ACTORS OF PROTECTION AND THE APPLICATION OF THE INTERNAL PROTECTION ALTERNATIVE

NATIONAL REPORT

AUSTRIA

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I. Acknowledgments

The research for this report was carried out by Ms Anny Knapp and Ms Julia Valenta.

II. Glossary of acronyms

ACCORD - Austrian Centre for Country of Origin and Asylum Research and Documentation

BAA - Federal Asylum Agency (Bundesasylamt)

BFA - Federal Office for Aliens and Asylum (Bundesamt für Fremdenwesen und Asyl)

BVwG - Federal Administrative Court (Bundesverwaltungsgericht)

VfGH - Constitutional Court (Verfassungsgerichtshof)

VwGH - Administrative High Court (Verwaltungsgerichtshof)

III. Background: the national asylum system

a. Applicable law

The Asylum Law lays down the conditions for granting international protection (Federal Law concerning the Granting of Asylum).[1] The recast qualification directive was implemented by the "*Fremdenbehördenneustrukturierungsgesetz*" (alien authorities restructuring law),[2] which entered into effect on 1 January 2014. This law includes amendments to the Asylum Law 2005. These amendments do not relate to the IPA.

b. Institutional setup

On 1 January 2014, the structure of authorities in the area of Asylum and Immigration Law was changed. The Federal Office for Aliens and Asylum (Bundesamt für Fremdenwesen und Asyl, BFA) replaced the Federal Asylum Agency (Bundesasylamt, BAA) as the first instance authority for asylum applications. The BFA is also responsible for some aliens' police proceedings. The recently established Federal Administrative Court (Bundesverwaltungsgericht, BVwG) acts as the second instance authority, replacing the Federal Asylum Court which operated from 2008. The Administrative High Court (Verwaltungsgerichtshof, VwGH) and Constitutional Court (Verfassungsgerichtshof, VfGH) remain the authorities of last instance.

[1] Bundesgesetz über die Gewährung von Asyl, StF: BGBl. I Nr. 100/2005 Asylgesetz 2005 – AsylG: http://www.ris.bka.gv.at/GeltendeFassung/Bundesnormen/20004240/AsylG%202005%2c%20Fassung%20vom%2021.03.2013.pdf. For an overview of the Austrian asylum legal framework, see ECRE/Asylkoordination, National Country Report: Austria, http://www.asylumineurope.org/reports/country/austria.

[2] https://www.ris.bka.gv.at/Dokumente/BgblAuth/BGBLA_2012_I_87/BGBLA_2012_I_87.pdf

c. The procedure

The Asylum Act provides for a single procedure for applications for international protection. First, in an admissibility procedure, the authorities have to decide whether to reject the application on account of safety in a third country or the responsibility of another state, for failure of the applicant to state adequate grounds for protection or as a repeated application. If they declare the application admissible, the authorities decide whether to grant refugee status, or alternatively, whether to grant subsidiary protection. A separate application for subsidiary protection is not possible.

Appeals to the Federal Administrative Court are possible against a decision rejecting the asylum application as inadmissible or on its merits. An appeal against inadmissibility must be submitted within one week and has no suspensive effect. Appeals against merits decisions must be submitted within two weeks and have suspensive effect unless the Federal Asylum Agency decides otherwise.[3] About 17% of appeals succeed in regard to refugee status and 7% in regard to subsidiary protection.

Appeal to the Administrative High Court (VwGH) was reintroduced on 1 January 2014. The Federal Administrative Court (BVwG) may permit a negative decision to be appealed at the VwGH, if the decision is not clearly based on a leading case of the VwGH. If the BVwG does not permit the appeal, the asylum seeker may demand an extraordinary remedy. This new system may expand the VwGH's effective competence over asylum, because the Asylum Court has not referred any decisions to the VwGH since 2008. Further appeals to the Constitutional Court may be lodged if the applicant claims a violation of a constitutional right. The BVwG may grant or refuse international protection on appeal or decide that further investigation is necessary and remand the case to the court of first instance for further proceedings. Third instance courts cannot remand the case but must render a final decision.

