
RETURN MIGRATION IN AUSTRIA

Austrian contribution to the European Research Study Project III:
„Return Migration in the EU Member States“



Photo: Monika Sulc

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National Contact Point Austria
within the European Migration Network

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Austrian contribution to the European Research Study Project III:

“Return Migration in the EU Member States”

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Foreword

This pilot study is the contribution of the National Contact Point Austria within the European Migration Network (EMN) to the European Research Study Project III on “*Return Migration in the EU Member States*,” which was commissioned by the EU Commission 2005/06. This study is an attempt to provide an overview of the current situation of forced and voluntary return in Austria. The study makes use of miscellaneous sources: On the one hand it is based on available results of research and reports of Austrian migration researchers, and on the other hand it draws on the experiences of non-governmental organisations (NGOs) and welfare organisations active in the field, which were gathered for this study through face-to-face interviews and a questionnaire. The personnel of the Unit for Coercive Measures of Aliens’ Police (Unit II/3/C) within the Federal Ministry of the Interior kindly answered some of the questions on which no information was available. The focus of the study is on the time frame from the year 2000 to the present; earlier incidents and research results were only included when relevant for the study.

The National Contact Points of the EMN taking part in this research project (Austria, Belgium, Estonia, Germany, Greece, Italy, Latvia, the Netherlands, Sweden and United Kingdom) use the same template of research questions, which was elaborated by the Berliner Institut für Vergleichende Sozialforschung (BIVS) (Berlin Institute for Comparative Social Research). This joint approach will make it possible to release a comparative European synthesis report at the end of the project (2006/07) compiling the findings of the respective country reports. This aims, among others, at contributing to an objective scientific perspective within the European debate on return policies.

The first chapter is an introduction that defines the aims of the study as well as the contributions that such a comparative study can make. Furthermore, it gives an overview of the current state of research and data in order to put the results of the following chapters into a better context.

The second chapter defines the methodology applied in carrying out the research, provides statistical data and explains the existing profiles of returnees. The third chapter deals with the political and legal framework, taking account of the influence exerted by the policies and the legislation of the European Union. The fourth chapter concentrates on actual return actions, providing a comprehensive overview on return policy and return programmes in Austria focusing on the two areas of voluntary and forced return.

Finally, the fifth chapter addresses the bilateral and multilateral cooperation with return and transit countries.

The study was predominantly composed by the National Contact Point Austria, namely by Mag. Sophie Hofbauer and Mag. Anne Unterwurzacher. Mag. Brigitte Schütz is the author of the second chapter on methodology, definitions and return categories; Dr. David Reizenstein is the author of the legal parts. Due to her experience in the field of voluntary return, Ilirjana Gashi (Focal Point on voluntary return at IOM Vienna) contributed significantly to the study by providing information and feedback. Alessandra Ferlesch, Ana Djordjevic and Daria Huss also contributed to the study by carrying out research and translation work.

Thanks to their commitment and precise work a balanced compilation of a controversial topic was made possible.

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Abbreviations

ADA	Austrian Development Agency	Austrian Development Agency
AnhO	Anhalteordnung	Stoppage in Transitu Decree
ARGO		EU action programme for administrative cooperation in the fields of asylum, visas, immigration and external borders
ARHG	Auslieferungs- und Rechtshilfegesetz	Extradition and Mutual Legal Assistance Act
AsylG.	Asylgesetz	Asylum Act
AVR		Assisted voluntary return
BGBI.	Bundesgesetzblatt	Federal Law Gazette
BIVS	Berliner Institut für Vergleichende Sozialforschung	Berlin Institute for Comparative Social Research
BM.I	Bundesministerium für Inneres	Ministry of the Interior
BM.J	Bundesministerium für Justiz	Ministry of Justice
BPD	Bundespolizeidirektion	Federal Police Authority
B-VG	Bundesverfassungsgesetz	Austrian Constitution
BZÖ	Bündnis Zukunft Österreich	Future Alliance Austria
CIREFI		Centre for Information, Discussion and Exchange on the Crossing of Frontiers and Immigration
EAST	Erstaufnahmestelle	Initial reception centre
ECHR		European Convention for the Protection of Human Rights and Fundamental Freedoms
ECJ		European Court of Justice
ECRE		European Council on Refugees and Exiles
ECt.HR		European Court of Human Rights
EEA		European Economic Area

EKO-Cobra	Einsatzkommando Cobra	Task Force Cobra
EMN		European Migration Network
ERF		European Refugee Fund
FIS	Fremdeninformationssystem	Alien Information System
FPG	Fremdenpolizeigesetz	Aliens' Police Act
FRONTEX		European Agency for the Management of Operational Cooperation at the External Borders
IATA		International Air Transport Association
ICMPD		International Centre for Migration Policy Development
IOM		International Organization for Migration
MRB	Menschenrechtsbeirat	Human Rights Advisory Board
NAG	Niederlassungs- und Aufenthaltsgesetz	Settlement and Residence Act
NCP		National Contact Point
NGO		Non-Governmental Organisation
ÖVP	Österreichische Volkspartei	Austrian People's Party
SIS		Schengen Information System
SPG	Sicherheitspolizeigesetz	Security Police Act
SPÖ	Sozialdemokratische Partei Österreichs	Social Democratic Party of Austria
UNHCR		United Nations High Commissioner for Refugees
UVS	Uanabhängiger Verwaltungssenat	Independent Administrative Senate

Executive Summary

The aim of this study is to give an overview of the field of return migration in Austria, which is to be seen as a scientific contribution to a controversial topic. Compiling data, statistics and profiles as well as describing the legal situation and the developments at the political level within the last six years aims at comparing the situations of all participating EU Member States, thus contributing to a joint approach to this ambit of European immigration and asylum policy in the long run.

Introduction

Return migration in Austria is a sparsely studied domain with regards to both public discussions as well as research. The term ‘return migration’ used in this study refers to the **voluntary return** of persons, who make the free and informed decision to return to their home country (or to a third country), and to the **forced return** of persons, who have to leave the country for different reasons. The Aliens’ Police Act regulates the latter with compulsion measures carried out by the Aliens’ Police (rejection, forcible return, expulsion, residence and return ban, detention pending deportation and deportation). Since 2000, there are specific programmes for assisted voluntary return, but no comprehensive legal basis exists yet.

Since the decision at EU level to find a joint approach to this part of migration policy, European legal norms in the form of directives and decisions of the European Council have influenced Austrian legislation as well as its implementation. Nevertheless, as in other EU countries, a return policy in Austria with consistent standards and principles is yet to be defined.

Definitions and Categories of Return

Definitions of return are not found in the Austrian legislation, only the terms of coercive measures of Aliens’ Police, among them deportation, are defined in specific paragraphs. The organisations and offices that work in the field of voluntary return use their own working definitions, which are all based on the principle of voluntariness of the decision to return.

In the year 2005, altogether 4,277 persons were deported from Austria (MoI statistics), while 1,406 persons returned to their home countries voluntarily (IOM statistics). The number of deportations has been decreasing since recent years, while the number of voluntary returnees supported by Assisted Voluntary Return Programmes has been sharply increasing since 2000, a trend that can also be foreseen for the future.

Concerning the data on returnees, the Alien Information System of the Ministry of the Interior contains, among others, the measures of the Aliens’ Police. The exact number of deported persons is published monthly, but not their profile or country of destination. The only sources of information on who returned from Austria to which destination are the profiles of *voluntary* returnees that are gathered by several organisations working in this field (for example, return counselling offices). In spite the general opinion that there is no “classic returnee”, based on statistics gathered by Caritas of the year 2005 it is possible to say the following about the profile of voluntarily returning persons: Almost 80% are male, 86% are asylum seekers and the main return destinations are Turkey, Serbia and Montenegro, Georgia, Kosovo¹, and Belarus.

¹ Serbian province under UN administration. Kosovo is mentioned explicitly in some parts of the study, as it is an important destination for returnees from Austria.

The Political and Legal Framework

Return is seen as part of the Austrian migration and asylum policy, in particular as an instrument to fight irregular immigration. In the framework of the Austrian EU Council Presidency 2006, a unification of European standards for returns was aspired. However, a comprehensive Austrian return policy is still to be defined. EU developments in joint return policies only get scant attention; the same goes for voluntary return. Only the issue of augmented imposition of detention pending deportation, the conditions for detainees and deportations prompt public discussions, especially in cases when refugee and human rights organisations address return measures.

Voluntary return of asylum seekers in the form of return assistance (absorption of costs) and return counselling is regulated in the Asylum Act 2005 and in the Basic Welfare Support Agreement 1991 (as amended 2005). If an asylum seeker decides to return voluntarily, return assistance in the form of return counselling, travel expenses and daily allowances are granted. The legal basis for return measures by the Aliens' Police is the expulsion by means of a notification, which under certain conditions can be imposed against lawfully as well as unlawfully residing aliens. In this respect, interests have to be considered, such as duration of legal residence, integration of the alien, existing family ties on the one hand and deportation on the other hand.

Concerning the status of already implemented European directives, the directive on mutual recognition of decisions on return of third-country nationals and the directive on support for transit in the frame of return measures on air route were implemented in the Aliens' Police Act 2005. To this end, amendments on the regulations on transit were made in order to organise concerted returns and transits, and the duties of and sanctions against participants in the transport were partially modified.

Return Measures in Austria

Two forms of return measures are to be distinguished: voluntary return and forced return. As for the former, since 2000 there has been a general humanitarian voluntary return programme, which is available to all asylum seekers and refugees without means in Austria, who wish to return to their home country or to a third-country. In addition, there are currently two country-specific programmes for Afghanistan and the Republic of Moldova, which provide reintegration measures (training, employment assistance, small business start-ups, etc.) in the respective countries. These programmes are funded by the Ministry of Interior respectively, in the case of country-specific programmes co-funded also by the European Refugee Fund, the EU Commission and the Austrian Development Agency and implemented by the International Organization for Migration and the return counselling offices of Caritas, Verein Menschenrechte Österreich (Association for Human Rights in Austria), Diakonie Flüchtlingsdienst (Deaconry Refugee Service), European Homecare, Volkshilfe Upper Austria and the Provincial Refugee Offices. A survey showed that the main important reasons for voluntary return are private/family reasons (illness or death of family members, lack of social integration, home sickness, and others) as well as the general lack of perspectives arising from insecurity and the duration of asylum proceedings, and the difficult living conditions of asylum seekers in Austria. Problems arising with some specific countries in the acquisition of documents for the homeward journey were mentioned as primary obstacles to voluntary return.

The actors involved in forced return are on the one hand the Aliens' Police and on the other hand organisations that have contracts with the Ministry of the Interior since 1998 to provide assistance to aliens in detention pending deportation. Detention pending deportation can be

imposed for up to 10 months in order to ensure return or transit or to enforce a residence ban. Since 2004, return counselling in Austria is also conducted in detention pending deportation and in prisons; the latter is a controversial issue, as the ability to make a decision on a voluntary return while in detention is questioned by some organisations. Specially trained civil servants of the public security service conduct the actual deportation; in the case of charter deportations an independent human rights observer as well as a medical doctor escorts the deportees.

Bi- and Multilateral Cooperation

Austria has signed several bilateral agreements on the readmission of persons not complying with conditions of entry and residence of the signatory countries. Austria has concluded contracts with the following EU Member States: Belgium, the Czech Republic, Estonia, France, Germany, Hungary, Italy, Latvia, Lithuania, Luxembourg, the Netherlands, Poland, Slovakia and Slovenia. Seven agreements were signed with third-countries (Bulgaria, Croatia, Liechtenstein, Romania, Switzerland, Serbia-Montenegro and Tunisia), while negotiations on such readmission agreements with Azerbaijan, Belarus, Bosnia-Herzegovina, Colombia, Georgia, Lebanon, Macedonia, Iran and Nigeria are planned or are already in progress (status: March 2006).

Basically, the offices of diplomatic missions endeavour towards good cooperation when it comes to the issuance of visa and identity documents; nevertheless, complications or long waiting periods can occur with certain countries.

Concerning projects with countries of origin or transit countries, there are pilot projects with Bulgaria and Romania on unaccompanied minors, and besides the general humanitarian programme on voluntary return conducted by IOM, the two already mentioned country specific programmes on reintegration of Afghan and Moldovan nationals are currently implemented.

1. Introduction: Aims and General Overview

This study aims to contribute to a sensitive and contested issue, which is of inherent interest to all EU Member States and European institutions. By means of a systematic comparative method, differences and similarities in state approaches towards return policies will be identified, which should lead towards a better understanding, the exchange of more information and a better informed policymaking process.

The main objectives of this study are:

- to reach a better informed understanding of the different state approaches towards dealing with return in the Member States and in the European Union at large;
- to develop comparable and reliable data on return measures and programmes;
- to provide policy and decision makers with more detailed and up-to-date knowledge about return policies, especially in view of the European Directive on common standards and procedures in Member States for returning illegally residing third country nationals (COM(2005) 391);
- to detect research gaps where further research is necessary; and
- to further examine the strengths and weaknesses crucial to the effective functioning of the EMN, particularly with respect to its analysis and research activities, and thus also drawing lessons for the future development of the Network.

Overview of the Present Research Situation

At the European level, especially in the past years, several studies on return migration were conducted. Those are mainly country reports with a rather practical than scientific approach: in most cases they give an overview on legal standards and models of best practice. The following publications in each case contain a country report on Austria (arranged according to the date of publication):

In 2001, a European comparative study, which includes the EU-15 countries, was published under the title *“Expulsion and Detention of Aliens in the European Union Countries”* (edited by Bruno Nascimbene). Rudolf Feik composed the report on the situation in Austria, focusing merely on legal aspects. A study by ICMPD with the title *“Study on Return – A Swiss Perspective”* describes and analyses not only the various elements pertinent to the return itself, such as policies, legislation and procedures in Switzerland as well as in Austria,

Belgium, Denmark, France, Germany, Italy, the Netherlands, Spain, Sweden and the United Kingdom, but also includes several key issues of domestic asylum systems as they relate to an eventual return of the rejected asylum seeker. Furthermore, it includes a description of the European Convention of Human Rights and Fundamental Freedoms and its domestic case law effective upon return (ICMPD 2002a: i).

The following report was also published by ICMPD: “*Study on Comprehensive EU Return Policies and Practices for Displaced Persons under Temporary Protection, other Persons Whose International Protection Has Ended, and Rejected Asylum-Seekers. Final Report 2002*”. It is the final report of a European Refugee Fund (ERF) project for enhanced collaboration between the Member States in the scope of return policies and programmes. The executive summary of the individual country reports² contains the legal frameworks for forced return as well as programmes for voluntary return.

On the website of the *European Reintegration Networking* project financed by the ERF (2002), besides fourteen European country reports, an “*Overview on activities on repatriation from Austria*” by Caritas Austria can also be found (written by Karl Bader in collaboration with Stephanie Krön). It describes programmes for voluntary return as well as the proceedings for forced return. Furthermore, models of best practice are introduced and political recommendations for the promotion of European return are given.

In 2004, the International Organization for Migration (IOM) office in Geneva published another comparative study on return migration with the title “*Return Migration. Policies and Practices in Europe*” together with the Dutch Advisory Committee on Aliens Affairs. It describes in detail return policies and practices and the respective laws of all EU Member States as well as of Norway and Switzerland.

Another report published by IOM is the “*Compilation of Best Practice in Return Management in Selected EU Countries and Romania*” (2005). It is the result of a project financed by ARGO to enhance exchange of experiences in the area of return between Austria, the Czech Republic, Germany, Hungary, the Netherlands, Poland, Romania, Slovakia, Slovenia, and Sweden. The IOM offices in Vienna and Budapest co-managed the project from 2004 to 2005, which consisted of two expert workshops, both of them held in Vienna.

The EU Parliament commissioned the most recent and comprehensive study on return migration, which was published in 2005: Together with Lukas Gehrke (ICMPD) and supported by the ODYSSEUS-Network (Odysseus Academic Network of Legal Studies on Immigration and Asylum in Europe), Kay Hailbronner (University of Constance) conducted

² Austria, Belgium, Denmark, Finland, France, Germany, Great Britain, Ireland, Italy, Luxembourg, the Netherlands, Norway, Portugal, Spain, Sweden, Switzerland.

the study entitled “*Refugee Status in EU Member States and Return Policies*” (2005). Ulrike Brandl and Philip Czech authored the Austrian country report, which not only describes the legal situation but also contains statistics on forced and voluntary return. Furthermore, the different projects that are (and were) implemented in Austria by Caritas, Volkshilfe, Verein Menschenrechte Österreich, European Homecare and IOM are described in detail. A comprehensive section on EU policies and practices introduces the eighteen country reports³ of the study.

Within the Austrian research scope, however, this topic is not highlighted enough, which seems to be a worldwide phenomenon: “*Return migration remains the great unwritten chapter in the history of migration. This may in part be due to the fact that, in the past, many returns occurred spontaneously and were therefore undocumented, and did not get as much attention as cases involving resettlement and integration.*” (IOM 2004e: section 3.9, 4). Concerning the recent state of research on return migration in Austria, apart from the mentioned country reports one would rather find sociological (qualitative) surveys on the relations with the country of origin and on migrants’ intentions to return (cf. Fassmann 2003, Reinprecht 2003, Haunschmidt 2003). Beyond those topics there are clear research gaps concerning research on return migration, return measures and evaluation of return. Only Krcmar (2002) interviewed returnees of the first and second generation in their original home country, the Czech Republic, in her diploma thesis “*Emigration back home: an empirical analysis of the return of Czech emigrants after the change of system in 1989*”.

In brief, the following points can be found in Austrian literature: in the scientific discourse it is commonly agreed that migrants do not give up their relations with the country or region of origin. Ties with the country of origin are not dissolved, but maintained and cultivated by various interactions like home trips, financial remittances and every form of communication (Fassmann 2003: 437). A question that has to be asked in this context is the phenomenon of the dream of returning home after retirement. The persons belonging to the first generation of immigrants have the strongest relation to their countries of origin, even if “*the intent of returning per se is not specific for the first generation*” (Fernández de la Hoz/ Pfliegerl 2000: 462, own translation). Yet, contrary to what has been assumed for a long time, many elderly migrants have mixed feelings about their life plans: on the one hand, they want to stay where their children and grandchildren are, on the other hand, many continue to dream of returning back to their home country. For some it is an economic question, especially with regards to

³ Austria, Belgium Denmark Germany, Finland, France, Hungary, Ireland, Italy, Luxembourg, Malta, the Netherlands, Poland, Portugal, Switzerland, Slovenia, Spain, the United Kingdom

the health services in both countries (Reinprecht 2003: 221). But in general it can be said that the motives for returning can primarily be found at the emotional level; economic motives are only secondary. The intention to return is to a great extent related to the degree of social integration, which itself is influenced by the emotional bonds to the place of residence (cf. IHS/SORA 1998). In her thesis, Haunschmidt examined the factors that can be crucial for the intention to return on the basis of qualitative interviews with Turkish migrants: Family ties, career, marriage, pension, education of the children, how well and integrated they feel in Austria, alienation from the culture of origin, security of subsistence, etc. Commuting between the two countries is also mentioned as an alternative. She concludes that “(t)he legal and economical (...) framework in Austria (has) a strong impact on the intents of return and stay for Turkish migrants. If migrant families feel secure in Austria, it is more likely that they will invest in staying in Austria.” (Haunschmidt 2003: 122, own translation).

Another recently released publication in the scope of forced return is “Detention pending deportation. Imprisonment without offence. Eight years of arge-Schubhaft – a documentation” (2006), published by arge-Schubhaft, an Austrian association providing care in detention pending deportation in Tyrol. Besides the documentation of their work, the publication also illuminates the beginnings and the developments of care in detention pending deportation in Austria.

In general, it can be said that there is a lack of comprehensive literature on this topic, although especially in the case of Austria, it will be interesting to observe the development of research as the number of former “guest workers”, who are retiring now, is growing. As Fernández de la Hoz/ Pfliegerl (2000: 461) have stated: “*The intentions to return of migrants are still of interest as an indicator for the degree of integration of immigrants.*” (own translation).

General Overview on Return in Austria

Although, compared to other migration relevant issues, little attention is paid to return migration in public, it plays an important role at the political and legal level as it warrants the integrity of each immigration and asylum system from the prospect of a national state. At the same time, forced return in the form of deportation often leads to emotional discourses in public, especially in cases that reveal human rights abuses or when deportations are used during electoral campaigns as “a solution” for national problems such as crime rates or unemployment.

Unlike other ambits of migration, return – apart from Jewish returnees after the end of the Holocaust – is a rather new field in Austria. This is reflected in the fact that there are no exact

legal definitions of return migration (forced and voluntary return) and of Austria's policies in that respect. Generally speaking, the following ambits can be classified under return migration:

- voluntary and independent return of immigrants (for example of former “guest workers”, who want to spend their retirement in their original home countries);
- assisted voluntary return of persons without means: usually rejected asylum seekers, refugees and persons with irregular residence status; and
- forced return (deportation) as part of coercive measures of the Aliens' Police .

Due to the deficient research and data material concerning independent return, it is not possible to say how many (elderly) persons already returned voluntarily. Exact data only exist in the ambits of assisted voluntary return since the year 2000 and on measures by the Aliens' Police (rejection, forcible return, expulsion, residence and return bans, detention pending deportation, deportation). Unlike in Germany, where assisted voluntary return was already organised in the late 1970s, in Austria special programmes for the target group of asylum seekers and stranded persons only exist since the late 1990s. For that reason voluntary return is still a new field in Austria when it comes to statistical data, research material or precise definitions.

Only since the developments and efforts at the EU-level to find a joint approach to these challenges by means of a European law was this issue covered more accurately in Austria as well in the last years. The goals of the Ministry of the Interior are the agreement on European minimum standards on return and a joint system for burden-sharing for return proceedings (Brandl/ Czech 2005: 247).

Also in Austria, the general conception prevails that voluntary return should be preferred to forced return as it is not only more cost-efficient but also more effective, and furthermore allows avoiding the stigmatisation of the returnees. Nevertheless, the principle of voluntary return has not yet been explicitly codified in a legally binding manner and therefore there is not a generally valid definition for this form of return.

A special case in Austria is return counselling carried out in detention pending deportation as well as in prison, which is seen critically by some actors. Within the framework of this counselling, affected persons in detention pending deportation are given the opportunity to decide for voluntary return instead of the imminent deportation. Yet, in Austria return

counselling is carried out by several organisations; thus a standardised and consistent return counselling procedure does not exist at a national level. In practice, this can lead to problems caused by differing tasks, working methods and standards.

The sustainability of voluntary return is seen as *the* criteria for the success of a return project. In spite of this, Austrian return activities are evaluated only very unsystematically. Yet, the return counselling institutions addressed by a questionnaire provided useful ideas and proposals for additional measures for improvement in Austria as well as in the countries of origin, as for example cross-national surveys, information campaigns and enhanced reintegration assistance in the countries of origin.

To conclude, it can be said that, in principle, it should be aspired to create an institutional and financial framework for the establishment of best practice models and successful projects on voluntary return in the long run.

2. Methodology, Definitions and Return Categories

2.1 Methodology

The study was conducted in cooperation and with the assistance of actors involved in the field of return in Austria. These actors are members of organisations and institutions who are active in return counselling and/or counselling in detention pending deportation, officials of the Austrian Ministry of the Interior (MoI) and staff members of the International Organization for Migration (IOM) in Vienna.

Concerning details about the legal situation in Austria, the already existing country reports provided the basis for our analysis. However, due to amendments in the legislation during the last years, particularly the reform of the Aliens' Law in 2005, these reports were partially outdated and therefore less useful for our work. As a consequence, a comprehensive questionnaire concerning forced return was sent to the Unit II/3/C Coercive Measures of Aliens' Police within the Federal Ministry of the Interior (MoI). The questions and answers were included in the study in their original terms. The text passages were sent for verification to the respective institutions and the interviewed persons.

Gaining insight into the practice in the field of voluntary return was somewhat more complex, as it varies between provinces and organisations. For this reason, an additional questionnaire⁴ was sent to all return counselling centres in Austria, and the results were included in the study. Furthermore, interviews were conducted with representatives of Volkshilfe Oberösterreich (Volkshilfe Upper Austria), Caritas, Diakonie Flüchtlingsdienst (Deaconry Refugee Service), Verein Menschenrechte Österreich (Association Human Rights Austria) and the provincial refugee office of Tyrol in Innsbruck, in order to compare and contrast different perspectives and practices and to clarify open questions. Conversations were held also with the initiative Ehe ohne Grenzen (Marriage without Borders) and SOS Mitmensch (SOS Fellow Human Beings). Difficulties as regards the content arose partly due to the insufficient cooperation between the relevant institutions and organisations as well as due to diverging view points.

⁴ See Annex III.

At a meeting between return counselling centres in Austria, IOM and MoI, which was organised by the latter on 21 June 2006, some distinctive aspects of the study and the results of the survey were presented and discussed with the participants.

Concerning statistics on forced return, MoI statistics were supplemented with Eurostat statistics on the number of removals, as these removal statistics are broken down by citizenship. While the field of forced return is entirely documented by the MoI, documentation on voluntary return is done only in the framework of programmes for assisted voluntary return. To a great extent, the data of the International Organization for Migration (IOM) covers voluntary return in the framework of return programmes. In addition, we also included data of the NGOs Caritas and Verein Menschenrechte Österreich, as these statistics complement the statistical overview with further interesting aspects.

