

**FEDERAL LAW CONCERNING THE GRANTING OF ASYLUM  
(2005 ASYLUM ACT – ASYLGESETZ 2005)  
- unofficial consolidated version -**

**Amendments**

FLG. I No. 75/2007 (VfGH)  
FLG. I No. 2/2008 (1. BVRBG) (NR: GP XXIII RV 314 AB 370 S. 41. BR: 7799 AB 7830 S. 751.)  
FLG. I No. 4/2008 (NR: GP XXIII AB 371 S. 41. BR: AB 7831 S. 751.)  
FLG. I No. 29/2009 (NR: GP XXIV RV 88 AB 116 S. 17. BR: AB 8084 S. 768.)  
BGBl. I No. 122/2009 (NR: GP XXIV RV 330 AB 387 S. 40. BR: AB 8200 S. 778.)  
[CELEX-No.: 32003L0109, 32004L0038]  
FLG. I No. 135/2009 (NR: GP XXIV RV 485 AB 558 S. 49. BR: 8217 AB 8228 S. 780.)  
FLG. I No. 38/2011 (NR: GP XXIV RV 1078 AB 1160 S. 103. BR: AB 8500 S. 796.)  
[CELEX-No.: 32008L0115, 32009L0050, 32009L0052]  
FLG. I No. 50/2012 (NR: GP XXIV RV 1726 AB 1757 S. 153. BR: AB 8715 S. 808.)  
FLG. I No. 67/2012 (VfGH)  
FLG. I No. 87/2012 (NR: GP XXIV RV 1803 AB 1889 S. 166. BR: AB 8774 S. 812.)  
FLG. I No. 68/2013 (NR: GP XXIV RV 2144 AB 2215 S. 193. BR: 8914 AB 8917 S. 819.)  
[CELEX-No.: 32011L0051, 32011L0095, 32011L0098]  
FLG. I No. 144/2013 (NR: GP XXIV AB 2548 S. 215. BR: AB 9059 S. 823.)  
FLG. I No. 70/2015 (NR: GP XXV RV 582 AB 610 S. 75. BR: 9372 AB 9379 S. 842.) [CELEX-Nr.: 32013L0032, 32013L0033]  
FLG. I No. 10/2016 (VfGH)  
FLG. I No. 24/2016 (NR: GP XXV RV 996 S. 123. BR: 9555 AB 9575 S. 853.)  
FLG. I No. 68/2017 (NR: GP XXV RV 1586 AB 1631 S. 179. BR: AB 9800 S. 868.)  
FLG. I No. 84/2017 (NR: GP XXV RV 1523 AB 1681 S. 188. BR: 9820 AB 9861 S. 870.)  
[CELEX-Nr.: 32014L0036, 32014L0066]  
FLG. I No. 145/2017 (NR: GP XXV IA 2285/A S. 197. BR: S. 872.)  
[CELEX-Nr.: 32014L0036, 32014L0066]  
BGBl. I Nr. 56/2018 (NR: GP XXVI RV 189 AB 207 S. 36. BR: 9998 AB 10020 S. 883.)  
[CELEX-Nr. 32016L0801]  
BGBl. I Nr. 53/2019 (NR: GP XXVI RV 594 AB 621 S. 76. BR: AB 10180 S. 893.)  
BGBl. I Nr. 29/2020 (NR: GP XXVII IA 443/A AB 149 S. 27. BR: 10299 AB 10314 S. 906.)  
BGBl. I Nr. 69/2020 (VfGH)  
BGBl. I Nr. 145/2020 (NR: GP XXVII RV 349 AB 382 S. 55.)  
BGBl. I Nr. 146/2020 (NR: GP XXVII IA 1106/A AB 552 S. 71. BR: AB 10465 S. 917.)

**[NOTE: This is an unofficial translation. Amendments issued in the context of the COVID-19 pandemic which are only applicable for a limited period of months are not included.]**

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**Part I**  
**Scope of application and definitions**

**Scope of application**

**Article 1.** The present federal law 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 law is to be issued in conjunction with a measure to terminate residence in accordance with the 2005 Aliens' Police Act (FPG), FLG I No. 100;
3. the granting of residence permits on grounds deserving of consideration;
4. the special provisions applying to procedures for obtaining decisions as referred to in subparagraphs 1 to 3 above.

**Definition of terms**

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

1. "Geneva Convention on Refugees" means the Convention relating to the Status of Refugees of 28 July 1951, Federal Law Gazette (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 European Union, FLG III No. 132/2009;
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 Regulation (EU) No. 604/2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (recast), Official Journal of the European Union L 180 of 29 June 2013, p. 31;
9. “Qualification Directive” means Directive 2011/95/EU on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted, Official Journal of the European Union L 337 of 20 December 2011, p. 9.
10. “Basic Welfare Support Agreement” means the Agreement between the Federal Government and the provincial governments, pursuant to article 15a of the Federal Constitution, 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 deported for legal or practical reasons), 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 made – in any possible way - by an alien in Austria to be accorded the protection of Austria; the application shall be considered 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 initially limited and ultimately permanent right of entry and residence granted by Austria to aliens in accordance with the provisions of the present federal law;
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 law;
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 (subparagraph 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 other than a member State of the EEA Agreement or Switzerland;
- 20a. “Alien” means anyone who does not possess Austrian nationality;
- 20b. “Third-country national” means an alien who is not an EEA citizen or a Swiss citizen;
- 20c. “Favoured third-country national” means the spouse or registered civil partner, relatives of, and relatives of the spouse or registered civil partner of, an EEA citizen or a Swiss citizen or an Austrian who have exercised their right of residence of more than three months under European Union law or accorded by virtue of the Agreement between the European Community and Switzerland on the free movement of persons, in the direct descending line up to the age of 21 years (beyond that age if they are dependants), and also his or her relatives and relatives of his or her spouse or registered civil partner in the direct ascending line if they are dependants, provided that the third-country national accompanies or re-joins the EEA citizen possessing right of residence under European Union law or Swiss citizen from whom his or her favoured status under European Union law derives;
21. “EEA citizen” means anyone who is a national of an EEA State (subparagraph 19 above);
22. “Family member”:
  - a. the parent of an under-age asylum seeker, a person having entitlement to asylum or a person holding subsidiary protection status;
  - b. the spouse or registered partner of an asylum seeker, a person having entitlement to asylum or a person holding subsidiary protection status, insofar as the marriage or registered partnership already existed before entry;
  - c. a child, under-age and unmarried at the time of filing the application, of an asylum seeker, a person having entitlement to asylum or a person holding subsidiary protection status and
  - d. the legal representative of an under-age, unmarried asylum seeker, a person having entitlement to asylum or a person holding subsidiary protection status, as well as a child, under-age and unmarried at the time of filing the application, who is granted legal representation for an asylum seeker, person having entitlement to asylum or person holding subsidiary protection status, insofar as such legal representation already existed before entry.
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;
25. “Multifactorial examination technique” means a model based on three individual medical examinations (specifically physical, dental and X-ray examinations) for the purpose of age diagnosis in line with current scientific knowledge.
26. “Sponsorship declaration” means a declaration made by third parties having their domicile or residence within Austria, authenticated by an Austrian notary or by an Austrian court and valid for at least three years, to the effect that they undertake to meet the requirements in respect of comprehensive sickness insurance, accommodation and appropriate means of support and assume liability for the reimbursement of costs arising for a local administration by reason of the alien’s residence in the federal territory or in connection with the execution of a repatriation decision or the enforcement of a residence ban, expulsion order, forcible return order or pre-deportation detention order or as outlay required for the use of less stringent measures or by virtue of social assistance provision or a federal or provincial law implementing the Basic Welfare Support Agreement pursuant to article 15a of the Federal Constitutional Law, FLG I No. 80/2004; the resources serving to justify the third party’s ability to pay shall be indicated in the sponsorship agreement; the existence of such resources shall be substantiated by appropriate proof at the time of the declaration; funds of public authorities shall in no circumstances constitute suitable resources for justifying the third party’s ability to pay; any agreements which are entered into in connection with the sponsorship declaration and under which a payment or other benefit is to be pledged or furnished to the third party or to another person shall be null and void;
27. “Measure to terminate residence” means a repatriation decision (article 52 of the Aliens’ Police Act), an order for removal from the country (article 61 of the Aliens’ Police Act), an expulsion order (article 66 of the Aliens’ Police Act) or a residence ban (article 67 of the Aliens’ Police Act).

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

(3) An alien shall have become an offender within the meaning of the present federal law if he has been convicted by final judgment:

1. of a wilfully committed act punishable by the courts which comes under provincial court jurisdiction or
2. on more than one occasion of any other wilfully committed act punishable by the courts which is prosecutable ex officio.

(4) Deviating from article 5 subparagraph 10 of the Austrian Juvenile Court Act of 1988 – JGG, FLG No. 599/1988 – there shall also be a legal sentence dependent on this federal law if it is the result of juvenile offending.



## **Part 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 already to be rejected pursuant to article 4, 4a or 5, be granted asylum status if it is satisfactorily established that the alien would be at risk of persecution in the country of origin 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 (1)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 (article 11) is available to the alien or
2. the alien has given rise to a reason for ineligibility for asylum (article 6).

(4) An alien who has been granted asylum status shall be accorded limited right of residence as a person having entitlement to asylum. Right of residence shall be valid for three years and shall be extended for an unlimited period of validity provided that the conditions required for initiating a procedure for the imposition of an asylum status withdrawal ruling do not exist or if the withdrawal procedure is discontinued. Right of residence shall continue to be valid until a final asylum status withdrawal ruling is rendered. Right of residence shall terminate once the asylum status withdrawal ruling becomes final.

(4a) In connection with country records (article 5 of the Federal Office Establishment Act), the Federal Office shall, at least once during the calendar year, conduct an analysis of the extent to which a significant, lasting change in the specific and, in particular, political circumstances relevant to the fear of persecution has arisen in those countries of origin to which special importance attaches in view of the number of rulings granting asylum status which have been issued in the last five calendar years.

(4b) In family procedures pursuant to paragraph (1), subparagraph 1, of article 34, paragraph (4) above shall apply with the proviso that the period of validity of limited right of residence shall be determined by the period of validity of the right of residence of the family member from whom the right is derived.

(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 law.

### **Ex officio international protection**

**Article 3a.** An alien shall be granted asylum status or subsidiary protection status *ex officio* without any further procedure if the Republic of Austria has undertaken to do so under international law.

## **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 third-country national is able to find protection against persecution in a country with which a treaty concerning the determination of responsibility for the examination of applications for asylum or applications for international protection does not exist or to which 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 a third-country national in a country where he is not exposed to danger as specified in article 8(1) or is guaranteed via another third country (asylum procedure), and the third-country national 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 third-country national is exposed in the country of origin to danger as specified in article 8(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 paragraph (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 in the course of an evaluation as referred to in article 9 (2) of the Federal Office for Immigration and Asylum Procedure Act (Federal Office Procedure Act) it is established that a repatriation decision issued in conjunction with the rejection ruling would give rise to a violation of article 8 of the European Convention on Human Rights.

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

### **Protection in EEA States or in Switzerland**

**Article 4a.** An application for international protection shall be rejected as inadmissible if the alien has been granted asylum status or subsidiary protection status in another EEA State or in Switzerland and has found protection against persecution there. The country to which the alien is to return shall also be specified when the rejection ruling is rendered.

### **Responsibility of another State**

**Article 5.** (1) An application for international protection which has not been decided in accordance with article 4 or article 4a 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. The application shall not be rejected if in the course of an evaluation as referred to in article 9 (2) of the Federal Office Procedure Act it is established that an order for removal from the country issued in conjunction with the rejection ruling would give rise to a violation of article 8 of the European Convention on Human Rights.

(2) The steps set out in paragraph (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 Federal Office or the Federal Administrative Court, it shall be assumed that the asylum-seeker can find protection against persecution in a country as referred to in paragraph (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 article 1, section D, of the Geneva Convention on Refugees;
2. any of the grounds set forth in the exclusion clauses in article 1, section F, of the Geneva Convention on Refugees exists;

3. there are valid reasons for considering that the alien 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 article 73 of the Penal Code, 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 paragraph (1) above exists, an application for international protection may be dismissed in regard to the granting of asylum status without further examination. Article 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 article 6 exists;
2. any of the grounds set forth in the cessation clauses in article 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) In the cases under article 27 para 3 subpara 1 to 4 and in the case of the presence of material evidence that a reason for termination, as specified in article 1 (C) subparagraphs 1, 2 or 4 of the Geneva Refugee Convention, has occurred, a procedure to withdraw the right to asylum must in any case be initiated if it appears likely that the prerequisites pursuant to para 1 will be fulfilled. A procedure pursuant to the first sentence must, if it was initiated on the grounds of article 27 para 3 subpara 1, be decided on within a month of the notification that the criminal law conviction by the courts has become legally binding pursuant to article 30 para 5 of the Federal Office Procedure Act; in other cases, it must be decided on as quickly as possible, but within a month of it being initiated at the latest, provided that the case facts relevant to the decision have been ascertained by the time this deadline expires. Missing the deadline pursuant to the second sentence does not constitute an impediment to withdrawing the right to asylum at a later point. Evidence pursuant to sentence 1 may especially take the form of entry by the person entitled to asylum into his country of origin or the application for and issuance of a passport to his country of origin.