The legal framework does not mention accelerated procedures, but reduced time limits are foreseen for lodging and deciding appeals, with the effect that certain cases are dealt with in an accelerated manner. These include (1) Dublin cases, (2) safe third country and safe country of origin cases, (3) airport procedures and (4) cases concerning the public interest. An application can be rejected in an airport procedure if it is manifestly unfounded, if the applicant comes from a safe country or if the applicant's allegations clearly do not correspond to reality.

d. Representation and legal aid

During the regular procedure, applicants are offered free legal advice at the branch offices of the BFA. The Asylum Law stipulates that every applicant must be provided with a legal adviser during the admissibility procedure, who informs the applicant about the procedure and the likelihood of success. Legal advisers are usually not present at first instance interviews, except where retained by the asylum-seeker as legal representatives.

Legal aid is provided at the appeal stage by two organisations. The law requires that advice be provided if the application is dismissed, but this does not include representation in court.

[3] Arts. 37 and 38 Asylum Law 2005 give the state discretion to decide whether to allow suspensive effect.

Asylum seekers are in practice not represented in court unless by NGOs or a paid private lawyer.

IV. Methodology: sample and interviews

This report is based on desk research, interviews and the analysis of recent asylum decisions and relevant court cases.

a. Methodology used

The desk research component included: articles and cases compiled from internet searches; specialised migration journals and literature; and interviews and contributions from stakeholders. The main internet resources were the Asylum Court web database, RIS (Rechtsinformationssystem) and the decision database of the Asylum, Administrative and Constitutional Courts.[4] A further few cases and articles were found via a keyword search on the website of the University Salzburg project "Fabl", active since 2008.[5] Printed sources included Frank, Annerinhof and Filzwieser's commentary on the 2005 asylum law,[6] articles in the journal "MigraLex" from between 2007 and 2012, and a draft analysis of Asylum Court decisions from the Ludwig Boltzmann Institute for Human Rights of the University of Vienna. Some case descriptions and supplementary information were provided by NGOs. The Protestant Refugee Service (Diakonie Flüchtlingsdienst) provided the sample of first instance decisions analysed, which it was able to access as part of its agreement with the Federal Chancellery to provide legal advice to applicants. Interviews were conducted with the head of the BAA and judges of the Asylum Court in Vienna and Linz.

b. Description of the sample

The selection of first instance cases included a variety of cases from all 7 branch offices of the Federal Asylum Agency. About 300 decisions were assessed to obtain a sample of fifty where the IPA or concepts of actors of protection were cited. In both instances the most recent decisions were selected, with only a few decisions from 2011. Cases from Afghanistan, Iraq, Russia and Somalia predominate in the sample, to facilitate comparisons with other Member States' case loads. In the Asylum Court, selection of cases was made from all senates that rule on applications from a given country of origin.

Country of Origin	Total	Instance		Gender[7]		Outcome	
		BAA/BFA	AC	Female	Male	Positive	Negative
Afghanistan	30	14	16	25	5	17	13
Algeria	1	1	0	0	1	0	1
Armenia	2	1	1	1	1	0	2

[4] http://www.ris.bka.gv.at/Judikatur.
[5] http://www.fabl.at
[6] Frank, Annerinhof & Filzwieser, *Asylum Law 2005: Commentary*, Vienna/Graz, 2012, pp. 447-457.
[7] Overall in 2012, 26% of asylum applicants were female. In the sample, 1 case was from a transsexual applicant.

Bangladesh	3	2	1	0	3	0	3
Belarus	1	0	1	0	1	1	0
Congo DRC	1	1	0	1	0	0	1
Georgia	1	0	1	1	0	1	0
India	2	1	1	0	2	0	2
Iran	2	1	1	0	2	1	1
Iraq	13	6	7	2	11	1	12
Kosovo	1	0	1	1	0	1	0
Nigeria	2	2	0	1	1	0	2
Pakistan	9	7	2	0	9	1	8
Philippines	1	1	0	1	0	0	1
Russia	13	4	9	7	5	4	9
Serbia	1	1	0	0	1	0	1
Somalia	12	6	6	3	9	8	4
Stateless	1	0	1	1	0	1	0
Syria	1	1	0	1	0	0	1
Turkey	2	1	1	2	0	1	1
Ukraine	1	0	1	1	0	1	0
TOTAL	**100**	**50**	**50**	**48**	**51**	**38**	**62**

