

Federal Act on the Exercise of Aliens' Police, the Issue of Documents for Aliens and the Granting of Entry Permits (2005 Aliens' Police Act – Fremdenpolizeigesetz 2005)

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Chapter 1

Scope of Applicability and Definition of Terms

Scope of Applicability

Article 1. (1) This federal act shall govern the exercise of aliens' police, the issue of documents for aliens and the granting of entry permits.

(2) Art. 41 to art. 43, art. 53, art. 58, art. 68, art. 69, art. 72 and art. 76 para (1) shall not apply to asylum seekers (art. 2 subpara 14 of the Federal Act on the Granting of Asylum (2005 Asylum Act – AsylG), FLG I No. 100/2005). A procedure relating to the imposition of a residence prohibition instituted before an application for international protection has been made shall, after such application has been made, be continued in the form of a procedure for the issue of a prohibition to return. A decision shall be taken only on the prohibition to return. In addition, art. 39, 60 and 76 shall not apply to aliens who are entitled to asylum status or subsidiary protection status. Enforcement of an expulsion order or a residence prohibition imposed on an alien shall be admissible only if expulsion can be enforced under art. 10 of the 2005 Asylum Act. It shall be possible to impose a prohibition to return on an alien who has been granted subsidiary protection status.

Definition of Terms

Article 2. (1) "Entry permits" shall be visas (art. 20), re-entry permits during the period of validity of a residence prohibition (art. 72) and special permits for a period of twelve months following rejection at the border, forcible return or expulsion (art. 73).

(2) "Aliens' police" shall be in particular

1. control of entry of aliens into the federal territory and prevention of unlawful entry;
2. control of the residence of aliens in the federal territory as well as termination of unlawful residence;
3. control of departure of aliens from the federal territory as well as enforcement of rulings on departure and
4. prevention and termination of criminal offences under this federal act.

(3) "Documents for aliens" shall be alien's passports (art. 88), Convention travel documents (art. 94), photo identity cards for bearers of privileges and immunities (art. 95), emergency travel documents for nationals of a Member State of the European Union (art. 96) and travel documents for the expulsion of third-country nationals (art. 97).

(4) Within the meaning of this federal act

1. "alien" shall be a person who is not an Austrian national;
2. "entry" shall be the entering of the federal territory;
- 2a. "departure" shall be the leaving of the federal territory;
3. "transit" shall be the crossing of the federal territory including stops indispensable therefor;
4. "travel document" shall be a passport, a passport replacement document or any other travel document recognised by federal act, by ordinance or by virtue of international agreements; foreign travel documents shall enjoy protection, under criminal law, of domestic public documents according to art. 224, art. 224a, art. 227 para (1) and art. 231 of the Criminal Code (CC – StGB), FLG No. 60/1974;

5. a travel document shall be “valid” if it has been issued by a duly empowered subject under international law, states the identity of the holder without doubt, is valid in terms of time and its territorial validity includes the Republic of Austria; with the exception of convention travel documents and travel documents issued to stateless persons or persons with unknown nationality, also the nationality of the holder shall be stated without doubt; attachment of additional sheets in the travel document shall be certified;
 6. “Convention Implementing the Schengen Agreement” (SDÜ) shall be the Convention of 19 June 1990 Implementing the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the Gradual Abolition of Checks at their Common Borders, FLG III No. 90/1997;
 7. “contracting state” shall be a state for which the Agreement signed on 28 April 1995 on the Accession of the Republic of Austria to the Convention Implementing the Schengen Agreement, FLG III No. 90/1997, is in effect;
 8. “EEA national” shall be an alien who is a national of a party to the Agreement on the European Economic Area (EEA Agreement);
 9. “third country” shall be any country that is not a Member State of the EEA Agreement;
 10. “third-country national” shall be an alien who is not an EEA national;
 11. “privileged third-country national” shall be the spouse, own relatives and relatives of the spouse of an EEA, Swiss or Austrian national who have made use of their right of free movement, in the direct descending line until they have attained the age of 21 and, beyond that age when they are provided maintenance, as well as own relatives and relatives of the spouse in the direct ascending line when they are provided maintenance if the third-country national accompanies or later joins the EEA, Swiss or Austrian national entitled to free movement from whom the privilege under Community law is derived;
 12. “family member” shall be any person who is a third-country national and spouse or an unmarried minor child, including an adoptive child or step child (core family);
 13. “decision on departure” shall be forcible return (art. 45), deportation (art. 46), expulsion (art. 53 and art. 54) or a residence prohibition (art. 60) imposed by an Austrian aliens’ police authority, or the decision on expulsion taken by a Member State of the European Economic Area (art. 71);
 14. “residence permit” shall be a residence permit within the meaning of the Federal Act on Settling and Residing in Austria (Settlement and Residence Act – NAG), FLG I No. 100/2005, or a residence permit issued by a contracting state, authorising settlement in its territory;
 15. “right of free movement” shall be the right of an EEA national under Community law to settle in Austria;
 16. “merely temporary independent gainful occupation” shall be any employment which is carried on for a maximum period of six months within a period of twelve months where a place of residence that continues to be the centre of vital interests is retained in the third country, and which does not constitute a case of obligatory insurance mentioned in art. 2 of the Social Insurance Act for Trade and Industry (Gewerbliches Sozialversicherungsgesetz – GSVG), FLG No. 560/1978;
 17. “merely temporary dependent gainful occupation” shall be any employment where a permit or other certificate under the Aliens’ Employment Act of 20 March 1975 (Aliens’ Employment Act – AuslBG), FLG No 218/1975, has been issued that is valid for a maximum period of six months, or which is carried on for a maximum period of six months within a period of twelve months by virtue of an exceptional provision under the Aliens’ Employment Act, (art. 1 paras (2) and (4) of the Aliens’ Employment Act).
- (5) Within the meaning of this federal act
1. “internal borders” shall be the borders of Austria with other contracting states (art. 2 para (4) subpara 7) as well as Austrian airports for domestic flights and Austrian harbours for inland waterway transport;
 2. “external borders” shall be the borders of Austria as well as Austrian airports and harbours unless they are internal borders;

3. "representing authorities" shall be Austrian diplomatic and consular representing authorities or representing authorities of the contracting states responsible for the issue of visas under the Schengen Agreement;
4. "identification data" shall be photographs, papillary line prints of the fingers, physical distinguishing marks and signature.

Chapter 2
Competence and Special Rules of Procedures
Section 1
Competence

Aliens' Police Authorities and Public Security Service Officers

Article 3. (1) Within the meaning of this federal act public security service officers (art. 5 of the Federal Act on the Organisation of Security Administration and the Exercise of Security Police Services (Security Police Act – SPG), FLG No. 566/1991, shall act on behalf of aliens' police authorities (art. 4 of the Security Police Act) or on their own account.

(2) To monitor compliance with the provisions of this federal act the Federal Minister of the Interior and the Director of Security may make use of public security service officers assigned, allocated or subordinate to them. Provided that the officers hereby act within the framework of the competence of an aliens' police authority, they shall intervene as their officers.

(3) Public security service officers who, in performing tasks under this federal act, leave the administrative area of their aliens' police authority shall be considered in such official act as officers of the aliens' police authority having regional competence; they shall inform such authority of their intervention without delay and shall be bound by its directions and instructions.

(4) In cases where the aliens' police authority having regional competence cannot take the required measures in time, public security service officers having no regional competence shall be allowed to perform official acts of the aliens' police outside the administrative area to which they are assigned, allocated or subordinate. Such acts shall be considered official acts of the aliens' police authority of first instance having regional competence; the intervening public security service officer shall notify such authority of the official act without delay.

Municipal Guard Force

Article 4. At the request of a municipality, members of its municipal guard force may be placed under the control of the aliens' police authority, with its consent, to monitor compliance with this federal act. In performing these tasks, they shall act on behalf of the aliens' police authority and may use the powers granted in this federal act. Such subordination shall take place by ordinance of the Director of Security. It shall be repealed

1. at the request of the municipality or
2. at the request of the aliens' police authority of first instance if the municipal guard force does not carry out the tasks it has been assigned.

The authorisation shall be repealed by ordinance of the Director of Security.

Domestic Functional Competence

Article 5. (1) Aliens' police authorities of first instance shall

1. exercise aliens' police (art. 2 para (2));
2. issue documents for aliens (art. 2 para (3)), with the exception of emergency travel documents under art. 96;

3. conduct administrative penal proceedings under this federal act;
4. impose sanctions under art. 112 and
5. charge costs under art. 113.

(2) The Federal Minister of the Interior may, by ordinance, authorise aliens' police authorities of first instance to issue visas at certain border crossing-points if this facilitates travel or is in the interests of convenience, time and simplicity.

(3) Visas, except for airport transit visas, shall be exclusively issued by aliens' police authorities of first instance to which an authorisation under para (2) above refers. Aliens' police authorities of first instance shall be authorised, at border crossing-points, to invalidate B and C visas as well as D and D+C visas issued by Austria.

(4) The issue or invalidation of service visas shall be incumbent on the Federal Minister of the Interior, of diplomatic visas on the Federal Minister of Foreign Affairs.

(5) Under international agreements that facilitate travel of aliens in the border areas of the Republic of Austria (art. 17 para (2)) other than aliens' police authorities of first instance may be designated to issue and countersign documents admissible for entry, residence and departure within the framework of such an agreement.

(6) If one of the agreements mentioned in para (5) above does not contain a provision on functional competence, aliens' police authorities of first instance having regional competence shall issue and countersign the documents admissible for entry, residence and departure. The Federal Minister of the Interior may authorise them by ordinance to issue such documents at border crossing-points to persons having the nationality of a contracting state if this makes it considerably easier for aliens to obtain such a document for departure and entry.

Domestic Regional Competence

Article 6. (1) Domestic regional competence shall depend on the principal place of residence within the meaning of art. 1 para (7) of the 1991 Domicile Registration Act (Meldegesetz 1991 - MeldeG), FLG No. 9/1992, and for lack of such, on any other place of residence of the alien in the federal territory. If there exist several other places of residences, the one established last shall be the relevant place of residence.

(2) If an alien does not have a place of residence in the federal territory, competence shall depend on his whereabouts at the time of the first intervention by the authority under this federal act.

(3) Regional competence for the issue of a visa at a border crossing-point shall depend on the whereabouts and shall not be in conflict with a place of residence in Austria.

(4) Regional competence for invalidation of a visa, for the issue and revocation of stay of deportation, for revocation of a re-entry permit during the period of validity of a residence prohibition and a special permit for the period of twelve months following rejection at the border, forcible return or expulsion as well for imposition of detention pending deportation [Schubhaft] and for deportation shall depend on the whereabouts.

(5) A residence prohibition shall be lifted by the aliens' police authority of first instance imposing the the residence prohibition.

(6) Measures to be taken without delay and measures to review lawfulness of entry, residence and departure shall be taken by the aliens' police authority of the administrative area in which the alien has his whereabouts or through which the alien wants to enter or depart from Austria.

(7) If the alien is arrested under art. 39 in a means of public transport in the process of a journey, regional competence for all measures to be taken by reason of arrest shall depend on the nearest exit point where he is able to exit from the means of transport according to the timetable of the transport company.

(8) The admission order under art. 74 para (3) shall be issued by the security headquarters [Sicherheitsdirektion] of the province in which entry of the alien is to take place.

(9) Regional competence for conducting administrative penal proceedings shall depend on para (7) above in cases where it is determined by the exit point; in any other cases it shall depend on the Administrative Penal Act 1991 (Verwaltungsstrafgesetz 1991 – VStG), FLG No. 52.

Functional Competence Abroad

Article 7. In a foreign country, representing authorities shall

1. issue, refuse and invalidate visas and issue humanitarian visas (art. 22) only with the consent of the Federal Minister of the Interior;
2. issue, refuse and revoke re-entry visas (art. 72) only with the consent of the Federal Minister of the Interior;
3. issue, refuse and invalidate special permits for a period of twelve months following rejection at the border, forcible return or expulsion;
4. issue, limit territorial validity, refuse and withdraw alien's passports and Convention travel documents, except for first issue, and
5. issue emergency travel documents for nationals of a Member State of the European Union.

Regional Competence Abroad

Article 8. (1) Unless otherwise stipulated, regional competence for performing official acts under this federal act in foreign countries shall depend on the alien's place of residence. Any consular representation office may take action upon directive of the Federal Minister of Foreign Affairs.

(2) If the alien has a place of residence in the federal territory, regional competence abroad shall depend on the alien's whereabouts.

Appeals

Article 9. (1) (Constitutional provision) Unless otherwise stipulated, appeals against decisions under this federal act shall be decided by

1. the independent administrative review boards of the respective provinces in the case of EEA, Swiss and privileged third-country nationals and
2. the security headquarters, as last instance, in any other cases.

(2) No appeal shall be admissible against the refusal, granting and revocation of stay of execution. No appeal, and no special type of appeal [Vorstellung], shall be admissible against the refusal, granting and revocation of stay of deportation as well as against the order of detention pending deportation. No appeal shall be admissible against the refusal to issue a clearance certificate.

(3) No appeal shall be admissible against decisions on applications for the issue of entry permits (art. 2 para (1)) to other than privileged third-country nationals (para (4) below).

(4) Appeals against decisions on applications for the issue of entry permits to privileged third-country nationals by authorities under art. 8 shall be decided by the Independent Administrative Review Board in whose administrative area the alien has or intends to have a place of residence. If such place of residence cannot be established, the Independent Administrative Review Board of the Province of Vienna shall have competence.

(5) Appeals against any other decisions by authorities under art. 8 shall be decided by the Federal Minister of the Interior who shall be the supreme authority as to functional competence.

(6) Appeals against administrative decisions under art. 112 and 113 paras (4) and (5) shall be decided by the Independent Administrative Review Board.

(7) If the appealing party is not entitled to enter Austria, a hearing by the Independent Administrative Review Board need not take place where the facts of the case have been finally established.

Official Objection

Article 10. The Federal Minister of the Interior and the Director of Security shall be entitled, both in favour and to the detriment of the person concerned, to file an official objection with the Administrative Court [Verwaltungsgerichtshof] against rulings made by the

independent administrative review boards under art. 9 and art. 83 within six weeks of service of the decision upon the authority of first instance. In the same way, within six weeks of service of the decision upon the competent aliens' police authority, the Federal Minister of the Interior and the Director of Security may file an official objection with the Administrative Court against rulings made by the Independent Administrative Review Board on appeals against administrative penal proceedings under this federal act (art. 129a para (1) subpara 1 of the Federal Constitutional Act [Bundesverfassungsgesetz - B-VG]) or against rulings made by the Independent Administrative Review Board on complaints by persons who claim that their rights have been violated by the exercise of direct command and coercive measures (art. 129a para (1) subpara 2 of the Federal Constitutional Act).

Section 2

Special Rules of Procedure

Proceedings before Austrian Representing Authorities

Article 11. (1) In proceedings before Austrian representing authorities the applicants themselves shall, guided by the authority, submit the documents and evidence required to establish the relevant facts of the case; the representing authority shall judge freely whether to deem a fact as proven or not. A decision not fully reflecting the applicant's view in substance may be taken only if the party has been given the opportunity to correct defects of form and make a concluding statement.

(2) At the party's application in writing or in the minutes, the decision under para (1) above shall be executed also in writing, stating the relevant statutory provisions, in addition to the decision taken; additional grounds need not be given.

(3) The executed copy shall give the name of the authority, the date of the decision and the signature of the approving official; alternatively to the signature, it may also bear the seal of the Republic of Austria, provided that the identity of the approving official can be identified in the file. Service shall be effected by handover of the document in the authority's premises or by post.

(4) In the case of privileged third-country nationals, decisions under para (1) above shall be executed in writing in such manner that the person concerned is able to understand their substance and effect. The person concerned shall be informed, in detail and extensively, of the grounds underlying the decision, relating to public order, security or health unless such communication is in conflict with grounds relating to the security of the Republic of Austria. The written copy of the grounds shall also state the appellate authority.

(5) If no decision on the merits is taken within six months of submission of the application and if, in cases under para (2) above, the decision is not executed in writing within two months of submission of the application, competence for decision or execution shall pass to the Federal Minister of the Interior upon written application. Such an application shall be submitted to him directly. For decision or execution he shall apply paras (1) to (4) above and para (6) below. The application shall be rejected if the delay is not exclusively attributable to the representing authority.

(6) If the application for issue of an entry permit cannot be allowed because of imperative foreign policy considerations or grounds relating to national security, the representing authority, and in cases under para (5) above the Federal Minister of the Interior, shall be authorised to confine themselves to pointing out that imperative grounds for refusal exist. In these cases, too, the relevant facts of the case shall be identifiable in the file.

Special Provisions for Minors

Article 12. (1) Minor aliens who have attained the age of 16 shall have legal capacity in proceedings under chapters 2 to 10. They may ask a legal representative and a person of their confidence not involved in the case to attend a hearing.

(2) An alien's legal representative under para (1) above shall be entitled

1. to inspect the file also against the minor's wishes and file motions for the admission of evidence and

2. to file an appeal, make complaints and file motions for reinstatement in the status quo ante or for resumption of proceedings within the period granted to a party.

