

Federal Act on the Conduct of Aliens Police Operations, 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 conduct of alien police and border rejection operations, the granting of entry permits, the imposition of measures to terminate residence, the ordering of deportation, the granting of temporary leave to remain, the execution of return decisions of EEA States and the issue of documents for aliens.

(2) Articles 27a and 41 to 43 shall not be applicable to asylum seekers (article 2, paragraph (1), subparagraph 14, of the 2005 Asylum Act, FLG I No. 100). In addition, articles 39 and 76 shall not be applicable to aliens who have been granted asylum status or subsidiary protection status.

(3) Articles 39, paragraph (3), 43 and 45 shall not apply to EEA citizens or to Swiss citizens.

Definition of terms

Article 2. (1) “Entry permits” shall mean visas as referred to in the Visa Code, national visas (D-type visas) as referred to in article 20, paragraph (1), and special permits as referred to in article 27a.

(2) “Alien police operations” shall mean:

1. the prevention of the unlawful entry of aliens;
2. the supervision of the residence of aliens in the federal territory;
- (3. has been repealed by FLG I. No. 145/2017)*
4. the forcible return and transit of aliens and
5. the prevention and stopping of punishable acts under this federal act.

(3) “Documents for aliens” shall mean alien’s passports (article 88), Convention travel documents (article 94), photo identity cards for persons entitled to privileges and immunities (article 95), emergency travel documents for nationals of a Member State of the European Union (article 96) and travel documents for the expulsion of third-country nationals (article 97).

(4) For the purposes of this federal act:

1. “alien” shall mean a person who is not an Austrian national;
2. “entry” shall mean the entering of the federal territory;

- 2a. “departure” shall mean the leaving of the federal territory;
3. “transit” shall mean the crossing of the federal territory including stops indispensable therefor;
4. “travel document” shall mean a passport, a passport replacement document or any other travel document recognized 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 article 224, article 224a, article 227, paragraph (1), and article 231 of the Criminal Code (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 mean 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 mean 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 mean an alien who is a national of a party to the Agreement on the European Economic Area (EEA Agreement);
9. “Third country” shall mean any country other than a member State of the EEA Agreement or Switzerland
10. ‘Third-country national’ shall mean an alien who is not an EEA citizen or a Swiss citizen;
11. “Favoured third-country national” shall mean the spouse or registered civil partner, relatives of, and relatives of the spouse or registered civil partner of, an EEA citizen or a Swiss citizen or an Austrian who have exercised their right of residence of more than three months under European Union law or accorded by virtue of the Agreement between the European Community and Switzerland on the free movement of persons, in the direct descending line up to the age of 21 years (beyond that age if they are dependants), and also his or her relatives and relatives of his or her spouse or registered civil partner in the direct ascending line if they are dependants, provided that the third-country national accompanies or rejoins the EEA citizen possessing right of residence under European Union law or Swiss citizen from whom his or her favoured status under European Union law derives;
12. “Family member” shall mean 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. “Seasonal worker” shall mean a third country national pursuing an activity on federal territory which requires a work permit for seasonal employees or harvest helpers pursuant to article 5 of the federal act of 20 March 1975 governing the employment of foreign persons (Aliens Employment Act), Federal Law Gazette No. 218/1975;

14. “Residence permit” shall mean a residence permit as defined in the Federal Act concerning Settlement and Residence in Austria (Settlement and Residence Act – NAG), FLG I No. 100/2005, or as defined in article 54, paragraph (1), of the 2005 Asylum Act, or a residence permit issued by a contracting State, authorising settlement in its territory;

15. “Right of free movement” shall mean the right of an EEA national and his family members under Community law to settle in Austria;

16. “Purely temporary occupation in a self-employed capacity” shall mean 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 as referred to in article 2 of the Social Insurance Act for Trade and Industry (*Gewerbliches Sozialversicherungsgesetz – GSVG*), FLG No. 560/1978;

17. “purely temporary occupation in a non-self-employed capacity” shall mean that any employment where a permit or other certificate pursuant to the Aliens Employment Act 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 pursuant to the Aliens Employment Act, (article 1, paras 2 and 4, of the Aliens Employment Act), or which is carried on for the period of time stipulated pursuant to article 1 subpara 14 of the Regulation of the Federal Minister for Employment and Social Matters of 19 September 1990 on exceptions to the scope of application of the Aliens Employment Act (Regulation on the Employment of Aliens -), Federal Law Gazette No. 609/1990;”

17a. “Request for extension” shall mean the request by a seasonal worker for an additional visa for employment as a seasonal worker on federal territory, made during the period of validity of a visa issued for federal territory for employment as a seasonal worker;

18. Freizügigkeitsrichtlinie: die Richtlinie 2004/38/EG über das Recht der Unionsbürger und ihrer Familienangehörigen, sich im Hoheitsgebiet der Mitgliedstaaten frei zu bewegen und aufzuhalten, zur Änderung der Verordnung (EWG) Nr. 1612/68 und zur Aufhebung der Richtlinien 64/221/EWG, 68/360/EWG, 72/194/EWG, 73/148/EWG, 75/34/EWG, 75/35/EWG, 90/364/EWG, 90/365/EWG und 93/96/EWG, ABl. Nr. L 158 vom 30.04.2004 S. 77 in der Fassung der Berichtigung ABl. Nr. L 229 vom 29.06.2004 S. 35;

19. Freizügigkeitsabkommen EG-Schweiz: das Abkommen zwischen der Europäischen Gemeinschaft und ihren Mitgliedstaaten einerseits und der Schweizerischen Eidgenossenschaft andererseits über die Freizügigkeit, ABl. Nr. L 114 vom 30.04.2002 S. 6 und BGBl. III Nr. 133/2002;

20. “Visa Requirement Regulation” shall mean Regulation (EC) No. 539/2001 listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement, Official Journal No. 81 of 21 March 2001, p. 1, as currently amended;

21. “VIS Regulation” shall mean Regulation (EC) No. 767/2008 concerning the Visa Information System (VIS) and the exchange of data between Member States on short-stay visas (VIS Regulation), Official Journal No. L 218 of 13 August 2008, p. 60, as currently amended;

22. “Visa Code” shall mean Regulation (EC) No. 810/2009 establishing a Community Code on Visas, Official Journal No. L 243 of 15 September 2009, p.1, as currently amended;

23. “ICT Directive” shall mean the directive 2014/66/EU on the conditions of entry and residence of third-country nationals in the framework of an intra-corporate transfer of the Official Journal No. L 157 of 27.05.2014 p. 1, as amended.

(5) For the purposes of this federal act

1. “Internal borders” shall mean the borders of Austria with other contracting States (article 2 paragraph (4), subparagraph 7) as well as Austrian airports for domestic flights and Austrian harbours for inland waterway transport;

2. “External borders” shall mean the borders of Austria as well as Austrian airports and harbours unless they are internal borders;

3. “Diplomatic and consular authorities” shall mean Austrian diplomatic missions and permanent consular posts or diplomatic and consular authorities of the contracting States responsible for the issue of visas under the Schengen Agreement;

4. “Identification data” shall mean photographs, impression of the papillary ridges on the fingers, physical distinguishing marks and signature.

Chapter 2 Jurisdiction and Special Procedural Rules

Section 1 Jurisdiction

Authorities and agents of the public security service

Article 3. (1) Within the scope of Chapters 3 to 6 and 12 to 15 of this federal act, agents of the public security service shall act on behalf of the provincial police authorities, as authorities of first resort, either on their orders or independently.

(2) Within the scope of Chapters 7, 8 and 11 of this federal act, agents of the public security service shall act on behalf of the Federal Office for Immigration and Asylum (Federal Office), as the authority of first resort, either on its orders or independently.

(3) The security authority in whose area of administration the alien resides shall be obliged to cooperate, through its medical officers, in procedures pursuant to this federal act and in its enforcement. Article 7, paragraph (4), of the Security Police Act – SPG (FLG No. 566/1991) shall apply.

(4) In cases where the provincial police authority having territorial jurisdiction cannot take the required measures in due time, assigned or subordinated agents of the public security service shall be permitted to perform official acts under Chapters 3 to 6 and 12 to 15 outside the area of administration of the authority to which they are assigned or subordinated. Such acts shall be considered official acts of the provincial police authority having territorial jurisdiction; the intervening agent shall notify that authority of the official act without delay.

(5) Agents of the public security service who in the performance of tasks under Chapters 3 to 6 and 12 to 15 cross the boundaries of the federal province of their own authority shall, in the performance of such official act, be considered agents of the authority having territorial jurisdiction; they shall inform that authority without delay of their intervention and shall be bound by its instructions and orders.

(6) The provincial police superintendent may authorize employees who are not agents of the public security service to exercise powers of command and constraint as set out in articles 33, 35, 37 and 38, provided that such persons are duly qualified and specially trained for that purpose. If in the exercise of such powers it would be necessary to overcome resistance on the part of the person concerned, the authorized employees shall request an agent of the public security service to perform the official act.

Municipal guard force

Article 4. At the request of a municipality, members of its municipal guard force may be subordinated to the provincial police authority, by order of the provincial police superintendent, for the purpose of conducting alien police operations. In performing these tasks, they shall act on behalf of the provincial police authority and may exercise the powers under Chapters 3 to 6 and 12 to 15 of this federal act. Such subordination shall be revoked at the request of the municipality or by order of the provincial police superintendent if the municipal guard force does not carry out the tasks assigned to it.

Subject-matter jurisdiction within Austria

Article 5. (1) The provincial police authorities shall be responsible for:

1. conducting alien police operations (article 2, paragraph (2));
2. handling the following visa matters:
 - a. extending visas pursuant to article 11b para 2 or article 33 of the Visa Code;
 - b. granting visas pursuant to article 22a subject to the consent of the Federal Minister for the Interior;
 - c. granting visas on the border pursuant to para 2, subject to the consent of the Federal Minister for the Interior;
 - d. annulling visas; if national visas are concerned, only those which were issued by Austria;
3. conducting administrative penalty proceedings under this federal act;
4. imposing administrative penalties under article 112 and

5. ordering payment of costs under article 113.

(1a) The Federal Office shall be responsible for:

1. ordering deportation, granting temporary leave to remain and executing return decisions of EEA States pursuant to Chapter 7;
2. imposing measures to terminate residence pursuant to Chapter 8 and
3. issuing Austrian documents for aliens pursuant to Chapter 11.

(2) The provincial police authorities shall be authorized by order of the Federal Minister of the Interior to issue visas at certain border crossing-points if this facilitates travel or is in the interests of expediency, speed and simplicity.

(3). The necessary entry of data, in the VIS, on visas annulled, as referred to in article 13 of the VIS Regulation, shall be effected via the provincial police authorities authorized under paragraph (2) above.

((4) Has been repealed by FLG I. No. 145/2017)

(5) Under international agreements that are intended to facilitate travel of aliens in the border areas of the Republic of Austria (article 17, paragraph (2)), authorities other than provincial police authorities may be designated to issue and countersign documents granted for purposes of entry, residence and departure within the framework of such an agreement.

(6) If any of the agreements mentioned in paragraph (5) above does not contain a provision on subject-matter jurisdiction, the provincial police authorities having territorial jurisdiction shall be responsible for issuing and countersigning documents granted for purposes of entry, residence and departure. They may be authorized by order of the Federal Minister of the Interior to issue such documents at border crossing-points to persons possessing the nationality of a contracting State if this makes it considerably easier for aliens to obtain such a document for purposes of departure and entry.

Territorial jurisdiction within Austria

Article 6. (1) Territorial jurisdiction within Austria for the purposes of Chapters 3 to 6 and 12 to 15 of this federal act shall be determined by the principal domicile as defined in article 1, paragraph (7), of the Federal act concerning registration of residents with the police authorities (1991 Domicile Registration Act) (*Meldegesez 1991 - MeldeG*), FLG No. 9/1992, or, in the absence of such principal domicile, by another place of domicile of the alien in the federal territory. If several other places of domicile exist, the one last established shall be applicable.

(1a) Within Austria, the authority under Chapters 7, 8 and 11 shall be the Federal Office with jurisdiction throughout the federal territory.

(2) If the alien does not have a domicile in the federal territory, jurisdiction shall be determined by his place of residence at the time of the first official intervention under Chapters 3 to 6 and 12 to 15 of this federal act.

(3) Territorial jurisdiction for the issue of a visa at a border crossing-point pursuant to article 5 para 1 subpara 2 letter c shall be determined by the place of residence; the existence of a domicile within Austria shall not conflict with such jurisdiction.

(4) Territorial jurisdiction for a visa annulment, for the revocation of a re-entry permit during the period of validity of an entry ban or a residence ban and for the revocation of a special permit during a period of eighteen months following rejection at the border or forcible return or following departure under an expulsion order shall be determined by the place of residence.

((4a) has been repealed by FLG I. No. 87/2012)

((5) has been repealed by FLG I. No. 87/2012)

(6) Non-postponable measures and measures to review the lawfulness of entry, residence and departure shall fall within the jurisdiction of the provincial police authority in whose area of administration the alien resides or through whose area of administration the alien wishes to enter or depart from Austria.

(7) If the alien is arrested pursuant to article 39 while on board a public conveyance in the course of travel, territorial jurisdiction for all measures to be taken by reason of the arrest shall be determined by the nearest place of disembarkation at which it is possible, in accordance with the carrier's timetable, to alight from the conveyance.

(8) The handover warrant as referred to in article 45b, paragraph (3), shall be issued by the Federal Ministry of the Interior.

(9) Territorial jurisdiction for the conduct of administrative penalty proceedings shall, in the cases referred to in paragraph (7) above in which such jurisdiction is governed by the place of disembarkation, be determined by that place; in all other cases it shall be determined in accordance with the 1991 Administrative Penalties Act (*Verwaltungsstrafgesetz 1991 – VStG*), FLG No. 52. By derogation from sentence 1, the territorial competence to carry out administrative penal procedures pursuant to article 121 para 1a is determined by the jurisdiction of the district administrative authority where the alien must reside pursuant to article 52a, or the location of accommodation which the alien must accept pursuant to article 57 or article 15b of the 2005 Asylum Act, or the federal province in which the asylum-seeker must have his place of residence or habitual residence pursuant to article 15c of the 2005 Asylum Act

Subject-matter jurisdiction abroad

Article 7. Im Ausland obliegt

1. die Erteilung, die Versagung, die Annullierung sowie die Aufhebung von Visa gemäß dem Visakodex,

2. die Erteilung, die Versagung und die Ungültigerklärung von Visa D gemäß dem 3. Abschnitt des 4. Hauptstückes,
3. die Erteilung von Visa gemäß Article 25 Abs. 1 lit. a Visakodex nur mit Zustimmung des Bundesministers für Inneres,
4. die Erteilung, die Versagung und die Ungültigerklärung von Visa D gemäß §§ 22 und 26a nur mit Zustimmung des Bundesministers für Inneres, und
5. die Erteilung, die Versagung und die Ungültigerklärung von Wiedereinreisebewilligungen gemäß § 27a nur mit Zustimmung des Bundesministers für Inneres den Vertretungsbehörden.

Territorial jurisdiction abroad

Article 8. (1) Territorial jurisdiction for the performance of official acts under Section 3 of Chapter 4 of this federal act shall, unless otherwise stipulated, be determined abroad by the alien's domicile. Any diplomatic or consular authority may take action on the instructions of the Federal Minister for Europe, Integration and Foreign Affairs .

(2) If the alien has a domicile in the federal territory, territorial jurisdiction abroad shall be determined by his place of residence.

Complaints

Article 9. (1) Unless otherwise stipulated, the provincial administrative courts shall rule on complaints against decisions of the provincial police authorities.

(2) The Federal Administrative Court shall rule on complaints against decisions of the Federal Office.

(3) The Federal Administrative Court shall rule on complaints against decisions of diplomatic or consular authorities.

(4) The Federal Administrative Court shall rule on complaints against decisions pursuant to article 5 para 1 subpara 2.

(5) If the complainant is not entitled to enter Austria, an oral hearing by the Federal Administrative Court need not take place if the facts of the case have been conclusively established.

Petitions for judicial review

Article 10. The Federal Minister of the Interior shall have the right to file petitions for judicial review with the Higher Administrative Court against decisions of the provincial administrative courts on complaints against rulings of the provincial police authorities following notification of the decision to the provincial police authorities.

Section 2

Special procedural rules applicable to Chapters 3 to 6 and 12 to 15

Procedures before Austrian diplomatic and consular authorities in visa matters

Article 11. (1) In procedures before Austrian diplomatic or consular authorities, applicants shall, under the direction of the authority, submit in person the documents and evidence required for the establishment of the material facts. In procedures for issuing a visa pursuant to article 20 para 1 subpara 9, article 9 para 1 first sentence and article 14 para 6 of the Visa Code apply *mutatis mutandis*. In procedures for the issue of a D-type visa, Section 19 of the Visa Code shall be applicable *mutatis mutandis*. The applicant shall, at the request of the diplomatic or consular authority, appear in person before it, accompanied, if necessary, by an interpreter (article 39a of the General Administrative Procedure Act - AVG). The last sentence of article 10, paragraph (1), of the General Administrative Procedure Act shall apply only to persons authorized to represent parties professionally in Austria. The diplomatic or consular authority shall judge freely whether or not a fact is to be admitted as proven. 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) The party in procedures before the diplomatic or consular authority shall be solely the applicant.

(3) The written ruling shall bear the name of the authority, the date of the decision and the signature of the authorizing official; the seal of the Republic of Austria may be affixed in place of the signature provided that the identity of the authorizing official is discernable from the document. The written ruling shall be handed over on the premises of the diplomatic or consular authority or, insofar as international practice so allows, be delivered by postal or electronic means; if the foregoing is not possible, the written ruling shall be announced via the diplomatic or consular authority's official noticeboard.

(4) Totally negative decisions rendered pursuant to paragraph (1) above concerning D-type visas shall be issued in writing in such a manner that their contents and effect are understandable to the person concerned. The person concerned shall be furnished with accurate and comprehensive information concerning the reasons of law and order, public safety or health which form the basis of the decision affecting him unless reasons of security of the Republic of Austria preclude the furnishing of such information. The appeal authority and the deadline for filing legal remedies shall also be indicated in the written statement of reasons.

(5) With regard to the computation of the commencement, operation and expiry of time limits (article 33 of the General Administrative Procedure Act), the weekend and public holiday rules of the recipient country shall apply.

(6) If an application for the issue of a D-type visa cannot be granted on grounds of compelling foreign-policy considerations or for reasons of national security, the diplomatic or consular authority shall be authorized simply to give notification of the existence of compelling grounds for refusal. The material facts must be discernable from the document in such cases also.

(7) The purpose and intended duration of the travel and residence shall be stated by the alien in the application for the issue of a D-type visa. The application shall, except in the

cases referred to in article 22, paragraph (3), be rejected if, notwithstanding a request to do so and the setting of a further time limit, the applicant fails to submit a valid travel document or, if applicable, a health certificate or if, notwithstanding a request to do so, the applicant fails to appear in person before the authority even though his attention has been drawn in the summons to the legal consequences involved.

(8) Under-age aliens who are at least 14 years old may, subject to the consent of the legal representative, apply personally for the issue of a visa.

(9) Article 23 para 1 to 3 Visa Code apply mutatis mutandis to decisions on granting visas for seasonal workers (article 2 para 4 subpara 13).

Complaints against administrative decisions of Austrian diplomatic or consular authorities in visa matters

Article 11a. (1) The complainant shall attach to his complaint against an administrative decision of an Austrian diplomatic or consular authority all the documents presented by him in the procedure before the diplomatic or consular authority against which the action is being brought, together with a translation in the German language.

(2) Complaint proceedings shall be conducted without an oral hearing. No new facts or evidence may be submitted in such proceedings.

(3) All expenses of the diplomatic or consular authority against which the action is being brought and of the Federal Administrative Court for interpreters and translators and also for verification of interpretation work and translations shall be cash expenses as defined in article 76 of the General Administrative Procedures Act.

(4) The notification of the decision of the Federal Administrative Court shall be effected through the diplomatic or consular authority. Article 11, paragraph (3), shall apply.

Procedure before the provincial police authorities in visa matters pursuant to article 5 para 1 subpara 2

Article 11b. (1) Article 11 para 1, 2, 4 and 6 to 9 apply mutatis mutandis in procedures before the provincial police authorities in visa matters pursuant to article 5 para 1 subpara 2, provided that delivery is made by means of delivery to the recipient in the premises of the provincial police authorities when visas are being granted or extended.

(2) Requests for extensions (article 2 para 4 subpara 17a) must be filed with the provincial police authority in Austria with territorial competence before the period of validity of the visa for seasonal workers expires. The request for extension must be granted if the requirements set out in article 24 are fulfilled.”

Special provisions relating to under-age persons and applicable to Chapters 3 to 6 and 12 to 15

Article 12. (1) Unless otherwise stipulated, the age requirement for capacity to act under Chapters 3 to 6 and 12 to 15 shall be determined by Austrian law irrespective of the nationality of the alien.

((2) has been repealed by FLG. I No. 70/2015)

(3) Aliens who are less than 18 years old and whose interests cannot be defended by their legal representative may in their own name engage in procedural acts to their benefit only. Upon the initiation of any such procedure, the legal representative shall be the youth welfare agency in whose jurisdiction the under-age person is resident.

(4) If an alien is unable to furnish proof, by reliable documents or other appropriate and equivalent evidence, of a claimed under-age status on which he relies in a procedure under Chapters 3 to 6 and 12 to 15 and which, on the basis of the available results of the preliminary investigation, is doubtful, the provincial police authority may give instructions for radiological examinations, in particular X-ray examinations, to be carried out as part of a multifactorial examination technique (article 2 (1) 25 of the 2005 Asylum Act) for the purpose of age diagnosis. Every examination procedure shall be conducted with the least possible interference. The alien's cooperation in a radiological examination shall not be enforceable by coercive means. If, following the age diagnosis, justified doubts continue to exist, under-age status shall be presumed in the alien's favour. Should an alien claim not to have yet reached a certain age and thus still to be under age, the competent youth welfare agency shall - except in cases of obvious inaccuracy - be contacted without delay and heard.

Proof of a family relationship

Article 12a. If an alien is unable to furnish proof, by reliable documents or other appropriate and equivalent evidence, of a claimed family relationship on which he relies in a procedure under Chapters 3 to 6 and 12 to 15, the provincial police authority shall, at his request, make it possible for him to have a DNA analysis undertaken at his own expense. The alien shall be informed of such possibility. The absence of a request for a DNA analysis by the alien shall not be construed as a refusal on his part to cooperate in the clarification of the facts. In the further course of the procedure, only the information on the family relationship may be processed; any additional data shall be deleted.

Chapter 3

Principles applying to the Performance of Tasks and Exercise of Powers of the Aliens Police Authorities

Execution principles

Article 13. (1) For the performance of tasks conferred on them under Chapters 3 to 6 and 12 to 15 the provincial police authorities and agents of the public security service may use all legally admissible means which do not interfere with a person's rights.

