

# **Federal Act Concerning the Granting of Asylum (2005 Asylum Act - Asylgesetz 2005)**

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## **Chapter 1 Scope of Applicability and Definition of Terms**

### **Scope of Applicability**

**Article 1.** The present federal act shall regulate:

1. the granting and withdrawal of asylum status and subsidiary protection status in respect of aliens in Austria;
2. the cases in which a ruling pursuant to the present federal act is to be issued in conjunction with an expulsion order;
3. the procedure for obtaining decisions as referred to in subparas 1 and 2 above.

### **Definition of Terms**

**Article 2.** (1) For the purposes of the present federal act:

1. "Geneva Convention on Refugees" means the Convention Relating to the Status of Refugees of 28 July 1951, FLG No. 55/1955, as amended by the Protocol Relating to the Status of Refugees of 31 January 1967, FLG No. 78/1974;

2. "European Convention on Human Rights" means the Convention for the Protection of Human Rights and Fundamental Freedoms, FLG No. 210/1958;
3. "Protocol No. 6 to the Convention" means Protocol No. 6 to the Convention for the Protection of Human Rights and Fundamental Freedoms Concerning the Abolition of the Death Penalty, FLG No. 138/1985;
4. "Protocol No. 11 to the Convention" means Protocol No. 11 to the Convention for the Protection of Human Rights and Fundamental Freedoms, Restructuring the Control Machinery Established thereby, FLG III No. 30/1998;
5. "Protocol No. 13 to the Convention" means Protocol No. 13 to the Convention for the Protection of Human Rights and Fundamental Freedoms, Concerning the Abolition of the Death Penalty in All Circumstances, FLG III No. 22/2005;
6. "TEU" means the Treaty on the European Union, FLG III No. 85/1999, as amended by federal acts FLG III No. 4/2003 and FLG III No. 20/2004;
7. "Dublin Convention" means the Convention, Determining the State Responsible for Examining Applications for Asylum Lodged in One of the Member States of the European Communities, signed in Dublin on 15 June 1990, FLG III No. 165/1997;
8. "Dublin Regulation" means Council Regulation (EC) No. 343/2003 Establishing the Criteria and Mechanisms for Determining the Member State Responsible for Examining an Asylum Application Lodged in One of the Member States by a Third-Country National, Official Journal of the European Union L 50 of 25 February 2003, p.1;
9. "Qualification Directive" means Council Directive 2004/83/EC on Minimum Standards for the Qualification and Status of Third-Country Nationals or Stateless Persons as Refugees or as Persons who otherwise Need International Protection and the Content of the Protection Granted; Official Journal of the European Union L 304 of 30 September 2004, p.12;
10. "Basic Welfare Support Agreement" means the Agreement between the Federal Government and the Provincial Governments, Pursuant to article 15a B-VG (Federal Constitutional Act), Concerning Joint Measures for the Temporary Granting of Basic Welfare Support to Aliens in Need of Assistance and Protection in Austria (Asylum Seekers, Persons Having Entitlement to Asylum, Displaced Persons and Other Persons who May not be Deportated for Legal or Practical Reasons) (Grundversorgungsvereinbarung – Art. 15a B-VG), FLG I No. 80/2004;
11. "persecution" means any act of persecution as defined in article 9 of the Qualification Directive;
12. "reason for persecution" means any reason stated in article 10 of the Qualification Directive;
13. "application for international protection" means a request howsoever made by an alien in Austria to be accorded the protection of Austria; the application shall be deemed to be a request to be granted asylum status and, in the event that asylum status is not granted, as a request to be granted subsidiary protection status;
14. "asylum seeker" means an alien from the time of submission of an application for international protection until the procedure is finally concluded, discontinued or deemed no longer relevant;
15. "asylum status" means permanent right of entry and residence granted by Austria to aliens in accordance with the provisions of the present federal act;
16. "subsidiary protection status" means temporary, renewable right of entry and residence granted by Austria to aliens in accordance with the provisions of the present federal act;
17. "country of origin" means the country of which the alien is a national or, in the case of a stateless person, the country of his former habitual residence;
18. "Member State" means any state which is a party to the TEU (subpara 6 above);
19. "EEA State" means any state, which is a party to the Agreement on the European Economic Area (EEA Agreement);

20. "third country" means any country which is not a Member State of the European Union;
21. "EEA citizen" means anyone who is a national of an EEA State (subpara 19 above);
22. "family member" means the parent of an under-age child, the spouse or the, at the time of filing the application, under-age child of an asylum seeker or of an alien to whom subsidiary protection status or asylum status has been granted, insofar as in case of spouses the family already existed in the country of origin;
23. "subsequent application" means a further application made following an application already finally ruled on;
24. "civilian" means any person belonging to the civilian population as defined in article 50 (1) of the Protocol of 10 December 1977, FLG No. 527/1982, Additional to the Geneva Conventions of 12 August 1949 and Relating to the Protection of Victims of International Armed Conflicts, FLG No. 155/1953.

(2) For the purposes of the present federal act "identification data" shall mean photographs, impressions of the papillary ridges on the fingers, external physical features and signature.

## **Chapter 2 Asylum Status and Subsidiary Protection Status**

### **Section 1 Asylum Status**

#### **Asylum Status**

**Article 3.** (1) An alien who in Austria has filed an application for international protection shall, unless that application is to be rejected on account of safety in a third country or the responsibility of another State, be granted asylum status if it is credible that the alien would in the country of origin be at risk of persecution as defined in article 1 A (2) of the Geneva Convention on Refugees.

(2) Persecution may also be based on events which have taken place since the alien left his country of origin (objective reasons arising *sur place*) or on activities engaged in by the alien since leaving the country of origin which in particular constitute the expression and continuation of convictions held in the country of origin (subjective reasons arising *sur place*). An alien who files a subsequent application (article 2, subpara 23) shall normally not be granted asylum status if the risk of persecution is based on circumstances which the alien has created himself since leaving his country of origin unless the case concerns activities permitted in Austria which are established as constituting the expression and continuation of convictions already held in the country of origin.

(3) An application for international protection shall be dismissed in regard to the granting of asylum status if:

1. an internal flight alternative (art. 11) is available to the alien or
2. the alien has given rise to a reason for ineligibility for asylum (art. 6).

(4) An alien shall be granted asylum status ex officio without any further procedure if the Republic of Austria has undertaken to do so under international law.

(5) The ruling whereby an alien is granted asylum status ex officio or on the basis of an application for international protection shall be issued in conjunction with a declaration that refugee status is accordingly conferred upon the alien by operation of the act.

## **Section 2 Absence of Responsibility of Austria**

### **Safety in a Third Country**

**Article 4.** (1) An application for international protection shall be rejected as inadmissible if the alien is able to find protection against persecution in a country to which a treaty concerning the determination of responsibility for the examination of applications for asylum or applications for international protection or the Dublin Regulation is not applicable (protection in a safe third country).

(2) Protection in a safe third country shall exist if a procedure for the granting of refugee status in accordance with the Geneva Convention on Refugees is available to an alien in a country where he is not exposed to danger as specified in art. 8, para (1), or is guaranteed via other countries (asylum procedure), and the alien is entitled to reside in that country during such procedure and has protection there against deportation to the country of origin, including via other countries, provided that the alien is exposed in the country of origin to danger as specified in art. 8 para, (1). The foregoing shall, in cases involving the same protection from rejection at the border, forcible return or deportation, apply to countries which have already rendered a decision in a procedure for the granting of refugee status in accordance with the Geneva Convention on Refugees.

(3) The requirements set out in para (2) above shall refutably be met in a country if that country has ratified the Geneva Convention on Refugees and has established by law an asylum procedure incorporating the principles of the aforesaid Convention, of the European Convention on Human Rights and of Protocols No. 6, No. 11 and No. 13 to the Convention.

(4) Notwithstanding protection in a safe third country, an application for international protection shall not be rejected as inadmissible if an expulsion order issued in conjunction with the rejection decision would give rise to a violation of art. 8 of the European Convention on Human Rights. Rejection by reason of protection in a safe third country shall not take place in particular if:

1. the asylum seeker is an EEA citizen;
2. asylum status or subsidiary protection status has been granted in Austria to a parent of an under-age unmarried asylum seeker or
3. asylum status or subsidiary protection status has been granted in Austria to the spouse or to an under-age unmarried child of the asylum seeker.

(5) If an alien whose application for international protection has been rejected as inadmissible pursuant to para (1) above cannot, for practical reasons that are not based on the alien's conduct, be forcibly returned or deported within three months of the date when the decision becomes enforceable, the decision shall cease to be valid.

### **Responsibility of Another State**

**Article 5.** (1) An application for international protection which has not been decided in accordance with art. 4 shall be rejected as inadmissible if, under treaty provisions or pursuant to the Dublin Regulation, another country is responsible for examining the application for asylum or the application for international protection. When rendering the rejection decision, the authority shall also specify which country is responsible.

(2) The steps set out in para (1) above shall also be followed if, under treaty provisions or pursuant to the Dublin Regulation, another country is responsible for determining which country is responsible for examining the application for asylum or the application for international protection.

(3) Unless specific reasons relating to the person of the asylum seeker and indicating a real risk of absence of protection against persecution are made credible or are evident to the authority, it shall be assumed that the asylum seeker can find protection against persecution in a country as referred to in para (1) above.

### **Section 3 Ineligibility for and Withdrawal of Asylum Status**

#### **Ineligibility for Asylum Status**

**Article 6.** (1) An alien shall be rendered ineligible for asylum status if:

1. and for as long as he enjoys protection pursuant to art. 1, section D, of the Geneva Convention on Refugees;
2. any of the grounds set forth in the exclusion clauses in art. 1, section F, of the Geneva Convention on Refugees exists;
3. for reasonable grounds he constitutes a danger to the security of the Republic of Austria or
4. he has been convicted, by final judgment of an Austrian court, of a particularly serious crime and, by reason of such punishable act, represents a danger to the community. A conviction by a foreign court which meets the requirements set out in art. 73 of the Criminal Code (CC - StGB), FLG No. 60/1974, shall be deemed equivalent to a conviction by an Austrian court.

(2) In cases where a reason for ineligibility as referred to in para (1) above exists, an application for international protection may be dismissed in regard to the granting of asylum status without further examination. Art. 8 shall apply.

#### **Withdrawal of Asylum Status**

**Article 7.** (1) An alien's asylum status shall be withdrawn ex officio by administrative decision if:

1. a reason for ineligibility for asylum status as referred to in art. 6 exists;
2. any of the grounds set forth in the cessation clauses in art. 1, section C, of the Geneva Convention on Refugees has arisen or
3. the person having entitlement to asylum has the centre of his vital interests in another country.

(2) The authority may not order an alien's asylum status to be withdrawn pursuant to subpara 2 of para (1) above if the withdrawal ruling – even if not final – is not issued by the Federal Asylum Agency within five years of the granting of such status and the alien has his principal domicile in the federal territory. In cases where, in accordance with the first sentence of the present para, withdrawal may not take place, the authority shall report the facts to the authority which is competent under the terms of the Federal Act on Settling and Residing in Austria (Settlement and Residence Act – NAG), FLG I No. 100/2005. If the latter informs the authority that it has issued the alien with a residence permit by final ruling, the asylum status of such an alien may also be withdrawn pursuant to subpara 2 of para (1) above.

(3) Withdrawal rulings pursuant to subparas 1 and 2 of para (1) above shall be issued in conjunction with a declaration that refugee status is no longer conferred upon the person concerned by operation of the law. Once the withdrawal ruling becomes final, that person shall return to the authority the identification documents and cards confirming asylum status or refugee status.