(3) Minor aliens who have not attained the age of 16 and whose interests cannot be safeguarded by their legal representative, may, on their own behalf, perform procedural acts only to their benefit. Upon the institution of such proceedings the youth welfare agency of the capital of the province where the minor is resident shall become the alien's legal representative. If the very same authority has competence for the proceedings before the aliens' police authority and for legal representation, the nearest youth welfare agency shall become the legal representative.

(4) It shall be the duty of the aliens' police authority to establish an alien's age in the course of preliminary investigations. To clarify the facts of the case also a medical officer may be consulted. If an alien claims not to have attained a certain age and, thus, to be a minor, contact shall be established with the competent youth welfare organisation without delay and the same shall be heard, except in cases where this is obviously not true. An alien's refusal to help clarifying the facts of the case shall be reflected in the evaluation of the evidence by the aliens' police authority.

Chapter 3

Principles of the Execution of Tasks and Powers of the Aliens' Police

Execution Principles

Article 13. (1) To perform the tasks conferred on them under this federal act aliens' police authorities and the public security service officers may use all legally admissible means which do not interfere with a person's rights.

(2) In performing these tasks they may interfere with a person's rights only if such power is provided in this federal act and if other more lenient measures are not sufficient to perform these tasks or if use of other measures is disproportionate to the interference otherwise appropriate. If interference with the rights of persons is found to be necessary, it may take place only where it is proportionate to the occasion and to the intended success.

(3) Public security service officers shall be authorised to enforce the powers and orders of aliens' police authorities, granted to them under this federal act, by using direct command and coercive measures. The person concerned shall be warned of the exercise of direct command and coercive measures and the same shall be announced. Such exercise shall be stopped as soon as the intended success has been achieved, it is found that it cannot be achieved such or the intended success is disproportionate to the interference required for enforcement. In any case, a threat to life or sustainable danger to health shall be inadmissible.

(4) Use of coercive force shall be governed by the provisions of the Act on the Use of Firearms 1969 (Waffengebrauchsgesetz 1969).

(5) Public security service officers shall be allowed to use physical force towards property if this is absolutely necessary for the exercise of a power. Hereby, they shall take every effort not to place any persons in danger.

Information Obligation by Public Security Service Officers

Article 14. (1) If public security service officers interfere with the rights of persons in performing tasks under this federal act, this, apart from separate information obligations under this federal act, shall be communicated to the competent aliens' police authority of first instance without undue delay.

(2) Officers assigned, allocated or subordinate to the Federal Minister of the Interior or the Director of Security shall inform the authority they are assigned, allocated or subordinate to. Moreover, para (1) above shall apply to such officers where they take action within the area of competence of an aliens' police authority of first instance.

Chapter 4
Lawfulness of Entry, Residence and Departure of Aliens
Section 1
Lawfulness of Entry, Passport Requirement and Visa Requirement

Requirements for Lawful Entry into the Federal Territory

Article 15. (1) Unless otherwise stipulated by federal act or international agreement or otherwise in conformance with international practice, aliens need a valid travel document for lawful entry into federal territory (passport requirement).

(2) Unless otherwise stipulated by federal act, international agreements or directly applicable legal instruments of the European Union, aliens subject to the passport requirement need a visa (visa requirement) for lawful entry into the federal territory. Aliens who hold a valid residence permit, a special permit for a period of twelve months following rejection at the border, forcible return or expulsion or a re-entry permit during the period of validity of a residence prohibition shall be deemed to comply with the visa requirement.

(3) If an alien enters the federal territory across an external or an internal border - if such crossing within the meaning of art. 10 para (2) of the Federal Act on Controls on Individuals on the Occasion of the Crossing of the Border (Grenzkontrollgesetz - GrekoG), FLG No. 435/1996, is provided only at border crossing-points - such entry shall be lawful where it takes place without evasion of border checks.

(4) Moreover, entry of an alien shall be lawful

1. if no contracting state has communicated any ground for rejection at the border;
2. if the alien holds a residence permit of a contracting state or an Austrian entry permit even though a contracting state has communicated a ground for rejection at the border;
 1. if entry takes place at the border crossing-point potentially provided for use or
 2. if the alien had to be readmitted by virtue of a readmission agreement (art. 19 para (4)) or international practices, has entered the country in the course of a transit operation (art. 48 para (1)) or by virtue of a transit permit under art. 67 of the Federal Act on the Extradition and Legal Assistance in Criminal Matters of 4 December 1979 (Auslieferungs- und Rechtshilfegesetz - ARHG), FLG No. 529.

Section 2
Provisions Relating to the Passport Requirement

General Provisions

Article 16. (1) If required in the public interests, in particular with regard to passport and aliens' police as well as foreign policy matters, the Federal Minister of the Interior, in agreement with the Federal Minister of Foreign Affairs, shall be authorised to stipulate by ordinance that specific types of travel documents issued by states other than the contracting states shall be travel documents not suitable to meet the passport requirement.

(2) Aliens included on the passport may only enter or depart if they are accompanied by the person on whose travel document they are included. This shall not apply to measures for termination of residence or for transport abroad under chapters 5 to 10.

(3) Aliens who have been issued a collective passport shall be deemed to comply with the passport requirement but may enter or depart only together. For this purpose, each traveller needs an identification document that has been issued by an authority and shows his identity. This shall not apply to measures for termination of residence or for transport abroad under chapters 5 to 10.

Limitation of the Passport Requirement

Article 17. (1) Provided that the Federal Government is authorised to conclude intergovernmental agreements under art. 66 para (2) of the Federal Constitutional Act, it may agree, on the basis of reciprocity, that aliens subject to the passport requirement shall be entitled to enter, reside in and depart from the federal territory also by virtue of other travel documents than those mentioned in art. 15 para (1) and art. 16 para (3). Such aliens shall be deemed to comply with the passport requirement.

(2) In agreements under para (1) above, which are to facilitate travel in the border areas of the Republic of Austria, it may be determined that aliens who have entered by virtue of such a travel document may reside in the border areas of the Republic of Austria. In such case, the international agreement may also stipulate that the document provided for entry, residence and departure be countersigned by an Austrian authority.

(3) If it is in the public interests, the Federal Minister of the Interior, in agreement with the Federal Minister of Foreign Affairs, shall be authorised to stipulate that specific aliens subject to the passport requirement may enter, reside in and depart from the federal territory by virtue of different documents. Such aliens shall be deemed to comply with the passport requirement.

(4) EEA nationals and Swiss nationals shall be deemed to comply with the passport requirement also with an identity card and may enter, reside in and depart from the federal territory by virtue of such travel document.

Exemptions from the Passport Requirement

Article 18. (1) No passport requirement shall exist for aliens

1. where a declaration of admission is issued (art. 19);
2. where a residence permit is issued under the Settlement and Residence Act if the alien does not hold a travel document or
3. in case of transit (art. 48).

(2) Aliens who are entitled to asylum status or subsidiary protection status and do not hold a valid travel document but are able to make their identity credible may not be refused entry, regardless of their liability under art. 120 and art. 121.

Declaration of Admission

Article 19. (1) At the request of a competent authority of another state, a declaration of admission shall be issued for an alien who is to be compulsorily transferred from the territory of this state to the federal territory and is to be admitted by the Republic of Austria by virtue of an international agreement (para (4) below), under an agreement of the European Community or in conformance with international practice.

(2) The declaration of admission shall be expressly referred to as such; it shall indicate the alien's identity and nationality.

(3) Unless otherwise provided in an international agreement or an agreement of the European Community, the period of validity of the declaration of admission shall be determined for as long as required for the alien's return; for entry, a specific border crossing-point or a specific place in a contracting state shall be specified.

(4) Provided that the Federal Government is authorised to conclude intergovernmental agreements under art. 66 para (2) of the Federal Constitutional Act, it may agree, on the basis of reciprocity, that persons who have unlawfully entered the territory of another state from the federal territory or who do not, or no longer, comply with the requirements for entry or residence in this state shall be admitted to re-enter the federal territory (readmission agreement).

Section 3

Provisions Relating to the Visa Requirement

Form and Effect of Visas

Article 20. (1) Visas shall be issued in the form of

1. an airport transit visa (visa for airport transit, A visa);
2. a transit visa (B visa);
3. a travel visa (short-stay visa, C visa);
4. a residence visa (long-stay visa, D visa) or
5. a residence/travel visa (D+C visa).

(2) Any visa issued by a contracting state, whose territorial validity comprises Austria shall be valid as entry permit; a D Visa not issued by Austria shall entitle a person to transit only. A D+C Visa not issued by Austria shall entitle a person to be resident in Austria only for a maximum period of three months as from the first day of its validity.

(3) Visas shall be issued for entry and residence of up to six months. Employment activities shall be admissible only within the framework of business trips and in cases under art. 24.

(4) Visas may be issued for single or multiple entry. In the interest of maintaining public order and security the authority may stipulate in the visa that specific border crossing-points have to be used.

(5) Transit visas shall entitle a person to single or multiple transit through the contracting states and through Austria within five days. Travel visas shall entitle a person to be resident in contracting states and Austria for up to three months. If the alien's travel document is not valid for all contracting states, the transit visa or the travel visa shall be limited to the federal territory and the contracting states for which the travel document is valid. Residence visas shall entitle a person to be resident in Austria for a period exceeding three months. Residence/travel visas shall entitle a person to be resident in Austria for a period exceeding three months and, at the same time, from the first day of their validity for a maximum period of three months in other contracting states.

(6) Visas may be issued in the form of service visas or diplomatic visas. They may be issued to aliens on the conditions on which Austrian service or diplomatic passports are issued to Austrian nationals for any such reason. Official acts in connection with such visas shall be free of charge.

(7) The external form of the visas shall be laid down by ordinance of the Federal Minister of the Interior.

Issue of Visas

Article 21. (1) Visas may, upon application, be issued to an alien if

1. he holds a valid travel document;
2. it appears guaranteed that the alien will depart again;
3. the issue of the visa is not in conflict with public interests unless the interests of the alien in the issue of the visa outweigh the public interests not to issue the visa and
4. no ground for refusal (para (7) below) exists.

(2) Visas shall be issued for a limited period of time and cannot be extended. Their validity shall not extend that of the travel document. The period of validity of the travel document shall exceed that of a visa by at least three months.

(3) In general, collective visas shall be issued to aliens who have been issued a collective passport. Seamen of the same nationality who are travelling in a group of 5 to 50 persons may, at the border, be issued a collective visa for transit on a separate sheet, in compliance with Council Regulation (EC) No. 415/2003 on the Issue of Visas at the Border, Including the Issue of Such Visas to Seamen in Transit, OJ L 064 of 7 March 2003, p 1.

(4) In weighing the interests under para (1) subpara 3 above, the authority shall, considering the purpose and duration of the alien's residence, take account of

1. his personal situation, in particular his family ties, his financial circumstances and, if applicable, the duration of his present residence in the federal territory and
2. public interests, in particular security police and economic matters and public health.

(5) Public interests shall be in conflict with the issue of a visa, in particular, if

1. the alien does not have health insurance protection covering all risks or he suffers from a severe illness according to the health certificate as defined in art. 23;
2. the alien does not possess sufficient means of his own for his maintenance and subsequent departure;
3. the alien's residence might lead to the financial burden of a territorial authority unless such burden would result from meeting a claim existing prior to entry;
4. the alien's residence would pose a threat to public order or security;
5. the alien's residence would impair the relations of the Republic of Austria to any other state;
6. there is reason to believe that the alien intends to carry on employment activities in the federal territory, except in the course of business trips or in cases under art. 24;
7. certain facts justify the assumption that the alien belongs or belonged to a criminal association or criminal organisation (art. 278 and 278a of the CC) or a terrorist association (art. 278b of the CC);
8. certain facts justify the assumption that the alien's conduct poses a threat to national security, in particular by public participation in violent acts, by publicly calling for violence or by instigation or provocation or
9. the alien publicly approves or promotes a crime against peace, a war crime, a crime against humanity or comparable terrorist acts in a gathering or by spreading written work.

(6) The authority may issue a visa to an alien despite the existence of facts under para (5) subpara 1, 2 or 3 above if, by virtue of an undertaking entered into in the public interests by a legal entity within the meaning of art. 1 para (1) of the Liability of Public Bodies Act (Amtshaftungsgesetz - AHG), FLG No. 20/1949, or by virtue of a formal undertaking given by a person having his principal place of residence or seat in the federal territory, payment of all costs that might arise for legal entities as a result of the alien's residence appears guaranteed.

(7) The issue of the visa shall be refused (para (1) subpara (4) above)

1. if a final residence prohibition has been imposed on the alien;
2. if a contracting state has communicated a ground for rejection at the border;
3. where necessary because a travel document is submitted for the purpose of obtaining an airport transit, travel or transit visa, which is not recognised by all contracting states;
4. where a travel visa in connection with an already expired travel visa would enable residence exceeding three months within the six-month period following first entry or
5. if the alien has attempted to deceive with regard to his true identity, his nationality or the authenticity of his documents in the process of being issued a visa.

(8) Third-country nationals who enjoy freedom of settlement but not exemption from the visa requirement under a state treaty, a federal act or a directly applicable legal instrument of the European Union shall be entitled to the issue of a visa in compliance with this state treaty, federal act or legal instrument.

Humanitarian Visas

Article 22. (1) Notwithstanding the existence of grounds for refusal under art. 21 para (7) subpara 2, the representing authority may, in cases deserving particular consideration on humanitarian grounds, by reason of national interests or international obligations, issue a travel visa to aliens by virtue of office, which is territorially limited to the federal territory.

(2) Notwithstanding the existence of grounds for refusal under art. 21 para (7) subpara 4, the representing authority may, in cases deserving particular consideration on humanitarian grounds, issue an additional travel visa to aliens within the respective six-month period, which is territorially limited to the federal territory.

(3) Notwithstanding the existence of grounds for refusal under art. 21 para (1) subpara 1, the representing authority may, in cases deserving particular consideration on humanitarian

grounds, by reason of national interests or international obligations, issue a visa to aliens on a form as defined in Council Regulation (EC) No. 333/2002 on a Uniform Format for Forms for Affixing the Visa Issued by Member States to Persons Holding Travel Documents not Recognised by the Member State Drawing up the Form, OJ L 053 of 23 February 2002, p. 4. Such a visa shall be territorially limited to the federal territory.

Health Certificate

Article 23. (1) With a view to avoiding a threat to public health, the Federal Minister for Health and Women may, by ordinance, identify specific states in which the risk of being infected with

1. a notifiable disease (serious illness) within the meaning of the Epidemics Act 1950 (Epidemiegesetz), FLG No. 186, which is easily transmitted by usual social contact,
2. any other serious infectious disease not subject to notification or
3. notifiable tuberculosis within the meaning of art. 3 lit. a of the Tuberculosis Act (Tuberkulosegesetz), FLG No. 127/1968,

is considerably increased and, thus, there is the risk that a large number of people may be sustainably and seriously endangered.

(2) Aliens who have been resident in a state identified in the ordinance under para (1) above for a period of six months prior to their entry into federal territory may be granted a visa if they present a health certificate that certifies that they are free from the diseases specified in the ordinance under para (1) above.

(3) The ordinance shall name the disease to which the requirements of para (1) above apply and define contents and validity of the health certificate.

Special Provisions Relating to the Issue of Visas for Employment

Article 24. (1) The taking up of

1. a merely temporary independent gainful occupation (art. 2 para (4) subpara 16);
2. a merely temporary dependent gainful occupation (art. 2 para (4) subpara 17) or
3. an activity the pursuit of which requires a work permit under art. 5 of the Aliens' Employment Act

in the federal territory shall be possible only after a residence/travel visa has been issued. In such case, considering art. 21 para (1), and, where the Aliens' Employment Act applies upon presentation of a confirmation of engagement [Sicherungsbescheinigung] under art. 11 of the Aliens' Employment Act, the alien shall be issued a residence/travel visa valid for up to six months.

(2) Para (1) above shall not apply to aliens entitled to enter without visa for the taking up of an activity under para (1) subpara 3 above.

(3) If an authority informs the competent representing authority abroad under the Settlement and Residence Act that an alien subject to the visa requirement will be granted a residence permit, he shall be issued a residence visa with a period of validity of four months, considering art. 21 para (1) subparagraphs 1, 3 and 4.

Procedure for the Issue of Visas

Article 25. (1) The Common Consular Instructions (CCI) for the diplomatic missions and consular posts, OJ No. C 310 of 19 December 2003, p. 1, shall apply to the procedure for the issue of visas.

(2) In the application the alien shall state the respective purpose and intended duration of his journey and residence. The authority may request that he appears in person. In addition, art. 10 of the Act on General Administrative Procedures (Allgemeines Verwaltungsverfahrensgesetz – AVG) shall apply. With the exception of cases under art. 22 para (3), the application shall be rejected if the applicant does not present a valid travel document or, where applicable, a health certificate, despite being requested to do so and being granted a period of grace or if the applicant has failed to appear in person before the authority, despite being requested to do so even though this legal consequence has been pointed out in the

summons. The application shall be also rejected if the provisions of the CCI (para (1) above) are not complied with.

(3) Minor aliens who have attained the age of 14 may apply for a visa on their own behalf. Consent by the legal representative shall be required; proof of such consent shall be furnished by the applicant.