(2a) Regardless of the period of validity of right of residence as specified in paragraph (4) of article 3, a procedure for the imposition of an asylum status withdrawal ruling shall in all cases be initiated if it emerges from the analysis referred to in paragraph (4a) of article 3 that a significant, lasting change in the specific and, in particular, political circumstances relevant to the fear of persecution has arisen in the country of origin of the person having entitlement to asylum. The Federal Office shall ex officio, by informal communication, notify the person having entitlement to asylum

of the initiation of the procedure for the imposition of an asylum status withdrawal ruling

(3) The authority may not order the asylum status of an alien who has not become an offender (article 2, paragraph (3)) to be withdrawn pursuant to subparagraph 2 of paragraph (1) above if the withdrawal ruling – even if not final – is not issued by the Federal Office for Immigration and Asylum (Federal Office) 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 paragraph, withdrawal may not take place, the authority shall report the facts to the authority which is competent under the terms of the Federal law concerning settlement and residence 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 authorization by final ruling, the asylum status of such an alien may also be withdrawn pursuant to subparagraph 2 of paragraph (1) above.

(4) Withdrawal rulings pursuant to subparagraphs 1 and 2 of paragraph (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 article 2 or article 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 paragraph (1) above shall be issued in conjunction with the dismissal ruling as referred to in article 3 or the asylum status withdrawal ruling as referred to in article 7.

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

(3a) If an application for international protection is not already to be dismissed in regard to the granting of subsidiary protection status owing to the absence of a condition required under paragraph (1) above or for the reasons set forth in paragraph (3) or

paragraph (6) above, dismissal shall be effected if a ground for withdrawal exists pursuant to article 9, paragraph (2). In such event, the dismissal ruling shall be issued in conjunction with a declaration that the alien's rejection at the border, forcible return or deportation to his country of origin is inadmissible since it would constitute a real risk of violation of article 2 or article 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 by reason of indiscriminate violence in situations of international or internal conflicts. The foregoing shall also apply mutatis mutandis to a declaratory ruling that subsidiary protection status is not to be granted.

(4) An alien who has been granted subsidiary protection status shall at the same time be accorded, by the Federal Office or by the Federal Administrative Court, 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 Office for two further years in each case of 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 article 34(1)2, paragraph (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, a repatriation decision shall be issued if its imposition is not inadmissible pursuant to article 9 (1) and (2) of the Federal Office Procedure Act.

(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 (article 8(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 article 2 or article 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) If subsidiary protection status is not already to be withdrawn for the reasons set forth in paragraph (1) above, withdrawal shall be effected if:

1. any of the grounds set forth in the clauses in article 1, section F, of the Geneva Convention on Refugees exists;
2. the alien constitutes a danger to the general public or to the security of the Republic of Austria or
3. the alien has been convicted of a crime by final judgment of an Austrian court (article 17 of the Penal Code). A conviction by a foreign court which meets the requirements set out in article 73 of the Penal Code, FLG No. 60/1974, shall be deemed equivalent to a conviction by an Austrian court.

In such cases, the ruling concerning the withdrawal of subsidiary protection status shall be issued in conjunction with a declaration that the alien's rejection at the border, forcible return or deportation to his country of origin is inadmissible since it would constitute a real risk of violation of article 2 or article 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 by reason of indiscriminate violence in situations of international or internal conflicts.

(3) A procedure for withdrawing subsidiary protection status shall in all cases be initiated if the alien has become an offender (article 2, paragraph (3)) and it is likely that the conditions required under paragraph (1) or (2) above exist.

(4) 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**

### **Imposition of measures to terminate residence**

**Article 10.** (1) A ruling under the present federal act shall be issued in conjunction with a repatriation decision or with an order for removal from the country pursuant to part 8 of the Aliens' Police Act if:

1. an application for international protection is rejected pursuant to article 4 or article 4a;
2. an application for international protection is rejected pursuant to article 5;
3. an application for international protection is dismissed in regard to the granting of both asylum status and subsidiary protection status;
4. an alien's asylum status is withdrawn and subsidiary protection status is not conferred or

5. an alien's subsidiary protection status is withdrawn

and, in the cases referred to in subparagraphs 1 and 3 to 5 above, a residence permit as referred to in article 57 is not granted ex officio.

(2) If an alien who is unlawfully resident in the federal territory and who does not fall within the sphere of application of part 6 of the Aliens' Police Act is not granted ex officio a residence permit as referred to in article 57, such ruling shall be issued in conjunction with a repatriation decision pursuant to part 8 of the Aliens' Police Act.

(3) If the application of a third-country national for the granting of a residence permit as referred to in article 55, 56 or 57 is dismissed, such ruling shall be issued in conjunction with a repatriation decision pursuant to part 8 of the Aliens' Police Act. If any such application is rejected, the foregoing shall apply only insofar as none of the cases referred to in article 58 (9) 1 to 3 exists.

### **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-founded fear in accordance with article 1 A (2) of the Geneva Convention on Refugees and the requirements for the granting of subsidiary protection status (article 8(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.

## **Part 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, except in the cases referred to in article 12a, 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 article 24, paragraph (2) (de facto protection against deportation); article 32 shall be unaffected. The alien's residence in the federal territory shall be permitted. Any right of residence existing on the basis of other federal laws shall be unaffected. Article 16, paragraph (4) of the Federal Office Procedure Act shall apply.



(2) An alien who has filed an application for international protection and is not accorded right of residence shall be permitted to stay solely in the area of the district administrative authority in which his place of residence, as referred to in subparagraph 4 of article 15, paragraph (1), is located for the duration of the admission procedure before the Federal Office. The alien shall further be permitted to stay anywhere in the 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, public prosecution services or administrative authorities or
3. for the receipt of medical care and treatment.

Upon the conclusion of the admission procedure before the Federal Office, the alien shall be permitted to stay anywhere in the federal territory for as long as he enjoys de facto protection against deportation.

(3) Residence as referred to in paragraphs (1) and (2) shall not constitute right of residence pursuant to article 13).

#### **De facto protection against deportation in the event of subsequent applications**

**Article 12a.** (1) If an alien has filed a subsequent application (article 2, paragraph (1), subparagraph 23) after a rejection ruling pursuant to article 4a or 5 or after any further rejection ruling pursuant to article 68, paragraph (1), of the General Administrative Procedure Act following a rejection ruling pursuant to article 4a or 5, he shall not enjoy de facto protection against deportation if:

1. an order for removal from the country pursuant to article 61 of the Aliens Police Act or an expulsion order pursuant to article 66 of the Aliens Police Act has been imposed on him;
2. none of the cases referred to in article 19 (2) of the Federal Office Procedure Act exists;
3. in the case referred to in article 5, the responsibility of the other country still exists or that country still or again acknowledges its responsibility and the circumstances in the responsible other country with respect to article 3 of the European Convention on Human Rights have with a sufficient degree of probability not deteriorated significantly since the ruling pursuant to article 5 and
4. deportation is still admissible having regard to article 8 of the European Convention on Human Rights (article 9 (1) to (2) of the Federal Office Procedures Act).

(2) If an alien has filed a subsequent application (article 2, paragraph (1), subparagraph 23) and none of the cases referred to in paragraph (1) above exists, the Federal Office may terminate the alien's de facto protection against deportation if:

1. a repatriation decision pursuant to article 52 of the Aliens' Police Act, order for removal from the country pursuant to article 61 of the Aliens' Police Act, an expulsion order pursuant to article 66 of the Aliens' Police Act or a residence ban pursuant to article 67 of the Aliens Police Act has been imposed on him; ;
2. the application is likely to be rejected since no change significant to the decision has occurred in the material facts and
3. rejection at the border, forcible return or deportation would not constitute a real risk of violation of article 2, article 3 or article 8 of the European Convention on Human Rights or of Protocol No. 6 or Protocol No. 13 to the Convention and would not represent a serious threat to the alien's life or person as a civilian by reason of indiscriminate violence in situations of international or internal conflicts.

(3) If an alien has filed a subsequent application (article 2, paragraph (1), subparagraph 23) in accordance with paragraph (2) above within eighteen days prior to a date already fixed for deportation, he shall not enjoy de facto protection against deportation if at the time of the application:

1. a repatriation decision pursuant to article 52 of the Aliens' Police Act, order for removal from the country pursuant to article 61 of the Aliens' Police Act, an expulsion order pursuant to article 66 of the Aliens' Police Act or a residence ban pursuant to article 67 of the Aliens Police Act has been imposed on him ;
2. the alien has previously been informed in a provable manner of the date fixed for deportation and
3. in addition:
  - (a) the alien is in detention pending deportation, penal confinement or pre-trial detention;
  - (b) a more lenient measure is applied with regard to the alien (article 77 of the Aliens' Police Act) or
  - (c) the alien is in custody following arrest pursuant to subparagraph 1 or 3 of article 34 (3) of the Federal Office Procedure Act in conjunction with article 40 (1) 1 of the Federal Office Procedure Act

If one of the conditions required under subparagraphs 1 to 3 above is not met, paragraph (2) above shall apply. Article 33, paragraph (2), of the General Administrative Procedure Act shall not apply with respect to the computation of the eighteen-day period.

(4) In the cases referred to in paragraph (3) above, the Federal Office shall grant the alien de facto protection against deportation in exceptional cases if the subsequent

application was not filed for the purpose of unjustifiably preventing or delaying deportation. That shall be the case:

1. if, at the time of the interrogation or interview (article 19), the alien demonstrates that he was unable to file the subsequent application at an earlier time or
2. if, since the last decision, a change relevant to the decision has occurred in the factual situation in the country of origin.

A ruling on the existence of the conditions required under subparagraphs 1 and 2 above shall be rendered in the form of a summary decision (article 57 of the General Administrative Procedure Act). If the subsequent application was filed within two days prior to the date already fixed for deportation, the examination of the question of de facto protection against deportation shall be limited to the existence of the condition required under subparagraph 2 above. Article 33, paragraph (2), of the General Administrative Procedure Act shall not apply with respect to the computation of the two-day period. The granting of de facto protection against deportation shall not preclude the possibility of reconducting the procedure in accordance with paragraph (2) above.

(5) Notwithstanding articles 17, paragraph (4), and 29 paragraph (1), the admission procedure in the cases referred to in paragraphs (1) and (3) above shall commence upon the filing of the application for international protection.

(6) Repatriation decisions pursuant to article 52 of the Aliens' Police Act shall remain valid for 18 months following the departure of the alien unless a longer period is fixed pursuant to article 53 (2) and (3) of the Aliens' Police Act. Orders for removal from the pursuant to article 61 of the Aliens Police Act, expulsion orders pursuant to article 66 of the Aliens Police Act and residence bans pursuant to article 67 of the Aliens Police Act shall remain valid for 18 months following the departure of the alien. The foregoing shall not apply to residence bans pursuant to article 67 of the Aliens Police Act which have been fixed for a longer period.

### **Right of residence**

**Article 13.** (1) 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 lost (paragraph (2) below) .

(2) An asylum seeker shall lose his right of residence in the federal territory if:

1. he has become an offender (article 2 (3));
2. charges have been filed against the asylum seeker by the public prosecution service by reason of an intentionally committed act punishable by the courts;
3. a pretrial detention order has been imposed on the asylum seeker (articles 173 et seq. of the Code of Criminal Procedure, FLG No. 631/1975) or

4. the asylum seeker has been discovered in the act of committing an offence (article 17 of the Penal Code).

The loss of right of residence shall be communicated to the asylum seeker by procedural order (article 63 (2) of the General Administrative Procedure Act). If, in the cases referred to in subparagraphs 2 to 4 above, an asylum seeker is acquitted, the public prosecution service shall abandon the prosecution of the offence (articles 198 et seq. of the Code of Criminal Procedure), or, if the criminal proceedings are discontinued, the asylum seeker's right of residence shall be reinstated with retroactive effect from the date when it was lost.

(3) If an asylum seeker has lost his right of residence in the federal territory pursuant to paragraph (2) above, he shall be accorded de facto protection against deportation (article 12).

(4) In the administrative decision concluding the procedure the Federal Office shall give its ruling on the loss of an asylum seeker's right of residence.

### **Re-entry**

**Article 14.** (1) An asylum-seeker whose appeal against a repatriation decision pursuant to article 52 of the Aliens' Police Act or an order for removal from the country pursuant to article 61 of the Aliens' Police Act issued in conjunction with a rejecting or dismissing decision by the Federal Office 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.

(1a) An alien whose de facto protection against deportation has been terminated (article 12a, paragraph (2)) or who has not enjoyed de facto protection against deportation (article 12a, paragraph (1) or (3)) shall be allowed to re-enter at the border crossing point against presentation of a ruling by the Federal Administrative Court, pursuant to article 22 of the Federal Office Procedure Act, revoking the termination of the de facto protection against deportation, or pursuant to article 21 (3) of the Federal Office Procedure Act, if he can furnish proof of his procedural identity. Paragraph (3) shall apply *mutatis mutandis*.

