



ACCESS

The Role of Courts in Shaping Access to Asylum

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INTRODUCTION: OBJECTIVES OF ACCESS

The research project “Gatekeepers to International Refugee Law? – The Role of Courts in Shaping Access to Asylum” [ACCESS](#) investigates the role of courts in shaping access to asylum. It seeks to understand how courts globally interpret State-developed barriers in light of the Refugee Convention (RC) and other international norms, what socio-legal factors influence asylum access adjudication, and how the emerging jurisprudence shapes international refugee law (IRL) and migration governance.

ACCESS adopts a comparative approach as it relies on data collected from 19 countries, theoretically selected to cover all geographical regions, various legal systems and adjudication models, and different forms of participation in the international refugee law regime.¹

Given the comparative and socio-legal approach of the project, our goal is to collect data through multiple methods that guarantee comparability, comprehensiveness, and reliability of the data.

The data collection template, along with the explanatory guidance used for the preparation of this National Report, can be found at: Lacchei, Alice; Lambertini, Sara Mariella; McDonough, Paul; Moraru, Madalina; Reyhani, Adel-Naim; Scissa, Chiara (2026) National Report ACCESS Project Template. DOI: 10.6092/unibo/amsacta/8984

In addition, the summaries of the judicial decisions analysed in Part II of this National Report and cited throughout this document can be found at: Lacchei, Alice; Lambertini Martinez, Sara Mariella; McDonough, Paul; Moraru, Madalina; Reyhani, Adel-Naim; Scissa, Chiara; Jesudoss, Loretta Mary (2026) ACCESS Mid-Term Dataset: The Role of Courts in Shaping Access to Asylum. University of Bologna. DOI 10.6092/unibo/amsacta/8962. [Dataset]

DEFINING TERMS

‘Asylum’ denotes the protection a state grants on its territory to non-citizens who seek it. It includes a legal status that protects against refoulement and provides a right to stay. In several jurisdictions, e.g. those that do not have domestic asylum legislation, this status might not be labelled ‘asylum’. The research nevertheless includes such equivalent protection under the term ‘asylum’. Similarly, if a national system that includes an asylum status provides additional protection statuses that include a set of rights closely similar to those the 1951 Convention provides for refugees lawfully staying, the research includes those statuses under ‘asylum’.

‘Accessing asylum’ describes using legal and practical avenues to move towards the territory of potential host states, or to enter procedures and other arrangements for obtaining such status (labelled as asylum or not) implemented by a state or on its behalf. Territorial asylum processing (sometimes referred to as refugee status determination or RSD) itself or equivalent practices, however, are not studied here.

‘Barriers to accessing asylum’ refers to measures, arrangements, approaches, implementation practices, or structures that impede access to asylum. They can be implemented by state actors and others (if tolerated by the state); be of a practical or legal character; incorporate socioeconomic and cultural elements; and pertain to administrative or judicial spheres. Barriers implemented after the formal start of territorial asylum processing can be considered, if the processing is conducted as a sham or pretence rather than allowing effective access to asylum.

‘Pushbacks’ denote the removal or non-admittance of individuals trying to access asylum, without a substantive assessment of risks or potential rights violations. They can occur both on land and sea, including on international waters.

¹ Australia; Kenya, South Africa, Tunisia (Africa); Austria, Greece, Italy, Poland, Spain (Europe); India, Malaysia, Pakistan, Turkey (Asia); Argentina, Brazil, Chile, Ecuador, Mexico (Latin America), USA.

‘Pullbacks’ are the dragging back of individuals approaching a destination state to the territory of a state from which they had departed without a substantive assessment of risks or potential rights violations. Such practices are often implemented in cooperation between two or more countries. While typically practiced at sea, such as in the territorial waters of the state of departure, pullbacks can also occur on land.

‘Walls and fences’ include physical barriers that prevent access to territory at or near borders, irrespective of the specificities of the construction or the materials used.

‘Detention’ is the imprisonment or other limitations of the right to liberty and security of person of individuals, territorially or extraterritorially, in connection with their asylum accessing.

‘Externalization of asylum processing’ denotes outsourcing procedures and transferring individuals to other jurisdictions to assess protection claims. Under such a practice, for example, potential destination states disallow asylum procedures on their territory, dismiss the corresponding applications, and deport individuals to cooperating countries. Externalized asylum processes can be based on formal and informal agreements between states.

‘Procedural barriers’ refers to any administrative practice or arrangement which, after individuals (attempt to) claim asylum, impedes the formalization of the application or the commencing of a procedure for obtaining asylum. This barrier can, for example, take the form of sham processes or (fast-track) processes based on the safe third country or safe country of origin concept, or a lack of mechanisms for ensuring appointments at registration offices.

‘Judicial or quasi-judicial body’ is the body that reviews/assesses the legality of the decisions, actions, or omissions of state authorities. This term encompasses the wide range of institutions adjudicating asylum barriers, including government/executive bodies, UNHCR, etc.

‘First instance judicial or quasi-judicial body’ is a court, tribunal, or other quasi-judicial body that hears appeals against administrative or executive decisions. **‘Second instance judicial or quasi-judicial body’** is a court or tribunal or other body that hears appeals against decisions made by a first instance judicial or quasi-judicial body. **‘Third instance judicial or quasi-judicial body’** is a court or tribunal (possibly a constitutional court) or another body that hears onward appeals, i.e., appeals against decisions already made by a judicial or quasi-judicial body of at least a second instance. In some jurisdictions there might be further levels of appeal.

‘Legal system’ refers to deeply rooted, historically conditioned attitudes about law’s nature and role, the legal system’s organization and functioning, and how the law is developed, applied, and interpreted (Merryman, 1985). The most common legal systems are the common law, civil law, Islamic, indigenous and socialist legal traditions (idem).

‘Asylum access adjudication’ refers to judicial examination and review by courts or quasi-judicial bodies of administrative decisions made by executive or immigration authorities regarding asylum.

‘Socio-legal factors’ refer to macro, meso, and micro factors influencing asylum access adjudication in the selected jurisdictions. They can originate at the macro level (state), at the meso level (judicial or quasi-judicial body), and at the micro level (individual). For example, adjudication may be influenced by the level of independence of the judiciary (macro factor) or the specialization of the asylum adjudication system (e.g., specialized courts); or availability of judicial or quasi-judicial bodies resources such as time, funds, human resources (meso factors); or individual characteristics of the actors involved, such as background or gender of adjudicators (micro factors).

‘Judicialization of politics’ refers to the increasing reliance on courts and judicial means for addressing core moral, political, and public policy questions (Hirschl 2013). For an overview of the meanings of judicialization, please refer to Hamlin and Sala (2018), who trace various forms in which judicialization of politics can occur (e.g., expanding the jurisdiction of courts, judicial activism, or due to the large number of cases decided by courts).

'Forced migration' refers to 'a migratory movement which, although the drivers can be diverse, involves force, compulsion, or coercion' (IOM, 2019:77). Although it is not an international legal concept and the use of the term is debated because of the controversial dichotomy of voluntary/forced movements, in this report we refer to forced migration including the movement of refugees and asylum seekers, as well as other displaced persons (including those displaced by disasters or victims of human trafficking) who will not attempt to lodge an asylum application. When referring to 'other displaced persons', we mean those forced migrants who are not registered as asylum seekers or refugees, etc., despite being present in the country.

1. **Functioning:** What is the barrier's specific functioning? How does it prevent individuals from accessing asylum?
2. **Time:** What is the implementation period of the barrier? Is it still in use? Is there a time frame for its planned termination?
3. **Place:** Where is the barrier implemented?
4. **Actors:** Who are the key institutional and other actors implementing the barrier? Are there relevant actors from other jurisdictions or international actors?
5. **Interaction:** How does the barrier interact with other barriers and the country's asylum system?
6. **Development:** What has been the historical and political context for introducing the barrier, and how have its implementation and its character developed over time? (Please consider e.g. corruption, economic or human resources available to implement the barrier, resistance or support by local actors - officials or local community)
7. **Rationale:** What are the stated purposes (e.g., in legislative preambles, government/executive, or judicial statements) the barrier is designed to serve?
8. **Legal Status:** What legal status does the national legal framework provide to individuals prevented by this barrier from accessing asylum? For example, do they fall under a specific (protected or unprotected) category within national law, such as asylum seekers or refugees before formal recognition, or are they treated under the general framework for non-citizens?
9. **Specific Impact:** What is the impact of the barrier on specific groups, such as children, women, LGBTQ+ individuals, or people with disabilities? How does it differ from the barrier's general impact?
10. **Reach:** How many individuals have been affected by this barrier since 2010, both in absolute numbers and relative to the number of procedures for determining protection status in the same period? Has the barrier contributed to less movement of displaced persons towards the country? Please provide an informed estimate if reliable statistics or studies are unavailable.
11. **Source:** What is the legal basis or source of the barrier? Is it grounded in or approved by domestic, international, or supranational law (even if its legality might be contested)?
12. **Justification:** What justifications have the government/executive branch provided for the barrier? Are there official statements or documents that outline these justifications?
13. **Domestic and International Reactions:** What have been the reactions or interventions from domestic actors, international bodies, or other countries?
14. **Externalization:** How does the barrier outsource migration control functions to actors outside the jurisdiction?
15. **Technology:** How does the barrier draw on technological infrastructure or tools to fulfil its functioning?
16. **Other:** Any further information considered crucial for understanding this barrier to accessing asylum and its relevance.

PART 1: BARRIERS TO ACCESSING ASYLUM

I. IDENTIFYING BARRIERS

This section identifies the barriers to accessing asylum relevant to Austria between 2010 and 2024.

A. Barriers of general relevance

The general barriers identified in Austria are pushbacks, walls and fences, detention, externalization of asylum processing, and procedural barriers. Pullbacks were not selected as a relevant barrier for Austria in this report.

B. Barriers of specific relevance to this jurisdiction

Family reunification visa refusal is the country-specific barrier identified for Austria. In family reunification with refugees, visas for entering Austria are denied, for example, based on the asylum authority's assessment ("Prognose") of the likelihood that protection will be granted.

II. UNDERSTANDING BARRIERS

A. Barriers of general relevance

Pushbacks

Summary: Austria reportedly engaged in pushbacks primarily at its border with Slovenia (Styria) between approximately 2016 and 2022, involving Austrian border police, sometimes cooperating with Slovenian counterparts. This practice entailed ignoring or overlooking asylum applications and forcibly removing individuals to Slovenia (and sometimes subsequently further), thereby denying them access to Austrian territory and the asylum procedure, despite the legal provision for de facto protection against refoulement (§ 12 Asylum Act). Although the government largely denied the practice or claimed individuals had not sought asylum, courts found evidence of systematic pushbacks, affecting an unknown number of people, including minors, and grounded the actions, contentiously, in legal 'refusal of entry' provisions. These actions drew criticism from domestic and international bodies like the Council of Europe's Human Rights Commissioner and NGOs, prompting the government to issue revised instructions and training for border police, while arguably constituting a form of externalization by forcing asylum claims elsewhere. Finally, Austrian law allows for the possibility of restricting access to asylum procedures in case of a public emergency. However, this provision has not yet been used as a general asylum-access restriction; the family-reunification suspension is addressed separately in the family-reunification section.

1. Functioning: The asylum applications of individuals are ignored or overheard and they are removed to a neighbouring country (particularly Slovenia), thus preventing both access to Austrian territory and an asylum procedure. In some cases, individuals were further removed to Croatia and from there to Bosnia and Herzegovina. Furthermore, cases of ill-treatment in police custody in Austria have been documented. Pushbacks towards Italy have also been reported, and Austrian police are active in border control measures extraterritorially, such as in Hungary.²

² Sources: LVwG Steiermark, LVwG 20.3-918/2016-15 and LVwG 21.3-919/2016-15, 9 Sep 2016; LVwG Steiermark, LVwG 20.3-864/2016-26 and LVwG 21.3-865/2016-23, 29 Aug 2016; LVwG Steiermark, LVwG 20.3-873/2016-21 and LVwG 21.3-874/2016-20, 9 Sep 2016; LVwG Steiermark, LVwG 22.3-2726/2020-50, 5 Jul 2021; LVwG Steiermark, LVwG 20.3-2725/2020-86, 1 Jul 2021; LVwG Steiermark, LVwG 20.3-2621/2021-49, 16 Feb 2022; VwGH, Ra 2017/21/0018, 14 Nov 2017; VwGH, Ra 2021/21/0274-6, 5 May 2022; VwGH, Ra 2022/21/0074-6, 19 May 2022; AIDA/ECRE, Country Report: Austria, Access to territory and push backs, 2024 Update, July 2025, <https://asylumineurope.org/reports/country/austria/asylum-procedure/access-procedure-and-registration/access-territory-and-push-backs/>

2. Time: The exact period is unknown. Based on the information in case law, they have occurred between 2015/2016 and 2022.³

3. Place: At the Austrian border with Slovenia, particularly in the province of Styria, and its proximity. The cases dealt with in case law have been intercepted either directly at the border or at a distance of up to 3.5 kilometres, being removed to Slovenia within a maximum of 12 hours.

Austria's eastern border with Hungary has temporary controls, but Hungary's own strict measures reduce Austrian pushbacks there. Still, Austria has conducted some pushback operations on Hungarian territory. To the west, Austria and Switzerland have discussed summary returns, though no routine pushbacks were documented by 2021. There have also been occasional informal returns from Austria to Italy, though these appear less systematic.⁴

4. Actors: Mainly Austrian border police, under the ultimate supervision of the Minister of the Interior, in cooperation with Slovene border police. There have even been specialised units like the PUMA task force and COBRA (special operations units) deployed at borders, though specific pushback cases usually just reference "Austrian police". Additionally, Austria's military was occasionally deployed internally to support border surveillance (during peak migration periods or COVID, soldiers patrolled borders alongside police), but there is no public evidence that the army directly engaged in the act of handing people to Slovenia - that remained a police function. For chain refoulement operations, Croatian and Bosnian police were similarly involved.

Beyond Slovenia, Hungary's authorities come into play in a newer form of Austrian migration control policy (notably Operation Fox). In late 2022/2023, Austria deployed its police officers to work jointly with Hungarian police on Hungarian territory; these joint teams have been involved in intercepting migrants in Hungary and sending them back to Serbia. While formally, Hungarian police execute the pushback to Serbia, Austrian officers are embedded and authorized to use force in these operations under EU police cooperation.⁵

³ Sources: LVwG Steiermark, LVwG 20.3-918/2016-15 and LVwG 21.3-919/2016-15, 9 Sep 2016; LVwG Steiermark, LVwG 20.3-864/2016-26 and LVwG 21.3-865/2016-23, 29 Aug 2016; LVwG Steiermark, LVwG 20.3-873/2016-21 and LVwG 21.3-874/2016-20, 9 Sep 2016; LVwG Steiermark, LVwG 22.3-2726/2020-50, 5 Jul 2021; LVwG Steiermark, LVwG 20.3-2725/2020-86, 1 Jul 2021; LVwG Steiermark, LVwG 20.3-2621/2021-49, 16 Feb 2022; VwGH, Ra 2017/21/0018, 14 Nov 2017; VwGH, Ra 2021/21/0274-6, 5 May 2022; VwGH, Ra 2022/21/0074-6, 19 May 2022; AIDA/ECRE, Country Report: Austria, Access to territory and push backs, 2024 Update, July 2025, <https://asylumineurope.org/reports/country/austria/asylum-procedure/access-procedure-and-registration/access-territory-and-push-backs/>

⁴ Sources: LVwG Steiermark, LVwG 20.3-918/2016-15 and LVwG 21.3-919/2016-15, 9 Sep 2016; LVwG Steiermark, LVwG 20.3-864/2016-26 and LVwG 21.3-865/2016-23, 29 Aug 2016; LVwG Steiermark, LVwG 20.3-873/2016-21 and LVwG 21.3-874/2016-20, 9 Sep 2016; LVwG Steiermark, LVwG 22.3-2726/2020-50, 5 Jul 2021; LVwG Steiermark, LVwG 20.3-2725/2020-86, 1 Jul 2021; LVwG Steiermark, LVwG 20.3-2621/2021-49, 16 Feb 2022; VwGH, Ra 2017/21/0018, 14 Nov 2017; VwGH, Ra 2021/21/0274-6, 5 May 2022; VwGH, Ra 2022/21/0074-6, 19 May 2022; AIDA/ECRE, Country Report: Austria, Access to territory and push backs, 2024 Update, July 2025, <https://asylumineurope.org/reports/country/austria/asylum-procedure/access-procedure-and-registration/access-territory-and-push-backs/>

⁵ Sources: Council Decision 2008/615/JHA of 23 June 2008 on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime, OJ L 210, 6.8.2008, pp. 1-11, especially Chapter 5, <https://eur-lex.europa.eu/eli/dec/2008/615/oj/eng>; Council Decision 2008/616/JHA of 23 June 2008 on the implementation of Decision 2008/615/JHA, OJ L 210, 6.8.2008, pp. 12-72, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32008D0616>; AIDA/ECRE, Country Report: Austria, Access to territory and push backs, 2024 Update, July 2025, <https://asylumineurope.org/reports/country/austria/asylum-procedure/access-procedure-and-registration/access-territory-and-push-backs/>; LVwG Steiermark, LVwG 20.3-918/2016-15 and LVwG 21.3-919/2016-15, 9 Sep 2016; LVwG Steiermark, LVwG 20.3-864/2016-26 and LVwG 21.3-865/2016-23, 29 Aug 2016; LVwG Steiermark, LVwG 20.3-873/2016-21 and LVwG 21.3-874/2016-20, 9 Sep 2016; LVwG Steiermark, LVwG 22.3-2726/2020-50, 5 Jul 2021; LVwG Steiermark, LVwG 20.3-2725/2020-86, 1 Jul 2021; LVwG Steiermark, LVwG 20.3-2621/2021-49, 16 Feb 2022; VwGH, Ra 2017/21/0018, 14 Nov 2017; VwGH, Ra 2021/21/0274-6, 5 May 2022; VwGH, Ra 2022/21/0074-6, 19 May 2022

5. Interaction: The barrier prevents access to the asylum procedure and bypasses the safe third country processing under the Dublin Regulation. Before implementation, individuals can be kept in police custody.⁶
6. Development: While reliable information is not available, it can be assumed that authorities started implementing pushbacks in the context of the mass arrivals of asylum seekers in 2015 and 2016. After judicial interventions in 2021 and 2022, implementation was discontinued.⁷
7. Rationale: The government has not provided a rationale but has largely denied that pushbacks are happening, arguing that individuals affected were not applying for asylum and thus were subjected to general measures to combat ‘illegal migration’.⁸
8. Legal Status: Those seeking asylum are granted a ‘de facto protection against refoulement’ before a final decision on their claim is taken. However, given that authorities would overhear or ignore asylum claims, this status would not apply in practice.⁹
9. Specific Impact: No specific impact is known. However, pushbacks were also conducted against minors. The pushback of the 17-year-old Somali boy in July 2021 illustrates how minors’ rights were disregarded. He explicitly said “Asyl” multiple times, but officers still pushed him back to Slovenia.¹⁰
10. Reach: The number of affected individuals is unknown. According to court decisions in 2021 and 2022, pushbacks were implemented systematically or methodically. In 2020, which appears to have been the peak, reportedly 514 persons were handed over to Slovenian authorities from Austria. Through Operation Fox (joint patrols in Hungary), in 2023, Austrian-supported

⁶ Sources: Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection (Dublin III Regulation), OJ L 180, 29.6.2013, pp. 31-59, especially Arts 3(2), 17, 27 and 28, <https://eur-lex.europa.eu/eli/reg/2013/604/oj/eng>; LVwG Steiermark, LVwG 20.3-918/2016-15 and LVwG 21.3-919/2016-15, 9 Sep 2016; LVwG Steiermark, LVwG 20.3-864/2016-26 and LVwG 21.3-865/2016-23, 29 Aug 2016; LVwG Steiermark, LVwG 20.3-873/2016-21 and LVwG 21.3-874/2016-20, 9 Sep 2016; LVwG Steiermark, LVwG 22.3-2726/2020-50, 5 Jul 2021; LVwG Steiermark, LVwG 20.3-2725/2020-86, 1 Jul 2021; LVwG Steiermark, LVwG 20.3-2621/2021-49, 16 Feb 2022; VwGH, Ra 2017/21/0018, 14 Nov 2017; VwGH, Ra 2021/21/0274-6, 5 May 2022; VwGH, Ra 2022/21/0074-6, 19 May 2022; AIDA/ECRE, Country Report: Austria, Access to territory and push backs, 2024 Update, July 2025, <https://asylumineurope.org/reports/country/austria/asylum-procedure/access-procedure-and-registration/access-territory-and-push-backs/>

⁷ Sources: LVwG Steiermark, LVwG 20.3-918/2016-15 and LVwG 21.3-919/2016-15, 9 Sep 2016; LVwG Steiermark, LVwG 20.3-864/2016-26 and LVwG 21.3-865/2016-23, 29 Aug 2016; LVwG Steiermark, LVwG 20.3-873/2016-21 and LVwG 21.3-874/2016-20, 9 Sep 2016; LVwG Steiermark, LVwG 22.3-2726/2020-50, 5 Jul 2021; LVwG Steiermark, LVwG 20.3-2725/2020-86, 1 Jul 2021; LVwG Steiermark, LVwG 20.3-2621/2021-49, 16 Feb 2022; VwGH, Ra 2017/21/0018, 14 Nov 2017; VwGH, Ra 2021/21/0274-6, 5 May 2022; VwGH, Ra 2022/21/0074-6, 19 May 2022; AIDA/ECRE, Country Report: Austria, Access to territory and push backs, 2024 Update, July 2025, <https://asylumineurope.org/reports/country/austria/asylum-procedure/access-procedure-and-registration/access-territory-and-push-backs/>

⁸ Sources: LVwG Steiermark, LVwG 20.3-918/2016-15 and LVwG 21.3-919/2016-15, 9 Sep 2016; LVwG Steiermark, LVwG 20.3-864/2016-26 and LVwG 21.3-865/2016-23, 29 Aug 2016; LVwG Steiermark, LVwG 20.3-873/2016-21 and LVwG 21.3-874/2016-20, 9 Sep 2016; LVwG Steiermark, LVwG 22.3-2726/2020-50, 5 Jul 2021; LVwG Steiermark, LVwG 20.3-2725/2020-86, 1 Jul 2021; LVwG Steiermark, LVwG 20.3-2621/2021-49, 16 Feb 2022; VwGH, Ra 2017/21/0018, 14 Nov 2017; VwGH, Ra 2021/21/0274-6, 5 May 2022; VwGH, Ra 2022/21/0074-6, 19 May 2022; Council of Europe Commissioner for Human Rights, Report following the visit to Austria from 13 to 17 December 2021, CommDH(2022)10, <https://rm.coe.int/commdh-2022-10-report-on-the-visit-to-austria-en/1680a6679a>; AIDA/ECRE, Country Report: Austria, Access to territory and push backs, 2024 Update, July 2025, <https://asylumineurope.org/reports/country/austria/asylum-procedure/access-procedure-and-registration/access-territory-and-push-backs/>

⁹ Source: Asylgesetz 2005 (Austrian Asylum Act), Federal Law Gazette I No 100/2005 as amended, especially §§ 12, 12a, 22, 24, 28 and 36, RIS consolidated version: <https://www.ris.bka.gv.at/Gelten.deFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=20004240>

¹⁰ Sources: LVwG Steiermark, LVwG 20.3-2621/2021-49, 16 Feb 2022; VwGH, Ra 2022/21/0074-6, 19 May 2022

operations led to large numbers of apprehensions, which could be connected to over 100,000 apprehensions in the Hungary-Austria border region in 2023.¹¹

11. Source: There is no legal basis in Austrian law that permits pushbacks of asylum seekers. On the contrary, Austrian legislation requires authorities to accept and process asylum applications made on the territory or at the border. The implementation of pushbacks was grounded in the instrument of ‘refusals of entry’ according to the Schengen Borders Code and the Austrian Aliens Police Act (Section 41). A bilateral readmission agreement with Slovenia, which itself excludes asylum seekers, has likely been used to facilitate informal police cooperation with Slovenia.¹² Moreover, Austrian law (Section 36 Asylum Act) allows for restricting access to asylum in case of public emergency.¹³ However, to date, this possibility has not yet been used.

12. Justification: The government claims that individuals did not apply for asylum and acknowledges the illegality of pushbacks against asylum seekers.¹⁴

13. Domestic and International Reactions: The Commission for Human Rights of the Council of Europe expressed concern “about consistent and credible allegations of pushbacks, which point to the existence of an established practice”¹⁵ Several domestic and European NGOs have similarly criticized the Austrian government for its actions, including ECRE¹⁶ and asylkoordination.¹⁷ The government, despite partly denying the occurrence of pushbacks, itself reacted with revised instructions to border police and requiring them to participate in trainings.¹⁸

¹¹ Sources: LVwG Steiermark, LVwG 20.3-2725/2020-86, 1 Jul 2021; LVwG Steiermark, LVwG 20.3-2621/2021-49, 16 Feb 2022; VwGH, Ra 2021/21/0274-6, 5 May 2022; VwGH, Ra 2022/21/0074-6, 19 May 2022; AIDA/ECRE, Country Report: Austria, Access to territory and push backs, 2024 Update, July 2025, <https://asylumineurope.org/reports/country/austria/asylum-procedure/access-procedure-and-registration/access-territory-and-push-backs/>

¹² Sources: Regulation (EU) 2016/399 of the European Parliament and of the Council of 9 March 2016 on a Union Code on the rules governing the movement of persons across borders (Schengen Borders Code), OJ L 77, 23.3.2016, pp. 1-52, especially Arts 6, 14 and 23a, <https://eur-lex.europa.eu/eli/reg/2016/399/oj/eng>; Fremdenpolizeigesetz 2005 (Austrian Aliens Police Act), Federal Law Gazette I No 100/2005 as amended, especially §§ 41, 46 and 76, RIS consolidated version:

<https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=20004241>;

Abkommen zwischen der Regierung der Republik Österreich und der Regierung der Republik Slowenien über die Übernahme von Personen an der gemeinsamen Grenze, BGBl 313/1995, https://www.ris.bka.gv.at/Dokumente/BgblPdf/1995_313_0/1995_313_0.pdf; LVwG Steiermark, LVwG 20.3-918/2016-15 and LVwG 21.3-919/2016-15, 9 Sep 2016; LVwG Steiermark, LVwG 20.3-864/2016-26 and LVwG 21.3-865/2016-23, 29 Aug 2016; LVwG Steiermark, LVwG 20.3-873/2016-21 and LVwG 21.3-874/2016-20, 9 Sep 2016; LVwG Steiermark, LVwG 22.3-2726/2020-50, 5 Jul 2021; LVwG Steiermark, LVwG 20.3-2725/2020-86, 1 Jul 2021; LVwG Steiermark, LVwG 20.3-2621/2021-49, 16 Feb 2022; VwGH, Ra 2017/21/0018, 14 Nov 2017; VwGH, Ra 2021/21/0274-6, 5 May 2022; VwGH, Ra 2022/21/0074-6, 19 May 2022; AIDA/ECRE, Country Report: Austria, Access to territory and push backs, 2024 Update, July 2025, <https://asylumineurope.org/reports/country/austria/asylum-procedure/access-procedure-and-registration/access-territory-and-push-backs/>

¹³ <https://www.blogasyl.at/2022/01/die-notverordnung-der-schlafende-hund-im-oesterreichischen-asylrecht/>

¹⁴ Sources: LVwG Steiermark, LVwG 20.3-918/2016-15 and LVwG 21.3-919/2016-15, 9 Sep 2016; LVwG Steiermark, LVwG 20.3-864/2016-26 and LVwG 21.3-865/2016-23, 29 Aug 2016; LVwG Steiermark, LVwG 20.3-873/2016-21 and LVwG 21.3-874/2016-20, 9 Sep 2016; LVwG Steiermark, LVwG 22.3-2726/2020-50, 5 Jul 2021; LVwG Steiermark, LVwG 20.3-2725/2020-86, 1 Jul 2021; LVwG Steiermark, LVwG 20.3-2621/2021-49, 16 Feb 2022; VwGH, Ra 2017/21/0018, 14 Nov 2017; VwGH, Ra 2021/21/0274-6, 5 May 2022; VwGH, Ra 2022/21/0074-6, 19 May 2022; AIDA/ECRE, Country Report: Austria, Access to territory and push backs, 2024 Update, July 2025, <https://asylumineurope.org/reports/country/austria/asylum-procedure/access-procedure-and-registration/access-territory-and-push-backs/>

¹⁵ <https://rm.coe.int/commdh-2022-10-report-on-the-visit-to-austria-en/1680a6679a>

¹⁶ <https://ecre.org/austria-new-judgment-confirms-pushbacks-review-of-readmission-agreement-with-switzerland-paves-the-way-for-summary-returns-government-seeks-cooperation-on-return/>

¹⁷ <https://www.asyl.at/archiv-2022/de/info/presseaussendungen/gerichtbestaetigtillegalenpush-back/index.html>

¹⁸ Sources: LVwG Steiermark, LVwG 20.3-918/2016-15 and LVwG 21.3-919/2016-15, 9 Sep 2016; LVwG Steiermark, LVwG 20.3-864/2016-26 and LVwG 21.3-865/2016-23, 29 Aug 2016; LVwG Steiermark, LVwG 20.3-

14. Externalization: Through pushbacks, individuals are forced to apply for asylum elsewhere, thus arguably constituting an instance of externalization. Moreover, an important dimension of Austria's approach to pushbacks is how it has involved cooperation with other countries, and how Austria is itself acting extraterritorially. In particular, as Austria curtailed pushbacks on its own soil, it ramped up a joint operation on Hungarian territory starting December 2022. Called Operation Fox, this initiative involves Austrian police officers deployed to Hungary (as of early 2023) working in mixed patrols with Hungarian officers. The operation explicitly allows Austrian officers to exercise police powers in Hungary, based on the EU's Prüm framework for cross-border cooperation. In practice, these joint patrols operate mainly near Hungary's border with Serbia, where individuals are forcibly returned to Serbia.¹⁹

15. Technology: No reliable public information identified.

16. Other: A related but distinct measure concerns the revocation of protection against refoulement and detention pending deportation for certain subsequent asylum applicants. This measure, introduced to address perceived misuse of repeated asylum applications, is discussed under detention and in the case-law analysis; it has been contested in constitutional and EU-law terms, including as regards changing Article 3 ECHR circumstances and Dublin cases. In practice, time is especially critical at or immediately after a pushback: removal can follow quickly, evidence may degrade, contact becomes less likely, and Austria lacks a dedicated border-monitoring mechanism.²⁰

Walls and fences

Summary: The Austrian border fence in Spielfeld at the Slovenian border, as the most prominent example, is a 5 km long chain-link fence, which was erected in 2015/2016 as part of a larger 'border management system'. Its main function was to channel the flow of migrants to the official border crossing for orderly registration and control, and to prevent uncontrolled crossings of the green border. In practice, the fence quickly lost its relevance. Although it still exists physically (albeit

873/2016-21 and LVwG 21.3-874/2016-20, 9 Sep 2016; LVwG Steiermark, LVwG 22.3-2726/2020-50, 5 Jul 2021; LVwG Steiermark, LVwG 20.3-2725/2020-86, 1 Jul 2021; LVwG Steiermark, LVwG 20.3-2621/2021-49, 16 Feb 2022; VwGH, Ra 2017/21/0018, 14 Nov 2017; VwGH, Ra 2021/21/0274-6, 5 May 2022; VwGH, Ra 2022/21/0074-6, 19 May 2022; AIDA/ECRE, Country Report: Austria, Access to territory and push backs, 2024 Update, July 2025, <https://asylumineurope.org/reports/country/austria/asylum-procedure/access-procedure-and-registration/access-territory-and-push-backs/>

¹⁹ Sources: Council Decision 2008/615/JHA of 23 June 2008 on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime, OJ L 210, 6.8.2008, pp. 1-11, especially Chapter 5, <https://eur-lex.europa.eu/eli/dec/2008/615/oj/eng>; Council Decision 2008/616/JHA of 23 June 2008 on the implementation of Decision 2008/615/JHA, OJ L 210, 6.8.2008, pp. 12-72, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32008D0616>; AIDA/ECRE, Country Report: Austria, Access to territory and push backs, 2024 Update, July 2025, <https://asylumineurope.org/reports/country/austria/asylum-procedure/access-procedure-and-registration/access-territory-and-push-backs/>; LVwG Steiermark, LVwG 20.3-918/2016-15 and LVwG 21.3-919/2016-15, 9 Sep 2016; LVwG Steiermark, LVwG 20.3-864/2016-26 and LVwG 21.3-865/2016-23, 29 Aug 2016; LVwG Steiermark, LVwG 20.3-873/2016-21 and LVwG 21.3-874/2016-20, 9 Sep 2016; LVwG Steiermark, LVwG 22.3-2726/2020-50, 5 Jul 2021; LVwG Steiermark, LVwG 20.3-2725/2020-86, 1 Jul 2021; LVwG Steiermark, LVwG 20.3-2621/2021-49, 16 Feb 2022; VwGH, Ra 2017/21/0018, 14 Nov 2017; VwGH, Ra 2021/21/0274-6, 5 May 2022; VwGH, Ra 2022/21/0074-6, 19 May 2022

²⁰ Sources: Asylgesetz 2005 (Austrian Asylum Act), Federal Law Gazette I No 100/2005 as amended, especially §§ 12, 12a, 22, 24, 28 and 36, RIS consolidated version: <https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=20004240>; Erläuterungen zur Regierungsvorlage 330 BlgNR XXIV. GP, https://www.parlament.gv.at/dokument/XXIV/I/330/fnameorig_167909.html; VwGH, Ra 2017/21/0240, 26 Apr 2018; VwGH, Ra 2019/21/0198, 24 Oct 2019; VwGH, Ro 2020/21/0011, 29 Sep 2020; VwGH, Ra 2020/21/0404, 15 Dec 2020; VwGH, Ra 2021/21/0025, 18 Feb 2021; VwGH, Ra 2021/21/0076, 8 Apr 2021; VwGH, Ra 2022/21/0169, 11 Apr 2024; VwGH, Ro 2024/21/0004, 27 Feb 2025; DOI 10.33196/juridikum201802016401, <https://biblioscout.net/article/10.33196/juridikum201802016401>

partially overgrown and incomplete), its role is negligible. It has incurred high costs and currently serves more as a symbolic instrument and potential infrastructure in the event of a crisis.

1. Functioning: The barrier at Spielfeld is designed to channel migrants and refugees arriving via the Balkan route toward the official border crossing for registration and processing. It is integrated within a broader border management system, funneling arrivals through designated checkpoints for identification and initial processing before any formal asylum application in Austria is considered.²¹

2. Time: Implementation began in late 2015 and continued into early 2016. Although the physical structure (the fence) remains, it is reported to be partially overgrown and exhibit gaps, while its active use diminished after the closure of the Balkan route further south. No reliable information is available regarding its planned termination.²²

3. Place: The barrier is situated at the Spielfeld-Šentilj border crossing between Austria (Styria) and Slovenia. The initial installation extended approximately 3.7 kilometres, later slightly expanded along the border near the official crossing point.²³

4. Actors: The principal institutional actor is the Austrian federal government, specifically the Ministry of the Interior, which coordinated police and border management efforts. The Austrian Army also contributed to border surveillance and, potentially, construction support. Additionally, Slovenia, as the directly affected neighbouring country, has voiced criticism.²⁴

²¹ Sources: Sophia Katharina Schneider, Die Bedeutung von Grenzen während der Flüchtlingskrise 2015/16: Am Beispiel der Grenze zwischen Slowenien und Österreich, Masters thesis, University of Graz, <https://unipub.uni-graz.at/obvugrhs/content/titleinfo/5267227/full.pdf>;

<https://www.derstandard.at/story/2000025547061/grenzzaun-in-slowenien-der-domino-effekt-hat-begonnen>;
<https://www.sueddeutsche.de/politik/fluechtlinge-oesterreich-baut-zaun-an-der-grenze-zu-slowenien-1.2735804>;
<https://www.spiegel.de/politik/ausland/oesterreich-grenzzaun-kostet-millionen-nur-fluechtlinge-kommen-nicht-a-1240507.html>; Ivan Josipovic and Ursula Reeger, Border Management and Migration Controls in Austria: Country Report, RESPOND Working Paper 2019/19, June 2019, DOI 10.5281/zenodo.3250621, <https://zenodo.org/record/3250621>

²² Sources: Sophia Katharina Schneider, Die Bedeutung von Grenzen während der Flüchtlingskrise 2015/16: Am Beispiel der Grenze zwischen Slowenien und Österreich, Masters thesis, University of Graz, <https://unipub.uni-graz.at/obvugrhs/content/titleinfo/5267227/full.pdf>;

<https://www.derstandard.at/story/2000025547061/grenzzaun-in-slowenien-der-domino-effekt-hat-begonnen>;
<https://www.sueddeutsche.de/politik/fluechtlinge-oesterreich-baut-zaun-an-der-grenze-zu-slowenien-1.2735804>;
<https://www.spiegel.de/politik/ausland/oesterreich-grenzzaun-kostet-millionen-nur-fluechtlinge-kommen-nicht-a-1240507.html>; Ivan Josipovic and Ursula Reeger, Border Management and Migration Controls in Austria: Country Report, RESPOND Working Paper 2019/19, June 2019, DOI 10.5281/zenodo.3250621, <https://zenodo.org/record/3250621>

²³ Sources: Sophia Katharina Schneider, Die Bedeutung von Grenzen während der Flüchtlingskrise 2015/16: Am Beispiel der Grenze zwischen Slowenien und Österreich, Masters thesis, University of Graz, <https://unipub.uni-graz.at/obvugrhs/content/titleinfo/5267227/full.pdf>;

<https://www.derstandard.at/story/2000025547061/grenzzaun-in-slowenien-der-domino-effekt-hat-begonnen>;
<https://www.sueddeutsche.de/politik/fluechtlinge-oesterreich-baut-zaun-an-der-grenze-zu-slowenien-1.2735804>;
<https://www.spiegel.de/politik/ausland/oesterreich-grenzzaun-kostet-millionen-nur-fluechtlinge-kommen-nicht-a-1240507.html>; Ivan Josipovic and Ursula Reeger, Border Management and Migration Controls in Austria: Country Report, RESPOND Working Paper 2019/19, June 2019, DOI 10.5281/zenodo.3250621, <https://zenodo.org/record/3250621>

²⁴ Sources: Sophia Katharina Schneider, Die Bedeutung von Grenzen während der Flüchtlingskrise 2015/16: Am Beispiel der Grenze zwischen Slowenien und Österreich, Masters thesis, University of Graz, <https://unipub.uni-graz.at/obvugrhs/content/titleinfo/5267227/full.pdf>;

<https://www.derstandard.at/story/2000025547061/grenzzaun-in-slowenien-der-domino-effekt-hat-begonnen>;
<https://www.sueddeutsche.de/politik/fluechtlinge-oesterreich-baut-zaun-an-der-grenze-zu-slowenien-1.2735804>;
<https://www.spiegel.de/politik/ausland/oesterreich-grenzzaun-kostet-millionen-nur-fluechtlinge-kommen-nicht-a-1240507.html>; Ivan Josipovic and Ursula Reeger, Border Management and Migration Controls in Austria: Country Report, RESPOND Working Paper 2019/19, June 2019, DOI 10.5281/zenodo.3250621, <https://zenodo.org/record/3250621>

5. Interaction: The Spielfeld barrier was implemented as part of a series of measures along the Balkan route, aimed at managing the flow from Slovenia. It primarily directs individuals into the Austrian asylum system at Spielfeld and interacts with temporary, flexible border checks reinstated at various internal Schengen borders (e.g., with Hungary, Slovenia, Slovakia) and with checks conducted by Germany along its border with Austria.²⁵

6. Development: Introduced amid the 2015 European migration crisis, the barrier was a response to daily increases of arrivals that challenged local reception capacities. Its construction required significant financial outlays and extensive police and military resources. Local opposition was noted, particularly from winemakers who resisted access, resulting in breaches in the fence. Initially an emergency measure, it has since become largely symbolic as migration patterns shifted.²⁶

7. Rationale: The measure is justified as a means to ensure a controlled and orderly entry into Austria, manage migration flows, maintain public order and security at the crossing point, and enable proper registration and identification of arrivals. Officials have presented it as necessary for responsible border management under exceptional circumstances.²⁷

8. Legal Status: The barrier does not confer any new legal status on individuals who are prevented from accessing asylum.²⁸

9. Specific Impact: No reliable public information identified.

10. Reach: No reliable public information identified.

²⁵ Sources: Sophia Katharina Schneider, Die Bedeutung von Grenzen während der Flüchtlingskrise 2015/16: Am Beispiel der Grenze zwischen Slowenien und Österreich, Masters thesis, University of Graz, <https://unipub.uni-graz.at/obvugrhs/content/titleinfo/5267227/full.pdf>;

<https://www.derstandard.at/story/2000025547061/grenzzaun-in-slowenien-der-domino-effekt-hat-begonnen>;

<https://www.sueddeutsche.de/politik/fluechtlinge-oesterreich-baut-zaun-an-der-grenze-zu-slowenien-1.2735804>;

<https://www.spiegel.de/politik/ausland/oesterreich-grenzzaun-kostet-millionen-nur-fluechtlinge-kommen-nicht-a-1240507.html>; Ivan Josipovic and Ursula Reeger, Border Management and Migration Controls in Austria: Country Report, RESPOND Working Paper 2019/19, June 2019, DOI 10.5281/zenodo.3250621, <https://zenodo.org/record/3250621>

²⁶ Sources: Sophia Katharina Schneider, Die Bedeutung von Grenzen während der Flüchtlingskrise 2015/16: Am Beispiel der Grenze zwischen Slowenien und Österreich, Masters thesis, University of Graz, <https://unipub.uni-graz.at/obvugrhs/content/titleinfo/5267227/full.pdf>;

<https://www.derstandard.at/story/2000025547061/grenzzaun-in-slowenien-der-domino-effekt-hat-begonnen>;

<https://www.sueddeutsche.de/politik/fluechtlinge-oesterreich-baut-zaun-an-der-grenze-zu-slowenien-1.2735804>;

<https://www.spiegel.de/politik/ausland/oesterreich-grenzzaun-kostet-millionen-nur-fluechtlinge-kommen-nicht-a-1240507.html>; Ivan Josipovic and Ursula Reeger, Border Management and Migration Controls in Austria: Country Report, RESPOND Working Paper 2019/19, June 2019, DOI 10.5281/zenodo.3250621, <https://zenodo.org/record/3250621>

²⁷ Sources: Sophia Katharina Schneider, Die Bedeutung von Grenzen während der Flüchtlingskrise 2015/16: Am Beispiel der Grenze zwischen Slowenien und Österreich, Masters thesis, University of Graz, <https://unipub.uni-graz.at/obvugrhs/content/titleinfo/5267227/full.pdf>;

<https://www.derstandard.at/story/2000025547061/grenzzaun-in-slowenien-der-domino-effekt-hat-begonnen>;

<https://www.sueddeutsche.de/politik/fluechtlinge-oesterreich-baut-zaun-an-der-grenze-zu-slowenien-1.2735804>;

<https://www.spiegel.de/politik/ausland/oesterreich-grenzzaun-kostet-millionen-nur-fluechtlinge-kommen-nicht-a-1240507.html>; Ivan Josipovic and Ursula Reeger, Border Management and Migration Controls in Austria: Country Report, RESPOND Working Paper 2019/19, June 2019, DOI 10.5281/zenodo.3250621, <https://zenodo.org/record/3250621>

²⁸ Sources: Sophia Katharina Schneider, Die Bedeutung von Grenzen während der Flüchtlingskrise 2015/16: Am Beispiel der Grenze zwischen Slowenien und Österreich, Masters thesis, University of Graz, <https://unipub.uni-graz.at/obvugrhs/content/titleinfo/5267227/full.pdf>;

<https://www.derstandard.at/story/2000025547061/grenzzaun-in-slowenien-der-domino-effekt-hat-begonnen>;

<https://www.sueddeutsche.de/politik/fluechtlinge-oesterreich-baut-zaun-an-der-grenze-zu-slowenien-1.2735804>;

<https://www.spiegel.de/politik/ausland/oesterreich-grenzzaun-kostet-millionen-nur-fluechtlinge-kommen-nicht-a-1240507.html>; Ivan Josipovic and Ursula Reeger, Border Management and Migration Controls in Austria: Country Report, RESPOND Working Paper 2019/19, June 2019, DOI 10.5281/zenodo.3250621, <https://zenodo.org/record/3250621>

11. Source: No reliable public information identified.

12. Justification: The Austrian government defends the barrier on the grounds of maintaining public order and internal security amid unprecedented arrival numbers. Government and contemporary reporting presented the measure as a means of ensuring “orderly processing”, preventing chaos and managing flows effectively in the exceptional circumstances of 2015/2016.²⁹

13. Domestic and International Reactions: Domestically, opinions are divided. Certain segments of the public and political groups favor stricter controls, whereas critics question the high costs, limited effectiveness, and the symbolism of an internal EU barrier - particularly noting negative impacts on local communities such as winemakers. Internationally, Slovenia has expressed criticism.³⁰

14. Externalization: No externalization component was identified.

15. Technology: The implementation relied on technological tools such as computer systems and fingerprint scanners integrated within registration containers, which were pivotal in identifying and processing arrivals channelled through the barrier.³¹

Detention

Summary: This barrier consists of the detention of individuals for the purpose of removal. It includes those who file subsequent asylum applications after their initial claim was rejected, a measure introduced in 2009 under the Aliens Police Act (Section 76). Implemented by the Federal Office for Immigration and Asylum (BFA) and Austrian police in detention facilities across the country, this aims to secure eventual deportation and is justified by the government as necessary to prevent misuse of the asylum system through non-genuine follow-up claims perceived as delaying tactics that create administrative burdens.

