



FIRST SMALL SCALE STUDY

RECEPTION SYSTEMS, THEIR CAPACITIES AND THE SOCIAL SITUATION OF ASYLUM APPLICANTS WITHIN THE RECEPTION SYSTEM IN THE EU MEMBER STATES

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LIST OF ABBREVIATIONS

AIVG	Arbeitslosenversicherungs- gesetz	Unemployment Insurance Law
AsylG	Asylgesetz	Asylum Law
AsylG – DV	Asylgesetz – Durchführungsverordnung	Executive order to the Asylum Law
Asylkoordination Oesterreich	Asylkoordination Oesterreich (Plattform von NGOs)	Asylum coordination Austria (platform of NGOs dealing with aliens, immigrants and asylum applicants)
AuslBG	Ausländerbeschäftigungs- gesetz	Law on the Occupation of Aliens
BbetrG	Bundesbetreuungsgesetz	Federal Law Regulating the Provision of Federal Care for Asylum Seekers
BEbV	Betreuungseinrichtungen - Betretungsverordnung	Decree Regulating the Access to Federal Care Facilities
BGBI	Bundesgesetzblatt	Federal Law Gazette
B-GlBG	Bundesgleichbehandlungs- gesetz	Federal Law on Equal Treatment
BKA	Bundeskanzleramt	Federal Chancellery of Austria
BMWA	Bundesministerium für Wirtschaft und Arbeit	Federal Ministry of Economics and Labour of the Republic of Austria
Caritas	Caritas (Hilfsorganisation der Diözesen der katholischen Kirche)	Caritas Austria (Relief organization run and financed by Catholic dioceses)
EASt	Erstaufnahmestellen	Initial Reception Centres
EC	Europäische Kommission	European Commission
EEA	Europäischer Wirtschaftsraum	European Economic Area
EMN	Europäisches	European Migration Network

	Migrationsnetzwerk	
FrG	Fremdengesetz	Aliens' Law
FrG - DV	Fremdengesetz - Durchführungsverordnung	Executive Order to the Aliens' Law
IOM	Internationale Organisation für Migration	International Organisation for Migration
IPR-G	Internationales Privatrechtsgesetz	International Civil Law Act
IV	Integrationsvereinbarung	Integration Agreement
IV-V	Integrationsvereinbarungs- verordnung	Integration Agreement Decree
Mol	Bundesministerium für Inneres	Ministry of Interior
NCP	Nationaler Kontaktpunkt Österreich	National Contact Point Austria
NLV	Niederlassungsverordnung	Settlement Regulation
OEIF	Österreichischer Integrationsfond	Austrian Integration Fund
PRESSE	Die Presse	Die Presse (daily Newspaper)
SchulpflichtG	Schulpflichtgesetz	Federal Law on compulsory education
STANDARD	Der Standard	Der Standard (daily Newspaper)
StbG	Staatsbürgerschaftsgesetz	Nationality Act
UBAS	Unabhängiger Bundesasylsenat	Independent Federal Asylum Review Board
Zebra	Zentrum zur sozialmedizinischen, rechtlichen und kulturellen Betreuung von Ausländern und Ausländerinnen in Österreich	Centre for Socio-medical, Legal and Cultural Care for Aliens in Austria (NGO; Graz, Styria)

INTRODUCTION

The small-scale study “Reception Systems, their Capacities and the Social Situation of Asylum Applicants within the Reception System in the EU Member States” provides an overview of the status quo of reception facilities for asylum applicants in Austria. This research, developed by the European Migration Network (EMN), analyses at first the historical development of reception facilities, beginning from the 1990s, when the Austrian Federal Republic committed itself to be responsible for the care for asylum applicants in terms of financing, up to 1 May 2004, when the new asylum law entered into force, changing the federal care system.

The second chapter focuses on the asylum application procedures, which changed as soon as the new version of the Austrian Asylum Act came into force. The asylum procedure is now split into an admission procedure and the substantive asylum procedure. Within this chapter a specific section deals with the legal framework of reception conditions, analysing the provisions adopted by the Austrian government. Then the study highlights the organisation of reception facilities, with special regard to the federal care centres, providing figures and statistics, drawing attention to the problems and strengths of the reception system.

The third and last chapter analyses the social situation of asylum applicants within the reception system, focussing more in depth on the care and clearing centre for asylum applicants based in Traiskirchen. Benefits, duties of asylum applicants and provisions of services are also described in order to provide a comprehensive analysis of what kind of life the asylum applicants do actually have in these reception centres.

EXECUTIVE SUMMARY

The small-scale study “Reception Systems, their Capacities and the Social Situation of Asylum Applicants within the Reception System in the EU Member States” is a research carried out by the European Migration Network (EMN) within a project co-funded by the European Commission and the Austrian Ministry of Interior (Mol), aimed at assessing the reception centres in Austria. In order to perform such an assessment, it is necessary to provide an overview of the status quo of reception facilities and to point out eventual deficiencies or problems.

The idea of reception facilities for asylum applicants was born in Austria at the beginning of the 1990s. Consequently the Austrian Federal Republic became responsible for the care for asylum applicants in terms of financing. However, on 1 May 2004 the new asylum law came into force, changing the federal care system by transferring part of the institutional responsibility from the federal state to the nine provinces.