(2) An asylum-seeker against whom an enforceable but not final repatriation decision pursuant to article 52 of the Aliens' Police Act, order for removal from the country pursuant to article 61 of the Aliens' Police Act or expulsion ruling pursuant to article 66 of the Aliens' Police Act 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 (article 15(1)4). An asylum-seeker shall also be informed of the postal address of the Federal Office and of the Federal Administrative Court. 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 photographic and fingerprint data shall be sufficient. Any photographing and fingerprinting procedures required to that end shall be carried out solely upon application by the person concerned. Data acquired 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 Office shall, if the appeal against a repatriation decision pursuant to article 52 of the Aliens' Police Act or an order for removal from the country pursuant to article 61 of the Aliens' Police Act 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 and duty to register**

### **Asylum-seekers' duty to cooperate in the procedure**

**Article 15.** (1) An asylum-seeker shall cooperate in procedures pursuant to the present federal law; 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. must present doctor's findings and assessments which are available to him, provided that these are relevant for judging whether there is a psychological disorder which is independent of stress and which classes as an illness (article 30) or special needs (article 2 para 1 of the Basic Welfare Support Act)
4. to notify the Federal Office or the Federal Administrative Court without delay of his place of residence and address and any changes thereto, including after he has left Austria for any reason. It shall be sufficient for such purposes if an asylum-seeker present in Austria complies with his duty to register under the 1991 Domicile Registration Act (MeldeG), FLG No. 9/1992. If the asylum-seeker is subject to a reporting obligation as laid down in article 15a, notification as referred to in the first phrase of this subparagraph shall be effected at the latest simultaneously with the change in the place of residence. The duty to register under the Domicile Registration Act shall be unaffected thereby.
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;

6. *(Has been repealed by FLG I No. 87/2012)*
7. notwithstanding subparagraphs 1, 2, 4 and 5, to cooperate in the procedural and investigative stages pursuant to article 29, paragraph (6), necessary at the commencement of the admission procedure

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

(3) Indications as referred to in subparagraph 1 of paragraph (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 Federal Administrative Court or Federal Office insofar as they are of importance to the procedure.

*(Art 3a und Art 3b repealed by FLG I No 70/2015)*

(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.

### **Reporting obligation in admission procedures**

**Article 15a.** (1) Aliens undergoing admission procedures shall be subject to a regular reporting obligation if:

1. a notification as referred to article 29, paragraph (3), subparagraphs 4 to 6 is effected or
2. the alien does not enjoy de facto protection against deportation pursuant to article 12a, paragraph (1) and

neither has an order for detention pending deportation been imposed on the alien nor has a more lenient measure been applied with regard to him.

(2) In order to comply with the reporting obligation laid down in paragraph (1) above, aliens who are not accommodated at a care facility operated by the Federal Government shall, at regular intervals not exceeding 48 hours, report to a station of a provincial police authority to be determined. The necessary information for that purpose, such as, in particular, the relevant police station and the reporting period and time, shall be communicated by the Federal Office to the alien by procedural order (article 63, paragraph (2), of the General Administrative Procedure Act). In the case of aliens who are accommodated at a care facility operated by the Federal Government, any absence of at least 48 hours from the care facility shall be deemed to be a breach of the reporting obligation. Absences from the care facility shall be documented in an appropriate, comprehensible manner. A breach of the reporting obligation shall not exist if its fulfilment was provably impossible for or could not reasonably be expected of the alien.

### **Order to stay at assigned place of residence**

**Article 15b.** (1) An asylum-seeker may be ordered to accept accommodation in quarters provided by the municipal body responsible for basic welfare support by means of an administrative order issued by the Federal Office (article 7 para 1 of the Administrative Procedural Act) if this is in the public interest, or for reasons of public order, or to ensure the quick processing and effective supervision of the application for international protection. The administrative order must be mentioned in the administrative decision which concludes the procedure.

(2) When assessing whether there is a public interest or there are reasons of public order, particular attention must be paid to the following

1. whether the requirements for the loss of the right to reside pursuant to article 13 para 2, or a decision pursuant to article 2 para 4 of the 2005 Basic Welfare Support Act 2005 have been fulfilled,
2. whether the application for international protection relates to a state pursuant to article 19 of the Federal Office Procedure Act, or
3. whether a legally binding decision to return was issued in relation to the third country national before the application for international protection was lodged.

(3) When assessing whether an order to take accommodation should be issued to ensure quick processing and effective supervision of the application for international protection, particular consideration must be paid to whether the asylum-seeker has complied with his cooperation obligations pursuant to article 15 or whether further investigations regarding identity are required.

(4) The order to stay at assigned place of residence applies until a legally binding decision has been made on the application for international protection, provided that such living quarters have been made available to the asylum-seeker unless subsidiary protection status has been granted to the asylum-seeker or a residence permit has been granted according to section 7. If the order refers to a care facility operated by the Federal Government, then it shall become invalid if the asylum-seeker is referred to a care facility operated by the federal state government.

(5) The asylum-seeker must be informed in a verifiable way of the order pursuant to para 1 as well as the consequences of a failure to comply with it.

### **Restriction on place of residence**

**Article 15c.** (1) An asylum-seeker may not establish a place of residence, or - in the absence of such - a place of habitual residence outside of the federal province which grants or provides for his basic welfare support unless subsidiary protection status has been granted to the asylum-seeker or a residence permit has been granted according to section 7 pursuant to the agreement on basic welfare support. The restriction on place of residence is not affected by the withdrawal of basic welfare support, unless another federal province grants or provides the asylum-seeker with such basic welfare support. In such cases, the first sentence applies.

(2) The obligation does not apply if, and for as long as, an order to stay at assigned place of residence pursuant to article 15b applies.

(3) The asylum-seeker must be verifiably informed of the restriction on place of residence pursuant to para 1 and the consequences of a failure to comply with it.

*(Article 16 has been repealed by FLG I No. 87/2012)*

## **Part 4**

### **Asylum procedural law**

#### **Section 1: General asylum procedures**

##### **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 (article 4 of the Federal Office Establishment Act).

(2) An application for international protection shall be deemed submitted upon the issuance of an order of the Federal Office as referred to in article 43 (1) of the Federal Office Procedures Act unless otherwise laid down in the present federal law or in the Federal Office Procedures Act.

(3) An application for international protection in respect of a child born in Austria of an alien on whom asylum status or subsidiary protection status has been conferred may also be submitted to a regional headquarters or a branch office of the regional



headquarters; such applications may also be filed and submitted in writing. A family procedure (article 34) in respect of an under-age single 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 paragraph (1) above, that authority shall notify the locally competent security authority or the nearest agent of the public security service.

(6) In the cases referred to in article 43 (2) of the Federal Office Procedures Act the application for international protection shall be deemed submitted upon completion of the interrogation and, where appropriate, the conduct of a search and photographing and fingerprinting procedures; the asylum-seeker shall be issued with a procedure card within three days. The 20-day time limit referred to in article 28, paragraph (2), shall in such event be computed as from the execution of a procedural act by the Federal Office.

(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 Office.

(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 Office shall forward such application without delay to the Federal Administrative Court.

(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 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, this explanatory leaflet shall draw attention to the obligation of asylum-seekers to be available to the authorities for purposes of procedures pursuant to the present federal law and the legal consequences of any breach thereof.

**Article 17a.** (1) When an alien submits an application for international protection, an application for international protection shall also be considered as issued and submitted for all unmarried, underage children who are third-country nationals staying in the federal territory and who are not granted the right of residence for more than 90 days according to this or another federal law and for whom the alien is authorised to represent.

(2) If an asylum-seeker or alien, who is unlawfully residing in the federal territory after his asylum procedure was finally concluded and who was not granted temporary

leave to remain in the federal territory (article 46a of the Aliens Police Act), has a third-country national child born in Austria and if the asylum-seeker or alien is authorised to represent this child, then this person must notify the Federal Office of the birth within two weeks.

(3) When notification of the birth is submitted to the Federal Office or as soon as the Federal Office becomes aware of the birth by some other means, this shall be classed as submission of an application for international protection for the child unless the child has already been granted a right of residence for more than 90 days in accordance with this or another federal law.

(4) Any alien who has submitted an application for international protection shall be made aware of the duty of disclosure in a provable manner, in accordance with paragraph 2.

### **Investigation procedures**

**Article 18.** (1) The Federal Office and the Federal Administrative Court 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) If the case concerns an asylum seeker who is an unaccompanied person under full age, the Federal Office shall take steps to trace his family members in the country of origin, a third country or a member State, subject to the actual resources available. In the case of unaccompanied under-age persons, the Federal Office shall assist such persons, at their request, in tracing family members.

(3) 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. 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. That restriction shall not apply if the application concerned is a subsequent application (article 2, paragraph (1), subparagraph 23). The interrogation may be dispensed with in the cases referred to in article 12a, paragraph (1), and in the cases referred to in article 12a, paragraph (3), if the subsequent application was filed within two days prior to the date already fixed for deportation.

(2) 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 Office 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. An interview may be dispensed with if the asylum-seeker does not enjoy de facto protection against deportation (article 12a, paragraph (1) or (3)). If it is possible without disproportionate expense, the asylum-seeker shall be interviewed in person by the official of the Federal Office who is competent to take a decision. Article 24, paragraph (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 (article 49 of the Federal Office Procedure Act) is present. Under-age asylum-seekers may be interviewed solely in the presence of a legal representative.

(6) In proceedings in respect of a breach of the obligation to render a decision in accordance with article 130 (1) 3 of the Federal Constitutional Act (complaint of omission), the Federal Administrative Court may instruct the Federal Office to interview the asylum seeker.

#### **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 (article 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.

#### **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 (article 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 procedures before the Federal Administrative Court, paragraph (1) above shall apply only if the asylum-seeker has already claimed an infringement of his right to sexual self-determination before the Federal Office or in the complaint. In such event, a hearing shall be conducted by a sole judge of the same sex or by a panel composed of judges of the same sex. A request as referred to in

paragraph (1) above shall be submitted at the latest simultaneously with the filing of the complaint.

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

(4) Upon request of concerned asylum-seeker the hearing shall be held in camera. The asylum-seeker shall be informed in a provable manner of that possibility. In all other respects article 25 of the Federal act on proceedings of the administrative courts (Administrative Court Proceedings Act – VwGVG), FLG I No. 33/2013 shall apply.

### **Evidence**

**Article 21.** (1) Documents and articles handed over in accordance with article 15, paragraph (1), subparagraph 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 law, 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 laws 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 paragraph shall be confirmed to the person concerned.

### **Decisions**

**Article 22.** *((2) to (5) have been repealed by FLG I No.87/2012)*

(1) Notwithstanding article 73, paragraph (1), of the General Administrative Procedures Act, a decision on an application for international protection shall be pronounced within a maximum period of 15 months.

(6) Procedures concerning applications for international protection shall, if the asylum-seeker is in detention pending deportation, be dealt with urgently by the Federal Office or the Federal Administrative Court according to the status of the procedure. 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 procedures shall be completed in accordance with the time-limit specified in article 73, paragraph (1), of the General Administrative Procedure Act. Article 27 shall be unaffected.

(7) The Federal Office and the Federal Administrative Court shall inform the relevant provincial police authority concerning the enforceability of decisions in procedures at airports.

(8) If Council Directive 2001/55/EC on 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 article 62, the computation of the time-limit for procedures relating to affected persons under the present federal law shall be suspended for the duration of the temporary protection.

*(9) (Has been repealed by FLG I No. 87/2012)*

(10) ) Rulings by the Federal Office on the termination of protection against deportation pursuant to article 12a, paragraph (2), shall be rendered orally in the form of administrative decisions. The record thereof made pursuant to article 62, paragraph (2), of the General Administrative Procedure Act shall be valid as an official copy in writing, as referred to in article 62, paragraph (3), of the General Administrative Procedure Act. The administrative records shall be communicated without delay to the Federal Administrative Court for review purposes pursuant to article 22 of the Federal Office Procedure Act. Such communication shall be deemed to be an appeal lodged with the Federal Administrative Court; the foregoing shall be stated in the instructions concerning the right to a legal remedy. The lawfulness of the termination of protection against deportation shall be ruled on by the Federal Administrative Court, by resolution, in the review conducted pursuant to article 22 of the Federal Office Procedure Act.

*(11) (Has been repealed by FLG I No.87/2012)*

*(12) (Has been repealed by FLG I No. 10/2016)*

*(13) (Has been repealed by FLG I No.87/2012)*

*(Article 23 has been repealed by FLG I No. 87/2012)*

### **Discontinuation of procedures**

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

1. owing to a breach of his duty of cooperation pursuant to article 13 (2) of the Federal Office Procedures Act, article 15 or article 15a, his place of residence is not known to the Federal Administrative Court or Federal Office 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 (article 25(1)) or
3. he fails to observe appointment dates fixed for him in the admission procedure by the Federal Office, notwithstanding a request to that effect.

(2) Asylum procedures shall be discontinued if an asylum-seeker has evaded the procedure (paragraph (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 article 73(1) of the General Administrative Procedure 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 before the Federal Office is to be discontinued, the steps set out in article 34 (4) of the Federal Office Procedure Act shall be followed.

(2a) In the case of the alien's voluntary departure to his country of origin, the asylum procedure shall be discontinued upon his exit from Austria unless a decision on

the facts is imminent. A discontinued procedure shall be resumed ex officio if the alien is unlawfully resident in the federal territory following discontinuation of the procedure or files an application for international protection. Upon the resumption of the procedure, the time-limit for rendering a decision, as referred to in article 73 (1) of the General Administrative Procedures Act or article 34 (1) of the Administrative Court Proceedings 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.

(3) If the facts relevant to a decision are established and the asylum-seeker has evaded the procedure (paragraph (1) above), the fact that he has not yet been interviewed by the Federal Office or the Federal Administrative Court shall not preclude the rendering of a decision.

*(Art 24 (4) repealed by FLG I No 70/2015)*

### **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 the cases referred to in article 12a, paragraph (3), if the subsequent application was filed within two days prior to the date already fixed for deportation, de facto protection against deportation was not granted pursuant to article 12a, paragraph (4), and the asylum-seeker is no longer resident in the federal territory or
2. if the application was filed in writing, unless such action was admissible in accordance with article 17(3).

(2) Withdrawal of an application for international protection in proceedings before the Federal Office shall not be possible unless the asylum-seeker is lawfully settled in Austria (article 2(2) of the Settlement and Residence Act). The withdrawal of an application for international protection in proceedings before the Federal Administrative Court 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.