(2) In performing such tasks they may only interfere with a person's rights if such power is provided for in this federal act and if other more lenient measures are not sufficient to perform these tasks or if the use of other measures is disproportionate to the interference which is otherwise appropriate. If any interference with the rights of persons is found to be necessary, it may take place only insofar as it is proportionate to the circumstances and to the outcome sought. Articles 2, 3 and 8 of the European Convention on Human Rights, FLG No. 210/1958, shall in particular be observed at every stage of an official act by the aliens police authorities.

(3) Agents of the public security service shall be authorized to exercise the powers and functions of the provincial police authorities, as conferred upon such agents under Chapters 3 to 6 and 12 to 15, and also the powers and functions of the Federal Office for

Immigration and Asylum, as conferred upon them under Chapters 7, 8 and 11, through the use of direct command and coercive measures. The person concerned shall be warned and notified of the use of direct command and coercive measures. Their use shall be discontinued as soon as the outcome sought has been achieved or is seen to be unachievable by such means or to be disproportionate to the interference required for enforcement purposes. Any threat to life or persistent threat to health shall in all cases be inadmissible.

(4) The use of direct coercive measures shall be governed by the provisions of the 1969 Use of Firearms Act (*Waffengebrauchsgesetz 1969*).

(5) Agents of the public security service shall be allowed to make use of physical force towards property if this is absolutely necessary for the exercise of powers. In such event they shall take every effort not to place any persons in danger.

(6) Agents of the public security service shall, for the purpose of enforcing a deportation order (article 46) and the restrictions on freedom connected therewith (arrest), be authorized, with the exercise of due respect for human dignity and the greatest possible consideration of the person, to adopt command and coercive measures, as referred to in paragraph (3) above, up to the time of handover to the competent authorities of the country of destination, unless binding international law conflicts therewith.

(7) Officials of the provincial police authorities who are so authorized (article 3, paragraph (6)) shall also be granted the powers referred to in articles 33, 35, 37 and 38. The Order of the Federal Minister of the Interior issuing Rules for the Intervention of Agents of the Public Security Service (Code of Conduct Regulations – RLV, FLG No. 266/1993) shall apply to such officials. Article 47 (2) of the Federal Office Procedures Act shall apply *mutatis mutandis*.

Notification obligation of agents of the public security service

Article 14. (1) If agents of the public security service interfere with the rights of persons in performing tasks under Chapters 3 to 6 and 12 to 15, such action shall, irrespective of separate notification obligations under this federal act, be communicated to the competent provincial police authority without undue delay.

((2) has been repealed by FLG I. No. 87/2012)

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 conformity 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 ban 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 article 10 paragraph (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;
3. if entry takes place at the border crossing-point potentially provided for use;
4. if the alien had to be readmitted by virtue of a readmission agreement (article 19, paragraph (4)) or international practices, has entered the country in the course of a transit operation (article 45b, paragraph (1)) or by virtue of a transit permit under article 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; or
5. if the alien has a right of residence for employees who are transferred within the corporation pursuant to the ICT directive for a member state which does not fully apply the Convention implementing the Schengen agreement.

EWR-Bürger und Schweizer Bürger

§ 15a. EWR-Bürger und Schweizer Bürger genießen Visumfreiheit und haben das Recht auf Aufenthalt für einen Zeitraum von drei Monaten. Darüber hinaus besteht ein Aufenthaltsrecht nach Maßgabe des 4. Hauptstückes des 2. Teiles des Niederlassungs- und Aufenthaltsgesetzes.

Begünstigte Drittstaatsangehörige

§ 15b. (1) Begünstigte Drittstaatsangehörige (§ 2 Abs. 4 Z 11) haben das Recht auf Aufenthalt für einen Zeitraum von drei Monaten, unterliegen aber der Visumpflicht, sofern Anhang I zur Visumpflichtverordnung (§ 2 Abs. 4 Z 20) auf sie Anwendung findet. Sie haben Anspruch auf Erteilung eines Visums.

(2) Amtshandlungen im Zusammenhang mit der Erteilung von Visa an begünstigte Drittstaatsangehörige sind prioritär zu führen und von Verwaltungsabgaben befreit.

(3) Über den dreimonatigen Zeitraum nach Abs. 1 hinaus besteht ein Aufenthaltsrecht nach Maßgabe des 4. Hauptstückes des 2. Teiles des Niederlassungs- und Aufenthaltsgesetzes. Inhaber von Aufenthaltskarten und Daueraufenthaltskarten (§§ 54 und 54a NAG) oder von Aufenthaltskarten und Daueraufenthaltskarten anderer Mitgliedstaaten sind zur visumfreien Einreise berechtigt.

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, alien police and foreign-policy matters, the Federal Minister of the Interior, in agreement with the Federal Minister for Europe, Integration and Foreign Affairs, shall be authorized to stipulate by ministerial order 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) Insofar as the Federal Government is authorized under article 66, paragraph (2), of the Federal Constitutional Act to conclude intergovernmental agreements, 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 article 15 paragraph (1) and article 16 paragraph (3). Such aliens shall be deemed to comply with the passport requirement.

(2) In agreements under paragraph (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 cases, the international agreement may also stipulate that the document provided for purposes of 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 for Europe, Integration and Foreign Affairs, shall be authorized to stipulate by ministerial order 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 an admission declaration is issued (article 19);
2. where a residence permit is issued under the Settlement and Residence Act or the 2005 Asylum Act if the alien does not hold a travel document or
3. in case of transit (article 45b).

(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 article 120 and article 121.

Admission declaration

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

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

(3) Unless otherwise provided for in an international agreement or an agreement of the European Community, the period of validity of the admission declaration shall be determined for as long as is 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) Insofar as the Federal Government is authorized under article 66, paragraph (2), of the Federal Constitutional Act to conclude intergovernmental agreements, 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 into or residence in this State shall be allowed to re-enter the federal territory (readmission agreement).

Section 3

Provisions relating to the visa requirement

Form and effect of D-type visas

Article 20. (1) D-type visas shall be issued in the form of:

1. Long-stay visas for residence in the federal territory;

2. Humanitarian visas;
3. Employment visas;
4. Job search visas;
5. Visas with a view to the granting of a residence permit;
6. Visas with a view to inclusion in family procedures pursuant to the 2005 Asylum Act;
7. Re-entry visas;
8. a visa for reasons which are particularly worthy of consideration;
9. a visa for seasonal workers.

(2) The exercise of gainful employment is only permitted in the cases set out in article 24. D visas are issued for single or multiple entries and entitle the holder to remain on federal territory for more than 90 days, but a maximum of

1. six months in the case of a visa pursuant to para 1 subpara 1 to 8 being issued;
2. nine months out of twelve in the case of a visa pursuant to para 1 subpara 9 being issued;
3. twelve months in the case of a visa pursuant to para 1 subpara 1 being issued, provided that it is necessary to issue the visa for reasons of national interest or because of international obligations; or
4. twelve months in the case of a visa pursuant to para 1 subpara 3 being issued, provided that it is necessary to issue the visa because of international agreements on carrying out an activity which is excluded from the Aliens Employment Act pursuant to article 1 subpara 14 of the Regulation on the Employment of Aliens.

(3) Visa gemäß Abs. 1 sind befristet zu erteilen. Ihre Gültigkeitsdauer darf jene des Reisedokumentes nicht übersteigen. Die Gültigkeitsdauer des Reisedokumentes hat jene eines Visums um mindestens drei Monate zu übersteigen. Eine von der erlaubten Aufenthaltsdauer abweichende Gültigkeitsdauer der Visa ist unzulässig.

(3a) Visas pursuant to para 1 subpara 8 and 9 can be issued with a period of validity of less than 91 days, provided that a request for extension (article 2 para 4 subpara 17a) or a request pursuant to article 22a has been made and there has been a continuous period of residence on federal territory of more than 90 days in total.

(4) Das Visum ist im Reisedokument des Fremden durch Anbringen ersichtlich zu machen.

(5) Die nähere Gestaltung sowie die Form der Anbringung der Visa D im Reisedokument wird durch Verordnung des Bundesministers für Inneres festgelegt.

(6) Visa gemäß Abs. 1 Z 1 sowie gemäß des Visakodex können unter den Voraussetzungen, unter denen für österreichische Staatsbürger österreichische Dienstpässe ausgestellt werden, als Dienstvisa gekennzeichnet werden.

Issue of visas

Article 21. (1) Visas as referred to in article 20, paragraph (1), article 20 para 1 subpara 1, 3 to 5, 8 and 9, may, upon application, be issued to an alien if:

1. he holds a valid travel document;
2. no grounds for refusal (paragraph (2) below) exist;
3. the alien's subsequent departure appears guaranteed.

In the cases referred to in article 20, paragraph (1), subparagraphs 4 and 5, the diplomatic or consular authority shall waive the requirement set out in subparagraph 3 above.

(2) The issue of the visa shall be refused, if:

1. der Fremde den Zweck und die Bedingungen des geplanten Aufenthalts nicht begründet;
2. 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;
3. der Fremde nicht über einen alle Risiken abdeckenden Krankenversicherungsschutz verfügt oder er im Gesundheitszeugnis gemäß § 23 eine schwerwiegende Erkrankung aufweist;
4. der Fremde nicht über ausreichende eigene Mittel für seinen Unterhalt und in den Fällen des article 20 para 1 subpara 1, 3 and 7 to 9 für die Wiederausreise verfügt;
5. der Aufenthalt des Fremden zu einer finanziellen Belastung einer Gebietskörperschaft führen könnte, es sei denn, diese Belastung ergäbe sich aus der Erfüllung eines vor der Einreise bestehenden gesetzlichen Anspruchs;
6. der Fremde im SIS zur Einreiseverweigerung ausgeschrieben ist;
7. der Aufenthalt des Fremden die öffentliche Ordnung oder Sicherheit gefährden würde;
8. gegen den Fremden ein rechtskräftiges Einreise- oder Aufenthaltsverbot besteht, außer im Fall des § 26a (Visa zur Wiedereinreise);
9. der Aufenthalt des Fremden die Beziehungen der Republik Österreich zu einem anderen Staat beeinträchtigen würde;
10. Grund zur Annahme besteht, der Fremde werde außer in den Fällen des § 24 eine Erwerbstätigkeit im Bundesgebiet beabsichtigen;

11. bestimmte Tatsachen die Annahme rechtfertigen, dass der Fremde einer kriminellen Organisation (§ 278a StGB) oder einer terroristischen Vereinigung (§ 278b StGB) angehört oder angehört hat, terroristische Straftaten begeht oder begangen hat (§ 278c StGB), Terrorismus finanziert oder finanziert hat (§ 278d StGB), eine Person für terroristische Zwecke ausbildet oder sich ausbilden lässt (§ 278e StGB) oder eine Person zur Begehung einer terroristischen Straftat anleitet oder angeleitet hat (§ 278f StGB);

12. bestimmte Tatsachen die Annahme rechtfertigen, dass der Fremde durch sein Verhalten, insbesondere durch die öffentliche Beteiligung an Gewalttätigkeiten, durch den öffentlichen Aufruf zur Gewalt oder durch hetzerische Aufforderungen oder Aufreizungen, die nationale Sicherheit gefährdet oder

13. der Fremde öffentlich, in einer Versammlung oder durch Verbreiten von Schriften ein Verbrechen gegen den Frieden, ein Kriegsverbrechen, ein Verbrechen gegen die Menschlichkeit oder terroristische Taten von vergleichbarem Gewicht billigt oder dafür wirbt.

(3) The authority may issue a visa to an alien despite the existence of facts under paragraph (2), subparagraph 3, 4 or 5, above if, by virtue of an undertaking entered into in the public interests by a legal entity within the meaning of article 1, paragraph (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 domicile or residence in the federal territory, payment of all costs that might arise for legal entities as a result of the alien's residence appears guaranteed.

(4) Wird einer Aufforderung zur Durchführung einer erkennungsdienstlichen Behandlung gemäß § 99 Abs. 1 Z 7 und Abs. 4 nicht Folge geleistet, ist der Antrag auf Erteilung eines Visums zurückzuweisen.

Visa für den längerfristigen Aufenthalt

§ 21a. (1) Die Vertretungsbehörde kann einem Fremden ein Visum zum längerfristigen Aufenthalt im Bundesgebiet erteilen, wenn die Voraussetzungen gemäß § 21 Abs. 1 vorliegen.

(2) Die Ausübung einer Erwerbstätigkeit ist nicht zulässig.

Humanitarian visas

Article 22. (1) Notwithstanding the existence of grounds for refusal under article 21, paragraph (2), subparagraph 6, the diplomatic or consular 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) has been repealed by FLG I. No. 68/2013)

(3) Notwithstanding the existence of grounds for refusal under article 21, paragraph (1), subparagraph 1, the diplomatic or consular 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 Recognized by the Member State Drawing up the Form, Official Journal 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 1950 Epidemics Act (*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 article 3, subparagraph (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 paragraph (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 paragraph (1) above.

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

Special provisions relating to the issue of employment visas

Article 24. (1) The taking up in the federal territory of:

1. a purely temporary occupation in a self-employed capacity (article 2, paragraph (4), subparagraph 16);
2. a purely temporary occupation in a non-self-employed capacity (article 2, paragraph (4), subparagraph 17) or
3. an activity the pursuit of which requires a work permit under article 5 of the Aliens Employment Act

shall be possible only after the granting of a visa. In such event, the alien shall be issued with a C-type visa or a D-type visa depending on the intended duration of the activity if, in the case of applicability of the Aliens Employment Act, a permit or certificate has been issued by the labour market authority and no grounds for a visa refusal exist.

(2) Paragraph (1) above shall not apply to aliens entitled to visa-exempt entry in order to take up an activity as referred to in paragraph (1), subparagraph 3, above.

((3) has been repealed by FLG I. No. 68/2013)

((4) has been repealed by FLG I. No. 68/2013)

Sonderbestimmungen zur Erteilung von Visa zum Zweck der Arbeitssuche

§ 24a. (1) Die Vertretungsbehörde kann einem Fremden auf Antrag ein Aufenthaltsvisum mit sechsmonatiger Gültigkeitsdauer zum Zweck der Arbeitssuche im Bundesgebiet erteilen, wenn

1. die Erteilungsvoraussetzungen gemäß § 21 Abs. 1 Z 1 und 2 vorliegen und

2. die Zentrale Ansprechstelle des Arbeitsmarktservice mitgeteilt hat, dass die Kriterien gemäß § 12 iVm Anlage A AuslBG erfüllt sind.

(2) Der Fremde hat bei Antragstellung, die von ihm vorgebrachten Kriterien gemäß § 12 iVm Anlage A AuslBG genau zu bezeichnen und durch Vorlage von Dokumenten nachzuweisen. Bei Vorliegen der Erteilungsvoraussetzungen gemäß § 21 Abs. 1 Z 1 und 2 hat die Vertretungsbehörde die Dokumente zum Nachweis der Kriterien gemäß § 12 iVm Anlage A AuslBG an die Zentrale Ansprechstelle des Arbeitsmarktservice weiterzuleiten.

(3) Das Verfahren gemäß Abs. 1 ist einzustellen, wenn der Fremde trotz Aufforderung und Setzung einer angemessenen Nachfrist die Behebung eines Mangels der Erteilungsvoraussetzungen gemäß § 21 Abs. 1 Z 1 oder 2 nicht vornimmt.

(4) Teilt die Zentrale Ansprechstelle des Arbeitsmarktservice mit, dass die in § 12 iVm Anlage A AuslBG vorausgesetzten Kriterien nicht vorliegen, ist der Antrag zurückzuweisen.

(5) Wurde dem Fremden ein solches Visum bereits erteilt, ist ein neuerlicher Antrag erst zwölf Monate nach seiner Ausreise aus dem Bundesgebiet zulässig.

(6) Der Bundesminister für Inneres ist ermächtigt, im Einvernehmen mit dem Bundesminister für Arbeit, Soziales und Konsumentenschutz und dem Bundesminister für europäische und internationale Angelegenheiten durch Verordnung festzulegen, welche Dokumente für das jeweilige Kriterium dem Antrag jedenfalls anzuschließen sind. Diese Verordnung kann auch die Form und Art der Antragstellung regeln, insbesondere bestimmen, welche Antragsformulare ausschließlich zu verwenden sind.

Visas at external borders

Article 24b. A D-type visa may, upon application, be issued to an alien at the external border if the requirements set out in article 35, paragraph 1 (b) and (c) and paragraph 2, of the Visa Code are met and no grounds for a visa refusal exist.

Visa zur Erteilung eines Aufenthaltstitels

§ 25. (1) Teilt die Niederlassungs- und Aufenthaltsbehörde der zuständigen Vertretungsbehörde mit, dass einem Fremden, der der Visumpflicht unterliegt, ein Aufenthaltstitel zu erteilen wäre (§ 23 Abs. 2 NAG), ist dem Fremden unter

Berücksichtigung des § 21 Abs. 1 Z 1 und 2 ein Visum mit viermonatiger Gültigkeitsdauer zu erteilen.

(2) Die Versagung des Visums wegen Vorliegens von Gründen gemäß § 21 Abs. 2 Z 3 bis 5 und 10 ist nicht zulässig. Wird das Visum nicht erteilt, hat dies die zuständige Vertretungsbehörde der Niederlassungs- und Aufenthaltsbehörde unter Angabe der Gründe mitzuteilen.

Visas for the purpose of inclusion in family procedures pursuant to the 2005 Asylum Act

Article 26. If, in accordance with article 35, paragraph 4, of the 2005 Asylum Act, the Federal Office for Immigration and Asylum gives notification that an application for international protection is likely to be granted through conferral of asylum status or subsidiary protection status, a single-entry visa with a four-month period of validity shall be issued to the alien without further formality.

Visa zur Wiedereinreise

§ 26a. (1) Die Vertretungsbehörde kann einem Fremden auf Antrag ein Visum zur Wiedereinreise während der Gültigkeitsdauer eines Einreise- oder Aufenthaltsverbotes erteilen, wenn

1. dies aus wichtigen öffentlichen oder privaten Gründen notwendig ist,
2. die Gründe, die zur Erlassung der aufenthaltsbeendenden Maßnahme geführt haben, dem nicht entgegenstehen und
3. sonst kein Visumsversagungsgrund vorliegt.

(2) Die sachlich gebotene Gültigkeitsdauer des Visums ist festzulegen.

(3) Das Visum kann im Interesse der Aufrechterhaltung der öffentlichen Ordnung oder Sicherheit mit Auflagen belegt werden; dabei ist auf den Zweck des Aufenthaltes Bedacht zu nehmen. Auflagen sind insbesondere die Vorschreibung bestimmter Grenzübergangsstellen und Reiserouten, die Beschränkung des Aufenthaltes auf den Sprengel einer Bezirksverwaltungsbehörde sowie die Verpflichtung, sich in periodischen Abständen bei einem Polizeikommando zu melden.

Ungültigkeit und Gegenstandslosigkeit von Visa D

§ 27. (1) Visa D sind für ungültig zu erklären, wenn nachträglich

1. Tatsachen bekannt werden oder
2. Tatsachen eintreten,
die eine Nichterteilung rechtfertigen würden (§ 21 Abs. 1).

(2) Soll ein Visum D für ungültig erklärt werden, so hat die Behörde nach Feststellung des maßgeblichen Sachverhalts dem Betroffenen Gelegenheit zur Stellungnahme zu geben. Der maßgebliche Sachverhalt ist nachvollziehbar festzuhalten.

(3) Visa D werden gegenstandslos, wenn

1. ein weiteres Visum D mit überschneidender Gültigkeit erteilt wird;
2. gegen den Fremden eine aufenthaltsbeendende Maßnahme gemäß dem 8. Hauptstück erlassen wird;
3. der Fremde einen Antrag auf internationalen Schutz einbringt;
4. ein Aufenthaltstitel gemäß dem NAG oder dem AsylG 2005 ausgestellt wird;
5. der Fremde Österreicher, EWR-Bürger oder Schweizer Bürger wird.

(4) Wird das Visum D für ungültig erklärt oder gegenstandslos, ist dies im Reisedokument kenntlich zu machen. Dazu ist jede Behörde ermächtigt, der ein Reisedokument anlässlich einer Amtshandlung nach diesem Bundesgesetz, dem BFA-VG, AsylG 2005 oder dem NAG vorliegt.

Section 3a Special permits

Re-entry during the period of validity of a residence ban

Article 27a. (1) During the period of validity of a residence ban 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 entry ban or residence ban and if no other grounds for a visa refusal exist. 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 in particular, be the requirement to use specific border-crossing points and travel routes, the limitation of residence to the area of administration of a district administrative authority as well as the obligation to report to a station of the provincial police authority 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 ban.

(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 ban requires the same to be enforced without delay or
2. would justify issue of an expulsion order or re-issue of a residence ban.

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

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) Drittstaaten, deren Staatsangehörige auf Grundlage des Article 3 Abs. 2 Visakodex für den Transit über einen österreichischen Flughafen ein Visum benötigen, sind vom Bundesminister für Inneres mit Verordnung kundzumachen.

Persons entitled to privileges and immunities

Article 29. Aliens who have been issued with a photo identity card under article 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 recognized 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) Insofar as the Federal Government is authorized under article 66, paragraph (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 for Europe, Integration and Foreign Affairs, shall be entitled to grant exemptions from the visa requirement to specific aliens by ministerial order. 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) has been repealed by FLG I. No. 87/2012)

(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. wenn sie Inhaber eines von einem Vertragsstaat ausgestellten Aufenthaltstitels sind bis zu drei Monaten (Artikel 21 SDÜ gilt), sofern sie während ihres Aufenthalts im Bundesgebiet keiner unerlaubten Erwerbstätigkeit nachgehen;

4. as long as they have right of residence according to the 2005 Asylum Act;

5. until a decision has been made on the request for extension (article 2 para 4 subpara 17a), provided that the total period of residence as a seasonal worker does not exceed nine months in the past twelve months

(6. has been repealed by FLG. I No. 145/2017)

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

(1a) Liegt kein Fall des Abs. 1 vor, halten sich Fremde nicht rechtmäßig im Bundesgebiet auf; dies insbesondere, wenn sie

1. auf Grund eines Rückübernahmeabkommens (§ 19 Abs. 4) oder internationaler Gepflogenheiten rückgenommen werden mussten,

2. auf Grund einer Durchbeförderungserklärung, sonstiger zwischenstaatlicher Abkommen oder auf Ersuchen eines Mitgliedstaates der Europäischen Union um Durchbeförderung (§ 45b Abs. 1) oder auf Grund einer Durchlieferungsbewilligung gemäß § 47 ARHG oder § 35 des Bundesgesetzes über die justizielle Zusammenarbeit in Strafsachen mit den Mitgliedstaaten der Europäischen Union (EU-JZG), BGBl. I Nr. 36/2004, eingereist sind,

3. geduldet sind (§ 46a) oder

4. eine Frist für die freiwillige Ausreise gemäß § 55 erhalten haben.