Vulnerabilities[8]	**BAA/BFA**	**Asylum Court**	**Total**
Unaccompanied Minors	9	10	19
Single women	6	7	13
Torture, Illness, rape victims	7	8	15
TOTAL	**22**	**25**	**47**

V. National Overview

In both the IPA and actors of protection analysis, assessment is in principle the same regardless of whether refugee status or subsidiary protection is at issue. According to the Administrative High Court, the conditions for a state to be willing and able to protect are the same for the prohibition of deportation (due to risk of violation of Article 3 ECHR) as for asylum.[9] There is no possibility of an internal protection alternative or a determination that the state can provide protection when the persecution is caused or tolerated by a state actor.[10] It appears based on stakeholder assessments and the cases studied that the AP and IPA concepts are not applied in the case of unaccompanied minors from Afghanistan. This appears to be due to an informal policy of not returning unaccompanied minors in general, except in some cases where the applicant reaches the age of 18 before a decision

[8] Some cases have more than one indicator
[9] VwGH 8.6.2000 (2000/20/0141). See e.g. case A1 412616-1/2010.
[10] See e.g., AC, 29.11.2011 (TUR96FRS); AC, 22.03.2013 (RUS59MRSVT) (referencing VwGH, 19.10.2006 (2006/19/0297-6) and VwGH, 21.09.2006 (2006/19/0967-7).

was rendered.[11] Instead, these applicants are permitted to remain in Austria under subsidiary protection until the age of 18, when cessation of protection might be considered.

a. Actors of protection

i. The nature of protection (art. 7(2))

1. Prevention of persecution or serious harm

In assessing whether a legal system provides effective protection, one requirement is that it be shown to have been effective in detecting, prosecuting and punishing acts of persecution or serious harm, without discrimination against a group the applicant belongs to. For example, factors evaluated in assessing the safety of northern Iraq include protection against militia attacks; the possibility to obtain a visa or residence documents; the possibility of residence with a sponsor; respect for the right to work; and toleration of ethnic or religious minorities. Specifically when assessing the possibility of serious harm, COI often describes the health and social benefit systems in detail.

2. Durability of protection

Two Administrative High Court decisions from 2004 require protection to be non-temporary and that it be reasonable for the applicant to be returned.[12] A 2009 first instance decision, for example, determined Mogadishu was regarded as a safe area, but the Asylum Court ruled this was not a stable situation as the al-Shabaab militia was still active and might again pose a threat to the applicant.[13]

3. Access to protection

Access to protection has to be reasonable[14] and includes the issue of a power imbalance which makes it difficult to approach the authorities. Usually an applicant's statements claiming that their low social status and low financial means, in connection with the endemic corruption of the authorities, are obstacles in gaining state protection are not considered in the decision. It sometimes negatively affects an applicant's claim if they did not attempt to find protection from NGOs, such as NGOs that provide support for women in Nigeria. It is unclear from the cases studied whether this is seen as a component of reasonableness or as diminishing the credibility of an applicant's claim.

ii. Actors of protection

[11] See e.g., A.C., 5.04.2012 (IRQ68MNSUM).
[12] VwGH, 19.2.2004 (2002/20/0075) and VwGH, 24.6.2004 (2001/20/0420).
[13] AC, 29.05.2013 (SOM73MRSUM).
[14] See case AsylGH, 29.12.2011 (D7 311918-1/2008).