To conclude, compiling the material turned out to be rather complicated due to the lack of data and reports. More empirical research in this field is much needed in order to be able to better capture the phenomenon of return migration in all its facets.

2.2 Concepts and Definitions

In the following chapter, terms and concepts, which were used in the study, will be defined and discussed. As there is a lack of definitions on the national level, the overview will be complemented with international definitions and definitions in EU law.

Concerning legal definitions of terms relevant for the topic of return, only coercive measures of the Aliens' Police are specified in the Aliens' Police Act (Fremdenpolizeigesetz, FPG) in certain paragraphs (see chapter 3).

Even though terms like "*return of third country nationals*"⁵ and "*voluntary return*"⁶ can be found in national laws, they are not concretely defined. Terms like "*return*,"⁷ "*transit with the purpose of return*"⁸ and (voluntary) "*repatriation*" are contained in bilateral readmission agreements and international human rights instruments⁹, but again without concrete definitions.

⁵ Art. 3 § 97 FPG 2005 (Travel document for the return of third country nationals) BGBl. I Nr. 100/2005.

⁶ Art. 6 (1) 8 Basic Welfare Support Agreement (Grundversorgungsvereinbarung) - Art. 15a B-VG. BGBl. I Nr. 80/2004.

⁷ E.g. Art. 2 (3) Readmission Agreement with Bulgaria BGBl. III Nr. 189/ 1998.

⁸ Art. 1 (Transit permission for Yugoslav citizens, who are obliged to leave the country) BGBl. III Nr. 68/2000

⁹ Art. 10 (2) of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (BGBl. III Nr. 93/2004) mentions the "*repatriation*" of child victims (e.g. of

As already explained, academic literature on the return of migrants from Austria is hardly available. Also, concerning the theoretical bases, we had to rely on international literature, mainly publications of the International Organization for Migration (IOM). There is also a number of definitions and concepts in the field of return, which are partly contradictory.

The general IOM definition of return migration also includes a certain duration of residence in the destination country. Thus, return migration means the movement of migrants to their country of origin or habitual residence after spending at least one year in another country. Return migration is an umbrella term, which subsumes voluntary as well as forced return (IOM 2004a). Equally, the term includes voluntary repatriation, a subject that is not dealt with in this study. In some studies, the term repatriation is used as a synonym for the term return, although in the original sense it means something different.¹⁰ Other studies are based on a broader definition of return migration, which encompasses all forms of emigration in the country of origin (cf. Ghosh 2000).

This study does not deal with the broad field of return migration in this sense; “return” shall be defined as foreseen in the Proposal for an EU Directive on common standards and procedures in Member States for returning illegally staying third-country nationals as “*process of going back to one’s country of origin, transit or another third country, whether voluntary or enforced.*”¹¹ Accordingly, return is the umbrella term for the two fields “voluntary return” and “forced return”, which will be treated separately in this study.

Voluntary return is the “*assisted or independent return to the country of origin, transit or another third country based on the free will of the returnee*” (IOM 2004a).¹² Thus, voluntariness is the crucial element here; Caritas, for example, an organisation active in return counselling, particularly highlights this element: the step to get into contact with the organisation concerning the return to the country of origin, has to be based on one’s own free will and cannot be taken by a person, who is being detained.¹³

child prostitution); Art 8. of the Protocol to prevent, suppress and punish trafficking in persons, especially women and children, supplementing the United Nations Convention against Transnational Organized Crime stipulates the “*repatriation of victims of trafficking*” (“preferably voluntary”).

¹⁰ Strictly defined, repatriation means the “*personal right of a refugee or a prisoner of war to return to his/her country of nationality under specific conditions laid down in various international instruments (Geneva Conventions, 1949 and Protocols, 1977, the Regulations Respecting the Laws and Customs of War on Land, Annexed to the Fourth Hague Convention, 1907, the human rights instruments as well as in customary international law).*” (IOM 2004a).

¹¹ COM(2005)391 final.

¹² It has to be taken into consideration, that the possibility to return voluntarily to a third country certainly depends on the legal status of the returnee in that country.

¹³ Interview with Bettina Wagner, Caritas Austrian – Coordination of Return Assistance, 7 June 2006, hereafter referred to as “Interview Caritas”.

According to the IOM definition, assisted voluntary return comprises the “*logistical and financial support*” for particular groups of migrants, such as “*rejected asylum seekers, trafficked migrants, stranded students or qualified nationals, who are unable or unwilling to remain in the host country and who volunteer to return to their country of origin*” (IOM 2004b: 7). According to the terminology of the European Commission, the term voluntary return focuses on a group of persons defined in a narrower sense: it concerns the “*EU’s policy of repatriating someone, by mutual consent, who is refused admission to a Member State.*”¹⁴ Nevertheless, it has to be mentioned at this point that particularly NGOs question the voluntariness in specific cases. This particularly concerns persons, whose expulsion procedure has already been started or who are in detention pending deportation. Real voluntariness is seen as doubtful, if voluntary return is only an alternative to the removal (see e.g. Asylkoordination http://asyl.at/umf/umf/frepo_rueckkehr.php). In many cases, voluntary return is linked with the lack of perspectives in the destination country; nevertheless, this does not mean that only those return, who are already facing deportation. In their statistical report on the Return Assistance Project, Caritas Austria gives an overview on the status of the returnees. The majority of their returnees in 2005 (in total 709 persons) were asylum seekers (86%).

The second field, which is treated in this study, is forced return, defined as “*the compulsory return of an individual to the country of origin, transit or third country, on the basis of an administrative and judicial act*” (IOM 2004a). Forced return from Austria means the deportation of a person as compulsory execution of an expulsion. Before a deportation is executed, an expulsion order has to be issued. An expulsion can be issued against an illegally residing person as well as a person with legal residence status. In addition to an expulsion, a residence or return ban can – if certain conditions are existent – be issued to a person, who is to be expelled. In addition, the person can be detained in order to secure the execution of the expulsion procedure (for details about the legal situation in Austria, see chapter 3).

2.3 Categories and Data on Returnees

Concerning data on return in Austria, one must first distinguish between voluntary and forced return. The only data source in the field of forced return is the Alien Information System (Fremdeninformationssystem, FIS) of the Federal Ministry of the Interior (MoI), which stores

¹⁴ Glossary of the European Commission/ Justice und Home Affairs: http://ec.europa.eu/justice_home/glossary/glossary_v_en.htm (accessed in March 2006).

data on coercive measures of the Aliens' Police (including deportations, expulsions, residence and return bans, detention pending deportation, rejections at the border and forcible returns). The corresponding statistics are published in monthly and yearly reports.

The area of voluntary return is documented by organisations that are active in return counselling and that implement programmes for voluntary return. Since the year 2004, return counselling is also possible within counselling in detention pending deportation, which is offered by the NGOs Verein Menschenrechte Österreich, Caritas and Diakonie. Voluntary return from detention pending deportation is an area that is particularly critically discussed, especially in view of the criterion of voluntariness. Besides Diakonie, Caritas also stresses that it is not possible to take a voluntary decision to return while in detention. Return counselling could only apply after the person is released from detention pending deportation (Caritas 2005: 33). For this reason, several actors suggest considering return from detention pending deportation, besides voluntary return and forced return, as a separate category.

Returnees who return voluntarily but outside of these programmes for assisted voluntary return, are not documented in any data base.¹⁵ Detailed tables with those statistics, which are discussed in the following, are included in Annex I.

2.4 Forced Return

2.4.1 Data of the Ministry of the Interior (MoI) on Forced Return¹⁶

In the year 2005, a total of 4,277 persons were deported. Compared to the preceding years, this represents a decline in the number of deportations: in 2003, a total of 8,073 deportations were documented; in 2004, a total of 5,274 (MoI data)¹⁷. The same trend is observed in the number of expulsions: there were 4,745 expulsions in the year 2005, while 6,378 expulsions were registered in 2004 (2003: 7,531 expulsions). The number of persons in detention pending deportation has similarly been declining: while 11,149 cases of detention pending deportation were registered in 2003, in 2005 the number declined to 7,463 (-33%). The development of the number of residence bans shows a similar trend (2005: 7,194; 2003: 15,057).

Comparing the trends of the period between January to May 2006 with the same period of the preceding year, the number of expulsions has significantly declined (-41%) and the number of

¹⁵ Nevertheless, the departure of persons who have received an expulsion order, is documented at the border control.

¹⁶ See Annex I, Tables 8-12 .

¹⁷ <http://www.bmi.gv.at/publikationen> (accessed in June 2006).

deportations has not substantially increased (+1%). On the contrary, the number of persons in detention pending deportation has significantly increased (+24%). The number of issued residence bans has also decreased: compared to the period January to May 2005, when 3,188 residence bans were issued, only 1,700 such bans were issued in the same period in 2006. However, it has to be taken into consideration that with the Aliens' Police Act (Fremdenpolizeigesetz, FPG) 2005, a so-called "return ban" was introduced. Between January and May 2006 a total of 409 return bans were imposed.¹⁸

Unfortunately, the reports of the MoI do not differentiate deportations, expulsions and persons in detention pending deportation by variables like gender, citizenship or return destination. Data on coercive measures of the Aliens' Police are also submitted to Eurostat, which also differentiates the data by citizenship (see below) in its annual reports.

2.4.2 Eurostat Data on Forced Return¹⁹

A further data source is the "Annual Report on Asylum and Migration," which is compiled by Eurostat together with the EU member states and other countries, and which publishes CIREFI data,²⁰ among others. As the latest report for the year 2003 is still being finalised and has not yet been published, and the report of 2002 does not contain data on Austria, we had to resort to the report of 2001.

The annual report 2001 mentions a total of 11,592 removals, which corresponds to a decline of 22% compared to the preceding year. This number is significantly different from the statistics published by the Austrian MoI, as according to EU definitions, forcible returns²¹ are included in this number. Concerning the citizenship of the removed persons, the five main countries were: Romania (33%), Poland (11%), Federal Republic of Yugoslavia²² (8%), Moldova (7%) and Bulgaria (5%) (Eurostat 2001)²³.

¹⁸ A return ban can be issued to asylum seekers; a legally effective return ban has the same consequences as a residence ban.

¹⁹ See Annex I, Table 13.

²⁰ Centre for Information, Discussion and Exchange on the Crossing of Frontiers and Immigration (CIREFI): the objectives of CIREFI, which was set up in 1992, are to assist the member states in effectively studying legal immigration, in preventing illegal immigration and facilitator networks, in better detecting forged documents and in improving expulsion practice. CIREFI is responsible for compiling and analysing information on these issues. See <http://www.europa.eu/scadplus/leg/en/lvb/l33100.htm> (accessed in May 2006).

²¹ In 2001, about 6,300 forcible returns and approx. 8,300 deportations were enforced. Eurostat figures only comprise third country nationals, which explains the deviation to national figures.

²² Now the Republic of Serbia and the Republic of Montenegro.

²³ The Annual Report is available online:

http://ec.europa.eu/justice_home/doc_centre/asylum/statistics/doc_annual_report_2001_en.htm (accessed in May 2006).

2.5 Data on Voluntary Return

This section examines the statistics compiled by organisations responsible for return counselling, and the implementation of programmes for voluntary return. In Austria, NGOs and other institutions undertake return counselling, while the International Organization for Migration (IOM) carries out the organisation of the return in the majority of the cases.

In addition to the statistics compiled by IOM, statistics of the NGOs Caritas and Verein Menschenrechte Österreich will also be discussed, as these two organisations also organise (in a smaller number of cases) returns without the assistance of IOM.²⁴ In addition, these data enable further interesting insights which are not included in the IOM statistics - such as the status of the returnee - as IOM does not dispose of such data. It also has to be taken into consideration that there is an overlap in the data sets: persons who have been counselled by Caritas and Verein Menschenrechte Österreich and whose return was organised by IOM, are included in the statistics of the respective NGO as well as in the IOM statistics.

According to the Caritas data, most of their clients are asylum seekers (86%). While the number of asylum seekers has significantly decreased during the last years, the number of persons who return voluntarily has risen. Different reasons might have caused these developments: On the one hand, programmes for assisted voluntary return only exist since the year 2000²⁵. In addition, the possibility to return in the framework of these programmes from detention pending deportation was only introduced in 2004. Since then, this form of return is significantly increasing. Furthermore, links between return destinations, the countries of origin of asylum seekers and recognition rates for asylum seekers from certain countries can be seen. Among the most frequent return destinations were countries such as Serbia and Montenegro, Russian Federation, Turkey, Moldova, Georgia and Nigeria; these countries were also among the main countries of origin of asylum seekers. The recognition rates for asylum seekers from countries such as, for example, Moldova and Nigeria are very low.²⁶

Certainly, political developments in regions of conflict also play an important role, which is illustrated in the case of Kosovo: While Kosovo was the main return destination in 2000 (according to the statistics of Caritas), the number of returnees going back to this region significantly dropped in the following year.

²⁴ There are also other organisations and institutions that are active in the field of return counselling. As these organisations exclusively organise the return of their clients via IOM, these cases are included in the IOM statistics.

²⁵ Based on the experience from the return of people to Bosnia and Kosovo, concrete projects for assisted voluntary return have been developed since the year 2000.

²⁶ For asylum statistics of the last years, see Annex I, Tables 14 and 15.

2.5.1 IOM Data on Voluntary Return²⁷

In 2005, the office of the International Organization for Migration (IOM) in Vienna organised the return of 1,406 persons from Austria. Looking at the preceding years, the number of persons returning with the assistance of IOM is continuously rising (2000: 194 returnees). Compared to the year 2004, the number of persons returning voluntarily increased by 21%.

The main countries of destination of returnees²⁸ changed only marginally compared to the year 2004. In 2005, the main countries of destination were Serbia and Montenegro (22% of the total number of returnees), followed by Georgia, Turkey, Belarus and Moldova. In the preceding year (2004), the five main destination countries were Serbia and Montenegro, Georgia, Turkey, Moldova and Armenia (IOM data).

The status of returnees (e.g. rejected asylum seeker, illegally residing person, etc.) is not documented, as this data is not submitted to IOM; demographic data is available on the gender and age groups of returnees (adults, children, infants). In 2004, about 80% of the returnees were men.²⁹ In which federal provinces the returning persons were residing is not documented by IOM either, only the referring organisations are known. These are either NGOs that are active in the field of return counselling and/or counselling in detention pending deportation (Caritas, Verein Menschenrechte Österreich, Diakonie Flüchtlingsdienst, Volkshilfe Oberösterreich), provincial refugee offices or the private enterprise European Homecare. Persons who wish to return are referred to IOM, which then organises the journey logistically.

2.5.2 Data of NGOs on Voluntary Return

Caritas³⁰

An important organisation in the field of return counselling is Caritas, which advises the largest number of clients. Data sources of the statistics, which are presented in the following section, are the annual reports on return assistance that were provided to us by Caritas.

In 2005, 709 persons, who were advised by Caritas, returned to 48 countries, which corresponds to an increase by 7% compared to the previous year. The documented number of persons who were advised for the first time amounted to 1,144, which is an increase of 13%.

²⁷ See Annex I, Tables 1-3.

²⁸ The destination country corresponds to the return destination, which means that it does not have to be equal to the country of origin or the citizenship of the returnee. Citizenship is also registered, but after the set up of a new data storage system, these statistics are not yet processed for technical reasons.

²⁹ After the introduction of a new data storage system, these statistics are not yet available for the year 2005.

³⁰ See Annex I, Tables 4 and 5.

Yet the reports of the years 2000 to 2005 do not show a continuous growth in the number of returnees: While 658 persons returned in the year 2000, the number significantly declined in the subsequent year to 429 returnees. Finally, the number of returnees increased again and reached a preliminary maximum at 770 returnees (Caritas 2000; 2001; 2002; 2003; 2004; 2005).

Comparing the statistics of the last five years, a strong diversification of the return destinations can be noticed; the number of returnees is now more evenly distributed among the different return destinations, as was not the case in the years before. In 2005, the main destination countries were Turkey, Serbia and Montenegro³¹(12%), Georgia (11%), Kosovo (8%) and Belarus (8%). In contrast, in the year 2000, 51% of a total of 658 returnees returned to Kosovo.

88% of the returnees advised by Caritas returned with IOM assistance by air route to their country of origin.³² In 84 cases the journey by bus or train was organised by Caritas itself. According to Caritas, this possibility allows the return in those cases where a return by plane is not possible (e.g. because of medical problems, fear of flying, transportation of indispensable items, etc.). The annual report 2005 also points to the fact that 21 returnees did not return to their country of origin, but to a third country (including EU member states) willing to accept the returnee.

Most returnees were men (81%). Looking at the age of returnees, 41% were between 18 and 30 years old, further 47% between 30 and 55 years old. The Caritas statistics also distinguish the number of returnees by status: in 2005, 86% were asylum seekers, another 10% fell into the category “coercive measures” (mainly persons who have already received an expulsion order).

In total, 42% of the persons advised by Caritas within the framework of return assistance were subsidised in the form of interim aid, and another 42% with reintegration aid. The financial assistance granted to the clients amounted to EUR 267 on average (Caritas 2005).

Verein Menschenrechte Österreich³³

The NGO Verein Menschenrechte Österreich operates in the field of return counselling and counselling in detention pending deportation. In 2005, a total of 808 clients (=proceedings) requested return counselling by Verein Menschenrechte Österreich. In the year 2004, a total of 288 proceedings were documented.

³¹ Due to its importance as a destination region, Kosovo is listed separately.

³² Consequently, these persons are also included in the IOM statistics.

³³ See Annex I, Tables 6 and 7.

In 2005, 516 persons returned to their country of origin, corresponding to a return quota of 73% of the proceedings. The clients who went through return counselling originated from 64 countries of origin. The main ones were Serbia and Montenegro (20% of the proceedings), Romania (11%), Bulgaria (9%), Moldova, Georgia, Ukraine and Nigeria (Verein Menschenrechte Österreich 2006).

Like Caritas, Verein Menschenrechte Österreich also organises voluntary return, in most cases with the assistance of IOM³⁴. However, in 2005, Verein Menschenrechte Österreich organised the return of 94 persons by itself. These returnees were so-called self-payers, meaning that they bore all the costs of the return themselves.³⁵ Cases in which the journey is funded by the Ministry of the Interior (MoI) are referred to IOM, which organizes and assists the return.

Verein Menschenrechte Österreich offers return counselling at different locations, and since summer 2004 also in cases of detention (detention pending deportation, remand and detention in prisons). Apart from the latter, return counselling is also offered asylum seekers in the Initial Reception Centre West (Erstaufnahmestelle West) and in accommodations for asylum seekers under federal care. In 2005, 437 of a total of 808 proceedings (54%) were conducted in the framework of counselling in detention pending deportation (ibid.). The main return destinations were Serbia and Montenegro, Romania, Ukraine und Bulgaria (ibid.).

³⁴ These cases are also included in the IOM statistics.

³⁵ The MoI bears the costs for clients who do not dispose of financial means.

3. The Political and Legal Framework

3.1 Political and Legal Frameworks on Federal and Regional Level

3.1.1 Political Discourse and Definitions of Political Principles of Austrian Return Policy

The fall of the Iron Curtain and the ethnic conflicts in the former Yugoslavia, including the subsequent refugee flows, had a lasting effect on migration and asylum policies in Austria as well as in other European countries. Austria exhibited a two-fold reaction toward the changing political situation: In response to the increasing immigration in the 1990s, several amendments to the Asylum Act were conducted with the aim of reducing the number of asylum seekers, accelerating the proceedings, and ensuring effective and speedy expulsions if and where necessary.

With respect to the armed conflict in the former Yugoslavia, the instrument of “temporary protection” of war refugees was introduced, which was closely connected to the idea of return to the respective countries of origin as soon as possible (cf. Tretter 2005). After conclusion of the peace agreements in Bosnia-Herzegovina in 1995 and in Kosovo in 1999, Austria conducted voluntary return activities to these two countries on a large-scale (cf. Bader/Krön 2002: 7).³⁶ These constituted the beginning of the establishment of and financial assistance for general programmes on voluntary return as an alternative to forced measures terminating a sojourn.

Research in the scope of this pilot study shows that the field of return as part of the Austrian migration and asylum policy is particularly seen as an instrument for fighting irregular migration. As in other EU Member States, there is no clear return policy in Austria; this area is still in development.

In the framework of a parliamentary query response, the Ministry of the Interior outlined voluntariness, need for help, singularity of the assistance in the voluntary journey home, the organisation of return per flight in cooperation with IOM, and the closure of criminal procedures, where applicable, as criteria for financial support for voluntary return by the MoI (cf. 3407/AB XXII.GP).³⁷

³⁶ Since 1999, about 5,000 persons were supported in their return to Kosovo (source: IOM).

³⁷ Query response of the MoI: Intransparency in return counselling (3407/AB http://www.parlinkom.gv.at/portal/page?_pageid=908,140062&_dad=portal&_schema=PORTAL (accessed in May 2006).

The claim made by Caritas in the year 2002 with respect to voluntary return that “*a systematic (above all politically secured) implementation of the preference of voluntary return to deportation would be important for preceding success*” (Bader/Krön 2002: 18, own translation) is, according to Caritas, still valid today.

There is evidence that this issue will gain political relevance in Austria as well. In the government programme for the legislation period XXII, Austria adheres to the “*harmonisation of European return policies*” (government programme 2003 – 2006: 7). In the framework of the Austrian EU presidency (01.01.2006 – 30.06.2006) “*measures for an efficient return and repatriation policy*” were named an important working goal in the presidency programme.³⁸

EU plans on the further development of a joint return policy³⁹ in the framework of harmonisation of migration and asylum policies in the Member States are not, or are rarely, discussed in Austria in public (Brandl/ Czech 2005: 233). The area of voluntary return hardly finds its way into the media. Concerning forced return of asylum seekers the situation is different. Especially refugee and human rights organisations repeatedly criticise conditions in detention pending deportation (cf. chapter. 3.1).

Controversial discussions flared in the course of the adoption of the “Fremdenrechtspaket 2005” (“Aliens’ Act Package 2005”), which was passed in July 2005 with the votes of the governmental parties ÖVP and BZÖ and the oppositional party SPÖ, and which came into effect on 01.01.2006. The Government not only amended the parts⁴⁰ of the 2003 amendment to the Asylum Act 1997 that were declared unconstitutional by the Constitutional Court, but the Aliens’ Act Package including the Asylum Act and the Aliens’ Police Act constituted an entire new codification.

In the context of the assessment procedure on the draft law in the course of the last year, the planned asylum reform was criticised by numerous human rights and refugee organisations such as UNHCR, Asylkoordination (Asylum Coordination), amnesty international, Menschenrechtsbeirat (Human Rights Advisory Board), Ludwig Boltzmann Institute for Human Rights and others.

³⁸ <http://www.eu2006.at> (accessed in May 2006).

³⁹ Cf., for example, Green Paper on a Community Return Policy for Illegal Residents (COM(2002)175 final); Proposal of a directive for joint standard and proceedings within the Member States on return of illegally resident third-country nationals (Com(2005)391 final).

⁴⁰ Judgment of the Constitutional Court G 237/03 ua, of 15.10.2004.

The most important points that were criticised and that are relevant for the area of return are:

- *extended possibilities to impose detention pending deportation on asylum seekers* (detention pending deportation can already be imposed due to the assumption that the asylum application will be rejected, for example in the framework of the Dublin procedure);
- *no further special protection for traumatised asylum seekers* (forcible return is made possible in the framework of the Dublin procedure);
- *restriction of territory during the admission trial* that substantially restricts the refugees' access to legal counselling;
- *the possibility to disallow suspension of an appeal in the regular trial*;
- *restriction of access to independent legal counselling and counselling in detention pending deportation*⁴¹;
- *temporal extension of the maximum duration of detention pending deportation* from six to ten months;
- *the newly introduced, legally feasible forcible feeding in detention pending deportation*;
- *passing on of the applicants' data to authorities in their home countries*;
- *extension of authorisation of the police in the framework of the asylum proceeding*.

At present, it is difficult to assess the long-term impact of these new Acts or of their durable implementation in practice. Though since the coming into effect of the Aliens' Act Package on 1 January 2006, NGOs as well as the media reported on the increasing promulgation of detention pending deportation. This augmentation can be proved by statistics on measures by the Aliens' Police published by the Ministry of the Interior: Whilst 3,170 cases of detention pending deportation were documented from January to May 2005, in the comparable timeframe of the year 2006 there were 3,908 cases of detention pending deportation, which corresponds to an increase of 23%.^{42 43}

⁴¹ cf. Knapp 2006: 7.

⁴² Data of the MoI (<http://www.bmi.gv.at/publikationen>) (accessed in June 2006) and own calculations.

⁴³ Concerning the number of persons in detention pending deportation, it has to be considered that it has decreased significantly between 2001 and 2004 (see Annex I, Table 4).

3.1.2. Legal Bases for Return

According to the Austrian Aliens' Act system, the legal bases for return can be found in the Austrian Aliens' Police Act (FPG). The Aliens' Police is the competent authority for return cases. Basis for return is an administrative order to leave the country, which under certain conditions can be issued against illegally⁴⁴ and legally⁴⁵ resident persons.