### **Section 4 Subsidiary Protection Status**

#### **Subsidiary Protection Status**

**Article 8.** (1) Subsidiary protection status shall be granted to an alien:

1. who has filed an application for international protection in Austria, if such application is dismissed in regard to the granting of asylum status or
2. whose asylum status has been withdrawn

if the alien's rejection at the border, forcible return or deportation to his country of origin would constitute a real risk of violation of art. 2, art. 3 of the European Convention on Human Rights or of Protocol No. 6 or Protocol No. 13 to the Convention or would represent for the alien as a civilian a serious threat to his life or person as a result of arbitrary violence in connection with an international or internal conflict.

(2) The decision concerning the granting of subsidiary protection status pursuant to para (1) above shall be issued in conjunction with the dismissal ruling as referred to in art. 3 or the asylum status withdrawal ruling as referred to in art. 7.

(3) Applications for international protection shall be dismissed in regard to the granting of subsidiary protection status if an internal flight alternative (art. 11) is available.

(4) An alien who has been granted subsidiary protection status shall at the same time be accorded, by the authority granting such status, limited right of residence as a person eligible for subsidiary protection. Right of residence shall be valid for one year and shall, upon application by the alien, be extended by the Federal Asylum Agency if the conditions required continue to exist. Following an application by the alien, right of residence shall exist until a final decision has been rendered on the extension of residence entitlement if the extension application was filed prior to expiry of the right of residence.

(5) In family procedures pursuant to art. 34, para (1), subpara 2, para (4) above shall apply with the proviso that the right of residence to be granted shall terminate simultaneously with that of the family member from whom the right is derived.

(6) If the asylum seeker's country of origin cannot be established, the application for international protection shall be dismissed in regard to subsidiary protection status. In such event, an order for expulsion from the federal territory shall be issued if such expulsion is not inadmissible pursuant to art. 10, para (2). Art. 10, para (3), shall apply.

(7) Subsidiary protection status shall terminate if the alien is granted asylum status.

### **Withdrawal of Subsidiary Protection Status**

**Article 9.** (1) An alien's subsidiary protection status shall be withdrawn ex officio by administrative decision if:

1. the conditions required for the granting of subsidiary protection status (art. 8, para (1)) do not or no longer exist;
2. the alien has the centre of his vital interests in another country or
3. the alien has obtained the nationality of another State and his rejection at the border, forcible return or deportation to his new country of origin would not constitute a real risk of violation of art. 2, art. 3 of the European Convention on Human Rights or of Protocol No. 6 or Protocol No. 13 to the Convention or would not represent for the alien as a civilian a serious threat to his life or person as a result of arbitrary violence in connection with an international or internal conflict.

(2) The ruling concerning the withdrawal of subsidiary protection status shall be issued in conjunction with a declaration of withdrawal of the alien's right of residence as a person eligible for subsidiary protection. Once the withdrawal ruling becomes final, the alien shall return to the authority the cards confirming subsidiary protection status.

## **Section 5 Common Provisions**

### **Rulings in Conjunction with Expulsion Orders**

**Article 10.** (1) A ruling pursuant to the present federal act shall be issued in conjunction with an expulsion order if:

1. an application for international protection is rejected;
2. an application for international protection is dismissed in regard to the granting of both asylum status and subsidiary protection status;



3. an alien's asylum status is withdrawn and the subsidiary protection status is not conferred or
4. an alien's subsidiary protection is withdrawn.

(2) Expulsion as referred to in para (1) above shall be inadmissible if:

1. in individual cases an alien is holding a right of residence that is not based on the present federal act or
2. expulsion would constitute a violation of art. 8 of the European Convention on Human Rights.

(3) If execution of an expulsion order would constitute a violation of art. 3 of the European Convention on Human Rights for reasons relating to the person of the asylum seeker and such reasons are not long-lasting, a pronouncement shall be made simultaneously with the issue of the expulsion order that the execution thereof shall be postponed for the necessary period.

(4) An expulsion order which is issued in conjunction with a ruling pursuant to subpara 1 of para (1) above shall in all cases be valid as a declaration of the admissibility of rejection at the border, forcible return or deportation to the country concerned. If an enforceable expulsion order exists, the alien shall leave Austria without delay.

### **Internal Flight Alternative**

**Article 11.** (1) If asylum seekers can, in a part of their country of origin, be guaranteed protection by the state or by other actors controlling the state of origin or a substantial part of the territory of the state and if they can reasonably be expected to reside in that part of the territory of the state, an application for international protection shall be dismissed (internal flight alternative). Protection shall be deemed guaranteed if, in regard to that part of the country of origin, there can be no well-substantiated fear in accordance with art. 1 section A subpara 2 of the Geneva Convention on Refugees and the requirements for the granting of subsidiary protection status (art. 8, para (1)) are not met in regard to that part of the country of origin.

(2) In the examination of whether an internal flight alternative exists, the general circumstances prevailing in the country of origin and the personal circumstances of the asylum seeker shall be taken into account at the time when the decision on the application is rendered.

## **Chapter 3 Rights and Duties of Asylum Seekers**

### **Section 1 Residence in the Federal Territory during Asylum Procedures**

#### **De-facto Protection against Deportation**

**Article 12.** (1) An alien who in Austria has filed an application for international protection may not be rejected at the border, forcibly returned or deported until an enforceable ruling is issued or until the procedure is deemed no longer relevant or, following its discontinuation, until such time as a resumption of the procedure is no longer admissible in accordance with art. 24, para (2) (de facto protection against deportation); art. 32 shall be unaffected. The alien's residence in the federal territory is tolerated. Any right of residence existing on the basis of other federal acts shall be unaffected. Art. 36, para (4), shall apply.

(2) An alien who has filed an application for international protection and is not accorded right of residence shall be tolerated for the duration of the admission procedure but for a maximum of 20 days solely in the territory of the district administrative authority in which the alien receives welfare support. An alien shall further be tolerated anywhere in federal territory if and for as long as is necessary:

1. for the fulfilment of statutory obligations;

2. for the purpose of compliance with summonses issued by courts or administrative authorities or

3. for the receipt of medical care and treatment.

Upon the expiry of the 20<sup>th</sup> day following the filing of the application for international protection, the alien shall be tolerated anywhere in the federal territory for as long as he is accorded de facto protection against deportation.

### **Right of Residence**

**Article 13.** An asylum seeker whose asylum procedure is admitted shall be entitled to reside in the federal territory until an enforceable ruling is issued or until the procedure is discontinued or deemed no longer relevant or until right of residence is withdrawn (art. 62, para (1), of the Federal Act on the Exercise of Aliens' Police, the Issue of Documents for Aliens and the Granting of Entry Permits [2005 Aliens' Police Act – FPG]). Any right of residence existing on the basis of other federal acts shall be unaffected. If asylum seekers' right of residence is withdrawn pursuant to art. 62 of the Aliens' Police Act, they shall be accorded de facto protection against deportation (art. 12).

### **Re-Entry**

**Article 14.** (1) An asylum seeker whose appeal against an expulsion issued in conjunction with a rejecting or dismissing decision by the Federal Asylum Agency did not have suspensory effect shall be allowed to re-enter at the border crossing point, by presentation of the appeal decision, if his appeal was accepted and he can furnish proof of his procedural identity. The asylum seeker's procedure shall be admitted if a final decision on the asylum procedure was not rendered with the appeal decision.

(2) An asylum seeker against whom an enforceable but not final expulsion order is enforced shall be informed in a provable manner that, for the service of documents in the asylum procedure, he may avail himself of the services of a registered process agent and that he shall be obliged to inform the authority of his place of residence and address, including outside Austria, and report any changes as quickly as possible (art. 15, para (1), subpara 4). An asylum seeker shall also be informed of the postal address of the Federal Asylum Agency and of the Independent Federal Asylum Review Board. Insofar as is possible, the asylum seeker shall be furnished with an information leaflet prepared in a language understandable to him.

(3) For purposes of establishing proof of procedural identity, a positive match with existing identification data shall be sufficient. Any identification procedures required to that end shall be carried out solely upon application by the person concerned. Data compiled in connection with such procedures shall be deleted once the matching operation has been completed.

(4) The ruling on the appeal against a rejection or dismissal decision by the Federal Asylum Agency shall, if the appeal against the expulsion order issued in conjunction therewith did not have suspensory effect, be notified insofar as is possible to the last address known to the authority for service of notifications; if such address is situated outside Austria, notification shall be deemed effected upon receipt of the ruling at that address.

## **Section 2 Duty of Cooperation**

### **Asylum Seeker's Duty to Cooperate in the Procedure**

**Article 15.** (1) An asylum seeker shall cooperate in procedures pursuant to the present federal act; in particular he shall be obliged:

1. without undue delay to substantiate his application and, upon request, furnish truthfully all indications required in support of the application for international protection;
2. in the event of the conduct of procedural acts or expert examinations, to appear in person at the due time and to cooperate in such measures. Any involuntary violation of the right to physical integrity shall be inadmissible;
3. to cooperate in identification procedures pursuant to the present federal act;
4. to inform the authority of his place of residence and address, including after he has left Austria for any reason, and to report any changes as quickly as possible, and at the latest within seven days during the period of residence in Austria. It shall be sufficient for such purpose if an asylum seeker present in Austria complies with his registration obligation under the 1991 Domicile Registration Act (MeldeG), FLG No. 9/1992;
5. to hand over to the authority all documents and articles available to him at the commencement of the procedure, or without delay if they emerge or become accessible only during the course of the procedure, insofar as they are relevant to the procedure.

(2) If an asylum seeker cannot fulfil any aspect of the duty of cooperation as referred to in para (1) above for reasons not attributable to him, he shall without delay communicate such fact to the authority with which the procedure is at that time being conducted. The communication shall be substantiated.

(3) Indications as referred to in subpara 1 of para (1) above shall include in particular:

1. the name of the asylum seeker;
2. all names and aliases used in procedures to date;
3. date of birth;
4. nationality or, in the case of a stateless person, country of origin;
5. countries of previous residence;
6. the route travelled to Austria;
7. previous applications for asylum and previous applications for international protection, including in other countries;
8. particulars of family and social circumstances;
9. particulars of the whereabouts of documents no longer present;
10. reasons which gave rise to the application for international protection and
11. grounds and facts expressly requested by the authority insofar as they are of importance to the procedure.

(4) At the commencement of the procedure, the asylum seeker shall be informed in a provable manner of his duty of cooperation and the consequences of any breach thereof. He shall also be furnished, insofar as is possible, with an information sheet prepared in a language understandable to him.

## **Chapter 4 Procedural Law**

### **Section 1 General Procedures**

#### **Capacity to Act**

**Article 16.** (1) The age requirement for capacity to act in procedures pursuant to the present federal act shall be determined by Austrian law irrespective of the nationality of the alien.

(2) In procedures pursuant to the present federal act each parent shall be individually authorized to represent his or her child. If, in the case of children born in wedlock, the declarations by the two parents conflict, the earlier declaration shall be applicable; a waiver of the right of appeal may not be expressed against the declared will of one parent. In the

case of a child born out of wedlock, representation shall, in the event of conflicting declarations of the parents, be accorded to the mother unless the father alone is entrusted with guardianship. An under-age person whose interests cannot be defended by his legal representative shall be entitled to file applications for international protection.

(3) A person under full age whose interests cannot be defended by his legal representative shall be entitled to file and submit applications. In procedures pursuant to the present federal act the legal representative shall be, upon submission of an application for international protection (art. 17, para (2)), the legal adviser at the initial reception centre and, following admission of the procedure and assignment to a care centre, the regionally competent youth welfare agency of the province in which the under-age person was assigned to a care centre. If, prior to the initial interview in the admission procedure, the legal adviser objects to an interrogation (art. 19, para (1)) of a person under full age, such interrogation shall be repeated in the legal adviser's presence.

(4) If the person under full age evades the procedure (art. 24, para (1)) or a legal representative cannot for other reasons be designated in accordance with para (3) above, the youth welfare agency to which legal representation was last assigned shall be the legal representative until a legal representative has again been designated in accordance with para (3) above. If, in the procedure to date, legal representation was discharged solely by the legal adviser, that person shall continue as the legal representative until legal representation first devolves upon a youth welfare agency in accordance with para (3) above.

