

**Federal act laying down general stipulations concerning procedures before the Federal Office for Immigration and Asylum in relation to the granting of international protection, residence permits on grounds deserving of consideration and temporary leave to remain, the imposition of deportation orders and measures to terminate residence and the issuance of Austrian documents to aliens
(Federal Office Procedure Act)**

- unofficial consolidated version -

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PART 1: GENERAL PROVISIONS

Section 1

Scope of application and definitions

Scope of application

Article 1. The present federal act shall lay down the general stipulations applying to all aliens undergoing procedures before the Federal Office for Immigration and Asylum (hereinafter “Federal Office”) or before the diplomatic or consular authorities pursuant to part 11 of the 2005 Aliens’ Police Act (FPG), *Federal Law Gazette* (FLG) I No. 100, or proceedings before the Federal Administrative Court pursuant to article 3 (2) 1 to 6. Other procedural stipulations in the 2005 Asylum Act (AsylG 2005), FLG I No. 100, and in the 2005 Aliens’ Police Act shall be unaffected thereby.

Definitions

Article 2. (1) For the purposes of the present federal act, “lawful residence” shall mean an alien’s residence in the federal territory in accordance with article 31 (1) and (4) of the Aliens’ Police Act.

(2) In all other respects, article 2 (1) 1, 2, 8, 10, 11, 13 to 17, 18, 20 to 20b, 25 and 27, and article 2 (2) of the 2005 Asylum Act and also article 2 (3) and (4) 1, 2, 2a, 4, 5, 7, 11, 15 and 18, and article 2 (5) 3 of the Aliens’ Police Act shall apply.

Section 2

Sphere of competence

Federal Office for Immigration and Asylum

Article 3. (1) Within Austria, the authority under the present federal act shall be the Federal Office with jurisdiction throughout the federal territory.

(2) The Federal Office shall be responsible for:

1. granting asylum status and subsidiary protection status to and withdrawing such status from aliens in Austria pursuant to the 2005 Asylum Act;
2. granting residence permits on grounds deserving of consideration pursuant to the 2005 Asylum Act;

3. ordering deportation, granting temporary leave to remain and executing return decisions of EEA States pursuant to part 7 of the Aliens' Police Act;
4. imposing measures to terminate residence pursuant to part 8 of the Aliens' Police Act;
5. issuing Austrian documents to aliens pursuant to part 11 of the Aliens' Police Act;
6. ordering reimbursement of costs in accordance with article 53 and
7. conducting procedures under the Federal Government Basic Welfare Support Act 2005 (GVG-B 2005), FLG No. 405/1991, with the exception of administrative penalty procedures.

(3) The Federal Office shall be competent to execute administrative decisions rendered by it and also rulings and orders issued by the Federal Administrative Court in matters falling within its material sphere of operation. The 1991 Administrative Enforcement Act (VVG), FLG No. 53/1991, shall apply. The special powers of constraint conferred in the present act, the 2005 Asylum Act and the Aliens Police Act shall be unaffected."

Diplomatic and consular authorities

Article 4. (1) Outside Austria, the Austrian diplomatic and consular authorities shall be responsible for:

1. issuing, refusing, withdrawing and limiting the scope of application of alien's passports (article 88 of the Aliens' Police Act) and Convention travel documents (article 94 of the Aliens' Police Act), with the exception of their first issuance, and
2. issuing return travel passes to nationals of member States (article 96 of the Aliens' Police Act).

(2) Territorial jurisdiction for the performance of official acts pursuant to paragraph (1) above shall, unless otherwise stipulated, be determined, outside Austria, by the alien's place of domicile. Any diplomatic or consular authority may take action on the instructions of the Federal Minister for Europe, Integration and Foreign Affairs.

(3) If the alien has a domicile within the federal territory, territorial jurisdiction shall be determined, outside Austria, by the alien's place of residence.

Provincial police authorities

Article 5. The execution of an order for an alien's detention pursuant to article 76 of the Aliens' Police Act, article 5 of the Administrative Enforcement Act or article 40, the deportation of an alien pursuant to article 46 of the Aliens' Police Act and the provision and supervision of less stringent measures pursuant to article 77 (3) 1 and 2 of the Aliens' Police Act shall be the responsibility of the provincial police authority in whose area of administration the alien resides. Articles 78 and 79 of the Aliens Police Act shall apply mutatis mutandis to the execution of coercive measures of detention pursuant to article 5 of the Administrative Enforcement Act.

Agents of the public security service

Article 6. The agents of the public security service shall assist the Federal Office in the performance of its duties, in particular through the exercise of the functions and powers conferred on them under articles 36 to 47.

Federal Administrative Court

Article 7. (1) The Federal Administrative Court shall rule on:

1. appeals against administrative decisions of the Federal Office;
2. appeals against administrative decisions of diplomatic or consular authorities pursuant to part 11 of the Aliens' Police Act;
3. appeals against measures of direct command and constraint pursuant to part 2, section 1, of the Federal Office Procedure Act and to parts 7 and 8 of the Aliens' Police Act;
4. appeals arising by reason of a breach of the Federal Office's obligation to render decisions and
5. appeals against administrative decisions of the Federal Minister of the Interior in procedures pursuant to article 3 (2) 1 to 6 and article 4 (1) 1 and 2.

(2) The Federal Administrative Court shall itself rule on the merits if the Higher Administrative Court has upheld a petition for judicial review or the Constitutional Court has upheld an appeal against a ruling of the Federal Administrative Court pursuant to paragraph (1) above.

Petitions for judicial review

Article 8. The Federal Minister of the Interior shall have the right to file petitions for judicial review with the Higher Administrative Court against rulings or orders of the Federal Administrative Court on appeals against administrative decisions of the Federal Office following notification of the ruling to the Federal Office.

Section 3

General procedural stipulations

Protection of private and family life

Article 9. (1) If a repatriation decision pursuant to article 52 of the Aliens' Police Act, an 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 interferes with the alien's private or family life, the rendering of such ruling shall be admissible if it is urgently required in order to achieve the objectives specified in article 8 (2) of the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights).

(2) In the assessment of private and family life within the meaning of article 8 (2) of the European Convention on Human Rights, account shall be taken, in particular, of:

1. the nature and duration of the residence to date and whether the alien's residence to date was illegal;
2. the actual existence of a family life;
3. the merits of protection of family life;
4. the degree of integration;
5. the ties with the alien's country of origin;
6. the absence of previous criminal convictions;
7. public order offences, in particular in the area of asylum, aliens policing and immigration law;
8. whether the alien's private and family life came into existence at a time when the parties concerned had become aware of their uncertain residence status;
9. whether the duration of the alien's residence to date is due to overly long delays attributable to the authorities.

(3) A ruling on the admissibility of a repatriation decision pursuant to article 52 of the Aliens' Police Act shall in all cases be rendered with a statement of reasons, in particular with respect to whether such decision is permanently inadmissible in accordance with paragraph (1) above. The inadmissibility of a repatriation decision pursuant to article 52 of the Aliens' Police Act shall be permanent only if the otherwise existing risk of violation of the right to private and family life is based on circumstances which by their nature are not merely temporary. The foregoing shall be the case in particular where a repatriation decision pursuant to article 52 of the Aliens' Police Act would already be inadmissible solely on grounds of private and family life with respect to Austrian nationals or persons who possess right of residence under European Union law or unlimited right of settlement (articles 45 or articles 51 et seq. of the Settlement and Residence Act (NAG), FLG I No. 100/2005).

(4) A third-country national who prior to the occurrence of the determining facts had already been lawfully settled in the federal territory for an uninterrupted period of five years but not yet eight years may not have a repatriation decision imposed on him pursuant to article 52 (4) in conjunction with article 53 (1a) of the Aliens' Police Act by reason of the lack of means to support himself, the absence of sufficient sickness insurance cover, the lack of accommodation or the possibility of his representing a financial burden for a local administration. The foregoing shall, however, apply only if the third-country national demonstrates that he can through his own efforts ensure the means to support himself and obtain sickness insurance cover or provide other accommodation and such an outcome does not appear unlikely.

(5) A third-country national who prior to the occurrence of the determining facts had already been lawfully settled in the federal territory for an uninterrupted period of eight years may only have a repatriation decision imposed on him pursuant to article 52 (4) of the Aliens' Police Act if the required conditions as set out in article 53 (3) of the Aliens' Police Act exist. Article 73 of the Penal Code, FLG No. 60/1974, shall apply.

Capacity to act

Article 10. (1) The age requirement for capacity to act in procedures before the Federal Office and the diplomatic or consular authorities pursuant to part 11 of the Aliens' Police Act and in proceedings before the Federal Administrative Court pursuant to article 3 (2) 1 to 6 shall be determined by Austrian law irrespective of the nationality of the alien.

(2) In procedures before the Federal Office and in proceedings before the Federal Administrative Court each parent shall be individually authorized to represent his or her child. If, in the case of children born in wedlock, the declarations by the two parents conflict, the earlier declaration shall be applicable; a waiver of the right to lodge an appeal may not be expressed against the declared will of one parent. In the case of a child born out of wedlock, representation shall, in the event of conflicting declarations by the parents, be accorded to the mother unless the father alone is entrusted with care and custody.

(3) A person under full age whose interests cannot be defended by his legal representative shall be entitled to file and submit an application for international protection and to engage in procedural acts pursuant to part 8 of the Aliens' Police Act for his benefit. Such aliens shall be brought to the initial reception centre (article 43 of the Federal Office Procedures Act). In procedures before the Federal Office and in proceedings before the Federal Administrative Court the legal representative shall be, the legal adviser (article 49) as from arrival at the initial reception centre and, following admission of the procedure and assignment to a care centre of a federal province, the territorially competent child and youth welfare support of the federal province in which the under-age person was assigned to a care centre. If, prior to the initial interview in the admission procedure, the legal adviser (article 49) objects to an interrogation (article 19 (1) of the 2005 Asylum Act) conducted on a person under full age, such interrogation shall be repeated in the presence of the legal adviser.

(4) If a procedure for the termination of residence pursuant to part 8 of the Aliens' Police Act is initiated against an under-age person whose interests cannot be defended by his legal representative and who has not submitted an application for international protection, the legal representative for all further procedural acts before the Federal Office and the Federal Administrative Court shall from that time be the child and youth welfare support in whose area of administration the under-age person resides.

(5) If a person under full age evades a procedure pursuant to article 24 (1) of the 2005 Asylum Act) or a legal representative cannot for other reasons be designated in accordance with paragraph (3) above, the child and youth welfare support to which legal representation was last assigned shall be the legal representative until a legal representative has again been designated in accordance with paragraph (3) above. If, in the procedure to date, legal representation was discharged solely by the legal adviser (article 49), that person shall continue as the legal representative until legal representation first devolves upon a youth welfare agency in accordance with paragraph (3) above.