An actor of protection must be willing and able to protect. The abstract existence of "safe areas" is not enough.[15]

1. State actors of protection

Protection does not have to be certain. No state can protect from private persecution without gaps.[16] A country of origin can be considered unable to protect for reasons that include a failed state, such as Somalia;[17] inability or unwillingness of local authorities to protect against non-state actors (e.g. Afghanistan, Russia);[18] unwillingness to protect disfavoured social groups (e.g. Russia, regarding Chechens);[19] widespread corruption (e.g., Ukraine)[20]; ineffectiveness of protection due to a transitional situation (e.g. Somalia);[21] and living conditions that would raise a risk of violation of Article 3 ECHR, as in a case from Afghanistan.[22] It is considered that the general situation in Afghanistan leads to exceptional circumstances that require subsidiary protection for persons without family support there.

2. Non-state actors of protection

i. Criteria for a non-state actor to be an AP

None of the decisions analysed explicitly applied the requirement of the Qualification Directive that in order to be considered actors of protection, non-state actors must "*control the State or a substantial part of the territory*". COI has indicated that AMISOM forces together with the army had gained control of Mogadishu so that Islamist groups no longer posed a threat there. An older judgment of the Administrative High Court determined that for an applicant from the former Yugoslavia, there is no risk of persecution if he could be sent to a part of the country which is under the control of his own people, and clearly and stably separated.[23]

ii. Types of non-state AP

A few general references to protection by international organisations were found, for example concerning IOM in Kabul or unspecified aid organisations in Somalia, but none of them were cited as reasons for refusing protection. One decision found AMISOM forces in southern Somalia sufficient to protect against persecution, but the Asylum Court declared this incorrect based on COI.[24] Some COI states that in principle clans could protect. In general, however, COI for Somalia concludes that protection by clans is not realistic against

[15] VwGH, 9.9.2003 (2002/01/0497).
[16] See e.g., BAA (Vienna), 29.05.2013 (BAN12MNS); BAA (Traiskirchen), 15.11.2012 (PAK13MNS).
[17] See e.g., AC, 29.05.2013 (SOM73MRSUM); BAA, 14.03.2013 (SOM01MSP).
[18] State unable to provide protection against criminals. See D13 415889-1/2010, D3 401986-1/2008.
[19] See case D7 311918-1/2008.
[20] See e.g., AC, 27.05.2010 (UKR98FRSSP).
[21] See e.g., BFA, 14.03.2012 (SOM01MSP); AC, 29.05.2013 (SOM74MRE).
[22] AC, 15.01.2013 (AFG77MRSUM).
[23] VwGH, 11.06.1997 (95/21/0908).
[24] AC, 29.05.2013 (SOM74MRE). See also AC, 13.06.2013 (SOM72MNS), denying status based on protection by the Somali government and Amisom forces, which together exercised control over Mogadishu.

the al-Shabaab militia. Finally, in many cases, it is considered that family, relatives or friends can provide protection from serious harm.

b. The Internal Protection Alternative

i. Assessment of the IPA

IPA assessment entails the consideration of the relevance and reasonableness of the option, according to jurisprudence of the Administrative High Court. In some cases judgments are explicitly cited, in others the assessment does not follow the criteria developed by the court. The IPA may only be considered in cases alleging a risk of persecution by non-state actors. The existence of a legal system designed to detect, prosecute and punish acts of persecution is assessed in each case. In some 1st instance cases subsidiary refugee status was denied with the argument that the applicant could find protection in other parts of the home country, but subsidiary protection was granted based on 15c QD ground (serious and individual threat to life or person by reason of indiscriminate violence in situation of international or internal armed conflict).[25]

If information emerges in the interview about either relatives or former stays in other, safe parts of the country, the applicant is asked about possible risks in the relevant regions. The authorities may also verify the situation through Austrian embassies or country experts. The decision maker must assess the power of the would-be persecuting organisation and whether its influence is locally limited.[26] The applicant cannot be expected to hide or to change or conceal, for example, political opinion, religious beliefs or protected characteristics.[27] Family ties will be considered in selecting a location to propose. In practice, the location is often the same for most applicants from a given country of origin, for example Kabul, or a general reference to large cities.