(4) Upon application for issue of an airport transit visa (art. 20 para (1) subpara 1) the alien shall specify the airport transit zone he wants to use.

(5) Official acts in connection with the issue of visas shall be exempt from administrative charges, provided that

1. an obligation to that effect exists under international law or
2. service or diplomatic visas are to be issued and reciprocity exists.

(6) The visa shall be entered into the alien's travel document.

(7) If a request for the exercise of identification procedures (art. 99 para (1) subpara 6) is not complied with, the application for issue of a visa shall be rejected.

Invalidation of Visas

Article 26. (1) A visa shall be invalidated if, subsequently, facts become known or occur which would justify a non-issue (art. 21 para (1)).

(2) If a visa is to be invalidated at a border crossing-point, the aliens' police authority, after establishing the relevant facts of the case, shall give the person concerned an opportunity for comment. If the visa is invalidated, such invalidity shall be entered in the travel document. The relevant facts of the case shall be recorded in a reproducible manner.

Invalidity and Non-Relevance of Visas

Article 27. (1) Visas shall become invalid if a residence prohibition or an expulsion order becomes enforceable against the alien.

(2) Visas shall become non-relevant if

1. an additional visa with overlapping validity is issued;
2. a residence permit with overlapping validity is issued or
3. the alien becomes an Austrian national, an EEA national or a Swiss national.

(3) The invalidity or non-relevance of the visa entered in the alien's travel document shall be marked in such travel document. Any aliens' police authority to which a travel document has been submitted during an official act under this federal act shall be authorised to do so.

Section 4

Exemptions from the Visa Requirement

Transit Passengers

Article 28. (1) Aliens who during a stopover at an Austrian airport do not leave the airport's transit area or disembark from the aircraft (transit passengers) shall not be subject to the visa requirement.

(2) Where required by public interests, in particular relating to the fight against international crime of gangs or organised crime or terrorism, protection against evasion of the visa requirement or to the relations between the Republic of Austria and other states, the Federal Minister of the Interior may, in agreement with the Federal Minister of Foreign Affairs, stipulate by ordinance that nationals of certain states, holders of certain travel documents or travellers on certain routes shall require an airport transit visa for transit purposes. Such aliens may, upon application, be granted an airport transit visa, provided they hold a valid travel document and the public interests referred to are not in conflict with such granting.

Beareres of Privileges and Immunities

Article 29. Aliens who have been issued a photo identity card under art. 95 shall not require a visa during the period of validity of such photo identity card for residence in or re-entry into the federal territory.

Other Exemptions from the Visa Requirement

Article 30. (1) Aliens who are exempt from the visa requirement and enjoy freedom of settlement by virtue of generally recognised rules of international law, a state treaty, a federal act or a directly applicable legal instrument of the European Union shall not require a visa for entry into the federal territory.

(2) Provided that the Federal Government is authorised under art. 66 para (2) of the Federal Constitutional Act to conclude intergovernmental agreements, it may agree, subject to reciprocity, that aliens shall be entitled to enter and reside in the federal territory without a visa.

(3) If so required by public interests for the purpose of facilitating travel, the Federal Minister of the Interior, in agreement with the Federal Minister of Foreign Affairs, shall be entitled to grant exemptions from the visa requirement to specific aliens by ordinance. Unless such ordinance specifies a shorter period, such aliens shall be entitled to residence in the federal territory for a period of three months after entry.

(4) Children who are not Austrian nationals shall be exempt from the visa requirement until they are six months old, provided that their mother or another alien who is responsible for the care and upbringing of the child is lawfully settled in the federal territory; the foregoing shall, however, apply only for as long as the person concerned remains lawfully settled and, with respect to the father, only if the right of care and upbringing falls solely to the father. Moreover, such children shall be granted exemption from the visa requirement until they are six months old if and for as long as an Austrian national having his principal place of residence in the federal territory is solely responsible for their care and upbringing.

(5) Aliens who are entitled to asylum status or subsidiary protection status in Austria shall not require a visa for lawful entry.

Section 5

Requirements for Lawful Residence and Lawful Departure

Requirements for Lawful Residence in the Federal Territory

Article 31. (1) Aliens shall be lawfully resident in the federal territory

1. if they have lawfully entered and, during their residence in the federal territory, have not violated the limitations or conditions of the entry permit or the duration or residence determined by international agreements, federal act or ordinance;
2. if they are entitled to settlement or residence by virtue of a residence permit or documentation establishing their right of residence under the Settlement and Residence Act or to residence by virtue of an ordinance for displaced persons;
3. if they hold a residence permit issued by a contracting state;
4. as long as they have a right of residence according to asylum provisions;
5. unless they had to be readmitted by virtue of a readmission agreement (art. 19 para (4)) or international practices or have entered by virtue of a transit declaration, other international agreements or at the request for transit by a Member State of the European Union (art. 48 para (1)) or by virtue of a transit permit under art. 67 ARHG;
6. if they hold a work permit under the Aliens' Employment Act with a period of validity of up to six months, an assignment permit, an EU assignment permit, a confirmation of notification under art. 3 para (5) of the Aliens' Employment Act or a confirmation of notification under art. 18 para (3) of the Aliens' Employment Act with a period of validity of up to six months or

7. provided that such residence results from other regulations under federal act.

(2) If, under art. 5 of the Aliens' Employment Act, an employer intends to employ an alien who is entitled to enter without visa and who has no right of residence and settlement under Community law, with the alien's consent he shall be issued a clearance certificate on request unless the aliens' police raises objections to the alien's residence. The clearance certificate shall be valid for four weeks. If the issue of the clearance certificate is refused, art. 57 of the Act on General Administrative Procedures shall be applied.

(3) Objections by the aliens' police within the meaning of para (2) above shall exist if

1. a residence prohibition under art. 60 has been imposed on the alien;
2. a contracting state has communicated a ground for rejection at the border;
3. a final expulsion order under art. 54 or art. 10 of the 2005 Asylum Act has been imposed on him during the past twelve months;
4. the alien's residence would constitute a threat to public order or security or
5. the alien has been punished with legal effect during the past twelve months for evasion of border checks or unlawful entry into the federal territory.

Aliens' Duties in Proving their Residence Permit

Article 32. (1) Aliens shall be obliged, if so requested in connection with enforcement of this federal act, to furnish authorities and their officials with documents establishing their residence permit, to contribute to establishing the lawfulness of entry, residence and departure and, if necessary, to proceed, accompanied by an official, to the place where the documents are kept. This shall apply to EEA nationals and Swiss nationals only as far as their identity and nationality cannot otherwise be proved without doubt.

(2) Aliens shall be obliged to carry their travel document on their person or to keep it at such distance from their respective place of residence that it can be obtained (para (1) above) without undue delay. The delay shall be considered as due if

1. the travel document is kept within the administrative area of the aliens' police authority of first instance of his place of residence or
2. obtaining the passport is not likely to take more than one hour.

(3) For the purpose of examining their right of residence in the federal territory, aliens shall be obliged, upon request and in substantiated cases, to furnish aliens' police authorities and public security service officers with information concerning the purpose and intended duration of their residence in the federal territory and with proof that they possess the means to support themselves.

(4) Aliens who hold a residence permit or possess documentation of their right of residence under the Settlement and Residence Act, cards under art. 51 and art. 52 of the 2005 Asylum Act or a photo identity card for bearers of privileges and immunities (art. 95) shall be deemed to comply with para (2) above if they carry the same on their person.

Chapter 5

Powers of Public Security Service Officers

Information Requests

Article 33. (1) For the purpose of exercising aliens' police public security service officers shall be authorised to request information from persons who, because of a close relationship to an alien or an incident involving an alien, can be assumed to provide information about

1. unlawful entry of an alien;
2. unlawful residence of an alien or
3. criminal offences under this federal act.

(2) It shall be inadmissible to exercise coercive measures in order to enforce this power.

Establishment of Identity

Article 34. (1) Public security service officers shall be authorised to establish the identity of a person

1. if, based on certain facts, it can be assumed that the person has unlawfully entered the federal territory or resides unlawfully in the federal territory;
8. if, based on certain facts, it can be assumed that an arrest warrant (art. 74) for this person has been issued or
9. if, based on certain facts, it can be assumed that the person resides outside the area to which his residence is limited.

(2) The establishment of identity shall be the recording of the names, date of birth and residential address of a person in his presence. It shall be done with the reliability appropriate to the occasion.

(3) Public security service officers shall inform persons whose identity is to be established of such procedure. Any person concerned shall be obliged to contribute to establishing his identity and to tolerate direct enforcement of the establishment of identity.

Review of Lawfulness of Entry and Residence

Article 35. Public security service officers shall be authorised to review the lawfulness of entry and residence of aliens if certain facts justify the assumption that the alien has unlawfully entered the federal territory or resides unlawfully in the same unless this can be determined with necessary certainty by means of establishment of identity.

Entry to Land, Facilities, Places of Work, Premises and Vehicles

Article 36. (1) Public security service officers shall be authorised to enter land, premises, facilities, places of work as well as vehicles where

1. a search warrant (art. 75) has been issued and this is required to enforce it;
2. it is justified to assume, based on certain facts, that this is necessary to get hold of aliens who are being smuggled or who violate the regulations governing prostitution;
3. it is justified to assume, based on certain facts, that at least five aliens are resident there, with aliens among them who unlawfully reside in the federal territory or
4. it is justified to assume, based on certain facts, that this is necessary to discover aliens who unlawfully reside in the federal territory in the pursuit of prohibited employment activities.

(2) In cases under para (1) subparas 3 and 4 above, art. 13 para (3) shall apply only if a warrant has been issued by an authority or immediate intervention is required because of imminent danger.

(3) In cases under para (1) above, the person concerned shall, at his request, be given a copy of the record of the entry and the grounds for entry at once or within the next 24 hours.

Search of Persons

Article 37. (1) For the purpose of seizing evidence (art. 38) public security service officers shall be authorised to search the clothes of aliens and the containers they carry with them if

1. they have been arrested under this federal act or
2. there is reason to believe that they reside unlawfully in the federal territory and carry evidence with them which is of relevance for deportation, transit, forcible return or rejection at the border.

(2) Prior to being searched under para (1) above, the alien shall be requested to voluntarily hand over all evidence; if he complies with this request, the search shall not take place.

Seizure of Evidence

Article 38. (1) Public security service officers shall be authorised to seize, on a temporary basis, articles and documents required for proceedings or for deportation, transit, forcible return or rejection at the border under this federal act.

(2) Articles or documents that are required in the course of executing an expulsion order or a residence prohibition in particular for obtaining a replacement travel document for deportation, shall be also considered evidence.

(3) A copy of the record of the seizure of evidence shall be given to the person concerned; the evidence shall be handed over to the aliens' police authority and shall be returned by the same to the person concerned as soon as it is no longer required for proceedings or for deportation, transit, forcible return or rejection at the border under this federal act unless it were to be seized under a different federal act.

Arrest

Article 39. (1) Public security service officers shall be authorised to arrest an alien in order to bring him before an authority, which is essential as procedural guarantee, if

1. he is caught in the act of committing an administrative offence under art. 120 or
2. he does not comply with his obligation under art. 32 para (1).

(2) Public security service officers shall be authorised to arrest an alien

1. for whom an arrest warrant (art. 74 para (1) or 2) has been issued so as to bring him before the authority;
2. who is discovered to be unlawfully resident within seven days of entry or
3. who has entered by virtue of a declaration of admission (art. 19).

(3) Public security service officers shall be authorised to arrest asylum seekers or aliens, who have applied for international protection, for the purpose of bringing them before the authority if

1. an enforceable – though not final - expulsion order (art. 10 of the 2005 Asylum Act) has been imposed on them;
2. expulsion proceedings under art. 27 of the 2005 Asylum Act have been instituted against them;
3. prior to applying for international protection an enforceable expulsion order (art. 53 or art. 54) or an enforceable residence prohibition (art. 60) has been imposed on them;
4. it can be assumed on the basis of the results of the interview, the search and the identification procedures that the alien's application for international protection will be rejected as Austria lacks responsibility for review.

(4) In cases under para (1) subpara 1, para (2) subpara 2 and para (3) above, arrest shall not take place if it is guaranteed that the alien will leave the federal territory across an external border without delay.

(5) The competent aliens' police authority shall be informed of the arrest without undue delay. In cases under para (1) above, it shall be admissible to detain an alien for up to 24 hours and, in cases under paras (2) and (3) above, for up to 48 hours; beyond that, deprivation of liberty shall be possible only in detention pending deportation. The person under arrest shall be given a copy of the arrest record at his request.

(6) Aliens under an admission order for the purpose of transit (art. 74 para (3)) shall be admitted into detention by public security service officers after entry; detention shall be admissible for up to 72 hours. If the transit operation cannot be completed during this time, additional deprivation of liberty shall be admissible only if the authority orders detention pending deportation. The authority need not be informed of the admission of such alien.

Rights of the Person under Arrest

Article 40. (1) Any person arrested under art. 39 paras (1) to (3) shall be informed as soon as practicable in a language understandable to him of the grounds for his arrest and, in the case of art. 39 para (1) subpara 1 of the charges against him.

(2) At the request of such person under arrest, the consular representation of his country of origin shall be notified of his detention without delay. Art. 36 para (4) VStG and art. 47 Security Police Act shall apply.

Prevention of Entry and Rejection at the Border

Article 41. (1) Public security service officers shall be authorised to prevent entry of aliens attempting to unlawfully enter the federal territory.

(2) Public security service officers shall be authorised to prevent entry or onward journey of aliens attempting to enter or having entered the federal territory on the occasion of border checks at land border crossing-points as well as at airports, in ports and in train traffic within the border control area (rejection at the border) if

1. their entry is unlawful;
2. an enforceable residence prohibition has been imposed on them and they have not been granted a permit for re-entry (art. 72);
3. a contracting state has communicated that their residence in the territory of the contracting states would constitute a threat to public order or national security unless they had a residence permit issued by a contracting state or an entry permit issued by Austria;
4. even though they are entitled to lawful entry, certain facts justify the assumption that
 - a) their residence in the federal territory would constitute a threat to public order or security or to the relations of the Republic of Austria to another state;
 - b) they intend to take up employment activities in the federal territory without the permits required for such purpose;
 - c) they will engage or participate in the smuggling of persons in the federal territory;
5. they do not have a place of residence in Austria and do not possess the means to meet the costs of their residence and subsequent departure;
6. certain facts justify the assumption that they wished to use their residence in the federal territory for the wilful commission of fiscal offences, with the exception of violations of financial rules, or for the wilful breach of foreign exchange regulations.

(3) A decision on the admissibility of entry shall be taken, after questioning the alien, by reason of the facts of the case that have been made credible by him or are known otherwise. Rejection at the border shall be entered in the alien's travel document. Such entry shall be deleted at the request of the person concerned if found unlawful by the Independent Administrative Review Board.

Measures to Ensure Rejection at the Border

Article 42. (1) If an alien who is to be rejected at the border cannot leave the border-crossing area immediately for legal or practical reasons, notwithstanding his right to leave the federal territory any time, he may be instructed to remain at a specified place within that area for the period of such stay as to ensure that rejection at the border is carried out.

(2) Aliens whose entry took place on board of a carrier's aircraft, land vehicle or vessel may be prohibited to disembark from such vehicle or be ordered to board a specific vehicle in which they will leave the federal territory as to ensure that rejection at the border is carried out.

(3) In the case of aliens whose rejection at the border is to be ensured, art. 53c paras (1) to (5) of the Administrative Penal Act 1991 shall apply to their residence at a place specified for such purpose.

Measures to Ensure Transit

Article 43. (1) An alien who, at border checks, claims to be a transit passenger shall be refused permission to remain in the transit area

1. if, on the basis of specific facts, the alien's subsequent departure does not appear guaranteed,

2. if after his first stay in the transit area the alien has been refused permission to enter the state to which he has departed and has been returned to Austria or
3. the alien does not hold the necessary airport transit visa.

(2) Measures to ensure transit shall be taken in conjunction with an order to depart without delay; if this is not possible, the alien may be instructed to remain at a specified place within the border control area until departure. Art. 42 (para (2)) shall be applied.

(3) Measures to ensure transit shall be entered in the alien's travel document. Such entry shall be deleted at the request of the person concerned if found unlawful by the Independent Administrative Review Board.

Escorted Return

Article 44. The authority may instruct public security service officers to escort an alien who is rejected at an airport border-crossing point on his return flight.

Forcible Return

Article 45. (1) Aliens may be ordered by public security service officers, on behalf of the authority, to return to foreign territory (forcible return) if

1. they have not lawfully entered the federal territory and are discovered within seven days or
2. had to be readmitted by the Republic of Austria within seven days of entry into the federal territory by virtue of an admission agreement or international practice.

(2) In orders under para (1) above the authority may instruct public security service officers to escort the alien subject to forcible return.

(3) Forcible return shall be entered in the alien's travel document. Such entry shall be deleted at the request of the person concerned if found unlawful by the Independent Administrative Review Board.