Furthermore, the new asylum law split the application procedure into an admission procedure, which must take place in one of the three Initial Reception Centres, and the substantive asylum procedure. The Federal Law Regulating the Provision of Federal Care for Asylum Applicants has therefore established a list of criteria in order to state detailed conditions for eligibility, exclusion and restriction regarding federal care. Among it the Basic Welfare Support Agreement provides not only general provisions for federal care, but also specific amount of money, fixed for different kinds of support.

Although the legislation states that asylum applicants benefit of federal care and maintenance from the moment of interview with the Federal Asylum Office until the final decision on their status of applicants, the office can provide them provisional care from their arrival until the interview.

Until the end of 2002, asylum applicants subject to federal care were usually assigned to federal care centres such as Bad Kreuzen, Mödling-Vorderbrühl, Thalham and Traiskirchen. At the moment European Homecare (EHC) runs the federal care centres and since 2003 the MoI has entrusted it with substantial agendas supporting asylum applicants and to provide return counselling.

Among the reception centres, the Traiskirchen Centre is the one that offers the largest capacity of available places, therefore it has been used as a practical example on how the social situation in reception facilities looks like, such as residents' living standards, regime of regulations and eventual ethnical conflicts.

Moreover, it is essential to state that Asylum applicants in Austria are granted limited social welfare assistance. Nevertheless, regulations concerning the premises for claim vary noticeably in the individual federal states. In any case asylum applicants subject to federal care are covered by the common health insurance plan, which includes all the necessary treatment.

Last but not less important is the access to the labour market for asylum applicants. Although they have the right to apply for a work permit, only few of them get the permission to work. This is one of the thorny issues that the Austrian government is still facing with, together with the ethnical conflicts that eventually arise within the reception centers.

1. HISTORICAL OVERVIEW OF THE DEVELOPMENT OF RECEPTION FACILITIES

At the beginning of the 1990s, the idea of reception facilities for asylum applicants was born in Austria. The federal republic should be responsible for the care for asylum applicants in terms of financing. The principles of neediness and cooperation with Austrian authorities during the asylum application procedure have been a guideline ever since for an asylum applicant to benefit from the federal care system (Fassmann: 2003).

The focus for the reception of asylum applicants has been the hosting in private accommodations as far as possible and in federal care facilities exceptionally. Private accommodation was paid on the bases of private contracts. According to the law, contractors should be NGOs, social organisation and or Christian associations. Military barracks were foreseen as an ultimate accommodation possibility for asylum applicants.¹

The Ministry of Interior (Mol) as competent ministry could fix quotas for every calendar year according to which asylum applicants would be divided to the different federal provinces of Austria.² The Mol ran four federal care facilities in Austria: Bad Kreuzen, Mödling-Vorderbrühl, Thalham and Traiskirchen.³

The aforementioned concept has broadly been unchanged until the entry into force of the new asylum law on 1 May 2004. The asylum application procedure has been split into an admission procedure and the substantive asylum procedure.⁴ The admission procedure must take place in one of the three Initial Reception Centres,⁵ which have been established by way of

¹ see BBetrG (Bundesbetreuungsgesetz) idF BGBl 405/1991

² *ibid.*

³ §1(3) BbetrVO (Bundesbetreuungsverordnung) idF BGBl 130/1991

⁴ § 24a AsylG 1997.

⁵ § 24a in corroboration with §37a *ibid.*

decree in the course of the amended law, namely East, West and Airport.⁶ Initial Reception Centres have to be locally separated from federal care centres, although the applicants receive identical benefits in both centres. Once the admission procedure ends with a positive decision, the asylum applicant enters the regular asylum procedure⁷ and therefore starts to be subject of the Federal Law Regulating the Provision of Federal Care for Asylum Applicants. As a consequence, the asylum applicant enters the federal care system if his/her neediness is confirmed.⁸

The Grundversorgungsvereinbarung (Basic Welfare Support Agreement) concluded on 1 May 2004 between the Austrian Federal State and its provinces, regarding the basic care for a defined group⁹ of needy aliens, mainly asylum applicants, changed the federal care system. It shifted part of the institutional responsibility¹⁰ of the basic care for asylum applicants from the federal state to the nine provinces, meaning that from this point onwards the costs for the basic care are born at the ratio of 60:40 by the federal state and the provinces. The provinces have been responsible to look for private or public accommodation for allocated asylum applicants on their territories.

⁶ § 3 AsylG-DV 2004.

⁷ § 24a AsylG 1997.

⁸ § 1 (2) BBetrG 1991.

⁹ Art. 2 Grundversorgungsvereinbarung – Art. 15a B-VG 2004.

¹⁰ Art. 4 *ibid.*

2. ASYLUM APPLICATION PROCEDURES AND LEGAL FRAMEWORK

2.1. Asylum Application Procedures

Asylum issues are codified in the Austrian Asylum Act, which has been modified lately. The new version entered into force on 1 May 2004. A number of far reaching amendments have been introduced accompanied by intense public discourse.¹¹

The asylum application procedure is split into an admission procedure and the substantive asylum procedure.¹² The aim of the admission procedure is to determine within a time period of 48 to maximum 72 hours manifestly unfounded or inadmissible applications, which should lead to a more efficient and accelerated asylum system in Austria. The admission procedure must take place in one of the three Initial Reception Centres,¹³ which have been established by way of decree in the course of the amended law.¹⁴ If an asylum applicant wants to apply for asylum at an authority outside an initial reception centre, his her compulsory attendance has to be enforced by public security officials.¹⁵ Once the admission procedure ends with a positive decision, the asylum applicant enters the regular asylum procedure¹⁶ and therefore starts to be subject of the Federal Law Regulating the Provision of Federal Care for Asylum Applicants. As a consequence, the asylum applicant enters the federal care system if his her neediness is confirmed.¹⁷ The Asylum Law establishes that asylum applicants have to be searched and treated by way of police identification

¹¹ See ch. 2.3.