((2) has been repealed by FLG. I No. 145/2017)

((3) has been repealed by FLG. I No. 145/2017)

(4) Children who do not possess Austrian nationality shall be lawfully resident in the federal territory until they are six months old if 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 apply for as long as the person concerned remains lawfully settled and, where deriving from the father, only if the right of care and upbringing falls solely to the father. Moreover, such children shall be lawfully resident until they are six months old if and for as long as an Austrian national having his or her principal domicile in the federal territory is solely responsible for their care and upbringing.

Aliens' duties in proving their right of residence

Article 32. (1) Aliens shall be obliged, if so requested in connection with the enforcement of this federal act, to furnish the provincial police authorities and their officials with documents establishing their right of residence, 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, Swiss nationals and favoured third-country nationals only insofar as their identity and nationality cannot otherwise be proven beyond doubt and Austrian nationals shall also be obliged to furnish such documents.

(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 (paragraph (1) above) without unreasonable delay. Für EWR-Bürger, Schweizer Bürger und begünstigte Drittstaatsangehörige gilt dies nur insoweit, als auch österreichische Staatsbürger verpflichtet sind maßgebliche Dokumente mitzuführen. The delay shall still be considered reasonable if:

(1. has been repealed by FLG I. No. 87/2012)

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 provincial police authorities and agents of the public security service 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 article 51 and article 52 of the 2005 Asylum Act or a photo identity card for persons entitled to privileges and immunities (article 95) shall be deemed to comply with paragraph (2) above if they carry the same on their person.

Chapter 5

Powers of Agents of the Public Security Service in Connection with Alien police and Border Rejection Operations

Information requests

Article 33. (1) For the purpose of conducting alien police operations, agents of the public security service shall be authorized 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. punishable acts under this federal act.

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

Establishment of identity

Article 34. (1) Agents of the public security service shall be authorized to establish the identity of a person:

1. if, on the basis of certain facts, it can be assumed that the person has unlawfully entered the federal territory or resides unlawfully in the federal territory;
2. if such measure is required in the event of participation in an in situ check in accordance with article 9a of the Federal Government Basic Welfare Support Act 2005 (GVG-B 2005), FLG No. 405/1991.

(2. has been repealed by FLG I. No 87/2012)

(3. has been repealed by FLG I. No 87/2012)

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

(3) Agents of the public security service 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 allow direct enforcement of the establishment of identity.

Review of lawfulness of entry and residence

Article 35. Agents of the public security service shall be authorized 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.

Search warrants

Article 35a. (1) If, on the basis of certain facts it may be assumed that an alien against whom an arrest warrant (article 39 para 5b) has been issued, is residing at certain premises, the provincial police authority may issue an order to the agents of the public security service to enter and search the premises if such measure appears necessary for the enforcement of the arrest warrant.

(2) The order referred to in para 1 above is issued in exercise of the administrative authority's powers of command. Upon request, written confirmation of the search carried out must be furnished to the person affected by the intervening agent of the public security service; such certification must be furnished as soon as possible and in any event within 24 hours."

Order for the examination of data carriers

Article 35b. (1) The provincial police authority can give orders for the agents of the public security service to examine data carriers secured from an alien for evidence, provided that the requirements of article 38a are met and such an examination has not already been carried out.

(2) The order for the examination of data carriers shall be issued in exercise of the administrative authority's power of command ; it shall be made on record.

Entry to land, facilities, places of work, premises and vehicles

Article 36. (1) Agents of the public security service shall be authorized to enter land, premises, facilities, places of work as well as vehicles where:

1. such measure is required in the event of participation in an in situ check in accordance with article 9a of the GVG-B 2005;
2. on the basis of certain facts, it may be assumed that this is necessary to capture an alien who is the victim of smuggling (a smuggled person) or who has violated the rules on prostitution;
3. on the basis of certain facts it may be assumed that at least three aliens are residing there, including an alien who is residing unlawfully on federal territory;
4. on the basis of certain facts it may be assumed that this is necessary to catch an alien who is residing unlawfully on federal territory while they are carrying out an unlawful employment activity; or
5. a search warrant (article 35a) has been issued and such action is necessary for the enforcement of the warrant.

(1a) Die Organe des öffentlichen Sicherheitsdienstes sind ermächtigt, Behältnisse, auch wenn sich diese in Räumen befinden zu öffnen und unter den Voraussetzungen des Abs. 1 Z 2, 3 oder 4 darin Nachschau zu halten. Die Behältnisse müssen geeignet sein eine Person zu verbergen.

(2) In the cases referred to in paragraph (1), subparagraphs 3 and 4, above, article 13, paragraph (3), shall apply only if a warrant has been issued by an authority or immediate intervention is required because of imminent danger.

(3) In the cases referred to in paragraph (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 (article 38), agents of the public security service shall be authorized to search the clothes of aliens and the containers they carry with them if:

1. they have been arrested under this federal act according to article 39 or

2. there is reason to believe that they are unlawfully resident 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 paragraph (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) Agents of the public security service shall be authorized to seize, on a temporary basis, articles and documents required for proceedings or for deportation, transit, forcible return or rejection at the border under Chapters 3 to 6 and 12 to 15 of this federal act.

(2) A copy of the record of the seized evidence shall be given to the person concerned; the evidence shall be handed over to the provincial 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 Chapters 3 to 6 and 12 to 15 of this federal act unless it were to be seized under a different federal act. In the event that data carriers are secured, it will not be the carriers themselves that shall be transferred to the provincial police authority but rather the results of the examination along with a backup copy (article 38a).

Examination of data carriers

Article 38a. (1) The agents of the public security service are authorised to create a backup copy of data found on data carriers secured from an alien for the purposes of identifying said alien and to evaluate these data in the event of an incident detailed in article 45 (1) and in the event that verification of identify for the purpose of forcible return is impossible using the evidence at hand or an order has been presented pursuant to article 35b.

(2) The agents of the public security service are authorised to create a backup copy of data found on data carriers secured from an alien and to evaluate these data in the event of an incident detailed in article 45 (1) and in the event that identifying the state to which the alien shall be forcibly returned is impossible using the evidence at hand or that an order has been presented pertaining to article 35b.

(3) The data carriers are to be restored to the alien immediately as soon as they are no longer required for examination. Article 98 applies.

Arrest and custody

Article 39. (1) Agents of the public security service shall be authorized to arrest and detain an alien for up to 24 hours in order to bring him before the provincial police authority as an essential procedural guarantee if:

1. he is caught in the act of committing an administrative infraction as referred to in article 120,
2. he fails to comply with his obligation under article 32, paragraph (1), *or*
3. he fails to comply with territorial restriction pursuant to article 52a, a mandatory residence requirement pursuant to article 57, an order to stay at assigned place of residence pursuant to

article 15b of the 2005 Asylum Act or a restriction on place of residence pursuant to article 15c of the 2005 Asylum Act.

(2) Agents of the public security service shall be authorized to arrest and detain for up to 48 hours an alien:

(1. and 2. have been repealed by FLG I. No 87/2012)

3. who entered the federal territory by virtue of an admission declaration (article 19).

(3) Agents of the public security service shall be authorized to arrest and detain an alien for up to 24 hours for the purpose of bringing him before the provincial police authority if:

1. he unlawfully entered the federal territory and is discovered within 14 days;

2. he had to be taken back by the Republic of Austria under a readmission agreement within 14 days following his entry into the federal territory;

3. he is discovered within 14 days from when his residence (whether exempt from or subject to the visa requirement) in the federal territory ceases to be lawful or

4. in the case of his unlawful residence in the federal territory, he is discovered in the process of leaving the country.

(4) In the cases referred to in paragraph (1) or (3) above, no arrest shall take place if it is guaranteed that the alien will leave the federal territory via an external border without delay.

(5) The competent provincial police authority shall be informed of the arrest without undue delay. In the cases referred to in paragraph (3) above it shall be admissible to detain an alien for up to 48 hours if so ordered by the provincial police authority in order to guarantee his forcible return. The arrested alien shall, at his request, be furnished with written certification of the making of the arrest.

(5a) If a forcible return measure pursuant to article 45 cannot be completed during detention, as referred to in paragraph (5) above, for reasons not attributable to the provincial police authority, detention for a maximum period of 120 hours shall be admissible only if so ordered by the provincial police authority by summary decision (article 57 of the General Administrative Procedure Act) to guarantee the alien's forcible return.

(5b) The responsible state police headquarters may order the arrest of an alien (arrest order), if the consent to the readmission of the alien is present and the demonstration is required to secure the repatriation. The agents of the public security service have the power to arrest an alien for the purpose of transferring him to the provincial police authority if an arrest warrant has been issued. The public security organs are authorized, in the case of a detention order, to arrest a stranger for the purpose of the demonstration before the National Police Directorate. Stopping is permitted for up to 72 hours.

(6) Aliens in regard to whom a handover warrant has been issued for the purpose of transit (article 45b, paragraph (3)) shall, following their entry, be taken into custody by agents of the public security service; detention shall be admissible for up to 72 hours. If the transit operation cannot be completed during that time, an additional period of deprivation of liberty of up to 48 hours shall be admissible only if so ordered by the provincial police authority as a measure to guarantee the transit. The provincial police authority need not be informed of the handover of any such alien.

Rights of persons under arrest

Article 40. (1) Any person arrested under article 39, paragraphs (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 article 39 paragraph (1) subparagraphs 1 to 3, of the charges against him.

(2) At the request of such person under arrest, the consular authority of his country of origin shall be notified of his detention without delay. Article 36, paragraph (4), of the 1991 Administrative Penalties Act and article 47 of the Security Police Act shall apply.

Chapter 6

Rejection, measures to ensure transit, forcible return and transit

Prevention of entry and rejection at the border

Article 41. (1) Agents of the public security service shall be authorized to prevent the entry of aliens attempting to unlawfully enter the federal territory.

(2) Agents of the public security service shall be authorized 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. they are subject to a valid entry ban or to an enforceable residence ban and they have not been granted a re-entry visa (article 26a) or a re-entry permit (article 27a);
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 domicile 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 provincial administrative court (*Verwaltungsgericht des Landes*).

Zurückweisung von EWR-Bürgern, Schweizer Bürgern oder begünstigten Drittstaatsangehörigen

§ 41a. (1) Die Zurückweisung eines EWR-Bürgers, Schweizer Bürgers oder begünstigten Drittstaatsangehörigen ist zulässig, wenn

1. Zweifel an seiner Identität besteht oder er der Pass- und gegebenenfalls der Visumpflicht auch nach Einräumung einer angemessenen Frist und unter Verfügungstellung angemessener Möglichkeiten zur Einholung der dazu erforderlichen Dokumente nicht genügt,

2. gegen ihn ein durchsetzbares Aufenthaltsverbot besteht und kein Visum zur Wiedereinreise (§ 26a) oder keine Bewilligung zur Wiedereinreise während der Gültigkeitsdauer eines Einreiseverbotes oder Aufenthaltsverbotes (§ 27a) erteilt wurde,

3. bestimmte Tatsachen die Annahme rechtfertigen, er werde im Bundesgebiet Schlepperei begehen,

4. bestimmte Tatsachen die Annahme rechtfertigen, er wolle den Aufenthalt im Bundesgebiet zur vorsätzlichen Begehung von Finanzvergehen, mit Ausnahme von Finanzordnungswidrigkeiten, oder zu vorsätzlichen Zuwiderhandlungen gegen devisa-rechtliche Vorschriften benützen, oder

5. bestimmte Tatsachen die Annahme rechtfertigen, dass sein Aufenthalt im Bundesgebiet die öffentliche Ordnung oder Sicherheit gefährdet.

(2) Die Zurückweisung eines begünstigten Drittstaatsangehörigen ist ferner dann zulässig, wenn ein Vertragsstaat mitgeteilt hat, dass sein Aufenthalt im Gebiet der Vertragsstaaten die öffentliche Ordnung oder Sicherheit gefährden würde, es sei denn, er hätte einen Aufenthaltstitel eines Vertragsstaates oder einen von Österreich erteilten Einreisetitel.

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 a carrier's aircraft, land vehicle or vessel may be prohibited from disembarking 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, article 53c, paragraphs (1) to (5), of the 1991 Administrative Penalties Act shall apply to their residence at a place specified for such purpose.

Measures to ensure airport 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. Article 42, paragraph (2), shall be applicable.

(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 provincial administrative court.

Escorted return

Article 44. The provincial police authority may instruct agents of the public security service 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 constrained by agents of the public security service, on the orders of the provincial police authority, to return to a member State (forcible return) if:

1. they unlawfully entered the federal territory and are discovered within seven days,
2. they had to be taken back by the Republic of Austria under a readmission agreement within seven days following their entry into the federal territory,

3. they are discovered within seven days from when their residence in the federal territory (whether exempt from or subject to the visa requirement) ceases to be lawful or
4. in the case of their unlawful residence in the federal territory, they are discovered in the process of leaving the country.

(2) In orders pursuant to paragraph (1) above the provincial police authority may instruct agents of the public security service to escort an alien during his 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 provincial administrative court.

(4) If an alien's forcible return proves impossible, the Federal Office shall be informed thereof without delay.

Prohibition of rejection at the border and forcible return (non-refoulement)

Article 45a. (1) The prevention of the entry, rejection at the border or forcible return of aliens to a country shall be inadmissible if such action would be in violation of article 2 or 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, FLG No. 210/1958, or Protocol No. 6 or Protocol No. 13 thereto concerning the abolition of the death penalty or would represent for them as civilians a serious threat to their life or person as a result of arbitrary violence in connection with an international or internal conflict.

(2) The rejection at the border or forcible return of aliens to a country or the prevention of their entry from a country shall be inadmissible if there are valid grounds for assuming that their life or freedom would be endangered in that country on account of their race, religion, nationality, membership of a particular social group or political opinion (article 33, paragraph 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 an internal flight alternative exists (article 11 of the 2005 Asylum Act).

(3) Rejection at the border or forcible return to a country shall be inadmissible for as long as the recommendation of an interim measure by the European Court of Human Rights is in conflict therewith.

(4) If the rejection at the border or forcible return to a third country of aliens whose application for international protection under the 2005 Asylum Act has been rejected by reason of the absence of responsibility of Austria is found to be impossible, the Federal Office shall be notified thereof without delay.

(5) Aliens who rely on any of the dangers stated in paragraphs (1) to (3) above may not be rejected at the border or forcibly returned before they have had an opportunity to put forward opposing reasons. The provincial police authority shall in such cases be informed of the facts prior to rejection at the border and shall thereupon rule on the rejection.

Transit

Article 45b. (1) Aliens shall be transferred by agents of the public security service, on instructions from the provincial police 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 (article 45c), 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 as stated in article 45a, paragraph (1) or (2), shall be inadmissible.

(3) A handover warrant shall be issued in respect of an alien who is to be transferred. Such warrant shall be issued in exercise of the power of constraint devolving upon the administrative authority and a written record thereof shall be made.

Transit agreement

Article 45c. (1) Insofar as the Federal Government is authorized under article 66, paragraph (2), of the Federal Constitutional Act to conclude intergovernmental agreements, 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 paragraph (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 punishable act.

Chapter 7

Deportation and temporary leave to remain

Deportation

Article 46. (1) Aliens against whom a repatriation ruling, an order for removal from the country, an expulsion order or a residence ban is enforceable shall be constrained by agents of the public security service, on the orders of the Federal Office, to leave the country (deportation) if:

1. the supervision of their exit appears necessary for reasons relating to the preservation of law and order or public safety,

2. they have failed to comply in due time with their exit obligation,
3. it is to be feared, on the basis of certain facts, that they will not comply with their exit obligation or
4. they have returned to the federal territory in contravention of an entry ban or a residence ban.

(2) An alien who is obliged to leave the country but who does not have a travel document and is therefore unable to comply with this obligation must - subject to para 2a - obtain a travel document himself from the foreign authority competent for him and take all actions vis-a-vis this authority which are necessary to achieve this purpose (including applying for the document and providing accurate information on his identity (article 36 para 2 of the Federal Office Procedure Act) and his origin as well as submitting any data which can be used for identification purposes), unless this is verifiably impossible for reasons for which the alien is not to blame. The alien must furnish proof that he has fulfilled this obligation to the Federal Office. Sentences 1 and 2 do not apply if the alien has temporary leave to remain pursuant to article 46a.

(2a) The Federal Office is authorised at all times to obtain the permits necessary for the deportation (particularly the homeward journey certificate or substitute travel document) from the foreign authority competent for the alien or to issue travel documents for returning third-country nationals (article 97 para 1). If it utilises such authorisation, the alien must cooperate as part of the official actions of the Federal Office which serve the purpose of obtaining the necessary permits for the deportation or the issue of the travel document pursuant to article 97 para 1 to the required extent, in particular the verification of his identity (article 36 para 2 of the Federal Office Procedure Act) and origin and also observe the deadlines which the Federal Office sets for this purpose.

(2b) The alien may be placed under the obligation pursuant to para 2 or 2a second sentence by means of an administrative decision. Article 19 para 2 to 4 in conjunction with article 56 of the General Administrative Procedure Act apply *mutatis mutandis* when imposing the obligation pursuant to para 2a second sentence on the alien, except that the summons is replaced by the imposition of the obligation; such an administrative decision may be combined with a summons to appear before the Federal Office or to an official act of the Federal Office to obtain the permit required for the deportation from the competent foreign authority (article 19 of the General Administrative Procedure Act). Article 3 para 3 of the Federal Office Procedure Act applies.

(3) The Federal Office shall at the earliest opportunity make all necessary arrangements for the execution of the deportation order taking into consideration the circumstances of the individual case concerned (in particular paragraphs (2) and (4)). It shall be required, in particular, pay any fees and reimburse and expenses in connection with the deportation to foreign authorities and, prior to the deportation of an unaccompanied under-age alien, to ensure that such alien can be handed over to a member of his or her family, to an official guardian or to an appropriate reception centre in the country of destination. Official acts concerning aliens whose *de facto* protection against deportation has been terminated pursuant to article 12a, paragraph (2), of the 2005 Asylum Act shall be conducted in priority.

(4) If the requirements for deportation are simultaneously satisfied in the case of relatives (article 72 of the Criminal Code), the Federal Office shall, when issuing the deportation order, impose measures to ensure that, in the implementation thereof, the effect on the family life of such aliens is as little as possible.

(5) The deportation shall be entered in the alien's travel document unless the deportation would thereby be rendered inadmissible or impossible. Such entry shall be deleted at the request of the person concerned if found to be unlawful by the Federal Administrative Court.

(6) Deportations shall be systematically supervised. More detailed provisions concerning the implementation of supervisory arrangements shall be laid down by order of the Federal Minister of the Interior.

(7) If the alien is in hospital (articles 1 and 2 of the Federal Law for Hospitals and Health Institutes (Bundesgesetz über Krankenanstalten und Kuranstalten) – KAKuG, FLG No. 1/1957) and this alien's deportation date is imminent, then the hospital must inform the Federal Office without delay when asked about the fixed or prospective date of discharge from residential care. If the date given according to sentence 1 changes, then the hospital must inform the Federal Office of this without prompting.

Temporary leave to remain

Article 46a. (1) Aliens shall be granted temporary leave to remain in the federal territory for as long as:

1. their deportation is inadmissible in accordance with article 50, article 51 or article 52, paragraph (9) first sentence, provided that their deportation to another country is not admissible;
2. their deportation is inadmissible in accordance with article 8, paragraph (3a), and article 9, paragraph (2), of the 2005 Asylum Act;
3. their deportation appears to be impossible for practical reasons not attributable to the alien or
4. a repatriation ruling as referred to in article 9, paragraphs (1) to (3), of the Federal Office Procedures Act is temporarily inadmissible,

unless, following a decision pursuant to article 61, the responsibility of another country still exists or that country still or again acknowledges its responsibility. This does not affect the obligation of an alien, who has been given temporary leave to remain on federal territory pursuant to the first sentence, to leave the country.

(2) Temporary leave to remain as referred to in paragraph (1), subparagraph 3, above may be granted by the Federal Office in conjunction with conditions; it shall in all cases terminate once the grounds for disallowing deportation cease to exist. The conditions laid down shall be communicated by the Federal Office to the alien by procedural order (article 7 (1) of the Administrative Court Proceedings Act) during the pending procedure; a ruling on the temporary leave, in particular with respect to its continuance, shall be given in the administrative decision concluding the procedure. Article 56 shall apply *mutatis mutandis*.

(3) Reasons (*obstacles to deportation*) attributable to an alien shall in all cases exist if:

1. he conceals his identity;

2. he fails to comply with a summons for the purpose of clarifying his identity or procuring a replacement travel document or
3. he does not cooperate in the steps necessary to obtain a replacement travel document or frustrates the taking of such steps.

(4) If the required conditions as set out in paragraph (1) above exist, the Federal Office shall, ex officio or upon application, issue a temporary admission card (Karte für Geduldete). The reason for the temporary leave to remain, as referred to in paragraph (1), subparagraph 1, 2, 3 or 4, above, shall be indicated in the application. The card shall serve as proof of the alien's identity in procedures before the Federal Office and shall contain in particular the designations "Republic of Austria" and "Temporary admission card", the name, sex, date of birth, nationality, photograph and signature of the temporary admittee, and also the title of the authority, date of issue and name of the authorizing official. The specific layout of the card shall be determined by order of the Federal Minister of the Interior.

(5) The temporary admission card shall be valid for one year as from the date of issue and shall, upon application by the alien, be renewed for a further year in each case if the required conditions as set out in paragraph (1) above, continue to exist. The card shall be withdrawn if:

1. its period of validity has expired;
2. the required conditions for granting temporary leave within the meaning of paragraph (1) above do not exist or no longer exist;
3. the holder can no longer be identified beyond doubt from the photograph on the card or
4. other official entries on the card have become illegible.

The alien shall present the card without delay to the Federal Office if the card has been withdrawn or facts exist which would justify its withdrawal. If the card has been withdrawn or is to be presented, agents of the public security service and the Federal Office shall be empowered to seize the card. Cards which have been seized by agents of the public security service shall be presented without delay to the Federal Office.

(6) The alien's temporary leave to remain shall be granted upon the issue of the card unless the existence of the required conditions as set out in paragraph (1) above had already been established by a final ruling at an earlier time. In such event, temporary leave to remain shall be deemed granted as from the time when the ruling became final.