While detained, individuals may face revoked protection against refoulement and more restricted access to substantive asylum processing for their subsequent claim, though they are still legally considered asylum seekers; stricter criteria apply for detaining minors, but specific impacts and

²⁹ Sources: Sophia Katharina Schneider, Die Bedeutung von Grenzen während der Flüchtlingskrise 2015/16: Am Beispiel der Grenze zwischen Slowenien und Österreich, Masters thesis, University of Graz, <https://unipub.uni-graz.at/obvugrhs/content/titleinfo/5267227/full.pdf>; <https://www.derstandard.at/story/2000025547061/grenzzaun-in-slowenien-der-domino-effekt-hat-begonnen>; <https://www.sueddeutsche.de/politik/fluechtlinge-oesterreich-baut-zaun-an-der-grenze-zu-slowenien-1.2735804>; <https://www.spiegel.de/politik/ausland/oesterreich-grenzzaun-kostet-millionen-nur-fluechtlinge-kommen-nicht-a-1240507.html>; Ivan Josipovic and Ursula Reeger, Border Management and Migration Controls in Austria: Country Report, RESPOND Working Paper 2019/19, June 2019, DOI 10.5281/zenodo.3250621, <https://zenodo.org/record/3250621>

³⁰ Sources: Sophia Katharina Schneider, Die Bedeutung von Grenzen während der Flüchtlingskrise 2015/16: Am Beispiel der Grenze zwischen Slowenien und Österreich, Masters thesis, University of Graz, <https://unipub.uni-graz.at/obvugrhs/content/titleinfo/5267227/full.pdf>; <https://www.derstandard.at/story/2000025547061/grenzzaun-in-slowenien-der-domino-effekt-hat-begonnen>; <https://www.sueddeutsche.de/politik/fluechtlinge-oesterreich-baut-zaun-an-der-grenze-zu-slowenien-1.2735804>; <https://www.spiegel.de/politik/ausland/oesterreich-grenzzaun-kostet-millionen-nur-fluechtlinge-kommen-nicht-a-1240507.html>; Ivan Josipovic and Ursula Reeger, Border Management and Migration Controls in Austria: Country Report, RESPOND Working Paper 2019/19, June 2019, DOI 10.5281/zenodo.3250621, <https://zenodo.org/record/3250621>

³¹ Sources: Sophia Katharina Schneider, Die Bedeutung von Grenzen während der Flüchtlingskrise 2015/16: Am Beispiel der Grenze zwischen Slowenien und Österreich, Masters thesis, University of Graz, <https://unipub.uni-graz.at/obvugrhs/content/titleinfo/5267227/full.pdf>; <https://www.derstandard.at/story/2000025547061/grenzzaun-in-slowenien-der-domino-effekt-hat-begonnen>; <https://www.sueddeutsche.de/politik/fluechtlinge-oesterreich-baut-zaun-an-der-grenze-zu-slowenien-1.2735804>; <https://www.spiegel.de/politik/ausland/oesterreich-grenzzaun-kostet-millionen-nur-fluechtlinge-kommen-nicht-a-1240507.html>; Ivan Josipovic and Ursula Reeger, Border Management and Migration Controls in Austria: Country Report, RESPOND Working Paper 2019/19, June 2019, DOI 10.5281/zenodo.3250621, <https://zenodo.org/record/3250621>

reach numbers are not reliably documented. This practice interacts directly with procedures for deportation and the revocation of non-refoulement protections and has faced legal challenges over time. A further practical version of the barrier concerns cases in which asylum applications or stated protection needs in detention are not promptly registered or forwarded, preventing the asylum procedure from being opened before removal steps continue.

In Dublin procedures, detention is explicitly foreseen under § 76 FPG to secure a transfer to the responsible Member State, where the conditions of Article 28 Dublin III are considered met (notably, a “risk of absconding”). Dublin applicants are often detained immediately after lodging the application and may be kept in detention until the transfer is implemented, and that detention can last “some weeks” because suspensive effect is hardly ever granted and the transfer may be carried out while an appeal is still pending. In addition, “arrest” (detention without an official order) is almost systematic in the 72 hours preceding a Dublin transfer, indicating routine short-notice deprivation of liberty immediately before removal.

1. Functioning: Individuals can be detained (for securing deportation) following their subsequent applications for asylum and revocation of protection against refoulement (under the statutory provisions and case law listed in the source note). This detention prevents them from proper access to asylum through facilitating their removal before the start of a substantial asylum process. In Dublin cases, detention is used to secure the Dublin transfer to the responsible Member State. In practice, applicants in the Dublin procedure are often detained immediately after lodging and may remain detained until transfer; moreover, pre-transfer “arrest” without an official order is reportedly almost systematic during the final 72 hours before the transfer.³²

2. Time: No reliable public information identified. The respective provision in Austrian law was introduced in 2009.³³

3. Place: In detention facilities (“Polizeianhaltezentren”) throughout the country, such as “Wien, PAZ Hernalser Gürtel”, “Wien, PAZ Rossauer Lände”, and “Wien, Familienunterkunft Zinnergasse.”³⁴

4. Actors: Federal Office for Immigration and Asylum (BFA); Austrian police.³⁵

5. Interaction: Detention interacts with the revoking of protection against refoulement for subsequent applications and deportations,³⁶ Federal Law Gazette I No 100/2005 as amended, especially §§ 41, 46 and 76, RIS consolidated version: <https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=20004241>; Asylgesetz 2005 (Austrian Asylum Act), Federal Law Gazette I No 100/2005 as

³² Sources: Fremdenpolizeigesetz 2005 (Austrian Aliens Police Act), Federal Law Gazette I No 100/2005 as amended, especially §§ 41, 46 and 76, RIS consolidated version: <https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=20004241>; VwGH, Ra 2017/21/0240, 26 Apr 2018; VwGH, Ra 2019/21/0198, 24 Oct 2019; VwGH, Ro 2020/21/0011, 29 Sep 2020; VwGH, Ra 2020/21/0404, 15 Dec 2020; VwGH, Ra 2021/21/0025, 18 Feb 2021; VwGH, Ra 2021/21/0076, 8 Apr 2021; VwGH, Ra 2022/21/0169, 11 Apr 2024; VwGH, Ro 2024/21/0004, 27 Feb 2025; AIDA/ECRE, Country Report: Austria, Detention conditions and legal framework of detention, 2024 Update, July 2025, <https://asylumineurope.org/reports/country/austria/detention-asylum-seekers/detention-conditions/> and <https://asylumineurope.org/reports/country/austria/detention-asylum-seekers/legal-framework-detention/>; AIDA/ECRE, Country Report: Austria, Dublin procedure, 2024 Update, July 2025, <https://asylumineurope.org/reports/country/austria/asylum-procedure/procedures/dublin/>

³³ Source: https://www.parlament.gv.at/dokument/XXIV/I/330/fnameorig_167909.html

³⁴

Source: https://www.bmi.gv.at/202/Fremdenpolizei_und_Grenzkontrolle/Information_Schubhaft/files/InfoFolder_Schubhaft_Deutsch.pdf

³⁵

Source: https://www.bmi.gv.at/202/Fremdenpolizei_und_Grenzkontrolle/Information_Schubhaft/files/InfoFolder_Schubhaft_Deutsch.pdf

³⁶ Sources: Fremdenpolizeigesetz 2005 (Austrian Aliens Police Act).

amended, especially §§ 12, 12a, 22, 24, 28 and 36, RIS consolidated version: <https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=20004240>). Moreover, it interacts with state-dependent legal aid, as governed by Austrian legal-aid provisions. In Dublin tracks, detention/arrest interacts directly with transfer enforcement and the appeal/suspensive-effect practice (since transfer may occur while the appeal is pending). The AIDA/ECRE 2024 Update reports that in late 2024 some applicants expected to be returned to Italy under Dublin were kept in detention based on the BFA's assumption Italy might resume take-backs, but were generally released after a short time as Italy did not change its policy and no Dublin returns to Italy occurred in 2024.³⁷

6. Development: The measure was introduced in 2009 when the government thought there was a heavy administrative burden created through subsequent applications which are not genuine but were misusing the system. The application of the measure, as well as the revoking of refoulement protection, was later partly challenged by case law (under the statutory provisions and case law listed in the source note).³⁸

7. Rationale: Given that an individual's initial asylum application has been decided negatively, detention is allegedly justified after a subsequent application.³⁹

8. Legal Status: Individuals are considered asylum seekers but without protection against refoulement. In Dublin cases, the risk of absconding is cited.⁴⁰

9. Specific Impact: No reliable public information identified. For detention against minors, stricter criteria apply.⁴¹

10. Reach: Available public material does not provide reliable aggregate information on the number of persons affected by this barrier; however, the identified detention decisions and judicial caseload estimates serve as proxy indicators for the prevalence of this barrier.⁴²

³⁷ AIDA/ECRE, Country Report: Austria, 2024 Update, July 2025, https://asylumineurope.org/wp-content/uploads/2025/07/AIDA_AT_2024-Update.pdf

³⁸ Sources: https://www.parlament.gv.at/dokument/XXIV/I/330/fnameorig_167909.html; VwGH, Ra 2017/21/0240, 26 Apr 2018; VwGH, Ra 2019/21/0198, 24 Oct 2019; VwGH, Ro 2020/21/0011, 29 Sep 2020; VwGH, Ra 2020/21/0404, 15 Dec 2020; VwGH, Ra 2021/21/0025, 18 Feb 2021; VwGH, Ra 2021/21/0076, 8 Apr 2021; VwGH, Ra 2022/21/0169, 11 Apr 2024; VwGH, Ro 2024/21/0004, 27 Feb 2025

³⁹ Sources: VwGH, Ra 2017/21/0240, 26 Apr 2018; VwGH, Ra 2019/21/0198, 24 Oct 2019; VwGH, Ro 2020/21/0011, 29 Sep 2020; VwGH, Ra 2020/21/0404, 15 Dec 2020; VwGH, Ra 2021/21/0025, 18 Feb 2021; VwGH, Ra 2021/21/0076, 8 Apr 2021; VwGH, Ra 2022/21/0169, 11 Apr 2024; VwGH, Ro 2024/21/0004, 27 Feb 2025; https://www.parlament.gv.at/dokument/XXIV/I/330/fnameorig_167909.html

⁴⁰ Sources: Asylgesetz 2005 (Austrian Asylum Act), Federal Law Gazette I No 100/2005 as amended, especially §§ 12, 12a, 22, 24, 28 and 36, RIS consolidated version: <https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=20004240>; Fremdenpolizeigesetz 2005 (Austrian Aliens Police Act), Federal Law Gazette I No 100/2005 as amended, especially §§ 41, 46 and 76, RIS consolidated version: <https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=20004241>; Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection (Dublin III Regulation), OJ L 180, 29.6.2013, pp. 31-59, especially Arts 3(2), 17, 27 and 28, <https://eur-lex.europa.eu/eli/reg/2013/604/oj/eng>

⁴¹ Source: Fremdenpolizeigesetz 2005 (Austrian Aliens Police Act), Federal Law Gazette I No 100/2005 as amended, especially §§ 41, 46 and 76, RIS consolidated version: <https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=20004241>

⁴² Sources: VwGH, Ra 2017/21/0240, 26 Apr 2018; VwGH, Ra 2019/21/0198, 24 Oct 2019; VwGH, Ro 2020/21/0011, 29 Sep 2020; VwGH, Ra 2020/21/0404, 15 Dec 2020; VwGH, Ra 2021/21/0025, 18 Feb 2021; VwGH, Ra 2021/21/0076, 8 Apr 2021; VwGH, Ra 2022/21/0169, 11 Apr 2024; VwGH, Ro 2024/21/0004, 27 Feb 2025; BVwG, Tätigkeitsbericht 2024, 1 February 2024-31 January 2025, https://www.bvwg.gv.at/dam/jcr%3A117e4749-fc50-4c58-93ba-3d2a43343559/T%C3%A4tigkeitsbericht%202024_barrierefrei.pdf

11. Source: Domestic law, particularly §§ 12a, 22 and 24 Asylum Act, § 22 BFA-VG, §§ 46 and 76 Aliens Police Act, and the Dublin III Regulation.⁴³

12. Justification: According to the government, many follow-up applications were not based on new asylum reasons but aimed at delaying or avoiding deportation, creating a heavy administrative burden. This would justify applying detention criteria different from those applied to first asylum applications.⁴⁴ In the Dublin context, the risk of absconding is cited.

13. Domestic and International Reactions: No reliable public information identified beyond the case law challenging the legality of the barrier.⁴⁵

14. Externalization: No externalization component was identified.

15. Technology: No reliable public information identified.

16. Other: Short statutory timelines plus facility logistics constrain appeal preparation; detainees depend on facility schedules for communications, receive decisions by post (shrinking effective appeal time), and courts decide swiftly while detention continues.⁴⁶

Externalization of asylum processing (“Externalization via Dublin”)

Summary: Individuals are processed under the Dublin Regulation and removed to EU states where they may face onward/chain refoulement, denying them full access to asylum in Austria and potentially the EU. First established by the 1990 Convention implementing the Schengen Agreement and applied nationwide by the Federal Office for Immigration and Asylum and the police, affected individuals can be detained pending deportation and are treated as asylum applicants without full protection assessments. The measure is justified by assigning responsibility to another EU Member State, although, particularly for minors without relatives abroad, Austria retains responsibility. This barrier focuses on chain refoulement risks under the Dublin mechanism, while also covering general issues in Dublin processing relevant to the research.

1. Functioning: Individuals are subjected to a safe third country processing mechanism under the Dublin Regulation and, on that basis, removed to EU Member States where they risk chain

⁴³ Sources: Asylgesetz 2005 (Austrian Asylum Act), Federal Law Gazette I No 100/2005 as amended, especially §§ 12, 12a, 22, 24, 28 and 36, RIS consolidated version: <https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=20004240>; BFA-Verfahrensgesetz, Federal Law Gazette I No 87/2012 as amended, especially §§ 10 and 22, RIS consolidated version: <https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=20007944>; Fremdenpolizeigesetz 2005 (Austrian Aliens Police Act), Federal Law Gazette I No 100/2005 as amended, especially §§ 41, 46 and 76, RIS consolidated version: <https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=20004241>; Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection (Dublin III Regulation), OJ L 180, 29.6.2013, pp. 31-59, especially Arts 3(2), 17, 27 and 28, <https://eur-lex.europa.eu/eli/reg/2013/604/oj/eng>

⁴⁴ Source: https://www.parlament.gv.at/dokument/XXIV/I/330/fnameorig_167909.html

⁴⁵ Sources: VwGH, Ra 2017/21/0240, 26 Apr 2018; VwGH, Ra 2019/21/0198, 24 Oct 2019; VwGH, Ro 2020/21/0011, 29 Sep 2020; VwGH, Ra 2020/21/0404, 15 Dec 2020; VwGH, Ra 2021/21/0025, 18 Feb 2021; VwGH, Ra 2021/21/0076, 8 Apr 2021; VwGH, Ra 2022/21/0169, 11 Apr 2024; VwGH, Ro 2024/21/0004, 27 Feb 2025

⁴⁶ Sources: BFA-Verfahrensgesetz, Federal Law Gazette I No 87/2012 as amended, especially § 18, RIS consolidated version: <https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=20007944>; Fremdenpolizeigesetz 2005 (Austrian Aliens Police Act), Federal Law Gazette I No 100/2005 as amended, especially § 76, RIS consolidated version: <https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=20004241>; AIDA/ECRE, Country Report: Austria, Detention conditions and legal framework of detention, 2024 Update, July 2025, <https://asylumineurope.org/reports/country/austria/detention-asylum-seekers/detention-conditions/> and <https://asylumineurope.org/reports/country/austria/detention-asylum-seekers/legal-framework-detention/>

refoulement to non-EU Member States. Thereby, individuals are prevented access to a substantial asylum procedure in Austria, and potentially also within the EU.⁴⁷

2. Time: No reliable public information identified as regards the issue of chain refoulement. The legal basis for this type of safe third country processing has existed since 1990 (Convention implementing the Schengen Agreement). Dublin transfers to respective countries, such as Bulgaria, have been pursued continuously and are ongoing since 2010.⁴⁸

3. Place: The measure is applied throughout the country.

4. Actors: Federal Office for Immigration and Asylum (BFA); Austrian police.⁴⁹

5. Interaction: Individuals subjected to this barrier can be detained pending deportation.⁵⁰ Moreover, the barrier interacts with state-dependent legal aid provided in this phase of the asylum process.

6. Development: Transfers to Bulgaria are currently generally executed by the asylum authority and upheld by the appeal court. In 2017, the Supreme Administrative Court ruled that a proper assessment of conditions in Bulgaria is required, particularly for families. In March 2023, the Constitutional Court annulled two Federal Administrative Court decisions for failing to assess risks of pushbacks to Türkiye and effective access to asylum. Subsequently, appeals were upheld across the board. This changed with BFA Staatendokumentation country information as summarized in the AIDA/ECRE Dublin section, which noted that Bulgaria no longer rejected applications on “safe third country” grounds. Courts resumed upholding transfers. As of May 2024, Dublin returns to Bulgaria proceed, and appeals are typically dismissed. Exceptions persist. In 2023, a case involving a single mother and her child was annulled due to unaddressed vulnerability. In 2024, a gay applicant alleging abuse in Bulgaria had his appeal upheld and the case returned for further review. No reliable public information identified regarding the issue of chain refoulement from receiving countries onwards. It can be assumed, however, that the issue continuously exists since

⁴⁷ Sources: Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection (Dublin III Regulation), OJ L 180, 29.6.2013, pp. 31-59, especially Arts 3(2), 17, 27 and 28, <https://eur-lex.europa.eu/eli/reg/2013/604/oj/eng>; VfGH, E 2944/2022, 15 Mar 2023; VfGH, E 1275/2023, 28 Jun 2023; VfGH, E 2771/2022, 4 Oct 2023; BVwG, W154 2286923-1/9E, 27 Feb 2024; BVwG, W232 2288355-1/4E, 16 May 2024; BVwG, W239 2277733-1/5E, 9 Jul 2024; BVwG, W175 2306126-1/6E, 7 Apr 2025; VwGH, Ra 2016/01/0153, 20 Jun 2017; VwGH, Ra 2016/19/0351, 18 Oct 2017; VwGH, Ra 2017/20/0108, 14 Nov 2017; AIDA/ECRE, Country Report: Austria, Dublin procedure, 2024 Update, July 2025, <https://asylumineurope.org/reports/country/austria/asylum-procedure/procedures/dublin/>

⁴⁸ Sources: Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection (Dublin III Regulation), OJ L 180, 29.6.2013, pp. 31-59, especially Arts 3(2), 17, 27 and 28, <https://eur-lex.europa.eu/eli/reg/2013/604/oj/eng>; VfGH, E 2944/2022, 15 Mar 2023; VfGH, E 1275/2023, 28 Jun 2023; VfGH, E 2771/2022, 4 Oct 2023; BVwG, W154 2286923-1/9E, 27 Feb 2024; BVwG, W232 2288355-1/4E, 16 May 2024; BVwG, W239 2277733-1/5E, 9 Jul 2024; BVwG, W175 2306126-1/6E, 7 Apr 2025; VwGH, Ra 2016/01/0153, 20 Jun 2017; VwGH, Ra 2016/19/0351, 18 Oct 2017; VwGH, Ra 2017/20/0108, 14 Nov 2017; AIDA/ECRE, Country Report: Austria, Dublin procedure, 2024 Update, July 2025, <https://asylumineurope.org/reports/country/austria/asylum-procedure/procedures/dublin/>

⁴⁹ Sources: AIDA/ECRE, Country Report: Austria, Dublin procedure, 2024 Update, July 2025, <https://asylumineurope.org/reports/country/austria/asylum-procedure/procedures/dublin/>; BFA, Aufgaben, <https://www.bfa.gv.at/104/start.html>; Fremdenpolizeigesetz 2005 (Austrian Aliens Police Act), Federal Law Gazette I No 100/2005 as amended, especially §§ 41, 46 and 76, RIS consolidated version: <https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=20004241>

⁵⁰ Source: Fremdenpolizeigesetz 2005 (Austrian Aliens Police Act), Federal Law Gazette I No 100/2005 as amended, especially §§ 41, 46 and 76, RIS consolidated version: <https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=20004241>

the establishment of the Dublin system with the Convention implementing the Schengen Agreement, and has been shaped by the listed case law.⁵¹

7. Rationale: The responsibility of the other Member State according to the Dublin Regulation.⁵²

8. Legal Status: Affected individuals are considered asylum applicants who are not yet admitted to the procedure for substantially assessing their protection claims.⁵³

9. Specific Impact: No reliable public information identified. However, for minors who do not have relatives in other countries, it is regularly assumed that responsibility for their asylum applications is with Austria.⁵⁴

10. Reach: Currently, no reliable information is available regarding the issue of chain refoulement, and a comprehensive assessment, e.g., based on case law, would be beyond the scope of this research step. In 2023, “around 50% (2022: 70%) of all Austrian take back requests were sent to Bulgaria (6,688). 5,893 (2022: 6,619) were accepted by Bulgaria, 114 (2022: 34) transfers were effectively completed.”⁵⁵ In the last three years, the total number of Dublin transfers from Austria has roughly been between 1,500 and 2,000 per year.⁵⁶

11. Source: Dublin III Regulation.⁵⁷

⁵¹ Sources: AIDA/ECRE, Country Report: Austria, Dublin procedure, 2024 Update, July 2025, <https://asylumineurope.org/reports/country/austria/asylum-procedure/procedures/dublin/>; BFA Staatendokumentation, Methodologie der Staatendokumentation, 2016, <https://www.staatendokumentation.at/site/assets/files/1040/methodologie-der-bfa-staatendokumentation-2016-12-20.pdf>; VfGH, E 2944/2022, 15 Mar 2023; VfGH, E 1275/2023, 28 Jun 2023; VfGH, E 2771/2022, 4 Oct 2023; BVwG, W154 2286923-1/9E, 27 Feb 2024; BVwG, W232 2288355-1/4E, 16 May 2024; BVwG, W239 2277733-1/5E, 9 Jul 2024; BVwG, W175 2306126-1/6E, 7 Apr 2025; VwGH, Ra 2016/01/0153, 20 Jun 2017; VwGH, Ra 2016/19/0351, 18 Oct 2017; VwGH, Ra 2017/20/0108, 14 Nov 2017

⁵² Sources: Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection (Dublin III Regulation), OJ L 180, 29.6.2013, pp. 31-59, especially Arts 3(2), 17, 27 and 28, <https://eur-lex.europa.eu/eli/reg/2013/604/oj/eng>; VfGH, E 2944/2022, 15 Mar 2023; VfGH, E 1275/2023, 28 Jun 2023; VfGH, E 2771/2022, 4 Oct 2023; BVwG, W154 2286923-1/9E, 27 Feb 2024; BVwG, W232 2288355-1/4E, 16 May 2024; BVwG, W239 2277733-1/5E, 9 Jul 2024; BVwG, W175 2306126-1/6E, 7 Apr 2025; VwGH, Ra 2016/01/0153, 20 Jun 2017; VwGH, Ra 2016/19/0351, 18 Oct 2017; VwGH, Ra 2017/20/0108, 14 Nov 2017; AIDA/ECRE, Country Report: Austria, Dublin procedure, 2024 Update, July 2025, <https://asylumineurope.org/reports/country/austria/asylum-procedure/procedures/dublin/>

⁵³ Sources: Asylgesetz 2005 (Austrian Asylum Act), Federal Law Gazette I No 100/2005 as amended, especially §§ 12, 12a, 22, 24, 28 and 36, RIS consolidated version: <https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=20004240>; VfGH, E 2944/2022, 15 Mar 2023; VfGH, E 1275/2023, 28 Jun 2023; VfGH, E 2771/2022, 4 Oct 2023; BVwG, W154 2286923-1/9E, 27 Feb 2024; BVwG, W232 2288355-1/4E, 16 May 2024; BVwG, W239 2277733-1/5E, 9 Jul 2024; BVwG, W175 2306126-1/6E, 7 Apr 2025; VwGH, Ra 2016/01/0153, 20 Jun 2017; VwGH, Ra 2016/19/0351, 18 Oct 2017; VwGH, Ra 2017/20/0108, 14 Nov 2017; Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection (Dublin III Regulation), OJ L 180, 29.6.2013, pp. 31-59, especially Arts 3(2), 17, 27 and 28, <https://eur-lex.europa.eu/eli/reg/2013/604/oj/eng>

⁵⁴ Source: CJEU, MA and Others, C-648/11, judgment of 6 Jun 2013, ECLI:EU:C:2013:367

⁵⁵ Source: AIDA/ECRE, Country Report: Austria, Dublin procedure, 2024 Update, July 2025, <https://asylumineurope.org/reports/country/austria/asylum-procedure/procedures/dublin/>

⁵⁶ Source: https://ec.europa.eu/eurostat/databrowser/view/migr_dubti/default/table?lang=en

⁵⁷ Sources: Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection (Dublin III Regulation), OJ L 180, 29.6.2013, pp. 31-59, especially Arts 3(2), 17, 27, 28 and 29, <https://eur-lex.europa.eu/eli/reg/2013/604/oj/eng>; VfGH, E 2944/2022, 15 Mar 2023; VfGH, E 1275/2023, 28 Jun 2023; VfGH, E 2771/2022, 4 Oct 2023; BVwG, W154 2286923-1/9E, 27 Feb 2024; BVwG, W232 2288355-1/4E, 16 May 2024; BVwG, W239 2277733-1/5E, 9 Jul 2024; BVwG, W175 2306126-1/6E, 7 Apr 2025; VwGH, Ra 2016/01/0153, 20 Jun 2017; VwGH, Ra 2016/19/0351, 18 Oct 2017; VwGH, Ra 2017/20/0108, 14 Nov 2017;

12. Justification: The measure is justified by reference to the Dublin responsibility system and the assumption that the responsible Member State will provide access to an asylum procedure. In individual cases, the government would argue that, in the other Member State deemed responsible, access to an asylum procedure is provided.⁵⁸

13. Domestic and International Reactions: Austrian Dublin litigation has included challenges to transfers to Bulgaria and other Member States, including the listed Constitutional Court, Federal Administrative Court and Supreme Administrative Court cases. It is also relevant that, in 2017, the UN Human Rights Committee had requested Austria to refrain from transfers to Bulgaria, given the protection gaps in the country. In this context, more generally, issues of legal scrutiny, human rights concerns, and systemic flaws within the EU asylum framework have been voiced. While Austrian courts generally uphold such transfers, the Constitutional Court has annulled specific cases where lower courts failed to adequately assess reception conditions or the risk of chain refoulement, particularly for vulnerable individuals. Civil society, in particular, critiques the Dublin III Regulation for being inefficient, unjust, and overly burdensome on frontline states, leading to procedural delays and rights violations.⁵⁹

14. Externalization: The measure can be considered a form of externalization, since the procedure for determining international protection status, if it occurs at all, is outsourced to other EU Member States or third countries.

15. Technology: The processing under the Dublin Regulation heavily relies on technology for comparing fingerprints, as implemented in connection to Eurodac, a fingerprint database, providing information to identify which country an asylum seeker first irregularly entered the EU.⁶⁰

16. Other: The BVwG appeal is non-suspensive unless the BVwG grants it within seven days of file receipt; also, transfers can occur before merits review and even suspensive-effect decisions arriving after the six-month transfer period.

Procedural barriers

Summary: Systemic delays, particularly from 2021/2022-2023, can encourage applicants to move to other EU countries, thus leading to the abandonment of asylum claims. While not identified as an official policy, slow or delayed processing connected with a high rate of discontinued asylum

AIDA/ECRE, Country Report: Austria, Dublin procedure, 2024 Update, July 2025, <https://asylumineurope.org/reports/country/austria/asylum-procedure/procedures/dublin/>

⁵⁸ Sources: Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection (Dublin III Regulation), OJ L 180, 29.6.2013, pp. 31-59, especially Arts 3(2), 17, 27, 28 and 29, <https://eur-lex.europa.eu/eli/reg/2013/604/oj/eng>; VfGH, E 2944/2022, 15 Mar 2023; VfGH, E 1275/2023, 28 Jun 2023; VfGH, E 2771/2022, 4 Oct 2023; BVwG, W154 2286923-1/9E, 27 Feb 2024; BVwG, W232 2288355-1/4E, 16 May 2024; BVwG, W239 2277733-1/5E, 9 Jul 2024; BVwG, W175 2306126-1/6E, 7 Apr 2025; VwGH, Ra 2016/01/0153, 20 Jun 2017; VwGH, Ra 2016/19/0351, 18 Oct 2017; VwGH, Ra 2017/20/0108, 14 Nov 2017; AIDA/ECRE, Country Report: Austria, Dublin procedure, 2024 Update, July 2025, <https://asylumineurope.org/reports/country/austria/asylum-procedure/procedures/dublin/>

⁵⁹ Sources: VfGH, E 2944/2022, 15 Mar 2023; VfGH, E 1275/2023, 28 Jun 2023; VfGH, E 2771/2022, 4 Oct 2023; BVwG, W154 2286923-1/9E, 27 Feb 2024; BVwG, W232 2288355-1/4E, 16 May 2024; BVwG, W239 2277733-1/5E, 9 Jul 2024; BVwG, W175 2306126-1/6E, 7 Apr 2025; VwGH, Ra 2016/01/0153, 20 Jun 2017; VwGH, Ra 2016/19/0351, 18 Oct 2017; VwGH, Ra 2017/20/0108, 14 Nov 2017; ECRE, Austria: Transfers vulnerable family to Bulgaria against UN Human Rights Committee request, <https://ecre.org/austria-transfers-vulnerable-family-to-bulgaria-against-un-human-rights-committee-request/>; Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection (Dublin III Regulation), OJ L 180, 29.6.2013, pp. 31-59, especially Arts 3(2), 17, 27, 28 and 29, <https://eur-lex.europa.eu/eli/reg/2013/604/oj/eng>

⁶⁰ Source: Regulation (EU) 2024/1358 of the European Parliament and of the Council of 14 May 2024 on the establishment of Eurodac for the comparison of biometric data, OJ L, 2024/1358, 22.5.2024, <https://eur-lex.europa.eu/eli/reg/2024/1358/oj/eng>

cases can function in practice as an indirect constraint on access to the Austrian asylum procedure. This pattern can shift practical responsibility for asylum seekers onto other EU Member States, primarily Germany, without amounting to a formal externalization measure.

1. Functioning: The barrier operated through prolonged procedural delay and discontinued procedures following onward movement. While individuals are able to lodge an asylum application initially, the process can be drawn out, leading some applicants to stop pursuing the procedure in Austria. During this period, applicants live in limbo with limited rights. Such extended uncertainty, without the ability to work or reunite with family, can create strong disincentives to wait in Austria. If an applicant stops communicating or vanishes, authorities will eventually discontinue the asylum procedure. By law, the Federal Office for Immigration and Asylum closes a case as “discontinued” if the asylum seeker cannot be contacted for three months.⁶¹

2. Time: 2021-2023.⁶²

3. Place: Throughout the country.⁶³

4. Actors: Federal Office for Immigration and Asylum.⁶⁴

5. Interaction: No notable interactions.

6. Development: In 2021, Austria saw a sharp rise in applicants leaving before their cases concluded (notably among Afghan asylum seekers following the Taliban takeover). By 2022, the practice hit a peak: 42,000 asylum cases were discontinued that year due to applicants’ onward travel. The pattern continued into 2023, when roughly 30,000 cases were closed for the same reason, which were almost half of all applications. These figures indicate that delay, uncertainty, and onward movement had substantial practical effects on access to a concluded asylum procedure in Austria, without establishing an officially acknowledged deterrence strategy. Civil society criticised the legal and humanitarian consequences of this pattern.⁶⁵

7. Rationale: No official policy or rationale for treating delay and discontinuation as a barrier is identified in the public sources reviewed.

8. Legal Status: Once an applicant leaves Austria and is not reachable, and the case is discontinued, the legal status of asylum applicant is effectively lost. The asylum procedure is terminated. After discontinuation, if the person is later found in Austria again, they would have to file a request to reopen the case or submit a new asylum application.

9. Specific Impact: In 2023, allegedly over 95% of asylum-seeking children who arrived alone in Austria went missing before their cases concluded. Authorities believe most of these minors traveled on to other EU countries.⁶⁶

⁶¹ Sources: AIDA/ECRE, Country Report: Austria, Registration of the asylum application, 2024 Update, July 2025, <https://asylumineurope.org/reports/country/austria/asylum-procedure/access-procedure-and-registration/registration-asylum-application/>; AIDA/ECRE, Country Report: Austria, Statistics, 2024 Update, July 2025, <https://asylumineurope.org/reports/country/austria/statistics/>

⁶² Source: AIDA/ECRE, Country Report: Austria, 2024 Update, July 2025, https://asylumineurope.org/wp-content/uploads/2025/07/AIDA_AT_2024-Update.pdf.

⁶³ Source: AIDA/ECRE, Country Report: Austria, 2024 Update, July 2025, https://asylumineurope.org/wp-content/uploads/2025/07/AIDA_AT_2024-Update.pdf.

⁶⁴ Source: AIDA/ECRE, Country Report: Austria, 2024 Update, July 2025, https://asylumineurope.org/wp-content/uploads/2025/07/AIDA_AT_2024-Update.pdf.

⁶⁵ Source: AIDA/ECRE, Country Report: Austria, Statistics, 2024 Update, July 2025, <https://asylumineurope.org/reports/country/austria/statistics/>

⁶⁶ Sources: AIDA/ECRE, Country Report: Austria, Statistics, 2024 Update, July 2025, <https://asylumineurope.org/reports/country/austria/statistics/>; Lost in Europe, More than 50,000 unaccompanied child migrants have gone missing after arriving in Europe, 2024, <https://lostineurope.eu/investigations/data-and-statistics-investigations/more-than-50-000-unaccompanied-child-migrants-have-gone-missing-after-arriving-in-europe/>

10. Reach: In 2022 and 2023, approximately 73,000 individuals.⁶⁷
11. Source: Informal practice (except for the discontinuing of asylum processing)
12. Justification: The AIDA/ECRE 2024 update does not identify an official government justification for using delay or discontinued procedures as a barrier. Government and public debate around the asylum system has nevertheless emphasized onward movement, alleged non-genuine claims, and pressure on reception infrastructure.⁶⁸
13. Domestic and International Reactions: Austrian civil society and human rights organizations have criticised the legal and humanitarian consequences of delay, discontinued procedures, and the disappearance of unaccompanied minors, including Asylkoordination Österreich.⁶⁹
14. Externalization: No formal externalization component was identified. The practical responsibility-shifting effects described in the summary do not amount to an outsourced or formal externalization arrangement.
15. Technology: No technology-specific component was identified.

B. Barriers of specific relevance to jurisdiction

Family reunification visa refusal

Summary: For family reunification, Austria denies visas if the asylum authority predicts a low likelihood of protection, thus restricting entry and access to asylum. This measure, in force since 2005 and applied nationwide by the Federal Office for Immigration and Asylum and Austrian diplomatic and consular missions abroad, targets non-national visa applicants. Rejections occur for failing to meet legal requirements, such as mandatory waiting periods, the family member's eligibility, or missing documents. Moreover, Austrian law allows for restricting access to family reunification in case of public emergency - an opportunity that the government is currently using (as of end of 2025). In July 2025, a temporary suspension of decision deadlines for § 35 AsylG 2005 (Austrian Asylum Act) family reunification visa applications entered into force; applications remain admissible but decisions are tolled, with an Article 8 ECHR urgency carve-out and transitional coverage for already-filed cases. A further version of the barrier may arise where revocation or withdrawal proceedings are initiated against the sponsor during or in connection with the family-reunification process, since the pending status question can interrupt the § 35 pathway before the sponsor's status has finally been withdrawn.