(6) An under-age person whose interests cannot be defended by his legal representative shall be entitled to file an application for international protection and to engage in procedural acts pursuant to part 8 of the Aliens' Police Act for his benefit. Notwithstanding article 17 (2) of the 2005 Asylum Act, applications by such aliens for international protection shall be deemed submitted if the filing of the application is corroborated in the presence of the legal adviser at the initial reception centre (article 4 of the Federal Office Establishment Act (BFA-G), FLG I No. 87/2012). In the case of an under-age person whose interests cannot be defended by his legal representative, the legal adviser shall be his legal representative as from arrival at the initial reception centre. Such aliens may be interrogated (article 19 (1) of the 2005 Asylum Act) solely in the presence of the legal adviser. In all other respects, paragraphs (3) and (5) above shall apply.

Service of documents

Article 11. (1) The initial reception centre at which an asylum-seeker or alien is present or the accommodation or care facility operated by the Federal Government at which an asylum-seeker or alien receives welfare support shall also be his address for delivery of notifications in person in accordance with the Federal act concerning the service of official documents (Process Service Act – ZustG, FLG No. 200/1982). In procedures before the Federal Office a contact location, as referred to in article 19a (2) of the 1991 Domicile Registration Act (MeldeG), FLG No. 9/1992, may not be an address for delivery of notifications within the meaning of the Process Service Act.

(2) Summonses in admission procedures shall be delivered solely to the asylum seeker in person and – if representation exists in accordance with article 10 or the asylum seeker has been referred to the legal

adviser (article 49) (article 29 para 4 of the 2005 Asylum Act) – to a legal adviser (article 49). If the asylum seeker also has a voluntary representative, that representative shall be notified as soon as possible by the legal adviser (article 49) concerning any summonses and the status of the procedure, should the asylum seeker so wish.

(3) Documents may be delivered to aliens by agents of the public security service or by agents of federal care facilities (article 1 subpara 7 of the Federal Office Procedure Act), unless deliveries are made by the Federal Office's own agents or the Federal Administrative Court. If necessary, the documents must be deposited either at the nearest office of the provincial police authorities or at the federal care facility. Article 17 para 3 first to third sentences of the Delivery of Documents Act apply *mutatis mutandis*. (5) If, on the basis of the alien's statements concerning his age, service is effected to a legal adviser (article 49) or a child and youth welfare support (article 10) as legal representative, such service shall also be valid if, at the time of delivery, the alien is of full age.

(6) Documents can also be delivered to aliens by agents of public security in the course of fulfilling a registration obligation pursuant to article 15a of the Asylum Act, articles 56 para 2 subpara 2, 71 para 2 subpara 2 or 77 para 3 subpara 2 of the Aliens Police Act or article 13 para 2. If the recipient fails to comply with his registration obligations after the delivery has been arranged, the document must be deposited at the office of the provincial police authorities. Article 17 para 3 first to third sentences of the Delivery of Documents Act apply *mutatis mutandis*, apart from that the office of the provincial police authority must keep the deposited document available for collection. If the Federal Office is notified of a failure to comply with the obligation to register before the delivery of the documents is arranged, delivery must be done by depositing the document without the need to try to deliver the document first, provided that the alien has failed to comply with his registration obligation. Article 23 of the Delivery of Documents Act applies *mutatis mutandis*, apart from that the office of the provincial police authorities takes the place of the competent office of the delivery service and the documents may not be deposited at the municipal office.

(7) An alien whose *de facto* protection against deportation is terminated (article 12a (2) of the 2005 Asylum Act) or who is not accorded *de facto* protection against deportation (article 12a (1) or (3) of the 2005 Asylum Act) and against whom a valid measure to terminate residence is enforced shall be informed in a provable manner that, for the delivery of documents, he may avail himself of the services of a registered process agent and that he shall be obliged to inform the Federal Office of his place of residence and address, including outside Austria, and report any changes as quickly as possible (article 15 (1) 4 of the 2005 Asylum Act). He shall also be informed of the postal address of the Federal Office and of the Federal Administrative Court. Insofar as is possible, he shall be furnished with an information leaflet prepared in a language understandable to him. The service of documents in such cases shall, insofar as is possible, be effected to the last address for delivery of notifications which is known to the Federal Office or to the Federal Administrative Court; if such address is situated outside Austria, notification shall be deemed effected upon arrival of the ruling at that address. Article 24 of the 2005 Asylum Act shall apply.

(8) If the alien has a registered process agent, the notification of an administrative decision ordering his detention pending deportation shall also be deemed served at the time when a copy is actually received by the alien. In such cases, arrangements shall be made without delay for a further copy to be delivered to the registered process server.

(9) A third-country national who has filed an application with the Federal Office for the granting of a residence permit shall without delay inform the Federal Office of an address for delivery of notifications and, in the event of any change thereto during the procedure, inform the Federal Office of the new address. If the delivery of a summons or a procedural order in person is not possible a second time, the procedure shall be discontinued if the third-country national had been made aware of that fact at the time of filing the application.

Administrative decisions

Article 12. (1) Rulings of the Federal Office and of the Federal Administrative Court shall contain the verdict and instructions concerning rights of appeal in a language understandable to the alien or in a language which may reasonably be presumed to be understood by him. An inaccurate translation shall solely establish the right to reinstatement, subject to the requirements set out in article 71 of the General Administrative Procedures Act.

(2) If an application for international protection is rejected as inadmissible pursuant to article 4 of the 2005 Asylum Act, the administrative decision of the Federal Office shall be accompanied by a translation, in that language, of the relevant statutory provisions and by an appended certification, also issued in the official language of the safe third country, to the effect that the application for international protection has not undergone any substantive examination owing to the protection existing in the safe third country and that no suspensory effect of the appeal lodged against the administrative decision of the Federal Office was allowed.

Interpretation services using technical equipment

Article 12a. If an interpreter is to be engaged for the purposes of an interview or interrogation (article 39a of the General Administrative Procedures Act) but interpretation services cannot be made available at the place of the interview within a reasonable period, such services may be provided and recorded using technical equipment for speech and image transmission.

Cooperation by aliens

Article 13. (1) Aliens shall cooperate in procedures before the Federal Office, in particular in identification procedures.

(2) If an alien possesses only a principal residence certification document, as referred to in article 19a of the Domicile Registration Act, he shall report on a fortnightly basis, commencing on the first working day following the issuance of the certification document, to the station of a provincial police authority nearest to the contact location as referred to in article 19a (1) 2 of the Domicile Registration Act; the foregoing shall not apply in the case of a procedural order as referred to in article 15a (2) of the 2005 Asylum Act. A breach of this duty to report shall not exist if its fulfilment was provably impossible for or could not reasonably be expected of the alien.

(3) If the alien is unable to furnish proof, by reliable documents or other appropriate and equivalent evidence, of a claimed under-age status on which he relies in a procedure before the Federal Office or in proceedings before the Federal Administrative Court and which, on the basis of the available results of the preliminary investigation, is doubtful, the Federal Office or the Federal Administrative Court may give instructions for radiological examinations, in particular X-ray examinations, to be carried out under a multifactorial examination technique for the purpose of age determination (article 2 (1) 25 of the 2005 Asylum Act). Every examination procedure shall be conducted with the least possible interference. The alien's cooperation in a radiological examination shall not be enforceable by coercive means. If, following the age determination, justified doubts continue to exist, under-age status shall be presumed in the alien's favour.

(4) If an alien is unable to furnish proof, by reliable documents or other appropriate and equivalent evidence, of a claimed family relationship on which he relies in a procedure before the Federal Office or in proceedings before the Federal Administrative Court or in a procedure pursuant to article 35 of the 2005 Asylum Act, the Federal Office or the Federal Administrative Court shall, at his request, make it possible for him to have a DNA analysis undertaken at his own expense. The alien shall be informed of such possibility. The absence of a request for a DNA analysis by the alien shall not be construed as a refusal on his part to cooperate in the clarification of the facts. In the further course of the procedure, only the information on the family relationship may be processed; any additional data shall be deleted. The Federal Office or the Federal Administrative Court shall reimburse to the alien the costs of the DNA analysis, upon application, if the claimed family relationship was established by the expert findings based on the DNA analysis and the alien is resident in the federal territory.

(5) In the assessment of the credibility of an alien's allegations, due account shall be taken of his cooperation in the procedure.

(6) An unaccompanied person under full age shall, unless owing to circumstances not relating to his person he is unable to do so, cooperate in all steps to trace family members in the country of origin, a third country or a member State, irrespective of by whom such steps are carried out, and shall present the related findings to the Federal Office without delay. The obligation to present the findings shall exist to the extent that they are not already accessible to the authority. Such obligation to cooperate shall not exist if tracing family members is not in the child's best interests. Unaccompanied under-age persons shall, at their request, be assisted by the authority in tracing their family members.

Enforcement principles

Article 14. The Federal Office, provincial police authorities and agents of the public security service shall take particular account of articles 2, 3 and 8 of the European Convention on Human Rights in the fulfilment of their duties pursuant to the present federal act, to the 2005 Asylum Act and to parts 7, 8 and 11 of the Aliens' Police Act.

Section 4

Procedures before diplomatic or consular authorities for the issuance of Austrian documents to aliens pursuant to part 11 of the Aliens' Police Act

Article 15. (1) In procedures before diplomatic or consular authorities, applicants shall, under instructions of the authority, submit in person the documents and evidence required for the establishment of the material facts. Articles 13 (3), 37 and 45 (2) and (3) of the General Administrative Procedures Act shall apply. The applicant shall, at the request of the diplomatic or consular authority, appear in person before it, accompanied, if necessary, by an interpreter (article 39a of the General Administrative Procedures Act). The last sentence of article 10, paragraph (1), of the General Administrative Procedures Act shall apply only to persons authorized to represent parties professionally in Austria.

(2) The party in procedures before the diplomatic or consular authority shall be solely the applicant.

(3) Decisions issued pursuant to paragraph (1) above shall be given in writing in such a manner that their contents and effect are comprehensible to the person concerned. The person concerned shall be furnished with accurate and comprehensive information concerning the reasons of law and order, public safety or health which form the basis of the decision affecting him unless reasons of security of the Republic of Austria preclude the furnishing of such information. The appeals authority shall also be indicated in the written statement of reasons.

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

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

Section 5: Appeal proceedings

Time-limit for appeals and effect of appeals

Article 16. (1) If the status of the person seeking asylum has been withdrawn and the withdrawal is associated with a measure to terminate residence, then the time limit for raising a complaint against an administrative decision made by the Federal Office in the cases stipulated in paragraph 2 and article 7 (2) of the 2005 Asylum Act is two weeks, thus diverging from the first sentence of article 7 (4) of the Administrative Court Proceedings Act – VwGVG – of FLG I No. 33/2013. This is not applicable if the case concerns an alien who is an unaccompanied minor at the time the administrative decision is issued (article 2 (1) subparagraph 17 of the Settlement and Residence Act (NAG)) or if the measure to terminate residence is associated with a declaration that the rejection, forcible return or deportation of the alien is unauthorised.

(2) An appeal against a ruling:

1. rejecting an application for international protection and issued in conjunction with a measure to terminate residence;
2. rejecting an application for international protection where an enforceable repatriation decision already exists or
3. imposing an order for removal from the country pursuant to article 61 (1) 2 of the Aliens Police Act

and a related submission application shall not have suspensory effect unless such suspensory effect is allowed by the Federal Administrative Court.