*(Article 26 has been repealed by FLG I No. 87/2012)*

### **Initiation of procedures for the imposition of measures to terminate residence**

**Article 27.** (1) A procedure for the imposition of a measure to terminate residence shall be deemed to be initiated:

1. if during the admission procedure, notification is effected in accordance with subparagraph 4 or 5 of article 29(3) and

2. if the procedure before the independent Federal Asylum Review Board was to be discontinued (article 24(2)) and the decision of the Federal Office in that procedure has been issued in conjunction with a measure to terminate residence.

(2) The Federal Office or the Federal Administrative Court shall also initiate a procedure for the imposition of a measure to terminate residence 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 a procedure for the imposition of a measure to terminate residence 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 become an offender (article 2, paragraph (3));
2. against whom charges have been filed by the Department of Public Prosecution by reason of an offence punishable by the courts which can only be committed intentionally;
3. on whom a pre-trial detention order has been imposed (articles 173 et seq. of the Code of Criminal Procedure, FLG No. 631/1975) or
4. who has been caught in the act of committing a felony (article 17 of the Penal Code).

(4) A procedure for the imposition of a measure to terminate residence initiated pursuant to subparagraph 1 of paragraph (1) above shall be discontinued if the procedure is admitted. An expulsion procedure initiated pursuant to subparagraph 2 of paragraph (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 Federal Administrative Court of his place of residence and it may be assumed, on the basis of certain facts, that he will not again evade the procedure.

(5) A procedure for the imposition of a measure to terminate residence initiated pursuant to paragraph (2) above shall be discontinued if the inquiries to date justify the assumption that the application for international protection is to be upheld in regard to the granting of asylum status or of subsidiary protection status or the specific public interest in the accelerated conduct of the procedure no longer exists.

(6) The discontinuation any procedure for the imposition of a measure to terminate residence shall not preclude its subsequent re-initiation.

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

(8) A procedure in which a procedure for the imposition of a measure to terminate residence has been initiated shall be ruled on as quickly as possible and at the latest

within three months from initiation of the procedure for the imposition of a measure to terminate residence or from the lodging of an appeal which has suspensory effect.

### **Accelerated procedures**

**Article 27a.** In the cases referred to in article 18 (1) of the Federal Office Procedures Act an accelerated procedure may be conducted. Such procedures shall be ruled on within five months at the latest. That time-limit may, however, be exceeded if required for the purpose of a full and proper examination of the application for international protection. The time-limit for rendering a decision as referred to in article 73 (1) of the General Administrative Procedures Act shall in such event be applicable.

## **Section 2: Special provisions relating to admission procedures**

### **Admission procedures**

**Article 28.** (1) If it is expected that the application for international protection 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 (article 51) provided that the asylum seeker possesses right of residence; an administrative decision shall then not be required. Otherwise, the admission shall be documented by procedural order. Admission shall not preclude a subsequent rejection ruling.

(2) If, within twenty days from submission of an application for international protection, the Federal Office 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 a notification as referred to in article 29, paragraph (3), subparagraphs 4, 5 or 6 has been effected, the asylum-seeker does not enjoy de facto protection against deportation (article 12a, paragraph (1) or (3)), 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 (paragraph (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 or at a federal government care facility.

### **Special provisions relating to admission procedures**



**Article 29.** “(1) Admission procedures shall be commenced upon the submission of applications for international protection.”

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

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

1. issue a residence entitlement card (article 51) to the asylum-seeker;
2. uphold his application for international protection by the granting of asylum status (article 3);
3. notify the asylum-seeker by procedural order (article 63(2) of the General Administrative Procedure Act) that it is intended that his application for international protection is to be upheld by the granting of subsidiary protection status (article 8(1)) and to be dismissed in regard to asylum status;
4. notify the asylum-seeker by procedural order (article 63(2) of the General Administrative Procedure Act) that it is intended that his application for international protection is to be rejected (articles 4 to 5 and article 68(1) of the General Administrative Procedure Act);
5. notify the asylum-seeker by procedural order (article 63(2) of the General Administrative Procedure Act) that it is intended that his application for international protection is to be dismissed or
6. notify the asylum-seeker by procedural order (article 63, paragraph (2), of the General Administrative Procedure Act) that it is intended that his de facto protection against deportation is to be terminated (article 12a, paragraph (2)).

A notification as referred to in subparagraphs 3 to 6 above shall not be effected if the asylum-seeker is no longer resident in the federal territory.

(4) If in the case of notifications as referred to in para (3) 3 to 6, an interview shall take place within 72 hours after the handing over of the notification to afford the parties an opportunity to be heard, the asylum-seeker shall be referred to a legal adviser (article 49 of the Federal Office Procedure Act). 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, which can take place at the earliest 24 hours later. The file content shall be made accessible to the legal adviser without delay (article 29 (1) 15 of the Federal Office Procedure Act) unless it is exempt from the right of inspection of records (article 17(3) of the General Administrative Procedure Act). If the asylum-seeker is not seeking legal advice, the interview can still take place and a decision can be taken. 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) If legal advice (article 49 of the Federal Office Procedure Act) was provided according to para (4), 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 to specify or present additional facts and evidence.

(6) At the commencement of the admission procedure the following procedural and investigative stages shall, if required in each case, be completed without undue delay:

1. photographing and fingerprinting procedures (article 42 (1) of the Federal Office Procedure Act) and search (article 38 (1) 3, 4 and 5 of the Federal Office Procedure Act);
2. multifactorial examination for the purpose of age diagnosis (article 2 (1) 25 of the 2005 Asylum Act in conjunction with article 13 (3) of the Federal Office Procedures Act);
3. information, in a provable manner, on the internal rules for the preservation of order and safety set out in article 5, paragraph (3), of the GVG-B 2005;
4. compliance with the statutory obligations set out in article 15, paragraph (4), and article 17, paragraph (9);
5. inquiries for the purpose of ascertaining the asylum seeker's identity;
6. interviews by an official of the Federal Office (article 19, paragraph (2));
7. issue of procedure card set out in article 50;
8. medical examinations provided for in federal public health provisions.

### **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, the use of serious forms of psychological, physical or sexual violence or like event which:

1. prevents him from defending his interests in the procedure or

2. presents for him a risk of permanent harm or long-term effects,

a notification as referred to in article 29, paragraph (3), subparagraph 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 61 (3) of the Aliens' Police Act 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, subparagraph 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 Office 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. Article 29, paragraph (6), shall not apply. If the alien's entry is permitted, he shall be transferred to the Federal Office within Austria; the provisions of the present Section shall not then be applicable to the further conduct of the procedure. The application for international protection shall be deemed submitted upon the alien's transfer as referred to in the first or third sentence.

(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.

(4) The provisions concerning de facto protection against deportation in the event of subsequent applications (article 2, paragraph (1), subparagraph 23) shall not be applicable to the cases referred to in paragraph (1) above, even if the alien's entry was permitted. The foregoing shall also apply if the alien files a subsequent application in the procedure at the airport following a rejection or dismissal ruling. If in such cases no departure from Austria has since then taken place, the measure to guarantee rejection at the border (article 32, paragraph (4)) may be maintained in force for a further four weeks beyond the six-week period. Paragraph (3) above shall not apply to subsequent applications.

#### **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 Office 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 a 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 (article 19 of the Federal Office Procedure Act).

(2) The dismissal of an application for international protection pursuant to paragraph (1) above and the rejection of an application by reason of existing protection in a safe third country (article 4) may be effected by the Federal Office 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 Office in procedures at an airport shall be one week.

(4) The Federal Administrative Court 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 any measure to terminate residence pursuant to part 8 of the Aliens' Police Act 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 of:

1. an alien who has been granted asylum status;
2. an alien who has been granted subsidiary protection status (article 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:

1. the family member has not become an offender and
3. a procedure for withdrawing asylum status is not pending against the alien who has been granted such status (article 7).

(3) The authority shall, pursuant to an application in respect of a family member of an alien who has been granted subsidiary protection status, grant subsidiary protection status to the family member by administrative decision if:

1. the family member has not become an offender ;
3. a procedure for withdrawing subsidiary protection status is not pending against the alien who has been granted such status (article 9) and
4. the family member is not 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; subject to the conditions required under paragraphs (2) and (3) above, 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. If an alien is to be granted de facto protection against deportation pursuant to article 12a, paragraph (4), such protection shall also be granted to his family members.

(5) The provisions of paragraphs (1) to (4) above shall apply mutatis mutandis to procedures before the Federal Administrative Court.

(6) The provisions of the present Section shall not be applicable:

1. to family members who are EEA citizens or Swiss citizens;
2. to family members of an alien who has been granted asylum status or subsidiary protection status in a procedure under the present Section unless the family member concerned is an under-age, single child;
3. in the event of a marriage, civil partnership or adoption arranged for the purposes of residence (article 30 of the Settlement and Residence Act).

#### **Applications for entry filed with diplomatic and consular authorities**

**Article 35.** (1) A family member, as defined in paragraph (5) below, of an alien who has been granted asylum status and who is outside Austria may, for the purpose of filing an application for international protection as referred to in article 34, paragraph (1), subparagraph 1, in conjunction with article 2, paragraph (1), subparagraph 13, file an application for the granting of entry authorization with an Austrian diplomatic authority abroad entrusted with consular functions (diplomatic authority). If the application for the granting of entry authorization is filed more than three months after asylum status has been granted by final ruling, it shall be necessary to meet the requirements set out in article 60 (2) 1 to 3.

(2) A family member, as defined in paragraph (5) below, of an alien who has been granted subsidiary protection status and who is outside Austria may, for the purpose of filing an application for international protection as referred to in article 34, paragraph (1), subparagraph 2, in conjunction with article 2, paragraph (1), subparagraph 13, file an application for the granting of entry authorization with the diplomatic or consular authority at the earliest three years after subsidiary protection status has been granted by final ruling provided that the requirements set out in article 60 (2) 1 to 3 are met. In such event, entry shall be granted 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. Paragraph (4) below shall additionally apply.

(2a) If the applicant is the parent of an unaccompanied minor who has been granted asylum status or subsidiary protection status, the requirements set out in article 60 (2) 1 to 3 shall be deemed to be met.

(3) If an application is filed pursuant to paragraph (1) or (2) above, the diplomatic or consular authority shall ensure that the alien completes a 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 for Europe, Integration and Foreign Affairs and after consultation with the United Nations High Commissioner for Refugees (article 63), in such a way that completion thereof serves to establish the material facts. The diplomatic or consular authority shall also endeavour to ensure that the application is complete with respect to furnishing proof that the requirements set out in article 60 (2) 1 to 3 have been met and shall make a written record of the content of the documents submitted to it. Applications for entry shall be forwarded to the Federal Office without delay.

(4) The diplomatic or consular authority shall issue an entry visa without further formality to an alien as referred to in paragraph (1) or (2) above (article 26 of the Aliens' Police Act) if the Federal Office has given notification that asylum status or subsidiary protection status is likely to be granted. Such notification may be issued by the Federal Office only if:

1. a procedure for withdrawing asylum status or a subsidiary protection status is not pending against the alien who has been granted such status (articles 7 and 9) pursuant to an application for the granting of entry authorization;
2. 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 article 8, paragraph 2, of the European Convention on Human Rights and
3. in the case of an application as referred to in the final sentence of paragraph (1) or in paragraph (2) above, the requirements set out in article 60 (2) 1 to 3 are met unless, in accordance with article 9 (2) of the Federal Office Procedures Act, the upholding of the application is necessary for the preservation of private and family life within the meaning of article 8 of the European Convention on Human Rights.

The time limit referred to in article 11, paragraph (5), of the Aliens' Police Act shall be suspended until receipt of that notification. The diplomatic or consular authority shall inform the alien of the further conduct of the procedure in Austria in accordance with article 17, paragraphs (1) and (2).

(5) For the purposes of this provision, 'family member' shall mean the parent of an under-age child, the spouse or anyone who, at the time of filing the application, was an unmarried under-age child of an alien to whom subsidiary protection status or asylum status has been granted, insofar as, in the case of spouses, the marriage already existed before the person awarded subsidiary protection or the person granted asylum entered the country; the foregoing shall also apply to registered civil partners insofar as the registered civil partnership already existed before the person awarded subsidiary protection or the person granted asylum entered the country.

## Section 5

### **Special provisions relating to the preservation of law and order and protection of domestic security during the operation of border controls**

#### **Orders of the Federal Government**

**Article 36.** (1) If the existence of a threat to the preservation of law and order or protection of domestic security is declared by order of the Federal Government, in agreement with the Executive Committee of the National Council, the provisions of the present Section shall be applicable during the period of validity of such order and the operation of border controls at internal borders (article 10 (2) of the Federal act on the conduct of identity checks at border crossings (Border Control Act – GrekoG), FLG No. 435/1996). Articles 17 and 18 of the 2013 Federal Budget Act (BHG 2013), FLG I No. 139/2009, shall not be applicable with respect to the issuance and extension of that order or of the order specified in article 37. The special provisions relating to procedures at airports (Section 3) shall not be affected by the present Section.

(2) The declaration of a threat to the preservation of law and order or protection of domestic security shall be substantiated in writing by the Federal Government to the Executive Committee of the National Council. In that respect, attention shall, in particular, be given to the number of aliens filing applications for international protection and to those State systems whose functioning is affected by current migration movements.

(3) The order referred to in paragraph (1) above may be issued for a period of validity of up to six months and be extended a maximum of three times for up to six months in each case.

#### **Registration points**

**Article 37.** The Federal Minister of the Interior shall be empowered by ministerial order to establish premises for registration purposes (registration points). Such premises shall form part of the provincial police authority having territorial jurisdiction.