Illegally residing persons can be ordered to leave the country, either because of their legal status itself⁴⁶ or if they possess neither a residence title nor the right to visa-free entry and a right of domicile, when they:

- have been sentenced by a criminal court for a criminal act committed with intent;
- have been caught in the very act of an intended criminal act within three months after their entry into the country;
- have broken laws related to prostitution within three months after their entry into the country;
- cannot prove sufficient means of subsistence within three months of entry into the country;
- are caught in the act of exercising any employment that violates the rules of the Aliens' Employment Act.⁴⁷

Legally resident persons can be ordered to leave the country based on (retroactive) grounds, inhibiting the issuance of a residence permit. Moreover, legally resident persons can be ordered to leave the country if they

- are subject to job placement and have not been working for at least four months during the first year of residence;
- did not fulfil the integration agreement (for reasons lying in their own responsibility) within five years of residence;
- did not start to fulfil the integration agreement (for reasons lying in their own responsibility) within the first three years of residence;

⁴⁴ § 53 FPG.

⁴⁵ § 54 FPG.

⁴⁶ § 53 (1) FPG.

⁴⁷ § 53 (2) FPG.

- are in possession of a settlement permit for “family reunification” and can no longer prove its justification grounds;
- are in possession of a settlement permit with a duration between one and five years and hardly ever worked during this period.⁴⁸

The FPG knows the legal institution of consolidation of residence⁴⁹, which implies that the longer a person resides in Austria, the harder it is to expel the person. After continuous legal residence of five years, the person can no longer be expelled on the grounds of lacking health insurance or means of subsistence, as long as the will to work and sustain oneself is evident. After eight years of continuous and legal residence, only if the person was convicted of a sentential criminal act *and* is a threat to public order and security is there a justification for expulsion. In case of continuous, legal residence of ten years or more, only the conviction of trafficking or specific drug offences as well as criminal offences punishable with imprisonment of at least six years can justify expulsions. Children who have grown up in Austria since childhood (baby ~ 3 years) can only be expelled in special cases of criminal offence.⁵⁰ Persons in possession of a residence title “permanent residence – EC” can only be expelled if they are a serious threat to public security or order, which in principle can be grounds similar to the ones valid for expulsions of persons with continuous residence of at least ten years.⁵¹

In case the expulsion threatens the family life, then expulsion is only eligible in the cases laid down in Article 8 (2) ECHR. These aims justifying an expulsion are in congruence with the ECHR, securing the entry and exit regulations (border rules) of the country, the prevention of illicit work, the fight against trafficking, and safeguarding the rights of third parties (i.e. prevention of criminal acts). However, a balance of interests must always be found between the duration of the legal residence and the integration of the alien and the intensity of family or other social relations.⁵²

According to Unit II/3/c of the Ministry of the Interior, in the field of return policies there are no measures and standards that are not based on legal groundwork, and in Austria there is no variation between federal and provincial policies.⁵³

⁴⁸ § 54 (2) FPG.

⁴⁹ §§ 55, 56 FPG.

⁵⁰ § 55 FPG.

⁵¹ § 56 FPG.

⁵² § 66 FPG.

⁵³ Written response of the MOI, Unit II/3/C.

Experiences with protest and solidarity movements with regard to returnees

Criticism of conditions of detention pending deportation and the conduct of authorities, protests against deportations in general as well as solidarity with detainees pending deportation on the part of civil society are not new in Austria. Among others, the network “no-racism.net” calls on the immediate abolition of detention pending deportation as well as the unlimited right of residence for all, and collects cases of suicide and death in detention pending deportation.⁵⁴ Also, the refugee organisation “Flüchtlings- und Deserteursberatung” (Refugee and Deserter Counselling) publishes critical articles on detention pending deportation and reports on conditions of detention pending deportation on its website.⁵⁵ The human rights group “SOS Mitmensch” stands up “*against detention pending deportation, as the promulgation of detention in order to secure a proceeding of expulsion constitutes an excessive interference*” (own translation).⁵⁶ In its opinion, Austrian practice is no longer backed by the European Convention on Human Rights.⁵⁷

In this context, the equalisation of illegality and criminality are generally criticised in the public discourse in Austria as well: “*The institution of detention pending deportation contributes to criminalising and stigmatising migrant, as it seems clear to the majority of the population: Those who did not commit an offence should also not be detained. Detention pending deportation is a measure that solely menaces persons originating from a certain segment of the population, namely those without a secured residence permit status. For persons holding an Austrian passport, this form of detention doesn’t exist, which is an additional reason for the fact that the institution of detention pending deportation is hardly questioned in political discourse and in the media.*” (Limberger 2005: 1, own translation)⁵⁸.

Civil society carries out demonstrations in particular after cases of death while in detention pending deportation, as in the case of death of the detainee Yankuba Ceesay in October 2005 in Linz.⁵⁹ For the most part, NGOs try to highlight deficient structures via the media on the

⁵⁴ cf. <http://no-racism.net/article/1394> (accessed on 10 May 2006).

⁵⁵ <http://deserteursberatung.at/themen/rubrik/910/> (accessed on 10 May 2006).

⁵⁶ <http://www.sosmitmensch.at/stories/597/> (accessed on 10 May 2006).

⁵⁷ cf. <http://www.sosmitmensch.at/stories/872/> (accessed on 10 Mai 2006).

⁵⁸ Online version: <http://www.deserteursberatung.at/article/240/> (accessed on 10 May 2006).

⁵⁹ This demonstration was headed by “Plattform Zivilcourage”, an alliance of NGOs, politicians, welfare organisations and media. In November 2005, a roundtable on the topic of hunger strike was held on the initiative of the Directorate-General for Public Security and with the participation of delegates of the Ministry of the Interior, the Federal Ministry of Justice, the Federal Police Headquarters of Vienna and Linz, the care in detention pending deportation and the Human Rights Advisory Board. The question of a suitable handling of hunger strike in detention pending deportation was discussed (cf. MRB 2005: 28). Also the Human Rights Advisory Board introduced a working group on this case that should investigate problems and, if necessary, come forward with suggestions for improvement. Fundamental topics in the process are the procedures to be

basis of selective cases. Especially the coming into force of the Aliens' Act Package and the associated increasing number of detainees pending deportation led to an increased coverage of cases of imposition of detention pending deportation and deportation in the media.

Furthermore, public attention is centred on the following legal loophole: Since 1 January 2006, due to the new regulations in the Settlement and Residence Act⁶⁰ (NAG), applications on issuance of a residence title can only be filed in person from abroad, except for persons who entered Austria without by-passing border control and who are residing legally (§ 21 para. 2 NAG). In practice, this means that asylum seekers who wish to marry during a pending asylum procedure, have to return to their country of origin, "*regardless of whether they are exposed to danger in the country of origin or not, or whether they already have family in Austria*" (Der Standard, 29. 3. 2006, own translation). Thus, all asylum seekers who had already married an Austrian before 2006 and hence had withdrawn their application for asylum and applied for a settlement permit, and whose application was not handled timely, are being illegalised. This led to impositions of detention pending deportation and deportation of spouses originating from third-countries, among them partially also persons who had already been living in the country for several years. A group of approximately 160 bi-national couples, who came together at the beginning of the year 2006 under the name "Initiative: Marriage Without Borders,"⁶¹ protests regularly in front of the Ministry of the Interior in order to draw attention to their situation.⁶²

3.2. Influence of European Legislation

Current stand on adopted European legal standards and/or EU Directives

So far, two directives have been adopted: The Council Directive on the mutual recognition of decisions on the expulsion of third country nationals,⁶³ and the Council Directive on

taken in cases of hunger strike and/or thirst strike, the points of intersection/responsibilities of medical care and of civil servants as well as reliability of forced treatments in detention pending deportation. The results of the working group will be released in the course of the year 2006 in form of a report (MRB 2005: 20).

⁶⁰ Settlement and Residence Act (NAG), BGBl. I 100/2005, as amended BGBl. I No. 31/2006.

⁶¹ <http://www.ehe-ohne-grenzen.at>

⁶² Claims of the Initiative Matrimony without borders:

- No detention pending deportation and deportation but residence permission for our spouses.
- No renewed applications of already filed applications (retroactive temporary arrangements).
- Reorganisation of the law relating to aliens: Right to issuance of an application for settlement for spouses from inside the country.
- No application of the Federal Law on the Occupation of Aliens for spouses.

<http://www.ehe-ohne-grenzen.at/forderungen.htm> (accessed on 8 May 2006).

⁶³ 2001/40/EC of 28 May 2001 (OJ L149/34, 02.06.2001).

assistance in cases of transit for the purposes of removal by air.⁶⁴ Moreover, Council Decisions and Conclusions have also been adopted in this area. The Council Decision of 29 April 2004⁶⁵ on the organisation of joint flights for removals has to be seen in the light of further enhancing mutual cooperation in and standardization of return operations in the EU. The purpose of the decision is to coordinate joint removals by air of third country nationals who are subject to individual removal orders⁶⁶. Together with the Decision, non-binding Common Directives on security provisions for joint removals by air⁶⁷ have been introduced, laying down specific requirements for returnees and escorts. Moreover, transportation procedures in the airport and the check-in, in-flight security procedures and procedures upon arrival are described in detail. The Council Conclusions of 12 July 2004⁶⁸ contain options for the practical implementation of the Council Decision on the organisation of joint flights for removals and urge to increase the use of joint flights.

In the area of voluntary return, there is still a lack of *Acquis Communautaire*. Therefore, EU Member States are implementing national programmes, which are co-financed through EU initiatives.

Although the primacy of voluntary return over forced return has been mentioned in a series of Commission and Council documents⁶⁹, and the European Parliament has agreed on the overriding priority of a voluntary return policy⁷⁰, the principle of voluntary return has not yet been codified in legally binding terms.

The Directive on the mutual recognition of expulsion decisions for third-country nationals has been implemented in the FPG, with the reservation of primacy of national decisions.⁷¹ The Directive on assistance in cases of transit for the purposes of removal by air has been transposed into the FPG. The existing regulations concerning transits⁷² for the purpose of organizing concerted removals and transits have been amended. Also, the responsibilities of and sanctions for aircraft carriers were partially modified⁷³.

⁶⁴ 2003/110/EC of 25 November 2003 (OJ L321/26, 06.12.2003).

⁶⁵ 2004/573/EC of 29 April 2004 (OJ L261/28, 06.08.2004).

⁶⁶ Article 1.

⁶⁷ Annex to 2004/573/EC of 29 April 2004 (OJ L261/28, 06.08.2004).

⁶⁸ Council Doc. 8540/04 of 28 June 2004.

⁶⁹ e.g. COM(2001) 672 final, 15.11.2001; COM(2002) 175 final, 10.04.2002; COM(2002) 564 final, 14.10.2002; European Council of Tampere, 16.10.1999, Conclusion No. 26.

⁷⁰ European Parliament resolution on the communication from the Commission to the European Parliament and the Council in view of the European Council of Thessaloniki on the development of a common policy on illegal immigration, smuggling and trafficking of human beings, external borders and the return of illegal residents, OJ C E/400, 16.04.2004.

⁷¹ § 71 FPG.

⁷² §§ 47, 48 FPG.

⁷³ §§ 111, 112 FPG.

Regarding the travel documents for the expulsion of third country nationals, Austria implemented the Council Recommendations of 30 November 1994 concerning the adoption of a standard travel document for the expulsion of third country nationals⁷⁴ into the executive decree of the FPG⁷⁵.

As a consequence of the Directive on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States,⁷⁶ and the current proceedings of the European Court of Justice (ECJ) against Austria C-136/03, the Independent Administrative Senate (Unabhängiger Verwaltungssenat, UVS) became responsible for appeals against decisions taken against EEA citizens, which either have been based on the Asylum Act 2005 or the Aliens' Police Act 2005. The above Directive and the advocate general demand more favourable appeal possibilities for EEA citizens who have been detained pending deportation, stopped or arrested for grounds laid down in the Asylum or Aliens' Police Act.⁷⁷ The UVS is an Article 6 ECHR tribunal, which decides on individual complaints against direct administrative acts of order and coercion (Öhlinger: 1997: 259).

What are the effects of the European framework for national policies? How are Schengen and Dublin affecting return policies in the country concerned? To what degree has EU enlargement changed the policies of return?

Concerning Schengen and Dublin, there were attempts to warrant an efficient return, and a unification of European standards for returns in the framework of the EU presidency was aspired.⁷⁸

What experiences have been gathered in cases concerning Article 3 from the European Convention for the Protection of Human Rights and Fundamental Freedoms?

Only a single case regarding Article 3 ECHR concerning expulsions was processed at the European Court for Human Rights against Austria. In the case Ahmed vs. Austria of 1996, the applicant alleged that, if he were to be deported to Somalia, he would certainly be subjected to torture there in the sense of Article 3 of the ECHR. He had been granted asylum, but lost his refugee status due to his criminal conviction. The Court found that no breach of Article 3 had as yet occurred. However, the Court found that the decision to deport Mr Ahmed would, if implemented, give rise to such a breach. The Court decided unanimously that, for as long as

⁷⁴ OJ C274/1998 of 19.09.1996, 18.

⁷⁵ § 8 FPG-DV, BGBl II 450/2005.

⁷⁶ 2004/58/EC of 29 April 2004 (OJ L 229/35, 29.6.2004).

⁷⁷ §§ 82, 83 FPG.

⁷⁸ Written response by the MOI, Unit II/3/C.

the applicant faces the risk of being subjected to treatment contrary to Article 3 of the Convention in Somalia, there would be a breach of that provision in the event the decision to deport him there were implemented.

The FPG explicitly mentions in different regulations regarding expulsions and transits that such acts are illegitimate in case of possible violations of Article 3 of the Convention.⁷⁹

What information is available with respect to the implementation of the European Community's RETURN Preparatory Action programme? What are the experiences with first common flights following Council Decision 2004/573/EC?

The first joint return flight (charter flight) from Austria, France and Poland to Armenia and Georgia took place on 12 and 13 June 2006 and proceeded without major incidents.⁸⁰

⁷⁹ §§ 48, 49, and 50 FPG.

⁸⁰ Written response of the MoI, Unit II/3/C.

4. Return Actions in Austria

4.1 Overview and General Description of Return Actions

Forms of Return

In Austria, there are two different forms of return actions: On the one hand there are coercive measures of the Aliens' Police, regulated within the Aliens' Police Act, and on the other hand there are programmes for assisted voluntary return that are not statutorily regulated.

Assisted voluntary return:

In Austria there are different programmes on voluntary return for asylum seekers and refugees who wish to return to their home countries. IOM Vienna and the Austrian Ministry of the Interior signed a Memorandum of Understanding in June 2000 on the promotion, development and establishment of programmes for voluntary return. The target groups of the general humanitarian voluntary return programme are (rejected) asylum seekers and illegally resident immigrants in Austria. Asylum seekers can be granted return counselling in every phase of their procedure. Return counselling comprises clarification of perspectives during and after closure of their asylum procedure (§ 67 AsylG 2005). This counselling service is co-financed by the MoI and by the European Refugee Fund (ERF).⁸¹ The MoI finances the costs of return, whilst IOM organises the homeward journey and provides assistance before, during and after return. At present, reintegration assistance in the home country in the form of special country programmes is offered to returnees to Afghanistan and Moldova.

The actors involved in voluntary return programmes respectively that have become active in this field are the MoI (donor), IOM Vienna (logistics and general assistance), the organisations Caritas, Verein Menschenrechte Österreich (Association Human Rights Austria), Diakonie Flüchtlingsdienst (Deaconry Refugee Service), European Homecare, Volkshilfe Oberösterreich (Volkshilfe Upper Austria), several Provincial Refugee Offices (counselling) and the UNHCR (regular exchange of information).

⁸¹ The European Refugee Fund was established with the aim to support Member States of the European Union in receiving asylum seekers, refugees and displaced people. After the first phase from 2000 – 2004, the fund was prolonged for the period of 2005 to 2010 in December 2004. Since 2005, the European programme RETURN has been active and finances the preparatory measures for return management (for more information see http://ec.europa.eu/justice_home/funding/return/wai/funding_return_en.htm, accessed in July 2006).

Forced Return:

Actors involved from the expulsion order to de facto deportation

As already mentioned, the Aliens' Police is responsible for measures in the field of forced return, thus for expulsion, imposition of detention pending deportation and de facto deportation. As soon as the Aliens' Police issues an expulsion order, as described in Chapter 3, the person is placed under detention pending deportation by the same authority. Since the late 1980s, human rights organisations, clerical, charitable and social institutions took on the task of visiting persons pending deportation arrested in the 18 existing prisons, caring for them and supplying them with necessities (cf. Verein arge-Schubhaft 2006: 25). After negotiations were conducted between NGOs (Zebra, Diakonie, Caritas, arge-Schubhaft, SOS Mitmensch, Volkshilfe) and the Ministry of the Interior in the mid 1990s in order to achieve improvements in detention conditions, the first treaty on care in detention pending deportation "*on the regulation and establishment of Austria-wide care in detention pending deportation*" entered into force on 1 January 1998. Care in detention pending deportation is, according to § 1a of the Anhalteordnung (Stoppage in Transitu Decree)⁸² "*an active aid institution bound by contract to the Ministry of the Interior to the care for aliens in detention pending deportation.*" Through those treaties, on the one hand the care for all persons in detention is secured, on the other hand the work of NGOs is financially secured; furthermore, authorities are obligated to intensified cooperation with NGOs (arge-Schubhaft 2006: 26). The activities of care in detention pending deportation include the provision of relief supplies, information of detainees on their legal situation (e.g. the asylum procedure)⁸³, getting into contact with relatives, support in crisis situations, assistance with medical problems, preparation for pending deportation or release and activities for the improvement of the conditions of detention (libraries, movies, German courses, sports equipment, etc.).

While in the first year eight different organisations in Austria were assigned responsibility of the care in detention pending deportation, in the meantime some of their treaties were

⁸² BGBl. II No. 128/1999, as amended BGBl. II No. 439/2005.

⁸³ The question of legal counselling in detention pending deportation was an issue from the beginning. Yet, in the year 2000 the sentence "*Legal counselling and legal assistance of the attended detainees pending deportation is not an aim of care in detention pending deportation*" was included in the treaties (arge-Schubhaft 2006: 26, own translation). In order to still guarantee legal support to the detainees, legal assistance is indeed not conducted directly by the organisations conducting care in detention pending deportation, but legal assistance is being procured. Furthermore, the organisations are bound by contract to the "*participation in the contact dialogue of the escorting civil servant with the person to be deported (...), at any rate in cases of problematic deportations*" (ibid. 27, own translation).

cancelled and the task was assigned to Verein Menschenrechte Österreich (arge-Schubhaft 2006: 27-28). By 1 January 2006 only the four organisations Caritas, Diakonie Flüchtlingsdienst, Deaconry Carinthia and Verein Menschenrechte Österreich are active in the attendance of detainees pending deportation.

Executives of the public security service conduct the *de facto* deportation. Since the death of the Nigerian asylum seeker Markus Omofuma on 1 May 1999, who suffocated on the airplane while being deported, special directives were introduced: Deportations by airplane are only conducted by specially trained bodies of the public security service after a medical examination of the deportee and a meeting between the deportee and the escorting personnel (in order to enhance mutual trust). The executives of the public security service are furthermore trained in legal issues relevant for deportations, as well as in appropriate use of physical strength, first aid and basic English. On charter flights the deportee is accompanied by the executive of the public security service, by a medical doctor and by an independent human rights observer (Günter Ecker of Verein Menschenrechte Österreich).⁸⁴ This observer ensures that the execution of the deportation complies with human rights standards. He takes part in the meeting between deportee and the responsible executive, undertakes assistance tasks (luggage, inform relatives), observes pickup and transfer to the airport, and case-by-case also takes part in the flight and observes the handing over of the deported person to local authorities in the country of destination.⁸⁵ In the meantime, the mandate has been extended to include the phase before the flight, which is, according to Günter Ecker, even more difficult than the deportation itself.⁸⁶ According to his statement, every year approximately six charter deportations are conducted, which he calls “problematic deportations”⁸⁷.

⁸⁴ Information of the MoI I/III/3 on query made available in written form on 13 January 2004.

⁸⁵ Attendance of the flight is only accomplished under the precondition that there is enough space on the airplane. As persons deported by charter flight are included in the “monitoring of measures terminating a sojourn,” eventual incidents can be determined.

⁸⁶ On the website of “Verein Menschenrechte Österreich” the tasks and the exact monitoring process of the observer is described as follows: “*The human rights observer has the task of monitoring the accomplishment of the deportation by charter flight in all its phases, especially focussing on incidents concerning human rights and to compose a separate record. He takes part in the contact conversation between detainee pending deportation and the personnel of EKO-COBRA in the prison. He observes the pickup of the detainees pending deportation of the prison and their transfer to the airport. The observer takes part in the flight and monitors the handing over of the deported person to the local authorities in the country of destination. The human rights observer shall give the detainees pending deportation the security that they will not be treated inadequately to the exclusion of the public. The escorting executives shall be protected by the human rights observer of unjustified accusations of violations.*” (own translation)

Cf. http://verein-menschenrechte.at/cgi-bin/index.pl?MAIN=index.html&MENU=menu1.html&NEWS=news1.html&DATA=../diverz/menschenrechtsb_eobachter.html (accessed in May 2006).

⁸⁷ The Human Rights Advisory Board defines problematic deportations as deportations “*during which it can be expected that the deportee will resist due to certain problems.*” (MRB 1999: 5).

Costs of return actions

As the distinct security agencies in charge of conducting tasks of the Aliens' Police mainly take over the costs, and due to different forms of implementation of returns, it is not possible to give precise information on the costs. The deportations are either carried out by air, which is very cost-intensive (especially in the case of charter flights, in other respects the costs conform to tariffs for plane tickets of scheduled flights, whereas they have to be bought for the deportee as well as for the escorting team), or the deportees are transferred directly to the border in the framework of deportation transports.⁸⁸

Evaluations and best practices of return actions

So far there is no systematic and comprehensive evaluation of voluntary return actions in Austria. Yet, from March 2004 to February 2005 Asylkoordination conducted an evaluation of voluntary return to Afghanistan, Bosnia and Kosovo in the framework of the project “*Increasing Refugee Participation in the Field of Voluntary Return*” (SHARE 2) in cooperation with the European Council on Refugees and Exiles (ECRE). In the framework of this explorative study, co-financed by the European Refugee Fund, project trips were undertaken to the respective countries, and returnees from Austria were interviewed. Furthermore, interviews were conducted with refugees from Afghanistan and Bosnia who stayed in Austria. Besides individual cases, the reports contain recommendations for future return projects. In the interviews many returnees expounded that the *push factors*, in the sense of perceived lack of aims and perspectives in Austria, were more decisive than possible *pull factors* in the country of origin.

According to the evaluation, the individual sustainability of return to Kosovo is estimated to be significantly lower compared to returns to Bosnia, as the majority of interviewed Kosovars expressed re-migration intentions due to their difficult economical situation (unemployment, risk of poverty, etc.). Yet, the returnees who were interviewed differed significantly in their age: While the Kosovars were in an employable age, the interviewed Bosnians were consistently older persons (62 years and older). Among the recommendations mentioned in these reports are an expanded concept of security that would, besides the ending of fighting, consider also long-term survival possibilities, and the possibility to work or complete an education in the host country. Furthermore, the concerned persons should be given enough time for preparation. It also seems useful to undertake exploration trips in order to gain insight

⁸⁸ Written response of the MoI, Unit II/3/C.

on the actual conditions in the respective municipalities.⁸⁹ Concerning a successful reintegration, the stronger control of application of funds in the countries of origin, the involvement of local initiatives and impartial NGOs, the granting of scholarships for education, the promotion of investments on the part of the diaspora as well as systematic aftercare operations are named as important factors, among others (cf. Asylkoordination 2005a, 2005b, 2005c).

Caritas also conducts project trips to different countries in the framework of its project “Return Assistance”. Those journeys are of an evaluative character, as the situation of returnees is surveyed and returnee families are visited.

From 2004 to 2005, IOM Vienna and Budapest conducted a pilot project, financed by ARGO, that served the exchange of experiences on national return practices of some selected countries of the enlarged European Union and Romania, and the selection of models of best practice (with the assessment of individual national solutions).⁹⁰ This project included assisted voluntary return as well as forced return. In the scope of assisted voluntary return, the Austrian model of return and reintegration of unaccompanied minors is mentioned as best practice example for cooperation with countries of origin (IOM 2005: 54). In Austria, the return of minors is carried out according to the UN convention on the rights of the child (article 3 (1)) and according to the directives of UNHCR on return of unaccompanied minor refugees. Handing minors over to the responsible authorities or to the parents/legal guardians in the country of origin is the central task of the return. For the organisation of such a return by IOM, a written statement testifying that the minor will receive adequate assistance for reintegration by the family and/or by social institutions in the country of origin is required (cf. IOM 2004f).

Furthermore, the “*monitoring of measures terminating a sojourn*” conducted by Verein Menschenrechte Österreich is named as the only monitoring system in Europe so far (IOM 2005: 112ff). This instrument, deployed since 2003, is a short-term monitoring tool which serves, in the first place, as a revision of the return (no integration monitoring). The returnees are interviewed either a few days after their deportation or their voluntary return per telephone

⁸⁹ In this context it is pointed out that in May 2006 a Fact Finding Mission to Kosovo was organised by the Bundesasylamt (Federal Asylum Office) that also dealt with questions of return.

⁹⁰ Government representatives and experts from Austria, the Czech Republic, Germany, Hungary, the Netherlands, Poland, Romania, Sweden, Slovakia and Slovenia were involved. Additionally, Switzerland took part as observer in the scope of forced return.

or directly after their arrival by a local NGO.⁹¹ Questions refer to the homeward journey, conduct of the executives in case of an escorted deportation, possible difficulties with entry, and their first days and current plans in the country of origin. Besides this monitoring, since 2001 an independent human rights observer escorts “problematic deportations” carried out per charter flight. Both measures serve to monitor the Austrian deportation practice, reveal possible human rights problems and can be taken as basis for improvements in the ambit of forced return.