(3) If an appeal against a rejection or dismissal ruling in family procedures pursuant to section 4 of part 4 of the 2005 Asylum Act is lodged solely by one affected family member, it shall be deemed to be also an appeal against the rulings affecting the other family members (article 2, subparagraph 22, of the 2005 Asylum Act); none of those rulings may then be treated as final.

(4) If an appeal against a ruling rejecting or dismissing an application for international protection or imposing an order for removal from the country pursuant to article 61 (1) 2 of the Aliens Police Act does not have suspensory effect, that ruling shall be enforceable. The execution of the measure to terminate residence imposed in conjunction with such ruling or the execution of the deportation in implementation of the already existing repatriation decision shall be deferred until expiry of the time-limit for lodging appeals or, if an appeal is lodged, until midnight on the seventh day from receipt of the appeal submission. The Federal Administrative Court shall notify the Federal Office without delay of the receipt of the appeal submission and of the granting of suspensory effect.

(5) An appeal against a ruling on an application for the granting of a residence permit pursuant to part 7 of the 2005 Asylum Act or a related submission application shall not establish any right of residence or right of continued abode. Article 58 (13) of the 2005 Asylum Act shall apply.

(6) Article 13 (2) to (5) and article 22 of the Administrative Court Proceedings Act shall not be applicable in the cases referred to in paragraphs (2) to (4) above.

Allowance of suspensory effect of appeals

Article 17. (1) The suspensory effect of an appeal against a ruling rejecting an application for international protection where:

1. such rejection ruling is issued in conjunction with a measure to terminate residence or
2. an enforceable repatriation decision already exists

and also of an appeal against an order for removal from the country pursuant to article 61 (1) 2 of the Aliens Police Act shall in each case be allowed by order of the Federal Administrative Court within one week from submission of the appeal ex officio if it can be assumed that the alien's rejection at the border, forcible return or deportation to the country to which the measure to terminate residence applies would 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 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 conflict. The reasons on which the assertion that there is a real risk or serious threat to life or bodily integrity pursuant to the first sentence is based must be precisely stated in the appeal against the administrative decision issued in the main issue. Article 38 of the Administrative Court Act applies.

(2) An appeal against a rejection ruling as referred to in paragraph (1) above or against an order for removal from the country pursuant to article 61 (1) 2 of the Aliens Police Act shall be ruled on by the Federal Administrative Court within eight weeks.

(3) In the decision whether an appeal against an order for removal from the country is to be allowed suspensory effect, due account shall be taken of the European Union law principles contained in article 26 (2) and article 27 (1) of the Dublin Regulation and the need for effective implementation of European Union law.

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

Disallowance of suspensory effect of appeals

Article 18. (1) The suspensory effect of an appeal against a dismissal ruling on an application for international protection may be disallowed by the Federal Office if:

1. the asylum seeker comes from a safe country of origin (article 19);
2. there are serious reasons for considering that the asylum seeker constitutes a threat to law and order or public safety;
3. the asylum-seeker has attempted to deceive the Federal Office by providing false information or documentation or by concealing important information or withholding documents regarding his identity or his nationality;
4. the asylum seeker has not adduced any reasons for persecution;

5. the allegations made by the asylum seeker concerning his situation of danger clearly do not correspond with reality;
6. an enforceable repatriation decision, an enforceable expulsion order or an enforceable residence ban was issued against the asylum seeker prior to the filing of the application for international protection or
7. the asylum seeker refuses to have his fingerprints taken notwithstanding an obligation to do so.

If the Federal Office has not disallowed suspensory effect, paragraph (2) below shall not be applicable to these cases. If the Federal Office has disallowed suspensory effect, the foregoing shall be deemed to constitute disallowance of the suspensory effect of an appeal against a repatriation decision issued in conjunction with the dismissal ruling on an application for international protection.

(2) The suspensory effect of an appeal against a repatriation decision shall be disallowed by the Federal Office if:

1. the third-country national's immediate exit is necessary in the interests of law and order or public safety;
2. the third-country national has returned to the federal territory in contravention of an entry ban or
3. there is a risk of his absconding.

(3) In the case of EEA citizens, Swiss citizens and favoured third-country nationals, the suspensory effect of an appeal against a residence ban may be disallowed if their immediate exit or if immediate enforceability is necessary in the interests of law and order or public safety

(4) The suspensory effect of an appeal against an expulsion order pursuant to article 66 of the Aliens' Police Act may not be disallowed.

(5) An appeal whose suspensory effect has been disallowed by the Federal Office shall be allowed suspensory effect by the Federal Administrative Court within one week from submission of the appeal ex officio if it can be assumed that the alien's rejection at the border, forcible return or deportation to his country of origin would constitute a real risk of violation of 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 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 conflict. The reasons on which the assertion that there is a real risk or serious threat to life or bodily integrity pursuant to the first sentence is based must be precisely stated in the appeal against the administrative decision issued in the main issue. Article 38 of the Administrative Court Act applies.

(6) Expiry of the time-limit as referred to in paragraph (5) above shall not preclude the allowance of suspensory effect.

(7) Article 13 (2) to (5) and article 22 of the Administrative Court Proceedings Act shall not be applicable.

Safe countries of origin

Article 19. (1) The member States (article 2 (1) 18 of the 2005 Asylum Act) shall be safe countries of origin.

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

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

- (4) Additional safe countries of origin shall be:
1. Australia;
 2. Iceland;
 3. Canada;
 4. Liechtenstein;

5. New Zealand;
6. Norway and
7. Switzerland.
8. The United Kingdom of Great Britain and Northern Ireland.

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

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

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

Submissions in appeals

Article 20. (1) In an appeal against a ruling by the Federal Office, new facts and evidence may only be submitted:

1. if the grounds on which the ruling was based have undergone any material change since the time of the ruling by the Federal Office;
2. if the procedure before by the Federal Office was irregular;
3. if such new facts and evidence were not accessible to the alien by the time of the ruling by the Federal Office or
4. if the alien had been unable to submit such new facts and evidence.

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

(3) Paragraph (1) above shall not apply to appeals against rulings by the Federal Office on the basis of an application for the granting of a residence permit pursuant to part 7 of the 2005 Asylum Act.

Proceedings before the Federal Administrative Court

Article 21. (1) The Federal Office shall be invited to attend hearings before the Federal Administrative Court; it shall be entitled to submit requests and questions.

(2) Appeals against rulings rejecting applications in admission procedures shall be ruled on by the Federal Administrative Court within eight weeks unless the suspensory effect of the appeal has been allowed.

(2a) The Federal Administrative Court shall within three months rule on appeals against decisions:

1. withdrawing asylum status (article 7 of the 2005 Asylum Act) and not conferring subsidiary protection status;
2. withdrawing subsidiary protection status (article 9 of the 2005 Asylum Act) or

3. imposing the admissibility of deportation is determined in the case of aliens who have been granted temporary leave to remain in the federal territory pursuant to article 46a (1) 2 of the Aliens Police Act. Such time-limit may be exceeded if required for the purpose of a full and proper examination of the appeal. The time-limit for rendering a decision as referred to in article 34 (1) of the Administrative Court Proceedings Act shall in such event be applicable. In derogation from the first sentence, the Federal Administrative Court decides on appeals against decisions on the withdrawal of asylum pursuant to article 7 para 2 of the 2005 of the Asylum Act within two months, without awarding subsidiary protection.

(2b) In derogation from article 34 para 1 of the Administrative Court Procedural Act, the Federal Administrative Court decides on appeals against decisions of the Federal Office on applications for international protection within twelve months, unless this federal act or 2005 Asylum Act provides to the contrary.

(3) If an appeal against the ruling of the Federal Office in an admission procedure is to be upheld, the procedure shall be admitted. An appeal against the ruling in an admission procedure shall also be upheld if the facts available are so inadequate that the conduct of an oral hearing or a further oral hearing appears unavoidable.

(4) In proceedings against a decision rendered in procedures at an airport (article 33 of the 2005 Asylum Act), the Federal Administrative Court shall rule on the merits if the facts have been sufficiently

established or if the establishment of the material facts by the Federal Administrative Court itself would be appropriate in the interests of speed or would mean a considerable saving in costs.

(5) If an appeal is lodged with the Federal Administrative Court against a measure to terminate residence and the alien is no longer resident in the federal territory at the time when the ruling on the appeal is pronounced, the Federal Administrative Court shall establish whether the measure to terminate residence was lawful at the time of pronouncement. If the measure to terminate residence was unlawful, the alien's re-entry shall at the same time be permitted.

(6) Rulings on appeals against administrative decisions pursuant to article 51 of the Aliens' Police Act whereby the admissibility of deportation to a specific country has been established shall be pronounced within one week, unless the custody of the alien terminates beforehand.

(6a) Notwithstanding paragraph (7) below, the Federal Administrative Court may rule on the allowance of the suspensory effect of an appeal which is not accorded suspensory effect by operation of the law (article 17) or which was disallowed suspensory effect by the Federal Office (article 18) and also on appeals against rejection rulings in admission procedures without the conduct of an oral hearing.

(7) An oral hearing may be dispensed with if the facts appear from the case documents in relation to the appeal to be clarified or it unequivocally emerges from the investigations to date that the allegations do not correspond with reality. In all other respects, article 24 of the Administrative Court Proceedings Act shall apply.

Review of withdrawal of de facto protection against deportation

Article 22. (1) A decision by the Federal Office whereby an alien's de facto protection against deportation has been withdrawn (article 12a (2) of the 2005 Asylum Act) shall undergo a review by the Federal Administrative Court without delay. The procedure shall be ruled on without the holding of an oral hearing. Article 20 shall apply mutatis mutandis. The second sentence of article 28, paragraph (3), of the Administrative Court Proceedings Act shall not apply.

(2) The withdrawal of protection against deportation pursuant to article 12a (2) of the 2005 Asylum Act and a valid repatriation decision pursuant to article 52 of the Aliens' Police Act or an expulsion order pursuant to article 66 of the Aliens' Police Act shall be enforceable upon the rendering of the ruling pursuant to article 12a (2) of the 2005 Asylum Act. The execution of the deportation in implementation of the repatriation decision or expulsion order pursuant to article 46 of the Aliens' Police Act shall be deferred until the expiry of the third working day from the receipt, by the competent judicial division of the Federal Administrative Court, of the administrative records to be transmitted in accordance with article 22 (10) of the 2005 Asylum Act. The Federal Administrative Court shall without delay notify the Federal Office of the receipt of the administrative records by the competent judicial division and of the ruling on the lawfulness of the withdrawal of protection against deportation as rendered in the review conducted pursuant to paragraph (1) above.

(3) In the review conducted pursuant to paragraph (1) above, the Federal Administrative Court shall rule within eight weeks on the lawfulness of the withdrawal of protection against deportation.