¹² § 24a AsylG 1997.

¹³ § 24a in corroboration with §37a ibid.

¹⁴ § 3 AsylG-DV 2004.

¹⁵ § 18(1) AsylG 1997.

¹⁶ § 24a ibid.

¹⁷ § 1 (1) BbetrG 1991.

service upon the submission of the asylum application.¹⁸ The fingerprints are entered into the EURODAC system. Searching the asylum applicant is done to learn more about the flight routes and the possible entry via a safe third country (which would make the application in Austria inadmissible and lead to an expulsion order). During the admission procedure, an applicant cannot be expelled (*faktischer Abschiebeschutz*).¹⁹ However, an expulsion order issued automatically with the rejection of an application due to reasons of safe third country transit is enforceable at once, meaning even before the decision of rejection becomes non-appealable.²⁰ This means that an appeal against rejection due to safe third countries does not have an automatic suspensive effect²¹, which, however, the Unabhängiger Bundesasylsenat (UBAS) (Independent Federal Asylum) is enabled to grant.²² The Dublin II Regulation has been implemented together with a comprehensive list of safe third countries.²³ During the admission procedure, the amendment codifies the obligation that the applicant gets advice from legal counsellors about his/her rights, duties and legal possibilities during the admission procedure. To become a legal advisor, special criteria must be met e.g. special knowledge in asylum law and working experience in the concerned field.²⁴ The asylum law also knows the institution of refugee counsellors who do not need to fulfil the special criteria of legal counsellors. Their tasks consist in e.g. helping the asylum applicant in all stages of the asylum procedure, to inform the applicant about all possibilities, to translate and/or provide necessary documents, etc.²⁵ Both, the legal counsellor and the refugee counsellor can be granted translators in all stages of the procedure.

¹⁸ § 24 (4) AsylG 1997.

¹⁹ § 19 (1) *ibid.*

²⁰ §§ 4, 4a, 5, in corroboration with 5a *ibid.*

²¹ § 29 (2) *ibid.*

²² § 32 (4a) *ibid.*

²³ § 6 (2) *ibid.*

²⁴ §§ 39a, b *ibid.*

²⁵ § 40 *ibid.*

The asylum applicant can receive return counselling during all stages of the admission and asylum procedure. Refugees can be granted help for successful integration in Austria.²⁶

Special procedural criteria have been introduced for traumatised or tortured asylum applicants. Once this fact has been medically proved, the applicant is automatically admitted to the regular procedure. Applicants, subject to the regular procedure, receive a residence permission card, which is valid until the final decision of the case.²⁷ Asylum applicants, subject to a negative decision who cannot be expelled, can be granted subsidiary protection.²⁸

For families of asylum applicants, are subject to the family procedure. This implies that the asylum procedure of all members of the core family will be treated as one single case, and the asylum applicants will therefore be subject to the same decision.²⁹ Applications for asylum submitted by family members at Austrian authorities abroad are at the same time applications for a visa, which has to be granted if the asylum decision of the case in Austria seems to be likely.³⁰

The possibility for a refugee to renounce from the granted right to asylum does exist too.³¹

The appeal system can be a two-step procedure. The first appeal against a decision of the Bundesasylamt (Federal Asylum Office) can be lodged by presenting new facts only if:

- 1) the facts of the case have changed since the decision has been taken.
- 2) the procedure in the first instance has been defective.
- 3) in the case of *nova reperta*; or

²⁶ §§40a f ibid.

²⁷ §§ 19, 24a, b, 36b ibid.

²⁸ §§ 2 (2), 8 ibid (previously used terms: temporary residence permit for rejected asylum applicants).

²⁹ § 10 ibid.

³⁰ § 16 ibid.

³¹ § 13a ibid.

4) if the asylum applicant has not been able to present facts and means of evidence in the first instance.³²

The appeals against decisions during the admission procedure and during the regular asylum procedure do not have an automatic suspensive effect. However, the UBAS (appeal body) can grant suspensive effect if not in confrontation with public interest. New asylum applications lodged during the period for appeal are automatically considered as appeals.³³

2.2. Legal Framework of Reception Conditions

The legal instruments, codifying the reception conditions for asylum applicants are the following:

Bundesbetreuungsgesetz (BbetrG) (Federal Law Regulating the Provision of Federal Care for Asylum Applicants), Bundesbetreuungseinrichtungen-Betreuungsverordnung (BEBV) (Decree regulating the Access to Federal Care Facilities), the Asylum Law, the Asylgesetz-Durchführungsverordnung (AsylG-DV) (Executive Order to the Asylum Law), and the Grundversorgungsvereinbarung (Basic Welfare Support Agreement).