#### **Filing of applications for international protection**

**Article 38.** (1) Applications for international protection by aliens who are not entitled to enter and reside in the federal territory shall be filed in person, at the time of the border crossing, with an agent of the public security service at the internal border. Applications for international protection by aliens who have unlawfully entered the country by evasion of border controls and who are not entitled to reside in the federal territory shall be filed in person with an agent of the public security service at a registration point (Article 37).

(2) If an alien who has unlawfully entered the country by evasion of border controls and who is not entitled to reside in the federal territory expresses to an agent of the public security service other than at a registration point (Article 37) or to an authority within Austria which is not a registration point, as referred to in article 37, the intention of wishing to file an application for international protection shall be transferred to a registration point by agents of the public security service in order to guarantee a forcible return measure. If the alien is transferred to the registration point of a provincial police authority which does not have jurisdiction in accordance with article 6 of the Aliens Police Act for the purposes of Chapters 3 to 6 and 12 to 15 of the Aliens Police Act,



jurisdiction shall devolve upon that provincial police authority at the time of the alien's transfer.

(3) Following the filing of an application for international protection as referred to in paragraph (1) above, the admissibility of entry prevention, rejection at the border (article 41 of the Aliens Police Act) or forcible return (article 45 of the Aliens Police Act) shall be determined prior to an interrogation as referred to in article 19, paragraph (1), and, if applicable, the entry prevention, rejection at the border or forcible return measure shall be executed.

### **De facto protection against deportation**

**Article 39.** Notwithstanding articles 12 and 12a, an alien who has filed an application for international protection in Austria pursuant to article 38 may only be accorded de facto protection against deportation upon the submission of the application (article 17 (2)).

### **Entry prevention, rejection at the border and forcible return**

**Article 40.** (1) Chapter 6 of the Aliens Police Act shall be applicable to aliens who have filed an application for international protection and who are not accorded de facto protection against deportation pursuant to Article 39.

(2) Entry prevention, rejection at the border (article 41 of the Aliens Police Act) or forcible return (article 45 of the Aliens Police Act) imposed on an alien who has filed an application for international protection and who is not accorded de facto protection against deportation pursuant to article 39 shall, however, be inadmissible if, in accordance with article 9 (2) of the Federal Office Procedures Act, the alien's entry into the federal territory or his continued residence in the federal territory is necessary for the preservation of private and family life within the meaning of article 8 of the European Convention on Human Rights. In that respect, the best interests of the child shall, in particular, be taken into account.

### **Asylum procedures**

**Article 41.** (1) If entry prevention, rejection at the border or forcible return imposed pursuant to article 40, in conjunction with article 41 or article 45, of the Aliens Police Act proves impossible or inadmissible on the grounds of article 2, 3 or 8 of the European Convention on Human Rights, the application for international protection shall be considered.

(2) If a complaint in accordance with article 130 (1) 2 of the Federal Constitutional Act against entry prevention, rejection at the border or forcible return imposed pursuant to article 40, in conjunction with article 41 or article 45, of the Aliens Police Act is lodged with the competent provincial administrative court (article 9 (1) of the Aliens Police Act) and the complaint is rejected or dismissed by the provincial administrative court, the application for international protection shall be deemed not submitted. If entry prevention, rejection at the border or forcible return is held by the provincial administrative court to be illegal, the complainant's entry shall be permitted and the application for international protection shall be considered.

(3) If a complaint in accordance with article 130 (1) 2 of the Federal Constitutional Act against entry prevention, rejection at the border or forcible return imposed pursuant to article 40, in conjunction with article 41 or article 45, of the Aliens Police Act is not lodged with the competent provincial administrative court within the prescribed period, the application for international protection shall be deemed not submitted.”

## **Part 6**

### **Cards for asylum seekers, persons having entitlement to asylum and persons eligible for subsidiary protection**

#### **Procedure cards**

**Article 50.** (1) An asylum seeker shall be issued with a procedure card without undue delay following submission of the application. This card shall, in the case of the provision of welfare support at a federal government care facility, confer entitlement to stay at such facility and to use the welfare support services, in accordance with the provisions of the Federal law 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. If the procedure is admitted prior to the issue of the card, it shall be possible to dispense with its issue.

(2) The specific layout of the procedure card shall be regulated by order of the Federal Minister of the Interior taking into consideration the manageability and security against forgery. The procedure card shall in particular contain the designations “Republic of Austria” and “Procedure Card”, the name, sex, nationality, date of birth and a photograph of the asylum-seeker.

(3) The order pursuant to paragraph 2 may require that the procedure card be supplied with a data carrier that can be read from a short distance without contact and on which personal details, in particular the asylum-seeker’s name, date of birth, sex, photograph, fingerprints and nationality, can be stored. If this option is made use of, then technical steps must be taken to ensure that the data stored on the card is protected against unlawful alteration and detection and, moreover, that the fingerprints can only be read by holders of a certificate specifically granted for this purpose. Additionally, the order pursuant to paragraph 2 can also require that the procedure card be supplied with a machine-readable section in which it is possible to display in particular the name, date of birth, sex and nationality of the asylum-seeker.

#### **Residence entitlement cards**

**Article 51.** (1) An asylum-seeker whose procedure is to be admitted and who is accorded right of residence pursuant to article 13 (1) 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 law and as proof of lawfulness of residence in the federal

territory. The residence entitlement card shall be returned by the alien to the Federal Office upon completion of the procedure or in the event of loss 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 taking into consideration the manageability and security against forgery. 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 and date of issue. Article 50 (3) shall apply *mutatis mutandis* with the proviso that the order according to the first sentence shall take the place of the order stipulated within it.

#### **Cards for persons having entitlement to asylum**

**Article 51a.** (1) An alien who has been granted asylum status shall be issued with a card for persons having entitlement to asylum. The card shall serve as proof of identity and lawfulness of residence in the federal territory. The card shall be returned to the Federal Office upon withdrawal of asylum status.

(2) The specific layout of the card for persons having entitlement to asylum shall be regulated by order of the Federal Minister of the Interior taking into consideration the manageability and security against forgery. The card for persons having entitlement to asylum shall in particular contain the designation “Card for Persons having Entitlement to Asylum”, the name, sex, date of birth, nationality, a photograph and the signature of the person having entitlement to asylum and also the title of the authority and date of issue.

#### **Cards for persons eligible for subsidiary protection**

**Article 52.** (1) An alien who has been granted subsidiary protection status shall be issued with a card for persons eligible for subsidiary protection. The card shall serve as proof of identity and lawfulness of residence in the federal territory. The card shall be returned to the Federal Office 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 taking into consideration the manageability and security against forgery. The card for persons eligible for subsidiary protection shall in particular contain the designation “Card for Persons Eligible for Subsidiary Protection”, 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 and date of issue.

#### **Revocation of cards**

**Article 53.** (1) The Federal Office shall revoke cards as referred to in the present federal law 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 law shall be returned by asylum-seekers to the Federal Office if they have been revoked or if circumstances exist which would justify revocation.

## **Part 7**

### **Residence permits on grounds deserving of consideration**

#### **Section 1: Residence permits**

#### **Types and form of residence permits**

Article 54 (1) The following residence permits shall be granted to third-country nationals on grounds deserving of consideration:

1. combined residence and work permit (Aufenthaltsberechtigung plus), which entitles the holder to reside in the federal territory and pursue an occupation in a self-employed or non-self-employed capacity pursuant to article 17 of the Aliens Employment Act (AuslBG), FLG No. 218/1975;
2. standard residence permit (Aufenthaltsberechtigung), which entitles the holder to reside in the federal territory and pursue an occupation in a self-employed or non-self-employed capacity, for which an appropriate work permit is required in accordance with the Aliens Employment Act;
3. special protection residence permit (Aufenthaltsberechtigung besonderer Schutz), which entitles the holder to reside in the federal territory and pursue an occupation in a self-employed or non-self-employed capacity, for which an appropriate work permit is required in accordance with the Aliens Employment Act.

(2) Residence permits as referred to in paragraph (1) above shall be issued for a twelve-month period commencing on the date of issuance. Residence permits as referred to in subparagraphs 1 and 2 of paragraph (1) above shall not be renewable.

(3) The third-country national shall notify the Federal Office without delay of the loss or non-usability of a residence permit and of any changes to the identity data on which the contents of a residence permit were based. Upon application, the documents shall be reissued with the original period of validity and the original scope of entitlement, and, if necessary, with amended identity data.

(4) The appearance and contents of residence permits as referred to in subparagraphs 1 to 3 of paragraph (1) above shall be determined by order of the Federal Minister of the Interior. Residence permits shall in particular contain the surname,

forename, date of birth, issuing authority and period of validity and a photograph; they shall be valid as identity documents.

(5) The provisions of part 7 shall not apply to favoured third-country nationals.

### **Residence permits on grounds of article 8 of the European Convention on Human Rights**

**Article 55.** (1) A combined residence and work permit shall be granted ex officio or upon a well-founded application to third-country nationals resident in the federal territory if:

1. in accordance with article 9 (2) of the Federal Office Procedure Act such measure is necessary for the preservation of private and family life within the meaning of article 8 of the European Convention on Human Rights and
2. the third-country national has completed module 1 of the integration agreement as referred to in article 14a of the Settlement and Residence Act or is, at the time of the ruling, pursuing a permitted occupation from which the earnings reach the monthly de minimis threshold (article 5 (2) of the General Social Security Act (ASVG), FLG No. 189/1955).

(2) If only the required condition as set out in subparagraph 1 of paragraph (1) above exists, a standard residence permit shall be granted.

### **Residence permits in cases particularly deserving of consideration**

**Article 56.** (1) In cases particularly deserving of consideration, a combined residence and work permit may be granted upon a well-founded application to third-country nationals resident in the federal territory, even if the third-country national is undergoing a procedure before the Federal Office for the imposition of a measure to terminate residence, if he:

1. has, at the time of filing the application, been provably resident in the federal territory for a continuous period of five years;
2. has been lawfully resident for at least one half, but in any event three years, of his period of established continuous residence and
3. has completed module 1 of the integration agreement as referred to in article 14a of the Settlement and Residence Act or is, at the time of the ruling, pursuing a permitted occupation from which the earnings reach the monthly de minimis threshold (article 5 (2) of the General Social Security Act).

(2) If only the required conditions as set out in subparagraphs 1 and 2 of paragraph (1) above exist, a standard residence permit shall be granted.

(3) The authority shall take into account the third-country national's degree of integration, in particular his self-sufficiency, education, vocational training,

employment and knowledge of the German language. Proof that one or more of the requirements set out in article 60 (2) 1 to 3 have been met may also be furnished by the presentation of a sole sponsorship declaration (article 2 (1) 26). If in a declaration two or more persons act as obligor, each of them shall be jointly liable for the full amount committed.

### **Special protection residence permits**

**Article 57.** (1) A special protection residence permit shall be granted ex officio or upon a well-founded application to third-country nationals resident in the federal territory:

1. if the third-country national has been granted temporary leave to remain in the federal territory for at least one year pursuant to article 46a, paragraph (1), subparagraph 1 or 3 of the Aliens' Police Act and the conditions required therefor continue to exist, unless the third-country national constitutes a danger to the general public or to the security of the Republic of Austria or has been convicted of a crime (article 17 of the Penal Code) by final judgment of an Austrian court. A conviction by a foreign court which satisfies the requirements set out in article 73 of the Penal Code shall be deemed equivalent to a conviction by an Austrian court;
2. in particular to witnesses or victims of human trafficking or the cross-border prostitution trade, for the purpose of guaranteeing the prosecution of acts punishable by the courts or with a view to the submission and enforcement of civil-law claims in connection with such punishable acts, or
3. if a third-country national not lawfully resident or not settled in the federal territory has been the victim of violence, an interim injunction as referred to in article 382b or 382e of the Enforcement and Dstraint Statute (EO), Reich Law Gazette (RGBL.) No. 79/1896, has been issued or could have been issued and the third-country national demonstrates that the granting of a special protection residence permit is necessary for the purpose of protection against further violence.

(2) With regard to the existence of the required conditions as set out in subparagraphs 2 and 3 of paragraph (1) above, the Federal Office shall obtain a substantiated opinion from the competent provincial police authority prior to granting the special protection residence permit. Until such opinion is received by the authority, the computation of the time-limits referred to in paragraph (3) below and in article 73 of the General Administrative Procedure Act shall be suspended.

(3) An application pursuant to subparagraph 2 of paragraph (1) above shall be rejected as inadmissible if no criminal proceedings have been initiated or no civil-law claims have been submitted. The authority shall rule on the application within six weeks.

(4) An application pursuant to subparagraph 3 of paragraph (1) above shall be rejected as inadmissible if an interim injunction as referred to in article 382b or

article 382e of the Enforcement and Dstraint Statute does not exist or could not have been issued.

## **Section 2: Procedures for the granting of residence permits**

### **Filing of applications and ex officio procedures**

**Article 58.** (1) The Federal Office shall ex officio review the granting of a residence permit as referred to in article 57 if:

1. an application for international protection is rejected pursuant to article 4 or article 4a;
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 subsidiary protection status is not conferred;
4. an alien's subsidiary protection status is withdrawn or
5. an alien is unlawfully resident in the federal territory and does not fall within the sphere of application of part 6 of the Aliens' Police Act.

(2) The granting of a residence permit as referred to in article 55 shall be reviewed ex officio if a repatriation decision is declared to be permanently inadmissible on the grounds of article 9 (1) to (3) of the Federal Office Procedures Act.