Chapter 6

Deportation, Territorial Limitation and Transit

Deportation

Article 46. (1) Aliens under an enforceable residence prohibition or expulsion order (art. 53, art. 54 and art. 10 of the 2005 Asylum Act) may be ordered by public security service officers, on behalf of the authority, to leave the country if

1. control of their departure appears necessary for reasons relating to the maintenance of public order or security or
2. they have failed to comply in due time with their obligation to depart (art. 67, art. 10 of the 2005 Asylum Act) or
3. it is to be feared, on the basis of certain facts, that they will not comply with their obligation to depart or
4. they have returned to the federal territory in violation of the residence prohibition.

(2) If the alien does not hold a travel document and deportation cannot be carried out without such, the authority shall obtain a replacement travel document for deportation from the representing authority having responsibility for him or issue a travel document for the expulsion of third-country nationals. Art. 97 para (1) shall apply.

(3) Deportation of an alien shall be stayed for a specific period not exceeding one year in each case (stay of deportation) upon application or by virtue of office if it is inadmissible (art. 50) or appears to be impossible for practical reasons. Art. 69 shall apply to revocation.

(4) If the requirements for deportation apply to relatives (art. 72 of the CC) at the same time, the authority shall, in ordering deportation, impose measures to ensure that, upon their implementation, the effect on the family life of such aliens is as little as possible.

(5) Deportation shall be entered in the alien's travel document unless deportation becomes inadmissible or impossible by such entry. Such entry shall be deleted at the request of the person concerned if found unlawful by the Independent Administrative Review Board.

Territorial Limitation

Article 47. (1) If required for the execution of aliens' police or for reasons of public order and security, aliens under an expulsion order or a residence prohibition may be ordered by administrative decision to remain in a limited area of the federal territory. This area shall comprise, in any case, the administrative area of a district administrative authority. Moreover, if required for the execution of aliens' police or for reasons of public order and security, the alien may be given orders, in particular, to report to a police command (art. 10 para (1) of the Security Police Act) at regular intervals. Territorial limitation shall be limited to a maximum period of one year. Such obligations shall be entered in the alien's travel document.

(2) If residence is limited to a specific area of the federal territory, it shall be on record that the limits of this area have been outlined to the alien on a map.

Transit

Article 48. (1) Aliens shall be transferred by public security service officers, on behalf of the authority, from one foreign country through the federal territory to another foreign country if such transit is ordered in a transit declaration under an international agreement on the transit of aliens who are not nationals of the contracting states (art. 49), by virtue of other international agreements or at the request of a Member State of the European Union.

(2) Any transit for the purpose of entry into a state in which the alien would be in danger under art. 50 para (1) or (2) shall be inadmissible.

Transit Agreement

Article 49. (1) Provided that the Federal Government is authorised to conclude intergovernmental agreements under art. 66 para (2) of the Federal Constitutional Act, it may conclude, on the basis of reciprocity, international agreements concerning the transit of aliens who are not nationals of the contracting states.

(2) In agreements under para (1) above it shall be stipulated that

1. a transit operation may take place only at the request of a contracting state and only if the onward journey and admission by the state of destination can be guaranteed;
2. transit is to be refused if in another transit state or in the state of destination the alien
 - a) will run the risk of being subjected to inhuman treatment or punishment, or the death penalty or
 - b) his life or freedom will be endangered on account of his race, religion, nationality, membership of a particular social group or political opinion;
3. transit may be refused if the alien would have to be prosecuted for a criminal offence.

Chapter 7

Non-Refoulement

Prohibition of Deportation, Forcible Return and Rejection at the Border

Article 50. (1) Rejection at the border, the prevention of entry, forcible return or deportation of aliens to a state shall be inadmissible if such action would be in violation of art. 2 or 3 of the European Convention on Human Rights (ECHR), FLG No. 210/1958, or Protocol No. 6 or No. 13 to the Convention for the Protection of Human Rights and

Fundamental Freedoms Concerning the Abolition of the Death Penalty, or the alien's life and integrity, as a private person, would be seriously threatened as a consequence of arbitrary violence in the course of an international or national conflict.

(2) Rejection at the border or forcible return of aliens to a state or prevention of entry from a state shall be inadmissible if there are reasonable grounds to assume that their life or freedom would be endangered on account of their race, religion, nationality, membership of a particular social group or political opinion (art. 33 subpara (1) of the Convention Relating to the Status of Refugees, FLG No 55/1955, as amended by the Protocol Relating to the Status of Refugees, FLG No. 78/1974), unless there exists an internal flight alternative (art. 11 of the 2005 Asylum Act).

(3) Aliens who claim any of the dangers stated in para (1) or (2) above may be rejected at the border or forcibly returned only after they have had the opportunity to put forward reasons to the contrary. In such cases the aliens' police authority shall be informed of the facts of the case prior to rejection at the border and shall subsequently decide on such rejection.

(4) Deportation of aliens to a state in which they would be in danger within the meaning of para (2) above, but not within the meaning of para (1) above, shall be admissible only if, for major reasons, they represent a threat to the security of the Republic or have been convicted, by a final judgement of an Austrian court, for a particularly serious crime and by reason of such punishable act constitute a danger to the community (art. 33 subpara 2 of the Convention Relating to the Status of Refugees).

(5) Compliance with the requirements under para (4) above shall be established by administrative decision. In cases where an application for international protection is dismissed or asylum is denied, such action shall be carried out by asylum authorities or, otherwise, the security headquarters.

(6) Deportation to a state shall be inadmissible for as long as it is in conflict with the recommendation of an interim measure by the European Court of Human Rights.

(7) If rejection at the border, forcible return or deportation to a third country of aliens whose application for international protection under the 2005 Asylum Act has been rejected as Austria lacks responsibility is found to be impossible, the Federal Asylum Agency [Bundesasylamt] shall be notified thereof without delay.

(8) Art. 51 first sentence of para (3) shall apply.

Determination of Inadmissibility of Deportation to a Specific State

Article 51. (1) Upon application of an alien, the aliens' police authority shall determine by administrative decision if there are reasonable grounds to assume that such alien will be in danger under art. 50 para (1) or (2) in a state specified by him. This shall not apply where the matter of inadmissibility of deportation to a specific state has already been decided by the asylum authority or said authority has determined that the alien enjoys protection from persecution in a given third country.

(2) The application may be filed only in the course of proceedings for issuing an expulsion order or a residence prohibition; the alien shall be informed thereof in due time.

(3) In cases in which it is particularly difficult to determine the relevant facts, the aliens' police authority may seek the opinion of the Federal Asylum Agency concerning the presence or absence of such danger. Appeals against administrative decisions determining admissibility of deportation to a specific state shall be decided within one week unless detention is terminated before.

(4) Up to the time of a final decision on the application the alien may not be deported to such state unless the application were to be rejected under para (1) or (2) above. Once the alien has been deported to another state, the determination procedure shall be discontinued as obsolete.

(5) The administrative decision by which a final ruling has been made on an application under para (1) above shall be amended upon application or by virtue of office if the relevant facts of the case have undergone a major change so that the ruling concerning the state in question would have to be different. Up to the time of a final decision on such application the alien may only be deported to the state concerned if the application clearly is to be rejected for *res judicata*.

Chapter 8
Tasks and Powers of Aliens' Police Authorities
Section 1
Official Measures for the Exercise of Aliens' Police

Aliens' Police Authorities' Tasks in the Field of Aliens' Police

Article 52. (1) Aliens' police authorities shall

1. control entry by aliens into and their residence in the federal territory;
2. prevent or terminate unlawful entry and unlawful residence by aliens and
3. prevent or terminate entry or residence of aliens

if required in the public interests, in particular for reasons of security police, criminal justice or public health.

(2) Aliens' police authorities shall be responsible for the prevention or instant termination of criminal offences under this federal act. Unlawful departure across an external border shall be tolerated.

Section 2
Expulsion

Expulsion of Aliens not Holding a Residence Permit

Article 53. (1) Aliens may be expelled by administrative decision if they are unlawfully resident in the federal territory.

(2) Aliens who neither hold a residence permit nor are exempt from the visa requirement and have no right of settlement (art. 21 para (8) and art. 30 para (1)) shall be expelled by administrative decision unless the requirements for imposition of a residence prohibition have been met, if

1. they have been convicted by a criminal court for committing a crime of intent within three months of entry, even if the judgement is not final;
2. within three months of entry they are discovered in the act of committing a crime of intent or credible charges of any such crime are put forward directly following the perpetration thereof, if, moreover the criminal offence carries severe punishment and the competent public prosecutor has declared his intention to report the case to the Federal Minister of Justice under art. 74 ARHG;
3. within three months of entry they have violated the regulations governing prostitution;
4. within three months of entry they have failed to furnish proof that they possess the means to support themselves or
5. within three months of entry they are discovered by an officer of the customs authority, the regional office or provincial offices of the Employment Service [Arbeitsmarktservice] to be engaged in employment which they would not have been permitted to pursue under the Aliens' Employment Act..

(3) A discovery under para (2) subpara 5 above shall be deemed equivalent to the notification by a customs authority or an agency of the Employment Service concerning the inadmissibility of the pursuit of employment under the Aliens' Employment Act, provided that the alien has been discovered by a public security service officer to be engaged in such employment.

Expulsion of Aliens Holding a Residence Permit

Article 54. (1) Aliens resident in the federal territory by virtue of a residence permit or in the course of proceedings for extending a residence permit may be expelled by administrative decision if

1. subsequently any ground for refusal arises or becomes known that would have been in conflict with the granting of the residence permit last issued or
2. any ground for refusal is in conflict with the granting of an additional residence permit.

(2) Furthermore, aliens resident in the federal territory by virtue of a residence permit or in the course of proceedings for extending a residence permit shall be expelled by administrative decision if they have been issued a settlement permit, have been available for work and have not been in permitted dependent gainful occupation for more than four months in their first year of settlement.

(3) Aliens shall be expelled by administrative decision if, for reasons solely attributable to them, they have failed to comply with the integration agreement within five years of being granted their first residence permit and facts justify the assumption that they are not willing to acquire the ability to participate in the social, economic and cultural life in Austria; consideration shall be given to the protection of private and family life (art. 66).

(4) Moreover, aliens shall be expelled by administrative decision, if, for reasons solely attributable to them, they have not begun to comply with the integration agreement within three years of being granted the initial settlement permit and facts justify the assumption that they are not willing to acquire the ability to participate in the social, economic and cultural life in Austria; consideration shall be given to the protection of private and family life (art. 66).

(5) Finally, aliens resident in the federal territory by virtue of a residence permit or in the course of proceedings for extending a residence permit may be expelled by administrative decision if

1. they have been granted a settlement permit in order to guarantee their right to family reunification and the requirements therefor have ceased to exist prior to expiry of a period of five years following settlement of the relative or
2. they have been granted a settlement permit, have settled in the federal territory for a period of more than one year but less than five years and have not pursued permitted employment activities for a virtually uninterrupted period of one year.

Consolidation of Residence of Aliens Holding a Settlement Permit

Article 55. (1) Aliens who, prior to the occurrence of the relevant facts, have already been lawfully settled in the federal territory for an uninterrupted period of five years, but not yet for eight years, may not be expelled by reason of the lack of means to support themselves, the absence of adequate health insurance, the absence of their own accommodation or the fact that they may represent a financial burden for a territorial authority. The foregoing shall, however, apply only if and for as long as the alien is found to be willing to provide the means to support himself through his own efforts and this does not appear hopeless.

(2) Aliens who, prior to the occurrence of the relevant facts, have already been lawfully settled in the federal territory for an uninterrupted period of eight years may be expelled only if they have been convicted, by a final judgement of an Austrian court, for committing a criminal offence and their continued residence would constitute a threat to public order and security.

(3) If the period stated in para (2) above has already lasted for ten years, aliens may no longer be expelled by reason of the occurrence of any ground for refusal unless they have been sentenced, by a final judgement of an Austrian court

1. for a crime or for smuggling, aiding and abetting unlawful residence, entry into or arrangement of marriages for purposes of residence or under art. 27 para (2), art. 28 para (1) and art. 32 para (1) of the Addictive Drugs Act (Suchtmittelgesetz - SMG), FLG I No. 112/1997, or by reason of acts constituting an offence under sections 16 or 20 of the special part of the Criminal Code or
2. for a crime of intent which is based on the same malicious inclination (art. 71 StGB) as another criminal offence committed by them to unconditional imprisonment of more than six months and the relevant conviction has not yet been expunged in the criminal record.

(4) Without prejudice to art. 61 subpara 4, aliens who have grown up in Austria from childhood and have been lawfully settled in this country for many years may not be expelled. Aliens shall be also regarded as having been settled in the federal territory for many years if they have spent half of their lives in the federal territory and, prior to the occurrence of the relevant facts, have been resident in this country for at least three years.

(5) Convictions by foreign criminal courts shall be deemed equivalent to convictions and sentences as mentioned in para (2) and (3) above if they meet the requirements of art. 73 of the CC.

Consolidation of Residence of Aliens Holding a Residence Permit “Long-Term Resident – EC” or “Long-Term Resident – Family Member”

Article 56. (1) Aliens who, prior to the occurrence of the relevant facts, have been lawfully resident and have held a residence permit “long-term resident - EC” or “long-term resident – family member” may be expelled only if their continued residence would constitute a serious threat to public order or security.

(2) A serious threat within the meaning of para (1) above shall be deemed to exist if an alien has been sentenced, by a final judgement of an Austrian court

1. for a crime or for smuggling, aiding and abetting unlawful residence, entry into or arrangement of marriages for purposes of residence or under art. 27 para (2), art. 28 para (1) and art. 32 para (1) of the Addictive Drugs Act, or by reason of acts constituting an offence under sections 16 or 20 of the special part of the CC or
2. for a crime of intent which is based on the same malicious inclination (art. 71 of the CC) as another criminal offence committed by him to unconditional imprisonment of more than six months and the relevant conviction has not yet been expunged in the criminal record.

(3) Art. 55 paras (4) and (5) shall apply.

Appeals against Expulsion Orders

Article 57. If a regular appeal is filed against an expulsion order and it has been established that the alien is no longer resident in the federal territory at the time the decision on the appeal is taken, the appellate authorities shall only determine whether the expulsion order has been lawful at the time of issue.

Denial of Suspensive Effect of an Appeal

Article 58. Suspensive effect of the appeal against an expulsion order under art. 53 shall be denied if the alien’s immediate departure is necessary in the interests of public order and security. Suspensive effect of the appeal against an expulsion order under art. 54 may not be denied.

Non-Relevance of Expulsion Orders

Article 59. (1) An expulsion order shall become non-relevant if the person concerned has complied with his obligation to depart (art. 67). Art. 73 shall apply.

(2) Furthermore, an expulsion order shall become non-relevant if the person concerned is granted a residence permit under the Settlement and Residence Act.

Section 3

Residence Prohibition and Prohibition to Return

Requirements for Imposing a Residence Prohibition

Article 60. (1) A residence prohibition may be imposed on an alien if, on the basis of certain facts, the assumption is justified that his residence

1. constitutes a threat to public order and security or

2. is in conflict with other public interests as stated in art. 8 para (2) of the ECHR.

(2) Certain facts within the meaning of para (1) above shall be deemed to include, in particular, cases where an alien

1. has been sentenced, by a final judgement of an Austrian court, to unconditional imprisonment of more than three months, partially suspended imprisonment, suspended imprisonment of more than six months, or on more than one occasion for criminal offences based on the same malicious inclination;
2. has been sentenced on more than one occasion, by a final decision, for an administrative offence under art. 20 para (2) of the Road Traffic Regulations 1960 (Straßenverkehrsordnung - StVO), FLG No. 159, in connection with art. 26 para (3) of the Driving Licence Act (Führerscheingesetz - FSG), FLG No. 120/1997, under art. 99 paras (1), (1a), (1b) or (2) of the Road Traffic Regulations, under art. 37 para (3) or (4) of the Driving Licence Act, under art. 366 para (1) subpara 1 of the Industrial Code 1994 (Gewerbeordnung 1994 - GewO), FLG No. 194, with regard to restricted trade or occupation subject to licensing, under art. 81 or art. 82 of the Security Police Act or under art. 9 or art. 14 in connection with art. 19 of the Public Meetings Act 1953 (Versammlungsgesetz), FLG No. 98, or on more than one occasion for a serious violation of this federal act, the Settlement and Residence Act, the Act on Border Controls, the 1991 Domicile Registration Act, the Act on the Transport of Dangerous Goods (Gefahrgutbeförderungsgesetz) or the Aliens' Employment Act;
3. has been sentenced in Austria, by a final decision, for the wilful commission of fiscal offences, with the exception of violations of financial rules, or for the wilful breach of foreign exchange regulations;
4. has been sentenced in Austria, by a final decision, for serious violation of the statutory provisions governing prostitution or has been convicted in Austria or abroad, by a final judgement, for procuring;
5. has engaged or participated in the smuggling of persons;
6. has made false statements to an Austrian authority or its officials concerning his person, his personal circumstances, the purpose or intended duration of his residence with a view to being granted an entry permit or a residence permit;
7. fails to furnish proof that he possesses the means to support himself unless he has lawfully entered for the purpose of taking up employment and has pursued permitted employment activities in Austria for more than six months within the previous year;
8. is discovered by a customs authority officer or an officer of the regional or provincial office of the Employment Service to be engaged in employment which he would not have been permitted to pursue under the Aliens' Employment Act;
9. has entered into marriage, claiming marriage as grounds for the granting of a residence permit or a certificate of exemption [Befreiungsschein] but has never led a family life with his spouse within the meaning of art. 8 of the ECHR;
10. has been adopted, the sole and predominant reason being to obtain or retain the residence permit, but deceived the court as to the true relationship with the adoptive parents;
11. has re-entered within twelve months of enforceability of an expulsion order without possessing the special permit under art. 73;
12. justifies the assumption, on the basis of certain facts, that he belongs or has belonged to a criminal organisation (art. 278a of the CC) or a terrorist association (art. 278b of the CC);
13. justifies the assumption, on the basis of certain facts, that his conduct poses a threat to national security, in particular by public participation in violent acts, by publicly calling for violence or by instigation or provocation or
14. publicly approves or promotes a crime against peace, a war crime, a crime against humanity or comparable terrorist acts in a gathering or by spreading written work.

