

Order of the Federal Minister of the Interior
concerning the Detention of Persons by the Security Executive
(Detention Regulation – AnhO)
- unofficial consolidated version -

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[NOTE: This is an unofficial translation]

Pursuant to article 68 (4) of the 1997 Aliens Act, *Federal Law Gazette (FLG)* I No. 75, articles 31, 47 (3) and 50 of the Security Policing Act, FLG No. 566/1991, article 53c (6) of the 1991 Administrative Penalties Act, FLG No. 52, and articles 2 and 4 of the 1969 Use of Firearms Act, FLG No. 149, the following regulations are hereby issued (in agreement with the Federal Minister of Justice as regards detention under the Security Policing Act or the Code of Criminal Procedure):

Table of Contents

Section 1: General part

- Article 1 Scope of application
- Article 2 Obligations of detainees
- Article 3 Surveillance officers
- Article 4 Detention

Section 2: Internal rules

- Article 5 Solitary confinement
- Article 6 Admission
- Article 7 Fitness to undergo detention
- Article 8 Lights-out and use of beds
- Article 9 Availability of clothing and other effects
- Article 10 Medical care of detainees
- Article 11 Spiritual welfare
- Article 12 Hygiene
- Article 13 Food
- Article 14 Smoking
- Article 15 Recreation
- Article 16 Prison work
- Article 17 Open-air exercise
- Article 18 Purchases
- Article 19 Telephone calls
- Article 20 Correspondence
- Article 21 Visits
- Article 22 Information
- Article 23 Complaints, wishes and requests
- Article 24 Breaches of regulations
- Article 25 Certification of detention

Section 3: Final provisions

- Article 26 Use of direct measures of constraint
- Article 27 Short-term detention
- Article 28 Entry into force

Section 1

General part

Scope of application

Article 1. (1) The present regulations shall apply to persons who are detained following their arrest by agents of the public security service or who are serving, at the detention premises of a security authority, sentences of imprisonment imposed by administrative decision (detainees).

(2) At the detention premises of a security authority, versions of the regulations shall be available in German, in the official languages of the United Nations, in the languages of the countries bordering Austria, and in Croatian, Romanian, Serbian and Turkish; detainees shall, upon request, be allowed to examine the regulations in the language version of their choice.

(3) An abridged version of the regulations (internal rules), reproducing the rights and obligations of detainees, shall be displayed in the cells of the detention premises of a security authority. The internal rules shall in all cases contain articles 1 (2), 7 (3) and (5), 8, 9 (1), and 23 (1) and (3), and shall make reference to the provisions set out in articles 9 (3), 11, 12 (2) to (4), 13 (1) and (2), 14 (1), 15 (3) and (4), 17, 18 (1), 19 (1), 20 (1), 21 (2) and (3), 24 and 25. Paragraph (2) above shall also apply to the internal rules.

(4) Authority shall be the security authority whose detention premises are involved.

Obligations of detainees

Article 2. (1) Detainees shall observe the internal rules, comply with instructions given by the surveillance officers, and refrain from any act that could jeopardize their own physical safety or security and good order at the detention premises.

(2) Detainees shall keep the rooms and facilities used by them clean and tidy, and shall treat with care any articles supplied to them; they shall not create excessively disturbing noise or offend against decency.

Surveillance officers

Article 3. (1) The surveillance officers shall exercise the necessary restraint towards detainees; they shall treat detainees with calmness, seriousness, firmness and fairness, and shall exercise respect for their self-esteem and human dignity and the greatest possible forbearance towards them.

(2) The surveillance officers shall protect and safeguard detainees against injury and impairment of their health to the extent that they are not in a position, owing to the specific circumstances of their detention, to ensure their own health and physical safety. Insofar as is necessary, the surveillance officers shall be empowered, in individual cases, to give instructions that temporarily encroach upon the rights accorded under the internal rules. Such instructions shall be cancelled as soon as the reason for their issue ceases to exist. Facts relating to cases of impairment of health occurring in the course of detention or injury sustained during that period shall be documented in such a way that those events and the measures taken by the surveillance officers for the protection of detainees can subsequently be reconstructed.

(3) Surveillance officers may, except in cases of impending danger, enter cells in which detainees of the other sex are held only in the presence of a second officer.