Regarding EU wide legal instruments, the Council Directive's provisions on minimum standards for the reception of asylum applicants³⁴ will have to be transposed into Austrian Law by 6 February 2005. In this regard several amendments to the Federal Law Regulating the Provision of Federal Care for Asylum Applicants were already enacted.

The BbetrG establishes a catalogue of criteria in order to state detailed conditions for the eligibility, exclusion and restriction in regard to federal

³² § 32 (1) *ibid.*

³³ § 32 *ibid.*

³⁴ Council Directive 2003/9/EC.

care.³⁵ During the admission procedure, the asylum applicant receives federal care in one of the three Initial Reception Centres. Regarding the accommodation of asylum applicants, family ties, special vulnerability of women and minors, and ethnical specialities have to be taken into account. People who endanger the security of a reception facility or who have been found guilty of certain crimes can be restricted in their access to federal care.³⁶ Asylum applicants who are citizens of EU member states as well as Switzerland, Norway, Iceland and Liechtenstein and asylum applicants who do not fulfil their obligations to cooperate in the asylum procedure can be excluded from federal care.³⁷ After the asylum applicant has been admitted to the regular asylum procedure, he she becomes subject to the basic care agreement and will be transferred to one of the federal provinces that are responsible for the accommodation. In theory the asylum applicant is after three months in the regular procedure, eligible to self-employment if the Austrian Labour Market Service grants a work permit. If they agree, they can also be used for remunerated social work in connection with their accommodation.³⁸ The Federal Law Regulating the Provision of Federal Care to Asylum Applicants, establishes a legal right to assistance and a legal remedy before courts in case of negative decisions concerning the granting of assistance.³⁹

In order to transpose the Directive on minimum standards for the reception of asylum applicants the Basic Welfare Support Agreement has been concluded.⁴⁰ The agreement entered into force by constitutional provision on 1 May 2004. It has to be noted that the Directive's minimum standards were in the main introduced into the Austrian system. A coordination unit distributes the asylum applicants to the nine Austrian provinces, where

³⁵ § 2 and 2a *ibid.*

³⁶ §2 BBetrG amended version BGBl I 32/2004.

³⁷ §3 *ibid.*

³⁸ §§6,7 *ibid.*

³⁹ §§2 (1) in conjunction with 9 (2) BbetrG 1991 idF BGBl I 2004 and Art 21 Council Directive 2003/9/EC.

⁴⁰ Grundversorgungsvereinbarung - Art. 15a B-VG 2004.

they receive basic care. This care comprises: accommodation (with attention to family ties), board, monthly pocket money, medical examination, medical insurance, medical treatment not covered by the insurance (case by case examination), care, counselling (also with regard to voluntary return), transport costs for administrative hearings, articles and transport costs for pupils, clothing (in kind or money), funeral costs, return counselling and reintegration aid, structuring of the daily routine if necessary. Again, people who endanger the security of a reception facility or who have been found guilty of certain crimes can be restricted in their access to or excluded from federal care.⁴¹

Special care is foreseen for Unaccompanied Minors (UAM). The agreement speaks about additional care, which is needed for minors. The minors receive psychological counselling. Furthermore, accommodation has to be organized in special residential homes and groups of minors. Minors who cannot self-support themselves receive are looked after. The daily routine is organized differently from full aged applicants with a focus on sports and group activities. Special attention is drawn to establishing family reunification, future perspectives, integration and education and the clarification of questions regarding age, identity, origin, and residence of the family.⁴²

Not only general provisions for federal care are stipulated in the Basic Welfare Support Agreement but also specific amounts of money are fixed for different kinds of support. E.g. accommodation provided by the Austrian Federal Republic or one of its provinces may cost up to €17. - per day and applicant. Asylum applicants are not forced to stay in a reception centre. The asylum applicant can organize his own accommodation (up to

⁴¹ Art 6 *ibid.*

⁴² Art 7 *ibid.*

€110.- per month and person plus €180,- for board; different rates for minors). €2,480.- are e.g. foreseen for people who are in need of care.⁴³

Respective regulations to the Council Directive's provisions on minimum standards for giving temporary protection in the event of a mass influx⁴⁴ can be found in different legal instruments. The Aliens' Law provides the legal basis for the Federal Government to issue a regulation in order to provide displaced persons with a temporary residence title.⁴⁵ However, according to Austrian legislation, these persons do neither receive an individual residence title nor social rights. Regarding asylum procedures, the Asylum Law states in accordance with the Directive that in cases of temporary protection, the computation of the time limit for procedures in respect of the persons concerned pursuant to the present Federal Law shall be suspended for the duration of the temporary protection.⁴⁶ As for assistance, the Basic Welfare Support Agreement is also applicable on temporary protection refugees,⁴⁷ but in cases of mass influx, support can be subject to limitations, which may not jeopardise the provision of basic needs.⁴⁸

⁴³ Art 9 *ibid.*

⁴⁴ Council Directive 2001/55/EC.

⁴⁵ § 29 FrG 1997 and Art. 8 (1) Council Directive 2001/55/EC.

⁴⁶ § 23 (4) AsylG 1997 and Art 19 (1) Council Directive 2001/55/EC.

⁴⁷ § 2 (1) Z 3 and § 8 Grundversorgungsvereinbarung – Art. 15a B-VG 2004.

