

# Changing migration patterns in eu countries law european essay

Law



**ASSIGN  
BUSTER**

In order to examine the scope of people moving within mixed migration flows, it is conventional to look into statistical data to have more clear vision on the scale of people affected by lacking regulations. Whereas, the current study was unable to find any statistical data particularly on mixed migration flows and there is no quantitative research on the subject yet available. This would be an important issue to carry out future research. However, this study will address currently available statistical data on general migration flows in Austria by country of citizenship, which include legal migration flows in comparison to irregular migrants apprehended and ordered to leave on one hand and total asylum applications, including numbers of positive and negative decisions on the other. Such quantitative assessment facilitates to analyze nationality identities of those persons who were rejected for international protection and those who were detected as illegal migrants and returned to their home countries or found criminal in Austria. From the data in Figure 2, it is apparent that legal immigration patterns have increasing in thousands of persons yearly with a significant decrease by 2009 and 2010. Increasing annual inflows to Austria since 2000 can be referred to the Eastern war conflicts as well as EU enlargement processes between 2004 and 2007, especially accession of Romania and Bulgaria into European Union in 2007. Figure TOTAL NUMBER OF FOREIGN NATIONALS LEGALLY RESIDING IN AUSTRIA ON A LONG-TERM BASIS, 2000 - 2010 Source: Eurostat, updated 05. 11. 2012, (code: tps00176) Following the data on total numbers of immigrants to Austria provided in previous figure, the Table 1 explores the nationalities by citizenship of those immigrants. It presents the most recent data available for 2011, which didn't significantly change in nationality

representation. The table reveals the list of the most common country of citizenship of immigrants in Austria. It is apparent from this table that the highest proportions of immigrants in Austria are from Eastern Europe.

## **Asylum Patterns**

As the matter of fact, it is important to highlight in this study that migration system is regulated separately from asylum in Austria, as in majority countries. The difference lies in the legal frameworks built for the regulations of both regimes. According to Geneva Refugee Convention, once a State becomes a party to it, the State takes an obligation to provide international protection to those who claim for it and who recognised under the Convention provision as a refugee in need. While immigration policies are shaped upon State's decision based on economic reasons to set the rule defining who can enter the territory of the State, for how long and under which conditions. However, expert interviews conducted within this study and review of status reports and analysis of migration and asylum developments, it was found that asylum seekers end up in the same migration routes along with economic migrants, most commonly in irregular routs of migration, which is as a result affects their legal status or opportunities to claim for asylum in the territory of a country of their first entry. As the table shows, the top countries of citizenship among asylum seekers appeared countries such as Afghanistan, Armenia, Georgia, India, Iraq, Iran, Tunisia, Algeria, Nigeria, Russian Federation, and Serbia and Montenegro. The results, as shown in the table indicate that most of the asylum seekers for the period of 2002 and 2011 appeared citizens of third-countries, including Serbia and Montenegro which are candidates for EU

Membership countries but still in negotiations process.[1]According to these results, flows of asylum seekers to Austria include persons from third countries such as Afghanistan, Iraq, Pakistan, India who were commonly found among routs of mixed migration from Horn of Africa reaching EU destinations through Greece, Spain islands, Italy and Turkey as described in the subchapter 4. 3 of this thesis. Surprisingly, there were found very little proportion of asylum claims to Austria from Horn of Africa. Table Number of Asylum sekrs from Horn of Africa in 2000 compared to 2011

## **Horn of Africa**

**2002**

**2011**

### **Eritrea**

5Eritrea27

### **Ethiopia**

0Ethiopia0

### **Kenya**

3Kenya10

### **Djibouti**

1Djibouti2

### **Somalia**

221Somalia610

## **Tanzania**

1Tanzania2

## **Uganda**

15Uganda8Source: The Federal Ministry of the Interior, Asylum statistics

2011As the table 3 shows very few asylum seekers were found in asylum procedure in Austria from the Horn of Africa, with higher numbers from Somalia only, which increased last year above 600 asylum seekers.

Surprisingly, these numbers show an opposite of the fact that millions of refugees fleeing Somalia and thousands fleeing from other regions of the Horn of Africa towards Europe and that a very few were found in Austria. This finding can be assumed that most of the asylum seekers from the Horn of Africa do not reach Austrian territory but only a few, or another assumption can be a case as such they could be found among irregular migrants, since they move along irregular migration routes.