Legal protection in cases of arrest, custody and pre-deportation detention

Article 22a. (1) An alien shall have the right to appeal to the Federal Administrative Court on the grounds of illegality of his arrest or custody or of an administrative decision ordering his detention pending deportation if:

1. he has been arrested pursuant to the present federal act;
2. he is being or has been held in custody by virtue of the present federal act or
3. an order for his detention pending deportation has been issued against him pursuant to part 8 of the Aliens Police Act.

(1a) The applicable provisions of the Administrative Court Proceedings Act relating to appeals pursuant to article 130 (1) 2 of the Federal Constitutional Act shall be valid for appeals as referred to in paragraph (1) above with the proviso that the authority against which the action is brought is the authority which rendered the contested administrative decision ordering pre-deportation detention or the authority responsible for the arrest or custody.

(2) The ruling by the Federal Administrative Court on the continuation of pre-deportation detention shall be pronounced within one week unless the custody of the alien terminates beforehand. If, pursuant to article 13 (3) of the General Administrative Procedures Act, the Federal Administrative Court has instructed the appellant to rectify an irregularity in the appeal within a specific period, the computation of the time-limit for rendering the ruling shall be suspended until the irregularity has been rectified or until the period allowed for that purpose has elapsed without the irregularity having been rectified. (3) If the custody is still in progress, the Federal Administrative Court shall establish whether, at the time of its ruling, the requirements determining the continuation of the detention are satisfied.

(4) If an alien is held for a continuous period of more than four months in detention pending deportation, the reasonableness of his custody shall be reviewed by the Federal Administrative Court after the day on which the fourth month elapses and thereafter every four weeks. The Federal Office shall present the administrative records in timely fashion so that there is one week remaining before the respective fixed dates in order that the Federal Administrative Court can render its ruling. The appeal shall be deemed lodged in respect of the detained alien upon presentation of the administrative records. The Federal Office shall demonstrate why it is necessary and reasonable to maintain the detention order in force. The Federal Administrative Court shall establish whether, at the time of its ruling, the requirements determining the continuation of the detention are satisfied and whether it is reasonable to maintain the detention order in force. Such review shall be dispensed with if an appeal as referred to in paragraph (1) above has already been lodged.

Appeals against administrative decisions in procedures before diplomatic or consular authorities for the issuance of Austrian documents to aliens pursuant to part 11 of the Aliens' Police Act

Article 22b. (1) The appellant shall attach to his appeal against an administrative decision of an Austrian diplomatic or consular authority all the documents presented by him in the procedure before the diplomatic or consular authority against which the action is brought, together with a translation in the German language.

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

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

(4) The notification of the decision of the Federal Administrative Court shall be effected through the diplomatic or consular authority. Article 15 (4) shall apply."

Section 6

Identification procedures and investigative operations

Use of personal data

Article 23. (1) The Federal Office and the Federal Administrative Court may use personal data only insofar as is necessary for the discharge of the duties assigned to them.

(2) The Federal Office and the Federal Administrative Court may process personal data on third parties only if there is no provision for the selectability of such data from the total quantity of stored information. The foregoing shall not preclude communication of the total number of the data sets relating to such third parties together with a reference to the respective controller of such processing operations provided that this is carried out only in connection with the processing of data on an alien to whom an official act directly relates.

- (3) Data compiled pursuant to the present federal act shall be physically deleted at the latest:
1. if Austrian nationality is conferred on the person concerned, as soon as the data are no longer required for the purpose of a procedure for the withdrawal of a document issued to him as an alien;
 2. if the death of the person concerned becomes known to the Federal Office or to the Federal Administrative Court and five years have elapsed since that time or

3. ten years after a procedure before the Federal Office or after proceedings before the Federal Administrative Court has or have been finally ruled on or after an application has been withdrawn, discontinued or deemed no longer relevant. The foregoing shall not apply if an entry ban or a residence ban has been imposed on the person concerned for an unlimited period. If the validity of a measure to terminate residence which is subject to a time limitation ceases after the period specified in the first sentence, the data shall not be deleted until such validity has expired.

Identification procedures

Article 24. (1) The Federal Office shall be empowered to arrange for an alien who is over 14 years old to undergo identification procedures if:

1. he files an application for international protection;
2. he is to be granted asylum status pursuant to article 3 (4) of the 2005 Asylum Act;
3. a residence permit is to be granted to him in accordance with the provisions of the 2005 Asylum Act;
4. he is in detention pending deportation;
5. he has been arrested pursuant to the present federal act;
6. a measure to terminate residence has been imposed on him;
7. it is suspected that an entry ban or a residence ban which is still in force has been imposed on him under another name;
8. an alien's passport or a Convention travel document is to be issued to him or
9. the establishment of his identity is not otherwise possible.

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

(3) The diplomatic and consular authorities shall be empowered to arrange for aliens to undergo identification procedures in the cases referred to in paragraph (1) 8 above.

(4) Article 64, article 65 (4), (5) first sentence and (6), and article 73 (7) of the Security Policing Act (SPG), FLG No. 566/1991, shall apply. Steps for the establishment of personal identity may be carried out in the cases referred to in paragraph (1) 1 to 5 and 8 above.

Notice to undergo identification procedures

Article 25. (1) An alien whom the Federal Office has to require to undergo identification procedures shall be issued by it with a notice to that effect and be informed by it of the reason for the identification procedures. He shall be furnished with an information leaflet concerning such procedures which shall be prepared in a language understandable to him or in a language which may reasonably be presumed to be understood by him. The person concerned shall cooperate in the identification procedures.

(2) If in the cases referred to in article 24 (1) 4 and 5 above the person concerned fails to comply with the notice, the agents of the public security service shall be empowered to transfer him to the Federal Office or to a station of a provincial police authority, to be determined by the Federal Office, for the purpose of undergoing the identification procedures; custody for such purpose shall be admissible only for as long as the conduct of such procedures appears to have some prospect of success, subject to observance of article 78 of the Security Policing Act.

(3) If, except in the cases referred to in article 24 (1) 8 above, the person concerned fails to comply with the notice, an obligation to cooperate shall be imposed on him by administrative decision unless he is in detention. The administrative decision may be issued in conjunction with a summons (article 19 of the General Administrative Procedures Act) to undergo identification procedures. Article 78 of the Security Policing Act shall apply.

(4) Identification data lawfully processed on aliens by a security authority under the Security Policing Act may in the cases referred to in article 24 (1) 1 to 8 be compiled by the Federal Office and be further processed in accordance with the provisions of the present federal act. The alien shall be informed of such compilation in a manner appropriate to the circumstances.

Central Register of Aliens; joint information system

Article 26. (1) The Federal Minister of the Interior shall be empowered to operate a central register of aliens as a joint information system (article 4, subparagraph 13, of the 2000 Data Protection Act, FLG No. 165/1999). The Federal Minister of the Interior shall discharge the dual role of operator in accordance with article 50 of the 2000 Data Protection Act and processor as defined in article 4, subparagraph 5, of the 2000 Data Protection Act. Controllers in accordance with data protection law shall be Federal Minister of the Interior, Federal Office, diplomatic and consular authorities, the Federal Administrative Court, authorities under the Settlement and Residence Act and provincial police authorities.

(2) Access to personal data processed in accordance with paragraph (1) above shall be barred to the Federal Office, the Federal Administrative Court, authorities under the Settlement and Residence Act and provincial police authorities, as controllers, as soon as the conditions required for the storage of such data cease to exist or the data are otherwise no longer needed. Furthermore, the data shall be physically deleted upon the expiry of a period of two years thereafter. During that time, the bar on access may be lifted for purposes of verification of the accuracy of other data intended for storage in accordance with paragraph (1) above.

(3) The Federal Office, the Federal Administrative Court, authorities under the Settlement and Residence Act and provincial police authorities shall be obliged, as controllers, to review personal data processed in accordance with paragraph (1) above to which access is not barred and which have remained unaltered for six years and are not subject to a time limitation, in order to ascertain whether the required conditions as referred to in paragraph (2) above for the barring of access do not already exist. Access to such data sets shall, in accordance with paragraph (2) above, be barred upon the expiry of a period of three months thereafter, unless the controller confirms beforehand that the reason which determined the storage of such data continues to exist or other deletion obligations as set out in article 23 (3) do not exist.

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

(5) With regard to data processed in the Central Register of Aliens, article 23 (3) shall apply.

Use of data in connection with the Central Register of Aliens

Article 27. (1) The Federal Minister of the Interior, the Federal Office, diplomatic and consular authorities, the Federal Administrative Court, authorities under the Settlement and Residence Act and provincial police authorities may jointly process the following particulars of an alien in the register of aliens (article 26):

1. name;
2. sex;
3. former name(s);
4. date and place of birth;
5. address;
6. nationality;
7. parents' names;
8. details of any aliases;
9. issuing authorities, dates of issue and numbers of accompanying documents;
10. any information concerning dangerousness in connection with intervention operations, including sensitive data, insofar as the use of such data is necessary for the safeguarding of vital interests of third parties;
11. data constituting determining factors with regard to the right of entry and residence and to the admissibility of detention pending deportation;
12. criminal investigation data for the purpose of carrying out arrests pursuant to the present federal act or to the Aliens' Police Act;
13. photographs;
14. impression of the papillary ridges on the fingers;
15. signature;
16. verbal description of external physical features;

17. results of a multifactorial examination for the purpose of age determination;
18. results of a DNA analysis for the purpose of establishing proof of a family relationship,
19. social security number,
20. Conditions, territorial restrictions, orders to accept accommodation or restriction on place of residence pursuant to articles 46a para 2, 52a, 56, 57, 71 or 77 of the Aliens Police Act, article 12 para 2, 15b or 15c of the 2005 Asylum Act and
21. the field-specific personal designation

(2) Retrieval of data from the register of aliens shall be admissible only if the alien is identified at least by the name, a number allocated to him, his photograph or an impression of the papillary ridges. For the purposes of article 32 (2), data may also be used as the inquiry criterion with a view to establishing the validity of entry permits or residence permits. If an impression of the papillary ridges is not used as the selection criterion, impressions of the papillary ridges and the signature may be displayed only if this is a necessary requirement for the discharge of an official duty.

(3) Personal data on third parties may be processed only if there is no provision for the selectability of such data from the total quantity of stored information. The foregoing shall not preclude communication of the total number of the data sets relating to such third parties together with a reference to the respective controller of such processing operations provided that this is carried out only in connection with the processing of data on an alien to whom an official act directly relates.

(4) Alphanumeric data, photographs, impressions of papillary ridges and signatures shall be processed in a physically separate manner. Every instance of retrieval and transmission of personal data from the central information-gathering system shall be recorded in such a way that the admissibility of the processing steps carried out is verifiable. The record entries shall be retained for three years.

Central procedural file; joint information system

Article 28. (1) The Federal Office and the Federal Administrative Court shall be empowered to process jointly the procedural data compiled by them, namely information on the status of the procedure, in particular on applications, decisions, legal remedies, deportations and voluntary repatriations including the information necessary for the imposition of an administrative decision in accordance with article 2 (1c) or (1e) of the 2005 Federal Law Regulating Basic Welfare Support.

