidiary protection is rejected, but a **residence permit** is granted in cases of **exceptional circumstances**.
- The application for asylum as well as for subsidiary protection is turned down, a residence permit is not granted, and a **residence-terminating measure** (return decision) is initiated. The individual in question must then leave within a specified time period, otherwise he may be deported.

ASYLUM  
granted



SUBSIDIARY PRO-  
TECTION granted



RESIDENCE PERMIT  
issued



INTERNATIONAL  
PROTECTION denied





# Information on rights of appeal

The asylum seeker may **appeal** the decision of the BFA **before the Austrian Federal Administrative Court (BVwG)**, where nonpartisan judges will rule on the appeal. Legal counselors will advise the asylum seeker and if he so desires, represent him before the BVwG.

Having a lawyer is not mandatory. However, the asylum seeker may hire a lawyer (at his own expense) to represent him.

The asylum seeker must submit the **appeal in writing** before the BFA **within a specific time period**. This time period starts with the serving of the decision. The appeal options and deadlines can be found in the information on rights of appeal in the decision.

**In principle**, appeals before the BVwG against BFA decisions have **suspensive effect**. This means that the authority may not enforce the decision. For example, the asylum seeker may not be deported, even if the authority has initiated a residence-terminating measure with the decision.

However, there are cases in which the authority may revoke the suspensive effect (if the alien comes from a safe country of origin, for example).

In principal the appeal does not have any suspensive effect in the case of appeals of non-acceptance. However, the BVwG may grant one.

The BVwG may uphold, amend, or overturn the decision, in other words reject or grant the appeal. The decision of the BVwG then supersedes the decision of the BFA. For example, the alien must depart if the BVwG rejects the appeal against a residence-terminating measure.

The asylum seeker has the right to **appeal** decisions of the BVwG **for revision before the Austrian Supreme Administrative Court (VwGH)**. The asylum seeker also has the right to **appeal** decisions of the BVwG **before the Austrian Constitutional Court (VfGH)**. These appeals may also be made simultaneously.

The VfGH only rules on an alleged violation of constitutional rights (according to the European Convention on Human Rights, for example). The VfGH rules on all other alleged rights violations.

For appeals for revision before the Supreme Administrative Court and appeals before the Constitutional Court, a lawyer is mandatory and costs shall be incurred. Like any other person, the asylum seeker may apply for legal aid.

**Appeals for revision** before the VwGH and **appeals** before the VfGH **do not have any suspensive effect**. However, these courts may grant suspensive effect in certain cases.



The asylum seeker must submit the **appeal in writing** before the BFA **within a specific time period**.





# Return

A functional return policy is an indispensable component of an orderly migration policy as well as part of a credible asylum system.

## **Voluntary return always has priority.**

If an alien is present in Austria illegally, he shall be obligated under a decision to depart. The alien shall be forcibly deported if he fails to comply.

### Voluntary return

**The BFA will ask the alien to depart voluntarily.** The alien may (and in certain circumstances must) avail himself of **return counselling**. Return counselling is currently provided by the Human Rights Association Austria (VMÖ) or by Caritas. If the alien decides to depart voluntarily, the return counselling organizations will inquire at the BFA whether the expenses will be covered. The Republic of Austria will cover the expenses for the return if the BFA consents to this.

#### **These expenses include**

- **travel** (plane ticket, for example)
- fees for obtaining **documents**
- **possible financial aid for returning.**

The NGOs and the International Organization for Migration (IOM) jointly make the arrangements for the return.

#### **When will the authority forcibly transfer an alien out of the country?**

- If an alien must definitely leave the country and if
  - the alien does not depart voluntarily, or
  - immediate transfer out of the country is necessary.

The alien must hold a travel document (passport) or a substitute travel document (emergency travel document) in order for a deportation to take place. If the alien does not have a passport, then the BFA must ask the appropriate embassy to issue an emergency travel document.

The BFA orders the **deportation (forcible transfer out of the country)**. The police then carry it out. The police may use coercive measures.

### The authority takes the alien

- to his home country
- to another country from which he may depart, or
- to the country that is responsible for the asylum procedure. This happens with transfers according to the Dublin Regulation, for example.

The alien may be forcibly transferred out of the country by **land route or air route**. Scheduled flights (**individual returns**) or charter planes are options for transfer by air. The BFA will arrange for so-called **emergency travel documents** in the event of lacking documents. The police will take the alien in custody in a timely fashion before the deportation. In this context, the alien will be informed about the further steps and a doctor will examine the alien to determine whether he is medically fit for detention and transport. If all legal and physical requirements have been met, the authority will deport the alien, usually by plane. In the case of **returns by charter flight**, the BFA will arrange for a plane and **accompanying personnel**. A **human rights observer** shall always be present. An **emergency doctor** and an **interpreter** shall also **accompany the aliens during the deportation**.

*When will the authority forcibly transfer an alien out of the country?*

If an alien definitely has to leave the country and

— the alien does not depart voluntarily,  
or  
— immediate transfer out of the country is necessary.





# Toleration

If a **deportation is not possible or not permissible** (for example, the country of origin will not issue a passport or a emergency travel document even though the alien is cooperating in this regard), the alien may apply for a **card for tolerated people (toleration)**.

Toleration means that the deportation of an alien is not possible or not admissible at the present time.