In Austria, the Human Rights Advisory Board systematically evaluates the imposition of detention pending deportation in the context of forced return. In its 2005 annual report, medical assistance and the partially poor conditions in detention pending deportation are pointed out as the main deficiencies.⁹²

Positive aspects of return

In discussions on the harmonisation of European return policies it is repeatedly emphasized that preference should be given to voluntary return for humanitarian reasons.⁹³ Actors involved in Austrian return actions have a similar perception. Voluntary return, which Caritas calls a “return in dignity”, allows people to determine for themselves how they want to carry on with their lives.⁹⁴ Voluntary return is an alternative to illegality or to deportation, and thus offers a way out of a residence without perspectives in Austria.⁹⁵ The voluntary decision and the possibility given to prepare return in the sense of a clarification of perspectives in the home country, in contrast to a situation of deportation, enhances the efficacy and sustainability of return⁹⁶ (cf. also Caritas 2005). Combined with adequate measures for integration aiming at structural integration in the home country, voluntary return proves to be the more effective alternative to forced return in the long run.

⁹¹ Verein Menschenrechte Österreich cooperates with local NGOs in the countries Georgia, Moldova and Nigeria. In case of deportation, approximately 50 % of the expelled persons who were already attended by Verein Menschenrechte Österreich in the framework of detention pending deportation can be reached by this monitoring

(interview with Günter Ecker, Verein Menschenrechte Österreich, on 18 May 2006, hereafter “interview with Verein Menschenrechte Österreich”).

⁹² Until summer 2006, a working group of the Human Rights Advisory Board on “The Ceesay case – death in detention pending deportation“ was in place; furthermore, in 2005 a report was published on “Conditions in prisons of the security authorities” (see <http://www.menschenrechtsbeirat.at> for more information).

⁹³ Cf. http://ec.europa.eu/justice_home/fsj/immigration/policy/wai/fsj_immigration_policy_de.htm (accessed in May 2006).

⁹⁴ Written response by Caritas.

⁹⁵ Written response by Verein Menschenrechte Österreich.

⁹⁶ Written response by Caritas.

Positive aspects cannot only be identified for returnees, but also for the host country: Voluntary return means avoidance of coercive measures by the police⁹⁷ and contributes to a controlled migration management⁹⁸ as well as to a comprehensible return. Furthermore, voluntary return is cheaper and faster than the implementation of coercive measures⁹⁹.

With regards to the countries of origin, it is often pointed out that returnees (can) make a positive contribution to the development and the reconstruction of the respective countries. This applies especially when the potential and skills of returning professionals is used, or when returnees invest the specific capital they acquired in the receiving country (e.g. financial means, language skills, vocational experience or social capital) appropriately in the home country.¹⁰⁰ With regards to this topic, Peter Logar, refugee coordinator of the provincial government of Tyrol, observes positive side effects of a residence in Austria, concerning for example the learning of certain operational procedures or concerning the position of women in society.¹⁰¹

4.2 Voluntary Return

Main motives for voluntary return

Surveys show that a complex interplay of diverse factors affect the decision to return (cf. Black et al. 2004). Factors can be found in the receiving countries as well as in the countries of origin.

Among the most important reasons are private/family reasons, such as homesickness, separation from the family, illness and/or death of relatives in the home country. The lack of perspectives resulting from insecurity and the duration of the asylum procedure as well as the difficult living conditions for asylum seekers in Austria are named as important motives for return by all actors involved in return counselling. European Homecare explains the situation

⁹⁷ Written response by Verein Menschenrechte Österreich.

⁹⁸ Written response by Caritas.

⁹⁹ Written response by Verein Menschenrechte Österreich.

¹⁰⁰ Objections have yet to be raised against a simplified perception of the relation between return migration and development, as in many cases migration is connected with dequalification. Migrants often only do unqualified jobs; specific groups of persons such as asylum seekers have no access to the labour market at all. Highly qualified returnees, in contrast, often cannot apply their potential adequately due to a lack of employment opportunities. There are different factors that determine whether returnees manage to re-integrate and whether their return has a positive effect on the economic and social development in the respective countries. Besides the individual character of the returnees, the causes and forms of migration, the institutional and social framework in the countries of origin, the situation of the migrants in the receiving countries and the quality of return preparations are crucial (cf. country report Germany, <http://www.reintegration.net>).

¹⁰¹ Interview with Peter Logar, Flüchtlingskoordination Tirol (refugee coordination Tyrol), on 22 June 2006.

as follows: “*There are many reasons why they want to return, for one thing because they are residing illegally, their asylum application was rejected, they have no pocket money, no job, no future. Thus, they are almost forced to make use of voluntary return*”¹⁰² (own translation). Motives for return at the structural level not only concern Austria as a receiving country but also the countries of origin themselves: An improvement of the political and economical situation and the termination of asylum relevant reasons can be an important motivation for voluntary return.

Obstacles to voluntary return

In the written survey the majority of actors involved considers actions of the Aliens’ Police – especially imposition of detention pending deportation – a significant obstacle to voluntary return. According to Verein Menschenrechte Österreich, the Aliens’ Police partially still refuses approval of voluntary return if it involves a) an asylum seeker in the Dublin procedure (return to the responsible Dublin State is partially preferred), or b) a foreign criminal offender with a perennial prison sentence (deportation is preferred).¹⁰³

Besides prison sentences, pending court procedures constitute other obstacles to the homeward journey. Trials of minor dimension are handled faster when deportation is imminent than in cases of voluntary return, which according to Caritas constitutes a discrimination (written response).

All actors describe the difficulties in obtaining return certificates and the long process of checking the identity of clients willing to return before the issuance of the necessary documents as further obstacles. Beyond that, some aspects in the home countries limit the possibility of voluntary return, such as military and political conflicts, lack of security, a bad economical situation and a lack of future perspectives.

Generally speaking, it is emphasised that voluntary return would stigmatise less than forced return. In the interview¹⁰⁴ with Iva Petkova of Volkshilfe Oberösterreich, she nevertheless mentioned that the opposite may also be the case. In her opinion the topic of stigmatisation contains a gender-specific element: She has often heard that in practice single women, who want to return voluntarily, are confronted with the allegation that “*they are no good as women as they did not manage to get to know a man and be able to stay*” (own translation). Women

¹⁰² Written response by European Homecare.

¹⁰³ Verein Menschenrechte Österreich, offering voluntary return counselling in prisons in Vienna, Lower Austria, Upper Austria, Salzburg and Tyrol, prompts in this context parole for foreign criminal offenders with documented willingness to return (Interview with Verein Menschenrechte Österreich).

¹⁰⁴ Interview with Iva Petkova, Volkshilfe Oberösterreich, on 29 May 2006.

would suffer under this stigma and thus prefer forced return, as in this case at least they could argue, “*I got caught and now I am here. This has nothing to do with me nor with my female attributes or me as a woman. I am, so to say, a victim of the police*” (own translation).

In order to minimise this stigmatisation in cases of voluntary return, according to Iva Petkova, information campaigns in the respective countries of origin would be necessary.

Caritas broaches the issue of societal conditions that have an impact on return in the Austrian country report for the *European Reintegration Networking*. The fact that the access to the Austrian labour market and to education is highly restricted for asylum seekers, limits the possibilities of acquiring specific capital in the form of qualifications and vocational experience in the framework of migration in Europe. The lack of access to the labour market prevents the concerned persons from bringing savings to the home country, which would facilitate setting up a business in the country of origin (cf. Bader/Krön 2002: 18).¹⁰⁵

Established procedures for voluntary return

The Asylum Act 2005 regulates voluntary return in cases of asylum applicants. The applicant has the right to return counselling at any stage of the asylum procedure. If the applicant decides (regardless of whether the procedure ended or will end positively or negatively) to return voluntarily, return assistance will be granted.¹⁰⁶ Provided that the person is in need, the return assistance comprises at least the travel costs.¹⁰⁷ According to the Basic Welfare Support Agreement (Grundversorgungsvereinbarung), the basic care for asylum applicants with regard to voluntary return consists of return counselling, travel costs and a lump sum.¹⁰⁸ The implementation of these activities can be carried out by social or church organisations.¹⁰⁹ The maximum amount of pocket money for voluntary returnees is € 370.- and the travel costs are limited by the costs fixed by IOM. IOM organises the voluntary return from Austria (i.e.

¹⁰⁵ The causal connections with the system mentioned by Caritas are approved by a study undertaken by Asylkoordination. A repeated concern expressed by the returnees to Afghanistan interviewed in the framework of this study refers to “*the problem of returning with empty hands. After all, enormous sums had been invested in getting to Europe and it is not believable both for family and friends that there is no financial return at all.*” (Asylkoordination 2005c: 4, own translation).

¹⁰⁶ § 67 AsylG.

¹⁰⁷ § 12 Basic Welfare Support Act 2005, BGBl. I 405/1991 as amended 32/2004.

¹⁰⁸ Art 6 Basic Welfare Support Agreement.

¹⁰⁹ Art 3 (5) *ibid.*

escorts, bookings, disbursing the pocket money, etc.) according to a Memorandum of Understanding with the Federal Ministry of the Interior.¹¹⁰

Illegal residents in Austria usually receive an order to leave the country, which puts them into the situation that, in case that the order is non-appealable, they are obliged to leave the country immediately.¹¹¹ Yet these forms of “voluntary departure” are not counted as cases of assisted voluntary return as described in this study. In case the alien has the right to visa-free entry into Austria, he/she needs a special permit to do so for the period of one year from the day of leaving the country.¹¹²

Sustainability of voluntary return

Sustainability of voluntary return is seen as *the* criteria for the success of a return project. But in spite of this great importance of sustainability, return activities in Austria are not evaluated at all, or if so, then only unsystematically.¹¹³ Moreover, it is not quite clear which definition of sustainability prevails in Austria.

Due to the lack of information, the actors involved in return counselling were interviewed on their perception and assessment of sustainability in the framework of a questionnaire on voluntary return.

Thus, it could be determined that the majority of actors referred to a quite narrow definition. In this sense return is sustainable “*if somebody returns home in order to stay there effectively and does not leave the country again*” (written response by the Provincial Refugee Office Carinthia, own translation). For Caritas it is not that important to “stay put”, they rather speak of sustainability: “*If people can find their bearings in the country of destination in the long run and establish their basis for livelihood. This means a longer-term coverage of basic needs (provisions, accommodation, and medical care)*” (written response by Caritas, own translation). The interviewed actors assess sustainability of return in different ways. Two of the actors who were interviewed stated that they could not appraise sustainability, as on the one hand there is no possibility of comparison with other return programmes, and on the other hand returnees are not accompanied to their home countries and thus it is not possible to

¹¹⁰ Memorandum of Understanding between the International Organization for Migration and the Federal Ministry of the Interior of Austria on cooperation in the field of humanitarian voluntary return of migrants, 14 June 2000.

¹¹¹ § 67 FPG.

¹¹² § 73 FPG.

¹¹³ One exception is the evaluation by Asylkoordination mentioned above. In light of the big spectrum of potential return countries or of the fact that returnees can come from different regions within a country, it becomes apparent that the evaluation of sustainability results in some problems.

spend a longer period of time with them (written responses by Verein Menschenrechte Österreich and the Provincial Refugee Office Carinthia).

European Homecare appraises the sustainability of return as positive (written response by European Homecare). Caritas comes to a similar result: The sustainability of their Return Assistance Project, which is identified as “*very good*,” is based on the clients’ possibility of taking the decision to return actively and voluntarily.¹¹⁴ Sustainable return is only possible “*if perspectives are discussed and the realisation of these perspectives is already initiated during the counselling*” (written response by Caritas, own translation).

Also, other actors call “*targeted information of those willing to return*” (written response by European Homecare, own translation) in the sense of “*discussing all advantages and disadvantages in Austria and in the home country as well as possible future perspectives*” (written response by the Provincial Refugee Office Carinthia, own translation) a very important measure for facilitating sustainability.

When interviewed on further necessary measures for the improvement of sustainability, the majority emphasised the importance of enhanced return assistance in the home country. According to Peter Logar, refugee coordinator for Tyrol, sustainability of voluntary return can only be assured by adequate local development aid (interview with Provincial Refugee Office Tyrol).

In this context, Verein Menschenrechte Österreich recommends the implementation of projects on education, employment and business formation “*that bind returnees in the country of origin for a certain time. Financial means should not be paid out as a single payment after return, but should be allocated over a certain period of time, for example according to the duration of an educational measure*” (written response by Verein Menschenrechte Österreich, own translation).

According to Caritas, returnees should have the possibility already in Austria to attend vocational training that could be useful after return. It would also be necessary “*to establish contact centres in the home countries where qualifications can be accredited, employment can be found and education can be pursued, etc*” (written response by Caritas, own translation). Peter Logar suggests longer-term support and attendance of returnees in their countries of origin for a period of two to three years.

Furthermore, sustainability could be influenced positively by the possibility to bring more luggage (written response by Caritas).

¹¹⁴ In the assessment of sustainability Caritas can make use of experiences of project trips, where returnees are questioned on their situation, as well as of feedbacks of clients.

4.2.1 Information Campaigns

In Austria, the dissemination of information is effected in different ways. The multidimensional approach comprises concrete information work by IOM on the one hand, and by return counselling organisations on the other hand. Return counselling organisations are supplied with relevant information by IOM. Brochures and posters on general return programmes as well as on country programmes are distributed. Furthermore, IOM organises diverse events for the dissemination of information and, in case of country programmes, releases newsletters containing up-to-date information on return modalities, socio-economical conditions in the country of origin as well as further information on possible return activities in the country.

Return counselling organisations partially disseminate their own information material (folders, leaflets, posters) to relevant offices and institutions, such as the Aliens' Police, initial reception centres and NGOs. Information folders and additional material of Caritas is available in German, English, Albanian and Russian (also in other languages on request) (written response by Caritas). European Homecare offers information material in English, Serbian, Albanian, French, Romanian, Russian, Arabic, Farsi, Urdu, Hindi and Punjabi (written response by European Homecare). Besides printed information material, return counselling organisations focus on word-of-mouth advertising. The return counsellors themselves, and in the case of Caritas also other Caritas staff working with refugees, provide potential clients with information (written response by Caritas). According to the majority of return counselling organisations, ethnic communities play a rather marginal role in concerted and systematic information work. Communication with ethnic communities results in the first place from personal contacts (written responses by Caritas). In this context, Verein Menschenrechte Österreich underlines the great importance of native speakers as counsellors: Information on successfully conducted return procedures would spread in the respective communities, and the association would be recommended within the communities (written response by Verein Menschenrechte Österreich).

4.2.2 Incentives for Voluntary Return

One of the incentives of the general assisted humanitarian return programme (AVR) is financial support. This return aid is paid out once and the maximum amount of return

assistance is set at € 370, according to the Basic Welfare Support Agreement.¹¹⁵ Until the end of 2005 and within the framework of the Caritas project “Return Assistance,” a payment of higher amounts was possible under certain circumstances. This money serves as financial bridge for the first months after arrival in the respective countries of origin. The actors involved in return counselling, except European Homecare, are of the opinion that this financial bridging is not crucial for the decision to return home. Caritas, on the contrary, emphasises that this material incentive does influence the *sustainability* of return (written response by Caritas). Nevertheless, Caritas considers that Austrian return assistance is still developable, and in this context views the cutting of maximum financial reintegration aid as problematic (interview with Caritas). Also, Verein Menschenrechte Österreich stresses that the current amount of financial return aid, ranging between € 70 and € 370, will not bind returnees to their home in the long run. For this purpose, a financial return aid in the amount of € 2,000 to € 3,000, following the Swiss example, would be necessary (interview with Verein Menschenrechte Österreich).¹¹⁶

Besides the general humanitarian return programme there are currently also specific country programmes for Afghanistan and Moldova. The returnees can participate in special reintegration measures (education and trainings, assistance with small business start-ups, etc.) in the respective countries, in addition to a single payment of initial aid. In general, the efficacy of such measures is assessed positively.

In case of voluntary return in Austria, no time limit is imposed for departure.

4.3 Forced Return

The main problems encountered with forced return

The alien is not yet willing to leave Austria voluntarily. Miscellaneous problems result from this situation that are based either on passive (e.g. hunger strike/self-injury) or on active resistance (e.g. aggressive or violent behaviour to impede deportation – if so, the pilot is not prepared to accept the transport in case of deportation by air).¹¹⁷

¹¹⁵ Persons returning voluntarily from a situation of detention (detention pending deportation, prison) can obtain maximal financial assistance of € 70. This money serves solely the purpose of facilitating the safe return to the hometown.

¹¹⁶ Günter Ecker, executive director of Verein Menschenrechte Österreich, explicitly points out that in his opinion it is not useful to pay out the whole amount of reintegration aid at once before departure or after arrival. As an alternative, the sum should be paid out in monthly instalments in order to secure a certain duration of sojourn in the countries of origin (interview with Verein Menschenrechte Österreich).

¹¹⁷ Written response by the MoI, Unit II/3/C.

Deportations cannot be carried out if the identity of the person to be deported cannot be determined. Experience shows that the acquisition of documents, for example from Indian, Armenian and Chinese nationals, lasts very long and, according to return counselling organisations, in the case of Chechnya it is almost impossible to get documents via the Russian embassy. These problems are related to a lack of cooperation of some countries of origin.¹¹⁸

Sanctions for failing to comply with a removal order

In this respect the Aliens' Police Act offers different possibilities, from imposition of detention pending deportation in order to secure deportation right up to usage of more moderate means according to § 47 leg.cit.¹¹⁹

Reasons for non-enforcement of deportation orders

There are different possibilities:

- Interdiction of deportation, forcible return or rejection at the border according to § 50 Aliens' Police Act (non-refoulement).
- Lack of travel document due to undetermined identity (the person does not possess a travel document and the preconditions for issuance of an Austrian travel document for aliens – §§ 88 to 97 FPG – are not fulfilled: In such cases the determination of identity or citizenship is attempted in the course of the procedure in cooperation with the responsible consular representation in Austria. If this is not possible, neither the issuance of a substitute travel document by the consular representation nor the return is possible. Preliminarily deportation is not possible.¹²⁰

How long do deportation orders remain in force?

According to the Aliens' Police Act, enforceable expulsions remain in force until their accomplishment. In cases of non-refoulement or in cases of a virtual infeasibility,

¹¹⁸ The Human Rights Advisory Board suggested in its mid-term report on the implementation of recommendations on the focal topics "problematic deportations" and minors in detention pending deportation (Quarter IV/2003: 11), "*to register the number and the countries of destination of 'problematic deportations' systematically and to issue statistics*". (own translation). These data should particularly enter the monthly issued Aliens' Statistic. This recommendation has not yet been implemented.

http://www.menschenrechtsbeirat.at/cms/mrb_pdf/evaluierung/2003_evaluierung_zwischenbericht_quartal_4.pdf

¹¹⁹ Written response by the MoI, Unit II/3/C.

¹²⁰ Written response by the MoI, Unit II/3/C.

deportations can be postponed for a certain period of time, in each case not exceeding a year (they can be postponed as often as necessary).¹²¹

4.3.1 Procedures of Forced Return: Ending of Illegal Stay and Removal Order

Are there any standardised procedures of forced return?

The removal order in the Austrian system is an order of the migration authority and implemented by the organs of public security¹²² (i.e. police), in case the removal is applicable or a residence ban exists¹²³. In that case, it is an independent order that is directed at the police and not the deportee. The decision for removal, which in the Austrian case is an ‘order to leave’, can theoretically only be given at the same time if the order to leave is non-appealable and therefore has no suspensiveness. The suspension of an appeal can only be denied a priori in *ordre public* cases or cases of national security.¹²⁴

Which procedures exist in Austria in the field of the illegal stay and the obligation to leave the territory?

Procedures differ according to the reason and place an illegally residing person is apprehended. In case of illegal entry into the country (country borders, ports, airports), the police can reject the person.¹²⁵ In case the rejected alien cannot return to the country of origin immediately, the police has to secure the rejection. This could mean prohibiting the aliens from leaving the means of transport (plane, car, boat), or ordering them to get on a certain means of transport for leaving the country, or forcing them to stay in a certain place until the rejection is implemented.¹²⁶ Rejections at airports can be implemented with or without escorts, which is decided case by case¹²⁷. In case of an alien transiting Austria via the airport, and in case the transit is insecure because the alien does not possess a transit visa or the like, the transit has to be secured by the police. Securing the transit can be implemented by denying the alien entry into the transit area or by ordering the alien to remain in a certain area

¹²¹ § 46 (3) FPG.

¹²² § 46 (1) FPG.

¹²³ §§ 53, 54 FPG; § 10 AsylG.

¹²⁴ § 46 in corroboration with § 64 FPG.

¹²⁵ § 41 FPG.

¹²⁶ § 42 FPG.

¹²⁷ § 44 FPG.

until departure.¹²⁸ Aliens who entered the country illegally and who have been discovered within seven days can be forcefully rejected.¹²⁹

The procedure of issuing the order to leave the country can be initiated by the Aliens' Police or by other public authorities. The Aliens' Police's task is to oversee the legal residence of aliens in Austria¹³⁰. If the Aliens' Police discovers any illegal residence (by way of ID check, etc.), the process of ordering the illegal alien to leave the country starts. In case of negative applications to prolong residence titles, the competent authority informs the Aliens' Police of the latter¹³¹, which again starts the same procedure. The alien has the right to comment during the procedure of issuing the order to leave the country. In cases other than threat to public security, where an appeal has no suspensive effect, appeals are possible and produce suspension.

Which mandatory information does a return decision/removal order contain?

The order to leave the country is structured like an ordinary Austrian administrative decision. It contains the letterhead (the local competent Aliens' Police), date and place of issuance as well as the name of the official in charge of the file. The letterhead is followed by the file number and the subject (name, date of birth, citizenship of the person concerned). Then, the address of the person follows. This is the so-called head of the administrative decision.

The main part contains the decision, which is usually in the form of: *“According to § XY FPG, BGBl. XYZ/2005, you are ordered to leave the country. Eventually followed by: according to § 58 FPG an appeal does not produce suspensive effects. You must leave the country immediately according to § 67 (1) FPG”* (own translation).

Then, a narrative part follows elaborating in detail the grounds for the decision. The grounds are followed by the instructions about the person's right to appeal. The final part is the information about the procedures that take place in case the person does not leave the country immediately. An overview is given about forced return, the obligation of the deportee to pay for their own deportation, and the possibility of detention pending deportation.

The signature of the person concerned certifies that the decision has been handed out personally to the person, and another signature certifies that an interpreter has translated the content of the decision into a language known to the alien.

¹²⁸ § 43 FPG.

¹²⁹ § 45 FPG.

¹³⁰ §§ 2 (2), § 52 FPG.

¹³¹ § 25 NAG.

Does the return decision/removal order fix a point in time at which the removal will be enforced and does it specify the country of return?

No.

Is a translation of the main elements of the removal act/decision in a language the third-country national may reasonably be expected to understand provided?

Yes, the authority provides oral translation.

Are the return decisions/removal orders subject to a suspension period (or postponement), e.g. in order to allow the migrant to return voluntarily? If so, what are the effects of this suspension period (or postponement) in terms of additional work for the judicial authority?

The alien has the possibility to file an application for suspension of the implementation of the order to leave the country during the processing of the order to leave the country. After the order is no longer appealable, such an application is no longer possible. Grounds for an application can be of personal nature, e.g. to make provisions in order to leave the country in an orderly manner. The authority has to weigh the personal interests of the alien concerned against public interests.¹³² The alien can be obliged to stay in a certain area of the administrative territory or to report regularly to the police during the suspensive period. Such obligations have to be entered into the alien's travel document.¹³³ The suspension can be revoked in certain cases (i.e. subsequent invalid grounds justifying the suspension).¹³⁴

In the case that the return decision/removal order is postponed, is the third country national provided with a specific document, a written confirmation of the fact that the obligation to leave has been postponed for a specified period?

Yes, the person and/or his legal representative are, after confirming receipt, provided with a notification on the granting of postponement of deportation or of postponement of implementation.

Are there any reasons for not issuing removal orders to third-country nationals?

None mentioned by the law.

¹³² § 67 FPG.

¹³³ § 68 FPG.

¹³⁴ § 69 FPG.

4.3.2 Detention Pending Deportation

The Aliens' Police Act (FPG) contains the most important regulations with regard to detention pending deportation and appeals against return obligations. Structurally, rules about return and detention pending deportation can be found in the FPG, whereas procedural rules on decisions to return remain in the specific categories of law (i.e. § 10 AsylG 2005 for rejected asylum applicants).

Detention pending deportation can be imposed for different reasons by administrative decisions (official ruling) of the locally competent Aliens' Police authority.¹³⁵ The most important grounds for detention pending deportation are to secure the expulsion procedure, to implement a residence ban, or to secure the transit through Austrian territories. Detention pending deportation is based on an official ruling, except for detained persons, on other grounds than illegal residence. Detention pending deportation can be continued for persons who apply for asylum whilst being kept in detention pending deportation.¹³⁶ More lenient measures can be imposed if it is assumed that the alien does not prevent an eventual expulsion and that s/he has been subject to the police identification service. More lenient measures have to be imposed on under-age minors, except when there is an indication that expulsion cannot be secured without detention.¹³⁷ More lenient measures consist of the request to take accommodation in designated rooms or buildings or in the order to report regularly to a designated police station.¹³⁸

As a general rule, detention pending deportation must be implemented in specially designated rooms of the Aliens' Police authority, with the exceptions that if such rooms are not available, or detention pending deportation is imposed right after penal detention, detention can be implemented in penitentiaries.¹³⁹ The Anhalteordnung, AnhO (Stoppage in Transitu Decree) states as a rule that persons in detention pending deportation have to be kept separately from persons who are detained on the basis of other grounds. Generally, women have to be detained separately from men and under-age minors separately from adults, except when the wellbeing of the minor requires the presence of the (adult) relative.¹⁴⁰ Detention pending deportation can be implemented after an observation phase in so-called open stations.¹⁴¹

¹³⁵ § 76 (3) FPG.

