

## Input by civil society to the EASO Annual Report 2019

Fields marked with\* are mandatory

The production of EASO's *2019 Annual Report on the Situation of Asylum in the European Union* is currently underway. The yearly [annual report](#) series present a comprehensive overview of developments in the field of asylum at the regional and national levels.

The report includes information and perspectives from various stakeholders, including experts from EU+ countries, civil society organizations, the UNHCR and researchers. To this end, we invite you to submit information on developments in asylum law, policy or practice in 2019 (and early 2020) by topic as presented in the online survey.

Please note that the EASO Annual Report does not seek to describe national systems in detail but rather to present key developments of the past year, including improvements and challenges which remain. Your input can cover practices of a specific EU+ country or the EU as a whole. You can complete all or only some of the sections. It is preferred to provide your submission in bullet points to facilitate drafting.

All submissions are publicly accessible. For transparency, 2019 contributions will be published on the EASO webpage. Contributions to the 2018 annual report by civil society organisations can be accessed [here](#). All contributions should be appropriately referenced. You may include links to supporting material, such as analytical studies, articles, reports, websites, press releases or position papers. If your organisation does not produce any publications, please make reference to other published materials, such as joint statements issued with other organisations. Some sources of information may be in a language other than English. In this case, please cite the original language and, if possible, provide one to two sentences describing the key messages in English.

The content of the EASO annual report is subject to terms of reference and volume limitations. Submissions may be edited for length and clarity or may not be included in the final report. Contributions from civil society organisations feed into EASO's work in multiple ways and inform reports and analyses beyond the annual report.

Please complete the online survey and submit your contribution to the 2019 annual report by **Thursday, 12 March 2020**

### [Instructions](#)

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Before completing the survey, please review the list of topics and types of information that should be included in your submission.

For each response, please only include the following type of information:

- ✓ New developments and improvements in 2019 and new or remaining challenges;
- ✓ Changes in policies or practices, transposition of legislation or institutional changes during 2019.

Please ensure that your responses remain within the scope of each section. Do not include information that goes beyond the thematic focus of each section or is not related to recent developments

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## Contributions by topic

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### 1. Access to territory and access to asylum procedures (including first arrival to territory and registration, arrival at the border, application of the non-refoulement principle, the right to first response (shelter, food, medical treatment) and issues regarding border guards)

The provision in the Asylum Act which allows the Government (together with the National Assembly) to restrict access to territory and access to asylum procedures the reaching of a maximum number of asylum applications is still in force.<sup>1</sup>

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

In May 2019, the parliament adopted a law to place under government control the provision of free legal advice for asylum seekers and in return procedures, thus replacing independent legal advice by NGOs.<sup>2</sup> This despite sharp criticism by UNHCR,<sup>3</sup> NGOs,<sup>4</sup> academics,<sup>5</sup> and international organisations<sup>6</sup> that the law constitutes a grave violation of fundamental rights, i.e. the right to an effective remedy under Article 47 of the Fundamental Rights Charter.

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<sup>1</sup> Art 36-41 of the Asylum Act.

<sup>2</sup> *Bundesgesetz über die Errichtung der Bundesagentur für Betreuungs- und Unterstützungsleistungen Gesellschaft mit beschränkter Haftung (BBU-Errichtungsgesetz – BBU-G)*, [Federal law on the establishment of the Federal Agency for Care and Support Services Limited liability company], BGBl I Nr 53/2019. The idea of abolishing independent legal advice by NGOs stems from the FPÖ. The latter had already before criticised heavily NGOs providing legal assistance on behalf of the Ministry of the Interior and accused NGOs of ‘greed for profit’ and to be part of the ‘asylum industry’. See Bernhard Perchinger and Gerd Valchans, ‘Einwanderungs- und Integrationspolitik’ in Emmerich Tálos (ed), *Die Schwarz-Blau-Wende in Österreich: Eine Bilanz* (Lit Verlag; Lit Verlag Wien 2019) 430–431.