1. Functioning: The embassy forwards the application for a visa based on family reunification to the Federal Office for Immigration and Asylum (BFA). The BFA assesses whether it is probable that the family member will be granted international protection (the same status as the sponsor). Rejections occur when formal legal requirements for family reunification are not met, such as failing to observe mandatory waiting periods, the family member in Austria no longer fitting the legal definition (e.g., having become an adult), or the lack of required documents. This prognosis (positive or negative) is binding on the embassy. The Federal Administrative Court can, however, review the asylum authority's assessment for correctness. The measures restrict access to territory and access to asylum status (Source: Section 35 Asylum Act). During the suspension period, the decision deadline at the embassy is tolled; applicants may request a finding that reunification is

⁶⁷ Source: AIDA/ECRE, Country Report: Austria, 2024 Update, July 2025, https://asylumineurope.org/wp-content/uploads/2025/07/AIDA_AT_2024-Update.pdf.

⁶⁸ Source: AIDA/ECRE, Country Report: Austria, 2024 Update, July 2025, https://asylumineurope.org/wp-content/uploads/2025/07/AIDA_AT_2024-Update.pdf.

⁶⁹ Sources: AIDA/ECRE, Country Report: Austria, Statistics, 2024 Update, July 2025, <https://asylumineurope.org/reports/country/austria/statistics/>; Lost in Europe, More than 50,000 unaccompanied child migrants have gone missing after arriving in Europe, 2024, <https://lostineurope.eu/investigations/data-and-statistics-investigations/more-than-50-000-unaccompanied-child-migrants-have-gone-missing-after-arriving-in-europe/>

urgently required under Article 8 ECHR, which must be decided within eight weeks; negative decisions for independently unmet legal requirements can still be issued; transitional rules extend the suspension to already-filed applications.⁷⁰

2. Time: While information on the implementation period is not available, the legal basis for the measure exists since 2005.⁷¹ The suspension regime took effect on 3 July 2025; the first regulation applies until 2 January 2026 and may be extended up to three times for six months each; the §§ 36/36a provisions sunset on 30 September 2026.⁷²

3. Place: Throughout the country.

4. Actors: Federal Office for Immigration and Asylum; Austrian diplomatic and consular missions abroad (Source: Section 35 Asylum Act). The Federal Government issues the suspension regulation; BVwG reviews urgency determinations.⁷³

5. Interaction: The measure interacts with access to international protection status.⁷⁴ The suspension adds waiting times and an Article 8 ECHR urgency track within the § 35 process.⁷⁵

6. Development: The measure was introduced with the 2005 reform of the Austrian asylum law. After the introduction of the possibility to appeal visa decisions in 2012 (in effect since 2014), case law later challenged aspects in the implementation of the measure, such as the extent to which the assessment of the asylum authority can be challenged.⁷⁶ In 2025, §§ 36/36a AsylG 2005 added a decision-deadline suspension and an Article 8 ECHR urgency track that overlays existing § 35 steps, raising practical issues around “double” suspensions and delay complaints.⁷⁷

7. Rationale: No reliable public information identified.

8. Legal Status: Affected individuals are non-national visa applicants. They are not considered asylum applicants.⁷⁸

9. Specific Impact: No reliable public information identified. Generally, family reunification procedures also apply to minors. In that context, age assessment and possibilities to challenge their results is relevant. Practical issues include risks of “ageing out,” backlogs, and interactions between overlapping suspensions.⁷⁹

⁷⁰ Sources: Sections 36, 36a Asylum Act; <https://www.blogasyl.at/2025/09/kinder-als-bedrohung-der-oeffentlichen-sicherheit-zur-voruebergehenden-aussetzung-des-asylrechtlichen-familiennachzugs-teil-i/>; <https://www.blogasyl.at/2025/09/aussetzung-des-asylrechtlichen-familiennachzugs-ein-blick-auf-praktische-problemstellungen/>

⁷¹ Source: https://www.parlament.gv.at/dokument/XXII/I/952/fnameorig_040777.html

⁷² Sources: Sections 36, 36a Asylum Act; <https://www.blogasyl.at/2025/09/kinder-als-bedrohung-der-oeffentlichen-sicherheit-zur-voruebergehenden-aussetzung-des-asylrechtlichen-familiennachzugs-teil-i/>

⁷³ Sources: Sections 36, 36a Asylum Act; <https://www.blogasyl.at/2025/09/kinder-als-bedrohung-der-oeffentlichen-sicherheit-zur-voruebergehenden-aussetzung-des-asylrechtlichen-familiennachzugs-teil-i/>

⁷⁴ Source: Section 35 Asylum Act.

⁷⁵ Sources: Sections 36, 36a Asylum Act; <https://www.blogasyl.at/2025/09/kinder-als-bedrohung-der-oeffentlichen-sicherheit-zur-voruebergehenden-aussetzung-des-asylrechtlichen-familiennachzugs-teil-i/>

⁷⁶ Source: https://www.parlament.gv.at/dokument/XXII/I/952/fnameorig_040777.html

⁷⁷ Sources: Sections 36, 36a Asylum Act; <https://www.blogasyl.at/2025/09/aussetzung-des-asylrechtlichen-familiennachzugs-ein-blick-auf-praktische-problemstellungen/>

⁷⁸ Source: Section 2 Asylum Act). During suspension, applicants may seek an Article 8 ECHR urgency finding; otherwise the six-month embassy decision deadline is tolled (Sources: Sections 36, 36a Asylum Act; <https://www.blogasyl.at/2025/09/kinder-als-bedrohung-der-oeffentlichen-sicherheit-zur-voruebergehenden-aussetzung-des-asylrechtlichen-familiennachzugs-teil-i/>

⁷⁹ Sources: Section 2(1) Asylum Act and Section 13(3) BFA-VG; <https://www.blogasyl.at/2025/09/aussetzung-des-asylrechtlichen-familiennachzugs-ein-blick-auf-praktische-problemstellungen/>

10. Reach: No reliable public information identified. During the suspension, the regime applies to all § 35 AsylG 2005 applications filed or pending while the regulation is in force; BVwG cases already pending are not suspended.⁸⁰

11. Source: Sections 34, 35, 36 Asylum Act; Sections 15, 20, 21, 26 Aliens Police Act.

12. Justification: No reliable public information identified regarding the general measure connected to the assessment of the likelihood of protection. For halting family reunification processing, Austria has argued the existence of a threat to the functioning of education, housing and health services and systems.⁸¹

13. Domestic and International Reactions: No reliable public information identified.

14. Externalization: The procedure is conducted at the embassy abroad.

15. Technology: No technology-specific component was identified.

16. Other: After refusal, applicants have four weeks to file a German-language complaint (with translations) at the Austrian mission, and that travel/appointment/postal hurdles shrink that window; missions are bound by the BFA prognosis though BVwG can fully review it.

III. SELECTING BARRIERS

The barriers selected for further assessment are pushbacks, detention, externalization of asylum processing through Dublin-related chain-refoulement risks, and family reunification visa refusal. Walls and fences are not selected for further assessment because of their limited practical relevance and the absence of case law. Procedural barriers are not taken forward as a separate selected barrier in the case-law analysis, although delay, onward movement, discontinued procedures, and related access effects are addressed where relevant in the socio-legal analysis.

⁸⁰ Sources: Sections 36, 36a Asylum Act; <https://www.blogasyl.at/2025/09/kinder-als-bedrohung-der-oeffentlichen-sicherheit-zur-voruebergehenden-aussetzung-des-asylrechtlichen-familiennachzugs-teil-i/>

⁸¹ Source: <https://www.derstandard.at/story/3000000269559/gelindere-mittel-ausgeschlossen-verordnung-zum-familiennachzug-stopp-liegt-vor;> <https://www.blogasyl.at/2025/09/kinder-als-bedrohung-der-oeffentlichen-sicherheit-zur-voruebergehenden-aussetzung-des-asylrechtlichen-familiennachzugs-teil-i/>

PART 2: CASE LAW ANALYSIS

I. IDENTIFICATION OF BARRIERS IN THE CASE LAW

A. Description of the barriers in the case law

The Austrian case law identified for this report concerns four selected barriers: pushbacks, externalization via Dublin, detention, and family reunification visa refusal. Pushback litigation has involved the Provincial Administrative Court and the Supreme Administrative Court. Dublin, detention, and family reunification cases have been reviewed by the Federal Administrative Court, the Supreme Administrative Court, and the Constitutional Court.

B. Institutional settings

Pushback cases have been reviewed by the Landesverwaltungsgericht (Provincial Administrative Court), the Verwaltungsgerichtshof (Supreme Administrative Court), and the Verfassungsgerichtshof (Constitutional Court). Detention, externalization via Dublin, and family reunification visa refusal cases have been reviewed by the Bundesverwaltungsgericht (Federal Administrative Court), the Verwaltungsgerichtshof (Supreme Administrative Court), and the Verfassungsgerichtshof (Constitutional Court). There is no third ordinary judicial instance beyond supreme administrative or constitutional review.

The main executive actors are the police, competent in border control, and the asylum authority (Federal Office for Immigration and Asylum), competent in first instance decisions on applications for international protection/asylum, as well as embassies/consulates abroad in visa cases. Moreover, liaison officers abroad, the country of origin information unit of the asylum authority, are relevant. Their competencies are described in the following paragraphs.

For pushbacks, the police directorate, through its border police officers, is the authority making the initial on-the-spot decision at the border regarding entry or refusal of entry. They assess whether a person fulfils entry requirements or if an asylum claim is being made. Their actions are the subject of the complaint against an act of direct administrative coercion before the first instance administrative court at the provincial level. They are responsible for conducting initial interrogations, documenting asylum claims, and carrying out the physical act of pushback.

In key cases, the police officers were questioned during court hearings. For instance, in a 2016 case at the Spielfeld border crossing, the court questioned two inspectors regarding their interrogation and the contradictory statements they noted on the refusal form (*LVwG 20.3-918/2016-15*). Similarly, a 2021 case concerning a pushback from Sieldorf involved the court hearing testimony from multiple police officers, about the circumstances of the apprehension and the subsequent handling of the individuals (*LVwG 22.3-2726/2020-50*).

A recurring issue highlighted by the courts is the failure of the police to properly document crucial information. This includes not recording the name of the interpreter used during the interview (*LVwG 20.3-873/2016-21*), and more significantly, failing to document that an individual was subjected to a full-body search or that an asylum claim was made (*LVwG 20.3-2725/2020-86*).

The police officers' role in these pushback cases is crucial because their determination of whether an asylum claim has been "articulated" directly impacts access to the asylum system and triggers (or fails to trigger) the de facto protection against deportation under Section 12 of the Asylum Act. The Supreme Administrative Court has clarified that border police have a duty to ascertain if an asylum claim is being made and cannot simply assume there is none in cases of ambiguity (Supreme Administrative Court Ra 2017/21/0018). The Styrian Administrative Court has repeatedly found that even the use of the word "Asyl" is sufficient to trigger this protection, making any subsequent pushback illegal (*LVwG 20.3-2621/2021-49*, *LVwG 20.3-2725/2020-86*). The Supreme

Administrative Court upheld this view, confirming that the use of “Asyl” grants the individual protection from removal (Supreme Administrative Court *Ra 2021/21/0274-6*).

Although the Federal Ministry of the Interior is not directly involved in individual access cases at the border in these instances, it is the overarching ministry responsible for asylum and migration policy, border control, and the police. It sets regulations (like border control ordinances) and gives instructions to subordinate bodies, such as the asylum authority and border police, and is the ultimate respondent authority in many broader legal challenges. The court decisions frequently reference the legality of ordinances issued by the Minister of the Interior regarding the temporary reintroduction of border controls (e.g., *BGBI. II Nr. 260/2015* referenced in *LVwG 20.3-873/2016-21*; *BGBI. II Nr. 186/2021* referenced in *LVwG 20.3-2621/2021-49*).

In some first-instance court decisions where the pushback was found to be unlawful, the Federal Government (represented by the Minister of the Interior as the legal entity responsible for the police) is ordered to pay the costs of the legal proceedings to the successful complainant (*LVwG 20.3-918/2016-15*, *LVwG 22.3-2726/2020-50*).

Moreover, the ministry reacted to judicial interventions in 2021 and 2022 to mandate police officers against pushbacks and training on refolement.

In externalization via Dublin cases, the Federal Office for Immigration and Asylum is the primary Austrian decision-making authority. It is responsible for initiating the Dublin procedure by sending a take-back or take-charge request to Bulgaria. Based on the response and its own country information, the BFA issues the initial decision to declare an asylum application inadmissible and order the return.

The liaison officers of the Austrian Ministry of the Interior serve as the direct executive communication link. Their primary function is to gather and relay official information and assurances from their Bulgarian counterparts to the Austrian asylum authority. These are then used by the Austrian authority to justify the lawfulness of a return.

In family reunification visa refusal cases, the Austrian embassy/consulate abroad is the authority that formally receives the visa application, conducts interviews, and issues the final decision to grant or refuse the visa. While they are the formal decision-maker, their discretion in family reunification cases under the Asylum Act (Section 35 Asylum Act) is heavily constrained by the assessment of the asylum authority in Austria. Their decisions are subject to judicial review, and the Constitutional Court has overturned them for being arbitrary or based on a flawed understanding of the facts, such as wrongly assuming a lack of parental consent when the mother herself filed the application (*E 3362-3364/2017-19*), or for illogically splitting a family unit (*B 369/2013-13*).

The Federal Office for Immigration and Asylum is the key domestic executive body. For applications under Section 35 Asylum Act, the authority conducts a “probability prognosis” (*Wahrscheinlichkeitsprognose*), assessing whether it is likely that the applicant would be granted international protection upon arrival in Austria. The Embassy is legally bound by this prognosis. The authority’s negative assessment - e.g. based on a failure to meet strict income or accommodation requirements (Section 60 Asylum Act) or a finding that no substantive “family life” exists (as in *Ra 2017/19/0218*) - is frequently the direct cause of the visa refusal. However, the courts have affirmed that the BFA’s assessment must itself respect constitutional rights, particularly Article 8 ECHR (*Ra 2021/18/0016*).

The Federal Ministry of the Interior, as the superior authority to the asylum authority, sets the overarching legal and policy framework through legislation and ordinances. While not involved in individual case decisions, it is the entity responsible for the legal framework that is often challenged, such as the constitutionality of the three-year waiting period for family members of subsidiarily protected persons (*E 4248-4251/2017-20*).

For detention, the executive body primarily responsible for decisions on detention, including in the context of revoking refoulement protection and Dublin processing, is the Federal Office for Immigration and Asylum (BFA). It has the power to issue a formal detention order. This competence is primarily based on Section 76 of the Aliens Police Act (FPG). When a person files a subsequent application for international protection, they often receive temporary de facto protection from deportation. The BFA has the authority to revoke this protection under specific conditions outlined in Section 12a of the Asylum Act. If a person files a subsequent application while already in detention, the BFA is responsible for the initial assessment of whether the detention can be legally maintained. This often involves determining if the application was filed solely to delay deportation.

International and regional organizations are generally not directly and formally involved in Austrian asylum access proceedings, but their reports can be used as evidentiary sources when assessing conditions in countries of origin or third countries.

In externalization via Dublin cases, UNHCR and EUAA reports on conditions in other EU Member States are used as key evidence by legal representatives and considered by Austrian courts.

C. Legal context and legal system

Austria is a civil-law jurisdiction.

In pushback cases, courts commonly reference the European Convention on Human Rights (ECHR), which is a foundational legal source and has the rank of constitutional law in Austria.

Article 3 ECHR (prohibition of torture, inhuman or degrading treatment, also underpinning refoulement prohibition), was central to the decision in *20.3-2725/2020-86*. The complainant argued that the forced full-body search was a form of degrading treatment. The court agreed, finding that the complete undressing and forced kneeling constituted an impermissible intensity of the body search, thereby violating the individual's rights. In *20.3-2621/2021-49*, the court found that the pushback, which ignored a clear asylum request, constituted a violation of the prohibition on refoulement, which is directly derived from Article 3 ECHR.

Article 2 ECHR (right to life) is implicitly referenced through national provisions that transpose the non-refoulement principle, such as Section 45a of the Aliens Police Act, which prohibits returns if there is a "serious threat to life". This was listed as a legal basis in *20.3-2725/2020-86*.

Article 13 ECHR (right to an effective remedy) is the very foundation of the legal actions being brought. The complaint against direct administrative coercion is the domestic remedy available to challenge the legality of a pushback. The entire series of judgments, including the review by the Supreme Administrative Court (Supreme Administrative Court *Ra 2017/21/0018*), demonstrates this.

The Schengen Borders Code (SBC) is consistently cited as a primary legal basis, as it governs the procedures for border checks and refusal of entry. Provisions on entry conditions (Article 6, formerly Article 5) are routinely checked by the courts to assess the formal legality of an individual's presence at the border. The older 2016 cases from Spielfeld frequently begin by noting that the complainants lacked a valid visa as required by the SBC (*20.3-918/2016-15*, *20.3-864/2016-26*).

The rules on refusal of entry (Article 14, formerly Article 13) are crucial. In *20.3-918/2016-15*, the court explicitly found that the border police violated Article 13(2) of the SBC because the refusal form failed to provide a sufficiently "reasoned decision". The court criticized the "blanket statement" that there was no reason for the complainants to travel to Germany. The SBC also explicitly states that its application is without prejudice to the rights of asylum seekers, a point which the courts heavily rely on.

The 1951 Refugee Convention is commonly omitted. The Convention itself is not cited as the direct legal basis for the courts' decisions. While the principle of non-refoulement is central, the legal battles in these pushback cases revolve around procedural failures under domestic and EU law that occur before a substantive asylum claim is ever examined. The key legal battleground is the “gateway” to the asylum procedure. The courts focus on whether the border police fulfilled their duty to identify and register an asylum claim. The pivotal legal provisions are therefore national ones: Section 12 of the Asylum Act, which grants “de facto protection from deportation” the moment an asylum claim is made, and Section 41 of the Aliens Police Act (FPG), which governs the refusal of entry procedure. For example, in Supreme Administrative Court *Ra 2017/21/0018*, the Supreme Administrative Court's ruling hinges on the interpretation of the police's duty to inquire under and the legal consequences of Section 12 Asylum Act, not on a direct application of the Refugee Convention. The Convention provides the underlying basis of the law, but the litigation is fought over the domestic rules that implement it.

The Dublin Regulation, although it constitutes the EU-law basis for the obligation to assess claims at the border, is not referenced in Austrian case law on pushbacks.

In externalization via Dublin cases, the primary legal instrument governing the adjudication is the Dublin III Regulation, whose provisions courts consistently reference to establish jurisdiction and procedural obligations. Particularly crucial is Article 3(2), which contains the “systemic deficiencies” clause allowing a transfer to be halted due to a risk of inhuman or degrading treatment. Article 17 (sovereignty clause) is also frequently cited as the legal basis for Austria to potentially assume responsibility for the claim. These provisions are interpreted in light of the Charter of Fundamental Rights of the EU, especially Article 4 (prohibition of torture and inhuman treatment) and Article 7 (right to private and family life).

The European Convention on Human Rights (ECHR) is also commonly referenced. Article 3 ECHR is the ultimate benchmark for assessing the “real risk” of returning an asylum seeker to a country with a potentially dysfunctional asylum system. Its absolute prohibition on torture or inhuman treatment sets the high threshold that conditions in other EU Member States must meet. Article 8 ECHR (right to private and family life) is also consistently referenced, though its application is often weighed against the state's sovereign right to control immigration, especially when family ties were formed under a precarious residence status.

By contrast, while the principle of non-refoulement is central, the 1951 Refugee Convention itself is not the primary legal battleground in these cases. The legal arguments are channelled through the more specific and directly applicable provisions of the Dublin Regulation and the ECHR. Finally, broader UN human rights treaties like the ICCPR are generally omitted, as the EUFRC and ECHR provide a more specific and judicially developed framework for rights protection within the European legal order.

In family reunification visa refusal cases, Article 8 ECHR (Right to respect for private and family life) is the central legal ground in nearly every decision. The courts consistently use it to mandate a case-by-case balancing test between the applicant's interest in family unity and the state's public interest in controlling immigration. In *Ra 2021/18/0016*, e.g., the Supreme Administrative Court overturned a decision precisely because the lower court failed to conduct this balancing test and instead mechanically applied domestic requirements.

Article 14 ECHR (Prohibition of discrimination) is invoked in conjunction with Article 8 to challenge the differential treatment between families of asylum beneficiaries and those of subsidiarily protected persons. However, in *E 4248-4251/2017-20*, the Constitutional Court found this distinction to be objectively justified.

The Family Reunification Directive (2003/86/EC) is referenced by the Constitutional Court to support the legality of stricter conditions for family reunification for subsidiarily protected persons, as the directive itself permits such a distinction (*E 4248-4251/2017-20*).

The EU Visa Code (Regulation 810/2009) is also relevant. While family reunification visas fall under national law, cases concerning short-term visit visas (Schengen C Visa) are adjudicated directly under the Visa Code. In *Ra 2019/22/0198*, the Supreme Administrative Court's entire reasoning is based on interpreting Article 32 of the Visa Code regarding "reasoned doubts" about the intention to return, emphasizing that a history of compliance must be given significant weight.

The 1951 Refugee Convention is commonly omitted. While the principle of family unity is a cornerstone of refugee protection, the Convention itself is rarely cited directly in these visa cases. The legal arguments are channelled through the more specific rights-based framework of the ECHR and the detailed procedural rules of the domestic Asylum Act.

Broader UN human rights treaties (e.g., ICCPR, CRC) are less directly invoked. While the "best interests of the child" is a core principle (deriving from the CRC), it is almost always discussed within the judicial framework of Article 8 ECHR.

In detention cases, the Reception Conditions Directive is a key source for prohibiting the detention of asylum seekers merely for the purpose of removal. The Supreme Administrative Court has emphasized that once a person formally applies for international protection, they are considered an "applicant" under this directive and cannot be detained under the general rules for deporting third-country nationals (*Ra 2018/21/0025*, *Ra 2019/21/0198*).

The Asylum Procedures Directive (Directive 2013/32/EU) is also referenced. The directive is referenced, particularly in relation to subsequent applications. It allows for a distinction between a first application and a subsequent one but still provides a floor of rights that prevents automatic detention (*Ra 2019/21/0198*).

The Return Directive (Directive 2008/115/EC) governs the detention of third-country nationals for the purpose of removal. The Supreme Administrative Court cites it to clarify that its provisions do not apply once a person has the protected status of an asylum applicant under the Reception Conditions Directive (*Ra 2019/21/0198*).

Under the ECHR, Article 2 (Right to life) and Article 3 (Prohibition of torture and inhuman or degrading treatment) are the basis for assessing whether deportation would expose an individual to a real risk of serious harm. The Constitutional Court has ruled that a meaningful assessment under these articles is mandatory before revoking a person's protection from deportation (*E 2094-2096/2018-12*), thus also influencing detention. Article 8 (Right to respect for private and family life) is also a required part of the assessment. The authorities must conduct a balancing test between the state's interest in removal and the individual's family and private life ties (*E 2094-2096/2018-12*).

By contrast, while the right to liberty under Article 5 ECHR forms the bedrock of Austria's laws on detention, it is not frequently cited as a ground for overturning detention in these specific cases. The higher courts found more direct arguments in the misapplication of specific EU asylum law and the failure to adhere to the principle of non-refoulement under Articles 2 and 3 ECHR. Furthermore, a specific Austrian constitutional law on the right to liberty provides more expansive protection.

The selected decisions do not explicitly rely on additional rights or obligations beyond those already discussed. However, the national and EU legal framework to which the cases refer is itself built on the right to asylum and non-refoulement as derived from the Charter of Fundamental Rights and the ECHR, which has constitutional rank in Austria.

In externalization via Dublin cases, the relevant rights and obligations are primarily operationalized through the “real risk” test derived from Article 3 ECHR and Article 4 EUFRC. This test sets a high threshold and connects to the “systemic deficiencies” test in the Dublin Regulation concerning the receiving state’s asylum and reception systems. The non-refoulement principle also requires strict examination of the risk of chain refoulement; failure to use up-to-date country information on this matter, as highlighted for example by the quashing of the asylum authority’s decision in case *W144 2281827-1/4E*, constitutes a grave procedural error. Article 8 ECHR also requires a balancing test in which the public interest in enforcing an orderly migration system usually outweighs private interests where family life was established over a short period and under precarious legal status, as in case *W240 2267166-1/21E*.

In family reunification visa refusal cases, the relevant influence stems mostly from Article 8 ECHR and EU law, including the EU Charter and secondary EU law such as the Family Reunification Directive and the EU Visa Code.

In detention cases, the relevant rights and obligations are addressed through the interaction between non-refoulement, personal liberty, and the EU-law status of the person as an asylum applicant.

The selected pushback decision does not expressly rely on foreign or comparative case law.

Externalization via Dublin decisions include references to foreign case law in the context of assessments of the safety/risks in other Member States (Bulgaria and Hungary).

The selected family reunification visa refusal decision did not reveal a comparable issue for this barrier.

The selected detention decision did not reveal a comparable issue for this barrier.

The selected pushback decision does not expressly rely on international or supranational courts.

In externalization via Dublin cases, the CJEU and ECtHR are frequently cited. The Austrian courts have adopted and consistently apply the framework established in cases such as *M.S.S.* (ECtHR) and *N.S. and Jawo* (CJEU). This has led to the overturning of administrative decisions and to the prevention of transfers. Other CJEU cases, such as *Shamso Abdullahi*, are cited regarding the limits on asylum seekers’ ability to challenge responsibility criteria and procedural errors in a Dublin transfer.

In family reunification visa refusal cases, the most significant impact comes from the ECtHR in defining the scope of the right to family life under Article 8 ECHR. Austrian courts consistently use this case law to establish the core legal tests that must be applied. For instance, in case *Ra 2021/18/0016*, the Supreme Administrative Court explicitly cited a series of precedents from the ECtHR, including *Berrehab*, *Keegan*, *Gül*, and *Boughanemi*. The court used these decisions to define the very concept of “family life,” establishing that a mere separation does not automatically dissolve it. The reference transformed the legal question from whether the applicant met a domestic income requirement to whether the refusal was a proportionate interference with fundamental rights, leading to the lower court’s decision being overturned. Similarly, in case *E 4248-4251/2017-20*, the Constitutional Court explicitly referenced cases from the ECtHR, such as *Jeunesse* and *Nunez*, to outline the state’s “margin of appreciation” in immigration matters while emphasizing that the “best interests of the child” must be a primary consideration. This jurisprudence occurred in the context of the court’s reasoning that a three-year waiting period for subsidiarily protected persons, while a significant interference, fell within the state’s permissible regulatory power. Furthermore, in case *Ra 2017/19/0218*, the Supreme Administrative Court used case law from the European Court of Human Rights to support its conclusion that “family life” requires more than a formal marriage.

In areas governed by EU law, CJEU case law is invoked as the final authority on interpretation. For example, in case *W205 2132001-1*, the Federal Administrative Court explicitly referenced C-84/12 to correctly apply the legal standard under the EU's Visa Code. That ruling clarified that authorities must conduct an individualised assessment and cannot refuse a visa based on a general risk but must have reasoned doubts specific to the applicant. The Constitutional Court, in *E 4248-4251/2017-20*, also cited a decision from the CJEU to affirm that considering a country's economic well-being is a legitimate public interest under the Family Reunification Directive, which helped justify Austrian law's focus on financial self-sufficiency as being compatible with the European Union legal order.

In detention cases, CJEU jurisprudence is invoked to ensure the uniform interpretation of EU law. An example is the Supreme Administrative Court's Ra 2018/21/0025 decision, which cites Jafari (*C-646/16*). This reference was used to establish the legal status of an individual transferred to Austria under the Dublin Regulation. By applying the Jafari precedent, the court affirmed that the individual was an "applicant" for international protection, a status that grants a right to reception conditions and prohibits detention for the purpose of removal.

Similarly, the jurisprudence of the ECtHR plays a role in defining the scope of fundamental rights protections. In its decision *E 2094-2096/2018-12*, the Constitutional Court referenced *Paposhvili v. Belgium* to establish the high procedural and substantive standards required when considering the deportation of a seriously ill person. The court used the decision to fault the lower court for failing to conduct an individualised assessment of the health risks and the availability of care and family support.

National courts, especially the Supreme Administrative Court, implicitly rely on international human-rights standards established by the ECtHR and CJEU. For example, the court consistently rules that the failure to properly assess an asylum claim at the border, leading to a pushback, is unlawful. Explicit references, however, are not to be found.

In externalization via Dublin cases, courts rely on several linked standards: the principle of mutual trust among EU Member States, the real-risk test based on ECtHR case law such as *M.S.S.*, the systemic-deficiencies test developed in CJEU case law such as *N.S. v. United Kingdom*, and the 'extreme material hardship' threshold from *Jawo* for Article 4 of the EU Charter.

The Dublin system seeks to balance regional efficiency, based on mutual trust among Member States, with individual-rights protection through the systemic-deficiencies test. Transfers are presumed lawful, but this presumption is rebuttable if credible evidence suggests structural flaws in the receiving country's asylum system. In *E2944/2022*, the Constitutional Court overturned a lower court decision for failing to adequately assess the risk of chain refoulement to Bulgaria, emphasizing the duty to examine current, specific risks in line with ECtHR and CJEU case law.

In family reunification visa refusal cases, Austrian courts extensively cite international human rights standards established by supranational courts. These standards, particularly the right to family life under Article 8 of the ECHR as interpreted by the ECtHR, form the core analytical tool. This forces authorities to prove that applying a national rule is proportionate and necessary in each specific case. This balancing test explicitly weighs the family's right to unity against national interests.

In detention cases, non-refoulement is addressed primarily through the interaction between removal-risk assessment, EU-law status protections, and the legality of continued detention.

D. Laws and norms at the domestic level

The 1951 Refugee Convention is the basis of Austrian asylum law and of the EU asylum law relevant to Austria. However, it is usually not explicitly referred to in asylum-access adjudication.

The principle of non-refoulement is recognised at constitutional level through Article 3 ECHR, which has constitutional rank in Austria, and is also reflected in binding domestic legislation and case law.

In pushback cases, Article 3 ECHR, on which the principle ultimately rests, is part of the Austrian constitution. Moreover, it is directly enshrined in law (Section 45a Aliens Police Act), prohibiting pushbacks that would lead to prohibited harm and requiring an opportunity to present reasons. It is the basic rationale behind the de facto protection from removal (Section 12 Asylum Act) granted upon lodging an asylum claim, however informally. It imposes a duty on border officials to diligently inquire about potential asylum claims to ensure that individuals are not prematurely removed in violation of non-refoulement.

In externalization via Dublin cases, the starting point is the legal presumption that all EU member states are safe and will provide access to a fair asylum procedure, thereby protecting applicants from refoulement. However, the Constitutional Court has clarified that this is a rebuttable presumption. Austrian courts cannot simply rely on another member state's, for example Bulgaria's, acceptance of a transfer; they have an explicit duty to investigate whether systemic flaws in that country's asylum system create a "real risk" of a violation of Article 3 ECHR, including the risk of chain refoulement. This specific risk that the responsible Dublin state might unlawfully declare a third country, such as Turkey, "safe" and return the applicant there without a proper individual assessment is a central point of contention. The Constitutional Court has repeatedly overturned lower court decisions for failing to use current, reliable country of origin information to examine this danger meticulously.

In family reunification visa refusal cases, non-refoulement is not the direct legal question for the applicants themselves in these proceedings. The applicants are family members located abroad seeking an entry permit. The refusal of a visa does not constitute an act of refoulement.

In detention cases, non-refoulement is addressed primarily through the interaction between removal-risk assessment, EU-law status protections, and the legality of continued detention.

Indirectly, non-refoulement also functions as a trigger by way of EU law that alters an individual's legal status, thereby making their continued detention unlawful. This is seen e.g. in *Ra 2018/21/0025* and *Ra 2019/21/0198*.

Austrian law does not recognise a free-standing constitutional right to asylum. Substantively, however, access to asylum is shaped by EU constitutional law, EU secondary asylum law, and the Austrian Asylum Act.

Explicitly, the right to asylum in Austria is not recognised.

Substantially, it follows from EU constitutional law (EUFRC) and secondary asylum law and is integrated into the domestic Asylum Act.

The domestic legal framework is built on the 1951 Convention, international human rights law, particularly the ECHR, and EU constitutional law, especially the EU Charter, as well as secondary asylum law such as the Dublin Regulation. Domestic law refers to these regimes through legislation and case law.

In pushback cases, Section 12 Asylum Act is the national statutory law on non-refoulement.

In family reunification visa refusal cases, EU directives, such as the Family Reunification Directive, are implemented via transposition into the Asylum Act, amongst others, obligating courts to interpret domestic legislation on family reunification in a manner consistent with their aims. In contrast, EU Regulations, like the Visa Code, are directly applicable, creating uniform rules that have primacy over national law and are enforced directly by Austrian courts, particularly in cases concerning the refusal of entry permits.

In externalization via Dublin cases, the primary domestic instrument is the Asylum Act, which statutorily implements the directly applicable Dublin III Regulation as the core procedural framework. This domestic law is explicitly subordinated to international human rights standards, primarily the ECHR, which has constitutional rank in Austria. Central to adjudication are Article 3 of the ECHR (non-refoulement) and Article 8 of the ECHR (family life), which are mirrored and reinforced by Articles 4, 7, and 19 of the EUFRC.

In detention cases, the ECHR has constitutional rank. EU law is either directly applicable or transposed in national law. In decisions *Ra 2018/21/0025* and *Ra 2019/21/0198*, the Supreme Administrative Court, however, found that detentions ordered under Austrian national law were unlawful. The reason was not that the Austrian law itself was invalid, but that its application in these specific cases conflicted with the superior rights granted to an “applicant” under the EU’s Reception Conditions Directive.

Other domestic legal fields also affect asylum access. Asylum seekers in Austria are subject to public, criminal, civil, and administrative law, all of which shape the asylum process. Since asylum procedures are administrative, Austria’s General Administrative Procedures Act applies alongside special asylum rules.

In pushback cases, the key determining aspect is a provision of administrative law (asylum law being a specialised form of administrative law in Austria), namely Section 12 of the Asylum Act, which grants “de facto protection from deportation” the moment an individual articulates a need for international protection, even by simply mentioning they are fleeing war.

In externalization via Dublin cases, adjudication is a review of an administrative decision, governed directly by Austrian administrative law, specifically the Asylum Act and the Aliens Police Act, which provided the basis for dismissing the asylum claim in Austria and ordering the transfer to Bulgaria under the Dublin Regulation. General public law, including the Federal Constitution, established the court’s jurisdiction and the rules for appeals. Criminal law was relevant only factually, as the applicant’s claims of assault were considered when evaluating the general safety and state protection available in Bulgaria, rather than for determining criminal guilt. Similarly, civil law concepts like a rental agreement were mentioned merely to establish the applicant’s prior living situation as part of the factual background for the human rights assessment.

In family reunification visa refusal cases, applicants must satisfy several statutory requirements to access family reunification. The entire process is framed by administrative and public law, which governs procedures and invokes *ordre public* (public policy) to scrutinize relationships, as seen in the rejection of marriages deemed contrary to public policy. Civil law is relevant, requiring applicants to provide legally valid proof of marriage or parentage. Criminal law acts as a direct exclusionary filter, with the requirement of a clean record. Most frequently, obligations from social welfare and public finance law create conflict, demanding proof of sufficient income and housing to prevent the applicant from becoming a financial burden.

In detention cases, the most significant “other obligations” stem from Austrian administrative and constitutional law. Austrian administrative law, through statutes like the Aliens Police Act and the Asylum Act, is the direct source of the state’s power to issue detention orders and revoke protection, while associated procedural acts define the required processes. Other legal fields play a very minor and technical role; for instance, civil law is referenced for procedural matters like granting legal aid.

Austria’s asylum system is shaped by EU and Council of Europe membership, which impose binding legal and human-rights obligations. Under the Common European Asylum System, Austria applies EU regulations such as the Dublin Regulation, Qualification Directive, Asylum Procedures Directive, Reception Conditions Directive, and Return Directive, as well as the EU Charter.

In particular, the ECHR applies with constitutional status in Austria, meaning asylum-seekers can invoke ECHR rights in court. This includes the right to life (Article 2), freedom from torture or inhuman and degrading treatment (Article 3), and respect for family/private life (Article 8) - all of which can bar removal if it would breach those rights. Furthermore, similar rights are enshrined in the EU's Fundamental Rights Charter (EUFRC), which binds Austria when implementing EU law. The EUFRC is considered to have constitutional character if it addresses rights already governed by the ECHR.

Soft-law instruments such as UNHCR guidelines, Executive Committee conclusions, EUAA documents, and internal administrative circulars play an advisory role in Austria's asylum system. While not legally binding, Austrian courts and authorities may reference UNHCR or EUAA material when assessing country conditions or procedural standards.

In pushback cases, nowhere in the decisions is there a reference to a soft law instrument. The courts had sufficient grounds within binding hard law to decide the cases.

In externalization via Dublin cases, guidelines and country reports from UNHCR, EUAA, and experts/NGOs, play a crucial, evidence-based role. While not legally binding as a statute, these documents serve as a source for the courts to assess the "real risk" an applicant would face upon transfer.

In family reunification visa refusal cases, nowhere in the decisions is there a reference to a soft law instrument.

The selected detention decision did not reveal a comparable issue for this barrier.

E. Legal standing

In pushback cases, the Maßnahmenbeschwerde, a complaint against an act of direct administrative command and coercion, is the primary legal procedure used in first-instance court proceedings to challenge the lawfulness of the pushback itself. The pushback is treated as an act of direct police power.

A revision to the Supreme Administrative Court may be lodged against a first-instance court decision where the case raises a legal question of fundamental importance. The Supreme Administrative Court reviews the lower court's decision on points of law.

A Richtlinienbeschwerde (complaint concerning violation of directives) allows individuals to complain about alleged violations of official directives by security authorities (e.g., regarding humane treatment, documentation during searches).

In externalization via Dublin cases, an appeal to the Federal Administrative Court (Beschwerde) is the primary first-instance judicial remedy against a negative decision by the Federal Office for Immigration and Asylum. It transfers the case from an executive agency to an administrative court for a full review of both the facts and the law. Its main purpose is to have the authority's decision, for example the dismissal of the asylum application and the transfer order under the Dublin Regulation, overturned.

A request for suspensive effect (Antrag auf aufschiebende Wirkung) is a crucial interim measure filed alongside the appeal. If granted, it issues a legal prohibition on the authorities from carrying out the deportation or transfer until the court has issued a final decision on the appeal. Its purpose is to ensure the legal process is not rendered meaningless. Without it, the applicant could be deported while their appeal is still pending.

A constitutional appeal (Verfassungsbeschwerde) is an extraordinary, high-level appeal used when a decision by the Federal Administrative Court is believed to have violated the applicant's constitutional rights. It is not a review of the facts or simple legal errors but focuses exclusively on

constitutional violations. Its purpose is to overturn a lower court's decision by demonstrating that the court itself acted arbitrarily or violated a fundamental constitutional principle.

An appeal on points of law to the Supreme Administrative Court (Revision) allows review of a Federal Administrative Court decision by the Supreme Administrative Court. Unlike a constitutional appeal, this procedure focuses on whether the lower court has correctly interpreted or applied the law. It does not re-examine the facts of the case. Its purpose is to correct significant legal errors made by the lower court. This appeal is only admissible if the case involves a legal question of fundamental importance, meaning that the decision deviates from the court's established case law, that such case law is absent, or that existing case law is inconsistent.

In family reunification visa refusal cases, an appeal (Beschwerde) is the first formal remedy an applicant can use to challenge a negative decision. It is an administrative appeal filed directly back to the authority that issued the decision.

A preliminary appeal decision (Beschwerdevorentscheidung) is the formal ruling made by the administrative authority in response to the appeal. Its function is to conclude the internal administrative review process. From the applicant's perspective, its main purpose is to finalize the administrative authority's position, which is a necessary procedural step before the case can be moved to the courts through a request for submission to the court.

A request for submission to court (Vorlageantrag) is a procedural request filed by the applicant after receiving a negative decision on the appeal. Its function is not to argue the merits of the case but to legally compel the administrative authority to transfer the entire case file to the Federal Administrative Court for judicial review.

An appeal on points of law (Revision) is the final remedy available, allowing a party to appeal a judgment from the first-instance court to the Supreme Administrative Court (VwGH). Its function is to review the lower court's decision for significant errors in the interpretation or application of the law, not to re-examine the facts.

A constitutional appeal (Verfassungsbeschwerde) is an extraordinary, high-level appeal used when a decision by the Federal Administrative Court is believed to have violated the applicant's constitutional rights. It is not a review of the facts or simple legal errors but focuses exclusively on constitutional violations. Its purpose is to overturn a lower court's decision by demonstrating that the court itself acted arbitrarily or violated a fundamental constitutional principle.

In detention cases, the primary and most immediate remedy available is the Detention Complaint (Schubhaftbeschwerde). This procedure allows a litigant to directly challenge the lawfulness of their detention before the Federal Administrative Court. Grounded in Section 22a BFA-VG, its defining feature is the requirement for a swift judicial decision, typically within one week. Following a decision by the Federal Administrative Court, a litigant may pursue an Appeal on Points of Law, where admissible, and a Constitutional Appeal.