⁴⁸ § 8 (4) *ibid.*

ORGANISATION, NUMBER AND CAPACITIES OF RECEPTION FACILITIES

2.3. Organisation of Reception Facilities

§ 1 BbetrG lays down the Republic's duty to take care of needy aliens who have applied for asylum according to the procedure constituted in § 2 AsylG. The wording of the BbetrG in principle bars the claimable right to federal care but a Supreme Court's ruling establishing that there is a legal right to federal care if all requirements enumerated in the BbetrG are fulfilled.⁴⁹

Needy asylum applicants may be eligible for federal care and maintenance, the so-called "Bundesbetreuung"; it benefits asylum applicants from the moment of the interview with the Federal Asylum Office until the final decision on the status of the applicant.

However, the office has the authority to provide provisional care to newly-arrived applicants from their arrival until the interview. Recent years have shown the practice of providing provisional care to asylum applicants even before their actual proceedings have been initiated. This group of persons who were granted with provisional care can mount to 10 or even nearly 20 percent of all recipients of federal care.⁵⁰ The accommodation depends on the local and regional context.

The Federal Asylum Office decides, in coordination with the responsible authority of the concerned federal state, about the initial place of accommodation after the admission to the proceedings. Until the end of 2002, asylum applicants were assigned to one of five aforementioned federal care centres.

⁴⁹ Decision of the Austrian Supreme Court 1 Ob 272/02k.

⁵⁰ <http://www.ecre.org/conditions/2003/austria.shtml>, May 17, 2005.

Applicants who abandon designated accommodation for more than three days are no longer eligible for federal care.⁵¹ In February 2005, the Ministry of Interior announced that just 603 out from 1,152 persons living in federal care centres (Bad Kreuzen, Reichenau, Thalham, Traiskirchen) enjoyed federal care.⁵²

For the dispatching into the different care facilities primarily the number of available places and the place where the asylum application has been filed are decisive. In practice, accommodation mainly takes place in large accommodation centres with a capacity of altogether 2,000 places or in private facilities, hotels and pensions.⁵³

The asylum applicant has to be informed about the care centre⁵⁴ in which the basic supply is granted in the future and free transport has to be provided.⁵⁵ During the allocation existing family relations, the need for special protection of unmarried women and minors as well as ethnical particularities have to be taken into consideration; this has been implemented according to Art. 14 of the Council Directive L2003/9/EC.⁵⁶

Up to the end of 2002, asylum applicants subject to federal care were usually assigned to a federal care centre. The reception can take place in the federal care centres Bad Kreuzen, Mödling-Vorderbrühl, Thalham (Sankt Georgen im Attergau) and Traiskirchen. The smaller centre Reichenau is attached to the federal care centre Traiskirchen.⁵⁷

⁵¹ Can be deduced from § 2 (1) BbetrG "the Federal Republic provides asylum applicants with federal care during the admission proceedings..., as long as they are accommodated in a federal care centre."

⁵² Asyl- und Fremdenwesen Statistik Februar 2005 (Statistic Report Asylum, February 2005), published by Mol; http://www.bmi.gv.at/downloadarea/asyl_fremdenwesen_statistik/022005.pdf, May 17, 2005.

⁵³ Sperl/Lukas/Sax 2004: 128

⁵⁴ § 37b (2) AsylG

⁵⁵ § 2 BBetrG

⁵⁶ § 2 (2) BbetrG: "The place where their assistance will be provided has to be communicated as fast as possible to the asylum applicants and other aliens. At the allocation family relation, the need of special protection of unmarried women and minors and ethnical characteristics hat to be taken into consideration"

⁵⁷ Sperl/Lukas/Sax 2004: 129-30

By contracts between the Mol and owners of accommodation (pensions, hotels), private organisations (Caritas, churches) or municipal facilities, asylum applicants are allocated into the respective accommodation. The contractual partner commits himself to secure accommodation, food supply (3x daily) and hygienic and sanitary conditions, receiving approximately €12,90 per day and person in return.⁵⁸

Due to failed negotiations between the Ministry of Interior and a consortium of Austrian humanitarian NGOs concerning the provision of future federal assistance, the government instructed European Homecare (EHC), a private company based in Essen, Germany, to run the federal care centres.⁵⁹ In 2003, the Mol entrusted EHC also with substantial agendas supporting asylum applicants⁶⁰ and to provide return counseling. “The company has subsequently admitted that it does not have any experience in giving legal advice to asylum applicants, and has been criticized by NGOs for its lack of experience and understanding of Austrian asylum legislation”.⁶¹

According to statements of the Mol the promise to accomplish return counselling of asylum applicants within one week was relevant for the contract with EHC. As an incentive for return, a return ticket together with financial assistance amounting up to €370,-⁶² is offered to asylum applicants. This financial assistance is paid after careful case-by-case examination by NGO officials according to the individual circumstances (such as: country of origin and marital status) of the returnee.

⁵⁸ <http://www.zebra.or.at/lexikon/b.html>, May 17, 2005; http://www.asyl.at/fakten_10/existenzsicherung_08.htm, May 17, 2005.

⁵⁹ <http://www.ecre.org/conditions/2003/austria.shtml>, May 17, 2005.

⁶⁰ Sperl/Lukas/Sax 2004: 133-34

⁶¹ <http://www.ecre.org/conditions/2003/austria.shtml>, May 17, 2005.