(3) A conviction as mentioned in para (2) above shall be deemed not to exist if it has already been expunged. Any such conviction shall, however, be deemed to exist if it has been rendered by a foreign court and meets the requirements of art. 73 of the CC.

(4) A committal, by the court, to an institution for offenders of unsound mind shall be deemed equivalent to a conviction as mentioned in para (2) subpara 1 above if the crime has been committed under the influence of a state that is based on a higher degree of mental or emotional abnormality, ruling out criminal responsibility.

(5) A discovery under para (2) subpara 8 above shall be deemed equivalent to the notification by a customs authority or an agency of the Employment Service concerning the

inadmissibility of the pursuit of employment under the Aliens' Employment Act if the alien has been discovered by a public security service officer to be engaged in such employment.

(6) Art. 66 shall apply.

Inadmissibility of Imposing a Residence Prohibition

Article 61. A residence prohibition shall not be imposed

1. if, in cases under art. 60 para (2) subpara 8, the alien would have been permitted to pursue different employment for the same employer under the provisions of the Aliens' Employment Act and if, for employment in which the alien has been discovered to be engaged, no change of purpose would have been required or a change of purpose would have been admissible;
2. if expulsion under art. 54 para (1) would be inadmissible by reason of the relevant facts;
3. if, prior to the occurrence of the relevant facts, nationality could have been granted to the alien under art. 10 para (1) of the Nationality Act 1985 (Staatsbürgerschaftsgesetz 1985 - StbG), FLG No. 311, unless the alien has been sentenced, by a final judgement, for a criminal offence to unconditional imprisonment of at least one year or one of the offences mentioned in art. 60 para (2) subpara 12 to 14 is constituted;
4. if the alien has grown up in Austria from childhood and has been lawfully settled in this country for many years unless the alien has been sentenced, by a final judgement, for a criminal offence to unconditional imprisonment of more than two years or one of the offences mentioned in art. 60 para (2) subparas 12 to 14 is constituted.

Requirements for Imposing a Prohibition to Return

Article 62. (1) A prohibition to return may be imposed on an asylum seeker if, on the basis of certain facts, the assumption is justified that his residence

1. constitutes a threat to public order and security or
2. is in conflict with other public interests as stated in art. 8 para (2) of the ECHR.

The prohibition to return shall be deemed to be withdrawal of the right of residence. Art. 13 2005 Asylum Act shall apply.

(2) Certain facts within the meaning of para (1) above shall be, in particular, those mentioned in art. 60 para (2) subparas 1 to 5, 8 to 10 and 12 to 14.

(3) Art. 60 paras (3) to (5) and art. 66 shall apply.

(4) A final prohibition to return shall be deemed to be a residence prohibition.

(5) If required for reasons of public order and security, in issuing the prohibition to return, an asylum seeker's residence may be limited to a specific area of the federal territory; this area shall comprise, in any case, the administrative area of a district administrative authority. Moreover, if so required for the same reasons, the asylum seeker may be given orders, in particular, to report to a police command at regular intervals. The obligations shall be entered in the travel document or, under the 2005 Asylum Act, in the alien's card.

(6) If the asylum seeker's residence is limited to a specific area of the federal territory, it shall be on record that the limits of this area have been outlined to the alien on a map.

Duration of Residence Prohibitions or Prohibitions to Return

Article 63. (1) A residence prohibition or prohibition to return may be issued for an unlimited period in cases under art. 60 para (2) subparas 1, 5 and 12 to 14 and, in any other cases, for a maximum period of ten years.

(2) In setting the duration of a residence prohibition or prohibition to return, due consideration shall be given to the factors relevant for imposition. The period shall start running as soon as the residence prohibition or prohibition to return become enforceable.

Denial of Suspensive Effect of an Appeal

Article 64. An alien who lawfully resides in the federal territory may be denied suspensive effect of an appeal against a residence prohibition or prohibition to return if the alien's immediate departure or immediate enforceability is required in the interests of public order or for reasons of national security.

Repeal and Termination of Residence Prohibitions or Prohibitions to Return

Article 65. (1) The residence prohibition or prohibition to return shall be repealed upon application or by virtue of office if the grounds for its issue have ceased to exist.

(2) The residence prohibition or prohibition to return shall become ineffective if an alien is recognised as being entitled to asylum status. Moreover, the prohibition to return shall become ineffective if the alien has been withdrawn the status of being entitled to subsidiary protection and no expulsion under art. 10 para (2) of the 2005 Asylum Act has been ordered.

(3) The residence prohibition shall become a prohibition to return if an alien is recognised as being entitled to subsidiary protection status. Territorial limitation associated with a prohibition to return shall become obsolete. As long as the status of being entitled to subsidiary protection is granted, the prohibition to return shall not become effective. Subsequent to any extension of the right of residence (art. 8 of the 2005 Asylum Act), the prohibition to return shall be reviewed by virtue of office.

(4) If the status of being entitled to subsidiary protection is withdrawn and expulsion becomes enforceable, the prohibition to return shall be deemed to be a residence prohibition in the event of expulsion.

Section 4

Common Procedural Provisions

Protection of Privacy and Family Life

Article 66. (1) If expulsion were to invade the alien's privacy or family life, it shall be admissible where it is urgently required to achieve the objectives specified in art. 8 para (2) of the ECHR.

(2) In any case, an expulsion order under art. 54 para (1), (3) and (4) may not be imposed where its effects on the life of the alien and his family would outweigh the adverse consequences of refraining from its imposition. In such process, due consideration shall be given, in particular, to the following factors:

1. duration of residence and extent of integration of the alien or his family members;
2. intensity of family or other ties.

Obligation to Depart and Stay of Execution

Article 67. (1) Expulsion of aliens under art. 53 or art. 54 and the residence prohibition shall be enforceable upon entry into effect, whereupon the alien has to depart without delay. Stay of execution shall apply for the duration of any deprivation of liberty imposed by reason of a criminal offence. In the course of the procedure for issuing an expulsion order to aliens under art. 53 para (1) or art. 54 or a residence prohibition, the authority may, upon application, stay its execution for a maximum period of three months (delay of execution); for such purpose, the public interest in the alien's immediate departure must be weighed against the factors the alien has to consider in settling his personal affairs.

(2) If the authority has denied suspensive effect to an appeal against the expulsion of aliens under art. 53 or against the residence prohibition (art. 58 and art. 64), the same shall become enforceable when the denial is pronounced, whereupon the alien has to depart without delay.

Obligations for Stay of Execution

Article 68. (1) If the authority imposes stay of execution of an expulsion order or a residence prohibition, it may specify the respective obligations required in the interest of maintaining public order or security. In this process, due consideration shall be given to the purpose of residence.

- (2) Obligations within the meaning of para (1) above shall comprise, in particular,
1. limitation of residence to a specific administrative area of a district administrative authority, which, if the alien has a place of residence in the federal territory, shall comprise the same in any event;
 2. the obligation to report to a police command at regular intervals.
- (3) The obligations under para (1) above shall be entered in the alien's travel document.

Revocation of Stay of Execution

Article 69. Stay of execution shall be revoked if

1. subsequently facts become known that would have justified its denial;
2. the grounds for granting have ceased to exist or
3. the alien engages in conduct during his continued residence in the federal territory that requires his immediate departure for the reasons stated in art. 54 para (1).

Special Procedural Provisions

Article 70. Enforceable expulsion orders, residence prohibitions or prohibitions to return shall be entered in the alien's travel document unless deportation becomes inadmissible or impossible by such entry. In a procedure for issuing an expulsion order, a residence prohibition or a prohibition to return the authority may request that the alien appears in person before such authority.

Section 5

Enforcement of Decisions on Expulsion by EEA Countries

Article 71. (1) With respect to third-country nationals who do not hold a residence permit, the final, enforceable decision on expulsion taken by a Member State of the European Economic Area shall be equivalent to an enforceable expulsion order if

1. the decision on expulsion is justified by the serious and imminent threat to public security and order or national security and
 - a) is based on a criminal conviction that carries a period of imprisonment of at least one year or
 - b) has been issued on substantiated grounds that the third-country national has committed serious crimes or there is specific evidence that he plans to commit the same in the territory of a Member State or
2. the decision on expulsion has been taken because the third-country national has violated the provisions on entry and residence of the state taking the decision.

(2) With respect to third-country nationals who hold an Austrian residence permit and are subject to a decision on expulsion under para (1) subpara 1 above, the aliens' police authority shall institute proceedings for withdrawal of the residence permit. If the settlement and residence authority does not withdraw the residence permit, the decision on expulsion will not be enforced. Art. 50 shall apply.

(3) National decisions under art. 53, 54, 60 and 62 shall take priority over paras (1) and (2) above.

Section 6 Special Permits

Re-Entry During the Period of Validity of a Residence Prohibition

Article 72. (1) During the period of validity of a residence prohibition the alien shall not be permitted to re-enter without a permit.

(2) A re-entry permit may, upon application, be granted to the alien if required for major public or private reasons that are not in conflict with the reasons decisive for the residence prohibition and if no other ground for refusal of a visa exists. The period of validity required by virtue of the facts shall be fixed at the time of issue of such permit.

(3) In the interest of maintaining public order or security, the permit may be subject to obligations; thereby, due consideration shall be given to the purpose of residence. Obligations shall be, in particular, the requirement to use specific border-crossing points and travel routes, limitation of residence to the administrative area of a district administrative authority as well as the obligation to report to a police command at regular intervals. Obligations imposed shall be entered in the travel document.

(4) The permit shall be issued in the form of a visa, notwithstanding the existence of a final residence prohibition.

(5) The permit shall be revoked if, subsequently, facts become known that would have justified its denial, if the grounds for its issue have ceased to exist or if the alien engages in conduct during his residence in the federal territory which

1. in connection with the reasons decisive for the residence prohibition requires the same to be enforced without delay or
2. would justify issue of an expulsion order or re-issue of a residence prohibition.

(6) The permit shall be revoked by invalidation in the travel document.

Special Permit Following Rejection at the Border, Forcible Return and Expulsion

Article 73. (1) Aliens who are entitled to enter and reside in the federal territory without a visa shall require a special permit for entry into and residence in the federal territory for the period of one year following rejection at the border under art. 41 para (2) subparas 4 and 6, forcible return or expulsion, with the exception of cases under art. 21 para (8) and art. 30 para (1).

(2) The permit for residence not exceeding three months shall be granted in the form of a visa. Art. 72 paras (3), (5) and (6) shall apply.

Section 7 Arrest Warrant, Admission Order and Search Warrant

Arrest Warrant and Admission Order

Art. 74. (1) The authority may impose a warrant for arrest of an alien also without issuing an administrative decision for detention pending deportation (arrest warrant) if, on the basis of certain facts, it can be assumed that the requirements for the issue of an expulsion order or a residence prohibition have been met and

1. the alien has failed, without good cause, to answer a summons served on him in person, warning him of the employment of such means of enforcement or
2. the alien's residence could not be established but his last known address has been within the authority's administrative area.

(2) An arrest warrant may also be imposed on an alien if

1. the requirements for imposing detention pending deportation under art. 76 para (1) have been met and he is not brought before the aliens' police authority for any other reasons;

2. he has not complied with his obligation to depart (art. 67, art. 10 of the 2005 Asylum Act) or

3. a deportation order (art. 46) is to be imposed on him.

(3) For an alien who is to be transited (art. 48) an admission order shall be issued.

(4) Arrest warrants and admission orders shall be issued by an administrative authority exercising command measures; they shall be placed on record.

(5) In cases under paras (1) and (2) above, a copy of the arrest warrant shall be provided to the person concerned at his request at once or within the next 24 hours.

Search Warrant

Article 75. (1) If, on the basis of certain facts, it can be assumed that an alien who has been issued an arrest warrant or on whom detention pending deportation shall be imposed is staying in specific premises within the authority's administrative area, the authority may instruct public security service officers to enter and search the premises, where this appears to be necessary to enforce the arrest warrant or the administrative decision ordering detention pending deportation.

(2) The warrant under para (1) above shall be issued by an administrative authority exercising command measures. On request, the intervening officer shall hand over to the person concerned a copy of the record of the search performed as soon as practicable, however, in any case within 24 hours.

Section 8

Detention Pending Deportation and More Lenient Measures

Detention Pending Deportation

Article 76. (1) Aliens may be arrested and detained (detention pending deportation), provided that such action is necessary as procedural guarantee in connection with the imposition of a residence prohibition or expulsion order, until commencement of enforceability thereof, or to guarantee deportation, forcible return or transit. Detention pending deportation may be imposed on aliens lawfully resident in the federal territory if, on the basis of certain facts, it may be assumed that they are likely to evade the procedure.

(2) The aliens' police authority having regional competence may impose detention pending deportation on an asylum seeker or alien who has applied for international protection as procedural guarantee in connection with the issue of an expulsion order under art. 10 2005 Asylum Act or to guarantee deportation if

1. an enforceable – though not final - expulsion order (art. 10 of the 2005 Asylum Act) has been imposed on him;

2. expulsion proceedings according to the provisions of the 2005 Asylum Act have been instituted against him;

3. prior to applying for international protection an enforceable expulsion order (art. 53 or art. 54) or an enforceable residence prohibition (art. 60) has been imposed on him;

4. it can be assumed, on the basis of the results of the interview, the search and the identification procedures, that the alien's application for international protection will be rejected as Austria lacks responsibility for review.

(3) Orders for detention pending deportation shall be imposed by administrative decision; such decision shall be rendered in accordance with art. 57 of the Act on General Administrative Procedures unless the alien is held in other than short-term custody for other reasons when the procedure for its issue is initiated. Unenforced administrative decisions under art. 57 of the Act on General Administrative Procedures shall be deemed to be revoked after 14 days of issue.

(4) If the alien is represented by a person authorised to accept service, service of the administrative decision on detention pending deportation shall be also deemed to be served from the time when the alien has actually received a copy. In such cases, arrangements shall

be made without delay for service of an additional copy to the person authorised to accept service.

(5) If a residence prohibition or expulsion order becomes enforceable and control of the alien's departure appears to be necessary, detention pending deportation imposed as procedural guarantee shall, as from this time, be deemed to be imposed to guarantee deportation.

(6) If an alien applies for international protection while being detained pending deportation, such detention may be maintained. If the requirements mentioned in para (2) above have been met, detention pending deportation shall be deemed to be imposed under para (2) above. Compliance with the requirements for imposing detention pending deportation under para (2) above shall be recorded in the file.

(7) Imposition of detention pending deportation may be contested by means of complaint under art. 82.

More Lenient Measures

Article 77. (1) The authority may refrain from imposing detention pending deportation if there is reason to assume that its purpose can be achieved by use of more lenient measures. In the case of minors, the authority shall be required to use more lenient measures unless there is reason to assume that the purpose of detention pending deportation cannot be achieved thereby.

(2) The alien shall consent to the exercise of identification procedures as a requirement for imposing more lenient measures unless such measures have already been carried out by virtue of office by reason of art. 99 para (1) subpara 1.

(3) A more lenient measure may be, in particular, an order to take up accommodation in premises specified by the authority or to report, at regular intervals, to the police command specified to the alien.

(4) If the alien does not comply with his obligations under para (3) above or fails, without good cause, to answer a summons requiring his appearance before the authority, in which he is informed of such consequence, an order for detention pending deportation shall be imposed. With regard to time spent in the accommodation, art. 80 shall apply, provided that the admissible period will be doubled.

(5) Use of a more lenient measure shall not be in conflict with the exercise of command and coercive measures required for enforcement of deportation, forcible return or transit. Where it is required to carry out these measures, the persons concerned may be instructed to stay in specific places for periods not exceeding 72 hours.

Execution of Detention Pending Deportation

Article 78. (1) Detention pending deportation shall be executed in detention premises of the aliens' police authority imposing such detention. If the aliens' police authority is unable to execute detention pending deportation, a request for execution shall be made to the nearest aliens' police authority that has detention premises. If such latter authority is also unable to execute such detention, a request for execution shall be made to the director of the court prison in whose administrative area the authority is located; he shall comply with the request unless this interferes with other statutory tasks.

(2) Detention pending deportation imposed on aliens who have no place of residence in the federal territory may be executed in detention premises of the nearest aliens' police authority that is actually able to admit them. If no detention premises are available at any aliens' police authority, detention pending deportation imposed on such aliens may be executed in the nearest court prison which is actually able to admit them; the director to whom the request for execution is made shall comply with the request unless this interferes with other statutory tasks.

