

# Input by civil society to the EASO Annual Report 2018

Fields marked with \* are mandatory.

## Input by civil society to the EASO Annual Report on the Situation of Asylum in the EU+ 2018

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EASO has started the production of the 2018 Annual Report on the Situation of Asylum in the European Union, in line with Article 12 (1) of the EASO Regulation. The report aims to provide a comprehensive overview of important asylum-related developments at EU+ and national level, and the functioning of all key aspects of the Common European Asylum System (CEAS). [Previous reports are available at EASO's website](#)

While the final product comes out of an analytical and synthetic process that takes place in-house, a critical part of information is elicited through valuable contributions by a multiplicity of stakeholders from EU+ countries, civil society organizations, UNHCR, and other actors possessing in-depth knowledge on main developments in asylum policies and practices in EU+ countries.

We would like to kindly invite you to take part in this process, by sharing your observations on developments in asylum law, policy or practice in 2018 (and early 2019) in the areas listed on the online survey. The topics listed there reflect the structure of Chapter 4 of the EASO Annual Report, which focuses on the 'Functioning of the CEAS'. To this end, your observations may concern national practices of specific EU+ countries or the EU as a whole. You can fill in all or only some of the points. Overall, the EASO Annual Report is not meant to describe the national asylum systems in detail, but present key developments in 2018, including improvements and new/remaining concerns. In terms of format, your contributions would be preferably offered in the form of bullet points, which would facilitate further processing of your input.

Please, bear in mind that the EASO Annual Report is a public document. Accordingly, it would be desirable that your contributions, whenever possible, be supported by references to relevant sources. Providing links to materials such as analytical studies, articles, reports, websites, press releases, position papers/statements, and press releases, would allow for maintaining transparency. For your reference, you may review the [contributions offered by civil society actors for the 2017 Annual Report](#). If you do not consent on EASO making your submission available, please indicate so in the relevant part of the online survey.

In our effort to provide an inclusive overview of all relevant developments, we strive to incorporate as

many contributions as possible. At the same time, the final content of the EASO Annual Report is subject to its set terms of reference and volume limitations. To this end, your submissions, which are gratefully received and acknowledged, may be edited for length and clarity so that the final product concisely serves the objectives of the Annual Report: to improve the quality, consistency, and effectiveness of CEAS. From our side, we can assure you that the valuable insights you offer feed into EASO's work in multiple ways and inform reports and analyses beyond the production of the Annual Report.

Please, kindly provide your input completing the online survey by **Thursday, 28 February 2019**.

## Instructions

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Within each area, please highlight the following **type of information**:

- **NEW positive developments; improvements and NEW or remaining matters of concern;**
- **Changes in policies or practices; transposition of legislation; institutional changes; relevant national jurisprudence.**

*You are kindly requested to make sure that your input falls within each section's scope. Please, refrain from including information that goes beyond the thematic focus of each section or is not related to recent developments. Feel free to use Section 16 to share information on developments you consider important that may have not been covered in previous sections.*

*Prior to completing the survey, please take a moment to review the list of areas and the types of information that needs to be included in each area.*

*Please contribute your feedback online or copy and paste your answers from an editable type document*

## Questions

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### **1. Access to territory and access to asylum procedure (including first arrival to territory and registration)**

Since 2016 special provisions have been in force aiming at the „maintenance of public order during border checks“ which form part of the Asylum Act. Annual maximum numbers ('quotas') of admitted procedures (to be examined on the merits) were introduced until 2019 (2016 37,500; 2017 35,000; 2018 30,000). If an annual quota is exhausted, persons have no access to the asylum procedure in Austria and can be rejected at the border. So far these 'quotas' have not been exhausted. These amendments were sharply criticized in light of possible violations with EU law, including the fundamental rights of asylum seekers according to Art 4, 18, 19 and 47 of the Charter of Fundamental Rights.

### **2. Access to information and legal assistance (including counselling and representation)**

The Austrian government announced in its government programme (2017-2022) the establishment of a Federal Agency for Care and Support Services that should also ensure legal advice and return counselling in asylum and alien police procedures. It is planned that this government agency will replace the independent counselling services of NGOs. These plans have raised sharp criticism in light of the right to access a fair procedure and the right to legal advice.

#### **4. Providing interpretation services**

#### **4. Dublin procedure (including the organisational framework, practical development and suspension of transfers to selected countries, detention in the framework of Dublin procedures)**

Interim measures from UN bodies (CCPR, CEDAW) in cases of asylum seekers subjected to Dublin transfers were not respected by Austrian authorities in 2018.