Concerning the regulation of the allocation of costs of federal support for applicants, the Federation and the federal states agreed on a burden-sharing of 60 to 40%, which entered into force on 1 May 2004 and is now known as the “15a agreement”⁶³

EHC estimated the costs per day and asylum applicant in one of the reception centres about €12.90 for the support. For accommodation and food supply pensions and guesthouses maximally receive €1.80 for breakfast, €4.40 for lunch, €2.50 for dinner and €7.60 for accommodation daily per person.⁶⁴

⁶² Information according to IOM experts; maximum expense ratio according to Art. 9 Basic Social Care Agreement (Adopted According to Paragraph 15a Federal Constitution)

⁶³ Grundversorgungsvereinbarung – Art. 15a B-VG 2004

⁶⁴ Sperl/Lukas/Sax 2004: 131

2.4. *Number, Capacities and Distribution*

Austria provides five reception centres, Traiskirchen (Lower Austria), Bad Kreuzen (Upper Austria), Thalham-Sankt Georgen im Attergau (Upper Austria), Vienna, Nussdorferstrasse, Reichenau (Lower Austria). Among these, the Traiskirchen Centre offers the largest capacity of available places.

Since there are no official numbers concerning the reception capacities of Austrian Federal Care Centres available, only estimations of NGOs can be given:

The number of places available in Austrian Federal Care Centres.⁶⁵

<u>Federal Care Centre</u>	<u>Estimated Capacity</u>
Traiskirchen	1,000 – 1,200 persons
Bad Kreuzen	250 persons
Mödling Vorderbrühl	150 persons
Thalham	250 persons
Vienna, Nussdorferstrasse	100 persons
<u>Reichenau (attached to Traiskirchen)</u>	<u>60 persons⁶⁶</u>
In total	1810 – 2010 persons

In comparison to that listing, the MoI published some numbers concerning the utilization of capacity (for January 1, 2005):⁶⁷

Bad Kreuzen	171 persons
Reichenau	36 persons
Thalham	177 persons
<u>Traiskirchen</u>	<u>1,264 persons</u>

⁶⁵ PLS RAMBOLL Management on behalf of the European Commission – Country Profile Austria; in: Sperl/Lukas/Sax 2004: 130.

⁶⁶ Sperl/Lukas/Sax 2004: 131

⁶⁷ Federal Ministry of Interior, Asyl- und Fremdenwesen Jahresstatistik 2004, Vienna 2005, p. 90;

In total	1,648 persons
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Beyond that, hotels, private hostels and hostels run by NGOs also provide accommodation. In 2003, 4,783 asylum applicants subject to federal care resided in one of approximately 90 private guesthouses and pensions. Most hostels are located in the economically disadvantaged “Weinviertel” and “Waldviertel” regions in the north of Lower Austria and are almost exclusively dependent on hosting asylum applicants. Many of the pensions are located in relatively isolated areas. Therefore, it is often problematic to provide social support for asylum applicants located in rural and rather secluded regions.⁶⁸ NGOs endeavor to maintain a minimum social support by establishing a “mobile refugee care”-service with running social workers who visit asylum seekers in their quarters often far away from urban infrastructure.⁶⁹

The capacity of the accommodation centres run by NGOs is limited. Caritas Austria manages 15 regular refugee houses and 13 emergency shelters,⁷⁰ and the Protestant Refugee Aid one.⁷¹ According to information of Caritas in October 2002 approximately 1,800 asylum applicants in Austria were accommodated and supported by NGOs.⁷²

According to information of the MoI, the average duration of stay in the federal care centres amounts from six to eight months.⁷³

Additionally, asylum applicants without federal care, rejected asylum applicants without legal protection as well as other aliens may be accommodated for a short period.⁷⁴

⁶⁸ Sperl/Lukas/Sax 2004: 131

⁶⁹ <http://www.caritas-wien.at/mobilebetreuung.htm>, May 17, 2005.

⁷⁰ http://www.caritas.at/oesterreich/betreuung_459.html, May 17, 2005.

⁷¹ <http://www.ecre.org/conditions/2003/austria.shtml>, May 17, 2005.

⁷² Sperl/Lukas/Sax 2004: 131

⁷³ Sperl/Lukas/Sax 2004: 126

In the Traiskirchen clearing centre, high fluctuation of minor asylum applicants is a big challenge for the responsible staff. The average length of stay amounted to 34 days so far, before the minors left the clearing centre and were transferred into another federal care centre or placed into an aftercare facility with longer duration of stay.⁷⁵

2.5. Problems and Strengths of the Reception System

Refugee organisations have been criticizing for a long time that citizens of certain countries of origin had so far hardly a chance to achieve benefits from the federal care system.⁷⁶

Guidelines of the Ministry of the Interior⁷⁷, which were established in 2002, and after heavy public discussion only in force for a very short period of time, disclosed the official tendency to reduce the number of asylum applicants from the European Economic Area and those countries negotiating European Union membership at that time. Additionally, the general willingness to grant federal care to applicants from Nigeria, the former Yugoslavia, Macedonia, Azerbaijan, Georgia, Turkey, Armenia and Russia after a negative first instance decision diminished explicitly. Serbs from Kosovo, Chechens from Russia and Kurds from Turkey seemed not to be affected by these modifications.⁷⁸

⁷⁴ <http://www.ecre.org/conditions/2003/austria.shtml>, May 17, 2005.