F. The influence of international courts

The jurisprudence of supranational courts, particularly the ECtHR and the CJEU, has had a notable influence on Austrian courts.

In the pushback context, however, this influence is only implicit. National courts, led by the Supreme Administrative Court, have internalized supranational standards, reinforcing procedural protections such as the right to an individual assessment, the duty of authorities to ascertain asylum intent, and the right to human dignity during border procedures.

In externalization via Dublin cases, the jurisprudence of the ECtHR and the CJEU introduced and reinforced the crucial procedural protection that national courts cannot blindly trust a receiving EU state to be safe. Explicitly citing foundational judgments like *M.S.S. v. Belgium and Greece*

and N.S., courts acknowledge a mandatory procedural duty to investigate transfer risks. However, this standard has been modified and limited by subsequent jurisprudence, most notably the CJEU's *Jawo* decision, which is repeatedly cited to raise the threshold for blocking a transfer to situations of "extreme material destitution." This specific test was used by the Supreme Administrative Court to justify the applicant's transfer. Furthermore, the ECtHR's *Tarakhel* ruling is explicitly referenced to define procedural requirements for vulnerable groups, with the court using it to conclude that no "individualised guarantees" were needed for a single adult applicant.

In family reunification visa refusal cases, the Supreme Administrative Court and the Constitutional Court consistently reinforced the principle, derived from ECtHR jurisprudence, that a formalistic application of national law is insufficient when family life is at stake. The courts must conduct a comprehensive balancing test between the individual's right to family life and the public interest in controlling immigration. In a prime example (*Ra 2021/18/0016*), the Supreme Administrative Court overturned a decision that denied entry permits to the wife and child of a beneficiary of subsidiary protection for failing to meet statutory income and housing requirements. The Court found this to be a legal error because the lower court had neglected to perform the mandatory balancing test under Article 8 of the ECHR. Citing a series of ECtHR precedents, the Supreme Administrative Court ruled that when family life cannot continue in the country of origin, the state's public interest in denying entry must be exceptionally strong to justify interfering with that family life.

In detention cases, the decisions of the Supreme Administrative Court and Constitutional Court reference jurisprudence of the CJEU and the ECtHR in their reasoning, particularly in relation to *Jafari* and *Paposhvili*.

G. Comparative insights

Divergences between judicial bodies are visible in pushback litigation. The Supreme Administrative Court (*Ra 2017/21/0018*) overturned decisions of the Regional Administrative Court of Styria (Landesverwaltungsgericht Steiermark) (*20.32-814/2016-42*). The first-instance court initially found in some cases that the border guards justifiably or defensibly assumed no asylum claim was made. The Supreme Administrative Court took a stricter stance, stating that this was not enough: border guards have a duty to inquire further if there are indications of a protection need, and the first-instance court had misjudged the legal situation.

In family reunification visa refusal cases, a notable divergence exists between the Federal Administrative Court and the Supreme Administrative Court. This difference typically manifests as a tension between a formalistic application of domestic statutes by the lower court and a more substantive, rights-based analysis demanded by the higher court. The lower court often treats statutory requirements, such as proof of income or specific waiting periods, as conclusive conditions for family reunification. The Supreme Administrative Court, however, consistently corrects this approach, emphasizing that these domestic rules must be interpreted and balanced against the overriding principles of Article 8 of the ECHR. This is illustrated in case *Ra 2021/18/0016*, where the Supreme Administrative Court overturned a Federal Administrative Court decision that had denied a visa based on unmet income and housing rules, ruling it was a legal error to forgo the mandatory Article 8 balancing test.

This hierarchical correction could stem from their different institutional mandates: the Federal Administrative Court applies specific laws to a high volume of cases, while the Supreme Administrative Court ensures the uniform and correct integration of supranational law across the administration. A second divergence arises from the distinct institutional mandates of the Supreme Administrative Court and the Constitutional Court. The Supreme Administrative Court reviews for legality, ensuring that lower courts and administrative bodies have correctly interpreted and applied ordinary statutes in light of precedents, including those from the ECtHR. In contrast, the

Constitutional Court reviews for constitutionality, examining whether a statute itself, or its application by a court, violates fundamental rights. The case *E 4248-4251/2017-20* demonstrates this distinction, where the Constitutional Court did not merely check if the three-year waiting period was applied correctly, but assessed whether the law itself was constitutionally permissible under Article 8 ECHR.

In externalization via Dublin cases, a notable divergence in the interpretation of legality is evident primarily between the Federal Administrative Court and the Constitutional Court. This difference centres on the assessment of “systemic deficiencies” within the asylum systems of other EU member states, particularly Bulgaria and Hungary. The Federal Administrative Court often adopted a more deferential stance towards the principle of mutual trust among EU member states. It tended to rely on the country information reports provided by the Federal Office for Immigration and Asylum and placed a significant burden on the asylum seeker to prove that systemic flaws would affect them. The Constitutional Court, however, has often applied a stricter standard, emphasizing the duty to investigate and use up-to-date data/information on the situation in the other Member State. Cases *E2944/2022* and *E1275/2023*, for example, demonstrate this approach.

In detention cases, divergences in the interpretation of legality are visible among Austrian judicial bodies primarily stemming from their distinct institutional mandates and procedural approaches. In *E 2094-2096/2018-12*, the Constitutional Court overturned a Federal Administrative Court decision because the lower court’s failure to adequately investigate and consider the severe deterioration of a mother’s mental health was deemed an arbitrary act that violated the constitutional right to equal treatment. Furthermore, the Constitutional Court strictly enforces its procedural mandate, as seen in *V 142/2015-19*. The Supreme Administrative Court, in contrast, serves as the arbiter on the correct and uniform application of administrative statutes and EU law. Its divergences from the Federal Administrative Court are often based on a more nuanced legal interpretation. For instance, in *Ra 2018/21/0025*, the Supreme Administrative Court corrected the Federal Administrative Court’s view on detention legality by clarifying that under the Dublin Regulation, an asylum application made in another Member State renders a person an applicant with de facto protection from deportation upon their transfer to Austria, making their immediate detention unlawful.

This part of the selected pushback case law does not expressly rely on comparative or foreign case law.

The Supreme Administrative Court decisions (e.g. *Ra 2017/21/0018*, *Ra 2021/21/0274-6*) and most Regional Administrative Court (LVwG) decisions align with the international principles of non-refoulement and the right to seek asylum by emphasizing the necessity of an individual assessment, the duty to inquire, and the unlawfulness of pushbacks without such due process.

Pushback adjudication within the Austrian legal system includes a robust accountability framework driven by a proactive judiciary and doctrine. Central to this is the establishment of a “duty to ascertain,” a principle articulated by the Supreme Administrative Court that shifts the onus to state officials, compelling them to clarify any ambiguous expression of a need for protection before a refusal of entry can be lawful (Supreme Administrative Court *Ra 2017/21/0018*). This principle is reinforced by a strict evidentiary standard where the absence of comprehensive documentation renders state action illegal. The courts have consistently found procedures unlawful due to failures such as not recording the identity of interpreters (as in cases *20.3-918/2016-15* and *20.3-873/2016-21*) or neglecting to document the legal grounds for, or even the existence of, invasive physical searches (*20.3-2725/2020-86*). To ensure such judicial review is not rendered ineffective by the very act of the pushback, the Styrian court has shown procedural flexibility by admitting remote and third-party testimony, such as accepting video evidence submitted on a USB stick from a complainant who had been pushed back to Bosnia and Herzegovina (*22.3-2726/2020-50*). This

accountability mechanism is enabled by the role of civil society actors in collecting evidence and the involvement of specialised lawyers, whose repeated appearance in these cases (20.3-2725/2020-86 and *LVwG 20.3-2621/2021-49*) demonstrates a concerted effort to use strategic litigation to overturn pushback practices.

H. Role of expert testimony

In pushback cases, expert testimony has thus far not played any role in the case law on pushbacks.

I. Future Directions

In relation to pushbacks, Austrian law contains the possibility of emergency regulations to restrict access to asylum at borders in case of mass arrivals. If triggered, case law on the human rights (Article 3 ECHR) and EU law limits of such regulations would be particularly relevant.

II. IDENTIFICATION OF LEADING DECISIONS

1. For pushbacks: Landesverwaltungsgericht Steiermark, *20.3-2725/2020-86*, 1 July 2021 (Ayoub 1)
2. Verwaltungsgerichtshof, *Ra 2021/21/0274-6*, 5 May 2022 (Ayoub 2)
3. Landesverwaltungsgericht Steiermark, *20.3-2621/2021-49*, 16 February 2022 (Minor)
4. Verwaltungsgerichtshof, *Ra 2017/21/0018*, 14 November 2017 (Syrian couple)
1. For externalization via Dublin: Verfassungsgerichtshof, *E2944/2022*, 15 March 2023
1. For family reunification visa refusal: Verwaltungsgerichtshof, *Ra 2019/19/0397*, 5 March 2020
1. For detention: Verwaltungsgerichtshof, *Ra 2019/21/0198*, 24 October 2019

A. Description of the barriers in the selected decisions

In the selected pushback decisions, the barrier to accessing asylum was informal: rejecting asylum seekers was not based on a written law or formal decree, but resulted from the actions and, crucially, the inactions of Austrian border police officers at the Sieldorf and Spielfeld border crossings. Authorities nevertheless drew on the formal legal basis of refusal of entry under the Schengen Borders Code as implemented in Austrian law, arguing that it applied because the individuals had not applied for asylum. The core administrative obstacle in all cases was the failure of officials to initiate the legally mandated asylum procedure upon receiving clear indications of an intention to seek protection; in this context, the four-week appeal period constituted an additional obstacle.

Participation in the selected pushback cases was affected by the fact that the applicants had been physically removed from Austrian jurisdiction. In Ayoub, the courts proceeded on the basis that the applicant was presumed to be in Bosnia and Herzegovina, without a valid address or entry permit for Austria. He could not appear in person at the hearing, and the case proceeded because his lawyer submitted evidence on his behalf, including written statements and video testimony. In the Minor case, the applicant had been pushed back to Slovenia but was able to apply for and receive asylum there, where he was placed in a facility for minors. Although still physically absent from the Austrian proceedings, his recognised status in Slovenia provided a stable location and legal footing from which his lawyer could challenge the Austrian pushback. His testimony was provided by video conference. In the Syrian couple case, the court expressly noted that the applicants could not appear personally at their hearing because they lacked an entry permit, so the case had to be argued by their legal representative.

The method of hearing differed across the selected pushback cases, but the applicants' testimony was considered despite their physical absence from the courtroom. In Ayoub, the applicant was

not heard directly by the court, either in person or by live video; the court based its findings on video statements that he had recorded and sent to his lawyer, while conducting an in-person hearing with the involved police officers. In the Minor case, the applicant was heard by video conference. In the Syrian couple case, the applicants were unable to attend the hearing, and the court proceeded on the basis of the arguments and evidence presented by their lawyer.

Representation was critical in the selected pushback decisions. Applicants were represented by specialised lawyers who worked pro bono, but this was not part of a state-organised legal aid scheme. Without a lawyer to file the complaint, gather evidence such as video statements, and argue the legal points before the administrative courts, it is virtually certain that none of these illegal pushbacks would have been challenged or overturned.

Vulnerability also played a role to different degrees. In Ayoub, the group was described as wearing wet and dirty clothing, shivering, tired, and frightened. In the Minor case, vulnerability arose from the applicant's minor status, although that fact did not decisively influence the outcome. In the Syrian couple case, the decision noted that, against the background of the known situation in Syria, the applicants' statements about war and seeking peace should have been taken as a serious indication of a need for protection.

In the selected externalization via Dublin decision, the formal framework was the Dublin III Regulation, but the informal barrier arose from applying that framework without a sufficient, up-to-date assessment of the risk of Article 3 ECHR harm through potential chain refoulement from Bulgaria to Turkey. The Constitutional Court established that the lower courts had failed to investigate that risk properly; it did not treat the Dublin III Regulation itself as the barrier, but rather its application without adequate examination of the facts in Bulgaria. The actors were the European Union as the legislator of the Dublin III Regulation, the Republic of Austria as the Member State applying the regulation, and the Federal Office for Immigration and Asylum as the first-instance administrative authority that issued the initial inadmissibility decision and the order for removal. The primary administrative obstacle identified in the leading judgment was the failure of the administrative and judicial authorities to conduct a proper and thorough investigation. The selected decision did not reveal comparable participation, hearing/testimony or vulnerability issues for this barrier. Legal aid was available, but its effect on the case cannot be reliably assessed.

In the selected family reunification visa refusal decision, the barrier was formally established through a negative notification by the Federal Office for Immigration and Asylum (BFA), implemented by the Austrian Embassy in New Delhi and initially upheld by the Federal Administrative Court. The BFA acted as the primary architect of this barrier by asserting that family reunification should be denied due to the sponsor's lack of "sole custody" and a vague suspicion of "child abduction," creating a legal obstacle that the Supreme Administrative Court later determined had no basis in the Asylum Act, which requires only proof of parentage and minority rather than custody decrees.

The applicant faced delays and procedural complexity, as she filed her application in August 2016 but only received a final corrective ruling from the Supreme Administrative Court in March 2020. This effectively suspended the minor child's right to family unity and access to protection, aggravated by the complex "two-step" structure where the Embassy felt bound by the BFA's unlawful prognosis and the lower court failed to independently scrutinize the statutory basis of the BFA's custody argument.

The selected decision did not reveal comparable participation or hearing/testimony issues for this barrier. The applicant was represented by a private law firm. The applicant was a minor and therefore inherently vulnerable, yet the authorities paradoxically used this vulnerability against her by arguing that potential "child abduction" justified denying reunification, a reasoning the Supreme Administrative Court rejected by clarifying that the specific privileges of the Family Procedure are

designed precisely to facilitate unity for minor children of refugees without the strict requirements found in general immigration law.

In the selected detention decision, the barrier was formally established through an administrative decision (Mandatsbescheid) issued by the BFA. Initially, on May 6, 2019, the BFA ordered detention based on § 76 Abs. 2 Z 2 FPG (risk of flight). Following the applicant's subsequent asylum request on May 8, 2019, the BFA formally maintained this detention via a file memo invoking § 76 Abs. 6 FPG (detention despite asylum application due to abuse of rights). The applicant faced obstacles regarding the “switching” of legal regimes governing his detention. While the BFA revoked his de facto protection against deportation, the reviewing court failed to perform the mandatory “rough check” (Grobprüfung) of his new asylum claim (conversion to Christianity) to determine if it was truly abusive or delaying in nature. This procedural omission acted as a barrier because the court simply assumed the detention could continue under standard rules, thereby denying the applicant the specific judicial assessment required. The selected decision did not reveal comparable participation, hearing/testimony or vulnerability issues for this barrier. The applicant was represented by a private law firm.

B. Impact of the judicial or quasi-judicial body’s decision

In the Syrian couple pushback case, the ruling sets an important legal standard for border control procedures. It obliges the executive to carry out more careful checks and documentation and strengthens the de facto protection against deportation under Section 12 of the Asylum Act 2005, which already applies in cases of an articulated request for protection. It established that border authorities cannot simply assume that there is no intention to seek asylum if there are indications that protection is needed. In that case, the relevant indications were the statements ‘because of the war’ and the desire for ‘peace and life’. The decision has been cited in almost all subsequent decisions of both courts on pushbacks.

In Ayoub (1), and following Ayoub (2), Minor, and their confirmation by the Supreme Administrative Court, pushbacks have been stopped, the Ministry of the Interior has issued a decree outlining non-refoulement obligations, and mandatory police training on handling asylum applications at the border has been implemented. Ayoub (2) and Minor confirmed and consolidated the judicial line that contributed to these changes in border-police practice.

In externalization via Dublin cases, the decision was immediately echoed in further rulings of the Constitutional Court (*E 3467/2022*, *E 1275/2023*, *E 2771/2022*), each annulling lower court decisions for replicating the same constitutional flaw: failure to investigate chain refoulement risks. The Federal Administrative Court, at first hesitant, began to align. In *W144 2273612 1/4E*, it cited the Constitutional Court directly and remitted the case, acknowledging that the asylum authority’s blind trust in Bulgaria no longer sufficed. But by *W144 2273612 2/4E* and *W240 2267166 1/21E*, the court, using updated country reports, conducted its own risk analysis and concluded the danger was no longer present.

In family reunification visa refusal cases, the decision reaffirmed that courts, unlike embassies, are not bound by the prognosis of the authority, and that authorities cannot invent extra-statutory barriers such as “sole custody” requirements for asylum family reunification. This prevents future rejections based solely on a refugee parent’s inability to produce custody orders from the country of origin.

In detention cases, the decision is particularly significant for the requirement that courts must perform a “rough check” (Grobprüfung) of a subsequent asylum application's content before confirming detention. It explicitly established that administrative revocation of protection does not absolve the court of this duty.

C. Consistency with previous jurisprudence

Pushbacks: With the exception of earlier first-instance decisions that upheld pushbacks because the applicants' statements were not treated as asylum claims, the later jurisprudence is largely consistent. Since at least the Supreme Administrative Court's intervention in the Syrian couple case, the courts have held that indications of a need for protection trigger a duty to inquire and that an immediate pushback is unlawful without such inquiry. This line broadly aligns with the principles of non-refoulement and access to asylum, while remaining focused on domestic administrative-law duties and evidentiary accountability.

Externalization via Dublin: The leading Constitutional Court decision on Bulgaria did not diverge from existing jurisprudence but affirmed the non-delegable duty of Austrian authorities and courts to investigate real risks of chain refoulement. It builds on earlier Constitutional Court case law requiring current, reliable country information and an individualised assessment of systemic deficiencies or specific risks in the receiving state. Later practice shows a more restrictive or deferential tendency in some Dublin contexts, including reliance on updated country reports and system-capacity/security rationales, but the core requirement of an individualised risk assessment remains.

Family reunification visa refusal: The leading Supreme Administrative Court decision is consistent with, and develops, earlier case law requiring review of the BFA's prognosis and rejecting extra-statutory obstacles such as a sole-custody requirement where the Asylum Act does not impose one. The case law aligns with the broader Article 8 ECHR jurisprudence of the higher courts, although restrictive tendencies remain, including the Constitutional Court's acceptance of waiting-time rules for beneficiaries of subsidiary protection.

Detention: The leading detention decision builds on prior Supreme Administrative Court case law, particularly the requirement that courts conduct a *prima facie* review of a subsequent asylum application before confirming continued detention. The jurisprudence has strengthened formal safeguards since 2015 and is consistent with the protective approach of the Constitutional Court and Supreme Administrative Court regarding personal liberty, even though NGOs continue to document structural shortcomings in effective remedies.

PART 3: SOCIO-LEGAL FACTORS

This third part of the Report is divided into four sections: I) Procedures in asylum access adjudication; II) Judicial or quasi-judicial bodies in asylum access adjudication; III) Other actors in asylum access adjudication; IV) Socio-political context.

I. PROCEDURES IN ASYLUM ACCESS ADJUDICATION

A. Access to judicial or quasi-judicial bodies

Body	Tier	Cases	Powers
LVwGs (Provincial Administrative Courts)	1st (provincial)	Pushbacks	Declares measure lawful/unlawful; may order restoration
BVwG (Federal Administrative Court)	1st (federal)	Dublin; visa/family reunification	Full merits; usually decides itself; can remit;
VwGH (Supreme Administrative Court)	Supreme	Legal review of LVwG/BVwG	Points of law; mainly cassatory;
VfGH (Constitutional Court)	Constitutional	Constitutional review of jurisprudence and laws	Annuls rights-breaching decisions; reviews laws/regulations

All selected barriers (pushbacks, detention, externalization via Dublin, and family reunification visa refusals) can be reviewed by courts, primarily the Regional Administrative Courts (Landesverwaltungsgerichte, LVwG) for complaints against administrative measures/actions, and the Federal Administrative Courts (Bundesverwaltungsgerichte, BVwG) for appeals against administrative decisions, each with further review to the Supreme Administrative Court (Verwaltungsgerichtshof, VwGH) and the Constitutional Court (Verfassungsgerichtshof, VfGH), through those statutory review routes. Uncertainty remains over how to challenge the physical barrier/fence at the AT-SI border. Onward movement due to systematic delay is only litigable case by case once the six-month administrative decision period is exceeded, which often coincides with procedures already being suspended.

Time pressure and the partial lack of automatic suspensive effect create significant access-to-court challenges in pushback, detention, Dublin, and family reunification contexts. Practical consequences of removal in pushback cases, compressed appeal and submission windows, and detention-related urgency can make judicial access highly time-sensitive. Moreover, as observed in the RSD context, caseworkers in authorities may work under output pressure, which can prioritize time efficiency and routinisation over depth.

In pushback cases, time is most critical at or immediately after the pushback. Removal can follow quickly while evidence may degrade and contact to potential claimants becomes less likely; because pushbacks are acts of direct command/coercion, remedies are reactive and therefore time-sensitive. Additionally, Austria lacks a dedicated border-monitoring mechanism.

In detention cases, short statutory timelines, in connection with detention facility logistics, constrain the preparation of appeals. Detainees can depend on facility schedules for communications, including with lawyers, and receive decisions by post, reducing effective appeal time; where detention continues, courts decide swiftly, tightening the window to establish that detention might be unlawful, e.g., given a potential vulnerability or a lack of flight risk, or alternatives to detention might be sufficient. Continued detention can be unlawful if the § 76(6) continuation basis is served/communicated too late (“unverhältnismäßig spät”), so “time pressure” is also a State-legality constraint.

In Dublin-related externalization cases, transfer may follow if suspensive effect is not secured promptly. Collecting, for example, reception conditions evidence (in other countries) and family link proofs can require time that does not align with the seven-day suspensive effect decision window within that seven-day window.

For family reunification visas, applications must (in key constellations) be lodged within three months (or within transitional windows), otherwise additional restrictive requirements can apply. VwGH decisions stress that authorities/courts must examine whether missing the 3-month period was objectively excusable, rather than automatically diverting families into other residence-law tracks. Moreover, the applicant’s status as a minor child (for “family member” purposes) does not automatically disappear merely because the person turns 18 during the administrative/court process.⁸²

Costs, representation, and further review also shape access to courts. First-instance access is mitigated to some extent by legal aid and cost-recovery rules, while mandatory attorney representation and court fees before the supreme and constitutional courts can deter further review. Litigated pushback cases show regular representation, often organised privately or with NGO support in strategic cases; free counselling is available in detention, but resource and access constraints remain; Dublin timelines limit meaningful counselling, and applicants abroad in family reunification cases face additional costs, such as filing and translation of documents.

For alleged pushbacks, access to the general (non-asylum or migration-related) free legal aid scheme (Verfahrenshilfe) is available. Cost recovery, which can mitigate litigation costs to an extent when free legal aid lawyers are deemed inadequate, is available. Jurisprudence shows both awards and adverse costs. In the 2020/21 litigation against pushbacks to Slovenia, the LVwG awarded € 2,397.20 (measures complaint) and € 1,659.60 (directive complaint); earlier 2016 cases that failed resulted in € 829.80 per person adverse costs plus interpreter fees. In key successful litigation cases, costs for representation were covered by NGO funds.

In detention cases, public counselling (available through the statutory legal aid provided in asylum and migration matters, the BBU GmbH) reduces direct representation costs in detention, but NGOs are not regularly present or funded in facilities, and additional travel/visit expenses are unquantified. Legal aid at this stage supports filings, yet preparation may still be affected by resource limits.

In Dublin-related externalization cases, mandatory attorney representation and fees at the VwGH and VfGH increase the cost of challenging transfers beyond the first appeal. Short time limits in inadmissibility cases constrain access to counselling in practice.

In family reunification visa refusal cases, applicants abroad bear not only counsel but also translation and filing costs; publicly funded representation at this stage is not available. Outcomes of litigation at the

⁸² Sources: BFA-VG §§ 16-18; AsylG 2005 § 33(3)-(4); AsylG 2005 § 35; Dublin III Art 27; VwGH, Ra 2021/21/0274-6, 5 May 2022; VwGH, Ra 2022/21/0074-6, 19 May 2022; BVwG, W239 2286457-1, 22 Feb 2024; VwGH Ro 2024/21/0004, 27 Feb 2025; VwGH Ra 2022/21/0169, 11 Apr 2024; VwGH Ra 2020/21/0404, 15 Dec 2020; AIDA/ECRE, Country Report: Austria, Dublin procedure, 2024 Update, July 2025, <https://asylumineurope.org/reports/country/austria/asylum-procedure/procedures/dublin/>; Julia Dahlvik, Inside Asylum Bureaucracy: Organizing Refugee Status Determination in Austria, IMISCOE Research Series, Springer, 2018, <https://doi.org/10.1007/978-3-319-63306-0>

VwGH show adverse-costs awards against unsuccessful parties (e.g., € 553.20 where a revision was rejected) and recovery for successful parties (e.g., € 1,106.40 where the BVwG was quashed).⁸³

Geography, removal, and logistical access further complicate access to courts. Pushbacks remove people beyond Austrian territory; the Vordernberg detention facility's remoteness hampers visits; Dublin transfers may occur before a ruling and physically relocate applicants during appeal; and family reunification applicants may need to deal with distant Austrian missions.

In litigated pushback cases, apprehensions occurred up to about 3.5 km inside Austria followed by returns at the station and chain handovers until Bosnia. Proceedings continued while applicants were abroad; the LVwG accepted video statements and other remote evidence and still granted relief. Because pushbacks occur before registration with rapid cross-border removal, review starts at the LVwG via a measures complaint, while applicants are often already abroad, complicating fact-finding.

In detention cases, a detention facility's remote location in Vordernberg and limited NGO presence constrain consultations. Night-time or short-notice transfers sever contact with counsel, increasing reliance on written communication.

In Dublin cases, applicants can be transferred to other Dublin states, with risk of chain refoulement, before the BVwG rules.

In family reunification visa refusal cases, the complaint must be lodged at the issuing representation, which, in certain cases, is located distant from the residence of the applicants; however, this challenge can be overcome through postal/electronic submission.⁸⁴

Intermediaries and evidentiary workarounds are especially important in pushback cases towards Slovenia. A 'network of intermediaries' (including grassroots collectives, base NGOs, specialised lawyers, and journalists) built workarounds to evidentiary gaps and tight deadlines: a small activist group set up a real-time hotline to notify police of asylum requests and later pivoted to post-hoc litigation when pushbacks still occurred, creating early documentation and faster case intake under the six-week filing limit and through intensive trust-building with claimants. They assembled an evidence archive (testimony, photos with verifiable metadata, on-site corroboration) and practiced 'jurisdictional arbitrage,' exploiting Slovenia's accessible records to reconstruct chains of removals that Austria denied. Journalists acted as intermediaries and evidence gatherers, while national-level NGOs built coalitions, linked frontline monitors to litigators, handled media outreach, and secured funding and referrals.

Beyond pushback cases, intermediaries can operate as logistical bridges for application submission and documentation management, such as in family reunification cases.

Moreover, in pushback cases, applicants and counsel have used directive complaints (Richtlinienbeschwerde) to enforce §§ 5 and 10 of the Police Service Regulations (RLV), leading to corrective orders by administrative courts. In Dublin cases, counsel routinely seek suspensive effect, argue vulnerability and family unity with up-to-date country material, request interim measures from the ECtHR under Rule 39 where domestic protection is ineffective, and rely on the expiry of transfer periods. NGOs have set up a project (Netzwerk Asylanwalt) to provide access to specialised counsel and

⁸³ Sources: VwGVG §§ 8a, 35; VwG-Aufwandersatz-VO 2014; VwGG § 24; VfGG § 17; VwGH, Ra 2021/21/0274-6, 5 May 2022; VwGH, Ra 2022/21/0074-6, 19 May 2022; VwGH, Ra 2018/18/0076, 13 Dec 2018; VwGH, Ra 2019/19/0397, 5 Mar 2020; VwGH, Ra 2019/20/0393-0395, 2 Mar 2020; VwGH, Ra 2019/18/0242, 17 Dec 2019; VwGH, Ra 2021/19/0146-0149, 25 Jan 2022; BVwG, W154 2286923-1/9E, 27 Feb 2024; VwGH, Ra 2017/20/0108, 14 Nov 2017; BVwG, W154 2286923-1/9E, 27 Feb 2024; VfGH, E 2944/2022, 15 Mar 2023; VfGH, E 1275/2023, 28 Jun 2023; VfGH, E 2771/2022, 4 Oct 2023; AIDA/ECRE, Country Report: Austria, 2024 Update, July 2025, https://asylumineurope.org/wp-content/uploads/2025/07/AIDA_AT_2024-Update.pdf.

⁸⁴ Sources: B-VG Art 130; VwGH, Ra 2021/21/0274-6, 5 May 2022; LVwG Steiermark, 20.3-2725/2020, 1 Jul 2021; Dublin III Art 27; AIDA/ECRE, Country Report: Austria, Detention conditions and legal framework of detention, 2024 Update, July 2025, <https://asylumineurope.org/reports/country/austria/detention-asylum-seekers/detention-conditions/> and <https://asylumineurope.org/reports/country/austria/detention-asylum-seekers/legal-framework-detention/>; <https://deserteursberatung.at/wp-content/uploads/2024/09/VordernbergBericht.pdf>

representation in front of high courts in strategic cases. Bar associations' "Erste anwaltliche Auskunft" and the Ministry of Justice's legal-aid information reduce cost and information barriers. Because suspensive effect in Dublin appeals is not automatic, these practices concentrate on immediate motions at the BVwG and, if needed, ECtHR interim measures to stabilise presence during review. The BVwG sometimes dispenses with separate suspensive-effect reasoning because it issues a merits decision immediately, which compresses the practical time for building the case at lodging.⁸⁵

Procedural constraints also filter which cases reach courts. The cited public material does not allow a precise assessment of how these constraints affect the full distribution of cases reaching courts. However, the following aspects can be emphasized.

Difficulties accessing justice filter which disputes reach courts and limit how far review can correct first-instance errors. Short complaint periods in asylum and return matters, and the fact that suspensive effect is not automatic in Dublin and other inadmissibility or certain removal cases, mean that transfers can happen before a court looks at the merits. Applicants sometimes win only after the fact, which does not undo a completed transfer.

These factors shape the case mix. Dublin litigation is common, but it is concentrated among people who secure counsel early and can stay reachable. At the BVwG, in Dublin cases, files are routinely decided without a personal hearing where the facts are considered established, which speeds cases but limits the chance to add evidence or challenge the rationale of authorities. Even so, general statistics from the BVwG show a relatively sizeable share of outcomes in favour of complainants, which points to a real but partial corrective role.

There are differences across bodies, as already noted. The BVwG focuses on case management and whether the file suffices, including when deciding on suspensive effect. The VwGH mainly checks legality and procedure rather than rebuilding the facts; it has refined standards on hearings and suspensive effect in detention-linked cases and confirmed the unlawfulness of pushbacks at the Slovenian border. The LVwG (in one province) has been central to fact-finding in measures complaints at the border, identifying systematic, unlawful returns that later received confirmation on legality.⁸⁶

B. Legal aid

Legal aid differs across barriers. In general, legal counselling at first instance asylum processing (not applicable to pushbacks, family reunification visas, or litigation before the VwGH or VfGH) is available only in defined situations under BFA-VG § 49; representation before the BVwG is ensured ex officio under BFA-VG § 52. Since 2021, both functions have been delivered by the state-owned provider, BBU GmbH, while NGOs continue to advise and complement the state-owned system. The VfGH found this setup insufficiently independent from the Interior Minister; Parliament amended the BBU Act (BBU-G) in July 2024. Moreover, the VfGH held that conducting a BVwG hearing without the court-appointed BBU representative is arbitrary unless the party expressly agrees.

Because first-instance access depends on statutory triggers while representation on appeal is automatic, the timing of access to legal aid in Dublin and detention cases helps determine whether the record is "lawyer-shaped" before BVwG review. Beyond this scheme, which, as set out here, has limited applicability, the general (non-asylum/migration) legal aid scheme (Verfahrenshilfe) can be accessed by individuals, particularly as regards access to the VwGH or VfGH.

⁸⁵ Sources: BFA-VG §§ 10(3), (5)-(6), 49, 52; Directive 2013/32/EU; ECtHR Rules of Court, Rule 39; BVwG, W239 2286457-1, 22 Feb 2024; AIDA/ECRE, Country Report: Austria, 2024 Update, July 2025, https://asylumineurope.org/wp-content/uploads/2025/07/AIDA_AT_2024-Update.pdf

⁸⁶ Sources: BFA-VG §§ 16-18; AsylG 2005 § 33(3); VwGH Ra 2019/21/0198, 24 Oct 2019; VwGH Ra 2021/21/0274 6, 5 May 2022; VwGH Ra 2022/21/0074 6, 19 May 2022; BVwG W239 2286457 1, 22 Feb 2024; VfGH, E 1275/2023-10, 28 Jun 2023; BVwG, Tätigkeitsbericht 2024, 1 February 2024-31 January 2025, https://www.bvwg.gv.at/dam/jcr%3A117e4749-fc50-4c58-93ba-3d2a43343559/T%C3%A4tigkeitsbericht%202024_barrierefrei.pdf; AIDA/ECRE, Country Report: Austria, 2024 Update, July 2025, https://asylumineurope.org/wp-content/uploads/2025/07/AIDA_AT_2024-Update.pdf.

For minors, the Jugendwohlfahrtsträger is treated as the legal representative, and the court's file treatment turns on whether a proper power of attorney exists from that legal representative to counsel (which can become an access-to-court friction point in practice).

For alleged pushbacks, access to the statutory specialised scheme (BBU GmbH) is unavailable for pushbacks. Effective access to specialised lawyers (beyond the general legal aid scheme) often depends on intermediaries, through those statutory review routes.

In detention cases, the BBU provides legal counselling and representation; access can be uneven in practice, for example, due to interpreter availability, but it is not absent. Preparation is often last-minute, and hearings may be held inside facilities; moreover, the Vordernberg facility's location can constrain counsel's access. Furthermore, visiting hours are time-restricted, which compounds remoteness and limits in-person consultations with independent counsel and NGOs.

In Dublin processing, the BBU legal aid scheme also applies. If the BFA schedules the interview within 72 hours after announcing its intention to issue an inadmissibility or Dublin decision, it must refer the applicant to legal counselling and invite the adviser to the interview. If the interview occurs later, notification typically follows the negative decision. In practice, this front-loads key steps and may curtail advice before the record is set for BVwG review.

In family reunification visa refusal cases, access to statutory BBU representation is unavailable. Applicants may seek Verfahrenshilfe (legal aid) before the BVwG and, if applicable, before the VwGH or VfGH.⁸⁷

The general Verfahrenshilfe route remains important outside the specialised BBU scheme. If a case is not covered by the state-owned BBU system, applicants in other administrative-court matters may seek legal aid, and further-review legal aid is available before the VwGH and the VfGH.

In pushback measures complaints to the LVwG for acts of direct administrative command/coercion, legal aid may be granted where required by Article 6 ECHR and Article 47 CFR, if the party is indigent and the complaint is not manifestly without prospect of success; if granted, counsel is appointed via the bar. There is no tailored legal-aid channel for alleged pushbacks, so claims rely on the general scheme and NGO support.

In detention cases, the specialised BBU scheme covers free counselling and representation for detention-related measures under BFA-VG § 52, with the caveats mentioned earlier.⁸⁸

The timing, independence, and practical effectiveness of legal aid also shape access. Legal counselling at first instance before the BFA is available only in limited situations, whereas representation before the BVwG is ensured ex officio if requested by applicants. This creates a structural "timing gap": whether the case is adequately developed and documented before judicial review depends on whether a statutory trigger and, in practice, early referral activate counselling before the record is set.

In Dublin (inadmissibility) processing, access to counselling can turn on whether the BFA schedules the interview within 72 hours after announcing its intention to issue an inadmissibility/Dublin decision

⁸⁷ Sources: BFA-VG §§ 49, 52; AsylG 2005 § 33; BGBl I 134/2024; VfGH, G 328/2022, 14 Dec 2023; VfGH, E 2125/2024 & E 2483/2024, 3 Oct 2024; BVwG, W232 2288355-1/4E, 16 May 2024; BVwG, Tätigkeitsbericht 2024, 1 February 2024-31 January 2025, https://www.bvwg.gv.at/dam/jcr%3A117e4749-fc50-4c58-93ba-3d2a43343559/T%C3%A4tigkeitsbericht%202024_barrierefrei.pdf; AIDA/ECRE, Country Report: Austria, Detention conditions and legal framework of detention, 2024 Update, July 2025, <https://asylumineurope.org/reports/country/austria/detention-asylum-seekers/detention-conditions/> and <https://asylumineurope.org/reports/country/austria/detention-asylum-seekers/legal-framework-detention/>; oesterreich.gv.at, Rechtsberatung im Asylverfahren, https://www.oesterreich.gv.at/de/themen/menschen_aus_anderen_staaten/asyl-in-oesterreich/Seite.3210005; <https://deserteursberatung.at/wp-content/uploads/2024/09/VordernbergBericht.pdf>

⁸⁸ Sources: BFA-VG §§ 49, 52, 16-18; VwGGV § 8a; VwGG § 61; VfGG § 35; VfGH, G 328/2022, 14 Dec 2023; VfGH, E 2125/2024 & E 2483/2024, 3 Oct 2024; VwGH Ra 2021/21/0025, 18 Feb 2021; VwGH, Ra 2016/19/0351 (miterledigt Ra 2016/19/0352; Ra 2016/19/0353), 18 Oct 2017; VfGH, E 1275/2023, 28 Jun 2023; AIDA/ECRE, Country Report: Austria, 2024 Update, July 2025, https://asylumineurope.org/wp-content/uploads/2025/07/AIDA_AT_2024-Update.pdf

(triggering referral and adviser invitation) or later (when counselling typically follows only after the negative decision). This sequencing can curtail meaningful pre-decision advice and means the BVwG often reviews a record formed without early legal input.

Since 2021, counselling and representation functions have been delivered by the state-owned BBU GmbH; the VfGH found the setup insufficiently independent from the Interior Minister, prompting legislative amendment of the BBU Act. Even where representation is formally available, contested independence can undermine perceived legitimacy and client trust, with potential “knock-on effects” for effective lawyer/client cooperation and the robustness of advocacy in access-related disputes.

Detention cases are covered by BBU counselling/representation, but practical conditions can make access uneven and late-stage, including interpreter constraints, last-minute preparation, hearings held inside facilities, and restricted visiting schedules. The remoteness of certain facilities (notably Vordernberg) can further impede timely consultations with independent counsel and NGOs, reducing the practical effectiveness of representation even when it exists in law.

For alleged pushbacks, the specialised BBU scheme is unavailable, so access to specialised representation depends heavily on intermediaries (notably NGOs) and the general legal aid route. Because there is no tailored pushback-specific legal aid channel, representation is more contingent and fragmented, and claimants face higher practical hurdles in securing counsel quickly enough for time-sensitive measures complaints.

Statutory BBU representation is unavailable in family reunification visa procedures, so applicants must retain counsel privately or seek “Verfahrenshilfe” before the BVwG and, if applicable, before the VfGH or VfGH. This produces a divergence from asylum appeals where representation is automatic, and it makes access to counsel more dependent on thresholds, merits screens, and the applicant’s ability to navigate legal-aid applications.

Outside the specialised BBU framework, Verfahrenshilfe is available but conditioned on indigence and a non-manifest lack of prospects of success, with counsel appointed via the bar if granted. This creates divergences across fora.

While dedicated studies are not available, it might be assumed that the availability, quality, and accessibility of legal aid materially influence outcomes. Where assistance is early and independent, records are usually better developed and review is more effective; where suspensive effect is limited in Dublin, transfers can pre-empt merits review despite representation.⁸⁹

C. Lodging the appeal

Appeal lodging varies by barrier, court, and deadline. Regular asylum appeals generally have a four-week deadline, while inadmissibility, Dublin, accelerated, and withdrawal-related decisions may be subject to shorter periods and special suspensive-effect rules.

Pushbacks arise before registration as coercive administrative acts. They can be challenged by a measures complaint (Maßnahmenbeschwerde) to the LVwG under Federal Constitutional Law (B-VG) Art 130(1)(2), with a six-week deadline running from the end or knowledge of the coercive act; complaints have no automatic suspensive effect (VwGVG § 22(1)), but the LVwG may grant suspension on request. Applicants may also bring a directive complaint (Richtlinienbeschwerde) to challenge police behaviour beyond the act of removal. Electronic filing is available and used.

In detention cases, a challenge to detention is typically lodged as a “Schubhaftbeschwerde” (detention complaint) to the BVwG under § 22a BFA-VG; procedurally, it is filed directly with the BVwG (not with the detaining authority), using accepted channels such as post/physical delivery or electronic filing, the

⁸⁹ Sources: BFA-VG §§ 49, 52; BGBl I 134/2024; VfGH, G 328/2022, 14 Dec 2023; BVwG, Tätigkeitsbericht 2024, 1 February 2024-31 January 2025, https://www.bvwg.gv.at/dam/jcr%3A117e4749-fc50-4c58-93ba-3d2a43343559/T%C3%A4tigkeitsbericht%202024_barrierefrei.pdf; AIDA/ECRE, Country Report: Austria, 2024 Update, July 2025, https://asylumineurope.org/wp-content/uploads/2025/07/AIDA_AT_2024-Update.pdf

relevant filing period is generally six weeks (with the practical backstop that a detention order/ongoing detention can be challenged during detention and, if already released, within six weeks after detention ends), and once the complaint is registered/received by the BVwG it must conduct a speedy judicial review (commonly within roughly one week while the person remains detained), whereas separate ex officio periodic review mechanisms (e.g., after prolonged detention) do not replace the individual complaint route.