(5) In the case of an under-age person whose interests cannot be defended by his legal representative, the legal adviser shall as from his arrival at the initial reception centre be his legal representative. Such aliens may be interrogated (art. 19, para (1)) solely in the presence of the legal adviser. In all other respects, paras (3) and (4) above shall apply.

### **Conduct of Procedures**

**Article 17.** (1) An application for international protection shall be deemed filed if an alien in Austria makes a request for protection against persecution to an agent of the public security service or to a security authority or at an initial reception centre (art. 59).

(2) An application for international protection shall be deemed submitted if it is filed in person by the alien at an initial reception centre (art. 59), including in cases where the alien is transferred there (art. 43, para (2)).

(3) An application for international protection in respect of a child born in Austria of an asylum seeker or an alien on whom asylum status or subsidiary protection status has been conferred may also be submitted to a branch office of the Federal Asylum Agency; such applications may also be filed and submitted in writing. A family procedure (art. 34) in respect of an under-age unmarried child of an alien on whom asylum status or subsidiary protection status has been conferred or whose procedure has been admitted and not yet finally ruled on shall be deemed admitted upon submission of the application.

(4) Following submission of an application for international protection, the proceedings shall be commenced with the admission procedure.

(5) If an alien makes a request for international protection to an authority in Austria other than those indicated in para (1) above, that authority shall notify the regionally competent security authority or the nearest agent of the public security service.

(6) If a transfer to an initial reception centre does not take place in accordance with art. 45, paras (1) and (2), the application for international protection shall be deemed submitted upon completion of the interrogation and, where appropriate, the conduct of a search and identification procedures; the asylum seeker shall be issued with a procedure card within three days. The admission procedure in respect of an asylum seeker whose transfer did not take place in accordance with art. 45, para (1), subpara 2, may also be conducted by a branch office of the Federal Asylum Agency; such procedure shall be commenced within a reasonable period. The time limits referred to in section 2 shall in such event be computed as from the execution of a procedural act by the authority.

(7) A further application for international protection filed within the time-limit for lodging appeals shall be deemed to be an appeal or a supplementary appeal submission against the rejecting or dismissing administrative decision by the Federal Asylum Agency.

(8) If a further application for international protection is filed or submitted in the course of a pending appeal procedure, that application shall be jointly dealt with as part of the pending appeal procedure. An application for international protection filed in writing in that event shall be deemed to be a supplementary appeal submission; the Federal Asylum Agency shall forward such application without delay to the Independent Federal Asylum Review Board.

(9) The Federal Minister of the Interior shall issue an explanatory leaflet setting out an asylum seeker's rights and obligations. A copy of this leaflet shall be provided at the latest upon submission of the application, at the initial reception centre, in a language understandable to the asylum seeker. The leaflet shall be prepared in advance in those languages which it may be assumed will be understandable to asylum seekers. In particular, the leaflet shall draw attention to the obligation of asylum seekers to place themselves at the disposal of the authorities for purposes of procedures pursuant to the present federal act and to the legal consequences of any breach.

### **Investigation Procedures**

**Article 18.** (1) The authority shall endeavour ex officio at all stages of the procedure to ensure that information relevant to a decision is adduced or that incomplete information concerning the circumstances invoked in support of the application is supplemented, that the evidence to substantiate such information is specified or that the evidence offered is complete and, in general, that any explanations required in support of the application are provided. If necessary, evidence is also to be procured ex officio.

(2) In the assessment of the credibility of an asylum seeker's allegations, due account shall be taken of his cooperation in the proceedings.

### **Interrogations and Interviews**

**Article 19.** (1) An alien who has filed an application for international protection shall be interrogated by agents of the public security service upon the filing of the application or during the admission procedure at the initial reception centre. Such interrogation shall be conducted in particular with a view to ascertaining the identity of the alien and the route followed by him and shall not refer to the specific reasons for his flight.

(2) If possible without disproportionate expense, the asylum seeker shall be interviewed in person by the official of the Federal Asylum Agency who is competent to take the respective decision. An interview during the admission procedure may be dispensed with if the procedure is admitted. An asylum seeker shall, unless owing to circumstances relating to his person he is unable by testifying to contribute to the establishment of the material facts, be interviewed by the Federal Asylum Agency at least once during the admission procedure and, unless a decision on the application is rendered in the admission procedure, at least once following the admission of the procedure. Art. 24, para (3), shall be unaffected.

(3) An interview may be documented with the use of technical sound-recording equipment.

(4) Prior to each interview the asylum seeker shall be expressly informed of the consequences of false testimony. In the admission procedure, the asylum seeker shall also be informed that his own statements will be accorded increased credibility.

(5) When appearing before the authority for the purpose of being interviewed, an asylum seeker may be accompanied by a person enjoying his confidence and by a representative; the asylum seeker may be accompanied by a person enjoying his confidence or by a representative even if a legal adviser is present. Under-age asylum seekers may be interviewed solely in the presence of a legal representative.

(6) If an asylum seeker is in custody for whatsoever reason, he shall be transferred to the asylum authority at its request. Such custody, in particular detention pending deportation, shall not be thereby interrupted.

### **Interviewing of Victims in Cases of Infringement of the Right to Sexual Self-Determination**

**Article 20.** (1) If an asylum seeker bases his fear of persecution (art. 1 A (2) of the Geneva Convention on Refugees) on infringement of his right to sexual self-determination, he shall be interviewed by an official of the same sex unless he requests otherwise. The asylum seeker shall be informed in a provable manner of the existence of that possibility.

(2) With regard to hearings before the Independent Federal Asylum Review Board, a request as referred to in para (1) above shall be made at the latest together with the appeal. The hearing shall in such cases be held in camera, should the asylum seeker concerned so wish. The asylum seeker shall be informed in a provable manner of that possibility. In all other respects, art. 67e of the General Administrative Procedures Act (AVG) shall apply.

### **Evidence**

**Article 21.** Documents and articles placed in safe keeping or handed over in accordance with art. 15, para (1), subpara 5, shall be returned to the asylum seeker as quickly as possible if they are no longer required for procedures pursuant to the present federal act, or in a procedure pursuant to a treaty concerning the determination of responsibility for examining applications for asylum or applications for international protection or the Dublin Regulation. Safe-keeping measures under other federal acts shall be unaffected. Evidence shall, if required, be handed over to the competent authority or to the competent court. Upon request, information shall be communicated to the person concerned and the hand-over as referred to in the third sentence of the present para shall be confirmed to the person concerned.

### **Decisions**

**Article 22.** (1) Decisions on applications for international protection shall be issued in the form of administrative decisions. Such decisions shall contain, in a language understandable to the asylum seeker, the verdict, instructions concerning rights of appeal and, in the case of decisions rendered in the last resort, the information specified in art. 61a of the General Administrative Procedures Act. If an application is rejected as inadmissible pursuant to art. 4, the decision shall be accompanied by a translation, in that language, of the relevant statutory provisions. An inaccurate translation shall solely establish the right to reinstatement, subject to the requirements set out in art. 71 of the General Administrative Procedures Act.

(2) A decision by which an application for international protection is rejected pursuant to art. 4 shall be accompanied by an appended certification, also issued in the official language of the safe third country, to the effect that the application for international protection has not undergone any substantive examination owing to the protection existing in the safe third country and that no suspensory effect of the appeal lodged against the decision was allowed.

(3) Procedures relating to applications for international protection shall, if the asylum seeker is in detention pending deportation, be dealt with on a priority basis by the authorities of first and second resort. Such cases shall be ruled on as quickly as possible and at the latest within three months. If the asylum seeker is released from such detention during the procedure but prior to expiry of the time-limit for rendering decisions, the proceedings shall be completed in accordance with the time-limit specified in art. 73 of the General Administrative Procedures Act; art. 27 shall be unaffected.

(4) The authority shall notify the competent aliens' police authority concerning the enforceability of rulings.

(5) If Directive 2001/55/EC on Minimum Standards for Giving temporary Protection in the Event of a Mass Influx of Displaced Persons and on Measures Promoting a Balance of Efforts between Member States in Receiving Such Persons and Bearing the Consequences thereof, is applicable or if a ministerial order is issued pursuant to art. 76 of the Settlement and Residence Act, the computation of the time-limit for procedures in respect of the persons concerned pursuant to the present federal act shall be suspended for the duration of the temporary protection.

### **Service of Documents**

**Article 23.** (1) The initial reception centre at which an asylum seeker is present or the accommodation at which an asylum seeker receives welfare support shall be his address for personal delivery of notifications in accordance with the Federal Act Concerning the Service of Official Documents (Process Service Act – ZustG), FLG No. 200/1982.

(2) Summonses in admission procedures shall be delivered solely to the asylum seeker in person and – if representation exists in accordance with art. 16 or the matter concerns procedural acts at which a legal adviser has to be present – to a legal adviser. If the asylum seeker also has a voluntary representative, that representative shall be notified as soon as possible by the legal adviser concerning any summonses and the status of the procedure, should the asylum seeker so wish.

(3) With regard to delivery of notifications of rejection or dismissal rulings issued in conjunction with an enforceable expulsion order (art. 10), the asylum seeker shall in all cases be designated as the addressee if at the time of delivery the asylum seeker has de facto protection against deportation (art. 12) or possesses right of residence pursuant to the present federal act (art. 13). If service in such event is effected to an address for delivery of notifications (art. 2, subpara 5, of the Process Service Act), it shall be performed by agents of the public security service unless it is carried out by serving officials of the authority at its premises itself. Any depositing of mail required in such event shall be effected at the nearest office of the security service.

(4) If the asylum seeker has a representative who is authorized to receive notifications, the service of documents in the cases referred to in para (3) above shall also be effected to him. Any time-limits dependent on the service of documents shall be computed only as from delivery to that authorized representative.

(5) Paras (2) to (4) above shall not apply in the case of applications by asylum seekers who, at the time of the intended delivery, possess a right of residence which is not based on the present federal act.

(6) If, on the basis of the asylum seeker's statements concerning his age, service is effected to a legal adviser or a youth welfare agency (art. 16) as legal representative, such service shall also be valid if, at the time of delivery, the asylum seeker is of full age.

### **Discontinuation of Procedures and Unjustified Absence from Initial Reception Centres**

**Article 24.** (1) An asylum seeker shall have evaded the asylum procedure if:

1. owing to a breach of his duty of cooperation (art. 15), his place of residence is not known to the authority and cannot otherwise be readily established by the authority or
2. he voluntarily leaves the federal territory and the file on the procedure is not to be closed as no longer relevant (art. 25, para (1)).

(2) Asylum procedures shall be discontinued if an asylum seeker has evaded the procedure (para (1) above) and a decision cannot be taken without a further interview or hearing. A discontinued procedure shall be resumed ex officio as soon as the establishment of the material facts is possible. Upon the resumption of the procedure, the time-limit for

rendering decisions, as referred to in art. 73, para (1), of the General Administrative Procedures Act, shall be re-computed. The resumption of a procedure shall be no longer admissible after the expiry of two years from the time of its discontinuation. If a procedure with the Federal Asylum Agency is to be discontinued, the steps set out in art. 26 shall be followed.

(3) If the facts relevant to a decision are established and the asylum seeker has evaded the procedure (para (1) above), the fact that he has not yet been interviewed by the authority shall not preclude the rendering of a decision.

(4) An asylum seeker shall have absented himself without justification from the initial reception centre if he fails to observe appointment dates fixed for him in the admission procedure by the Federal Asylum Agency, notwithstanding a request to that effect, and cannot be found at the initial reception centre. In particular, a case of hospitalization shall not constitute unjustified absence from the initial reception centre.