## **Changing Migration Patterns in EU countries**

Every year, thousands of desperate women and men leave their places of origin in Africa in search of protection or new life around the world, including the Europe. They travel on fishing boats, dinghies and canoes to reach their destination of hope. Many of them make a hazardous journey through West Africa to the Spanish Canary Islands; from Morocco to southern Spain; from Libya to Malta and through Italian islands of Sicily and Lampedusa; from Turkey to the islands of Greece. The most common way of entering the European Union is by land, through Turkey and the Western European region or from Ukraine and Belarus. These people travel and enter EU zone

irregularly, with no passports or entry permits. In some cases they are fleeing persecution, human rights violations and armed conflict and can, therefore, be considered as refugees who need special protection. More often, they are migrants trying to escape poverty and unemployment. Increasing irregular migration flows from African continent to Europe has contributed to national security concerns of the EU Member States. In order to strengthen their management of external borders, the European Agency for the Management of Operational Cooperation at the External Borders (Frontex) of the Member States of the European Union was established by Council Regulation (EC, 2004). Figure Total migration trends in European Union 2004 - 2008 (Immigration in persons) Source of Data: Eurostat, European Commission

## **Multilateral Response to the Challenges of Mixed Migration**

In referring to previous subchapter, which explains the root causes of mixed migration phenomenon, it occurs that many States are not ready to deal with the challenge in the context of their existing national legal frameworks. But mostly, policy impact of mixed migration has affected strongly the field of international protection for asylum. Initially, the UN High Commissioner for Refugee (UNHCR) was the first actor, who alerted governments and called for international cooperation, especially among the key partners at national, regional and international level. (Van Hear, 2011: p. 3). The UNHCR's Global Consultations on International Protection<sup>[2]</sup> has introduced the term 'mixed migration' or 'migration-asylum nexus' for the first time to address a crisis in international protection of refugees which became serious threat for safety and security of vulnerable people. The crisis was mainly caused by

<https://assignbuster.com/changing-migration-patterns-in-eu-countries-law-european-essay/>

buildup stereotype among host governments that refugees seeking protection are in fact not refugees but economic migrants abusing the asylum protection system. This situation urged to establish clear distinctions between migration and asylum. As a result, the key international actors: UNHCR, International Organization for Migration, and International Labor Organization in a joint effort analyzed the nexus between migration and asylum. (N. Nyberg-Sorensen; N. Van Hear; P. Engberg-Pedersen, 2002: p. 15) As mentioned in literature review, this initiative led to formation of strategic framework entitled " Ten Point Plan of Action" developed by UNHCR. The 10-Point Plan offers tools and guidance to assist governments and relevant stakeholders to incorporate refugee protection concerns into migration policies. (UNHCR, 2007: p. 8) The implementation of 10-Point framework, which set out ten areas to take initiatives, would ensure identification of people in need of international protection traveling along the mixed migration movements and to provide them an adequate assistance. (UNHCR, 2007: p. 10) This Plan emphasize ten critical areas of migration regulation and asylum procedure that must be examined and recommendations must be implemented in affected State as following: 1) cooperation among key partners; 2) data collection and analysis; 3) protection-sensitive entry systems; 4) reception arrangements; 5) mechanisms for profiling and referral; 6) differentiated processes and procedures; 7) solutions for refugees; 8) addressing secondary movements; 9) return arrangements for non-refugees and alternative migration options; and 10) information strategy. An implication of these ten point framework is that affected States would be able to incorporate the traditional protection

activities based on Geneva Refugee Convention but also to introduce specific developments to protect refugees and asylum seekers traveling within the mixed movements. Particularly, the Plan has important implications for establishing entry systems that provides an efficient mechanism to identify new arrivals with a special need for international protection involved in mixed movements. (UNHCR, 2007: p. 10)The 10-Point Plan especially applies to cases of refugees involved in irregular migration movements and under the risk of ' refoulement' (UNHCR, 2007: p. 11)

### **Relevance of the ' Ten Point Plan of Action' to Austria**

As a result of conducted expert interviews, the empirical research of this thesis found that implementation of the Ten Point Action Plan is not relevant for Austria's legal framework for immigration and asylum. Initially the Plan of Action was not drafted for European countries. Austria had established along the path of its immigration history a strong legal framework around the topics of migration and refugees. Overall, Western European migration governance, including Austria is strongly based on principles of rule of law and fundamental human rights, and follows comprehensive approach of multilateralism and partnership. Thus, the current legal framework established in Austria doesn't require an implementation of the Ten Point Plan because all ten areas where the Action Plan calls States for imitative are already adequately established in Austria. Contrary to expectations, this study did not found major gaps within Austrian migration policy regime and asylum protection system that needs an implementation of the Ten Point Action Plan's recommendations specifically. All areas of interest with regard to international protection of refugees and asylum seekers, which are