Detention

Article 4. (1) The detention of detainees shall be undertaken with the exercise of respect for their human dignity and the greatest possible forbearance in their treatment.

(2) Detainees shall wear their own clothes. If they are called upon to perform prison work or if their own clothes are no longer usable, for example for reasons of hygiene, the necessary clothing shall be supplied to them.

(3) In general, detainees shall be accommodated in group confinement. Detainees on whom orders for detention pending their expulsion have been imposed (detainees awaiting deportation), detainees who are serving administrative sentences of imprisonment (detainees subject to administrative penalties) and detainees who are held in detention following arrest by an agent of the public security service acting on his own initiative or in execution of a committal order issued by a judge (detainees on remand) shall, insofar as is possible, be accommodated separately from each other. Women shall be kept separate from men and under-age persons separate from adults. A detainee's wish to be accommodated together with or not together with certain other detainees shall, insofar as is possible, be taken into consideration, as shall a detainee's wish to be accommodated in a non-smoking cell.

(4) Detainees less than 16 years old awaiting deportation may be held in detention only if accommodation and care appropriate to their age and stage of development can be guaranteed. If an order for detention pending expulsion has also been imposed on a parent or legal guardian of an under-age detainee awaiting deportation, they shall both be held in detention together, unless the well-being of the under-age person requires separate detention.

Section 2

Internal rules

Solitary confinement

Article 5. (1) A detainee's detention shall be carried out in solitary confinement:

1. If on the basis of certain facts it can be assumed that the detainee could commit acts of violence against other detainees;
2. If, in cases involving detainees against whom criminal proceedings are pending, a request for solitary confinement is made by the court;
3. If there is a risk of infection from a detainee or if a detainee, by reason of his outward appearance or conduct, would represent a considerable burden to other detainees.

(2) Detainees on remand shall, insofar as is possible, be held in solitary confinement.

(3) A detainee's detention may be carried out in solitary confinement:

1. At the wish of the detainee;
2. During the lights-out period, if this appears necessary for the maintenance of security or good order;
3. As a disciplinary measure;
4. If required on a short-term basis for organizational reasons;
5. If facts justify the assumption that the detainee could, through acts of violence, endanger his own life or health;
6. For as long as the detainee refuses, according to his own assertion, to eat and/or drink (hunger strike).

(4) Detainees awaiting deportation may, on the instructions of the immigration authority responsible for their detention, be held in solitary confinement, until their initial interview, if it is to be feared that they may conspire with other detainees awaiting deportation; however, article 4 (4) shall not be affected thereby.

(5) In the case referred to in paragraph (3) 5 above, detainees may, to the extent strictly required, be accommodated in a specially secure, padded and otherwise empty cell. The displaying of the internal rules (article 1 (3)) in such cells may be dispensed with.

Admission

Article 6. (1) The admission of a person who himself reports for the commencement of his sentence shall in any case be permissible during the period from 7 a.m. to 6 p.m. and only if:

1. No doubts exist as to the person's identity;
2. A request has been issued for the commencement of the sentence of imprisonment (including imprisonment in default of payment of a fine);
3. The person is clearly not unfit to undergo detention, is not in a state of intoxication and has agreed to be searched;
4. Despite being notified of the termination of detention between midnight and 6 a.m., the person still wishes to commence his sentence immediately;
5. The person possesses only such effects as may be kept in the cell or, in accordance with the existing facilities, can be taken into safekeeping.

(2) Persons who report themselves for the commencement of their detention pending expulsion or are brought by escort shall be admitted at any time, provided that the necessary committal documents are furnished and that they are clearly not unfit to undergo detention. If, at that time, a relative of the detainee or another person of his trust or a legal adviser has still not been informed, an opportunity shall be granted to the detainee to rectify such omission by telephone immediately following his admission.

(3) The identification particulars (name, sex, and date and place of birth) of detainees to be admitted shall be ascertained and compared with the details contained in the committal documents. Admissions shall be recorded in an entry register.

(4) Every detainee shall, upon admission, be subjected to a search, which may be conducted only by a person of the same sex. In addition, all detainees shall, if necessary, be obliged to wash themselves thoroughly and undergo disinfection measures prior to being taken to their cells.

Fitness to undergo detention

Article 7. (1) Persons whose unfitness to undergo detention is established or clearly apparent may not be detained.