### **Non-Relevance and Withdrawal of Applications**

**Article 25.** (1) The file on an application for international protection shall be closed as no longer relevant:

1. in family procedures if, after the involvement of the Federal Asylum Agency, the alien is not granted entry;
2. if the application is filed with an agent of the public security service and the alien having entitlement to reside in Austria does not submit that application in person at the initial reception centre within fourteen days (art. 43, para (1));
3. if the alien voluntarily departs to the country of origin upon his exit or
4. if the application was filed in writing, unless such action was admissible in accordance with article 17, para (3).

(2) Withdrawal of an application for international protection in proceedings before the authority of first resort shall not be possible unless the asylum seeker is lawfully settled in Austria (article 2, para (2), of the Settlement and Residence Act). The withdrawal of an application for international protection in proceedings before the authority of second resort shall be deemed to be a withdrawal of the appeal. The files relating to submissions whereby applications for international protection are to be withdrawn shall, once the asylum seeker has been informed of the legal consequences, be closed as no longer relevant if the submission is not deemed to be a withdrawal of the appeal.

### **Arrest Warrant**

**Article 26.** (1) The Federal Asylum Agency may issue an arrest warrant against an alien who:

1. has evaded the procedure (art. 24, para (1)) or
2. has absented himself without justification from the initial reception centre (article 24, para (4)).

(2) The custody of an alien against whom an arrest warrant has been issued shall be reported without delay to the Federal Asylum Agency. The latter shall indicate when and to which initial reception centre or branch office of the Federal Asylum Agency the alien is to be transferred. Custody pursuant to an arrest warrant may not exceed 72 hours and shall cease upon completion of the necessary procedural acts.

(3) An arrest warrant shall be revoked if:

1. the procedure has been discontinued and its resumption is no longer admissible (article 24, para (2));
2. the asylum seeker voluntarily notifies the authority of his place of residence and it may not be assumed, on the basis of certain facts, that he will again evade the procedure or



3. the asylum seeker again voluntarily presents himself at the initial reception centre during the admission procedure and it may not be assumed, on the basis of certain facts, that he will again absent himself from there without justification.
- (4) The Federal Asylum Agency shall notify the security authorities of the issue and revocation of any arrest warrant.

### **Initiation of Expulsion Procedures**

**Article 27.** (1) An expulsion procedure pursuant to the present federal act shall be deemed to be initiated:

1. if during the admission procedure, notification is effected in accordance with subparas 4 or 5 of article 29, para (3), and
2. if the procedure with the Independent Federal Asylum Review Board was to be discontinued (art. 24, para (2)) and the decision of the Federal Asylum Agency in that procedure has been issued in conjunction with an expulsion order (article 10).

(2) The authority shall also initiate an expulsion procedure if the inquiries to date justify the assumption that the application for international protection is to be dismissed or rejected in regard to the granting of both asylum status and subsidiary protection status and if there is a specific public interest in the accelerated conduct of the procedure. The initiation of the expulsion procedure shall be documented by means of a file note.

(3) A specific public interest in the accelerated conduct of the procedure shall exist in particular in the case of an alien:

1. who has been convicted, by final judgment, of an offence punishable by the courts which is prosecutable ex officio and was committed wilfully;
2. against whom charges have been brought by the Department of Public Prosecution by reason of an offence punishable by the courts which comes under lower-court jurisdiction and which has to be committed wilfully or
3. who has been caught in the act of committing an offence (art. 17 of the CC).

(4) An expulsion procedure initiated pursuant to subpara 1 of para (1) above shall be discontinued if the procedure is admitted. An expulsion procedure initiated pursuant to subpara 2 of para (1) above shall be discontinued if the inquiries to date justify the assumption that the application for international protection is not to be dismissed or rejected in regard to the granting of either asylum status or subsidiary protection status or if the asylum seeker voluntarily notifies the Independent Federal Asylum Review Board of his place of residence and it may not be assumed, on the basis of certain facts, that he will again evade the procedure.

(5) An expulsion procedure initiated by the authority pursuant to para (2) above shall be discontinued if the conditions required for its initiation no longer exist.

(6) The discontinuation of any expulsion procedure shall not preclude its subsequent re-initiation.

(7) The initiation and discontinuation of any expulsion procedure shall be reported to the competent aliens' police authority.

(8) A procedure in which an expulsion procedure has been initiated shall be ruled on as quickly as possible and at the latest within three months from initiation of the expulsion procedure or from the lodging of an appeal which has suspensory effect.

## **Section 2 Special Provisions Relating to Admission Procedures**

### **Admission Procedures**

**Article 28.** (1) If it is expected that the application will not be rejected, the procedure shall be admitted unless a substantive ruling is rendered on the procedure prior to admission. Admission shall be granted with the issue of a residence entitlement card (art. 51); an

administrative decision shall then not be required. Admission shall not preclude a subsequent rejection ruling.

(2) If, within 20 days from submission of an application for international protection, the Federal Asylum Agency does not rule that the application is to be rejected, the application shall be admitted unless consultations are held in accordance with the Dublin Regulation or a treaty concerning the determination of responsibility for the examination of applications for asylum or applications for international protection. The asylum seeker shall be notified of the holding of such consultations within the 20-day time-limit. In that event, the 20-day time-limit shall not apply. It shall also not apply if the asylum seeker does not cooperate in the procedure, the procedure is deemed no longer relevant or the asylum seeker evades the procedure. If for reasons relating to his person the asylum seeker is unable to cooperate in the procedure, the computation of the time-limit referred to in the first sentence of the present paragraph shall be suspended.

(3) The upholding or dismissal of the application in the admission procedure shall replace the admission ruling (para (1) above). If the application is dismissed in the admission procedure, such application shall be deemed to be admitted if or as soon as an appeal against that ruling has suspensory effect.

(4) The asylum seeker shall be offered the possibility of undergoing a medical examination at the initial reception centre.

### **Procedures at Initial Reception Centres**

**Article 29.** (1) Admission procedures shall be commenced upon the submission of applications for international protection and be conducted at an initial reception centre of the Federal Asylum Agency, except as otherwise laid down in the present federal act. Art. 17, paras (3) and (6), shall apply. Without delay following submission of an application, the asylum seeker shall be provided with guidance and initial information concerning the asylum procedure in a language understandable to him.

(2) Following submission of an application for international protection, an interrogation of the asylum seeker shall be conducted within 48 hours, and at the latest after 72 hours, by agents of the public security service (art. 19, para (1)) unless any such interrogation has already been conducted to a sufficient extent when the asylum seeker was transferred to the initial reception centre. Saturdays, Sundays and public holidays shall suspend the computation of the time-limit referred to in the first sentence of the present para.

(3) Upon completion of the necessary inquiries, the authority, depending on the status of the preliminary investigation, shall:

1. issue a residence entitlement card (art. 51) to the asylum seeker;
2. uphold his application for international protection by the granting of asylum status (art. 3);
3. notify the asylum seeker by procedural order (art. 63, para (2), of the General Administrative Procedures Act) that it is intended that his application for international protection is to be upheld by the granting of subsidiary protection status (art. 8, para (1)) and to be dismissed in regard to asylum status;
4. notify the asylum seeker by procedural order (art. 63, para (2), of the General Administrative Procedures Act) that it is intended that his application for international protection is to be rejected (art. 4, 5 and art. 68, para (1), of the General Administrative Procedures Act) or
5. notify the asylum seeker by procedural order (art. 63, para (2), of the General Administrative Procedures Act) that it is intended that his application for international protection is to be dismissed.

(4) In the case of notifications as referred to in subparagraphs 3 to 5 of para (3) above, the authority shall refer the asylum seeker to a legal adviser. The asylum seeker shall be furnished with a copy of the case record and be granted a time-limit of not less than 24 hours in which to make preparations. The asylum seeker and the legal adviser shall simultaneously be summoned to attend an interview held to afford the Parties an opportunity to be heard,

after that time-limit has expired. Within that period, legal advice (art. 64 and 65) shall be provided; a copy of the case record shall be made accessible to the legal adviser without delay (art. 57, para (1), subpara 3) unless they are exempt from the right of inspection of records (art. 17, para (3) of the General Administrative Procedures Act). If the asylum seeker receives welfare support at the initial reception centre, the provision of legal advice shall take place there. If the asylum seeker is in custody, legal advice may also be provided at the detention premises.

(5) The legal adviser shall be present at the interview held to afford the parties an opportunity to be heard. At the commencement of that interview, the evidentiary findings to date shall be communicated to the asylum seeker. The asylum seeker shall have the possibility of adducing or presenting additional facts and evidence.

### **Victims of Violence**

**Article 30.** If, in the admission procedure, it can be assumed with a high degree of probability that the asylum seeker is suffering from a medically significant stress-related mental disorder as a result of torture or like event which:

1. prevents him from defending his interests in the procedure or
2. entails for him a risk of permanent harm or long-term effects,

a notification as referred to in article 29, para (3), subpara 5, shall not be effected. The application shall not be dismissed in the admission procedure. In the further course of the procedure, due consideration shall be given to the asylum seeker's specific needs. Article 10, para (3), shall apply.

### **Section 3**

#### **Special Provisions Relating to Procedures at Airports**

##### **Arrival via Airports and Transfer to Initial Reception Centres**

**Article 31.** (1) An alien who, after arriving via an airport (article 1, subpara 1, of the Airport Ground Handling Act (FBG), FLG I No. 97/1998) at which an initial reception centre at the airport is established, files an application for international protection shall be transferred to that initial reception centre unless the Federal Asylum Agency permits his entry on the basis of the information available. Except as otherwise laid down in the present section, the provisions of section 2 shall be applicable to procedures at airports. If the alien's entry is permitted, he shall be transferred to an initial reception centre within Austria; the provisions of the present section shall not then be applicable to the further conduct of the procedure.

(2) Entry shall be permitted if, on the basis of the status of the investigation procedure, a rejection or dismissal is not or is no longer likely in the procedure at the airport.

(3) If an alien files an application for international protection in the course of his deportation via an airport at which an initial reception centre at the airport is established, he shall be transferred to the initial reception centre at the airport. The provisions of the present section shall be applicable to him.

##### **Measures to Guarantee Rejection at the Border**

**Article 32.** (1) An alien who has been transferred to an initial reception centre at the airport may, for the purpose of guaranteeing his rejection at the border, be required to remain at a specific place in the border control area or in the area of this initial reception centre if and for as long as his entry is not permitted (measure to guarantee rejection at the border); he shall be entitled to leave Austria at any time.

(2) The intended ruling by the authority of first resort shall be communicated to the United Nations High Commissioner for Refugees within one week from the asylum seeker's

transfer to the initial reception centre. If the application is to be rejected by reason of absence of responsibility of Austria pursuant to the Dublin Regulation or a treaty concerning the determination of responsibility for the examination of applications for asylum or applications for international protection, the consultations shall be initiated within one week; the asylum seeker shall be notified thereof.

(3) A measure to guarantee rejection at the border may also be maintained in force:

1. until midnight on the date at which the consent or objection of the United Nations High Commissioner for Refugees (article 63) is received;
2. until the expiry of the time-limit for lodging appeals or
3. for the duration of the appeal proceedings.

(4) A measure to guarantee rejection at the border shall be terminated if the Federal Asylum Agency gives notification that the asylum seeker's entry is to be permitted. Such measure may be maintained in force only for as long as is absolutely necessary but in no circumstances for more than six weeks.

### **Special Procedural Rules Applying to Procedures at Airports**

**Article 33.** (1) The dismissal of an application at an initial reception centre at the airport shall be admissible only if there is no substantiated evidence to indicate that the asylum seeker would be granted asylum status or subsidiary protection status and:

1. the asylum seeker has, despite being informed of the consequences, attempted to deceive the asylum authority concerning his true identity or nationality or the authenticity of his documents;
2. the allegations made by the asylum seeker concerning his situation of danger clearly do not correspond with reality;
3. the asylum seeker has not claimed persecution in the country of origin or
4. the asylum seeker comes from a safe country of origin (art. 39).

(2) The dismissal of an application for international protection pursuant to para (1) above and the rejection of an application by reason of existing protection in a safe third country (art. 4) may be effected by the Federal Asylum Agency only with the consent of the United Nations High Commissioner for Refugees. In procedures at an airport, one interview shall be sufficient.