emphasized in the Plan of Action found as common ground for national laws in Western European countries, including in Austria. There is no need for Austria to abide to any specific plan in the area of immigration and asylum as all aspects of the Plan have been implemented in national laws even before it became the Plan was developed. Initially, the Plan was mainly targeted to Southern countries but in European prospectus it would be more relevant to Eastern and South Easter borders of the European Union Member States, in particular to Greece. It is crucial implementation of the Ten Point Action Plan framework in Greece due to increasing trends of mixed migratory flows coming over the sea and also from country border with Turkey in order to ensure that the State's capacity to identify people in need of international protection migrating as part of such movement and to provide an adequate response. (UNHCR, 2007b)The interviews with UNHCR experts refer to Greece as a key in addressing mixed migratory flows targeted to European Union due to the country's current legal framework needs improvements starting from a very basis such as ensuring the correct data, statistics on migration and asylum, which is completely opposite with Austrian statistics, data collection system. This study found that Austrian data collection system is working efficient providing timely, up -to-date and realistic overview and well measured statistical data. However, in this section the thesis will address ten key areas of work proposed by Ten Point Action Plan., which emphasizes best practices of Austrian system on migration and international protection. However, the establishment of the 10-Point Plan of Action introduced several developments into Austrian asylum system. A closer look into the Ten Point Action Plan's key principles reveals following best

practices of Austrian system emphasized in the Action Plan: The first aspect of the Plan, Cooperation Among key partners: According to the Plan, a starting point towards building effective approach for challenges of mixed migration requires full cooperation amongst key partners. Thus, united efforts by affected States, relevant governmental bodies, regional and interregional organisations with relevant mandate towards cooperation are a crucial requirement. However, Austria was found one of a few countries in EU, where in addition to national and federal organisations, also NGOs and international organisations are involved in Asylum first-instance assistance. UNHCR Liaison Office in Vienna (website - [www.unhcr.at](http://www.unhcr.at)) is one of the key stakeholders in Austrian asylum field. It implements monitoring activities with a special focus to asylum seekers, since this particular group of people are the most vulnerable and part of irregular and mixed migration flows. The organisation holds a right to closely look into asylum procedure at the national level and provide its positions, comments and recommendations to the Government. It holds a dialog with all engaged local stakeholders including lawyers who provides legal aid to asylum seekers, relevant local authorities, legal counsellors, NGOs, other organisations involved in the field toward advocacy of asylum seekers' needs. IOM's approach in assisting "States, migrants and communities in addressing the challenges of irregular migration"[3]underlines " collaboration with its partners by (1) directly assisting particularly vulnerable migrants in situations of mixed flows and (2) providing support and services to governments and other relevant actors in their response to the challenges posed by such movements."[4]The International Centre for Migration Policy Development (ICMPD) was founded

in 1993, upon the initiative of Austria and Switzerland. The organization was created to serve as a support mechanism for informal consultations, and to provide expertise and efficient services in the newly emerging landscape of multilateral cooperation on migration and asylum issues. The organization's mandate states: " ICMPD shall analyze current and potential migratory flows to European receiving countries, follow and examine the situation in the major countries of origin of migrants and develop measures for the improved recognition and control of migratory movements." (www. icmpd. org)The second aspect of the Plan, Data collection and analysis: The process of collection, analysis and exchange of data relating to the characteristics of movements is important aspect for coherent regulation. Basic data collected at the first-instance Asylum authority must include information about conditions in country of origin, reasons for migration, routs of movement, modes of transport and also first entry points. (UNHCR, 2007b) This aspect of identification of illegal migrant's motives is not implemented in many countries while Austria's first point of receiving migrants or asylum seekers can be highlighted as exemplary. According to Geneva Convention, it is crucial procedure that people crossing the border must be identified, interviewed in mother tang and provided legal assistance. Detected migrants must be explained about their rights as a migrant or asylum seeker but not sent back to the country of origin, without identifying, if deportation is dangerous for the life of a person. In the Austrian system, irregular migrants detected and sent to Police stations are interviewed to collect basic information regarding motives for migration, country of origin but mainly to clarify whether a person aimed to apply for asylum. The main public domains