A toleration may be granted in the following cases:

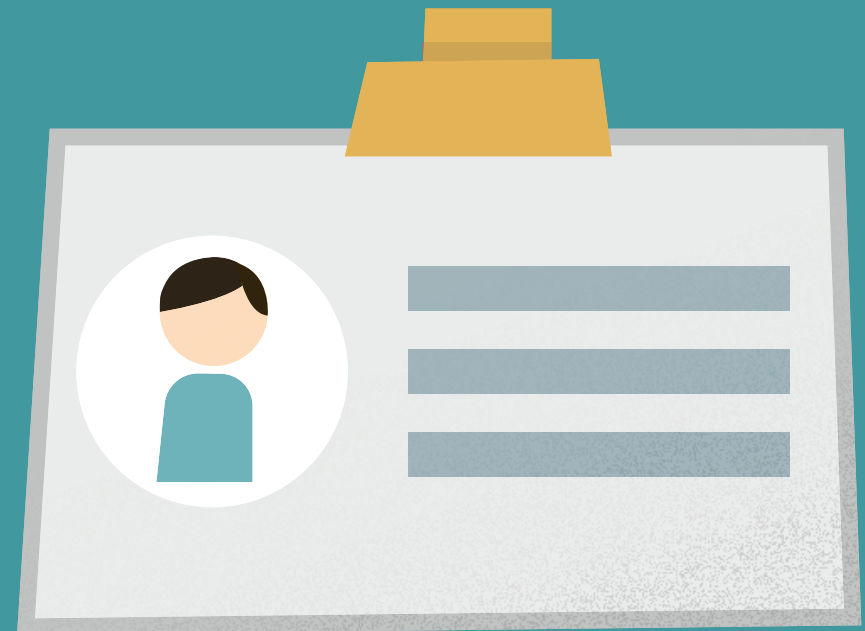
- **The deportation is not permissible for legal reasons** (Art. 3 ECHR)  
>> if the situation changes, then a new return decision is required and the admissibility of the deportation must be confirmed
- **The deportation is not possible for physical reasons** (no travel document)  
>> a deportation is admissible at any time if a travel document exists;
- **Temporarily inadmissible return decision** (Art. 8 ECHR)  
>> a return decision must be enacted if this situation changes.

Toleration is *not* a right to stay!



# Cards & Documents

Aliens may be issued *various kinds of documents* in Austria



# During the asylum procedure

## Procedure card

(green card) pursuant to art. 50 AsylG (Austrian Asylum Act)

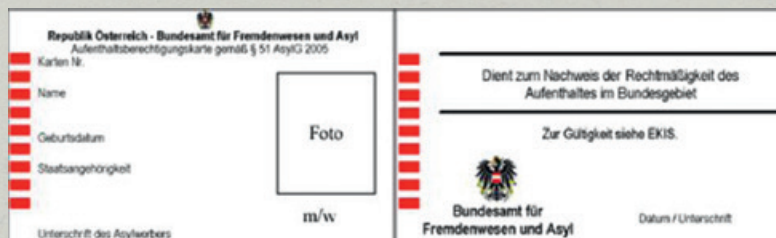
The asylum seeker is issued a **procedure card** during the admission procedure. The green card imposes a territorial restriction on the asylum seeker. That means that he may not leave the district. The procedure card is not an identification document. The card merely serves as proof of identity in the procedure before the BFA.



## Temporary residence permit card

(white card) pursuant to art. 51 AsylG

If a procedure is approved, the asylum seeker is generally issued a temporary residence permit **card**. This means that the asylum seeker is now entitled to stay in the country for the duration of the procedure. The temporary residence permit card is not an identification document. The card merely serves as proof of identity in the procedure before the BFA.



# When international protection is granted

## Card for persons entitled to asylum

(blue card) pursuant to art. 51 AsylG

After having been granted the status of person entitled to asylum, the alien shall be issued a **card for persons entitled to asylum**. The card documents the legality of the residence in the federal territory [of Austria] and serves as proof of identity (official picture ID). The card for persons entitled to asylum is issued to aliens who made their applications for international protection after November 15, 2015 and to whom the status of persons entitled to asylum was granted after June 1, 2016.



## Card for persons entitled to subsidiary protection

(grey card) pursuant to art. 52 AsylG

This card proves that the alien is in Austria legally. The alien can use this card as proof of identity (official picture ID).





## Convention travel document

pursuant to art. 94 FPG (Austrian Aliens' Police Act)  
for persons entitled to asylum



If someone is **entitled to asylum**, he can apply for a **convention travel document**.

## Aliens' passport

pursuant to art. 88 FPG for persons entitled to subsidiary protection



**Persons entitled to subsidiary protection** may apply for an **aliens' passport** if they are unable to obtain a travel document from their home country.

## Identification card for aliens

pursuant to art. 94a FPG

If an alien does not receive an aliens' passport, he may apply for an **identity card for aliens**. Persons entitled to asylum who are not eligible for a card for persons entitled to asylum and who are not issued a convention travel document can apply for an identity card for aliens. The card only serves as proof of identity and does not constitute a right to stay.





## Residence permit in cases of exceptional circumstances pursuant to art. 54 AsylG

Residence permits in cases of exceptional circumstances are granted in the form of:

- temporary residence permit card
- residence permit card plus
- temporary residence permit card special protection



Although these cards look the same, they differ in terms of the options on the job market. They are identification documents and are proof of legal residence.

## Toleration card pursuant to art. 46a (4) FPG



If an alien is tolerated in Austria, he will be issued a card for tolerated persons.

The card is valid for one year. If the requirements are still met, the authority may extend the card for another year in each case. The card for tolerated persons is not proof of identity.

## CREDITS

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