(3) The time-limit for lodging appeals against a ruling by the Federal Asylum Agency in procedures at an airport shall be seven days.

(4) The Independent Federal Asylum Review Board shall render its decision in procedures at an airport within two weeks from the submission of the appeal. A hearing in the appeal proceedings shall be conducted at the initial reception centre at the airport. The asylum seeker concerned shall be informed that it is a hearing by the appeal authority.

(5) In procedures at an airport, no decision on expulsion shall be rendered. Rejection at the border may be enforced only after the decision of total dismissal or rejection becomes final.

## **Section 4 Special Provisions Relating to Family Procedures**

### **Family Procedures within Austria**

**Article 34.** (1) If a family member (subpara 22 of art. 2) of:

1. an alien who has been granted asylum status;
2. an alien who has been granted subsidiary protection status (art. 8) or
3. an asylum seeker

files an application for international protection, such application shall be deemed to be an application for the granting of the same protection.

(2) The authority shall, pursuant to an application in respect of a family member of an alien who has been granted asylum status, grant asylum status by administrative decision to the family member if it is not possible to continue an existing family life, within the meaning of art. 8 of the European Convention on Human Rights, with the family member in another country.

(3) The authority shall, pursuant to an application in respect of a family member of an alien who has been granted subsidiary protection status where that family member is present in the federal territory, grant subsidiary protection status by administrative decision unless:

1. it is possible to continue an existing family life, within the meaning of art. 8 of the European Convention on Human Rights, with the family member in another country or

2. the asylum seeker is to be granted asylum status.

(4) Applications in respect of an asylum seeker's family members shall be examined separately by the authority; the procedures shall be conducted jointly and all family members shall receive the same scope of protection. Either asylum status or subsidiary protection status shall be granted, with the granting of asylum status having precedence, unless all applications are to be rejected or dismissed as inadmissible. A separate administrative decision shall be issued to each asylum seeker.

### **Applications in Family Procedures Filed with Consular Representation Offices**

**Article 35.** (1) A family member of an alien who has been granted asylum status or subsidiary protection status and who is outside Austria shall file an application as referred to in art. 34, para (1), with the Austrian consular representation office abroad entrusted with consular functions (consular representation office). Such application shall additionally be deemed to be an application for the granting of entry authorization.

(2) If the family member of an alien who has been granted subsidiary protection status is outside Austria, that person shall, upon application, be granted entry following the first extension of the limited right of residence of the alien who has already been granted subsidiary protection status unless it may be assumed, on the basis of certain facts, that the conditions required for the granting of subsidiary protection status no longer exist or will no longer exist in three months. Para (4) below shall additionally apply.

(3) If an application is filed pursuant to paras (1) and (2) above, the consular representation office shall ensure that the alien completes an application form and questionnaire drawn up in a language understandable to him; the format and text of the application form and questionnaire shall be determined by the Federal Minister of the Interior, in agreement with the Federal Minister of Foreign Affairs and after consultation with the United Nations High Commissioner for Refugees (art. 63), in such a way that completion thereof serves to establish the material facts. The consular representation office shall also make a written record of the content of the documents submitted to it. Applications in family procedures shall be forwarded to the Federal Asylum Agency without delay.

(4) The consular representation office shall issue an entry visa without further formality to an alien as referred to in para (1) or (2) above if the Federal Asylum Agency has given notification that asylum status or subsidiary protection status is likely to be granted. Such notification may be issued by the Federal Asylum Agency only if the Federal Ministry of the Interior, which is to be involved, has given notification that entry is not contrary to public interests within the meaning of art. 8, para (2), of the European Convention on Human Rights. The consular representation office shall also inform the alien that the application shall be deemed submitted only after presentation in person at the initial reception centre (art. 17, para (2)).

## **Section 5 Appeals**

### **Effect of Appeals**

**Article 36.** (1) An appeal against a decision rejecting an application shall not have suspensory effect. An appeal against an expulsion order issued in conjunction with such ruling shall have suspensory effect only if it is allowed by the Independent Federal Asylum Review Board.

(2) An appeal against other decisions and the expulsion order issued in conjunction therewith shall have suspensory effect unless it is disallowed.

(3) If an appeal against a rejection or dismissal ruling in family procedures is lodged solely by one affected family member, it shall be deemed to be also an appeal against the rulings affecting the other family members (subpara 22 of art. 2); none of those rulings may then be treated as final. All appeals against rulings in family procedures shall have suspensory effect as soon as at least one appeal in the same family procedure has suspensory effect.

(4) If an appeal against an expulsion order does not have suspensory effect, the expulsion order shall be enforceable. Execution of the deportation or forcible return in implementation of such expulsion order shall be postponed until expiry of the time-limit for lodging appeals or, if an appeal is lodged, until midnight on the seventh day from submission of the appeal. The Independent Federal Asylum Review Board shall notify the Federal Asylum Agency without delay of the receipt of the appeal submission and of the granting of suspensory effect.

(5) If an appeal is lodged against an enforceable ruling or if the suspensory effect of such appeal is allowed, the authority shall notify the competent aliens' police authority.

### **Allowance of Suspensory Effect of Appeals**

**Article 37.** (1) If an appeal is lodged against an expulsion order issued in conjunction with a rejection ruling on an application for international protection, the suspensory effect of such appeal shall be allowed by the Independent Federal Asylum Review Board within seven days from submission of the appeal if it can be assumed that the alien's rejection at the border, forcible return or deportation to the country to which the expulsion order applies would constitute a real risk of violation of art. 2, art. 3 of the European Convention on Human Rights or of Protocol No. 6 or Protocol No. 13 to the Convention or would represent for the alien as a civilian a serious threat to his life or person as a result of arbitrary violence in connection with an international or internal conflict.

(2) In the decision whether an appeal against an expulsion order issued in conjunction with a decision as referred to in art. 5 is to be allowed suspensory effect, due consideration shall be given to the Community law principles contained in art. 19, para (2), and art. 20, para (1), subpara e, of the Dublin Regulation and the need for effective implementation of Community law.

(3) An appeal against a rejection ruling as referred to in para (1) above which has been allowed suspensory effect in regard to the expulsion order shall be ruled on by the Independent Federal Asylum Review Board within two weeks.

(4) Expiry of the time-limit as referred to in para (1) above shall not preclude the allowance of suspensory effect.

### **Disallowance of Suspensory Effect of Appeals**

**Article 38.** (1) The suspensory effect of an appeal against a dismissal ruling on an application for international protection and the expulsion order issued in conjunction therewith may be disallowed by the Federal Asylum Agency if:

1. the asylum seeker comes from a safe country of origin (art. 39);
2. the asylum seeker has already been resident in Austria for at least three months prior to the filing of the application, unless he was unable to file the application for international protection within three months of entry owing to specific circumstances not attributable to him. Material changes in the circumstances relating to persecution in the country of origin shall be treated as such;
3. the asylum seeker has, despite being informed of the consequences thereof, attempted to deceive the asylum authority concerning his true identity or nationality or the authenticity of his documents;
4. the asylum seeker has not adduced any reasons for persecution;
5. the allegations made by the asylum seeker concerning his situation of danger clearly do not correspond with reality or
6. an enforceable deportation order and an enforceable residence prohibition issued against the asylum seeker prior to the filing of the application for international protection.

(2) An appeal whose suspensory effect has been disallowed by the Federal Asylum Agency shall be allowed suspensory effect by the Independent Federal Asylum Review Board, by administrative decision, within seven days from submission of the appeal if it can be assumed that the alien's rejection at the border, forcible return or deportation to his country of origin would constitute a real risk of violation of art. 2, art. 3 of the European Convention on Human Rights or of Protocol No. 6 or Protocol No. 13 to the Convention or would represent for the alien as a civilian a serious threat to his life or person as a result of arbitrary violence in connection with an international or internal conflict.

(3) Expiry of the time-limit as referred to in para (2) above shall not preclude the allowance of suspensory effect.

### **Safe Countries of Origin**

**Article 39.** (1) Safe countries of origin, as referred to in art. 38, para (1), subpara 1, shall be:

1. Belgium;
2. Denmark
3. Germany;
4. Estonia;
5. Finland;
6. France;
7. Greece;
8. Ireland;
9. Italy;
10. Latvia;
11. Lithuania;
12. Luxembourg;
13. Malta;
14. the Netherlands;
15. Poland;
16. Portugal;
17. Sweden;
18. Slovakia;
19. Slovenia;
20. Spain;
21. Czech Republic;
22. Hungary;
23. United Kingdom and
24. Cyprus.

(2) If, upon a substantiated proposal by one third of the Member States, by the European Parliament or by the Commission, it is determined by the Council, acting by a majority of four fifths of its members, that there is a clear risk of a serious breach by a Member State of principles stated in article 6, para (1), of the TEU (article 7, para (1), of the TEU), the suspensory effect of appeals against rulings on applications by asylum seekers from that country of origin shall not be disallowed.

(3) If, after a procedure has been initiated pursuant to article 7, para (1), of the TEU, a determination as referred to in article 7, para (2), of the TEU is not made or all the measures imposed in connection therewith (art. 7, para (3), of the TEU) are revoked (art. 7, para (4), of the TEU), the suspensory effect of appeals against applications by asylum seekers from that country of origin may again be disallowed.

(4) Additional safe countries of origin shall be:

1. Australia;
2. Iceland;
3. Canada;
4. Liechtenstein;
5. New Zealand;
6. Norway;
7. Switzerland;
8. Bulgaria and
9. Romania.

(5) The Federal Government shall be empowered to stipulate by ministerial order that:

1. the suspensory effect of appeals by asylum seekers who come from a country of origin named in para (4) above may no longer be disallowed and
2. countries other than those named in para (4) above are to be deemed safe countries of origin.

In the making of any such order, account shall be taken primarily of the existence or absence of state persecution, protection from private persecution and legal protection against human rights violations.

## **Section 6**

### **Special Provisions Applying to Procedure with the Authority of Second Resort**

#### **Submissions in Appeal Proceedings**

**Article 40.** (1) In an appeal against a ruling by the Federal Asylum Agency, new facts and evidence may only be submitted:

1. if the grounds on which the ruling was based have undergone any material change since the time of the ruling by the authority of first resort;
2. if the procedure conducted by the authority of first resort was irregular;
3. if such new facts and evidence were not accessible to the asylum seeker by the time of the ruling by the authority of first resort or
4. if the asylum seeker had been unable to submit such new facts and evidence.

(2) A decision on the admissibility of the submission of new facts and evidence shall not be rendered unless such facts and evidence are relevant to the ruling by the Independent Federal Asylum Review Board.

#### **Procedures with the Authority of Second Resort**

**Article 41.** (1) The Federal Asylum Agency shall be invited to attend hearings with the Independent Federal Asylum Review Board; it shall be entitled to submit requests and questions.

(2) Appeals against rulings rejecting applications in admission procedures shall be ruled on by the Independent Federal Asylum Review Board within eight weeks unless the



suspensory effect of an appeal against an expulsion order issued in conjunction with the ruling has been allowed.

(3) In a procedure relating to an appeal against a rejection ruling and the expulsion order issued in conjunction therewith, art. 66, para (2), of the General Administrative Procedures Act shall not apply. If an appeal against the ruling by the Federal Asylum Agency in an admission procedure is to be upheld, the procedure shall be admitted. An appeal against the ruling in an admission procedure shall also be upheld if the facts available are so inadequate that the conduct of an oral hearing or a further oral hearing appears unavoidable.

(4) The Independent Federal Asylum Review Board may, without the conduct of an oral hearing, rule on the allowance of suspensory effect which is not granted in respect of an appeal by operation of the law (art. 37), or which was disallowed by the Federal Asylum Agency in respect of an appeal (art. 38), and also on appeals against rejection decisions in admission procedures. In other procedures, art. 67d of the General Administrative Procedures Act shall apply.