which provides detailed figures in migration flows as well as comprehensive and detailed statistical data on asylum applications, positive and negative decisions. Key public domains containing reliable statistical data are: The Federal Ministry of the Interior ([www.bmi.gv.at](http://www.bmi.gv.at)), Migration Portal of the Austrian Federal Government ([www.migration.gv.at](http://www.migration.gv.at)), Austrian Portal "Help" for administrative information ([www.help.gv.at](http://www.help.gv.at)), and Statistik Austria ([www.statistik.at](http://www.statistik.at)), also Eurostat ([www.ec.europa.eu/eurostat](http://www.ec.europa.eu/eurostat)) containing detailed statistical data on Austria provides well measured and accurate figures for evaluation of migration and asylum developments in the country and region. The sixth aspect of the Plan, Differentiated process and procedures: " Different process outside the asylum arrangements should address the situation of people with specific needs which are not refugee related, including victims of trafficking not in need of international protection, as well as persons who are seeking to migrate."(10-Point Plan of Action, revision 1, January 2007)This aspect of the Plan recommends more comprehensive processes and procedures to be established in receiving State in order to meet various needs of persons travelling along with mixed movements. It is an integral part for more tailored and adequate responses to the most vulnerable persons involved in mixed migration. (UNHCR, 2007b)In this regard, Austria's Asylum Act[5]established a new procedure at the Airport in Austria, which functions as a first-instance Asylum authority thus creating a possibility for submission of asylum applications upon arrival through air transportation.[6]However, involvement of UNHCR is relevant to some specific decisions made at the first-instance asylum authorities and to ensure that the needed protection have been delivered adequately. In

Austria, key actors involved in Airport procedure are the Federal Asylum Agency and UNHCR. The Austrian Centre for Country-of-Origin and Asylum Research (ACCORD) facilitates with caseload analysis thus contributing to efficient decision-making. (UNHCR, 2007: p. 110)

## **Empirical Evidence: Challenges and Practices of Austrian Legal Framework**

### **Introduction**

In this chapter, we will examine Austria's legal framework for migration and asylum, and determine whether the mixed-migration challenges have been addressed by the Austrian immigration policy regimes. This chapter looks into .....It is important to highlight that the asylum, migration and integration systems are regulated separately in Austria although they are closely correlated and different institutions deal with very specific group of immigrants....

### **History of Immigration Policies in Austria**

To understand the current Austrian public policies on immigration, it is important to review its historical patterns and discuss problems associated with their change. Austrian policies managing migration flows are largely being affected along the path by many politico-historical and economical events in the past. Austria has participated in various forms of international migration, including immigration, emigration, transit migration, and asylum protection for refugees over the past two centuries. (Guličová-Grethe, 2008)One of the major changes in regulations on immigration, residence, employment of both national and non-nationals was influenced by German

legislation since 1938, which remained to be in force even after the collapse of the Nazi regime. ' For the first time severe restrictions were introduced on Jewish citizens in Austria, in all area of social life such as employment, social benefits, housing, in the acquisition of property followed by seizure of property, also known in the policy world as ' Arisierung' or ' aryanisation'.

Between 1938 and 1941, around 128. 000 Jews were forced to leave Austria.'

(Jandl and Kraler, 2003)By completion of World War II, around 1. 4 million foreigners, including former slave labourers, foreign workers, displaced persons, prisoners of war, war refugees, and ethnic Germans from all over Eastern Europe found themselves in Austrian territory. While civilian foreigners and prisoners of war were quickly repatriated to their respective countries of origin, more than 500 000 displaced persons permanently settled in Austria, the majority of them ethnic Germans from Eastern Europe.

(Jandl and Kraler, 2003)After the era of Nazi regime, Austria has experienced several major flows of immigration. One of them backs to the period of Cold War, when Austria became a destination and transit country for refugees escaping from the communist regimes in Eastern and Central Europe between 1945 and 1989. As a result of these political crises and uprisings in dominated by communist regime countries, about 2 million refugees from Hungary, Czechoslovakia and Poland entered Austria and find a temporary shelter. The vast majority of them traveled to other Western states but also many were granted asylum and participated in the integration process.

(EMN, 2004) The results of this study indicate that the foundation of Austria's asylum protection policies has been greatly exercised during this period.

Another major change in Austria's immigration regulations took place in the

early 1960s when Austrian workforce has emigrated to Germany and Switzerland throughout the 1950s. This outflow has created a significant labour shortage in Austria. Prospering Austrian economy of this period and a high scarcity in labour has encouraged employers to look abroad to fill the gap. After a long process of negotiations the " Raab-Olah Agreement" between entrepreneurs and trade unions has been formed in 1961, which authorized new labor migration. The so-called " guest worker" immigration with fixed annual " contingents" was promoted by contract labour programmes and organized by state agencies similar. Extensive acknowledgements of work permits for foreign workers brought to Austria a total of 265 000 immigrants between 1961 and 1972. Yugoslav nationals formed the biggest share of the guest workers with 78. 5 % in 1973, followed by Turks with 11. 8 % (Biffi 1995, tables 11, 12). Although the main idea of guest worker system were aimed to benefit from foreign workers service for a couple of years and after it will be terminated but the system didn't take into account that most likely this immigrants will decide to stay longer or settle in Austria permanently. Later the guest workers were granted with a permanent residence permits and were allowed to bring their family members which resulted in a steadily growth of immigration rationale even further. (Roth, K. and Hayden, R, 2009) This was another big scale contribution to the immigration process. The mean annual migration to Austria between 1961 and 1995 exceeded 16 000 persons, resulting from a negative net migration of about 4 000 Austrians and a positive net migration of some 20 000 foreigners migrating into Austria. It is important to highlight that 1974 and 1975 were a crucial moment that changed the course of