(2) In this respect, the Federal Minister of the Interior shall perform on behalf of the Federal Office and the Federal Administrative Court the dual role of operator in accordance with article 50 of the 2000 Data Protection Act and processor as defined in article 4, subparagraph 5, of the 2000 Data Protection Act.

(3) The Federal Office and the Federal Administrative Court shall be empowered to compile procedural data processed by authorities under the Settlement and Residence Act and by provincial police authorities if absolutely necessary for the discharge of their duties.

(4) Retrieval of data from the central procedural file shall be admissible only insofar as is necessary for the performance of a duty assigned pursuant to the present federal act, the 2005 Asylum Act or parts 7, 8 and 11 of the Aliens' Police Act or for the discharge of duties assigned under articles 148a ff. of the Federal Constitutional Act and the alien is identified at least by the name, a number allocated to him or an impression of the papillary ridges.

(4a) The Federal Agency for Care and Support Services Ltd. shall be empowered to enter personal data according to para 1 in the central procedural file and insofar takes action as a processor according to article 4 lit. 8 GDPR. It is in this function obligated to discharge data protection obligations according to Art. 28 para 3 lit. a-h GDPR and is bound by the instructions of the Federal Office as controller according to data protection law (article 4 lit. 7 icw Art. 26 para 1 GDPR) when executing such entries.

(5) With regard to data processed in the central procedural file, article 23 (3) shall apply.

Transmission of personal data

Article 29. (1) Data processed in accordance with article 27 (1) and article 28 may be transmitted to the following recipients insofar as they require such data for the discharge of the duties assigned to them:

1. security authorities (article 4 of the Security Policing Act);

2. public prosecution authorities;
3. civil and criminal courts and penal institutions;
4. provincial administrative courts;
5. the Office of the United Nations High Commissioner for Refugees in Austria;
6. the parties to a treaty concerning the determination of the State responsible for examining applications for asylum or applications for international protection or the authorities of States that are required to apply the Dublin Regulation;
7. foreign authorities responsible for the implementation of the Geneva Convention on Refugees if the establishment of identity or granting of asylum is not possible without the transmission of the data to those authorities and if it is guaranteed that such data will not be accessible to authorities of the country where the asylum seeker or refugee claims a fear of being persecuted;
8. Austrian diplomatic and consular authorities;
9. authorities under the Settlement and Residence Act;
10. authorities responsible for nationality matters;
11. authorities responsible for civil status matters;
12. authorities entrusted with implementation of the Aliens Employment Act;
13. fiscal offence prosecution authorities;
14. child and youth welfare support;
15. legal advisers, insofar as the legal advice (articles 49 – 52) is not yet conducted by the Federal Agency for Care and Support Services Ltd. according to article 2 para 1 lit. 2 Federal Agency Establishment Act;
16. repatriation advisers, insofar as the repatriation advice and repatriation assistance (article 52a) is not yet conducted by the Federal Agency for Care and Support Services Ltd. according to article 2 para 1 lit. 3 Federal Agency Establishment Act
17. tax authorities;
18. interpreters for purposes relating to the provision of interpretation services in accordance with article 12a. In all other respects, the transmission of data shall be admissible only if express statutory authorization exists to that effect;
19. the Federal Minister of Internal Affairs;
20. the positions entrusted with the systematic monitoring of deportations (article 46 para 6 of the Aliens Police Act);
21. the Federal Agency for Care and Support Services Ltd., insofar as it carries out its duties according to article 2 para 1 of the Federal Agency Establishment Act.

(2) Data processed in accordance with article article 27 para 1 subpara 1 to 11 and subpara 19 and with article 28 may be transmitted to the following recipients insofar as they require such data for the discharge of the duties assigned to them:

1. officials of the Federal Government and provincial governments who perform duties in execution of the Basic Welfare Support Agreement;
2. the labour market service and local authority institutions entrusted with providing care and integration assistance;
3. local health insurance funds and the Federation of Austrian Social Insurance Institutions;
4. the Federal Ministry of European and International Affairs and
5. the Austrian Integration Fund.

(3) Data processed in accordance with article 27 (1) 1 to 9 and 11 may be transmitted to the domicile registration authorities insofar as they require such data for the discharge of the duties assigned to them.

Reporting obligations of the authorities

Article 30. (1) The security authorities shall transmit to the Federal Office the identification data processed by them in respect of any aliens on whom the Federal Office has compiled various data of the same kind in the course of identification procedures pursuant to article 24.

(2) The security authorities shall notify the Federal Office and – if appeal proceedings are pending – the Federal Administrative Court of any suspicion of the perpetration of punishable acts by any aliens, reporting the material facts.

(3) The diplomatic and consular authorities (article 35 (1) and (2) of the 2005 Asylum Act) shall notify the Federal Office of all official acts in regard to persons concerning whom they have knowledge of any procedure pending in the federal territory in relation to an application for international protection.

(4) The federal, provincial and municipal government authorities, offices of the labour market service, the Austrian Integration Fund and social insurance institutions which are lawfully in possession of data shall be empowered and, upon request, obliged to transmit such data to the Federal Office insofar as the data are required by it for the execution of measures or the conduct of procedures before the Federal Office. The foregoing shall also apply to the transmission of the types of data specified in article 27, paragraph (1), subparagraphs 1 to 6 and 19, to the Austrian Integration Fund insofar as the data are required by it for the execution of integration assistance measures (article 68 of the 2005 Asylum Act).” Any withholding of information shall be inadmissible. The data shall be deleted without delay if no longer required to meet the specific purpose involved.

(5) With regard to criminal proceedings against aliens because of intentionally committed criminal offences, as well as extradition and transfer procedures,

1. the criminal law court must inform the Federal Office as soon as possible of the imposition and termination of custody, or detention pending extradition or transfer as well as the legally binding decision in the criminal law, extradition or transfer procedure, attaching the decision which concluded the procedure,
2. the public prosecutor must inform the Federal Office as soon as possible that the complaint has been lodged, that prosecution has been withdrawn and the investigation procedure discontinued and
3. the prison must inform the Federal Office as early as possible of a prison sentence being commenced and of the prisoner’s release.

If the technical possibilities permit, this notification to the Federal Office must be done by sending this data electronically (article 15b para 1 of the Penal Execution Act). The Federal Office must forward the information to competent higher appellate bodies (if any). (6) The authorities responsible for nationality matters shall notify the Federal Office of the conferment of nationality on any alien.

(7) The authorities responsible for civil status matters shall notify the Federal Office of applications for the celebration of marriage or for the establishment of a registered civil partnership by third-country nationals who are not favoured third-country nationals.

(8) The district administrative authorities shall notify the Federal Office of applications for changes of name and the civil courts shall notify the Federal Office of applications for the adoption of aliens.

(9) The driver licensing authorities shall notify the Federal Office of the issuance of a driving licence to any alien.

Communication obligations

Article 31. (1) A notification as referred to in article 30 (5) shall be transmitted by the Federal Office to the Federal Administrative Court if the proceedings are pending before it.

(2) The Federal Office and, in the cases referred to in subparagraph 2 below, the Federal Administrative Court if the proceedings are pending before it, shall notify the competent provincial police authority:

1. of the breach of an obligation to report as laid down in article 15a of the 2005 Asylum Act,
2. of the breach of an obligation to report as laid down in article 13 (2) if a procedure for the imposition of a measure to terminate residence has been initiated against an asylum seeker pursuant to article 27 of the 2005 Asylum Act and
3. of the perpetration of a punishable act in accordance with the Aliens’ Police Act.

(3) The Federal Minister of the Interior shall be obliged to inform the authorities responsible for nationality matters of any repatriation decisions and residence bans that have ceased to be in force. He shall in such cases transmit to those authorities, by reason of the bar on access pursuant to article 26 (2), the basic data set on an alien and details of the decision which has ceased to be in force.

(4) Information in connection with measures to terminate residence shall be made available to the competent authority for the conduct of administrative penalty procedures under the Aliens Employment Act (AuslBG), FLG No. 218/1975 (article 28 of the Aliens Employment Act).

Admissibility of the use of data in the Central Register of Residents

Article 32. (1) In the retrieval of data from the Central Register of Residents which the Federal Office is allowed to carry out pursuant to the Domicile Registration Act, selectability from the total quantity of all data processed in the Central Register of Residents may also be provided for on the basis of the address in addition to the name, if this is necessary for the performance of the duties assigned to the Federal Office.

(2) The Federal Minister of the Interior shall be empowered to match data processed in the Central Register of Residents on registered persons with the personal data sets on aliens whose residence permits are no longer valid. If a valid registration exists notwithstanding the expiry of the residence permit, the Federal Minister of the Interior shall notify the Federal Office thereof.

(3) One year after initiating the measures provided for in paragraph (2) above the Federal Minister of the Interior shall review their suitability and submit a report thereon to the Data Protection Council.

International data exchange

Article 33. (1) Insofar as the Federal Government is empowered under article 66 (2) of the Federal Constitutional Law to conclude international treaties it may, provided that a reciprocal arrangement is granted and a level of data protection comparable with Austria exists, conclude intergovernmental agreements concerning the transmission of data, as referred to in article 27 or article 28, where such data are required for the purposes stated in article 29. In those cases, the transmission of such data shall be the prerogative of the Federal Minister of the Interior and it shall be stipulated that the deletion of transmitted data shall be subject to the same substantive requirements as apply in Austria and that nationals of the contracting States shall be excluded from the scope of application of such agreements.

(2) Personal data transmitted from outside Austria on aliens by virtue of an agreement concluded pursuant to paragraph (1) above may be processed in the central information-gathering system.

(3) The transmission of personal data on an alien to the country of origin shall not be admissible unless it involves data required with a view to the procurement of a permit pursuant to article 46 para 2a of the Aliens Police Act or to verify fulfilment of an obligation pursuant to article 46 para 2 or 2b of the Aliens Police Act.

(4) The transmission of personal data on an asylum seeker to the country of origin shall, without prejudice to paragraph (5) below, not be admissible. Data which is required to obtain a permit pursuant to article 46 para 2a of the Aliens Police Act or to verify the fulfilment of an obligation pursuant to article 46 para 2 or 2b of the Aliens Police Act, may be transmitted if the application has been dismissed or rejected (even if this is not legally binding) or the asylum-seeker is not entitled to de facto protection from deportation. The fact that an application for international protection has been filed may in no circumstances emerge in the course of any such transmission.

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

1. that country is a safe country of origin;
2. a procedure for the imposition of a measure to terminate residence has been initiated in cases where the required conditions as set out in subparagraphs 2 to 4 of article 27 (3) of the 2005 Asylum Act exist or
3. an application for international protection has been rejected, or has been dismissed in regard to the granting of both asylum status and subsidiary protection status, by the authority of first resort, even if not finally. The fact that an application for international protection has been filed may in no circumstances emerge in the course of any such transmission.