<sup>3</sup> UNHCR, ‘Analyse des Entwurfs für ein BBU-Errichtungsgesetz, 15/SN-127/ME XXVI. GP’ (11 April 2019) <[https://www.parlament.gv.at/PAKT/VHG/XXVI/SNME/SNME\\_04072/imfname\\_747916.pdf](https://www.parlament.gv.at/PAKT/VHG/XXVI/SNME/SNME_04072/imfname_747916.pdf)>

<sup>4</sup> See also ECRE, *Reforming Legal Assistance in Austria: And End to Independent Provision? ECRE’s Call for Withdrawal of Measures that severely restrict Access to Independent Legal Assistance*, 2019, <https://www.ecre.org/wp-content/uploads/2019/07/Legal-Note-5.pdf>

<sup>5</sup> Margit Ammer and Adel-Naim Reyhani, ‘Stellungnahme des Ludwig Boltzmann Instituts für Menschenrechte zum Entwurf betreffend das BBU-Errichtungsgesetz [Legal opinion on the draft law on the establishment of a „Bundesagentur für Betreuungs- und Unterstützungsleistungen (BBU)“ (Federal Agency for Care and Support Services)]’ (36/SN-127/ME XXVI. GP, 12 April 2019) <[https://www.parlament.gv.at/PAKT/VHG/XXVI/SNME/SNME\\_04118/imfname\\_748026.pdf](https://www.parlament.gv.at/PAKT/VHG/XXVI/SNME/SNME_04118/imfname_748026.pdf)> accessed 18 December 2019

<sup>6</sup> OHCHR, ‘Report of mission to Austria focusing on the human rights of migrants, particularly in the context of return’ (October 2018) 41 <<https://www.ohchr.org/Documents/Issues/Migration/AustriaMigrationMissionReport.pdf>>: ‘OHCHR regards it essential for the Government to ensure sufficient space for a plurality of civil society actors to meaningfully promote and protect the human rights of migrants within migration processes and policies. This includes providing independent legal counselling and assistance, and facilitating administrative procedures and legal remedies.’

The systemic flaw of the new model as regards the rights of asylum seekers is that the entity will be subordinated to and under the extensive influence of the Ministry of the Interior,<sup>7</sup> which however also controls and directs the first instance asylum authority. Through this design, it intends to ‘restore fair, realistic and objective legal advice as a contribution to the public task of effective and speedy legal proceedings’ and to impede ‘appeal proceedings with a very low chance of success’.<sup>8</sup>

3. **Provision of interpretation services (e.g. introduction of innovative methods for interpretation, increase/decrease in the number of languages available, change in qualifications required for interpreters)**
4. **Dublin procedures (including the organisational framework, practical developments, suspension of transfers to selected countries, detention in the framework of Dublin procedures)**
5. **Special procedures (including border procedures, procedures in transit zones, accelerated procedures, admissibility procedures, prioritised procedures or any special procedure for selected caseloads)**
6. **Reception of applicants for international protection (including information on reception capacities – increase/decrease/stable, material reception conditions - housing, food, clothing and financial support, contingency planning in reception, access to the labour market and vocational training, medical care, schooling and education, residence and freedom of movement)**

In 2019, the Federal Administrative Court (BVwG) in several cases concluded that the Austrian practice to obstruct the access of young asylum-seekers to the labour market and thus also to an apprenticeship constitutes a violation of EU law.<sup>9</sup>

The newly formed Parliament has voted in December 2019 for a legislative amendment of the Aliens Police Act ensuring that if an asylum application is rejected an apprenticeship (started

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<sup>7</sup> The ministry is tasked to execute shareholder rights of the Federation (who owns 100% of the shares of the Agency, a limited liability company). See Sec 1(5) BBU-G. The ministry – according to the BBU-G – further not only concludes the framework agreement with the Federal Agency on, among other things, the selection of legal advisors, issues the declaration on the establishment of the Federal Agency, lays down binding general principles of business policy and corporate governance, issues rules of procedure for the Management Board and the Supervisory Board as representatives of the Federation, and appoints managing directors. It also has (as a representative of the Federal Government) an internally effective right to issue directives under company law, which affects all management measures. In addition, to support his management and auditing rights, he is entitled to ‘a comprehensive (all business matters comprehensive) claim to information against the company, which cannot be justified in detail’, which goes beyond the right to inspect books (Sec. 22 GmbHG) regulated by law. The Minister also has an internal right to issue instructions, which affects all management decisions. In addition, in support of his management and auditing rights, he is entitled to a comprehensive right to information against the company which goes beyond the right to inspect books.