Austrian immigration policy and implicated to its future developments. (Parnreiter, 1994) Due to the international economic crisis which returned back to homes emigrated earlier Austrian workers, the competition at the labor market in Austria became challenging for immigrants. This gave a different pattern to the immigration regulations and new quota regime has regulated the access to the labour market. The guest worker recruitment had been stopped and Austria has introduced new restrictions on the employment of foreign workers under the new Aliens Employment Act of 1975 (Ausländerbeschäftigungsgesetz - AuslBG). Under this law, the foreign workers were allowed after their eight years of continuous employment to obtain a so-called " Certificate of Exemption" (Befreiungsschein), which had provided them with a free access to the labour market. This had led to a decrease about 40% of the foreign employment share against Austrian native employment between 1974 and 1984 although the total amount of immigrants living in Austria remain the same due to family reunion implications. But in 1987 this restrictions were abolished with regard to its insufficient conformity with the European human rights convention of 1987 followed with a significant switch within the institutional framework for immigration and asylum policies. Since then, the responsibility for the aliens policy has passed from the Ministry of Social Affairs to the Ministry of the Interior, which added to its existing responsibilities over the asylum protection. The decade of 1990 has marked the history of immigration policies in Austria with an intensive dynamics of new policy developments and challenges of regulating immigration processes. Due to the economic upswings, the fall of the Iron Curtain and civil wars in Croatia, and Bosnia -



Herzegovina, the number of non-nationals residing in Austria has doubled, from 344 000 in 1988 to 690 000 in 1993, thus increasing the share of foreign employed people from 5. 9% to 9. 1% at this period of time. A temporary shelter was granted to the war refugees from former Yugoslavia under the so-called " temporary protected status" in a condition of exceptional administrative rules. In addition, surprisingly exceptional decision was made by Austrian policy makers which granted a legal status to 29 100 illegally employed foreigners in 1990. Under this new circumstance of growing number of foreign employed persons, the government introduced a quota scheme for work permits known as " Bundeshöchstzahl" in 1990, in order to regulate the foreign employment share in labor market. The quota defined limit for foreign employment up till 8% to 10% of the total workforce. (Jandl , Kraler, 2003) Later, the government restricted even further its immigration policy and introduced a series of new laws in 1992 (Alliance Act) and 1993 (Residence Act). A new yearly quota system has replaced the previous guest worker system, which was applicable for new residence permits only. In 1997, the Austrian government has unified the 1992 Aliens Act and 1993 Residence Act into a single 1997 Aliens Act. This new reform has introduced a new concept known as " Integration before immigration" which was aimed at integration of already residing in Austria foreigners but more tightened entry restrictions (Kraler, Sohler, 2008). The empirical research of Austria's participation in the asylum protection for refugees that lies in foundation of its current policies leads back to the mid 80s of the last century with the opening of the eastern borders for the refugees from communist countries. Further foundation of the Austrian asylum protection

policies are greatly exercised on asylum procedures for war refugees from former Yugoslavia in 1990 as well as war refugees from Bosnia-Herzegovina between 1992 and 1995. Only between 1988 and 1992, the Austria received on average more than 20 000 asylum applications per year, mainly from the Eastern Europe (Czechoslovakia, Hungary, Poland, and Romania), Yugoslavia, and Turkey as well as well as from the other parts of the world such as Iran, Bangladesh, and Pakistan. However, these so-called " asylum crisis" resulted in a series of reforms with more restrictive regulations aimed at reducing the number of ungrounded asylum applications (Jandl, Kraler, 2003). The new Law on the Reception of Asylum Seekers, and the new Asylum Act, both passed in 1991, were following the concept of minimum reception standards of asylum seekers. This concept of minimization mainly had reflected in welfare benefits and restricted enjoyment of personal freedom but not into measures supportive of a dignified life for asylum seekers. (Rosenberger, König, 2011) Particularly, the 1991 Asylum Act, introducing the principles of " safe third countries" and " safe country of origin", was heavily criticized by the UNHCR for the lack of conformity with the International Law. The provisions of the asylum act was found insufficient in implementing Austria's commitments according to the 1951 Convention relating to the Status of Refugees (the Geneva Convention on Refugees) and the 1967 Protocol relating to the Status of Refugees (UNHCR, 1994). Certain proposals were made for a revision of the 1991 Asylum Act, regarding the safety from persecution in third countries, a better access to asylum procedures, establishment of independent appeal body, and facilitating the reunification of refugee families in accordance to fundamental principles of

international refugee law. As a result, in 1997 the revision of the 1991 Asylum Act revoked the principle of " safe country of origin" and introduced the Schengen Agreement as well as the harmonization of the Austrian asylum law in connection with the 1990 EU Dublin Convention[7].