Where a first subsequent asylum application is lodged during detention, the controlling basis is § 76(6) FPG: the BVwG must conduct a prima facie review of the new grounds; it may take requested evidence before treating the application as abusive. A mere § 12a(2) AsylG 2005 (refoulement protection) lifting by the BFA does not revert the legal basis to § 76(2) FPG (detention for removal) unless and until confirmed by the BVwG under § 22 BFA-VG; until then, the right to remain continues to bar detention based on requirements of the EU's Return Directive. Under § 76(6) FPG, however, detention may continue to secure the procedure, effectively overriding the applicant's previous "right to remain." As the VwGH has held, once the § 76(6) criteria are met, detention is regarded as "primarily for securing the procedure," and whether the applicant has factual protection under asylum law is "not further relevant." Only if the court concludes the application is not abusive (so § 76(6) does not apply) does the legal basis for detention revert to § 76(2) FPG, in which case the person's asylum-derived right to remain would again bar deportation.

Externalization via Dublin is litigated by appeal to the BVwG within two weeks, without automatic suspensive effect; the BVwG must decide on suspensive effect within seven days after the file reaches the court (§ 18 BFA-VG; Dublin III Art 27). Electronic filing channels are used. Practice reports short notice transfer notifications and up to 48-hour holds pending enforcement; Austria both receives and executes transfers at scale, increasing the need to file quickly. Because Dublin appeals lack automatic suspensive effect, review at the BVwG typically begins with an urgent motion for suspensive effect decided within seven days, leaving little time to draft and gather evidence at the lodging stage; where suspensive effect is denied or not granted in time, transfers may occur before a merits decision, and subsequent applications close to removal reportedly lack practical protection against refoulement.

In family reunification visa refusal cases, the complaint to the BVwG generally must be lodged at the mission within four weeks, in German and with translations; filing follows the mission's forwarding to the BVwG. Distance to diplomatic posts, travel/security constraints, and document logistics/procedural complexity can impede timely, well-documented lodging; "Elektronischer Rechtsverkehr" (the official electronic legal communication system, ERV) is not available to applicants abroad, so paper practice usually dominates.

At the embassy stage, the mission is bound by the BFA's prognosis under § 35(4) AsylG 2005 - both when positive and when negative - while the BVwG may fully review the BFA's prognosis for correctness.⁹⁰

D. Hearing

Hearings before Austrian administrative courts are, in law, oral and public by default, and (both at the LVwG and BVwG) are typically conducted by a single judge unless a statute provides for a senate formation. Under the VwGVG, a hearing is held on request or where the court considers it necessary,

⁹⁰ Sources: B-VG Art 130; VwGVG §§ 7, 9, 22; BFA-VG §§ 18, 22, 22a; FPG § 76; AsylG 2005 §§ 12a(2), 33(3)-(4), 34, 35(4), § 2(1)(22); Dublin III Art 27; VwGH, Ra 2021/21/0274-6, 5 May 2022; VwGH, Ra 2022/21/0074-6, 19 May 2022; VwGH, Ra 2019/19/0397, 5 Mar 2020; VwGH, Ra 2019/20/0393-0395, 2 Mar 2020; VwGH, Ra 2018/18/0076, 13 Dec 2018; BVwG, W239 2286457-1, 22 Feb 2024; BVwG, W175 2272941-1/00, 20 Jun 2024; VwGH, Ra 2017/19/0218, 22 Nov 2017; BVwG, W175 2306126-1/6E, 7 Apr 2025; BVwG W600 2309735-1/28E, 31 Mar 2025; VwGH Ra 2021/21/0076, 8 Apr 2021; VwGH Ro 2020/21/0011, 29 Sep 2020; AIDA/ECRE, Country Report: Austria, Detention conditions and legal framework of detention, 2024 Update, July 2025, <https://asylumineurope.org/reports/country/austria/detention-asylum-seekers/detention-conditions/> and <https://asylumineurope.org/reports/country/austria/detention-asylum-seekers/legal-framework-detention/>; <https://deserteursberatung.at/wp-content/uploads/2024/09/VordernbergBericht.pdf>

and may be dispensed with only under narrow statutory conditions (e.g., where the decisive facts are sufficiently clarified from the file and no further clarification is expected).

Hearings are public unless the public is excluded on enumerated grounds (including, inter alia, public order/security and the protection of private life). Since 2023 reforms, the VwGVG also expressly allows hearings to be conducted with video/audio transmission (fully or partially), subject to statutory safeguards. In practice, hearing frequency and format vary by barrier and venue, which in turn affects opportunities for adversarial evidence-taking, credibility assessment, and participation.

At the VwGH, hearings are structurally less central: revisions focus primarily on points of law, and an oral hearing is generally only held upon request, with the Court able to dispense with a hearing in specified circumstances.

Evidence needed for the decision should, as a rule, be taken in an oral hearing; a hearing may be skipped only exceptionally (e.g., facts are already fully established in the file and no complex legal issue arises). The courts generally conduct free evaluation of evidence and there is an open list of admissible proofs; moreover, courts pursue the “material truth” and have a duty to guide parties.

In pushback cases, oral hearings remain the procedural default for measures complaints concerning coercive administrative acts under the VwGVG framework. However, there is no automatic suspensive effect: complaints under Art 130(1) Z 2 B-VG do not suspend the measure unless the court grants suspensive effect on application. As a result, removals can occur before any hearing, and effective participation may be lost. In practice, LVwGs have reconstructed events post-removal using officer testimony, operational notes, and (where possible) remote statements; the VwGH has tended to leave such factual findings intact when rejecting revisions.

In detention cases, an oral hearing is, in principle, available under the general VwGVG hearing framework. The statutory tempo is, however, compressed: the BVwG must decide on continued detention within one week in the relevant posture, which shapes hearing scheduling and preparation time. In practice, hearings may be held in or near detention facilities (or with video elements where used), and short notice plus facility logistics can narrow the scope for evidence-taking on vulnerability and alternatives to detention. In practice, the BVwG may treat the absence of a hearing request in a lawyer-drafted complaint as an implicit waiver, enabling file-based decision-making.

In Dublin-related removal contexts, appeals are frequently non-suspensive in practice because the authority may deny suspensive effect; the BVwG must then decide on restoring suspensive effect within one week where the statutory risk threshold is met. If suspensive effect is not granted, transfer can occur before any merits hearing, limiting participation and reducing the corrective value of later oral proceedings. The BVwG may also dispense with a hearing where the facts are deemed established, including under the special asylum-procedure rule allowing omission where the file and complaint sufficiently clarify the facts or where the claim is found clearly untrue on the existing investigations. The BVwG frequently relies on the special rule allowing omission of an oral hearing where the file is deemed sufficiently clarified and no contradictions exist.

In family reunification visa refusal cases, visa refusal complaints are file-based by law: under § 11a(2) FPG the BVwG decides without an oral hearing. However, the BVwG still carries a meaningful duty of investigation and legal correctness control.⁹¹

⁹¹ Sources: VwGVG §§ 24–25a, § 22; BFA-VG §§ 18(5), 21(7), 22a; FPG § 11a(2); VwGG § 39; VfGH E 2125/2024 (3 Oct 2024); VfGH, E 2771/2022-16 & E 622/2022-16, 4 Oct 2023; VwGH, Ra 2016/01/0153-16, 20 Jun 2017; VwGH Ra 2020/21/0116, 27 Apr 2020; VwGH Ra 2019/21/0198, 24 Oct 2019; VwGH Ra 2017/21/0240, 26 Apr 2018; BVwG, W154 2286923-1/9E, 27 Feb 2024; BVwG, W232 2288355-1/4E, 16 May 2024; BVwG, W239 2277733-1/5E (et al), 9 Jul 2024; BVwG, W175 2306126-1/6E, 7 Apr 2025; VwGH, Ra 2016/01/0153, 20 Jun 2017; VwGH, Ra 2017/20/0108, 14 Nov 2017; AIDA/ECRE, Country Report: Austria, 2024 Update, July 2025, https://asylumineurope.org/wp-content/uploads/2025/07/AIDA_AT_2024-Update.pdf Sources: VwGVG §§ 24–25a, RIS consolidated version: <https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=20008255>; AsylG 2005 § 33(3)-(4), RIS consolidated version:

Hearings - or their omission - likely materially influence outcomes. Where hearings occur with timely representation, courts can test credibility, fill factual gaps, and direct further inquiries; where hearings are omitted (e.g., file-only practice in family reunification appeals) or rendered moot by early transfers in Dublin cases, the corrective capacity of review is reduced.

At the BVwG, the ability to decide without a hearing can streamline adjudication but risks under-developed records in fast-track settings. At the LVwG, oral hearings have proven essential to remedy pushbacks through after-the-fact fact-finding when applicants are abroad; at the VwGH, legality control leaves factual reconstruction to the lower courts. Because Dublin is non-suspensive, the requirement (or practice) of conducting a hearing can itself become an obstacle to an effective remedy where attendance is prevented.

In asylum-access adjudication, written records, hearing transcripts, country information and expert reports can strongly shape judicial review. Where applicants lack effective representation, they may struggle to correct or contextualise the administrative record; counsel is often needed to engage meaningfully with country material and evidentiary templates.⁹²

E. Deliberation

Deliberation in asylum-access adjudication is non-public and, by default, conducted by a single judge at the LVwG or the BVwG unless a statute prescribes a panel; published dissenting opinions are not a feature of administrative-court practice. Where hearings are omitted or severely curtailed, deliberation proceeds on a limited written record, which restricts factual development and shifts the emphasis toward legal sufficiency rather than evidentiary resolution. Panel composition, where prescribed, follows the allocation plans of the courts; deliberation and voting remain internal even in multi-member formations. The VwGH reviews legal questions (extraordinary revision lies only for issues of fundamental legal importance) and ordinarily decides in non-public senates (no published dissents), relying on the facts as found by the administrative courts unless specific procedural defects are shown. The VfGH hears constitutional complaints against administrative-court decisions (and norm-control), deliberates in non-public session without published dissents, may grant interim measures to prevent irreparable harm, and can annul decisions for rights-based defects; like the VwGH, it does not re-try the facts, so first-instance fact-finding frames later review.

In pushback cases, measures complaints are ordinarily decided by a single judge under Art 135 B-VG and the VwGVG; deliberation is not public and no practice of published dissents exists. In the Slovenia case-law line, the LVwG reconstructed facts after the fact and the VwGH rejected the police authority's revisions, leaving the LVwG's findings intact; deliberation thus rested on testimony and written notes gathered after removal rather than full oral participation.

<https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=20004240>; VfGH, E 2125/2024 & E 2483/2024, 3 Oct 2024; BVwG, Tätigkeitsbericht 2024, 1 February 2024-31 January 2025, https://www.bvwg.gv.at/dam/jcr%3A117e4749-fc50-4c58-93ba-3d2a43343559/T%C3%A4tigkeitsbericht%202024_barrierefrei.pdf; AIDA/ECRE, Country Report: Austria, Access to territory and push backs, 2024 Update, July 2025, <https://asylumineurope.org/reports/country/austria/asylum-procedure/access-procedure-and-registration/access-territory-and-push-backs/>; Andrea Fritsche, *Asyl als Anspruch? Der Alltag des Rechts und Rechte im Alltag von Asylsuchenden*, Bielefeld: transcript Verlag, 2023, <https://www.transcript-verlag.de/978-3-8376-6613-7/asyl-als-anspruch/>

⁹² Sources: VwGVG §§ 24-25a, RIS consolidated version: <https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=20008255>; AsylG 2005 § 33(3)-(4), RIS consolidated version: <https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=20004240>; BVwG, Tätigkeitsbericht 2024, 1 February 2024-31 January 2025, https://www.bvwg.gv.at/dam/jcr%3A117e4749-fc50-4c58-93ba-3d2a43343559/T%C3%A4tigkeitsbericht%202024_barrierefrei.pdf; AIDA/ECRE, Country Report: Austria, Access to territory and push backs, 2024 Update, July 2025, <https://asylumineurope.org/reports/country/austria/asylum-procedure/access-procedure-and-registration/access-territory-and-push-backs/>; Andrea Fritsche, *Asyl als Anspruch? Der Alltag des Rechts und Rechte im Alltag von Asylsuchenden*, Bielefeld: transcript Verlag, 2023, <https://www.transcript-verlag.de/978-3-8376-6613-7/asyl-als-anspruch/>

In detention cases, challenges are generally decided by a single BVwG judge; deliberations are internal and may follow facility-based hearings or short-notice video sessions. In practice, the court often deliberates on a rapidly assembled record, with limited opportunity to test disputed facts, even as it must assess necessity and proportionality.

Dublin inadmissibility appeals are single-judge BVwG matters; deliberation is internal, and the absence of automatic suspensive effect can result in transfers before any merits hearing, leaving only a written record. In practice, deliberation focuses on procedural aspects (e.g., acceptance by the other Member State), responsibility criteria and the file, with limited scope to expand individualised risk evidence before decision.⁹³

Deliberation on asylum access disputes is shaped less by formal panel rules than by how much fact-finding survives to that stage: when hearings are omitted or applicants have been removed, courts deliberate on limited records, which narrows proportionality and risk assessments without showing measurable effects tied to panel versus single-judge composition. For example, panel review at the VwGH then operates on that limited record, checking legality rather than redoing fact-finding, while first-instance single-judge courts carry the burden of any evidentiary development.⁹⁴

F. Review of decisions

Judicial review of asylum-access barriers in Austria is two-tiered in practice: pushbacks are first reviewed by the LVwG via a measures complaint, while detention, family reunification visa refusal, and Dublin inadmissibility are reviewed by the BVwG. Further review then lies (on narrowly framed grounds and typically without automatic suspensive effect) to the VwGH by (extraordinary) revision and/or to the VfGH by constitutional complaint, each within six weeks and with mandatory lawyer representation and fees. Because the VwGH is bound by the facts as established by the lower court (though it may decide on the merits when the case is ripe), short filing windows, lawyer-and-fee requirements, and non-suspensive defaults mean that first-instance fact-finding at the LVwG/BVwG often decides whether higher-court control will be practically meaningful.

Furthermore, authorities may issue a “Beschwerdevorentscheidung” within two months of a complaint, potentially granting self-remedy before the file reaches the court. Second, first-instance administrative courts exercise reformatory merits powers and generally replace unlawful decisions with the decision the authority should have made; their judgments are immediately final and enforceable, which can shorten proceedings and supply effective relief.

In pushback cases, review lies with the LVwG through a non-suspensive measures complaint, with further access to the VwGH/VfGH within six weeks, by attorney, and subject to a fee. In practice, once a person has been summarily removed abroad, arranging counsel and compliant filings from outside Austria within six weeks can foreclose higher-court scrutiny. This places heavy weight on LVwG fact-finding and makes the first-instance outcome decisive, given the pre-registration setting and the absence of automatic suspension.

In detention cases, the BVwG conducts first-instance review. Thereafter, parties may seek a VwGH revision within six weeks (attorney-drafted, with fee, no automatic suspensive effect) or file a VfGH complaint within six weeks (same conditions). As noted, in practice, short deadlines, distance, and restricted communications impede preparation; the public legal aid provider BBU must, on request and where prospects exist, support applications for legal aid for high-court remedies. Because defaults are

⁹³ Sources: BVwGG §§ 6, 8; VwGVG § 25(8); Art 133(4), 135, 144 B-VG; VwGG §§ 11-12; VfGG § 30; VwGH, Ra 2021/21/0274-6 (5 May 2022); VwGH, Ra 2022/21/0074-6 (19 May 2022); AIDA/ECRE, Country Report: Austria, 2024 Update, July 2025, https://asylumineurope.org/wp-content/uploads/2025/07/AIDA_AT_2024-Update.pdf

⁹⁴ Sources: BVwGG § 6; VwGVG § 25(8); VwGH, Ra 2021/21/0274-6, 5 May 2022; VwGH, Ra 2022/21/0074-6, 19 May 2022; AIDA/ECRE, Country Report: Austria, 2024 Update, July 2025, https://asylumineurope.org/wp-content/uploads/2025/07/AIDA_AT_2024-Update.pdf

non-suspensive and logistics are strict during detention, timely BVwG appeal is often decisive for the outcome.

For Dublin transfers, an appeal to the BVwG must be lodged within two weeks and is non-suspensive unless the BVwG grants suspensive effect within seven days of file receipt. In practice, reports document transfers before any merits review and even decisions on suspensive effect arriving after the six-month Dublin transfer period.

After refusal of a family reunification visa, applicants have four weeks to file a German-language complaint (with translations) at the Austrian mission, and travel/appointment/postal hurdles further shrink that window. Missions are bound by the BFA's prognosis, though the BVwG can fully review it.⁹⁵

G. Procedures in decentralized states

Austria is federal but highly centralised legally, so procedural variation by land/province is limited. Reports on significant territorial variations in practice are not found. In practice, the implications are logistical rather than legal: local venue for border incidents, travel distances, detention siting, and interpreter/counsel access affect participation and timelines but not the availability or structure of remedies. Pushback cases have so far been decided, due to geographical responsibility, by a single court, the LVwG in the province of Styria.⁹⁶

H. Influence of procedures in practice and the role of courts

As noted, practice at borders and in detention diverges from the model of an oral, participatory hearing. Pushbacks remove applicants beyond Austrian territory before any asylum file exists; LVwG courts have compensated with after-the-fact oral hearings and remote testimony to reconstruct facts and find illegality, but relief is typically declaratory. In Dublin, transfers before a BVwG hearing erode the corrective value of oral examination; in detention, on-site hearings held on short notice and the remoteness of Vordernberg restrict attendance and depth of inquiry. Family reunification appeals are usually decided on the file and new evidence is not taken, given the legal bar to it (FPG § 11a(2)); where the BFA does not provide adequate reasoning or party hearing on its § 35(4) "Mitteilung", however, the "Neuerungsverbot" cannot be used rigidly against applicants. This further reduces the space for factual correction, although applicants can submit a new visa application to have new circumstances considered.

Representation and procedural form also shape access. BBU representation attaches by statute only at defined stages, leaving gaps at the pushback stage and for family reunification complaints lodged abroad. NGOs advise but cannot represent at the supreme courts, where mandatory attorney representation and fees, mitigated only by general Verfahrenshilfe, can chill further review even in legally promising cases. LVwG oral hearings have been pivotal in remedying pushbacks through detailed, after-the-fact fact-finding; the BVwG handles a larger share in detention and Dublin but is often forced into paper-driven review when suspensive effect is denied or late, or where hearings are omitted under the 'facts established' provision; the VwGH and VfGH primarily assess legality and procedure on a limited record, frequently leaving lower-court fact-finding intact. Across streams, BVwG outcome data (approximately 30%

⁹⁵ Sources: VwGVG §§ 7, 9; BFA-VG § 18; CFR Art 47; CJEU, C-392/22, 29 Feb 2024; CJEU, C-19/21, 1 Aug 2022; VwGH, Ra 2021/21/0274-6, 5 May 2022; VwGH, Ra 2022/21/0074-6, 19 May 2022; VfGH, E 4248–4251/2017-20, 10 Oct 2018; VwGH, Ra 2018/20/0464, 28 Jan 2020; VwGH, Ra 2024/20/0312–0316, 11 Sep 2024; VwGH, Ra 2024/14/0453–0460, 1 Sep 2025; VfGH, E 2944/2022-16, 15 Mar 2023; VwGH, Ra 2016/19/0351 (miterledigt: Ra 2016/19/0352; Ra 2016/19/0353), 18 Oct 2017; VfGH, E 2944/2022, 15 Mar 2023; VfGH, E 1275/2023, 28 Jun 2023; VfGH, E 2771/2022, 4 Oct 2023; BVwG, W175 2306126-1/6E, 7 Apr 2025; VwGH, Ra 2017/20/0108, 14 Nov 2017; AIDA/ECRE, Country Report: Austria, 2024 Update, July 2025, https://asylumineurope.org/wp-content/uploads/2025/07/AIDA_AT_2024-Update.pdf; BVwG, Tätigkeitsbericht 2024, 1 February 2024-31 January 2025, https://www.bvwg.gv.at/dam/jcr%3A117e4749-fc50-4c58-93ba-3d2a43343559/T%3%A4tigkeitsbericht%202024_barrierefrei.pdf

⁹⁶ Sources: AsylG 2005; BFA-VG; AIDA/ECRE, Country Report: Austria, 2024 Update, July 2025, https://asylumineurope.org/wp-content/uploads/2025/07/AIDA_AT_2024-Update.pdf; LVwG Steiermark, 22.3-2726/2020, 1 Jul 2021; BVwG, W239 2286457-1, 22 Feb 2024; VwGH, Ra 2019/21/0198, 24 Oct 2019; VwGH, Ra 2021/21/0274-6, 5 May 2022

complainant-favourable in 2024) and successful pushback litigation show that, once access hurdles are overcome and a hearing with effective representation occurs, courts may correct a share of errors.⁹⁷

Supranational jurisprudence has shaped Austrian asylum rights particularly because (i) the ECHR has constitutional rank in Austria, and (ii) EU asylum/return law as interpreted by the CJEU binds Austrian courts. This is generally described as a sustained “Europeanisation” of procedural law, with Article 47 CFR operating as a key driver of requirements on the effectiveness and quality of review. Against that backdrop, supranational case law has (a) reinforced the content of the “effective remedy” under Article 46 of the Asylum Procedures Directive and Article 47 CFR, including the need for a genuinely effective review capable of engaging with current facts, and (b) tightened the conditions under which oral hearings may be omitted, notably where credibility or disputed facts are decisive (CJEU Sacko).

In the Dublin field, CJEU jurisprudence has broadened what can be litigated and when: applicants may challenge responsibility criteria and enforcement of deadlines (Ghezelbash; Shiri), while transfers must be halted where Article 4 CFR risks arise from reception conditions or individual vulnerability (C.K.; Jawo), and additional protection has been articulated for minors’ judicial protection in requested-state decisions (C-19/21). In parallel, ECtHR jurisprudence has set hard limits where reception conditions reach Article 3 ECHR severity (M.S.S.) and has required individualised assurances for vulnerable applicants in transfer contexts (Tarakhel), standards that Austrian adjudication and commentary treat as binding external constraints on procedural outcomes.

Finally, supranational fair-trial logic has influenced institutional procedural guarantees, most visibly in the debate on state-provided legal counselling/representation (VfGH G 328/2022; with subsequent legislative amendments in 2024). Moreover, the VwGH has required authorities to actively ascertain asylum intent in relevant situations (VwGH Ra 2017/21/0018; Ra 2021/21/0274-6) and in applying ECtHR-style structured proportionality analysis under Article 8 ECHR in family reunification contexts (e.g., quashing an entry-permit refusal for lack of adequate Article 8 balancing: VwGH Ra 2021/18/0016).⁹⁸

I. Other procedures

Other procedural features with practical impact include costs awards (Aufwandersatz) for successful complainants and the coexistence, in border operations, of measures complaints and directive complaints to enforce §§ 5 and 10 Police Service Regulations (RLV), which together structure frontier remedies. The

⁹⁷ Sources: VwGVG §§ 22, 24-25a; BFA-VG §§ 18, 49, 52; AsylG 2005 § 33(3)-(4); FPG § 76 (including § 76(6)); B-VG Art 130; LVwG Steiermark, 22.3-2726/2020, 1 Jul 2021; BVwG, W239 2286457-1, 22 Feb 2024; VwGH, Ra 2021/21/0274-6, 5 May 2022; VwGH, Ra 2022/21/0074-6, 19 May 2022; VfGH, G 328/2022, 14 Dec 2023; VfGH, E 2125/2024 & E 2483/2024, 3 Oct 2024; BVwG, W239 2277733-1/5E (joined with W239 2277731-1/7E; W239 2277735-1/5E), 9 Jul 2024; BVwG, Tätigkeitsbericht 2024, 1 February 2024-31 January 2025, https://www.bvwg.gv.at/dam/jcr%3A117e4749-fc50-4c58-93ba-3d2a43343559/T%C3%A4tigkeitsbericht%202024_barrierefrei.pdf; AIDA/ECRE, Country Report: Austria, Detention conditions and legal framework of detention, 2024 Update, July 2025, <https://asylumineurope.org/reports/country/austria/detention-asylum-seekers/detention-conditions/> and <https://asylumineurope.org/reports/country/austria/detention-asylum-seekers/legal-framework-detention/>; <https://deserteursberatung.at/wp-content/uploads/2024/09/VordernbergBericht.pdf>

⁹⁸ Sources: CFR Arts 4, 18, 47; Directive 2013/32/EU Art 46; Dublin III Arts 3(2), 27; CJEU: C-63/15 (Ghezelbash), 7 Jun 2016; C-201/16 (Shiri), 25 Oct 2017; C-348/16 (Sacko), 26 Jul 2017; C-578/16 PPU (C.K.), 16 Feb 2017; C-163/17 (Jawo), 19 Mar 2019; C-924/19 PPU & C-925/19 PPU, 14 May 2020; C-808/18 (Commission v Hungary), 17 Dec 2020; C-19/21, 1 Aug 2022; C-392/22, 29 Feb 2024; ECtHR: M.S.S. v Belgium and Greece, 21 Jan 2011; Tarakhel v Switzerland [GC], 4 Nov 2014; AIDA/ECRE, Country Report: Austria, Dublin procedure, 2024 Update, July 2025, <https://asylumineurope.org/reports/country/austria/asylum-procedure/procedures/dublin/>; Ewald Wiederin, “Der gerichtliche Rechtsschutz in Asylsachen”, *migraLex* (2008); Lioba Kasper, “Defizite im Rechtsschutz?”, *juridikum* 3/2013; Christian Schmaus, “Die Auslegung des Art 47 GRC durch den VfGH”, *migraLex* 3/2012; Jasmin Ziegelbecker, “Die Verhandlungspflicht des Bundesverwaltungsgerichts im Asylverfahren”, in: Filzwieser/Taucher (eds), *Jahrbuch Asyl- und Fremdenrecht* (2019); Sebastian Frik, “Verstaatlichte Rechtsberatung im Asylverfahren”, *juridikum* 2/2021

initial admissibility stage at EAST Traiskirchen, Thalham (and Vienna Airport) channels cases into track-specific deadlines (e.g., two-week inadmissibility/Dublin).⁹⁹

Where (practice not yet established) police invoke Schengen Borders Code Art 23a for internal-border cooperation, the person must receive a written, reasoned decision and access to a judicial remedy. There is no automatic suspensive effect *ex lege*, compressing the factual window to challenge transfers (akin to Dublin practice). Asylum seekers fall outside Art 23a's personal scope for transfer purposes; indicating an intent to seek asylum obliges registration/lodging in Austria rather than cooperation-based diversion. Practical risks mirror Dublin: short clocks, evidence loss at the border, and cross-border logistics.¹⁰⁰

CJEU jurisprudence on the Return Directive (*Affum/Arib* line) confines the Art 2(2)(a) derogation to external borders; reintroduced internal controls do not revive refusal-of-entry mechanisms inside Schengen. After any intra-EU readmission, the receiving state must apply the Return Directive framework, and “chain” readmissions that bypass individual assessment are incompatible with that logic. For Austria, this baseline constrains internal-border police practice and supports LVwG/BVwG review in measures complaints and appeals.¹⁰¹

II. JUDICIAL BODIES IN ACCESS TO ASYLUM

A. Institutional configuration

The following section provides the institutional baseline.

Generally, Austria's administrative justice is two-tiered since 2014: State Administrative Courts (LVwG) and the Federal Administrative Court (BVwG), with the Supreme Administrative Court (VwGH) above them, and the possibility to access the Constitutional Court (VfGH). Roughly, VfGH is human-rights/value-based; VwGH focuses on strict legality/textual assessments.

The reform responded to Art. 6 ECHR/Art. 47 FRC concerns and aligned Austria with systems like Germany/Sweden. The reform's core aim was to replace internal administrative appeal chains with a direct route to court. From (almost) every decision one can immediately complain to an administrative court. Moreover, the Constitution regulates administrative courts in much detail (organisation, subject-matter, appointment, standing, and even key procedural features) and requires a single federal procedural act (VwGVG). Departures are permitted only where “necessary to regulate the subject,” explicitly to prevent procedural fragmentation.

At first instance on the executive side, the BFA decides asylum/return matters and is a subordinate authority of the Federal Ministry of the Interior (BMI). Complaints against BFA decisions lie to the BVwG; since 8 January 2018 the BVwG is assigned (in matters of court administration) to the Federal Ministry of Justice (BMJ), while remaining independent in adjudication. The BVwG sits in Vienna with branch offices in Graz, Innsbruck and Linz (§ 1 BVwGG). Alongside it, the Regional Administrative Courts (Landesverwaltungsgerichte, LVwG) operate at Länder level; they are independent courts carried and funded by the provinces. Uniform legality control is ensured by the VwGH via revision on points of law (Art 133 B-VG) and the VfGH via constitutional complaint (Art 144 B-VG).

In general, LVwG hears measures complaints (Maßnahmenbeschwerden) against the direct exercise of administrative command and coercion under Art 130(1)(2) B-VG in pushback cases. LVwG proceedings follow the Federal Act on Administrative Court Procedure (VwGVG): hearings (§ 24), public evidence-taking (§ 25), and cost rules (§ 35). However, federal law assigns some measures-complaint subject-matter

⁹⁹ Sources: RLV §§ 5, 10; AsylG 2005 § 33; VwGH, Ra 2021/21/0274-6, 5 May 2022; LVwG Steiermark, 22.3-2726/2020, 1 Jul 2021; AIDA/ECRE, Country Report: Austria, 2024 Update, July 2025, https://asylumineurope.org/wp-content/uploads/2025/07/AIDA_AT_2024-Update.pdf

¹⁰⁰ Source: Regulation (EU) 2016/399 of the European Parliament and of the Council of 9 March 2016 on a Union Code on the rules governing the movement of persons across borders (Schengen Borders Code), OJ L 77, 23.3.2016, pp. 1-52, especially Arts 6, 14 and 23a, <https://eur-lex.europa.eu/eli/reg/2016/399/oj/eng>

¹⁰¹ Sources: Return Directive 2008/115/EC; CJEU, *Affum*, C-47/15, judgment of 7 Jun 2016, ECLI:EU:C:2016:408; CJEU, *Arib and Others*, C-444/17, judgment of 19 Mar 2019, ECLI:EU:C:2019:220

exclusively to the BVwG. The BVwG reviews BFA decisions and certain visa/family reunification complaints; it may decide on the merits or remit with a binding legal view (§ 28 VwGVG). Hearing practice is governed by §§ 24-25 VwGVG. The VwGH ensures consistent legality via revision (ordinary or extraordinary) under Art 133 B-VG / VwGG; the VfGH safeguards constitutionally guaranteed rights via Art 144 B-VG complaints. Both are independent courts of public law (“Höchstgerichte”).

BVwG and LVwG are first-instance administrative courts with a default duty to decide meritoriously and substitute the authority’s act; VwGH and VfGH primarily exercise cassation-type control. For ‘Bescheidbeschwerden’ (review of written decisions) under Art 130(1)(1) B-VG, §28 VwGVG obliges a reform decision where facts suffice; for Maßnahmenbeschwerden under Art 130(1)(2) B-VG the court does not “replace” an act but declares the measure unlawful and, if ongoing (which is not the case in pushbacks), orders restoration of a lawful state. The BVwG conducts ex-nunc review, and (if an inadmissibility/Dublin appeal succeeds) must admit the procedure in Austria (thereby providing access to the ordinary asylum procedure) under §21(3) BFA-VG, i.e., a fully “reformatorsche” (reformatory) outcome. VwGH reviews BVwG only on points of law; and the court typically annuls and remits (though amendment is legally possible). VfGH reviews administrative-court rulings for violations of constitutionally guaranteed rights under Art 144 B-VG; it annuls when a right is breached.¹⁰²

Specific empirical studies on this institutional effect are not available; the independence dimension is addressed in the next subsection.

At first instance, the LVwG and the BVwG decide on the merits, may take evidence and hold oral hearings, grant or refuse suspensive effect, and - where further fact-finding or discretion by the authority is necessary - remit with a binding legal view; in measures complaints they may also award costs. The VwGH hears Revisions confined to points of law, annulling or upholding and remitting where appropriate; the VfGH reviews alleged violations of constitutionally guaranteed rights (including ECHR-based rights by constitutional reference) and its decisions bind both administration and courts.¹⁰³

Remedial design directly affects access adjudication: no automatic suspensive effect in Dublin inadmissibility appeals shifts the burden onto applicants to secure interim protection, so transfers may precede merits review; measures complaints (only) allow after the fact declarations against pushbacks and BVwG merits jurisdiction enables direct relief in detention and visa disputes. Higher-court filters (admissibility, representation, fees) focus further review on legal issues of general importance, which establishes standards but constrains routine factual re-assessment. Because the practical availability and timing of suspensive effect determine whether a hearing and merits review can occur before removal, early interim-relief practice is decisive; The precise deadlines and default suspensive-effect rules are legally decisive for that point.¹⁰⁴

B. Independence

Austria’s administrative judiciary provides express constitutional guarantees of judicial independence for asylum-access adjudication: judges of the BVwG and the LVwG are independent in office under Art. 87 Federal Constitutional Law (B-VG), the separation of justice and administration is set by Art. 94 B-VG,

¹⁰² Sources: Michael Holoubek and Michael Lang (eds), *Die Neuordnung der Verwaltungsgerichtsbarkeit*, Linde Verlag, 2013 B-VG Arts 129-131, 133, 144; BFA-VG § 7(1)(3); BVwGG § 1; VwGVG §§ 22, 24, 28, 35; VwGG § 26; BVwG, Tätigkeitsbericht 2024, 1 February 2024-31 January 2025, https://www.bvwg.gv.at/dam/jcr%3A117e4749-fc50-4c58-93ba-3d2a43343559/T%C3%A4tigkeitsbericht%202024_barrierefrei.pdf; BVwG, W239 2286457-1, 22 Feb 2024; AIDA/ECRE, Country Report: Austria, 2024 Update, July 2025, https://asylumineurope.org/wp-content/uploads/2025/07/AIDA_AT_2024-Update.pdf)

¹⁰³ (Sources: §§ 22, 24, 28, 35 VwGVG; Art. 133 B-VG; § 26 VwGG; Art. 144 B-VG; § 17a VfGG; Art 130(1)(2) B-VG; LVwG Steiermark, 20.3-2725/2020, 1 Jul 2021; BVwGG § 1 (seat/branches); VwGH, Ra 2021/21/0274-6, 5 May 2022; VwGH, Ra 2022/21/0074-6, 19 May 2022; VfGH, E 2125/2024 & E 2483/2024, 3 Oct 2024.)

¹⁰⁴ (Sources: Art. 133(4) B-VG; § 26 VwGG; BFA-VG §§ 16-18; VwGVG §§ 22, 24, 28, 35; Regulation (EU) No 604/2013, Art. 27; AIDA/ECRE, Country Report: Austria, 2024 Update, July 2025, https://asylumineurope.org/wp-content/uploads/2025/07/AIDA_AT_2024-Update.pdf; BVwG, W239 2286457-1, 22 Feb 2024; VfGH, E 2125/2024; E 2483/2024, 03 Oct 2024.)

and members of the administrative courts are “judges” within Art. 134(7) B-VG. The “lawful judge” guarantee in Art. 83(2) B-VG is implemented by in advance business allocation in §§ 15-17 Federal Administrative Court Act (BVwGG), published annually as the BVwG’s business distribution; procedural independence is reinforced by statutory bias rules (§ 6 Federal Act on the Procedures of Administrative Courts, VwGVG) and legality review confined to points of law at the VwGH (Art. 133 B-VG). Because these guarantees bind both measures-complaint review at the LVwG and merits appeals at the BVwG, they frame independence consistently across pushbacks, detention, Dublin and visa disputes.¹⁰⁵

Management at the BVwG is judge-led and circumscribed by independence clauses: the President conducts internal administration and service supervision “with full respect for judicial independence” (§ 3 BVwGG); the General Assembly (Vollversammlung) adopts the Rules of Procedure and elects bodies such as the Business Allocation Committee and Personnel Senate (§ 4 BVwGG), diffusing authority; section heads and outpost leaders are judges appointed/removed by the President (§ 5 BVwGG). Case assignment follows ex ante, publicly accessible annual distribution rules (§§ 15-17 BVwGG; BVwG Geschäftsverteilung 2025), which specify panels/rapporteurs and rotation/stand-in logic, leaving no room for outcome-directing file steering by court management; the same internal-independence logic applies to LVwG, where business distribution must be set for a legally fixed period and is typically published (e.g. LVwG-G § 11; LVwG Wien Geschäftsverteilung). Disciplinary/service-appraisal powers affecting judges are exercised in collegial bodies (Personalsenat/Disziplinarsenat) elected by the Vollversammlung under the Richterdienstrecht, rather than monocratically by the President, further insulating adjudication from managerial leverage.

These guardrails are constitutionally mirrored at the top courts. For the VwGH, the President directs the court and exercises service supervision but must ensure coherence of case-law while sticking to independence requirements (§ 9 VwGG); the “Vollversammlung” determines senate composition and allocates business in advance for the year (§ 10 VwGG); disciplinary authority over members lies with the Vollversammlung acting as Disciplinary Court (§ 7 VwGG). For the VfGH, the President leads and oversees the court’s justizverwaltung (internal organisation, personnel, budget, service supervision), but the court itself adopts its rules of procedure (§ 14 VfGG), which also cabins the President’s tools to maintain order; the court’s own materials openly describe this division of labour. In short, both courts entrench internal independence by separating justizverwaltung from adjudication and by fixing business allocation through plenary decisions rather than presidential fiat.

Austria’s constitutional frame is uniform across the administrative judiciary. Article 134(7) B-VG declares members of the BVwG, LVwG, and the VwGH to be judges with the independence and tenure guarantees of Articles 87-88 B-VG. Article 135(2) B-VG requires allocation of business in advance by the Vollversammlung or an elected committee, including for the VwGH, thereby operationalising the “lawful judge” principle. Appointment pathways diffuse, but do not eliminate, executive leverage at the leadership stage. For LVwG, the Land government appoints the president, vice-president, and other members, with binding three-name lists only for non-presidency posts originating from the court’s Vollversammlung or an elected committee. For the BVwG and the VwGH, the Federal President appoints on proposal of the Federal Government, again using three-name lists for non-presidency posts from the respective Vollversammlung. The VfGH follows a mixed-origin model in which the Federal President appoints upon proposals by the Federal Government, the Nationalrat, and the Bundesrat.

Since 2019, the CCJE has flagged that executive discretion over administrative-court presidencies risks perceived politicisation, a concern reiterated in the EU Rule of Law Reports 2024 and 2025, which record no progress toward systematic judicial involvement and cite the protracted BVwG presidency appointment, ultimately filled in January 2024 from the third-ranked candidate on the shortlist. A Land-level procedural tweak in Tyrol formalised a selection commission for LVwG leadership but left executive

¹⁰⁵ (Sources: B-VG Arts 83(2), 87, 94, 130, 133, 134(7); BVwGG §§ 15-17; VwGVG § 6; BVwG, Geschäftsverteilung 2025, including Anlagen 1-2, <https://www.bvwg.gv.at/dam/jcr%3A6c75e692-709e-4aaf-9289-6dd623aed016/GV%202025%20-%20Gesch%C3%A4ftsverteilung%20idF%20vom%2022.1.2026%20iKt%2023.1.2026.pdf>)

choice intact. None of these features permits court managers to direct outcomes in individual asylum files, because case assignment remains governed by advance allocation under Article 135(2) B-VG.

In the asylum-access field, formal safeguards seek to prevent managerial steering. Case allocation and panel composition are fixed *ex ante* by the Geschäftsverteilungsausschuss and published in the Geschäftsverteilungsübersicht once a matter is allocated, removal is permitted only in narrowly defined situations under Article 135(3) B-VG. Service supervision cannot extend to adjudicative content: the VwGH held on 5 December 2023 that a president’s instruction telling a judge to ensure affiliated Rechtspfleger “judge in a certain way” is an unlawful instruction (*Weisung*) and need not be followed. External assessments have noted structural risks (most notably the CCJE 29 March 2019 opinion issued at AEAJ’s request concerning the Vienna LVwG presidency) but Austria’s enforceable allocation rules, publication duties, and higher-court policing address those risks in practice to prevent influence on outcomes.¹⁰⁶

Financial autonomy differs by court tier. The BVwG is financed within the federal Justice chapter UG 13 - Justiz, with the legally binding appropriation at the Globalbudget level (GB 13.02 “Rechtsprechung”) under the Federal Organic Budget Act 2013 (BHG 2013). Within that envelope, the BVwG is disclosed as Detailbudget 13.02.07, i.e. its resources are planned and executed inside the Justice chapter rather than via a stand-alone court UG. By contrast, the VwGH and the VfGH each have their own federal budget chapters (UG 04 and UG 03), while the Regional Administrative Courts (LVwG) are funded by the Länder (provincial) budgets with oversight by the respective Landesrechnungshof.