1. Safety in the region

In principle, if the IPA is applied, the absence of a risk of persecution or serious harm in a proposed protection region is always verified. In practice, however, a detailed assessment is only conducted if the IPA is the main reason to reject an application for asylum. Factors considered as leading to safety include a large country and population (e.g. India, Nigeria, Pakistan), large cities, absence of a registration system, free movement and the presence of local or national police and army in the proposed region. Some cases refer, in the context of protection against serious harm, to the existence of state or non-state organisations able to assist in relocation, although they do not assess whether the organisations' resources would be available to specific applicants. Several decisions assessed for this study applied the IPA under the argument that protection without any gaps is not possible.[28]

The availability of protection for women must take into account information such as the capacity of shelters and the security of their funding.[29] Similarly, factors such as age, health

[25] See e.g., AC, 23.08.2012 (AFG92FRS); AC, 04.03.2013 (AFG89MRSUM).
[26] VwGH, 15.05.2003 (2002/01/0560).
[27] See VwGH, 19.12.2001 (98/20/0299); VwGH, 18.04.1996 (95/20/0295) ; VwGH, 20.03.1997 (95/20/0606).
[28] See e.g., BFA, 5.02.2013 (NIG06FP).
[29] VwGH, 21.12.2006 (2003/20/0550).

and education are considered when serious harm is at stake. None of the cases reviewed concerned a victim of trafficking, possibly because trafficking victims tend to approach specialised NGOs which assist them in obtaining residence permits.

2. Securing human and social rights

Legislation demands the consideration of the general situation in the country of origin and the personal circumstances of the applicant, as they exist at the time of the decision.[30]

a. General circumstances

Factors considered in evaluating the general circumstances in the proposed region of protection normally include the size of the region, its ethnic and religious composition, the local power of the actor of persecution, general security and the availability of services for persons with special needs. The principle of reasonableness has to be applied.

Practice varies considerably. In some cases a hopeless situation ("aussichtslose Lage") upon return would lead to the conclusion that a risk of violation of Article 3 ECHR is likely (e.g. in Kabul), but sometimes the authorities base the decision on COI with little individual assessment. As a rule, unqualified but healthy persons are considered able to survive with occasional jobs (for India or Pakistan, e.g., dishwasher, waste-collector, warehouse-worker, rickshaw driver).[31] There should not be evidence of general hardship such as starvation, epidemics or environmental or natural disasters. These factors are usually considered sufficient to support the reasonableness of the IPA, unless the applicant has particular needs or disabilities.[32]

b. Personal circumstances

Other than factors pertaining to the risk of persecution or harm, personal circumstances considered in determining whether it is reasonable to expect an applicant to stay in an IPA region include language, family connections, special needs and economic status.

In principle, the best interest of the child is always considered when the applicant is a minor, because the individual situation has to be taken into account. Although the case sample anaylsed included many decisions regarding unaccompanied minors, protection was in some cases denied based on an IPA in Kabul, and the best interest of the child was not explicitly assessed in any decision.[33] The Administrative High Court has decided that the IPA should not be applied to unaccompanied minors, because it will often not be possible or reasonable for them to reside in a part of the country without a legal guardian.[34] If the IPA is applied to a minor special regard has to be taken of reasonability, and concrete findings about the relocation situation are necessary.[35]

[30] Asylum Law 2005, Art.11.
[31] See e.g. A.C., 31.10.2012 (PAK93MNS).
[32] VwGH, 22.8.2007 (2005/01/0015-6), 2005/01/0017-8.
[33] See BFA, 21.03.2013 (AFG33MUM).
[34] VwGH, 26.06.1996 (95/20/0427).
[35] VwGH, 19.10.2006 (2006/19/029).

In assessing whether it is reasonable for an applicant to remain in the proposed region, there is some consideration of special needs. For persons suffering from traumatic experiences or who have chronic medical or psychological needs, the availability of support and treatment is verified. The psychological impact of moving to the proposed region is sometimes assessed as well. Society's attitudes, and the availability of civil and social rights, are considered in cases concerning LGBT applicants. Similarly for women, factors such as societal attitudes, customs and risk of forced? prostitution or other exploitation are taken into account.[36]

c. "Stay/settle"