(Fassmann, Reeger, 2001) If on one hand the Schengen Agreement allows a border-free movement among the several EU states, which allows more chances for asylum seekers on choosing their destination country for asylum protection within the EU but on the other hand, conformity of the asylum act to the 1990 EU Dublin Convention, eliminates access to asylum protection on the other EU states, if asylum application have been refused on one member state. Further steps toward the EU-wide harmonization of migration and asylum policies became necessary with the entry into force of the 1999 Amsterdam Treaty which provided, among other things, for minimum standards for both the reception of asylum seekers and asylum procedures, minimum standards for persons granted temporary protection and, finally (albeit not relevant for national legislation), a system of burden-sharing among member states. Austria's constantly changing pattern of policies and politics over the immigration of foreigners in the past has shaped significantly its current public policies that regulate immigration into the country. Recent policies — some more restrictive, some more liberal — reflect Austria's continuing uncertainty about immigration. According to present findings, it is possible to conclude that restricted immigration reforms to Austria, introduced for the last two decades has contributed in a stabilization of the share of foreign national in the population, which seems to be the main goal of the government (Fassmann, Reeger, 2001).

## **General overview of legal system**

Austrian legal framework in the area of migration and asylum had been more restrictive over the past century, (UWT, 2007) and continuous amendments for the last decade made contradictory changes, on one hand more flexible regulation for highly-skilled and more restrictive towards immigrants from third-countries. The general structure of Austrian legal system for migration is based on the Aliens' Police Act, the Settlement and Residence Act, the Aliens' Employment Act, and the Citizenship Act. The asylum system governed by the Federal Asylum Act (EMN, 2011: p. 6). Each of the policies regulates different aspects of migration and asylum. The Settlement and Residence Act regulates long-term immigration issues involving issuance, denial or withdrawal of residence titles for aliens residing or aimed to reside for more than six month in the territory of Austria. (UTW, 2007: 3) This legislation handles also family reunification and immigrants' status related issues. (EMN, 2011: 6) The Aliens' Employment Act governs the procedure of integration of immigrants into the labor market. The provisions of Aliens' Police Act arranges procedures related to entry to Austria and stays less than for six month, and it has authority for termination of both legal and illegal stays on the Federal territory. (EMN, 2011: p. 5)[8]The Federal Asylum Act governs admission for international protection in Austria while Citizenship Act sets the rules concerning acquisition of Austrian citizenship. (EMN, 2011: 6)

## **Institutional Framework – Key Actors and their Attributes**

In Austria, asylum and immigration policies are regulated under the auspices of the Federal Ministry of Interior (www. bmi. gv. at).[9]It is a kind of

<https://assignbuster.com/changing-migration-patterns-in-eu-countries-law-european-essay/>

umbrella institution from which stems other federal, regional, and local authorities responsible for different aspects of immigration and asylum. Responsibility for labor market policies fall into auspices of the Federal Ministry for Labor, Social Affairs and Consumer (www. bmask. gv. at) protection including policies with regard to foreigners.[10]Procedures related to visa issuance and development policies are implemented under the supervision of the Federal Ministry for European and International Affairs (www. bmeia. gv. at).[11](EMN, 2010)

## **Legal Immigration and Integration**

Legal immigration and integration is crucial for any State that receives any kinds of migrants or asylum seekers. Austria's key legislation that governs legal immigration and integration includes Alien's Police Act (Fremdengesetz, FrG), the Settlement and Residence Act, the Aliens' Employment Act (Ausländerbeschäftigungsgesetz, AuslBG), the Citizenship Act and the Asylum Act.

## **Economic Migrant**

The Aliens' Employment Act governs the issues relating to access to the labour market in association with the Settlement and Residence Act. The regulations on asylum applications for international protection are implemented under the Asylum Act, and the Citizenship Act.