#### **5. Specific procedures (including border procedures, procedures in transit zones, accelerated procedures, admissibility procedures, prioritised procedures or any special procedure for selected caseloads)**

#### **6. Reception of applicants for international protection (including information on reception capacities – rise/fall/stable, material reception conditions, i.e. housing, food and clothing and financial support, contingency planning in reception, access to labour market and vocational training, medical care, schooling and education, residence and freedom of movement)**

An intensive public debate ensued after unaccompanied minors who were allegedly "difficult to deal with" were arbitrarily detained outside of proper channels (e.g. as regards detention pending deportation) for several days in a facility in Drasenhofen.

The access of young asylum-seekers to an apprenticeship was cancelled in 2018, raising criticism as regards the obligation of Austria according to the Reception Directive to ensure effective access to the labour market.

Amendments to the aliens law in 2017 and 2018 raised serious human rights concerns.

In 2017, the amendments already established a regime in Austrian asylum and aliens law which - together with limited legal protection - that provides the administration with the means to consistently restrict the personal freedom of persons seeking protection in Austria from the beginning of the procedure until possible deportation and to partially withdraw it completely.

In the 2018 amendments, this trend continued, aimed at "preventing abuse of asylum" and "increasing the efficiency of asylum and immigration procedures". With these objectives and without any further empirical or other basis measures are legitimised which interfere with the fundamental and human rights of individuals and which extend the special status of asylum law, which is already questionable from the point of view of the rule of law.

Public security bodies were authorised to search persons and secure cash up to € 840 per person to contribute to the universal service if it cannot be ruled out that they carry cash with them and do not present it on demand. This interference with the fundamental right to property is not justified either in the government programme to which the draft referred or in the government programme itself. It may be doubted to what extent, on the one hand, there is a public interest in this encroachment and on the other hand the proportionality of the encroachment can be ensured by the intended flat-rate procedure - especially since according to the former legal situation basic care services are only provided for asylum seekers in need of assistance.

Furthermore, an authorization to secure data carriers (in particular mobile phones) and to evaluate the data stored on them was established to determine the identity and the flight route more easily. This interference with the right to private and family life, the right to the protection of personal data and respect for human dignity requires clarity regarding the actual necessity and proportionality, which the draft law does not provide, however.

## **7. Detention of applicants for international protection (including detention capacity – rise/fall /stable, practices regarding detention, grounds for detention, alternatives to detention, time limit for detention)**

Detention pending deportation may be imposed by a written decision without a prior procedure of investigation. Detainees have access to free legal advisors and can appeal to the Federal Administrative Court. However, the right to an oral public hearing at the court is not always guaranteed. Alternatives to detention are provided by law, but in practice, there is hardly any use of them, while it seems that detention orders with often weak reasonings and sometimes even without prior interviews are issued almost by default. In some cases, access to the files is not provided, or relevant elements are excluded from the files. Entry and residence bans are issued often shortly before deportation without allowing effective access to lawyers. Several deficiencies can also be observed in the actual execution of detention: officers often lack relevant training and experience, particularly in the context of individuals with mental health problems; some detainees are imprisoned in closed facilities; access to social workers as well as awareness for cases of trafficking is largely lacking.

In 2018, an intensive public debate as regards the detention and deportation of asylum-seekers with criminal records ensued in Austria, in which also the usefulness of the principle of non-refoulement as well as possibilities to revoke international protection status after minor criminal activities was questioned /addressed. This discussion was also related to the possibilities in the Reception Directive related to the detention of asylum-seekers based on grounds of national security and public order, which is not exhaustively implemented in Austria due to fundamental rights issues.

#### **8. Procedures at First Instance (including relevant changes in: the authority in charge, organisation of the process, interviews, evidence assessment, international protection status determination, decision making, timeframes, case management, including backlog management)**

The number of first instance proceedings to revoke protection status rose from 161 in 2015, 764 (2016) and 1,476 (2017) to 5,438 in the previous year (2018 figures only from January to November). In much fewer cases, however, asylum status was actually revoked. Most cases involved Afghan nationals, despite the deterioration of the security and supply situation in Afghanistan.

#### **9. Procedures at Second Instance (including organisation of the process, hearings, written procedures, timeframes, case management, including backlog management)**

The backlog of asylum cases has shifted from the first instance (Bundesamt für Fremdenwesen und Asyl (BFA) [Federal Agency for Migration and Asylum]) to the appellate court, the Federal Administrative Court. While at the end of 2015 73,444 procedures were pending at the first instance and 6,279 at the court, at the end of 2018 the number of pending proceedings at the first instance amounted to 7,535 and at the court 30,518. The BFA managed to clear its backlog due to more personnel but also the shrinking number of asylum applications.