(3) Detention pending deportation that immediately follows a prison sentence may alternatively be executed in a court prison or, with the consent of the person concerned, in a penal institution.

(4) If so required for the purposes of deportation, forcible return or transit, detention pending deportation may be executed in detention premises located en route to the federal border.

(5) Separate detention premises shall be maintained for every aliens' police authority. Such detention premises may be established for a single aliens' police authority or, for purposes of expediency and cost saving, for several aliens' police authorities jointly. The territorial authorities which have to bear the costs of aliens' police authorities shall ensure that detention premises available in each province correspond to the average number of orders for detention pending deportation imposed in that province. The territorial authorities concerned shall draw up administrative agreements which define their tasks with regard to the establishment, maintenance and operation of detention premises as well as the responsibility for costs, considering the extent of utilisation of detention premises by the authorities.

(6) If an alien who is ill or injured cannot be treated properly in detention premises during detention pending deportation, the period during which he receives medical out-patient treatment shall be deemed to be detention pending deportation. If, in such case by reason of the alien's state of health which he has caused himself, the aliens' police authority cannot or no longer execute detention pending deportation, the aliens' police authority may request the director of the court prison in Vienna to execute detention pending deportation in the medical ward of such court prison, provided that the residence prohibition or expulsion order imposed on the alien is enforceable and deportation is possible; the director shall comply with the request, provided that proper medical treatment and care of the person concerned is possible, with regard to the extent of utilisation and equipment of the facilities providing the required treatment.

(7) If required by the alien's state of health, he shall be taken to an appropriate hospital and, if necessary, be guarded there, continuing execution of detention pending deportation, provided that treatment cannot be carried out in detention premises of the aliens' police authority. Art. 71 paras (2) and (3) of the Act Concerning the Execution of Prison Sentences (Strafvollzugsgesetz - StVG), FLG No. 144/1969, shall apply accordingly.

(8) If detention pending deportation is executed in a court prison, in detention premises of another aliens' police authority or in a hospital, the aliens' police authority shall fully refund the costs incurred by such detention.

Implementation of Detention Pending Deportation

Article 79. (1) Detention pending deportation in detention premises of an aliens' police authority shall be governed by art. 53c paras (1) to (5) of the Administrative Penal Act 1991, detention in court prisons and penal institutions shall be governed by art. 53d of the Administrative Penal Act 1991.

(2) Aliens under sixteen years may be held in detention pending deportation if accommodation and care appropriate to their age and stage of development can be guaranteed.

(3) Minors and adults shall be detained separately. If detention pending deportation has also been imposed on a parent or legal guardian, minor detainees shall be detained jointly with the same unless their well-being requires separate detention.

(4) The Federal Minister of the Interior shall issue internal rules for the implementation of detention pending deportation in detention premises of aliens' police authorities, which shall stipulate the rights and obligations of the detainees, having regard to the maintenance of order and giving due consideration to space and staff conditions.

Duration of Detention Pending Deportation

Article 80. (1) The authority shall endeavour to keep detention pending deportation as short as possible.

(2) Detention pending deportation may be continued until the reason for its imposition has ceased to exist or its purpose can no longer be achieved. Except in cases under paras (3) and (4) below, it shall not last for a period exceeding two months altogether.

(3) If an alien may not be deported because an application under art. 51 has not been finally decided, detention pending deportation may be continued until expiry of the fourth week following pronouncement of the final decision, however, for no longer than six months altogether.

(4) If an alien cannot or may not be deported because

1. it is not possible to establish his identity and nationality or
2. he does not possess the permit required by another state for entry or transit or
3. he thwarts deportation by resisting coercive measures (art. 13),

detention pending deportation cannot be continued by reason of the same facts for a period exceeding six months within a period of two years unless failure to deport the alien is attributable to his conduct. In such cases, the alien shall not be kept in detention pending deportation for a period exceeding ten months within a period of two years by reason of the same facts. Also, detention pending deportation imposed under art. 76 para (2) may be continued for a period exceeding six months within a period of two years but not for more than ten months within a period of two years.

(5) In cases where detention pending deportation has been imposed under art. 76 para (2), it may be continued until expiry of the fourth week following a negative final decision on the application for international protection unless a case mentioned in para (4) subparas 1 to 3 above applies. If the appeal against an expulsion order that is associated with a rejecting decision is granted suspensive effect under art. 37 of the 2005 Asylum Act, detention pending deportation may be continued until a ruling is made by the Independent Federal Asylum Review Board. Beyond that, detention pending deportation may be continued only if the Independent Federal Asylum Review Board makes a negative ruling.

(6) If the alien is to be kept in detention pending deportation for a continuous period of more than six months, the appropriateness of such detention shall be reviewed by the Independent Administrative Review Board having regional competence by virtue of office following the day on which the sixth month has been exceeded and, thereafter, every eight weeks. The authority shall submit the administrative files in good time so that the independent administrative review boards may take one week to decide prior to expiry of the time-limits in question. Thereby, it shall state why it is necessary and appropriate to continue detention pending deportation. In any case, the Independent Administrative Review Board shall establish if, at the time of its ruling, the requirements relevant for continuation of detention pending deportation are still met and if continuation of detention pending deportation is appropriate.

(7) The authority shall notify an alien who is to be held in detention pending deportation solely for reasons stipulated in para (3) or (4) above thereof in writing without delay.

Termination of Detention Pending Deportation

Article 81. (1) Detention pending deportation shall be informally terminated by the alien's release if

1. it may no longer be continued under art. 80 or
2. the Independent Administrative Review Board has established that the requirements for continuation are not met.

(2) If detention pending deportation under para (1) above has been informally terminated, the underlying administrative decision shall be deemed to be revoked; the authority shall place this on record.

(3) The authority shall furnish an alien who has been released from detention pending deportation, at his request and free of charge, with a letter stating the duration of his detention.

Chapter 9 Special Legal Redress

Complaint to the Independent Administrative Review Board

Article 82. (1) The alien shall be entitled to apply to the Independent Administrative Review Board, claiming unlawfulness of the administrative decision imposing detention pending deportation, arrest or detention

1. if he has been arrested under this federal act;
2. if he has been or is being detained by reference to this federal act or the 2005 Asylum Act or
3. if an order for detention pending deportation has been imposed on him.

(2) The complaint may be also filed with the authority responsible for arrest or detention. If such contested detention takes place in execution of an administrative decision for imposing detention pending deportation, the complaint may be also filed with the authority issuing the administrative decision.

(3) If the complaint is filed with the authority under para (2) above, such authority shall ensure that it is submitted to the Independent Administrative Review Board within the maximum period of two business days of receipt unless the complainant's detention has terminated before. The detaining authority shall inform the Independent Administrative Review Board without delay of any termination of detention during the complaint procedure.

(4) If, however, the alien's detention has terminated prior to expiry of the period stated in para (3) above, the authority shall be obliged under para (2) above to submit the complaint to the Independent Administrative Review Board without undue delay.

Ruling by the Independent Administrative Review Board

Article 83. (1) The Independent Administrative Review Board in whose administrative area the complainant has been arrested shall have competence to rule on the complaint.

(2) The Independent Administrative Review Board shall rule on the complaint through one of its members. In other respects, art. 67c to 67g and art. 79a of the Act on General Administrative Procedures shall apply, provided that

1. a hearing need not take place if the facts of the case relating to the complaint appear, from the file, to be clarified and
2. the ruling by the Independent Administrative Review Board concerning continuation of detention pending deportation shall be made within one week unless the alien's detention terminates before.

(3) If, under art. 13 para (3) of the Act on General Administrative Procedures, the Independent Administrative Review Board has instructed the complainant to rectify an irregularity in the complaint within a specific period, the period for the ruling specified in para (2) subpara 2 above shall be suspended until rectification of the irregularity or futile expiry of such period.

(4) Provided that detention still continues, the Independent Administrative Review Board shall establish in any case if at the time the ruling is made the requirements relevant for continuation of detention pending deportation are met. In other respects, it shall rule on the items of complaint put forward.

Chapter 10

Special Provisions for EEA Nationals and Swiss Nationals Entitled to Free Movement as well as for Privileged Third-Country Nationals and Family Members of EEA Nationals, Swiss Nationals and Austrian Nationals not Entitled to Free Movement

EEA Nationals and Swiss Nationals

Article 84. EEA nationals and Swiss nationals shall have a right of residence for a period of three months. Art. 30 para (1) shall apply. In addition, they shall have a right of residence subject to chapter 4 part 2 of the Settlement and Residence Act.

Privileged Third-Country Nationals

Article 85. (1) Privileged third-country nationals (art. 2 para (4) subpara 11) shall have a right of residence for a period of three months but are subject to the visa requirement. Art. 21 para (8) shall apply. In addition, they shall have a right of residence subject to chapter 4 part 2 of the Settlement and Residence Act. Holders of long term residence cards (art. 54 of the Settlement and Residence Act) shall be entitled to enter without visa.

(2) Official acts in connection with the issue of visas to privileged third-country nationals shall be exempt from stamp and administrative charges.

Special Provisions Relating to the Withdrawal of Residence Permits and to Non-Procedural Measures

Article 86. (1) Imposition of a residence prohibition on EEA nationals, Swiss nationals or privileged third-country nationals entitled to free movement shall be admissible if their personal conduct represents a threat to public order or security. Such personal conduct shall constitute an actual, current and considerable threat that affects a fundamental interest of society. Such measures may not be justified by criminal convictions alone. Justifications isolated from an individual case or referring to general crime prevention shall not be admissible. Imposition of a residence prohibition on EEA nationals, Swiss nationals or privileged third-country nationals who, prior to the occurrence of the relevant facts, have had their principal place of residence in the federal territory for a continuous period of ten years shall be admissible only if, on the basis of the alien's personal conduct, it can be assumed that the alien's continued residence in the federal territory would constitute a sustainable and serious threat to public order or security of the Republic of Austria. The same shall apply to minors unless the residence prohibition is necessary for the well-being of the child, as provided in the UN Convention on the Rights of the Child of 20 November 1989.

(2) EEA nationals, Swiss nationals and privileged third-country nationals shall be expelled if they do not possess the right of settlement by reason of art. 55 para (1) of the Settlement and Residence Act.

(3) EEA nationals, Swiss nationals and privileged third-country nationals under an expulsion order or a residence prohibition shall be granted stay of execution of one month by virtue of office unless the alien's immediate departure is in the interests of public order or security.

(4) Rejection at the border of EEA nationals, Swiss nationals or privileged third-country nationals shall be admissible if

1. there is doubt concerning their identity or they do not comply with the passport requirement and, if applicable, the visa requirement;
2. an enforceable residence prohibition has been imposed on them and no re-entry permit has been granted;
3. certain facts justify the assumption that they will engage or participate in the smuggling of persons in the federal territory;

4. certain facts justify the assumption that they wish to use their residence in the federal territory for the wilful commission of fiscal offences, with the exception of violations of financial rules, or for the wilful breach of foreign exchange regulations or
5. certain facts justify the assumption that their residence in the federal territory poses a threat to public order or security.

(5) In addition, rejection at the border of a privileged third-country national shall be admissible if a contracting state has communicated that his residence in the territory of the contracting states would pose a threat to public order or security unless he holds a residence permit of a contracting state or an entry permit issued by Austria.

(6) Art. 39 para (2) subpara 2, art. 43 and art. 45 shall not apply to EEA nationals and Swiss nationals.

Family Members of EEA Nationals, Swiss Nationals and Austrian Nationals not Entitled to Free Movement

Article 87. Family members (art. 2 para (4) subpara 12) shall be subject to the visa requirement. The provisions relating to privileged third-country nationals under art. 85 para (2) and art. 86 shall apply to them.

Chapter 11

Austrian Documents for Aliens

Section 1

Alien's Passports and Convention Travel Documents

Issue of Alien's Passports

Article 88. (1) If it is in the interests of the Republic with regard to the person of the alien concerned, alien's passports may, upon application, be issued for

1. stateless persons or persons with unknown nationality who do not hold a valid travel document;
2. foreign nationals who are entitled to unlimited residence in the federal territory and are not in a position to obtain a valid travel document of their country of origin;
3. foreign nationals who are not in a position to obtain a valid travel document of their country of origin and who otherwise comply with the requirements for the issue of a permanent residence permit;
4. foreign nationals who are not in a position to obtain the travel document of their country of origin required for emigration from the federal territory;
5. foreign nationals who have had their principal place of residence in the federal territory for a continuous period of at least four years, provided that the competent federal minister or the provincial government certifies that the issue of the alien's passport is in the interests of the federal republic or the province on account of the services the alien has rendered or is expected to render or
6. foreign nationals who are entitled to subsidiary protection status if their presence in any other state is required for humanitarian reasons unless this is not appropriate for reasons of public order and security.

(2) The format of alien's passports shall be determined by ordinance of the Federal Minister of the Interior in accordance with the international standard requirements for such travel documents; in other respects, the ordinance shall conform to the valid regulations of the Passport Act 1992 (Paßgesetz), FLG No. 839.

(3) With regard to further procedural provisions relating to the issue of an alien's passport, the provisions relating to processing and deletion of personal data and further provisions relating to the processor, the provisions of the Passport Act shall apply accordingly.

Alien's Passports for Minors

Article 89. (1) Minor aliens who have attained the age of 14 may apply for an alien's passport on their own behalf. In such cases, consent of the minor's legal representative shall be required for the issue of the passport; proof of such consent shall be furnished by the applicant.

(2) An application for the issue of an alien's passport for a minor shall require approval by the guardianship court if

1. facts justify the assumption that the minor's well-being would be adversely affected by his residence abroad or
2. a person responsible for the care and upbringing of the minor objects to the issue of the passport.

(3) Paras (1) and (2) above shall also apply to the territorial validity of alien's passports of minors.

Period of Validity of Alien's Passports

Article 90. (1) Alien's passports may be issued for a period of five years unless

1. a shorter period of validity is applied for or
2. a shorter period of validity is adequate with regard to the requirements relevant to the issue of the alien's passport.

(2) Alien's passports with a period of validity of less than six months need not contain information in the machine readable zone.

(3) Extension of the period of validity of an alien's passport shall not be permitted.

Territorial Validity of Alien's Passports

Article 91. (1) Alien's passports shall be valid for all states of the world unless restricted territorial validity is applied for. Territorial validity shall, upon application, be extended or limited.

(2) Territorial validity of an alien's passport shall in no event include the state of which the alien is a national; in the case of statelessness, it shall not include the state in which the alien formerly has had his ordinary place of residence, with the exception of cases under para(3) below.

(3) In special cases deserving particular consideration on humanitarian grounds, territorial validity of an alien's passport may, in the event of statelessness, also include the state in which the alien formerly has had his ordinary place of residence.

Refusal of Alien's Passports

Article 92. (1) Issue, extension of territorial validity and alteration of an alien's passport shall be refused if certain facts justify the assumption that

1. the alien intends to use the document in order to evade criminal prosecution or execution of a sentence in Austria for a criminal offence;
2. the alien intends to use the document in order to violate customs regulations;
3. the alien intends to use the document in order to violate provisions of the Addictive Drugs Act;
4. the alien intends to use the document in order to engage or participate in the smuggling of persons;
5. the alien's residence abroad would pose a threat to internal or external security of the Republic of Austria.

(2) The issue of an alien's passport shall be refused if the alien has failed, without good cause, to answer a summons for the exercise of identification procedures, in which he is informed of such consequence, or does not take part in the same.

Withdrawal of Alien's Passports

Article 93. (1) An alien's passport shall be withdrawn if

1. subsequently, facts become known or occur which would justify refusal of the alien's passport;
2. the photograph is missing or the bearer's identity cannot be established without doubt;
3. an entry made thereon by the authority has become unrecognisable;
4. the alien's passport has been falsified, is no longer complete or has become useless for other reasons.

(2) Alien's passports that are withdrawn under an enforceable order shall be presented to the authority without delay. They shall not constitute valid travel documents.

(3) Public security service officers shall be authorised to seize an alien's passport presented to them if such passport has been withdrawn under an enforceable order. The alien's passport shall, without delay, be presented to the authority in whose local area of jurisdiction the officer has intervened. Such authority shall forward the alien's passport to the authority ordering withdrawal.

Convention Travel Documents

Article 94. (1) Convention travel documents shall, upon application, be issued to aliens who are entitled to asylum status in Austria.

(2) Furthermore, Convention travel documents may, upon application, be issued to aliens who have been granted asylum status in another state if they do not hold a valid travel document and their entry has taken place without evasion of border checks.

(3) In exercising the discretionary power granted under para (2) above, the authority shall give due consideration not only to the applicant's personal circumstances but also to security police matters, as well as to any potential impairment of the relations of the Republic of Austria to another state.

(4) Convention travel documents shall be issued in conformity with the specimen annexed to the Convention Relating to the Status of Refugees. They shall consist of 32 pages and no additional pages may be inserted.

(5) The provisions of the schedule to the Convention Relating to the Status of Refugees shall apply to the setting of the period of validity and territorial validity of Convention travel documents as well as the period of validity of the return authorisation in Convention travel documents; in other respects, art. 88 paras (3) to (8) and art. 89 to 93 shall apply.