(3) In the administrative decision concluding the procedure the Federal Office shall give its ruling on the results of the ex officio review of the granting of a residence permit as referred to in articles 55 and 57.

(4) A residence permit as referred to in article 55 or 57 which is granted ex officio shall be issued by the Federal Office if the ruling (paragraph (3) above) in the administrative decision concluding the procedure has become final. Paragraph (11) below shall apply.

(5) Applications for the granting of residence permits as referred to in articles 55 to 57 and for the renewal of residence permits as referred to in article 57 shall be filed in person with the Federal Office. If the applicant does not have the capacity to act himself, the application shall be submitted by his legal representative.

(6) Specific details of the residence permit sought, as referred to in articles 55 to 57, shall be indicated in the application. If on the basis of the application or in the course of the preliminary investigation it emerges that the third-country national requires a different residence permit for the intended purpose of his residence, he shall be informed thereof; article 13 (3) of the General Administrative Procedure Act shall apply.

(7) If an application for the granting of a residence permit as referred to in article 55, 56 or 57 is upheld, the residence permit shall be issued to the alien. Paragraph (11) below shall apply.

(8) If an application for the granting of a residence permit as referred to in article 55, 56 or 57 is rejected or dismissed, the Federal Office shall give its ruling thereon in the administrative decision concluding the procedure.

(9) An application for a residence permit pursuant to the present part shall be rejected as inadmissible if the third-country national:

1. is undergoing a procedure pursuant to the Settlement and Residence Act;
2. already possesses right of residence pursuant to the present federal act or to the Settlement and Residence Act or
3. holds a passport with photograph for persons entitled to privileges and immunities pursuant to article 95 of the Aliens' Police Act or is entitled to engage in a purely temporary occupation pursuant to article 24 of the Aliens' Police Act

unless otherwise stipulated in the present federal act. The foregoing shall also apply in the event of the simultaneous filing of two or more applications.

(10) Applications pursuant to article 55 shall be rejected as inadmissible if a final repatriation decision has been imposed on the applicant and if with respect to the assessment of private and family life, in accordance with article 9 (2) of the Federal Office Procedure Act, it does not emerge from the substantiated assertions made in the application that there are any altered circumstances which necessitate a further evaluation or a re-evaluation in accordance with article 8 of the European Convention on Human Rights. Applications pursuant to article 56 and article 57 which are filed after an application has already been finally ruled on (subsequent applications) or after a final decision has been rendered shall be rejected as inadmissible if it does not emerge from the substantiated assertions made in the application that there are any materially altered circumstances.

(11) If the third-country national fails to fulfil his general duty of cooperation to the required extent, in particular with respect to the compilation and examination of identification data:

1. the procedure for the issuance of a residence permit to be granted ex officio (paragraph (4) above) shall be discontinued without further formality or
  2. the application for the granting of a residence permit shall be rejected.
- The third-country national shall be informed thereof.

(12) Residence permits may only be issued in person to third-country nationals who are over 14 years old. Residence permits for under-age persons may only be issued to their legal representative. At the time of issuance the third-country national shall be informed in a provable manner of the limited period of validity, inadmissibility of any



change of purpose and non-renewability of residence permits as referred to in articles 55 and 56 and of the possibility of thereafter obtaining a residence permit pursuant to the Settlement and Residence Act.

(13) Applications for the granting of residence permits as referred to in articles 55 to 57 shall not establish any right of residence or right of continued abode. Applications for the granting of residence permits as referred to in article 55 and article 57 shall not preclude the imposition and enforcement of measures to terminate residence. Such applications may therefore not give rise to suspensory effect in procedures pursuant to parts 7 and 8 of the Aliens' Police Act. However, in the case of an application for the granting of a residence permit as referred to in article 56, the Federal Office shall defer the execution of the deportation in implementation of a repatriation decision until such application has been finally ruled on if:

1. the procedure for the rendering of a repatriation decision was initiated only after the filing of an application pursuant to article 56 and
2. a residence permit as referred to in article 56 is likely to be granted, in which case the required conditions as set out in article 56 (1) 1, 2 and 3 have to exist.

(14) The Federal Minister of the Interior is authorised to enact a regulation which sets out which official documents and proof must be attached to the application in general and for the respective right of residence. This regulation may also set out the form and type of the application, including certain application forms which must be used exclusively.

### **Renewal procedures for special protection residence permits**

**Article 59.** (1) Applications for the renewal of a residence permit as referred to in article 57 shall be submitted to the Federal Office prior to expiry of the period of validity of the residence permit but at the earliest three months before that time. Applications thereafter shall be deemed to be initial applications. Following the filing of a renewal application the applicant shall, notwithstanding the determination pursuant to the Aliens' Police Act, continue to be lawfully resident in the federal territory until the application is finally ruled on. A once-only entry may, upon a well-founded application, be made in the third-country national's travel document certifying the timely filing of the application and showing a period of validity of not more than three months. Such certification shall confer entitlement to visa-exempt entry into the federal territory. The form and contents of the certification may be regulated by order of the Federal Minister of the Interior.

(2) The period of validity of a renewed residence permit shall commence on the day following the final day of the last residence permit if no more than six months have elapsed since that time. Lawful residence in the federal territory during the time between expiry of the last residence permit and commencement of the period of validity of the renewed residence permit shall be declared *ex officio*, without payment of fees, by administrative decision simultaneously with the granting of the renewed residence permit.

(3) Applications filed after expiry of the period of validity of the residence permit shall be deemed to be renewal applications only if:

1. the applicant demonstrates simultaneously with the submission of the application that he was prevented by an unforeseen or unavoidable occurrence from filing the renewal application in a timely manner and no blame or only minimal fault attaches to him, and
2. the application is filed within two weeks of his ceasing to be so prevented; article 71 (5) of the General Administrative Procedure Act shall apply.

The time between expiry of the period of validity of the last residence permit and the filing of an application which meets the requirements of subparagraphs 1 and 2 above shall be deemed to be a period of lawful and uninterrupted residence in accordance with the previously held residence permit.

(4) The Federal Office shall without delay notify the territorially competent authority under the Settlement and Residence Act that:

1. the required conditions as set out in article 57 continue to exist;
2. the applicant has completed module 1 of the integration agreement as referred to in article 14a of the Settlement and Residence Act and
3. the requirements set out in article 60 (2) 1 to 4 have been met.

If the required conditions as set out in subparagraph 2 or 3 above do not exist, the Federal Office shall grant a residence permit as referred to in article 57. The decision on an application for the renewal of the residence permit as referred to in paragraph (1) above shall be rendered without delay but at the latest within 4 months from submission of the application.

(5) In the case of a notification as referred to in paragraph (4) above, the computation of the time-limit as referred to in the final sentence of paragraph (4) above shall be suspended. The Federal Office shall inform the applicant of the notification. The renewal procedure shall be discontinued without formality upon the issuance of a residence permit in accordance with article 41a (3) of the Settlement and Residence Act.

### **General issuance requirements**

**Article 60.** (1) Residence permits may not be granted to a third-country national if:

1. a valid repatriation decision has been imposed on him pursuant to article 52 in conjunction with article 53 (2) or (3) of the Aliens' Police Act or
2. a return decision of another EEA State or Switzerland has been imposed on him.

(2) Residence permits as referred to in article 56 may be granted to a third-country national only if:

1. the third-country national furnishes proof of a legal entitlement to accommodation which is deemed in conformity with local accommodation for a family of comparable size;
2. the third-country national holds comprehensive sickness insurance cover and if liability to provide benefits under such insurance is also effective in Austria;
3. the third-country national's residence could not give rise to a financial burden for a local administration (article 11 (5) of the Settlement and Residence Act) and
4. the relations of the Republic of Austria with another State or another subject of international law would not be significantly harmed by the granting of a residence permit.

(3) Residence permits may be granted to a third-country national only if the third-country national's residence does not conflict with public interests. A third-country national's residence conflicts with the public interest if:

1. he has close links with an extremist or terrorist group and, having regard to its existing structures or to expected developments within its sphere, extremist or terrorist activities by such group cannot be ruled out, or because of certain facts, it must be assumed that the alien is attempting (or has attempted) to convince other persons or organisations of his/her views which violate the values of a European democratic state or his own society by disseminating such views using writing, pictures or documents or otherwise supports a person or organisation which promotes or endorses the dissemination of such a body of thought
2. in the cases referred to article 56 and article 57 his residence would constitute a threat to law and order or public safety.

### **Invalidity, non-relevance and withdrawal**

**Article 61.** (1) Residence permits shall be rendered invalid if a decision to terminate residence becomes enforceable or final against third-country nationals. The loss of right of residence shall thereby be incurred. A residence permit shall be reinstated ipso jure if during its original period of validity the measure to terminate residence is subsequently revoked by legal process.

(2) Residence permits shall be no longer relevant if:

1. the third-country national is issued with a residence permit or documentation pursuant to the Settlement and Residence Act;
2. the third-country national becomes an Austrian, an EEA citizen or a Swiss citizen or

3. the third-country national is subsequently granted asylum status or subsidiary protection status by legal process.

(3) Documents which are invalid or no longer relevant shall be surrendered to the Federal Office. Any authority performing an official act under the present federal act and agents of the public security service shall be empowered to seize documents that are to be surrendered. Authorities under the Settlement and Residence Act and authorities responsible for nationality matters shall be obliged to do so. Seized documents shall be submitted to the Federal Office without delay.

(4) Third-country nationals in possession of a residence permit may have such permit withdrawn if a final enforceable return decision of another EEA State which is founded on an acute threat to public safety and law and order or national security has been imposed on them and the return decision:

1. is based on the criminal judgement of an intentional offence which carries a minimum sentence of imprisonment of one year;
2. was imposed owing to the existence of a well-founded suspicion that the third-country national had committed criminal acts as referred to in subparagraph 1 above or to the existence of material evidence to conclude that he was planning such acts within the territory of an EEA State or
3. was imposed because the third-country national had infringed the entry and residence regulations of the State rendering the decision.

(5) The withdrawal of a residence permit pursuant to paragraph (4) above shall be inadmissible if the execution of the return decision would be in violation of article 2 or article 3 of the European Convention on Human Rights, Protocol No. 6 thereto concerning the abolition of the death penalty, FLG No. 138/1985, or Protocol No. 13 thereto concerning the abolition of the death penalty in all circumstances, FLG III No. 22/2005.

(6) The withdrawal shall be admissible only if it is urgently required in order to achieve the objectives specified in article 8 (2) of the European Convention on Human Rights.

### **Section 3: Right of residence for displaced persons**

#### **Right of residence for displaced persons**

**Article 62.** (1) In times of armed conflict or other circumstances threatening the safety of entire population groups, the Federal Government, in agreement with the Executive Committee of the National Council, may by ministerial order grant temporary right of residence in the federal territory to directly affected groups of aliens who can find no protection elsewhere (displaced persons). Displaced persons shall be granted temporary leave to remain in the federal territory until the entry into force of the ministerial order. The alien shall be furnished with certification thereof by the authority.

(2) The aliens' entry and the duration of their residence shall be regulated in the ministerial order referred to in paragraph (1) above having regard to the circumstances of the particular case concerned.

(3) If permanent integration becomes necessary as a result of the prolonged duration of the circumstances referred to in paragraph (1) above, it may be stipulated in the ministerial order that specific groups of persons having right of residence may validly submit within Austria an application for the granting of a residence permit and that the residence permit may be granted to them notwithstanding the existence of grounds for refusal.

(4) The right of residence conferred by virtue of the ministerial order shall be certified ex officio by the authority through the issuance of an identification document for displaced persons. The identification document shall be designated "identity card for displaced persons"; it may be renewed and shall serve to fulfil the passport requirement. The form and contents of the identity card and certification as referred to in paragraph (1) above shall be determined by order of the Federal Minister of the Interior.

*(5) Has been repealed by FLG I No. 70/2015)*

## **Part 8:**

### **United Nations High Commissioner for Refugees, repatriation assistance and integration assistance**

**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 return decision or to the imposition of an order for removal from the country, deportation order or asylum status withdrawal ruling.

(3) The United Nations High Commissioner for Refugees for purposes of the exercise of his functions in the discharge of his mandate shall be entitled in all such procedures to request information, examine case records (article 17 of the General Administrative Procedure 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 law 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 Alien's 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.

*(Article 64 to Article 66a have been repealed by FLG I No. 87/2012)*

### **Integration of persons having entitlement to asylum and persons eligible for subsidiary protection**

**Article 67.** (1) Aliens who have been granted asylum status or subsidiary protection status shall, for purposes of integration support, appear in person without delay following the granting of such status before the Austrian Integration Fund's integration centre having jurisdiction for the federal province concerned. The alien shall be notified of that obligation simultaneously with the granting of such status.

(2) If a procedure is initiated for the rendering of a repatriation decision pursuant to article 10, paragraph (1), subparagraph 4 or 5, the Federal Office and the Federal Administrative Court may request information from the Austrian Integration Fund on the alien's participation in integration support measures of the Austrian Integration Fund, in particular in language courses and courses covering the fundamentals of the democratic system of the Republic of Austria and of the basic principles deriving therefrom, as well as on any course results. This information may accordingly be taken into account in the evaluation of the degree of integration in connection with the assessment of private and family life within the meaning of article 8 of the European Convention on Human Rights (article 9 (2) 4 of the Federal Office Procedures Act).

### **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. Integration assistance measures, as referred to in paragraph (2) below, may, subject to existing financial and organisational resources, also be provided for asylum seekers who, taking into account current experience, are very likely to be granted international protection. Asylum seekers shall be notified thereof upon the admission of the procedure.

(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 Integration Fund – 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.