PART 2: SPECIFIC PROVISIONS

Section 1

Orders of authorities and powers of agents

Subsection 1

Orders of authorities

Arrest warrants

Article 34. (1) The Federal Office may issue an order for the arrest of an alien (arrest warrant) if he:

1. is in breach of conditions laid down in article 56 (2) or article 71 (2) of the Aliens' Police Act or
2. 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 Federal Office may issue an order for the arrest of an alien, even without an administrative decision ordering his detention pending deportation having been rendered, if on the basis of certain facts it may be assumed that the conditions required for the imposition of a measure to terminate residence exist and

1. the alien has failed without good cause to answer a summons which was served on him personally and in which the use of such means of coercion was threatened or
2. the alien's residence could not be established.

(3) An arrest warrant may also be issued against an alien:

1. if the conditions required for the imposition of an order for detention pending deportation pursuant to article 76 of the Aliens' Police Act or for the ordering of less stringent measures pursuant to article 77 (1) of the Aliens' Police Act exist and the alien's transfer to the Federal Office does not take place for other reasons;
2. if the alien has not complied with his exit obligation (articles 52 (8) and 70 (1) of the Aliens' Police Act);
3. if a deportation order is to be issued against the alien (article 46 of the Aliens' Police Act) or
4. if an execution order enacted on the basis of an administrative decision pursuant to article 46 para 2b of the Aliens Police Act is not able to be executed or the alien fails, without a satisfactory excuse, to obey a summons which was personally delivered to him pursuant to article 46 para 2b of the Aliens Police Act (which summons mentioned this coercive measure) and which required his questioning to clarify his identity and origin, particularly for the purpose of the authority obtaining a permit pursuant to article 46 para 2a of the Aliens Police Act from the foreign authority.

(4) The Federal Office may issue an order for the arrest of an asylum seeker if he has evaded the procedure (article 24 (1) of the 2005 Asylum Act).

(5) Arrest warrants shall be issued in exercise of the power of command devolving upon the administrative authority; a written record of such warrants shall be made. Custody pursuant to an arrest warrant may not exceed 72 hours and shall cease upon completion of the necessary procedural acts.

(6) In the cases referred to in paragraphs (1) to (4) above the person concerned shall, at his request, be furnished with a copy of the arrest warrant immediately or within the following 24 hours.

(7) The custody of an alien against whom an arrest warrant has been issued shall be reported without delay to the Federal Office. The latter shall indicate whether the alien is to be transferred to an initial reception centre or to a regional headquarters.

(8) An arrest warrant shall be revoked if:

1. the procedure for the granting of asylum status has been discontinued and the resumption of the procedure is no longer admissible (article 24 (2) of the 2005 Asylum Act) or
2. the asylum seeker voluntarily notifies the Federal Office or the Federal Administrative Court of his place of residence and it may not be assumed on the basis of certain facts that he will again evade the procedure.

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

(9) The Federal Office shall notify the provincial police authorities of the issuance and revocation of any arrest warrant.

Search warrants

Article 35. (1) If on the basis of certain facts it may be assumed that an alien against whom an arrest warrant has been issued or on whom an order for detention pending deportation is to be imposed is residing at certain premises, the Federal Office may issue an order to the agents of the public security service to enter and search the premises if such measure appears necessary for the enforcement of the arrest warrant or for the execution of the administrative decision ordering the alien's pre-deportation detention.

(2) The order referred to in paragraph (1) above shall be issued in exercise of the power of command devolving upon the administrative authority. Written certification of the search carried out shall be furnished by the intervening agent of the public security service to the person concerned, upon request, as soon as possible and in any event within 24 hours.

Order for the examination of data carriers

Article 35a. (1) The Federal Office can order the examination of data carriers secured from an asylum-seeker, provided that the requirements of article 39a are met and an examination has not already been performed.

(2) The order for the examination of data carriers that have been secured shall be issued by exerting administrative authority; it shall be made on record.

Subsection 2

Involvement and powers of agents of the public security service

Establishment of identity

Article 36. (1) The agents of the public security service shall be empowered to take steps to establish the identity of a person:

1. if on the basis of certain facts it may be assumed that an arrest warrant has been issued against him (article 34) or
2. if on the basis of certain facts it may be assumed that he would as an alien reside outside the area to which his right of residence is restricted.

(2) Establishment of identity shall entail the recording of the name, date of birth, nationality and address of a person in his presence. It shall be carried out with the reliability warranted by the circumstances.

(3) Persons whose identity is to be established shall be informed thereof by the agents of the public security service. Every person concerned shall be obliged to cooperate in the procedure for the establishment of his identity and allow the direct enforcement of such procedure.

Power of entry

Article 37. (1) The agents of the public security service shall be empowered to enter property, premises, business establishments, places of employment and vehicles if a search warrant (article 35) has been issued and such action is necessary for the enforcement of the warrant.

(2) In the cases referred to in paragraph (1) above the person concerned shall, at his request, be furnished with written certification of the entry and the reasons therefor immediately or within the following 24 hours.

Personal searches

Article 38. (1) The agents of the public security service shall be empowered for the purpose of safe keeping of evidence and cash (article 39) to search the clothing of an alien and the belongings carried with him if:

1. he has been arrested pursuant to the present federal act;
2. it is suspected that he is unlawfully resident in the federal territory and possesses evidence which is of importance for his deportation;

3. he files an application pursuant to article 42 (1) or
4. he submits an application for international protection,

if, in the cases specified in subparagraphs 3 and 4, it cannot be ruled out that the alien is carrying objects or documents that could provide information regarding his identity, nationality, the route travelled by him or reasons for fleeing or that he is carrying money in cash and he does not present these on request. Before performing a search, the alien shall be asked to voluntarily surrender all evidence and money in cash that he is carrying.

(2) The agents of the public security service shall also be empowered to search the clothing of an asylum seeker and the belongings carried with him if it may be assumed on the basis of certain facts, in conjunction with an interview, that the asylum seeker is carrying with him documents or articles which, in accordance with article 15 (1) 5 of the 2005 Asylum Act, he is obliged to hand over or is carrying with him data carriers which must be secured as evidence in accordance with article 39 and which he does not voluntarily hand over upon request.

Safekeeping of evidence and cash

Article 39. (1) The agents of the public security service shall be empowered to place temporarily in safe keeping any articles and documents required as evidence for purposes of a procedure before the Federal Office or a deportation pursuant to article 46 of the Aliens' Police Act. In the event of an order pursuant to article 43 (1), the agents of the public security service are also authorised to secure any portion of the cash being carried that exceeds the amount an alien is permitted to retain of 120 EUR or equivalent in another currency but does not exceed the maximum amount of 840 EUR or equivalent. If money held in cash is secured, then the alien must provide verifiable information regarding the liability to pay contributions, the claim for surrender of the remaining amount where applicable and the right to apply for this to be determined, as well as the legal consequence of the lapse in accordance with article 2 (1b) to (1e) of the 2005 Federal Law Regulating Basic Welfare Support.

(1a) If, when securing cash in foreign currencies, it becomes excessively time-consuming for the agents of the public security service to determine the equivalent value of the amount in euros or to transfer the contributions designated in paragraph 1, then the cash being carried shall be secured and passed on to the Federal Office in its entirety. The Federal Office shall officially transfer the permitted sum to the alien and also, if necessary, a balance of the remaining amount in excess of the maximum amount without unnecessary delay.

(1b) If the alien is liable to pay contributions for one or more dependent family member(s) (article 2 (1b) 2005 Federal Law Regulating Basic Welfare Support) then the amounts stipulated in paragraph 1 shall increase by 100% for each dependent family member. This applies with respect to the quantity authorised for the alien as stated in paragraph 1, as long as this has not already been taken into account when securing the cash carried by the dependent family members, in accordance with paragraph 1. The obligation to provide maintenance and the right to receive maintenance shall be decided in accordance with Austrian law for the purpose of this federal act.

(2) Articles or documents required in connection with the execution of a repatriation decision or the enforcement of an expulsion order or a residence ban, in particular with a view to the procurement of a replacement travel document for deportation purposes, shall also be deemed to be evidence.

(3) A written confirmation shall be given to the person concerned regarding safekeeping in accordance with paragraphs 1 and 1a. This confirmation shall specify the sum of the amount secured if cash has been secured. The evidence shall be transferred to the Federal Office and the Federal Office shall return this to the person concerned as soon as it is no longer required for the procedure or for deportation unless it has to be secured according to another federal law. In the event that data carriers are secured, it will not be the carriers themselves that shall be transferred to the Federal Office but rather the results of the examination along with a backup copy (article 39a). In the event that cash money is secured, the secured amount of cash and a copy of the confirmation given to the asylum-seeker shall be transferred to the Federal Office.

Examination of data carriers

Article 39a. (1) The agents of the public security service are authorised to create a backup copy of data found on secured data carriers for the purpose of identification and to examine these data if an alien submits an application for international protection and if verification of identity is not possible using the evidence at hand or an order has been presented pertaining to article 35a.

(2) The agents of the public security service are authorised to create and examine a backup copy from data found on data carriers that have been secured for the purpose of deciding on the competent state responsible for investigating the application for international protection, provided that the route taken by the alien cannot be determined using the evidence available or an order has been issued pursuant to article 35a.

(3) The data carriers are to be returned to the alien immediately as soon as they are no longer required for examination. Article 23 applies.”

Arrest

Article 40. (1) The agents of the public security service shall be empowered to arrest an alien for the purpose of transferring him to the Federal Office if:

1. an arrest warrant (article 34) has been issued against him;
2. he is in breach of conditions laid down in article 56 (2) or article 71 (2) of the Aliens’ Police Act or
3. he 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 agents of the public security service shall be empowered to arrest asylum seekers or aliens who have filed an application for international protection, for the purpose of transferring them to the Federal Office, if:

1. such alien is not entitled to reside in the federal territory;
2. an enforceable measure to terminate residence – even if not final – has been imposed on him pursuant to part 8 of the Aliens’ Police Act;
3. a procedure for the imposition of a measure to terminate residence has been initiated against him pursuant to article 27 of the 2005 Asylum Act;
4. an enforceable measure to terminate residence was imposed on him pursuant to part 8 of the Aliens’ Police Act prior to the filing of the application for international protection or
5. it may be assumed, on the basis of the outcome of the interrogation, search and identification procedures, that the alien’s application for international protection will be rejected owing to the absence of responsibility of Austria for the examination of the application.

(3) In the cases referred to in paragraphs (1) and (2) above the arrest may be dispensed with if it is guaranteed that the alien will leave the federal territory without delay via an external border.

(4) The Federal Office shall without undue delay give notification of arrests carried out. An alien’s custody in the cases referred to in paragraph (1) 2 and 3 and paragraph (2) above shall be admissible for up to 48 hours and in the cases referred to in paragraph (1) 1 above for up to 72 hours; beyond those limits, deprivation of liberty shall be possible only in accordance with article 77 (5) of the Aliens’ Police Act or by way of detention pending deportation in accordance with article 76 of the Aliens’ Police Act. The arrested alien shall, at his request, be furnished with written certification of the making of the arrest.

(5) If an alien makes an application for international protection during a period of detention based on an arrest warrant, pursuant to article 34 (3) subparagraphs 1 or 3, then this period of detention can be continued if there are reasons to assume that the application was made to postpone the legal enforcement of a measure to terminate residence. If the conditions for this are met, this shall be recorded in the file memorandum; it shall also be brought to the attention of the alien. Article 11 (8) and article 12 (1) shall apply *mutatis mutandis* in this matter.