Section 2

Other Austrian Identification Documents for Aliens

Photo Identity Cards for Bearers of Privileges and Immunities

Article 95. For identification purposes, the Federal Minister of Foreign Affairs may, by ordinance, provide photo identity cards to members of groups of persons enjoying privileges and immunities in Austria by virtue of an international treaty or under the Federal Act on the Granting of Privileges and Immunities to International Organisations (Bundesgesetz über die Einräumung von Privilegien und Immunitäten), FLG No. 677/1977, which show identity, nationality and the bearer's function.

Emergency Travel Documents for Nationals of EU Member States

Article 96. (1) A national of a Member State of the European Union may, upon application, be issued an emergency travel document for a single journey to the State of which he is a national, the State of permanent residence or a State in which a diplomatic or consular representation of the Member State of which he is a national is accessible. The period of validity of the emergency travel document shall be only barely longer than the minimum period required for completion of the journey for which it is issued.

(2) The document may be issued if

1. the travel document of the person concerned has been lost, stolen, destroyed or is temporarily not available and he is in the territory of a State where the Member State of which the person is a national has no accessible diplomatic or consular representation with the capacity to issue a travel document or where that State is not otherwise represented and
2. clearance from the Member State of which the person is a national has been obtained.

(3) If an emergency travel document has been issued, the application form, a copy of the emergency travel document as well as copies, certified by the representing authority, of the documents proving the applicant's identity and nationality shall be sent to the Member State of which the person is a national.

(4) The format of the emergency travel document shall be determined by ordinance of the Federal Minister of the Interior.

Travel Documents for the Expulsion of Third-Country Nationals

Article 97. (1) Third-country nationals who do not hold a travel document and whose expulsion order or residence prohibition is enforceable may be issued a travel document valid for single departure if it can be assumed that the state to which the alien is to be deported will permit entry with this document.

(2) The travel document shall contain, in any case, the third-country national's name, date of birth, height and nationality as well as the state of destination. The detailed format of the travel document shall be determined by ordinance of the Federal Minister of the Interior.

Chapter 12

Police Identification and Compiling Procedures

Use of Personal Data

Article 98. (1) Aliens' police authorities may use personal data only to the extent required to perform the tasks conferred on them.

(2) Aliens' police authorities may process personal data of third persons only if no provision is made for selection of such data from the total amount of data stored. Procedural data shall be deleted as soon as they are no longer needed, however, not later than five years after the decision became final.

Use of Identification Data

Article 99. (1) Aliens' police authorities shall be authorised to subject aliens to identification procedures if

1. they are in detention pending deportation;
2. they are unlawfully resident in the federal territory, are discovered during such residence and have already attained the age of 14;

3. a residence prohibition or an expulsion order has been imposed on them;
4. it is suspected that a residence prohibition which is still valid has been imposed on them under a different name;
5. an alien's passport or a Convention travel document is to be issued to them;
6. they are to be issued an entry permit or
7. their identity cannot be established otherwise.

(2) Austrian representing authorities abroad shall be authorised to subject aliens to identification procedures in cases under para (1) subparagraphs 5 and 6 above.

(3) Identification data shall be deleted by virtue of office if

1. the death of the person concerned becomes known and five years have elapsed since such death;
2. in cases under para (1) subpara 6 above, two years have passed since identification procedures were taken;
3. in cases under para (1) subparagraphs 1 and 2 above, neither a residence prohibition nor an expulsion order is imposed and two years have passed since identification procedures were taken;
4. eventually, neither a residence prohibition nor an expulsion order is imposed or the period of validity of the residence prohibition has expired or an arrest warrant has been revoked;
5. five years have elapsed since expulsion or rejection at the border;
6. the suspicion mentioned in para (1) subpara 4 above is not confirmed;
7. the application under para (1) subpara 5 above is withdrawn prior to the issue of the alien's passport or Convention travel document or the period of validity of the alien's passport or Convention travel document last issued expired ten years ago;
8. Austrian nationality is granted to the person concerned.

(4) Art. 64 and art. 65 para (4), first sentence of para (5) and para (6), as well as art. 73 para (7) of the Security Police Act shall apply. In cases under para (1) subparagraphs 1, 2 and 5 above, measures for the establishment of personal identity may be carried out.

Compiling of Identification Data

Article 100. (1) Aliens' police authorities shall request an alien who is to be subjected to identification procedures to comply with such request and inform him about the reasons for such procedures; for this purpose, he shall be given an information sheet, basically in a language understandable to him. The person concerned shall take part in the identification procedures.

(2) If the person concerned does not comply with the request in the case mentioned in art. 99 para (1) subpara 2, public security service officers shall be authorised to bring the person concerned before the authority for the purpose of exercising identification procedures; detention shall be admissible for such purpose only as long as the successful exercise of the identification procedures, taking account of art. 78 of the Security Police Act, does not seem futile.

(3) If the person concerned does not comply with the request, except for cases under art. 99 para (1) subparagraphs 5 and 6, the obligation to take part in such procedures shall be imposed on him by administrative decision unless he is in prison; no appeal shall be admissible. The administrative decision may be issued together with a summons (art. 19 of the Act on General Administrative Procedures) requiring his appearance for the identification procedures. Art. 78 of the Security Police Act shall apply.

(4) In cases under art. 99 para (1) subparagraphs 1 to 5 and 7, identification data of aliens, which are lawfully processed by a security authority under the Security Police Act, may be compiled by aliens' police authorities and further processed under the provisions of this federal act. The alien shall be informed of such compiling in a manner appropriate to the circumstances.

Central Aliens' Register; Information Network

Article 101. The Federal Minister of the Interior shall be authorised to operate a Central Aliens' Register in the form of an information network (art. 4 subpara 13 of the Data Protection Act 2000 [Datenschutzgesetz – DSG]). The Federal Minister of the Interior shall perform both the function of operator under art. 50 of the Data Protection Act 2000 and that of processor within the meaning of art. 4 subpara 5 of the Data Protection Act 2000. Controllers in compliance with data protection provisions shall be authorities under the 2005 Aliens' Police Act, the Settlement and Residence Act and the 2005 Asylum Act.

Use of Data within the Framework of the Central Aliens' Register

Article 102. (1) Authorities responsible for aliens' police matters, settlement and residence matters and asylum matters may jointly process and use

1. name,
2. sex,
3. previous names,
4. date and place of birth,
5. residential addresses,
6. nationality,
7. name of parents,
8. alias data,
9. issuing authorities, issuing data and numbers of documents carried along,
10. any information on the dangerousness in case of intervention, including sensitive data if their use is required to protect vital interests of others,
11. data relevant for entry permit and residence permit and for admissibility of detention pending deportation,
12. police search data for arrest under this federal act or the 2005 Asylum Act ,
13. photographs,
14. papillary line prints of the fingers,
15. signature and
16. verbal description of physical distinguishing marks

of an alien listed in the Aliens' Register.

(2) Retrievals from the Aliens' Register shall be admissible only if the alien is being identified at least by his name, a number assigned to him or a papillary line print. For the purposes of art. 107 para (2) also data on the validity of entry and residence permits may be used as criteria for retrieval. Unless a papillary line print is used as selection criterion, information on papillary line prints and the signature may be provided only if this is required for the performance of an official task.

(3) Personal data of third persons may be processed only if no provision is made for selection of such data from the total amount of data stored. This shall not be in conflict with the provision of information on the total number of data records concerning such third person, including a reference to the respective controller of such processing operations, provided that it takes place only in the course of processing the data of an alien who is directly affected by an official act.

(4) Transmission of the data processed under para (1) above shall be admissible to security authorities and public prosecution authorities so that they can carry out their functions in the service of criminal justice, as well as to Austrian representing authorities abroad, fiscal offence prosecution authorities and authorities entrusted with enforcement of the Aliens' Employment Act in matters of security administration and to security authorities, vital statistics authorities and nationality authorities if this is required for the performance of their tasks. In other respects, transmission shall be admissible only if an express statutory authorisation has been granted therefor.

(5) Processing of alphanumerical data, photographs, papillary line prints and signatures shall be done physically separate. Any retrieval and transmission of personal data from the Information Collection Center shall be recorded in such manner as to allow review of admissibility of the processing operations performed. Such records shall be kept for three years.

Central Aliens' Register; Access Denial and Deletion

Article 103. (1) Access by aliens' police authorities, asylum authorities, settlement and residence authorities and Austrian representing authorities abroad, as controllers, to personal data processed under art. 101 shall be denied as soon as the requirements for storage of such data have ceased to exist or the data are no longer needed otherwise. Upon expiry of further two years, the data shall be deleted also physically. During this time, access denial may be lifted for purposes of checking the correctness of any other storage intended under art. 101.

(2) As controller, authorities shall be obliged to check personal data which are unlimited in time, have been processed under art. 101, access to which is not denied and which have remained para (1) above have not already been met. Upon expiry of further three months under para (1) above, access to such data shall be denied unless the controller has confirmed before that the reason causing storage of such data continues to exist or other obligations for deletion under art. 99 exist.

(3) As soon as identification data have been processed in the Central Aliens' Register, they shall be deleted in the local application.

Central Procedural File; Information Network

Article 104. (1) Aliens' police authorities shall be entitled to jointly process and use all procedural data compiled by them, i.e. procedural information on applications, decisions and appeals. On behalf of aliens' police authorities, the Federal Minister of the Interior shall perform both the function of operator under art. 50 of the Data Protection Act 2000 and that of processor within the meaning of art. 4 subpara 5 of the Data Protection Act 2000.

(2) Aliens' police authorities shall be entitled to compile procedural data processed by authorities responsible for asylum or settlement and residence matters if this is absolutely required for the performance of their tasks.

(3) Retrievals from the Central Procedural File shall be admissible only where this is required to perform a task conferred under this federal act and the alien is being identified at least by his name, a number assigned to him or a papillary line print.

(4) Art. 98 para (2) shall apply to data processed in the Central Procedural File.

Information Obligations

Article 105. (1) By communicating the relevant circumstances, security authorities shall inform aliens' police authorities about the suspected commission of a criminal offence by aliens. The aliens' police authority shall forward the information to any higher instance that may have competence.

(2) The criminal courts shall inform the aliens' police authority of first instance of the bringing of charges for intentionally committed offences prosecutable by courts of first instance, final convictions with the copy of the judgement enclosed, imposition and lifting of pre-trial detention; penal institutions and court prisons shall inform the aliens' police authority of the beginning and the end of an alien's prison sentence. Subject to technical feasibility, such information shall be provided by means of electronic transmission of these data to the aliens' police authority (art. 15b para (1) of the Act Concerning the Execution of Prison Sentences). The aliens' police authority shall be responsible for forwarding the information to any higher instance that may have competence. If the alien has applied for asylum, the information shall be forwarded to the Federal Asylum Agency.

(3) The Federal Minister of the Interior shall be obliged to inform authorities responsible for nationality matters of ineffective residence prohibitions. For such purpose, by reason of

barred access under art. 103 para (1), he shall transmit to them the basic data record of the alien and the data relating to the ineffective residence prohibition.

(4) Authorities responsible for nationality matters shall inform the competent aliens' police authority of the granting of nationality to an alien.

(5) District administrative authorities shall inform the competent aliens' police authority of applications for name changes of aliens and the civil courts shall inform such authority of applications for adoption of aliens. If the alien has applied for asylum, such information shall be forwarded to the Federal Asylum Agency.

(6) Information in connection with expulsion orders under art. 53 and art. 54 and residence prohibitions under art. 60 shall be made available to the competent authority for the purpose of conducting administrative penal proceedings under the Aliens' Employment Act (art. 28 of the Aliens' Employment Act).

Cooperation Obligations

Article 106. Authorities of the federal republic, provinces and municipalities, the agencies of the Employment Service as well as the social insurance institutions, which have lawful access to data, shall be authorised and, on request, obliged to transmit such data to the aliens' police authority, provided that such authority needs such data to carry out a measure under chapters 5 to 10. It shall not be admissible to refuse to give such information. The data shall be deleted without delay if they are no longer needed for the specific purpose.

Admissibility of Use of Data from the Central Register [Zentrales Melderegister]

Article 107. (1) For retrievals from the Central Register conducted by the aliens' police authority under the Residence Registration Act, provision may be made for selection not only by name but also by residential address from the total amount of data stored in the Central Register if so required for the exercise of aliens' police.

(2) The Federal Minister of the Interior shall be authorised to synchronise the data of the registered persons stored in the Central Register with the personal data records of the aliens whose residence permit is no longer valid. If such alien is still registered even though his residence permit has expired, the Federal Minister of the Interior shall communicate such fact to the competent aliens' police authority.

(3) One year after taking the measures provided in para (2) above, the Federal Minister of the Interior shall review the expediency of such measures and report the findings to the Data Protection Council [Datenschutzrat].

International Data Exchange

Article 108. (1) Provided that the Federal Government is authorised to conclude intergovernmental agreements under art. 66 para (2) of the Federal Constitutional Act, it may conclude international agreements on the transmission, to certain recipients,

1. of data processed under art. 101 on aliens who are not nationals of the contracting states or
2. of data mentioned in para (2) below on persons under a final residence prohibition under art. 60 para (2) subpara 5 or who, by a final judgement, have been convicted under art. 114 or 117.

In such agreements, reciprocity shall be granted and any deletion of data in one contracting state within six months shall lead also to deletion of the data transmitted to the other contracting state.

(2) For transmission under para (1) subpara 2 above, the following particulars shall be compiled, in addition to the data on the residence prohibition, the penal order or judgement: name, sex, previous names, date of birth, place of birth and residential address, nationality, name of parents and identification data, if available.

(3) Personal data on aliens transmitted from a foreign country by virtue of an agreement concluded under para (1) above may be processed in the Information Collection Center.

Chapter 13

Fighting Marriages and Adoptions for Purposes of Residence

Obligation to Notify of Authorities

Article 109. If a court or an administrative authority, in taking a decision or performing an official act, has substantiated grounds to suspect that marriage or adoption has been concluded for purposes of residence, it shall inform the competent aliens' police authority thereof.

Obligation to Notify Settlement and Residence Authorities

Article 110. If the settlement and residence authority informs the aliens' police authority having competence for the alien's place of residence that there are substantiated grounds to suspect that marriage or adoption has been concluded for purposes of residence, the aliens' police authority shall investigate such circumstance and communicate the result of the investigation to the settlement and residence authority within a period of three months. If no communication is made within such period, the settlement and residence authority shall assume that the investigations by the aliens' police authority have not produced any result.

Chapter 14

Carriers

Duties of Carriers

Article 111. (1) Carriers which convey aliens to Austria across the external border in an aircraft or vessel or a motor coach operating regular international services shall be obliged to take all required measures to make sure that the alien holds the required travel document and, if applicable, a visa for entry into the federal territory.

(2) Carriers which convey aliens to Austria across the external border in an aircraft or vessel or a motor coach operating regular international services shall be furthermore obliged to record

1. identity data of the aliens conveyed by them (full name, date of birth, place of birth, place of residence and nationality);
2. data of the documents required for their entry (type, number, period of validity, issuing authority and issue date of travel document and, where applicable, visa);
3. original place of departure;
4. times of departure and arrival;
5. border crossing-point for entry into the federal territory;
6. total number of persons conveyed by the respective carriage and
7. in the event of air carriage, the carriage code number,

keep such information ready for its provision to the border control authority for a period of 48 hours after arrival of the means of transport and make it available to the same free of charge without delay. Thereafter, the carrier shall destroy the data.

(3) Carriers which will convey aliens to Austria in an aircraft or vessel shall, on request, be obliged to transmit in advance the data mentioned in para (2) above free of charge to the border control authority already upon completion of the formalities relating to the passengers.

(4) If an alien who has been conveyed to Austria in a carrier's aircraft, land vehicle or vessel is rejected at the border, the carrier shall be obliged, at his expense, to arrange for the alien's immediate departure.

(5) If the carrier is not in the position to arrange for the rejected alien's immediate departure under para (4) above, he shall be obliged to find return transport and to bear the

costs for the same or, if return transport cannot take place without delay, to bear the costs for the alien's residence and return transport.

(6) The obligations under paras (4) and (5) above shall apply to the carrier also if an alien is refused permission to remain in the transit area (art. 43 para (1)).

Sanctions against Carriers

Article 112. (1) The carrier shall pay an amount of Euro 3,000 for any alien he has conveyed to Austria without a travel document and the required visa (art. 111 para (1)) or relating to whom he does not fulfil his obligations under art. 111 para (2) or (3).

(2) An administrative decision under para (1) above shall not be issued or repealed if the respective alien is granted asylum or subsidiary protection under the 2005 Asylum Act or it is established that rejection at the border or deportation of the alien is not admissible by reason of art. 50 para (1).

Chapter 15

Costs and Penal Provisions

Section 1

Costs

Article 113. (1) Costs incurred by the authority or the federal republic in connection with enforcement of a residence prohibition, an expulsion order or forcible return, as well as costs relating to execution of an order for detention pending deportation, including expenses relating to use of more lenient measures and interpretation services, shall be refunded by the alien.