## **Part 9 Final provisions**

### **Grammatical equivalence**

**Article 69.** Where references made in the present federal law 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 law 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 law shall be payable. The dispensation from fees, administrative charges and cash expenses also applies to the complaints procedure before the Federal Administrative Court.

### **References**

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

### **Execution**

**Article 72.** Execution of the present federal law shall be entrusted,

1. (*Has been repealed by FLG I No. 87/2012*)
2. with regard to article 75 (7) and (16) to the Federal Chancellor,
3. with regard to article 70, insofar as fees are concerned, to the Federal Minister of Finance,
4. with regard to article 68, to the respective competent Federal Minister but, with regard to the third sentence to the Federal Minister for Europe, Integration and Foreign Affairs and with regard to the fourth sentence of article 68, paragraph (1), to the Federal Minister of the Interior,

5. with regard to article 35 (1) and (2)”.to the Federal Minister for Europe, Integration and Foreign Affairs ,

6. *(Has been repealed by FLG I No. 87/2012),*

7. in all other respects to the Federal Minister of the Interior,

a. acting in agreement with the Federal Minister for Europe, Integration and Foreign Affairs with regard to the second half of the first sentence of article 35(3).

b. *(Has been repealed by FLG I No. 87/2012)*

### **Period of validity**

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

(2) The Federal law concerning the granting of asylum (1997 Asylum Act – AsylG), FLG I No. 76/1997, shall, with the exception of article 42(1), cease to be in force at midnight on 31 December 2005.

*((3) Has been repealed by article. 2 paragraph 2 (1) lit. 31, FLG. I Nr. 2/2008)*

(4) Ministerial orders pursuant to the present federal law 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 law.

(5) Article 2, paragraph (1), subparagraph 24, article 4, paragraph (5), article 5, paragraph (1), final sentence, and paragraph (3), article 7, paragraph (2), article 14, paragraphs (1) and (4), article 15, article 17 paragraphs (6) to (8), article 18, paragraph (1), article 19, paragraphs (5) and (6), article 20, paragraphs (2) to (4), article 22, article 23, paragraph (3), article 24, paragraphs (1) and (3), article 25, paragraph (2), article 26, paragraph (3), subparagraph 2, article 27, article 28, paragraph (3), article 29, paragraphs (3) and (4), article 32, paragraph (3), article 33, article 34, paragraphs (3) and (5), the title of Section 5 of Part 4, article 36 and its heading, article 37 and its heading, article 38 and its heading, article 39, the title of Section 6 of Part 4, article 40 and its heading, article 41 and its heading, article 42 and its heading, article 47, paragraph (1), article 54, article 55, paragraph (6), article 56, paragraphs (1) and (2), article 57, paragraphs (6) and (8), the title of Section 1 of Part 8, article 58, paragraph (1), article 60 , paragraphs (3) and (5), article 61 and its heading, article 62 and its heading, article 72 and its heading and article 75, paragraphs (1) and (7), as well as the list of contents, as amended by federal law FLG. I No. 4/2008, shall enter into force on 1 July 2008.

(6) Article 10, paragraph (2), subparagraph 2, and paragraph (5), article 14, paragraphs (1) and (2), article 16, paragraph (2), article 17, paragraph (8), article 22, paragraph (9), article 25, paragraph (2), article 33, paragraphs (3) and (4), article 34, paragraph (1), article 36, paragraph (1), article 41, paragraphs (4) and (6), article 57, paragraph (6), article 60, paragraphs (3) and (4), article 63, paragraph (2), subparagraph 2 and article 75, paragraph (1), first sentence, and paragraph (8), as amended by federal law FLG I No. 29/2009, shall enter into force on 1 April 2009.



(7) Article 2, paragraph (1), subparagraphs 24 and 25, and paragraph (3), article 7, paragraphs (2) to (4), article 8, paragraphs (3a) and (4), article 9, paragraphs (2) to (4), article 10, paragraphs (1), (5) and (6), article 12, article 12a and its heading, article 14, paragraph (1a), the title of Section 2 of Part 3, article 15, paragraph (1), subparagraphs 4 to 6, article 15a and its heading, article 16, paragraphs (3) to (5), article 18, paragraphs (2) and (3), article 19, paragraphs (1), (2) and (5), article 22, paragraphs (3) and (10) to (12), article 23, paragraphs (1), (2), (6), (8) and (9), article 25, paragraph (1), subparagraph 1, article 27, paragraphs (3) to (5), article 28, paragraph (2), article 29, paragraph (3), subparagraphs 4 to 6, paragraphs (4) and (5), article 31, paragraph (4), article 34, paragraphs (2) to (4) and (6), the heading to article 35, article 35, paragraphs (1), (3) and (4), article 39, paragraph (1), subparagraphs 1 to 26, and paragraph (4), subparagraph 7, article 41a and its heading, article 45, paragraph (2), article 57, paragraph (1), subparagraph 3, paragraph (2), subparagraph 6, paragraphs (10) and (11), subparagraph 2, the title of Part 8, article 60, paragraphs (3), (4) and (6), subparagraph 4, article 61, paragraphs (1) and (3a), article 62, paragraph (3), article 64, paragraphs (1) to (4), article 65 and its heading, article 66 and its heading, article 67, paragraph (2), article 75, paragraphs (1), (5), (6) and (8) to (14) and the list of contents, as amended by federal law FLG I No. 122/2009, shall enter into force on 1 January 2010. Article 23, paragraph (7), shall enter into force with retroactive effect from 1 July 2008. Article 39, paragraph (4), subparagraphs 8 and 9, shall cease to be in force at midnight on 31 December 2009.

(8) Article 2, paragraph (1), subparagraph 22, article 4, paragraph (4), subparagraphs 2 and 3, article 17, paragraph (3), article 34, paragraph (6), subparagraph 2, and article 57, paragraph (5), as amended by federal law FLG I No. 135/2009, shall enter into force on 1 January 2010.

(9) Article 10, paragraph (2), subparagraph 2 and paragraphs (7) and (8), article 12a, paragraphs (1) to (3), article 13, article 15, paragraph (1), subparagraphs 6 and 7, and paragraphs (3a) and (3b), article 17, paragraph (9), article 22, paragraph (13), article 24, paragraphs (1) and (4), article 26, paragraph (1), subparagraph 2, article 29, paragraphs (1) and (6), article 31, paragraph (1), article 38, paragraph (1), subparagraph 6, article 43, paragraph (2), article 45, paragraph (2), subparagraph 1, article 46, article 57, paragraph (1), subparagraphs 5, 6, 7, and subparagraph (10), article 63, paragraph (2), subparagraph 2, article 72, subparagraphs 2 and 7(b), and article 75, paragraphs (8), (15) and (16), as amended by federal law FLG I No. 38/2011, shall enter into force on 1 July 2011. Articles 64 to 66a and headings as well the list of contents, as amended by federal law FLG I No. 38/2011, shall enter into force on 1 October 2011.

(10) Article 58, paragraph (6), as amended by federal law FLG I No. 50/2012, shall enter into force on 1 September 2012

“11) Article 1, subparagraphs 2 to 4, article 2 (1) 6, 20 to 20c and 25 to 27, article 3 (1) and (2), article 4 (1), (2), (4) and (5), article 4a and its heading, article 5 (1) and (3), article 7 (3), article 8 (4) and (6), article 10 and its heading, article 12 (1) to (3), article 12a, article 13, article 14, article 15 (1) 4, 5 and 7, (2), (3) 11 and (3a), article 15a (2), the title of part 4, the title of section 1 of part 4, articles 17 (1) to (3) and (6) to (8), article 18 (1), article 19 (2), (5) and (6), article 20 (2), article 21, article 22 (6) to (8), (10) and (12), article 24 (1) 1, (2), (3) and (4) 2, article 25 (1) 2 and

(2), article 27 and its heading, article 28 (1) and (2), article 29 (1), (3) to (5) and (6) 1 and 6, article 30, article 31 (1), article 32 (4), article 33 (1) 1 and 4 and (2) to (5), article 34 (1), (2) 1, (3) 1 and (5), article 35 and its heading, article 51 (1) and (2), article 52 (1), article 53 (1) and (2), the title of part 7, the title of section 1 of part 7, articles 54 to 57 and their headings, the title of section 2 of part 7, articles 58 to 61 and their headings, the title of section 3 of part 7, article 62 and its heading, the title of part 8, article 63 (2) 2 and (4), article 67 (1) and (2), article 72, subparagraphs 2, 5 and 7, and the list of contents, as amended by federal act FLG I No. 87/2012, shall enter into force on 1 January 2014. Article 15 (1) 3 and 6, article 16 and its heading, article 18 (2), article 20 (3), article 22 (1) to (5), (9), (11) and (13), article 23 and its heading, article 26 and its heading, article 27 (7), the titles of sections 5 and 6 of part 4, articles 36 to 42 and their headings, the title of part 5, articles 43 to 49 and their headings, articles 64 to 66a and their headings and article 72, subparagraphs 1 and 6, prior to amendment by federal act FLG I No. 87/2012, shall cease to be in force at midnight on 31 December 2013.

(12) Article 2 (1) 9 and 22, article 8 (4), article 10 (3), article 12 (1), article 14 (1a), article 18 (2), article 20 (4), article 22 (10), article 33 (1) 4, article 35 (1), (2), (4) and (5) and article 75 (17) to (21), as amended by federal act FLG I No. 68/2013, shall enter into force on 1 January 2014.

(13) Orders issued pursuant to federal act FLG I No. 68/2013 shall be understood to refer to that version of the provisions of the present federal act which would incorporate these provisions by virtue of the Immigration Authorities Restructuring Act (FNG), FLG I No. 87/2012.

(14) Article 2 (1) 8, article 3a and its heading, article 4a, article 6 (1) 3, article 12 (2) 2, article 12a (2) 1, (3) 1 and (6), article 13 (2), article 15a (2), article 17 (1), (2), (6) and (9), article 19 (1) and (2), the heading of article 24, article 24 (1) 1 to 3 and (2a), article 25 (1), article 27a and its heading, article 28 (4), the heading of article 29, article 29 (1), (3) 3 to 6 and (6), article 30, article 31 (1), article 50 (1), article 57 (1) 1, article 58 (2), article 59 (4) and (5), article 62 (4), article 75 (23) and the entries for articles 3a, 24, 27a and 29 in the list of contents, as amended by federal law FLG I No. 70/2015, shall enter into force on 20 July 2015. Article 3 (4), article 15 (3a) and (3b), article 19 (6), article 24 (4), article 25 (1) 2 and 3, article 29 (2), article 62 (5), article 67 and its heading, and the entry for article 67 in the list of contents shall cease to be in force at midnight on 19 July 2015.

(15) Article 2, paragraph (1), subparagraph 15, article 3, paragraphs (4) to (4b), article 7, paragraph (2a), article 17, paragraph (6), article 19, paragraph (6), article 22, paragraph (1), article 33, paragraph (2), article 35, paragraphs (1) to (4), the title of Part 6, article 51a and its heading, article 67 and its heading, article 68, paragraph (1), article 72, subparagraphs 4 and 5, article 75, paragraphs (24) to (26), and the entries in the table of contents for the title of Part 6 and for articles 51a and 67, as amended by federal law FLG I No. 24/2016, shall enter into force on 1 June 2016. Article 22, paragraph (1), as amended by federal law FLG I No. 24/2016, shall cease to be in force at midnight on 31 May 2018. Section 5 of Part 4 and its title and the entry in the table of contents for Section 5 of Part 4, as amended by federal law FLG I No. 24/2016, shall enter into force at midnight on the day following promulgation of federal law FLG I No. 24/2016.

(16) Articles 55 para 1 subpara 2, 56 para 1 subpara 3 and 59 para 4 subpara 2 as amended by federal law FLG I No. 68/2017 enter into force on 1 October 2017.

(17) Article 68 paras 1, 1a and 3 as amended by federal law FLG I No. 68/2017 enter into force on 1 October 2017.

(18) Article 2 para 1 subpara 22, 4a, 7 para 2, 8 para 3a, 9, para 2, 10, para 1, 12a, para 1 subpara 3 and para 3 subpara 2, 15 para 1 subpara 3, 15b and 15c complete with titles, 34 para 2, 3 and 6 subpara 2 and 3, 35 para 3 and 5, 58 para 14, 60 para 3, subpara 1, 72 subpara 5 and subpara 7 letter a as well as the items in the table of contents at articles 15b and 15c as amended by federal law FLG I No. 145/2017, enter into force when the day of announcement expires, but on 1 November 2017 at the earliest.

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

(20) The articles 2 (1) subparagraph 22; 2 (4); 4a; 7 (2) and (2a); 15b (1), (3) and (4); 15c (1); 17 (3); 17a; 28 (2); 35 (1); 55 (1) subparagraph 2; 68 (1); 72 subparagraph 4; 75 (27) in the federal law version FLG I No. 56/2018 shall enter into force on 1 September 2018. Article 70 in the federal law version FLG I No. 56/2018 shall enter into force retroactively as of 1 January 2018. The articles 50 (2) and (3); 51 (3); 51a (2), and 52 (2) in the federal law version FLG I No. 56/2018 shall enter into force on 1 January 2019.

(21) Article 29 paragraph (4) and paragraph (5) as amended by federal law FLG I No. 53/2019, shall enter into force on 1 January 2021. If the date set in article 2 paragraph (3) 2 of the Federal Agency Establishment Act, as amended by the federal law FLG I Nr. 53/2019, is postponed by a regulation according to article 2 paragraph (4) of the Federal Agency Establishment Act, article 29 paragraph (4) and paragraph (5) remains in force in its version before amendment by FLG Nr. 53/2019, until the date set in this regulation.