¹³⁶ § 76 FPG.

¹³⁷ § 77 FPG.

¹³⁸ § 77(2) FPG.

¹³⁹ § 78 FPG.

¹⁴⁰ § 4 (3,4) AnhO, BGBl. II, 439/2005.

¹⁴¹ § 5a AnhO.

Minors under the age of 16 can be detained if they are in good condition for their age. They have to be detained separately from adults other than their family members.¹⁴² The regular period of detention can last up to six months within a total of two years, if the citizenship or identity of the alien cannot be identified, if the expulsion or transit through/to a third country is not possible, or if the alien prevents the expulsion by physical opposition to police force. If the alien causes abovementioned grounds for failure of implementation of the expulsions, the detention pending deportation can last up to ten months within two years. In case of continuous detention for more than six months, the Independent Administrative Senate (UVS) has to review the decision every eight weeks and decide whether the reasons for prolongation of detention are still valid.¹⁴³ If this is not the case, the alien has to be released.¹⁴⁴

Would a judicial authority be needed to regularly confirm and review a detention order taken by an administrative authority?

No. The Independent Administrative Senate (§ 82 ff SPG)¹⁴⁵ decides on complaints claiming unlawfulness of detention pending deportation, arrest or detention.

4.3.3 Transport and removal measures¹⁴⁶

What methods are used for forced removals?

Forced removals are effected in attendance of specially trained executives.

Why are these methods used?

They are used to secure the actual removal on the one hand, and to secure abidance of public order and security on the other hand.

What is the success of these methods? Is success measured in terms of numbers of deportees?

With regard to “success,” it is only possible to speak of a momentary success. A successful deportation does not exclude that the person re-enters Austria illegally at a later date. Thus, success cannot be measured in numbers.

¹⁴² § 79 FPG.

¹⁴³ § 80 FPG.

¹⁴⁴ § 81 FPG.

¹⁴⁵ Written response by the MoI, Unit II/3/C.

¹⁴⁶ Written response by the MoI, Unit II/3/C.

What experiences does Austria have with respect to resistance against forced return during the transport?

Apart from individual cases of deportations by air in which the pilot refuses to undertake the transport due to heavy resistance by the alien, transports proceed relatively quietly.

Sanctions?

No – the person is retaken into detention pending deportation and the care-taking organisation is incorporated. The Aliens' Police promptly take all the measures regarding the arrangement of a new date of deportation (in particular the plane ticket).¹⁴⁷

Are there experiences with collective resistance of returnees against deportation?

See response to prior questions.

Is staff specially trained for the physical procedure of deportation?

A difference has to be made between official measures (an official procedure and at the same time assistance in detention pending deportation conducted by NGOs) and an effective deportation conducted by executives. This question can only refer to the executing escorting teams, who are trained consistently.

Are there joint training courses of staff with other Member States?

Yes, they are organised by FRONTEX.¹⁴⁸ The trainings are carried out in accordance with international and EU standards.

¹⁴⁷ Remark: In the context of a cancelled deportation, the case of Bakary J. drew public attention in April 2006: Three executives of the Vienna Police were accused of grave violations in the context of the cancelled deportation of the detainee pending deportation Bakary J. The incident took place on 6 April 2006 in the course of return from the airport Schwechat to the detention centre Hernalser Gürtel. The Vienna Office for Special Investigations assigned the case to the Ministry of the Interior, Department for Internal Affairs. The public prosecution department Vienna is investigating the case. Cf.

http://www.menschenrechtsbeirat.at/cms/index.php?option=com_content&task=view&id=230&Itemid=196 (accessed in June 2006).

¹⁴⁸ European Agency for the Management of Operational Cooperation at the External Borders.

To what extent are medical conditions considered in the context of forced removal and transport?

In addition to the laws there are comprehensive regulations by decrees, according to which the alien in detention pending deportation has to be permanently medically supervised, and aliens deported by air have to undergo a medical examination before the date of deportation.

How are relations with passenger carriers regulated?

Deportations by air are carried out either per scheduled flights or per charter flights. Before deportations the escorting team establishes contact with the pilot and discusses possible details.

What are the experiences with flight transports and with the IATA Guidelines on Deportation and Escort?

So far none. On 12 June 2006 the first joint charter flight with France and Poland was carried out in the framework of an EU project organised by Austria in cooperation with FRONTEX.

4.3.4 Sustainability of Forced Return¹⁴⁹

Are deported migrants registered and recorded?

No. Only legally binding residence bans and such are registered in the electronic Fremdeninformationssystem (FIS) (Alien Information System).

What are the conditions for re-entry?

The authorisation for re-entry can be granted on the request of the alien if necessary, for important official or private reasons that do not contradict reasons relevant for the residence ban and if no reason for visa denial is present. This authorisation is to also include a period of validity; conditions can also be set (e.g. re-entry only for a specific purpose).

Can a re-entry ban be shortened or prolonged for any reason?

The residence ban has to be cancelled on application or ex officio, if reasons that led to issuance ceased to exist (§65 FPG). A prolongation of a residence ban is not possible, but in

¹⁴⁹ Written response of the MoI, Unit II/3/C.

the course of a proceeding of the Aliens' Police a new residence ban might be issued, if the premises § 60 FPG are met.

4.4 Return Assistance – Return Counselling

In Austria, counselling and assistance are generally offered only for voluntary return. The following organisations are involved in voluntary return counselling in Austria:

- Caritas Austria (Coordination of the project “Return Assistance”)
- Verein Menschenrechte Österreich
- European Homecare
- Volkshilfe Oberösterreich (since spring 2005 only in single cases)
- Some provincial refugee offices

Return counselling in detention pending deportation is a special case in Austria. In the framework of such counselling, persons held in detention pending deportation are informed of the possibilities of assisted voluntary return and of the differences to forced return (cf. IOM 2005: 97). Affected persons are thus given the possibility to decide on voluntary return instead of pending forced return. In addition to their activities in general assistance in detention pending deportation, the following organisations also offer return counselling in detention pending deportation:

- Verein Menschenrechte Österreich (Vienna, airport Vienna-Schwechat, Upper Austria)
- Deaconry Refugee Service (Salzburg, Lower Austria)
- Counselling for Aliens of the Deaconry Carinthia
- Caritas (Graz, Eisenstadt, Vorarlberg)

The actors involved consider the issue of deciding on voluntary return when in detention pending deportation as controversial. While Verein Menschenrechte Österreich does not question the voluntariness of the decision to return, Caritas and the Refugee Service of the Deaconry take the stance that a voluntary decision in an “extreme situation”, such as detention pending deportation, is ultimately not possible. Christoph Riedl, head of the Deaconry Refugee Service, argues in this context: “*As detention is always a situation of*

*constraint, we do not consider the term ‘voluntariness’ appropriate in this context”*¹⁵⁰ (own translation). The Deaconry Refugee Service nevertheless conducts return counselling in detention pending deportation “*as it can help to overcome too long terms of imprisonment and the lack of perspectives*” (interview with the Deaconry Refugee Service, own translation)¹⁵¹. Caritas mentions that meanwhile only in individual cases is it possible to release detainees pending deportation who express the explicit wish to return in accordance with the Aliens’ Police, in order to conduct the process of return counselling outside detention (interview with Caritas).

Process of voluntary return counselling

Return counselling, as a bridge between the individual migrants and the general national policy on voluntary return, is crucial to ensure an informed decision on return by the migrants (IOM 2005: 38). The prototypical process of return counselling is conducted as follows:

- The option of voluntary return is addressed;
- Clarification of perspectives: Overview of the (legal) situation and chances of migrants in the receiving countries as well as possibilities in the countries of origin;
- Planning of return;
- Journey home.

The support in clarifying perspectives in the receiving countries as well as in the countries of origin plays a decisive role in the process of counselling. The planning of return implies the support of migrants in obtaining documents for the journey home, the application for absorption of costs by the MoI as well as concrete preparations of the journey in cooperation with IOM. Furthermore, the returnees are accompanied to the airport. If required, the individual return aid is paid out at the airport.¹⁵²

In the following, the activities of the respective Austrian return counselling institutions are introduced.

¹⁵⁰ With regard to voluntariness of return in general, Caritas points to restrictions arising from the Austrian and European system of asylum and aliens’ policies: “*Legal and social obstacles for integration or the completely unsecured bridging of the waiting period resulting from the asylum proceeding influence the sojourn too much. The residence is affected so much by external circumstances that the decision to go away or to go back does not entirely result from free will*” (written response by Caritas).

¹⁵¹ Interview with Christoph Riedl, Deaconry Refugee Service, on 23 May 2006.

¹⁵² Several return counselling offices pay out the individual return aid themselves, others entrusted IOM with this task.

a) *Return Assistance of Caritas (written response by and interview with Caritas)*

For Caritas, pointing out the option of returning is an integral component of any counselling activity towards aliens. For this reason, the option of voluntary return is discussed in all institutions of Caritas' aliens' assistance (counselling offices, refugee shelters, social service at the airport) as a possible option. In case of interest, the potential returnees are passed on to the respective counselling offices for return assistance of the dioceses Vienna, Linz, Salzburg, Graz, Feldkirch and Eisenstadt. The activities of the dioceses are coordinated by the central Caritas office and financed by the MoI and the ERF. The process of return counselling is carried out in four phases: First contact, decision-making, organisation and implementation of return. Caritas Return Assistance covers the following areas (Caritas 2005, www.reintegration.net):

- Clarification of legal circumstances in Austria and the target group;
- Clarification of voluntariness and the actual wish to return home as well as the possibilities¹⁵³;
- Clarification and securing of maintenance (accommodation and provisions) until date of departure;
- Development of perspectives in the country of origin (reintegration);
- Organisation of travel documents and of documents to clarify identity;
- If necessary, asylum proceedings and proceedings of the Aliens' Police are clarified;
- Application for cost absorption by the MoI for persons in need;
- Organisation of the journey home;
- Concrete preparation of the journey;
- Clarification and processing of financial support in order to facilitate a sustainable new start.

In order to ensure the quality of counselling activities, social work practice is applied (multi-perspective case work, case management), with emphasis on resource-oriented social work in the sense of an empowerment approach. Caritas also sees its duty in "*warning potential*

¹⁵³ Great importance is attached to free will. It must be avoided that non-official institutions or persons of the circle of friends and family put the potential returnees under pressure. "*If somebody wants to send back family members, the return assistance project is not the right address*" (written response by Caritas).

returnees of the actual situation in the home country. Although most of them are informed at best, the difficult living conditions often lead to whitewashing reality in the country of origin. The consequence might be to dissuade them from return, not to support their wish to return home but to support alternatives” (written response by Caritas, own translation).

Problems in the scope of voluntary return from Caritas’ point of view:

- New Asylum Act with enforced detention pending deportation;
- Return out of detention pending deportation;
- Discrimination of voluntary return compared with deportation (with regards to criminal procedures of minor degree);
- Different levels of counselling in different organisations in Austria (there are no consistent standards);
- Delays in the calls-for-proposal lead to high financial risks;
- Politically, it is more popular to conduct deportations than to facilitate voluntary return.

According to Caritas, improvements would be necessary in the above-mentioned problematic areas. The assurance of long-term financing (2 years) and the determination of Austria-wide quality standards in return counselling were voiced as central requests during the face-to-face interview. Furthermore, there should be an extra fund for cases of hardship (e.g. mentally handicapped persons) in respect to financial re-integration aid.

b) Verein Menschenrechte Österreich

According to Verein Menschenrechte Österreich, voluntary return is based on an accordant decision and expression of will of the client to return to his/her country of origin or to a secure third-country. Return counselling supports the decision to and implementation of return. The client contributes to the creation of all preconditions necessary (data of identity, contact with the embassy, procurement of travel documents...). Return is conducted without governmental coercive measures.

Verein Menschenrechte Österreich currently offers return counselling in the following areas:

- In the branch offices in Vienna, St. Pölten, Linz and Innsbruck;
- Initial reception centre West in Thalham near St. Georgen/Attergau;

- Police detention centres in Vienna, Lower and Upper Austria and Tyrol;
- Prisons in Vienna, Lower and Upper Austria, Salzburg and Tyrol.

Return counselling is offered to every asylum seeker interviewed in the initial reception centre West, and to every detainee pending deportation in detention centres of the above-mentioned provinces. Return counsellors come to see detainees in prisons if they themselves, a confidant or the prison's social service get into contact with Verein Menschenrechte Österreich. Verein Menschenrechte Österreich sees the task of return counsellors primarily in¹⁵⁴:

- Explaining the possibility of voluntary return, the procedure of return and the offered assistance;
- Assistance in filling out all forms, such as the application for cost absorption for return to the Ministry of the Interior;
- Accompanying the clients to government agencies, embassies and the like, as long as it serves return preparations;
- Organising a substitute travel document for the clients at the embassy of the home country, in case they do not own valid travel documents;
- Booking a flight in cooperation with IOM;
- Transfer of the returnees to the airport;
- Payment of the return aid according to need case-by-case.

For Verein Menschenrechte Österreich, return counselling in detention pending deportation and in prisons constitutes a Europe-wide exemplary innovation. According to Günter Ecker, executive director of Verein Menschenrechte Österreich, this area shows clear potential for development. He criticises the lack of legal regulations for release on probation of convicted alien criminals, who have no further right to residence in Austria, if their willingness to return is documented accordingly. Legal regulations should be created that allow the release on probation of a convicted alien criminal under the condition that s/he will leave to the country of origin or to another country with the corresponding residence title, and that a re-entry in Austria infringing the conditions imposed would make the imprisonment set on probation valid again.

¹⁵⁴ <http://verein-menschenrechte.at> (accessed in May 2006).

c) European Homecare (written response by European Homecare)

Since 1 May 2004, the initial reception centre East is located in Traiskirchen, Lower Austria. At the beginning of their asylum-seeking process at the initial reception centre East, asylum seekers are told of the possibility of return counselling, conducted by the private company European Homecare. For European Homecare voluntary return is an opportunity to help people whose possibilities in Austria are exhausted, and who thus have no real perspectives. The Federal Asylum Office refers affected asylum seekers to return counselling. The counselling is conducted in the presence of a translator. The person is interviewed on the situation in the home country, especially on the family and the economical and political situation. The minutes of the hearing help return counsellors gain a picture of the reasons given by the asylum seeker for the asylum application. In the second phase, counsellors analyse the situation and the future perspectives in Austria jointly with the affected person. In the end of the counselling they advise the potential returnee to think about the possibility of voluntary return.

In case of a decision for voluntary return, the next steps are conducted as follows:

- The real identity is ascertained (name, first name, date of birth, country of origin);
- Application for assignation to section III/5, MoI is filed;
- Necessary forms are filled out: asylum disclaimer, declaration of voluntariness for IOM, report of the loss of the passport filed with the police, application filed with the embassy;
- Telephone call is made to the home country for relevant identity documents;
- Passport pictures;
- Appointment with the embassy is arranged;
- Transport to the embassy, application for a *laisser-passez* is filed;
- Second visit to the embassy to pick up the travel document;
- Flight is booked;
- Transport to the airport.

European Homecare calls the distribution of return counselling services across several organisations that are almost not even linked with one another problematic, as this leads to redundancies. A further problem is the long waiting periods at the embassies when the

returnee does not have any (valid) travel documents with him/her, which delays return. European Homecare suggests offering returnees more money in order to increase the financial incentive to leave. Also, thought should be given on offering those willing to return a further motivation. Adequate social aftercare should be procured in the countries of origin. European Homecare also suggests offering potential detainees pending deportation the possibility of a conversation explaining their situation and offering them assisted return already *before* they are taken into detention pending deportation.

d) Volkshilfe Upper Austria (interview)

Volkshilfe Upper Austria conducted the project “*Mobile and regional return counselling of asylum seekers in Upper Austria*” from 1 May 2003 to 30 April 2005, *funded by* the MoI and the ERF.

Although since then this project is no longer being sponsored, Volkshilfe still offers return counselling to its clients. In Iva Petkova’s opinion, due to the new Aliens’ Act Package which entered into force on 01.01.2006, it is even more important to reveal the possibility of voluntary return to the migrants. Moreover, Volkshilfe does not want to lose the know-how it acquired in this field. Yet, the financial restrictions make it necessary to limit the target group to persons possessing valid passports. Persons without this precondition are referred to Caritas Upper Austria. According to Iva Petkova, the provision of information and the aimed counselling contribute to a deliberate decision. Return counselling itself takes place in three phases: The first phase comprises the process of individual decision. When the decision is made the actual return procedure follows in phase two (forms, clarification of pending criminal procedures, application for cost absorption to the MoI, booking of the flight) and the return to the respective country of origin in phase three.

Telephone calls to relatives and friends in the countries of origin are very important for the process of decision making itself. Those willing to return are thus encouraged by Iva Petkova to get into contact and to ask directly: “*Is there still a search warrant for me? How are other returnees doing? Was anybody detained at the airport, etc.?*” Iva Petkova observes that often only men want to return, “*to wait and see if there are reactions by the police.*” For Volkshilfe the problem of sustainability is a main concern. The resources of aid organisations in the respective countries are often not sufficient to also supply returnees. Moreover, some of the returnees come from “*the provincial backwater*” where such *infrastructure* is lacking. Due to the need of returnees to return as fast as possible, they are often not very motivated to participate in educational trainings in Austria.

Also, the stigmatisation of returnees in general is problematic: *“They are considered as somebody who didn’t manage to stay in the West.”* Iva Petkova emphasizes the necessity of information campaigns in the countries of origin, as there is not enough information on the fact that only very few asylum seekers are granted asylum. Furthermore, there should be a stronger focus on cross-national surveys of the topic of return. It would also be necessary to have a secured long-term financing of return counselling projects.

e) Provincial governments of Carinthia and Tyrol

Provincial Refugee Office Carinthia (written response)

The province of Carinthia considers the fact that those affected are given the possibility to return to the social, religious and cultural environment they are used to by means of voluntary return as positive.

The Provincial Refugee Office of Carinthia describes the course of return counselling as follows: The option of voluntary return is described in the framework of a first session of counselling or when making the first contact. After discussing perspectives in Austria and in the home country, the concrete organisation of the return process begins. It is important to inform returnees as comprehensively as possible. Voluntariness means that the person concerned utters the wish to return, but still has the possibility of reconsidering that decision. The Provincial Refugee Office identifies problems with missing travel documents and the difficulties resulting from their provision. Furthermore, the fact that there is not enough country information automatically available is criticised as well as the fact that there is a lack of direct offers of supporting measures in the home country. These problems could be minimised by providing better country information and mailing lists of aid organisations in the respective countries of return as well as through the publication of return reports.

Department for Refugee Care and Ambulant Services Tyrol (interview)

According to the Tyrolean refugee coordinator Peter Logar, voluntary return will gain importance due to the Aliens’ Act Package. In Tyrol, return counselling is conducted as described below:

The return counsellor receives information from the Tyrolean refugee accommodations on persons potentially willing to return. Furthermore, it is possible to make use of return counselling in the Department for Refugee Care during the working hours. If acquisition of documents for persons without valid travel documents turns out to be difficult, the Tyrolean provincial government organises relocation to Traiskirchen, where European Homecare takes

over the further procedure of return. For all other persons, return is organised by the Tyrolean provincial government (forms, application for travel allowances to the MoI, booking of flights via IOM). In addition to the € 370 that are paid out in the scope of the Basic Welfare Support Agreement as reintegration aid, the Tyrolean provincial government offers an initial aid for returnees of max. € 500.

In the opinion of the refugee coordinator, due to the dimension of return aid at present, it is hardly possible to organise corresponding support measures in the destination countries. During the interview, the activities of the provincial government of Tyrol in Kosovo were described as exemplary: e.g. one returnee, who had to sustain a large family including his unmarried sisters, was provided with a tractor, plough and a mower. Concerning enhancing the sustainability of return, the Tyrolean federal government points to the training project *Bürglkopf*, which was designed in cooperation with the Berufsförderungsinstitut (bfi) (institute for career advancement) and which could be reactivated any time. This project would enable participants to work as qualified professionals in the metalworking field or in gastronomy after their return to their home countries.

A big problem for voluntary return is the lack of *laissez-passez*. In the opinion of the Department for Refugee Care, a central coordination office should be established that would take on the organisation of documents for the journey home for all actors involved, in order to take advantage of certain synergy effects, as for example the advantage of native speakers in the acquisition of documents. Since in Austria different organisations are involved in return counselling, overlapping due to unclear responsibilities take place in Tyrol as well. This problem could be avoided by better cooperation and coordination.

With regards to counselling itself, the Tyrolean refugee counsellor wishes for a regular provision of official information, such as the number of voluntary returnees, the number of deported persons and the quota of recognition of asylum according to the respective countries of origin. This would simplify the assessment of the chances in Austria and could be used as argumentation in the process of counselling.

When do counselling services begin?

In Austria, return counselling in the sense of an early clarification of perspectives is already possible in the first instance of the asylum procedure.

In the framework of a subsidy contract on the care for asylum seekers in special transit at the Vienna-Schwechat airport, Caritas Vienna informs of possibilities of voluntary return. Furthermore, after the first interrogation all asylum seekers are told about the possibility of

return counselling. In case of a pending negative decision in the asylum procedure, Federal Asylum Authorities refer the affected persons to return counselling organisations (cf. parliamentary query response MoI 3407/AB XXII GP.). According to the MoI, the decision whether to follow this recommendation or not is left to the asylum seeker. In principle, return counselling in initial reception centres conducted by European Homecare at the initial reception centre East (Traiskirchen) and by Verein Menschenrechte Österreich in the initial reception centre West (Thalham), is open to all asylum seekers.¹⁵⁵

Is the counselling standardised?

In Austria return counselling is conducted by different organisations. Thus, nation-wide standardised return counselling does not exist. With regard to the degree of standardisation the Caritas project “Return Assistance” is cited as example (cf. graphic 14 in Annex I). Besides the activities of counselling, data recording, which is carried out via a proper database, and reporting system are standardised as well.

Is mobile counselling available?

In Austria, mobile counselling is not offered all over the country. From May 2003 to April 2005 Verein Menschenrechte Österreich offered “*Return Counselling on Call for Asylum Seekers in Federal Care*” in the quarters of basic welfare support of Burgenland and Lower Austria.¹⁵⁶ If required, the same association visits prisoners in Vienna, Lower Austria, Upper Austria, Salzburg and Tyrol for return counselling.

From May 2003 to the end of April 2005 the Austrian Caritas centre conducted the project “*Mobile Clarification of Perspectives*”.¹⁵⁷ Other projects that were funded by the MoI and the ERF included “*Mobile Return Counselling*” (August 2003 – April 2005) by Caritas Graz-Seckau as well as “*Mobile and Regional Return Counselling of Asylum Seekers in Upper Austria*” (May 2003 – May 2005) by Volkshilfe.

¹⁵⁵ In the report “*Evaluation of initial reception centres. Amendment to the Asylum Act 2003*“ NGOs working with refugees criticise the practice of the federal asylum authorities to prompt asylum seekers in the course of the first interrogation – in many cases even before asking them about the reasons for escape – to make use of return counselling “*irrespective of the outcome of the asylum procedure,*” or to advise them to make use of return counselling after finishing the record of the first interrogation. In the view of the NGOs, it is problematic that the persons involved with decisions on asylum give the impression of being biased or give the impression of intending to make a repelling decision even before knowing the reasons for flight (cf. Forum Asyl 2004: 13).

¹⁵⁶ Verein Menschenrechte Österreich asserted that asylum seekers who were admitted to the asylum procedure and who were in basic welfare support show a very low disposition for return (written response by Verein Menschenrechte Österreich).

¹⁵⁷ In the framework of this project asylum seekers were visited in their accommodation facilities of Federal Care and NGO-refugee accommodations).

Specific programmes of assisted voluntary return

At present in Austria two country-specific programmes for assisted voluntary return are implemented. Since April 2003 IOM Vienna is commissioned with the “*Coordination of Assistance for Voluntary Returnees to Afghanistan*”.¹⁵⁸ IOM Vienna assists national return counselling offices and provides them with relevant information on Afghanistan and on the return procedure and organizes the return. All Afghan nationals who have a refugee status, are (rejected) asylum seekers or have a subsidiary or temporary protection can avail themselves of the return project. The reintegration assistance is financed by the MoI and set as follows: € 500 for a single person, € 800 for a married couple and € 100 for each child (with a maximum of € 1,200 per family).