## **Family Reunification**

### **Integration**

Austria made significant progress for the last two years towards improving its integration policy thus creating motivation among immigrants. Integration <https://assignbuster.com/changing-migration-patterns-in-eu-countries-law-european-essay/>

policy begins for the State Department, when someone is staying legally in Austria for medium or long term stay in the territory of the country. Accordingly, the task is clearly defined in the areas of asylum and immigration in the agenda of the Ministry of the Interior. Significant change in the field of integration started by appointing a special focal point for integration, a new Secretary of State for Integration headed by Sebastian Kurz, who entered into brand new position on 21 April 2011 (Staatssekretär für Integration, 2011). Establishment of a separate State Secretariat was an important and necessary step for the integration policy in Austria. For many years reputation of Austrian community were known as xenophobic and discriminative, which brought many negative practices and frustration over the social integration of migrants and refugees living in Austria for last decades. The main focus of newly established State Secretariat for Integration is decreasing a negative image of immigrants among Austrian society and promoting success stories of immigrants who integrated into the host country contributing to its further development. As the central cornerstones of successful integration the State Secretariat has defined learning the German language and the acceptance of the host country's democratic and legal values (Staatssekretär für Integration, 2011)." These pillars of integration are essential to the active participation in our society - without having to deny their own roots they have. It is also important for the perception of integration to be set: The many positive life stories and experiences of people with a migration background have an increased focus in the foreground," Sebastian Kurz, State Secretary for Integration.

## **International Protection, Asylum**

In contrast of highly hierarchical institutional network for migration regulation, the asylum proceedings directly fall into competence of the Federal State. The Federal Ministry of the Interior is superior to the Federal Asylum Agency, which deals whole asylum proceedings at first instance.

## **Illegal Migration and Mixed Flows**

According to the IOM International Migration Law " Glossary on Migration" the term " irregular migration" is defined as:" A movement that takes place outside the regulatory norms of the sending, transit or receiving countries. There is no clear or universally accepted definition of irregular migration. From the perspectives of destination countries it is entry, stay or work in a country without the necessary authorization or documents required under immigration regulations. From the perspective of the sending country, the irregularity is for example seen in cases in which a person crosses an international boundary without a valid passport or travel documents or does not fulfill the administrative requirements for leaving the country. There is, however, a tendency to restrict the use of the term ' illegal migration' to cases of smuggling of migrants and trafficking in persons." (IOM, 2011)According to Reyhani, A. N., Kratzmann, K. (2012) the lack of well-defined definition of the term " irregular migration" found to be challenging on policy world to distinguish it from people in need of international protection, who have no ID document. In Austria, it is common to come along with different terms explaining phenomenon of irregular migration such as " illegal migration", " undocumented migration" or " clandestine migration." Accordingly, the correlation between ' irregular migration' and ' mixed

<https://assignbuster.com/changing-migration-patterns-in-eu-countries-law-european-essay/>

migration' can be tested here to investigate policy gaps. Recognition of a strong relationship between 'mixed migration flows' and 'illegal migration' has been found in the report by the Austrian Federal Ministry of Interior as a major new developments in 2011 along with 'migrants smuggling.' This concern highlighted in The Future Strategy of the Ministry of Interior for 2012 (Die Zukunftsstrategie des Innenministeriums), (INNEN. SICHER, 2012: p. 32) as a priority fields to be improved on the policy level and operations. This means, Austrian authorities recognize irregular migration as a major challenge not only for receiving state but for countries of origin or transit, moreover has a dramatic consequence for migrants itself. (Reyhani, A. N., Kratzmann, K., 2012) In this regard, Austria puts significant efforts to reduce irregular migration which found to be implemented through several amendments on the policy level (Aliens' Law amendments in 2005, 2009, and 2011) and also increased international cooperation. (IOM: A. N. Reyhani, personal interview, 23 August, 2012)

## **Border Control**

The results of this study indicate that in case of Austria, current existing system doesn't allow to identify mixed migration flows and routs by which they travel because there is no external border control in Austria with other European Union countries. There is a high possibility that people within the asylum procedure are those who migrated in mixed migration flows and has mixed nature of reasons to leave their country and doesn't fall into any existing in Austria legal systems of migration or asylum protection. However, people arriving through air travel or ground movements across the border of other EU countries to Austria are well received at first receiving points. For <https://assignbuster.com/changing-migration-patterns-in-eu-countries-law-european-essay/>



the air travel, under the Austrian Asylum Act (Section 3: Articles 31-33) that governs a procedure for asylum applications to be submitted at the airport of Austria, the first - instance asylum authority operates since 2005 to determine cases for immediate response or for more complex cases to grant entry into the State territory and transfer a case to the regular asylum procedure (UNHCR 2007: p. 176). According to the UNHCR expert, Police Stations across the Austrian borders serve as the first -instance asylum authority to deal with people aimed to apply for asylum (UNHCR, R. Schöffl, personnel interview, November 22, 2012), which indicates well implementation of basic minimum standards of the Geneva Refugee Convention for the treatment of refugees and asylum seekers with no prejudice granting more complementary treatment (UNHCR, the 1951 Refugee Convention and 1967 Protocol: p. 3). This also helps to deal with irregular migrants. It is very important part of Geneva Convention when any people crossing the border have to be checked, provided assistance on identification, but not immediately sent back without checking if it dangerous for a person. These cases are not problem at all in Austria. In this regard, the border crossing aspects of the Ten Point Action Plan is very well implemented in Austria.