(5) In proceedings against a decision rendered in procedures at airports, the Independent Federal Asylum Review Board shall rule on the substance of the case if the facts have been sufficiently established.

(6) If an ordinary appeal is lodged against an expulsion order and the alien is no longer resident in the federal territory at the time when the appeal ruling is issued, the Independent Federal Asylum Review Board shall establish only whether the expulsion order was lawful at the time of issue. If the expulsion order was unlawful, the alien's re-entry shall at the same time be permitted.

### **Precedent-Setting Cases**

**Article 42.** (1) A case may be referred to the competent enlarged review panel by the member responsible for rendering a decision if the latter is of the opinion that the issue to be resolved is of fundamental importance and could be relevant in a large number of procedures that are currently pending or are to be dealt with in the near future. In further, similarly based cases, the Independent Federal Asylum Review Board may render its decision without the conduct of an oral hearing if the points relevant to a decision are clarified by precedent.

(2) Precedent-setting cases shall be published based on an anonymous form. In such publications, reference shall be made to subsequent judgments that rely on precedent and are pronounced by courts of justice dealing with matters of public law.

## **Chapter 5**

### **Involvement of Agents of the Public Security Service**

#### **Filing of Applications for International Protection with Security Authorities or with Agents of the Public Security Service**

**Article 43.** (1) If an alien who is entitled to reside in Austria files an application for international protection with a security authority or with an agent of the public security service, he shall be requested to submit that application at an initial reception centre within fourteen days. The Federal Asylum Agency shall be informed of the filing of the application by means of written notification.

(2) If an alien who is not entitled to reside in Austria files an application for international protection with a security authority or with an agent of the public security service, he shall be transferred to an initial reception centre by agents of the public security service for the purpose of securing his expulsion. An alien who has filed an application for international protection in accordance with para (1) above and who, before the application for international protection is submitted and deemed no longer relevant (article 25, para (1)) but after the expiry of his residence entitlement, is discovered shall also be transferred to an initial reception centre.

## **Interrogations, Searches and Identification procedures**

**Article 44.** (1) An alien:

1. who is to be transferred to an initial reception centre;
2. whose transfer to such a centre does not take place in accordance with art. 45, para (1) or (2), or
3. who submits an application for international protection and has not yet undergone an interrogation in that procedure

shall be required to undergo an initial interrogation (art. 19, para (1)) by officials of the public security service.

(2) An alien:

1. who is to be transferred to an initial reception centre;
2. whose transfer to such a centre does not take place in accordance with art. 45, para (1) or (2), or
3. who submits an application for international protection

shall undergo a search of his clothing and of his belongings brought with him if it cannot be ruled out that the alien may be carrying with him articles and documents which can provide information concerning his identity or nationality, the route followed by him or the reasons for his flight and which he does not present upon request.

(3) Agents of the public security service shall also be empowered to search the clothing of an asylum seeker and the belongings brought with him if it may be assumed, on the basis of certain facts in conjunction with an interview, that the asylum seeker is carrying with him documents and articles which, in accordance with art. 15, para (1), subpara 5, he is obliged to hand over and which he does not voluntarily hand over upon request.

(4) In the course of a search or voluntary hand-over, as referred to in para (2) or (3) above, all documents and articles which can provide information concerning the alien's identity or nationality, the route followed by him or the reasons for his flight shall be placed in safe keeping. The asylum seeker shall be furnished with written certification of the safe-keeping operation. Documents and Articles placed in safe keeping shall be delivered to the initial reception centre at the same time as the alien is transferred thereto. If the alien's transfer to such a centre does not take place (art. 45, paras (1) and (2)), documents and Articles placed in safe keeping shall be handed over to the Federal Asylum Agency as quickly as possible.

(5) An alien who is over 14 years old and:

1. who is to be transferred to an initial reception centre;
2. whose transfer to such a centre does not take place in accordance with art. 45, para (1) or (2), or
3. who has submitted an application for international protection

shall undergo identification procedures unless such operations have already been carried out.

(6) The powers referred to in paras (2) to (5) above shall also be conferred upon duly authorized officials of the Federal Asylum Agency (art. 58, para (7)). The Order of the Federal Minister of the Interior Issuing Rules for the Intervention of Agents of the Public Security Service (Code of Conduct Regulation – RLV), FLG No. 266/1993, shall apply to such officials.

## **Transfer to Initial Reception Centres**

**Article 45.** (1) The Federal Asylum Agency shall be notified prior to any transfer to an initial reception centre. The Federal Asylum Agency may order that such transfer shall not take place if:

1. the asylum seeker concerned is in custody pending deportation, in penal confinement or in pre-trial detention or
2. the provision of welfare support in the initial reception centre is not possible owing to specific unforeseeable circumstances.

(2) Transfer to an initial reception centre shall also not take place if it may be assumed, on the basis of the outcome of the interrogation, search and identification procedures, that the alien's application will be rejected owing to the absence of responsibility of Austria (art. 4 et seq.) and the alien will be transferred to the aliens' police authority.

(3) The escorting agents of the public security service shall hand over to the initial reception centre, at the latest at the same time as the alien is transferred there (art. 43, para (2)), the record of the interrogation and a report stating the time, place and circumstances of the application and containing particulars of any evidence as to the alien's nationality and the route followed by him, in particular the place of the border crossing.

(4) If an alien's transfer to an initial reception centre does not take place (paras (1) and (2) above), the record of the interrogation and the report as referred to in para (3) above shall be handed over to the Federal Asylum Agency as quickly as possible.

### **Transfer Following Involvement of the Aliens' Police Authority**

**Article 46.** If a transfer to the Federal Asylum Agency has not taken place in accordance with art. 45, para (2), an alien who has filed an application for international protection shall be transferred by agents of the public security service to the Federal Asylum Agency for the purpose of securing his expulsion, unless an order for detention pending deportation is imposed.

### **Interference with the Right to Liberty of the Person**

**Article 47.** (1) Agents of the public security service shall be empowered to arrest an alien who has filed an application for international protection, for the purpose of transferring him to the asylum authorities, if:

1. the alien is not entitled to reside in the federal territory or
2. an arrest warrant (art. 26) has been issued against the alien.

(2) An arrest pursuant to subpara 1 of para (1) above may be maintained in force only for as long as is necessary; it may in no circumstances exceed 48 hours.

(3) Agents of the public security service shall be empowered to prevent asylum seekers who are not entitled to reside in the federal territory from leaving the initial reception centre until they have undergone identification procedures and a search (art. 44), insofar as such operations are admissible.

(4) In procedures at an airport, agents of the public security service shall, during the time that a measure guaranteeing rejection at the border is admissible, be empowered to prevent a rejected asylum seeker from entering the federal territory unless he is permitted to do so.

### **Withdrawal of Cards**

**Article 48.** Agents of the public security service and the security authorities (art. 4 of the Federal Act on the Organisation of Security Administration and the Exercise of Security Police Services (Security Police Act - SPG), FLG No. 566/1991, shall be empowered to withdraw cards as referred to in the present federal act from anyone if:

1. the cards have been revoked (art. 53, para (1));
2. the cards are to be returned (art. 53, para (2)) or
3. the cards are held by persons to whom they were not issued, except in the case of legal representatives of under-age persons.

Withdrawn cards shall be presented to the Federal Asylum Agency.

## **Exercise of Direct Powers of Constraint**

**Article 49.** (1) In discharging the authority conferred under the present chapter, agents of the public security service shall be entitled to exercise direct powers of constraint; agents of the public security service shall notify and warn the person concerned regarding the exercise of direct powers of constraint.

(2) If, in discharging of any authority as referred to in art. 44, para (6), it would be necessary to overcome resistance on the part of the person concerned, authorized officials of the Federal Asylum Agency shall request an agent of the public security service to perform the official act.

## **Chapter 6**

### **Cards for Asylum Seekers and Persons Holding Subsidiary Protection Status**

#### **Procedure Cards**

**Article 50.** (1) An asylum seeker shall be issued with a procedure card at the initial reception centre. This card shall confer entitlement to stay at the initial reception centre and to use the welfare support services there, in accordance with the provisions of the Federal Act Regulating Basic Welfare Support of Asylum Seekers in Admission Procedures and of Certain Other Aliens (GVG-B 2005), FLG No. 405/1991. Also, the procedural stages that are required for the purpose of completing the admission procedure may be recorded using the procedure card.

(2) The specific layout of the procedure card shall be regulated by order of the Federal Minister of the Interior. The procedure card shall in particular contain the designations "Republic of Austria" and "Procedure Card", the name, sex, date of birth and a photograph of the asylum seeker.

#### **Residence Entitlement Cards**

**Article 51.** (1) An asylum seeker whose procedure is to be admitted shall be issued with a residence entitlement card. The card shall be valid until an enforceable decision is rendered, until the discontinuation or the non-relevance of the procedure.

(2) The residence entitlement card shall serve as proof of identity for procedures pursuant to the present federal act and as proof of lawfulness of residence in the federal territory. The residence entitlement card shall be returned by the alien to the Federal Asylum Agency upon completion of the procedure or in the event of withdrawal of right of residence.

(3) The specific layout of the residence entitlement card shall be regulated by order of the Federal Minister of the Interior. The residence entitlement card shall in particular contain the designations "Republic of Austria" and "Residence Entitlement Card", the name, sex, date of birth, nationality, a photograph and the signature of the asylum seeker and also the title of the authority, date of issue and signature of the authorizing official.

### **Cards for Persons Holding Subsidiary Protection Status**

**Article 52.** (1) An alien who has been granted subsidiary protection status shall be issued with a card for persons holding subsidiary protection status. The card shall serve as proof of identity and lawfulness of residence in the federal territory. The card shall be returned to the Federal Asylum Agency upon withdrawal of subsidiary protection status.

(2) The specific layout of the card for persons eligible for subsidiary protection shall be regulated by order of the Federal Minister of the Interior. The card for persons holding subsidiary protection status shall in particular contain the designations "Republic of Austria" and "Card for Persons Holding Subsidiary Protection Status", the name, sex, date of birth,

nationality, a photograph and the signature of the person entitled to subsidiary protection and also the title of the authority, date of issue and signature of the authorizing official.

### **Revocation of Cards**

**Article 53.** (1) The Federal Asylum Agency shall revoke cards as referred to in the present federal act if:

1. their period of validity has expired;
2. the facts confirmed by the card do not or no longer correspond with reality;
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.

No right of appeal against revocation shall be admissible.

(2) Cards as referred to in the present federal act shall be returned by asylum seekers to the Federal Asylum Agency if they have been revoked or if circumstances exist which would justify revocation.

## **Chapter 7 Use of Personal Data**

### **General**

**Article 54.** (1) The asylum authorities may use personal data only insofar as is necessary for the discharge of the duties assigned to them.

(2) The asylum authorities may process personal data on third parties and social insurance numbers only if there is no provision for selectability from the total quantity of stored data.

(3) Data compiled pursuant to the present federal act shall be physically deleted:

1. as soon as it becomes known to the authority that the person concerned has acquired the nationality of a Member State of the European Union;
2. ten years after the procedure has been finally ruled on or an application for international protection, an asylum application or an asylum extension application has been withdrawn, discontinued or deemed no longer relevant or
3. if the death of the person concerned becomes known to the authority and five years have elapsed since that time.

### **Use of Identification Data**

**Article 55.** (1) The Federal Asylum Agency shall be empowered to arrange for aliens who are over 14 years old and

1. who file an application for international protection or
2. who are to be granted asylum status pursuant to article 3, para (4) to undergo identification procedures.

(2) Identification data shall be deleted ex officio in accordance with article 54, para (3).

(3) Article 64, 65, para (4), the first sentence of article 65, para (5), article 65, para (6), and article 73, para (7), of the Security Police Act shall apply. Measures for the establishment of personal identity may be carried out.