#### **10. Availability and use of Country of Origin Information (including organisation, methodology, products, databases, fact-finding missions, cooperation between stakeholders)**

The possibility of an internal flight alternative for Afghans who have no family or other connections in Kabul was publicly discussed in 2018 and was also subject of many asylum decisions in that year. The case law of the Federal Administrative Court in that context became more restrictive despite the deteriorating situation in the country and particularly the capital. Criticism was raised as regards the use by the Federal Administrative Court of one particular expert opinion, which claimed that the situation in Kabul does not indicate a lack of a flight alternative, as regards its objectivity and correctness.

**11. Vulnerable applicants (including definition, special reception facilities, identification mechanisms/referral, applicable procedural standards, provision of information, age assessment, legal guardianship and foster care for unaccompanied and separated children).**

Austria still does not have any effective system aiming at the identification of asylum seekers with special procedural needs as required by the Reception Conditions Directive

**12. Content of protection – situation of beneficiaries of protection (including access to social security, social assistance, healthcare, housing and other basic services; Integration into the labour market; Measures to enhance language skills; Measures to improve attainment in schooling and/or the education system and/or vocational training)**

In 2018, regulations were introduced that stipulate that recognised refugees can only receive full social assistance if they already have German language skills at B1 level. According to language experts, this can only be achieved with intensive German courses after one and a half years at the earliest. However, since German effective are only planned after a positive asylum decision, the fear was voiced that a hidden waiting period for refugees will be introduced via the detour of the required knowledge of German. The planned regulation would thus be unjustified discrimination, which would contradict the equal treatment principle of the Geneva Refugee Convention and the EU Qualification Directive, according to UNHCR.

It is furthermore planned to completely exclude beneficiaries of subsidiary protection from social assistance, which raised even stronger criticism.

In 2018, amendments were introduced to provide for an increase in the minimum duration of legal and uninterrupted residence for the granting of citizenship for refugees from six to ten years. This proposal, which is likely to make the rapid integration of refugees more difficult, is in clear contradiction to Art 34 Refugee Convention, according to which the naturalisation of refugees is to effective as far as possible and, in particular, every effort is to be made to speed up the procedure and reduce its costs.

**13. Return of former applicants for international protection**

In 2018, the topic of apprenticeship (Lehre) and asylum shaped the public debate in Austria. Based on a decree of the Minister of Social Affairs from 2012, it has been possible for young asylum seekers to obtain an employment permit for an apprenticeship in shortage occupations. In addition to working as a seasonal worker, this possibility was an exception to the otherwise barred access to the labour market for asylum seekers. After it became known that some of the more than thousand asylum seekers who currently serve their apprenticeship could be affected by deportations, a broad initiative that mobilised numerous supporters from business, culture, science, politics and civil society right up Austrian president campaigned for their stay in Austria. The tenor: From an economic and humane perspective it is unreasonable to deport asylum seekers who work in shortage occupations and thus help the Austrian economy, which is affected by a shortage of skilled workers.

In connection with this initiative, a legal opinion was produced by Adel-Naim Reyhani and Manfred Nowak from the Ludwig Boltzmann Institute of Human Rights, which to the conclusion that authorities and courts in Austria are required to examine the extent to which, given the contribution to the economic well-being, there was, in fact, sufficient public interest in the return of the persons concerned. Based on this rationale, the Federal Administrative Court in Austria decided to grant a right to stay to asylum-seekers in apprenticeships in a number of cases.

Furthermore, the methods of deportation in 2018 raised serious human rights concerns, particularly of vulnerable groups. These methods include, for example, the separation of individual family members or the arrest of persons from the psychiatric ward, and thus rejected asylum-seekers face massive psychological pressure. In the recent past, for example, a couple was separated because the pregnant, mentally ill woman was not deportable. The woman was told she could not be deported, but that she could join the deportation flight voluntarily. An individual admitted to a psychiatric ward was picked up by the authorities for a Dublin deportation despite the acute risk of self-endangerment. A mother was deported together with her daughter, while the father and the second daughter, who was terminally ill, could stay in Austria.

#### **14. Resettlement and humanitarian admission programmes including EU Joint Resettlement Programmes; national resettlement programme (UNHCR); National Humanitarian Admission Programme; Private sponsorship programme/scheme and Ad-hoc special programmes)**

Since 2018 Austria does not have any resettlement programme anymore. Between 2014 and 2017 Austria resettled in total 1,900 refugees from Syria.