(2) Persons who show signs of or claim to be suffering from any sickness or injury or with regard to whom certain facts give reason to believe that they are suffering from any sickness or injury, shall, if even a short period of detention is thereby rendered questionable, be admitted only after their fitness to undergo detention has been established by medical examination.

(3) All detainees shall, without undue delay and at the latest within 24 hours of admission, be medically examined with a view to determining their fitness to undergo detention. They shall be obliged to submit to such medical examinations as may be necessary for the assessment of their fitness to remain in detention. Should any detainees refuse to cooperate in the conduct of a medical examination, they shall be regarded as fit to undergo detention for as long as they show no signs of suffering from any sickness or injury and no reason to doubt their fitness to undergo detention otherwise exists.

(4) Any sickness or injury detected during a medical examination shall be assessed from the viewpoint of the detainee's fitness to undergo detention; in any such assessment, consideration may be given to supplying the detainee with his own medicines. The duty to provide first aid shall not be affected thereby. In cases where injuries are probably attributable to a third party or are claimed to be so caused, an official medical report thereon shall be drawn up.

(5) Administrative sentences of imprisonment may not be executed against persons who are suffering from serious illness or are pregnant, for as long as such condition continues. The same shall apply to young persons below 16 years of age and to women for a period of eight weeks after giving birth.

(6) Should persons who are unfit to undergo detention be referred to a hospital, the management of the hospital shall, if the person concerned has been released from detention, be notified thereof without delay.

Lights-out and use of beds

Article 8. The lights-out period shall generally be fixed by the authority; it shall be for a minimum duration of eight hours. The commanding officer shall be empowered to permit the use of beds outside the lights-out period.

Availability of clothing and other effects

Article 9. (1) Only necessary items of clothing, toilet requisites, and food and tobacco in small quantities may be kept in the cells. Detainees may possess minimal amounts of money if the commanding officer has generally declared this to be permissible. Medicines may, without exception, be brought into the cells only with the consent of the medical officer.

(2) Other effects shall be taken into safekeeping, but detainees may have disposal of such articles. A record of such property shall be entered in a register, whose accuracy and completeness shall be certified both by the surveillance officer making the record and by the detainee. If a detainee is illiterate or refuses to sign, the accuracy and completeness of the record shall be certified by a second surveillance officer.

(3) Detainees on remand may be subject to certain restrictions, in addition to those set out in paragraphs (1) and (2) above, where required by reason of the short duration of their detention or if facts justify the assumption that the detainee could endanger his own life or health.

(4) Every detainee may be sent or brought sums of money and parcels. Parcels shall be opened in the presence of the detainee; their contents shall be handed over to the detainee only in such quantities as may be kept in the cells. Articles that may not be handed over shall, if they are intended for self-catering, be held at the disposal of the detainee, according to the existing facilities; otherwise, they shall either be given back to the person who brought them or be retained until the detainee is discharged unless, on account of their composition, they have to be destroyed.

(5) Effects taken into safekeeping shall be handed over to detainees at the time of their discharge, against an acknowledgement of receipt.

Medical care of detainees

Article 10. (1) The necessary medical care of detainees shall be guaranteed by official medical officers or otherwise ensured by arrangements under which a medical officer is able, if necessary, to intervene without undue delay. In that connection, the care of detainees may, for less serious matters, be provided by medical attendants.

(2) Detainees whose fitness to undergo detention has already been established (article 7) shall, if, on the basis of certain facts and, in particular, on the basis of their own assertions, their fitness to remain in detention is in doubt, be brought before the medical officer without delay. The state of health of injured or sick detainees whose fitness to undergo detention has been established shall be monitored under official medical supervision so that any deterioration can be detected promptly; if any such deterioration gives cause for concern that a detainee may no longer be fit to remain in detention, an official medical pronouncement shall be sought without delay.

(3) If there is a risk of infection from a detainee, the medical officer shall take such measures as are statutorily laid down and medically required, and shall ensure that they continue to be applied. This shall include his duty to request, if necessary, that a detainee be accommodated in solitary confinement or be discharged.