For the BVwG, the UG 13/GB 13.02 “Teilhefte” for 2025/2026 confirm court financing within the Justice chapter; Court of Audit “Zahlenteil” tables show a distinct BVwG detail-budget line (e.g., 13.02.07.x), evidencing transparent accounting while overall allocations are set at GB 13.02 level, not by a separate UG. Internally, §§ 22-24 Federal Administrative Court Act (BVwGG) provide for controlling (§ 22), Geschäftsausweise (§ 23), and an annual activity report (Tätigkeitsbericht) adopted by the General Assembly (§ 24), ensuring disclosure rather than independent multi-year budgeting. In practice, the BVwG’s capacity to absorb spikes in access-to-asylum litigation (e.g., detention or Dublin appeals) depends on appropriations and plan posts decided in the federal budget within UG 13/GB 13.02, not on court-set envelopes.

For the LVwG, financing is a Länder responsibility and appears as a dedicated area/budget line (Bereichsbudget Landesverwaltungsgericht) in each Land’s Voranschlag and accounts; Landesrechnungshof reports (e.g., Carinthia, Rechnungsabschluss 2023) confirm provincial-level appropriation and audit rather than federal UG funding. This means resourcing may vary by Land, with financial oversight exercised by the respective Landtag and Landesrechnungshof.

For the VwGH, the court is financed through its own federal budget chapter UG 04; the 2025 UG 04 “Teilheft” details plan posts (around 200, including about 68 judicial posts) and shows that the court manages its operations within a self-standing UG envelope enacted by Parliament, subject to general

¹⁰⁶ (Sources: BVwGG §§ 3-5, 11, 15-17; BVwG, Wahlergebnisse (richterliche Gremien), <https://www.bvwg.gv.at/amtstafel/Veroeffentlichungspflichten/Wahlergebnisse.html>; BVwG, Geschäftsverteilung 2025, including Anlagen 1-2, <https://www.bvwg.gv.at/dam/jcr%3A6c75e692-709e-4aaf-9289-6dd623aed016/GV%202025%20-%20Gesch%C3%A4ftsverteilung%20idF%20vom%2022.1.2026%20iKt%2023.1.2026.pdf>; Rechnungshof, Bericht des Rechnungshofes: Bundesverwaltungsgericht, Reihe Bund 2023/5, 2023, https://www.rechnungshof.gv.at/rh/home/home/2023_5_Bundesverwaltungsgericht.pdf; LVwG-G § 11; Verwaltungsgericht Wien, Geschäftsverteilung, <https://verwaltungsgericht.wien.gv.at/Content.Node/verwaltungsgericht-wien/geschaeftsverteilung.html>; B-VG Arts 134(2)-(4),(7), 135(2); VwGG §§ 7-10; VfGG § 14; B-VG Art 130(1)(2); European Commission, 2024 Rule of Law Report - Country Chapter on the rule of law situation in Austria, 24 Jul 2024, https://commission.europa.eu/document/download/bcfe8b8e-4c42-461d-b560-efcff1f29e87_en?filename=46_1_58076_coun_chap_austria_en.pdf; European Commission, 2025 Rule of Law Report - Country Chapter on the rule of law situation in Austria, 8 Jul 2025, https://commission.europa.eu/document/download/f9790196-3452-4a1c-a7dc-ecae3c676099_en?filename=2025+Rule+of+Law+Report+-+Country+Chapter+Austria.pdf)

federal budget law and audit. Budgetdienst analyses also track annual movements in UG 04 appropriations, underscoring that - unlike the BVwG - funding is not nested inside the Justice chapter.

For the VfGH, a separate UG 03 bases the court's appropriations; the 2025 and 2026 Budgetdienst analysis reports - together with the UG 03 "Teilheft" and personnel workbook - show payments in the ~€20-21 million range and confirm that the VfGH's resources are appropriated in a stand-alone chapter, with internal execution by the court under BHG 2013 principles and external audit by the Rechnungshof. This structure gives the VfGH (like the VwGH) a more separate budget line within the federal budget than the BVwG's placement in UG 13/GB 13.02.¹⁰⁷

Selection, appointment, and internal career steps for adjudicators deciding asylum access cases in Austria are channelled through judge-run bodies and detailed statutes, with constitutional guarantees as backstops. The Federal President appoints the President, Vice President, and other judges on proposal of the Federal Government. For ordinary judges, the proposal is preceded by three name lists prepared by the BVwG Personnel Senate, elected by the General Assembly, while proposals for the President and the Vice President follow recommendations from a mixed commission, together with transparency duties on publication of shortlist data. Allocation of business is set in advance by judge-elected organs, chamber chairs, and comparable internal roles are filled only after hearing the Personnel Senate, and managerial administration must operate within the adopted business allocation plan. Dismissal and discipline lie with judicial disciplinary bodies under the Judges and Prosecutors Service Act, evaluation and promotion rely on formal appraisals that are open to legal challenge; training is a statutory judicial duty delivered within the justice system and documented in court activity reports; and constitutional non-removability and non-transferability are reinforced by the rule that any involuntary transfer requires a judicial decision.

Similar guarantees apply at the VwGH, where the Federal President appoints members on Government proposal and for ordinary members the Government is bound by three name lists of the plenary, business allocation is set by the plenary or a committee, and discipline is handled by the Court's plenary acting as disciplinary court with the General Prosecutor in a role equivalent to that in proceedings against ordinary judges.

The VfGH sits within its own constitutional appointment and status regime, with members appointed by the Federal President on proposals from the Government, the National Council and the Federal Council, with strict qualification and incompatibility rules, with independence and non-transferability expressly applied by the Constitution, and with removal from office and other status decisions governed by the Constitutional Court Act and taken by the Court itself under enumerated grounds. Because across these bodies the main human resource levers are legally structured, exercised by peer-elected organs, and

¹⁰⁷ (Sources: BHG 2013; BVwGG §§ 22-24;
https://service.bmf.gv.at/Budget/Budgets/2025_2026/bfg2025/teilhefte/UG13/UG13_Teilheft_2025.pdf;
https://service.bmf.gv.at/Budget/Budgets/2025_2026/bfg2026/teilhefte/UG13/UG13_Teilheft_2026.pdf;
https://service.bmf.gv.at/Budget/Budgets/2025_2026/bfg2025/teilhefte/UG04/UG04_Teilheft_2025.pdf;
https://service.bmf.gv.at/Budget/Budgets/2025_2026/bfg2026/teilhefte/UG04/UG04_Teilheft_2026.pdf;
https://service.bmf.gv.at/Budget/Budgets/2025_2026/bfg2025/teilhefte/UG03/UG03_Teilheft_2025.pdf;
https://service.bmf.gv.at/Budget/Budgets/2025_2026/bfg2026/teilhefte/UG03/UG03_Teilheft_2026.pdf;
<https://www.parlament.gv.at/dokument/budgetdienst/untergliederungsanalysen/BD-UG-13-Justiz-Budgets-2025-und-2026.pdf>;
<https://www.parlament.gv.at/dokument/budgetdienst/untergliederungsanalysen/BD-UG-04-Verwaltungsgerichtshof-Budgets-2025-und-2026.pdf>;
<https://www.parlament.gv.at/dokument/budgetdienst/untergliederungsanalysen/BD-UG-03-Verfassungsgerichtshof-Budgets-2025-und-2026.pdf>;
https://rechnungshof.gv.at/rh/home/home_1/home_9/BRA_2024_Zahlenteil_UG_13_Justiz.pdf;
https://www.bvwg.gv.at/dam/jcr%3A046f9ac1-891a-493e-a854-6f8eb576535d/12.11.24_Taetigkeitsbericht_BVwG_2023_barrierefrei.pdf;
<https://www.lrh-ktn.at/berichte/rechnungsabschluss2023-land/>;
https://www.lrh-ktn.at/f/101163/x/5c7ed8f9ba/lrh_bericht_rechnungsabschluss2023.pdf).

subject to review, opportunities for indirect pressure on asylum outcomes are materially constrained once judges are in post.¹⁰⁸

Potential influence points remain at leadership appointments and at the margins of selection within shortlists. At the BVwG level, the Federal President is appointed on the Federal Government's proposal. For ordinary judges, the Government is constrained by three name lists from the Personnel Senate, while proposals for the President and the Vice President follow a recommendation from a mixed commission that is not binding. At provincial administrative courts, Land governments appoint the President and the Vice President under Land rules that, in practice, do not require a binding judicial shortlist for these posts, while ordinary judge appointments typically rely on three name proposals or comparable peer input. At the VwGH, the binding effect of the plenary three-name list limits discretion for ordinary members, but the President and the Vice President are proposed directly by the Government, as confirmed by the 2025 changes in office. At the VfGH, the nomination power is shared between the Government and the two chambers of Parliament, again without a binding shortlist, which embeds a political element at the leadership layer, although once appointed, the constitutional guarantees of independence, non-removability, and business allocation safeguards apply with full force.

European monitoring in the Rule of Law Reports for 2024 and 2025 has repeatedly urged stronger judge majority involvement and a more binding effect of peer proposals for the presidencies of administrative courts, and it reports limited progress on those recommendations. These design choices leave some executive or political discretion at the leadership layer, while the independence guarantees and ex ante business allocation continue to secure day-to-day adjudication in asylum access matters.¹⁰⁹

Internal independence is well protected. Constitutional guarantees (Arts. 83(2), 87 B-VG) and the advance, published business allocation (§§ 15-17 BVwGG) prevent ad hoc case steering; the President's role is administrative and must respect judicial independence (§ 3 BVwGG), while the General Assembly adopts the Rules of Procedure (§ 4 BVwGG). Bias/recusal rules (§ 6 VwGVG) and VwGH legality review (Art. 133 B-VG) provide strong individual-case safeguards. Because these protections apply equally to LVwG measures complaints and BVwG merits appeals, higher-ranked adjudicators or managers cannot issue outcome-directing guidance in access cases. External checks reinforce this further: the VwGH polices legality and adherence to the business-allocation regime, and the VfGH offers a constitutional remedy against rights-violating decisions in asylum matters.¹¹⁰

¹⁰⁸ (Sources: BVwGG § 2 paragraphs 3 to 5, §§ 3 to 5, 10 to 11, 15 to 17, RIS consolidated version: <https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=20008212>; B-VG Arts 87, 88, 134 paragraphs 1, 3, 4, 7, RIS consolidated version: <https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10000138>; VfGG § 10, RIS consolidated version: <https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10000245>; RStDG §§ 54, 57, 82, RIS consolidated version: <https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10008187>.)

¹⁰⁹ (Sources: B-VG Art. 134 paragraphs 3 and 4, Art. 147 paragraphs 1 to 3 and 7; BVwGG § 2; https://commission.europa.eu/document/download/bcfe8b8e-4c42-461d-b560-efcff1f29e87_en?filename=46_1_58076_coun_chap_austria_en.pdf; https://commission.europa.eu/document/download/f9790196-3452-4a1c-a7dc-eaea3c676099_en?filename=2025+Rule+of+Law+Report+-+Country+Chapter+Austria.pdf; <https://www.bundeskanzleramt.gv.at/medien/ministerraete/ministerraete-seit-maerz-2025/13-mr-4-juni.html>; https://www.bundeskanzleramt.gv.at/dam/jcr%3Ab1847486-63a8-47b2-bed8-6fb07df06805/13_10_mrv.pdf; <https://www.vwgh.gv.at/medien/mitteilungen/neuepraesidialspitze.html>; https://www.vwgh.gv.at/gerichtshof/richterrinnen_und_richter/praesident.html; https://www.vwgh.gv.at/gerichtshof/richterrinnen_und_richter/vizepraesidentin.html.)

¹¹⁰ (Sources: B-VG Arts. 83(2), 87, 133, RIS consolidated version: <https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10000138>; BVwGG §§ 3-4, 15-17, RIS consolidated version: <https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=20008212>; VwGVG § 6, RIS consolidated version: <https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=20008255>.)

Austria's legal framework (characterized by independent administrative courts) enables the BVwG and LVwG to annul, amend or otherwise control executive measures in access-to-asylum disputes, with uniform legality standards safeguarded by the VwGH on revision. The legal hook for merits control is § 28 VwGVG, while Art. 133 B-VG governs revision to the VwGH; revisions have no automatic suspensive effect but suspensive effect may be granted (§ 30 VwGG). Constitutional control is layered on top: the VfGH can rescind BVwG/LVwG rulings for violations of constitutionally guaranteed rights (Art. 144 B-VG) and repeal unconstitutional laws or unlawful regulations that restrict access (Arts 139-140 B-VG); although a constitutional complaint is not suspensive by default, interim protection may be granted (§ 85 VfGG). The Court of Audit has flagged resource constraints and backlogs that may delay but do not legally limit judicial oversight; caseload data show heavy intake (with average durations measured in weeks at the VfGH and several months at the VwGH), while EU Rule of Law reporting records high perceived judicial independence, supporting confidence that access adjudication operates without executive direction. These guarantees apply across pushbacks handled via LVwG measures complaints and detention/Dublin/visa appeals handled by the BVwG.¹¹¹

Because leadership (President/Vice-President; chamber heads, etc.) influences scheduling, allocation and internal coordination, executive-influenced leadership appointments can indirectly shape speed, consistency and prioritization in access disputes (e.g., suspensive-effect practice in Dublin transfers or facility-based detention hearings). That influence is procedural, not decisional: once appointed, constitutional independence (irremovability, lawful judge), fixed business allocation, and VwGH/VfGH oversight preserve merits autonomy. Monitors' calls to reduce political influence in leadership selection remain relevant where urgent interim relief and coordinated chamber practice materially affect effective remedies, but they do not detract from the courts' ability to overturn or constrain access-affecting executive action.¹¹²

Austria's general guarantees of judicial independence extend in full to the administrative judiciary, so asylum-access adjudication before the BVwG and LVwG operates under the same constitutional protections (independence from instructions; fixed business allocation) as ordinary courts. Legal basis for this includes Arts. 87 and 94 B-VG (independence; separation of justice/administration), Arts. 129-136 and 134(7) B-VG (integration of the administrative judiciary and application of independence guarantees), and BVwGG provisions on self-administration (Personnel Senate; business allocation; Rules of Procedure); the BVwG's funding within UG 13 mirrors the justice system generally and does not create a separate tier of independence. Because the asylum/migration docket is the BVwG's largest,

¹¹¹ (Sources: § 28 VwGVG; Art. 133, 139-140, 144 B-VG; § 30 VwGG; § 85 VfGG; https://www.bvwg.gv.at/dam/jcr%3A117e4749-fc50-4c58-93ba-3d2a43343559/T%C3%A4tigkeitsbericht%202024_barrierefrei.pdf; <https://www.vwgh.gv.at/gerichtshof/taetigkeitsberichte/Taetigkeitsbericht-2024.pdf>; https://www.vfgh.gv.at/downloads/taetigkeitsberichte/VfGH_Taetigkeitsbericht-2024.pdf; https://www.rechnungshof.gv.at/rh/home/home/2023_5_Bundesverwaltungsgericht.pdf; https://www.rechnungshof.gv.at/rh/home/news/news/news_3/Rueckstand_bei_Verfahren_am_Bundesverwaltungsgericht.html; https://commission.europa.eu/document/download/bcfe8b8e-4c42-461d-b560-efcff1f29e87_en?filename=46_1_58076_coun_chap_austria_en.pdf; https://commission.europa.eu/document/download/f9790196-3452-4a1c-a7dc-aea3c676099_en?filename=2025+Rule+of+Law+Report+-+Country+Chapter+Austria.pdf; https://service.bmf.gv.at/Budget/Budgets/2025_2026/bfg2025/teilhefte/UG13/UG13_Teilheft_2025.pdf)

¹¹² (Sources: B-VG Arts 83(2), 87, 133-134, 139-140, 144; BVwGG §§ 3, 11, 15-19; §§ 17-18 BFA-VG; VwGG § 30; VfGG § 85; European Commission, 2024 Rule of Law Report - Country Chapter on the rule of law situation in Austria, 24 Jul 2024, https://commission.europa.eu/document/download/bcfe8b8e-4c42-461d-b560-efcff1f29e87_en?filename=46_1_58076_coun_chap_austria_en.pdf; European Commission, 2025 Rule of Law Report - Country Chapter on the rule of law situation in Austria, 8 Jul 2025, https://commission.europa.eu/document/download/f9790196-3452-4a1c-a7dc-aea3c676099_en?filename=2025+Rule+of+Law+Report+-+Country+Chapter+Austria.pdf)

timelines can be pressured, but these operational factors do not alter independence or remedial authority across pushbacks, detention, Dublin, and visa appeals.¹¹³

C. Centralization/decentralization

Austria is a federal state with provinces but highly centralised legally; key justice powers are at federal level, so procedural variation by Land is limited. Austria's BVwG is a single federal court seated in Vienna with three branch offices in Graz, Innsbruck, and Linz fixed by statute; chambers are distributed across these sites in the court's annual business allocation (Geschäftsverteilung). By contrast, first-instance LVwGs are decentralized - nine courts, one in each Land - while supreme review before the VwGH and VfGH is centralized in Vienna. Because police "pushback"-type measures arise territorially before registration, initial review in such cases lies with the competent LVwG before any further review.¹¹⁴

Procedural structures do not generally vary by Land. However, part of Austria's administrative judiciary consists of nine Regional Administrative Courts (Landesverwaltungsgerichte, LVwG) - one per Land. Each Land may regulate the organization of its LVwG (seat, internal bodies, when panels with lay members are used, etc.), which produces some limited regional variation (e.g., LVwG Styria, seated in Graz, allows senate decisions in specified matters).¹¹⁵

D. Specialization

The BVwG runs a dedicated Kammer A (Asyl- und Fremdenrecht) and allocates cases via published Geschäftsverteilung rules. Within the asylum/migration field, separate tracks are expressly used for Dublin, detention, and visa matters, with the remaining asylum complaints grouped within a separate docket, producing repeated exposure to the same procedure types and, in practice, sustained subject-matter specialization. The court also documents relevant continuing in-house training (e.g., a BVwG CEAS reform training held on 1 April 2025).

LVwG are generalist regional courts. Relevant pushback cases have been decided by the same single judge with accumulating experience in challenges against respective police conduct.

The VwGH's Geschäftsverteilung provides multiple senates for asylum and migration law due to high inflow (i.e., panel-level specialization within a generalist high court concerned with points of law). Activity reports confirm asylum's large share of the docket. The VfGH has no dedicated asylum section; it conducts general constitutional review. Nonetheless, asylum/migration complaints constitute a very large part of filings (~71% in 2024). However, courts, including the VfGH, have internal resources allocated to coordinating asylum matters at the court.¹¹⁶

¹¹³ (Sources: Arts. 87, 94, 129-136, 134(7) B-VG; §§ 10-11, 15, 19 BVwGG; <https://www.bvwg.gv.at/dam/jcr%3Ac3608f33-b200-4b6a-b700-f5c0d47aae2d/Gesch%3%A4ftsverteilung%3%BCbersicht%20gem%3%A4%3%9F%20%2%A7%2%2015%20Abs.%208%20und%2018%20Abs.%205%20BVwGG.pdf>; https://www.bvwg.gv.at/dam/jcr%3A43c443e7-9d02-436a-8dd7-5108f9d2e06d/12.11.24_Taetigkeitsbericht_BVwG_2022.pdf; https://service.bmf.gv.at/Budget/Budgets/2025_2026/bfg2025/teilhefte/UG13/UG13_Teilheft_2025.pdf; https://commission.europa.eu/document/download/f9790196-3452-4a1c-a7dc-eaea3c676099_en?filename=2025+Rule+of+Law+Report+-+Country+Chapter+Austria.pdf)

¹¹⁴ (Sources: BVwGG § 1 (seat Vienna; branches Graz/Innsbruck/Linz); BVwG, Geschäftsverteilung 2025, including Anlagen 1-2, <https://www.bvwg.gv.at/dam/jcr%3A6c75e692-709e-4aaf-9289-6dd623aed016/GV%202025%20-%20Gesch%3%A4ftsverteilung%20idF%20vom%2022.1.2026%20iKt%2023.1.2026.pdf>; BVwG, Sitz und Außenstellen, <https://www.bvwg.gv.at/organisation/Sitz-und-Au-enstellen.html>; B-VG Arts 129-136, 134(7).)

¹¹⁵ (Sources: B-VG Art 129)

¹¹⁶ (Sources: BVwG, Geschäftsverteilung 2025, including Anlagen 1-2, <https://www.bvwg.gv.at/dam/jcr%3A6c75e692-709e-4aaf-9289-6dd623aed016/GV%202025%20-%20Gesch%3%A4ftsverteilung%20idF%20vom%2022.1.2026%20iKt%2023.1.2026.pdf>; BVwG, Tätigkeitsbericht 2024, 1 February 2024-31 January 2025, https://www.bvwg.gv.at/dam/jcr%3A117e4749-fc50-4c58-93ba-3d2a43343559/T%3%A4tigkeitsbericht%202024_barrierefrei.pdf; BVwG, GEAS-Schulung: Qualifizierung für das neue europäische Asylsystem, 4 Apr 2025, <https://www.bvwg.gv.at/news/aktuelle-meldungen/GEAS-Schulung--Qualifizierung-f-r-das-neue-europ-ische-Asylsystem.html>; AIDA/ECRE, Country Report: Austria, Access to territory and push backs, 2024

Judges have a statutory continuing-education duty under § 57(1) Judicial Service Act (RStDG) (explicitly for VwGH and *mutatis mutandis* BVwG; LVwG judges are under Länder service laws with equivalent duties), and the BVwG, the provincial administrative courts (LVwG) and the VwGH report or benefit from structured, recurring training with targeted asylum/foreigners-law content (e.g., a BVwG in-house update on the CEAS reform on 01 Apr 2025; EU-level COI practice via EUAA “Country Talks: Syria,” 26 Apr 2024; ÖAVG workshops hosted at LVwG venues - e.g., “Urteilstechnik und Verfahrensrecht,” LVwG Kärnten, 27 Feb 2025 - and a 2025 NAG update taught by a VwGH judge). EUAA offers specific modules on access to the procedure and registration, with documented Austrian uptake (EUAA Annual Training Report 2024; and the AIDA/ECRE 2024 Update reports two EUAA sessions in Austria to 56 local staff in Jan-Jun 2024); nationally, the Austrian Academy for Administrative Judiciary (ÖAVG) runs year-round programmes for administrative judges (with events at BVwG and LVwG sites), and the Justice Ministry highlights and facilitates participation in EU-level judicial training (EJTN/ERA catalogues and events open to Austrian judges). Implication: recurring BVwG/LVwG/VwGH, ÖAVG and EUAA/EJTN/ERA training sustains adjudicator competence on access-to-procedure issues and supports more uniform adjudication.¹¹⁷

Specialization, and whether it exists, varies by forum and barrier. The BVwG applies functional specialization (country/region-focused chambers and designated COI points of contact), yet the sustained caseload since 2017 has meant virtually all chambers handle aliens/asylum cases and judges from other areas have been reassigned. Regional Administrative Courts (LVwG) are generalist but have built practical expertise through repeated “measures complaints” on border policing - especially in Styria - while the Supreme Administrative Court (VwGH) and VfGH remain generalist apex courts. No reliable information is available on the specialization of clerks across these bodies.¹¹⁸

A documented gap exists at the BVwG: while chamber grouping suggests specialization “on paper,” high inflows have produced near-universal chamber exposure to aliens/asylum cases and reassignment from other fields, weakening *de facto* specialization. At Regional Administrative Courts (LVwG), there is no formal asylum section, yet repeated litigation on border measures has created practical expertise.

E. Human resources

At the BVwG, adjudication is conducted by professional administrative judges; as of end-2024 the BVwG had 220 judges (48.7% women), with judges typically recruited from public administration, private legal practice or as long-standing legal staff of the court. LVwGs are likewise staffed by professional administrative judges (no lay adjudicators in asylum matters); Vienna alone reported 85 judicial posts in 2024. VwGH reviews in 22 senates, and in 2024 comprised the President, a Vice-President, 13 senate chairs and 53 judges (all career judges). VfGH consists of the President, a Vice-President, 12 other members and 6 substitutes (age-limit 70); members are appointed from diverse professional backgrounds (not only career judiciary), including academia, the bar and senior civil service.¹¹⁹

Update, July 2025, <https://asylumineurope.org/reports/country/austria/asylum-procedure/access-procedure-and-registration/access-territory-and-push-backs/>; VwGH, Pressemitteilung zur Bestätigung der Rechtswidrigkeit eines Pushbacks, 2022, <https://www.vwgh.gv.at/medien/mitteilungen/2022-06-14-pushback.html>; VwGH, Ra 2022/21/0074-6, 19 May 2022; AsylG 2005, § 36 et seq.; VwGH, Tätigkeitsbericht für das Jahr 2024, beschlossen 24 June 2025, <https://www.vwgh.gv.at/gerichtshof/taetigkeitsberichte/Taetigkeitsbericht-2024.pdf>; VfGH, Tätigkeitsbericht 2024, https://www.vfgh.gv.at/downloads/taetigkeitsberichte/VfGH_Taetigkeitsbericht-2024.pdf

¹¹⁷ (Sources: § 57(1) RStDG; EUAA, Annual Training Report 2024, June 2025, https://www.euaa.europa.eu/sites/default/files/publications/2025-06/EUAA_Annual_Training_Report_2024_FINAL_EN.pdf;

AIDA/ECRE, Country Report: Austria, 2024 Update, July 2025, https://asylumineurope.org/wp-content/uploads/2025/07/AIDA_AT_2024-Update.pdf; Österreichische Verwaltungsrichtervereinigung (ÖVG/ÖAVG), Fortbildungsprogramm 2025, <https://www.verwaltungsrichter.at/>; European Judicial Training Network, Catalogue of training activities 2025, <https://ejtn.eu/>.)

¹¹⁸ (Sources: AIDA/ECRE, Country Report: Austria, 2024 Update, July 2025, https://asylumineurope.org/wp-content/uploads/2025/07/AIDA_AT_2024-Update.pdf; Arts 130-131 B-VG.)

¹¹⁹ (Sources: B-VG; VwGVG; BVwGG; <https://www.bvwg.gv.at/dam/jcr%3Ac3608f33-b200-4b6a-b700-f5c0d47aae2d/Gesch%C3%A4ftsverteilungen%C3%BCbersicht%20gem%C3%A4%C3%9F%20%2%A7%C2%A7%2015>

Austria's constitution treats members of the BVwG, the nine LVwG and the VfGH as “judges” with the guarantees of independence and tenure; business allocation must be fixed in advance by the plenary or an elected committee, operationalising the “lawful judge” principle. Appointments to the BVwG and the VfGH are made by the Federal President on proposal of the Federal Government and are preceded by peer shortlists (Dreiervorschläge) prepared by the respective court bodies; the VfGH follows a mixed-origin model in which the Federal President appoints on proposals from the Federal Government, the National Council and the Federal Council. None of these arrangements permits managerial steering of individual outcomes once judges are in office.

Constitutional and statutory design diffuse appointment powers yet insulate adjudication from managerial influence or steering. Article 134(7) B-VG extends the independence and tenure guarantees of Articles 87-88 B-VG to members of the BVwG and LVwG; Article 135(2) B-VG requires advance business allocation by the General Assembly (Vollversammlung) or a judge-elected committee, thereby operationalising the lawful-judge principle. At the BVwG, § 2 BVwGG provides that the Federal President appoints the President, Vice-President, and other judges on Government proposal; for other judges the Government must first obtain three-name proposals from the BVwG Personalsenat elected by the General Assembly, transparency duties require online publication of the number of suitable applicants by sex and the names of participating Personalsenat members, and specified provisions of the Richter- und Staatsanwaltschaftsdienstgesetz apply mutatis mutandis. In the most recent cycle, Personalsenat hearings took place on 10 Apr 2024, the Federal Government decided on 06 Aug 2024, and presidential appointments took effect on 01 Sep 2024.

For the LVwG, Land governments appoint the President and Vice-President under Land law, while ordinary judges are typically appointed on the basis of three-name lists or comparable peer input from the court's plenary or an elected committee; in several Länder the government is not formally bound by these lists, and monitoring bodies have urged stronger judge-majority involvement in leadership appointments and clearer reasons when deviating from peer rankings. These choices may shape leadership selection at the margins; however, once appointments are made, constitutional guarantees and fixed business-allocation rules constrain managerial influence on individual case outcomes.

Candidates typically need Austrian citizenship, an (accredited) Austrian law degree, and at least five years of legal practice. Judicial preparatory service or exams are not needed for (administrative) courts.¹²⁰

https://www.bvwg.gv.at/dam/jcr%3A117e4749-fc50-4c58-93ba-3d2a43343559/T%20C3%A4tigkeitsbericht%202024_barrierefrei.pdf;
<https://www.vwgh.gv.at/gerichtshof/taetigkeitsberichte/Taetigkeitsbericht-2024.pdf>;
https://www.vfgh.gv.at/downloads/taetigkeitsberichte/VfGH_Taetigkeitsbericht-2024.pdf; AIDA/ECRE, Country Report: Austria, 2024 Update, July 2025, https://asylumineurope.org/wp-content/uploads/2025/07/AIDA_AT_2024-Update.pdf.)

¹²⁰ (Sources: BVwGG § 2; §§ 3-5, 10-11, 15-17; RStDG §§ 31-35; B-VG Arts 83(2), 87-88, 134(3), 134(7), 135(2); VwGG §§ 7-10; VfGG § 14; BVwG, Geschäftsverteilung 2025, including Anlagen 1-2, <https://www.bvwg.gv.at/dam/jcr%3A6c75e692-709e-4aaf-9289-6dd623aed016/GV%202025%20-%20Gesch%20C3%A4ftsverteilung%20idF%20vom%2022.1.2026%20iKt%2023.1.2026.pdf>; BVwG, Wahlergebnisse (richterliche Gremien), <https://www.bvwg.gv.at/amtstafel/Veroeffentlichungspflichten/Wahlergebnisse.html>; BMJ, Besetzungsergebnisse, <https://www.bmj.gv.at/ministerium/stellenausschreibungen/besetzungsergebnisse.html>; for example Wiener Verwaltungsgericht-Dienstrechtsgesetz (VGW-DRG), § 11, RIS consolidated version: <https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=LrW&Gesetzesnummer=20000231>; European Commission, 2024 Rule of Law Report - Country Chapter on the rule of law situation in Austria, 24 Jul 2024, https://commission.europa.eu/document/download/bcfe8b8e-4c42-461d-b560-efcff1f29e87_en?filename=46_1_58076_coun_chap_austria_en.pdf; European Commission, 2025 Rule of Law Report - Country Chapter on the rule of law situation in Austria, 8 Jul 2025, https://commission.europa.eu/document/download/f9790196-3452-4a1c-a7dc-eaea3c676099_en?filename=2025+Rule+of+Law+Report+-+Country+Chapter+Austria.pdf; GRECO, Fifth Evaluation Round: Evaluation Report Austria, GrecoEval5Rep(2022)5, 1 Mar 2023, https://www.bmj.gv.at/dam/jcr%3A824c12a6-ab3d-401e-beae-ba30c6f17d1b/GrecoEval5Rep%282022%29-Final_deutsch.pdf.)

Both tiers employ substantial non-judicial support that enables high-volume access dockets. At the BVwG, legal staff and case-managers have been scaled up (legal staff from 80 in 2014 to 189 by early 2025; 101 case-managers, 73 embedded in chambers) with defined tasks in coordinating proceedings, drafting simple orders, organising summonses and expert evidence, managing files/rooms and ensuring data quality; Rechtspfleger (judicial officers) may act under a presiding judge’s instruction, and the court may appoint official experts and interpreters. At the VwGH, central support includes the Evidenzbüro (jurisprudence digesting/headnotes), scientific staff, library and IT. Because interpreters and experts are frequently engaged in access disputes (e.g., language mediation, country-expert input), the layered staffing at first instance stabilises timelines while review courts’ knowledge-management tools support legality control.

Non-judicial staff at the BVwG include “juristische Mitarbeiter:innen” (legal staff), “Verfahrensmanager:innen” (case managers), “Sachbearbeiter:innen,” and “Schreibkräfte/Kanzlist:innen,” with chamber-level staffing as of 31 Jan 2025. Legal staff increased from 80 (2014) to 189 (early 2025), including pooled support for asylum/immigration; 101 case-managers (73 embedded) prepare drafts and simple orders, take procedural steps, coordinate evidence and logistics, and support data quality, with dedicated training and some deployment in controlling/HR/quality/revision. § 13 BVwGG allows certified “Rechtspfleger” to act under judicial instruction; § 14 BVwGG provides for official experts and interpreters.

At the VwGH, support units include the “Evidenzbüro”, scientific staff, library, and IT within a presidency-led administration, alongside adjudication in senates (three/five; nine when departing from case-law).¹²¹

Interpreting is institutionally provided but quality varies with hearing format. The BVwG may appoint official experts and interpreters; in practice, however, courts often still hire external certified interpreters. Practice reports note videoconference frictions (e.g., judges switching off video, the applicant being unable to see the interpreter, or security/protocol issues). Generally, interpreters are not always neutral conduits; some summarize, omit, or opine on credibility, which can skew the record and harm fairness. Moreover, the interview transcript is a legally crucial artefact for both the authority and appellate bodies.

Courts appoint official interpreters under § 14 BVwGG at the BVwG; judges are expected to draw primarily from the national list of “allgemein beeidete und gerichtlich zertifizierte” interpreters under the SDG and § 86 GOG (court-certified roster). AIDA details videoconference hearing problems (including the interpreter not being visible) which correlate with quality concerns; UNHCR Austria issued a “self-check” checklist for video interviews to mitigate these risks. LVwG hearings likewise rely on generally sworn/court-certified interpreters under the same public framework; rulings also show courts engaging external interpreters where no “official” interpreter is available. VwGVG (in administrative-penal matters) expressly allows remote interpreting if fairness is preserved.

No reliable public information in the sources reviewed sets out systematic interpreter availability/qualification policies for the VwGH or VfGH in asylum cases; both courts operate mainly solely on written files.¹²²

Available human resources at first instance are significant but stretched by sustained intake. AIDA reporting notes continued reassignment of non-specialist judges into asylum since 2017, while the BVwG has expanded legal staff and case-manager capacity to keep cases moving; videoconferencing exists but is rarely used and has documented shortcomings. Because access barriers (including border measures and

¹²¹ (Sources: BVwGG §§ 12-14; BVwG, Tätigkeitsbericht 2024, 1 February 2024-31 January 2025, https://www.bvwg.gv.at/dam/jcr%3A117e4749-fc50-4c58-93ba-3d2a43343559/T%3C%A4tigkeitsbericht%202024_barrierefrei.pdf (legal staff, case-managers); Verwaltungsgerichtshof, Organisation, <https://www.vwgh.gv.at/gerichtshof/organisation/index.html>.)

¹²² (Sources: BVwGG § 14; SDG; GOG § 86; VwGVG/AVG; GebAG; AIDA/ECRE, Country Report: Austria, 2024 Update, July 2025, https://asylumineurope.org/wp-content/uploads/2025/07/AIDA_AT_2024-Update.pdf; Julia Dahlvik, Inside Asylum Bureaucracy: Organizing Refugee Status Determination in Austria, IMISCOE Research Series, Springer, 2018, <https://doi.org/10.1007/978-3-319-63306-0>.)

Dublin transfers) demand rapid, reliable fact-finding, mixed specialisation and limits of tools can stress consistency even where support staff has been scaled.¹²³

Court presidents hold broad “Justizverwaltung” powers that can, in practice, shape staffing conditions, but the legal texts typically do not guarantee any individual judge a specific number of judicial assistants. At the BVwG, the President “guides” the court, exercises “Dienstaufsicht” over all personnel, and performs the court’s internal administration (BVwGG § 3(1)), while the head of a BVwG external office (e.g., Graz) performs presidential tasks for that office under the President’s responsibility (and is instruction-bound in that administrative capacity) (BVwGG § 5(2)). At the BVwG, judicial divisions are supported by “juristische Mitarbeiter:innen” and “B-Referent:innen”, with further administrative support (transcription/protocol/anonymisation). At the LVwGs, Land legislation commonly places the President in charge of internal operations and Dienstaufsicht not only over non-judicial staff but also (formally) over members of the court, and may expressly include control of service operations and staff working-time organisation. At the VfGH, the President leads personnel/resource matters for the court’s administrative staff, and important personnel measures require hearing a “Personalsenat” (VfGG § 13(1)–(2)); separately, members are supported by verfassungsrechtliche Mitarbeiter:innen (VfGG § 13a), but this provision does not by itself specify enforceable per-member entitlements or allocation criteria. At the VwGH, “Leitungsgeschäfte” expressly include regulating internal service operations and Dienstaufsicht over the entire staff (VwGG § 9(1)).

F. Tools supporting adjudication

Key organisational tools in Austrian asylum judicial or quasi-judicial adjudication include (i) structured country-of-origin information via the BFA’s Staatendokumentation; (ii) systematic publication of decisions on the Federal Legal Information System (RIS) for BVwG, LVwG, VwGH and VfGH; and (iii) standardised electronic filing/service (ERV). These tools underpin evidentiary consistency and transparency. Practical levers include the BVwG’s published Geschäftsverteilung (business allocation) and the Vienna LVwG’s ERV roll-out by ordinance (in force 1 Sept 2024), with the court’s ERV “Anschriftcode” publicly available. Because access disputes often turn on current country conditions (including Dublin or border-practice evidence), the combination of up-to-date COI, accessible jurisprudence on RIS, and secure/rapid ERV filing directly affects predictability and available remedies.¹²⁴

IT tools supporting asylum access adjudication include several consequential systems: ERV, which enables secure, structured e-filing/service (the BVwG accepts “ERV für alle”; ordinary email is not the filing channel); online jurisprudence/COI platforms (RIS + Staatendokumentation) that support evidence-gathering and consistency; and audio-video hearings at the administrative courts (BVwG/LVwG) authorised by § 25a VwGGV (within the § 24 hearing framework). Austrian-wide usage data for video hearings are not centrally consolidated; where used, safeguards matter (e.g., interpreter visibility, party participation, protocol handling). Guidance and comparative research highlight both benefits and due-process risks of remote formats, underscoring the need for clear safeguards.¹²⁵

¹²³ (Sources: AIDA/ECRE, Country Report: Austria, 2024 Update, July 2025, https://asylumineurope.org/wp-content/uploads/2025/07/AIDA_AT_2024-Update.pdf; BVwG, Tätigkeitsbericht 2024, 1 February 2024–31 January 2025, https://www.bvwg.gv.at/dam/jcr%3A117e4749-fc50-4c58-93ba-3d2a43343559/T%3%A4tigkeitsbericht%202024_barrierefrei.pdf.)

¹²⁴ (Sources: VwGGV §§ 24–25a; BVwG-EVV; VwGH-ERV-VO (Vienna); <https://www.bvwg.gv.at/verfahren/Unsere-Verfahren/einbringung/elektronische-einbringung.html>; <https://justiz.gv.at/service/digitale-justiz/elektronischer-rechtsverkehr-%28erv%29.967.de.html>;

https://www.oesterreich.gv.at/de/themen/egovernment/moderne_verwaltung/elektronischer_rechtsverkehr_erv; <https://www.lvwg-tirol.gv.at/entscheidungen/>; AIDA/ECRE, Country Report: Austria, 2024 Update, July 2025, https://asylumineurope.org/wp-content/uploads/2025/07/AIDA_AT_2024-Update.pdf.)

¹²⁵ (Sources: VwGGV §§ 24–25a; Vienna LVwG ERV Ordinance 2024; BVwG, Tätigkeitsbericht 2024, 1 February 2024–31 January 2025, https://www.bvwg.gv.at/dam/jcr%3A117e4749-fc50-4c58-93ba-3d2a43343559/T%3%A4tigkeitsbericht%202024_barrierefrei.pdf; AIDA/ECRE, Country Report: Austria, 2024 Update, July 2025, https://asylumineurope.org/wp-content/uploads/2025/07/AIDA_AT_2024-Update.pdf.)

Standardised digital COI and systematic RIS publication enhance consistency and allow parties and judges to align rapidly with current country conditions and case-law, which can be decisive in Dublin and border-practice reasoning (e.g., documented disruptions to Dublin transfers affecting outcomes/strategy). By contrast, low-quality or poorly-safeguarded remote hearings (e.g., difficulties ensuring interpreter quality/visibility or effective participation) can impair the effectiveness of the remedy in access cases; research and guidance therefore recommend safeguards if video is used. Overall, reliable ERV/RIS/COI infrastructures tend to facilitate access and predictability, while uneven video-hearing quality can pull the other way.¹²⁶

G. Management

Management at first instance is formalised and transparent, combining elected judicial self-administration with operational leadership; at the review tier, management uses high-court performance goals on timing and backlog.