In assessing whether "*the applicant can reasonably be expected to stay*" or "*settle*",[37] the BFA/BAA tends to consider factors such as living conditions, housing, the possibility to register for legal residence, employment prospects, assistance by family, relatives or friends, knowledge of the local situation and language and access to medical care. The Constitutional Court has ruled that the existence of a home and the possibility of sustenance can be relevant under Article 3 ECHR.[38] However in at least one decision the BFA/BAA asserted that poor social and economic conditions are no obstacle to the IPA.[39]

There is no clear rule regarding how long the applicant should be expected to "*reasonably*" be able to remain in the region. Some decisions distinguish between the situation immediately after return and in the longer term. It is assumed that assistance could first be found from charity organisations, a family network or IOM return assistance (e.g. Kabul), and that the applicant could eventually secure livelihood and housing by work.[40]

With regard to an IPA region, protection is generally understood as in Article 7 of the Qualification Directive.[41] However when considering a need for subsidiary protection, even when COI shows that the protection system is ineffective, it is often argued that the applicant would not face a hopeless situation because of support from a family or social network, or unspecified aid organisations. Therefore it appears that in practice the IPA is sometimes evaluated differently depending whether refugee status or subsidiary protection is at issue.

3. Access

In general the IPA should only be applied if the safe place is accessible. According to the Administrative High Court, the practical possibility of return to the region must be assessed, without requiring that the person pass through a region where there is a risk of persecution.[42] The possibility to safely and legally travel to the IPA region is verified through reviewing COI, whereby it may be confirmed that other returning people have been able to reach the country or region. In practice accessibility is not always assessed, particularly in cases where the IPA is used as an alternative argument.

[36] See AC, 6.7.2011 (AFG84FRSSP), AC, 27.05.2012 (UKR98FRSSP).
[37] Qualification Directive, Article 8(1).
[38] VfGH 19.602/2011.
[39] See BFA, 6.06.2013 (IND35M).
[40] See e.g. AC, 6.02.2013 (AFG91MNSUM); AC, 31.10.2012 (PAK93MNS).
[41] See Qualification Directive 2011, Article 8(1)(b).
[42] See e.g. VwGH, 21.11.2002 (2000/20/0185) ; VwGH, 13.10.2000 (96/18/0149).

ii. Application of the IPA

1. Procedure

According to settled jurisprudence, the IPA may only be considered in the context of a full procedure. Otherwise there would be a risk the case would not be looked at in sufficient detail. Nonetheless, in several cases examined for this study the IPA was cited as an alternative argument in rejecting applications during the airport procedure.[43] For some countries of origin (such as India, Nigeria or Pakistan) assessment of protection needs is less thorough than for others, and the interviews focus mainly on IPA-related questions.[44]

There is no clear pattern but usually, if it is considered, the IPA is discussed during consideration of the risk of persecution. In most cases the applicant is only formally made aware the IPA is under consideration when it appears in the decision, and therefore can only contest it in the context of an appeal. Sometimes the applicant is informed of the possibility the IPA will be applied during the interview or otherwise before the decision is rendered, and may have the opportunity to make a written submission or attend a second interview to discuss whether the IPA is appropriate.

According to §19/1 of the asylum law the first interview should not seek to elicit details about the applicant's fear of persecution. In practice however, this principle is not consistently followed. Usually statements made at the first interview are regarded as more credible than conflicting statements made in the determination hearing. If at any point an applicant states that they lived in another part of the country before escaping (even temporarily to organise the escape) the IPA will be raised. This applies to the assessments regarding both refugee status and subsidiary protection. It applies especially to the question of whether the applicant would face a hopeless situation in a relocation region, in view of the possibility of receiving support from relatives or finding employment.[45]

2. Policy

No cases concerning Article 15(c) of the Qualification Directive were found where the IPA was applied. According to jurisprudence, the IPA must be reasonable, which seems unlikely in a situation of armed conflict. If, however, a part of the territory is under the control of a national or international protection force (e.g. UN or from the applicant's own party), there would not be a risk of persecution. Such a region must be stable and within clear boundaries.[46]

[43] See e.g. AC, 16.01.2013 (C10 431909-1/2013): persecution by juvenile gangs in Vietnam not credible; alternatively an IPA could be available, for example in Hanoi; AC, 3.09.2012 (A14 428778-1/2012): Ghana can protect from persecution by an extortionist and his gang, but there would also be an (unspecified) IPA; AC, 7.03.2012 (C12 424903-1/2012): persecution by Sikhs or stepfather in the whole territory of India not likely; alternatively, according to COI an IPA exists outside of Punjab.
[44] See e.g. BFA, 16.04.2013 (PAK38M).
[45] See e.g. AC, 19.12.2012 (AFG86MSP).
[46] VwGH, 26.06.1997 (95/21/0294).