(4) Detainees who go on hunger strike in order to render themselves unfit to remain in detention shall be brought before the medical officer without undue delay; the medical officer shall determine the necessary medical action and inform the detainees thereof. In particular, in that connection, a decision shall be taken as to whether, for the duration of the hunger strike, the detainees should:

1. Be accommodated in a sick room in solitary confinement and
2. Be prohibited from smoking.

(5) Detainees may freely engage, at their own expense, the services of a physician of their own choice for their medical care; the provision of such care shall take place at the detention premises. With regard to detainees' engaging the services of their own physician for the purpose of examinations by a medical officer, as referred to in paragraph (1) above, this shall be permitted only if it is possible without causing any significant delay in the examination.

Spiritual welfare

Article 11. Detainees may freely attend religious services held on the detention premises. This shall not apply to detainees who are held in solitary confinement in accordance with article 5 (1). However, every detainee may, upon request, be allowed to receive a visit from a pastor at any time.

Hygiene

Article 12. (1) Steps shall be taken to ensure that every detainee's standard of hygiene is maintained.

(2) All detainees shall be provided, as frequently as necessary but at least once a day, with sufficient hot water to wash themselves. Detainees without means shall be supplied with toilet articles. Detainees shall be obliged to wash themselves, take a hot shower once a week and, if necessary, undergo disinfection measures.

(3) Detainees shall be granted shaving and haircutting facilities. Detainees without means shall be supplied with shaving equipment.

(4) The cells shall be cleaned and aired daily by the inmates; the floors shall be cleaned once a week and the sanitary installations daily.

(5) The other areas of the detention premises and the adjoining yards shall be kept clean and tidy according to the requirements of hygiene and good order. For such purposes, a cleaning schedule shall be drawn up by the authority, fixing the times when cleaning operations are to be carried out, having regard to the obligation laid down in article 2 (2) and to the possibility of detainees being called upon to perform prison work.

Food

Article 13. (1) Detainees may cater for themselves. This shall be permitted unless, on the basis of the available facilities, such self-catering interferes with supervision and good order or gives rise to undue additional administrative expenditure.

(2) Detainees shall be entitled to sufficient food, including a hot meal once a day, and to a sufficient supply of drinking water. Due consideration shall be given to medical orders (bland, specific or dietary food) and to religious requirements (special food). Additional food shall be permissible. The consumption of alcoholic beverages shall be prohibited.

(3) Mealtimes shall be fixed by the authority, having regard to the usual hours for taking food. Detainees may consume their own food outside such times provided that this does not interfere with supervision and good order.

(4) The quantity, palatability and quality of the food provided shall be inspected by the commanding officer on a daily basis and by the medical officer and the authority on a regular basis. The results shall be recorded in writing on the meal schedule.

Smoking

Article 14. (1) Except where smoking is expressly prohibited in specific areas, detainees shall be permitted to smoke.

(2) Smoking shall be prohibited:

1. On medical orders, in particular in the case of a hunger strike;
2. When detainees are in bed;

3. In all cases in communal night cells, and during the lights-out period in solitary cells.

Recreation

Article 15. (1) Detainees may engage in suitable recreation provided that this does not contravene the internal rules or endanger safety. Articles required for such purposes may be handed over to detainees from their effects.

(2) Detainees to whom a battery-operated radio or television set is available may use such equipment – except in communal night cells – provided that no annoyance is thereby caused to other detainees, in particular during the lights-out period. Joint receptions shall be subject to the limits fixed by the authority.

(3) The reading of books, newspapers and magazines may not be banned. During hours of darkness outside the lights-out period, the cells shall be illuminated in such a way that detainees can read without damaging their eyesight.

(4) Indoor games, including card games, shall be permitted. Betting shall be prohibited.

(5) The withdrawal of the rights granted under paragraphs (2) and (4) above shall be permissible only in accordance with article 24.

Prison work

Article 16. (1) Every detainee who is capable of work may, with his consent, be called upon to perform tasks within the sphere of the authority (prison work). In the assignment of work, due consideration shall be given to detainees' constitution, age, skills and aptitudes, as well as to the duration of their detention and to their conduct in the community. The statutory provisions concerning employment protection shall be observed.

(2) Work shall be performed at detainees' own risk and without remuneration apart from the provision of additional food and the non-applicability of costs of execution (article 54 d (1) of the Administrative Penalties Act (VStG)). Detainees shall be informed of such conditions prior to giving their consent.

Open-air exercise

Article 17. Detainees held in detention for more than two days shall be granted an opportunity to take open-air exercise for at least one hour a day. Where this is not possible owing to weather conditions or for other reasons, alternative arrangements for compensatory physical activity shall be provided.