### **Anti-Immigrant Sentiment: Is it a case of the State Sovereignty or Xenophobia at the Political Level?**

Understanding of current Austrian politics over its immigration policies requires a look back into history of national political changes and patterns for the last two decades. Along with other several Western European countries, Austria's anti-immigrant sentiment have been strongly criticised since its

Freedom Party (FPÖ) came into government and gained increasing attention and popularity among local community. (The New York Times, 1999) This subchapter of the thesis will examine political patterns of Austria between 1999 up-to-date in order to find out whether anti-immigrant sentiments exist on political level and its effects on immigration policies. Moreover, the study looks into attitudes of Austrian society toward ethnic minorities and immigrants to examine whether it has xenophobic characteristics of treatment of migrants and asylum seekers as well as implications on successful integration of immigrants.

### **Extreme-Right: Anti-Immigrant Parties**

Founded in 1956, the Austria's Freedom Party (FPÖ) known " as a right-wing, populist party with extremist elements" (Ibid.) under the leadership of charismatic Jörg Haider from 1986 labeled Austrian political history with an extreme anti-immigration ideologies, even pro-Nazi. (Liberty, 2000: 41) Haider's ideologies against " over-foreignization" of Austrian society and his extreme praise of the Third Reich's " decent employment policy" (Liberty, 2000: 41) had an effect on immigration policies in Austria, especially for the period of his coalition with the People's Party (VPÖ) advocating for more restricted regulations. The Extreme-right wing Party found a strong support from Austrian society and broke through political force with its " praise of Nazi employment policy" and " anti-foreigner rhetoric" gaining 42% of the vote in regional elections in Carinthia in March 1999. (Socialism Today, 1999) This victory brought the Freedom Party's leader Jörg Haider at the heart of Government of the Carinthia state by taking the position of Governor of Carinthia. (Ibid.) Beginning of 2000 was crucial in political arena with

<https://assignbuster.com/changing-migration-patterns-in-eu-countries-law-european-essay/>

developments of this coalition between the People's Party (ÖVP) and the Freedom Party (FPÖ). The inclusion of far-right Freedom Party in the Government was highly criticized by the European Union and generated sanctions against Austria. (The Guardian, 2000) As a result, a 14 EU partners had freeze bilateral diplomatic relations with Austria. The EU sanctions were triggered mostly because of " xenophobic or even racist" language that the Freedom Party commonly use in their political activities and public speeches openly promoting " anti-foreigner language" (BBC, 2000b). In the following figure the study shows that the Freedom Party had the most peak of its popularity in 1999 when Parliamentary Elections gained 26, 91% of vote, the biggest share since its establishment. Examination of Parliamentary Elections in Austria shows that the Austrian society's fears of cheap labor immigrants from undesired Eastern Europe and third countries as well as growing stereotypes of " asylum system abuse" by economic migrants was successfully manipulated by the Freedom Party and served as the main issue of political debates among key political parties in Austria[12]. Political debates over Austria's immigration policies served the Freedom Party as a tool to gain votes in both Federal Elections as well as Parliamentary Elections since 1990 until up-to-date. (European Election Database, 2012) The politics of FPÖ over the years remained anti-immigrant and during the 2008 election campaign it had a strong advocacy message for deportation of all illegal immigrants, including legal immigrants with criminal records, also expressed discriminative, even xenophobic administrative requirement for all foreigners such as holding a special state issued ID cards, thus putting a label on every single non-national persons residing in Austria (The New York

Time, 2008). During the last 2008 Parliamentary Elections, the FPÖ gained 17, 54% of vote, only behind of the Social Democratic Party (SPÖ) with around 30%, and followed by another competitor the conservative People's Party (ÖVP) with 26%. (European Election Database, 2012) In comparison the FPO's popularity since 1990 (see Figure 8), It is apparent from the Figure 9 bellow that the FPÖ again gained a public support after a loss during the 2002-2004 elections due to the split with People's Party at that period. However, these findings can be assumed that the Freedom Party has a significant effect on Austria's society and their racist perception of immigrants and refugees, encouraging even further racist public opinion in Austrian society.