The IPA is not applied if the state is the actor of persecution or tolerates the persecution.[47] According to the Administrative High Court, the IPA may only be considered in cases of non-state actors of persecution. The authority has to assess if the persecuting organisation may be regarded as powerful or if their influence is locally limited.[48] In exceptional cases the Asylum Office has argued for an IPA for "semi-official" persecution by local authorities whose influence is limited to a certain region.[49]

The IPA is applied case by case. The country reports of the Asylum Agency include information on relocation, internally displaced persons and (sometimes) returnees. This may lead to a non-exhaustive assessment of the risk of persecution or the applicant's credibility, as for some countries an IPA will be deemed to be available due to, for example, the lack of a registration system or the existence of big cities.

The IPA is most frequently applied in cases from Pakistan, Bangladesh, Nigeria and India. According to a 1996 ruling from the Administrative High Court the IPA should not be applied to unaccompanied minors (as the laws of countries of origin may not allow them to settle in another part of the country). In practice however the IPA is sometimes applied to unaccompanied minors.

c. Assessment of facts and circumstances

According to the Administrative High Court the state has the burden of proving the existence of an IPA (including the elements of relevance and reasonableness) or an actor of protection. The applicant has to cooperate, including rendering all evidence available, and has to show an individual risk of *refoulement*.[50] The authorities must show the existence of an IPA, rather than the applicant showing its absence, because of the exclusionary nature of the IPA.[51] According to the Constitutional Court, referencing § 15 of the asylum law, which provides similar rules to those of Article 4 of the Qualification Directive, the authorities have the duty to assess all relevant elements.[52] The authorities should allow the applicant to be heard regarding the findings, in particular COI. In practice, for some countries of origin, the authority assumes there is an IPA and asks the applicant to argue why their case is exceptional. This effectively reverses the burden of proof.

If the IPA is applied, the lack of a risk of persecution or serious harm in the region has to be proven with a high probability. The Asylum Court has explained the interpretation of the Qualification Directive according to the General Administrative Procedure Law (§ 45 Abs 2 AVG):[53] under Article 6 of the Directive mere credibility of the applicant's account is not sufficient. It must be demonstrated that the state or organisation controlling (parts of) the state is unable or unwilling to protect against non-state actors (referring to ECtHR, *H.L.R. v France*, but not to Article 4 of the Directive).

[47] VwGH, 26.2.2002 (99/20/0509): it makes no difference to a persecuted person whether persecution emanates from the state or from other actors that the state cannot sufficiently prevent. See also VwGH, 22.3.2000 (99/01/0256). In both cases it is not possible or not reasonable for the applicants to attempt to avail themselves of the protection of the state; D1 426926-1/2012.
[48] VwGH 15.05.2003 (2002/01/0560).
[49] See BFA, 6.6.2013 (IND35M).
[50] VwGH 09.09.2009, 2002/01/0497.
[51] VwGH, 9. 9.2003 (2002/01/0497); VwGH, 8.4.2003 (2002/01/0318).
[52] See VfGH, 2.10.2001 (B2136/00).
[53] Decision E10 402440-1/2008 of 9.12.08.