Purchases

Article 18. (1) At least one purchase day per week shall be scheduled and detainees shall be informed thereof in good time. Detainees may, on such purchase days, procure articles of daily use, food and tobacco in limited quantities, and also newspapers and magazines. The purchase of alcoholic beverages shall be prohibited. The restriction of this right shall be permissible only in accordance with article 24, but this may not restrict the possibility of self-catering or of purchasing newspapers and magazines.

(2) In the case of detainees on hunger strike, the right granted under paragraph (1) above shall be withdrawn for the duration of their refusal.

Telephone calls

Article 19. (1) Detainees shall in justified cases be allowed, under supervision, to make telephone calls at their own expense.

(2) Detainees without means shall be permitted, at no charge, to make telephone calls for the purpose of contacting relatives, legal advisers, authorities and diplomatic or consular representatives.

Correspondence

Article 20. (1) Detainees' correspondence shall not be subject to any restrictions, but random monitoring thereof shall be permissible except in cases involving correspondence with Austrian authorities and legal advisers, with diplomatic and consular representatives of the home country, and with bodies established under international human rights conventions binding upon Austria. Documents that are clearly intended for the preparation, perpetration, continuation or concealment of criminal offences shall be withheld and handed over to the authority; detainees shall be notified of such measures.

(2) Detainees shall, upon request, be provided with paper and writing implements at no charge. Costs of postage shall be borne by the detainee; they shall be advanced to detainees without means, to the extent required.

Visits

Article 21. (1) The right of detainees to receive visits may not be restricted beyond the degree fixed by the present internal rules.

(2) Every detainee may receive visitors once per week during a 30-minute period within the visiting times fixed by the authority; during such visits, only two adult visitors may be present at the same time. Relatives under 14 years of age shall be allowed to visit only if accompanied by an adult. Visits shall, insofar as is possible, take place in areas suitable for such purpose outside the cells.

(3) Visits

1. By legal advisers, representatives of Austrian authorities, diplomatic or consular representatives of the home country or bodies established under international human rights conventions binding upon Austria, or
2. Whose bearing on the settlement of important personal affairs is satisfactorily established may be received at any time, for the duration required; such visits shall, insofar as is possible, take place during the official times.

(4) The contents of visits by private individuals, other than legal advisers, may be monitored; conversations or acts that run counter to the purpose of detention or disrupt internal good order shall be halted. If, despite a warning, a visitor repeats any such act, the visit shall be terminated.

(5) The right of a detainee on hunger strike to receive visits may, following consultations with the medical officer, be deferred for a maximum period of ten days. This shall not apply to visits by legal advisers who are professionally authorized to represent the parties, to representatives of Austrian authorities or diplomatic or consular representatives of the home country, or to visits whose bearing on the settlement of important personal affairs is satisfactorily established.

Information

Article 22. (1) Close relatives and cohabitants who present themselves in person and provide proof of their identity shall be informed as to whether a specific person is being held in detention. Any further disclosures, other than information concerning the amount of outstanding fines, shall be at the discretion of the authority on whose orders or for whose purposes the detainee is being held.

(2) Courts of law and authorities shall be informed of the fact of a person's detention and of other circumstances concerning the detention. Diplomatic and consular representatives shall be informed solely of the fact of a person's detention; any further information shall be at the discretion of the authority on whose orders or for whose purposes the detainee is being held.

(3) Telephone inquiries in the cases referred to in paragraph (2) above shall be permissible, on the basis of a return call.

Complaints, wishes and requests

Article 23. (1) Detainees shall, during their detention, be entitled to complain, orally or in writing, to the commanding officer, alleging continuous infringement of any of the rights accorded to them under the internal rules. Should they so desire, they shall for such purpose be brought before the commanding officer without undue delay.

(2) If, following prompt investigation of a complaint filed in accordance with paragraph (1) above, the commanding officer is of the opinion that the complaint is justified, he shall restore the lawful state of affairs; if he is not of that opinion, he shall submit the facts of the case to the authority. The authority shall carry out a prompt investigation of the facts. If the authority concludes that the complaint is justified and if the complainant is still in detention, the authority shall instruct the commanding officer to restore the lawful state of affairs without delay; otherwise it shall inform the person concerned of the outcome of the investigation, without any acknowledgement of receipt, if a place of delivery is known or can be ascertained without difficulty.