<sup>8</sup> Government bill 594 der Beilagen XXVI. GP - Regierungsvorlage - Vorblatt und WFA, 5. See also Ministerialentwurf 127/ME, Vorblatt, 5.

<sup>9</sup> See e.g. BVwG, L517 2216953-1, 10.07.2019, L517 2216953-1/6E and L517 2217220-1/5E, 10.07.2019. Based on a decree of the Minister of Social Affairs from 2012 young asylum seekers (under the age of 25) could (three months after admission to the asylum procedure) obtain an employment permit for an apprenticeship in shortage occupations. Apart from seasonal work, this possibility was an exception to the otherwise barred access to the labour market for asylum seekers. The access to an apprenticeship was abolished in September 2018 per decree of the Minister of Social Affairs.

before entry force of the amendment, i.e. 28 December 2019) can be finished.<sup>10</sup> Thus, no new apprenticeships are covered.

7. Detention of applicants for international protection (including detention capacity – increase /decrease/stable, practices regarding detention, grounds for detention, alternatives to detention, time limit for detention)
8. Procedures at first instance (including relevant changes in: the authority in charge, organisation of the process, interviews, evidence assessment, determination of international protection status, decision-making, timeframes, case management - including backlog management)
9. Procedures at second instance (including organisation of the process, hearings, written procedures, timeframes, case management - including backlog management)
10. Availability and use of country of origin information (including organisation, methodology, products, databases, fact-finding missions, cooperation between stakeholders)
11. Vulnerable applicants (including definitions, special reception facilities, identification mechanisms/referrals, procedural standards, provision of information, age assessment, legal guardianship and foster care for unaccompanied and separated children)
12. Content of protection (including access to social security, social assistance, healthcare, housing and other basic services; integration into the labour market; measures to enhance language skills; measures to improve attainment in schooling and/or the education system and/or vocational training)

In December 2019, the Constitutional Court ruled that a provision in the new Austrian social assistance law that makes the receipt of full social assistance dependent on language skills and would have been disadvantageous for recognized refugees was unconstitutional.<sup>11</sup> Beneficiaries of subsidiary protection must under the new law only be granted ‘core social assistance benefits which do not exceed the level of basic care’.<sup>12</sup>

13. Return of former applicants for international protection
14. Resettlement and humanitarian admission programmes (including EU Joint Resettlement Programme, national resettlement programme (UNHCR), National Humanitarian Admission Programme, private sponsorship programmes/schemes and ad hoc special programmes)
15. Relocation (ad hoc, emergency relocation; developments in activities organised under national schemes or on a bilateral basis)
16. National jurisprudence on international protection in 2019 (please include a link to the relevant case law and/or submit cases to the [EASO Case Law Database](#))
17. Other important developments in 2019

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<sup>10</sup> BGBl I Nr. 110/2019, Sec. 55a Aliens Police Act (FPG).

<sup>11</sup> Constitutional Court (12.12.2019) G 164, 171/2019. G 164/2019-25, G 171/2019-24, Z. 2.3.3.3. The following provision was affected: at least 35% of the benefit must be made dependent on employability on the labour market (so-called ‘job qualification bonus’); the latter is only assumed for German level B1 or English level C1 (Common European Framework of Reference for Languages). See Sec. 5(6) and (7) Federal Act concerning Federal Law on Principles of Social Assistance (Basic Law on Social Assistance), BGBl. I Nr. 41/2019.)

<sup>12</sup> Sec. 4(1) Basic Law on Social Assistance.

## References and sources

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**18. Please provide links to references and sources and/or upload the related material in PDF format**

All sources are in footnotes.

**19. Feedback or suggestions about the process or format for submissions to the EASO Annual Report**

## Contact details

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