Vollstreckung von Rückführungsentscheidungen von EWR-Staaten

Article 46b. (1) Bei Drittstaatsangehörigen, die über keinen Aufenthaltstitel verfügen, entspricht die rechtskräftige, vollstreckbare Rückführungsentscheidung eines EWR-Staates einer durchsetzbaren Rückkehrentscheidung, wenn

1. die Rückführungsentscheidung mit der schwerwiegenden und akuten Gefahr für die öffentliche Sicherheit und Ordnung oder die nationale Sicherheit begründet wird und

- a) auf der strafrechtlichen Verurteilung einer mit einer mindestens einjährigen Freiheitsstrafe bedrohten Straftat beruht oder
- b) erlassen wurde, weil begründeter Verdacht besteht, dass der Drittstaatsangehörige schwere Straftaten begangen hat oder konkrete Hinweise bestehen, dass er solche Taten im Hoheitsgebiet eines Mitgliedstaates plant, oder

2. die Rückführungsentscheidung erlassen wurde, weil der Drittstaatsangehörige gegen die Einreise- und Aufenthaltsbestimmungen des Entscheidungsstaates verstoßen hat.

(2) Bei Drittstaatsangehörigen, die über einen österreichischen Aufenthaltstitel verfügen und gegen die eine Rückführungsentscheidung gemäß Abs. 1 Z 1 erlassen wurde, hat das Bundesamt ein Verfahren zur Entziehung des Aufenthaltstitels einzuleiten. Entzieht die Niederlassungs- und Aufenthaltsbehörde den Aufenthaltstitel nicht, wird die Rückführungsentscheidung nicht vollstreckt. § 50 gilt.

(3) Nationale Entscheidungen gemäß den §§ 52 und 66 gehen Abs. 1 und 2 vor.

Prohibition of deportation

Article 50. (1) The deportation of aliens to a country shall be inadmissible if such action would be in violation of article 2 or 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, FLG No. 210/1958, or Protocol No. 6 or Protocol No. 13 thereto concerning the abolition of the death penalty or would represent for them as civilians a serious threat to their life or person as a result of arbitrary violence in connection with an international or internal conflict.

(2) Deportation to a country shall be inadmissible if there are valid grounds for assuming that their life or freedom would be endangered in that country on account of their race, religion, nationality, membership of a particular social group or political opinion (article 33, paragraph 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 an internal flight alternative exists (article 11 of the 2005 Asylum Act).

(3) Deportation to a country shall be inadmissible for as long as the recommendation of an interim measure by the European Court of Human Rights is in conflict with such deportation.

(4) *has been repealed by FLG No. 87/2012)*

Determination of inadmissibility of deportation to a specific country

Article 51. (1) If petitioned by the alien during a procedure for the imposition of, an expulsion order or a residence ban, of which the alien is to be notified, it shall be determined whether deportation to a country named by him which is not his country of origin would be inadmissible in accordance with article 50.

(2) If a petition as referred to in paragraph (1) above relates to the alien's country of origin, it shall be deemed to be an application for international protection. In such event the provisions of the 2005 Asylum Act shall be applied.

(3) The alien may not be deported to a country as referred to in paragraph (1) above until a final ruling on the petition has been pronounced unless the petition is to be rejected in accordance with article 68 (1) of the General Administrative Procedure Act. The procedure shall be discontinued as being no longer relevant upon the deportation of the alien to another country.

((4) *has been repealed by FLG I. No. 87/2012)*

(5) The administrative decision whereby a final ruling has been pronounced on a petition as referred to paragraph (1) above shall, upon request or ex officio, be amended if the material facts have significantly changed so that the decision relating to that country would have to be rendered differently. Until a final ruling has been pronounced on any such petition, the alien may be deported to the country concerned only if the petition is to be rejected by reason of res judicata, in accordance with article 68 (1) of the General Administrative Procedures Act.

((6) has been repealed by FLG I. No. 87/2012)

Chapter 8

Measures to Terminate Residence imposed on Aliens

Section 1

Measures to terminate residence imposed on third-country nationals

Repatriation rulings

Article 52. (1) The Federal Office shall impose a repatriation ruling by administrative decision on a third-country national if he:

1. is unlawfully resident in the federal territory or
2. was unlawfully resident in the federal territory and the procedure relating to the imposition of the repatriation ruling was initiated within six weeks from his departure.

(2) The Federal Office shall jointly impose (article 10 of the 2005 Asylum Act) a repatriation ruling by administrative decision on a third-country national if:

1. his application for international protection is rejected by reason of safety in a third country;
2. his application for international protection is dismissed in regard to the granting of both asylum status and subsidiary protection status;
3. his asylum status is withdrawn and subsidiary protection status is not conferred or
4. his subsidiary protection status is withdrawn

and he is not accorded right of residence under other federal laws. The foregoing shall not apply to favoured third-country nationals.

(3) The Federal Office shall jointly impose a repatriation ruling by administrative decision on a third-country national if his application for the granting of a residence permit as referred to in article 55, 56 or 57 of the 2005 Asylum Act is rejected or dismissed.

(4) The Federal Office shall impose a repatriation ruling by administrative decision on a third-country national who is lawfully resident in the federal territory if:

1. any grounds for refusal as referred to in article 60 of the 2005 Asylum Act or in article 11 (1) and (2) of the Settlement and Residence Act which would conflict with the granting of the residence permit last issued subsequently arise or become known;
 - 1a. any grounds for refusal which would conflict with the granting of the entry permit last issued subsequently arise or become known or a required condition as set out in article 31, paragraph (1), which is necessary for the permitted visa-exempt entry or for lawful residence ceases to exist;
2. a residence permit was issued to him pursuant to article 8 (1) 1 or 2 of the Settlement and Residence Act, he has made himself available for work and he has not pursued a permitted occupation in a non-self-employed capacity for more than four months in his first year of settlement;
3. a residence permit was issued to him pursuant to article 8 (1) 1 or 2 of the Settlement and Residence Act, he has been settled in the federal territory for a period of more than one year but less than five years and he has not pursued a permitted occupation for a virtually uninterrupted period of one year;
4. any grounds for refusal conflict with the granting of an additional residence permit (article 11 (1) and (2) of the Settlement and Residence Act) or
5. module 1 of the integration agreement as referred to in article 14a of the Settlement and Residence Act was not completed in due time for reasons attributable solely to the third-country national.

If facts become known to the authority under the Settlement and Residence Act which justify the imposition of a repatriation ruling, that authority shall be obliged to give notification thereof to the Federal Office, attaching the relevant documents. In the case of a renewal procedure pursuant to article 24 of the Settlement and Residence Act, the Federal Office shall only assess all those circumstances of which the third-country national could and should have already furnished proof in the course of any such procedure before the authority under the Settlement and Residence Act.

(5) The Federal Office shall impose a repatriation ruling on a third-country national who prior to the occurrence of the material facts had been lawfully settled on a permanent basis and possesses an EU permanent residence permit if the required conditions as set out in article 53, paragraph (3), justify the assumption that his continued residence would constitute an actual and sufficiently serious threat to law and order or public safety.

(6) If a third-country national who is unlawfully resident in the federal territory is in possession of a residence permit or any other right of residence from another Member State, he shall be obliged to travel to the territory of that State without delay. Proof of the foregoing shall be furnished by the third-country national. If he does not comply with his exit obligation or if his immediate departure from the federal territory is necessary for reasons of law and order or public safety, a repatriation ruling shall be imposed pursuant to paragraph (1) above.

(7) A repatriation ruling shall not be imposed pursuant to paragraph (1) above if any of the cases referred to in article 45, paragraph (1), exists and a readmission agreement is in

existence with the Member State to which the third-country national is to be forcibly returned.

(8) The repatriation ruling shall become enforceable in the case as referred to in article 16, paragraph (4), of the Federal Office Procedure Act or upon becoming final and shall require the third-country national to depart without delay for his country of origin, for a transit country pursuant to European Union or bilateral readmission agreements or other agreements or for another third country unless he has been granted a time limit for voluntary departure. In the case of a complaint against a repatriation ruling, article 28, paragraph (2), of the Federal act on proceedings of the administrative courts (Administrative Court Proceedings Act – VwGGV), FLG I No. 33/2013, shall be applicable even if he is no longer resident in the federal territory at the time of the decision on the complaint.

(9) As part of the decision to return, it must be determined whether it is legal to deport third country nationals to one or several states pursuant to article 46. This does not apply if it is not possible to determine which third country the third country national should be deported to for reasons for which the third country national is to blame.

(10) The deportation of a third-country national pursuant to article 46 may also be effected via countries other than those referred to in paragraph (9) above.

(11) The fact that in a procedure for the imposition of a repatriation ruling the inadmissibility of that ruling has been determined, in accordance with article 9, paragraph (3), of the Federal Office Procedure Act, shall not preclude the making of a re-evaluation, as referred to in article 9, paragraph (1), of the Federal Office Procedure Act, in the course of a further procedure for the imposition of any such ruling if the alien has in the intervening period again committed an act which would justify the imposition of a repatriation ruling.

Territorial restriction

Article 52a. (1) Third country nationals who are being provided for in a federal care facility pursuant to article 6 para 2a of the 2005 Basic Welfare Support Act or third-country nationals who are assigned to be housed in a care facility operated by the Federal Government in accordance with article 57 (3) as designated by a stipulation of article 5 (1) of the 2005 Basic Welfare Support Act may only reside within the territorial jurisdiction of the district administrative authority in which the care facility is located in the period between being accepted into the care facility and for as long as care is provided to him until the time when he leaves the country.

(2) The obligations of the third country national which result from this territorial restriction pursuant to para 1 do not apply if, and for as long as

1. the decision on his return pursuant to article 59 para 6 and the decree for expulsion pursuant to article 12a para 4 of the 2005 Asylum Act are temporarily unable to be executed,
2. he has been given temporary leave to remain on federal territory pursuant to article 46a or
3. he has been deprived of his personal liberty.

(3) The third country national must be verifiably informed of the territorial restriction pursuant to para 1, the boundaries of the respective territory where he must reside as well as

the consequences of a failure to comply with the territorial restriction when he is accepted into the care facility pursuant to article 6 para 2a of the 2005 Basic Welfare Support Act. This also applies to the acceptance of third-country nationals into a care facility as designated in a stipulation of article 5 (1) of the 2005 Basic Welfare Support Act, if the third-country national has been assigned to accommodation in this care facility in accordance with article 57 (3).

Entry bans

Article 53. (1) An entry ban may be imposed by administrative decision by the Federal Office together with a repatriation ruling. Under the entry ban the third-country national shall be instructed not to travel to or reside in the territory of the Member States for a fixed period.

(1a) *(has been repealed by FLG I No. 68/2013)*

(2) Without prejudice to paragraph (3) below, an entry ban as referred to in paragraph (1) above shall be issued for a maximum period of five years. In the determination of the duration of the entry ban the Federal Office shall take into account the previous conduct of the third-country national and give consideration to the extent to which his residence constitutes a threat to law and order or public safety or runs counter to other public interests as stated in article 8 (2) of the European Convention on Human Rights. The foregoing shall be assumed in particular if the third-country national:

1. has been sentenced, by a final judgement, for an administrative infraction under article 20, paragraph (2), of the 1960 Road Traffic Regulations (StVO), FLG No. 159, in conjunction with article 26, paragraph (3), of the Driving Licence Act (FSG), FLG I No. 120/1997, under article 99, paragraph (1), (1a), (1b) or (2), of the StVO, under article 37, paragraph (3) or (4), of the FSG, under article 366, paragraph (1) 1, of the 1994 Trade and Industry Regulations (GewO), FLG No. 194, in connection with a restricted trade or occupation which is subject to licensing, under article 81 or 82 of the Security Police Act (SPG), or under article 9 or 14 in conjunction with article 19 of the 1953 Public Meetings Act, FLG No. 98, or for a breach of the Border Control Act, the Domicile Registration Act, the Carriage of Hazardous Goods Act or the Aliens Employment Act;
2. has been sentenced, by a final judgement, for an administrative infraction for which the penalty was a fine of at least 1,000 euros or a term of imprisonment as the primary sanction;
3. has been sentenced, by a final judgement, for an infraction of this federal act or the Settlement and Residence Act unless an infraction as referred to in paragraph (3) below is involved;
4. has been sentenced, by a final judgement, for wilfully committed fiscal offences or of wilful breaches of foreign-exchange control regulations;
5. has been sentenced, by a final judgement, for an infringement of the regulations governing prostitution;

6. cannot give proof of possessing the means to support himself;
7. is discovered to be engaged in an occupation which he is not permitted to pursue under the Aliens Employment Act unless the third-country national would have been permitted to pursue another occupation for the same employer under the provisions of the Aliens Employment Act and no change of purpose would have been required or a change of purpose would have been admissible for the occupation in which he was discovered to be engaged;
8. has entered into a marriage or formed a registered civil partnership and has invoked that marriage or registered civil partnership as grounds for the granting or continuation of a residence permit, for the acquisition or retention of a right of residence under European Union law, for the acquisition of Austrian nationality, or for the purpose of gaining access to the domestic labour market or of avoiding measures to terminate residence but has not led with his spouse or civil partner a joint family life within the meaning of article 8 of the European Convention on Human Rights or
9. was adopted and the granting or continuation of a residence permit, acquisition or retention of a right of residence under European Union law, acquisition of Austrian nationality, access to the domestic labour market or avoidance of measures to terminate residence was the sole or predominant reason for his adoption but he deceived the court as to the true relationship with the adoptive parents.

(3) An entry ban as referred to in paragraph (1) above shall be imposed for a maximum period of ten years and in the cases referred to in subpara 5 to 9 above for an unlimited period if certain facts justify the assumption that the residence of the third-country national constitutes a serious threat to law and order or public safety. Certain facts of relevance in the determination of the duration of the entry ban shall be deemed to include, in particular, in addition to the other public interests stated in article 8 (2) of the European Convention on Human Rights, cases where:

1. a third-country national has received, under a final court judgement, an unconditional sentence of imprisonment of at least three months, a suspended or partially suspended sentence of imprisonment of more than six months, or a sentence on at least one occasion for punishable acts based on the same malicious propensity;
2. a third-country national has been convicted, by a final court judgement, of a wilful offence committed within three months of his entry;
3. a third-country national has been convicted, by a final judgement, of procuring;
4. a third-country national has been sentenced or convicted, by a final judgement, for a repeat offence or for an act punishable by the courts within the meaning of this federal act or the Settlement and Residence Act;
5. a third-country national has received, under a final court judgement, an unconditional sentence of imprisonment of more than three years;
6. on the basis of certain facts it can justifiably be assumed that the third-country national belongs or has belonged to a criminal organization (article 278a of the Criminal Code)

or a terrorist association (article 278b of the Criminal Code), is perpetrating or has perpetrated terrorist offences (article 278c of the Criminal Code), finances or has financed terrorism (article 278d of the Criminal Code), is training a person or undergoing training for terrorist purposes (article 278e of the Criminal Code) or is instructing or has instructed a person with a view to the perpetration of a terrorist offence (article 278f of the Criminal Code);

7. on the basis of certain facts it can justifiably be assumed that the third-country national by his conduct, in particular through public participation in acts of violence, public calls to violence or incitement or agitation, constitutes a threat to national security;
8. a third-country national approves of or promotes publicly, at a meeting or through the distribution of pamphlets a crime against peace, a war crime, a crime against humanity or terrorist acts of comparable severity or
9. the third country national has close links with an extremist or terrorist group and, having regard to its existing structures or to expected developments within its sphere, extremist or terrorist activities by such group cannot be ruled out, or because of certain facts, it must be assumed that the alien is attempting (or has attempted) to convince other persons or organisations of his/her views which violate the values of a European democratic state or his own society by disseminating such views using writing, pictures or documents or otherwise supports a person or organisation which promotes or endorses the dissemination of such a body of thought.

(4) The period of the entry ban shall be computed from midnight on the date of departure of the third-country national.

(5) An applicable judgement as referred to in paragraph (3) above shall be deemed not to exist if the conviction has already been expunged. Article 73 of the Criminal Code shall apply.

(6) A court-directed committal to an institution for mentally disturbed offenders shall be treated as equivalent to a judgement as referred to in paragraph (3), subparagraphs 1, 2 and 5, above if the offence was perpetrated under the influence of a condition which precludes criminal responsibility and stems from a significant mental or psychological abnormality.

Time limit for voluntary departure

Article 55. (1) A time limit for voluntary departure shall be fixed simultaneously with a repatriation ruling imposed pursuant to article 52.

(1a) There shall be no time limit for voluntary departure in cases involving a rejection decision in accordance with article 68 of the General Administrative Procedure Act or if a ruling pursuant to a procedure as referred to in article 18 of the Federal Office Procedure Act can be implemented.

(2) The time limit for voluntary departure shall be 14 days from the date when the administrative decision becomes final unless it has been established in the course of an assessment to be conducted by the Federal Office that special circumstances which the third-

country national has to take into account in the settlement of his personal affairs outweigh the reasons which gave rise to the imposition of the repatriation ruling.

(3) If special circumstances outweigh those reasons, the time limit for voluntary departure may be fixed once only for a duration greater than the 14-day period provided for. Proof of the special circumstances is to be furnished by the third-country national and he shall at the same time communicate a date for his departure. Article 37 of the General Administrative Procedure Act shall apply.

(4) The Federal Office shall not fix a time limit for voluntary departure if the suspensory effect of a complaint has been disallowed pursuant to article 18, paragraph (2), of the Federal Office Procedure Act.

(5) The granting of a time limit as referred to in paragraph (1) above shall be revoked by summary decision (article 57 of the General Administrative Procedure Act) if certain facts justify the assumption that the residence of the third-country national constitutes a threat to law and order or public safety or there is a risk of his absconding.

Conditions imposed in cases where a time limit is granted for voluntary departure

Article 56. (1) If the Federal Office or the Federal Administrative Court has fixed a time limit for voluntary departure pursuant to article 55, the Federal Office may, by summary decision, impose conditions on the third-country national that are necessary in the interests of preserving law and order or public safety or to avoid the risk of his absconding.

(2) Conditions as referred to in paragraph (1) above shall involve, in particular, the obligation:

1. to stay solely within the area of the district administrative authority in which his place of residence is located;
2. to report at regular intervals to a station of a provincial police authority;
3. to deposit documents with the Federal Office;
4. to deposit an appropriate financial security with the Federal Office or
5. to take up accommodation in premises specified by the Federal Office.

(3) The third-country national shall be informed, in a provable manner, of the boundaries of the area referred to in paragraph (2), subparagraph 1, above. He shall further be permitted to reside anywhere in the federal territory if and for as long as this is necessary:

1. for the fulfilment of statutory obligations;
2. for the purpose of compliance with summonses issued by courts, public prosecution services or administrative authorities or
3. for the receipt of medical care or treatment.

(4) In order to comply with the reporting obligation laid down in paragraph (2), subparagraph 2, above, the third-country national shall report at regular intervals not exceeding 48 hours to a station of a provincial police authority to be determined. The necessary information for that purpose, such as, in particular, the relevant station of a provincial police authority and the reporting period and time, shall be communicated by the Federal Office to the third-country national by procedural order (article 7 (1) of the Administrative Court Proceedings Act. A breach of the reporting obligation shall not exist if its fulfilment was provably impossible for or could not reasonably be expected of the third-country national.

(5) More detailed provisions governing the deposit of documents, as referred to in paragraph (2), subparagraph 3, above, or of a financial security, as referred to in paragraph (2), subparagraph 4, above, may be laid down by order of the Federal Minister of the Interior.

(6) The conditions fixed by the Federal Office shall be complied with by the third-country national up to the time of his departure from the federal territory. The third-country national's duty of compliance therewith shall be suspended if he is held in custody pending deportation, penal confinement or pretrial detention or if a more lenient measure has been ordered against him.

Mandatory residence requirement

Article 57. (1) If a legally binding decision to return has been issued in relation to a third country national who has not been given temporary leave to remain on federal territory (article 46a), such third country national may be required to stay in certain accommodation provided by the federation until he leaves the country, if

1. no deadline was set for leaving the country voluntarily pursuant to article 55, or
2. after the deadline for leaving the country voluntarily pursuant to article 55 has expired, certain facts justify the assumption that the third country national will continue in his failure to comply with the obligation to leave the country.

(2) When assessing whether certain facts pursuant to para 1 subpara 2 exist, particular consideration must be paid to whether the third country national

1. has failed to participate in a return counselling meeting (article 52a para 2 of the Federal Office Procedure Act), either in violation of an order by the Federal Office or in spite of a verifiable offer by the Return Counselling Office;
2. changed his place of residence or the place of habitual residence after the deadline for leaving the country voluntarily expired and did not notify the Federal Office of this;
3. fails to cooperate with the necessary steps for obtaining a permit or a travel document within the meaning of article 46 para 2 and 2a;
4. declared his unwillingness to comply with the obligation to leave the country in the course of the asylum procedure, the procedure for issuing a decision to return or the return counselling meeting;
5. has misled the authorities (or has attempted to mislead the authorities) during the asylum procedure or the procedure for issuing a decision to return with regard to his country of origin or his identity.

(3) If a legally binding order for expulsion from the country has been issued in relation to a third country national, such third country national may be required to stay in certain

accommodation provided by the federation until he leaves the country, if certain facts justify the assumption that the third country national will not comply with his obligation to leave the country. When assessing whether certain facts exist, particular consideration must be paid to whether

1. the third country national has already frustrated the execution of an order to expel him from the country,
2. the time limit for transfer has had to be extended for reasons for which the third country national was to blame,
3. the third country national re-entered federal territory during the period of validity of the order for his expulsion, or
4. the third country national misled the authorities (or attempted to mislead the authorities) in the course of the asylum procedure with regard to his identity, country of origin or transit route.

(4) The obligations of the third country national resulting from a mandatory residence requirement pursuant to para 1 or para 3 do not apply if, and for as long as

1. the decision to return pursuant to article 59 para 6 or the order for expulsion from the country pursuant to article 12a para 4 of the 2005 Asylum Act are temporarily unable to be executed,
2. he has been given temporary leave to remain on federal territory pursuant to article 46a or
3. he has been deprived of his personal liberty.

(5) If a decision to return becomes obsolete, or an order for expulsion from the country ceases to have effect, the mandatory residence requirement also ceases to have effect.

(6) The mandatory residence requirement pursuant to para 1 or para 3 must be imposed by means of an administrative decision issued without a prior investigative procedure (article 57 of the General Administrative Procedure Act). This must inform the third party national of the consequences of a failure to comply.

Information obligations

Article 58. (1) The Federal Office shall inform an alien on whom a repatriation ruling has been imposed of his obligation to leave the country without delay or within the prescribed period and shall draw his attention to measures for the enforcement of his exit obligation (article 46).

(2) Information as referred to in paragraphs (1) above may be furnished in any suitable manner, in particular by printed forms in a language understandable to the alien or by oral communication. The specific format and layout of such printed forms may be determined by order of the Federal Minister of the Interior.

Special procedural provisions

Article 59. (1) *(has been repealed by FLG. I No. 87/2012)*

(2) *(has been repealed by FLG. I No. 87/2012)*

(3) An enforceable repatriation ruling shall be entered in the third-country national's travel document unless his deportation would thereby be rendered inadmissible or impossible.