(3) If a right of legal redress otherwise exists by reason of the conduct to which the complaint relates, such right shall remain unaffected.

(4) Furthermore, all detainees may freely express any wishes and requests orally or in writing. Should they so desire, they shall for such purpose be brought before the commanding officer without undue delay.

Breaches of regulations

Article 24. (1) Any detainee who willfully fails to comply with an obligation devolving upon him under the internal rules or attempts to escape or to secure his early release by false pretences shall be guilty of a breach of regulations.

(2) If a detainee is suspected of having committed a breach of regulations, the surveillance officer shall draw up a report on the matter unless, in the surveillance officer's opinion, an admonition is sufficient.

(3) The commanding officer shall investigate the facts on which the report is based and shall hear the detainee in connection with the charge. Depending on the seriousness of the offence, one of the following measures, which shall be subject to appeal in accordance with article 23 (2), shall be imposed by the commanding officer, without any formal proceedings, on detainees who have committed a breach of regulations:

1. Reprimand;
2. Temporary withdrawal, for a maximum period of one week, of one or more of the rights specified in articles 15 and 18 as being liable to restrictions;
3. Detention in solitary confinement for a period of not more than three days.

(4) The measures referred to in paragraph (3) 2 and 3 above may be imposed jointly.

Certification of detention

Article 25. Upon his discharge, every person shall, at his request, be provided with a certification of the duration of his detention. Moreover, detainees awaiting deportation shall, at their request, be provided, at any time, with a certification of the date of their admission.

Section 3

Final provisions

Use of direct measures of constraint

Article 26. (1) The surveillance officers shall be empowered to enforce their instructions by the use of direct measures of constraint if such measures are necessary for reasons of security and good order at detention premises or for the physical safety of persons. Searches as referred to in article 6 (4) shall, subject to the provisions of article 50 (1) of the Security Policing Act (SPG), be conducted using direct

measures of constraint. If a detainee refuses to cooperate in the conduct of a medical examination and there is reason to assume that such detainee is unfit to undergo detention, the examination may, if the question of his fitness to undergo detention cannot otherwise be determined, be carried out with the use of direct measures of constraint to the extent that appears appropriate on the basis of the circumstances of the case and no violation of the physical integrity of the person concerned is necessary.

(2) A person taken into detention may be handcuffed if, on the basis of certain facts, there is a risk that the person will:

1. Injure himself or others;
2. Damage third-party property not only of minor value;
3. Escape;
4. Attempt to frustrate an act of the authorities in which he is to participate.

(3) The use of a straightjacket in place of handcuffs shall be permissible if facts justify the assumption that, by reason of mental illness, a detainee could, through acts of violence, endanger his own life or health.

(4) In any use of direct measures of constraint, particular attention shall be paid to ensuring that the rule of proportionality is observed with respect to the nature, extent and duration of such measures. Article 10 of the Code of Conduct Regulations, FLG No. 266/1993, shall apply.

Short-term detention

Article 27. With regard to confinement at detention premises of a security service, in particular confinement up to the time of transfer to detention premises of a security authority or penal institution, articles 1 (3), 6, 7 (3), first sentence, and (6), 8, 9 (4), 10 (2) and (4), 11, 12 (2) to (5), 13 (3) and (4), 14 (2), 15 to 18, 21, 23 and 24 shall not apply. Article 20 shall apply with the proviso that withheld documents shall be handed over to the authority on whose orders or for whose purposes the detainee is being held. The internal rules relating to those detention premises shall, in such event, make reference to at least articles 9 (1) and (3), 13 (1) and (2), and 25, and shall be available in the languages specified in article 1 (2); detainees shall, upon request, be allowed to examine the internal rules in the language version of their choice.

Entry into force

Article 28. The present regulations shall enter into force on 1 May 1999. The Order of the Federal Minister of the Interior promulgating internal rules for the execution of sentences at detention premises of the federal police authorities (Internal Rules for Detention in Police Jails), FLG No. 566/1988, as amended by Order FLG II No. 185/1998, and the Order of the Federal Minister of the Interior concerning the implementation of the Aliens Act (1994 Aliens Act Implementing Regulations; FrG-DV 1994), FLG No. 121/1995, as amended by Order FLG II No. 185/1998, shall simultaneously cease to be valid.