⁷⁵ <http://www.sos.at/Clearingstelle/betreuung.htm>, May 17, 2005.

⁷⁶ Sperl/Lukas/Sax 2004: 126-27

⁷⁷ "Richtlinien"; completely cited in the Decision of the Constitutional Court V 85/02-12

⁷⁸ <http://www.ecre.org/conditions/2003/austria.shtml>, May 17, 2005.

3. SOCIAL SITUATION OF ASYLUM APPLICANTS WITHIN THE RECEPTION SYSTEM

3.1. Social Situation in Accommodation Centres and Other Reception Facilities

Since hardly any written information is available on these practical matters, researchers of International Organisation for Migration (IOM) Vienna conducted an interview with Mr. Klaus Neumann, head of the NGO *SOS Menschenrechte* (SOS Human Rights), which is a care and clearing centre for asylum applicants and based in Traiskirchen, about the situation in the federal accommodation center. Under pp. 3.1. and 3.2. Traiskirchen is referred to as a practical example on how the social situation in reception facilities looks like. This, however, does not mean that the situation of asylum applicants is the same in federal care facilities all over Austria.

Concerning accommodation, individual needs of asylum applicants, their ethnical and national origins, family relations as well as the situation of single women should be taken into consideration. Unaccompanied minors must be accommodated according to their age and level of development as well as their specific personal situation. Persons, who are accommodated in federal care centres, receive a personal card with a photo, which is needed for the purchase of different goods (food, clothing, pocket money).⁷⁹

Although housing conditions in care centres depend on the number of accommodated persons, and occasionally, emergency accommodations must be established, no general standards exist for the equipment of the centres. Accommodation centres therefore differ widely regarding the quality level.⁸⁰

In Traiskirchen, separated houses for different groups of asylum applicants have been established, in which *SOS Menschenrechte* offers its support.

⁷⁹ Schumacher 2003

⁸⁰ Sperl/Lukas/Sax 2004: 129

One of these houses accommodates unaccompanied minor asylum applicants, another one single women. The majority are single men who are accommodated in another building. The psychological support centre, which is also run by the NGO, offers psychological care for approximately 700 – 800 residents.⁸¹

The NGO SOS Menschenrechte states that the social situation in the accommodation facilities has improved. In Traiskirchen, many efforts have been made to increase the residents' living standard. Large dormitories have been progressively replaced by smaller rooms for approximately eight – ten persons.⁸²

Recent experiences have shown that ethnically motivated conflicts among applicants cause concern. The Mol tried to reduce the risk of violent conflicts⁸³ by issuing restrictive rules regarding to entrance and stay of visitors inside federal care centres.⁸⁴

The authorities in charge of the centre try to promote leisure activities by building sports facilities. However, the residents are confronted with a restrictive regime of regulations. For instance, riding the bicycle is not allowed inside the reception centre area. Yet, to change the daily routine, NGOs organize accompanied excursions, which enjoy great popularity.⁸⁵

⁸¹ Information conveyed by Mr. Klaus Neumann, Head of SOS Menschenrechte-led Traiskirchen Clearing Centre, interviewed by IOM researchers in April 2005.

⁸² Information conveyed by Mr. Klaus Neumann, Head of SOS Menschenrechte-led Traiskirchen Clearing Centre, interviewed by IOM researchers in April 2005.

⁸³ An ethnically motivated affray led to death of an asylum applicant in Traiskirchen in August 2003: (Nach Tod eines Flüchtlings vier Moldawier in Haft, Die Presse, Vienna, August 13, 2003)

⁸⁴ § 1, 2 Betreuungseinrichtungs-BetretungsVO.

⁸⁵ Information conveyed by Mr. Klaus Neumann, Head of SOS Menschenrechte-led Traiskirchen Clearing Centre, interviewed by IOM researchers in April 2005.

Recent examinations of NGOs have shown that individual cooking possibilities reduce conflicts between accommodation owners and asylum applicants.⁸⁶

Even if there is no reliable data available, newly opened care centres for asylum applicants seem to reflect that idea - in order to reduce this conflict potential beforehand.⁸⁷

The Traiskirchen centre does not provide many individual cooking facilities. In the central canteen all residents are supplied with food, whereby the menus are not necessarily harmonized with individual needs of the asylum applicants. European Homecare, in charge of the general maintenance of the care centre, is hesitant to promote private cooking.⁸⁸ A different cultural approach towards food continuously bears a source of friction. The authorities sometimes attempt to balance between different hygienic and culinary perceptions.⁸⁹

3.2. Benefits of Asylum Applicants

The legal claim on social welfare assistance to asylum applicants in Austria is limited. The regulations concerning the concrete presuppositions for claim, which non-natives have to fulfill, vary considerably in the individual federal states. The social welfare assistance laws of the federal states Burgenland and Styria grant legal claims on social welfare assistance achievements also to asylum applicants, if the presuppositions are fulfilled. In the federal state Vorarlberg asylum applicants and other non natives have a legal claim on living costs and health assistance as well, however

⁸⁶ The Austrian NGO platform "Asylkoordination" refers to not specified experiences of Carinthian care centres (http://www.asyl.at/fakten_2/betr_2003_04.htm, May 17, 2005).

⁸⁷ An Article in the Austrian newspaper Der Standard gives details about the newly opened care centre in Kufstein, Tyrol. (<http://derstandard.at/?url=/?id=1996585>, May 17, 2005.)