In addition to paying out the reintegration assistance financed by Austria, IOM is also responsible for linking up the returnees to the EU-wide programme “*RANA – Return, Reception and Reintegration of Afghan Nationals to Afghanistan*,” which is funded by the European Commission. In the framework of this programme IOM Kabul provides the returnees reception assistance at the airport.¹⁵⁹ Furthermore, the RANA-programme enables all interested returnees access to reintegration measures in Afghanistan. Language and computer courses as well as vocational training (carpentry, masonry, tailoring, painting, welding, electrical installation, etc.) are offered. In order to facilitate career entry, participants receive tool kits at the end of the vocational training. Since late March 2004, IOM Kabul provides assistance for small business start-ups for returnees. This measure consists of assistance in developing a business plan as well as a non-refundable grant in the amount of maximum € 1,700 in the form of equipment, tools and materials necessary to start the business.

Until July 2006, 138 persons returned in the framework of the IOM Vienna project from Austria to Afghanistan, of whom 33 persons made use of the reintegration assistance offered by RANA.

Since December 2005, IOM Vienna is in charge of implementing the second country-specific support programme “*Coordination of Return- and Reintegration Assistance for Voluntary Returnees to Moldova*”. A declared aim of this project is the involvement of returnees in reintegration activities in Moldova in support of sustainable return. Furthermore, support

¹⁵⁸ This project will be implemented until 31 August 2006 and is co-funded by the MoI and the ERF.

¹⁵⁹ Whenever required board and lodging as well as onward transportation is organized. Furthermore, returnees receive initial counselling and information, among others on issues such as the new legal situation, health, education, mines, etc.

measures are extended also to the local population in order to reduce possible tensions between vulnerable persons from the local community and returnees, and at the same time contribute to the development of the respective community. The target group is Moldovan citizens who have the status of a) refugees b) asylum seekers or c) persons entitled to protection against refoulement. Moldovan citizens who have been convicted in Austria cannot participate in this programme. The MoI grants € 300 per returnee as direct reintegration assistance. IOM Chisinau implements reintegration measures in Moldova together with national and local project partners (among others the Ministry of Economy and Trade, Moldovan employment agencies, micro-credit institutions). Reintegration measures include language and computer courses, educational grants (e.g. tuition fees, school fees for children), vocational training and purchase of tool kits, as well as job placements in private and public enterprises. Furthermore, grants for the start-up of micro-enterprises are provided (non-refundable grants, business training, facilitation of access to micro credits, etc.).

It must be noted positively that the funding and implementation of reintegration measures of the specific support programme in Moldova is being carried out for the first time in cooperation with the Austrian Development Agency, ADA.¹⁶⁰ From April to July 2006, 33 persons returned to Moldova with this programme.

From January to April 2005, it was possible for returnees to Albania, Macedonia and Kosovo to participate in the project “*Fostering sustainable reintegration in Albania, the Kosovo and Former Yugoslav Republic of Macedonia (FYROM), by reinforcing local NGO capacity service provision to returnees.*” The target group was irregular migrants (persons with expired visas, undocumented migrants and rejected asylum seekers). Assistance for small business start-up, job placement in private and public enterprises, vocational training, computer and language courses, payment of fees for education and so forth were available to returnees. Within the framework of this project, 31 returnees to Kosovo and seven returnees to Macedonia availed themselves of the reintegration assistance.

¹⁶⁰ Linking voluntary return to development projects is regarded as an important measure in international discussions on the sustainability of return. What is desirable is that, with this pilot project, the correlation between migration and development gains increased attention in Austria as well (see for instance the international discussion on the importance of investments on the part of the Diaspora).

Experiences with post-arrival assistance

Until now, specific support structures in the countries of origin especially established for voluntary returnees from Austria hardly exist.¹⁶¹ With the reintegration measures for voluntary returnees to Moldova being funded by ADA, for the first time Austria disposes of a reintegration project with a focus on development policy. For this reason important insights in continuous development of Austrian return programmes can be expected.

The experiences gathered in the framework of the EU-funded return programme to Afghanistan (RANA) show that the reception of returnees by IOM Kabul has positive effects: IOM staff ensures a smooth procedure upon arrival and assists with airport formalities (passport and customs control). Furthermore, information relevant for returnees and counselling on the security situation, schools, accommodation, health etc. as well as, if necessary, medical checks and provision of medication is offered. Moreover, it proved useful to inform returnees about the offers of reintegration measures right upon arrival. Migrants who took the decision to return voluntarily want to close the “Chapter Austria” and return home as quickly as possible (Bader/Krön 2002: 16).¹⁶² In this phase the disposition to engage with offers of reintegration measures in Austria is reduced. But as soon as the returnees pass through the orientation phase after arrival and begin thinking about their future in Afghanistan in more detail, the demand for reintegration measures increases. This partially leads to a delayed participation in the reintegration measures offered. Return programmes should thus be designed to be flexible and allow the returnees participation in the programme within a certain period of time, as is the case with the programme mentioned above (up to a year after return). Similarly to other European country reports, returnees from Austria availed themselves of the concrete assistance for small business start-ups more often than educational and vocational training.

According to project reports, the specific experiences with the return programme described above to Albania, Macedonia and Kosovo showed that most of the Kosovars participating in the programme were satisfied with the reintegration measures provided, as the offers were very much oriented towards the clients’ interests, their qualifications and the existing

¹⁶¹ In the Austrian country report in the framework of the *European Reintegration Networking*, Caritas addresses problems with regard to assistance in countries of origin. A broad diversification of return countries and the lack of time to organise supporting measures due to the returnees’ wish to conduct return as quickly as possible are mentioned (cf. Bader/Krön 2002).

¹⁶² The majority of actors involved in return counselling named a quick return as one of the integral requirements of returnees.

possibilities in the respective region. It should be noted that reintegration measures should be tailored to the individual profile of the returnee.

4.5 Identification and Acquisition of Travel Documents

Determination of nationality and identity

In Austria, different methods are used for the determination of nationality and identity. According to a parliamentary query response of the MoI (2111/AB-BR/2005), determination of the identity of asylum seekers is carried out with specially trained security staff immediately after the application is filed at the initial reception centres. The officials carry out in-depth interviews to determine the identity. The officials can request support from the respective embassies or consulates. Furthermore, Verein Menschenrechte Österreich offers support in verification of identity to the referees of the Federal Asylum Authorities in the framework of the project “*Telephone Service Countries of Origin*”. Country experts carry out telephone conversations with the affected persons on the respective region. If doubts intensify, specialised institutes might provide language expertise.¹⁶³ According to the MoI, Unit II/3/C, special questionnaires are recently being used for the first interview. This questionnaire contains questions such as “*Where did you go to school? What were the names of your teacher and your principal?*”

The asylum seeker is fingerprinted and photographed at the latest in the initial reception centre by means of the Eurodac system, which significantly contributes to the determination of identity with the help of the Europe-wide comparison of fingerprints (2111/AB-BR/2005).

Assistance for the acquisition of relevant travel documents and financial assistant schemes to cover travel costs

In principle, voluntary returnees in Austria are responsible for the acquisition of their travel documents themselves, but the return counselling organisations, and in certain cases also IOM, offers assistance (IOM 2005: 60). In the case of voluntary return the MoI covers the travel costs.

¹⁶³ <http://www.verein-menschenrechte.at> (accessed in June 2006).

Problems of identification and acquisition of travel documents and how they are being addressed

Due to a lack of cooperation of some foreign embassies or consulates, problems concerning the identification and acquisition of travel documents might occur. Partly travel documents are not issued at all or if, only hesitantly. In this regard, Unit II/3/C of the MoI mentioned the countries Georgia, Russia, Ghana, Taiwan, Iran, China, Tunisia, Armenia and Nigeria in a telephone query. According to them, a possible countermeasure would be to negotiate readmission agreements.

Acquisition of travel documents is difficult and takes a lot of time in cases when the respective country of origin has no diplomatic mission in Austria (for example, Bangladesh and Cameroon). The return counselling organisations deplore the enormous difficulty for clients from the Russian Federation to acquire the necessary documents, especially when they come from Chechnya. Also for returnees to Uzbekistan, Vietnam and India there are (or were) undue waiting periods.

Difficulties with the issuance of passports

In the case of voluntary return passports are usually not issued but rather return certificates with temporarily limited validity (“Laissez passer”).

Informal methods

A close cooperation with the respective diplomatic missions as well as the maintenance of personal contacts to the staff of the mission are named by the actors involved in return counselling as the most important informal methods. In this context, the advantages of native speaking contact persons are pointed out. Moreover, it is helpful when contacts to the embassies are done in multiplexed form by the same persons (Interview Verein Menschenrechte Österreich).

What are the possibilities and are there actual agreements for European and/or international co-operation with respect to identification and document gathering?

Yes, partially with some third-countries, especially regarding the acquisition of return certificates as well as return itself.¹⁶⁴

¹⁶⁴ Written response by the MoI, Unit II/3/C.

Are there possibilities to return persons based on their nationality, despite uncertainty of their identity?

No.¹⁶⁵

To what extent is the establishment of a biometrically-based database on illegal, detained and physically removed people developed?

----- (no answer).¹⁶⁶

¹⁶⁵ Written response by the MoI, Unit II/3/C.

¹⁶⁶ Written response by the MoI, Unit II/3/C.

5. Bilateral and Multilateral Cooperation

In the course of the last years, Austria has begun different projects at the international level in order to support the new accession countries in their alignment to EU and Schengen standards, especially concerning border and entry controls, visa and readmission policies as well as international police co-operation. Austria signed a range of bilateral agreements with many, mainly European States, on the readmission of persons, on transborder police co-operation, on counter-terrorism, illegal drug trafficking and organised crime.

The contractual partners of readmission agreements commit themselves to readmitting persons who do not comply with entry and residence conditions of the signing country. In practice, this includes rejected asylum seekers as well as persons who crossed the border illegally coming from a signatory country.

At the bilateral level, Austria signed a number of readmission agreements with countries of origin or transit countries. Austrian initiatives for negotiations of these agreements initially concentrated on neighbouring states, but meanwhile the list of signatory states has expanded: Today it already contains 21 countries; agreements with 9 further states are intended (see below).

Overview of return-related bilateral treaties, Memoranda of Understanding and agreements with countries of origin

Agreements contracted with EU Member States:

Contracting State	Status
Belgium, Luxemburg, Netherlands	Entered into force on 1.4.1965, BGBI 51/1965
Germany	Entered into force on 15.1.1998, BGBI III Nr. 19/1998
France	Entered into force on 1.1.1963, BGBI 337/1962; negotiations for a new readmission agreement on 6/7.12.2005 in Paris, negotiations concluded (next steps: resolution by the Council of Ministers, signature)
Italy	Entered into force on 1.4.1998, BGBI III 160/1998
Estonia	Entered into force on 1.9.2001, BGBI III 202/2001
Latvia	Entered into force on 1.9.2000, BGBI III 144/2000
Lithuania	Entered into force on 1.1.2000, BGBI III 12/2000
Poland	Entered into force on 30.5.2005, BGBI III 56/2005
Slovakia	Entered into force on 1.10.2002, BGBI III 227/2002
Slovenia	Entered into force on 1.9.1993, BGBI 623/1993

Czech Republic	Entered into force on 09.10.2005, BGBl III 187/2005;
Hungary	Entered into force on 20.4.1995, BGBl 315/1995 as amended by BGBl III 25/1998

Readmission agreements concluded with third countries:

Contracting State	Status
Bulgaria	Entered into force on 30.11.1998, BGBl III 189/1998
Croatia	Entered into force on 1.11.1998, BGBl III 177/1998
Romania	Entered into force on 6.2.2002, BGBl III 27/2002
Switzerland, Liechtenstein	Entered into force on 1.1.2001, BGBl III 1/2001
Serbia-Montenegro	Entered into force on 29.04.2004, BGBl III 66/2004
Tunisia	Entered into force on 1.8.1965, BGBl 255/1965; the agreement only contains rules on the readmission of own citizens

Intended agreements:

Contracting State	Status of negotiations
Azerbaijan	Draft submitted in July 2003 – no response
Belarus	Drafts exchanged
BiH	Draft submitted in June 2005 – negotiations on 12/13.12.2005 in Vienna; negotiations concluded (next steps: resolution by the Council of Ministers, signature).
Macedonia (FYROM)	Draft submitted in June 2005 – negotiations on 23/24.11.2005 in Vienna; agreement reached with regard to contents, despite rules on readmission of third country nationals and stateless persons, invitation by Macedonia to further discussion (intended for the end of April 2006) in Skopje.
Nigeria	Drafts exchanged; first negotiations in November 2003. Meeting with the embassy in December 2004, followed by adapted versions of the agreements sent by the MoI; response still missing (internal discussions about an EU-mandate for negotiations).
Colombia	Draft submitted in March 2002 – no response
Iran	Draft submitted in July 2002 – no response
Lebanon	Positive Lebanese reaction on the draft submitted by Austria; due to political situation in Lebanon, a date for the conclusion of the agreement is not foreseeable.
Georgia	Draft submitted in June 2003 – no response (topic mentioned in talks between Austrian Foreign Minister Plassnik and Beschuaschwili on 19.01.2006).

¹⁶⁷

¹⁶⁷ Information provided by Section II/3/c of the Austrian Ministry of the Interior, 17.03.2006.

Experiences with regard to co-operation with return countries

In principle, the responsible department of the MoI as well as the diplomatic missions in Austria endeavour towards good co-operation, whereby contacts were able to be improved and intensified in recent times in particular.¹⁶⁸

Pilot projects in co-operation with countries of origin and transit

There are pilot projects with the countries Romania and Bulgaria for the already mentioned return of unaccompanied minors. The concept was developed by Norbert Ceipek, head of the crisis centre “Drehscheibe”¹⁶⁹ of the Municipal Department 11 (Municipal Department for Youth and Family) in Vienna, and provides accommodation for the children and adolescents in specially established crisis centres in Romania and Bulgaria. Until the end of 2006, 18 crisis centres will be constructed in Romania; in Bulgaria the first of three centres will be completed in September 2006 (Salzburger Nachrichten, 24 June 2006). The minors can be accommodated in these centres for up to six months. The aim is to return them to their families as quickly as possible. The staff of the crisis centre as well as of the national agency on child protection check the trustworthiness of the parents and whether the children can be committed to their care. Furthermore, actions for reintegration are taken and a regulated daily routine (e.g. regular school attendance) is secured and supervised. Within the time frame of half a year, every two months the crisis centres write a monitoring report on the current situation of the adolescents. Norbert Ceipek and his personnel conduct staff training.¹⁷⁰

IOM Chisinau conducts the already mentioned programme on “*Return and Reintegration of Voluntary Returnees to Moldova*” in close cooperation with national and local authorities. They are provided with know-how in order to enable them to continue the project on their own after the end of the project. The expansions of support measures to the local population is meant to contribute to development and poverty reduction in the communities of the returnees. Thus, the lack of perspectives in the country are combated and alternatives to a new emigration are found. By integrating and reinforcing the local structures in the

¹⁶⁸ Written response by the MoI, Unit II/3/C.

¹⁶⁹ Drehscheibe is an institution focussing on the attendance to foreign minors (often victims of trafficking in human beings), who are seized by the police when committing unlawful acts (such as theft, begging, burglary or illegal prostitution). Most of these children and adolescents are victims of criminal organisations who exploit them and force them to carry out criminal actions.

¹⁷⁰ Telephone information provided by Norbert Ceipek on 24.05.2006.

implementation of reintegration measures, their sustainability is also secured after the end of the project.

Return programmes in partnership with intergovernmental and non-governmental organisations

In Austria, the general humanitarian voluntary return programmes as well as country specific return programmes are carried out in cooperation with the MoI, IOM, miscellaneous NGOs, some provincial refugee offices and a private company. Return counselling is conducted by different NGOs, a private company and some provincial refugee offices (cf. chapter 4).

6. Conclusions

Due to the methods applied, this study is the result of a survey of already existing material combined with a self-conducted questionnaire and interviews with involved actors. This approach made it possible to show many different perspectives and to contrapose them. Due to the given template by the EMN, the returnees themselves were not interviewed; this would have provided additional revealing insights and information, and is thus imaginable for a future research project.

In Austria, return migration is a clearly underresearched area in comparison with other research topics relevant to migration. There is no comprehensive research literature on this topic that goes beyond the comparative legal situation at the EU level. Empirical research on the phenomenon of voluntary return only exists in the form of a few sociological (qualitative) surveys. As it already became apparent in the two previous pilot studies, the research work of universities in the form of master theses and dissertations on this topic seems to have the pioneering role. In future, this topic will assumedly incite more interest, as the debate on integration will gain importance when a large number of former guest-workers reaches retirement age, and thus return wishes to the home country could be realised.

The main outcomes of the study are summarized in the following points:

- Voluntary return in Austria is a relatively new field compared to other countries, such as Germany, and is hardly perceived by the public.
- IOM statistics of voluntary return programmes since the year 2000 show that the number of voluntary returns has been increasing, while the number of forced returns is decreasing. This can be explained in the remarkable reduction of asylum applications, but it is partially also due to the fact that, since 2004, voluntary return is also possible from detention pending deportation.
- Since the new Aliens' Act Package entered into force in January 2006, persons are increasingly placed under detention pending deportation. Return counselling in detention pending deportation and in prisons has been on the rise since 2006 and is carried out by various organisations.

- The precedence of voluntary return vis-à-vis forced return is not determined by law, although it is generally considered to be more humane and less cost-intensive.
- Due to these developments, voluntary return programmes will gain more importance in future. The creation of a financial and institutional basis exceeding mere project work and financing would be necessary for a long-term establishment of the existing programmes. The development of unified standards concerning voluntary return as well as forced return is related to that, as there are different working methods in the regions and among the actors involved.
- Important obstacles for return in general include difficulties in the acquisition of documents. Some countries may pose problems for different groups of persons (such as Chechens) and delays might occur.
- Contrary to the view that voluntary return can avoid stigmatisation of forced return, experiences of return counselling offices showed that the contrary might occur and that voluntary returnees can be seen as “losers” at home.
- When a person made the decision for voluntary return, s/he usually wished to return as quickly as possible, which generates a time pressure that might make it difficult to organise adequate support measures on site.
- Concerning sustainability of return, a systematic evaluation of return activities would be revealing. The integration of reintegration activities for returnees in the countries of origin, such as they exist for the return projects in Afghanistan and Moldova, is an important step for the creation of effective sustainability. National institutions and the local population are also involved in order to enhance effectiveness. In this context, the first project partnership with the Austrian Development Agency in the case of reintegration assistance following voluntary return to Moldova should be mentioned.

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Annex I: Statistics

Table 1: Returnees within the General Humanitarian Return Programme of IOM Vienna 2000-2005

Year	Number of returnees
2000	194
2001	355
2002	878
2003	1.063
2004	1.158
2005	1.406

Source: International Organization for Migration (IOM) Vienna

Comments:

IOM Vienna organises the voluntary return of asylum applicants, whose claims on granting the refugee status have been rejected, of persons who do not have a residence permit and are requested to leave Austria, as well as of asylum applicants who withdraw their asylum application. The return is organised at the request of return counselling centres and financed by the Austrian Federal Ministry of the Interior (MoI).

Chart 1: Voluntary return organised by IOM Vienna 2000-2005

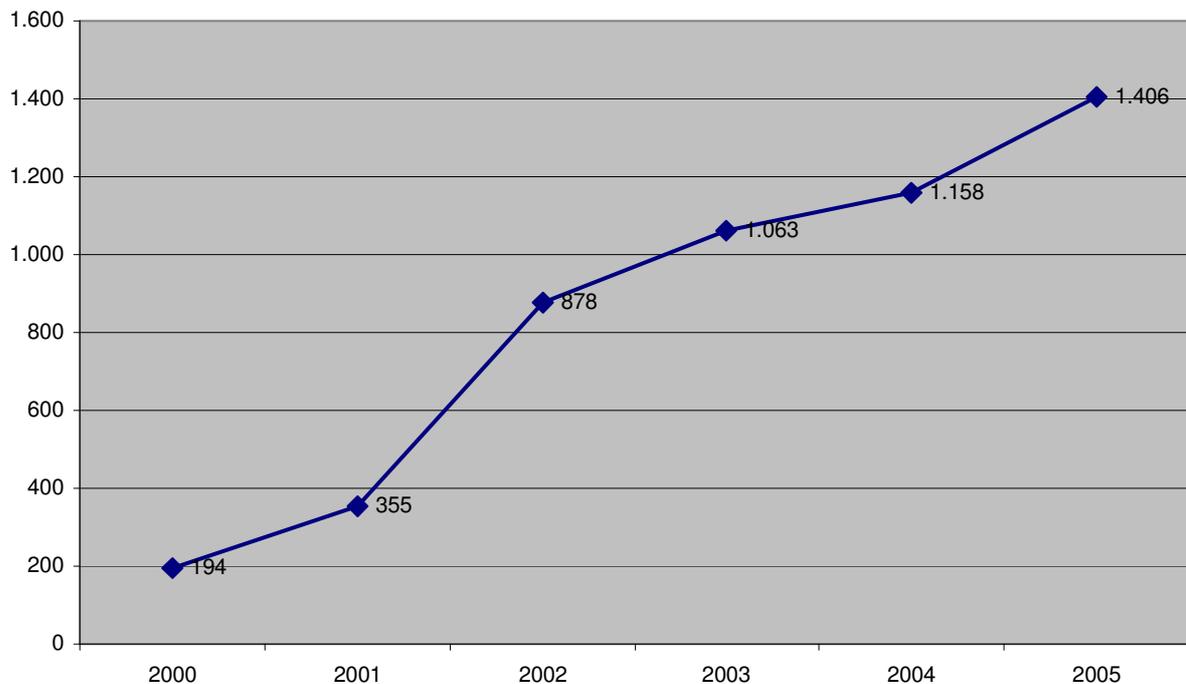


Table 2: Returnees within the General Humanitarian Return Programme of IOM Vienna 2004 by destination country

Destination country	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	TOTAL 2004
Serbia & Montenegro	12	17	10	12	13	16	21	19	23	12	15	18	188
Georgia	14	6	12	10	7	12	11	24	13	13	11	28	161
Turkey	3	22	13	7	11	15	8	8	9	4	5	10	115
Moldova	11	8	5	2	4	6	7	5	8	12	13	12	93
Armenia	8	2	9	12	2	8	3	11	5	3	4	12	74
Russian Federation	7	3	3	3	3	8	3	6	4	1	1	6	47
Afghanistan	14	9	6	8	3	1	6	2	2	1	1	2	47
Ukraine	5	1	1	8	2	3	2	6	4	3	3	6	44
Nigeria	11	4	1	1	4	2	4	6	6	3	2	5	43
Macedonia	4	4	1	1	4	4	5	4	4	2	3	5	41
Other	34	18	25	27	15	27	19	29	26	28	21	36	305
Total/Month	123	94	86	83	66	102	86	114	104	81	79	140	1.158

Source: International Organization for Migration (IOM) Vienna

Table 3: Returnees within the General Humanitarian Return Programme of IOM Vienna 2005 by destination country

Destination country	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	TOTAL 2005
Serbia & Montenegro	10	13	27	28	21	11	32	27	20	35	42	40	306
Georgia	19	17	4	17	5	21	7	13	9	5	3	11	131
Turkey	6	17	9	8	8	2	10	8	13	7	2	9	99
Belarus	5	7	3	9	10	8	12	9	3	12	3	11	92
Moldova	6	6	7	3	3	8	12	3	5	5	31	3	92
Romania	1	1	4	8	16	8	9	11	5	12	3	7	85
Ukraine	7	4	9	1	3	11	5	10	5	5	13	8	81
Bulgaria		9	7	3	8	5	2	3	5	4	7	2	55
Nigeria	7	4	5	3	5	5	6	1	9	4	5	1	55
Mongolia	3	7	9	4	5	33	2	7	3	2	8	2	52
Other	22	27	30	20	29	33	24	37	30	35	40	31	358
Total/Month	86	112	114	104	113	112	121	129	107	126	157	125	1.406

Source: International Organization for Migration (IOM) Vienna

Chart 2: Returnees within the General Humanitarian Return Programme of IOM Vienna 2004 by destination country

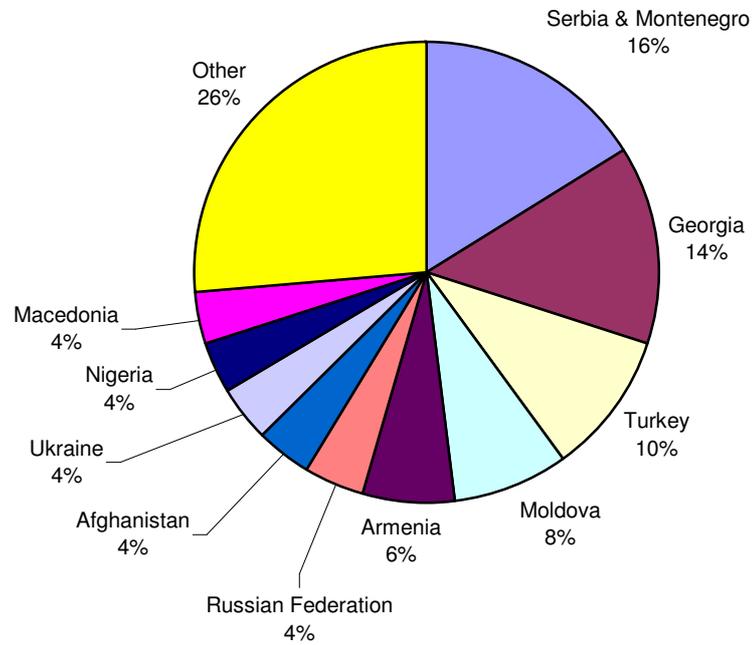


Chart 3: Returnees within the General Humanitarian Return Programme of IOM Vienna 2005 by destination country

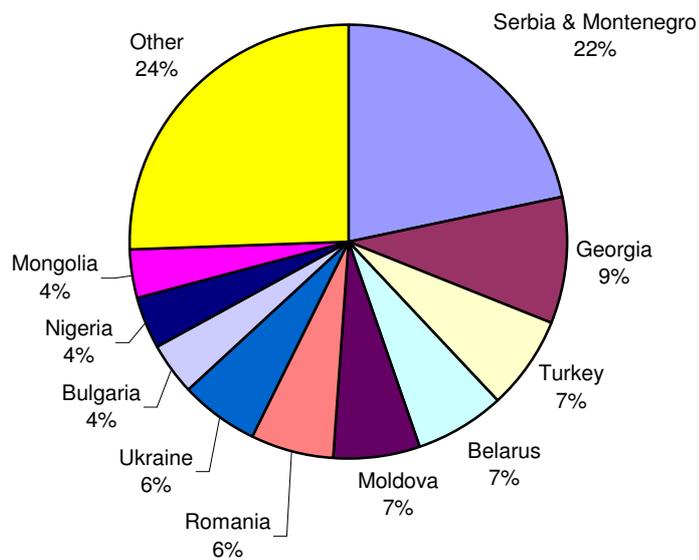


Table 4: Returnees within the Return Assistance Programme of Caritas 2000-2005

Year	Number of Returnees
2000	658
2001	429
2002	770
2003	761
2004	664
2005	709

Source: Caritas

Table 5: Returnees within the Return Assistance Programme of Caritas 2005 by destination country

Destination country	Number of Returnees
Turkey	88
Serbia and Montenegro*	83
Georgia	81
Kosovo*	59
Belarus	55
Moldova	40
Ukraine	38
Nigeria	35
Macedonia	27
Mongolia	26
Other	177
TOTAL	709

Source: Caritas

Comments:

* Because of its significance as return destination, Kosovo is listed separately.