(4) The commencement of enforceability of the repatriation ruling shall be deferred for the duration of any deprivation of liberty imposed by reason of a punishable act.

(5) If a third-country national is already subject to a valid and final repatriation ruling, no further repatriation ruling shall be required in any subsequent procedural acts pursuant to Chapters 7, 8 and 11 or to the 2005 Asylum Act unless new facts as referred to in article 53, paragraphs (2) and (3), have emerged.

(6) If the third-country national submits an application for international protection, a repatriation ruling shall temporarily not be implementable:

1. until the suspensory effect of a complaint against a rejection decision is not allowed (article 17 of the Federal Office Procedure Act) or
2. until the suspensory effect of a complaint against a dismissal decision is disallowed (article 18 of the Federal Office Procedure Act).

In the case of a subsequent application as defined in article 2, paragraph (1), subparagraph 23, of the 2005 Asylum Act, article 12a of the 2005 Asylum Act shall apply.

Reduction, non-relevance and revocation

Article 60. (1) The Federal Office may, at the request of a third-country national, reduce the duration of or revoke an entry ban issued pursuant to article 53, paragraph (2), taking into consideration the factors which had determined the imposition of the repatriation ruling or entry ban, if the third-country national has left the territory of the Member States within the prescribed period. Proof of departure within the prescribed period shall be furnished by the third-country national.

(2) The Federal Office may, at the request of a third-country national, reduce the duration of an entry ban issued pursuant to article 53, paragraph (3), subparagraphs 1 to 4, taking into consideration the factors which had determined the imposition of the repatriation ruling or entry ban, if the third-country national has left the territory of the Member States within the prescribed period and has since then spent a period greater than one half of the entry ban abroad. Proof of departure within the prescribed period shall be furnished by the third-country national.

(3) The repatriation ruling shall be no longer relevant if a third-country national:

1. is granted asylum status;
2. is issued with a residence permit pursuant to articles 55 to 57 of the 2005 Asylum Act.

(4) *(has been repealed by FLG I No. 87/2012)*

(5) *(has been repealed by FLG I No. 87/2012)*

Orders for removal from the country

Article 61. (1) The Federal Office shall issue an order for removal from the country against a third-country national if:

1. his application for international protection is rejected pursuant to article 4a or 5 of the 2005 Asylum Act or after any further rejection decision in accordance with article 68 (1) of the General Administrative Procedure Act following a rejection ruling pursuant to article 4a or 5 of the 2005 Asylum Act or
2. he has filed an application for international protection in another Member State and that Member State is responsible for examining the application under treaty provisions or pursuant to the Dublin Regulation. The foregoing shall not apply to favoured third-country nationals.

(2) An order for removal from the country shall render admissible the third-country national's deportation to the State of destination. The order shall remain valid for up to 18 months from departure of the third-country national.

(3) If the execution of the order for removal from the country would for reasons relating to the person of the third-country national constitute a violation of article 3 of the European Convention on Human Rights and such reasons are not permanent, execution shall be deferred for the necessary period.

(4) The order for removal from the country shall cease to be valid if the asylum procedure is admitted pursuant to article 28 of the 2005 Asylum Act.

((5) has been repealed by FLG. No. I Nr. 24/2016)

4. Abschnitt

Aufenthaltsbeendende Maßnahmen gegen unionsrechtlich aufenthaltsberechtigte EWR-Bürger, Schweizer Bürger und begünstigte Drittstaatsangehörige Ausweisung

Article 66. (1) EWR-Bürger, Schweizer Bürger und begünstigte Drittstaatsangehörige können ausgewiesen werden, wenn ihnen aus den Gründen des § 55 Abs. 3 NAG das unionsrechtliche Aufenthaltsrecht nicht oder nicht mehr zukommt, es sei denn, sie sind zur Arbeitssuche eingereist und können nachweisen, dass sie weiterhin Arbeit suchen und begründete Aussicht haben, eingestellt zu werden; oder sie bereits das Daueraufenthaltsrecht (§§ 53a, 54a NAG) erworben haben; im letzteren Fall ist eine Ausweisung nur zulässig, wenn ihr Aufenthalt eine schwerwiegende Gefahr für die öffentliche Ordnung oder Sicherheit darstellt.

(2) Soll ein EWR-Bürger, Schweizer Bürger oder begünstigter Drittstaatsangehöriger ausgewiesen werden, hat das Bundesamt insbesondere die Dauer des Aufenthalts im Bundesgebiet, sein Alter, seinen Gesundheitszustand, seine familiäre und wirtschaftliche Lage, seine soziale und kulturelle Integration im Bundesgebiet und das Ausmaß seiner Bindung zum Herkunftsstaat zu berücksichtigen.

(3) Die Erlassung einer Ausweisung gegen EWR-Bürger, Schweizer Bürger oder begünstigte Drittstaatsangehörige, die ihren Aufenthalt seit zehn Jahren im Bundesgebiet hatten, ist dann zulässig, wenn aufgrund des persönlichen Verhaltens des Fremden davon

ausgegangen werden kann, dass die öffentliche Sicherheit der Republik Österreich durch seinen Verbleib im Bundesgebiet nachhaltig und maßgeblich gefährdet würde. Dasselbe gilt für Minderjährige, es sei denn, die Ausweisung wäre zum Wohl des Kindes notwendig, wie es im Übereinkommen der Vereinten Nationen vom 20. November 1989 über die Rechte des Kindes vorgesehen ist.

(4) (Anm.: aufgehoben durch BGBl. I Nr. 87/2012)

Aufenthaltsverbot

Article 67. (1) Die Erlassung eines Aufenthaltsverbotes gegen unionsrechtlich aufenthaltsberechtigte EWR-Bürger, Schweizer Bürger oder begünstigte Drittstaatsangehörige ist zulässig, wenn auf Grund ihres persönlichen Verhaltens die öffentliche Ordnung oder Sicherheit gefährdet ist. Das persönliche Verhalten muss eine tatsächliche, gegenwärtige und erhebliche Gefahr darstellen, die ein Grundinteresse der Gesellschaft berührt. Strafrechtliche Verurteilungen allein können nicht ohne weiteres diese Maßnahmen begründen. Vom Einzelfall losgelöste oder auf Generalprävention verweisende Begründungen sind nicht zulässig. Die Erlassung eines Aufenthaltsverbotes gegen EWR-Bürger, Schweizer Bürger oder begünstigte Drittstaatsangehörige, die ihren Aufenthalt seit zehn Jahren im Bundesgebiet hatten, ist dann zulässig, wenn aufgrund des persönlichen Verhaltens des Fremden davon ausgegangen werden kann, dass die öffentliche Sicherheit der Republik Österreich durch seinen Verbleib im Bundesgebiet nachhaltig und maßgeblich gefährdet würde. Dasselbe gilt für Minderjährige, es sei denn, das Aufenthaltsverbot wäre zum Wohl des Kindes notwendig, wie es im Übereinkommen der Vereinten Nationen vom 20. November 1989 über die Rechte des Kindes vorgesehen ist.

(2) Ein Aufenthaltsverbot kann, vorbehaltlich des Abs. 3, für die Dauer von höchstens zehn Jahren erlassen werden.

(3) Ein Aufenthaltsverbot kann unbefristet erlassen werden, wenn insbesondere

1. der EWR-Bürger, Schweizer Bürger oder begünstigte Drittstaatsangehörige von einem Gericht zu einer unbedingten Freiheitsstrafe von mehr als fünf Jahren rechtskräftig verurteilt worden ist;
2. auf Grund bestimmter Tatsachen die Annahme gerechtfertigt ist, dass der EWR-Bürger, Schweizer Bürger oder begünstigte Drittstaatsangehörige einer kriminellen Organisation (§ 278a StGB) oder einer terroristischen Vereinigung (§ 278b StGB) angehört oder angehört hat, terroristische Straftaten begeht oder begangen hat (§ 278c StGB), Terrorismus finanziert oder finanziert hat (§ 278d StGB) oder eine Person für terroristische Zwecke ausbildet oder sich ausbilden lässt (§ 278e StGB);
3. auf Grund bestimmter Tatsachen die Annahme gerechtfertigt ist, dass der EWR-Bürger, Schweizer Bürger oder begünstigte Drittstaatsangehörige durch sein Verhalten, insbesondere durch die öffentliche Beteiligung an Gewalttätigkeiten, durch den öffentlichen Aufruf zur Gewalt oder durch hetzerische Aufforderungen oder Aufreizungen, die nationale Sicherheit gefährdet oder
4. der EWR-Bürger, Schweizer Bürger oder begünstigte Drittstaatsangehörige öffentlich, in einer Versammlung oder durch Verbreiten von Schriften ein Verbrechen gegen den

Frieden, ein Kriegsverbrechen, ein Verbrechen gegen die Menschlichkeit oder terroristische Taten von vergleichbarem Gewicht billigt oder dafür wirbt.

(4) Bei der Festsetzung der Gültigkeitsdauer des Aufenthaltsverbotes ist auf die für seine Erlassung maßgeblichen Umstände Bedacht zu nehmen. **The residence ban begins with the expiry of the day when the alien leaves the country.**

(5) *(Anm.: aufgehoben durch BGBl. I Nr. 87/2012)*

Gegenstandslosigkeit und Aufhebung

Article 69. (1) Eine Ausweisung wird gegenstandslos, wenn der EWR-Bürger, Schweizer Bürger oder begünstigte Drittstaatsangehörige seiner Ausreiseverpflichtung (§ 70) nachgekommen ist. § 27b gilt.

(2) Ein Aufenthaltsverbot ist auf Antrag oder von Amts wegen aufzuheben, wenn die Gründe, die zu seiner Erlassung geführt haben, weggefallen sind.

(3) Das Aufenthaltsverbot tritt außer Kraft, wenn einem EWR-Bürger, Schweizer Bürger oder begünstigten Drittstaatsangehörigen der Status des Asylberechtigten zuerkannt wird.

Ausreiseverpflichtung und Durchsetzungsaufschub

Article 70. (1) Die Ausweisung und das Aufenthaltsverbot werden spätestens mit Eintritt der Rechtskraft durchsetzbar; der EWR-Bürger, Schweizer Bürger oder begünstigte Drittstaatsangehörige hat dann unverzüglich auszureisen. Der Eintritt der Durchsetzbarkeit ist für die Dauer eines Freiheitsentzuges aufgeschoben, auf den wegen einer mit Strafe bedrohten Handlung erkannt wurde.

(2) *(Anm.: aufgehoben durch BGBl. I Nr. 87/2012)*

(3) EWR-Bürgern, Schweizer Bürgern und begünstigten Drittstaatsangehörigen ist bei der Erlassung einer Ausweisung oder eines Aufenthaltsverbotes von Amts wegen ein Durchsetzungsaufschub von einem Monat zu erteilen, es sei denn, die sofortige Ausreise wäre im Interesse der öffentlichen Ordnung oder Sicherheit erforderlich.

(4) Der Durchsetzungsaufschub ist zu widerrufen, wenn

1. nachträglich Tatsachen bekannt werden, die dessen Versagung gerechtfertigt hätten;
2. die Gründe für die Erteilung weggefallen sind oder
3. der EWR-Bürger, Schweizer Bürger oder begünstigte Drittstaatsangehörige während seines weiteren Aufenthaltes im Bundesgebiet ein Verhalten setzt, das die sofortige Ausreise aus Gründen der öffentlichen Ordnung und Sicherheit gebietet.

Auflagen für den Durchsetzungsaufschub

Article 71. (1) Schiebt das Bundesamt den Eintritt der Durchsetzbarkeit einer Ausweisung oder eines Aufenthaltsverbotes auf, so kann sie die dafür im Interesse der Aufrechterhaltung der öffentlichen Ordnung oder Sicherheit gebotenen Auflagen festsetzen. Hierbei ist auf den Zweck des Aufenthalts Bedacht zu nehmen.

(2) Auflagen im Sinne des Abs. 1 sind insbesondere die Verpflichtung,

1. sich lediglich im Gebiet der Bezirksverwaltungsbehörde, in dem sich sein Aufenthaltsort befindet, aufzuhalten;
2. sich in periodischen Abständen bei einer Dienststelle einer Landespolizeidirektion zu melden;
3. eine angemessene finanzielle Sicherheit beim Bundesamt zu hinterlegen.

(3) Dem EWR-Bürger, Schweizer Bürger oder begünstigten Drittstaatsangehörigen sind die Grenzen des Gebietes gemäß Abs. 2 Z 1 nachweislich zur Kenntnis zu bringen. Darüber hinaus ist der Aufenthalt im gesamten Bundesgebiet geduldet, wenn und solange dies

1. zur Erfüllung von gesetzlichen Pflichten notwendig ist;
2. notwendig ist, um Ladungen von Gerichten und Verwaltungsbehörden Folge zu leisten oder
3. für die Inanspruchnahme einer medizinischen Versorgung oder Behandlung notwendig ist.

(4) Zur Erfüllung der Meldeverpflichtung gemäß Abs. 2 Z 2 hat sich der EWR-Bürger, Schweizer Bürger oder begünstigte Drittstaatsangehörige in periodischen, 48 Stunden nicht unterschreitenden Abständen bei einer zu bestimmenden Dienststelle einer Landespolizeidirektion zu melden. Die dafür notwendigen Angaben, wie insbesondere die zuständige Dienststelle einer Landespolizeidirektion sowie Zeitraum und Zeitpunkt der Meldung, sind dem EWR-Bürger, Schweizer Bürger oder begünstigten Drittstaatsangehörigen vom Bundesamt mit Verfahrensordnung (§ 63 Abs. 2 AVG) mitzuteilen. Eine Verletzung der Meldeverpflichtung liegt nicht vor, wenn deren Erfüllung für den EWR-Bürger, Schweizer Bürger oder begünstigten Drittstaatsangehörigen nachweislich nicht möglich oder nicht zumutbar war.

(5) Die näheren Bestimmungen, welche die Hinterlegung einer finanziellen Sicherheit gemäß Abs. 2 Z 3 regeln, kann der Bundesminister für Inneres durch Verordnung festlegen.

(6) Die vom Bundesamt festgesetzten Auflagen sind vom EWR-Bürger, Schweizer Bürger oder begünstigten Drittstaatsangehörigen bis zum Zeitpunkt seiner Ausreise aus dem Bundesgebiet zu erfüllen. Die Erfüllungspflicht der Auflagen ruht, soweit der EWR-Bürger, Schweizer Bürger oder begünstigte Drittstaatsangehörige in Schub- Straf- oder Untersuchungshaft angehalten oder gegen ihn ein gelinderes Mittel angeordnet wird.

Section 8

Detention pending deportation and more lenient measures

Detention pending deportation

Article 76. (1) Aliens may be arrested and held in custody (detention pending deportation) if the purpose of such detention cannot be achieved by a more lenient measure

(article 77). Persons under the age of 14 years may not be held in detention pending deportation.

(2) Detention pending deportation may only be ordered if

1. this is necessary in order to guarantee the procedure for applying for international protection with regard to imposing a measure to terminate residence, insofar as the residence of the alien in question endangers public order or safety according to article 67, there is a risk of flight and detention pending deportation is proportional,
2. this is necessary in order to guarantee the procedure for the imposition of a measure to terminate residence in accordance with the section 8 or the deportation, if there is both a risk of flight and the detention pending deportation is proportional, or
3. the requirements of article 28 (1) and (2) of the Dublin Regulation are met.

If the imposition of a measure to terminate residence is not required because there already exists a valid, legally binding repatriation ruling (article 59 (5)), then this does not exclude the application of subparagraph 1. In the cases detailed in article 40 (5) of the Federal Office Procedure Act, subparagraph 1 shall apply with the proviso that the order for detention pending deportation is not subject to a threat to public order or safety resulting from the alien's residence.

(2a) As part of the proportionality test (para 2 and article 28 para 1 and 2 of the Dublin Regulation), any conduct by the alien which is relevant under criminal law must be taken into account, and in particular whether, in view of the gravity of the criminal offence, public interest in a quick deportation outweighs the protection of the alien's personal liberty.

(3) A risk of absconding, as referred to in paragraph (2), subparagraph 1 or 2, above or as defined in Article 2 (n) of the Dublin Regulation, shall exist if certain facts justify the assumption that the alien will evade the procedure or deportation or will significantly impede the deportation. In the making of such assessment, particular consideration shall be given to:

1. whether the alien cooperates in the procedure for the imposition of a measure to terminate residence or evades or obstructs the repatriation or deportation;
- 1a. whether the alien has violated an obligation pursuant to article 46 para 2 or 2a, particularly if this obligation has been imposed by means of an administrative decision pursuant to article 46 para 2b, he has not complied with this decision and this has led to coercive sanctions being imposed (article 3 para 3 of the Federal Office Procedure Act);
2. whether the alien has re-entered the federal territory in contravention of a valid entry ban or of a valid residence ban or during the validity of an order for removal from the country;
3. whether an enforceable measure to terminate residence exists or the alien has already evaded a procedure for the imposition of a measure to terminate residence or a procedure concerning an application for international protection;
4. whether, in the case of a subsequent application (article 2 (1) 23 of the 2005 Asylum Act), de facto protection against deportation has been terminated or the alien does not enjoy such protection;

5. whether, at the time of filing an application for international protection, an enforceable measure to terminate residence had been imposed on the alien, in particular if, at that time, he was already in detention pending deportation or was being held in custody pursuant to article 34 (3) 1 to 3 of the Federal Office Procedures Act;
6. whether it can be assumed, on the basis of the results of the interview, search or identification procedures, that another Member State is responsible under the Dublin Regulation, in particular if:
 - (a) the alien has already filed two or more applications for international protection in the Member States or has made false statements in connection therewith;
 - (b) the alien has attempted to travel onward to a third Member State or
 - (c) on the basis of the results of the interview, search, identification procedures or previous conduct of the alien, it is likely that he intends to travel onward to a third Member State;
7. whether the alien fails to fulfil his obligation arising from the adoption of a more lenient measure;
8. whether any conditions, obligations to cooperate, territorial restrictions, registration obligations or orders to accept accommodation pursuant to articles 52a, 56, 57 or 71 of the Aliens Police Act, article 38b of the Security Policing Act, article 13 para 2 of the Federal Office Procedure Act or article 15a or 15b of the 2005 Asylum Act, have not been complied with, in particular in the case of the existence of a measure to terminate residence which is enforceable currently or when an application for international protection is filed;
9. the extent of social integration in Austria, in particular the existence of family ties, the pursuit of a lawful occupation or the possession of sufficient means of subsistence and the existence of a guaranteed abode.

(4) Orders for detention pending deportation shall be effected in writing by administrative decision; such decision shall be rendered in accordance with article 57 of the General Administrative Procedures Act unless at the time when the procedure for its issue is initiated the alien is for other reasons being held in detention not constituting simple short-term custody. Unenforced administrative decisions relating to detention pending deportation and rendered in accordance with article 57 of the General Administrative Procedures Act shall be deemed to be revoked 14 days after their issue.

(5) If a measure to terminate residence (subparagraph 1 or 2) becomes enforceable and the supervision of the alien's departure appears to be necessary, detention pending deportation ordered as a procedural guarantee shall as from that time be deemed to be imposed as a measure to guarantee deportation.

(6) If an alien files an application for international protection while being held in custody pending deportation, such detention may be maintained if there are reasons to assume that the application has been filed for the purpose of delaying the execution of a measure to terminate residence. The existence of the required conditions shall be recorded as a file note; the alien shall be informed thereof. Article 11, paragraph (8), and article 12, paragraph (1), of the Federal Office Procedures Act shall apply *mutatis mutandis*.

More lenient measures

Article 77. (1) The authority shall order more lenient measures if the requirements set out in article 76 are met and if the authority has reason to assume that the objective of detention pending deportation can be achieved by the use of more lenient measures. The

authority shall use more lenient measures for under-age persons, unless it may be assumed, on the basis of certain facts, that the objective of detention pending deportation cannot be achieved thereby; in such event, article 80, paragraph (2), subparagraph 1, shall apply.

(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 ex officio by reason of article 24, paragraph (1), subparagraph 4, of the Federal Office Procedure Act.

(3) A more lenient measure shall in particular be an order:

1. to take up accommodation in premises specified by the authority,
2. to report at regular intervals to a police station,
3. to deposit an adequate financial guarantee with the authority.

(4) If the alien does not comply with his obligations under paragraph (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, article 80 shall apply, provided that the admissible period will be doubled.

(5) The use of a more lenient measure shall not preclude the adoption of command and coercive measures required for enforcement of deportation. 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.

(6) In order to comply with the reporting obligation laid down in subparagraph 2 of paragraph (3) above, the alien shall, at regular intervals not shorter than 24 hours, report to a police station to be determined. The necessary information for that purpose, such as, in particular, the relevant police station and the reporting period and time, shall be communicated by the authority to the alien by procedural order (article 7 (1) of the Administrative Court Proceedings Act). A breach of the reporting obligation shall not exist if its fulfilment was provably impossible for or could not reasonably be expected of the alien.

(7) The specific provisions as to the deposit of the financial guarantee set out in subparagraph 3 of paragraph (3) above may be regulated by order of the Federal Minister of the Interior.

(8) Orders for the use of more lenient measures shall be imposed by administrative decision; such decision shall be rendered in accordance with article 57 of the General Administrative Procedure Act unless at the time when the procedure for its issue is initiated the alien is for other reasons being held in detention not constituting short-term custody. Unenforced administrative decisions rendered in accordance with article 57 of the General Administrative Procedure Act shall be deemed to be revoked 14 days after their issue

(9) The provincial police authorities may make advance arrangements concerning the premises in which accommodation, as referred to in paragraph (3), subparagraph 1, above, is to be taken up.

Execution of orders for detention pending deportation

Article 78. (1) Orders for detention pending deportation shall be executed in detention premises of the provincial police authority. If a provincial police authority is unable to execute an order for detention pending deportation, a request for its execution shall be made to a provincial police authority that has detention premises.

((2) has been repealed by FLG. I No. 87/2012)

((3) has been repealed by FLG. I No. 70/2015)

(4) If so required for purposes of deportation, such detention may be carried out in detention premises located en route to the federal border.

((5) has been repealed by FLG. I No. 68/2013)

(6) If a sick or injured alien cannot be treated properly in detention premises during detention pending deportation, the period during which he receives medical out-patient care shall be deemed to be detention pending deportation. If, in such event, by reason of the alien's state of health which he has caused himself, the provincial police authority cannot or can no longer carry out his detention pending deportation, the provincial police authority may request the director of the court prison in Vienna to carry out such detention in the medical ward of that court prison if the measure to terminate residence 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 and his separate accommodation are possible, having regard to the workload and equipment of the facilities providing the required treatment.