#### **15. Relocation (any relevant developments concerning persons transferred under the EU relocation programme and relocation activities organised under national schemes/on bilateral basis)**

#### **\* 16. Other relevant developments**

Austria decided to pull out from the Global Compact on Migration in 2018. This topic was intensively debated in Austria, raising considerable criticism as regards the role of Austria during the EU presidency as well as during the consultations leading to the adoption of the compact.

## References and Sources

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**\* 17. Please provide links to references and sources and/or upload the related material in pdf format using the following box**

Stellungnahme des Ludwig Boltzmann Instituts für Menschenrechte im Begutachtungsverfahren, available at [http://bim.lbg.ac.at/sites/files/bim/attachments/bim-stellungnahme\\_asylg.pdf](http://bim.lbg.ac.at/sites/files/bim/attachments/bim-stellungnahme_asylg.pdf)

Stellungnahme zur Verordnung der Bundesregierung zur Feststellung der Gefährdung der Aufrechterhaltung der öffentlichen Ordnung und des Schutzes der inneren Sicherheit, available at [http://bim.lbg.ac.at/sites/files/bim/attachments/stellungnahme\\_verordnung\\_ludwig\\_boltzmann\\_institut\\_fuer\\_menschenrechte\\_2016-10\\_corr.pdf](http://bim.lbg.ac.at/sites/files/bim/attachments/stellungnahme_verordnung_ludwig_boltzmann_institut_fuer_menschenrechte_2016-10_corr.pdf)

Frühwirth, Die Sonderbestimmungen zum sogenannten „Notverordnungsrecht“, in Eppel/Reyhani (Hg), Handbuch Asyl- und Fremdenrecht, WEKA-Verlag, Wien, 2016.

Keudel-Kaiser/Monina/Scholdan/Wladasch, A new Asylum Policy for Europe?!, Opting for a rights-based approach and what this would mean, available at [http://bim.lbg.ac.at/sites/files/bim/anhang/publikationen/keudel-kaiser\\_a\\_new\\_asylum\\_policy\\_for\\_europe.pdf](http://bim.lbg.ac.at/sites/files/bim/anhang/publikationen/keudel-kaiser_a_new_asylum_policy_for_europe.pdf)

Reply to a parliamentary request, 20 February 2019, available at [https://www.parlament.gv.at/PAKT/VHG/XXVI/AB/AB\\_02483/imfname\\_738095.pdf](https://www.parlament.gv.at/PAKT/VHG/XXVI/AB/AB_02483/imfname_738095.pdf)

Reply to a parliamentary request, 18 February 2019, [https://www.parlament.gv.at/PAKT/VHG/XXVI/AB/AB\\_02479/imfname\\_738081.pdf](https://www.parlament.gv.at/PAKT/VHG/XXVI/AB/AB_02479/imfname_738081.pdf)

<http://www.asylumineurope.org/reports/country/austria/asylum-procedure/guarantees-vulnerable-groups/identification>

<https://www.unhcr.org/dach/wp-content/uploads/sites/27/2019/01/Analyse-des-Entwurfs-f%C3%BCr-ein-SozialhilfeGrundsatzgesetz.pdf>

Stellungnahme des Ludwig Boltzmann Instituts für Menschenrechte im Begutachtungsverfahren, [https://bim.lbg.ac.at/sites/files/bim/attachments/bim\\_sn\\_fraeg\\_2018\\_140518.pdf](https://bim.lbg.ac.at/sites/files/bim/attachments/bim_sn_fraeg_2018_140518.pdf)

Legal opinion of Adel-Naim Reyhani and Manfred Nowak, [https://bim.lbg.ac.at/sites/files/bim/attachments/reghaninowak\\_gutachten\\_art\\_8\\_abs\\_2\\_emrk\\_04072018.pdf](https://bim.lbg.ac.at/sites/files/bim/attachments/reghaninowak_gutachten_art_8_abs_2_emrk_04072018.pdf)

<https://www.unhcr.org/dach/at/29220-ressetlement-2018.html>

Stellungnahme des Ludwig Boltzmann Instituts für Menschenrechte im Begutachtungsverfahren, [https://www.parlament.gv.at/PAKT/VHG/XXV/SNME/SNME\\_11987/imfname\\_637416.pdf](https://www.parlament.gv.at/PAKT/VHG/XXV/SNME/SNME_11987/imfname_637416.pdf)

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## Consent for making the input publicly available

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\* Do you consent on making your input available on the EASO website?

Yes

No

## Case law

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Please include relevant case law and/or submit cases to [EASO Portal IDS on Caselaw](#)

## Contact details

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\* Name of the contributing stakeholder

Ludwig Boltzmann Institute of Human Rights, Vienna, Austria

Contact person, Role

\* Email

\* I accept the provisions of EASO [Legal and Privacy Statements](#)

### Contact

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