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

Rights of persons arrested

Article 41. (1) Every person arrested pursuant to article 40 (1) or (2) shall be informed as soon as possible, in a language understandable to him, of the reasons for his arrest.

(2) At the request of any such person, the consular authority of his country of origin shall be informed without delay that he is being held in custody. Article 36 (4) of the Administrative Penalties Act (VStG) and article 47 of the Aliens' Police Act shall apply.

Filing of applications with security authorities or with agents of the public security service, interrogations and power to conduct identification procedures

Article 42. (1) If an alien files an application for international protection with a security authority or with an agent of the public security service, the agents of the public security service shall conduct an initial interrogation in accordance with article 19 (1) of the 2005 Asylum Act and require the alien to undergo identification procedures unless such operations have already been carried out and provided that the alien is over 14 years old.

“(2) Following completion of the steps referred to in paragraph (1) above, the agents of the public security service shall submit and hand over to the Federal Office the record of the interrogation and a report containing the time, place and circumstances of the filing of the application, particulars of any evidence as to the alien's nationality and the route travelled by him, in particular the place of the border crossing, and the results of the identification procedures (paragraph (1) above) and, if applicable, any personal search carried out (article 38 above) and shall obtain an order for further action from the Federal Office.

Orders for further action

Article 43. (1) On the basis of the information communicated in accordance with article 42, the Federal Office shall without delay order that:

1. in the case of an alien possessing right of residence, such alien be required to present himself within fourteen days at an initial reception centre or at a regional headquarters or
2. in the case of an alien not possessing right of residence:
 - (a) that such alien be transferred to an initial reception centre, regional headquarters or branch for the purpose of further proceedings or
 - (b) where such transfer is not required for the further conduct of the procedure, that the alien be provided with free-of-charge travel to a specific federal government care facility; the alien shall be informed thereof in an appropriate manner. Article 2 (1a) of the Federal Government Basic Welfare Support Act 2005 shall apply *mutatis mutandis*.

“(2) The Federal Office may dispense with an order as referred to in paragraph (1) 1 or 2 if:

1. the alien concerned is in custody pending deportation, in penal confinement, in pretrial detention or in another form of detention or
2. the provision of welfare support to the asylum seeker at a federal government care facility is not possible owing to specific unforeseeable circumstances.

Other transfer operations

Article 44. If an alien is in custody for any reason whatsoever, he shall be brought before the Federal Office or the Federal Administrative Court at its request. His custody, in particular pre-deportation detention, shall not be interrupted by such transfer.

Powers of officials of the provincial police authorities

Article 45. (1) The provincial police superintendent may authorize employees who are not agents of the public security service to exercise powers of command and constraint as set out in articles 38, 39 and 42, provided that such persons are duly qualified and specially trained for that purpose.

(2) Officials of the provincial police authorities who are so authorized (paragraph (1) above) shall also be granted the powers referred to in articles 38, 39 and 42. The Order of the Federal Minister of the Interior issuing Rules for the Intervention of Agents of the Public Security Service (Code of Conduct Regulations – RLV, FLG No. 266/1993) shall apply to such officials. Article 47 (2) shall apply to these officials *mutatis mutandis*.

Withdrawal of cards

Article 46. The agents of the public security service and the security authorities (article 4 of the Aliens' Police Act) shall be empowered to withdraw cards as referred to in articles 50 to 52 of the 2005 Asylum Act from anyone if:

1. the cards have been revoked (article 53 (1) of the 2005 Asylum Act);
2. the cards are to be returned (article 53 (2) of the 2005 Asylum Act) or
3. the cards are held by persons to whom they were not issued, except in the case of legal representatives of under-age persons.

Withdrawn cards shall be presented to the Federal Office.

Exercise of direct powers of constraint

Article 47. (1) In discharging the authority conferred under the present section, the agents of the public security service shall be empowered to exercise direct powers of constraint; the agents of the public security service shall notify and warn the person concerned regarding the exercise of direct powers of constraint. They shall discontinue the exercise of such powers as soon as the outcome sought has been achieved or is seen to be unachievable by such means or to be out of proportion with the intervention necessary for enforcement purposes. Any threat to life or persistent threat to health shall in all cases be inadmissible

(2) If, in the discharge of any authority as referred to in article 38 (1) 3 and 4, article 38 (2), article 39 (1) and article 42 (1), it would be necessary to overcome resistance on the part of the person concerned, authorized officials of the Federal Office (article 2 (5) of the Federal Office Establishment Act) shall request an agent of the public security service to perform the official act.

Section 2

Legal advice before the Federal Office

Article 49. (1) Aliens may be granted free legal advice in procedures before the Federal Office (article 3 para 2) subject to factual capacities. Legal advice for asylum seekers includes support in the procurement of an interpreter and advice with regards to their asylum procedure and their prospects of being awarded asylum or subsidiary protection status. There shall be no legal entitlement to legal advice except for cases according to article 10 para 3, 5 and 6 as well as article 29 para 4 of the 2005 Asylum Act. If legal advice does not occur, legal and procedural information is to be given to the alien free of charge upon his request.

(2) Legal advice and, if it does not occur, the issuing of legal and procedural information shall take place only during office hours of the Federal Office.

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

Legal advice before the Federal Administrative Court

Article 52. (1) The Federal Office shall, upon the rendering of decisions, with the exception of decisions as referred to in article 53 of the Federal Office Procedures Act, articles 19 and 76 to 78 of the General Administrative Procedures Act, articles 46 para 2-2b, 60 para 1 and 2, 69 para 2, 88 to 94 of the Aliens Police Act and the Law of Administrative Enforcement, or upon the presentation of case files pursuant to article 16 para 2, of the Administrative Court Proceedings Act, inform the alien or asylum seeker by procedural order that a legal adviser will be placed ex officio, at no charge, at his disposal. At the same time, the Federal Office shall notify the appointed legal adviser or the Federal Agency for Care and Support Services Ltd. thereof.

(2) Legal advisers shall in all cases provide assistance and advice to aliens or asylum seekers in the lodging of complaints and in complaint proceedings before the Federal Administrative Court, in accordance

with paragraph (1) above, and also in the procurement of the services of an interpreter. Legal advisers shall perform their advisory activity objectively and in good conscience and explain to persons receiving advice the prospects of success of their complaint. They shall also represent the aliens or asylum seekers concerned, at their request, in proceedings, including oral hearings. In case of delivery of a decision regarding detention pending deportation legal advice and representation by the legal adviser also refers to directly preceding arrest and detention according to this federal act.

(3) The Federal Chancellor shall regulate the amount of compensation due to legal advisers for time and labour expended. If a corporate entity is commissioned to provide legal advice before the Federal Administrative Court, the Federal Chancellor shall regulate the amount of compensation due for the time and labour expended in providing such advice, including costs of interpretation, in the form of lump sums per alien or asylum seeker receiving advice. The compensation shall be based on the previously received offer from the commissioned corporate entity.

Repatriation advice and repatriation assistance

Article 52a. (1) An alien may be given repatriation advice at any stage of his procedure. Repatriation advice shall include an explanation of prospects during and after the conclusion of the procedure. Repatriation assistance shall in all cases include the necessary costs of the return journey (article 12 (2) of the Federal Government Basic Welfare Support Act 2005).

(2) There must be a return counselling session, if

1. a return decision is issued against a third-country national who is residing illegally – even if not legally binding,
2. a return decision against a third-country national who is residing illegally becomes enforceable or legally binding,
3. an asylum seeker is issued with a notice as per § 29, Para. 3 (4 to 6) AsylG 2005 or
4. a return decision against an asylum seeker is enforceable or legally binding.

If an accelerated asylum procedure is conducted (§ 27a AsylG 2005) or it is intended to issue the asylum seeker or alien with a return decision, then a return counselling session may be arranged at an earlier stage by means of a procedural order. Furthermore, return counselling centres are authorised to offer further return counselling sessions to aliens who have been issued with a return decision, even if not legally binding. Aliens are obligated to make use of these sessions when it is clear that they have been offered to them.

(2a) The Federal Office is to issue an information sheet regarding return counselling. This is to be kept on hand at the Federal Office and the Federal Administrative Court. If a return decision is viable in cases of Para. 2 (2 or 4) based on a decision made in accordance with § 18 Para. 5, or viable within the complaint procedure due to the decision of the Federal Administrative Court, then the Federal Administrative Court must provide the alien with the information sheet together with the decision.

(3) The competent repatriation advisory centre shall furnish the Federal Office or the Federal Administrative Court, upon enquiry by the competent provincial police authority in the course of the administrative penal procedure pursuant to article 120 para 1b of the Aliens Police Act, with information as to whether a repatriation consultation has taken place and the outcome reached. (4) Should an alien decide to accept the repatriation assistance offered to him and to leave Austria, he may be given financial support prior to his departure (article 12 of the Federal Government Basic Welfare Support Act 2005). The services of the legal adviser (article 49 of the Federal Office Procedures Act) shall be engaged in the concluding discussion concerning the granting of repatriation assistance in the admission procedure.

(4) If the alien chooses to accept the offered repatriation assistance and to leave the country, financial assistance can be granted before his departure (article 12 of the Federal Basic Support Act).

Section 3

Costs

Reimbursement of costs

Article 53. (1) The following costs incurred by the Federal Government shall be reimbursed by the alien unless article 30 of the Dublin Regulation conflicts herewith:

1. costs relating to the enforcement of a measure to terminate residence pursuant to part 8 of the Aliens' Police Act;
2. costs of interpretation arising in connection with procedural acts pursuant to parts 7 and 8 of the Aliens' Police Act.

(2) Anyone who employs an alien in contravention of article 3 (1) of the Aliens Employment Act shall reimburse the costs, as referred to in paragraph (1) above, in the event of the rendering of a repatriation decision against that alien pursuant to article 52 in conjunction with article 53 (1) and (2) 7 of the Aliens' Police Act. The main contractor and all subcontractors shall be jointly and severally liable if they have knowingly permitted the alien's employment by a subcontractor in contravention of article 3 (1) of the Aliens Employment Act or if the main contractor has not complied with its supervisory obligation pursuant to article 26 (6) of the Aliens Employment Act.

(3) Any carrier failing to comply with its obligations under article 111 (2) to (6) of the Aliens' Police Act shall reimburse the costs arising in connection with the deportation of an alien pursuant to article 46 of the Aliens' Police Act. Such costs shall include, in particular, expenses which from the time of the alien's arrival at the border crossing point until his departure:

1. arise in respect of accommodation, food and any medical care;
2. arise for the authority or the Federal Government in connection with any necessary execution of a repatriation decision pursuant to article 52 of the Aliens' Police Act or a residence ban pursuant to article 67 of the Aliens' Police Act, including costs relating to the enforcement of a pre-deportation detention order, costs of interpretation, ticket costs and costs in respect of accompanying agents.

(4) Article 79 of the General Administrative Procedures Act shall apply mutatis mutandis. Costs as referred to in paragraph (1) above which are not recoverable shall be borne by the Federal Government.