(22) § 58 Abs. 5a in der Fassung des Bundesgesetzes BGBl. I Nr. 29/2020 tritt mit Ablauf des Tages der Kundmachung in Kraft und mit Ablauf des 30. Juni 2021 außer Kraft.

(23) § 2 Para. 1 (22) in the current version of the Federal Act, Federal Law Gazette I No. 145/2020 shall come into force at the end of the day on which it is announced.

### **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 with the proviso that, in procedures which are or become pending before the Federal Asylum

Agency after 31 March 2009, article 10, as amended by federal law FLG I No. 29/2009, shall be applicable with the proviso that the dismissal of an asylum application – if the asylum-seeker's rejection at the border, forcible return or deportation to his country of origin is at the same time declared admissible – or the rejection of an asylum application shall be valid as a decision pursuant to the 2005 Asylum Act. Article 44 of the 1997 Asylum Act shall apply. Articles 24, 26, 54 to 57 and 60 of the present federal law shall be applicable to those procedures. Article 27, as amended by federal law FLG I No. 122/2009, shall be applicable to those procedures with the proviso that the Federal Asylum Agency or the Asylum Court 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. Article 57, paragraphs (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 law 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 paragraph (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 paragraph (1) above.

(3) Cards as referred to in the 1997 Asylum Act shall continue to be valid up to the specified time.

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

(5) An alien who on or after 31 December 2005 possessed or was granted refugee status in accordance with the provisions of the 1997 Asylum Act or earlier provisions of asylum law shall be deemed to be granted asylum status unless withdrawal or loss of refugee status has occurred.

(6) An alien who on or after 31 December 2005 possessed or was granted 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.

(7) Procedures which on 1 July 2008 are pending before the independent Federal Asylum Review Board shall be continued by the Asylum Court in accordance with the following provisions:

1. Members of the independent Federal Asylum Review Board who have been appointed judges of the Asylum Court shall continue to conduct, as sole judges, all procedures which are pending before them and in which an oral hearing has already taken place.

2. Procedures against administrative decisions of dismissal in which an oral hearing has not yet taken place shall be continued by the competent panel in accordance with the first work schedule of the Asylum Court.
3. Procedures against administrative decisions of dismissal which were conducted by members of the independent Federal Asylum Review Board who have not been appointed judges of the Asylum Court shall be continued by the competent panel in accordance with the first work schedule of the Asylum Court.

(8) Article 10, as amended by federal law FLG I No. 38/2011, shall be applicable to all procedures pending on or after 1 January 2010 pursuant to the 1997 Asylum Act with the proviso that an expulsion ruling pursuant to the 1997 Asylum Act which was issued prior to 1 January 2010 shall be valid as an expulsion ruling pursuant to article 10, a ruling rejecting an asylum application pursuant to the 1997 Asylum Act shall be valid as a rejection ruling pursuant to article 10, paragraph (1), subparagraph 1, and a ruling dismissing an asylum application pursuant to the 1997 Asylum Act which was issued in conjunction with a declaration that the alien's rejection at the border, forcible return or deportation to his country of origin is admissible shall be valid as a dismissal ruling pursuant to article 10, paragraph (1), subparagraph 2.

(9) Article 12, paragraph (2), article 12a, article 22, paragraph (12), article 25, paragraph (1), subparagraph 1, article 31, paragraph (4), article 34, paragraph (6), and article 35, as amended by federal law FLG I No. 122/2009, shall not be applicable to procedures which were already pending prior to 1 January 2010. Article 12, paragraph (2), article 25, paragraph (1), subparagraph 1, and article 35 shall continue to be applicable, in the version valid on 31 December 2009, to all procedures pending on that date and to be conducted pursuant to the 2005 Asylum Act, subject to the proviso set out in paragraph (1) above.

(10) Article 2, paragraphs (1), subparagraph 25, and (3), article 15, paragraph (1), subparagraphs 4 and 6, article 18, paragraphs (2) and (3), article 22, paragraphs (3) and (11), subparagraph 7, article 23, paragraphs (1), (7) and (8), article 27, paragraphs (4) and (5), article 57, paragraphs (10) and (11), subparagraph 2 and article 62, paragraph (3), as amended by federal law FLG I No. 122/2009, shall be applicable to all procedures pursuant to the 1997 Asylum Act pending on or after 1 January 2010. Article 8, paragraph (3a), and article 9, paragraph (2), as amended by federal law FLG I No. 122/2009, shall be applicable to those procedures with the proviso that right of residence is not to be granted pursuant to article 8, paragraph (3), of the 1997 Asylum Act and it is to be declared that the alien's rejection at the border, forcible return or deportation to his country of origin is inadmissible since it would constitute a real risk of violation of article 2 or article 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 by reason of indiscriminate violence in situations of international or internal conflicts. Expulsion shall not be ordered in such cases.

(11) Article 27, paragraph (3), as amended by federal law FLG I No. 29/2009, shall be applicable to procedures pursuant to the present federal law if the act which would lead to the initiation of the expulsion procedure was committed prior to 1 January 2010. Article 27, paragraph (3), shall also be applicable to all procedures pending on or

after 1 January 2010 pursuant to the 1997 Asylum Act, subject to the proviso set out in the fourth sentence of paragraph (1) of article 75.

(12) Aliens who at the time of entry into force of article 15, paragraph (1), subparagraph 4, as amended by federal law FLG I No. 122/2009, possess a principal residence certification document, as referred to in article 19a of the Domicile Registration Act, and are not undergoing admission procedures shall report, for the first time, by 1 March 2010 at the latest, to the police station nearest to the contact location referred to in article 19a, paragraph (1), subparagraph 2, of the Domicile Registration Act.

(13) Amendments to the legal situation under the present federal law shall not constitute grounds for referrals in accordance with article 66 of the General Administrative Procedure Act.

(14) Article 10 of the 1997 Asylum Act shall not apply to asylum-seekers:

1. who have become offenders (article 2, paragraph (3));
2. whose asylum procedures are to be conducted pursuant to the 1997 Asylum Act, subject to the proviso set out in paragraph (1) above, and
3. whose application for asylum was filed on or after 1 May 2004,

with the proviso that the procedures relating to family members are nevertheless to be conducted and ruled on jointly.

(15) Article 66, as amended by federal law FLG I No. 38/2011, shall be applicable to all procedures pending on 30 September 2011 before the Federal Asylum Agency with the proviso that they shall be ruled on after 1 October 2011.

(16) Asylum-seekers whose complaint proceedings against a rejection or dismissal decision on an application for international protection which is not a subsequent application are pending on 30 September 2011 before the Asylum Court may request the Asylum Court to have a legal adviser placed ex officio at their disposal in accordance with article 66, as amended by federal law FLG I No. 38/2011. A sole judge shall rule on such request by procedural order. The foregoing shall also apply to procedures pending on 30 September 2011, in accordance with the provisions of the 1997 Asylum Act.

(17) All procedures which are pending before the Federal Asylum Agency at midnight on 31 December 2013 shall as from 1 January 2014 be completed by the Federal Office.

(18) If a ruling by the Federal Asylum Agency against which a complaint to the Asylum Court is admissible was rendered prior to midnight on 31 December 2013, the time-limit for lodging a complaint shall still be computed from midnight on 31 December 2013 and, if a complaint against such ruling had not already been lodged with the Asylum Court by midnight on 31 December 2013, a complaint against that ruling may be lodged with the Federal Administrative Court from 1 January until

midnight on 15 January 2014. Articles 14 to 16 of the Administrative Court Proceedings Act shall not be applicable. A complaint lodged against any such ruling by midnight on 31 December 2013 shall be deemed to be a duly lodged complaint in accordance with article 130 (1) 1 of the Federal Constitutional Law.

(19) All complaint proceedings which are pending before the Asylum Court at midnight on 31 December 2013 shall as from 1 January 2014 be completed by the Federal Administrative Court in accordance with paragraph (20) below.

(20) If, in the cases referred to in paragraphs (18) and (19) above, the Federal Administrative Court, in regard to applications for international protection, upholds:

1. a dismissal decision rendered by the Federal Asylum Agency;
2. any additional rejection decision, as referred to in article 68 (1) of the General Administrative Procedure Act, rendered by the Federal Asylum Agency following a dismissal ruling;
3. a rejection decision rendered by the Federal Asylum Agency pursuant to article 4;
4. any additional rejection decision, as referred to in article 68 (1) of the General Administrative Procedure Act, rendered by the Federal Asylum Agency following a rejection ruling pursuant to article 4;
5. a decision rendered by the Federal Asylum Agency whereby asylum status is withdrawn pursuant to article 7 and subsidiary protection status is not conferred or
6. a decision rendered by the Federal Asylum Agency whereby subsidiary protection status is withdrawn pursuant to article 9,

the Federal Administrative Court shall in every procedure decide whether in such procedure the repatriation decision is permanently inadmissible or whether the procedure is to be referred back to the Federal Office for the purpose of a review of the admissibility of a repatriation decision. In the event of a referral of the procedure, the assessments made by the Federal Administrative Court with respect to the absence of permanent inadmissibility of the repatriation decision shall not be binding on the Federal Office. In the cases referred to in subparagraphs 5 and 6 above, none of the cases referred to in article 8 (3a) or article 9 (2) may exist.

(21) If a ruling pursuant to the present federal act prior to amendment by federal act FLG I No. 87/2012 is annulled by the Constitutional Court after midnight on 31 December 2013, that procedure shall be referred back to the Federal Administrative Court, which shall render its decision in accordance with paragraphs (19) and (20) above.

(22) Any decision ratified after midnight on 31 October 2013 shall contain a reference to the legal consequence as set out in paragraph (18) above.

(23) Expulsion orders which have been issued pursuant to article 10 prior to amendment by federal law FLG I No. 87/2012 shall remain in force for up to 18 months from the alien's departure from the country. Such expulsion orders shall be valid as measures to terminate residence pursuant to Section 1 of Part 8 of the Aliens Police Act as amended by federal law FLG I No. 87/2012.

(24) Article 2, paragraph (1), subparagraph 15, article 3, paragraphs (4) to (4b), article 7, paragraph (2a), and article 51a, as amended by federal law FLG I No. 24/2016, shall not apply to aliens who have already been granted asylum status prior to the entry into force of federal law FLG I No. 24/2016 or to aliens who have filed an application for international protection prior to 15 November 2015. Article 2, paragraph (1), subparagraph 15, in the version existing prior to the entry into force of federal law FLG I No. 24/2016, shall continue to apply to such aliens. Article 17, paragraph (6), and article 35, paragraphs (1) to (4), as amended by federal law FLG I No. 24/2016, shall not apply to procedures which were already pending prior to 1 June 2016. Article 35, paragraphs (1) to (4), in the version existing prior to the entry into force of federal law FLG I No. 24/2016, shall continue to apply to procedures pursuant to article 35 which were already pending prior to 1 June 2016. If, in the case of an application for the granting of entry authorization pursuant to article 35, paragraph (1), the applicant is a family member of an alien who had already been granted asylum status by final ruling prior to the entry into force of federal law FLG I No. 24/2016, it shall not be necessary to meet the requirements set out in article 60 (2) 1 to 3 if the application for the granting of entry authorization was filed within three months following the entry into force of federal law FLG I No. 24/2016. Paragraph (1) of article 22 shall apply to procedures which were already pending at midnight on 31 May 2018 and shall continue to apply, even after 31 May 2018.

(25) If the technical requirements for the issuance of the card for persons having entitlement to asylum have not yet been met at the time of entry into force of the present federal law, such card shall be issued once the grounds for disallowing its issuance cease to exist.

(26) With regard to complaints against entry prevention, rejection at the border or forcible return imposed pursuant to article 40, in conjunction with article 41 or article 45, of the Aliens Police Act and the legal consequences in relation to the application for international protection (article 41, paragraphs (2) and (3)), the provisions of Section 5 of Part 4 shall continue to apply, even after that Section ceases to be applicable (article 36, paragraph (1))

(27) Article 17a in the federal law version FLG I No. 56/2018 shall not be applicable to unmarried under-aged third-country national children residing in the federal territory whose representatives submitted an application for international protection before the federal law FLG I No. 56/2018 came into effect, nor to third-country national children who were born in the federal territory before the federal law FLG I No. 56/2018 came into effect and their representatives.

### **Entry into force and transitional provisions**

**(Re. articles 2, 4, 17, 34 and 57, FLG I No. 100/2005)**



(1) Section 2 (Amendment of the Civil Code), Section 3 (Amendment of the Marriage Act), Section 4 (Amendment of the Reproductive Medicine Act), Section 6 (Amendment of the Rules for the Administration of Justice), Section 7 (Amendment of the Criminal Code), Section 27 (Amendment of the 1988 Income Tax Act), Section 28 (Amendment of the 1988 Corporation Tax Act), Section 29 (Amendment of the 1994 Turnover Tax Act), Section 30 (Amendment of the 1955 Tax Assessment Act), Section 31 (Amendment of the 1957 Fees and Duties Act), Section 33 (Amendment of the Federal Tax Regulations), Section 34 (Amendment of the Alcohol Excise Act), Section 61 (Amendment of the 1998 Medical Practitioners Act), Section 62 (Amendment of the 2002 Salary Contributions Act), Section 63 (Amendment of the Pharmacists Act), Section 72 (Amendment of the Study Grant Act), Section 76 (Amendment of the Development Aid Workers Act), Section 77 (Amendment of the Federal Law on the Functions and Organization of the External Service – Regulations) and Section 78 (Federal Law on the Granting of Privileges and Immunities to International Organizations) shall enter into force on 1 January 2010.

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