⁸⁸ § 3a, Rules of the house, given out by European Homecare in Traiskirchen.

⁸⁹ Information conveyed by Mr. Klaus Neumann, Head of SOS Menschenrechte-led Traiskirchen Clearing Centre, interviewed by IOM researchers in April 2005.

this depends on the agreement of the federal state government. The social welfare assistance laws of the federal states Carinthia, Lower Austria, Upper Austria, Salzburg, Tyrol and Vienna do not grant a right to claim on social welfare assistance achievements to asylum applicants.⁹⁰

Asylum applicants subject to federal care obtain a monthly pocket money of 40 EUR; federal care is no longer granted to those who abandon accommodation for more than three days. Asylum applicants who do not receive federal care are not provided with any kind of state social assistance. They depend on the social benefits of the federal provinces or the support provided by NGOs, charitable organisations or churches. Provincial support is available too, although the legal provisions for the financial assistance differ in the federal provinces. Asylum applicants in Vienna and Lower Austria are excluded from obtaining financial support, but in other provinces asylum applicants receive financial assistance at the same rate as Austrian nationals and some provinces demand for a residence qualification of those who request financial assistance.⁹¹

3.3. Provision of Services

There is a general obligation to attend school at the age of 6 - 15 in Austria, regardless of one's nationality or residence permit status.⁹²

By intermediation of *SOS Menschenrechte* minors at the aforementioned age attend the state school in Traiskirchen, together with resident locals. Additionally, the organisation offers two-hour German courses three times per week, which are accepted positively.⁹³

⁹⁰ Sperl/Lukas/Sax 2004: 160-64

⁹¹ <http://www.ecre.org/conditions/2003/austria.shtml>, May 17, 2005.

⁹² § 1(1), § 2ff SchulpflichtG

⁹³ <http://www.sos.at/Clearingstelle/betreuung.htm>, May 17, 2005.

The access to vocational training is quite restricted. Not even the large reception centre of Traiskirchen grants vocational training opportunities.⁹⁴

Austria makes the access to the labour market for asylum applicants dependent on the needs of the labour market. Here collides asylum policy, which should be committed to humanity and aims of human rights, with economic interests of the host state.⁹⁵

Only few get the permission to work, although asylum applicants have the right to apply for a work permit, if they are in a regular determination procedure and the responsible authorities fail to reach a decision on the application within three months.⁹⁶

In 2001, just 1,760 working licenses were granted; 1,490 to men and 270 to women. In the Arbeitsmarktservice, the employment centres, gave out 3,520 working licenses, 2,804 to male and 631 to female asylum applicants.⁹⁷

Asylum applicants subject to federal care are covered by the common health insurance plan, which includes all necessary medical treatment. Asylum applicants not subject to federal care have the opportunity to receive medical treatment in private hospitals. Additionally, several projects exist, run by NGOs and supported by the Mol, which focus on the treatment of victims of torture and traumatized refugees.⁹⁸

The state of health of asylum applicants in federal support can become problematic if, due to the state of health, extra achievements are necessary, which are not covered by health insurance companies. Also the treatment of chronic and treatment-intensive diseases as well as psychotherapeutic

⁹⁴ Information conveyed by Mr. Klaus Neumann, Head of SOS Menschenrechte-led Traiskirchen Clearing Centre, interviewed by IOM researchers in April 2005.

⁹⁵ Sperl/Lukas/Sax 2004: 240

⁹⁶ § 4 (3) 7 Law on Employment of Foreigners (Auslaenderbeschaeftigungsgesetz)

⁹⁷ Disclosure of Arbeitsmarktservice, in Sperl/Lukas/Sax 2004: 241

⁹⁸ <http://www.ecre.org/conditions/2003/austria.shtml>, May 17, 2005.

treatments remains problematic. Currently exists in particular the demand for psychotherapeutic offers for heavy traumatized Chechens. A further problem, which becomes relevant for the state of health for asylum applicants, is the large distance between the rural accommodations to the next medical possibility of treatment.⁹⁹

There is no childcare available for asylum applicants funded by the government. Female asylum applicants do not receive special care either. Unaccompanied minors live in five specialised reception centres called “Clearing Centres”, where they are accommodated for three months until they are transferred to reception centres, hostels or hotels. The Federal Asylum Office and the youth welfare agency assist with asylum applications, family reunification as well as in matters of health and education.¹⁰⁰

3.4. Duties

A stern code of behavior and rather strict sounding rules of conduct can be found in the rules of the house of Traiskirchen care centre established according to § 14 BbetrVO (Bundesbetreuungsverordnung). For instance, carpets inside the accommodations are generally forbidden and using TVs or radios without the permission of the management is also not allowed in Traiskirchen.¹⁰¹

Decent concerns about security inside the care centres and the rising risk of ethnically motivated conflicts have let to a – in some degree restrictive – regiment of the BEBV in corroboration with the rules of the house of Traiskirchen care centre, which applies also to other federal care centres in Austria.

⁹⁹ Sperl/Lukas/Sax: 217

¹⁰⁰ <http://www.ecre.org/conditions/2003/austria.shtml>, May 17, 2005.

¹⁰¹ Hausordnung gem. § 14 BbetrVO, Published by European Homecare.

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