(7) The alien shall, if so required by his state of health, be taken to and, if necessary, guarded at a suitable hospital for the continuation of his detention pending deportation if the treatment cannot be carried out in detention premises of the provincial police authority. Article 71, paragraphs (2) and (3), of the Prisons Act (*Strafvollzugsgesetz - StVG*), FLG No. 144/1969, shall apply *mutatis mutandis*.

(8) If an order for detention pending deportation is executed in a court prison or in a hospital, the provincial police authority shall fully refund the costs thereby incurred.

Implementation of detention pending deportation

Article 79. (1) Detention pending deportation in detention premises of a provincial police authority shall be governed by article 53c, paragraphs (1) to (5), of the 1991 Administrative Penalties Act; detention in court prisons, as referred to in article 78, paragraph (6), shall be governed by article 53d of the 1991 Administrative Penalties Act.

(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 provincial 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.

(5) If accommodation suitable for families and children is guaranteed, aliens who are held in detention shortly before their deportation shall be allowed to be accompanied by under-age persons entrusted to their guardianship. In the event of accompanying arrangements, the internal rules and safety regulations shall apply *mutatis mutandis* to under-age persons.

Duration of detention pending deportation

Article 80. (1) The Federal Office shall endeavour to ensure that the period of any detention pending deportation is as short as possible. Detention pending deportation shall be maintained in force until the reason for its imposition ceases to exist or until its objective can no longer be achieved.

(2) Subject to para 5 and the Dublin Regulation, detention pending deportation shall in principle:

1. not exceed three months if detention pending deportation is ordered on an under-age person over 14 years;
2. not exceed six months if detention pending deportation is ordered on an alien aged over 18 years and no case as referred to in paragraphs (3) and (4) exists.

(3) If it is not permissible to deport an alien because a final decision has not yet been rendered concerning an application filed pursuant to article 51, detention pending deportation may be maintained in force until the expiry of the fourth week following the final decision but for a period not exceeding six months in all.

(4) If it is not possible to deport an alien because

1. it is not possible to verify his identity and nationality, in particular for the purpose of obtaining a substitute travel document,
 2. another state has not granted the necessary permit for entry or transit,
 3. the alien frustrates the deportation by resisting coercive force (article 13), or
 4. the deportation appears jeopardised because the alien has already avoided the procedure once or is otherwise to blame for an obstacle to deportation,
- detention (pending deportation) may be ordered for a maximum of 18 months for the same set of case facts, in derogation from para 2 subpara 2 and para 3.

(5) In derogation from para 2, and subject to the Dublin Regulation, detention (pending deportation) may not last more than 10 months running up to the time when the measure which terminates residence becomes able to be executed, if it is ordered in relation to an

asylum-seeker or an alien who has applied for international protection. If detention (pending deportation) extends beyond this point or is re-ordered after this time, the period of detention which has already lapsed must be counted towards the period pursuant to para 2 or 4.

(5a) In the cases of the last sentence of article 76 (2), the duration of detention based on the arrest warrant shall count towards the period of detention pending deportation according to paragraph 5, provided that this was maintained after the application for international protection in accordance with article 40 (5) of the Federal Office Procedure Act. The allowance stipulated in the last sentence of paragraph 5 remains unaffected.

(6) The Federal Office shall ex officio review the proportionality of cases of custody pending deportation every four weeks. If a complaint as referred to in article 22a, paragraph (1), subparagraph 3, of the Federal Office Procedure Act is pending, an ex officio review shall in such event not be applicable.

(7) An alien who is to be detained solely on the grounds set forth in paragraph (3) or (4) above shall without delay be informed thereof in writing by the Federal Office.

Discontinuation of detention pending deportation and of more lenient measures

Article 81. (1) Detention pending deportation shall be discontinued without formality by the alien's release from custody if:

1. it may no longer be maintained in force in accordance with article 80 or
2. the Federal Administrative Court has established that the requirements for its continuation are not satisfied.

(2) In cases where detention pending deportation has been discontinued without formality pursuant to paragraph (1) above, the administrative decision on which it was based shall be deemed to be revoked; a written record thereof shall be made by the Federal Office.

(3) An alien who has been released from detention pending deportation shall be furnished, at his request and at no charge, by the Federal Office with a certification of the duration of his detention.

(4) A more lenient measure shall be discontinued by informal communication if:

1. it may no longer be maintained in force in accordance with article 77 in conjunction with article 80 or
2. the Federal Administrative Court has established that the requirements for its continuation are not satisfied.

In cases where a more lenient measure has been discontinued without formality, the administrative decision on which it was based shall be deemed to be revoked; a written record thereof shall be made by the Federal Office.

Chapter 9

Complaint Proceedings against Arrest and Custody pursuant to Article 39

Complaints to the provincial administrative court

Article 82. (1) An alien shall be entitled to apply to the provincial administrative court, claiming unlawfulness of arrest or custody, if:

1. he has been arrested pursuant to this federal act or
2. he has been or is being held in custody by virtue of this federal act.

(2) With regard to rulings by the provincial administrative court on the continuation of detention as referred to in paragraphs (5) to (5b) of article 39, paragraph (2) of article 22a of the Federal Office Procedures Act shall apply with the proviso that the competent provincial administrative court shall be substituted for the Federal Administrative Court and detention to guarantee forcible return shall be substituted for detention pending deportation.

(3) Objections to the imposition of detention orders as referred to in article 39, paragraphs (5) to (5b), shall not be admissible.

Rulings by the provincial administrative court

Article 83. The provincial administrative court in whose area of jurisdiction the authority which ordered the custody is located shall be competent to rule on a complaint as referred to in article 82, paragraph (1), subparagraph 2. In the cases referred to in article 82, paragraph (1), subparagraph 1, jurisdiction shall be determined by the place of arrest.

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 of indeterminate nationality who do not possess 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 from their country of origin;
3. foreign nationals who are not in a position to obtain a valid travel document from their country of origin and who in all other respects satisfy the requirements for the issue of an EU permanent residence permit (article 45 of the Settlement and Residence Act);

4. foreign nationals who are not in a position to obtain from their country of origin the necessary travel document for emigration from the federal territory;
5. foreign nationals who have had their principal domicile 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 Federation or the province on account of the services which the alien has rendered or is expected to render.

(2) Alien's passports may, on application, be issued also for stateless persons who are lawfully resident in the federal territory or for persons of indeterminate nationality who do not possess a valid travel document and are lawfully resident in the federal territory.

(2a) Alien's passports shall, upon application, be issued to aliens who enjoy subsidiary protection status in Austria and are not in a position to obtain a valid travel document from their country of origin unless compelling reasons of national security or public order preclude the issue thereof.

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

(4) 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 *mutatis mutandis*.

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 the approval of 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) Paragraphs (1) and (2) above shall also apply to the extension of the territorial validity of alien's passports held by 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 paragraph (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 has formerly had his ordinary place of residence.

Refusal of alien's passports

Article 92. (1) The 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 an act punishable by the courts;
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.

(1a) The grounds for refusal as set out in article 14 (1) 3 (d) and (e) and article 14 (1) 5 of the 1992 Passport Act shall apply mutatis mutandis with the proviso that the alien's passport shall be substituted for the travel document."

(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.

(3) If the facts stated in paragraph (1), subparagraphs 1 to 4, and paragraph (1a) above relate to acts punishable by the courts, a ground for refusal shall in all cases be presumed to exist up to the expiry of three years from the offence, disregarding any terms of imprisonment and periods spent in an institution as referred to in articles 21 to 23 of the Criminal Code. In all other respects, article 14 of the 1992 Passport Act shall apply.

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 identity of the holder can no longer be established beyond doubt;
3. an entry made thereon by the Federal Office or the diplomatic or consular authority has become unrecognisable;
4. the alien's passport has been falsified, is no longer complete or has become unusable for other reasons.

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

(3) Agents of the public security service shall be authorized 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 Federal Office.

(4) If the holder of an alien's passport acquires Austrian nationality or if the cases referred to in paragraph (1), subparagraphs 2 to 4, above exist, an administrative decision shall not be required if the alien's passport is presented to the authority without further formality for invalidation.

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 paragraph (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.

(5) Article 88, paragraph (4), and articles 89 to 93 shall apply *mutatis mutandis* with the proviso that the Convention travel document shall be substituted for the alien's passport.

Section 2

Other Austrian identification documents for aliens

Identity cards for aliens

Article 94a.

(1) The Federal Office may issue an identity card to aliens in respect of whom the issue of an alien's passport has been refused pursuant to article 92, or whose alien's passport has been withdrawn pursuant to article 93, if the requirements for the re-issue of an alien's passport are not satisfied.

(2) The identity card shall in all cases contain the designations "Republic of Austria and "Identity card for aliens", the name, sex, date of birth, nationality, photograph and signature of the alien and also the title of the authority, date of issue and signature of the authorizing official. The specific layout of the identity card shall be determined by order of the Federal Minister of the Interior.

(3) The identity card shall serve solely to furnish proof of identity. No rights under the Settlement and Residence Act, the 2005 Asylum Act or this federal act shall be substantiated or established by the issue of the identity card.

(4) The identity card may be issued for a period of validity of five years unless:

1. a shorter period of validity is applied for or
2. a shorter period of validity is necessary, having regard to the requirements determining the granting of the identity card.

Any extension of the period of validity of an identity card shall be inadmissible.

(5) The identity card shall be withdrawn if:

1. the photograph is missing or the identity of the holder can no longer be established beyond doubt from the card;
2. an entry made by the Federal Office has become indiscernible or
3. the identity card has been falsified, is no longer complete or has become unusable for other reasons.

Cards which have been withdrawn shall be presented to the Federal Office without delay. They shall not constitute a valid document for the purpose of proof of identity.

(6) Agents of the public security service shall be authorized to seize an identity card presented to them if such card has been withdrawn. The identity card shall be presented without delay to the Federal Office.

Photo identity cards for persons entitled to privileges and immunities

Article 95. For identification purposes, photo identity cards may be provided by order of the Federal Minister for Europe, Integration and Foreign Affairs 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 the identity, nationality and function of the holder.

Emergency travel documents for nationals of Member States of the European Union

Article 96. (1) A national of a Member State of the European Union may, upon application, be issued with 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 authority 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 authority 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 diplomatic or consular 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 order of the Federal Minister of the Interior.

Travel documents for the return of third-country nationals

Article 97. (1) Third-country nationals who do not possess a travel document and against whom a repatriation ruling, an order for removal from the country, an expulsion order or a residence ban is enforceable may be issued with a travel document valid for a single departure if it can be assumed that the country to which the alien voluntarily returns or is to be deported will permit his entry with this document.

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

Chapter 12

Police Identification and Compilation Procedure

Use of personal data

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

(2) The provincial 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) The provincial police authorities shall be authorized to subject an alien to identification procedures if:

(1. has been repealed by FLG I. No. 87/2012);

2. he has been arrested pursuant to article 39;

3. he is unlawfully resident in the federal territory, is discovered during such residence and has already attained the age of 14 years;

(4. to 6 have been repealed by FLG I. No. 87/2012)

7. a re-entry permit is to be issued to him during the period of validity of an entry ban or a residence ban or

8. his identity cannot be established otherwise.

(2) Austrian diplomatic or consular authorities abroad shall be authorized to subject aliens to identification procedures in the cases referred to in paragraph (1), subparagraph 7, above.

(3) Identification data shall be deleted ex officio if:

1. the death of the person concerned becomes known and five years have elapsed since such death;

2. in the cases referred to in paragraph (1), subparagraph 7, above, two years have elapsed since identification procedures were undertaken;

3. in the cases referred to in paragraph (1), subparagraph 2 or 3, above, a forcible return measure is not executed and two years have elapsed since identification procedures were undertaken;

(4. has been repealed by FLG I. No. 87/2012)

5. five years have elapsed since the rejection at the border or forcible return or

(6 and 7 have been repealed by FLG I. No. 87/2012)

8. Austrian nationality is granted to the person concerned.

(4) Die Landespolizeidirektionen und die Vertretungsbehörden sind ermächtigt, Fremde in Verfahren im Zusammenhang mit Visa erkenntungsdienstlich zu behandeln. Solche erkenntungsdienstliche Daten sind von Amts wegen zu löschen, wenn die Aufbewahrungsfrist für die Datenspeicherung nach Article 23 der VIS-Verordnung abgelaufen ist.

(5) Article 64, article 65, paragraphs (4), (5), first sentence, and (6), and article 73, paragraph (7), of the Security Police Act shall apply. In the cases referred to in paragraph (1), subparagraphs 2 and 3, above, measures for the establishment of personal identity may be carried out.

Compiling of identification data

Article 100. (1) Provincial 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 article 99, paragraph (1), subparagraph 2, agents of the public security service shall be authorized 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 article 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 article 99, paragraph (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 (article 19 of the General Administrative Procedure Act) requiring his appearance for the identification procedures. Article 78 of the Security Police Act shall apply.

(4) In the cases referred to in article 99, paragraph (1), subparagraphs 2, 3 and 8, identification data of aliens, which are lawfully processed by a security authority under the Security Police Act, may be compiled by provincial 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.

Übermittlung personenbezogener Daten

Article 102. (1) bis (3) (*Anm.: aufgehoben durch BGBl. I Nr. 87/2012*)

(4) Übermittlungen der gemäß § 27 Abs. 1 BFA-VG verarbeiteten Daten sind an Sicherheitsbehörden und staatsanwaltschaftliche Behörden für deren Tätigkeit im Dienste der Strafrechtspflege sowie an österreichische Vertretungsbehörden, die Finanzstrafbehörden und die mit der Vollziehung des Ausländerbeschäftigungsgesetzes betrauten Behörden in Angelegenheiten der Sicherheitsverwaltung und an Sicherheitsbehörden, Personenstandsbehörden und an Staatsbürgerschaftsbehörden zulässig, wenn dies zur Erfüllung ihrer Aufgaben erforderlich ist. Im Übrigen sind Übermittlungen nur zulässig, wenn hierfür eine ausdrückliche gesetzliche Ermächtigung besteht.

(5) (*Anm.: aufgehoben durch BGBl. I Nr. 87/2012*)

Central procedural file; information network

Article 104. (1) The provincial police authorities and the Federal Minister of the Interior 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 provincial police authorities, the Federal Minister of the Interior shall perform both the function of operator under article 50 of the 2000 Data Protection Act 2000 and that of processor within the meaning of article 4, subparagraph 5, of the 2000 Data Protection Act.

(2) The provincial police authorities and the Federal Minister of the Interior 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 an impression of the papillary ridges.

(4) Article 98, paragraph (2), shall apply to data processed in the Central Procedural File.

Notification obligations

Article 105. (1) The security authorities shall inform the provincial police authorities of the suspected commission by aliens of acts punishable by the courts, reporting the relevant facts. The provincial police authority shall be responsible for forwarding the information to any higher instance that may have competence.

(2) The criminal courts shall inform the provincial police authority of the bringing of charges for intentionally committed punishable acts, final convictions with a copy of the judgement attached, and the imposition and lifting of pretrial detention orders; and penal institutions and court prisons shall inform the provincial police authority of the beginning and the end of aliens' prison sentences. Subject to the technical resources available, such communication shall be effected by electronic transmission of these data to the provincial

police authority (article 15b, paragraph (1), of the Prisons Act). The provincial police authority shall be responsible for forwarding the information to any higher instance that may have competence.

((3) has been repealed by FLG I. No. 87/2012)

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

(5) District administrative authorities shall inform the competent provincial police authority of applications for name changes of aliens and the civil courts shall inform that authority of applications for adoption of aliens.

((6) to (9) have been repealed by FLG I. No. 87/2012)

(10) Die Führerscheinebehörden haben der zuständigen Landespolizeidirektion die Ausstellung eines Führerscheines an einen Fremden mitzuteilen.

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 authorized and, on request, obliged to transmit such data to the provincial police authority, provided that such authority needs such data to carry out a measure under Chapters 4, 5 or 6. 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 of Residents (Zentrales Melderegister)

Article 107. (1) For retrievals from the Central Register of Residents conducted by the provincial police authority under the Domicile 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 of Residents if so required for the conduct of alien police operations.

(2) The Federal Minister of the Interior shall be authorized to synchronise the data of the registered persons stored in the Central Register of Residents 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 provincial police authority.

(3) One year after taking the measures provided for in paragraph (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) Insofar as the Federal Government is authorized under article 66, paragraph (2), of the Federal Constitutional Act to conclude intergovernmental agreements, it may conclude intergovernmental agreements concerning the transmission, to certain recipients, of data referred to in paragraph (2) below on persons who have been sentenced by a final judgement in accordance with article 114 or article 117. In such agreements it shall be stipulated that a reciprocal arrangement will be granted and that any deletion in one contracting State shall within six months give rise to deletion of the data transmitted to the other contracting State.

(2) For a transmission under paragraph (1) above, the following particulars shall be compiled, in addition to the data on the residence ban, 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 paragraph (1) above may be processed in the Information Collection Centre.

(4) The transmission of personal data on an alien to the country of origin shall not be admissible. Data required with a view to the procurement of a replacement travel document may be transmitted.

Chapter 13

Arrangement of Marriages, Civil Partnerships and Adoptions for Purposes of Residence

Notification obligation of authorities

Article 109. If a court or an administrative authority, when making a decision or performing an official act, has substantiated grounds to suspect that a marriage or civil partnership or an adoption has been arranged for purposes of residence, it shall inform the competent provincial police authority accordingly.

Notification obligation of the Federal Office and settlement and residence authorities

Article 110. If the Federal Office or the settlement and residence authority informs the provincial police authority having jurisdiction on the basis of the alien's domicile that, in regard to a particular alien, there are substantiated grounds for suspecting that a marriage or civil partnership or an adoption has been arranged for purposes of residence, the provincial police authority shall investigate such circumstance and communicate the result of the investigations to the Federal Office and to the settlement and residence authority within a period of three months unless the provincial police authority gives substantiated notification within such period that the investigations could still not be concluded. In that event, the time limit shall be extended once only for a further two months. If no communication is made within that period, the Federal Office and the settlement and residence authority shall assume that the investigations by the provincial 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 paragraph (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 paragraph (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 paragraphs (4) and (5) above shall apply to the carrier also if an alien is refused permission to remain in the transit area (article 43, paragraph (1)).

Sanctions against carriers

Article 112. (1) A carrier who

1. conveyed an alien to Austria without a travel document and the required visa (article 111 paragraph (1)) or

2. does not fulfil his obligations under article 111 paragraph (2) or (3)

commits an administrative infraction and shall pay an amount of Euro 5,000 to 15,000.

(2) A carrier is not to be punished according to article 112 paragraph (1) 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 article 45a, paragraph (1) or article 50, paragraph (1).

Chapter 15 **Costs and Penal Provisions**

Section 1 **Costs**

Article 113. (1) The following costs incurred by the provincial police authority or the Federal Government shall be reimbursed by the alien:

1. costs incurred in connection with the execution of a forcible return measure;
2. costs of execution an order for detention pending deportation;
3. costs arising as outlay required for the use of more lenient measures;
4. costs of interpretation.

((2) has been repealed by FLG I. No. 87/2012)

(3) Any person who has agreed vis-à-vis a provincial police authority or an Austrian diplomatic or consular authority abroad to bear the costs under article 21, paragraph (6), shall bear such costs.

(4) The carrier which does not comply with its obligations under article 111, paragraphs (2) to (6), shall refund the costs arising in connection with the alien's rejection at the border. 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. has been repealed by FLG I. No. 87/2012).

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

(6) Die Kosten, deren Ersatz die Landespolizeidirektion vorzuschreiben hat, sind von der Landespolizeidirektion, in deren Sprengel sich der Fremde aufhält, einzuheben. Article 79 of the General Administrative Procedure Act shall apply *mutatis mutandis*. Other non-collectable costs mentioned in paragraph (1), subparagraphs 1 to 4, above shall be borne by the Federal Republic.

(7. *has been repealed by FLG I. No. 87/2012*)

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 has already been convicted within the last five years for smuggling of persons within the meaning of paragraph (1) 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 article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms shall be also deemed as such.

(3) Any person who commits the offence under paragraph (2) above on a commercial basis (article 70 of the Criminal Code) 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.

(4) Any person who commits the offence under paragraph (1) 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 punishable act relates shall be sentenced by the court to a term of imprisonment of one year up to ten years.

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

(6) The agents of the public security service shall in case of imminent danger be authorized 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 secure the confiscation (§ 19a StGB), the forfeiture (§§ 20 to 20c StGB) or the confiscation (§ 26 StGB).

The cargo on board the means of transport may be handed over to the holder of the vehicle registration document or his authorized representative. The court shall be notified of the measures taken without delay.

(7) Paragraphs (1) to (4) above are also valid for offences committed in another country, irrespective of the laws valid at the crime scene if Austrian interests were harmed by the offence.

Aiding and abetting unauthorized 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 unauthorized 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.

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

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

(4) Proceedings in connection with the offences mentioned in paragraph (1) 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 or civil partnerships 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 article 8 of the European Convention on Human Rights and is, or must have been, aware that the alien intends to rely on this marriage or civil partnership 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 or civil partnership with an alien without the intention of leading a family life within the meaning of article 8 of the European Convention on Human Rights 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 or civil partnership 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 article 8 of the European Convention on Human Rights 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 or civil partnership within the meaning of paragraph (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 paragraph (1) above.

Adoptions and arrangement of adoptions for purposes of residence of aliens of legal age

Article 118. (1) An Austrian national or an alien entitled to settle in the federal territory who adopts an alien of legal age 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 of legal age 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 paragraph (1) or (2) above on a commercial basis (article 70 of the Criminal Code) 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) Das volljährige Wahlkind ist als Beteiligter zu bestrafen.

(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 paragraph (1) above.

Obtaining an entry or residence permit by fraud

Article 119. Wer sich unter Berufung auf ein gemäß § 120 Abs. 2 erschlichesenes Recht, soziale Leistungen, insbesondere Leistungen einer Kranken-, Unfall- oder Pensionsversicherung, Leistungen aus dem Titel der Sozialhilfe oder eines Bundes- oder Landesgesetzes, das die Grundversorgungsvereinbarung - Artikel 15a B-VG, BGBl. I Nr. 80/2004 umsetzt, in Anspruch genommen hat, ist vom Gericht mit Freiheitsstrafe bis zu einem Jahr oder mit Geldstrafe bis zu 360 Tagessätzen zu bestrafen. Wer soziale Leistungen in Anspruch genommen hat, deren Wert 3 000 Euro übersteigt, ist vom Gericht mit Freiheitsstrafe bis zu drei Jahren zu bestrafen.