88% of the returnees who were assisted by Caritas, returned with the help of IOM; therefore, these persons also appear in IOM statistics.

Chart 4: Returnees within the Return Assistance Programme of Caritas 2000-2005

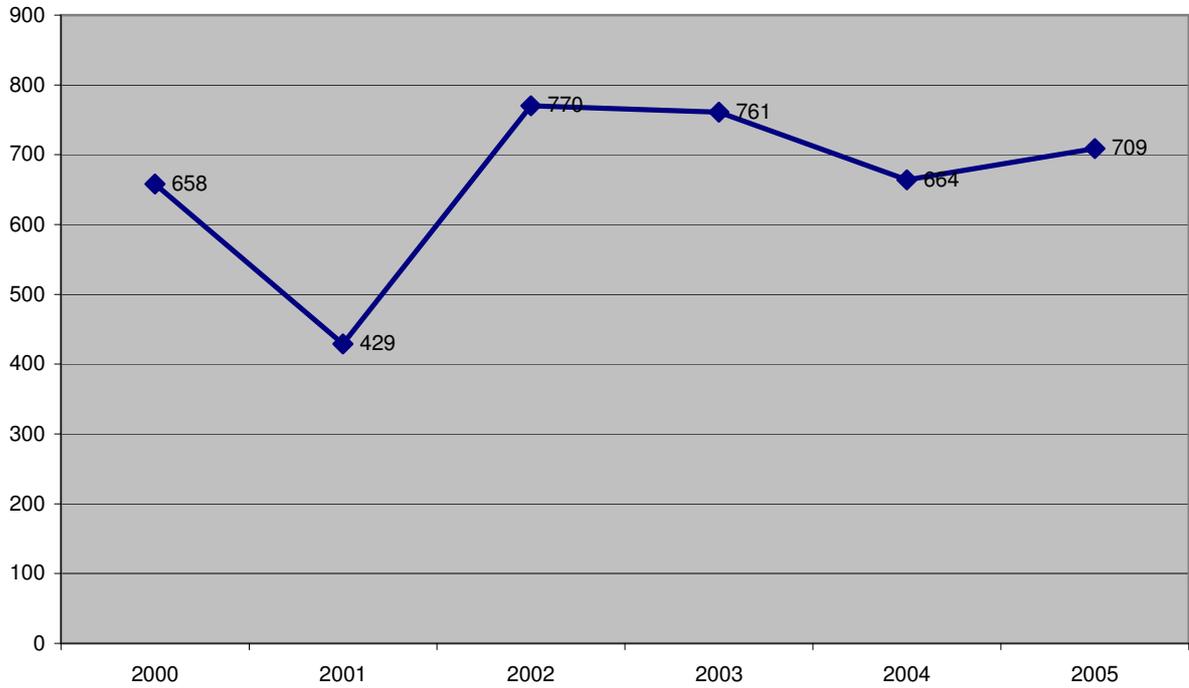


Chart 5: Returnees within the Return Assistance Programme of Caritas by destination country 2005

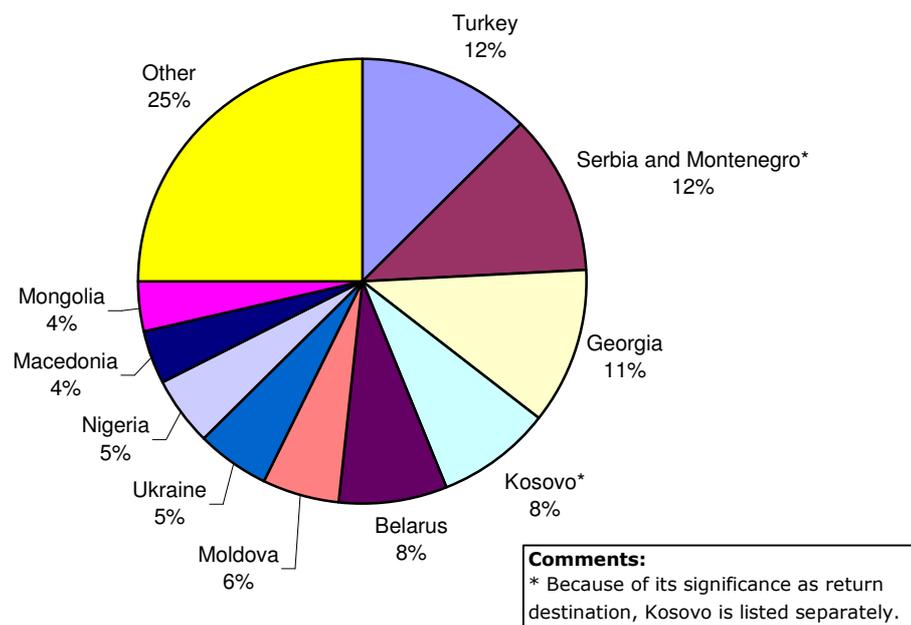


Table 6: Verein Menschenrechte Österreich: Return counselling proceedings by location 2004 and 2005

Return counselling proceedings by location	2004	2005
Detention pending deportation	219	437
Prisons	2	151
Initial Reception Centre West	5	126
Accommodations of federal care	39	39
Office hours	23	55
Total	288	808

Source: Verein Menschenrechte Österreich

Comments:

The number of proceedings corresponds to the number of clients in return counselling, not to the number of persons who effectively returned.

In the year 2005, 516 out of 808 persons in counselling proceedings effectively returned.

Table 7: Verein Menschenrechte Österreich: Clients in return counselling proceedings by country of origin

Country of origin	2004	2005
Serbia and Montenegro	38	160
Romania	19	89
Bulgaria	23	75
Moldova	42	62
Georgia	33	57
Ukraine	25	43
Nigeria	6	42
Chile	1	32
Turkey	10	27
People's Republic of China	22	26
India	4	18

Source: Verein Menschenrechte Österreich

Chart 6: Verein Menschenrechte Österreich: Return counselling proceedings by location 2005

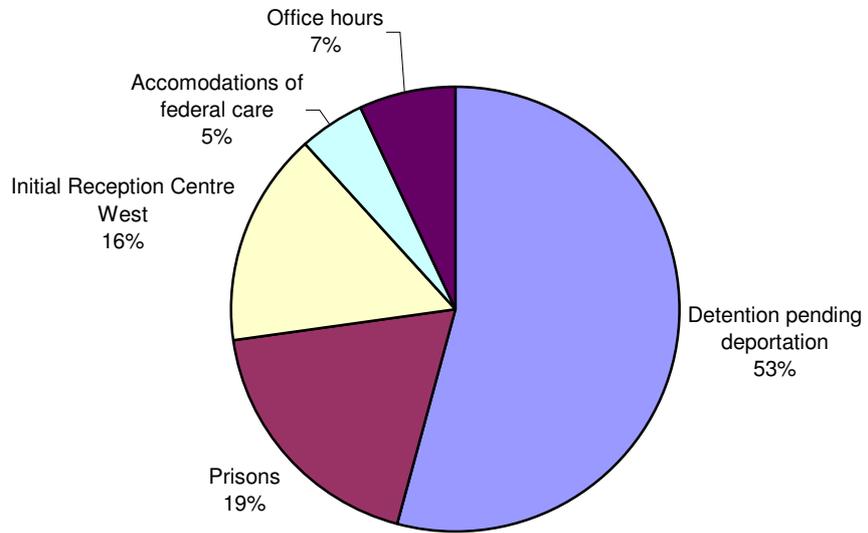


Table 8: Coercive Measures of the Aliens' Police 1997-2005

Coercive measures	1997*	1998	1999	2000	2001	2002	2003	2004	2005
Rejection at the border (§ 52)	72.874	23.825	23.101	18.081	17.595	23.280	22.371	26.280	27.043
Forcible return (§ 55)	4.234	5.982	9.373	8.015	6.338	4.734	3.135	4.132	1.895
Expulsion (§ 33 und § 34)	5.655	4.951	8.485	9.126	6.204	7.059	7.531	6.378	4.745
Residence bans (§ 36)	11.258	11.023	11.725	11.884	16.387	16.691	15.057	9.132	7.194
Detention pending deportation (§ 61/1)	13.047	13.815	**	13.439	17.306	11.816	11.149	9.041	7.463
Deportation (§ 56/1)	10.097	9.544	9.236	8.935	8.324	6.842	8.073	5.274	4.277

Source: Federal Ministry of the Interior (MoI)

Comments:

* The Aliens' Act 1997 entered into force on 1 January 1998. In 1997 the legal basis for coercive measures was the Alien's Act 1992: rejection at the border (§ 32), forcible return (§ 35), expulsion (§17), residence ban (§18), detention pending deportation (§41) and deportation (§ 36).

** Figures on detention pending deportation were not published for 1999.

Chart 7: Coercive measures of compulsion of the Aliens' Police 1997-2005



Comments:

*1997: Legal basis was the Alien's Act 1992: rejection at the border (§ 32), forcible return (§ 35), expulsion (§17), residence ban (§18), detention pending deportation (§41) and deportation (§ 36).

** Figures on detention pending deportation were not published for 1999.

Table 9: Comparison of the number of deportations - January to May 2005 and 2006

	2005	2006
January	327	301
February	332	368
March	384	420
April	365	348
May	353	342
Total	1.761	1.779

Source: Federal Ministry of the Interior (MoI)

Chart 8: Comparison of the number of deportations - January to May 2005 and 2006

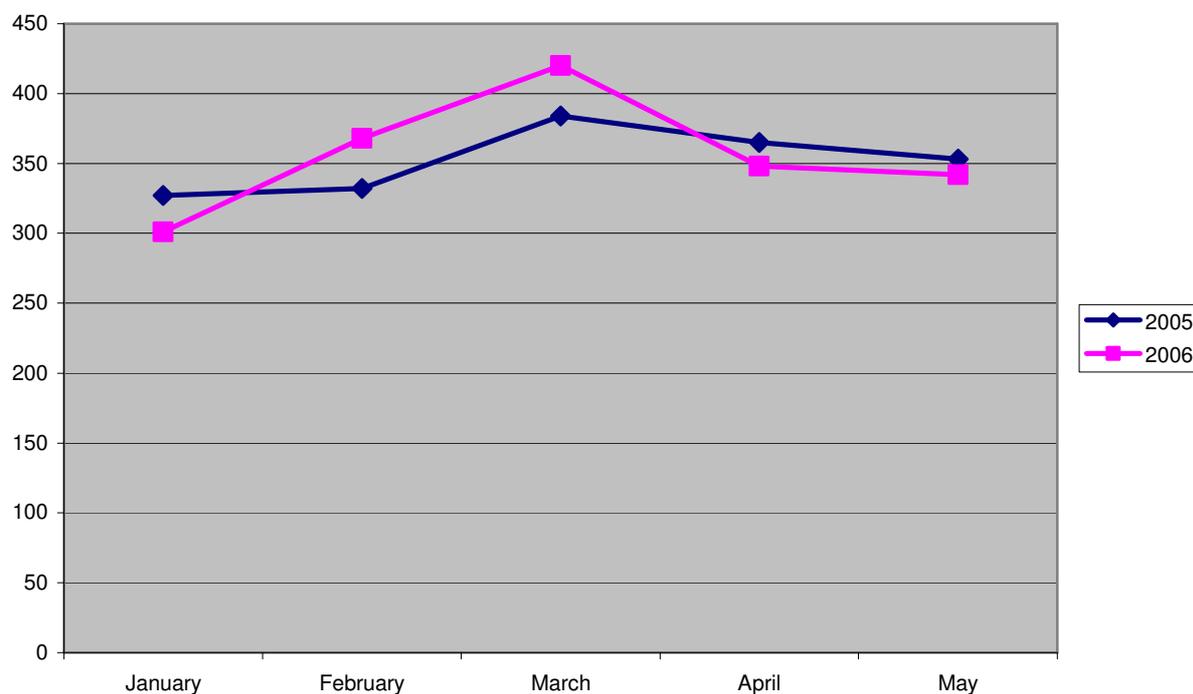


Table 10: Comparison of the number of expulsions - January to May 2005 and 2006

	2005	2006
January	319	200
February	373	218
March	465	318
April	562	258
May	479	303
Total	2.198	1.297

Source: Federal Ministry of the Interior (MoI)

Chart 9: Comparison of the number of expulsions - January to May 2005 and 2006

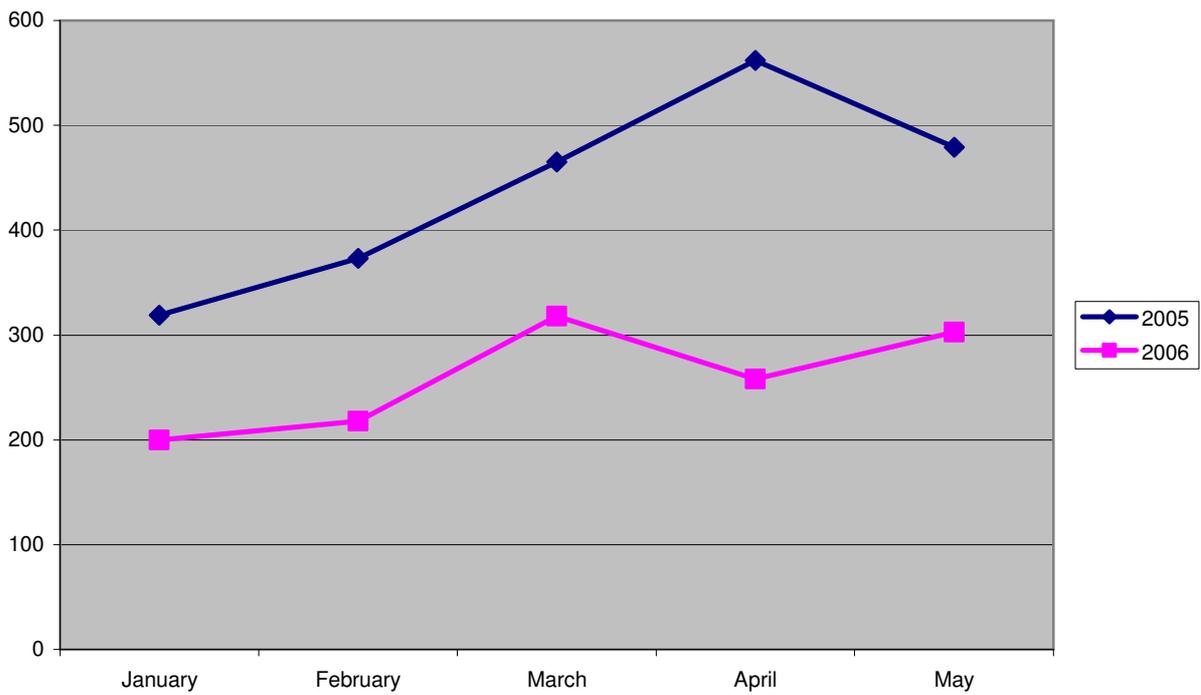


Table 11: Comparison of the number of persons in detention pending deportation - January to May 2005 and 2006

	2005	2006
January	582	788
February	593	788
March	699	829
April	712	763
May	584	777
Total	3.170	3.945

Source: Federal Ministry of the Interior (MoI)

Chart 10: Comparison of the number of persons in detention pending deportation - January to May 2005 and 2006

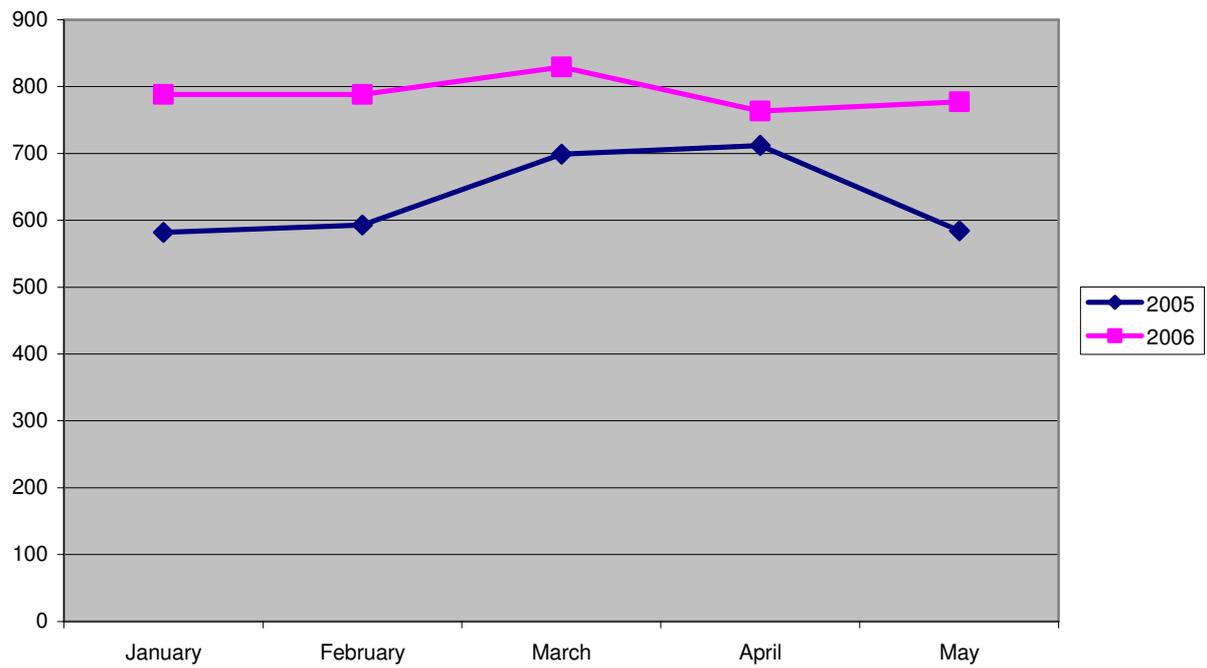


Table 12: Comparison of the number of residence bans - January to May 2005 and 2006

	2005	2006
January	620	253
February	596	289
March	659	398
April	694	383
May	619	377
Total	3.188	1.700

Source: Federal Ministry of the Interior (MoI)

Comments:

In addition to residence bans, 409 return bans were issued in the year 2006. Return bans were introduced with the new Aliens' Police Act 2005, which entered into force on 1 January 2006.

Chart 11: Comparison of the number of residence bans - January to May 2005 and 2006

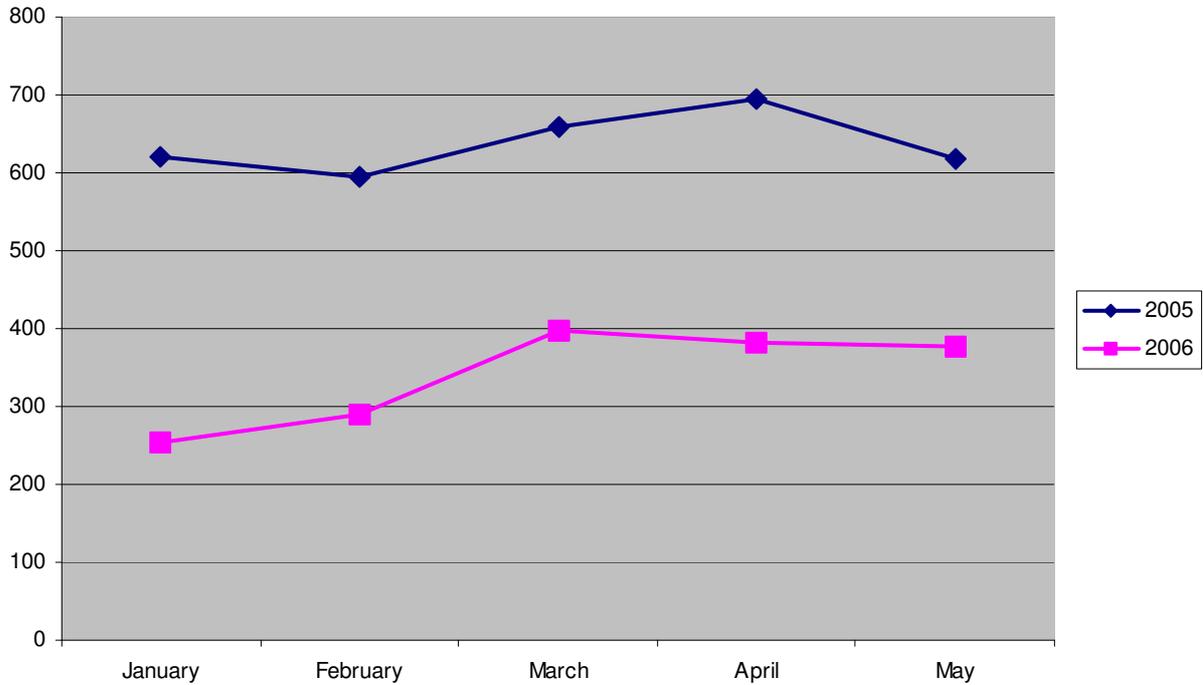


Table 13: Removed aliens by citizenship 2001

Citizenship	Total
Romania	3.794
Poland	1.223
Serbia and Montenegro	914
Moldova	780
Bulgaria	525
Slovakia	523
Hungary	449
Turkey	381
Germany	349
Ukraine	328
Other	2.326
Total	11.592

Source: Eurostat; CIREFI

Chart 12: Removed aliens by citizenship 2001

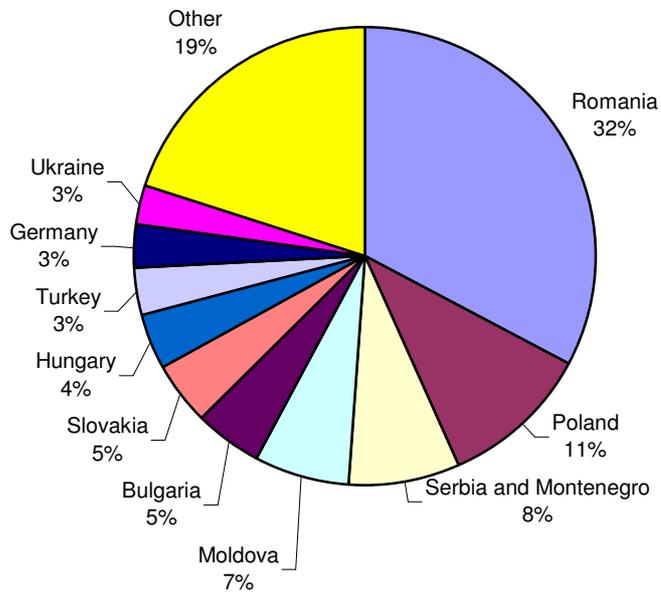


Table 14: Asylum applications by gender of asylum seekers 1997-2005

Year	Total	Male		Female	
		Total	in %	Total	in %
1997	6.719	5.093	75,80%	1.626	24,20%
1998	13.805	9.781	70,85%	4.024	29,15%
1999	20.129	13.472	66,93%	6.657	33,07%
2000	18.284	13.665	74,74%	4.619	25,26%
2001	30.127	23.430	77,77%	6.697	22,23%
2002	39.354	30.515	77,54%	8.839	22,46%
2003	32.364	23.754	73,40%	8.610	26,60%
2004	24.676	17.755	71,95%	6.921	28,05%
2005	22.471	15.974	71,10%	6.497	28,90%

Source: Federal Ministry of the Interior (MoI)