Concrete assessment of the effects of a change of location on the living conditions is considered necessary if the IPA is applied to an unaccompanied minor,[54] or to an applicant with special needs. Additional investigation might be necessary (for example, COI requests to Austrian embassies) and specific information used to assess the reasonableness of the IPA.[55]

d. Decision quality

i. Country of Origin Information

The BFA has a duty to gather and maintain archives of "relevant facts" from countries of origin to support risk of persecution and credibility assessments, as well as safe third country or safe country of origin determinations.[56] The BFA and the Asylum Court are also required to follow developments in countries of origin based on publicly available information. The Advisory Board on the Maintenance of Country Records issues recommendations on keeping country records, gathering relevant facts, evaluating sources used and conducting analyses. UNHCR and the Federal Ministry for Foreign Affairs each provide one of the nine board members.

Country files (COI packages) used by the BFA include (among other topics) a chapter on the IPA and often a chapter concerning returned persons as well. They usually contain information from a variety of governmental and non-governmental sources. The COI used in the cases reviewed was usually, but not always up to date. Additional information relating to the specific circumstances of the applicant can be requested from ACCORD or Austrian embassies, or from experts (expert assistance, if used, is mainly for hearings at the Asylum Court). The Asylum Court has to examine the COI used by the authority as part of the appeal proceeding. Federal law enforcement authorities, courts and legal advisers are required to notify the BAA/BFA if they discover that any COI no longer corresponds to reality; any other persons may do so as well.[57]

If there is no oral hearing regarding COI, applicants usually receive a package of COI used. Otherwise the authority translates the relevant COI in the interviews with the opportunity for the applicant to make a statement. The credibility of the applicant's statements is crucial. Applicants can apply for investigations in the countries of origin, if the credibility of their statements cannot be verified by COI and require further research.

The applicant may also challenge the COI presented by the Asylum Office or the Asylum Court in appeal or in a written statement during the proceeding, by presenting more up-to-date or more specific COI or other evidence. In practice this is difficult. Usually applicants do not have legal assistance at first instance, as a legal adviser is only appointed when a negative decision is rendered. Without assistance – at least translation of the COI from German – most applicants will not be able to contest the authority's COI in written form.

[54] VwGH 19.10.2006 (2006/19/0297).
[55] See e.g., AC, 15.02.12013 (AFG88MREUM); BFA, 3.12.2012 (AFG20MSPUM).
[56] Asylum Law 2005, §60(1), (2).
[57] Asylum Law 2005, §60(7).

ii. Templates, guidance and training

It is unclear whether interview or case templates are in use at the BFA. There are no guidelines per se regarding the IPA, but a collection of jurisprudence is available to decision makers of the BFA. Trainings provided in cooperation with UNHCR deal with the IPA as part of the question of persecution and the need for protection. Caseworkers at the Asylum Court are not provided guidelines or training, but must follow and apply the jurisprudence of the Administrative High Court.

A few decisions refer to UNHCR. According to the Administrative High Court, recommendations of international organisations are essential indicators. If the authorities do not agree with their assessment of the situation in the country of origin they must explain their reasoning and the evidence it is based on.[58] A few senates of the Asylum Court referred in their rulings to the UNHCR Guidelines Guidelines on the Internal Flight or Relocation Alternative for assessment of relevance and reasonableness of the IPA.

VI. National recommendations.

These recommendations are considered particularly relevant to the Austrian context, and are complementary to the general recommendations provided in the APAIPA comparative report.

- Non-State actors should never be considered as actors of protection, either on their own or alongside a State actor of protection.

- If the IPA is raised as a possibility, it must be fully assessed and not simply asserted.

- Because of the complex nature of the IPA inquiry and in accordance with settled jurisprudence, the IPA should only be applied (if at all) in the context of a full asylum procedure, not in the airport procedure.

- The Federal Asylum Agency bears the burden of establishing each elements of the IPA. While the applicants may be expected to cooperate in this assessment, they should not bear the burden of proving that the IPA is not feasible or that any elements required apply it is missing. The Asylum Agency cannot, for specific countries of origin, assume that the IPA is available and leave the applicants to argue why an IPA is not available in their case.

- If the IPA may be applicable to the applicant, he/she must be provided with information explaining the concept and its significance, either in written form or through their legal representative or both. If the IPA is to be considered, the applicant must be promptly made aware of this possibility and given the opportunity to present evidence and arguments about it.

[58] VwGH, 19.3.2009 (2006/01/0930).

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