PART 3: FINAL PROVISIONS

Grammatical equivalence

Article 54. Where references made in the present federal act to natural persons appear in the masculine form, they shall apply equally to males and to females. In cases where the reference applies to a particular natural person, the specific form of the gender shall be employed.

References

Article 55. If reference is made in the present federal act to provisions of other federal acts, those provisions shall be applicable in their current wording.

Entry into force

Article 56. (1) The present federal act shall enter into force on 1 January 2014.

(2) Ministerial orders and intergovernmental agreements pursuant to the present federal act may be issued or concluded as from the day following the date of its promulgation; however, they may enter into force at the earliest upon the entry into force of the present federal act.

(3) Die §§ 7, 8, 13 Abs. 6, 15, die Überschrift des 5. Hauptstückes und die §§ 16 bis 22b samt Überschriften, §§ 26 Abs. 1 letzter Satz, 27 Abs. 1 Z 12 und § 58 sowie das Inhaltsverzeichnis in der Fassung des Bundesgesetzes BGBl. I Nr. 68/2013 treten mit 1. Jänner 2014 in Kraft. Die Überschrift des 5. Hauptstückes in der Fassung vor dem BGBl. I Nr. 68/2013 tritt mit Ablauf des 31. Dezember 2013 außer Kraft.

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

(5) Die §§ 9 Abs. 5 und 22a Abs. 5 in der Fassung des Bundesgesetzes BGBl. I Nr. 144/2013 treten mit 1. Jänner 2014 in Kraft. Die Anordnungen des Bundesgesetzes BGBl. I Nr. 144/2013 sind so zu verstehen, dass sie sich auf jene Fassung dieses Bundesgesetzes beziehen, die es durch das FNG-Anpassungsgesetz, BGBl. I Nr. 68/2013, erhalten würde. (6) § 18 Abs. 7 in der Fassung des Budgetbegleitgesetzes 2014, BGBl. I Nr. 40/2014, tritt mit Ablauf des Tages der Kundmachung in Kraft.

(6) § 18 Abs. 7 in der Fassung des Budgetbegleitgesetzes 2014, BGBl. I Nr. 40/2014, tritt mit Ablauf des Tages der Kundmachung in Kraft.

(7) Article 3, paragraph (2), subparagraphs 5 to 7, and paragraph (3), article 5, article 6, article 9, paragraphs (3) and (4), article 10, paragraphs (3) and (6), article 11, paragraphs (1) and (6), article 13, paragraphs (2) and 4, article 14, article 16, paragraph (2), subparagraphs 1 to 3, and paragraphs (4) and (6), article 17, paragraphs (1) to (3), article 18, paragraph (1), subparagraphs 2 and 5 to 7, article 21, paragraphs (2a) and (6a), article 23, paragraph (3), subparagraphs 1 and 3, article 28, paragraph (3), article 29, paragraph (1), subparagraphs 3 and 15 to 17, article 30, paragraph (5), article 34, paragraphs (4) and (8), subparagraphs 1 and 2, article 38, paragraph (1), articles 42 to 45 and their headings, article 47, paragraph (2), article 49, paragraph (3), article 52, paragraphs (1) and (2), article 52a and its heading, article 53, paragraphs (1) and (4), article 58, paragraph (4), and the entries for articles 42 to 45 and 52a in the list of contents, as amended by federal act FLG I No. 70/2015, shall enter into force on 20 July 2015. Article 34, paragraph (8), subparagraph 3, article 38, paragraph (1), subparagraph 3, and article 40, paragraph (5), shall cease to be in force at midnight on 19 July 2015.

(8) Article 12a and its heading, article 29, paragraph (1) and paragraph (2), subparagraphs 3 to 5, article 30, paragraphs (3) and (4), and the entry in the table of contents for article 12a, as amended by federal act FLG I No. 24/2016, shall enter into force on 1 June 2016. Article 52, paragraphs (1) and (2), as amended by federal act FLG I No. 24/2016, shall enter into force on 1 October 2016.

(9) Article 27, paragraph (2), as amended by federal act FLG I No. 25/2016, shall enter into force on 1 June 2016.

(10) Articles 4, para 2, 11 para 1, 3 and 6, 17 para 1, 18 para 5, 21 para 2a, 2b and 6, 27 para 1, 28 para 1 and 3, 29 para 2, 30 para 5, 33 para 3 and 4, 34 para 3 subpara 4, 36 para 2 as well as 52a para 2 and 3, 57 subpara 3 and 58 para 5 as amended by federal act FLG I No. 145/2017 enter into force on the expiry of the day of announcement but on 1 November 2017 at the earliest. Article 11 para 4 ceases to have effect upon the expiry of the day of announcement but upon the expiry of 31 October 2017 at the earliest. Article 21 para 2b as amended by federal act FLG I No. 145/2017 ceases to have effect upon the expiry of 31 May 2018.

(11) § 2 Abs. 2, § 13 Abs. 1, § 23 samt Überschrift und Eintrag im Inhaltsverzeichnis, § 24 Abs. 1, 3a und 4, § 26 samt Überschrift und Eintrag im Inhaltsverzeichnis, die Überschrift zu § 27 samt Eintrag im Inhaltsverzeichnis, § 27 Abs. 1, 3, 4 und 5, § 28 samt Überschrift und Eintrag im Inhaltsverzeichnis, § 29 Abs. 1 bis 3, § 30 Abs. 6, § 31 Abs. 3, die Überschrift zu § 32 samt Eintrag im Inhaltsverzeichnis sowie § 33 in der Fassung des Materien-Datenschutz-Anpassungsgesetzes 2018, BGBl. I Nr. 32/2018, treten mit 25. Mai 2018 in Kraft.

(12) Article 16 (1); article 18 (1) subparagraph 3; article 24 (1) subparagraph 3; article 28 (1); the heading of subsection 1 of section 1 of part 2; article 35a and its heading; article 38 (1) and (2); the heading for article 39; article 39 (1) to (1b) and (3); article 39a and its heading; article 40 (5); article 42 (2); article 43 (1) subparagraph 2 (a); article 47 (2) and the entries into the list of contents regarding the heading of subsection 1 of section 1 of part 2 and articles 35a, 39 and 39a in the federal law version FLG I No. 56/2108 shall all enter into force on 1 September 2018. Articles 10 (3), (4) and (5); 11 (5) and 29 (1) subparagraph 14 in the federal law version FLG I No. 56/2018 shall enter into force at the end of the day they are announced. The last sentence of articles 9 (4) and 16 (3) shall cease to be in force on 31 August 2018.

(13) The articles 11 para 2, 28 para 4a, 49 including heading and entry in the table of contents, 52, 52a para 4 and 58 para 6 as amended by FLG I Nr. 53/2019 enter into force on 1st January 2021. The articles 48, 50 and 51 including headings and entries in the table of contents cease to be in force after 31st December 2020. If the date set in article 2 para 3 lit. 2 of the Federal Agency Establishment Act, FLG I Nr. 53/2019, is postponed by a regulation according to article 2 para 4 of the Federal Agency Establishment Act, the articles 11 para 2, 48 to 51 including headings and entries in the table of contents, as well as 52 and 52a para 4 remain in force as amended by FLG Nr. 53/2019 up until the date set in this regulation.

(14) Die Änderungen der §§ 10 Abs. 3 und 6 sowie 49 Abs. 4 durch die Novelle BGBl. I Nr. 29/2020 treten mit Ablauf des Tages der Kundmachung in Kraft. Die Änderungen des § 49 Abs. 4 durch die Novelle BGBl. I Nr. 29/2020 treten mit Ablauf des 31. Dezember 2020 und die Änderungen des § 10 Abs. 3 und 6 durch die Novelle BGBl. I Nr. 29/2020 mit Ablauf des 30. Juni 2021 außer Kraft.

(15) § 19 Para. 4 and § 52a Para. 2 and 2a in the version of the Federal Act, Federal Law Gazette I No. 145/2020 come into force on 1 January 2021.

Execution

Article 57. Execution shall be entrusted:

1. with regard to articles 20, 21 and 33 (1), to the Federal Government;
2. with regard to articles 7 and 52, to the Federal Chancellor;
3. with regard to article 30 (3), to the Federal Minister for Europe, Integration and Foreign Affairs;
and
4. in all other respects, to the Federal Minister of the Interior.

Transitional provisions

Article 58. (1) Immigration police authorities under the Aliens' Police Act prior to amendment by federal act FLG I No. 87/2012 shall, as from 1 January 2014, also remain the controllers, as defined in article 4, subparagraph 4, of the 2000 Data Protection Act, for data processed on their behalf in the Central Register of Aliens, in accordance with article 101 of the Aliens' Police Act prior to amendment by federal act FLG I No. 87/2012, subject to the proviso that the procedure on which the data concerned are based is finally concluded prior to 1 January 2014. If such data are to be amended, rectified or deleted on or after 1 January 2014 ex officio or upon request, this obligation shall apply to authorities under the present federal act and under the Aliens' Police Act, as amended by federal act FLG I No. 68/2013, as the new controllers, as defined in article 4, subparagraph 4, of the 2000 Data Protection Act. The time-limit referred to in article 27 (4) of the 2000 Data Protection Act shall be computed as from receipt of the request by the current competent authority.

(2) Immigration police authorities under the Aliens' Police Act prior to amendment by federal act FLG I No. 87/2012 may use data in other data applications up to, at the latest, expiry of the statutory retention period, as specified in the Aliens' Police Act prior to amendment by federal act FLG I No. 87/2012, even if their competence to conduct procedures on which such data are based ceases after midnight on 31 December 2013.

(3) The Federal Administrative Court shall, as legal successor, take over the function of controller, as defined in article 4, subparagraph 4, of the 2000 Data Protection Act, for all data applications (both registered and not subject to notification) of the Asylum Court within the scope of the 2005 Asylum Act and the Aliens' Police Act. All registered data applications shall be continued under the register number of the Asylum Court. It shall not be necessary to submit new notifications to the data protection authority concerning data applications of the legal predecessor which have already been registered. Any necessary amendments in the data-processing register resulting from the legal succession shall be made by the data protection authority.

(4) Administrative decisions rendered by the Federal Office as from 20 July 2015 and rulings or orders issued by the Federal Administrative Court as from 20 July 2015 shall be executed by the Federal Office in accordance with article 3 (3), as amended by federal act FLG I No. 70/2015. The execution of administrative decisions rendered and rulings and orders issued prior to 20 July 2015 shall be in conformity with the legal situation prior to the entry into force of federal act FLG I No. 70/2015.

(5) Article 21 para 2b as amended by federal act FLG I No. 145/2017 continues to apply to appeal procedures, which were already pending upon the expiry of 31 May 2018, beyond 31 May 2018.

(6) Legal advice as well as repatriation advice and repatriation assistance granted according to the provisions of this federal act as amended before the entry into force of the FLG I Nr. 53/2019 are to be considered as legal advice as well as repatriation advice and repatriation assistance according to this federal act as amended by FLG I Nr. 53/2019.