(4) The identification procedures and the establishment of personal identity may also be undertaken by agents of the public security service. In such cases, they intervene on behalf of the Federal Asylum Agency.

(5) An alien whom the Federal Asylum Agency has to require undergoing identification procedures shall be requested to do so. He shall be informed of the reason for the

identification procedures. He shall be furnished with an information sheet concerning such procedures. Efforts shall in principle be made to have such information sheet prepared in a language understandable to him. The person concerned shall cooperate in the identification procedures.

- (6) If the person concerned fails to comply with the request, agents of the public security service shall be empowered to transfer him to the authority for the purpose of undergoing the identification procedures. Custody for such purpose shall be admissible only for as long as the conduct of those procedures appears to have some prospect of success, subject to observance of art. 78 of the Security Police Act.

### **Central Procedural File; Information Network**

**Article 56.** (1) The asylum authorities shall be empowered to process jointly and to use procedure data compiled by them, namely procedural information on applications, rulings and appeals. In this regard, the Federal Minister of the Interior shall discharge on behalf of the asylum authorities the dual role of operator, in accordance with art. 50 of the Federal Act Concerning the Protection of Personal Data (2000 Data Protection Act – DSG 2000), FLG I No. 165/1999, and processor as defined in art. 4, subpara 5, of the 2000 Data Protection Act.

(2) The asylum authorities shall be empowered to compile procedure data processed by aliens police authorities and by settlement and residence authorities if absolutely necessary for the performance of their duties.

(3) Retrieval of data from the Central Procedural File shall be admissible only insofar as is necessary for the discharge of any duty assigned pursuant to the present federal act and the alien is identified at least by the name, a number allocated to him or an impression of the papillary ridges.

(4) Art. 54, para (3), shall apply to data processed in the Central Procedural File.

### **Specific Data Transmissions**

**Article 57.** (1) Data processed in accordance with art. 102, para (1), of the 2005 Aliens' Police Act and with art. 56 may be transmitted to the following recipients insofar as they require such data for the discharge of the duties assigned to them:

1. the security authorities (art. 4 of the Security Police Act);
2. the Office of the United Nations High Commissioner for Refugees in Austria;
3. the legal advisers at initial reception centres;
4. the parties to a treaty concerning the determination of the country responsible for examining applications for asylum or applications for international protection or the authorities of countries that are required to apply the Dublin Regulation;
5. the foreign authorities responsible for the execution of the Geneva Convention on Refugees if the establishment of identity or granting of asylum is not possible without the transmission of the data to those authorities and if it is guaranteed that such data will not be accessible to authorities of the country where the asylum seeker or refugee claims a fear of being persecuted and
6. the youth welfare agencies.

(2) Data processed in accordance with art. 102, para (1), subparagraphs 1 to 11, of the 2005 Aliens' Police Act and with art. 56 may be transmitted to the following recipients insofar as they require such data for the discharge of the duties assigned to them:

1. federal and provincial officials who perform duties in execution of the Basic Welfare Support Agreement;
2. Employment Service and territorial authorities' institutions responsible for providing care and integration assistance;
3. the local health insurance funds and the Federation of Austrian Social Insurance Institutions;
4. the independent administrative review boards;

5. the civil and criminal courts and
6. the Federal Ministry for Foreign Affairs.

(3) Data processed in accordance with:

1. art. 102, para (1), subparagraphs 1 to 9, of the 2005 Aliens' Police Act may be transmitted to the authorities responsible for civil status matters;
2. art. 102, para (1), subparagraphs 1 to 9 and 11, of the 2005 Aliens' Police Act may be transmitted to the authorities responsible for nationality matters;
3. art. 102, para (1), subparagraphs 1 to 9 and 11, of the 2005 Aliens' Police Act may be transmitted to the domicile registration authorities, insofar as they require such data for the discharge of the duties assigned to them.

(4) The security authorities shall transmit to the Federal Asylum Agency the identification data processed by them in respect of any aliens on whom the Federal Asylum Agency has compiled various data of the same kind in the course of identification procedures pursuant to art. 55.

(5) The authorities responsible for civil status matters shall notify the Federal Asylum Agency of applications for marriage by asylum seekers and aliens who have been granted asylum status or subsidiary protection status. The authorities responsible for nationality matters shall notify the Federal Asylum Agency of the conferment of nationality on any asylum seeker and alien who has been granted asylum status or subsidiary protection status.

(6) A notification as referred to in art. 105, para (2), of the 2005 Aliens' Police Act shall be transmitted by the Federal Asylum Agency to the Independent Federal Asylum Review Board if the procedure is pending before the authority of second resort. The security authorities shall notify the Federal Asylum Agency and, if appeal proceedings are pending, the Independent Federal Asylum Review Board of any suspicion of the perpetration of punishable acts by any asylum seekers, reporting the material facts.

(7) The consular representation offices (art. 35, para (1)) shall notify the Federal Asylum Agency of all official acts in regard to persons concerning whom they have knowledge of any procedure pending in Austria in relation to an application for international protection.

(8) In the retrieval of data from the Central Register which the asylum authority is allowed to carry out pursuant to the 1991 Domicile Registration Act, selectability from the total quantity of all data processed in the Central Register may also be provided for on the basis of the address in addition to the name.

(9) Insofar as the Federal Government is empowered under art. 66, para (2), of the Federal Constitutional Act to conclude international treaties, it may, provided that a reciprocal arrangement is granted and a level of data protection comparable with Austria exists, conclude intergovernmental agreements concerning the transmission of data, as referred to in para (1) above, where such data are required for the purposes stated in para (1) above. In those cases, the transmission of such data shall be the prerogative of the Federal Minister of the Interior and it shall be stipulated that the deletion of transmitted data shall be subject to the same substantive requirements as apply in Austria and that nationals of the contracting States shall be excluded from the scope of application of such agreements.

(10) The transmission of personal data on an asylum seeker to the country of origin shall, without prejudice to para (11) below, not be admissible. However, data required for the purpose of obtaining the necessary entry authorizations may be transmitted if the application has been dismissed or rejected – even if not finally – and the asylum seeker's identity is not clarified.

(11) The transmission of personal data to the country of origin for purposes of security policing and criminal justice administration shall, however, be admissible if:

1. that country is a safe country of origin (art. 39);
2. an expulsion procedure has been initiated in cases where the conditions required in accordance with subpara 2 or 3 of art. 27, para (3), exist or
3. an application for international protection has been rejected, or has been dismissed in regard to the granting of both asylum status and subsidiary protection status, by the authority of first resort, even if not finally. The fact that an application for international protection has been filed may in no circumstances emerge in the course of any such transmission.

**Chapter 8**  
**Austrian and International Authorities, Legal Advisers and Refugee Advisers**

**Section 1**  
**Austrian Authorities, Country Records and Official Objections**

**Federal Asylum Agency**

**Article 58.** (1) The asylum authority of first resort shall be Federal Asylum Agency, which shall be established in subordination to the Federal Minister of the Interior. The principal seat of the Federal Asylum Agency shall be located in Vienna. The Federal Asylum Agency shall be headed by the Director.

(2) The Federal Asylum Agency shall, with reference to individual cases, be the competent authority for the exchange of information with those countries with which the Dublin Regulation or a treaty concerning the determination of responsibility for the examination of applications for asylum or applications for international protection is applicable.

(3) The number of organizational units and the assignment of functions to them shall be established in a work allocation plan to be issued by the Director.

(4) The Director of the Federal Asylum Agency may, having regard to the number of asylum seekers normally resident in the individual administrative districts, establish branch offices of the Federal Asylum Agency in order to be able to conduct and conclude in an administratively efficient manner and without undue delay all the procedures to be undertaken.

(5) The Director shall ensure high standards of qualification of the personnel of the Federal Asylum Agency through instruction and in-service training.

(6) Agents of the public security service shall be assigned, subordinated or attached to the Federal Asylum Agency in order to discharge the duties entrusted to it. Such agents shall, within the scope of the performance of their duties pursuant to the present federal act, be empowered to take those measures of an official security nature which may not be deferred; in so doing, they shall intervene on behalf of the regionally competent federal police directorate or district administrative authority and shall notify them without delay of the measures carried out. In addition, agents of the public security service shall assist the Federal Asylum Agency in the performance of its duties at initial reception centres.

(7) Employees who are not agents of the public security service may be authorized by the Director of the Federal Asylum Agency to exercise powers of command and constraint as set out in article 44, paras (2) to (5), provided that such persons are duly qualified and specially trained for that purpose.

**Initial Reception Centres**

**Article 59.** The Federal Minister of the Interior shall be empowered to establish initial reception centres by ministerial order. Such centres shall form part of the Federal Asylum Agency and be under the authority of its director.

**Country Records**

**Article 60.** (1) The Federal Asylum Agency shall maintain country records in which facts relevant to procedures pursuant to the present federal act and relating to the situation in the countries concerned shall be entered, together with their sources.

(2) In particular, the purpose of country records shall be to gather relevant facts for:

1. assessing whether facts exist which allow it to be concluded that in a certain country there is a danger of persecution as defined in the present federal act;
2. assessing the credibility of asylum seekers' statements and



3. deciding whether a certain country is safe within the meaning of art. 39 (safe country of origin) or of art. 4 (safe third country).

The facts gathered shall be collated by specific country, scientifically reviewed on the basis of objective criteria (general analysis) and recorded in a generic manner. Records shall be rectified with respect to facts which do not or no longer correspond with reality. Any analysis based on such facts shall be corrected.

(3) The Independent Federal Asylum Review Board and courts of justice dealing with matters of public law shall, within the framework of country records, be entitled to request the Federal Asylum Agency to gather information available and evaluate information in existence or to be gathered on a particular question in connection with official assistance. The Federal Asylum Agency shall be obliged to comply with such request.

(4) Within the Federal Ministry of the Interior there shall be established an advisory board (Advisory Board on the Maintenance of Country Records), which in particular shall issue recommendations on keeping country records, gathering relevant facts, evaluating sources used and conducting analyses. The Federal Minister of the Interior shall appoint the chairman and nine members of the advisory board, who shall possess relevant specialist knowledge of asylum and immigration law and shall hold office for five years; the composition of the advisory board shall in all cases include a member of the Independent Federal Asylum Review Board, a representative of the United Nations High Commissioner for Refugees and a representative of the Federal Ministry for Foreign Affairs. The Director of the Federal Asylum Agency shall also serve on the advisory board; he may be represented in that position by an employee of the Federal Asylum Agency who is versed in the law. participation in the advisory board shall be in an honorary capacity. Necessary travelling expenses shall be reimbursed to the members of the advisory board. Art. 66 para (4), shall apply to reimbursement of travelling expenses. The Federal Minister of the Interior shall, by ministerial order, issue rules of procedure, which shall stipulate that, in the event of an equal number of votes, the chairman shall have the casting vote; in all other respects, the rules of procedure shall govern in particular the convening, conducting and recording of meetings, the decision-making process in the formulation of recommendations and the criteria for establishing a qualified minority.

(5) Country records shall be public. Documents which are subject to the requirement of confidentiality or to which the right of inspection of records (art. 17 of the General Administrative Procedures Act) does not otherwise apply shall not be accessible to the public. Also, the asylum authorities may deny public access to documents which are solely for internal official use.

(6) Country records shall be available on a free-of-charge basis to:

1. authorities engaged in federal enforcement operations;
2. the ordinary courts;
3. authorities and mandataries of the provinces engaged in implementing the Basic Welfare Support Agreement;
4. legal advisers (art. 64 et seq.);
5. the courts of justice dealing with matters of public law;
6. the United Nations High Commissioner for Refugees (UNHCR);
7. the European Court of Human Rights and the European Court of Justice and
8. foreign asylum or immigration authorities or foreign courts insofar as reciprocal arrangements exist.

For the furnishing of information, other authorities or persons shall be required to pay administrative fees, which shall be fixed by order of the Federal Minister of the Interior in agreement with the Federal Minister of Finance.