Illegal entry and residence

Article 120. (1) Any person who unlawfully enters the federal territory as an alien shall be guilty of an administrative infraction and be liable to a fine from 100 euros to 1,000 euros or, if the fine is not recoverable, to a term of imprisonment of up to two weeks. Any person who has already on one occasion been sentenced, by a final judgement, for any such offence shall be liable to a fine from 1,000 euros to 5,000 euros or, if the fine is not recoverable, to a term of imprisonment of up to three weeks. The place of discovery shall be deemed to be the place of commission of the offence; in the case of discovery on board a public conveyance, the nearest place of disembarkation at which it is possible, in accordance with the carrier's timetable, to alight from the public conveyance shall be deemed to be the place of commission of the offence. As punishment for an administrative infraction referred to in the first sentence, a fixed penalty notice may be imposed pursuant to article 50 of the Administrative Penalties Act for an amount of up to 200 euros.

(1a) Any person who is unlawfully resident in the federal territory as an alien shall be guilty of an administrative infraction and be liable to a fine from 500 euros to 2,500 euros or, if the fine is not recoverable, to a term of imprisonment of up to two weeks. Any person who has already on one occasion been sentenced, by a final judgement, for any such offence shall be liable to a fine from 2,500 euros to 7,500 euros or to a term of imprisonment of up to four weeks. The place of discovery or the last known residence shall be deemed to be the place of commission of the offence; in the case of discovery on board a public conveyance, the nearest place of disembarkation at which it is possible, in accordance with the carrier's timetable, to alight from the public conveyance shall be deemed to be the place of commission of the offence. As punishment for an administrative infraction referred to in the first sentence, a fixed penalty notice may be imposed pursuant to article 50 of the Administrative Penalties Act for an amount of up to 500 euros.

(1b) Whoever as an alien fails to comply with his obligation to leave federal territory without delay for reasons for which he is to blame after a legally binding decision to return has been issued in relation to him and has become enforceable, and after he has participated in a return counselling meeting pursuant to article 52a para 2 of the Federal Office Procedure Act or fails to take advantage of such meeting for reasons for which he is to blame by the time the decision on his return has become legally binding and enforceable, commits an administrative offence and is punishable with a fine of between 5,000 and 15,000 euros, or, if he cannot pay such fine, with a prison sentence of up to six weeks. The place where the offence was committed is deemed to be the point of discovery or the last known place of residence; if discovery occurs while using public transport, the next place where it is possible to disembark from such means of public transport according to the travel schedule of the carrier.

(1c) Any alien who

1. unlawfully enters the federal territory contrary to a legally binding entry ban or residence ban or
2. unlawfully resides in the federal territory after exiting the country because of the imposition of a legally binding entry ban or exclusion order despite the existence of a valid entry ban or exclusion order

is judged to be committing an administrative offence and shall be punished with a fine of EUR 5,000 to 15,000 or with a custodial sentence of up to six weeks. The place of discovery shall be deemed to be the place of commission of the offence, in the case of discovery on board a public conveyance, the nearest place of disembarkation at which it is possible, in accordance with the carrier's timetable, to alight from the public conveyance shall be deemed to be the place of commission of the offence.

(2) Wer als Fremder

- in einem Verfahren zur Erteilung eines Einreisetitels, eines Aufenthaltstitels oder einer Dokumentation vor der zur Ausstellung eines solchen Titels berufenen Behörde oder im Rahmen der Überprüfung der Rechtmäßigkeit der Einreise oder des Aufenthalts gegenüber Organen des öffentlichen Sicherheitsdienstes wissentlich falsche Angaben macht, um sich einen, wenn auch nur vorübergehenden, rechtmäßigen Aufenthalt im Bundesgebiet zu erschleichen, oder
- 1.

- in einem Asylverfahren vor dem Bundesamt oder dem Bundesverwaltungsgericht wissentlich falsche Angaben über seine Identität oder Herkunft macht, um die Duldung seiner Anwesenheit im Bundesgebiet oder einen, wenn auch nur vorübergehenden, rechtmäßigen Aufenthalt im Bundesgebiet zu erschleichen,
- 2.

begeht eine Verwaltungsübertretung und ist mit Geldstrafe von 1 000 Euro bis zu 5 000 Euro, im Fall ihrer Uneinbringlichkeit mit Freiheitsstrafe bis zu drei Wochen, zu bestrafen.

(3) Wer

1. wissentlich die rechtswidrige Einreise oder Durchreise eines Fremden in oder durch einen Mitgliedstaat der Europäischen Union oder Nachbarstaat Österreichs fördert, oder mit dem Vorsatz, das Verfahren zur Erlassung oder die Durchsetzung aufenthaltsbeendender Maßnahmen hintanzuhalten, einem Fremden den unbefugten Aufenthalt im Hoheitsgebiet eines Mitgliedstaates der Europäischen Union wissentlich erleichtert,
- 2.

begeht eine Verwaltungsübertretung und ist mit Geldstrafe von 1 000 Euro bis zu 5 000 Euro, im Fall ihrer Uneinbringlichkeit mit Freiheitsstrafe bis zu drei Wochen, zu bestrafen.

(4) Wer eine Tat nach Abs. 2 oder 3 begeht, obwohl er wegen einer solchen Tat bereits einmal rechtskräftig bestraft wurde, ist mit Geldstrafe von 5 000 Euro bis zu 15 000 Euro oder mit Freiheitsstrafe bis zu sechs Wochen zu bestrafen.

(5) Eine Verwaltungsübertretung gemäß Abs. 1a, 1b und 1c Z2 liegt nicht vor,

1. wenn die Ausreise nur in ein Land möglich wäre, in das eine Abschiebung unzulässig (§ 50) ist;
2. solange der Fremde geduldet ist (§ 46a),

3. im Fall des Aufenthalts eines begünstigten Drittstaatsangehörigen ohne Visum,
4. solange dem Fremden die persönliche Freiheit entzogen ist oder
5. während der Frist für die freiwillige Ausreise gemäß § 55.

(6) Eine Bestrafung gemäß Abs. 1a schließt eine solche wegen der zugleich gemäß Abs. 1 begangenen Verwaltungsübertretung aus. Eine Bestrafung nach Abs. 1b schließt eine solche wegen der zugleich gemäß Abs. 1 und 1a begangenen Verwaltungsübertretung aus; eine Bestrafung nach Abs. 1c schließt eine solche wegen der zugleich gemäß Abs. 1 und 1a begangenen Verwaltungsübertretungen aus; punishment according to paragraph 1c subparagraph 2 excludes such punishment because of an administrative offence committed simultaneously according to paragraph 1c subparagraph 1.

(7) There shall be no administrative infraction under paras 1 to 1c above if the alien has filed an application for international protection and has been granted asylum status or subsidiary protection status. The administrative penalty proceedings shall be interrupted during the conduct of the asylum procedure.

(8) Der Fremde, dem eine Tat nach Abs. 3 zu Gute kommt oder kommen sollte, ist wegen Anstiftung oder Beihilfe nicht strafbar.

(9) Nach Abs. 3 ist nicht strafbar, wer die Tat in Bezug auf seinen Ehegatten, seinen eingetragenen Partner, seine Kinder oder seine Eltern begeht.

(10) Der Versuch in den Fällen der Abs. 1, 1c Z1, Abs. 2 und 3 ist strafbar.

(11) If an alien is granted asylum or is awarded subsidiary protection during a pending administrative penal procedure pursuant to article 120 para 1, 1a, 1b or 1c, or is granted a right of residence pursuant to the 2005 Asylum Act or the Settlement and Residence Act with legally binding effect, or is issued with documents pursuant to the Settlement and Residence Act, the administrative penal procedure must be ceased. Article 45 para 2 of the Administrative Penal Act applies.

Other offences

Article 121. (1) Wer Auflagen, die ihm das Bundesamt gemäß §§ 46a Abs. 2, 56 Abs. 2 Z 1 bis 4 oder 71 erteilt hat, missachtet, begeht eine Verwaltungsübertretung und ist mit Geldstrafe von 100 Euro bis zu 1 000 Euro, im Fall ihrer Uneinbringlichkeit mit Freiheitsstrafe bis zu zwei Wochen, zu bestrafen. Wer wegen einer solchen Tat bereits einmal rechtskräftig bestraft wurde, ist mit Geldstrafe von 1 000 Euro bis zu 5 000 Euro, im Fall ihrer Uneinbringlichkeit mit Freiheitsstrafe bis zu drei Wochen, zu bestrafen. Dies gilt nicht, wenn ein Fall des §§ 56 Abs. 3, 71 Abs. 3 oder 120 Abs. 5 Z 4 vorliegt. Die Verwaltungsübertretung gemäß erster Satz kann durch Organstrafverfügung gemäß § 50 VStG in der Höhe von bis zu 200 Euro geahndet werden.

(1a) Whoever fails to comply with a mandatory residence requirement pursuant to article 57, an order to stay at assigned place of residence pursuant to article 15b of the Asylum Act 2005 or a restriction on place of residence pursuant to article 15c of the Asylum Act 2005, or who, as an alien, resides outside the territory to which his residence is restricted pursuant to article 52a, commits an administrative offence and is punishable by a fine of between 100 euros and 1000 euros, or, if he cannot pay such fine, with a prison sentence of up to two

weeks. Whoever has already been punished once with legally binding effect for such an offence, is punishable with a fine of between 1000 and 5,000 euros, or, if he cannot pay such fine, with a prison sentence of up to three weeks. This does not apply in cases under articles 56 para 3 or 120 para 5 subpara 4.

(2) Any person who as an alien resides outside the area in which he is permitted to stay under article 12, paragraph (2), of the 2005 Asylum Act or is in breach of a reporting obligation as referred to in article 13, paragraph (2), of the Federal Office Procedure Act or article 15a of the 2005 Asylum act shall be guilty of an administrative infraction and be liable to a fine from 100 euros to 1,000 euros or, if the fine is not recoverable, to a term of imprisonment of up to two weeks. Any person who has already on one occasion been sentenced, by a final judgement, for any such offence shall be liable to a fine from 1,000 euros to 5,000 euros or, if the fine is not recoverable, to a term of imprisonment of up to three weeks. As punishment for an administrative infraction referred to in the first sentence, a fixed penalty notice may be imposed pursuant to article 50 of the Administrative Penalties Act for an amount of up to 200 euros.

(3) Any person who:

1. fails to comply with conditions imposed on him by the authority pursuant to article 27a or
2. fails to carry his travel document on his person or keep his travel document in accordance with article 32, paragraph (2), or
3. despite being requested by an agent of the public security service:
 - (a) fails to hand over to such officer a document establishing his right of residence or
 - (b) fails to proceed, accompanied by such officer, to the place where the document is kept

shall be guilty of an administrative infraction and be liable to a fine from 50 euros to 250 euros, or, if the fine is not recoverable, to a term of imprisonment of up to one week.

(4) Wer Organen des öffentlichen Sicherheitsdienstes als Verantwortlicher nicht gemäß § 36 Abs. 1 oder §37 Abs.1 BFA-VG Zutritt zu Grundstücken, Betriebsstellen, Arbeitsstellen, Räumen oder Fahrzeugen gewährt oder das Nachschauhalten in Behältnissen gemäß § 36 Abs. 1a verhindert, begeht eine Verwaltungsübertretung und ist mit Geldstrafe von 1 000 Euro bis zu 5 000 Euro, im Fall ihrer Uneinbringlichkeit mit Freiheitsstrafe bis zu drei Wochen, zu bestrafen.

(5) Wer eine Tat nach Abs. 4 begeht, obwohl er wegen einer solchen Tat bereits einmal rechtskräftig bestraft wurde, ist mit Geldstrafe von 5 000 Euro bis zu 15 000 Euro oder mit Freiheitsstrafe bis zu sechs Wochen zu bestrafen.

(6) Penalties imposed pursuant to para. 1, 1a, 2, 3, 4 or 5 or § 120 para. 1, 1a, 2, 3 or 4 or their interruptions pursuant to § 122a together with the required personal data are subject to administrative criminal liability of the National Police Directorate (§ 60 SPG) to process. § 60 para. 2 and 3 SPG applies.

(7) Beim Verdacht des Vorliegens einer Verwaltungsübertretung gemäß §§ 120 oder 121 Abs. 1, 2 oder 4 können Organe des öffentlichen Sicherheitsdienstes eine vorläufige Sicherheit bis zu einem Betrag von 1 000 Euro festsetzen und einheben, im Wiederholungsfall bis zu einem Betrag von 5 000 Euro.

Subsidiarity

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

Suspension of execution of prison sentences or substitute prison sentences pursuant to articles 120 and 121 to enable departure from the country

Article 122a. (1) The execution of prison sentences or substitute prison sentences pursuant to articles 120 and 121 may be suspended if

1. it appears certain that the alien will comply with his obligation to leave the country pursuant to article 52 para 8 within the deadline set, or that the deportation appears likely to occur soon, and
2. there are no legal or factual impediments to the departure.

(2) The period for which the execution of a punishment is suspended may not be counted towards the length of the punishment.

(3) The suspension of the execution of the punishment must be recorded in a note in the relevant file. The Federal Office must be informed of the suspension.

(4) If the alien fails to comply with his obligation to leave the country within the deadline pursuant to para 1 subpara 1 or if he re-enters federal territory unlawfully after having left it, the suspension of execution of the punishment is deemed to have been revoked. The alien must be verifiably informed of this in the event that the execution of punishment is suspended.

Chapter 16 Final and Transitional Provisions

Gender-neutral use of language

Article 123. Insofar 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) Insofar as references are made in this federal act 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. If this Federal Act refers to the Decree on the employment of aliens, this is understood to refer to the legal norm at the time when the reference under this Federal act entered into force.

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

Transitional provisions

Article 125. ((1) has been repealed by FLG I. No. 38/2011)

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

(4) Residence bans which have been contested before the Higher 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 ban.

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

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

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

(8) Authorizations as referred to in article 110, paragraph (2,) of the Federal Act concerning the Entry, Residence and Settlement of Aliens (*Bundesgesetz über die Einreise, den Aufenthalt und die Niederlassung von Fremden* - FrG), FLG I No. 75/1997, which are in existence on 1 January 2006 shall be deemed to be orders issued pursuant to article 4, paragraph (1), and shall be promulgated.

(9) With regard to proceedings under the 1997 Aliens Act which are pending before a security directorate on 31 December 2005 and for which, in accordance with article 9, the jurisdiction of an independent administrative review board is established as at 1 January 2006, the time limit referred to in article 73 of the General Administrative Procedure Act shall be re-computed as from 1 January 2006.

(10) Soweit ein Fremder einen Asylantrag oder einen Antrag auf internationalen Schutz gestellt hat und das Bundesasylamt § 8 Abs. 2 AsylG 1997, BGBl. I Nr. 106/1998 in der

Fassung BGBl. I Nr. 101/2003, oder § 10 AsylG 2005, BGBl. I. Nr. 100/2005 anzuwenden hatte, ist § 66 Abs. 3 erster Satz nicht anzuwenden.

(11) Vor dem Inkrafttreten des Bundesgesetzes BGBl. I Nr. 29/2009 gemäß § 24 Abs. 1 erteilte Aufenthalts-Reisevisa behalten ihre Gültigkeit bis zum festgesetzten Zeitpunkt.

(12) Die §§ 114 bis 121 dieses Bundesgesetzes in der Fassung des Bundesgesetzes BGBl. I Nr. 29/2009 gelten für strafbare Handlungen, die vor dem 1. Jänner 2010 begangen wurden, weiter.

(13) Vor Inkrafttreten des Bundesgesetzes BGBl. I Nr. 122/2009 gemäß § 46 Abs. 3 ausgesprochene Abschiebungsaufschübe bleiben bis zum festgesetzten Zeitpunkt weiterhin gültig. Bis zu diesem Zeitpunkt liegt eine Verwaltungsübertretung gemäß § 120 Abs. 1 Z 2 nicht vor. § 69 sowie §§ 6 Abs. 4 und 9 Abs. 2 in der am 31. Dezember 2009 gültigen Fassung sind auf diese Fälle weiter anzuwenden.

(14) Vor Inkrafttreten des Bundesgesetzes BGBl. I Nr. 38/2011 erlassene Ausweisungen gemäß § 53 gelten als Rückkehrentscheidungen gemäß § 52 in der Fassung des Bundesgesetzes BGBl. I Nr. 38/2011 weiter, mit der Maßgabe, dass ein Einreiseverbot gemäß § 53 in der Fassung des Bundesgesetzes BGBl. I Nr. 38/2011 damit nicht verbunden ist.

(15) Vor Inkrafttreten des Bundesgesetzes BGBl. I Nr. 38/2011 erlassene Ausweisungen gemäß § 54 gelten als Ausweisungen gemäß § 62 in der Fassung des Bundesgesetzes BGBl. I Nr. 38/2011 weiter.

(16) Vor Inkrafttreten des Bundesgesetzes BGBl. I Nr. 38/2011 erlassene Aufenthaltsverbote gemäß § 60 oder Rückkehrverbote gemäß § 62 bleiben bis zum festgesetzten Zeitpunkt weiterhin gültig.

(17) Vor Inkrafttreten des Bundesgesetzes BGBl. I Nr. 38/2011 erlassene Durchsetzungsaufschübe gemäß § 67 bleiben bis zum festgesetzten Zeitpunkt weiterhin gültig.

(18) Eine vor Inkrafttreten des Bundesgesetzes BGBl. I Nr. 38/2011 ausgestellte Karte für Geduldete behält ihre Gültigkeit bis zum festgesetzten Zeitpunkt.

(19) Die §§ 84 bis 86 in der Fassung des Bundesgesetzes BGBl. I Nr. 38/2011 sind auf Verfahren, die bereits vor dem 1. Dezember 2011 anhängig waren, nicht anzuwenden.

(20) Vor Inkrafttreten des Bundesgesetzes BGBl. I Nr. 38/2011 vorgenommene Beurteilungen und Entscheidungen gemäß § 66 gelten als Beurteilungen und Entscheidungen gemäß § 61 in der Fassung des Bundesgesetzes BGBl. I Nr. 38/2011 weiter.

(21) Ist eine Entscheidung nach diesem Bundesgesetz, gegen die eine Berufung zulässig ist, vor Ablauf des 31. Dezember 2013 erlassen worden, läuft die Berufungsfrist mit Ablauf des 31. Dezember 2013 noch und wurde gegen diese Entscheidung nicht bereits bis zum Ablauf des 31. Dezember 2013 Berufung erhoben, so kann gegen diese vom 1. Jänner bis zum Ablauf des 15. Jänner 2014 Beschwerde beim jeweils zuständigen Landesverwaltungsgericht erhoben werden. Das Landesverwaltungsgericht hat in diesen Fällen dieses Bundesgesetz in der Fassung vor dem Bundesgesetz BGBl. I Nr. 87/2012

anzuwenden. Eine gegen eine solche Entscheidung bis zum Ablauf des 31. Dezember 2013 erhobene Berufung gilt als rechtzeitig erhobene Beschwerde gemäß Article 130 Abs. 1 Z 1 B-VG.

(22) Alle mit Ablauf des 31. Dezember 2013 bei einem Unabhängigen Verwaltungssenat der Länder anhängigen Berufungsverfahren und Beschwerden gegen die Ausübung unmittelbarer verwaltungsbehördlicher Befehls- und Zwangsgewalt nach diesem Bundesgesetz sind ab 1. Jänner 2014 vom jeweils zuständigen Landesverwaltungsgericht nach den Bestimmungen dieses Bundesgesetzes in der Fassung vor dem Bundesgesetz BGBl. I Nr. 87/2012 zu Ende zu führen.

(23) Alle mit Ablauf des 31. Dezember 2013 bei einer Landespolizeidirektion anhängigen Berufungsverfahren nach diesem Bundesgesetz sind ab 1. Jänner 2014 vom jeweils zuständigen Landesverwaltungsgericht nach den Bestimmungen dieses Bundesgesetzes in der Fassung vor dem Bundesgesetz BGBl. I Nr. 87/2012 zu Ende zu führen.

(24) Wird eine Entscheidung nach diesem Bundesgesetz in der Fassung vor dem Bundesgesetz BGBl. I Nr. 87/2012 nach Ablauf des 31. Dezember 2013 durch den Verfassungsgerichtshof oder den Verwaltungsgerichtshof behoben, so fällt dieses Verfahren an das jeweils zuständige Landesverwaltungsgericht zurück, das nach diesem Bundesgesetz in der Fassung vor dem Bundesgesetz BGBl. I Nr. 87/2012 zu entscheiden hat.

(25) Ausweisungen gemäß § 62 in der Fassung vor dem Bundesgesetz BGBl. I Nr. 87/2012 bleiben bis zur Ausreise des Drittstaatsangehörigen aus dem Bundesgebiet aufrecht. Vor Inkrafttreten des Bundesgesetzes BGBl. I Nr. 87/2012 erlassene Rückkehrverbote bleiben bis zum festgesetzten Zeitpunkt weiterhin gültig und können nach Ablauf des 31. Dezember 2013 gemäß § 60 Abs. 4 und 5 in der Fassung BGBl. I Nr. 87/2012 aufgehoben oder für gegenstandslos erklärt werden. Vor Inkrafttreten des Bundesgesetzes BGBl. I Nr. 87/2012 erlassene Aufenthaltsverbote bleiben bis zum festgesetzten Zeitpunkt weiterhin gültig und können nach Ablauf des 31. Dezember 2013 gemäß § 69 Abs. 2 und 3 in der Fassung BGBl. I Nr. 87/2012 aufgehoben werden oder außer Kraft treten. Vor Inkrafttreten des Bundesgesetzes BGBl. I Nr. 87/2012 erlassene Einreiseverbote bleiben bis zum festgesetzten Zeitpunkt weiterhin gültig und können nach Ablauf des 31. Dezember 2013 gemäß § 60 in der Fassung des Bundesgesetzes BGBl. I Nr. 68/2013 aufgehoben, verkürzt oder für gegenstandslos erklärt werden.

(26) Vor Inkrafttreten des Bundesgesetzes BGBl. I Nr. 68/2013 festgesetzte Auflagen behalten ihre Gültigkeit. Die Missachtung von diesen Auflagen ist gemäß § 121 in der Fassung des Bundesgesetzes BGBl. I Nr. 68/2013 weiterhin zu bestrafen.

(27) Jeder Bescheid, der nach Ablauf des 31. Oktober 2013 genehmigt wird, hat einen Hinweis auf die Rechtsfolge des Abs. 21 zu enthalten.

(28) Temporary leave to remain granted prior to 20 July 2015 shall:

1. in the case referred to in article 46a, paragraph (1), subparagraph 1, be deemed to be temporary leave granted pursuant to article 46a, paragraph (1), subparagraph 1;
2. in the case referred to in article 46a, paragraph (1), subparagraph 2, be deemed to be temporary leave granted pursuant to article 46a, paragraph (1), subparagraph 2;

3. in the case referred to in article 46a, paragraph (1a), be deemed to be temporary leave granted pursuant to article 46a, paragraph (1), subparagraph 3, and
 4. in the case referred to in article 46a, paragraph (1c), be deemed to be temporary leave granted pursuant to article 46a, paragraph (1), subparagraph 4,
- as amended by federal act FLG I No. 70/2015.