At the BVwG, the President and Vice-President lead within judicial bodies (General Assembly, Personnel Senate, Business Allocation Committee, Controlling Committee) and operational roles (outpost heads, chamber chairs), with publication duties (e.g., annual business allocation, Rules of Procedure). At the BVwG, the President conducts internal administration while aiming for uniform case-law and respecting judicial independence; chamber chairs lead chambers and pursue internal consistency. The statute provides for a Controlling Office and an elected Controlling Committee that issues recommendations; the court publishes the annual business allocation and its Rules of Procedure (GO-BVwG, in force 06 Nov 2024). Vienna's LVwG shows a parallel structure (President/Vice-President, Business Allocation and Personnel/Service Senates, chamber heads) and uses a published, points benchmark to balance workloads. At LVwG Wien, the Präsidium and judicial self-administration manage case allocation and chamber organisation; the annual report and organigram document workload management, with a public points system used to balance workloads across single-judge and panel matters.

The VwGH President manages organisation and allocation under internal business rules; support includes the Evidenzbüro and scientific staff. Performance is steered through budget performance goals, including ceilings on proceedings pending for more than one year and on pendency in foreigners-law matters. Budgets are set annually and do not automatically rise with output, but performance and workload data can inform the next budget cycle and justify additional staff or funds. Targets and indicators also inform internal planning, alongside published data on case duration and pending stock. The VfGH is headed by a President/Vice-President; decisions issue in plenum or small formations, and court-level statistics (high asylum share; short average durations) are the main indicator rather than per-member quotas.¹²⁷

Managers influence dockets and timelines - but not legal outcomes - through allocation rules, workload equalisation and scheduling; careers are peer-mediated, and controlling is advisory. At the BVwG, the Business Allocation Committee annually adopts and may mid-year adjust the Geschäftsverteilung (distribution to single judges/senates, senate compositions, chamber structures); in impediment or delay scenarios a case can be reassigned. Chamber chairs coordinate uniform case-law, and the President has a parallel coordination duty, both “while preserving judicial independence.” At LVwG Wien, the Präsidium/Business Allocation Committee steer allocation and chamber organisation; a published points system with a “sustainable” benchmark equalises workloads. Because access litigation often requires

¹²⁶ (Sources: AIDA/ECRE, Country Report: Austria, 2024 Update, July 2025, https://asylumineurope.org/wp-content/uploads/2025/07/AIDA_AT_2024-Update.pdf; VwGVG §§ 24-25a.)

¹²⁷ (Sources: BVwGG §§ 3-11, 15-17, 19-24, 20; GO-BVwG (in force 6 Nov 2024); <https://www.bvwg.gv.at/In-English/Proceedings.html>; Verwaltungsgericht Wien, Tätigkeitsbericht 2024, https://verwaltungsgericht.wien.gv.at/Content.Node/verwaltungsgericht-wien/TB_2024.pdf; VwGH, Tätigkeitsbericht für das Jahr 2024, beschlossen 24 June 2025, <https://www.vwgh.gv.at/gerichtshof/taetigkeitsberichte/Taetigkeitsbericht-2024.pdf>; https://oeffentlicherdienst.gv.at/wp-content/uploads/2025/10/251030_Bericht-WO-2024_BF_komprimiert.pdf; VfGH, Tätigkeitsbericht 2024, https://www.vfgh.gv.at/downloads/taetigkeitsberichte/VfGH_Taetigkeitsbericht-2024.pdf.)

urgent interim measures, these management tools affect timing and caseload without authorising merits instructions.

At the BVwG, career paths are peer-mediated via the Personnel Senate (e.g., three-name proposals, service appraisals). The Controlling Office generates data, and the elected Controlling Committee issues non-binding recommendations to the President; neither has authority over merits. At LVwG Wien, public points-based performance management guides workload equalisation across judges handling dockets that include access-related cases, indirectly influencing scheduling and consistency while preserving decisional independence.

At the VwGH, the President manages organisation/allocation, and performance is steered through court-level performance goals in the federal performance framework; at the VfGH, the President manages administration and session scheduling, and statistical transparency (volumes/durations) serves as the chief management signal. Neither high court publishes per-judge merits quotas.¹²⁸

Formal performance measures exist, with first-instance tools focusing on throughput planning and high-court tools on court-level backlog. At the BVwG, the Court of Audit documented per-judge minimum disposal frames (“Mindeststrahlen/Erledigungsziele”) differentiated by field (asylum/migration law usually ~120-130 closures/year; Dublin >200), monitored by the Presidium and chamber heads; since first quarter of 2024 a planning-oriented “Richtwertsystem” supports workload planning. Furthermore, Vienna’s LVwG applies a published points benchmark per FTE (2024: 241 points assigned per individual in full time occupation; reference value 180 points as a sustainable yearly load) to manage workloads across single-judge and panel matters that include access-related cases.

Because access litigation is time-sensitive, these instruments can reduce backlog and support timeliness without prescribing outcomes; independence clauses plus advisory controlling at BVwG (§ 22 BVwGG) are expressly framed to respect judicial independence, which helps limit outcome pressure. At review level, the VwGH works with court-level performance goals within the federal “Wirkungsmonitoring” (e.g., indicators to reduce >1-year backlog and to address pending cases); 2024 reporting shows ~7,600 closures, ~3,300 pending, and a 5.5-month average duration. The VfGH publishes volumes/durations (2024: 5,376 new cases; ~71% asylum/aliens; ~55-day average in asylum).

Quantified targets and planning tools correlate with reduced stock and faster average durations at the high courts and are intended to prioritise timely access to adjudication. The Rechnungshof flagged that BVwG’s output-oriented minima were based on experiential estimates rather than statistically validated workload metrics, which can bias toward quantity; the introduction of a “Richtwertsystem” in 2024 is meant to improve planning transparency. BVwGG § 22 requires controlling to support court management while keeping judicial independence; no sources indicate outcome quotas. Publication and court-level indicators emphasise speed/duration rather than dictating decision results.¹²⁹

¹²⁸ (Sources: BVwGG §§ 3(1), 10-11, 15-17, 22-23; Verwaltungsgericht Wien, Tätigkeitsbericht 2024, https://verwaltungsgericht.wien.gv.at/Content.Node/verwaltungsgericht-wien/TB_2024.pdf; VwGH, Tätigkeitsbericht für das Jahr 2024, beschlossen 24 June 2025, <https://www.vwgh.gv.at/gerichtshof/taetigkeitsberichte/Taetigkeitsbericht-2024.pdf>; VfGH, Tätigkeitsbericht 2024, https://www.vfgh.gv.at/downloads/taetigkeitsberichte/VfGH_Taetigkeitsbericht-2024.pdf.)

¹²⁹ (Sources: Rechnungshof, Bericht des Rechnungshofes: Bundesverwaltungsgericht, Reihe Bund 2023/5, 2023, https://www.rechnungshof.gv.at/rh/home/home/2023_5_Bundesverwaltungsgericht.pdf; BVwGG § 22; BVwG, Tätigkeitsbericht 2024, 1 February 2024-31 January 2025, https://www.bvwg.gv.at/dam/jcr%3A117e4749-fc50-4c58-93ba-3d2a43343559/T%C3%A4tigkeitsbericht%202024_barrierefrei.pdf (Richtwertsystem); Verwaltungsgericht Wien, Tätigkeitsbericht 2024, https://verwaltungsgericht.wien.gv.at/Content.Node/verwaltungsgericht-wien/TB_2024.pdf (points benchmark); VwGH, Tätigkeitsbericht für das Jahr 2024, beschlossen 24 June 2025, <https://www.vwgh.gv.at/gerichtshof/taetigkeitsberichte/Taetigkeitsbericht-2024.pdf> and Bundesvoranschlag 2024, Untergliederung 04 - Verwaltungsgerichtshof, https://www.parlament.gv.at/dokument/XXVII/III/1075/imfname_1622197.pdf (indicators); VfGH, Tätigkeitsbericht 2024, https://www.vfgh.gv.at/downloads/VfGH_Taetigkeitsbericht_2024.pdf (volumes/durations).)

H. Caseload and delays

Caseloads in 2024 remained high across all tiers: at first instance, the BVwG registered roughly 24,500 new cases, with “Fremdenwesen und Asyl” the largest stream, and concluded about 59-60% of proceedings within the six-month statutory target despite the heavy inflow. Vienna’s LVwG reports workloads through a transparent points system; against a ‘sustainable’ benchmark of 180 points per full-time judge, average 2024 allocations were 241 points/FTE - evidence of sustained pressure in access-adjacent dockets. At the top level, migration/asylum continues to dominate: the VwGH closed about 7,600 cases in 2024 (average duration 5.5 months) and had ~3,300 matters pending at year-end, with performance monitored against indicators such as “>1-year pendency” and the stock of migration-law cases in the federal Wirkungsmonitoring (UG 04). The VfGH recorded 5,376 new cases in 2024, 71% of which concerned asylum/aliens law.¹³⁰

Across tiers, delays appear moderate overall with pockets of backlog: at first instance, the BVwG reported in its 2024 business year (1 Feb 2024-31 Jan 2025) that ~59% of cases were completed within six months (85% within a year), against sharply higher intake (~24,500 new; ~21,150 closures) and a year-end stock of ~17,550 pending files (~71% of new filings; ~67% of closures). At Vienna’s LVwG, pendency is managed transparently via a points benchmark (~241 points per full-time adjudicator vs a published sustainable reference of 180), with the court noting a reduction of ~2,000 open matters since the 2021 peak even as 2024 brought 17,689 new filings and heavy inflow in access-adjacent areas; the metrics-based load tracking makes age bands less visible but still allows clear monitoring. At review level, the VwGH closed ~7,600 cases in 2024, averaged ~5.5 months per case, and ended the year with ~3,300 pending, while operating under explicit federal performance ceilings (e.g., target ≤2,500 cases pending >1 year; and ≤1,300 pending in foreigners-police matters), which discipline backlog control without dictating outcomes. The VfGH showed very short processing times (overall ~79 days; ~55 days in asylum), indicating swift constitutional review in access litigation.¹³¹

Backlogs and delay have uneven effects on different groups. For applicants, older cases prolong uncertainty and can weaken protection where key steps are non-suspensive (notably Dublin), yet BVwG and apex-court average durations limit overall risk; still, some transfers occur before merits review where suspensive effect is not secured in time.

Conversely, delay can occasionally benefit applicants: additional time allows counsel to assemble medical/psychological evaluations, family-link proof and up-to-date country information, and - specifically in Dublin cases - expiry of the six-month transfer window can shift responsibility to Austria, mooting removal logistics.

For judges, high inflows combined with performance management (per-judge “Mindestrahmen”/Richtwert systems; KPI ceilings on pendency at the apex-court level) maintain a high case-completion rate but create workload stress that can encourage file-based adjudication and tighter

¹³⁰ (Sources: BVwG, Tätigkeitsbericht 2024, 1 February 2024-31 January 2025, https://www.bvwg.gv.at/dam/jcr%3A117e4749-fc50-4c58-93ba-3d2a43343559/T%C3%A4tigkeitsbericht%202024_barrierefrei.pdf; Verwaltungsgericht Wien, Tätigkeitsbericht 2024, https://verwaltungsgericht.wien.gv.at/Content.Node/verwaltungsgericht-wien/TB_2024.pdf; VwGH, Tätigkeitsbericht für das Jahr 2024, beschlossen 24 June 2025, <https://www.vwgh.gv.at/gerichtshof/taetigkeitsberichte/Taetigkeitsbericht-2024.pdf>; Bundesvoranschlag 2024, Untergliederung 04 - Verwaltungsgerichtshof, https://www.parlament.gv.at/dokument/XXVII/III/1075/imfname_1622197.pdf; VfGH, Tätigkeitsbericht 2024, https://www.vfgh.gv.at/downloads/taetigkeitsberichte/VfGH_Taetigkeitsbericht-2024.pdf.)

¹³¹ (Sources: BVwG, Tätigkeitsbericht 2024, 1 February 2024-31 January 2025, https://www.bvwg.gv.at/dam/jcr%3A117e4749-fc50-4c58-93ba-3d2a43343559/T%C3%A4tigkeitsbericht%202024_barrierefrei.pdf; Verwaltungsgericht Wien, Tätigkeitsbericht 2024, https://verwaltungsgericht.wien.gv.at/Content.Node/verwaltungsgericht-wien/TB_2024.pdf; VwGH, Tätigkeitsbericht für das Jahr 2024, beschlossen 24 June 2025, <https://www.vwgh.gv.at/gerichtshof/taetigkeitsberichte/Taetigkeitsbericht-2024.pdf>; Bundesvoranschlag 2024, Untergliederung 04 - Verwaltungsgerichtshof, https://www.parlament.gv.at/dokument/XXVII/III/1075/imfname_1622197.pdf; VfGH, Tätigkeitsbericht 2024, https://www.vfgh.gv.at/downloads/taetigkeitsberichte/VfGH_Taetigkeitsbericht-2024.pdf.)

hearing calendars, with potential knock-on effects for evidentiary development in fast-track settings. These same tools, however, function as backlog-control tools that preserve timeliness and the practical use of remedies.

For lawyers (including NGO providers), delay raises costs and prioritization pressures but sometimes yields benefit: more time to gather evidence, prepare interim-measure requests, and improve motions for suspensive effect in Dublin; in detention, it can enable fuller preparation for arguments for alternatives to detention. Capacity limits (queues/Journaldienst) mean the benefits are unevenly distributed, with late-arriving clients most exposed to the downsides of compressed timelines.

Overall, while prolonged delays can hinder access (uncertainty, evidence decay, pre-decision transfers), processing targets and high-court performance goals help limit case age and maintain judicial oversight; the net effect depends on whether interim protection is secured early and whether counsel can use the time to build the record.¹³²

I. Influence of judicial or quasi-judicial bodies on access to asylum

Case law, particularly of the Constitutional Court, has traditionally in important ways shaped asylum laws in Austria, such as on the conditions for granting asylum seekers a right to stay based on Article 8 ECHR. For example, the Constitutional Court's judgment of 14 Dec 2023 (G 328/2022) found the statutory model for state-funded legal counselling insufficiently independent and impairing the right to an effective remedy; Parliament responded by amending the BBU Act and § 52 BFA-VG in July 2024 (BGBl I 134/2024) to codify counsellor independence and adjust governance/quality-control - an expressly court-prompted legislative reform in the legal-aid framework for asylum access adjudication. On 3 Oct 2024, the Court further held that conducting a BVwG hearing without the court-appointed BBU representative, absent explicit party consent and proper inquiry into availability, amounts to arbitrary application of procedural law, reinforcing the legislative reset in practice. A separate 2025 initiative ("Asylverfahrens-Beschleunigungsnovelle 2025") seeks to narrow apex-court review in defined foreigners-law matters via constitutional amendment, but as of the reference period it remains a proposal rather than enacted law. By contrast, contemporaneous executive measures such as the 2025 "pause" in family reunification processing were not court-driven. Generally, moreover, the ECtHR's Article 6 case-law pushed Austria to replace in-administration appeals with real tribunals in 2014.¹³³

Judicial interventions have set operative boundaries for border practice and Dublin logistics, with more limited effects on family reunification policy.

In pushback litigation, the VwGH consolidated first-instance strands from the Styrian LVwG in 2022. This adjusted border-policing policy at the southern internal Schengen border, refraining from further pushbacks, while attention shifted to police collaboration with Hungary.¹³⁴

In externalization via Dublin cases, high-court jurisprudence continuously influences Dublin transfers, their scheduling and possible destinations. The VwGH has clarified that once the six-month Article 29 Dublin III window lapses, and suspensive effect is only granted thereafter, responsibility shifts to Austria and cannot be revived by late procedural acts, thus sharpening internal practice on extensions and

¹³² (Sources: BVwG, Tätigkeitsbericht 2024, 1 February 2024-31 January 2025, https://www.bvwg.gv.at/dam/jcr%3A117e4749-fc50-4c58-93ba-3d2a43343559/T%C3%A4tigkeitsbericht%202024_barrierefrei.pdf; Wirkungsmonitoring.gv.at, 2024-VwGH-UG-04-W0001, Steigerung der Effizienz des Rechtsschutzes, Verwaltungsgerichtshof, <https://wirkungsmonitoring.gv.at/wirkungsziel-detail/2024-vwgh-ug-04-w0001/>; VfGH, Tätigkeitsbericht 2024, https://www.vfgh.gv.at/downloads/taetigkeitsberichte/VfGH_Taetigkeitsbericht-2024.pdf; VwGH, Ra 2018/14/0133, 24 Oct 2018; AIDA/ECRE, Country Report: Austria, 2024 Update, July 2025, https://asylumineurope.org/wp-content/uploads/2025/07/AIDA_AT_2024-Update.pdf.)

¹³³ (Sources: BGBl I 134/2024; VfGH, G 328/2022, 14 Dec 2023; VfGH, E 2125/2024; VfGH, E 2483/2024, 3 Oct 2024; Initiativantrag 141/A XXVIII GP.)

¹³⁴ (Sources: VwGH, Ra 2021/21/0274, 05 May 2022; VwGH, Ra 2022/21/0074, 19 May 2022; LVwG Steiermark, 20.3-2725/2020; LVwG, 20.3-915/2016; LVwG, 40.3-1095/2016; AIDA/ECRE, Country Report: Austria, 2024 Update, July 2025, https://asylumineurope.org/wp-content/uploads/2025/07/AIDA_AT_2024-Update.pdf.)

logistics of inter-state relations with other states under the Dublin Regulation. Destination-state policy has tracked judicial signals and new country information: most prominently, the BVwG rejected appeals against transfers to Greece in late 2024, and the VfGH later dismissed a constitutional complaint against a Greece transfer citing individualised guarantees (VfGH, E 4746/2024, 27 Feb 2025), allowing, in principle, selected transfers. Bulgaria policy changed back and forth after 2023 VfGH annulments (E 2944/2022; E 1044/2022) but returned to confirming transfers in 2024 following updated country sheets; transfers to Italy largely stalled in practice, with detention generally not upheld given practical concerns.¹³⁵

Judicial rulings have concretely reshaped day-to-day registration, border handling, counselling logistics, detention practice, and Dublin execution. Because several changes hinge on appeal timing and suspensive effect in Dublin cases, the procedural defaults are addressed separately (see C. Lodging the appeal).

First instance and high-court jurisprudence rejecting systematic pushback practice and, inter alia, confirming that an asylum claim can be lodged by conclusive action and not only explicit mention of the term ‘asylum’, prompted an Interior-ministry decree and mandatory border-officer training and stopped pushbacks towards Slovenia. Dublin case law on transfer destinations such as Bulgaria has led to the use of updated COI (Staatendokumentation). BVwG decisions, following VfGH lead, frequently instruct the BFA to deepen investigations (e.g., Article 3 ECHR risks; family ties) and to issue in-merit decisions where admissibility reasoning is thin or COI outdated. For detention, courts have tightened proportionality and necessity tests and require individualised risk-of-absconding analysis, with alternatives considered first.¹³⁶

J. Judicialization of politics

The VfGH held on 22 Dec 2023 that the statutory model for state-funded legal counselling lacked sufficient guarantees of independence and impaired the right to an effective remedy, setting 1 Jul 2025 as a compliance deadline and prompting corrective legislation. In Jan 2021, charter removals of schoolchildren and families to Georgia/Armenia proceeded while a constitutional complaint and interim-relief request were pending; the BVwG later found the execution unlawful, highlighting tensions once disputes enter judicial control. Following the CJEU judgment of 4 Oct 2024 (joined cases C-608/22 & C-609/22) on Afghan women’s practically automatic refugee status, the Interior Ministry publicly emphasized continuous case-by-case assessment (“Einzelfallprüfungen”), signaling reluctance even as the VfGH - which had referred the questions - adjusted its case law. Media have also reported criticism by the apex courts of BVwG decision quality and politically sensitive wrangling over the BVwG presidency, perceived by some as “blurring” judicial-executive boundaries.¹³⁷

¹³⁵ (Sources: VfGH, Ra 2018/14/0133, 24 Oct 2018; VfGH, Ra 2021/21/0274, 5 May 2022; VfGH, Ra 2022/21/0074, 19 May 2022; LVwG Steiermark, 20.3-2725/2020; LVwG, 20.3-915/2016-26; BVwG, W144 2299891-1, 7 Oct 2024; BVwG, W161 2299884-1, 21 Nov 2024; VfGH, E 4746/2024, 27 Feb 2025; VfGH, E 2944/2022, 15 Mar 2023; VfGH, E 1044/2022, 9 Mar 2023; AIDA/ECRE, Country Report: Austria, 2024 Update, July 2025, https://asylumineurope.org/wp-content/uploads/2025/07/AIDA_AT_2024-Update.pdf)

¹³⁶ (Sources: Bundesgesetz über die Errichtung der Bundesagentur für Betreuungs- und Unterstützungsleistungen Gesellschaft mit beschränkter Haftung (BBU-G), BGBl I No 53/2019, RIS consolidated version: <https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=20010721>; Asylgesetz 2005 (Austrian Asylum Act), Federal Law Gazette I No 100/2005 as amended, especially §§ 12, 12a, 22, 24, 28 and 36, RIS consolidated version: <https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=20004240>; Fremdenpolizeigesetz 2005 (Austrian Aliens Police Act), Federal Law Gazette I No 100/2005 as amended, especially §§ 41, 46 and 76, RIS consolidated version: <https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=20004241>; VfGH, Ra 2013/21/0008, 02 Aug 2013; VfGH, B1447/10, 20 Sep 2011; AIDA/ECRE, Country Report: Austria, 2024 Update, July 2025, https://asylumineurope.org/wp-content/uploads/2025/07/AIDA_AT_2024-Update.pdf)

¹³⁷ (Sources: <https://www.vfgh.gv.at/medien/BBU.php>; <https://orf.at/stories/3343698/>; <https://orf.at/stories/3199353/>; <https://orf.at/stories/3254693/>; <https://curia.europa.eu/juris/document/document.jsf?cid=4643389&dir=&docid=290687&doclang=DE&mode=req&oc c=first&pageIndex=0&part=1&text=>; <https://orf.at/stories/3372104/>; <https://www.derstandard.de/story/3000000239761/eugh-urteil-zu-afghaninnen-oesterreich-bleibt-bei-einzelfallpruefungen;>

Sources do not depict courts as pursuing an institutional strategy beyond adjudication.

No further court-specific effects were identified beyond those already described.

For example, in 2024, the Constitutional Court reported that 71% of new filings concerned asylum/migration law. Moreover, the AIDA report records 17,254 first-instance and 12,112 second-instance backlogs at end-2024 and notes that roughly 30% of challenged BFA decisions are annulled or amended by the BVwG.¹³⁸

K. Other relevant aspects of judicial and quasi-judicial bodies

Family reunification could become a main area of dispute between the executive and courts. In 2025, the Federal Government and then Parliament created and applied, as mentioned, a statutory “pause” mechanism in the AsylG 2005, enabling suspension of family reunification processing for renewable six-month periods via ordinance (with narrow exceptions) and invoked TFEU Article 72 “public order”; rights groups and commentators indicated likely conflicts with Directive 2003/86/EC and ECHR family-life guarantees, amongst others.¹³⁹

III. OTHER ACTORS IN ASYLUM ACCESS ADJUDICATION

A. Bodies of the executive branch in asylum access adjudication

The Federal Ministry of the Interior (BMI) is the policy-setting ministry for migration, asylum and border management and supervises both the Federal Police and the BFA. It is not a case handler itself, but it issues border-control ordinances and instructions and has substantial administrative resources as a full ministry.

The Federal Police and Landespolizeidirektionen are law-enforcement bodies specialised in border control and migration-control policing, including detention execution. They are not human-rights institutions, but they are first contact points for lodging asylum claims and are bound by non-refoulement and due-process duties. They are organised across all Länder; personnel exceeds 32,000, with sustained hiring and nationwide coverage.

The Federal Office for Immigration and Asylum (BFA) is the specialised asylum and migration authority. It decides first-instance asylum and return cases, conducts Dublin procedures, orders detention under the Aliens Police Act, and manages admission through EAST facilities in Traiskirchen, Thalham, and Vienna-Schwechat. It has a central directorate in Vienna, regional directorates across the country, and significant organisational infrastructure dedicated to asylum and immigration casework.

The COI Unit is highly specialised in asylum support and human-rights-relevant country analysis for decision-making. It works under a formal methodology, is advised by a multi-institutional Beirat, including UNHCR, courts and ministries, produces COI reports, and conducts fact-finding to inform BFA decisions.

<https://www.derstandard.at/story/3000000146225671/verantwortungslos-und-unzumutbar-scharfe-kritik-an-offenen-justizposten>; <https://www.derstandard.at/story/2000137349439/lotterie-am-asyldericht-wie-sich-strukturelle-probleme-auf-entscheide-auswirken>.)

¹³⁸ (Sources: VfGH, Tätigkeitsbericht 2024, https://www.vfgh.gv.at/downloads/taetigkeitsberichte/VfGH_Taetigkeitsbericht-2024.pdf; AIDA/ECRE, Country Report: Austria, 2024 Update, July 2025, https://asylumineurope.org/wp-content/uploads/2025/07/AIDA_AT_2024-Update.pdf; BFA-VG §18; VwGH Ra 2021/21/0274-6; Ra 2022/21/0074-6; BGBl I 134/2024; VfGH G 328/2022; BVwG, Tätigkeitsbericht 2024, 1 February 2024-31 January 2025, https://www.bvwg.gv.at/dam/jcr%3A117e4749-fc50-4c58-93ba-3d2a43343559/T%C3%A4tigkeitsbericht%202024_barrierefrei.pdf.)

¹³⁹ (Sources: TFEU Art 72; Directive 2003/86/EC; AIDA/ECRE, Country Report: Austria, Family reunification / criteria and conditions, 2024 Update, July 2025, <https://asylumineurope.org/reports/country/austria/content-international-protection/family-reunification/criteria-and-conditions/>; Austrian Federal Government, Regierungsprogramm 2025-2029, Jetzt das Richtige tun. Für Österreich, <https://www.bundeskanzleramt.gv.at/bundeskanzleramt/die-bundesregierung/regierungsdokumente.html>)

Liaison officers of the BMI are police attachés posted abroad. They are specialised in law-enforcement and immigration cooperation rather than human-rights adjudication. They facilitate information exchange with counterpart authorities and can relay official assurances or information used by domestic authorities in migration and asylum contexts. The network is small, with posts in the mid-20s and local assistants.

Austrian embassies and consulates administer visas (including §35 AsylG 2005 family reunification D-visas), conduct interviews and issue visa decisions under consular and immigration law. In refugee family reunification, their discretion is constrained by the BFA's "probability" assessment, with missions acting as the formal decision-maker and intake interface of a worldwide consular network.¹⁴⁰

Executive bodies (police at the border, the BFA, Austrian missions, and liaison networks) act as both gatekeepers and principal fact-makers in asylum-access adjudication, and their active participation as interviewers, record-keepers, COI suppliers, and litigating parties can shape (and sometimes predetermine) the record that judicial or quasi-judicial bodies later review; courts can "recalibrate" that influence when executive conduct compromises individualisation or access to asylum.

In pushback cases at the internal Schengen border, first-contact practices (failures to ask purpose of entry, to register an "Asyl" request, to secure qualified interpretation, or to keep basic notes) generate the core evidentiary file; after the fact LVwG hearings and officer testimony have repeatedly established unlawful refusals and degrading searches, while the VwGH has left those factual findings intact (signalling that border-police omissions will not be excused at review).

In externalization via Dublin cases, first-instance files tend to rely on executive-prepared COI (Staatendokumentation, liaison replies) to justify transfers and access to procedure in the requested state; courts have accepted such records where current and individualised, but they have also annulled when based on stale or generalized notes (e.g., on Hungary), insisting on 'objective, reliable, precise and duly updated' information and, where appropriate, individualised guarantees.

In family reunification visa refusal cases involving entry-visa disputes, embassies are bound by the BFA's 'Wahrscheinlichkeitsprognose,' yet that prognosis can be reviewed at the BVwG and cannot hinge on formalities alone (e.g., passport validity) or speculation about overstay.¹⁴¹

¹⁴⁰ (Sources: Grenzkontrollgesetz (GrekoG); <https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&FassungVom=2023-10-27&Gesetzesnummer=20012379>; https://www.bmi.gv.at/202/Fremdenpolizei_und_Grenzkontrolle/files/BMI_WFA_Buendel_GrenzkontrollVO.pdf; BFA - Kontakt / Standorte, <https://www.bfa.gv.at/kontakt.aspx>; Rechnungshof - Bericht zum BFA, <https://www.rechnungshof.gv.at/rh/home/home/BFA.pdf>; BFA Staatendokumentation, Methodologie der Staatendokumentation, 2016, <https://www.staatendokumentation.at/site/assets/files/1040/methodologie-der-bfa-staatendokumentation-2016-12-20.pdf>; BFA - Bericht des Staatendokumentationsbeirats (Jahresbericht 2024), https://www.bfa.gv.at/402/files/03_Berichte/2025-02-19_Beirat_Jahresbericht_2024_BF_20250731.pdf; BVwG - Tätigkeitsbericht 2024, https://www.bvwg.gv.at/dam/jcr%3A117e4749-fc50-4c58-93ba-3d2a43343559/T%C3%A4tigkeitsbericht%202024_barrierefrei.pdf; BMI Magazin - BMI Verbindungsbeamte, https://www.bmi.gv.at/magazin/2023_07_08/11_BMI_Verbindungsbeamte.aspx; AIDA/ECRE, Country Report: Austria, 2024 Update, July 2025, https://asylumineurope.org/wp-content/uploads/2025/07/AIDA_AT_2024-Update.pdf.)

¹⁴¹ (Sources: VwGH, Ra 2021/21/0274-6, 5 May 2022; VwGH, Ra 2022/21/0074-6, 19 May 2022; LVwG Steiermark, 22.3-2726/2020, 1 Jul 2021; LVwG, 20.3-915/2016-26; LVwG, 40.3-1095/2016; BVwG, W239 2286457-1, 22 Feb 2024; BVwG, W144 2299891-1, 7 Oct 2024; VfGH, E 2944/2022, 15 Mar 2023; VfGH, E 1044/2022, 9 Mar 2023; VwGH, Ra 2019/21/0198, 24 Oct 2019; VwGH, Ra 2019/19/0397, 5 Mar 2020; VwGH, Ra 2019/20/0393-0395, 2 Mar 2020; VwGH, Ra 2018/18/0076, 13 Dec 2018; AIDA/ECRE, Country Report: Austria, 2024 Update, July 2025, https://asylumineurope.org/wp-content/uploads/2025/07/AIDA_AT_2024-Update.pdf; BVwG, Tätigkeitsbericht 2024, 1 February 2024-31 January 2025, https://www.bvwg.gv.at/dam/jcr%3A117e4749-fc50-4c58-93ba-3d2a43343559/T%C3%A4tigkeitsbericht%202024_barrierefrei.pdf.)

B. International or regional organizations

No international or regional organization has a direct adjudicatory role in Austrian asylum-access proceedings. UNHCR, EUAA, and other bodies may nevertheless be relevant through country information, reports, and legal standards considered by courts.

C. NGOs and bar associations

Austria has a stable set of NGOs and professional bodies working on access to asylum. Caritas and Diakonie Flüchtlingsdienst specialise in asylum and migration. Caritas offers free counselling across the country, prepares people for BFA interviews and BVwG hearings, and drafts submissions and appeals; its Fremdenrechtsberatung also covers residence-law and family reunification cases under the NAG. Diakonie provides independent counselling, represents people in detention (Schubhaft), and helps with legal-aid applications to the supreme courts after negative first-instance review decisions. Asylkoordination Österreich coordinates information and advice and publishes practical guides, e.g., on Dublin and family reunification. Netzwerk Asylanwalt, coordinated by Caritas, brings in specialist lawyers for selected cases (usually via referrals from counselling centres rather than walk-ins). In Vienna, moreover, e.g., Deserteurs- und Flüchtlingsberatung runs free drop-in hours that expand intake capacity.¹⁴²

NGOs focus on the first steps into the procedure. Their counselling and representation are free and quick but limited by capacity, with posted intake times and queues deciding who is helped in time (especially in Dublin and detention settings). The bar supports access to higher courts through “Verfahrenshilfe” (general legal aid scheme) and mandatory-counsel rules, while first-advice services and the lawyer directory make it easier to find a specialist early.

These roles follow from how the system is built and how fast procedures move. AIDA documents that the state scheme (BBU GmbH) offers first-instance legal help only in defined situations, including a 72-hour trigger for “right-to-be-heard” interviews, and that Dublin interviews are generally not covered at first instance. This leaves gaps that NGOs try to fill. Short deadlines and practical limits in detention also compress preparation time, so early NGO input often makes the difference.

Work on the ground translates into results at different barriers. In detention, Diakonie and partners represent people inside facilities, helping them argue for alternatives to detention and to request suspensive effect in time; if a case goes further, the bar’s legal-aid system makes review at the VwGH/VfGH realistic for those without means.

In Dublin and other inadmissibility tracks, NGO counselling helps people meet tight, often non-suspensive timelines and raise non-transfer arguments. Because the state scheme is usually not appointed for first-instance Dublin interviews, NGO support often decides whether a stay is obtained before transfer. Territorial differences reflect where procedures happen. Activity clusters around Vienna, Traiskirchen and the airport, while services in some regions are thinner or open fewer hours. Public listings show coverage across all provinces, but with uneven density and opening times. Evidence from casework shows that NGO monitoring and rapid counselling can stop pushbacks and inform court findings, which in turn lead to changes in border practice and training.¹⁴³

¹⁴² (Sources: <https://www.caritas.at/hilfe-angebote/asyl-und-integration/rechtsberatung>; <https://diakonie.at/unsere-angebote-und-einrichtungen/fluechtlingsdienst/rechtsberatung>; <https://www.asyl.at/de/info/dublin/>; <https://www.asyl.at/de/info/familiennachzug/>; <https://www.caritas.at/hilfe-angebote/asyl-und-integration/rechtsberatung/netzwerk-asylanwalt>; Deserteurs- und Flüchtlingsberatung, Kontakt und Beratung, <https://deserteursberatung.at/index.php/kontakt-und-beratung/>; AIDA/ECRE, Country Report: Austria, Family reunification / criteria and conditions, 2024 Update, July 2025, <https://asylumineurope.org/reports/country/austria/content-international-protection/family-reunification/criteria-and-conditions/>; <https://www.rechtsanwaelte.at/buergerservice/verfahrenshilfe/>; <https://www.rechtsanwaelte.at/buergerservice/erste-anwaltliche-auskunft/>)

¹⁴³ (Sources: <https://www.caritas.at/hilfe-angebote/asyl-und-integration/rechtsberatung>; <https://diakonie.at/unsere-angebote-und-einrichtungen/fluechtlingsdienst/rechtsberatung>; <https://www.asyl.at/de/info/dublin/>;

Taken together, NGOs and the bar make the asylum-access adjudication system more usable in practice. NGOs such as Caritas, Diakonie, Deserteursberatung, QueerBase, Asylkoordination and Pushback Alarm provide initial assistance, draft complaints and urgent requests, and collect evidence that is often missing from official files, including photos, medical notes, travel logs and witness contacts. Their work has supported Styrian pushback litigation, detention challenges and Dublin suspensive-effect requests. The Austrian Bar supports higher-court review by administering Verfahrenshilfe, which is particularly important because counsel is mandatory before the VwGH and VfGH, and by maintaining routes to specialist asylum-law advice.¹⁴⁴

No additional actor-specific information was identified.

D. Other actors

Private security (G4S) operates the Vordernberg pre-removal detention centre under Interior-ministry custodial authority, affecting transparency and evidence on conditions; the Volksanwaltschaft (as NPM) and its commissions conduct visits and issue findings related to safeguards that appear in litigation and parliamentary debates; university/CSO research and practitioner reports add detailed documentation on detention and border practices. Journalists, local monitors and grassroots networks act as active intermediaries: they document events close in time to alleged pushbacks, help locate witnesses across borders, and coordinate file-access in neighbouring states. Their outputs (notes, photos, timestamps, FOI replies) are relied on by counsel to reconstruct facts for LVwG measures complaints and BVwG appeals when official records are partial or delayed.¹⁴⁵

IV. THE SOCIO-POLITICAL CONTEXT

A. Migratory routes and entry points

Austria is primarily a receiving and transit country in the relevant migration routes.

<https://www.asyl.at/de/info/familiennachzug/>; <https://www.caritas.at/hilfe-angebote/asyl-und-integration/rechtsberatung/netzwerk-asylanwalt/>; <https://deserteursberatung.at/index.php/kontakt-und-beratung/>; <https://www.rechtsanwaelte.at/buergerservice/verfahrenshilfe/>; <https://www.rechtsanwaelte.at/buergerservice/erste-anwaltliche-auskunft/>

¹⁴⁴ (Sources: <https://www.caritas.at/hilfe-angebote/asyl-und-integration/rechtsberatung/>; <https://diakonie.at/unsere-angebote-und-einrichtungen/fluechtlingsdienst/rechtsberatung/>; <https://www.asyl.at/de/info/dublin/>; <https://www.caritas.at/hilfe-angebote/asyl-und-integration/rechtsberatung/netzwerk-asylanwalt/>; <https://deserteursberatung.at/index.php/kontakt-und-beratung/>; AIDA/ECRE, Country Report: Austria, Family reunification / criteria and conditions, 2024 Update, July 2025, <https://asylumineurope.org/reports/country/austria/content-international-protection/family-reunification/criteria-and-conditions/>; <https://www.rechtsanwaelte.at/buergerservice/verfahrenshilfe/>; <https://www.rechtsanwaelte.at/buergerservice/erste-anwaltliche-auskunft/>; LVwG Steiermark, LVwG 20.3-918/2016-15 and LVwG 21.3-919/2016-15, 9 Sep 2016; LVwG Steiermark, LVwG 20.3-864/2016-26 and LVwG 21.3-865/2016-23, 29 Aug 2016; LVwG Steiermark, LVwG 20.3-873/2016-21 and LVwG 21.3-874/2016-20, 9 Sep 2016; LVwG Steiermark, LVwG 22.3-2726/2020-50, 5 Jul 2021; LVwG Steiermark, LVwG 20.3-2725/2020-86, 1 Jul 2021; LVwG Steiermark, LVwG 20.3-2621/2021-49, 16 Feb 2022; VwGH, Ra 2017/21/0018, 14 Nov 2017; VwGH, Ra 2021/21/0274-6, 5 May 2022; VwGH, Ra 2022/21/0074-6, 19 May 2022; BVwG, Tätigkeitsbericht 2024, 1 February 2024-31 January 2025, https://www.bvwg.gv.at/dam/jcr%3A117e4749-fc50-4c58-93ba-3d2a43343559/T%C3%A4tigkeitsbericht%202024_barrierefrei.pdf; Volksanwaltschaft, Bericht 2024: Präventive Menschenrechtskontrolle, https://volksanwaltschaft.gv.at/fileadmin/user_upload/Downloads/Berichte/NR/pb-48-praeventiv_2024-bf-mit-wappen.pdf.)

¹⁴⁵ (Sources: Global Detention Project, Austria Immigration Detention Profile / Vordernberg detention centre, <https://www.globaldetentionproject.org/countries/europe/austria/>; Volksanwaltschaft, Bericht 2024: Präventive Menschenrechtskontrolle, https://volksanwaltschaft.gv.at/fileadmin/user_upload/Downloads/Berichte/NR/pb-48-praeventiv_2024-bf-mit-wappen.pdf; Deserteurs- und Flüchtlingsberatung, Vordernberg report, September 2024, <https://deserteursberatung.at/wp-content/uploads/2024/09/VordernbergBericht.pdf>)

Since 2010, the main route toward Austria has been the Western Balkan route (Eastern Mediterranean to North Macedonia/Serbia to Hungary/Croatia/Slovenia to Austria). A secondary pathway runs via the Central Mediterranean to Italy and then over the Brenner Pass into Tyrol. A separate, largely regular movement began in 2022 as people fleeing Russia's invasion of Ukraine arrived overland via Slovakia, Hungary, and Czechia under Temporary Protection. Flows increased in 2015-16 along a state-organised Balkan "corridor" feeding Austria's Nickelsdorf and Spielfeld crossings, then fell sharply after March 2016 and tighter downstream borders. 2017-21 saw lower numbers. 2022 brought a new increase - strengthened by Serbia's short visa waivers and looser regional enforcement - followed by late-2022 visa alignment and coordinated policing that potentially led to a decrease again in 2023-24, with the Western Balkan route dropping especially strongly. Meanwhile, Croatia's Schengen entry (Jan 2023) influenced where checks occur, and Austria and neighbors have intermittently reintroduced internal Schengen controls (including at Brenner) during increased arrivals.¹⁴⁶

Since 2010, (registered) forced-migration movements toward Austria have concentrated on three corridors. The Western Balkan route (the primary route): either via Serbia to Hungary to Burgenland or via Serbia/Bosnia to Croatia to Slovenia to Styria/Carinthia. A secondary pathway is the Central Mediterranean to Italy, where arrivals move north into Tyrol. Since February 2022 there has also been a distinct, largely regularized flow of people fleeing Ukraine reaching Austria overland through Slovakia/Czechia.¹⁴⁷

Austria is landlocked, so the main entry points for forced migration since 2010 have been land and air. On land, flows concentrate at the Hungary-Burgenland crossings - above all Nickelsdorf/Hegyeshalom (A4/B10), with Klingenbach/Sopron and Heiligenkreuz/Rábfüzes as other routes - and at the Slovenia-Styria/Carinthia line - especially Spielfeld/Šentilj (A9/B67), plus Bad Radkersburg/Gornja Radgona, the Karawankentunnel (A11) and Loibl/Ljubelj. Toward Italy, the Brenner Pass (A13/A22 & rail) is the key alpine entry, with Thörl-Maglern/Tarvisio (A2/A23) secondary.