Chart 13: Asylum applications 1997-2005

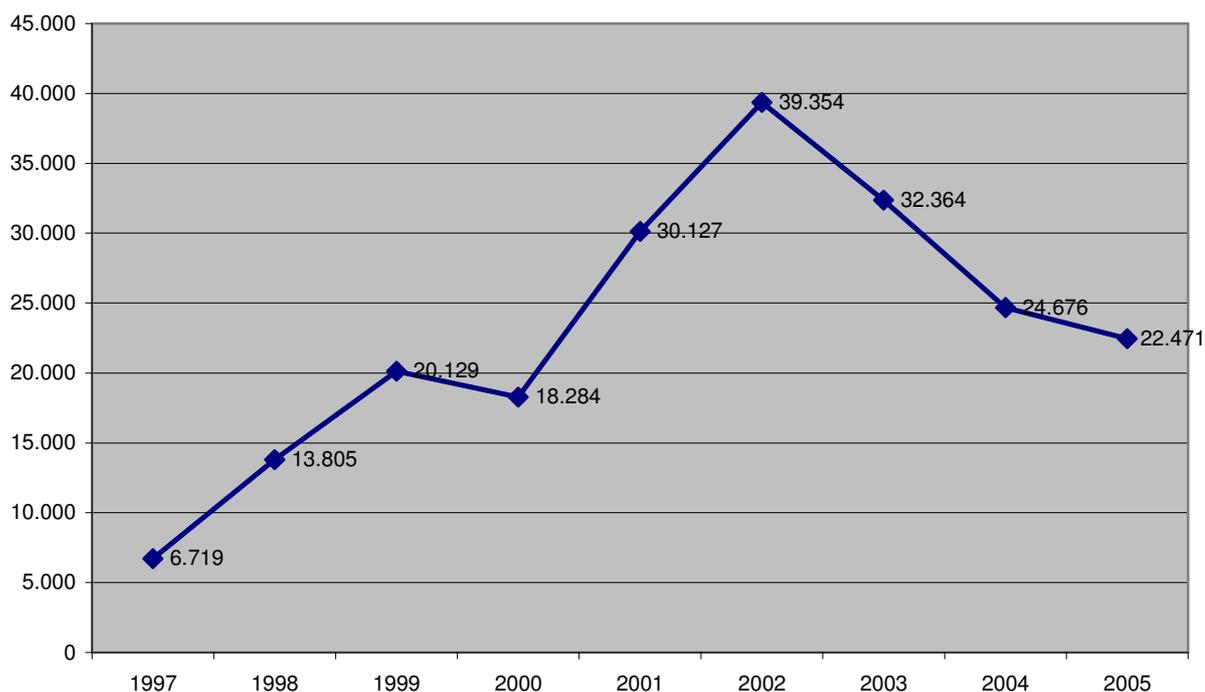


Table 15: Asylum applications and decisions 1998-2005

		1998			
Citizenship	Asylum applications	Positive decisions	Negative decisions	Recognition rate	
Serbia and Montenegro	6.647	124	1.894	6,1%	
Iraq	1.963	77	483	13,8%	
Iran	950	56	228	19,7%	
India	472	0	60	0,0%	
Afghanistan	467	51	62	45,1%	
Pakistan	242	1	40	2,4%	
Turkey	210	22	47	31,9%	
Nigeria	189	7	109	6,0%	
Bangladesh	167	0	29	0,0%	

		1999			
Citizenship	Asylum applications	Positive decisions	Negative decisions	Recognition rate	
Serbia and Montenegro	6.840	2.926	1.404	67,6%	
Iran	3.343	102	304	25,1%	
Afghanistan	2.209	101	98	50,8%	
Iraq	2.014	74	198	27,2%	
India	874	0	104	0,0%	
Sierra Leone	350	5	106	4,5%	
Turkey	337	10	46	17,9%	
Pakistan	317	1	60	1,6%	
Bangladesh	305	0	71	0,0%	
Nigeria	269	10	164	5,7%	

2000

Citizenship	Asylum applications	Positive decisions	Negative decisions	Recognition rate
Afghanistan	4.205	295	217	57,6%
Iran	2.559	63	368	14,6%
India	2.441	0	268	0,0%
Iraq	2.361	98	241	28,9%
Serbia and Montenegro	1.486	292	2.025	12,6%
Pakistan	624	1	100	1,0%
Turkey	592	18	165	9,8%
Nigeria	390	1	142	0,7%
Bangladesh	305	0	40	0,0%
Russian Federation	290	21	48	30,4%

2001

Citizenship	Asylum applications	Positive decisions	Negative decisions	Recognition rate
Afghanistan	12.955	432	335	56,3%
Iraq	2.118	87	239	26,7%
Turkey	1.868	49	284	14,7%
India	1.802	0	296	0,0%
Serbia and Montenegro	1.637	206	692	22,9%
Armenia	1.235	6	108	5,3%
Nigeria	1.047	2	216	0,9%
Bangladesh	949	0	63	0,0%
Macedonia	947	0	71	0,0%
Iran	734	134	334	28,6%

2002

Citizenship	Asylum applications	Positive decisions	Negative decisions	Recognition rate
Afghanistan	6.651	263	308	46,1%
Serbia and Montenegro	4.723	191	1.249	13,3%
Iraq	4.466	117	159	42,4%
Turkey	3.561	68	352	16,2%
India	3.366	0	192	0,0%
Russian Federation	2.221	36	91	28,3%
Armenia	2.038	10	205	4,7%
Georgia	1.921	13	136	8,7%
Nigeria	1.432	6	322	1,8%
Bangladesh	1.104	0	52	0,0%
Moldova	819	1	77	1,3%

2003

Citizenship	Asylum applications	Positive decisions	Negative decisions	Recognition rate
Russian Federation	6.713	635	215	74,7%
Turkey	2.843	65	398	14,0%
India	2.823	0	651	0,0%
Serbia and Montenegro	2.521	164	1.028	13,8%
Afghanistan	2.360	294	156	65,3%
Nigeria	1.846	3	345	0,9%
Georgia	1.517	53	220	19,4%
Iraq	1.452	138	50	73,4%
Moldova	1.175	0	155	0,0%
Armenia	1.112	23	119	16,2%

2004

Citizenship	Asylum applications	Positive decisions	Negative decisions	Recognition rate
Russian Federation	6.184	2.798	199	93,4%
Serbia and Montenegro	2.840	407	915	30,8%
India	1.842	0	520	0,0%
Nigeria	1.829	3	455	0,7%
Georgia	1.743	52	409	11,3%
Moldova	1.350	9	216	4,0%
Turkey	1.113	101	628	13,9%
Afghanistan	757	729	117	86,2%
Pakistan	575	4	117	3,3%
China (People's Republic)	565	4	81	4,7%

2005

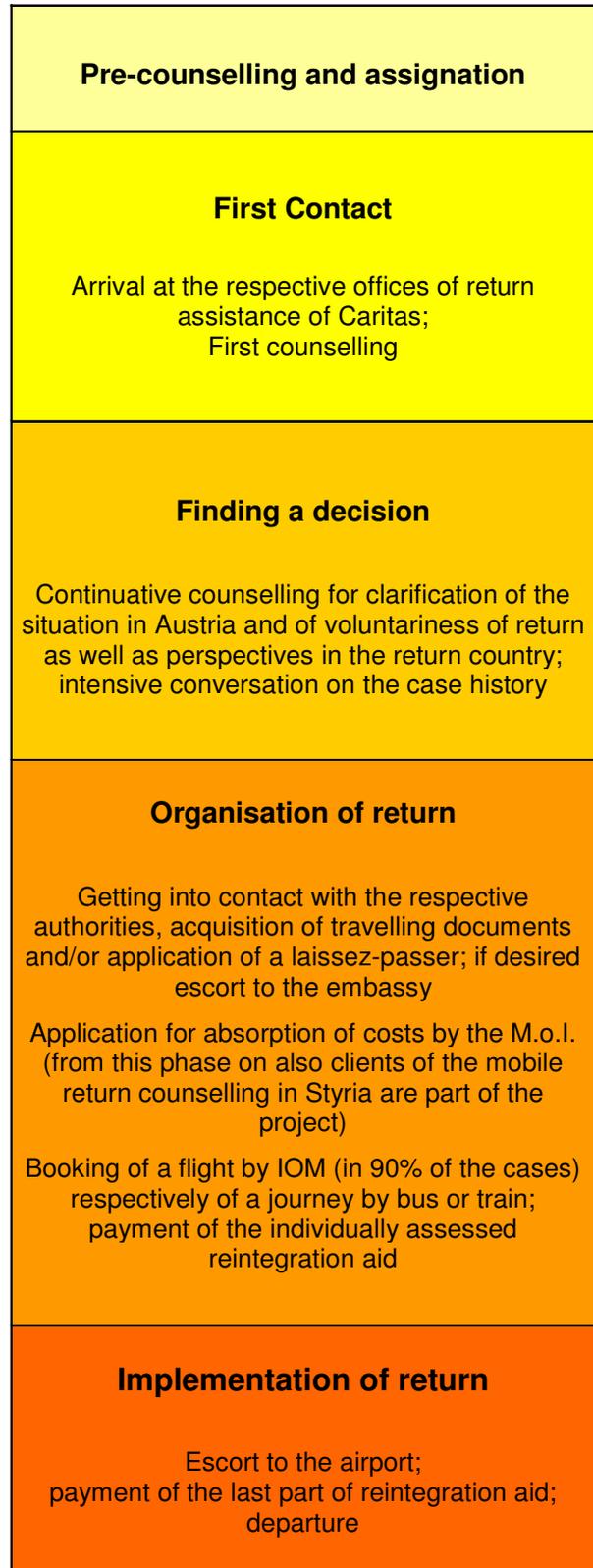
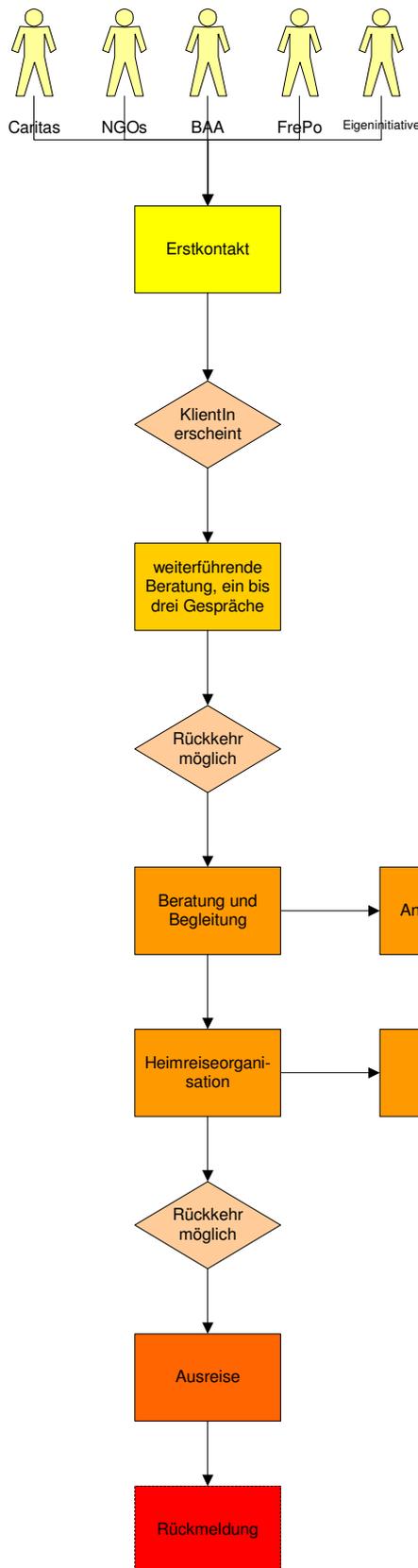
Citizenship	Asylum applications	Positive decisions	Negative decisions	Recognition rate
Serbia and Montenegro	4.408	462	1.042	30,7%
Russian Federation	4.359	2.395	271	89,8%
India	1.530	1	368	0,3%
Moldova	1.210	7	217	3,1%
Turkey	1.067	67	579	10,4%
Georgia	953	59	505	10,5%
Afghanistan	928	533	141	79,1%
Nigeria	881	7	637	1,1%
Mongolia	641	3	59	4,8%
Bangladesh	548	0	114	0,0%

Source: Federal Ministry of the Interior (Bundesministerium für Inneres (BM.I))

Comments:

Selected were the main countries of citizenship according to the number of asylum applications. Applications and decisions of the same year are not dependant - decisions may refer to asylum applications made in preceding years. For the calculations of recognition rates only the positive and negative decisions are taken into consideration.

Chart 14: Voluntary return: Organisation and process



Source: Caritas (final report of return assistance 2005)

Annex II: Institutions and Organisations

I. GOVERNMENTAL INSTITUTIONS AND ORGANISATIONS

**Ministry of the Interior
(Bundesministerium für Inneres) (BM.I)**
Herrengasse 7
A-1014 Vienna
Tel.: ++43-(0)1/531-26-0
Email: oeffentlichkeitsarbeit@bmi.gv.at
URL: <http://www.bmi.gv.at>

**Office of the Human Rights Advisory
Board (Menschenrechtsbeirat)**
Minoritenplatz 9
A-1014 Vienna
Tel.: ++43-(0)1/53126 3501
Fax: ++43-(0)1/53126 3504
Email: office@menschenrechtsbeirat.at
URL: <http://www.menschenrechtsbeirat.at>

**Section II – Directorate General for
Public Security
(Sektion II – Generaldirektion für die
öffentliche Sicherheit)**
Email: bmi-II@bmi.gv.at

**Asylum and Aliens' System
Information Centre for Asylum and
Integration
(Asyl- und Fremdenwesen
Informationszentrum für Asyl und
Integration)**
Bräunerstraße 5
A-1014 Vienna
Tel.: ++43-(0)1/53126-5224; -5223
URL: <http://www.bmi.gv.at/fremdenwesen>

Department II/3
Fremdenpolizei und Grenzkontrollwesen
Email: bmi-II-3@bmi.gv.at

- **Department II/3/a (Border Control)**
BMI-II-3-a@bmi.gv.at
- **Department II/3/b (Passport and Visa
Issues for Aliens)**
BMI-II-3-b@bmi.gv.at
- **Unit II/3/C (Coercive Measures of
Aliens' Police)**
BMI-II-3-c@bmi.gv.at

Federal Police (Bundespolizei)
Herrengasse 7
A-1014 Vienna
Tel.: ++43-(0)1/531-26-0
Email: oeffentlichkeitsarbeit@bmi.gv.at
URL: <http://www.bundespolizei.gv.at>

Section III – Law
Email: bmi-III@bmi.gv.at

Department III/5
Asylum and Care
Email: bmi-III-5@bmi.gv.at

- **Department III/5/a (Asylum and Care)**
BMI-III-5-a@bmi.gv.at
- **Department III/5/b (Integration)**
BMI-III-5-b@bmi.gv.at
- **Department III/5/c (Coordination and
Basic Welfare Support)**
BMI-III-5-c@bmi.gv.at

**Federal Asylum Authorities –
Headquarters
(Bundesasylamt – Zentrale)**
Landstraßer Hauptstraße 171
A-1030 Vienna
Tel.: ++43-(0)1/7144063-0
Fax: ++43-(0)1/53126-5914
Email: sekr.baa@bmi.gv.at

**Independent Federal Asylum Tribunal
(Unabhängiger Bundesasylsenat)**

Laxenburger Strasse 36
A-1100 Vienna
Tel: ++43-(0)1/601 49-0
Fax: ++43-(0)1/601 49-4310 oder 4311
E-Mail: einlaufstelle@ubas.gv.at

**Bureau of the provincial government
Tyrol**

(Amt der Tiroler Landesregierung)
Meinhardstraße 8
A-6020 Innsbruck
Tel: ++43-(0)512/508-3291
Fax: ++43-(0)512/508-2605
E-mail: p.logar@tirol.gv.at

**Bureau of the provincial government of
Carinthia/ Diakonie Carinthia**

**(Amt der Kärntner
Landesregierung/Diakonie Kärnten)**
Refugee office Carinthia
(Flüchtlingsstelle für Kärnten)
Tel: ++43-(0)463/32303-499
Fax: ++43-(0)463/32303-401

II. NON-GOVERNMENTAL ORGANISATIONS AND INSTITUTIONS

Organisations for care in detention pending deportation

**Care in detention pending deportation
Vorarlberg**

**(Schubhaftbetreuung Vorarlberg)
Caritas Feldkirch**
Wichnergasse 22
A-6800 Feldkirch
Tel.: ++43-(0)5522/200-1058 or -1220
Fax: ++43(0)5522/200-1007
Email: fluechtlingshilfe@caritas.at
URL: <http://www.caritas-vorarlberg.at>

**Care in detention pending deportation
Styria**

**(Schubhaftbetreuung Steiermark)
Caritas Graz**
Keplerstraße 82 / 2. Stock
A-8020 Graz
Tel.: ++43-(0)316/8015 - 337
Fax: ++43-(0)316/8015-350
URL: <http://www.caritas-graz.at>
E-mail: office@caritas-graz.at

**Care in detention pending deportation
Burgenland**

**(Schubhaftbetreuung Burgenland)
Caritas Eisenstadt**
St.-Rochus-Straße 15
A-7000 Eisenstadt
Tel.: ++43-(0)2682/73600-307 bzw. -326
Fax: ++43-(0)2682/73600-306
Email:
fluechtlingshilfe@eisenstadt.caritas.at

**Care in detention pending deportation
Tyrol**

**(Schubhaftbetreuung Tirol)
Verein Menschenrechte Austria**
Meinhardstraße 4/II. OG
A-6020 Innsbruck
Tel.: ++43-(0)664/8404280
Fax: ++43-(0)512/58 25 51 - 4
Email: tirol@verein-menschenrechte.at
URL: <http://verein-menschenrechte.at>

**Care in detention pending deportation
Carinthia**

(Schubhaftbetreuung Kärnten)

Alien counselling Carinthia

(Ausländerberatung Kärnten)

Freihausplatz 3

A-9500 Villach

Tel.: ++43-(0)664/3572754

++43-(0)4242/25561

Fax: ++43-(0)4242/216155

Email: ausl.beratung@evang.at

URL:

<http://members.eunet.at/ausl.beratung/>

**Care in detention pending deportation
Lower Austria**

(Schubhaftbetreuung Niederösterreich)

Deaconry Refugee Service

Julius-Raab-Promenade 18

A-3100 St. Pölten

Tel.: ++43-(2742) 73311-12

Fax: ++43-(2742) 73311-14

Email: sn.efdoe@diakonie.at

URL: <http://fluechtlingsdienst.diakonie.at>

**Care in detention pending deportation
Upper Austria**

(Schubhaftbetreuung Oberösterreich)

Verein Menschenrechte Österreich

Bismarckstraße 7

A-4020 Linz

Tel.: ++43-(0)664/8227480

Fax: ++43-(0)732/784564

Email: linz@verein-menschenrechte.at

URL: <http://verein-menschenrechte.at>

**Care in detention pending deportation
Salzburg**

(Schubhaftbetreuung Salzburg)

Deaconry Refugee Service

Lehener Str. 26

A-5020 Salzburg

Tel: ++43-(0)662/876024

Fax: ++43-(0)662/876024-14

Email: bs@bdf-net.com

URL: <http://fluechtlingsdienst.diakonie.at>

**Care in detention pending deportation
Vienna**

(Schubhaftbetreuung Wien)

Verein Menschenrechte Österreich

Alser Straße 20

A-1090 Vienna

Tel.: ++43-(0)664/3003224

Fax: ++43-(0)2682/73600-306

Email: wien@verein-menschenrechte.at

URL: <http://verein-menschenrechte.at>

Voluntary return assistance – Return counselling

Burgenland

Caritas Eisenstadt

St. Rochusstraße 15
A-7000 Eisenstadt
Tel.: 02682/736 00-336
Fax: 02682/736 00-306

Upper Austria

Caritas Linz

Hafnerstraße 28
A-4021 Linz
Tel.: 0732/76 10-2366
Fax: 0732/7610-23 83
Email: information@caritas-linz.at

Salzburg

Caritas Salzburg

Plainstraße 83
A-5020 Salzburg,
Tel.: 0662/84 93 73-215
Fax: 0662/84 93 73-341
Email: kommunikation@caritas-salzburg.at

Styria

Caritas Graz

Keplerstraße 82
A-8020 Graz
Tel.: 0316/80 15-323
Fax: 0316/72 13 69-340

Vorarlberg

Caritas Feldkirch

Wichnergasse 22
A-6800 Feldkirch
Tel.: 05522/200-1223
Fax: 05522/200-1225
E-Mail: fluechtlingshilfe@caritas.at

Vienna & Lower Austria

Caritas department for return assistance

(Caritas Referat für Rückkehrhilfe)

Alser Straße 4/1. Hof
A-1090 Vienna
Tel.: 01/897 52 21
Fax: 01/897 52 21-19
E-Mail: rkh@caritas-wien.at

Caritas Austria

Coordination return-assistance

(Koordination Rückkehr-Hilfe)

Albrechtskreithgasse 19-21
A-1160 Vienna
Tel.: 01/48831-435 oder 0664/82 66 906
Fax: 01/480 45 83
Email: b.wagner@caritas-austria.at
URL: <http://www.caritas.at>

Volkshilfe Upper Austria

Schillerstraße 34
A-4020 Linz
Tel: ++43-0-732/603099-50
Fax: ++43-0-732/603099-1
Email: iva.petkova@volkshilfe-ooe.at
URL: <http://www.volkshilfe-ooe.at>

European Homecare

Otto-Glöckel-Straße 24
A-2514 Traiskirchen
Tel: +43-(0)2252 / 508919 –26
Fax: +43-(0)2252 / 508919 –69
Email: presse-at@eu-homecare.com
URL: <http://www.eu-homecare.com/at/index.htm>

**For Vienna, Lower Austria, Upper
Austria and Burgenland**

Verein Menschenrechte Austria

Postfach 69
A-1095 Vienna
Austria
Tel.: ++43-(664) 3003224
Fax: ++43-(0)1/4090480-2
Email: wien@verein-menschenrechte.at
URL: <http://verein-menschenrechte.at>

Other Organisations

**Network Asylum Advocate
(Netzwerk AsylAnwalt)**

Caritas Österreich
Albrechtskreithgasse 19-21
A-1160 Vienna
Tel.: ++43-(0)1/488 31-440
Fax: ++43-(0)1/480 45 83
Email: office@asylanwalt.at
URL: <http://www.asylanwalt.at>

SOS Mitmensch

Postfach 220
A-1070 Vienna
Tel.: ++43-(0)1/524 9900,
Fax: ++43-(0)1/524 9900-9
Email: office@sosmitmensch.at
URL: <http://www.sosmitmensch.at>

**Initiative Marriage without Borders
(Initiative Ehe ohne Grenzen)**

Stiftgasse 8
A-1070 Vienna
Email: office@ehe-ohne-grenzen.at
URL: <http://www.ehe-ohne-grenzen.at>

UNHCR Austria

Postfach 550
A-1400 Vienna
Tel. ++43-(0)1-26060-4048
Fax ++43-(0)1-2633748
Email: ausvi@unhcr.ch
URL: <http://www.unhcr.at>

**International Organization for
Migration (IOM)**

Nibelungengasse 13/4
A-1010 Vienna
Tel.: ++43-(0)1/5853322
Fax: ++43-(0)1/5853322-30
Email: iom-vienna@iom.int
URL: <http://www.iomvienna.at>

Annex III: Questionnaire on Voluntary Return

- 1) How would you **define voluntary return, what** are your working definitions?
- 2) What **positive aspects** do you see in return in general (for those affected, for the countries of origin and for Austria)?
- 3) **Return Counselling**
 - a) Please describe in brief the procedure of return counselling:
 - b) How much time does a return counselling conversation take on average?
 - c) How is voluntariness of return determined?
- 4) **Motives**
 - a) What do you think are the main motives for voluntary return?
 - b) Do certain groups of persons (women, families, minors, countries of origin) differ according to relevant return motivation? If yes, how?
 - c) What is the role of financial incentives for voluntary return?
 - d) What are the needs of potential returnees?
- 5) Do you observe that persons with a certain **status** wish to return more often (illegally residing persons, asylum seekers, rejected asylum seekers, etc.)? If yes, which groups? What are the possible reasons?
- 6) **Obstacles**
 - a) What are the main obstacles to voluntary return in your opinion?
 - b) Are there differences in certain population groups (women, families, minors, countries of origin)? If yes, which?

7) Assessment of sustainability

- a) What does sustainable return mean for you?
- b) How would you assess sustainability of the present return assistance?
- c) Which measures are carried out by your organisation in order to facilitate sustainable return?
- d) Which additional measures are/would be necessary for sustainable return in your opinion?
- e) Is there a mechanism in your organisation to assess the sustainability of the measures (monitoring, contacts to returnees)?

8) Dissemination of information

- a) How do you disseminate relevant information on assisted voluntary return to those who are interested?
- b) Do you offer information materials in different languages? If yes, in which languages?
- c) What is the role of ethnic communities in your information work?

9) What would you call “best practice” in voluntary return?

10) What problems do you see concerning voluntary return in general?

11) What has to be improved in your opinion?

12) What should necessarily be addressed in this study from your point of view?

Thank you very much!

www.emn.at



Information on migrants, asylumseekers, and refugees in Austria (statistics, laws, institutions)



Information on the European Migration Network (Contact Points, networks, researchers)



Current issues in the field of migration in the European context (events, publications, invitations for tenders)

Information also available in German



International Organization for Migration (IOM)
Special Liaison Mission in Austria and to the International Organizations in Vienna
Nibelungengasse 13/4
1010 Vienna - Austria
Tel: +43 1 585 33 22
Fax: +43 1 585 33 22-30
Email: ncpaustria@iom.int
Internet: <http://www.iomvienna.at>