(7) If a user as referred to in subpara 1, 2 or 4 of para (6) above detects that any elements of information contained in country records do not or no longer correspond with reality, the Federal Asylum Agency shall be notified thereof. Other persons shall be entitled to report such particulars to the Federal Asylum Agency.

(8) The Federal Asylum Agency may avail itself of the services of third parties in connection with the maintenance of country records.

## **Independent Federal Asylum Review Board**

**Article 61.** Appeals lodged against decisions of the Federal Asylum Agency shall be ruled on by the Independent Federal Asylum Review Board through one of its members or, if laid down by federal act, by review panel. The member competent for rendering a decision shall refer the case to the competent review panel for its ruling if the decision would constitute a departure from previously established jurisprudence of the Independent Federal Asylum Review Board.

### **Official Objections**

**Article 62.** The Federal Minister of the Interior may lodge objections on the ground of illegality, with the Administrative Court against decisions of the Independent Federal Asylum Review Board within six weeks following notification to the Federal Asylum Agency; such action may be both for the benefit and to the detriment of the alien concerned.

## **Section 2**

### **International Protection of Asylum Seekers and Refugees**

#### **International Protection of Asylum Seekers and Refugees**

**Article 63.** (1) An asylum seeker shall be given an opportunity at any time to have recourse to the United Nations High Commissioner for Refugees.

(2) The United Nations High Commissioner for Refugees shall be notified without delay:

1. of the initiation of any procedure relating to an application for international protection;
2. if a procedure is conducted against an asylum seeker with a view to rejection at the border, forcible return or expulsion or to the imposition of a residence prohibition, deportation or asylum status withdrawal ruling.

(3) The United Nations High Commissioner for Refugees shall be entitled in all such procedures to request information, examine case records (article 17 of the General Administrative Procedures Act), be represented at interrogations, interviews and oral hearings, and enter into contact with the persons concerned at any time.

(4) Administrative regulations for the implementation of the present federal act shall be forwarded without delay to the United Nations High Commissioner for Refugees. The foregoing shall apply to administrative regulations for the implementation of the 2005 Aliens' Police Act and the Settlement and Residence Act insofar as they are of importance to asylum seekers or aliens who have been granted asylum status or subsidiary protection status.

## **Section 3**

### **Legal Advice, Support for Asylum Seekers and Refugees, and Repatriation Assistance**

#### **Legal Advice in Admission Procedures**

**Article 64.** (1) Persons versed in the law with specialist knowledge of asylum and immigration matters (legal advisers) shall be present alongside asylum seekers in admission procedures; they shall, in discharging their duties, be subject to the obligation of confidentiality.

(2) Legal advisers shall act independently and not be bound by any mandatory instructions in the discharge of their duties.

(3) The costs of legal advice shall be borne by the federal government.

(4) Legal advisers in admission procedures shall, prior to every interview following a notification as referred to in subparas 3 to 5 of art. 29, para (3), advise asylum seekers on their asylum procedure and on their prospects of being granted asylum status or subsidiary

protection status; if required for such purpose, interpreters shall be assigned to them by the Federal Asylum Agency and the investigative findings to date shall be made fully available to them. Legal advisers shall be required to take part in all interviews held to afford the parties an opportunity to be heard.

(5) In the case of asylum seekers who are unaccompanied minors, the legal adviser shall take part, as legal representative in the admission procedure, at every interrogation in the initial reception centre and at every interview in the admission procedure.

### **Professional Requirements for Legal Advisers**

**Article 65.** (1) Legal advisers shall give proof of completion of degree law studies unless they have or had been engaged for at least five years on a full-time and continuous basis to provide legal advice on asylum matters in an ecclesiastical or private organization.

(2) The selection and appointment of legal advisers shall be the competence of the Federal Minister of the Interior. The latter may, in discharging that competence, take into consideration proposals by the United Nations High Commissioner for Refugees, the provincial and municipal authorities and the Asylum and Migration Advisory Board (art. 18 of the Settlement and Residence Act).

(3) The duration of the legal advice relationship shall be determined by the contract to be concluded with the Federal Minister of the Interior; the minimum duration of the contract shall be five years. A reappointment shall not constitute grounds for a contractual relationship of unlimited duration. If the legal adviser repeatedly and persistently infringes his obligations, his contract may be terminated with immediate effect.

(4) Legal advisers shall assist asylum seekers in connection with procedural acts for which the presence of a legal adviser is stipulated by law and with the preparations therefore. Legal advisers shall perform their advisory services objectively and conscientiously; they shall participate in the conduct of the procedure in such a way as to avoid any undue delay. Art. 7 of the General Administrative Procedures Act shall apply.

(5) A legal adviser shall throughout the duration of his contractual relationship refrain from any conduct which may:

1. conflict with the scrupulous performance of his duties;
2. give the impression that his obligations are being discharged in a manner inconsistent with any of his duties or
3. jeopardize official secrecy.

### **Refugee Advisers**

**Article 66.** (1) The Federal Minister of the Interior shall appoint refugee advisers in the required number to assist aliens in matter of asylum law. They shall perform their services objectively and to the best of their knowledge.

(2) Refugee advisers shall upon request:

1. provide aliens with information on any questions concerning asylum law unless such questions come within the advisory duties of legal advisers;
2. assist aliens in connection with the filing or submission of an application for international protection;
3. represent aliens in procedures pursuant to the present federal act or, insofar as asylum seekers are involved, pursuant to the 2005 Aliens' Police Act, unless the engagement of a lawyer is stipulated by law;
4. be of help to aliens in connection with the translation of documents and the provision of interpreters and
5. provide aliens, where appropriate, with repatriation advice.

(3) The selection of refugee advisers shall be the competence of the Federal Minister of the Interior. The latter may, in discharging that competence, take into consideration proposals by the United Nations High Commissioner for Refugees, the provincial and

municipal authorities and the Asylum and Migration Advisory Board (art. 18 of the Settlement and Residence Act).

(4) Refugee advisers who are employees of the federal government shall be entitled to reimbursement of travelling expenses in accordance with the 1955 Travel Cost Regulation (Reisegebühreenvorschrift 1955), FLG No. 133, and other refugee advisers shall be entitled to a refund of travelling expenses to the extent due under the 1955 Travel Cost Regulation to a federal civil servant qualifying for a grade 3 expenditure entitlement and travelling on official business, in addition to compensation for time and labour expended, to be fixed by the Federal Minister of the Interior in agreement with the Federal Minister of Finance.

### **Repatriation Assistance**

**Article 67.** (1) An asylum seeker may be given repatriation advice at any stage of the proceedings. Repatriation advice shall encompass an explanation of prospects during and after the conclusion of the asylum procedure.

(2) Should an asylum seeker decide to accept the repatriation assistance offered to him and to leave Austria, he may be granted financial support prior to his departure from Austria (art. 12 of the GVG-B 2005). The legal adviser's services shall be engaged in the concluding discussion at the initial reception centre concerning the granting of repatriation assistance.

### **Integration Assistance**

**Article 68.** (1) An alien who has been granted asylum status may be accorded integration assistance. The purpose of integration assistance shall be to bring about his full involvement in the economic, cultural and social life of Austria and the greatest possible equality of opportunity with Austrian citizens in these areas.

(2) Integration assistance shall, in particular, include:

1. language courses;
2. basic and advanced training courses;
3. events organized to provide an introduction to Austrian culture and history;
4. events arranged jointly with Austrian citizens to promote mutual understanding;
5. dissemination of information concerning the housing market and
6. benefits provided by the Austrian Fund for the Integration of Refugees and Migrants.

(3) Private, humanitarian and ecclesiastical organizations and voluntary welfare or local authority institutions shall, to the extent possible, be called upon to furnish integration assistance. The services to be provided shall be set out in a contract under private law which shall also regulate the reimbursement of costs.

## **Chapter 9 Final Provisions**

### **Grammatical Equivalence**

**Article 69.** Where references made in the present federal act to natural persons appear only in the masculine form, they shall apply equally to females and to males. In cases where the reference applies to a particular natural person, the specific form of the gender shall be employed.

### **Fees**

**Article 70.** Submissions, letters of authorization, statements, attestations and foreign birth, marriage or death certificates required in procedures pursuant to the present federal act and extensions of rights of residence shall not be subject to fees. Also, no federal

administrative charges or out-of-pocket expenses incurred in respect of official acts arising out of or directly connected with the purposes of the present federal act shall be payable.

### References

**Article 71.** If references are made in the present federal act to other federal acts, such other acts shall be applicable in their current wording.

### Execution

**Article 72.** Execution of the present federal act shall be entrusted, with regard to article 39, para (5), and article 57, para (9), to the Federal Government; with regard to article 70, insofar as fees are concerned, to the Federal Minister of Finance; with regard to article 68, to the respective competent Federal Minister; with regard to article 35, para (1), and article 57, para (7), to the Federal Minister for Foreign Affairs; with regard to article 57, para (5), insofar as the civil courts are affected, and to article 57, para (6), to the Federal Minister of Justice; and in all other respects to the Federal Minister of the Interior, acting in agreement with the Federal Minister for Foreign Affairs with regard to the second half of the first sentence of article 35, para (3), and acting in agreement with the Federal Minister of Finance with regard to the last sentence of article 60, para (6), and to article 66, para (4).

### Period of Validity

**Article 73.** (1) The present federal act shall enter into force on 1 January 2006.

(2) The Federal Act Concerning the Granting of Asylum (1997 Asylum Act - AsylG), FLG I No. 76/1997, shall, with the exception of art. 42, para (1), cease to be in force at midnight on 31 December 2005.

(3) (Constitutional provision) Art. 42, para (1), of the 1997 Asylum Act shall cease to be in force at midnight on 31 December 2005.

(4) Ministerial orders pursuant to the present federal act may be issued as from the day following its promulgation. However, they may be put into effect at the earliest upon the entry into force of the present federal act.

### Relationship to the Geneva Convention on Refugees

**Article 74.** The provisions of the Geneva Convention on Refugees shall be unaffected.

### Transitional Provisions

**Article 75.** (1) All procedures which are pending on 31 December 2005 shall be completed in accordance with the provisions of the 1997 Asylum Act. Art. 44 of the 1997 Asylum Act shall apply. Art. 24, 26, 54 to 57 and 60 of the present federal act shall be applicable to those procedures. Art. 27 shall be applicable to those procedures with the proviso that the authority is competent to issue an expulsion order and the act which would lead to the initiation of the expulsion procedure was committed after 31 December 2005. Art. 57 paras (5) and (6) shall be applicable to those procedures with the proviso that only acts which were committed after 31 December 2005 shall give rise to the application of these provisions.

(2) A procedure which is discontinued pursuant to the Federal Act Concerning the Granting of Asylum (1991 Asylum Act), FLG No. 8/1992, shall be resumed in accordance

with the provisions of the 1991 Asylum Act up to 31 December 2007 and shall be deemed to be a pending procedure as referred to in para (1) above. A procedure which is discontinued pursuant to the 1997 Asylum Act shall be resumed in accordance with the provisions of the 1997 Asylum Act up to 31 December 2007 and shall be deemed to be a pending procedure as referred to in para (1) above.

(3) Cards as referred to in the 1997 Asylum Act shall continue to be valid up to the specified time. the Asylum Act, FLG No. 126/1968, the 1991 Asylum Act, FLG No. 8/1992, and the 1997 Asylum Act shall in respect of the same case, in procedures pursuant to the present federal

(4) Dismissal or rejection rulings pursuant to act, specify the facts which gave rise to rejection in the case ruled on (art. 68 of the General Administrative Procedures Act).

(5) An alien who on 31 December 2005 possessed refugee status shall be deemed to be granted asylum status unless withdrawal or loss of refugee status has occurred.

(6) An alien who on 31 December 2005 possessed limited right of residence in accordance with the provisions of the 1991 Asylum Act or the 1997 Asylum Act shall be deemed to be granted subsidiary protection status.

**AsylG:**

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