(29) Article 94, paragraph (5), and article 94a shall apply in the version existing prior to the entry into force of federal law FLG I No. 24/2016 to aliens who have been granted asylum status pursuant to article 3 of the 2005 Asylum Act in the version existing prior to the entry into force of federal law FLG I No. 24/2016.

(30) The beginning and the expiry of residence bans which were issued and became executable before 1 November 2017 are determined by article 67 para 4 second sentence in the version of the Federal Act published in the Federal Law Gazette I No. 87/2012.

Entry into force

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

((2) has been repealed by article 2, paragraph 2 (2) (84), FLG I. No. 2/2008)

(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) Article 2, paragraph (4), subparagraphs 2, 2a and 11, and article 9, paragraph (2), article 24, paragraphs (2) and (3), article 31, article 46, paragraph (1), article 56, paragraph (3), article 62, paragraph (1), article 65, paragraphs (2) and (3), article 74, paragraph (2), subparagraph 2, article 101, article 102, paragraph (1), subparagraph 12, the heading of article 112 as well as article 115, paragraph (1), as amended by federal act FLG I No. 157/2005, shall enter into force on 1 January 2006.

(5) Die §§ 50 Abs. 5, 51 Abs. 1, 80 Abs. 5, 101 Abs. 1, 102 Abs. 1, 103 Abs. 1 und 2, 104 Abs. 2 sowie 119 Abs. 2 in der Fassung des Bundesgesetzes BGBl. I Nr. 4/2008 treten mit 1. Juli 2008 in Kraft.

(6) Die §§ 5 Abs. 4, 21 Abs. 9, 24 Abs. 1, 66 Abs. 2 und 3, 105 Abs. 7 sowie 125 Abs. 10 und 11 in der Fassung des Bundesgesetzes BGBl. I Nr. 29/2009 treten mit 1. April 2009 in Kraft.

(7) Die §§ 2 Abs. 1 und 4 Z 11, 15 und 17 bis 21, 5 Abs. 4, 6 Abs. 4 und 4a, §§ 7 Z 3, 8 Abs. 1, 9 Abs. 2, 12 Abs. 4, 12a samt Überschrift, 15 Abs. 2, 16 Abs. 1, 17 Abs. 3, 21 Abs. 8, 24 Abs. 3 und 4, 26 Abs. 1, 28 Abs. 2, 30 Abs. 1 und 3, 31 Abs. 1 Z 3, Abs. 1a und 2, § 39 Abs. 5, die Überschrift des 6. Hauptstücks, §§ 46 Abs. 3, 46a samt Überschrift, 50, 51, 53 Abs. 2, 54 Abs. 5, 60 Abs. 2 Z 9 bis 11, 62 Abs. 4, 66 Abs. 3, 67 Abs. 3 bis 5, 73, 74 Abs. 2 Z 2 bis 4, 76 Abs. 2a, 83 Abs. 1, die Überschrift des 10. Hauptstücks, §§ 84, 85, 86 Abs. 1 und 2, die Überschrift des § 87, §§ 88, 94 Abs. 5, 94a samt Überschrift, 95, 98 Abs. 2, 105 Abs. 2, 8 und 9, 110, 111 Abs. 1 bis 3, 112 Abs. 1, 114, 115 samt Überschrift, 117 Abs. 1 bis 4, 118 Abs. 1 bis 4, 119 samt Überschrift, 120 samt Überschrift, 121 samt Überschrift, 125

Abs. 12 und 13, 127 sowie das Inhaltsverzeichnis in der Fassung des Bundesgesetzes BGBl. I Nr. 122/2009 treten mit 1. Jänner 2010 in Kraft. Die §§ 5 Abs. 2 und 3, 6 Abs. 3 und 21 Abs. 2 in der Fassung des Bundesgesetzes BGBl. I Nr. 122/2009 treten mit 5. April 2010 in Kraft.

(8) Die §§ 2 Abs. 4 Z 11 und 12, 55 Abs. 3 Z 1, 56 Abs. 2 Z 1, 60 Abs. 2 Z 9, die Überschrift des 13. Hauptstückes, die §§ 109 und 110, § 117 samt Überschrift, § 120 Abs. 9 sowie das Inhaltsverzeichnis in der Fassung des Bundesgesetzes BGBl. I Nr. 135/2009 treten mit 1. Jänner 2010 in Kraft.

(9) Die §§ 1 Abs. 2 und 3, 2 Abs. 4, 5 Abs. 1 Z 4, 6 Abs. 4, 4a, 6 (Anm.: richtig wäre 5) und 8, §§ 9 Abs. 1a, 10, 13 Abs. 2, die Überschrift des 1. Abschnittes des 4. Hauptstückes, die Überschrift des § 15, § 15 Abs. 1 und 2, die Überschrift des 3. Abschnittes des 4. Hauptstückes, §§ 24 Abs. 1, 2 und 3, 24a samt Überschrift, die Überschrift des 4. Abschnittes des 4. Hauptstückes, § 28 Abs. 1 und 2, die Überschrift des § 30, §§ 30 Abs. 1, 3 und 4, 31 Abs. 1a und 2, 32 Abs. 1 und 2, 34 Abs. 2, 36 Abs. 1 Z 3 und Abs. 1a, 38, 41 Abs. 2 Z 2, 41a samt Überschrift, 45 Abs. 1, §§ 46 Abs. 1 bis 3 und 6, 46a, 46b samt Überschrift, 51 Abs. 1, die Überschrift des 1. Abschnittes des 8. Hauptstückes, §§ 52 bis 60 samt Überschriften, die Überschrift des 2. Abschnittes des 8. Hauptstückes, § 61, die Überschrift des 3. Abschnittes des 8. Hauptstückes, §§ 62 bis 64 samt Überschriften, die Überschrift des 4. Abschnittes des 8. Hauptstückes, §§ 65 bis 67 samt Überschriften, die Überschrift des 5. Abschnittes des 8. Hauptstückes, §§ 68 bis 71 samt Überschriften, § 72 samt Überschrift, 73 Abs. 1, 74 Abs. 1 und 2, 76, 77 Abs. 1, 3, 6 und 7, 78 Abs. 6, 79 Abs. 5, § 80, 94 Abs. 2, 97 Abs. 1, 99, 100 Abs. 2 bis 4, 102 Abs. 1 und 4, 103 Abs. 1, 104 Abs. 1, 105 Abs. 3, 6, 7, 8 und 10, §§ 106, 107 Abs. 2, 108, 112, 113, 117 Abs. 1 bis 3, 118 Abs. 1 bis 3, 120 Abs. 1, 1a und 5, 121 Abs. 1, 2, 3 Z 1 lit. a und Abs. 4, 5 und 7, 125 Abs. 14 bis 20 sowie das Inhaltsverzeichnis in der Fassung des Bundesgesetzes BGBl. I Nr. 38/2011 treten mit 1. Juli 2011 in Kraft. Die Überschrift des 10. Hauptstückes sowie die §§ 84 bis 86 samt Überschriften in der Fassung des Bundesgesetzes BGBl. I Nr. 38/2011 treten mit 1. Dezember 2011 in Kraft. Die §§ 47, 84 bis 87 samt Überschriften und § 125 Abs. 1 in der Fassung vor dem Bundesgesetz BGBl. I Nr. 38/2011 treten mit Ablauf des 30. Juni 2011 außer Kraft.

(10) (Verfassungsbestimmung) § 9 Abs. 1 in der Fassung des Bundesverfassungsgesetzes BGBl. I Nr. 49/2012 tritt mit 1. September 2012 in Kraft und mit Ablauf des 31. Dezember 2013 außer Kraft.

(11) § 3 Abs. 2, § 4, § 10, § 14 Abs. 2 und § 121 Abs. 6 in der Fassung des Bundesgesetzes BGBl. I Nr. 50/2012 treten mit 1. September 2012 in Kraft.

(12) Die §§ 1 Abs. 1 bis 3, 2 Abs. 1 und 2, §§ 3 und 4 samt Überschriften, 5 Abs. 1 bis 3, 5 und 6, 6 Abs. 1 bis 2, 4, 6 und 8, 7 Z 2, 8 Abs. 1, 9 und 10 samt Überschriften, die Überschrift des 2. Abschnittes des 2. Hauptstückes, die Überschriften der §§ 11 und 12, §§ 11 Abs. 4, 12 Abs. 1 bis 4, 12a, die Überschrift des 3. Hauptstückes, §§ 13 Abs. 1 und 3, 14 Abs. 1, 15 Abs. 1 und 4 Z 4, 15a und 15b samt Überschriften, 18 Abs. 1, 19 samt Überschrift, 21 Abs. 7 Z 1, 24 Abs. 4, 25 Abs. 7, 26 Abs. 2, 27 Abs. 1 und 3, die Überschrift des 3a. Abschnittes des 3. Hauptstückes, §§ 27a und 27b samt Überschriften, §§ 31 Abs. 1 Z 1 und 4, Abs. 1a Z 2 und 4, Abs. 3 Z 1 und Abs. 4, 32 Abs. 1, 3 und 4, die Überschrift des 5. Hauptstückes, §§ 37 Abs. 1 Z 1 und 2, 38 Abs. 1 und 3, 39 samt Überschrift, die Überschrift des 6. Hauptstückes, §§ 41 Abs. 2 Z 2 und Abs. 3, 43 Abs. 1 Z 3 und Abs. 3, 44,

45 Abs. 1 bis 4, 45a bis 45c samt Überschriften, die Überschrift des 7. Hauptstückes, §§ 46 Abs. 1 bis 5, 46a Abs. 1a bis 3, 46b Abs. 1 und 3, die Überschrift des § 50, § 50 Abs. 1 und 2, die Überschrift des 8. Hauptstückes, die Überschrift des 1. Abschnittes des 8. Hauptstückes, §§ 52, 53 Abs. 1 bis 2, 55 Abs. 1a, 2 und 4, 56 Abs. 1, 2, 4 und 6, 58 Abs. 1 und 2, 59 Abs. 3, 5 und 6, 60 Abs. 1 und 3 Z 2, § 61 samt Überschrift, die Überschrift des 4. Abschnittes des 8. Hauptstückes, §§ 66 Abs. 2, 67 Abs. 2, 69 Abs. 1 bis 3, 70 Abs. 1 und 4 Z 3, 71 Abs. 1, 2 Z 2 und 3 und Abs. 3, 4 und 6, §§ 72 Abs. 3, 76 Abs. 1 bis 3 und 5, 77 Abs. 1, 2, 3 Z 1 bis 3 und Abs. 4 bis 6, 8 und 9, §§ 78 Abs. 1 und 4 bis 8, 79 Abs. 1 und 4, 80 Abs. 1 und 5 bis 8, die Überschrift des § 81, §§ 81 Abs. 1 Z 2 und Abs. 2 bis 4, 93 Abs. 1 Z 3 und Abs. 2 und 3, 94 Abs. 3, 94a Abs. 1, 2 und 6, 98 Abs. 1 und 2, 99 Abs. 1, Abs. 2 und 3 Z 3 und 5 und Abs. 4 und 5, § 100 Abs. 1 bis 4, die Überschrift des § 102, §§ 102 Abs. 4, 104 Abs. 1 und 2, 105 Abs. 1, 2, 4, 5 und 10, 106, 107 Abs. 1 und 2, 108 Abs. 1 und 2, 109, 110 samt Überschrift, 112 Abs. 2, 113 Abs. 1 und Abs. 3, 4 und 6, 120 Abs. 2 Z 2 und Abs. 5 Z 5, 121 Abs. 1 bis 4 und 6 sowie das Inhaltsverzeichnis in der Fassung des Bundesgesetzes BGBl. I Nr. 87/2012 treten mit 1. Jänner 2014 in Kraft. Die §§ 2 Abs. 4 Z 13, 5 Abs. 1 Z 2, 6 Abs. 4a und 5, 14 Abs. 2, 30 Abs. 4, 31 Abs. 3 Z 3, 32 Abs. 2 Z 1, 34 Abs. 1 Z 2 und 3, 36 Abs. 1 Z 1, 38 Abs. 2, 39 Abs. 2 Z 1 und 2, die Überschrift des 6. Hauptstückes, §§ 48 und 49 samt Überschriften, die Überschrift des 7. Hauptstückes, §§ 50 Abs. 4, 51 Abs. 4 und 6, §§ 54 samt Überschrift, 55a samt Überschrift, 57 samt Überschriften, 59 Abs. 1 und 2, 60 Abs. 2, 4 und 5, die Überschrift des 2. und 3. Abschnittes des 8. Hauptstückes, §§ 62 bis 64 samt Überschriften, 65 bis 65b samt Überschriften, 66 Abs. 4, 67 Abs. 5, 68 samt Überschrift, 70 Abs. 2, die Überschrift des 6. Abschnittes des 8. Hauptstückes, §§ 72 und 73 samt Überschriften, die Überschrift des 7. Abschnittes des 8. Hauptstückes, §§ 74 und 75 samt Überschriften, 76 Abs. 4 und 7, 78 Abs. 2, die Überschrift des 9. Hauptstückes, §§ 82 und 83 samt Überschriften, die Überschrift des 10. Hauptstückes, §§ 84 bis 86 samt Überschriften, 99 Abs. 1 Z 1, 4 bis 6 sowie Abs. 3 Z 4, 6 und 7, §§ 101 samt Überschrift, 102 Abs. 1 bis 3 und 5, 103 samt Überschrift, 105 Abs. 3 und 6 bis 9, 113 Abs. 2 und 7 in der Fassung vor dem BGBl. I Nr. 87/2012 treten mit Ablauf des 31. Dezember 2013 außer Kraft.

(13) Die §§ 1 Abs. 1, 2 Abs. 1, 2 und 4 Z 11, 15 und 20 bis 22, die §§ 5 Abs. 3 und 4, 7, 9 Abs. 1, 4 und 5, 11 Abs. 1 bis 8, 11a samt Überschrift, 15 Abs. 2, 20 bis 21a samt Überschriften, die Überschrift des § 22, die §§ 22 Abs. 1 und 3, 23 Abs. 1, 24 Abs. 1, 24a Abs. 1 bis 3, 25 bis 27 samt Überschriften, 27a, 28 Abs. 2, 41a Abs. 1 Z 2, 43 Abs. 1 Z 3, 52 Abs. 5 und 8, 53 Abs. 1, 2 erster Satz und 3 Z 6, 55 Abs. 1a und 4, 59 Abs. 6 Z 1 und 2, 60 Abs. 1 und 2, 80 Abs. 5 und 6, das 9. Hauptstück samt Überschrift, 88 Abs. 1 Z 3, Abs. 2 und 2a, die §§ 97 Abs. 1, 99 Abs. 1 Z 7, 100 Abs. 3, 104 Abs. 1, 113 Abs. 3, 121 Abs. 3 Z 1, 125 Abs. 21 bis 26 und § 127 sowie das Inhaltsverzeichnis in der Fassung des Bundesgesetzes BGBl. I Nr. 68/2013 treten mit 1. Jänner 2014 in Kraft. Die §§ 22 Abs. 2, 24 Abs. 3 und 4, 27b, 53 Abs. 1a und 78 Abs. 5 sowie 80 Abs. 7 in der Fassung vor dem Bundesgesetz BGBl. I Nr. 68/2013 treten mit Ablauf des 31. Dezember 2013 außer Kraft.

(14) Die Anordnungen des Bundesgesetzes BGBl. I Nr. 68/2013 sind so zu verstehen, dass sie sich auf jene Fassung der Bestimmungen dieses Bundesgesetzes beziehen, die sie durch das Fremdenbehördenneustrukturierungsgesetz – FNG, BGBl. I Nr. 87/2012, erhalten würden.

(15) Die §§ 1 Abs. 2, 2 Abs. 4 Z 14, 3 Abs. 6, 5 Abs. 3 und 4, 6 Abs. 4, 7 Z 2, 4 und 5, 11 Abs. 8, 13 Abs. 3, 6 und 7, 20 Abs. 3, 21 Abs. 2 Z 8, 24 Abs. 3, 24b samt Überschrift, die Überschrift des § 27 sowie § 27 Abs. 1, 2 und 4, §§ 27a Abs. 2, 34 Abs. 1 Z 2, 36 Abs. 1 Z 1, 41 Abs. 2 Z 2, 46 Abs. 2 und Abs. 2a, 46a, 51 Abs. 1, 52 Abs. 4 Z 1, 1a bis 3, die Überschrift

des § 56 sowie §§ 56 Abs. 3 Z 2 und Abs. 4, 61 Abs. 5, 69 Abs. 1, 71 Abs. 3 Z 2 und Abs. 4, 76, 77 Abs. 1 und 6, 78 Abs. 1, 6 und 8, 79 Abs. 1, 80 Abs. 2, 5 und 6, 92 Abs. 1a und 3, 93 Abs. 4, 94 Abs. 5, 94a Abs. 7, 99 Abs. 4, 104 Abs. 3, 120 Abs. 1 und 1a, 121 Abs. 1 und 2, 125 Abs. 25 und 28 sowie 126 Abs. 13 sowie die Einträge zu §§ 24b, 27 und 56 im Inhaltsverzeichnis in der Fassung des Bundesgesetzes BGBl. I Nr. 70/2015 treten mit 20. Juli 2015 in Kraft. §§ 12 Abs. 2 und 78 Abs. 3 treten mit Ablauf des 19. Juli 2015 außer Kraft.

(16) § 114 Abs. 3 Z 2 in der Fassung BGBl. I Nr. 121/2015 tritt mit 1. Oktober 2015 in Kraft.

(17) Die §§ 39 Abs. 3 Z 1 bis 3, 5a, 5b, 7 und 8, 45 Abs. 1 Z 1 bis 3, 61 Abs. 5, 82, 94a und 125 Abs. 29 in der Fassung des Bundesgesetzes BGBl. I Nr. 24/2016 treten mit 1. Juni 2016 in Kraft.

(18) § 52 Abs. 4 Z 5 in der Fassung des Bundesgesetzes BGBl. I Nr. 68/2017 tritt mit 1. Oktober 2017 in Kraft.

(19) Articles 2 para 4 subpara 13, subpara 17, subpara 17a, subpara 22 and subpara 23, 5 para 1 subpara 2, para 2 and 3, 6 para 3, 7 subpara 4, 9 para 4, 11 para 1, 4, 7 and 9, 11b complete with title, 15 para 4 subpara 3, 4 and 5, 20 para 1 subpara 7 to 9, para 2 and 3a, 21 para 1 and 2 subpara 4, 22a complete with title, 24 para 1 subpara 3, para 3 to 5, 27 para 3 subpara 5 and 6 as well as para 5, 31 para 1 subpara 5, 106, 124 para 1 as well as the items in the table of contents at articles 11b and 22a as amended by the federal act published in the Federal Law Gazette I No. 145/2017, enter into force upon the expiry of the day of announcement, but on 1 October 2017 at the earliest. Articles 6 para 9, 8 para 1, 12 para 3, 13 para 2 and 3, 16 para 1, 17 para 3, 21 para 2 subpara 12, 13 and 14, 24a para 6, 26, the title of section 3a of chapter 4, article 27a para 1, 30 para 3, 35a (complete with title), 36 para 1 subpara 2 to 5, 39 para 1, 39 para 5b, the titles of chapter 6 and 7, 46 para 2, 2a and 2b, 46 para 3, 46a para 1 and 3, 52 para 2 and 9, 52a complete with title, 53 para 3, 56 para 6, 57 complete with title, 58 para 2, 67 para 4, 76 para 2a and 3 subpara 1a and subpara 8, 80 para 2, 4, 5 and 7, 95, 99 para 3 subpara 5, 102 para 4, 104 para 2, 114 para 6, 120 para 1b to 1c, para 2 subpara 1, para 5 to 7, 10 and 11, 121 para 1, 1a and 6, 122a complete with title, 125 para 30, 127 as well as the items in the table of contents at article 12, 35a, section 5 of chapter 4, article 52a, 57 as well as 122a in the version of the federal act published in the Federal Law Gazette I No. 145/2017 enter into force on the expiry of the day of announcement, but on 1 November 2017 at the earliest. Articles 2 para 2 subpara 3, 21a para 2, 24 para 2 as well as 31 para 1 subpara 6 and paras 2 to 3 cease to be effective when the day of announcement expires, but upon the expiry of 30 September 2017 at the earliest. Articles 5 para 4 and 58 para 2 cease to be effective when the day of announcement expires, but upon the expiry of 31 October 2017 at the earliest.

(20) Orders issued pursuant to the federal act published in the Federal Law Gazette I No. 145/2017 are understood to refer to that version of the provisions of the present federal act which would incorporate these provisions by virtue of the federal act enacting an Integration Act and an Anti-Face-Covering Act and amending the Settlement and Residence Act, the 2005 Asylum Act, the 2005 Aliens Police Act, the 1985 Nationality Act and the 1960 Road Traffic Regulation, published in Federal Law Gazette I No. 68/2017.

Enforcement

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

Artikel 79

Inkrafttreten und Übergangsbestimmungen

(Anm.: Zu den §§ 2, 55, 56, 60, 109, 110, 117 und 120, BGBl. I Nr. 100/2005)

(1) Article 2 (Änderung des Allgemeinen Bürgerlichen Gesetzbuchs), Article 3 (Änderung des Ehegesetzes), Article 4 (Änderung des Fortpflanzungsmedizingesetzes), Article 6 (Änderung der Jurisdiktionsnorm), Article 7 (Änderung des Strafgesetzbuches), Article 27 (Änderung des Einkommensteuergesetzes 1988), Article 28 (Änderung des Körperschaftsteuergesetzes 1988), Article 29 (Änderung des Umsatzsteuergesetzes 1994), Article 30 (Änderung des Bewertungsgesetzes 1955), Article 31 (Änderung des Gebührengesetzes 1957), Article 33 (Änderung der Bundesabgabenordnung), Article 34 (Änderung des Alkoholsteuergesetzes), Article 61 (Änderung des Ärztegesetzes 1998), Article 62 (Änderung des Gehaltskassengesetzes 2002), Article 63 (Änderung des Apothekengesetzes), Article 72 (Änderung des Studienförderungsgesetzes), Article 76 (Änderung des Entwicklungshelfergesetzes), Article 77 (Änderung des Bundesgesetzes über Aufgaben und Organisation des auswärtigen Dienstes – Statut) und Article 78 (Bundesgesetz über die Einräumung von Privilegien und Immunitäten an internationale Organisationen) treten mit 1. Jänner 2010 in Kraft.

(2) Die durch dieses Bundesgesetz geänderten Strafbestimmungen sind in Strafsachen nicht anzuwenden, in denen vor ihrem Inkrafttreten das Urteil in erster Instanz gefällt worden ist. Nach Aufhebung eines Urteils infolge Nichtigkeitsbeschwerde, Berufung, Wiederaufnahme oder Erneuerung des Strafverfahrens oder infolge eines Einspruches ist jedoch im Sinne der §§ 1 und 61 StGB vorzugehen.