(2) Any person who employs an alien in violation of art. 3 para (1) of the Aliens' Employment Act shall bear the costs arising from enforcement of an expulsion order imposed by reason of art. 53 para (2) subpara 5 or a residence prohibition imposed by reason of art. 60 para (2) subpara 8, as well as the costs of detention pending deportation and interpretation costs.

(3) Any person who has agreed vis-à-vis an aliens' police authority or an Austrian representing authority abroad to bear the costs under art. 21 para (6) shall bear such costs.

(4) The carrier which does not comply with its obligations under art. 111 paras (2) to (6) shall refund the costs arising in connection with the alien's rejection at the border or deportation. This shall, in particular, include costs incurred, between the alien's arrival at the border crossing-point and execution of his departure,

1. for board and lodging, including costs incurred for arranging for and carrying out rejection at the border and costs for escorting officers;
2. to the authority or the federal republic for enforcement of the residence prohibition, if required, including costs for execution of detention pending deportation, interpretation costs, costs for the ticket and costs for escorting officers.

(5) The carrier which complies with its obligations under art. 111 para (4), (5) or (6) but wants rejection at the border to take place with an escort (art. 44) shall bear the costs for escorting officers.

(6) The costs which are to be refunded under an administrative decision issued by the authority shall be collected by the authority performing the official act and shall be credited to the territorial authority responsible for meeting the expenditures of that authority or the intervening public security service officers. Art. 79 of the the Act on General Administrative Procedures shall apply *mutatis mutandis*. Costs of executing detention pending deportation, including expenditures for use of more lenient measures, shall be borne by the territorial authority meeting the expenditures of the authority that issued the administrative decision relating to such detention unless such costs are collectable under para (1), (2), (3) or (4) above. Other noncollectable costs mentioned in para (1) above shall be borne by the federal republic.

Section 2 Penal Provisions

Smuggling of Persons

Article 114. (1) Any person who knowingly assists in the unlawful entry or transit of an alien into or through a Member State of the European Union or neighbouring state of Austria shall be sentenced by the court to a term of imprisonment of up to one year.

(2) Any person who, with intent to unjustly enrich himself or a third person through payment made to that end, assists in the unlawful entry or transit of an alien into or through a Member State of the European Union or neighbouring state of Austria shall be sentenced by the court to a term of imprisonment of up to two years.

(3) Any person who has already been convicted within the last five years for smuggling of persons within the meaning of para (2) above shall be sentenced to a term of imprisonment of up to three years. A conviction by a foreign court in proceedings conforming to the principles of art. 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms shall be also deemed as such.

(4) Any person who commits the offence under para (2) above on a commercial basis (art. 70 of the CC) or in a manner that subjects the alien to a state of torture for a prolonged period of time, in particular during transport, shall be sentenced by the court to a term of imprisonment of six months up to five years.

(5) Any person who commits the offence under para (2) above as a member of a criminal organisation or in a manner that poses a threat to the life of the alien to whom the offence relates shall be sentenced by the court to a term of imprisonment of one year up to ten years.

(6) Aliens whose unlawful entry or transit is assisted by the offence shall not be punished as parties to the offence (art. 12 of the CC). Their deportation or deportation may be delayed where and for as long as this is necessary to question them on the facts of the case.

(7) In case of imminent danger, public security service officers shall be authorised to seize, on a provisional basis, any articles carried by the offender, or means of transport or containers used for the commission of the offence to guarantee recovery of proceeds (art. 20 of the CC), forfeiture (art. 20b of the CC) or confiscation (art. 26 of the CC). The cargo on board of the means of transport may be handed over to the holder of the vehicle registration document or his authorised representative. The court shall be notified of the measures taken without delay.

(8) Proceedings in connection with the offence mentioned in para (1) above shall be conducted in courts of first instance.

Aiding and Abetting Unauthorised Residence

Article 115. (1) Any person who, with intent to prevent the procedure for issue or enforcement of measures terminating residence, facilitates an alien's unauthorised residence in the territory of a Member State of the European Union shall be sentenced by the court to a term of imprisonment of up to six months or to a fine of up to 360 daily units. Any person who exclusively performs activities within the framework of his professional duties as lawyer shall in no case be deemed to act unlawfully. The same shall apply to other persons entered in the list of defending counsels.

(2) Any person who, with intent to unjustly enrich himself or a third person through payment of more than a small amount made to that end, facilitates an alien's unauthorised residence in the territory of a Member State of the European Union shall be sentenced by the court to a term of imprisonment of up to one year or to a fine of up to 360 daily units.

(3) Any person who commits the offence on a commercial basis shall be sentenced to a term of imprisonment of up to three years.

(4) The alien who benefited or was to benefit from aiding and abetting under para (1) or (2) above shall not be punished as a party to the offence.

(5) Proceedings in connection with the offences mentioned in paras (1) and (2) above shall be conducted in courts of first instance.

Exploitation of Aliens

Article 116. (1) Any person who, with intent to generate a regular income for himself or a third person by making use of an alien's special state of dependence, exploits such alien who is unlawfully resident in the federal territory, does not hold a work permit or is otherwise in a special state of dependence shall be sentenced by the court to a term of imprisonment of up to three years.

(2) Any person who, through such offence, puts an alien in distress or exploits a larger number of aliens shall be sentenced to a term of imprisonment of six months up to five years.

(3) Where the offence results in the death of an alien, the offender shall be sentenced to a term of imprisonment of one year up to ten years.

Entry into and Arrangement of Marriages for Purposes of Residence

Article 117. (1) An Austrian national or an alien entitled to settle in the federal territory who enters into marriage with an alien without the intention of leading a family life within the meaning of art. 8 of the ECHR and is, or must have been, aware that the alien intends to rely on this marriage to obtain or retain a residence permit, to acquire Austrian nationality or to prevent measures terminating residence shall, if the offence is not subject to more severe punishment under a different provision, be sentenced by the court to a fine of up to 360 daily units.

(2) An Austrian national or an alien entitled to settle in the federal territory who, with intent to unjustly enrich himself or a third person through payment made to that end, enters into marriage with an alien without the intention of leading a family life within the meaning of art. 8 of the ECHR and is, or must have been, aware that the alien intends to rely on this marriage to obtain or retain a residence permit, to acquire Austrian nationality or to prevent measures terminating residence shall, where the offence is not subject to more severe punishment under a different provision, be sentenced by the court to a term of imprisonment of up to one year or to a fine of up to 360 daily units.

(3) Any person who arranges or sets up marriages on a commercial basis even though he is, or must have been, aware that the persons concerned will rely on this marriage to obtain or retain a residence permit, to acquire Austrian nationality or to prevent measures terminating residence but do not intend to lead a family life within the meaning of art. 8 of the ECHR shall, where the offence is not subject to more severe punishment under a different provision, be sentenced by the court to a term of imprisonment of up to three years.

(4) The alien who wants to rely on the marriage within the meaning of para (1) above shall not be punished as a party to the offence.

(5) Any person who voluntarily cooperates in establishing the facts of the case before a prosecution authority learns of his guilt shall not be punished under para (1) above.

Adoptions and Arrangement of Adoptions for Purposes of Residence of Aliens *sui juris*

Article 118. (1) An Austrian national or an alien entitled to settle in the federal territory who adopts an alien *sui juris* and submits an application for approval of such adoption to the guardianship court even though he is, or must have been, aware that the alien will rely on this adoption to obtain or retain a residence permit, to acquire Austrian nationality or to prevent measures terminating residence but does not intend to maintain a relationship similar to that between natural parents and children shall, where the offence is not subject to more severe punishment under a different provision, be sentenced by the court to a fine of up to 360 daily units.

(2) An Austrian national or an alien entitled to settle in the federal territory who, with intent to unjustly enrich himself or a third person through payment made to that end, adopts an alien *sui juris* and submits an application for approval of such adoption to the guardianship court even though he is, or must have been, aware that the alien will rely on this adoption to obtain or retain a residence permit, to acquire Austrian nationality or to prevent measures terminating residence but does not intend to maintain a relationship similar to that between natural parents and children shall, where the offence is not subject to more

severe punishment under a different provision, be sentenced by the court to a term of imprisonment of up to one year or to a fine of up to 360 daily units.

(3) Any person who arranges or sets up adoptions under para (1) or (2) above on a commercial basis (art. 70 of the CC) even though he is, or must have been, aware that the persons concerned will rely on these adoptions to obtain or retain a residence permit, to acquire Austrian nationality or to prevent measures terminating residence but do not intend to maintain a relationship similar to that between natural parents and children shall, where the offence is not subject to more severe punishment under a different provision, be sentenced by the court to a term of imprisonment of up to three years.

(4) The adopted child shall not be punished under para (1) above as party to the offence.

(5) Any person who voluntarily cooperates in establishing the facts of the case before a prosecution authority learns of his guilt shall not be punished under para (1) above.

Obtaining an Entry or Residence Permit by Fraud

Article 119. (1) Any person who, in proceedings for obtaining an entry or residence permit, knowingly provides the authority responsible for issuing such permit with false information in order to obtain lawful residence in the federal territory by fraud, if only on a temporary basis, shall be sentenced by the court to a term of imprisonment of up to one year or to a fine of up to 360 daily units.

(2) Any person who, in asylum proceedings before an asylum authority, knowingly provides false information concerning his identity or origin in order to obtain temporary leave to remain in the federal territory or to obtain lawful residence in the federal territory by fraud, if only on a temporary basis, shall be sentenced by the court to a term of imprisonment of up to one year or to a fine of up to 360 daily units.

(3) Criminal liability under art. 289 of the CC shall preclude criminal liability under paras (1) and (2) above.

Unauthorised Residence

Article 120. (1) Any alien who

1. does not lawfully enter the federal territory or
2. is not lawfully resident in the federal territory

shall be deemed to have committed an administrative offence and shall be sentenced to a fine of up to Euro 2,180.-- or, if noncollectable, to a term of imprisonment of up to three weeks. The place where the alien is discovered or his last known residence shall be regarded as the place where the offence has been committed; if the alien is discovered in a means of public transport, such place shall be the nearest exit point where it is possible to exit from the means of public transport according to the timetable of the transport company.

(2) Any person who commits the offence under para (1) above, even though he has already been convicted for such offence, shall be sentenced to a fine of up to Euro 4,360.-- or, if noncollectable, to a term of imprisonment of up to six weeks.

(3) It shall not be an administrative offence under para (1) subpara 2 above

1. if departure is possible only to a state to which deportation is inadmissible (art. 50);
2. for as long as the alien has been granted stay of deportation,
3. in the case of residence of a privileged third-country national not holding a visa or
4. for as long as the alien is being deprived of his personal freedom.

(4) Punishment under para (1) subpara 2 above shall preclude punishment on account of the administrative offence committed at the same time under para (1) subpara 1 above.

(5) It shall not be an administrative offence under para (1) above if the alien has applied for international protection and has been granted asylum status or subsidiary protection status. During the asylum proceedings, the administrative penal proceedings shall be suspended.

Other Offences

Article 121. (1) Any alien who resides outside the area to which his residence has been limited under art. 47 para (1) or art. 62 para (5) shall be deemed to have committed an administrative offence and shall be sentenced to a fine of up to Euro 2,180.--, or, if noncollectable, to a term of imprisonment of up to three weeks. This shall not apply where residence outside this area is necessary, in particular, to receive medical treatment or to fulfil other statutory obligations.

(2) Any person who fails to comply with

1. conditions imposed on him by the authority

a) upon granting stay of execution;

b) upon granting stay of deportation or

c) in connection with permits under art. 72 or art. 73

or

2. fails to carry his travel document on his person or keep it under art. 32 para (2),

3. despite being requested by a public security service officer

a) fails to hand over to such officer a document establishing his residence permit or

b) fails to proceed, accompanied by such officer, to the place where the document is kept

shall be deemed to have committed an administrative offence and shall be sentenced to a fine of up to Euro 218.--, or, if noncollectable, to a term of imprisonment of up to one week.

(3) Any person in charge who does not permit public security service officers to enter land, facilities, places of work, premises or vehicles under art. 36 para (1) shall be deemed to have committed an administrative offence and shall be sentenced to a fine of up to Euro 4,360.--, and if noncollectable, to a term of imprisonment of up to six weeks.

(4) Sentences imposed under para (1), (2) or (3) above or art. 120 paras (1) and (2) shall be processed together with the required personal data in the Register of Administrative Penalties [Verwaltungsstrafevidenz] of the security headquarters (art. 60 of the Security Police Act). Art. 60 paras (2) and (3) of the Security Police Act shall apply.

Subsidiarity

Article 122. It shall not be an administrative offence if an offence under art. 120 and 121 constitutes a criminal offence falling within the jurisdiction of the courts.

Chapter 16

Final and Transitional Provisions

Gender-Neutral Use of Language

Article 123. So far as in this federal act expressions relating to natural persons are given only in the male form, they shall equally apply to women and men. If the expression is applied to specific natural persons, the form specific to the gender shall be used.

References

Article 124. (1) So far as in this federal act references are made to provisions of other federal acts, they shall be applied in the respective version as amended. References to other rules of law shall refer to the rule of law at the time of promulgation of the reference under this federal act.

(2) So far as in other federal acts references are made to the provisions of the Aliens' Act 1997 (Fremdengesetz), such provisions shall be replaced by the respective provisions of this federal act.

Transitional Provisions

Article 125. (1) Proceedings for the imposition of a residence prohibition or an expulsion order pending at the time of entry into force of this federal act shall be continued in accordance with the provisions hereof.

(2) Orders for detention pending deportation issued under the Aliens' Act 1997 shall, with effect from 1 January 2006, be deemed to have been imposed under this federal act. An alien's detention that has commenced prior to 31 December 2005 and is continued thereafter without interruption may be carried on for a total period not exceeding that permitted under this federal act.

(3) Residence prohibitions whose period of validity have not expired at the time of entry into force of this federal act shall be deemed to be residence prohibitions issued hereunder, having the same period of validity. If a residence prohibition has been imposed on an alien who is an asylum seeker on 1 January 2006, such residence prohibition shall be regarded as prohibition to return.

(4) Residence prohibitions which have been contested before the Administrative Court or Constitutional Court shall become ineffective upon entry into force of this federal act unless the contested decision had a basis also in the provisions of this federal act. In such cases, the complaint shall be declared non-relevant and the proceedings shall be terminated without any prior hearing of the complainant. In such cases, the decision on non-relevance of the complaint shall also render the administrative decision of first instance ineffective. Decisions to be taken after entry into force of this federal act may not have detrimental effects on such residence prohibition.

(5) Administrative decisions whereby enforcement of a residence prohibition has been deferred under the Aliens' Act 1997 shall remain valid as stipulated.

(6) Visas issued prior to entry into force of this federal act shall remain valid as stipulated.

(7) Identity cards of bearers of privileges and immunities, photo identity cards of aliens and photo identity cards of EEA nationals issued prior to entry into force of this federal act shall remain valid as stipulated.

(8) Authorisations under art. 110 para (2) of the Federal Act on Entry as well as Residence and Settlement of Aliens (Bundesgesetz über die Einreise und den Aufenthalt und die Niederlassung von Fremden - FrG), FLG I No. 75/1997, in existence on 1 January 2006, shall be deemed to be ordinances issued under art. 4 para (1) and shall be promulgated.

(9) For proceedings under the Aliens' Act 1997 pending at security headquarters on 31 December 2005, which will fall into the competence of an independent administrative review board as per 1 January 2006 under art. 9, the period under art. 73 of the the Act on General Administrative Procedures shall re-commence on 1 January 2006.

Entry into Force

Article 126. (1) This federal act, except for art. 9 para (1), shall enter into force on 1 January 2006.

(2) (Constitutional provision) Art. 9 para (1) as amended by the federal act FLG I No. 100/2005 shall enter into force on 1 January 2006.

(3) Regulations or intergovernmental agreements under this federal act may be already issued or concluded as from the day following its promulgation; however, they shall enter into force no sooner than this federal act enters into force.

(4) Art. 2 para (4) subparas 2, 2a and 11 and art. 9 para (2), art. 24 paras (2) and (3), art. 31, art. 46 para (1), art. 56 para (3), art. 62 para (1), art. 65 paras (2) and (3), art. 74 para (2) subpara 2, art. 101, art. 102 para (1) subpara 12, the heading of art. 112 as well as art. 115 para (1), as amended by the federal act FLG I No. 157/2005, shall enter into force on 1 January 2006.

Enforcement

Article 127. Art. 17 paras (1) and (2), art. 19 para (4), art. 30 para (3), art. 49 paras (1) and (2) and art. 108 shall be enforced by the Federal Government; art. 16 para (1), art. 17 para (3), art. 25 para (1), art. 28 para (2) and art. 30 para (4) by the Federal Minister of the Interior, in agreement with the Federal Minister of Foreign Affairs; art. 23 by the Federal Minister for Health and Women; art. 5 para (4) second part of the sentence, art. 8 para (1) second sentence and art. 95 by the Federal Minister of Foreign Affairs; art. 114, 115, 116, 117, 118 and 119 by the Federal Minister of Justice and the other provisions by the Federal Minister of the Interior.

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All translations are unofficial. They have been prepared with great care, but linguistic compromises had to be made. The reader should also bear in mind that some provisions of these laws will remain unclear without a certain background knowledge of the Austrian legal and political system. Please note that these laws may be amended in future and check occasionally for updates.