¹⁴⁶ (Sources: <https://www.consilium.europa.eu/en/press/press-releases/2016/03/18/eu-turkey-statement/>; <https://www.frontex.europa.eu/media-centre/news/news-release/irregular-border-crossings-into-eu-drop-sharply-in-2024-oqpweX>; https://home-affairs.ec.europa.eu/news/eu-sees-38-drop-irregular-border-crossings-2024-2025-01-24_en; <https://www.reuters.com/article/world/austria-to-tighten-checks-at-italian-border-from-june-1-at-the-latest-idUSKCN0X90VM/>; <https://www.reuters.com/article/world/italy-austria-seek-to-calm-tensions-over-brenner-border-controls-idUSKCN0XP1E8/>; <https://www.hrw.org/news/2016/07/13/hungary-migrants-abused-border>; AIDA/ECRE, Country Report: Austria, Family reunification / criteria and conditions, 2024 Update, July 2025, <https://asylumineurope.org/reports/country/austria/content-international-protection/family-reunification/criteria-and-conditions/>; <https://www.bundeskanzleramt.gv.at/dam/jcr%3A698ca2f5-e450-4c1c-b1eb-ef66b4ba0c78/ib2024-de-web.pdf>; BMI, Asylstatistik Jahresstatistik 2024, https://www.bmi.gv.at/301/Statistiken/files/Jahresstatistiken/Asylstatistik_Jahresstatistik_2024.pdf; <https://balkaninsight.com/2022/10/25/serbia-ends-visa-free-regimes-with-tunisia-and-burundi/>; https://eoibelgrade.gov.in/public_files/assets/pdf/Visa_related_advisory_16122022.pdf; <https://www.consilium.europa.eu/en/press/press-releases/2022/12/08/schengen-area-council-decides-to-lift-border-controls-with-croatia/>; <https://door.donau-uni.ac.at/api/object/o%3A5279/download>.)

¹⁴⁷ (Sources: <https://www.consilium.europa.eu/en/press/press-releases/2016/03/18/eu-turkey-statement/>; <https://www.frontex.europa.eu/media-centre/news/news-release/irregular-border-crossings-into-eu-drop-sharply-in-2024-oqpweX>; https://www.bmi.gv.at/301/Statistiken/files/Jahresstatistiken/Asylantraege_seit_1999.pdf; AIDA/ECRE, Country Report: Austria, Family reunification / criteria and conditions, 2024 Update, July 2025, <https://asylumineurope.org/reports/country/austria/content-international-protection/family-reunification/criteria-and-conditions/>; <https://www.consilium.europa.eu/en/press/press-releases/2022/12/08/schengen-area-council-decides-to-lift-border-controls-with-croatia/>; https://ec.europa.eu/commission/presscorner/detail/en/ip_22_7411; <https://balkaninsight.com/2022/10/25/serbia-ends-visa-free-regimes-with-tunisia-and-burundi/>; https://eoibelgrade.gov.in/public_files/assets/pdf/Visa_related_advisory_16122022.pdf; <https://www.reuters.com/article/world/austria-to-tighten-checks-at-italian-border-from-june-1-at-the-latest-idUSKCN0X90VM/>; <https://www.reuters.com/article/world/italy-austria-seek-to-calm-tensions-over-brenner-border-controls-idUSKCN0XP1E8/>; <https://data.unhcr.org/en/situations/ukraine?&gsid=5710&country=15&source=conflict>; <https://euaa.europa.eu/latest-asylum-trends-monthly-overview>; <https://www.hrw.org/news/2016/07/13/hungary-migrants-abused-border>.)

During 2015-16 Austria set up ‘containerised’ border-management compounds with lanes and temporary fencing at Nickelsdorf and Spielfeld, used mobile and stationary controls at Brenner, and - together with neighbours - periodically reintroduced internal Schengen checks. Standard practice at the border or shortly inland has been ID screening, Eurodac fingerprinting/photography, a short police interview on identity/route, medical triage, and referral to Initial Reception Centres (Traiskirchen, Thalham); on the ground the principal police lead, supported by the military and NGOs (notably the Austrian Red Cross and Caritas) for first aid, information and onward transport.

Since 2022, people fleeing Ukraine have mostly arrived overland via Bratislava-Kittsee/Berg and Marchegg (rail) into Vienna, where reception and registration hubs were set up. By air, the formal border/asylum procedure operates at Vienna International Airport (VIE/Schwechat), after which cases either continue in the airport track or are admitted to the territory and transferred to the reception network. Detention facilities across the country, sometimes in remote places, are used in return-/security-related cases; at Brenner and other internal borders, Austria has installed control points to channel flows during increased arrivals rather than permanent walls.¹⁴⁸

No reliable public information identified beyond what has been described already regarding judicial interventions in cases of (chain) pushbacks to Slovenia and beyond.

Entry points in Austria determine which LVwG is responsible for challenging potential/alleged pushbacks.¹⁴⁹

B. Composition and spatial distribution of forced migration population

For 31 December 2024, the Federal Ministry of the Interior reported 28,908 open procedures, consisting of 16,996 cases at first instance (including the appeal period) and 11,912 cases pending before the administrative courts. In the same year, Austria registered 25,360 asylum applications in total (of which 22,254 were first-time applications and 3,106 were repeat applications).

The 2024 applicant population was compositionally distinct and highly concentrated by country of origin and by age/sex. By citizenship, the five largest groups among all 2024 applications were Syria (13,909), Afghanistan (3,396), Türkiye (1,121), Somalia (870) and the Russian Federation (577). Applicants were 57.9% male (14,695) and 42.1% female (10,665). Notably, minors constituted a majority of applicants: 12,977 (51.2%) were under 18; of these, 12,052 were accompanied and 925 were unaccompanied minors. In terms of family-related channels reflected in the asylum statistics’ typology, originally/newly arrived applicants accounted for 10,311 (41%) of all 2024 applications, while a further 30% of applications were recorded as filed after an “Einreisegestattung” (entry permission, typically connected to family reunification), and 17% as “nachgeboren” (children born in Austria) (percentages reported in the official breakdown; absolute numbers are therefore approximate when derived from shares).

“Recognised refugees” can be measured (in a legally precise, decision-based sense) by the number of final, legally effective asylum grants (refugee status) in a year. For 2024, Austria recorded 17,028 legally effective asylum grants (refugee status), alongside additional final grants of other protection forms (e.g., subsidiary protection). The nationality composition of those recognised as refugees in 2024 was again

¹⁴⁸ (Sources: AIDA/ECRE, Country Report: Austria, Access to territory and push backs, 2024 Update, July 2025, <https://asylumineurope.org/reports/country/austria/asylum-procedure/access-procedure-and-registration/access-territory-and-push-backs/>; AIDA/ECRE, Country Report: Slovenia, Access to territory and push backs, 2024 Update, 2025, <https://asylumineurope.org/reports/country/slovenia/asylum-procedure/access-procedure-and-registration/access-territory-and-push-backs/>; Reuters, Austria to tighten checks at Italian border from June 1 at the latest, 12 Apr 2016, <https://www.reuters.com/article/world/austria-to-tighten-checks-at-italian-border-from-june-1-at-the-latest-idUSKCN0X90VM/>; Reuters, Italy, Austria seek to calm tensions over Brenner border controls, 28 Apr 2016, <https://www.reuters.com/article/world/italy-austria-seek-to-calm-tensions-over-brenner-border-controls-idUSKCN0XP1E8/>; Council of the EU, Schengen: Council decides to lift border controls with Croatia, 8 Dec 2022, <https://www.consilium.europa.eu/en/press/press-releases/2022/12/08/schengen-area-council-decides-to-lift-border-controls-with-croatia/>.)

¹⁴⁹ (Sources: AIDA/ECRE, Country Report: Austria, 2024 Update, July 2025, https://asylumineurope.org/wp-content/uploads/2025/07/AIDA_AT_2024-Update.pdf)

highly concentrated: Syria (12,478) and Afghanistan (2,126) dominated, followed by Somalia (628), stateless persons (546) and Iran (364).

For the longer-term picture since 2010, Austria's asylum-seeker and recognition profiles have shifted markedly across successive phases, with strong year-to-year volatility in application volumes and changing predominant origins. Official Austrian annual asylum statistics and Eurostat both provide time-series data that allow systematic tracking of (i) applications (and their breakdown by citizenship, sex and age), (ii) pending caseloads, and (iii) asylum decisions (including refugee status grants). For example, the Austrian annual asylum statistics summarise very large swings in the post-2010 period, including a high point in 2015 (88,340 applications), another surge in 2022 (112,272), and a sharp fall by 2024 (25,360), while showing that (across recent years) Syrian and Afghan nationals have consistently formed the largest applicant groups.¹⁵⁰

Direct evidence linking population composition to asylum-access adjudication is limited. However, fluctuations in applications to an extent shaped capacity and caseload: after the 2022-23 surge (112,272 applications in 2022; 59,232 in 2023), 2024 saw a steep drop to 25,360 and a scaled-down federal reception network (10 federal Basic Care facilities in use at end-2024 vs 21 in 2023), which eased federal-level pressure. Yet the BVwG still registered about 24,500 new cases in its 2024 business year (1 Feb 2024-31 Jan 2025), with "Fremdenwesen und Asyl" the largest area (70.7% / 17,320 new entries). At procedure level, the AIDA/ECRE 2024 Update reports that free legal assistance at first instance is resources-dependent and only guaranteed where a hearing is scheduled within 72 hours of notice (conditions that are especially hard for detainees in accelerated procedures). Backlogs remain significant: 28,908 asylum cases were pending at 31 Dec 2024 across instances, illustrating how volumes feed into review pipelines.¹⁵¹

In Austria, shifts in the volume and composition of forced migration tend to affect access-related adjudication less through "nationality-driven merits reasoning" and more through (i) capacity pressures at the registration/reception "front door" that generate procedural-legality disputes, and (ii) vulnerability-triggered safeguards (especially for children) that become central in litigation about whether authorities and courts ensured effective access to the procedure. AIDA describes, for example, how the unaccompanied-minor caseload has repeatedly interacted with institutional capacity: in 2022, 13,276 unaccompanied minors applied for asylum and federal reception centres reportedly held up to around 1,200 UAM because provinces were reluctant to take them into provincial Basic Care, leading to prolonged stays and institutional reconfigurations (including the opening/closing of federal facilities). By 1 January 2025, AIDA reports that two federal UAM facilities remained (EAST Traiskirchen and Finkenstein), managed by the federal agency BBU GmbH.

¹⁵⁰ Sources: AIDA/ECRE, Country Report: Austria, Statistics, 2024 Update, July 2025, <https://asylumineurope.org/reports/country/austria/statistics/>; https://www.bmi.gv.at/301/Statistiken/files/Jahresstatistiken/Asylstatistik_Jahresstatistik_2024.pdf; <https://www.statistik.at/en/statistics/population-and-society/population/migration-and-naturalisation/asylum>; https://ec.europa.eu/eurostat/databrowser/product/view/migr_asyappctza; https://ec.europa.eu/eurostat/databrowser/view/migr_asyapenczm/default/table?lang=en; https://ec.europa.eu/eurostat/databrowser/view/migr_asydcfsta/default/table?lang=en; <https://ec.europa.eu/eurostat/web/migration-asylum/asylum/database>.

¹⁵¹ Sources: BMI, Asylstatistik Jahresstatistik 2024, https://www.bmi.gv.at/301/Statistiken/files/Jahresstatistiken/Asylstatistik_Jahresstatistik_2024.pdf (applications; pending stock as of 31 Dec 2024); BMI, Asylanträge seit 1999, https://www.bmi.gv.at/301/Statistiken/files/Jahresstatistiken/Asylantraege_seit_1999.pdf; BMI, Grundversorgung, <https://www.bmi.gv.at/303/start.html>; BBU GmbH, Versorgung, Beratung und Unterstützung Schutzbedürftiger, <https://www.bbu.gv.at/was-wir-tun>; Rechnungshof, Asylbetreuungseinrichtungen des Bundes, Reihe Bund 2022/2, https://www.rechnungshof.gv.at/rh/home/home/2022-2_Asylbetreuungseinrichtungen.pdf; BVwG, Tätigkeitsbericht 2024, 1 February 2024-31 January 2025, https://www.bvwg.gv.at/dam/jcr%3A117e4749-fc50-4c58-93ba-3d2a43343559/T%C3%A4tigkeitsbericht%202024_barrierefrei.pdf; AIDA/ECRE, Country Report: Austria, Types of accommodation, 2024 Update, July 2025, <https://asylumineurope.org/reports/country/austria/reception-conditions/housing/types-accommodation/>

The presence of vulnerable applicants (particularly unaccompanied minors) also sharpens the legal norms raised in access-adjacent challenges (registration, first interviews, and early procedural steps). AIDA reports that unaccompanied minors must lodge the asylum application at specified police offices (notably Traiskirchen; for some ages also Schwechat) and that a legal representative is appointed by the BFA as soon as an unaccompanied child applies, with a requirement that legal representatives be present at BFA interviews and BVwG hearings. In the same vein, AIDA highlights case law illustrating how failures at the initial stage can become decisive: it cites an Asylum Court decision finding the procedure unlawful where an unaccompanied Afghan minor was interrogated by the police without a legal representative or trusted person, and where the authority failed to provide the interrogation minutes or hear the representative before rejecting the application.

Composition by nationality can matter most clearly where authorities introduce nationality-specific practices at the procedural “front end,” thereby creating new discrimination and legality questions. AIDA reports that, for applicants from Gaza, the BFA introduced new questions in the first interview conducted by the police (including questions about views on the Gaza–Israel conflict and the applicant’s position toward Israel), and that these questions have already generated complaints alleging discriminatory treatment, with proceedings pending at the time of writing.

Some composition effects operate more indirectly, through changes in the “case-mix” entering subsequent or repeated procedures (again with potential spillovers into access-related legality). Following the CJEU’s 4 October 2024 judgment in AH/FN (C-608/22 and C-609/22) on the persecutory nature of cumulative discrimination against women under Taliban rule, AIDA reports that Austria did not experience a noticeable rise in first-time applications by Afghan women, but did see an increase in subsequent applications by Afghan women already in Austria (often holding subsidiary protection), contributing to a broader rise in subsequent applications (12% of all applications in 2024) in which Afghans and Syrians comprised a large share. In parallel, Austrian authorities publicly stated that they would continue to proceed with individual assessments of Afghan women’s claims notwithstanding the judgment.

Finally, if understood broadly to include decision-making dynamics inside adjudicatory bodies, there is empirical evidence from Austria that composition can correlate with outcomes: a quantitative study of more than 49,000 Austrian Asylum Court rulings (2008–2013) finds applicant-gender effects and argues that the gender balance of a judge’s recent caseload moderates those effects. This does not, on its own, establish a direct mechanism for access-barrier adjudication today, but it is a relevant caution that who appears before asylum adjudicators (and in what proportions) can be associated with systematic variations in outcomes.¹⁵²

In Austria, a major category of displaced persons who are neither asylum seekers nor recognised refugees are beneficiaries of temporary protection (displaced persons under the EU Temporary Protection framework, overwhelmingly people fleeing Ukraine). Official BFA statistics show that in 2024 Austria recorded 17,137 newly registered displaced persons under the Displaced Persons Regulation, and issued 17,860 temporary-protection residence titles (99.2% Ukrainian nationals). As a rule, this population holds a lawful status and is therefore not typically the main target group for detention or pushback-type practices (though individuals can still be affected if they lack documentation at a given moment).

Austria also has other non-refugee, non-asylum-seeker groups such as beneficiaries of subsidiary protection and certain humanitarian/tolerated statuses under domestic law, but the population most directly exposed to migration control consists of undocumented / irregularly staying third-country nationals who do not apply for asylum (including overstayers and persons intercepted for unlawful entry or stay). The overall size of the undocumented population is not directly observable, but it is tracked

¹⁵² Sources: AIDA/ECRE, Country Report: Austria, 2024 Update, July 2025, https://asylumineurope.org/wp-content/uploads/2025/07/AIDA_AT_2024-Update.pdf; Alejandro Ecker, Martin Haselmayer and Marcelo Jenny, Gender Bias in Asylum Adjudications: Evidence for Leniency toward Token Women, *Sex Roles* 82 (2020), pp. 117-126, <https://doi.org/10.1007/s11199-019-01030-2>.

through enforcement indicators (Eurostat’s “third-country nationals found to be illegally present” series; and national “refused entry/summary return” statistics). For example, Austria’s official border-measure statistics for 2024 report 1,028 “Zurückweisungen” (refusals of entry) and 803 “Zurückschiebungen” (similar to summary returns). Detention exposure is documented in BFA enforcement data: in 2024, the BFA recorded 3,722 decisions on immigration detention and alternatives, including 2,530 outside Dublin, overwhelmingly affecting men and featuring nationalities such as Serbia, Romania, Slovakia, Morocco, Algeria, and Turkey among the largest groups.¹⁵³

Austria distributes asylum applicants and other persons entitled to or dependent on reception support primarily through the Basic Care (Grundversorgung) system, which is organised around a population-based quota across the nine Länder. Because Basic Care is an administered scheme with reporting obligations, it is also the clearest public proxy for the territorial distribution of displaced persons within Austria (whereas “non-registered displaced persons” cannot, by definition, be mapped reliably through published statistical datasets).

On the most recent comprehensive official snapshot for end-2024 (31 December 2024), Austria recorded 68,161 persons in Basic Care in total. The territorial pattern is highly uneven: Vienna alone hosted 30,952 persons (around 45% of the national total), followed by Lower Austria (9,268), Styria (7,830) and Upper Austria (6,341). The remaining Länder were substantially lower in absolute numbers, Tyrol (3,232), Vorarlberg (2,816), Salzburg (2,358), Carinthia (1,999) and Burgenland (1,890), while a further 1,475 persons were counted under federal (“Bund”) basic care rather than allocated to a Land total. These figures confirm a persistent structural feature of Austrian reception: Vienna carries a disproportionate share relative to quota, and official quota reporting places Vienna above 200% fulfilment (207.93% in January 2025). At the same time, the comparatively modest totals in several border Länder indicate that, beyond initial entry and intake, accommodation is not principally concentrated in border zones but is dispersed nationwide through the quota mechanism. In practice, initial intake links to federal reception infrastructure (including key initial reception centres), after which provincial systems assume responsibility for most longer-term accommodation.

Urban–rural differences also matter for where people actually live within each Land. Vienna relies heavily on private accommodation (reported at 83% in 2024), whereas several other provinces make far greater use of organised/collective facilities, reflecting differences in housing markets, municipal practice, and reception capacity. For asylum applicants specifically (as a subset of Basic Care beneficiaries), the same official materials provide a separate Land-by-Land breakdown; but for “non-registered” displaced persons, no equivalent spatially disaggregated dataset exists, so Basic Care remains the most defensible basis for describing territorial distribution.¹⁵⁴

The uneven spatial distribution of Austria’s forced-migration population likely shapes who gets representation early, how far people must travel to hearings, and what kinds of cases each hearing site tends to see (airport cases near Vienna; detention reviews near Vordernberg/Vienna). But the size of these effects cannot be precisely quantified with publicly available data: BVwG publishes subject totals

¹⁵³ Sources: https://www.bfa.gv.at/403/files/Detailstatistik_BFA_Kennzahlen_Jahr_2024.pdf; https://www.bmi.gv.at/312/statistiken/files/FrP_2024/Zurueckweisungen_und_Zurueckschiebungen_Dezember_2024.pdf; https://ec.europa.eu/eurostat/databrowser/view/migr_asytpsm/default/table?lang=en; https://ec.europa.eu/eurostat/databrowser/view/migr_cipre/default/table?lang=en; AIDA/ECRE, Country Report: Austria, Access to territory and push backs, 2024 Update, July 2025, <https://asylumineurope.org/reports/country/austria/asylum-procedure/access-procedure-and-registration/access-territory-and-push-backs/>; <https://www.amnesty.at/news-events/news/oesterreich-rechtswidrige-und-systematische-pushbacks-an-slowenischer-grenze-von-hoehstgericht-bestaetigt/>; https://www.asyl.at/archiv-2022/files/514/translation_court_finding_pushback_austria_bosnia_2021.pdf; <https://rm.coe.int/commdh-2022-10-report-on-the-visit-to-austria-en/1680a6679a>; <https://www.emn.at/wp-content/uploads/2025/06/emn-austria-asylum-and-migration-overview-2024.pdf>.

¹⁵⁴ Sources: <https://www.parlament.gv.at/gegenstand/XXVIII/AB/973>; AIDA/ECRE, Country Report: Austria, Types of accommodation, 2024 Update, July 2025, <https://asylumineurope.org/reports/country/austria/reception-conditions/housing/types-accommodation/>

(not per-site inflows/outcomes), BFA stats are national, and CEPEJ is system-level. That leaves an evidence gap between the clear Vienna concentration of people and the documented Vienna share of court workload.¹⁵⁵

C. Political and public debate in the country

Border controls (with repeated prolongations), cross-border policing, and proposals to restrict channels such as family reunification have been central in Austrian politics. The 2024 election cycle kept migration/access to asylum prominent in mainstream media formats (e.g., ORF's "Programmcheck Migration" and the pre-election "Elefantenrunde"), and the three-party government sworn in on 3 March 2025 immediately acted: on 12 March it announced a temporary halt to family reunification for persons with protection in Austria, invoking an EU "emergency" basis; Parliament then adopted the Asylum Act amendment (BGBl I Nr. 17/2025), inserting a new § 36a AsylG 2005 and expanding § 36 to allow the government to suspend decision deadlines for § 35 entry-visa applications; the regime is time-limited and expires by 30 September 2026. The Parliament approved the implementing regulation on 1 July 2025, and the pause entered into force on 3 July 2025 for six months, extendable in steps (within the 30 September 2026 cap). The Government Programme 2025-2029 embeds this agenda (e.g., "Stopp der irregulären Migration und des Missbrauchs des Asylsystems" and mentioned potential use of Art. 72 TFEU). In parallel, the Interior Ministry has repeatedly prolonged internal border controls to Slovenia and Hungary (e.g., from 12 May 2025 for another six months) and highlights intensified joint policing against irregular migration and smuggling (e.g., ongoing "Operation Fox" with Hungarian police).¹⁵⁶

Access to asylum has been consistently important (and often framed critically) in Austria's public debate. A 10-year media analysis by the Austrian Integration Fund (ÖIF) of seven national dailies (2014-May 2024; ≈37,400 articles, ~10/day) finds a predominantly critical reporting tone on "Migration/Asyl/Integration," indicating sustained attention over time. In 2025 that focus re-intensified around the government's temporary suspension of family reunification (visa) processing, widely covered and contested across major outlets. Debate also regularly centres on access-to-asylum barriers (border controls and alleged pushbacks, detention, and Dublin transfers), keeping the issue on the agenda through a control-oriented framing. Interior Ministry communications also repeatedly highlighted extensions of EU internal border controls.¹⁵⁷

¹⁵⁵ Sources: AIDA/ECRE, Country Report: Austria, 2024 Update, July 2025, https://asylumineurope.org/wp-content/uploads/2025/07/AIDA_AT_2024-Update.pdf; https://www.statistik.at/fileadmin/user_upload/Migration_und_Integration_2024.pdf; <https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=20003460>; <https://www.bfa.gv.at/kontakt/>; <https://www.bvwg.gv.at/organisation/Sitz-und-Au-enstellen.html>; <https://www.bvwg.gv.at/news/aktuelle-meldungen/T-tigkeitsbericht-2024--Rechtsprechung-im-Fokus.html>; https://www.bvwg.gv.at/dam/jcr%3A117e4749-fc50-4c58-93ba-3d2a43343559/T%C3%A4tigkeitsbericht%202024_barrierefrei.pdf; <https://rm.coe.int/austria/1680b1df5a>; <https://www.coe.int/en/web/cepej/individual-country-profiles5>; https://www.oesterreich.gv.at/de/themen/egovernment/moderne_verwaltung/elektronischer_rechtsverkehr_erv; <https://justiz.gv.at/service/digitale-justiz/elektronischer-rechtsverkehr-%28erv%29.967.de.html>; BMI, Asylstatistik Jahresstatistik 2024, https://www.bmi.gv.at/301/Statistiken/files/Jahresstatistiken/Asylstatistik_Jahresstatistik_2024.pdf

¹⁵⁶ Sources: AIDA/ECRE, Country Report: Austria, Family reunification / criteria and conditions, 2024 Update, July 2025, <https://asylumineurope.org/reports/country/austria/content-international-protection/family-reunification/criteria-and-conditions/>; RIS BGBl I Nr. 17/2025; Austrian Federal Government, Regierungsprogramm 2025-2029, Jetzt das Richtige tun. Für Österreich, <https://www.bundeskanzleramt.gv.at/bundeskanzleramt/die-bundesregierung/regierungsdokumente.html>.

¹⁵⁷ Sources: Institut für Strategieforschung / Österreichischer Integrationsfonds, Flüchtlinge & Integration: Medienrezeption in Österreich, analysis period 1 Jan 2014-15 May 2024, https://www.integrationsfonds.at/fileadmin/content/AT/monitor/FB_Medienanalyse_v5.pdf; AIDA/ECRE, Country Report: Austria, Access to territory and push backs, 2024 Update, July 2025, <https://asylumineurope.org/reports/country/austria/asylum-procedure/access-procedure-and-registration/access-territory-and-push-backs/>; RIS, BGBl II Nr. 309/2024, temporary reintroduction of border controls at internal borders with Slovenia and Hungary, <https://www.ris.bka.gv.at/eli/bgbl/II/2024/309>; RIS, BGBl II Nr. 85/2025, amendment extending those controls, <https://ris.bka.gv.at/eli/bgbl/II/2025/85>; also Alena Kluknavská, Jana Bernhard, Hajo G. Boomgarden, Claiming

Access to asylum is highly salient in Austrian public opinion, but it is usually discussed through the broader prism of “migration”, “asylum policy”, and “integration capacity”, rather than as a stand-alone procedural-rights topic. In the most recent Standard Eurobarometer country report for Austria (fieldwork 9 October–3 November 2025), respondents listed immigration among the country’s “most important problems” (16%), alongside inflation/cost of living (48%), the economic situation (24%) and public debt (17%). At EU level, immigration was the single most frequently cited “most important problem” for Austrian respondents (23%), slightly ahead of the economic situation (22%) and Russia’s war against Ukraine (21%). The political salience of the theme is consistent with 2024 electoral dynamics: Austria’s National Council election (29 September 2024) was widely described as being dominated by migration and internal security debates, with migration featuring prominently in voters’ stated motivations in polling summaries reported in official overview work.

Survey evidence indicates substantial skepticism about the state’s capacity to receive and process asylum seekers, with strong support for restrictive policy preferences that may function as (or be translated into) barriers to effective access. In the ÖIF Integrationsbarometer (March 2024 wave), 65% assessed Austria’s ability to cope with the current inflow of refugees and asylum seekers as “rather/very poor”. On the question whether the number of refugees and asylum seekers is manageable, the same wave yields 60% answering “rather not” or “not at all” manageable. Perceptions of integration are also predominantly negative in this dataset: 69% said integration of immigrants in Austria functions “rather/very poorly”. These attitudes map onto preferences for tightening: the survey reports 75% support for introducing an “asylum cap” (Asylobergrenze), and very broad endorsement of demanding integration conditions (e.g., 85% agreeing that refugees should acquire basic German within defined time limits). In parallel, high-level political discourse has explicitly entertained externalisation-style approaches: a May 2024 UK–Austria joint statement described cooperation with “designated safe third countries” as part of the solution to irregular migration and referred expressly to a “Rwanda style model”, indicating that such approaches have been publicly normalised at senior-government level even if direct Austrian public-opinion measurement on externalisation is less standardised in major recurring surveys. Objective migration context has also shifted in ways that can interact with perceptions: official Austrian asylum statistics record 25,360 asylum applications in 2024, down from 59,232 in 2023.

Public attitudes toward immigrants and refugees are nonetheless differentiated rather than uniformly hostile, and they vary strongly by group and by whether the issue is admission or inclusion. The ÖIF survey shows markedly more positive views toward Ukrainian war-displaced persons than toward “refugees” as a general category: coexistence with Ukrainians was rated positively by 60% (vs 25% negatively), whereas coexistence with refugees was rated positively by 31% and negatively by 62%. The sharpest negative gradient is visible for Muslims: coexistence between Muslims and non-Muslims in Austria was rated positively by 25% and negatively by 66%, underscoring pronounced Islam-related polarisation. At the same time, the same ÖIF instrument captures a pragmatic pro-migration/pro-inclusion strand: 75% supported easing immigration for qualified workers and skilled workers (Facharbeiter/innen), and 64% agreed that immigrants have sufficient offers/opportunities to integrate. Vienna-specific polling (useful as an urban nuance rather than a proxy for Austria as a whole) similarly shows strong support for concrete inclusion measures once people are present, including very high endorsement of language support for children in schools (90%) and majority support for extending local political participation rights (e.g., voting rights after five years’ residence: 52%).¹⁵⁸

the Crisis: Mediated Public Debates about the Refugee Crisis in Austria, the Czech Republic and Slovakia, *Journal of Refugee Studies*, Volume 34, Issue 1, March 2021, Pages 241-263

¹⁵⁸ Sources: <https://europa-in-niederoesterreich.at/wp-content/uploads/2024/05/Fact-Sheet-zu-Oesterreich.pdf>;
<https://www.reuters.com/world/europe/austrias-rightward-shift-puts-immigration-crosshairs-2024-09-30/>;
https://www.integrationsfonds.at/fileadmin/user_upload/OeIF-Integrationsbarometer-1-2024.pdf;
<https://apnews.com/article/austria-britain-sunak-nehhammer-migration-rwanda-6cc4a34351329d41af7006c441fdb0e1>;
<https://www.gov.uk/government/news/pm-meeting-with-austrian-chancellor-karl-nehhammer-21-may-2024>;
<https://www.bundeskanzleramt.gv.at/dam/jcr%3A108d4c8a-e81d-4ae4-9fc3->

In Austria, high salience of migration has led to restrictive policy. The cited access-to-asylum case law shows that courts have, in several important instances, reviewed or constrained executive action, and the constitutional guarantees listed in the following source note provide a strong formal basis for judicial independence. These materials support the assessment that asylum-access adjudication has retained meaningful judicial autonomy despite policy pressure, without proving uniform independence or consistency across all cases.¹⁵⁹

Asylum-related decisions or opinions have at times generated explicit political “court-bashing” directed at domestic judges and courts, typically when a judgment is perceived to obstruct restrictive asylum policy or constrain enforcement. A prominent early example is the 2016 “Obergrenze” debate, where the ÖVP publicly attacked VfGH President Gerhart Holzinger after he said a statutory cap on admitting refugees would be unconstitutional, with the party’s constitutional spokesperson stating Holzinger had gone clearly too far. A more directly adjudicative instance is the Drasenhofen case: after the LVwG Niederösterreich found the fenced confinement of young asylum seekers unlawful, the responsible FPÖ politician Waldhäusl responded by questioning judicial independence, explicitly framing courts as siding with “perpetrators.” Similar dynamics appear in reaction to procedural/access rulings by the VfGH: following the Court’s annulment of restrictive administrative instruments limiting asylum seekers’ labour-market access, FPÖ leader Herbert Kickl urged the minister to restore the prior restrictive regime by ordinance and downplayed the judgment as “not substantive” but merely “formal.” And when the VfGH held that the BBU model for asylum legal counselling lacked sufficiently secured independence in law, Kickl called the decision “unverständlich” (not comprehensible) and portrayed the “only beneficiaries” as NGOs pursuing private or illegitimate interests.¹⁶⁰

D. Corruption

Core institutional sources focus on integrity frameworks around entry-point actors rather than documenting specific corruption cases in asylum access: GRECO’s 5th-round evaluation on Austria (law-enforcement integrity, senior appointments, sponsoring transparency) and its 2025 compliance follow-up set the benchmark for police/border-police safeguards; the special audit of federal asylum care facilities by the Court of Audit (2022) and its 2024/25 Basic Care follow-up flag procurement, documentation and risk-management weaknesses that are corruption-risk factors in reception/detention-like operations; the AIDA/ECRE 2024 Update reports that Vordernberg is run by G4S and highlights that its remote location hampers access for lawyers/NGOs; and the BAK annual report describes

d95adb7d8534/2025_MigInt_2025_EN%20WEB%20v2.pdf;

<https://www.digital.wienbibliothek.at/wbrup/download/pdf/4624118?originalFilename=true>.)

¹⁵⁹ Sources: LVwG Steiermark, LVwG 20.3-2725/2020-86, 1 Jul 2021; LVwG Steiermark, LVwG 22.3-2726/2020-50, 5 Jul 2021; LVwG Steiermark, LVwG 20.3-2621/2021-49, 16 Feb 2022; VwGH, Ra 2021/21/0274-6, 5 May 2022; VwGH, Ra 2022/21/0074-6, 19 May 2022; VfGH, E 2944/2022, 15 Mar 2023; VfGH, E 1044/2022, 9 Mar 2023; BVwG, W144 2299891-1, 7 Oct 2024; BVwG, W161 2299884-1, 21 Nov 2024; VfGH, E 4746/2024, 27 Feb 2025; VfGH, G 328/2022, 14 Dec 2023; VfGH, E 2125/2024; VfGH, E 2483/2024, 3 Oct 2024; Bundes-Verfassungsgesetz (B-VG), Arts 83(2), 87 and 88, RIS consolidated version:

<https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10000138>.

¹⁶⁰ Sources: <https://www.derstandard.at/story/2000033033840/oevp-kritisiert-holzinger-zu-weit-gegangen>; <https://news2.orf.at/stories/2329952/>; https://www.ots.at/presseaussendung/OTS_20160316_OTS0181/gerstl-praesident-holzinger-ist-zu-weit-gegangen; <https://noe.orf.at/stories/3104512/>; <https://www.derstandard.at/story/2000126721690/fluechtlings-unterbringung-im-stacheldraht-asylheim-drasenhofen-war-rechtswidrig>; <https://kurier.at/chronik/niederosterreich/unterbringung-von-fluechtling-in-noe-war-laut-gericht-rechtswidrig/401386971>; https://www.vfgh.gv.at/medien/Beschaefigungsbewilligungen_fuer_Asylwerbende.php; https://www.vfgh.gv.at/downloads/VfGH-Erkenntnis_V_95-96_2021_vom_23._Juni_2021.pdf; https://www.ots.at/presseaussendung/OTS_20210714_OTS0074/fpoe-kickl-zu-vfgh-entscheidung-kocher-muss-zugang-von-asylwerbenden-zu-lehre-und-arbeitsmarkt-sofort-wieder-unterbinden; <https://www.vfgh.gv.at/medien/BBU.php>; https://www.vfgh.gv.at/downloads/VfGH-Erkenntnis_G_328_2022_vom_14._Dezember_2023.pdf; https://www.ots.at/presseaussendung/OTS_20231222_OTS0064/fpoe-kickl-vfgh-urteil-macht-von-geschaeftsinteressen-getriebene-asyl-ngos-zu-gewinnern-und-die-steuerzahler-zu-verlierern; <https://www.derstandard.at/story/3000000200784/rechtsberatung-fuer-asylwerber-durch-bbu-laut-vfgh-teils-verfassungswidrig>.)

prevention/enforcement for public-official corruption but does not single out asylum registration/detention as a category.¹⁶¹

Available integrity monitoring for judges/prosecutors is system-wide rather than asylum-specific: GRECO's 4th-round judicial materials and follow-ups assess general judicial-integrity safeguards, not BVwG asylum chambers; the Justice Ministry's 2020 Compliance Guidelines set conflict-of-interest and integrity standards across courts but do not address asylum adjudication as a sector; the EU Rule of Law 2025 Country Chapter on Austria similarly discusses judicial independence/anti-corruption at system level without reporting asylum-adjudication corruption.¹⁶²

E. Other socio-political factors

AIDA documents federal-provincial dispersal imbalances and operational frictions, such as transfers or placement of vulnerable persons and uneven capacity, which shape counselling and representation conditions earlier in litigation; the 2024/25 follow-up on Basic Care by the Court of Audit notes persistent gaps in joint risk assessment and references adjustments to cost-rate models; and prolonged internal Schengen border controls, extended in November 2024 and again in May 2025, keep border-enforcement relevance high. Debates also continue around political and other powerful interests' influence on judge appointments at different levels, including delays in the appointment of the BVwG president.¹⁶³

¹⁶¹ Sources: GRECO, Fifth Evaluation Round: Evaluation Report Austria, GrecoEval5Rep(2022)5, 1 Mar 2023, https://www.bmj.gv.at/dam/jcr%3A824c12a6-ab3d-401e-beae-ba30c6f17d1b/GrecoEval5Rep%282022%29-Final_deutsch.pdf; GRECO, Fifth Evaluation Round: Compliance Report Austria, GrecoRC5(2024)15, published 26 Mar 2025, https://www.bmj.gv.at/dam/jcr%3A3938540b-f3ed-4688-9203-c5fa2924a21b/Q_%C3%9CZ_52229-III-PKRS-2024_GrecoRC5%282024%2915-Final-eng-Compliance_report-Austria-CONF_DE_FINAL_Umsetzungsbericht_eng.pdf; Rechnungshof, Asylbetreuungseinrichtungen des Bundes, Reihe Bund 2022/2, https://www.rechnungshof.gv.at/rh/home/home/2022-2_Asylbetreuungseinrichtungen.pdf; Rechnungshof, Grundversorgung; Follow-up-Überprüfung beim Bundesministerium für Inneres, Reihe Bund 2024/25, https://www.rechnungshof.gv.at/rh/home/home/home_7/2024_25_Grundversorgung_FuP.pdf; AIDA/ECRE, Country Report: Austria, Types of accommodation, 2024 Update, July 2025, <https://asylumineurope.org/reports/country/austria/reception-conditions/housing/types-accommodation/>; Bundesamt zur Korruptionsprävention und Korruptionsbekämpfung (BAK), Jahresbericht 2023, https://www.bak.gv.at/downloads/files/jahresberichte/jahresbericht_2023.pdf; <https://deserteursberatung.at/wp-content/uploads/2024/09/VordernbergBericht.pdf>

¹⁶² Sources: GRECO, Fourth Evaluation Round: Austria, compliance materials on corruption prevention in respect of members of parliament, judges and prosecutors, including GrecoRC4(2024)10, published 26 Mar 2025, https://www.bmj.gv.at/dam/jcr%3A5b6af3c1-d77e-4a4e-a3d2-e1cb3b1a5d04/A_GrecoRC4%282024%2910-P2-eng-3rd_Interim-Austria-CONF_vs_FINAL_DE_3.vorl%C3%A4ufiger%20Umsetzungsbericht%20vom%2026.3.2025_eng.pdf; BMJ, Compliance-Leitlinien für die Justiz / Compliance-Richtlinien, referenced in GRECO Fourth Evaluation Round compliance materials, https://www.bmj.gv.at/dam/jcr%3Aa55252db-edef-47cc-a07f-d2d7a78ec972/GrecoRC4%282020%297_DE.pdf; European Commission, 2025 Rule of Law Report - Country Chapter on the rule of law situation in Austria, 8 Jul 2025, https://commission.europa.eu/document/download/f9790196-3452-4a1c-a7dc-ecae3c676099_en?filename=2025+Rule+of+Law+Report+-+Country+Chapter+Austria.pdf; Bundesamt zur Korruptionsprävention und Korruptionsbekämpfung (BAK), Jahresbericht 2023, https://www.bak.gv.at/downloads/files/jahresberichte/jahresbericht_2023.pdf

¹⁶³ Sources: AIDA/ECRE, Country Report: Austria, Types of accommodation, 2024 Update, July 2025, <https://asylumineurope.org/reports/country/austria/reception-conditions/housing/types-accommodation/>; Rechnungshof, Grundversorgung; Follow-up-Überprüfung beim Bundesministerium für Inneres, Reihe Bund 2024/25, https://www.rechnungshof.gv.at/rh/home/home/home_7/2024_25_Grundversorgung_FuP.pdf